

“Critically Evaluating the Doctrine of Sepation of Power in Indian Context.”

Despite the fact that the idea of the separation of powers does not have a strict application, this does not mean that it is irrelevant in the current situation. The main goal of the idea of separation of powers is to maintain checks and balances among the three branches of government, which is crucial to the effective operation of a government. This doctrine's rationale is not based on rigorous classification, but rather on avoiding the concentration of power in the hands of one person or entity. Although this theory does not work in a strict sense, it can be highly helpful when used in conjunction with other theories.

ABSTRACT

Many of the constitutional founders, judges, academic authors, and political theorists have given the notion of "The Separation of Powers" some thought. This doctrine essentially refers to the division of distinct authorities among various state bodies. Three aspects of governmental power are referred to as the "separation of powers": one person should not hold office in more than one of the state's three organs; one organ should not interfere in any way with any branch of the government; and one body should not carry out the duties delegated to another body. One of the main responsibilities of the government is to protect individual rights, but we cannot ignore the fact that the government has frequently violated these rights. One of the numerous strategies developed to lessen this possibility is separation of powers. The trias politica principle serves as the foundation for the doctrine of separation of powers. The principle underlying this idea is that when a lot of power is concentrated in the hands of one person or group, it can become harmful for the populace. The separation of powers method is used to reduce or eliminate this authority, or to make it more difficult to abuse. According to the theory of Separation of Powers there one would envisage a tripartite system of government i.e. (i) the executive (ii) the legislature and (iii) the judiciary and their functions and powers need to be kept and exercised separately from each other. Thus, the legislature cannot exercise executive or judicial power; the executive cannot exercise legislative or judicial power of the government.¹

“Governments without separation of powers commit the worst crimes.”

-James Cook

KEYWORDS

Separation, Power, Government, Provision, Equal, Constitutional, Parliament, Structure, Principle, Amendment.

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I. INTRODUCTION

Power corrupts, and ultimate power corrupts inevitably, it is said. It implies that complete power given to a single authority is prone to unfairness in the context of governance. Separation of powers is a concept that, rather than concentrating power in a single person it should be vested in a group of individuals, as provides a barrier against corruption by allocating authority and defining boundaries between distinct branches of government. The division of powers is a necessary component of every democratic government. India is divided into three major branches under this system: legislative, executive, and judiciary. Each of these institutions has the power to carry out the various responsibilities that have been assigned to it. Responsibilities are assigned to each organ and their institutions in such a way that each may monitor the prerogative by the others; as a result, no one branch or institution can become large enough to completely dominate the system. To simplify comprehension of these departments, the legislative body creates laws, the executive body implements them, and the judicial organ interprets them.

As a consequence, the separation of powers idea aims to divide and distribute authority in such a way that tyranny by the government may be fully avoided by placing equal status in three separate organs that act as democratic accountability for one another.

This research paper discusses comparative study and theoretical analysis in nations such as the United States, the United Kingdom, and India, as well as other issues connected to the idea of separation of powers. In this sense, I

¹ C.K. Takwani, Lectures on Administrative Law (2008) p.31.

am quickly outlining various benefits and drawbacks associated with this concept, and for better understanding of the Indian context, I am dealing with a number of constitutional provisions as well as court responses to circumstances involving this concept and also the current situation of India also I would like to elaborate on the evolution of separation of power.

ANALYSIS AND RESEARCH

The separation of powers theory was taken into consideration when designing the Indian constitution, however it is never explicitly acknowledged or endorsed by the document. Given that we in India have a parliamentary system of government, the constitution's writers tried to keep the various branches of government apart from one another.

Therefore, the provisions of the law that lean toward the fundamental principle of separation of powers are studied below in order to better comprehend the situation in India with regard to this notion.

1. In connection with Articles 53(1) and 154 of the Constitution, the President and the Governor have been specifically given authority to carry out the executive functions of the Union and States.

2. Articles 122 and 212 of the Constitution forbid the courts from interfering with the activities of the state legislatures and the Parliament, respectively.

3. In addition, Article 245 granted the Parliament and the State Legislatures, respectively, the authority to adopt national law from both the Central and State levels.

4. Article 50 of the Indian Constitution specifically mandates the separation of the executive and judicial branches of power. Because of this, the Constitution outlines a distinct line between the three divisions and their responsibilities.

5. Supreme and High Court justices are exempt from scrutiny for their conduct in Parliament or State legislatures, according to Articles 121 and 211. In *Indira Gandhi Nehru vs. Raj Narain*², the Supreme Court upheld the *Kesavananda*³ judgment and backed the basic structure as well as the separation of powers doctrine, making it a landmark case in our country. In the case of *Indira Gandhi Nehru v. Raj Narain*, which resulted from the Prime Minister elections, the constituent body acted as a court and determined that the elections were lawful. As a result, the component body's acts were ultra vires. As a result, it was determined that a parliament cannot act as a court, despite its ability to modify the constitution. In this instance, the separation of powers principle was respected.

