

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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DOCTRINE OF SEPARATION OF POWERS: A COMPARATIVE CONSTITUTIONAL STUDY BETWEEN INDIA AND THE UNITED STATES

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ABSTRACT

Doctrine of separation of powers is considered as one of the key concepts of constitutional democracy. It suggests that the powers of legislative, executive, and judicial branches of government should be divided amongst separate governmental bodies to ensure checks and balances, thus avoiding the risk of centralization of power within a single body. This research paper involves comparative constitutional analysis of the doctrine of separation of powers between India and the United States. It discusses the differences in the ways in which both states implement the doctrine and how the interrelationship between the organs of government in these countries varies. The U.S., operating according to the presidential form of state organization, applies the doctrine more strictly. India, practices the doctrine of separation of powers flexibly, under the parliamentary form of government.

This paper is mainly concerned with the judicial dimension of the doctrine of separation of powers and deals with the importance of the judiciary in preserving the equilibrium of the constitution and upholding the rule of law. The paper discusses how courts, while performing their constitutional duties, sometimes enter into areas traditionally associated with the executive or legislature, giving rise to debates concerning judicial activism and judicial overreach. It further analyzes how increasing executive powers, administrative expansion, and political conflicts influence the practical working of the doctrine in both countries. The research aims to understand whether the judiciary, while safeguarding constitutional values and democratic governance, continues to maintain the constitutional limits envisioned under the doctrine of separation of powers in modern democracy.

Keywords: Separation of Powers, Constitutional Governance, Judiciary, Judicial Activism, Checks and Balances, Executive Power, Comparative Constitutional Study, India, United States

INTRODUCTION

The concept of separation of powers forms a key aspect of constitutionalism within a democratic State. The doctrine seeks to ensure the division of governmental powers amongst the three arms of government namely, the legislature, the executive, and the judiciary in order to avoid the concentration of powers in any one body¹. The doctrine is founded on the presumption that the various arms of government should exercise their powers independently but within a framework of checks and balances over one another². The separation of governmental powers contributes immensely towards the protection of individual rights, observance of the rule of law, and constitutional accountability³. This theory became highly recognized because of the contributions made by John Locke and Montesquieu. In his renowned book titled "The Spirit of the Laws" written in 1748, Montesquieu stressed that freedom could only be achieved if the powers of legislation, execution, and adjudication were never vested in one person or body⁴. It is designed to maintain a system of equilibrium among the three branches of government, thereby ensuring that no single organ acquires excessive authority capable of resulting in tyranny or oppressive rule. The theory has been incorporated in different ways by several democratic states in the world. The practical implementation of this doctrine varies in different countries based on their governmental structures.

The research paper is focused on a comparative constitutional analysis of the theory of separation of powers practiced in India and the United States. The Constitution of the United States has adopted a relatively rigid form of separation of powers in a presidential form of government, where each organ of the government acts independently with clearly demarcated powers. Moreover, in the United States, there has been a practice of checks and balances, which helps to avoid any misuse of power by an organ of the government. However, the Indian Constitution follows the parliamentary system of government, where the practice of separation of powers becomes impracticable.

The doctrine of separation of powers has been challenged on many counts because of the evolving dynamics of governance. The Rise in administrative authorities, the rise in the power of the executive, the political environment, and the rising importance of the judiciary raised serious issues regarding the interplay between the three organs of the government. In India, the role of the judiciary in issues related to governance, human rights, and administration has grown substantially owing to judicial activism. Judicial activism has improved constitutional governance and rights protection. It has also led to concerns regarding judicial overreach and

interference⁵. This study essentially concentrates on the judicial aspect of the separation of powers theory. It analyzes the role of courts in India and in the US in upholding constitutional balance in the exercise of their judicial review powers. The study will also try to investigate whether the contemporary view of the doctrine is able to uphold democratic government. This study will aim to explore the operational aspect of the doctrine in both constitutional systems and will also try to find out the problems in maintaining the balance in modern democracies.

