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BEYOND THE BRANCHES: DOCTRINE OF SEPARATION OF POWERS

AUTHORED BY - SAMIYA CHOUDHARY

Abstract

The doctrine of separation of powers is considered to be an essence of democracy. In the Indian Constitution, though the doctrine hasn't been expressly envisaged, the provisions mentioned therein provide for such differentiated powers amongst the organs of the government. The doctrine finds its origin in America in its absolute rigidity. However, different countries have adopted it as per their needs and circumstances prevailing in their countries. In India, it hasn't been found in its absolute rigidity. Therefore, the paper highlights the origin, the concept, and its practical applicability in India and explores various provisions in the constitution dealing with the doctrine. It also focuses on the relevance of this old doctrine and the instances and judicial interpretations pertaining to it.

Keywords: Checks and Balances, Organs, Separation, Functions, Overlapping, etc.

INTRODUCTION

Separation of Powers implies the distribution of powers within the different organs of the government. In India, there are three government organs, namely the legislature, executive, and judiciary. These organs have been separated from each other on the grounds of powers given to them in terms of their workings and functioning. They have been given different functions to perform, as one organ cannot do everything on its own, and absolute autonomy or arbitrariness might exist in the system. The separation of powers exists in the Indian constitution, which is a written constitution. It is prevalent in other constituents as well. However, the countries differ in their pursuit of this doctrine, which is on the question as to whether the constitution of the country has adopted the doctrine in rigid terms or not in absolute terms. The Indian constitution has provided for the doctrine of separation of powers in express provisions. It provides that the legislature has the function or the authority of law-making, while the executive has the function of executing or applying the laws made by the legislature and lastly, the judiciary has to check whether the other organs are working properly within the authority and powers conferred on

them. Moreover, it has the power to adjudge the disputes and declare any law made by the legislature as invalid or unconstitutional if it exceeds the limitation provided by the Constitution. The functions of these three organs are differentiated by the constitution of India, but this doesn't mean that they only have to confine themselves to those functions. Hence, the constitution envisages the doctrine of separation of powers but not in the strict sense; this means that though the different organs are provided with different functions to perform, there are times, circumstances, or situations that necessitate going or performing beyond their powers. This is of immense importance for the proper and effective functioning of the country and to have a balanced system of working thereby avoiding any kind of instability in the workings and functioning of the country. Moreover, the provisions that provide for such powers do not mention the limitations to their authority or the powers, and hence, the doctrine adopted by the Indian constitution is different from the doctrine adopted in other countries. Indian constitution focuses on having comprehensive development, which is only possible if there is comprehensiveness in the workings of the bodies. Therefore, to better understand the doctrine of separation of power, it becomes important to have insights into the aspects of the principle on which the doctrine is based and its applicability in the Indian constitution and a comparison with other constitutions.

HISTORICAL ASPECTS OF THE DOCTRINE

The doctrine of separation of powers is said to have evolved from Montesquieu. However, the doctrine can be traced back to the juristic philosophy of Aristotle, who, while recognizing the division of powers, did not envisage the absolute or rigid division of powers. Therefore, the origin of the doctrine can be traced back to ancient philosophies; though these philosophies were subjected to criticism, they are still relevant today. Particularly, two principles can be made out of the ancient philosophies for this doctrine. Firstly, that the powers of the government are of 3 types, and secondly, that the most beneficial and least frictional constitution is that in which the various elements are carefully controlled¹. So, therefore the doctrine of separation was provided or analyzed by Aristotle but not in the proper sense. Apart from him, English theorist John Locke has also talked about the same in his book. It was only Montesquieu who further propounded the theory in the proper manner. Montesquie believed that the aim of the government is liberty and for achieving liberty, the system of checks and balances is required for the smooth functioning of the government and its functions. According to Mr. Justice Miller, It is believed to be one of the

¹ Jacob Finkelman, 'Separation of powers: A Study in Administrative Law', The University of Toronto law journal, Vol. 1, No.2, (1936).

chief merits of the American system of written constitutional law that all the powers entrusted to government, whether state or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide the departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other.²

Therefore, with the developments in British constitutional history, Montesquieu gathered the information and analyzed the doctrine of separation of powers. The doctrine varies from country to country and also its origins may vary from country to country. For instance, in England, there were problematic relations between the king and the parliament. There was a separation of powers existing between them, though that type of separation of powers is not followed in today's times, the functions were differentiated such as the king was to perform the executive functions, the parliament was to perform a legislative function, and last, the judiciary dealt with the court matters.

