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SEPARATION OF POWERS

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ABSTRACT

The doctrine of Separation of Powers emphasises the mutual exclusiveness of the three organs of government, viz., legislature, executive and judiciary. The main underlying idea is that each of these organs should exercise only one type of function. 'Separation of Powers' is a fundamental principle whereby powers and responsibilities are divided among the legislative branch, executive branch, and judicial branch. The officials of each branch are selected by different procedures and serve different terms of office; each branch may choose to block action of the other branches through the system of checks and balances. The framers of the Constitution designed this system to ensure that no one branch would accumulate too much power and that issues of public policy and welfare would be given comprehensive consideration before any action was taken.

INTRODUCTION

The doctrine of Separation of Powers examines the relationship between the three branches of government (the legislature, the executive, and the judiciary). Historically, this principle can be traced back to the time of philosophers like Plato and Aristotle. Aristotle was the first person to classify a government's functions into three distinct branches: the judicial, the magisterial, and the deliberative. Lock established the separation of powers between the executive, the legislature, and the federative branches of government. We can safely assume that "continuous executive power" refers to the executive and judicial branches, "discontinuous legislative power" means rulemaking, and "federative power" means the power to regulate foreign affairs.

In his 1748 book L. Esprit Des Lois (Spirit of Laws), the French jurist Montesquieu first outlined the concept of separation of powers. That's why he's held up as the modern hero of the theory. The core of Montesquieu's doctrine is the idea that the branches of government— the legislature, the executive, and the courts—should operate independently from one another. This means that organs and other parts of the body shouldn't encroach on one another's domains.

It is impossible to have freedom when "the legislative and executive powers are united in the same person, or in the same body or Magistrate," as Montesquieu puts it. When it comes to the separation of powers, the independence of the Judiciary is just as crucial as that of the Legislative and the Executive if not more so. The lives and liberties of the people would be inthe hands of judges if the judicial and legislative branches were combined. Which was then followed by

Juries have the power to use force and oppress the people because they are part of the executive branch. The end of the world as we know it would occur if one man or one body possessed all three of these powers. Montesquieu's "Separation" envisioned a system of mutual restraints, or "checks and balances," in place of impregnable walls and immutable borders. All three organs must function in tandem, but that doesn't preclude them from interacting with one another.

In ancient times, the Monarch had absolute power. The state's duties were expanded as we advanced towards constitutional democracies. The fact that the three wings of the state serve various purposes is now taken for granted. While this may be considered common knowledge, it is only partially true, like most conventional wisdom.

Maybe the fundamentals of the situation can be explained in this paragraph. All three branches of our government are equal and collaborate under our written constitution, which has a quasi-federal structure similar to that of the United States. The system of checks and balances established by such a written Constitution must be safeguarded by a court, the Supreme Court. In accordance with the Constitution's vision of a democracy comprised of both individuals and institutions, no single governmental branch or organ is granted absolute power. Because the three branches of government are equal and work together, it is unacceptable to break the separation of powers guaranteed by the Constitution. According to Durga Das Basu, the government is kept in check by the separation of powers principle,which prevents any one branch from having authority over the duties of the other two.

According to Ram Jawayya (AIR 1955 SC 549), however, "The Indian Constitution has not accepted the theory of separation of powers in its absolute rigour, but the duties of various departments of the Government have been properly divided. One organ cannot take over duties that in essence belong to another. Although having a federal framework, our Constitution is based on the British parliamentary system. The British Cabinet is described as"a hyphen which links, a buckle which fastens the legislative portion of the State to the executive component," while the Council of Ministers is similar in that it is composed of lawmakers. The Cabinet concentrates the virtual power of both, benefiting from its majority in the legislature.

both the legislative and executive branches. In that regard, there is less division of powersand more fusion and merging.

