
THE DOCTRINE OF SEPARATION OF POWERS: A COMPARATIVE STUDY OF ITS APPLICATION IN INDIA AND THE UNITED STATES

Mansi Seja Galchar, LL.B, Pursuing LL.M, Gujarat National Law University

ABSTRACT

A key tenet of constitutional governance is the theory of separation of powers, which guarantees the separation of governmental duties among the legislative, executive, and judicial branches in order to prevent power concentration and preserve democracy. With a focus on their different constitutional frameworks and real-world applications, this research study compares how this concept is used in India and the US. With a system of checks and balances that guarantees each branch operates autonomously while limiting the others, the United States rigorously upholds the separation of powers. However, the Indian system takes a more accommodating stance, permitting a functional overlap but preserving judicial review as a check on capricious power. The study examines significant court rulings, constitutional clauses, and institutional procedures in both nations, highlighting how well they uphold democratic governance. The study also analyses how each system adjusts to the demands of modern governance while examining the difficulties presented by changing political and legal dynamics, such as judicial activism, executive overreach, and legislative encroachments. The study assesses the doctrine's wider implications for upholding constitutionalism and the rule of law while highlighting the advantages and disadvantages of each model through this comparative lens. In the end, this study demonstrates how, despite being widely accepted, the theory of separation of powers takes on different forms in various legal and political circumstances, influencing the governance systems of both the US and India in distinctive ways.

1. INTRODUCTION AND BACKGROUND

The “*doctrine of the separation of powers*” states that governmental efficacy is maximized when authority is distributed among distinct branches rather than concentrated in a singular authority. It was initially adopted by the USA. This Doctrine was established in India in the 17th century. The three branches of government: “*the legislative power to form laws, the executive power to enforce laws, and the judicial capacity to interpret laws*”.¹

The main aim behind this doctrine is that the concentration of all activities in a single organ should be avoided, as it may jeopardize human freedom and enable arbitrary actions. It may implement a totalitarian law, enforce it despotically, and interpret it arbitrarily without external oversight. The argument underpinning the idea is that if all authority is centralized in a single authority, the risk of state absolutism emerges, jeopardizing individual liberties.

It is truly said that “Power corrupts, and absolute power corrupts absolutely”. This means that to develop an effective control mechanism it is important to find out the ways to restrain the forces of arbitrariness and authoritarianism. Nevertheless, the Greek philosopher Aristotle reveals a notion of the division of powers. Aristotle stated that:

*“There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these three elements. The three are, first the deliberative, which discusses everything of common importance; second, the officials . . .; and third, the judicial element”.*²

1.1 The Contribution of Montesquieu

This doctrine states that no individual should possess all three powers. These should be allocated such that legislation is enacted by the “*legislature, and the executive*” will enforce or implement the laws and judiciary must enforce the law and deliver justice. Thus, Montesquieu asserted that the decentralization of power is essential; otherwise, justice becomes arbitrary. The legislative, executive, and judicial branches must operate

¹ Ritika Chadhauri, ‘Separation of Power’ (2021) 2 IJLLR 45, 47

² *Id.* at 1

independently, with no overlap in their respective duties.³

2. RESEARCH METHODOLOGY

The researcher followed the doctrinal research. The researcher reviewed both primary and secondary sources, including statutes, books, newspapers, articles, journals, judgments, and other sources. The researcher also used a different internet websites, including SCC Online, Lawoctopus, and Manupatra, to support the cases.

3. CONCEPT OF DOCTRINE OF SEPARATION OF POWERS

The implementation of the doctrine is that to prevent abuse or misuse of powers of the authority. This idea asserts that no governmental organ may exert powers beyond those conferred upon it.⁴ This concept is founded on four principles:

- The *Exclusivity Principle* has partitioned the government into three distinct government organs.
- The *Functional Principle* delineates the limits of organs, which ensures that one organ cannot perform functions of another organ of the government.
- The *Check and Balance Principle* posits that these organs should monitor one another to ensure that their responsibilities and duties remain within constitutional limits.
- The *Mutuality Principle* seeks to foster harmony and collaboration rather than confrontation.