As a result, we can see that the state's functions are still split, and court rulings have upheld the separation of powers theory. No organ may violate the rights of others, and any attempt to do so has been refuted in order to uphold the fundamental structure principle, even if it took the shape of an amendment.

EVOLUTION

The ancient Greeks were the first to employ the separation of powers paradigm, which was eventually adopted by the Roman Republic. Its beginnings can also be seen in the 16th and 17th centuries, during the times of Aristotle and Plato. It has its roots in the "Magna Carta" era, and since then, British politician Locke and French philosopher John Bodin have both shared their opinions on the idea. But Montesquieu was the first person to systematically formulate it in his book "Esprit des Lois" in 1748.

The discoveries of Montesquieu suggest that tyranny can result when power is concentrated in the hands of a single person or entity. Therefore, he believed that there should be three distinct governmental institutions, namely (i) the legislative (ii) the executive (iii), and (iii) the judiciary, all of which should be independent of one another and refrain from carrying out tasks that are entrusted to the other. He continued by saying that if these powers were concentrated in the hands of one person, dictatorship would result and there would be no way to mount an effective defence against the state. He regarded the judicial authority as the most terrifying of the three since, in his view, the executive could not threaten a subject's life, liberty, or property before a court decision.

“To become truly great, one has to stand with people, not above them”

- Montesquieu

COMPARATIVE ANALYSIS

It is vital to consider the governmental systems of other nations because, as we all know, the Indian Constitution was drafted using the perspectives and ideas of many other nations. Therefore, along with India to some extent, the United States and the United Kingdom are among the powerful countries that have incorporated this doctrine into their constitutional system.

² *Indira Gandhi Nehru vs. Raj Narain* AIR 1975 SC 2299

³ *Keshavanandha Bharati vs State of Kerela* AIR 1973 SC 1461.

United States: The US Constitution's framers believed that the only way to appropriately distribute power was to divide it among three separate and distinctive departments of government. Following this the result was that the US Constitution splits the three branches of government. The distributive articles, which make up the first three parts of their constitution, define the structure and duties of the congress, which includes the legislative, executive, and judicial branches.

Since the Supreme Court of the United States lacks the authority to rule on political issues, it is unable to interfere with how the executive branch exercises its authority. The President of the United States utilises his power to limit the legislature's ability to carry out its duties. He has the ability to enact laws by using his treaty-making power. The President having the power to appoint justices indirectly or directly interferes with the Supreme Court's operation.

Similar to this, Congress obstructs the President's authority through approving budgets votes, confirming nominations in the senate, and ratifying treaty obligations. Congress also meddles in the functioning of the courts by creating special courts, establishing procedural rules, and allowing the appointment of judges. The court, in turn, challenges the legitimacy of Congress and the President using its judicial review powers. It is true that Congress made fewer amendments to the US Constitution than the Supreme Court of the United States. In conclusion, it is clear that the United States adheres to the principle of separation of powers, despite the fact that this principle is not fully realised.

United Kingdom: Since the UK does not have a formal constitution, there is no written instrument addressing the subject of whether or not there is a true separation of powers in the country's political institutions. There is far too much overlap between the three government bodies. Law Lords serve as the House of Lords' legislative branch and sit on both the Privy Council's judicial committee and the appellate committee of the House of Lords. Being in charge of its own internal affairs, parliament has a legislative and, to a lesser extent, a judicial responsibility too.

Members of the executive branch who also act as legislators through delegated legislation and in Parliament are known as ministers of the government. While magistrates carry out both administrative and judicial functions, such as issuing licences, courts legislate in the sense that they develop common law concepts in addition to carrying out their judicial tasks. However, the position of Lord Chancellor is the one that is most frequently used as an example of overlap to prove that there is no separation of powers in the UK.

The post of Lord Chancellor has endured through time, and the incumbent is distinct in that he or she holds a position of authority and is a member of all three branches of the government. The judiciary in the United Kingdom is the weakest branch of government. There is a widespread belief among academic constitutional law professors that there is no real separation of powers. On the other hand, the court asserts that the division of powers is the foundation of the UK's constitutional processes. It is possible to argue that the UK has some form of separation of power in this regard. On the other hand, there isn't and never has been a clear separation of powers under the UK constitution.

INDIA: The notion of separation of powers is not specifically addressed in our Constitution. The state must take steps to separate the judiciary from the executive in the state's public services, and there is no formal and dogmatic division of powers apart from this. However, there are some delegate precepts in our constitution, such as Part-IV and Part-V, and Article-50, which separate the judiciary from the executive.

In India, there are a lot of personal overlaps in addition to many functional similarities and connections. As a result, there is a close relationship between the legislative and executive branches; the executive must answer to the legislature for the actions it takes and receives its authority from it.