LITERATURE REVIEW

1. Separation of Powers: A Comparative Study under India, UK and USA Constitution by Munireddygari Latha Pravalika analyses the doctrine of separation of powers under the constitutional systems of India, the United Kingdom, and the United States⁶. The article discusses how powers and responsibilities are divided among the legislature, executive, and judiciary to maintain constitutional balance and democratic governance. It further examines the practical difficulties faced by the three organs of government while implementing constitutional provisions relating to separation of powers. The study helps the researcher understand the comparative constitutional position of different democratic systems and provides insight into how India follows a flexible approach while the United States follows a comparatively strict separation of powers model.
2. A critical analysis of the separation of powers doctrine in modern legal theory by Tefvik Can Inan and Abdülatif Nuredin examined the doctrine of separation of powers as an important principle of constitutional governance and modern democracy⁷. The study discussed how governmental powers are divided among the legislature, executive, and judiciary in order to maintain checks and balances and prevent concentration of power. The researchers compared the application of the doctrine in presidential and parliamentary systems and explained that the United States follows a comparatively strict separation of powers, whereas parliamentary systems follow a more flexible approach with overlap between the executive and legislature. The article further analyzed the practical challenges faced in modern governance, including executive expansion, administrative bodies, political conflicts, and judicial overreach. The researchers also examined the role of the judiciary in protecting human rights in India and highlighted concerns regarding courts performing executive or legislative functions. The study helps the researcher understand the modern challenges to the doctrine of separation of powers and its practical functioning in contemporary

constitutional systems.

3. Separation of Power by Sahil Patel discusses the doctrine of separation of powers as a constitutional principle requiring the legislature, executive, and judiciary to remain separate and independent in their powers and functions⁸. The article examines the need, merits, and demerits of the doctrine along with the importance of checks and balances in democratic governance. It further analyzes the impact of the doctrine in countries such as India, the United States, and the United Kingdom. The study helps the researcher understand the constitutional importance of separation of powers and the practical challenges faced in maintaining institutional balance among the three organs of government.
4. Comparative analysis of separation of powers: Theoretical and practical insights from India by Ashutosh Acharya and Manindra Singh Hanspal examined the doctrine of separation of powers within the constitutional framework of India and analyzed its theoretical and practical application in constitutional governance⁹. The study explained that the doctrine is an important principle for maintaining balance among the legislature, executive, and judiciary in a democratic system. The researchers discussed how the doctrine has evolved through constitutional interpretation and judicial decisions such as *Golak Nath v. State of Punjab* and *Indira Nehru Gandhi v. Raj Narain*, where separation of powers was recognized as part of the basic structure of the Constitution. The article further examined the role of the judiciary in interpreting constitutional principles and maintaining democratic governance. The study helps the researcher understand the practical functioning of the doctrine of separation of powers and the constitutional challenges faced in maintaining institutional balance in modern governance.
5. Comparative study on separation of power in India and the USA by Rajamani Shankar examined the doctrine of separation of powers as an essential element of constitutional democracy and governance¹⁰. The study discussed the theory of separation of powers and explained how legislative, executive, and judicial powers are distributed among different organs of government to ensure independence and prevent interference in decision-making. The researcher comparatively analyzed the constitutional systems of India and the United States and explored the important features of separation of powers in both countries. The article highlighted the role of constitutional structure, governmental functions, and institutional independence in maintaining democratic governance and constitutional accountability. The study helps the researcher

understand the comparative constitutional position of India and the United States and provides insight into the practical functioning of the legislature, executive, and judiciary within democratic systems.

