DOES THE POLITICAL QUESTION DOCTRINE HAVE A PLACE IN THE INDIAN CONSTITUTIONAL SETUP?: AN ANALYSIS THROUGH THE LENS OF LANDMARK SUPREME COURT DECISIONS

ARJUN SAGAR[1]

The power of judicial review has been recognised as an intrinsic feature in a constitutional democracy. It acts as a check against arbitrary legislative and executive action. However, this power is not unfettered. In order to prevent judicial adventurism, the judiciary has devised some self-imposed principles of restraint, one of which is the political question doctrine. Having its roots in the American constitutional jurisprudence, the doctrine warrants judicial abstention in issues which are deemed better suited to be dealt with either by the legislature or executive on account of them being 'political' in nature. The doctrine has been relied upon by US Courts to refuse adjudication upon political issues in several cases, but its exact scope of application remains ambiguous. This has invited scholars to present different approaches towards interpreting the doctrine, with some considering it to be recurrent in the court's practice, while others aiming to disprove its very existence. The judiciary and legal fraternity have largely remained aloof from undertaking an in-depth analysis of this doctrine in the Indian context; though interestingly, the Supreme Court has touched upon its scope of application in some of its landmark decisions. This article seeks to determine the political question doctrine's place in the Indian constitutional set-up by tracing the Supreme Court's approach towards its application. An effort is also made to analyse the extant literature and judicial pronouncements pertaining to the doctrine in order to discern its exact meaning and import.

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[1] Arjun Sagar is a fourth-year student at University Institute of Legal Studies (UILS), Panjab University, Chandigarh. The author may be reached at <arjunsagar4490@gmail.com>.

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INTRODUCTION

In a democracy, the judiciary is entrusted with the onerous task of guarding the Constitution. It is through the power of judicial review that the courts are able to successfully undertake this task. In simple terms, judicial review refers to the overseeing by the judiciary of the exercise of power by other coordinate organs of the state to ensure that they act in conformity with the constitutional principles.[2]

The Indian Constitution makers borrowed this concept from the United States ("**US**") Constitution. In the US, the historical judgement of *Marbury v. Madison*[3] ("***Marbury***") marked the inception of judicial review as we know it today. In this case, the court, elaborating on its own function(s) declared that *"in case of a conflict between the Constitution and a legislative statute, the Court will follow the former, which is superior of the two laws, and declare the latter to be unconstitutional."* It can, therefore, be said that the power of review of courts is based on the premise that legislative enactments and executive actions must be reviewed at the touchstone of the Constitution of the country.[4] It has been observed by the Supreme Court that judicial review is *"one of the features upon which hinges the system of checks and balances."* [5]

[2] S.P. Sathe, *Judicial Review in India: Limits and Policy*, 35 OHIO ST. L.J. 870-72 (1974).
[3] Marbury v. Madison, 5 U.S. 137 (1803).
[4] *Id.*; State of Rajasthan v. Union of India, (1977) 3 SCC 592.
[5] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

Though the power of judicial review has been cemented as an inextricable feature of the Indian Constitution, the Court's approach towards the exercise of this power has undergone considerable changes over time. In the first two decades since 1947, the Court stuck to a textual interpretation of the Constitution and largely confined itself to the traditional role of the judiciary, i.e., interpretation of the law.[6] This is evinced from the precedent laid down in *AK Gopalan v. Union of India*[7], where the court adopted a strict interpretation of Article 21.[8] In this case, while deciding upon the State's power of detention under the Preventive Detention Act, 1950, the court observed that the term "personal liberty" under Article 21 solely includes liberty of the physical body. It also ruled that Articles 19 and 21 must be read disjunctively, which in turn greatly restricted the scope of Article 21.

Similarly, on the issue of the amending power of the Parliament; in *Shankari Prasad v. Union of India*[9], it was held that amendments to the Constitution cannot be considered as "law" under Article 13(2)[10] and by implication, the Parliament practically enjoyed unfettered power of amendment, including the amendment (and taking away) of fundamental rights. The same stance was reiterated in *Sajjan Singh v. State of Rajasthan*.[11] These three decisions revealed considerable restraint on the court's part to impose any significant limitations on the powers of the legislature/executive, and are evidence of the reserved approach of the court which prevailed at that time.

However, there began a marked change in the approach of the Supreme Court starting from the case of *Golak Nath v. State of Punjab*[12] ("***Golak Nath***") (in which *Shankari Prasad*[13] and *Sajjan Singh*[14] were overruled).

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6 BARON DE MONTESQUIEU, THE SPIRIT OF LAWS, 151-162 (The Colonial Press, 2nd ed, 1899).

7 A.K. Gopalan v. Union of India, (1950) SCC 228.

8 INDIA CONST. art. 21.

9 Shankari Prasad v. Union of India, (1951) 4 SCC 966.

10 INDIA CONST. art. 13(2) talks about the extent of law-making power by the state so as to not abridge fundamental rights in the Constitution.

11 Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

12 Golak Nath v. State of Punjab, AIR 1967 SC 1643.

13 Shankari Prasad v. Union of India, (1951) 4 SCC 966.

14 Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

This period is often termed as the period of judicial activism, where the Court played a proactive role in the working of the democratic polity of the country.[15] The basic structure doctrine was promulgated[16], Article 21 was interpreted to include a plethora of rights which otherwise were not a part of the Constitution[17], the rule of *locus standi* was modified by introducing the concept of PILs (public interest litigation)[18] and the court exercised the power of judicial legislation in a myriad of cases.[19]

However, this interventionist approach of the Court in affairs of the legislature and executive has been criticised by some.[20] The primary ground for such criticism has been that the judiciary has breached the principle of separation of powers at times.[21] Though the Indian constitutional scheme does not adopt a strict model of separation of powers[22] like the US, and it cannot be given primacy over judicial review[23], it must be noted that the Constitution by no means envisages the assumption of legislative and or executive functions by the judiciary.[24]

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15 Shyam Prakash Pandey, *Understanding Judicial Activism and Its Impact*, 4(2) GLS L.J. 15 (2022).

16 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

17 Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

18 S.P. Gupta v. Union of India, AIR 1982 SC 149; Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai, (1976) 3 SCC 832; Bar Council of Maharashtra v. M.V. Dabholkar, (1975) 2 SCC 702.

