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# **BETWEEN INTEGRATION AND AUTONOMY: DOMICILE QUOTAS, GAG ORDERS, AND GUBERNATORIAL FRICTION IN INDIAN CONSTITUTIONAL LAW**

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## **Abstract**

This paper examines three contested frontiers in contemporary Indian constitutional law: first, the constitutionality of domicile-based quotas in post-graduate medical admissions following the Supreme Court's landmark ruling in *Tanvi Behl v. Shrey Goel* (2025);<sup>1</sup> second, the tension between judicial gag orders and the fundamental right to freedom of speech and expression under Article 19(1)(a),<sup>2</sup> with particular reference to the *Ranveer Allahbadia* proceedings<sup>3</sup> and the *Sahara India Real Estate Corp.* postponement-order doctrine;<sup>4</sup> and third, the evolving separation of powers jurisprudence governing the Governor's legislative and clemency powers, culminating in recent Supreme Court interventions.<sup>5</sup> Across all three domains, a common dialectic emerges: the judiciary is increasingly called upon to adjudicate the boundary between state autonomy and constitutional uniformity, between governmental discretion and justiciable rights. Drawing on landmark judgments, constitutional provisions, and contemporary legal scholarship, this paper argues that the Supreme Court of India has, in each domain, deployed a rights-maximising interpretive approach that subordinates regional or executive preferences to the imperatives of the fundamental rights chapter.

<sup>1</sup>Tanvi Behl v. Shrey Goel, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>2</sup>INDIA CONST. art. 19, cl. 1(a).

<sup>3</sup>Ranveer Allahbadia v. Union of India, W.P. (Crl.) No. 55/2025 (Supreme Court of India 2025); see also Supreme Court's Stance on Gag Orders: Examining Free Speech and Judicial Restrictions, VAJIRAO & REDDY IAS INSTITUTE (2025), <https://vajiramandravi.com/current-affairs/supreme-courts-stance-on-gag-orders-examining-free-speech-and-judicial-restrictions/>.

<sup>4</sup>Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603.

<sup>5</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>6</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

## I. Introduction

The Indian Constitution is, in Justice Iyer's memorable phrase, a 'social document.' Yet the text that gave India the world's longest written constitution also created structural tensions that no draftsman could fully resolve: between the rights of individuals and the prerogatives of the state; between the uniformity demanded by national integration and the diversity that federalism presupposes; between the finality that executive decisions require and the accountability that the rule of law demands. Seventy-five years after the Constitution's commencement, those tensions remain alive and litigated. Three areas of contemporary Indian constitutional law exemplify these enduring contests with unusual intensity: admissions policy in professional education, the scope of judicial orders silencing public discourse, and the friction between Governors and elected state governments.

The first domain concerns domicile-based reservation in post-graduate medical courses. India's healthcare delivery challenge is both systemic and spatial: a shortage of specialists in rural and semi-urban areas sits alongside an intensely competitive meritocratic market for post-graduate medical seats. State governments have historically responded by reserving seats in state-funded PG programmes for candidates who are residents of, or have studied in, the state. The Supreme Court has now decisively rejected this approach, holding in *Tanvi Behl v. Shrey Goel* (2025) that domicile-based reservation at the PG stage violates Article 14.<sup>78</sup>

The second domain concerns gag orders. As Indian courts have grown increasingly interventionist in high-profile matters — from corporate fraud to celebrity controversies — orders barring reporting, social media commentary, and even journalistic investigation have multiplied. The legal framework governing such orders remains unsettled. The Supreme Court's 2012 ruling in *Sahara India Real Estate Corp. v. SEBI* recognised a 'postponement orders' doctrine, permitting courts to temporarily halt media reporting to ensure a fair trial.<sup>9</sup> Yet the criteria for such orders, and the constitutional limits on their scope, remain contested. The 2025 *Ranveer Allahbadia* proceedings raised the question anew, with the Court imposing social media restrictions while simultaneously granting interim protection.<sup>10</sup>

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<sup>7</sup>Tanvi Behl v. Shrey Goel, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>8</sup>INDIA CONST. art. 14.

<sup>9</sup>Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603.

<sup>10</sup>Ranveer Allahbadia v. Union of India, W.P. (Crl.) No. 55/2025 (Supreme Court of India 2025); see also Supreme Court's Stance on Gag Orders: Examining Free Speech and Judicial Restrictions, VAJIRAO & REDDY IAS INSTITUTE (2025), <https://vajiramandravi.com/current-affairs/supreme-courts-stance-on-gag-orders-examining-free-speech-and-judicial-restrictions/>.