6. Comparative Study of Separation of Power in India, U.K. and U.S.A. by Supriya Rani examined the doctrine of separation of powers as an important principle of constitutional governance and democratic administration¹¹. The study discussed the origin and development of the doctrine from the ideas of Aristotle and Montesquieu and explained how powers are divided among the legislature, executive, and judiciary to maintain checks and balances within the government. The researcher analyzed the application of the doctrine in India, the United Kingdom, and the United States and examined how the doctrine helps in protecting individual liberty and ensuring transparency in governance. The article also discussed the criticism and practical limitations of the doctrine, highlighting that complete separation of powers is difficult to achieve in practice due to overlaps among governmental functions. The study helps the researcher understand both the theoretical importance and practical challenges of implementing the doctrine of separation of powers in different constitutional systems.
7. A Comparative Constitutional Study of the Doctrine of Separation of Powers: A Critical Analysis of India, the United Kingdom, and the United States by A. Abirami and Dr. S. Sanjith provide a comparative examination of the doctrine of separation of powers in three major democratic systems, namely India, the United Kingdom, and the United States¹². The study analyses the historical evolution and constitutional basis of the doctrine and evaluates how the legislative, executive, and judicial organs function within these nations. The authors emphasize the importance of judicial review and constitutional accountability in preserving the system of checks and balances. The article further highlights various constitutional issues, operational difficulties, and contemporary challenges associated with the doctrine in modern democratic governance. This study is significant for understanding the comparative constitutional framework of different democratic countries and the practical application of separation of powers in ensuring accountable governance.
8. Separation of Power: A Comparative Study of UK, USA and Indian Constitutions by Sojib Wayajed Joy discusses the doctrine of separation of powers and its role in maintaining constitutional governance in India, the United Kingdom, and the United States¹³. The study explains how the division of powers among the legislature, executive, and judiciary helps in preventing the excessive concentration of authority

and strengthens democratic accountability. Through a comparative constitutional approach, the researcher identifies the structural similarities and distinctions among these constitutional systems. The article also examines the role of constitutional principles in protecting democratic institutions and maintaining institutional balance. The study contributes to a better understanding of the practical implementation of the doctrine of separation of powers and its significance in preserving constitutional democracy.

THE DOCTRINE OF SEPARATION OF POWERS IN INDIA

Separation of Powers is a doctrine of Constitutional form of government in India. It refers to the distribution of powers between legislature, executive and judiciary to ensure constitutional balance, responsibility and rule of law. The Indian Constitution lays down principles relating to the separation of powers through several constitutional provisions, which allocate powers amongst the three branches of government. Articles 53 and 154 allocate executive powers to the President and the Governors respectively¹⁴, Articles 79 to 122 are related to the powers and functions of the Parliament¹⁵, Articles 124 to 147 pertain to the Constitution of the Judiciary¹⁶ and Article 50 of the Indian Constitution emphasizes the separation of judiciary from the executive in respect of public services of the State¹⁷.

Judiciary plays an important role in interpreting and reinforcing the doctrine of separation of powers in India by means of judicial pronouncements. In the case of *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that the concept of separation of powers was a part of the basic structure of the constitution, and therefore, could not be amended even under the provision for constitutional amendments¹⁸. In the case of *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court emphasized on the need to preserve constitutional equilibrium among the three organs of government¹⁹. In the case of *Ram Jawaya Kapur v. State of Punjab*, the Supreme Court highlighted the fact that despite not being based on separation of powers, there is adequate distinction between the functions performed by the various organs²⁰.

CONSTITUTIONAL FRAMEWORK

The Constitution of India has several provisions which reflect the doctrine of separation of powers and make a functional distribution of powers between the legislature, executive and judiciary. These constitutional provisions guarantee institutional independence, constitutional

accountability and a system of checks and balances between the three arms of government. Under Articles 53 and 154 of the Constitution, the executive powers of the Union and the States vest in the President and the Governors respectively²¹. These provisions also respect the constitutional position of the executive authority at the centre and the states. Further, Article 361 provides that the President and Governors shall not be liable to any proceedings in the court for the acts done by them in the exercise of the official functions. This protects the dignity and independence of the constitutional offices²².

Articles 121 and 211 Parliament and the State Legislatures from discussing the conduct of judges of the Supreme Court and High Courts except in relation to impeachment proceedings²³.