Therefore, it can be said that it was Montesquieu who systematically, and scientifically propagated the theory in his book 'L'Esprit des Loix' (The Spirit of the Laws), published in the year 1788. Philosophers like Aristotle and Plato have given their views on the theory in their times. Montesquieu, while giving the theory, was of the view that there must be a separation of powers in order to maintain stability in terms of the absence of arbitrariness. He believed that tyranny prevails when there is no separation of powers. There would be an end to everything, where the same man or same body, whether of the nobles or of the people, to exercise those three powers of enacting laws, executing public resolutions, and of trying the causes of individuals.³

This means that if all the powers, whether legislative, executive, or judiciary in the hands of one single person, then there would exist a situation of tyranny where the single person would enact the laws as per his interest and convenience and also would execute the same in a tyrannical manner or in the manner he pleases and also the judicial control would be in his own hands and

² Kilbourne v. Thompson, 103 U.S. 168.

³ Vrad Kilor, Criminalization in Politics and Separation of Powers, (2022) PL February 64.

there would be no challenge to the existing tyrannical powers. Hence, there would be chances of conflicts between the rights and freedoms of people and the exercise of powers in such a tyrannical manner. Therefore, because of such apprehensions, Montesqie advocated for the separation of powers. He observed that where it joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, where the judge would then be the legislator. Where it joined the executive power, the judge might behave with oppression and violence.⁴ His thoughts were based on the British constitution. According to him, the secret of Englishmen's liberty was the separation and functional independence of three departments of the government from one another.

Blackstone believed that if all the powers of the government were in one hand, then it would be an end to personal liberty. Personal liberty is one of the important freedoms provided by the Indian constitution, and this implies the relevance and importance of the application of this doctrine in India. So, the power can't be exercised on one hand, and the separation, though not in an absolute sense, is required to achieve the ideals enshrined in the Constitution. Therefore, the origin of the doctrine seems to be a rigid one. However, different countries have adopted it as per the situations and circumstances occurring in the country. Hence, the doctrine holds great importance in the 21st century, which envisages the rule of law and the absence of the misuse of the powers or the exercise of arbitrary or tyrannical powers.

DOCTRINE OF SEPARATION OF POWERS IN INDIA

During the constitutional debates, the doctrine was put forth to be included in the directive principles of state policy and not in the stricter sense. However, several members were of the view that we must incorporate the doctrine in a stricter sense and gave their reasoning for the same. For instance, Mr. K.T. Shah gave an amendment for absolute division of powers between the three organs and observed that "if you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contract between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I

⁴ Karan Tyagi, 'The Doctrine of Separation of Powers and its Relevance in time of Coalition politics', Vol. 69, No. 3, The Indian Journal of Political Science, pp. 619-625, (2008).

am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle.⁵ In response to this amendment by Mr. Shah, it was Shri K. Hanumanthaiya who observed that our country is a parliamentary democracy and what the amendment reflects is that we have a presidential system and he further observes that “if there is separation- not separation but Prof. Shah wants complete separation- then conflicts are sure to arise between these Departments of the Government and main reason is that this house is wedded to parliamentary system of democracy and this view clause is out of place in such a constitutional structure.”⁶ Therefore, the majority of the members were of the opinion that we must incorporate the doctrine in our system in the absolute sense.

In India, the doctrine of Separation of Powers is adopted as a part of the constitution of India, but not in the strict sense as with changing circumstances and needs of the society; hence, following a holistic approach requires holistic strategy or interdependence, interactions and cooperation between the organs of the government. In *Udai Ram Sharma v. Union of India*⁷, The Supreme Court has held that the American doctrine of separation of legislative and judicial powers has no application to India.