3.1 THE ESSENTIAL PRINCIPLES BEHIND THE SEPARATION OF POWERS

Primarily, it seeks to rectify the inconsistencies, despotism, and autocracy of the government, thereby fostering a more democratic and responsible system. Furthermore, it enables monitoring across several governmental sectors, thereby preventing the misuse of authority by these specialized branches of government. In our nation, the constitution represents the

³ H.M. Seervai, *Constitutional Law in India* (4th edn., Aggrawal Law House, 2022) 973

⁴ *Id.* at 4

paramount and sovereign authority; any idea or notion that deviates from its provisions is deemed null, void, or unconstitutional. Furthermore, each branch of government has distinct responsibilities, and through the “*principle of separation of powers*”, each branch is held accountable for its duties, thereby ensuring oversight of all branches. This principle allocates authority among three distinct branches, thereby preventing concentration within a single entity that could lead to inconsistencies. Therefore, this fosters a balance of power, rendering the government more democratic and effective.

4. SEPARATION OF POWERS UNDER INDIAN CONSTITUTION

The Constitution contains stringent Articles that unequivocally delineate the separation of powers, although it also includes stipulations that differentiate the authority of the several branches of government. Although there is no explicit provision for this idea, it is implicitly adhered to in India. It has delineated the functions of each governmental organ.

Article 50⁵ states that “separation of judiciary from the executive”. This Article implies that Judiciary is an independent branch which will act in its own sphere and the executive is an independent branch. Thus, this Article says that state has an obligation to keep judiciary and executive separately.

4.1 Intervention can be done by the three branches

*“The conduct and actions of judges cannot be discussed in Parliament and state legislatures as stipulated in Articles 121⁶ and 211⁷”.⁷ The executive functions are conferred upon “the president at the national level and upon the governor at the state level, as stipulated in Articles 53⁸ and 154⁹”.*⁹

The legislature may possess judicial powers in specific instances, such as presidential impeachment or the removal of judges. Similarly, the government possesses specific authority to “*appoint judges and the chief justice*”, which might influence the operation of the judiciary.

⁵ The Constitution of India 1950, art. 50

⁶ The Constitution of India 1950, art. 121

⁷ The Constitution of India 1950, art. 211

⁸ The Constitution of India 1950, art. 53

⁹ The Constitution of India 1950, art. 154

*“According to Article 123, the Executive may exercise legislative powers when the legislature is not in session and there is a necessity to enact law”.*¹⁰

4.2 Concept of Checks and Balance

The Constitution has established a system of “*checks and balances*” to avoid the misuse of vested powers. The main objective behind this was to protect the rights and balance between individual freedom and government concentration of powers.¹¹ The fundamental aspect of Indian democracy is the separation of powers, which prevents any single entity from arbitrariness.

4.3 Judicial Interpretations

In *Keshavananda Bharti v. State of Kerala*,¹² the question arises that whether Judiciary can intervene in the Parliamentary powers of amending laws? The court determined that the notion of separation of powers constitutes the “*basic structure of the Constitution*”, which must not be infringed upon. Thus, the Court held that “*separation of powers is the basic structure of Constitution*” and hence, this doctrine cannot be violated.

In “*Ram Jawaya Kapur v State of Punjab*”,¹³ the court determined that doctrine of separation of powers are not explicit stated in the constitution. But the functions of one branch should not be executed by another. These organs should exercise their powers beyond what is stipulated by the Constitution.

In “*Indira Nehru Gandhi v Raj Narain*”,¹⁴ it was noted that the “*basic structure of the constitution*” cannot be amend, despite Article 368 allows constitutional amendments. The Constitution of India is paramount, and no other authority can supersede it. The functions of the three organs must be executed within the appropriate authority.

5. CHALLENGES TO THE SEPARATION OF POWERS

The implementation of the “*separation of powers*” in India reflects their various foundational

¹⁰ The Constitution of India 1950, art. 123

¹¹ Mahendra Pal Singh, *V.N. Shukla's Constitution of India* (13th edn. Eastern Book Company, 2023). 1289

¹² AIR 1973 SC 1461

¹³ AIR 1955 SC 549

¹⁴ AIR 1975 SC 865S

democratic beliefs and political systems. The Constitution maintains the “*separation of powers*” through “*three distinct branches of government*”. Legislation is enacted by the Indian Parliament (legislature), executed by the President (executive), and the interpretation by the judiciary. Nevertheless, the parliamentary system's capacity to grant the executive influence within the legislature may occasionally lead to conflicts that compromise the “*separation of powers*”.