These provisions protect judicial independence and prevent unnecessary legislative interference in judicial functions. Similarly, Article 123 empowers the President to promulgate ordinances when Parliament is not in session thereby allowing the executive to exercise limited legislative powers under exceptional circumstances²⁴. These constitutional provisions collectively demonstrate that while the Indian Constitution maintains a functional separation among the three organs of government, it also permits limited overlaps to ensure effective governance and constitutional administration.

JUDICIAL INTERPRETATION

The judiciary has been instrumental in shaping the principle of separation of powers in India through its decisions in several important cases. The Supreme Court has, through these decisions, delineated the constitutional position of the legislative, executive, and judicial branches and reiterated the principle that each branch of the State must work within the parameters defined by the Constitution. While it is true that the Indian Constitution has not embraced the separation of powers doctrine in the same strict sense as the American Constitution, the Indian judiciary has always stood by this principle.

IN RE DELHI LAWS ACT (1951)

Supreme Court in *Re Delhi Laws Act (1951)* has considered the issue of constitutionality of delegated legislation and the extent of powers under the Constitution²⁵. The Supreme Court pointed out that there is no explicit mention of a system of separation of powers in the Constitution of India; however, the duties and functions of the three organs of the government have been distinguished sufficiently well. The Court further made it clear that basic legislative

functions cannot be entrusted to the Executive.

The Court further stated that while limited delegation of powers is permissible for administrative convenience. One organ of government cannot arrogate the essential functions assigned to another organ under the Constitution. This judgment became one of the earliest judicial interpretations relating to separation of powers in India and established the constitutional principle that governmental powers must operate within defined constitutional limitations.

RAM JAWAYA KAPUR V. STATE OF PUNJAB (1955)

In *Ram Jawaya Kapur v. State of Punjab (1955)*, the Supreme Court elaborately discussed the scope of executive powers under the Constitution²⁶. The case arose from the policy of the Punjab Government relating to the publication and distribution of school textbooks. The petitioners challenged the policy on the ground that the executive could not engage in such activities without legislative authorization.

The Supreme Court did not accept the claim and ruled that powers can be exercised by the executive in cases where there is no specific bar to such action from legislation. Justice Mukherjea stated that the Constitution of India does not adopt the principle of separation of powers in the rigid sense, but it has ensured adequate differentiation of the functions of the various organs of the government. The Court made it clear that an organ of the State should not perform the functions of another organ.

I.C. GOLAKNATH V. STATE OF PUNJAB (1967)

I.C. Golaknath v. State of Punjab (1967) addressed the role of Parliament in regard to constitutional rights and amendments²⁷. In this case, the Supreme Court held that “the Constitution established independent organs of government, which include the Legislature, Executive, and Judiciary.” Each organ was to act within constitutional constraints and was not supposed to encroach upon the basic functions of other organs.

According to the court, centralization of power in one organ of government would lead to the violation of constitutional harmony, thereby hampering the exercise of constitutional rights and freedoms guaranteed by the Constitution.

KESAVANANDA BHARATI V. STATE OF KERALA (1973)

In *Kesavananda Bharati v. State of Kerala (1973)*, the Supreme Court gave one of the most important rulings in Indian constitutional law by laying down the Basic Structure Doctrine²⁸.

The Court held that Parliament had wide powers to amend the Constitution under Article 368 but it cannot change or destroy the basic structure of the Constitution.

Supreme Court has recognized the doctrine of separation of power as a part of basic structure of constitution. The judgement underlined the necessity of constitutional balance between the legislature, executive and judiciary for the sake of preservation of democratic governance and rule of law. This case confirmed judicial review and imposed constitutional limits on Parliament's power to amend.

INDIRA NEHRU GANDHI V. RAJ NARAIN (1975)

In *Indira Nehru Gandhi v. Raj Narain*, (1975) the Supreme Court considered the constitutionality of the Thirty-Ninth Constitutional Amendment Act which aimed at removing the election of the Prime Minister from judicial review²⁹. The Court observed that Parliament cannot exercise judicial powers or override judicial decisions by constitutional amendments.