There are numerous provisions in the constitution that provide for the separation of powers between the three organs of the government. The three organs are – the legislative, the executive, and the judiciary. In India, each is independent in its own spheres, i.e., one is concerned with law-making, the other is concerned with the execution of laws enacted by parliament and the third one is concerned with the role of checking the validity of the laws. The Doctrine of separation of powers is based on certain principles, these are:-

- That the same person cannot be a member of more than one organ.
- That they must not perform the functions assigned to the other organ.
- They should not interfere in each other's sphere.

The Constitution of India itself envisages and has incorporated express provisions regarding the division of powers. In India, two important principles or doctrines, i.e., the doctrine of separation of powers and the federal principle, play crucial roles in the functioning of parliamentary democracy. There is a clear division between the center and the state. However, this is also not

⁵ constituent assemble debates(proceedings)- volume VII- Friday, 10th Dec, 1948, para 20.

⁶ Constituent assemble debates(proceedings)- volume VII- Friday, 10th Dec, 1948.

⁷ AIR 1968 SC 1138 at p. 1152.

absolute, and that is the reason our constitution is called a quasi-federal constitution. Similarly, there is a parliament at the center level which has plenary powers of law-making, while the president is the executive at the center. In the same way, such division occurs at the state level as well. The judiciary constitutes the supreme court, high courts, and all other subordinate courts. For instance, Article 62-72⁸ deals with the president and its functions. While Articles 226⁹, 227¹⁰, 32¹¹, 136¹² etc, deal with the judiciary. This is how the constitution has provided with the demarcation of the functions of the three organs. Adoption of the doctrine in a stricter sense implies that there is a clear-cut demarcation in the division of powers and no one organ can interfere at all with the functioning of the other, while adoption in India which is in a broader sense implies that though the functions are clearly demarcated by the constitution, however, there are instances where one organ has undertaken the function of the other but that is not considered to be going beyond the limits provided to them. Such cooperation and interdependence between these organs are necessary for the proper functioning of our parliamentary democracy in India.

P.M Bakshi has observed the position of this doctrine of separation of powers in India and has observed that-

- The Indian constitution does not contain any formal declaration of the doctrine of separation of powers.
- The Indian constitution in its actual position, does not exhibit any scrupulous regard for the doctrine of separation of powers.
- Legislation in India cannot be declared to be void merely on the grounds that it amounts to adjudication. The authority on this point is not very strong, but in principle, this appears to be the position.
- Legislation amounting to adjudication may, however, be held to be void if it discriminates against any person or group without justification.
- The legislation amounting to adjudication may be void on the grounds that it takes away the property of an individual without providing them compensation or unreasonably restraining the enjoyment of property.

⁸ INDIA CONST. art. 62-72.

⁹ INDIA CONST. art. 226.

¹⁰ INDIA CONST. art. 227.

¹¹ INDIA CONST. art. 32.

¹² INDIA CONST. art. 136.

- The act of the legislature of conferring the legislative powers of the executive might be void on the grounds of an undue delegation of powers.
- If the executive assumes the adjudicatory functions, such an assumption cannot be void merely on grounds of the doctrine of separation of powers.
- If the judiciary assumes legislative or executive functions, such an assumption would be void, not on any theoretical basis, but on the general principle that the court cannot exercise powers not conferred upon it by law.¹³

CHECKS AND BALANCES APPROACH

Indian parliamentary democracy has a system of checks and balances. The main purpose of having such a system is to keep the powers of the organs under control so that one organ might not become too powerful to include all the functions within its ambit. Therefore, all three organs have to perform checks and balances; this implies that the three organs have the authority and power to check the functioning of the other organs. This does not mean that they will interfere with the other organs; however, they will just keep a check. This will further provide balance and a stable form of government. For instance, the parliament, i.e., the law-making body, does not have the power to interfere in the role of the judiciary but has the power for the appointment and removal of judges. Article 124(2)¹⁴ provides that the judge of the Supreme Court shall be appointed by the president; this means that there is interdependence of the executive and judiciary. As the Supreme Court in the case has observed that *P. Kannadasan & Ors. v. State of Tamil Nadu*¹⁵, where an Act made by the State legislature is invalidated by the courts on the ground that the State legislature was not competent to enact it, the State legislature cannot enact a law declaring that the judgment of the court shall not operate; it cannot overrule or annul the decision of the court. But this does not mean that the legislature which is competent to enact that law cannot enact that law. Similarly, it is open to a legislature to alter the basis of the judgment while adhering to the constitutional limitation. In such a case the decision of the Court becomes ineffective. The new law cannot be challenged on the ground that it seeks to circumvent the decision of the Court. The Court observed that this is what meant by "checks and balances" inherent in a system of Government incorporating the concept of separation of powers¹⁶.