The third domain concerns the Governor's constitutional role. The framers designed the Governor as a constitutional head who acts on ministerial advice under Article 163,<sup>11</sup> yet the post has become a recurring site of political conflict. Governors have withheld assent to state bills, reserved them for presidential consideration without time-bound reasons, and exercised pardon powers in ways that elected state governments have contested. The Supreme Court has, in a series of interventions culminating in a 2025 ruling, imposed significant constitutional constraints on gubernatorial discretion, drawing the separation of powers into sharp relief.<sup>1213</sup>

This paper proceeds in three substantive parts, each corresponding to one of these domains. Part II analyses the domicile quota controversy. Part III examines gag orders and free speech. Part IV addresses gubernatorial powers and the separation of powers. Part V draws comparative threads across the three areas and offers conclusions about the trajectory of Indian constitutional law.

## **II. Domicile Quotas in Postgraduate Medical Admissions: National Integration Versus Regional Affirmative Action**

### **A. The Constitutional Framework**

The constitutional architecture of reservation in India is built on several interlocking provisions. Article 14 guarantees equality before law and equal protection of laws, permitting classification only where it is founded on intelligible differentia and bears a rational nexus to the object sought.<sup>14</sup> Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth — notably not domicile or residence.<sup>15</sup> Article 19(1)(g) guarantees every citizen the right to practise any profession or carry on any occupation, trade, or business.<sup>16</sup> The question that has occupied courts for four decades is whether domicile — a criterion not listed in Article 15(1) — can nonetheless constitute a constitutionally impermissible classification under Article 14 when deployed to restrict access to professional education.

The earliest authoritative answer came in *Dr. Pradeep Jain v. Union of India* (1984),

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<sup>11</sup>INDIA CONST. art. 163.

<sup>12</sup>State of Punjab v. Principal Secretary to the Governor of Punjab, Civil Appeal No. 2024 (Supreme Court of India, Nov. 10, 2023).

<sup>13</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>14</sup>INDIA CONST. art. 14.

<sup>15</sup>INDIA CONST. art. 15, cl. 1.

<sup>16</sup>INDIA CONST. art. 19, cl. 1(g).

where a Constitution Bench of the Supreme Court drew a carefully calibrated line.<sup>17</sup> At the undergraduate level, the Court held, residence-based preferences for students of a state could be justified by reference to the state's investment in creating healthcare infrastructure. But the Court indicated that this logic could not travel to the post-graduate stage, where the national interest in producing the best possible specialists outweighs local preferences. This distinction — between UG and PG, between state-funded return on investment and national meritocratic interest — became the doctrinal lodestone of subsequent case law.

In *Saurabh Chaudri v. Union of India* (2003), the Supreme Court refined the *Pradeep Jain* framework.<sup>18</sup> It drew a crucial distinction between 'institutional preference' — giving preference to students of a given college in admissions to that institution's own PG programmes — and pure 'domicile reservation,' which allocates seats on the basis of state residence irrespective of institutional affiliation. Institutional preference was permissible as a form of reasonable classification. Domicile reservation, by contrast, could not survive Article 14 scrutiny because residence alone, divorced from any institutional link, does not constitute an intelligible differentia with a rational nexus to the object of ensuring quality postgraduate medical education.<sup>19,20</sup>

### **B. Tanvi Behl v. Shrey Goel (2025): The Definitive Ruling**

The 2025 decision in *Tanvi Behl v. Shrey Goel* represents the Supreme Court's most comprehensive and unequivocal statement on domicile quotas in professional education.<sup>21</sup> The case arose from the State of Haryana's policy of reserving a significant proportion of PG medical seats in state-aided institutions exclusively for candidates who had completed their MBBS from a college within the state. The petitioners, who had passed the National Eligibility cum Entrance Test (NEET) with high scores but were denied admission under the domicile quota, challenged the policy as unconstitutional.<sup>22,23</sup>

The Supreme Court, affirming and extending *Pradeep Jain* and *Saurabh Chaudri*, held

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<sup>17</sup>Dr. Pradeep Jain v. Union of India, (1984) 3 SCC 654.

<sup>18</sup>Saurabh Chaudri v. Union of India, (2003) 11 SCC 146.

<sup>19</sup>Saurabh Chaudri v. Union of India, (2003) 11 SCC 146.

<sup>20</sup>Residence-Based Reservation in Postgraduate Medical Courses Unconstitutional: Dr. Tanvi Behl v. Shrey Goel, SC OBSERVER (2025), <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/>.

<sup>21</sup>Tanvi Behl v. Shrey Goel, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>22</sup>National Eligibility cum Entrance Test (NEET), conducted by the National Testing Agency under the Medical Council of India Act, 1956.

