

# Doctrine of Separation of Powers

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**ABSTRACT:** *No statutory status has been given to the doctrine of separation of powers. In the fourth part of the Directive Principles of State Policies, however, the independence of the judiciary from the executive has been specified in Article 50 of the Indian Constitution. The Indian Constitution states that executive powers are exercised by the government, legislative powers are held by the senate and judicial powers are held by the judiciary. The president serves in office for a fixed amount of time and the Constitution outlines his responsibilities and degree of power. Under constitution, parliament has the mandate to make laws, there are no such limitations on its statutory powers. Parliament has the right to regulate legislation, but it has no power to make a verdict void. On the other hand, the court cannot have any intervention with its duties. Both of these have made jurists opine that in the Constitution of India the concept of division of powers has been embraced and forms the main foundation of it.*

**KEYWORDS:** *Constitution of India; Doctrine of Separation of Powers.*

## INTRODUCTION

A doctrine that has exercised the minds of many citizens is "The Separation of Powers." Over the ages, ancient thinkers, political theories and political scholars, framers of constitutions, judges and scholarly authors have all had occasion to consider the doctrine. This primarily involves the separation of differing powers between separate state bodies; the executive, the legislature, and the judiciary[1].

The principle of power division specifically applies to three formulations of governmental powers; The same person should not be part of more than one of the state's three organs; Any other institution of the state does not conflict with one organ; The functions delegated to any other organ should not be exercised by one organ[1].

The Separation of Powers theory deals with mutual relations. The legislative, executive and judiciary are among the three organs of the government. The root of this hypothesis dates back to the days of Plato and Aristotle. For the first time, Aristotle divided the government's duties into three sections, i.e. deliberative, magisterial and judicial locks classified the government's powers into three parts: continuous executive authority, discontinuous legislative power and federal power[2].

If the legislative and executive powers are merged in the same manner, there can be no liberty, no person, or within the same body or magistrate. Again, if the judicial authority is not isolated from the legislative and executive power, there is little liberty. The life and liberties of the subject would be subjected to arbitrary influence if it joined with the legislative authority, for the judge would then be the legislature. The judge could act with brutality and injustice as it joined with the executive authority. There would be an end to all this if all three powers were to be exerted by the same man or the same body[2].

In a strict sense, the doctrine of division of powers has no place. The Indian Constitution, however, has properly separated the functions of separate government organs, so that one government organ does not usurp another's role. There is no question that the executive should be split. In respect to the executive's departure from the executive. It is correct that in the Constitution of the United States there is such a division, but many Americans themselves were very disappointed with the strict separation between the executive and the legislative reflected in the American Constitution. The work of Parliament is so complex, so vast, that it will be very difficult for Members of Parliament to take on the work of the Legislature, unless and before the members of the Legislature gain direct direction and initiative from the members of the Government, seated in Parliament[3].

The Political History of India shows that there was little sympathy for the theory among the framers of the Indian Constitution. In spite of efforts being made, this is clear from its express denial. It does not even shine much light on the doctrine's implementation under the British regime. While in the course of drafting the Constitution, the Constituent Assembly had long dedicated itself to implementing the doctrine and eventually dismissed the proposal in its entirety. Dr. B.R. Ambedkar, who, while comparing the

legislative and presidential regimes of India and America, was one of the members of the Constituent Assembly, commented as well[4].

## DISCUSSION

In our Constitution, there are no separate clauses on the Doctrine of Division of Powers. However, as in Part-IV and Part-V, such Directive Principles are laid down in the Constitution and Article-50 of our Constitution distinguishes the judiciary from the executive as 'the Legislature shall take steps to distinguish the judiciary from the executive in the public services of the State,' and there is no systematic and dogmatic separation of powers but this. In India, there is not only practical overlap, but personal overlap still prevails[5].

According to Article-142 and Article-145 of our Constitution, in the case of executive acts, the SC has the authority to declare unconstitutional the laws passed by the legislature and the actions taken by the executive if they break some clause of the constitution or the legislation passed by the legislature. Even the authority of Parliament to amend the constitution is subject to the Court's review. If it alters the fundamental framework of the constitution, the Court may declare that provision unconstitutional. In certain cases, the courts have given guidelines for decision making through Parliament[5].

The President of India, who is the chief administrative authority in India, exercises jurisdiction in the form of an ordinance exercising jurisdiction pursuant to Article-123, as well as judicial powers pursuant to Article-103(1) and Article-217(3), has the right to consult the SC of India pursuant to Article-143 and also the power to pardon pursuant to Article-72 of the Constitution. The Executive also influences the operation of the judiciary by appointing the Chief Justice of India and other judges to the office[6].