¹³ P.M Bakshi, Comparative Law: Separation of Powers in India, 42 A.B.A.J. 553 (1956).

¹⁴ INDIA CONT. art. 124(2).

¹⁵ 1996 (5) SCC 670

¹⁶ P. Kannadasan & Ors. v. State of Tamil Nadu 1996(5) SC 670.

RELEVANCE OF THE DOCTRINE

The relevance of the doctrine can be viewed by its successful implementation in India and at the international level. Moreover, the doctrine is a part of the basic structure of the Constitution. Basic structure implies the soul and fabric of the constitution which can't be altered or destroyed by any authority. The basic structure of the constitution theory was laid down in the case of *Kesavananda Bharti v State of Kerala*.¹⁷ In the case, *Kartar Singh v State of Punjab*¹⁸, one of the justices observed that It is a part of the basic postulate under the Indian constitution that the legal sovereign power has been distributed between the legislature to make the law, the executive to implement the law and the judiciary to interpret the law within the limits set down by the constitution¹⁹. Therefore, in India, the doctrine is practically applicable to all three government organs. However, the executive, at times, in the exercise of its powers conferred by the constitution, performs judicial functions, for instance, granting pardons, reprieves, commuting, etc. Moreover, the executive also performs legislative functions in terms of ordinance-making, delegated legislation, etc. Hence, it shows the applicability of the doctrine in India not in a stricter sense but in a broader sense.

At the international level, the doctrine has been adopted by several countries; some have adopted it in the stricter sense, while some have not adopted it in the absolute sense. For instance, in The position in the United States in respect of separation of powers, enshrined in its Constitution for well over two centuries, is of great relevance to India. In the United States, the head of the executive branch, the President, and his Cabinet are not members of the Congress. The Judges of the Supreme Court in the United States are appointed for life after being nominated by the President and approved by Congress. However, once appointed, they are accountable to no other branch of the State. Their job is to uphold the Constitution, which empowers them to overrule other branches of the Government. In the United States, each Judge is appointed for life, and the President and the Congress have only limited flexibility in influencing the Court's composition during their tenures. No one has ever questioned the unfettered right of the Courts to review whether decisions taken by Congress and State Legislatures are in conformity with the Constitutional provisions.²⁰ In England, it is opposite to the USA as in the UK, the constitution is not written, and also, there is no clear division of powers between the three organs of the

¹⁷ *Kesavananda Bharti V. State of Kerala*, (1973) 4 SCC 225.

¹⁸ 1994 SCC (3) 569.

¹⁹ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

²⁰ Karan Tyagi, 'The Doctrine of Separation of Powers and its Relevance in time of Coalition politics', Vol. 69, No. 3, *The Indian Journal of Political Science*, pp. 619-625, (2008).

government. The three branches often overlap due to unclear and undefined division or demarcation of powers. However, senior justices have stated that the division of powers is the foundation.²¹ Therefore, it will be very incorrect to say that the doctrine has lost its relevance in today's time as the basic essence and the logic of the doctrine, i.e the absence of tyranny, is still of great importance

