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THE DOCTRINE OF SEPARATION OF POWERS: CONTRASTING APPROACHES IN INDIA AND THE UNITED STATES

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ABSTRACT

Though the Idea of Separation of Power is an ancient perspective, it was not as clearly articulated then as it is now. At the period, different legal philosophers and jurists proposed different meanings of it. The government has the role of protecting individual rights, but there are a number of ways that they have tried to reduce the chances of abuse of such rights by the governments in the past. This includes the separation of powers. The very essence of the concept behind the separation of powers is a caution that too much power concentrated in one individual or a group of individuals becomes a threat to the citizens. The separation of powers is one way to ensure that no single group holds too much influence over the government or any organization for that matter. It can be treated as an 'paramount savior' for individuals from the abuse of power of government. In the United States, the separation of powers is implemented in its strictest sense, with clear demarcations among the three branches of government. The U.S. Constitution explicitly grants separate powers to each branch while incorporating a system of checks and balances to prevent overreach. The President holds executive authority, Congress exercises legislative power, and the judiciary, headed by the Supreme Court, has the final say on constitutional interpretation. Mechanisms such as presidential veto, congressional override, judicial review, and impeachment proceedings ensure that no branch becomes too powerful. The landmark case *Marbury v. Madison* (1803) established judicial review, reinforcing the judiciary's role in maintaining the constitutional balance. Despite this rigid separation, certain overlaps, such as executive orders and legislative delegation, indicate a functional approach where branches coordinate while maintaining their independence. In contrast, India follows a more flexible and functional interpretation of the separation of powers. The Indian Constitution, while embodying the principle, does not enforce it in an absolute sense. The executive, led by the President (or Prime Minister in practice), is an integral part of the legislature, as ministers are drawn from Parliament. The judiciary, although independent, interacts with the other branches through judicial review and constitutional interpretation. The Indian Supreme Court has played a pivotal role in maintaining this balance, as

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seen in cases like *Kesavananda Bharati v. State of Kerala* (1973), which upheld the doctrine of the basic structure of the Constitution, including the independence of the judiciary. The Parliament can amend laws, but they remain subject to judicial scrutiny. Similarly, the executive has legislative powers through ordinances, showcasing a pragmatic fusion of functions. The differences between the U.S. and Indian approaches reflect their unique constitutional philosophies. The United States, influenced by classical liberalism, adheres to a stricter doctrine to ensure limited government and individual freedoms. India, shaped by parliamentary democracy and socio-political diversity, embraces a more integrated model, allowing cooperation among branches for effective governance. Both systems, however, share the fundamental goal of preventing tyranny and ensuring accountability.

Keywords:

Separation of Powers, paramount savior, Judicial Review, India and United States Governance, Checks and Balances

INTRODUCTION AND MEANING OF SEPARATION OF POWERS:

The Separation of Powers is based on the principle of 'trias politica'. The Doctrine of Separation of Power is the forerunner to all the constitutions of the world, which came into existence since the days of the "Magna Carta". Though Montesquieu was under the erroneous impression that the foundations of the British Constitution lay in the principle of Separation of Power, it found its genesis in the American Constitution. Montesquieu had a feeling that it would be a panacea to good governance but it had its own drawbacks. A complete Separation of Power without adequate checks and balances would have nullified any constitution. It was only with this in mind the founding fathers of various constitutions have accepted this theory with modifications to make it relevant to the changing times².

Embedded in the Indian constitution set up as one of its basic features. The sovereign power or the administrative power has been bifurcated into three classes or wings:

- Legislative

² Mahajan, B. (2014, December 7). Doctrine of Separation of Powers. Lawctopus.
<https://www.lawctopus.com/academike/doctrine-of-separation-of-powers/>

- Executive
- Judiciary

The Doctrine of Separation of powers envisages a tripartite system. The powers are delegated by the constitution to the three organs and limit the jurisdiction of each³.

The position in India is that the doctrine of separation of powers has not been accorded constitutional status. In the Constituent Assembly, there was a proposal to incorporate this doctrine in the Constitution but it was knowingly not accepted and as such dropped. Apart from the Directive principles laid down in Article 50 which enjoins Separation of Judiciary from the executive, the constitutional scheme does not embody any formalistic and dogmatic division of powers⁴.

RESEARCH OBJECTIVE

The objective of this research is to conduct a comprehensive comparative analysis of the doctrine of separation of powers in India and the United States, examining its constitutional foundations, historical evolution, and practical implementation in both countries. By exploring the role of each branch of government—executive, legislative, and judiciary. This study aims to identify the similarities and divergences in how separation of powers is interpreted, the factors influencing these interpretations, and the impact of judicial interventions on maintaining or altering the balance of power in each constitutional framework. This research ultimately seeks to provide a nuanced understanding of how separation of powers functions in different political contexts and its implications for democratic governance and institutional accountability in India and the USA.