According to Cardozo, J., the idea of separation of powers "is not a doctrinaire notion to be used with pedantic rigour, as was stated in Panama Refining Co vs. Ryan [293 U.S. 388,440 (1935)]. In order to respond to the practical needs of the government, which cannot now predict the developments of tomorrow in their practically endless variety, there must be reasonable approximation and flexibility of adjustment.

The distinct institutions created by the Constitution are meant to create a system of governance that would make sure that freedom and democracy are not only abstract ideals.By restricting the functions of separate departments of government and shielding the populace and various elements of the State from outside interference, the division of powers promotes democracy. The fundamental tenet of the Constitution is that while the State is not free, man may be.

The purpose of a constitution is to divide, distribute, and administer state authority in a way that prevents arbitrary behaviour and establishes responsibility (to the law). The Constitution separates the three branches of government into the legislative, executive, and judicial branches as well as between the federal government and the states.

There is no strict division of powers in India's constitution, in contrast to the one in the United States. The legislative, executive, and judicial branches of government—Articles I, II, and III of the US Constitution—are specifically delegated to the Congress, the President, and the Supreme Court, respectively. Only executive authority is expressly granted to the President of the Union and the Governor of each State under the Indian Constitution (s).

Separating the judicial from the executive in the State's public services is one of the directive principles outlined in Art. 50 of the Constitution, which calls for this separation. The judiciary is separated from the other two, notwithstanding the fact that there may not be a rigid, impenetrable division between the legislative and the executive.

The separate branches respect one another as a result of the separation of powers. This is specifically stated in our constitution's arts 121, 122, 211, and 212, which forbid discussionof the behavior of judges of the superior judiciary in the performance of their duties in eitherParliament or State legislatures or judicial scrutiny of parliamentary or legislative proceedings on the basis of irregularities in procedure and prohibit the exercise of any power to regulate conduct or procedure by anyone.

A restraining principle, the division of powers "has in it the axiom, implicit in the wisdom of self preservation that moderation is the better part of valor."

Social Aspects of Law and Justice, by Julius Stone, 1966, p. 688

In the area of constitutional law, the delicate balance between the many institutions ismaintained in great part by the respect that each institution has for the others, which Dicey compared to the labour of bees while building a honeycomb in The Law of the Constitution(10th edn, 1959, pp 3). This fundamental fact is universally applicable and servesas an equally effective prescription for the present as it did for the past.

Today, what actually exists is a limited government, or a government of enumerated powers, with the judiciary constituted as the guardian of the Constitution and the arbiter of the functions of all organs of State as grantees under the Constitution. This is especially true in countries with written constitutions and an established, justiciable Bill of Rights. The Supreme Court has the last say in how the Constitution is to be interpreted, and that decision is binding on all State institutions. Articles 141 and 144 of the Indian Constitution have clear provisions to that effect.

In order to better understand this idea, it is appropriate to refer to what the Constitution Bench of our Supreme Court stated in Sub Committee of Judicial Accountability v. Union of India - AIR 1992 SC 320 (345): "But where, as in this country and unlike in England, there isa written constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the Legislature and other organs of the State as grantees under the Constitution, the usual incidents

SEPARATION OF POWERS: THE CONCEPT

Montesquieu in the following words stated the Doctrine of Separation of Powers-

"*There would be an end of everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that ofexecuting the public resolutions, and of trying the causes of individuals*."

Montesquieu, a French scholar, found that concentration of power in one person or a group ofpersons results in tyranny. And therefore for decentralization of power to check arbitrariness, he felt the need for vesting the governmental power in three different organs, the legislature, the executive, and the judiciary. The principle implies that each organ should be independent of the other and that no organ should perform functions that belong to the other.

