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SEPARATION OF POWER IN INDIA, U.K. **AND U.S.A – A COMPARATIVE STUDY**

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DECLARATION

I, thus certify that the subject matter in the dissertation named "**SEPARATION OF POWER IN INDIA, U.K., AND U.S.A. - A COMPARATIVE STUDY**" is a true and authentic work completed under the supervision of Professor Arun Upadhyay. The report's work is unique and has never before been submitted for the award of a degree or certificate from another university or institution.

My debt to other authors' works has been properly acknowledged in the appropriate locations.

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This is to certify that the thesis "Separation of power in India, U.K. and U.S.A. - A comparative study" presented by Miss Ramchhuanmawii for the award of a Degree of Masters in Law is a legitimate investigation. Her dissertation is finished and prepared for submission since she worked on the aforementioned subject under my constant supervision and direction. I am confident that this thesis merits being taken into account for the Master of Laws degree. I suggest that this dissertation be approved for review by the university because it satisfies the criteria established by Amity University,

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Ramchhuanmawii

ABSTRACT

The doctrine of Separation of Powers finds application in democratic and federal systems, as well as in administrative contexts. As per the stipulations of this legislation, the governance of the state can be segregated into three discrete branches, namely the legislative, executive, and judiciary in a prescribed sequence. As a result of the separation, each of these branches currently possesses a unique set of obligations and jurisdiction that are separate from those of the other branches. The aim of this division was to ensure the non-interference of any single branch in the operations of the remaining two branches. At its most basic level, the concept refers to the set of guidelines that state governments are required to follow in order to create, enforce, and apply laws to particular circumstances in a manner that is deemed satisfactory by the masses.

The aim of this paper is to dissect the conceptualization and implementation of this theory by virtue of a comparative analysis of the administrative functioning of India, U.K. & U.S.A.

Keywords: Separation of Powers, legislative, executive and judiciary, Constitutional law, Supreme Court, High Court, India, U.K & U.S.A.

CHAPTER 1 – INTRODUCTION

The theory of “Rule of Law” is built on the basis of “Separation of Powers”. The division of a democratic state into three types of government the legislature, the executive, and the judicial organs. These are indicated to as the principle of separation of powers. The rationale being these branches goes about as a check and equilibrium on the others and ensuring that each braches practice their powers concurring and with nobody branch practicing more power than both of the other two.

Different constitutional system vest each one of these institution with changing relative qualities. In certain nations the judiciary might have restricted abilities of review of laws; maybe it can strike down activities by the executive yet not the legislature. Different nations might have more grounded courts, with conflicts regularly arising between the lawmaking body and executive. In the U.S.A, the type of the government is presidential, with the legislature and the executive being set in opposition to each

other; in the U.K the framework embraced is parliamentary and include close connections between the legislature and the executive. Broadly respected to be one of the most troublesome and conclusive inquiries of institutional plan, the Indian constitution's model of separation of power is both elaborate and unique.

Review of Literature

1. **P.M Bakshi, The Constitution of India (incorporating all amendments up to the one hundred and First Amendment Act, 2016), 14th Edition, 2017;** It is universally accepted that for the stable political system, there should be balance between the holders of powers against each other. The theory of Separation of power deals with the relations among the three organs of the government namely legislature, executive and judiciary.
2. **MP Jain and SN Jain's Principles of Administrative Law, seventh edition, 2017;** In India, separation of powers is functions is followed and not powers not theoretically but even practically and thus the principle is not set to followed rigidly therefore, separation of powers is not followed as it is followed in U.S. But a system of checks and balances has been followed so much so that the court are competent to strike down the unconstitutional amendments made by the legislatures. The framers of the constitution have also defined the functions of various organs of the state. Legislative and executive which works on two aspects of the people will have the powers including that of the finance.
3. **I.P Massey in his book of Administrative Law, Edn. 1970;** The doctrine of Separation of Powers deals with the mutual relations among the three organs of the Government namely legislature, executive and judiciary. It was Aristotle who for the first time classified the functions of the Government into three categories viz., deliberative, magisterial and judicial Locks categorized the powers of the Government into three parts namely: continuous executive power, discontinuous legislative power and federative power. "Continuous executive power" implies the executive and the judicial power, discontinuous legislative power" implies the rule making power, federative power" signifies the power regulating the foreign affairs ¹.