The judgment held that the principle of checks and balances was an essential feature of the Constitution and that no organ of government could encroach upon the essential functions of another. The Court also pointed out that separation of powers was part of the constitutional structure and was necessary to preserve institutional independence and democratic accountability.

VISHAKA V. STATE OF RAJASTHAN (1997)

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court had to grapple with the problem of sexual harassment at the workplace in the absence of any specific legislation³⁰. To secure the fundamental rights of women under Articles 14, 19 and 21 of the Constitution, the Court laid down detailed guidelines on harassment at workplace.

The verdict is considered a landmark example of judicial activism in India. The Court clarified that the guidelines would be in force only till the time Parliament passed suitable legislation on the subject. The case illustrated the active role of the judiciary in protecting constitutional rights and the problem of institutional overlap between the judicial and legislative functions.

D.K. BASU V. STATE OF WEST BENGAL (1997)

In the case of *D.K. Basu v. State of West Bengal* (1997), the Supreme Court of India discussed the problem of custodial torture and abuse by the law enforcing authorities³¹. According to the Supreme Court, any form of custodial torture was held to be breach of the fundamental right to life enshrined in Article 21 of the Indian Constitution.

Through this judgment, the Supreme Court gave certain procedural measures for avoiding such instances of custodial abuse in order to ensure human dignity.

V.K. NASWA V. UNION OF INDIA (2012)

The case of V.K. Naswa vs Union of India, decided in 2012, dealt with the limitations placed on judicial interference with regard to legislative issues by the Constitution³². The Court held that in terms of the doctrine of separation of powers, the task of legislation was strictly confined to the legislature, whereas the judiciary had to interpret laws and ensure their enforcement.

The Court also clarified that there could be no question of the judiciary directing Parliament or the State Legislatures about the time and manner of passing legislations. The Court made it clear that the scope of judicial review did not extend to policy formulation.

DR. ASHWANI KUMAR V. UNION OF INDIA (2017)

Dr. Ashwani Kumar v. Union of India, 2017 was a case where the Supreme Court ruled on the possibility of the judiciary's direction to the legislature to pass a certain law relating to torture in custody³³. The court's view in this regard is that even though there is no absolute separation of powers under the Indian constitution, the judiciary cannot force the legislature to pass any law except in cases of constitutional compulsion or legislative vacuum impacting the fundamental rights. The judgment underscores the significance of judicial self-restraint within the context of separation of powers among the three wings of the government.

KALPANA MEHTA V. UNION OF INDIA (2018)

In the case of Kalpana Mehta v. Union of India (2018), the Supreme Court spoke on the relationship between parliamentary proceedings and the functioning of the judiciary³⁴. According to the Court, while there may be some extent of overlapping between the functions of various organs of government, such overlap cannot exceed the constitutional bounds. The decision reiterated that while the judiciary has the power to interpret the laws and uphold the constitutional values, it cannot do the job of the legislature.

THE DOCTRINE OF SEPARATION OF POWERS IN UNITED STATES

One of the key principles of the American constitutional system is the principle of Separation of powers. The separation of powers is a principle to distribute power of the government amongst legislature, executive and judiciary so as to avoid the concentration of power and maintain constitutional balance³⁵. American Constitution is a form of presidential constitution

where each of the three organs operate independently within their powers bestowed by the Constitution. This principle is reflected in the first three Articles of the Constitution: Article I vests the legislative power in the Congress. Article II vests the executive power in the President and Article III vest the judicial powers in the Supreme Court and the subordinate courts. This constitutional arrangement clearly separates the power functions among the three branches and imposes democratic responsibility through a system of checks and balances³⁶.

The legislature of the US is composed of the Senate and House of Representatives and functions as the law-making body, it is responsible for tax, declaration of war, approval of treat and appointment and so on. The executive body is led by the president as the head of the State, the Commander-in-Chief and also the head of chief executive authority who is responsible for implementation of the laws and management of foreign relation³⁷. The judiciary is led by the Supreme Court and it is responsible for interpreting the constitution and also possess the judicial review, so it can verify the constitutionality of actions taken by the legislative and executive branch. The American system also set a strong checks and balances system where every branch of government has power to check each other, although US's separation of powers is more strict compared with other countries there is still some overlap among three powers to enable proper working and administration of constitution.