Montesquieu was positively influenced by the ideas of John Locke and the working of the British constitution. He found the Lockian idea of limited government and the British practiseof separation of functions very useful. Negatively the working of French government under King Louis XIV was centralized, oppressive and despotic and the people of France were not enjoying their liberty. Montesquieu, it is true, contributed new ideas to the doctrine; he emphasized certain elements in it that had not previously received such attention, particularly in relation to the judiciary, and he accorded the doctrine a more important position than did most previous writers. However, the influence of Montesquieu cannot be ascribed to his originality in this respect, but rather to the manner and timing of the doctrine's developmentin his hands.[1]

According to some, the 20th century's greatest notable legal innovation was administrative law. The legislation that regulates governmental acts and attempts to rebalance the

[1] Vile MJC, *Constitutionalism and the Separation of Powers*, 2nd ed., Liberty Fund Indianapolis, 1967, pg 106.

connection between the public's authority and individual rights is known as administrative law. The creation of administrative law, according to Lord Diplock, was his greatest accomplishment as a judge (R v IRC ex p. National Federation of Self-employed and Small Business Ltd. [1982] AC 617,641).

Both constitutional law and administrative law fundamentally deal with the powers and dutiesof the state, hence there is a strong and tight connection between them. Fundamentally, constitutional law is concerned with the arrangements, delegation of authority, roles, and responsibilities among the three wings, as well as the interactions between the State and its citizens. Administrative law is concerned with how the government interacts with its citizens.It is the area of public law that deals with how the government really runs, or the administrative process. The Rule of Law, the separation of powers, and the categorization of functions are a few constitutional law ideas that have an influence on administrative law.

Administrative law focuses on the composition, authority, and duties of the administrative organs; the boundaries of those powers; the procedures and methods they use to carry out their duties; the means by which those powers are restrained; and the legal recourses that are available to a person against the administrative organs when they violate his rights. Its goal is to control the use of power in the public sphere. In that regard, the transition in administrativelaw has been from an authority-based culture to a justification-based one. Principles of natural justice, issues of invalidity, control over delegated legislation, administrative adjudication, and the powers and jurisdiction of the authorities and their legal character are only a few of the essential concepts of administrative law. In a way, the core of administrative law is the notion of supra vires. The fundamental tenet is that an authority cannot misuse or go beyond the bounds of its jurisdiction (ultra vires). Another rule is that thepower must use reasonable judgement.

Contemporary governments require broad discretionary powers in a variety of sectors, particularly in pluralistic welfare states. Administrative law's fundamental tenet is the acknowledgement that all authorities are subject to legal restraints that must be upheld by courts, whose job it is to define such restraints by striking the proper balance between administrative effectiveness and the legal protection of individuals' rights. This isaccomplished through the judicial review process.

It is crucial to remember that the limiting scope of judicial scrutiny is unconstitutionality, not unwiseness. The democratic process of governance and the voting box should be used to remove foolish legislation. Each question as to whether a law is lawful must be answered in favour of its constitutionality. The Court's only responsibility is to interpret the Constitution as written, not to make grandiose proposals for revision. The courts shouldn't determine what the Constitution should say since it is a matter of high policy, and they are more concerned with how laws should be interpreted than with the morality of the underlying policies. To be realised is a dedication to the legal requirements of law and their upholding for the common welfare. The court must constantly exercise caution in preserving the proper balance between the several branches of the government. The comity between instruments is violated by mistrust in the government. Although compromising

on principles is immoral, courts must keep in mind that applying administrative law to the contemporary realities of governance requires being pragmatic. In response to the practical requirements of governance, which cannot predict today the events of tomorrow in their practically endless diversity, there must be a reasonable approximation and flexibility of judgement.

As vital and crucial a corollary of constitutionalism as the vigorous use of judicial authority isjudicial humility and submission. Constitutional interpretation and the use of the judicial review authority are sensitive tasks that demand for the balance of many ideas and values. This needs vision and statesmanship, as well as a certain amount of activism and self control.

Judicial authority also has its limits; it is not a magic bullet for resolving social problems and the shortcomings of the other arms of government. The attitude of judicial humility and constraint is a proper observation of its boundaries rather than an abandonment of the judicialjob. Losing sight of this important reality might be risky and invite judicial authoritarianism.

