
ANALYSIS OF THE DOCTRINE OF SEPARATION OF POWERS WITH REFERENCE TO INDIA AND U.S.A.

Abishek Johny, School of Law, Christ Deemed to be University

ABSTRACT

The Constitution acknowledges the division of powers as a component of it. The division of duties between the executive, legislative, and judicial departments is known as the “Separation of Powers,” and it is a fundamental constitutional principle. The purpose of this study is to explore the idea of separation of powers as it is set forth in the Indian Constitution and to highlight the challenges that the three branches of government have while putting the Constitution provisions into effect, a comparison of the US (United States of America) Constitution’s separation of powers structure to that of India’s.

Introduction

The concept of the separation of powers emphasises the mutual exclusivity of the legislative, executive, and judicial departments of the government. The fundamental idea is that each of these organs should have a separate purpose. If one organ perform all the tasks that would give it the power to behave arbitrarily and pose a threat to personal freedom. It may enact a totalitarian law, carry it out despotically, and interpret it arbitrarily without any outside oversight¹. In order to prevent absolutism and to protect the state's dictatorial and arbitrary powers, the Separation theory attempts to distribute governmental authority and allocate each function to the institution most qualified to carry it out. Consolidating all power in a single body would enhance the danger of governmental absolutism and jeopardise individual freedom. The separation of powers idea is not a legal principle but a political theory.

THE DOCTRINE OF SEPARATION OF POWERS IN INDIA.

In India there is a definite division between the executive branch, which is led by the president of India, who is the head of state, and the legislative branch, which is headed by the prime minister, who is the head of government and the judiciary is made up of the Supreme Court of India, state high courts, and various lower courts. the legislative is made up of Parliament and both houses of the Loksabha and Rajyasabha. The central and state functions are separated at the national level in India as India is a federal republic. At the federal level, the Chief Executive is the President, while at the state level, the Chief Executive is the Governor. Similarly, each state has its own legislative body, as well as a Parliament at the national level.

On the other hand, neither this article nor the Constitution make any mention of the clause regarding the separation of powers within the legislative branch. The Constitution divides the legislative authority between the state legislature (as provided for in article 168) and both houses of Parliament (as stated in article 79). The executive branch is under the president's control as head of state. The Supreme Court of India, as well as the numerous higher and lower courts, are invested with authority at the national level under article 53, as well as the governors of each state under article 154. The Supreme Court of India also has authority over the several higher and lower courts.

¹ Charles de Secondat; B. de Montesquieu (1748), 'The Spirit of Laws', trans. Thomas Nugent

These three Indian government organisations will exercise people's rights. Laws are created or amended by legislative bodies on behalf of the populace, put into effect by government agencies, and applied to specific cases of lawlessness by the judiciary. Despite the fact that a nation's function and power are obviously distinct, each organ frequently interferes with how that function is carried out in different ways. This is as a result of the difficulty in establishing a distinct separation of duties in their dealings with the general population. These organs consequently frequently perform many functions even when functioning independently. It is unclear how these three governmental institutions should work together, or if there should be a full division of powers.

In *Ram Jawaya v. State of Punjab*² it was established that the executive can be viewed as a part of the legislative and is answerable to it in some ways. The president is only regarded as a nominal head, with the prime minister wielding real power.

The case of *Indira Nehru Gandhi v. Raj Narain*³ addressed the question of whether the legislature can perform judicial functions. It was decided that when the legislature performs judicial functions, two fundamental conditions must be met. First, the power should be openly granted to parliament, and second, the function should be carried out in accordance with the law.

The executive power of the Union shall be vested in the President, and the executive power of the State shall be vested in the Governor, as stated in the Indian Constitution. However, there is no clear clause stating who or what should be given control over legislative and judicial functions. The Indian Constitution implicitly recognises the separation of powers. Despite the fact that there is no specific provision recognising the principle of separation of powers, the Constitution ensures that the three government departments have a reasonable separation of function and power.

State institutions must be divided in terms of their functions, according to the Indian Constitution. According to Article 50, the state has made efforts to keep the judicial system separate from the executive branch. Thus, the independence of the judiciary is ensured. The legislature cannot challenge the process in court because it is legal under Articles 122 and 212. This protects the legislature's impartiality and shields it from judicial scrutiny of potential

² AIR 1955 SC 549

³ 1975 AIR 1590

procedural irregularities. In addition to making laws, the legislature also possesses judicial powers in cases of abuse of its privilege, the impeachment of the President, and the dismissal of judges.