<sup>23</sup>Domicile-Based PG Medical Admissions Unconstitutional, DRISHTI IAS (Feb. 2025), <https://www.drishtiias.com/daily-updates/daily-news-analysis/domicile-based-pg-medical-admissions-unconstitutional>.

that domicile-based reservation at the PG level is unconstitutional on two distinct grounds.<sup>24</sup> First, state residence is not an intelligible differentia for Article 14 purposes, since it bears no rational nexus to the capacity of a candidate to perform well in or contribute to post-graduate specialisation. Second, the Court emphasised that the introduction of NEET as a centralised, uniform entrance examination for medical admissions had fundamentally altered the constitutional landscape.<sup>25</sup> Where all candidates are assessed on the same national examination, the differentiation of candidates by domicile becomes not merely irrational but inconsistent with the very premises on which the national examination system rests. To permit domicile quotas after NEET would undermine the reformist purpose for which the national test was introduced.<sup>26</sup>

The ruling also clarified the interaction between domicile quotas and the right to practise a profession under Article 19(1)(g).<sup>27,28</sup> A restriction that bars meritorious candidates from accessing post-graduate courses solely on the basis of state residence impairs their right to carry on a profession, since access to professional education is a necessary precondition for professional practice. The Court noted that such restrictions generate long-term systemic costs by impeding the mobility of skilled medical professionals and by creating a two-tier system in which the quality of specialists varies with the accident of birthplace.<sup>29</sup>

### C. Critical Analysis and Unresolved Questions

The *Tanvi Behl* ruling is doctrinally coherent and practically significant, but it leaves several questions open.<sup>30</sup> The Court's reasoning rests heavily on the post-NEET landscape; it does not fully address what would follow if NEET were discontinued or if states were granted an exemption. Moreover, the distinction between 'institutional preference' and 'domicile

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<sup>24</sup>Residence-Based Reservation in Postgraduate Medical Courses Unconstitutional: Dr. Tanvi Behl v. Shreya Goel, SC OBSERVER (2025), <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/>.

<sup>25</sup>National Eligibility cum Entrance Test (NEET), conducted by the National Testing Agency under the Medical Council of India Act, 1956.

<sup>26</sup>Domicile-Based PG Medical Admissions Unconstitutional, DRISHTI IAS (Feb. 2025), <https://www.drishtias.com/daily-updates/daily-news-analysis/domicile-based-pg-medical-admissions-unconstitutional>.

<sup>27</sup>INDIA CONST. art. 19, cl. 1(g).

<sup>28</sup>Gautam Bhatia, The P&H High Court's Judgment on Domicile Quotas in the Private Sector, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Nov. 23, 2023), <https://indconlawphil.wordpress.com/2023/11/23/guest-post-the-ph-high-courts-judgment-on-domicile-quotas-in-the-private-sector/>.

<sup>29</sup>Gautam Bhatia, The P&H High Court's Judgment on Domicile Quotas in the Private Sector, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Nov. 23, 2023), <https://indconlawphil.wordpress.com/2023/11/23/guest-post-the-ph-high-courts-judgment-on-domicile-quotas-in-the-private-sector/>.

<sup>30</sup>P.V. Indiresan v. Union of India, (2011) 12 SCC 414.

reservation' — preserved from *Saurabh Chaudri* — may be operationally difficult to maintain in a world where most PG seats are awarded through centralised counselling rather than institution-specific processes.

A deeper tension underlies this jurisprudence. The argument for regional affirmative action in healthcare is not trivial: states face genuine shortages of specialists, particularly in underserved districts, and there is an intuitive logic to the proposition that graduates who trained in a state may be more likely to practise there. The Punjab & Haryana High Court's judgment on domicile quotas in the private sector analysed this tension in depth, concluding that economic arguments for regional preference, while understandable, could not override the constitutional commitment to an integrated national labour market.<sup>31</sup> The Supreme Court's consistent position — that the constitutional architecture of equality cannot be diluted by state-level utilitarian calculations — reflects a rights-maximising interpretive stance that prioritises individual merit over collective regional interest.<sup>32</sup>

What the ruling does not grapple with is the healthcare delivery crisis that motivates these policies in the first place. If domicile quotas are unconstitutional, the question of how to ensure adequate specialist coverage in states with deficient healthcare infrastructure requires an alternative policy answer — one that the Court acknowledges is for the legislative and executive branches to devise, subject to constitutional constraints. The Supreme Court's role, consistent with the separation of powers, is to identify what the Constitution prohibits, not to prescribe what policy should replace it.<sup>33</sup>

### III. Judicial Review and Mass Gag Orders: Free Speech, Fair Trial, and Digital Silencing

#### A. The Constitutional Tension

Article 19(1)(a) of the Constitution of India guarantees to every citizen the right to freedom of speech and expression.<sup>34</sup> Article 19(2) permits the state to impose reasonable restrictions on this right in the interests of, inter alia, public order, decency or morality,

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<sup>31</sup>Gautam Bhatia, The P&H High Court's Judgment on Domicile Quotas in the Private Sector, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Nov. 23, 2023), <https://indconlawphil.wordpress.com/2023/11/23/guest-post-the-ph-high-courts-judgment-on-domicile-quotas-in-the-private-sector/>.

<sup>32</sup>*Indra Sawhney v. Union of India*, AIR 1993 SC 477 (the Mandal Commission case establishing the 50% ceiling on reservations).

<sup>33</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>34</sup>INDIA CONST. art. 19, cl. 1(a).

contempt of court, defamation, and incitement.<sup>35</sup> Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted to encompass the right to a fair trial, the right to dignity, and the right to reputation.<sup>36,37</sup> These provisions stand in evident tension when media reporting on ongoing judicial proceedings threatens to prejudice a fair trial. The resulting doctrine — governing what courts may lawfully prohibit, when, and for how long — is the subject of this Part.