After analysing the working of the French and British systems of government, Montesquieu concluded that in the former, the people did not enjoy liberty because there was concentrationof powers into a single hand, and the latter were enjoying liberty because there was present a separation of powers. Later, in his book, "*The Spirit Of The Law (1748)",* Montesquieu explained his theory of separation of powers.

Thus in simple language we can summarise the analysis of Montesquieu as:-

1. If the legislative and executive powers are united in the same person or body, the libertyof the people gets jeopardised because it leads to tyrannical exercise of these two powers. "Tyrannical laws are made and executed tyrannical".
2. If the judicial and legislative powers are united in the same person or body, the interpretation of laws becomes meaningless because then the law maker also acts as the law interpreter and he never likes or wishes to accept the errors of his laws.
3. If the judicial power be combined with the executive power and vested with the same person, the administration of justice becomes meaningless and faulty because then the police becomes the judge.
4. Finally, if all the three powers are combined and vested with a single or two body of persons, the concentration of power becomes so big that it virtually ends all liberty and establishes a despotism of that single person or body.
   Therefore, separation of powers doctrine acts as a check against Tyrannical rule. The purpose underlying the separation doctrine is to diffuse governmental authority so as to

   prevent absolutism and guard against arbitrary and tyrannical powers of the state, and toallocate each function to the institution best suited to discharge it.

"Doctrine of separation of powers is structural rather than functional."

It has been well said by Lord Acton:- "Power corrupts and absolute Power tends to corrupt absolutely" .

The theory of separation is based on this principle itself. Concentration of power in a single hand is most dangerous and leads to despotism. It always endangers individual liberty. For preventing the government from acting arbitrarily, it is essential to distribute its power into three separate organs in such a way as may ensure that each may operate separately, check the powers of the other two organs, and in the process may maintain a balance. Each organ should be limited to its own sphere of action so as to ensure to preserve the liberty of the people.

Gettell explains the theory of separation of power as," *the theory that the functions of the government should be performed by different bodies of persons, that each department should be limited to its own sphere of action, without encroaching upon other, that it should be independent within that sphere, is called the theory of separation of powers".*[2]

In simple words, separation of powers is the theory which advocates that the three functionsof government should be performed by three separate organs. One should have power only itsown sphere. Powers should be separated, dispersed and decentralised. Thus, it means that the Legislature cannot exercise executive or judicial power; the Executive cannot exercise legislative or judicial power and the Judiciary cannot exercise legislative or executive power of the Government. It is widely accepted that for a political system to be stable, the holders of power need to be balanced off against each other. The principle of separation of powers dealswith the mutual relations among the three organs of the government.

The modern usage of the term began with the founding and early development of the US Constitution.[3] Today all the systems might not be opting for the strict separation of powers because that is undesirable and impracticable but implications of this concept can be seen in almost all the countries in its diluted form.

[3] Ed. Jeffery Jowell and Dawn Oliver, *"The Changing Constitution"*,6th ed., 2007, Oxford, pg. 186

THEORY OF CHECKS AND BALANCES

The doctrine of separation 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 antiquityand 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 Roman Government which enabled Rome to establish a worldwide empire. He advanced the theory that thepowers of Rome stemmed from her mixed government.

Unmixed systems of government that is 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 wok of Polybius thatpolitical theorists in the 17th Century evolved that theory of separation of powers and the closely related theory of Checks and Balances.