RESEARCH METHODOLOGY

In this paper, a doctrinal approach is followed in research. It was necessary to present a comparative view of Doctrine of Separation of powers in India and in USA in a few important cases which are particularly relevant to the substantive part of this research here. The contents are outlined as first – the small introduction about the tenet of separation of powers, the ideal definition and meaning of this specific doctrine, brief history of the principle of separation of power, the three arms of government, importance of the application of the power separation

³ Tripathi, S. (2013). *Understanding the Doctrine of Separation of Powers*.

⁴ Upadhyaya, J. J. R. (2019). *Administrative Law* (8th ed., p. 46). Central Law Agency.

principle, certain constitutional aspects and important articles such as Article 50, Article 122 and 212, Article 53 and 154 and Article 361 concerning the principle, application of separation principle in India, current trends, practitioners view regarding separation of powers in America, pertaining to *Marbury v Madison* cases, laws comparison and degree of variation in the application of the doctrine in India and USA and lastly my views on how the government functions and how better results can be achieved.

RESEARCH QUESTIONS

1. How does the doctrine of separation of powers in the United States, as established by the Constitution, differ from its interpretation and implementation within the Indian constitutional framework, and what are the key historical and political factors influencing these differences?
2. In what ways have the judiciary in India and the United States played a role in shaping the balance of power between the legislative, executive, and judicial branches, and how has this role evolved over time in response to political challenges in each country?

HISTORICAL BACKGROUND

The Doctrine of Separation of Powers is based on the tripartite model. The writings of Locke and Montesquieu gave it a base with reference to modern attempts to distinguish between legislative, executive and judiciary.

The Doctrine may be traced to ancient and medieval theories of mixed government, which argued that the processes of government should involve the different elements in society such as monarchic, aristocratic, and democratic interests. The first modern formulation of the doctrine was that of the French writer Montesquieu in *De l'esprit des lois*, 1748, although the English philosopher John Locke had earlier argued that legislative power should be divided between king and parliament⁵.

Locke distinguished between what he called:

1. Discontinuous legislative power
2. Continuous executive power

⁵ The Editors of Encyclopaedia Britannica. (n.d.). Separation of powers. *Encyclopædia Britannica*. <https://www.britannica.com/topic/Encyclopaedia-Britannica-English-language-reference-work>

3. Federative power.

It was Montesquieu who for the first time gave it a systematic and scientific formulation in his book 'Esprit des lois {The Spirit of Laws}', while others derived the contents of this doctrine from the developments in the British constitutional history of the 18th Century. At that time, the King exercised legislative powers and the courts exercised judicial powers, though later on England did not stick to this structural classification of functions.

After the end of the war of independence in America by 1787⁶ the founding fathers of the American constitution drafted the constitution of America and in that itself they inserted the Doctrine of Separation of Power and by this instance America became the first country to implement the Doctrine of Separation of Power. Later Rousseau also supported the said theory propounded by Montesquieu. England follows the parliamentary form of government where the crown is only a titular head. The mere existence of the cabinet system negates the doctrine of separation of power in England as the executive represented by the cabinet remains in power at the sweet will of the parliament.

THREE TIER MACHINERY OF STATE GOVERNMENT

As we all know there are three organs of government: the executive, the legislative and the judiciary. The three tier machinery establishes a core independent functioning of these three branches. According to this theory, powers are of three kinds: Legislative, executive and judicial and that each of these powers should be vested in a separate and distinct organ, for if all these powers, or any two of them, are united in the same organ or individual, there can be no liberty. If, for instance, legislative and executive powers unite, there is apprehension that the organ concerned may enact tyrannical laws and execute them in a tyrannical manner.

Again, there can be no liberty if the judicial power is not separated from the legislative and the executive. Where it joined the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Where it joined with the executive power, the judge might behave with violence and oppression⁷.

⁶ Mahajan, B. (2014, December 7). Doctrine of Separation of Powers. Lawctopus.
<https://www.lawctopus.com/academike/doctrine-of-separation-of-powers/>

⁷ Upadhyaya, J. J. R. (2019). *Administrative Law* (8th ed., p. 46). Central Law Agency.

WRITING IN 1748, MONTESQUIEU SAID

"When the legislative and the executive powers are united in the same person or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should exact tyrannical laws, to execute them in a tyrannical manner.