The challenges to this doctrine in India have elicited discourse and concern. The following are notable aspects:

Judicial Appointments

Accusations have arisen over excessive involvement of the “*executive branch in the judicial appointment process*”. In 2014, an effort was initiated to modify the appointment process through the implementation of the "NJAC Act" (National Judicial Appointments Commission Act). Nevertheless, the Supreme Court annulled it in the 2015 since they deemed it contrary to the independence of the judiciary.¹⁵

Judicial Activism - Judges Formulating Legislation

The judiciary has intermittently faced criticism for exceeding its expected role by imposing policies and issuing directives to the executive branch.

In *Vishakha v. State of Rajasthan*,¹⁶ this case exemplifies a situation where the Supreme Court established “*guidelines to prohibit sexual harassment in the workplace*”. While considerable, others argue that this constituted a legislative obligation.

The Speaker of the House interprets laws to uphold the decorum of the Parliament

The Speaker's role as an impartial adjudicator in the legislature has been questioned when they are affiliated with a political party. The Speaker's decision to dismiss dissenting MLAs during the 2019 political crisis in Karnataka was fiercely debated as it appeared to favor the ruling party. The executive branch possesses the power to issue ordinances independently of

¹⁵ *Supreme Court Advocates-on-Record Association v. Union of India*, AIR 2015 SC 5457

¹⁶ AIR 1997 SC 3011

parliamentary consent, potentially undermining the legislative process.

6. COMPARATIVE ANALYSIS WITH THE CONSTITUTIONAL PROVISIONS OF THE UNITED STATES

The U.S and India, two unique democracies, utilize different constitutional provisions and checks and balances to protect and define the allocation of powers within their respective governments. An essential element of the “*U.S Constitution is the separation of powers*”, founded on a tripartite framework that allots specific responsibilities to the “*legislative, executive, and judicial*” branches of government. Each organ of the system possesses distinct authority to prevent potential abuses by others, and the system is reinforced by checks and balances. A two-thirds majority in Congress has the power to override a presidential veto of legislation. Thus, the Court has the power to examine in each and every case and make decisions unconstitutional of legislature and executive where it goes beyond the constitutional principle.¹⁷

The Constitution of the United States embodies a core principle known as the “*separation of powers*”. The United States Congress serves as the “*legislative branch of government, as specified in Article I*”.¹⁸ The legislative body consists of the “*House of Representatives and the Senate*”. The bicameral system guarantees the representation of various regions within the nation, as both branches must concur for legislation to be approved.

The President governs the executive branch, as specified in “*Article II*”.¹⁹ This branch implements and enforced the laws established by Congress. In U.S, the power of executive is vested upon President direct the military, reject bills, and issue pardons. And on the other hand, the Congress possesses the jurisdiction to impeach and remove the President from office, so acting as a check on the President's power. The system of “*checks and balances*”, implies that powers are restricted from one branch to another so that there can be no intervention and hence this clearly shows the existence of separation of powers.

Article III²⁰ delineates the “*judicial branch, which includes the Supreme Court and federal*

¹⁷ Devanshi Sharma, ‘Separation of Powers’ (2023) SSRN < <https://dx.doi.org/10.2139/ssrn.4380967> > accessed 6th October 2024

¹⁸ The U.S Constitution 1787, art I

¹⁹ The U.S Constitution 1787, art II

²⁰ The U.S Constitution 1787, art III

courts". The judiciary is tasked with interpreting the law and guaranteeing its fair and uniform application. The ability to evaluate the legality of laws and governmental actions bestows upon the judiciary the power of "*judicial review*". Thus, the most important aspect of "*separation of powers*" is to scrutinize and avoid abuse of powers by other branches by making their decisions invalidate.