19 Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (guidelines were laid down by the SC for the protection of women from sexual harassment at workplace); D.K. Basu v. State of W.B., (1997) 1 SCC 416 (guidelines to be followed by police while arresting a person); Vishwa Jagriti Mission v. Central Govt., (2001) 6 SCC 577 (anti-ragging guidelines).

20 S.P. Sathe, *Judicial Activism and the Indian Experience,* 6 Washington U. J. of L. and Policy 30, 88-89 (2001).

21 *Id.*

22 Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.

23 Justice Ruma Pal, *Judicial Oversight or Overreach: The Role of the Judiciary in Contemporary India*, 7 SCC J. 9, 13 (2008); *see also*, Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549; Powers, Privileges and Immunities of State Legislatures, Re, Special Reference No. 1 of 1964, (1965) 1 SCR 413.

24 Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.

The proper functioning of a democracy depends upon the strength and independence of each of its organs.[25]

Hence, the courts observe a self-imposed discipline on their otherwise sweeping powers of review, known as judicial restraint.[26] In pursuance of this discipline, the courts have relied upon certain doctrines such as the doctrine of presumption of constitutionality[27], the doctrine of harmonious construction[28], the Wednesbury principle[29] and a much lesser-known 'doctrine of political question' ("**the doctrine**"). It was evolved by courts in the US and in its essence, it seeks to preserve [the] "…*proper and properly limited role of the courts in a democratic society.*"[30]

While the doctrine has been subjected to criticism both in India and in the US, it has its roots deeply entrenched in constitutional law[31] and the courts[32] have relied upon it in multiple cases to determine the justiciability of an issue. This article seeks to undertake an all-encompassing study on the genesis and growth of the political question doctrine, in order to determine its place in the Indian constitutional set-up. It analyses the major judicial pronouncements of US courts and the scholarly commentary pertaining to the doctrine. It scrutinizes three major theoretical approaches towards its application to discern their respective merits and demerits. After providing this backdrop to the doctrine, the article goes on to analyse landmark cases of the Supreme Court of India where the doctrine has been subjected to different, and quite often, conflicting interpretations. The conclusion of the article provides a synthesis of the preceding sections by applying the theoretical foundations of the doctrine to the Supreme Court's approach towards its application; to argue that the doctrine can, and does fit into the Indian

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25 Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.

26 Jaya Thakur v. Union of India, (2023) 10 SCC 276; *see also*, Trop v. Dulles, 356 U.S. 86 (1958).

27 PUCL v. Union of India, (2004) 2 SCC 476; Natural Resources Allocation, *In re*, Special Reference No. 1 of 2012, (2012) 10 SCC 1.

28 National Buildings Construction Corporation v. Pritam Singh Gill, (1972) 2 SCC 1.

29 Rohtas Industries v. S.D. Agarwal, (1969) 1 SCC 325.

30 Warth v. Seldin, 422 U.S. 490, 498 (1975).

31 Fritz W. Scharpf, *Judicial Review and the Political Question Doctrine: A Functional Analysis*, 75 YALE L.J. 518, 524 (1966).

32 Baker v. Carr, 369 U.S. 186 (1962), Coleman v. Miller, 307 U.S. 433 (1939).

Constitutional framework, as it is nothing but an overt expression of the principle that the power of judicial review is not unrestricted.

THE POLITICAL QUESTION DOCTRINE IN THE US

A. LEADING JUDICIAL PRONOUNCEMENTS

The inception of the political question doctrine can be traced back to 1803, when the US Supreme Court in *Marbury* declared that "*questions, in their nature political, or which are, by the Constitution and laws, submitted to the executive, can never be made in this court.*"[33] This had the effect of the demarcation of a territory into which the courts cannot venture, as the issue raises a political question or has been submitted to another branch of the state. In simple words, the doctrine relates to the questions which the courts should refuse to decide upon or take cognizance of, on account of their political character.[34]

More than a century after *Marbury*, in 1939, the *Coleman v. Miller* case[35] considerably expanded the scope of this doctrine. In this case, constitutional amendments were excluded from judicial scrutiny, both on procedural and substantive grounds, based on the reasoning that granting a degree of finality to the decision of political branches is imperative in some constitutional matters, including amendments. Declaring amendments to the Constitution to be political questions, the judiciary was reasoned to be ill-equipped to gauge the myriad of political, social and economic conditions which mandate such amendments.[36]

However, till 1962, the courts were unclear about the exact application of this doctrine. It was only after the *Baker v. Carr*[37] ("***Baker***") case that it

[33] Marbury v. Madison, 5 U.S. 137 (1803).
[34] BLACK'S LAW DICTIONARY, 1319 (Bryan A. Garner, 12th ed., 2024).
[35] Coleman v. Miller, 307 U.S. 433 (1939).
[36] Mohammad Moin Uddin, *et al.*, *Judicial Review of Constitutional Amendments in Light of the Political Question Doctrine: A Comparative Study of the Jurisprudence of Supreme Courts of Bangladesh, India and the United States*, 58 J. INDIAN L. INST. 313, 317 (2016).
[37] Baker v. Carr, 369 U.S. 186 (1962).

started taking a definitive shape. A set of factors constituting the doctrine were laid down in this case:

> "*i) a textually demonstrable constitutional commitment of the issue to a coordinate political department;*
>
> *ii) or a lack of judicially discoverable and manageable standards for resolving it;*
>
> *iii) or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;*
>
> *iv) or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due to co- ordinate branches of Government or an unusual need for unquestioning adherence to a political decision already made;*
>
> *v) or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.*"[38]

It must be noted that while laying down these criteria, the court cautioned that whether a case raises a political question or not must be decided on a case-to-case basis and no water-tight rule can be laid down for its application.[39] These principles have subsequently been relied upon by courts[40] to refuse adjudication of impeachment proceedings undertaken by the Senate[41], matters of foreign policy[42], military affairs[43] and political conventions.[44] In recent cases, such as *Zivotofsky v. Clinton*[45],

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[38] *Id.*

[39] *Id.*

[40] Congressional Research Service (US), *Report on The Political Question Doctrine: Justiciability and the Separation of Powers*, DOC. NO. 7-5700 (2014).

[41] Nixon v. United States, 409 U.S. 1 (1972), where the Court decided not to interfere to accord finality to the Senate's decision while relying upon criterion no. 5 laid down in Baker v. Carr, 369 U.S. 186 (1962).