Again there is no liberty if the judicial power is not separated from the legislative and the executive. Where it joined with the legislative, the life and the liberty of the subject would be exposed to arbitrary control; for the judge would be then a legislator. When it joined the executive power, the judge might behave with violence and oppression. There would be an end of everything, where the same man or the same body, whether of nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals⁸.

Legislative: The most fundamental function of the legislature is to enact a law. Enactment of law is crucial to the will and formation of a state. And thus legislative is the fundamental premise for the functioning of the Executive and Judiciary. It ranks on the first place among the three organs because until and unless the law is framed and finalized the operation of implementing and applying the law cannot be exercised⁹. The judiciary functions as the advisory body, meaning that it can give the required suggestions to the legislature about the building and framing of new laws and amendments as advised by the legislation but cannot function. Thus it's almost solely dependent on the legislative.

Executive: The principal responsibility of this organ is thoroughly implementing and carrying out or enforcing the will of the state, as demonstrated in our Constitution. The Executive is the administrative head of the Government. Without the presence of the Executive, the Government would get completely imbalanced and thus collapse. In pivotal positional terms, the Executive includes the head of the Minister, advisors, departmental head and his ministers.

Judiciary: The term directly refers to those public officers whose shoulders the responsibility is applying the law framed by the legislature¹⁰ to every individual of the nation. They are assigned to

⁸ Montesquieu, C. L. de S. (n.d.). *The Spirit of the Laws*. (pp. 151-152). As cited in Thakker, C. K. *Administrative Law*. Eastern Book Company.

⁹ Massey, I. P. (1980). *Administrative Law*.

¹⁰ Chakraborty, M. (July 1). *Separation of Powers in India*. (pp. 39-40).

diffuse every critical societal case by taking into consideration the principle of justice. The Judiciary is also the final key to the proper implementation of a law. As the Judiciary is the one interacting the most with the commoners, it needs to be more acquainted with the societal standards.

Thus, we can all come to a concluding agreement that the "Separation of The Powers" is a great model to follow for law enforcement and the more secured nation as a whole. And though the system needs a lot of hard work, the results of having a pacifying government is the absolute best.

IMPORTANCE AND SIGNIFICANCE

The doctrine of separation of power in its true sense is very rigid and this is one of the reasons why it is not accepted by a large number of countries in the world. The main object as per Montesquieu in the Doctrine of separation of power is that there should be a government of law rather than having Will and whims of the official. Also, another most important feature of the above-said doctrine is that there should be the independence of judiciary i.e. it should be free from the other organs of the state and if it is so then justice would be delivered properly.

The judiciary is the scale through which one can measure the actual development of the state if the judiciary is not independent then it is the first step towards a tyrannical form of government i.e. power is concentrated in a single hand and if it is so then there is a cent percent chance of misuse of power. Hence the Doctrine of separation of power does play a vital role in the creation of a fair government and also fair and proper justice is dispensed by the judiciary as there is the independence of the judiciary¹¹

Also, the importance of the above-said doctrine can be traced back to as early as 1789 where the constituent Assembly of France in 1789 was of the view that "there would be nothing like a Constitution in the country where the doctrine of separation of power is not accepted". Also in 1787, the American constitution inserted the provision pertaining to the Doctrine of separation of power at the time of the drafting of the constitution in 1787¹²."

¹¹ Mahajan, B. (2014, December 7). Doctrine of Separation of Powers. Lawctopus.
<https://www.lawctopus.com/academike/doctrine-of-separation-of-powers/>

¹² Takwani, C. K. (2022). *Lectures on Administrative Law* (4th ed.). Eastern Book Company.

CONSTITUTIONAL POSITION OF THE DOCTRINE OF SEPARATION OF POWER IN INDIA ALONG WITH IMPORTANT ARTICLES AND CASES

The Constitution of India lays down a functional separation of the organs of the State in the following manner:

- Article 50: State shall take steps to separate the judiciary from the executive. This is for the purpose of ensuring the independence of the judiciary¹³.
- Article 122 and 212: validity of proceedings in Parliament and the Legislatures cannot be called into question in any Court. This ensures the separation and immunity of the legislatures from judicial intervention on the allegation of procedural irregularity.
- Judicial conduct of a judge of the Supreme Court and the High Courts' cannot be discussed in the Parliament and the State Legislature, according to Article 121 and 211 of the Constitution.
- Articles 53 and 154 respectively, provide that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
- Article 361: the President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

The separation of power there were times where the judiciary has faced tough challenges in maintaining and preserving the Doctrine of separation of power and it has in the process of preservation of the above said Doctrine has delivered landmark judgments which clearly talks about the independence of judiciary as well as the success of judiciary in India for the last six decades.