The executive can further influence how the judiciary operates by nominating Chief Justices and other judges. The legislature acts in a judicial capacity when it amends and revalidates legislation that the Court has ruled is excessive. By removing its members from office and impeaching judges, the legislature carries out the duties of the judiciary. One of the privileges and rights of the legislature is the authority to penalise anyone who violate their right to free speech there. However, anytime this authority is used, it must always be done so in conformity with the law. The leaders of each governmental ministry are legislators, making the executive a crucial component of the legislature.

On the recommendation of the council of ministers, which is composed of elected members of the legislature, the president and governor make decisions. In some cases, the administration may use the legislative authority granted to the legislature. When the legislature is not in session and the President or Governor is convinced that urgent action is required, they may promulgate an ordinance with the same legal force as a law passed by the Parliament or the State legislature. Through Articles 118 and 208, respectively, the Constitution allows the Central and State legislatures the power to enact regulations that will govern their respective working practises and conduct of business, according to the restrictions of the Constitution. Judicial duties are also carried out by tribunals and other quasi-judicial bodies that are under the executive government. The executive branch's administrative tribunals carry out judicial functions as well. At higher administrative tribunals, a representative of the court should always be present. The upper judiciary has been given the authority to oversee the operation of lesser courts. It also performs the function of a legislative body, enacting laws that control its operations and the way disputes are handled.

All of this shows that the Indian Constitution does not choose for absolute separation of powers because it is undesirable and impracticable, but the consequences of this notion can be observed in India in its weakened version. In the Indian system, there is no personnel division between the three departments aside from the functional overlap.

Judicial views

In *Delhi Laws Act* case⁴, the Supreme Court, for the first time observed that in India, the idea that one organ should not undertake activities that basically belong to others is followed, save where the constitution has vested power in a body. The Court decided by a 5:2 majority that, while the doctrine of separation of powers is not part and parcel of our Constitution, it is obvious in the Constitution's provisions under exceptional circumstances.

Again, in *Ram Krishna Dalmia v. Justice Tendolkar*⁵, it was observed that "the existence of separation of powers is not expressly stated in the Constitution, and while it is true that the division of government powers into legislative, executive, and judicial is implicit in the Constitution, the doctrine does not form an essential foundational stone of the constitutional framework as it does in the United States of America."

Later in *I.G. Golak Nath v. State of Punjab*⁶, Subha Rao, C.J opined that "Different constitutional entities, such as the union, the state, and the union territories, are established by the constitution. It establishes the Legislature, the Executive, and the Judiciary as three major instruments of power. It clearly demarcates their authority and expects them to exercise their separate functions within those boundaries. They should use the spheres that have been assigned to them."

The court's decision in the case of *Ram Jawaya v. State of Punjab*⁷, relating to the doctrine of separation of powers, is clearly stated in the above opinion.

Following one of the Supreme Court's most important rulings in *Kesavananda Bharati v. Union of India*, the court ruled that amendment powers are now constrained by the fundamental principles of the constitution. Therefore, any modification that alters these essential features would be deemed illegitimate. According to J. Beg, the constitution's fundamental structure includes the separation of powers. The three distinct organs of the republic are not interchangeable with one another. Therefore, this furthered the court's assessment of the idea of separation of powers.

⁴ 1951 AIR 332, 1951 SCR 747

⁵ 1958 AIR 538, 1959 SCR 279

⁶ 1967 AIR 1643

⁷ AIR 1955 SC 549

SEPARATION OF POWERS IN THE UNITED STATES OF AMERICA.

The whole structure of the US Constitution is based on the notion of separation of powers. The phrase "Separation of Powers" was first used by philosopher Montesquieu in the eighteenth century. According to the concept of "separation of powers," the federal government is composed of various branches, each with its own set of powers. Thirteen independent states came together voluntarily to become the United States of America. These states kept the majority of their sovereign authority while ceding some of it to the federal government. In 1787, the United States of America's Constitution came into being. Because of this, it is the first and most revered member of the family of current federal constitutions and is regarded as the origin of modern federalism. Separation of powers is strictly observed in countries with presidential systems of government, such as the United States. This principle often separates the government into three branches: the Judicial Branch, the Executive Branch, and the Legislative Branch.

The President is given administrative authority, the Congress is given legislative authority, and the Supreme Court and its lower courts are given judicial authority. The American Constitution's Articles I, II, and III, respectively, deal with the matters mentioned above. The American constitutional system is founded on this notion. This "checks and balances" system prevents any organ from rising to the top. The powers vested in one organ of government cannot be used to encroach on the powers vested in the other⁸.