The foundational free press cases — *Romesh Thappar v. State of Madras* (1950)<sup>38</sup> and *Brij Bhushan v. State of Delhi* (1950)<sup>39</sup> — established that freedom of expression includes freedom of the press and that prior restraint is constitutionally suspect. The corollary proposition, that courts may nonetheless restrict reporting on sub judice matters to protect the administration of justice, derives from the contempt jurisdiction and has been recognised in India through statute and judicial decision.<sup>40</sup> The difficult constitutional question is whether a court order barring publication constitutes a 'reasonable restriction' under Article 19(2) or an impermissible prior restraint on the press.<sup>41</sup>

## **B. The Sahara Doctrine: Postponement Orders**

The most authoritative Indian ruling on this question is *Sahara India Real Estate Corp. Ltd. v. SEBI* (2012), in which a five-judge Constitution Bench recognised the 'postponement order' doctrine.<sup>42</sup> A postponement order is a temporary court directive restricting media reporting of proceedings to prevent a real and substantial risk of prejudice to a fair trial that could not be avoided by any reasonably available alternative measure. The Bench drew heavily on English and Canadian jurisprudence, including the House of Lords' decision in *Attorney General v. BBC*, to construct a test that is more stringent than a bare prior restraint but calibrated to the specific hazard of trial-prejudicing publicity.<sup>43</sup>

The *Sahara* conditions for a postponement order are demanding.<sup>44,45</sup> The court must be satisfied: first, that there is a real and substantial risk to the fairness of the trial; second, that no

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<sup>35</sup>INDIA CONST. art. 19, cl. 2.

<sup>36</sup>INDIA CONST. art. 21.

<sup>37</sup>*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (right to privacy as fundamental right under Article 21).

<sup>38</sup>*Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>39</sup>*Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

<sup>40</sup>*Vineet Narain v. Union of India*, (1998) 1 SCC 226.

<sup>41</sup>INDIA CONST. art. 19, cl. 2.

<sup>42</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>43</sup>*Attorney General v. BBC*, [1981] AC 303 (HL).

<sup>44</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>45</sup>*Maharashtra Gag Order: Gag Free Speech*, IPLEADERS BLOG (2024), <https://blog.iplayers.in/maharashtra-gag-order-gag-free-speech/>.

other reasonable measures — such as change of venue, sequential trials, or stronger judicial directions — would adequately address the risk; and third, that the restriction is as narrow as possible in both scope and duration. The order must be reviewed periodically and must not operate as a permanent ban on publication. These requirements were designed to ensure that the postponement order doctrine does not become a general licence for judicial censorship.

Scholarship on the doctrine has noted, however, that the *Sahara* conditions, stringent as they are in theory, have been inconsistently applied in practice.<sup>46</sup> Lower courts and even High Courts have on occasion issued broad ex parte injunctions against media reporting without the exhaustive balancing that *Sahara* requires, responding to applications by parties who fear adverse publicity more than they demonstrate a risk to the administration of justice.<sup>47</sup> This divergence between doctrine and practice is a central concern of contemporary Indian media law.

### C. The Ranveer Allahbadia Case (2025) and Digital Silencing

The 2025 *Ranveer Allahbadia* proceedings brought these concerns into sharp focus in the context of social media.<sup>48</sup> Allahbadia, a popular digital content creator, faced proceedings arising from controversial remarks on a streamed programme. The Supreme Court, while granting him interim protection from arrest, simultaneously imposed a condition barring him from posting on social media during the pendency of the proceedings. The order attracted immediate academic and civil society criticism: it amounted, critics argued, to a prior restraint on speech that was not directed at any specific publication likely to prejudice a specific trial.

The legal analysis of the order is complex.<sup>49</sup> On one reading, the Court was exercising its power under Article 142 to do complete justice by imposing conditions on interim relief — a power that is broad and supervisory in nature. On another reading, the order was effectively a gag order: it silenced a litigant's public voice during a period of maximum vulnerability, in a manner disproportionate to any identifiable risk to fair trial or specific judicial proceeding. As

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<sup>46</sup>Gag Orders in India: Judicial Discretion vs. Constitutional Freedoms, RESEARCHGATE (2025), [https://www.researchgate.net/publication/393396307\\_Gag\\_Orders\\_in\\_India\\_Judicial\\_Discretion\\_vs\\_Constitutional\\_Freedoms](https://www.researchgate.net/publication/393396307_Gag_Orders_in_India_Judicial_Discretion_vs_Constitutional_Freedoms).

<sup>47</sup>Gag Orders in India 2025: Legal Analysis of Recent High-Profile Cases and Constitutional Implications, PRIME LEGAL BLOG (2025), <https://blog.primelegal.in/gag-orders-in-india-2025-legal-analysis-of-recent-high-profile-cases-and-constitutional-implications/>.

