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Separation of Power Theory and Practice in India

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CHAPTER 1- INTRODUCTION

INTRODUCTION

The principles of federalism and separation of powers are cornerstones of democratic governance, ensuring that power is distributed evenly among distinct branches of government. This distribution prevents any one branch from dominating the others, thereby safeguarding individual rights and promoting accountability. India, the United States of America, and the United Kingdom are exemplary federal democracies that have implemented separation of powers in their constitutional frameworks.

The Indian Constitution is the world's largest and longest written constitution. It encompasses fundamental rights and fundamental duties in Part III and Part IV, respectively, of the Constitution of India. The concept of separation of powers refers to the checks and balances system of the government, ensuring that the power of any one branch of government is limited. The Constitution provides a mechanism for the separation of powers so that the rights of one organ of the government cannot be handed over to another in terms of power and responsibility. The separation of powers deals with the situation that the executive cannot exercise the powers of the legislative and judiciary. The legislature cannot exercise the powers of executive and judiciary and the judiciary cannot exercise the powers of executive and legislative. This research contributes to the understanding of separation of powers in federal systems, providing valuable

insights for policymakers, scholars, and practitioners. By examining the successes and challenges of India, USA, and UK, this study informs strategies for strengthening democratic institutions and promoting good governance.

CHAPTER 2- METHODOLOGY

This study employs a comparative analysis approach, utilizing primary and secondary sources, including:

1. Constitutional documents (e.g., Indian Constitution, US Constitution, UK's Glorious Revolution documents)
2. Legislative and judicial decisions
3. Academic literature and expert opinions
4. Case studies of significant events and controversies

CHAPTER 3- HISTORICAL BACKGROUND

Historical Background of Separation of Power

Ancient Greece gave birth to the concept of separation of powers and it became widespread in the Roman Republic as part of the initial Constitution of the Roman Republic.

Aristotle (384-322 BC) introduced it in his book "The Politics" in the 4th century B.C. He has 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, differences in constitutions are bound to correspond to the difference between each of these elements. Later, the theory of separation of powers was discussed in detail by Baron-de-Montesquieu and John Locke.

Aristotle divided the government into three different parts or branches, and the Roman Republic also observed similar forms of political structure around the same period.

Baron-de-Montesquieu was a French philosopher who observed that the government's responsibilities must be divided into three categories: legislative, executive and judiciary.

Wade and Phillips introduce three types of categories in the separation of power. The three parts of the separation of powers are given below.

- One organ of government should not interfere with other organs of the government; it means every part of government should be independent.
- The same organ cannot be part of more than one organ and there should be separation and distinctions for all three organs of the government.
- The function of each organ must be separate and should not be exercised with any other one.

Separation of Powers in India

Relevant Provisions in the Indian Constitution:

There are various constitutional provisions in the Constitution of India that describe the concept and theory of separation of powers. *Article 50* of the Indian Constitution deals with the separation of the judiciary from the executive. According to Article 50, the state shall take steps to separate the judiciary from the executive in the public service of the states.

Article 53 of the Indian Constitution deals with the executive power of the union. *Article 53(1)* further states that the president shall have the executive power of the union and shall be exercised by the president himself; it may be either directly or maybe through officers who are subordinate to the president as per the Constitution.

Part XI of the Indian Constitution deals with relations between the union and the states. *Article 246* of the Indian Constitution deals with the subject matter of laws made by parliament or state legislatures. Parliament may make laws on any matter for any part of the territory of India. There are three lists in the seventh schedule of the constitution which are the union list, the state list and the concurrent list. These lists enumerate the various subject matters in which laws are made by parliament or the state legislature.

Article 154 of Part VI of the Constitution of India deals with the executive power of the state. According to *Article 154*, the governor of the state exercises his executive power either through himself or through officers subordinate to him, in accordance with the Constitution. *Article 168* deals with the constitution of legislatures in states. According to Article 168 of the Constitution of India, for every state, there shall be a legislature, which shall consist of a governor.