Presidential System

The president serves as both the head of state and the head of government under this system. The executive branch of government, as well as different administrative bodies like the Cabinet of Ministers or the heads of several executive branches, are all under the President's supervision. The Chief Executive Officer and his staff are in charge of managing daily government operations as well as enforcing the law. In particular, the president is in charge of overseeing the military and defending the nation against both internal disturbance and foreign assault.

⁸ Friedmann, Law in a Changing Society (1996) 383.

Legislative Power

The first article of the US Constitution says "All legislative power shall be vested in a Congress."⁹ In the United States, only Congress has the legislative power. The non-delegation principle prevents Congress from delegating legislative powers to other bodies. In this regard, the Supreme Court in *Clinton v. New York*¹⁰ in 1998 found that Congress could not grant the president a "line-item veto" to knowingly overturn certain elements of the law before Congress signed it. Article 1, Section 8 of the Constitution delegated all powers to Parliament. Congress has the exclusive power to make laws and make laws, as well as all other powers conferred on governments by the Constitution.

Executive Power

Article II, Section 1 of the Constitution grants the president executive authority, subject to a number of exceptions and restrictions. According to the Constitution, the president has the power to sign treaties, appoint officials to positions "...with the Advice and Consent of the Senate," receive ambassadors and public ministers, and "...take care that the laws are faithfully executed." The president also has command over the Army, Navy, and the militias of several states when called into service (Section 3). By utilising these words, the president is not required by the Constitution to impose the legislation himself; rather, officers reporting to the president may. The Constitution grants the president the authority to ensure that Congress's laws are faithfully implemented. The ability to cancel such nominations and impose limitations on the president rests with Congress and can be exercised through impeachment. Executing the directives that the Congress gives the president is his responsibility.

Judicial Power

Judicial authority, or the capacity to settle disputes, is granted to the Supreme Court and other lesser courts created by Congress. The judges must be appointed by the president with the advice and consent of the Senate, and they must be appointed for life with no possibility of pay reductions while in office. The judicial authority of the United States may not be exercised by a court whose justices fall short of these standards. "Constitutional courts" are tribunals with judicial authority. Legislative courts, which are not judicial bodies or commissions and do not

⁹ Article 1, Sec.8, US Constitution, 1787.

¹⁰ 524 US 417 (1998)

have the same authority or compensation as judges of constitutional courts, may be established by Congress. . Legislative courts cannot exercise the United States' judicial power. The Supreme Court declared in *Murray's Lessee v. Hoboken Land & Improvement Co.*¹¹ that a legislative court cannot decide "a claim at common law, in equity, or in admiralty," because such a matter is fundamentally judicial. Legislative courts can only rule on "public rights." Despite the fact that separation of powers is not practised in America in its strict sense, it caught the attention of those who drafted the modern constitutions, especially in the nineteenth century.

OBSERVATION AND CONCLUSION

Even if neither India nor the United States' constitutions provide a complete and tight separation of powers, it is evident from a comparison of their numerous clauses that the United States' constitutional separation of powers is, in theory, stricter than India's. Although the separation of powers is implied by the constitutions' many parts, it is not officially stated in the constitutions of either country.

The key difference between how the philosophy is carried out in both countries is the leadership that is exercised by the president and the executive. In comparison to India, the United States has less success with the executive's control over the legislative branch and vice versa. In the United States, the president is regarded as a true executive head, and the presidential form of government is in place. This essentially means that, provided the president abides by the Constitution, the president is theoretically self-governing and not answerable to the legislature. However, the president's acts are subject to judicial scrutiny by the Supreme Court. Similar to this, the legislature operates independently of the executive branch, and the president lacks the power to dissolve a presiding assembly.

In this regard, a comparison with the situation in India and the impact of the legislative branch on the executive, as well as the reverse, must be made. The president is only regarded as the ceremonial head in India. The council of ministers of the legislature must provide aid and counsel to the president when making decisions. The prime minister, who is thought of as the real leader, has the authority to dissolve a parliament as well.

¹¹ 59 U.S. 18 How. 272 272 (1856)

Another notable difference between the organisational systems of the two nations is that in the United States, the constitution ensures that employees be strictly segregated among the three departments. On the other hand, such a division is not permitted by the Indian Constitution. The legislative and executive branches of government in India share certain personnel.

Because of this, there are significant differences that should be taken into account, despite the fact that the notion is used broadly similarly in India and the US. There has been harsh criticism of the political systems of both nations. However, it's crucial to note that both nations have chosen the approach that works best for them given their unique social and historical situations.