

## Separation of Powers and Judicial Review vis-a-vis Judicial Overreach in South Africa: A Critical Analysis

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**Abstract :** The Constitution of the Republic of South Africa, 1996 ranks the Constitution as the Supreme law of the Republic. Law or conduct, inconsistent with the provisions of the Constitution is invalid to the extent of the inconsistency. The Constitution binds all persons and legislative, executive and judicial organs of the State at all levels of government. The Constitution embodies a Bill of Rights and expressly allows for judicial review. The introduction of a chapter of rights requires the judiciary to examine the decisions of the legislature and the executive. In a situation where these conflicts with the Bill of Rights, the judiciary have the constitutional power to overrule such decisions. In exercising its adjudicatory and interpretative powers, the judiciary sometimes arrives at unpopular decisions and accusations of judicial overreach are made. A problem, therefore, emerges on the issue of the separation of powers and judicial review. This paper proposes to, through the South African perspective, investigate the application of the doctrine of separation of powers and judicial review. In this regard, the qualitative method of research will be employed. The reason is that it is best suited to this type of study which entails a critical analysis of legal issues. The following findings are made: (i) a complete separation of powers is not possible. This is because some overlapping of the functions of the three branches of state are unavoidable; (ii) the powers vested in the judiciary does not make it more powerful than the executive and the legislature; (iii) interference by the judiciary in matters concerning other branches is not automatically, judicial overreach; and (iv) if both the executive and legislative organs of government adhere to their constitutional obligations there would be a decrease in the need for judicial interference through court adjudication. The researcher concludes by submitting that the judiciary should not derogate from their constitutionally mandated function of judicial review. The rationale being that that if the values contained in the Constitution are not scrupulously observed and their precepts not carried out conscientiously, the result will be a constitutional crisis of great magnitude.

**Keywords :** constitution, judicial review, judicial overreach, separation of powers

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