<sup>48</sup>Ranveer Allahbadia v. Union of India, W.P. (Crl.) No. 55/2025 (Supreme Court of India 2025); see also Supreme Court's Stance on Gag Orders: Examining Free Speech and Judicial Restrictions, VAJIRAO & REDDY IAS INSTITUTE (2025), <https://vajiramandravi.com/current-affairs/supreme-courts-stance-on-gag-orders-examining-free-speech-and-judicial-restrictions/>.

<sup>49</sup>Gag Orders in India: Judicial Discretion vs. Constitutional Freedoms, 7 INT'L J. FOR MULTIDISCIPLINARY RESEARCH 1 (2025), <https://www.ijfmr.com/research-paper.php?id=49500>.

one commentator noted, the order 'operates as a digital silencing tool,' suppressing expression in a medium where the affected party commands a significant public following.<sup>50</sup>

The broader concern raised by the *Allahbadia* case is the absence of a clear constitutional framework for social media gag orders. The *Sahara* doctrine was designed for traditional media reporting on court proceedings; it does not map cleanly onto social media, where the relevant publication is often not coverage of a trial but the litigant's own speech about matters unrelated to any pending proceeding. The trial courts' propensity to grant broad ex parte injunctions against online speech — documented in recent legal analyses — suggests that a constitutional gap is being filled by judicial improvisation of questionable constitutionality.<sup>5152</sup>

#### D. Media Trials and the Presumption of Innocence

Underlying the gag order controversy is a broader debate about 'media trials' — the phenomenon of intense media coverage that, effectively, constitutes a parallel adjudicative process operating outside the safeguards of due process.<sup>53</sup> The legal scholarship on this subject identifies a genuine constitutional concern: when media reporting presents an accused as guilty before conviction, it risks not only prejudicing judicial officers exposed to public pressure but also inflicting irreparable reputational harm on individuals who may ultimately be acquitted.

Against this concern must be weighed the equally real interest in investigative journalism as a component of the right to receive information and as a check on institutional power.<sup>5455</sup> Courts, police, and prosecution authorities are not immune from corruption or error; a free press serves as a systemic safeguard against the abuse of prosecutorial power. The constitutional resolution of this tension cannot be achieved by categorical rules that privilege either free speech or fair trial; it requires case-by-case proportionality analysis that the Indian doctrine, following *Sahara*, has attempted to provide, though its consistent application remains a work in progress.<sup>56</sup>

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<sup>50</sup>Gag Orders in India: Judicial Discretion vs. Constitutional Freedoms, 7 INT'L J. FOR MULTIDISCIPLINARY RESEARCH 1 (2025), <https://www.ijfmr.com/research-paper.php?id=49500>.

<sup>51</sup>Gag Orders in India 2025: Legal Analysis of Recent High-Profile Cases and Constitutional Implications, PRIME LEGAL BLOG (2025), <https://blog.primelegal.in/gag-orders-in-india-2025-legal-analysis-of-recent-high-profile-cases-and-constitutional-implications/>.

<sup>52</sup>Gag Orders in India: Judicial Discretion vs. Constitutional Freedoms, RESEARCHGATE (2025), [https://www.researchgate.net/publication/393396307\\_Gag\\_Orders\\_in\\_India\\_Judicial\\_Discretion\\_vs\\_Constitutional\\_Freedoms](https://www.researchgate.net/publication/393396307_Gag_Orders_in_India_Judicial_Discretion_vs_Constitutional_Freedoms).

<sup>53</sup>Media Trial in Indian Legal System, 12 INT'L J. OF EDUC. & SOC. SCIS. 45 (2023), <https://theaspd.com/index.php/ijes/article/download/1269/985/2473>.

<sup>54</sup>INDIA CONST. art. 19, cl. 1(a).

<sup>55</sup>Vineet Narain v. Union of India, (1998) 1 SCC 226.

<sup>56</sup>Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603.

## IV. Separation of Powers and Gubernatorial Friction: Legislative Assent and Clemency

### A. The Governor's Constitutional Role

The Indian Constitution establishes a parliamentary system at both the Union and state levels, premised on the convention that the constitutional head acts on the advice of the elected government.<sup>57</sup> Article 163 provides that there shall be a Council of Ministers to aid and advise the Governor in the exercise of the functions of the office, except in so far as the Governor is required to act at discretion.<sup>58</sup> Article 200 gives the Governor the power to assent to bills passed by the state legislature, to withhold assent, or to return bills for reconsideration.<sup>59</sup> Article 201 permits the Governor to reserve bills for presidential consideration.<sup>60</sup> These provisions, read together with the constitutional convention of ministerial advice, are designed to ensure that the Governor functions as a constitutional figurehead rather than an independent political actor.

In practice, the Governor's role has generated persistent constitutional controversy, particularly when the Governor's political complexion differs from that of the elected state government.<sup>61</sup> Governors have used the power to withhold assent, reserve bills for the President, and delay legislative processes as political instruments, often in ways that critics argue are inconsistent with the 'aid and advice' structure of Article 163.<sup>62</sup> The Supreme Court's intervention in this area has been cautious but increasingly firm, culminating in significant rulings that redefine the constitutional boundaries of gubernatorial discretion.