[42] Goldwater v. Carter, 444 U.S. 996, 1004 (1979); Sosa v. Alvarez-Machain, 542 U.S. 692, 733 n.21 (2004).

[43] Gilligan v. Morgan, 413 U.S. 1, 3-4 (1973).

[44] O'Brien v. Brown, 409 U.S. 1 (1972).

[45] Zivotofsky v. Clinton, 566 U.S. 189 (2012).

the courts have been relatively cautious in the application of the doctrine. However, it continues to hold an important place in US constitutional law.[46]

DIFFERENT APPROACHES TOWARDS APPLICATION OF THE DOCTRINE

The political question doctrine has been subjected to varying interpretations by scholars. Some have supported it but profess a narrow application, some advocate a liberal application, while still some assert that the doctrine either does not or should not exist. These different perspectives can be studied under three broad heads or approaches, namely – Classical, Prudential and Critical.

A. THE CLASSICAL APPROACH

The classical theory propagates for a narrow application of the doctrine. It was initially propounded by Justice Marshall in *Marbury*.[47] Though Justice Marshall did not make an explicit mention of the doctrine, he asserted that issues raising a political question may be beyond the scrutiny of courts but the court *cannot* forgo its constitutional duty to adjudicate issues of law.[48]

The most renowned proponent of modern classical theory is Herbert Wechsler. He tried to reconcile the application of the doctrine with the *"inflexible judicial duty"* of courts to decide cases.[49] The courts, in his opinion, should refuse to take jurisdiction wherever necessary but at the same time, they should *not* (emphasis added) refuse to take jurisdiction solely because they consider the issue to be "*doubtful*." In Wechsler's words, this amounts to *"treason of the constitution."* He believed that the

[46] Curtis A. Bradley, et al., *The Real Political Question Doctrine*, 75 STANFORD L. REV. 1033, 1089 (2023).
[47] Marbury v. Madison, 5 U.S. 137 (1803).
[48] SCHARPF, *supra* note 30.
[49] Herbert Wechsler, *Towards Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959).

political question doctrine calls upon courts to decide if an issue has been committed to another organ of the government and that is completely different from a "*broad discretion to abstain.*"[50]

In other words, the classical theorists posited that courts should consider the Constitution as the touchstone to decide whether to abstain or to interfere. A matter placed within the domain of a coordinate branch by the Constitution should not be interfered with by courts. However, questions which are legal must undoubtedly be adjudicated upon. If the court is doubtful as to the nature of the question raised, *i.e.*, if the question is partly political and partly legal, the court must exercise its jurisdiction. It can, therefore, be stated that the classical theorists were in favour of a limited application of the doctrine and emphasized more on the exercise of the power of review, even in "*doubtful*" cases.[51]

B. THE PRUDENTIAL APPROACH

The term *"broad discretion to abstain"* that Wechsler made a reference to is the approach propounded by Alexander Bickel, an American constitutionalist, through his concept of passive virtues.[52] This concept seemingly aligns with Bickel's justification for judicial review in a democracy: that it ensures a principled government.[53] He believed that the judiciary exercises three functions: "*[first], striking down a legislation which is inconsistent with principle, [second], validating a legislation which is consistent with principle, or [third] doing neither.*"[54] In Bickel's opinion, courts

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[50] J. Peter Mulhern, *In Defense of the Political Question Doctrine*, 137 U. PA. L. REV. 110 (1988).

[51] WECHSLER, *supra* note 49.

[52] Alexander M. Bickel, *The Supreme Court 1960 Term Foreword: The Passive Virtues*, 75 HARV. L. REV. 40, 74-80 (1961).

[53] ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 169-70 (Yale Univ. Press, 2nd ed. 1986). As per Bickel, the courts are the guardian of *'society's enduring values.*' He distinguishes between the concepts of '*principle'* and '*expediency'* and posits that while the political branches of the state have liberty to act on the premise of expediency (or necessity), judicial review exercised by the courts is "*always idealistic*" and aimed at upholding the ideals (or principles) dear to society. For him, pronouncing and guarding the values of society and ensuring a principled government is the only justification for judicial review in a democracy.

[54] Anthony T. Kronman, *Alexander Bickel's Philosophy of Prudence*, 94 YALE L.J. 1575, 1584-1585 (1985).

have the *discretion* to refuse to decide upon a case where it may not be "*prudent*" to do so.[55] An oft-quoted passage summing up Bickel's description of the political question doctrine is as follows:

> "*Such is the basis of the political-question doctrine: the court's sense of lack of capacity, compounded in unequal parts of the strangeness of the issue and the suspicion that it will have to yield more often and more substantially to expediency than to principle; the sheer momentousness of it, which unbalances judgment and prevents one from subsuming the normal calculations of probabilities; the anxiety not so much that judicial judgment will be ignored, as that perhaps it should be but won't; finally and in sum (in a mature democracy), the inner vulnerability of an institution which is electorally irresponsible and has no earth to draw strength from.*"[56]

Though this description reiterates the concepts of principle and expediency to some extent and also recognises the court's lack of capacity to examine certain issues, it is unclear and ambiguous. Bickel terms the judiciary as being "*electorally irresponsible*" which for him, should act as a restraint on its power of judicial review.[57] This power, according to him, is a counter-majoritarian force as striking down an act of the legislature or executive (the electorally responsible organs) gradually frustrates the will of the people. Hence, he states that by applying the principle of passive virtues, the courts should abstain from adjudicating an issue when a *"principled judgement"* is not possible, in order to maintain their perceived legitimacy. Bickel's hypothesis seems to advocate for the deferment of a judgment by the courts till the circumstances are not ripe, and the courts in his opinion, have complete discretion to do so.[58] However, the import of the terms used by him, such as "*circumstances*",

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[55] *Id.*

[56] BICKEL, *supra* note 53, at 184.

[57] *Id.*

[58] BICKEL, *supra* note 53, at 110. Bickel saw nothing in the Constitution to prevent courts from choosing to decide some constitutional issues and not others.

"*principled judgement*" and "*expediency*" is difficult to understand and hence, the prudential approach seems to be an ambiguous one.

C. THE CRITICAL APPROACH

Though Wechsler and Bickel were at loggerheads with each other over the scope of application of the doctrine, their approaches intersected at the point that the doctrine does in fact exist and should be applied by courts. However, starting from the 1970s, attempts were made by a group of scholars to dismiss the very existence of the doctrine.