In India the need for separating judicial and executive power was felt in late eighteenth century when the rule of East India Company became the terror in Bengal. It was then that the British parliament passed the Regulating Act in 1773 which aimed at establishing a sound judicial order. Under it, Supreme Court was established replacing the Mayor's court. To separate it from executive it was put under the direct authority of king instead of company.[4]

Montesquieu's "Separation" took the form, not of impassable barriers and unalterable frontiers, but of mutual restraints, or of what afterwards came to be known as "checks and balances".[5] What will prevent the accumulation of power in the absence of pure separation? The answer was to be found in a unique feature of the Constitution: the pairing of separated powers with an intricate system of checks and balances designed to give each branch fortifications against encroachments by the others. The "Madisonian Model," as it is now generally called, gave genuine and practical life to both the observation of Aristotle and the vision of Montesquieu.[6]

The framers of the USA Constitution adopted the Separation of Powers so that it weakens thegovernment by dividing its powers and because of that the government may not act in an arbitrary manner. The Principle of Checks and Balances further, limits the governmental powers. It envisages that that one organ of government be controlled to some extent by the other two.[7]

Theory of checks and balances holds that no organ of power should enjoy unchecked powerin its sphere. The power of one organ should be restrained and checked by the other two organs of the government. Thereby a balance should be secured which will prevent the organs from misusing their power. Example, In USA, the President may veto a bill passed by the two houses of Congress and thus, the President controls the Congress so that it may not pass arbitrary or discriminatory legislation.

[4] Ranjan Sudhanshu, *"Judocracy and democracy in India*", pg. 126.
[5] Tej Bahadur Singh, Principle Of Separation Of Powers And Concentration Of Authority, Institute's journal,1996, pg. 1.
[6] https://www.docsoffreedom.org/readings/separation-of-powers-with-checks-and-balances last accessed: 24/03/2015.
[7] Jain MP, Indian Constitutional Law, 6th ed., Lexis Nexis, 2010, Vol 1,Pg 257.

The theory of checks and balances is based on two principles:

- Power corrupts and absolute power corrupts absolutely. This demands that no organ ofthe government should have absolute power in its sphere.
- Power alone can be an antidote for power. If the power is not to be abused, it is necessary that power must be made to be checked by power.

The theory of checks and balances is supplementary to the principle separation of powers. Its distinguishing feature is the idea enabling each of several coordinating branches of thegovernment to wield a limited degree of control over the other either by participation to someextent in the exercise of powers allocated primarily to a particular branch or by making the effective functioning of each branch contingent upon the supporting action by the others.

Thus the theories of separation of powers and checks and balances always go together. The former stands for separating the three organs of the government and the latter for providing inter organ relations in the form of network of checks and balances.

The system of checks and balances is a part of Indian Constitution. It guarantees that no part of the government becomes too powerful. For example, the legislative branch is in charge of making laws. The executive branch can veto the law, thus making it harder for the legislative branch to pass the law. The judicial branch may also say that the law is unconstitutional and thus make sure it is not a law. The legislative branch can also remove a president or judge that is not doing his/her job properly. The executive branch appoints judges and the legislative branch approves the choice of the executive branch. Again, the branches checkand balance each other so that no one branch has too much power.

SEPARATION OF POWERS IN INDIA

The doctrine of separation of powers has no place in strict sense in Indian Constitution but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the function of another. The Indian Constitution has not indeed recognised the doctrine of separation of powers in the 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 doesnot contemplate assumption by one organ or part of the State of the functions that essentially belong to another. Article 13 of the Constitution mandates that the "state shall make no law, which violates, abridges or takes away rights conferred under part III". This implies that both the Legislature and Judiciary in the spirit of the words can make a law, but under the theoryof checks and balances, the judiciary is also vested with the power to keep a check on the laws made by the Legislature.

A LOOK INTO THE CONSTITUENT ASSEMBLY DEBATES:

In Constituent Assembly debates Prof. K.T. Shah, a member of Constituent Assembly, laid emphasis to insert by amendment a new Article 40-A concerned with doctrine of separationof powers. This Article reads: "There shall be complete separation of powers as between the principal organs of the State, viz; the legislative, the executive, and the judicial."[8]

Kazi Syed Karimuddin (a member of Constituent Assembly) was entirely in agreement with the amendment of Prof. K.T. Shah. Shri K. Hanumanthiya, a member of Constituent Assembly dissented with the proposal of Prof. K.T. Shah. He stated that Drafting Committee has given approval to Parliamentary system of Government suitable to this country and Prof.