### B. The Governor's Assent Ruling (2025)

The 2025 Supreme Court ruling on the Governor's assent power — identified by *SC Observer* as among the top ten judgments of the year — represents a significant constitutional landmark.<sup>63</sup> Building on the earlier decision in *State of Punjab v. Principal Secretary to the Governor of Punjab* (2023), which had ruled that Governors cannot pocket-veto state legislation by indefinitely withholding assent,<sup>64</sup> the 2025 ruling went further: it held that where

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<sup>57</sup>INDIA CONST. art. 163.

<sup>58</sup>INDIA CONST. art. 163.

<sup>59</sup>INDIA CONST. art. 200.

<sup>60</sup>INDIA CONST. art. 201.

<sup>61</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>62</sup>INDIA CONST. art. 163.

<sup>63</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>64</sup>*State of Punjab v. Principal Secretary to the Governor of Punjab*, Civil Appeal No. 2024 (Supreme Court of India, Nov. 10, 2023).

a Governor returns a bill for reconsideration and the legislature re-passes it, the Governor has no constitutional option but to assent. The power to withhold assent on second presentation is not constitutionally available.

The constitutional reasoning of the ruling is rooted in parliamentary democracy. The Indian Constitution does not vest legislative veto power in the constitutional head at the state level. The Governor's role in the legislative process is supervisory and communicative, not substantively determinative. To permit indefinite withholding of assent, or to permit the Governor to treat the return of a bill as the beginning of an indefinite delay, would be to transform a constitutional position premised on ministerial advice into an independent legislative veto — inconsistent with both the text and the structure of the Constitution.<sup>656667</sup>

The ruling also addressed the Governor's power under Article 201 to reserve bills for presidential consideration.<sup>68</sup> The Court clarified that this power must be exercised within a reasonable time, and the reasons for reservation must be germane to the objects of the constitutional provision. Reservation for extraneous or purely political reasons is subject to judicial review. This holding brings the reservation power within the framework of reviewable gubernatorial action — a significant doctrinal development that reinforces executive accountability under the Constitution.<sup>6970</sup>

### C. Pardoning Power: Articles 72 and 161 Under Judicial Scrutiny

The Governor's clemency power under Article 161 — the state-level analogue of the President's pardon power under Article 72 — has been an equally contested site of separation of powers jurisprudence.<sup>71</sup> The traditional position, rooted in the prerogative origins of the pardoning power, was that clemency decisions are non-justiciable acts of executive grace.<sup>72</sup> The Supreme Court progressively departed from this position through a line of decisions culminating in *Shatrughan Chauhan v. Union of India* (2014).<sup>73</sup>

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<sup>65</sup>INDIA CONST. art. 200.

<sup>66</sup>INDIA CONST. art. 201.

<sup>67</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>68</sup>INDIA CONST. art. 201.

<sup>69</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>70</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>71</sup>INDIA CONST. arts. 72, 161.

<sup>72</sup>Kehar Singh v. Union of India, AIR 1989 SC 653.

<sup>73</sup>Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.

In *Shatrughan Chauhan*, the Court held that the exercise of the pardoning power under Articles 72 and 161 is subject to limited judicial review.<sup>74</sup> The Court identified specific grounds on which a clemency decision can be challenged: mala fide exercise of power; non-application of mind; failure to consider relevant material (such as prolonged delay on death row constituting mental torture); or a decision that is arbitrary or perverse. This framework preserves the broad executive discretion of the pardoning power while establishing that the power is not insulated from constitutional scrutiny. The clemency decision is an executive act, but an executive act that must be exercised in accordance with the rule of law.

The 'aid and advice' structure of Article 163 intersects significantly with the clemency power at the state level.<sup>75</sup> The Governor exercises the Article 161 power on the aid and advice of the state's Council of Ministers. Where the Governor acts contrary to that advice, or where the advice itself is coloured by mala fide political considerations, the resulting clemency decision may be judicially reviewable. In *Epuru Sudhakar v. Government of Andhra Pradesh* (2006), the Supreme Court set aside a gubernatorial pardon that had been granted for partisan political reasons, holding that the pardoning power is a constitutional trust that must be exercised for the benefit of the convict and the interests of justice, not for the electoral advantage of the party in power.<sup>77</sup>

#### **D. The Separation of Powers Framework**

The National Judicial Academy's analysis of separation of powers jurisprudence identifies three distinct models of review that Indian courts have deployed: the 'merits review' model (asking whether the decision was correct); the 'process review' model (asking whether the decision-making process was lawful); and the 'fundamental rights review' model (asking whether the decision infringed a fundamental right).<sup>78</sup> In the domain of gubernatorial power, the Court has predominantly deployed the process and fundamental rights review models, stopping short of substituting its judgment for that of the Governor on the substantive merits of clemency decisions or legislative choices.