The first major judgment by the judiciary in relation to the Doctrine of separation of powers was in ***Ram Jawaya v. State of Punjab***¹⁴. The Court in this case was of the opinion that the doctrine of separation of power was not fully accepted in India.

¹³ Singh, T. B. (1996). Principle of separation of powers and concentration of authority. *Institute's Journal*, March.

¹⁴ Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab (1955) AIR 549

Further, the view of Mukherjee J adds weight to the argument that the above-said doctrine is not fully accepted in India. He states that:

"The Indian constitution has not indeed recognized the doctrine of separation of powering its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another".

Later in *I.C. Golak Nath v State of Punjab*¹⁵ The above opinion of the court clearly states the change in the court's views pertaining to the opinion in the case of *Ram Jawaya v State of Punjab* related to the doctrine of separation of power. This came one of the most landmark judgments delivered by the Supreme Court in *Keshvananda Bharti v Union of India* the court was of the view that amending power was now subject to the basic features of the constitution. And hence, any amendment tampering these essential features will be struck down as unconstitutional. Beg, J. added that separation of powers is a part of the basic structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the other. Hence this further confirmed the opinion of the court in relation to the doctrine of separation of power.

Then in *Indira Nehru Gandhi v. Raj Narain*¹⁶, where the dispute regarding P.M. election was pending before the Supreme Court, opined that adjudication of a specific dispute is a judicial function which parliament, even under constitutional amending power, cannot exercise i.e. the parliament does not have the jurisdiction to perform a function which the other organ is responsible for otherwise there will be chaos as there will be overlapping of the jurisdictions of the three organs of the state. Also, the constituent Assembly Of France in 1789 was of the view that "there would be nothing like a Constitution in the country where the doctrine of separation of power is not accepted." So if there is a provision then there should be proper implementation and this judgment emphasizes on that point only.

Also in *I.R. Coelho vs. State of Tamil Nadu*¹⁷, S.C. took the opinion opined by the Supreme court in *Keshvananda Bharti* case pertaining to the doctrine of basic structure and held that the

¹⁵ Golaknath v. State of Punjab (1967) AIR 1643

¹⁶ Indira Nehru Gandhi v. Raj Narain (1976) 2 SCR 347

¹⁷ R. Coelho (Dead) by Lrs. v. State of Tamil Nadu (2007) AIR 8617

Ninth Schedule is violative of the above-said doctrine and hence from now on the Ninth Schedule will be amenable to judicial review which also forms part of the basic structure theory.

From the above few case laws right from *Ram Jawaya v state of Punjab* in 1955 to *I.R. Coelho v. State of Tamil Nadu* in there has been a wide change of opinion as in the beginning the court was of the opinion that as such there is no Doctrine of Separation of Power in the constitution of India but then as the passage of time the opinion of the Supreme Court has also changed and now it does include the above said Doctrine as the basic feature of the Constitution.

FUNCTIONAL OVERLAP

- The legislature besides exercising law-making powers exercises judicial powers in cases of breach of its privilege, impeachment of the President and the removal of the judges¹⁸.
- The executive may further affect the functioning of the judiciary by making appointments to the office of Chief Justice and other judges.
- Legislature exercising judicial powers in the case of amending a law declared ultra Vires by the Court¹⁹ and revalidating it.
- While discharging the function of disqualifying its members and impeachment of the judges, the legislature discharges the functions of the judiciary.
- Legislature can impose punishment for exceeding freedom of speech in the Parliament; this comes under the powers and privileges of the parliament. But while exercising such power it is always necessary that it should be in conformity with due process.
- The heads of each governmental ministry is a member of the legislature, thus making the executive an integral part of the legislature.
- The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.
- Legislative power that is being vested with the legislature in certain circumstances can be exercised by the executive. If the President or the Governor, when the legislature or is not in session²⁰ and is satisfied that circumstances exist that necessitate immediate action may promulgate ordinance which has the same force of the Act made by the Parliament or the state legislature.

¹⁸ Basu, D. D. (1996). *Administrative Law*. (Page 26).

¹⁹ Takwani, C. K. (2022). *Lectures on Administrative Law* (4th ed.). Eastern Book Company.

²⁰ Massey, I. P. (1980). *Administrative Law*.

- The Constitution permits, through Article 118 and Article 208, the Legislature at the Centre and in the States respectively, the authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution. The executive also exercises law making power under delegated legislation.
- The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions. Administrative tribunals which are a part of the executive also discharge judicial functions.
- Higher administrative tribunals²¹ should always have a member of the judiciary. The higher judiciary is conferred with the power of supervising the functioning of subordinate courts. It also acts as a legislature while making laws regulating its conduct and rules regarding disposal of cases.