The president is the head of the executive branch, but a deeper look reveals that he is merely has ceremonial position, with the Prime Minister and his Council of Ministers holding the real power. Under specific conditions, the President is able to execute judicial and legislative duties, and the parliament may also carry out those duties. As a result, the three institutions function as a check and balance on one another, working together to make sure that our parliamentary system of governance is successful. Although it is clear that our country has not adopted the Separation of Powers principle in its most complete form and that it has not been given constitutional validity, a modified and modern approach is employed to support and direct our parliamentary form of government.

CRITICAL ANALYSIS

It is believed that the doctrine's practical application in India is accomplished in a deliberate rather than literal sense. It sticks to the doctrine's core ideas but modifies its elements to suit India's particular political structure. *Ram Jawaya Kapur vs. State of Punjab*⁴, a landmark judgement, showed how India's constitutional framework effectively separates the roles and branches of government to prevent one from taking on the responsibilities of another. The court's ruling significantly clarifies India's position on the idea. It uses a unique

⁴ *Ram Jawaya Kapur vs. State of Punjab* AIR 1955 SC 549

form to show how the theory was adopted in India. The essential and incidental capabilities that an organ may exert are distinguished in this version of the idea. An organ cannot assert control over the execution of another's essential obligations, but it may rightfully carry out the ancillary obligations of another organ. With the essential powers aligning with the doctrine's pure form and the incidental powers departing from it to demonstrate the idea of checks and balances, the conflicting dualism of these two sorts of powers highlights the plurality of this version.

Contrary to popular belief, India has embraced the concept of checks and balances. We are already aware that our constitution is a composite of the best provisions from a few different countries' constitutions. In actuality, a system of checks and balances was cleverly devised by the Indian constitution's creators and included into the document. The High Courts are given the authority to conduct judicial reviews of any act of the government's executive or legislative branch by Articles 226 and 227, the Supreme Court, and Articles 32 and 136, respectively. One would infer from these cases that there is no oversight of the judiciary, but this is untrue. According to Article 124 (2) of the Indian Constitution, the president appoints all justices to the Supreme Court. There are numerous additional laws and regulations that guarantee that every single member or worker of a governmental organization is continuously monitored. The accompanying clauses demonstrate that the Indian Constitution plainly includes a system of checks and balances. Adopting this idea into the system offers a lot of advantages; because tasks are separated, the effectiveness of the state's organs has increased while time consumption has dropped. There is now a division of labour, which results in the distribution of labour and skill. There is no crossover in the system because of the obvious division of labour, and no one impedes the work of others as a result.

Although this theory has advantages, it also has some disadvantages. As I previously stated, it will lead to higher efficiency; yet, if we do not take the theory literally, organs may compete for dominance, leading to the opposite effect. It's also possible that organs might compete with one another to demonstrate their excellence. Due to the lack of a supervising authority over the organs and the haphazard nature of their actions, there is also a chance that the procedure will be delayed.

However, because our parliamentary system of government requires so much cooperation, each organ must have some sort of relationship with the others in order to function efficiently. A system of checks and balances has been built over time, and as previously noted, has even been consistent with multiple Supreme Court judgments, because it may be exceedingly dangerous to place too much authority in any one organ. Because of this, even if the doctrine of separation of powers is a theoretical idea that may be impossible to fully apply, it is nonetheless used in our country in a watered-down manner.

II. SUGGESTIONS

1. Rather than replacing administrative instructions with judicial ones, the court's job must be to force the authorities to issue the proper executive directives. Therefore, the executive must be held accountable for the decisions they make in accordance with judicial instructions.
2. To prevent the judiciary from acting as a super legislator and to stop any intervention by the judiciary, the legislature should not simply be a passive observer but rather should be swift to implement the required legislation and alter the existing ones as instructed by the court.
3. The executive should actively labour in the sphere of law enforcement, with responsibilities set forth and deeds to be reported. Many measures are still waiting since obtaining the President's assent is required in order to approve a bill; this sluggish approach needs to be stopped.

III. CONCLUSION

The hypothesis is important in modern times, but only in a relative sense, seems to be the conclusion. The Constitution enshrines the goals and principles of a democratic country like ours, and the government infrastructure is subsequently developed in conformity with those principles. The constitution's clauses are constructed in this manner to support a parliamentary form of government, where the idea cannot be strictly enforced. The Separation of Powers has been violated on numerous occasions, but each time, the issue was resolved in a respectable manner. Although the concept is not explicitly defined in the Indian constitution, we have adhered to it whenever it was necessary, as evidenced by numerous Supreme Court rulings. However, the fundamental idea of this concept—that all authority should be distributed among several institutions rather than concentrated in one—remains the same and is generally acknowledged by most modern democracies.

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