[8] Constituent Assembly Debates Book No.2, Vol. No. VII Second Print 1989, p. 959.

Shah sponsors in his amendment the Presidential Executive. He further commented: "Instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we completely separate the executive, judiciary and the legislature conflicts are bound to arise between these three departments of Government. In any country or in any government, conflicts are suicidal to the peace and progress of the country. Therefore in a governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict."

Prof. Shibban Lal Saksena also agreed with the view of Shri K. Hanumanthaiya. Dr. B.R. Ambedkar, one of the important architect of Indian Constitution, disagreeing with the argument of Prof. K.T. Shah, advocated thus: *"There is no dispute whatsoever that the executive should be separated from the Judiciary. With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitutionof United States; but many Americans themselves were quite dissatisfied with the rigidseparation embodied in the American Constitution between the executive and legislature. There is not slightest doubt in my mind and in the minds of many students of Political Science, that the work of Parliament is so complicated, so vast that unless and until the members of the Legislature receive direct guidance and initiative from the members of theExecutive, sitting in Parliament, it would be very difficult for Members of Parliament to carryon the work of the Legislature. I personally therefore, do not think that there is any very greatloss that is likely to occur if we do not adopt the American method of separating theExecutive from the Legislature."*

With the aforesaid observations the motion to insert a new Article 40-A dealing with the separation of powers was negatived i.e. turned down.

REFLECTION OF THE DOCTRINE IN THE INDIAN CONSTITUTION:

In Indian Constitution there is express provision that "Executive power of the Union shall be vested in the President, and the executive power of the State shall be vested in Governor.." (Article 154(1) of Indian Constitution). But there is no express provision that legislative and judicial powers shall be vested in any person or organ.
The provisions of the Constitution of India, one can say that the doctrine of Separation of Powers is accepted in India.

- Under the Indian Constitution, executive powers are with the President, legislative powers with the Parliament and judicial powers with the Judiciary (Supreme Court, High Courts and subordinate courts).
- The President holds his office for a fixed period. His functions and powers are enumerated in the Constitution itself.
- Parliament is competent to make any legislation. It can amend the law prospectivelyor even retrospectively but it cannot declare a judgment delivered by a competent court void or of no effect.
- The Parliament has also inherited all the powers, privileges and immunities of the British House of Commons.
- Similarly, the Judiciary is independent in its field and there can be no interferencewith its judicial functions either by the Executive or by the Legislature. Constitution restricts the discussion of the conduct of any judge in the Parliament.
- The Supreme Court and High Courts are given the power of judicial review and they can declare any law passed by Parliament or Legislature ultra vires or unconstitutional.The judges are independent of executive control and their salaries and other services are fixed by the constitution under article 125(2). They hold office during their good behaviour.

Taking into account these factors, some jurists are of the opinion that the separation of functions is not confined to the doctrine of Separation of Powers. It is a part of essential structure of any developed legal system. In every democratic society, the process of administration, legislation and adjudication are more clearly distinct than in a totalitarian society.

In re Delhi Law Act [9] case Hon'ble Chief Justice Kania observed: "Although in the Constitution of India there is no express separation of powers, it is clear that a legislature is created by the Constitution and detailed provisions are made for making that legislature pass laws. It is then too much to say that under the Constitution the duty to make laws, the duty to exercise its own wisdom, judgment and patriotism in making law is primarily cast on the legislature? Does it not imply that unless it can be gathered from other provisions of the Constitution, other bodies executive or judicial are not intended to discharge legislative functions?"

To the same effect another case is *Rai Sahib Ram Jawaya v. State of Punjab* [10] in which Hon"ble Chief Justice B.K. Mukherjea observed: "The Indian Constitution has not indeed recognised the doctrine of separation of powers in the 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 the functions that essentially belong to another?"[11]

[9] AIR 1951 S.C. 332, at p.346.
[10] AIR 1955 S.C. 549 at p.556.
[11] http://www.ijtr.nic.in/articles/art35.pdf last accessed: 24/03/2015.