CONSTITUTIONAL FRAMEWORK

The idea of the doctrine of separation of powers deeply impressed the Constitution of the United States. The Constitution makers applied the doctrine in the US system of constitution with the intent to avoid concentration of powers and preserve the freedom of individuals through check and balance. The notion of Montesquieu had deeply impressed American constitutionalists including James Madison and Alexander Hamilton in the Constitutional Convention in 1787. Its main purpose was to separate and make independent branches of the government so that one body would not dominate the constitutional framework.

The constitutional framework of separation of powers in the United States is clearly reflected in the first three Articles of the Constitution, commonly known as the distributive Articles:

- Legislative powers are granted to the Congress in Article I, Section 1³⁸.
- Executive powers are granted to the President of the United States in Article II, Section 1³⁹.

- Judicial powers are granted to the Supreme Court in Article III, Section 1 and other lesser federal courts that are created by Congress⁴⁰.

The system of constitutional division of function within the three branches of government helps define their scope of activity and ensures that each institution acts within the constitutional boundaries of its power. However, the American constitutional framework also has a system of checks and balances of power amongst the three institutions. Congress can legislate and controls fiscal power, it can impeach judges and executives. The President can veto the legislation, he can appoint judges but he needs the consent of the Senate, he can use his position as the Commander-in-Chief of the United States army⁴¹. The judiciary has the power of judicial review and it can declare acts of the judiciary or the executive as unconstitutional. With the constitutional framework discussed above, the separation of powers remain the most crucial guardian for constitutional government, democratic control and individual freedom in the United States.

JUDICIAL POWER

The U.S. Judiciary is a fundamental institution of the U.S. Constitution and has been instrumental in the maintenance of the principle of separation of powers. According to Article III, Section 1 of the U.S. Constitution, the judicial power of the U.S. Shall be vested in a Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish⁴². It interprets the constitution, resolves dispute, and upholds the Constitution by its authority in judicial review. Appointed by the President on the advice and consent of the Senate, federal judges are protected by holding their offices during good behavior to assure independence and to ensure constitutional check and balance.

Though it remains an independent branch, the Congress exercises a substantial power in terms of judicial structure, jurisdiction, and organization of the federal court. Consequently, the U.S. Judiciary operates within the constitutional limits imposed by the constitutional separation of powers, in which the independence of the judiciary is balanced with constitutional check and balance. The judiciary, especially the Supreme Court, by rendering a variety of judicial opinions, has defined the limits of judicial authority, and has demarcated the bounds of congressional and presidential power under the theory of separation of powers.

MARBURY V. MADISON (1803)

The Marbury v. Madison case (1803) led to the creation of judicial review. The Chief Justice John Marshall decided that the judicial branch of the government is entitled to declare any law passed by Congress unconstitutional if it contradicts the constitution⁴³. This established the judiciary as the defender of the constitution and it formed the basis of judicial review in the USA.

WAYMAN V. SOUTHARD (1825)

In Wayman v. Southard (1825), the Supreme Court discussed delegated legislative powers and observed that Congress may delegate procedural and minor matters, but essential legislative functions cannot be delegated⁴⁴. The judgment emphasized the importance of maintaining constitutional limitations among governmental branches.

MURRAY'S LESSEE V. HOBOKEN LAND AND IMPROVEMENT CO. (1856)

In Murray's Lessee v. Hoboken Land and Improvement Co. (1856), the Supreme Court distinguished constitutional courts from legislative courts⁴⁵. The Court held that purely judicial powers under Article III can only be exercised by constitutional courts and not by legislative tribunals established for administrative purposes.

KILBOURN V. THOMPSON (1881)

With regards to the separation of powers doctrine that had been introduced by the landmark case Marbury v. Madison, the Supreme Court reiterated the importance of keeping the branches of government within their respective limits. In Kilbourn v. Thompson (1881) the court wrote that each branch⁴⁶. Can't exercise executive and judicial functions, the executive can neither legislative nor judicial, the judiciary can neither legislative nor executive. Unless specifically authorized by the Constitution to do so.