¹ I.P. Massey : Administrative Law, Edn. 1970, p. 35

Montesquieu in his “Espirite des Louis” observed that “separation of power” can be a panacea to great administration though it consist of some disadvantages. A total Separation of Power without satisfactory governing rules would have invalidated the fundamental idea of constitutionalism. Assuming that there might be inflexible division of power between the different organs of government. It will obstruct the working of public authority.

4. **Montesquieu, De L“ Espirite des lois” 1748 quoted in Justice D.D. Basu Administrative Law, Edn. 199;** There ought to be co-activity & congruity kept up with among the three organs of the public authority. On the off chance that there shall be compartmentalisation among the organs, the fulfilment of managerial effectiveness will likewise be troublesome on the grounds that then every dept. attempt to safeguard their ability, ignoring the necessities of different organs ².

The U.S. constitution talks Separation of power in Article I, it mentioned that All legislative powers herein granted shall be vested in a congress.

Article II provides “The executive power shall be vested in a President.” Article III underline “Judicial power shall be vested in one Supreme Court.....”

5. **J.J.R Upadhyaya in his book entitled Administrative Law, eleventh edition, 2019;** mentions that the system of checks and balances control the organ of the government from becoming supreme than the other organs in the U.S. In U.K, the King being the executive head also performed certain legislative functions. While, in India, the Doctrine of Separation of powers has not been accorded a Constitutional status.³
6. **Konings, M. (2009), The Construction of US Financial Power. Review of Int. Studies, 35(1);** The theory of separation was developed in the U.S. It is the bedrock upon which the United States constitutional system rests. The founders of the U.S Const. observed that separation of powers would serve to prevent the surge of a dictatorial form of govt. by

² Montesquieu, De L“ Espirite des lois” 1748 quoted in Justice D.D. Basu: Administrative Law, Edn. 199, p. 23.

³ JJR Upadhyaya, The Administrative Law, eleventh edition, 2019

removing the possibility that an individual or bunch of people might wield an excessive amount of power. Article I of the Const. relegates legislative authority to Congress, while Article II delegates exec. authority to the President and Art.III delegates judicial authority to the Supreme Court. The goal was to prevent any branch of govt. turning into extra high-powered through a “system of checks and balances.” This alternative arrangement avoids the emergence of a dominating organ by decoupling its duties from the others.

7. *In Indira Nehru Gandhi v. Raj Narain*⁴, the Court held that Indian Const. has followed the concept of SOP. As per the broad view of the Court, Indian contit. does not concerned whether there is a rigid SOP, such in America or Austrailian Constitution.
8. On account of *Kesavananda Bharati v. State of Kerala*⁵, Beg. J held one of the fundamental components of the Indian Const. is the notion of “Separation of powers.” The functions & authority delegated to the trio body cannot be taken over. Art. 368 of the Indian Constituion also clearly mentioned that the design of the Constitution cannot be modified.
9. On account of *AK Gopalan v. Madras*⁶, here, the Court stated that the judiciary are vested with the powers to review the executive as well as the legislative organ.
10. In 1881 the United States Court pronounced in *Kilborne v. Thompson*⁷ that each and every capacity of govt. are partitioned into “executive, legislature and judiciary and that it is essential to effective functioning of this framework that the individual endowed with power in any of these branches will not be allowed to infringe upon the power trusted to the others, yet each will by the law of its creation be restricted to the activity of the powers fitting to its own specialization and no other”.

⁴ AIR 1975 SCR 333

⁵ AIR 1973 SC 1461

⁶ AIR 1950 SC 27: 1950 SCR 88

⁷ 103 U.S. 168 (1880)

Statement of problem

Separation of powers in some cases brings regarding authoritative difficulties. It becomes hard to fashion participation and coordination between the organs of government. The efficient functioning of current states seek not such a lot of Separation of Power as a "co-ordination" of powers.