Louis Henkin, in his work titled "*Is There A Political Question Doctrine*?"[59] states that whenever the courts decide that an issue is better suited to be dealt with by the legislature or executive, they are not applying a doctrine *per se* (emphasis added). Rather, this is done to give ordinary respect to the decisions of the other branches of the government. Even in cases where the courts declare that the impugned issue has been assigned to another organ by the Constitution, they are undertaking judicial review by affirming that such organ was constitutionally authorised to carry out the act. This, according to Henkin, cannot be done without going into merits of the case[60], which is an exercise of the power of review. By implication, the doctrine is rendered redundant even when the court ultimately decides not to interfere in a matter. Therefore, the doctrine, in his words is no more than "*an unnecessary, deceptive packaging of several established doctrines*"[61] and should be discarded permanently.

Professor Redish is another scholar who supports a complete abandonment of the doctrine. He believes that as judicial review is an immutable part of a constitutional democracy, there can be no exceptions to the rule of justiciability.[62] Redish is one amongst several modern scholars who consider that as the judiciary is the only organ empowered to interpret the Constitution, there cannot be a case where the legislature

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[59] Louis Henkin, *Is There a Political Question Doctrine?*, 85 YALE L.J. 598, 599 (1976).
[60] Wayne McCormack, *The Justiciability Myth and the Concept of Law*, 14 HASTINGS CONST. L.Q. 614 (1987).
[61] HENKIN, *supra* note 59, at 622.
[62] Martin H. Redish, *Judicial Review and the Political Question*, 79 N.Y.U. L. REV. 1031, 1059-1060 (1985).

or executive enjoys unfettered discretion.[63] The doctrine is irreconcilable with his vision of constitutional democracy as it seeks to limit the scope of justiciability of issues raised before the court.

CRITICAL ASSESSMENT OF THE THREE APPROACHES

The classical, prudential and critical theories posit different interpretations and scope of application of the political question doctrine. In order to determine which of these theories is legally as well as logically sound, their respective merits and demerits need to be considered.

The classical theory adopts an arguably safe application of the doctrine by relying upon the Constitution. This can be termed as a balanced approach because this leads the court to maintain a harmonious balance between its duty to adjudicate legal issues and forgo adjudication of political issues. However, this theory's application becomes confusing when we look into instances when the courts have transgressed explicit provisions of the Constitution that seemingly confer discretion upon the legislature or executive and have held the matter justiciable. A pertinent example of this is the case of *Powell v. McCormack*, in which the Court intervened in the selection of members based upon the qualifications set by Congress, for which it has been declared as the sole judge by the Constitution.[64] The classical theory provides no solution to this inconsistency.

Bickel's prudential theory has also been criticised on several fronts. In a democracy, the courts do not function solely to maintain their perceived legitimacy. Merely because the judges are not elected by the people, courts cannot shrug off their constitutional duty on the ground that a decision would lead to criticism, hostility or disobedience.[65] If the court exercised the power of review only in cases where the circumstances are

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[63] *Id.*

[64] Powell v. McCormack, 395 U.S. 486 (1969).

[65] Jesse H. Choper, *The Political Question Doctrine: Suggested Criteria*, 54 DUKE L.J. 1457, 1477-1478 (2005).

favourable, it would be undermining its position as the institution entrusted with guarding the Constitution. Moreover, the explanation rendered by Bickel for the political question doctrine and the concept of passive virtues is inconclusive. Questions such as what is the exact import of the term "*prudence*", or how the courts can distinguish between constitutional and political questions have been overlooked in his theory.[66]

The political question doctrine, as pointed out by Henkin, can be termed as a manifestation of the principle of separation of powers[67], but in reality, the doctrine goes much beyond this principle and encompasses variegated concepts of judicial abstinence which are required to be observed by courts.[68] There are matters that require extraordinary judicial abstinence, such as those of foreign policy and defence, something which Henkin overlooks. Such matters involve considerations which are exclusively within the knowledge of the executive, due to which the judiciary is not well-equipped to adequately adjudge them.

Moreover, Henkin's view that a court's *prima-facie* refusal to adjudicate upon an issue implies that it has gone into the merits of the case, cannot be said to be correct. This is because a refusal to adjudicate in itself means that the court considers it unwise to touch upon the merits and in turn, dismisses the matter at the outset. Therefore, Henkin's observations regarding the doctrine are also not free of fault.

The author would be inclined to disagree with Redish's observation that any exception to justiciability invites disaster. The court is a judicial institution with limited knowledge about the existing social, political and economic conditions.[69] This should prompt a deferential attitude towards certain issues. The court's role should be limited to examining whether a breach of constitutional principles has taken place.[70] If the court is satisfied that there is no such breach, the political branches should be

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66 BICKEL, *supra* note 53, at 115.

67 HENKIN, *supra* note 59, at 613.

68 Baker v. Carr, 369 U.S. 186 (1962).

69 Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1.

70 B.A.L.C.O. Employees Union (regd.) v. Union of India, (2002) 2 SCC 333.

allowed to exercise reasonable discretion in their domains. This necessarily implies certain limitations on the power of judicial review.

Considering the continuous tussle between scholars regarding the nature of the political question doctrine, as well as its inconsistent application by courts, it is evident that the precise nature and scope of the doctrine is still "*murky and confused*."[71]

THE INDIAN SUPREME COURT ON THE POLITICAL QUESTION DOCTRINE

The political question doctrine has received substantially less attention in India as compared to the US. There is little to no scholarly work on the Indian judiciary's perspective towards the doctrine. However, in several cases encompassing a range of issues, the Supreme Court has made reference to the same. This section contains a concise analysis of the different interpretations that the doctrine has been subjected to by the Supreme Court in several landmark cases.