Similarly, the courts have reached the same conclusion in a wide variety of other cases.As Hon'ble Chief Justice Sikri pointed out in Kesavananda Bharti v. State of Kerala:
"Separation of powers between the legislature, the executive and the judiciary is a part of the basic structure of the Constitution; this structure cannot be destroyed by any form of amendment."[12]

In *Smt. Indira Nehru Gandhi v. Raj Narain*, Hon'ble Justice Chandrachud observed:

"The American Constitution provides for a rigid separation of governmental powers intothree basic divisions- the executive, legislative and judicial. It is essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution follows the same pattern of distribution of powers. Unlike these Constitutions, the Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions."[13]

Some have voiced concerns that the courts are usurping legitimate roles of government as thescope of so-called "Judicial Activism" has expanded. These worries are unwarranted, however. In order to ensure that they are following the law, both the Executive and the Legislature rely on the Supreme Court and the High Courts..

[12]AIR 1973 SC 1461 by Zia mody in "10 judgements that changed India" p.14

[13] AIR 1975 SC 2299 as cited by Zia mody in "10 judgements that changed India" p.21

SEPARATION OF POWERS IN UK AND USA

UK

Understanding the constitutional framework of the country that colonised India and to which India ultimately owes its current system of government - In the United Kingdom, which has aparliamentary system of government, laws are created by Parliament rather than by the Crown. A cabinet system fundamentally conflicts with the idea of a divided government. Cabinet members, not the monarch, are the real power brokers in the executive branch. It initiates legislation, oversees the assembly, and has the power to abolish it. With so much power in so few hands, some have claimed that separation of powers does not exist in England.

The parliamentary system in the United Kingdom requires the coexistence of

Legislators and governors work closely together, with the executive answering to lawmakers.

Bagehot referred to the Cabinet as the "buckle that binds" or the "hyphen that joins" the executive and legislative branches. The English Cabinet is distinguished by its membershipof parliamentarians, its leadership, its legislative initiative, and its collective responsibility to parliament as a whole. As a result, the separation of powers in the English political system is hazy at best. Instead of relying on a well-thought-out system of checks and balances like the separation of powers, the protection of personal freedoms is left in the hands of well-organized political parties and the public opinion they can sway. The United Kingdom has, therefore, largely abandoned the separation of powers in favour of other institutional checks against autocratic rule.

English history and the division of powers have never gotten along. The three independentbut equal branches of government each have equal authority over the judiciary, the legislature, and the executive branch. The Lord Chancellor serves as the government's top legal and constitutional advisor, is a permanent member of the Cabinet during times of peace,and is the ex officio Speaker of the House of Lords in addition to his roles as president of the House of Lords when it meets as the final court of appeal and the Judicial Committee of the Privy Council.

Although the idea of separation of powers plays a part in UK constitutional doctrine, it is widely believed that the UK constitution has "poor separation of powers".

USA

The doctrine of separation was developed in the United States. It is widely agreed that one of the Constitution's guiding principles is the separation of powers, which ensures that no single branch of government assumes the duties of another. This is consistent with what Cooley has said. It's the rock that the US Constitution was written on. In Article I, Congress is given the power to make laws; in Article II, the President is given the power to run the government;and in Article III, the Supreme Court is given the power to interpret and enforce those laws.
U.S. founders believed tyrannical government could be avoided if the Constitution specified clear separation of powers. Consequently, the United States government was set up with distinct lines of authority to ensure that its leaders are answerable to both the people they serve and each other. As a result, they planned for a system with checks and balances to makesure government agencies didn't abuse their authority.