The doctrine of Separation of Power is not completely achievable. The executive plays several part in rule-production, the legislative body likewise carries out a few legal roles. For instance, reprimand or impeachment which is legal is finished by the legislative body.

Separation of powers depends on the standard - balance of potentials, but this guideline is not good enough. In the parliamentary framework, the assembly which focuses individuals is generally strong on the other hand, the executive is top remarkable in the official framework.

Separation of power may also include freedom, though it is not the basic instrument of freedom. Freedom rely a ton upon the mind-set of individuals, their standpoint, their political opinion, central privileges, law & order, freedom of legal executive and fairness in financial.

The public authority has gone steadily stronger as it has taken on ,any crucial duties. Along with problem solving and disaster management, providing the help to populace is also necessary. The stability allying the organs of the govt. has been interrupted, making the executive more powerful. Not as much skill division is required for planning, security and government aid as for their "combination".

Objectives of the study

The object and extent of this thesis is exceptionally wide.

- (i) It is a lot of crucial for a majority rule country for the smooth running of the public authority to safeguard the singular freedom and to keep away from the showdown among the regulative, chief and legal executive.
- (ii) The SOP under a system of "checks and balances" is absolutely necessary, so none of these three organs can infringe on the other's restricted territory. However, from a rigid standpoint, it is unthinkable, while from a balance and check structure, it is very conceivable, which makes filtering of the mediation of the powers of others as since, in

such a case that any organ gets the three powers close by, it unquestionably turns out to be outright and tyrannical, which does cause the difficulty of the people in a nation and imperils the possibility of majority rule and constitutionalism.

- (iii) The logical restriction should be on the “executive, legislative, and judicial” branches of govt. in a chamber structure, but not in a watertight compartment structure, given the shifting needs of the general public.

Research Methodology

The thesis was completed with aid of a doctrinal method that communicates the legal framework, case study, and legal structure. The researcher has produced a close report on the division of powers focal point of check and equilibrium. The analyst has illustrated how the “United States, the United Kingdom, & India” have separate governments.

For this study endeavour, the investigators collect various tools and resources from particular books, articles/journals, Acts, judicial decisions, and websites.

Expected outcome of the study/Hypothesis

The researcher's hypothesis is that the security of the individual freedom A democratically based government must function effectively with the division of powers within a system of checks and balances, but it should not be rigid given the nature of the general public, which is continually evolving.

Research Design

The research's **first chapter** focuses mostly on the **Introduction**, which covers the **Historical context, the definition of Separation of Powers**, and its importance.

The second chapter focuses mostly on **India's system of Separation of Powers**, which includes its historical context, the power split between “the three branches of government” and various judicial rulings.

The third chapter covers the **History and Division of Powers between the Executive, Legislative, and Judicial** branches of government in the U.K.

The fourth chapter deals with the **History and Division of Powers between the Executive, Legislative, and Judicial** branches of government in the U.S.A.

The fifth chapter consist of Comparision of powers in **India, the U.K, & U.S.A.**

The **Conclusion & Suggestions** are covered in the **sixth chapter**, and the **Bibliography and References** pages ended this dissertation.

1.1 Meaning and Significance

The concept of the separation of powers is one which is capable of being implemented in democratic system as well as federal system and also for the purposes of administrative work. According to the provisions of this statute, the state govt. can be divided into three branches, which include “the legislative, the executive, and the judiciary” in particular order. Because of the division, each of these branches now possesses its own distinct collection of separate responsibilities and authorities that are independent from the others. This separation was carried out with the intention of preventing any one branch from interfering with the operations of the other branches. In its most fundamental type, it can be the guideline that every state govt. must follow to generate, tot & apply the law to particular situations in a manner that is acceptable to the people. This is done so that law can be enforced to specific situations in a way that is acceptable to the people. The public views the law as the ultimate arbiter of what constitutes acceptable behaviour and what does not. This is because it helps to maintain a fair application of the law, which is essential to its continued existence.