A. CONSTITUTIONAL AMENDMENT CASES

The *Golak Nath* and *Kesavananda Bharati v. State of Kerala* ("***Kesavananda Bharati***") case(s) are arguably the two most important cases in the history of the Indian Constitution. The primary question before the court in these cases pertained to the power of the Parliament to amend the Constitution under Article 368.[72] In *Golak Nath*, the State raised the contention that the amending power of the Parliament is a sovereign power and cannot be equated with ordinary legislative power. Thus, an Amendment to the Constitution is the prerogative of Parliament, the exercise of which involves a *political question* and hence it is not amenable

[71] Bradley, *supra* note 46.
[72] INDIA CONST., art. 368.

to judicial review. The court rejected this contention and made three observations[73]:

1. That the nature of the question posed before it is irrelevant and the only thing which needs to be determined is whether the matter has been "*explicitly or by necessary implication excluded from its jurisdiction*." (emphasis added)

2. That it is "*not possible to define what is a political question and what is not. The character of a question depends upon the circumstances and the nature of a political society*." (emphasis added)

3. That the objective of Parliament while amending the Constitution may be political but the court in "*denying that power is not deciding upon a political question*." It also noted that the court "*does not decide any political question at all in the ordinary sense of the term*." (emphasis added)

These observations are, in the author's opinion, self-contradictory to some extent. In the first observation, the court believed that the nature of the question was altogether irrelevant. However, in the third observation, the court found it necessary to clear that imposing a limit on the amending power of the Parliament is not a political question, noting that the court ordinarily does not decide political questions. This implies that the court did, in fact, consider the nature of the question to be of relevance. The first and second observations are rendered redundant by this concession, as it found the nature of the question to be of significant importance while determining the justiciability of an issue and evidently, it was also able to distinguish between a political and non-political question in the third observation. Therefore, it can be said that in *Golak Nath*, the court has inadvertently recognised and affirmed the political question doctrine while accepting the inherent limitations on its review power. It was ultimately held by the court that an Amendment to the Constitution comes under the purview of 'law' in Article 13(2)[74] and therefore, the fundamental rights laid down in Part III cannot be abridged by way of an Amendment. It also noted that Article 368 of the

[73] Golak Nath v. State of Punjab, AIR 1967 SC 1643.
[74] INDIA CONST., art. 13(2).

Constitution only provided for the procedure of Amendment and did not confer any constituent power on Parliament to amend it.

To nullify the effect of the *Golak Nath* judgement, the Constitution (Twenty Fourth Amendment) Act was introduced in 1971. The Amendment completely overhauled Article 368 of the Constitution which now conferred constituent amending power upon Parliament including the power to amend fundamental rights.[75]

The said Amendment was challenged in *Kesavananda Bharati*.[76] Similar to the contentions raised in *Golak Nath*, the State asserted that constitutional amendments fall within the realm of the political question doctrine and hence are not subject to judicial review. To answer this contention, the court quoted an excerpt from the Australian case of *Commonwealth of Australia v. Bank of New South Wales* which stated that "*the problem to be solved will often be not so much legal as political, social or economic, yet it must be solved by a court of law*."[77] The Supreme Court here undertook a correct interpretation of the limitations in applying the political question doctrine.

The doctrine does not warrant abstention from courts solely because an issue has a political complexion or can have political consequences.[78] In any constitutional matter, the court is not adjudicating upon the social, economic or other issues presented before it but upon the constitutional questions presented.[79] The political question doctrine comes into an application only in cases where a legal question does not arise *at all* (emphasis added) and the matter entirely falls in the political domain. Putting the respondents' concerns to rest, the Supreme Court in this

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[75] The Constitution (Twenty Fourth Amendment) Act, 1971, sp 3, Acts of Parliament, 1971 (India).

[76] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

[77] Commonwealth of Australia v. Bank of New South Wales, [1950] A.C. 235, 310 (Austl.).

[78] *Supra* note 40, at 2.

[79] State of Rajasthan v. Union of India, (1977) 3 SCC 592.

momentous case went on to enunciate the basic structure doctrine[80], posing a limitation on the amending power of Parliament while upholding the validity of the impugned Amendment Act.

B. STATE-EMERGENCY CASES

Article 356 of the Constitution empowers the President to issue a proclamation of emergency if he is satisfied that the constitutional machinery in a state has broken down.[81] The aftermath of such a proclamation is that the concerned state directly comes under the President's rule. A profoundly extraordinary provision such as that of Article 356 was intended to be used in the rarest of rare cases by the members of the Constituent Assembly.[82] However, it was seen that the provision was often used capriciously for attaining oblique motives.[83] The High Courts in several cases[84] had declared that the satisfaction of the President warranting proclamation of emergency is a political issue and the court cannot examine such satisfaction due to a lack of "*satisfactory criteria*"[85] for judicial determination. The proclamation of emergency was thus considered to be a political question entrusted to the executive, beyond the scope of judicial review.

However, this changed after the 1978 decision of the *State of Rajasthan v. Union of India*. The Supreme Court in this case was presented with the issue of determining the extent to which power exercised under Article 356 is subject to judicial scrutiny. Article 74(2)[86] was relied upon by the respondent to argue against the interference of the court as this provision

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[80] The basic structure doctrine restricts the Parliament from amending the fundamental principles of the Constitution, such as democratic and republic state, universal adult franchise, free and fair elections, judicial review and so on.

[81] INDIA CONST., art. 356.

[82] R. Prakash, *Judicial Review of Presidential Proclamation Under Article 356*, 6 SCC J-13 (1998).

[83] Sarkaria Commission Report (1987), p. 6.4.01, quoted in S.R. Bommai v. Union of India, (1994) 3 SCC 1, *infra* note 94; *see also,* Baker v. Carr, 369 U.S. 186 (1962), criterion no. 2.

[84] Rao Birinder Singh v. Union of India AIR 1968 P&H 441; Gokulananda Roy v. Tarapada Mukharjee AIR 1973 Cal 233; A. Sreeramula, *in re*, AIR 1974 AP 106.

[85] *See* Baker v. Carr, 369 U.S. 186 (1962), criterion no. 2.

[86] INDIA CONST., art. 74(2): *"The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."*

bars an inquiry by a court into the advice tendered by the Council of Ministers to the President. It was deemed relevant to rely upon as it seemingly restricted judicial interference in the President's decision to declare a state emergency.

The court referred to the political question doctrine as "*an open sesame expression that can become a password for gaining or preventing admission into forbidden fields.*"[87] This expression finds elaboration in the latter part of the judgement.