6.1 Judicial Interpretations

In *Kilbourn v. Thompson*,²¹ the Court observed that no branch of government shall encroached onto the powers designated to the other branches. The "*legislature*" cannot exercise or infringe upon the powers of the "*executive or judicial branches*". Therefore, the "*executive*" branch has to perform their function in their sphere and cannot intervene in judiciary or legislature. Also, the judiciary cannot perform the function of executive and legislature until and unless it is violation of rights.

In *Marbury v. Madison*,²² within the context of this ruling, the Court came to the conclusion that the legislation might be overturned by the judicial system. In this case, the Secretary of State James Madison did not grant a commission to William Marbury, who had been selected by President John Adams to serve as a justice for the District of Columbia. The Court reaffirmed its ability to determine whether the laws are constitutional or not and to determine this, essential component is required in the legal system to govern such laws in U.S.

The decision made a significant victory for those who advocate for judicial review. The Chief Justice of the United States, John Marshall, argued on behalf of the Supreme Court that the Constitution was the highest law in the land and that it was the responsibility of the courts to uphold it. In addition, he held that the judicial branch had the jurisdiction to declare laws to be unconstitutional, regardless of whether or not Congress had passed them for approval. Both the legal system and the governance of the United States have been greatly impacted by this decision.²³

According to the doctrine, that has been implemented in the countries, the courts are the ones who are responsible for interpreting the Constitution and have the right to invalidate measures

²¹ [1880] 103 U.S 168

²² [1803] 5 U.S. 137

²³ *Id.* at 25

that are found to be unconstitutional. Protecting individual rights, preserving the “*separation of powers, and the rule of law*” are fall under the purview of judicial authority.

CONCLUSION

The doctrine of separation of powers is a fundamental principle of governance that delineates the distinct roles and responsibilities of the three branches of government: the executive, legislative, and judicial branches. This doctrine aims to prevent the concentration of power in any one branch, thereby protecting individual liberties and promoting a balanced system of governance. However, it is crucial to evaluate the separation of powers not merely as a rigid classification of governmental functions but also in the context of its intended goals. A strict adherence to the separation of powers can be counterproductive; instead, it should be interpreted and applied in the spirit of unity and collective advancement for the greater benefit of society.

In practice, the concept of separation of powers can sometimes be at odds with its literal interpretation. While the fundamental aim is to prevent power manipulation and misuse, the functioning of government is inherently intertwined. The efficient operation of a democracy requires a nuanced approach to the separation of powers, wherein the various branches work collaboratively while maintaining their distinct roles. This collaborative spirit is essential for establishing an effective government in its truest form, where checks and balances are not merely theoretical constructs but practical mechanisms that facilitate responsible governance.

In the context of India, the application of the separation of powers doctrine is particularly complex due to its parliamentary system of governance, which fosters a fusion of powers between the executive and legislative branches. The Prime Minister and the Council of Ministers, drawn from the legislature, exemplify this blend. In contrast, the United States operates under a presidential system, characterized by a more rigid separation of powers. The U.S. Constitution establishes clear boundaries between the functions of each branch, resulting in a system where the executive is independently elected and distinct from the legislative body.

While both nations strive to implement the doctrine of separation of powers, the realities of governance reveal that strict adherence to this principle can lead to practical challenges. For instance, in the United States, the emphasis on checks and balances often results in legislative impasses and executive overreach. The dynamics of this system can lead to gridlock, where

significant decisions are stalled due to partisan divides, hindering the government's ability to respond effectively to pressing issues. Such circumstances can create frustration among the electorate, who may perceive their government as ineffective or disconnected from their needs.

In India, the parliamentary system promotes a certain degree of executive authority due to the inherent connection between the executive and legislative branches. While this may allow for more streamlined decision-making and governance, it raises concerns about the potential for the executive to overshadow the legislative branch, particularly in matters of policy formulation and implementation. The ability of the Prime Minister and the Cabinet to exert influence over legislative processes can lead to situations where the executive may bypass thorough scrutiny of proposed legislation, which can undermine democratic principles.

The historical contexts of these two nations further illuminate the evolution of their approaches to the separation of powers. In the United States, the doctrine emerged from revolutionary ideals that sought to limit government authority and protect individual liberties. The Founding Fathers were acutely aware of the dangers of concentrated power and designed a system that emphasized checks and balances as a safeguard against tyranny. This historical backdrop is instrumental in understanding the rigidity of the U.S. separation of powers doctrine.