Besides the functional overlapping, the Indian system also lacks the separation of personnel amongst the three departments.

Applying the doctrines of constitutional limitation and trust in the Indian scenario, a system is created where none of the organs can usurp the functions or powers which are assigned to another organ by express or necessary provision, nor can they divest themselves of essential functions which belong to them as under the Constitution.

SEPARATION OF POWERS IN USA

It has been accepted and strictly adopted in the USA. Article; Section 1 vests all legislative power in the congress. Article III; section 1 vests all judicial power in the Supreme court.

Jefferson quoted: "The concentration of legislative, executive and judicial power in the same hands is precisely the definition of despotic government. On the basis of this theory, the SC was not given power to decide political questions so that there was no interference in the exercise of the power of the executive branch. Also overriding power of judicial review is not given to the SC. The president interferes with the exercise of powers by the congress through his veto power. He also exercises the law making power in exercise of his treaty making power. He also interferes in the functioning of the SC by appointing judges". The judiciary interferes with the power of the congress and the president through its power of judicial review. It can be said that the SC made more amendments to the American constitution than the congress. To prevent one branch from

²¹ Upadhyaya, J. J. R. (2021). *Administrative Law* (8th ed., p. 48). Central Law Agency

becoming superior and to induce the branches to co-operate, a governance system that employs a separation of power needs a way to balance each of the branches. Typically this was accomplished through a system of checks and balances. This doctrine allows for a system based regulation that allows one branch to limit another²². The case of *Marbury v. Madison* (1803)²³ played a defining role in establishing judicial review, strengthening the judiciary's power to check legislative and executive actions. Chief Justice John Marshall's ruling in this case affirmed that it is the duty of the judiciary to interpret the Constitution and nullify laws that violate it. This decision reinforced the separation of powers by preventing the legislative and executive branches from overstepping their constitutional limits.

PRINCIPLE OF CHECKS AND BALANCES

The doctrine of separations of powers may be traced back to an earlier theory known as the theory of mixed government from which it has been evolved. That theory is of great antiquity and was adumbrated in the writings of Polybius, a great historian who was captured by the Romans in 167 BC and kept in Rome as a Political hostage for 17 years in his history of Rome. Polybius explained the reasons for the exceptional stability of the Roman Government which enabled Rome to establish a worldwide empire. He advanced the theory that the powers of Rome stemmed from her mixed government. Unmixed systems of government that are the three primary forms of government namely, Monarchy, Aristocracy, and Democracy - were considered by Polybius as inherently unstable and liable to rapid degeneration.

The Roman constitutions counteracted that instability and tendency to degeneration by a happy mixture of principles drawn from all the three primary forms of government. The consuls, the Senate and the popular Assemblies exemplified the monarchical, the aristocratic and the democratic principles respectively. The powers of Government were distributed between them in such a way that each checked and was checked by the others so that an equipoise or equilibrium was achieved which imparted a remarkable stability to the constitutional structure. It is from the work of Polybius that political theorists in the 17th Century evolved that theory of separation of powers and the closely related theory of Checks and Balances²⁴.

²² Legal Service India. (n.d.). Doctrine of Separation of Powers. Retrieved from <https://www.legalserviceindia.com/legal/article-35-doctrine-of-separation-of-powers.html>

²³ *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (1803)

²⁴ Vishwanadham, L. (2012, June). *History of Checks and Balances*. VSRD Journals, 38-40.

CONCLUSION

In a strict sense, the principle of separation of powers cannot be applied in any modern Government either may be U.K., U.S.A., France, India or Australia. But it does not mean that the principle has no relevance nowadays. Government is an organic unity. It cannot be divided into watertight compartments. History proves this fact. If there is a complete separation of powers the government cannot run smoothly and effectively. The smooth running of government is possible only by cooperation and mutual adjustment of all the three organs of the government. Prof. Garner has rightly said, "the doctrine is impracticable as a working principle of Government." It is not possible to categorize the functions of all three branches of Government on a mathematical basis. The observation of Frankfurter is notable in this connection. According to him

"Enforcement of a rigid conception of separation of powers would make Government impossible."

It is my opinion that the doctrine of Montesquieu is not merely a "myth" it also carries a truth, but in the sense that each organ of the Government should exercise its power on the principle of "Checks and Balances" signifying the fact that none of the organs of Government should usurp the essential functions of the other organs. Professor Laski has aptly remarked: "It is necessary to have a separation of functions which need not imply a separation of personnel²⁵".

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