The court declared that the President (in consultation with the Council of Ministers) must be left as the "*sole judge*" to determine whether a situation exists that warrants a proclamation of emergency. The facts disclosed to the President by the Council of Ministers are political in nature and the courts should never enter into this "*prohibited field.*" It was observed that "*if a question brought before the Court is purely a political question not involving determination of any legal or constitutional right or obligation, the Court would not entertain it, since the Court is concerned only with adjudication of legal rights and liabilities.*"[88]

However, the court, like in *Kesavananda Bharati*, cautioned that essentially every constitutional question can have a political complexion, but this cannot be the sole ground for the judiciary to refrain from appraising the issue at hand.[89] Undertaking its role as the interpreter of the extent of powers assigned to the political branches in the Constitution, the court held that the President's decision of proclamation of emergency would not be amenable to judicial review *unless* it is *mala-fide* or based on extraneous grounds.[90] The burden of proving that the proclamation was guided by extraneous factors is upon the party that challenges the legality of such proclamation. This can be proved by showing that the proclamation is fuelled by political motives and/or that nothing has been

[87] State of Rajasthan v. Union of India, (1977) 3 SCC 592.
[88] *Id.*
[89] Baker v. Carr, 369 U.S. 186 (1962).
[90] State of Rajasthan v. Union of India, (1977) 3 SCC 592.

placed on record which shows that there is a breakdown of constitutional machinery in the state which warranted the exercise of emergency power.

The Supreme Court's views on the political question doctrine in *State of Rajasthan v. Union of India* have been criticised[91] on the ground that the Constitution (Thirty-Eighth Amendment) Act, 1975 was in force at the time the case was decided. This Amendment declared the President's decision to proclaim an emergency to be conclusive and not amenable to judicial review.[92] However, the explanation of the political question doctrine as laid down in *State of Rajasthan v. Union of India* was later affirmed by the Supreme Court in the case of *SR Bommai v. Union of India*[93]("***Bommai***") as well, long after the said Amendment had been struck down, thereby proving the criticism to be unfounded.

In *Bommai*, the court reasoned that Article 356 of the Constitution is wrapped up with "*political thicket*" not only on account of the proclamation power being vested in the hands of the executive head of the country but also because of the additional layer of judicial abstention posed by Article 74(2).[94] The court declared that such proclamation is a political judgement based on "*varied factors, fast changing situations, potential consequences, public reaction…and a host of other considerations*"[95] which the judiciary cannot gauge due to a want of judicially manageable standards.[96] Hence, it is left to the subjective satisfaction of the President. Scrutinizing the advice tendered by the Council of Ministers or substituting the opinion of the President with its own amounts to a questioning of political wisdom which the courts must avoid. However, the court while concurring with the precedent laid down in *State of Rajasthan v. Union of India* observed that this political thicket can be unwrapped in select circumstances where the emergency provision has been patently misused, leading to a violation of the constitutional principles. This rationale was followed in *Rameshwar Prasad v. Union of*

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91 A.K. Roy v. Union of India, (1982) 1 SCC 271.

92The Constitution (Thirty-Eighth Amendment) Act, 1975, §6, Acts of Parliament, 1971 (India).

93 S.R. Bommai v. Union of India, (1994) 3 SCC 1.

94 *Id.*

95 *Id.*

96 *See* Baker v. Carr, 369 U.S. 186 (1962), criterion no. 2.

India[97], where the court scrutinised the reasons quoted by the State to justify the proclamation of state emergency in order to determine whether the proclamation was in fact, warranted. The court also reiterated that a proclamation issued under Article 356 is amenable to judicial review on the grounds mentioned above[98], *i.e., mala-fide* exercise of power or extraneous considerations.

C. ORDINANCE PROMULGATION CASES

A similar discretionary power is vested upon the President by virtue of Article 123 of the Constitution. It empowers the President to promulgate ordinances when both houses of the Parliament are not in session and when the existence of certain circumstances mandates immediate action.[99] The contours of the powers conferred by Article 356 and Article 123 are relatively similar as both are vested in the hands of the President who exercises the power upon the advice of the Council of Ministers. The case of *AK Roy v. Union of India* ("***AK Roy***") is a landmark pronouncement on the extent of justiciability of promulgation of ordinances. The court in this case laid down that an ordinance is amenable to judicial review *only* (emphasis added) on the grounds of vagueness, arbitrariness, reasonableness and public interest.[100] However, the court was once again confronted with the question of the application of the political question doctrine with respect to Article 123.

The petitioners in this case asserted that the doctrine does not act as a bar against the justiciability of satisfaction of the President while issuing ordinances. To refute its application, two primary contentions were raised, *first* that the doctrine is the result of a rigid separation of powers followed in the US, which is not the case under the Indian Constitution and the observations made by the Apex Court in the case of *Madhav Rao*

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97 Rameshwar Prasad v. Union of India, AIR 2005 SC 4301.
98 State of Rajasthan v. Union of India, (1977) 3 SCC 592.
99 INDIA CONST., art. 123.
100 A.K. Roy v. Union of India, (1982) 1 SCC 271.

Scindia v. Union of India[101] ("***Madhav Rao***") essentially negates the application of the political question doctrine in India.

The court while dealing with these contentions adopted a hostile attitude towards the doctrine. The petitioner's first contention was affirmed by the court. The fact that India follows a flexible model of separation of powers does, in the author's opinion, limit the circumstances where the doctrine can be relied upon, but as noted in the preceding sections, it does not render it otiose. The doctrine can still be applied as the term 'flexible' does not mean that the judiciary enjoys unfettered power. Moreover, the court in this case seemed to have implicitly limited itself to Bickel's interpretation of the doctrine: that they must apply a prudential attitude and not interfere when claims of principle and claims of expediency are at loggerheads with each other.[102] As aforementioned in Part II of the paper, Bickel's interpretation of the doctrine cannot be considered to be an adept one for several reasons.

With regard to the second contention, though the court did not directly address the observations laid down in *Madhav Rao,* at this juncture it is important to understand why the petitioners relied upon the said case to negate the application of the doctrine. The Supreme Court had opined in *Madhav Rao* that there is no political power under the Constitution as it only recognises legislative, executive and judicial powers.[103] However, it would be incorrect to infer that this observation of the court negates the application of the political question doctrine in its entirety. The term 'political' is an umbrella term relating to the policy[104] or administration of the government in which both the legislature and executive play a role. Declaring that these bodies do not exercise political powers is doubtful. The doctrine does not envisage a literal import of the term 'political.'

Also, it is important to consider the context in which the court made this observation. In *Madhav Rao*, the petitioners while relying upon Article

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[101] Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85.