CASE LAWS

1. Ram Jawaya v State of Punjab:²² The facts of the case are that in pursuance of its policy of nationalizing textbooks used in schools in the state, the Punjab government issues an executive order acquiring the copyright in selected books from authors and undertaking itself printing, publishing, and sale of books. Private publishing houses were thus ousted from the book business. This order was challenged on the grounds that executive power if the state did not extend to undertaking trading activities without a legislative sanction. The court observed that ordinarily the executive power connotes the residue of governmental functions that remain after the legislative and judicial functions are taken away. It is neither necessary nor possible to give an exhaustive enumeration of kinds and categories of executive functions. Article 73²³ of the constitution provides that the executive power of the union shall extend to the matters with respect to which the parliament has the power to make laws. Similarly, Article 162²⁴ provides for in the case of the state government. So, neither of these articles contains any definition of executive function and activities within its scope. On the other hand, the language of these articles clearly indicates that the powers of the union/ state executive do extend to matters upon which the parliament /state legislature is competent to legislate and are not confined to matters over which the legislation has been passed already. Indian Constitution has not indeed recognized the doctrine of separation of powers in the stricter sense or absolute rigidity, but the function of different parts of the government have been sufficiently differentiated, and consequently, it can be very well said that our constitution does not contemplate assumption by one organ or part of the state of functions that essentially belong to another. The executive branch can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also,

²¹ Richa Goel, 'Separation of Power', (3 October, 2022), <[Separation of powers \(ipleaders.in\)](https://www.ipleaders.in/separation-of-powers/)>, accessed on 22 April, 2024.

²² AIR 1955 SC 549.

²³ INDIA CONT. art. 73.

²⁴ INDIA CONT. art. 162.

when so empowered, exercise judicial functions in a limited way. The executive government, however, can never go against the provisions of the constitution or of any law. But as we have already stated, it does not follow from this that in order to enable the executive to function, there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws. The limits within which the executive function can function under the constitution of India can be ascertained without much difficulty by reference to the form of the executive which our constitution has set up. Our Constitution though federal in structure is modeled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of the governmental policy and its transmission into the law, though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the state. The executive function comprises both the determination of the policy and carrying it into execution. This evidently includes the initiation of legislation, the maintenance of the order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on or supervision of the general administration of the state. Therefore, the court was of the opinion that the functions of a modern state, like the police of states of old, are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern state is certainly expected to engage in all the activities necessary for the promotion of the social and economic welfare of the community. It is not necessary that in order to enable the executive to function, there must be a law already in existence, and the powers of the executive are limited merely to carrying out these laws. Thus, in the present case, there is no fundamental right of the publishers that any of the books printed and published by them should be prescribed as textbooks by the school authorities, or if they are once accepted as textbooks, they cannot be stopped or discontinued in future.

2. *Asif Hamid v. State of J&K*²⁵, the facts of the case are that the selection of MBBS/BDS course for the session 1988-89 in the two government medical colleges of the state of Jammu and Kashmir has been set aside by the J&K High court on the ground that the selection was not held in accordance with the directions of the said court given in an earlier case, i.e. *Jyotsana Sharma V State of J&K*²⁶. In that case, the high court directed the state government to entrust the selection process of two medical colleges to a statutory

²⁵ 1989 Supp (2) SCC 364.

independent body that was free from executive influence. No such body was constituted. The primary issues in this case were whether the High Court had the competence to issue directions to the state government to constitute a statutory body for medical colleges selection and whether the selection made by any other authority was invalid on that ground alone. The court in the present case observed that, Although the doctrine of separation of powers hasn't been recognized under the constitution, the constitution makers have carefully defined the functions of various organs of the state. Legislature, Executive, and Judiciary have to function within their own spheres and such demarcation of powers is provided under the constitution. No organ can use the functions assigned to another; the functioning of democracy depends upon the strength and independence of each of its organs. The legislature and executive have all the power, including that of finance. The judiciary has the power to ensure that all the aforesaid two main organs of the state function within the constitutional limits. Judicial Review is a powerful weapon to restrain the unconstitutional exercise of power by legislature and executive. The constitution does not permit the courts to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. Hence, the court observed that when the constitution gives power to the executive to lay down policy or procedure for admission to the medical colleges in the state, then the high court has no authority to divest the executive of that power. The state government in its executive powers, in the absence of a law on the subject, is the competent authority to prescribe method and procedure for admission to medical college by the executive instructions, but the high court transgressed its self imposed limits in issuing the directions for constituting statutory authority. However, the selection procedure is always open to judicial review on the grounds of unreasonableness, etc. Hence, the High Court, in this case, was patently in error in issuing directions in the Jyotsana Sharma case and reiterating the Same in this case as well. Thus, the judgment of the high court is set aside.