Article 123 deals with the power of the president to promulgate ordinances during recess of parliament and the governor of the state enjoys similar power to promulgate ordinances under *Article 213.2*

Landmark Judgement

There are the following landmark judgements regarding the separation of power in India. These cases are given below.

In Re-Delhi Law Act

The Supreme Court noticed that functions other than executive were not vested in particular bodies. The Constitution of India is a written constitution; therefore, the power and functions of each organ of the government must originate from the Constitution alone. However, there are some exceptional provisions in the constitution, like *Articles 123, 213 and 357*.

It was observed by Chief Justice Kania, that there is no separate provision for the separation of powers in the Indian Constitution but it is clear that the constitution is created by the legislature, detailed provisions are made for making the laws and there are provisions to pass the laws by the legislature.

The Supreme Court held in the famous case of *Gupta vs. Union of India (1982)* by Justice Mahajan that the judges are trusted by their decisions in the cases so they cannot delegate their ancillary powers to other organs of the government. So, it is observed in *Gupta vs. Union of India* that the separation of powers is not part of the Indian Constitution. There are various provisions provided in the Constitution of India that can be amended and repealed. The powers of one organ cannot be delegated to other organs of the government.

CHAPTER 4-LEGAL BACKGROUND

Rai Sahib Ram Jawaya Kapur And Ors. vs. The State Of Punjab (1955)

The scope of executive power was discussed in the case of *Ram Jawaya Kapoor*. The decision of the case was generally influenced by the decision made by the court in the Delhi Laws case. The scheme of the government regarding the printing and publishing of textbooks in the year **1950** was challenged on the ground that the executive could not engage in any trade or business activities without any laws made for the purpose.

The Supreme Court held that the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions may be differentiated and consecutively. The power of one organ cannot be exercised by other organs.

Indira Nehru Gandhi vs. Shri Raj Narain & Anr. (1975)

In this case, the Court held that there are amending provisions in the Constitution under **Article 368**. The election of the House of People by **Mrs. Gandhi** was challenged before the *Allahabad High Court*. The Allahabad High Court gave its decision in **June 1975** and set aside the election, and **Mrs. Gandhi** was found guilty of corrupt practices. It was held by the court that the doctrine of rigid separation of powers, in the American sense, does not apply in India. No organ of the republic can take over the function assigned to any other organ of the republic. The Supreme Court held that adjudication of specific disputes is a judicial function that Parliament, acting under constitutional amending powers, cannot exercise. It was recognised that there is no separation between the executive and legislative wings of the government. The division of powers into the legislature, executive and judiciary is difficult to define in terms of workability.

S.R. Bommai v. Union of India (1994)

The case involved the dismissal of the Karnataka State Government, led by **Chief Minister S.R. Bommai**, under **Article 356** of the Indian Constitution (President's Rule). The dismissal was challenged, leading to a lengthy and complex judgment.

Federalism Aspects:

The Supreme Court's verdict strengthened federalism in India by:

Restricting arbitrary use of **Article 356**: The court established guidelines for imposing President's Rule, ensuring it's not misused to destabilize elected State governments.

Centre-State relations: The judgment reaffirmed the importance of cooperative federalism, emphasizing the need for consultation and coordination between the Centre and States.

State autonomy: The court recognized the significance of State autonomy and the need to protect it from unwarranted Centre interference.

Judicial review: The verdict reinforced judicial review as a vital aspect of federalism, enabling courts to scrutinize Centre-State disputes.

Federal balance: The court sought to maintain the delicate balance between Centre and State powers, ensuring neither encroaches on the other's domain."

Separation of Powers in the United States of America

According to the modern exponent of doctrine, there will be no liberty if legislative and executive powers are united into the same person, body or magistrate. There is a need to separate judicial power from executive and legislative power; if it is not separated, then the judge might become violent and oppressive.

Madison said that the accumulation of all three powers-legislative, executive and judiciary in the same hands will become tyranny.

Constitutional provisions of the American Constitution

The framers of the Constitution of America meticulously designed a system of government built upon the principle of separation of powers. This fundamental concept divides the governing functions into three distinct authorities: legislative, executive, and judiciary. Each branch possesses unique responsibilities and is designed to operate independently while maintaining checks and balances with the others.