[102] A.K. Roy v. Union of India, (1982) 1 SCC 271.

[103] *Id.*

[104] *Supra* note 34, at 1316, policy means *'the general principles by which a government is guided in its management of public affairs, or the legislature in its measures.'*

363[105] of the Constitution (which precludes the jurisdiction of the Supreme Court in any dispute arising out of any provision of a treaty, agreement or covenant to which the Government is a party) made the claim that in such matters, the President enjoyed sovereign or paramount power not subject to any checks. The court, while rejecting this contention, had stated that there can be no political power vested in the President which can transcend the Constitution or the law. Therefore, the views of the court can be considered to be confined to the peculiar facts of the case.

Another reason why *Madhav Rao* cannot be considered as the final authority to declare the political question doctrine to be inapplicable in India is that the doctrine has been affirmed by the Supreme Court in several subsequent cases. In *Indira Nehru Gandhi v. Raj Narain*[106], the Supreme Court directly tackled the observation made in *Madhav Rao*. It observed that though the political question doctrine may seemingly have *"no hospitable quarters"* in our Constitution, it eventually conceded to the logical presumption that only this doctrine can explain why courts do not interfere in certain issues, such as with the verdict of Parliament to impeach the President.[107]

Therefore, though the Court in *AK Roy* might not have adopted a correct approach in analysing the doctrine, its decision that the doctrine cannot act as a bar to assess if the exercise of power under Article 123 has been used capriciously is constitutionally sound.

Gurudevdatta VKSSS Maryadit v. State of Maharashtra[108] is another case dealing with the justiciability of promulgation of ordinances by the President. Though the court resonated with the narrow grounds on which the court can scrutinize the enactment of an ordinance laid down

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[105] INDIA CONST., art. 363.

[106] Indira Nehru Gandhi v. Raj Narain, (1975) 2 SCC 159.

[107] *Id. See also* Baker v. Carr, 369 U.S. 186 (1962), criterion no. 5.

[108] Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534.

in *AK Roy*[109], it adopted a different approach towards the political question doctrine. It opined that the doctrine has "*to be treated as a tool for maintenance of governmental order.*"[110] In other words, the doctrine should be followed in cases where the policy being adopted by the government is in danger of being disrupted. However, the court cautioned that it is impossible to devise a straitjacket formula for application of the doctrine as it would vary as per the facts and circumstances of each case.

D. FOREIGN POLICY AND DEFENSE CASES

The affairs relating to the maintenance of relations with other states, formulation of foreign policy, defence and security matters and execution and recession of treaties have been vested in the hands of the executive by the Constitution.[111] The variegated factors which the courts cannot examine adequately for want of requisite information have refrained the courts from entering into the realm of foreign policy and defence matters as far as possible. This abstention finds its ground in *Baker's* two principles: the institutional limitations of the judiciary and the lack of manageable standards.[112]

An oft-quoted Indian case on the extent of justiciability of actions undertaken by the executive in foreign matters is that of *RC Poudyal v. Union of India*.[113] Succinctly stating the relevant facts of the case, the validity of accession of the state of Sikkim to India and the subsequent insertion of Article 371-F[114] into the Constitution stipulating the special terms on which said accession took place were in question. The State contended that the issues raised in this case "*involve complex questions of political policy and expedience; of international-relations; of security and defense of the realm etc. which do not possess and present judicially manageable standards*"[115]

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[109] A.K. Roy v. Union of India, (1982) 1 SCC 271.

[110] Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534.

[111] Marie Emmanuel Verhoeven v. Union of India, (2016) 6 SCC 456; Abdul Salem Abdul Qayoob Ansari v. State of Maharashtra, (2011) 11 SCC 214; Citizens of Green Doon v. Union of India, 2020 SCC OnLine SC 1360.

[112] El-Shifa Pharmaceutical Industries Co. v. United States, 607 F.3d 836, 844 (D.C. Cir. 2010) (U.S.A.); *see also* Goldwater v. Carter, 444 U.S. 996, 1004 (1979).

[113] R.C. Poudyal v. Union of India, (1994) Supp (1) SCC 324.

[114] INDIA CONST., art. 371-F.

[115] R.C. Poudyal v. Union of India, (1994) Supp (1) SCC 324.

which warrant non-interference by the Court. Reliance was also placed upon Article 2 of the Constitution which confers power upon the Parliament to admit new states into the Union "*on such terms and conditions as it finds fit.*"[116]

The court reasoned that the exercise of power conferred by Article 2 undoubtedly involves complex political issues for the examination of which judicially manageable standards may not be present. However, the court demarcated the strict line of constitutionalism which the legislature cannot transgress even while exercising as wide a power as envisaged under the said Article.[117] Reference was made by the court to the observations made in *Baker* that every case relating to foreign relations does not lie beyond judicial scrutiny.[118]

E. RECENT CASES

In two recent landmark judgements of *Supriyo* v. *State of Rajasthan*[119] ("***Supriyo***") and *Anoop Baranwal* v. *Union of India*[120] ("***Anoop Baranwal***"), the Supreme Court dealt with complex issues seemingly raising political questions. In *Supriyo*, the court grappled with the issue of granting legal recognition to homosexual marriages by reading into the provisions of the Special Marriage Act, 1954.[121] The State relied upon the political question doctrine and the principles laid down in *Baker* to argue that "*such issues are left for being decided by the competent Legislature where social,*

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116 INDIA CONST., art. 2.

117 *See* Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85.

118 Baker v. Carr, 369 U.S. 186 (1962).

119 Supriyo v. Union of India, 2023 SCC OnLine SC 1348.

120 Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161.

121 It was argued that the Special Marriage Act, 1954, § 4(c), No. 43, Acts of Parliament, 1954 recognizes marriage only between a male and a female, essentially derecognizing same-sex marriages. Section 4 provides for conditions for solemnization of special marriages. Sub-section (c) provides: "the *male* has completed the age of twenty-one years and the *female* the age of eighteen years."

psychological, religious and other impacts on society can be debated."[122] The court made a general remark upon this argument (while reiterating *Baker's* essentials) that political questions are considered "*off-limits*" for judicial review. However, with respect to the issue raised in the present case, the argument that the doctrine poses a bar to deciding upon the legality of homosexual marriages was rejected by the court, though ultimately it exercised restraint in granting the relief claimed by stating that the "*Court … must steer clear of matters, particularly those impinging on policy, which fall in the legislative domain*" due to its "*institutional limitations.*"[123] This decision has been criticised[124] as some believe that it was an issue which warranted the exercise of the power of review by the court.