The Council of Ministers shall be appointed from within the legislature and the legislature shall be responsible for this Council. The legislature shall exercise judicial powers in the event of violation of its rights, impeachment of the President according to Article 61 and dismissal of the judges. The legislative body has the powers of penalty under Article-1055 (3)[6].

A non-parliamentary executive, being independent of parliament, tends to be less accountable to the legislature from the point of view of oversight, whereas a parliamentary system differs from a non-parliamentary system in as far as the former is more accountable than the latter, but they still vary in terms of time and agency for their transparency evaluation. In the non-parliamentary structure, which operates in the U.S.A., the determination of the executive's duty is periodic. It will take place once every two years. In England, where the legislative system prevails, it is done by the electorate; the determination of duty is both periodic and regular[6].

The regular appraisal is carried out by the members of parliament by questions, resolutions, no confidence motions, motions for adjournment and discussions on discussing issues. The voter conducts annual review at the time of the election, which will take place every five years before that. In a country like India, the regular assessment of liability that is not possible under the American scheme is, it is claimed, much more successful than the periodic assessment and much more appropriate. More accountability than peace was favoured by the draft constitution in proposing the parliamentary form of government[7].

Indeed, the practical classification and appropriate demarcation, as held by the Supreme Court, does not imply, in its absolute words, the implementation of the doctrine. Rather, it just provides a small snapshot of the essence of the Indian Constitution that shares with the above-mentioned pure doctrine, that is, inter alia, the acceptance of the theory behind the doctrine of the rigors of power accumulation and the absence of tyranny, of making a rule of law and not of man. The same can be substantiated by a thorough study of the rules of the Constitution, which is the next course of action to be taken by this section[7].

Like every other Westminster system, the executive in India is a subset of the legislature and there is basically a merger between them, so there is normally no tension between them. Indeed, the British Legislative structure has been introduced by the Constitution of India, where the Senate regulates the constitutional executive. In comparison, in legislatures, the Cabinet or the Council of Ministers holds a majority and virtually dominates both the legislature and the government. As with the British Cabinet, its

Indian equivalent may be considered a hyphen that connects a buckle that joins the state's legislative component to its executive part[8].

The executive powers are delegated to the President and Governors of the respective states under the Indian Constitution. Consequently, the President is deemed to be the Chief Executive of the Indian Union, who, in compliance with the legislative mandate, exercises his powers on the assistance and recommendation of the Council of Ministers. In exercising his broad legislative authority, the president is also empowered to pass ordinances that apply to all matters beyond the legislative competence of Parliament. Such a power is consistent with the constitutional power of the legislature. He is also entrusted with powers to frame rules and regulations relating to service matters, aside from ordinance making[9].

A tripartite arrangement is envisaged by the concept of division of powers. Powers are assigned to the three bodies by the Constitution and the authority of each is delineated. The position in India is that no statutory status has been given to the doctrine of separation of powers. There was a plan in the Constituent Assembly to integrate this doctrine into the Constitution, but it was purposely not adopted and abandoned as such. In addition to the Directive principles laid down in Article 50, which allow for the independence of the judiciary from the executive, there is no formalist and dogmatic division of powers in the constitutional framework[10].

Therefore, separation of powers applies to the division of government duties into separate divisions to restrict any one branch from performing another's core functions. The aim is to avoid power accumulation and allow for checks and balances[10].

The aim of the division of powers is to prohibit a single entity or a group of people from exploiting authority. It will safeguard society against the coercive, unreasonable and tyrannical powers of the state, safeguard independence for all, and delegate each role for the successful discharge of their respective duties to the appropriate organs of the state[10].

### CONCLUSION & IMPLICATION

We may infer from the above debate that while this theory has a definitional problem, each state understood the doctrine of division of powers according to their interpretation and need of the state. The drawbacks present with the theory are particular benefits, but it is alive from Aristotle's time regardless of whether the fundamental framework has been altered according to contemporary governments. The USA embraces it in spirit and, along with France, is regarded as the supporters of the doctrine of separation of powers.

Never has this doctrine been practiced in its purest form in the UK. There is no clear definition of the doctrine in the constitution of India, but we have pursued it wherever appropriate and it is clear that the Supreme Court has provided different judgments. In short, we can conclude that the Doctrine of Separation of Powers is practiced with a heart in the United States, never strictly followed in the United Kingdom, and India has followed it with major exceptions.

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