1. Legislative branch:

- Composed of the United States Congress (Senate and House of Representatives), the legislative branch holds the power to create laws.
- Its primary roles include enacting legislation, impeaching government officials, and confirming presidential nominations.
- It exercises oversight over the executive branch through congressional hearings, investigations, and committee proceedings.

2. Executive branch:

- Led by the President, the executive branch is responsible for implementing and enforcing laws passed by the legislative branch.
- The President appoints cabinet members and other executive officials, manages the federal bureaucracy, and serves as the commander-in-chief of the armed forces.
- The executive branch is tasked with conducting foreign policy, negotiating treaties, and executing the budget approved by Congress.

3. Judicial branch:

- Composing the Supreme Court and lower federal courts, the judicial branch interprets the laws and the Constitution.
- Its primary function is to resolve legal disputes, protect individual rights, and ensure that the actions of the other branches comply with the Constitution.
- The Supreme Court, in particular, possesses the power of judicial review, allowing it to declare laws and executive actions unconstitutional.
- The separation of powers is a crucial element of American democracy. It prevents the concentration of excessive power in any single branch of government, fostering a system of checks and balances that safeguards individual liberties and promotes accountability.
- The Supreme Court of America has no power to decide political questions. The Supreme Court of the United States does not interfere with the executive branch of the government. The power of judicial review is not vested in the Supreme Court of America. The President of the United States is not bound by the advice of a secretary and is free to take any decision

The American Cabinet is collectively responsible for holding its office so long as it enjoys the confidence of the majority. The President is the head of state as well as the executive.

Landmark judgements in the United States of America

Kilbourn vs. Thompson (1880)

In this case, the Supreme Court of the United States of America observed in 1881 that the power of any of the branches shall not be permitted to encroach upon the power confined to the other organs or branches. The legislature cannot exercise or encroach upon the power of executive or judicial power. The executive branch cannot exercise or encroach upon the functions of the judiciary and legislative branches. The judicial power cannot exercise executive and legislative functions.

Marbury vs. Madison (1803)

The Court in this case held that the legislation could be invalidated by courts. The issue of judicial review was settled in terms of exercising the power of judicial review. The case arose from the refusal of then-Secretary of State James Madison to deliver a commission to William Marbury, who had been appointed as a justice of the peace for the District of Columbia by President John Adams. Marbury sought a writ of mandamus from the Supreme Court to compel

Madison to deliver the commission, but the Court ultimately ruled against him. However, in the process of reaching its decision, the Court asserted its power to review the constitutionality of laws, a power that has since become a cornerstone of the American legal system.

The issue of judicial review has been a subject of debate since the founding of the United States. Some, like Alexander Hamilton, argued that the Constitution itself granted the courts the power of judicial review. Others, like Thomas Jefferson, maintained that such a power was not explicitly granted by the Constitution and that it would give the unelected judiciary too much power over the elected branches of government.

The **Marbury v. Madison** decision was a significant victory for those who believed in the importance of judicial review. In his opinion for the Court, Chief Justice John Marshall argued that the Constitution was the supreme law of the land and that it was the duty of the courts to uphold it. He also asserted that the courts had the power to declare laws unconstitutional, even if those laws had been passed by Congress. The decision in *Marbury v. Madison* has had a profound impact on American law and government. It has established the principle that the courts are the ultimate interpreters of the Constitution and that they have the power to strike down laws that they find to be unconstitutional. This power has been used to protect individual rights, to ensure the separation of powers, and to uphold the rule of law.

Sattinger vs. Philippine Island (1928)

The Court in this case held that unless it is provided by the American Constitution, the executive, legislative and judiciary cannot exercise the functions of each other. This principle is essential to the system of checks and balances that is a fundamental part of the American system of government. It ensures that no one branch of government becomes too powerful and that the rights of the people are protected.

The case arose out of a dispute between the Philippine Islands, which were at the time a territory of the United States, and a group of American citizens who were doing business in the Philippines. The citizens had filed a lawsuit against the Philippine government, but the Philippine Supreme Court dismissed the case, holding that the US Supreme Court did not have jurisdiction over the case.