On the other hand, in *Anoop Baranwal*[125], the issue of enactment of a law for the appointment of the Chief Election Commissioner and the Election Commissioners of the Election Commission ("**EC**") was raised. The petitioner argued that Article 324(2)[126] of the Constitution imposes an obligation upon the legislature to enact a suitable law in this regard, while one of the arguments of the State was that this issue raises a political question and hence, it should not be interfered with by the court. However, the obligation of enacting a law under this provision had not been met by the legislature till then and appointments of the EC Commissioners were being made unilaterally by the President, *i.e.*, the executive. The court held that by inserting this provision, the Constitution makers intended that the appointment of EC Commissioners must be regulated by law in order to maintain the independence of the EC, which is crucial to ensure free and fair elections.

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122 Supriyo v. Union of India, 2023 SCC OnLine SC 1348.

123 *Id.*

124 Danish Sheikh, *et. al.*, *Besides Marriage Equality: Conversations on Supriyo*, 20(1) SOC. L. REV. (2024), *see also,* Akshat Agarwal, *When Discrimination Is Not Enough,* VERFASSUNGSBLOG (Dec. 8, 2024,), https://verfassungsblog.de/when-discrimination-is-not- enough/.

125 Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161.

126 INDIA CONST., art. 324(2): "*The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.*"

It was never intended that this power be unilaterally exercised by the executive. The Court went on to establish an interim Committee comprising the Prime Minister, the Leader of the Opposition and the Chief Justice of India to advise the President in making such appointments until a law is made by the Parliament. Soon after this ruling, a law was passed in this regard.[127]

The inconsistent approach of the court in these two cases is evident. In *Anoop Baranwal*, the issue may be said to be squarely falling under the political question doctrine. *Baker's* first essential that "*a textually demonstrable constitutional commitment of the issue to a coordinate political department*"[128], *i.e.*, where the Constitution commits an issue to a particular branch, is fulfilled here. This is because Article 324(2) of the Constitution explicitly vested the power of appointment of the EC Commissioners in the hands of the President, subject to a law made by the Parliament. However, the court, observing that there was a legislative vacuum on account of the Parliament's non-enactment of law, found it within its institutional competence to lay down an interim scheme, irrespective of the fact that such power was textually committed to other branches. This is in sharp contrast to the *Supriyo* verdict where the court neither found it prudent to accord recognition to homosexual marriages nor suggested that the Parliament make a suitable law/amendment to the existing regulations, citing its institutional limitations. Both cases posed seemingly political questions but the Court adopted completely different approaches in determining its competence to adjudicate the issue raised.

CONCLUSION

After an analysis of the past references made by the Indian Supreme Court to the political question doctrine, it can be concluded that the court's approach towards the political question doctrine has been

[127] Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161.
[128] Baker v. Carr, 369 U.S. 186 (1962), criterion no. 1.

fluctuating. The doctrine has been dismissed in its entirety in one case[129], while it has been affirmed in another.[130] Much like in the US, there remains some ambiguity surrounding the doctrine owing to the restraint on the part of courts in recent cases in applying it (though *Baker* continues to be an established authority). The recent decisions of *Supriyo*[131] and *Anoop Baranwal*[132] support this proposition.

However, a common thread of reasoning that seems to flow in all these cases is that the court has been wary of adopting a complete hands-off approach where even the slightest possibility of a violation of the Constitution is in question. When a matter has been textually committed to the legislature or executive, or where the court's jurisdiction has been excluded (such as under Articles 356, 123 and 74(2)), the Court has still ruled in favour of the exercise of judicial review, though in a strict and narrow sense. In contrast, the courts in the US have considered it wise to not interfere where the Constitution grants discretion to the political branches of the state and have placed considerable reliance upon the political question doctrine to abstain from adjudication.

The reason for the Indian Supreme Court exercising over-arching powers of judicial review with limited exceptions while the US Supreme Court being more or less restricted to the 'traditional' role of judiciary can be attributed to different socio-political conditions prevailing in the countries. In India, deep-rooted corruption and malpractices have had an impact on the legitimacy of the legislative and executive branches. This has led to the judiciary being labelled as the last resort for resolution of citizen's problems. The Constitution of India, when considered as a whole, has also reposed trust in the judiciary for guarding the Constitution, which has prompted courts to adopt an 'active' role in the functioning of the state. However, the courts have still been cognizant of their inherent limitations on certain matters where their interference would most likely usurp, and not uphold the constitutional vision.

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129 Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85.

130 S.R. Bommai v. Union of India, (1994) 3 SCC 1; State of Rajasthan v. Union of India, (1977) 3 SCC 592.

131 Supriyo v. Union of India, 2023 SCC OnLine SC 1348.

132 Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161.

This is where the political question doctrine comes into the picture. It serves as the yardstick for courts to decide whether a particular case warrants a deferential approach owing to the existence of certain factors. The Supreme Court's views in *State of Rajasthan v. Union of India*[133] that the doctrine is an expression to prevent or admit entry into *"forbidden fields"* correctly implies that it is still ultimately the judiciary which has to decide whether the legislature or executive should be allowed to act without interference. Hence, Redish's views[134] can be termed to be correct to the extent that only the judiciary can interpret the Constitution and that the political branches do not enjoy absolute discretion even where the Constitution seems to confer the same upon them. This is also the approach adopted by the Indian Supreme Court while interpreting cases involving the exercise of discretionary executive power like under Article 356[135] and Article 123.[136]

In sum, it can be said that the Indian Constitution does not entirely prohibit the existence of such a doctrine as the constitutional scheme itself recognises some limitations of the judiciary as well as some independence to be enjoyed by the legislature and executive. It cannot be consistently relied upon by courts as has been the case in the US, but it can surely be used as a barometer to test the nature, and ultimately the justiciability of the question posed before it.

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133 State of Rajasthan v. Union of India, (1977) 3 SCC 592.

134 REDISH, *supra* note 62.

135 S.R. Bommai v. Union of India, (1994) 3 SCC 1; State of Rajasthan v. Union of India, (1977) 3 SCC 592.

136 A.K. Roy v. Union of India, (1982) 1 SCC 271; Gurudevdatta VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534.