3. In Delhi Laws Act, 1912, In re²⁷, a seven-judge Special Bench of the Hon'ble Supreme Court, has considered the doctrine of separation of powers and ruled that strictly speaking, it has no place in the system of governance in India nor at the present day under the Constitution. Unlike the American and Australian Constitutions, the Indian Constitution

²⁷ 1951 SCC 568.

does not expressly vest the different sets of powers in the different organs of the State. Under Article 53(1)²⁸, the executive power is indeed vested in the President, but there is no similar vesting provision regarding the legislative and judicial powers. Our Constitution, though federal in its structure, is modeled on the British parliamentary system, the essential feature of which is the responsibility of the executive to the legislature. The President, as the head of the executive, is to act on the advice of the Council of Ministers, and this Council of Ministers, like the British Cabinet, is “a hyphen which joins—a buckle which fastens—the legislative part of the State to the executive part.”

4. In *Bhim Singh v. Union of India*²⁹ the court observed that in modern governance, the strict separation of powers is neither possible nor desirable. The Indian Constitution does not prohibit the overlap of functions, but in fact, it provides for accommodating some overlap as a parliamentary democracy. But what it prohibits is such exercise of the function of the other branch, which results in wresting away from the regime of constitutional accountability. This is the test for violation of separation of powers. The constitutional principle of separation of powers will only be violated if an essential function of one branch is taken over by another branch, leading to the removal of checks and balances. Till the principle of accountability is preserved, there is no violation of the separation of powers.
5. In *Smt. Indira Nehru Gandhi v. Raj Narain*³⁰, Hon'ble Justice Chandrachud observed: “The American Constitution provides for a rigid separation of Governmental Power governmental powers into three basic divisions: the executive, legislative and judicial. It is an essential principle of the Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution even follows the same pattern of power distribution. Unlike these Constitutions, the Indian Constitution does not expressly vest the three kinds of powers 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 ambit of their functions.”
6. In *Sri Ram v. State of Bombay*³¹, it was held that the absolute separation of powers is not possible by any form of Government. In view of the varying situations, the legislature cannot anticipate all the circumstances to which a legislative measure should be extended

²⁸ INDIA CONT. art. 53(1).

²⁹ (2010) 5 SCC 538.

³⁰ 1965 SCC 1.

³¹ AIR 1959 SC 459.

and applied. Therefore, the legislature is empowered to delegate some of its functions to executive authority. However, one thing is here: the legislature cannot delegate its essential legislative power.

CONCLUSION

Therefore, a rigid and clear demarcation of the powers of the organs is not feasible in any constitution. As in *Ram Jawaya Kapur v Union Of India*³², it was observed by one of the justices, that The Indian Constitution has not indeed recognized the doctrine of separation of power in its absolute rigidity but the functions of the different parts or branches of the Government has been sufficiently differentiated and consequently it can be very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of function that essentially belongs to another.³³ Hence, in India, the doctrine is practically applicable but not in a stricter sense, as is evident from the interpretation of the courts and its usage. The principles on which the doctrine is based are not fulfilled in India; this is because one organ is interdependent on the other and, at times, even performs the functions assigned to the other organ.

Hence, history proves the fact that if there is a complete separation of powers, the government cannot run effectively and smoothly. The smooth running of government is possible only by cooperation and mutual adjustment of all three organs of the government. Prof. Garner has rightly pointed out that the doctrine is impracticable as a working principle of government. It is not possible to categorize the functions of all three branches of government on a mathematical basis³⁴, The observation of Frankfurt is notable in this connection. According to him, a rigid conception of separation of powers would make government impossible.³⁵

³² Supra note 22.

³³ *Ram Jawaya Kapoor V. Union Of India* AIR (1955) SC 569.

³⁴ Mahantesh, Dynamics of Constitutionalism in India- An Appraisal, IJLS(2018) 28.

³⁵ *Frankfurter-The Public and its Government* (1930) quoted by B. Schwartz in *American Constitutional Law*, 1955 Page 286.