This restraint is constitutionally appropriate. The separation of powers in India is not a

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<sup>74</sup>*Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

<sup>75</sup>INDIA CONST. art. 163.

<sup>76</sup>The Governor vs. The State: Who Has the Final Say on Pardons?, AJMALI IAS ACADEMY (2025), <https://ajmaliasacademy.in/the-governor-vs-the-state-who-has-the-final-say-on-pardons/>.

<sup>77</sup>*Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.

<sup>78</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

rigidly tripartite structure of the American kind, but it is a structural principle that the Constitution embodies in its architecture of interlocking checks and balances. The judiciary's role is to ensure that each branch acts within its constitutionally assigned domain, not to assume the functions of other branches. When the Supreme Court rules that a Governor cannot indefinitely withhold assent, it is not usurping executive power; it is enforcing the constitutional allocation of functions.<sup>7980</sup>

## V. Synthesis: Convergences and Trajectories

### A. The Rights-Maximising Interpretive Approach

Across the three domains examined, a consistent interpretive approach is discernible. The Supreme Court has, in each case, adopted a rights-maximising stance that subordinates governmental or institutional preferences to the imperatives of the fundamental rights chapter. In the domicile quota domain, state fiscal investment in medical education cannot override the equality rights of meritorious candidates.<sup>8182</sup> In the gag order domain, court proceedings cannot be conducted behind a wall of imposed silence that extends beyond what strict necessity requires.<sup>83</sup> In the gubernatorial domain, constitutional offices must be exercised in ways consistent with the parliamentary democratic structure that the Constitution establishes.<sup>8485</sup>

This approach reflects the Supreme Court's self-understanding as the guardian of the Constitution's normative commitments. The Court has, particularly since the 1970s, developed an expansive conception of fundamental rights — exemplified by the recognition of the right to privacy in *K.S. Puttaswamy v. Union of India* (2017)<sup>86</sup> and the foundational doctrine of basic structure. The three domains examined in this paper are manifestations of this broader jurisprudential project, each extending fundamental rights review into arenas where governmental discretion had previously operated with minimal constraint.

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<sup>79</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>80</sup>INDIA CONST. art. 163.

<sup>81</sup>Tanvi Behl v. Shrey Goel, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>82</sup>INDIA CONST. art. 14.

<sup>83</sup>Sahara India Real Estate Corp. Ltd. v. SEBI, (2012) 10 SCC 603.

<sup>84</sup>INDIA CONST. art. 163.

<sup>85</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>86</sup>*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (right to privacy as fundamental right under Article 21).

## B. Federalism and Constitutional Uniformity

A second convergent theme is the tension between federalism and constitutional uniformity. Each of the three domains involves a state-level actor — a state government reserving medical seats, a trial court issuing a gag order, a Governor withholding legislative assent — whose action the Supreme Court has found to be constitutionally deficient. In each case, the Court's ruling has the effect of imposing a uniform constitutional standard that overrides state-level variation.<sup>878889</sup>

This pattern is consistent with the Indian Constitution's structure, which is federal in form but unitary in spirit, as the framers themselves acknowledged. The Supreme Court's authority to enforce the fundamental rights chapter against state action (under Articles 12 and 13) makes it the final arbiter of the boundary between legitimate state autonomy and constitutional uniformity. The rulings examined in this paper are instances of the Court drawing that boundary — against domicile quotas in PG admissions,<sup>90</sup> against disproportionate gag orders,<sup>9192</sup> and against unconstitutional gubernatorial delay.<sup>9394</sup>

## C. Institutional Legitimacy and the Limits of Adjudication

A third theme, less visible but structurally important, concerns the limits of adjudication. The Supreme Court's rulings in these domains are constitutionally significant, but they are not policy solutions. The ruling in *Tanvi Behl* does not resolve India's healthcare deficit in rural areas;<sup>95</sup> the *Sahara* doctrine does not eliminate media trials;<sup>96</sup> and the Governor's assent ruling does not address the root cause of political tensions between Governors and state governments.<sup>97</sup> These structural problems require legislative, executive, and institutional responses that courts, by their nature, are ill-equipped to provide.

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<sup>87</sup>INDIA CONST. art. 14.

<sup>88</sup>INDIA CONST. art. 19, cl. 1(a).

<sup>89</sup>INDIA CONST. art. 200.

<sup>90</sup>*Tanvi Behl v. Shrey Goel*, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>91</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>92</sup>*Ranveer Allahbadia v. Union of India*, W.P. (Crl.) No. 55/2025 (Supreme Court of India 2025); see also Supreme Court's Stance on Gag Orders: Examining Free Speech and Judicial Restrictions, VAJIRAO & REDDY IAS INSTITUTE (2025), <https://vajiramandravi.com/current-affairs/supreme-courts-stance-on-gag-orders-examining-free-speech-and-judicial-restrictions/>.