Conversely, India's approach is shaped by its post-colonial experience and the need to build a cohesive nation from diverse cultural, linguistic, and regional backgrounds. The framers of the Indian Constitution aimed to establish a robust democratic framework while also addressing the complexities of federalism and social justice. This resulted in a more flexible interpretation of the separation of powers, where the emphasis is on collaboration and adaptive governance rather than strict compartmentalization.

Despite the challenges each system faces, both India and the United States have demonstrated resilience in upholding democratic principles and constitutional goals. Policymakers, along with the judiciary, play a crucial role in navigating the delicate balance between the branches of government. In India, the judiciary has emerged as a vital check on executive power, often stepping in to adjudicate disputes and ensure adherence to constitutional mandates. Similarly, in the U.S., the judiciary serves as a guardian of constitutional rights, interpreting the law in ways that can challenge executive actions or legislative overreach.

However, the ongoing issues of executive overreach and legislative gridlock in both countries

highlight the necessity for continual examination and adaptation of the separation of powers doctrine. It is essential for policymakers and the judiciary to engage in a collaborative discourse to address these challenges and improve governance. By doing so, they can glean significant insights into enhancing the effectiveness of democratic governance within their respective federal systems.

In conclusion, the separation of powers doctrine, while foundational to the governance of both India and the United States, is subject to the complexities of political realities and historical contexts. Understanding this doctrine requires a nuanced perspective that recognizes the interplay between institutional structures, the unique political cultures of each nation, and the necessity of maintaining effective governance through collaboration and adaptive practices. This holistic approach will ensure that the separation of powers remains a living principle, capable of addressing the evolving needs and aspirations of society.

BIBLIOGRAPHY

Statutes

- The Constitution of India, 1950

Books

- Aldar John, *Constitutional and Administrative Law* (6th edn., Palgrave Macmillan, 2014) 773
- Dr. J.N. Pandey, *Constitutional Law of India* (59th edn. Central Law Agency, 2022). 389
- H.M. Seervai, *Constitutional Law in India* (4th edn., Aggrawal Law House, 2022) 987
- I.P Maesseys, *Administrative Law* (10th edn., Eastern Book Company, 2023) 991
- Mahendra Pal Singh, *V.N. Shukla's Constitution of India* (13th edn., Eastern Book Company, 2017) 1289
- MP Jain, *Indian Constitutional Law* (8th edn., Eastern Book Company, 2022) 1176

Articles

- Devanshi Sharma, 'Separation of Powers' (2023) SSRN < <https://dx.doi.org/10.2139/ssrn.4380967>> accessed 6th October 2024
- Kusum, 'The Doctrine of Separation of Powers in Indian Perspective' (2023) 11 IJCRT 34, 35
- Ritika Chadhaury, 'Separation of Power' (2021) 2 IJLLR 45, 47
- Tej Bahadur Singh, 'Principle of separation of powers and concentration of authority' (1996) IJTR < <https://ijtr.nic.in/articles/art35.pdf>> accessed 6th October 2024
- Vinita Chadhaury, 'separation of powers: a comparative study of India, USA, UK and France' (2010) NLIU Law Review 99, 105 < <https://nliulawreview.nliu.ac.in/wp-content/uploads/2021/11/SEPARATION-OF-POWERS-A-COMPARATIVE-STUDY-OF-INDIA-USA-UK-AND-FRANCE-Article-6.pdf>> accesses 6th October 2024

Dictionary

- Cambridge Dictionary (Online)

- Merriam Webster
- Oxford Dictionary (Online)

Journals

- ILI Law Review
- Indian bar Review
- Indian Journal of Applied Research
- Indian journal of Law and Legal Research
- International Journal of Humanities and Social Science Invention
- Journal of the Indian Law Institute

International Instruments

- The U.S. Constitution, 1787

Magazines

- Economic & Political Weekly

Websites

www.mondaq.com

www.blog.ipleaders.in

www.scconline.com

www.legalserviceindia.com

www.manupatra.com

www.indiacode.nic.in