HUMPHREY'S EXECUTOR V. UNITED STATES (1935)

The Supreme Court confirmed the constitutionality of an independent administrative body performing legislative and adjudicatory functions in Humphrey's Executor v. United States (1935)⁴⁷. The opinion gave practical support to the increasing prevalence of administrative agencies while respecting the Constitution limits of executive power.

BUCKLEY V. VALEO (1976)

Buckley v. Valeo (1976): Congress cannot "appropriat[e] to itself, or transfer to other branches, either end of the appointment process, as this would constitute a breach of the separation of powers and constitutional equilibrium"⁴⁸.

IMMIGRATION AND NATURALIZATION SERVICE V. CHADHA (1983)

In Immigration and Naturalization Service v. Chadha (1983) the Court found the legislative veto to be an unconstitutional attempt by Congress to assume executive power, but circumventing its own legislating processes⁴⁹.

BIDEN V. NEBRASKA (2023)

Biden v. Nebraska (2023) is a US Supreme Court case that analyzed the separation of powers and its limitations regarding the powers of the executive branch⁵⁰. The case deals with the action taken by the president to cancel federal student loan debt by executive action under the HEROES Act. Multiple States sued challenging the decision arguing that the executive branch overstepped its constitutional powers and that such action needed authorization by Congress. The Supreme Court found that the executive branch cannot use expansive legislative powers without direct congressional approval. The Court emphasized that decisions that carry enormous financial and economic significance need legislative approval. The decision reinforces the idea that the ability to create laws is a Congressional power and that the executive must operate within constitutional parameters. This case is known as a significant modern case of judicial review and application of the separation of powers doctrine in the American constitution.

COMPARATIVE ASSESSMENT: INDIA AND THE UNITED STATES

Separation of powers is a very significant element of the constitutional setups of India and USA. Both countries are democracies and their powers are segregated among the three organs i.e. Legislature, Executive and Judiciary so that power is not consolidated and a constitutional balance is maintained. In both constitutions, the judiciary is independent and it has Supreme Court at the apex who are final guardians of the constitution and uphold rule of law.

Both India and USA has Bicameral Legislature. In India, Parliament comprises of Lok Sabha and Rajya Sabha. In USA, it is known as Congress which has two chambers like House of Representative and Senate. In both the countries Judiciary is vested with powers of judicial

review in order to check the constitutionality of actions of legislature and executive organs. Similarly in both cases there are checks and balances which hold each of the organs of government responsible to prevent undue assertion of powers among the constitutional organs.

JUDICIAL ROLE AND JUDICIAL REVIEW

The role of the judiciary in ensuring constitutional governance is essential. It safeguards basic human rights and upholds the concept of separation of powers. In addition, the judiciary serves as the ultimate protector of the Constitution by ensuring that the legislature and the executive branch stay within constitutional confines. Judicial review enables the judiciary to assess the constitutionality of legislation and executive orders; it can strike down any legislation and orders as unconstitutional and contrary to the provisions and fundamental rights guaranteed by the Constitution⁵¹.

Judicial review has been well-established in the USA on the strength of the judgment in *Marbury v. Madison* (1803) where the Supreme Court ruled that it has the power to nullify legislation that is contrary to the Constitution, making judicial review a powerful instrument for achieving a system of checks and balances within the government⁵². The Constitution of India derives its power of judicial review from articles 13, 32, 131, 136, 141 and 226 of the Constitution⁵³. The Supreme Court and the High Courts have the power to review the constitutional validity of legislations and executive actions. In the case of *Kesavananda Bharati v. State of Kerala* (1973) the Supreme Court ruled that the basic structure of the Constitution cannot be amended by Parliament, a ruling that came to be known as the basic structure doctrine⁵⁴.