<sup>93</sup>*State of Punjab v. Principal Secretary to the Governor of Punjab*, Civil Appeal No. 2024 (Supreme Court of India, Nov. 10, 2023).

<sup>94</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>95</sup>*Tanvi Behl v. Shrey Goel*, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>96</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>97</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

The appropriate judicial role, as the NJA's framework suggests, is to establish the constitutional limits within which policy must operate, not to design the policy itself.<sup>98</sup> The risk of an excessively interventionist judiciary — one that moves from constitutional review to policy prescription — is a concern that Indian courts have, to their credit, generally recognised. The rulings examined here are, for the most part, properly confined to the constitutional question: what does the Constitution prohibit? They leave open, as they should, the harder policy question of what should be done instead.

## VI. Conclusion

This paper has examined three domains of contemporary Indian constitutional law that are, individually, significant and, taken together, illuminating about the direction of the Supreme Court's jurisprudence. The *Tanvi Behl* ruling on domicile quotas reaffirms and strengthens the post-NEET framework of merit-based, nationally uniform access to postgraduate medical education, while acknowledging the healthcare delivery challenges that motivate state-level reservation policies.<sup>99</sup><sup>100</sup> The evolving gag order jurisprudence, from *Sahara* to *Allahbadia*, reflects the difficulty of applying pre-digital doctrines to a media landscape in which social media, streaming platforms, and digital journalism interact with judicial proceedings in ways that existing constitutional frameworks do not fully address.<sup>101</sup><sup>102</sup><sup>103</sup> The gubernatorial powers rulings represent the most significant judicial intervention in the separation of powers at the state level in decades, establishing that constitutional offices are bounded by the constitutional conventions and text that create them.<sup>104</sup><sup>105</sup><sup>106</sup>

<sup>98</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>99</sup>*Tanvi Behl v. Shrey Goel*, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>100</sup>National Eligibility cum Entrance Test (NEET), conducted by the National Testing Agency under the Medical Council of India Act, 1956.

<sup>101</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>102</sup>*Ranveer Allahbadia v. Union of India*, W.P. (Crl.) No. 55/2025 (Supreme Court of India 2025); see also Supreme Court's Stance on Gag Orders: Examining Free Speech and Judicial Restrictions, VAJIRAO & REDDY IAS INSTITUTE (2025), <https://vajiramandravi.com/current-affairs/supreme-courts-stance-on-gag-orders-examining-free-speech-and-judicial-restrictions/>.

<sup>103</sup>Gag Orders in India: Judicial Discretion vs. Constitutional Freedoms, 7 INT'L J. FOR MULTIDISCIPLINARY RESEARCH 1 (2025), <https://www.ijfmr.com/research-paper.php?id=49500>.

<sup>104</sup>*State of Punjab v. Principal Secretary to the Governor of Punjab*, Civil Appeal No. 2024 (Supreme Court of India, Nov. 10, 2023).

<sup>105</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>106</sup>*Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

What unites these developments is a common jurisprudential commitment: that the Indian Constitution is a living document whose rights guarantees are real and enforceable, and that no governmental actor — state, executive, or judicial — is above constitutional scrutiny. This commitment, institutionalised in seventy-five years of Supreme Court jurisprudence, is the foundation on which the constitutional disputes of the present generation are being resolved.<sup>107108109</sup>

As India confronts deepening healthcare inequalities, an increasingly fragmented media ecosystem, and persistent friction between constitutional offices, the Supreme Court's role as constitutional arbiter will only grow in importance. The doctrinal frameworks examined in this paper — the *Pradeep Jain–Saurabh Chaudri–Tanvi Behl* lineage on admissions,<sup>110111112</sup> the *Sahara* postponement order doctrine,<sup>113</sup> and the emerging jurisprudence on gubernatorial accountability<sup>114115116</sup> — provide the building blocks for constitutional adjudication in the years ahead. Their continued development, in dialogue with legislative reform and executive accountability, will determine the constitutional character of Indian governance in the decades to come.

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<sup>107</sup>INDIA CONST. art. 14.

<sup>108</sup>INDIA CONST. art. 19, cl. 1(a).

<sup>109</sup>Separation of Powers and Contours of Judicial Review, NATIONAL JUDICIAL ACADEMY 2 (2019-20), [https://nja.gov.in/Concluded\\_Programmes/2019-20/P-1187\\_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf](https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/3.Separation%20of%20Powers%20and%20Contours%20of%20Judicial%20Review.pdf).

<sup>110</sup>*Dr. Pradeep Jain v. Union of India*, (1984) 3 SCC 654.

<sup>111</sup>*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146.

<sup>112</sup>*Tanvi Behl v. Shrey Goel*, Civil Appeal No. 1017/2019 (Supreme Court of India, Jan. 29, 2025).

<sup>113</sup>*Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

<sup>114</sup>Supreme Court Review: Top 10 Judgements of 2025, SC OBSERVER (2025), <https://www.scobserver.in/journal/supreme-court-review-top-10-judgements-of-2025/>.

<sup>115</sup>*Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

<sup>116</sup>*Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.