The American citizens appealed to the US Supreme Court, which agreed to hear the case. In its decision, the Court held that the US Supreme Court did have jurisdiction over the case and that the Philippine Supreme Court had erred in dismissing it. The Court also held that the Philippine government was not immune from suit in US courts.

The decision in *Satterlee vs. Philippine Island* is a landmark case in the development of the American system of government. It established the principle of separation of powers among the executive, legislative, and judicial branches of government and ensured that no one branch of government became too powerful."

Separation of powers in the United Kingdom

The United Kingdom is one of the countries in the world where there is no written constitution. Since there is no written constitution in the United Kingdom", it is not possible to claim that there is no formal separation of powers in the United Kingdom.

1. The person cannot be a part of more than one of the three organs of the government.
2. There should not be interference from one organ of the government with the other organs of the government.
3. No organ of that government cannot exercise the function of the other organs to whom it was assigned.

The separation of powers exists in England and the King is the executive head of England and also an integral part of the legislature.

Recent developments in the United Kingdom regarding the separation of powers

Before 2009, the House of Lords was the highest court in the United Kingdom for over 130 years. The Supreme Court of the United Kingdom was separated from the House of Lords on October 1, 2009. The absolute monarchy system was replaced by the legislative function being exercised by Parliament and the courts replaced judicial functions. The Judiciary became independent from the control of the executive in England.

Landmark Judgement

Thomas Bonham v University of Cambridge (1610), (Dr Bonham's Case)

CHAPTER 5-FACTS

Facts:

Bonham, a trained medical doctor, petitioned to join the College of Physicians but was rejected. A short time later he applied for membership again; this time his rejection was accompanied by a fine and a threat of imprisonment should he continue his practice. As Bonham continued his medical practice, he was to be arrested. Bonham told the College that he would continue working as a doctor and claimed that the College had no power over Oxford and Cambridge graduates. Bonham was imprisoned as a consequence. The College sued Bonham for a fine for maintaining an illicit practice at the King's Bench, to which he responded by claiming trespass to the person and wrongful imprisonment.

CHAPTER 6-ISSUES

Issues:

The College claimed to have statutory basis for its allegation that it was free to decide who could practice medicine and to punish those without a licence, including by way of imprisonment. Bonham argued that the statutes aimed to prevent malpractice but did not relate practice without a licence.

CHAPTER 7-DECISION

Decision

The two-judge minority sided with the College based on its position as a valid licensing authority. They held that the statutes conferred powers on the College that were to be exercised on behalf of the King (as it was the King's duty to care for the sick). However, the majority found for Bonham. Sir Coke, delivering the majority judgment, claimed that the power to impose fines on those involved in illicit practice and the power to imprison practitioners for malpractice were separate. Thus, working without a licence did not amount to malpractice and the College did not have the power to put Bonham in prison. He found that the statutes allowing the College to act as both a party and a judge were absurd, so "in many cases, the common law will control Acts of Parliament" and could render them void.

CHAPTER 8- CONCLUSION

Conclusion

We come to the conclusion that India never adopted the doctrine of separation of powers very rigidly, but India has adopted the division of power. All three organs of government should not interfere with the functions of any of the other organs of the government. It must be kept in mind that any one organ of the government should not exercise the functions of all three organs of the government.

The Constitution is the supreme law of the land and the legislative, executive and judiciary should not go beyond the limits of the Constitution.

This comparative study of separation of power in India, the USA, and the UK reveals that federalism's success hinges on effective power distribution among legislative, executive, and judicial branches. The analysis of landmark cases - *Ram Jawaya Kapoor v. State of Punjab* (1955), *Marbury v. Madison* (1803), and *St. Boniface College v. Cambridge University* (1616) demonstrates the evolution of separation of power principles in these jurisdictions.

Final Thoughts:

1. "Separation of power is a cornerstone of federalism, ensuring accountability and protecting individual rights."
2. "Federalism's success hinges on striking a balance between autonomy and coordination."
3. "The separation of power principle remains essential for preventing authoritarianism."

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