The judiciary also plays a vital role in protecting the democratic values of the nation, constitutional supremacy, and rule of law, balancing constitutional affairs, and curbing the misuse of governmental authority through constitutional adjudication and interpretation. The judiciary over-intervention in the matter of the legislature or executive has been subject to criticisms on the grounds of judicial activism and judicial overreach. Therefore, the judiciary has to exercise a degree of constitutional restraint as well, with respect to the legislature and the executive.

CHECKS AND BALANCES

The system of checks and balances is an important part of Indian and U.S. Constitutionalism. The objective of the doctrine of checks and balances is to avoid concentration of power by distributing it amongst the legislature, executive and the judiciary, and to also provide these organs with some powers of control over the other organs. This constitutional device facilitates accountability and diffusion of power and the maintenance of the rule of law and democracy. The Indian Constitution provides for a functional system of checks and balances between the three organs of the government. Judiciary can exercise control over legislature and executive through its power of judicial review, it can strike down any law or executive action that it considers unconstitutional or offending any of the fundamental rights. The legislature controls the executive by means of parliamentary discussions and debates, motions, motions of no confidence and through the control of the executive over the purse. Parliament also has powers to impeach the President, judges of the Supreme Court and judges of the High Court by way of a special constitutional procedure.

The Indian executive also operates within the system of checks and balances, the Judges of the Supreme Court are appointed by the President, by warrant under his hand and seal after consultation with the Chief Justice of India, any judge or judges as he may deem necessary, or the judges in each High Court being consultant as he may deem necessary (Article 124(2) of Constitution of India)⁵⁵. The judges cannot be arbitrarily removed as they are impeached and removed by a special majority in both Houses of Parliament. This secures judicial independence and institutional balance.

In the United States of America the doctrine of checks and balances operates in a comparatively rigorous fashion under the presidential form of government, the legislature can impeach the President and also refuse to pass the appointments, ratify treaties made by the President and also control the executive through purse strings. The President can check the legislature through his power to veto any legislation passed by it and also appoint the judges and executive officials, but he cannot do so in an arbitrary fashion as they need to be ratified by the senate. The judiciary on the other hand can check both executive and legislature and invalidate unconstitutional action of any other organ. This has been done by judiciary as shown by the case of *Marbury v. Madison* (1803)⁵⁶.

CONCLUSION

The doctrine of separation of powers is still the bedrock of constitutional government in democratic nations. It requires the vesting of state authority with legislature, executive and judiciary so as to ensure that the government does not get concentrated in any one body, that a balance is maintained and the liberties of the people are not infringed. The comparative analysis of India and the US demonstrates that the approach in which these two countries recognize and adhere to the doctrine is quite different on account of their specific constitutional frameworks and governmental systems. While the US adopts a relatively strict adherence to separation of powers due to its presidential form of government, India's parliamentary system permits greater overlap in functional relationship between legislature and executive, yet a check and balance mechanism continues to exist within each system.

The judiciary is instrumental in sustaining constitutional supremacy in both countries. Through judicial review, courts in both countries act as check on legislature and executive and keep them within their constitutional limits. Landmarks cases of Marbury v. Madison, Kesavananda Bharati case and Indira Nehru Gandhi case have bolstered the principle of separation of powers and constitutionalism. The judiciary has also been responsible for upholding fundamental rights and democratic values through its interpretational power.

Contemporary systems of government face numerous challenges which may affect the traditional doctrine of separation of powers. Growing complexity of administration, expanding scope of executive actions and the phenomenon of judicial activism have led to fusion and overlapping functioning among different organs of government. In India's case, it is the concept of judicial activism, public interest litigation, etc., while in the US, it is the executive orders and administrative bodies, that are perceived to enhance executive power concentration. These developments show that a rigid implementation of separation of powers is difficult in the current governmental context. The doctrine must be understood as a doctrine about an institution within the structure of the government and not of individual organs of state. Concepts like checks and balances, judicial independence, and limitations placed upon powers through the constitution will continue to be necessary to safeguard against executive power and maintain rule of law in India and in the US.

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