These overlapping governmental roles reflect the complexity and interdependence of modern societies. As a result, there is an innate measurement for competition and conflict among the branches of government. Throughout American history, there also has been an ebb and flow of pre-eminence among the governmental branches. Suchexperiences suggest that where power resides is part of an evolutionary process. [14] This alternative system existing with the separation doctrine prevents any organ to becomesupreme.[15]

For example, a bill passed by the Congress may be vetoed by the President in the exercise of his legislative power. Also treaty making power is with the President but it's not effective till approved by the Senate. It was the exercise of executive power of the senate due to which
U.S. couldn't become a member to League of Nations. The Supreme Court has the power to declare the acts passed by the congress as unconstitutional. There are other functions of an organ also which are exercised by the other. India, too, followed U.S. in adoption of the checks and balances which make sure that the individual organs doesn't behold the powers absolutely. [16]

Though in India strict separation of powers like in American sense is not followed but, the principle of 'checks and balances', exists as a part of this doctrine. Therefore, none of the three organs can usurp the essential functions of the organs, which constitute a part of the 'basic structure' doctrine so much so that, not even by amending the Constitution and if any such amendment is made, the court will strike it down as unconstitutional.[17]

[14] http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx last accessed: 26/03/2015.
[15] http://www.legalserviceindia.com/article/l16-Separation-Of-Powers.html last accessed: 27/03/2015.
[16] Ibid.
[17] http://www.ijsrp.org/research-paper-1113/ijsrp-p2337.pdf last accessed: 27/03/2015.

CONCLUSION

The many branches of the government work well together. It cannot be divided into separate, waterproof components. This has previously been empirically supported. Separation of powers is necessary to make sure that the government runs efficiently. The effectiveness of the three branches of government depends on cooperation and compromise.

So Montesquieu's hypothesis shouldn't be dismissed as untrue. In a similar vein, no branch of government should take on duties that are rightfully the domain of another. This idea is reflected in the idea of "checks and balances," which contends that no one branch of the government should hold excessive power.

Harmonious interactions between its three branches of government are a sign of a mature democracy. It is undeniable that for a democracy to succeed, there must be a balance of power among the three parts of government. They lack access to a map that would show themprohibited areas and are unable to see a border they shouldn't cross. The fact that they respect one another and seek to fill any gaps they may have is among the most crucial factors. This information might be used to create a "welfare state" and protect individual liberty. Weshould have the utmost respect for our Constitution's founders because they saw a time when the three branches of government would work together in unison.

BIBLIOGRAPHY

BOOKS:

- Ranjan Sudhanshu, *"Judocracy and democracy in India"*.
- Rathore L S, S A Haqqi, *"Political Theory and Organization"*.
- Vile MJC, *Constitutionalism and the Separation of Powers*, 2nd ed., Liberty FundIndianapolis, 1967.
- Ghai K K, "*Political Science theories",* Kalyani Publications, 8th edition, 2010.
- Ed. Jeffery Jowell and Dawn Oliver, *"The Changing Constitution"*,6th ed., 2007,Oxford.
- Tej Bahadur Singh, Principle Of Separation Of Powers And Concentration OfAuthority, Institute's journal, 1996.
- Jain MP, Indian Constitutional Law, 6th ed., Lexis Nexis, 2010, Vol 1.
- Constituent Assembly Debates Book No.2, Vol. No. VII Second Print 1989.

  Seervai H.M, *"Constitutional Law of India*", 4th ed., Universal Law Publications, Vol3, 1996.
- Basu Das Durga, *"Commentary on the Constitution of India"*, 8th ed., Lexi Nexis, Vol8, 2012.

ONLINE RESOURCES:

- https://www.docsoffreedom.org/readings/separation-of-powers-with-checks-and-balances
- http://www.ijtr.nic.in/articles/art35.pdf
- http://www.legalserviceindia.com/article/l16-Separation-Of-Powers.html
- http://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx
- http://www.legalserviceindia.com/article/l16-Separation-Of-Powers.html
- http://www.ijsrp.org/research-paper-1113/ijsrp-p2337.pdf