If this plan is carried out, the likelihood of oppressive legislation being enacted will decrease because those in positions of power will be aware that this legislation will be evaluated by another branch of the government. However, there is still a possibility that oppressive legislation will be passed if this plan is carried out as planned. Because of this, the passage of stringent legislation is an outcome that is less likely to occur. If, on the other hand, this principle is not adhered to, there is a greater likelihood that power will be abused, in addition to the possibility that corruption will take place. This is as a result of the fact that either outcome is possible in the event that the principle is not adhered to. The danger of authority abuse will increase regardless of whether of these two situations occurs. It seeks to establish a distinct delineation of power and to ensure that the functioning of each organ is distinct from that of the other organs. Particularly, it seeks to ensure that the operation of each organ is unique from that of the others. By implementing this plan, it intends to achieve both of these objectives.

In India, functions are differentiated from powers, rather than vice versa as is the case in the majority of other countries. This is in sharp contrast to the great majority of other nations, in which functions follow powers.

In contrast to the U.S, India does not adhere to the principle of Separation of Power in an appropriate manner. In contrast to America, this is the condition. This is likewise the case with the Indian government. Due to the presence of a system of checks and balances, the court has jurisdiction to disprove laws approved by legislature that is declared unconstitutional because it contradicts the constitution. This jurisdiction permits the court to valid any law approved by the legislature that breaches the constitution. Even if the act was deemed constitutional at the time it was passed by the Legislature, this outcome will stand.

In the majority of current constitutional systems, it is not an easy task to enforce Separation of Powers that is commonly considered to exist between the different organs of government. As the outcome, there exist no obvious separation of power between many organs in these system. This is because the phrase separation of powers is commonly believed to refer to a division of responsibilities, which is the situation here. SOP in its most fundamental form, it does contain measures for a fair and equal distribution of duties & ascendancy across the institutions of govt. Notwithstanding the fact that the Const. does not explicitly accept the principle of Separation of Power in its most fundamental form, this is the situation.

Meaning

Several authors have each presented their own unique perspective on what the term "separation of powers" means as well as according to what it should be seen in practice. When seen in a broader perspective, the notion of varied but equal authority may be broken down into the following three components:

1. If a person is already a part of one organ, it would be inappropriate for them to participate in the function of any other organs in which they are also involved.
2. Taking precautions to ensure that the activities of one branch do not clash with other in the body is of the utmost importance. Following these measures will aid in preventing any harmful consequences.

3. It is inappropriate for single body to exercise the role of another organ, and this situation should be avoided whenever possible.
4. The concept of triaspolitica serves as the intellectual foundation for the division of powers that is characteristic of modern democracies. This concept proposes a “tripartite” system in which powers are divided among them, with each organ having its own jurisdictional mandate, and the these branches working together to fulfil their respective mandates. This system is referred to as a tripartite government.

There are three distinct levels of state government that work closely together to form the apparatus of state govt. None of the organs can perform all of their duties in a manner that is not only acceptable but also well-organized. In order for all three branches of government to function effectively the legislative, executive, and judicial bodies each have a portion of the authority to govern the country.⁸ This is done to ensure that all three govt. departments are able to govern the country effectively. Now that we've covered the basics, let's delve deeper into the specifics of how each organ in the body performs its function in an attempt to acquire a better knowledge of how the body functions as a whole.

Legislative

The primary responsibility of the government body known as the Legislative Branch is to ensure that all proposed legislation becomes law. The passage and implementation of a law not only clarifies the motive of the state to the people, but also paves way for the state to exercise the autonomy that is rightfully its own. It is the basis upon which the duties of both the executive & judicial branches of govt. are based, so it can be considered the basis for both. Because of this, it serves as the foundation for both. It is placed first among the three organs because it is impossible for it to carry out its duties of implementing and administering the law before the actual legislation has been drafted. As a result, it occupies the top spot on the list. The role of the judiciary is advisory; therefore, it is permitted to make hint to the legislature with regards to the formulation of berand-new law and modification of current law; however, the judiciary dearth the authority to actually draft the laws. This is because judiciary lacks the authority to actually draft laws.⁹

⁸Cooper, S. W. (1994), ConsideringPowerin Separation of Powers, Stanford Law Review, 46(2), 361–400

⁹Rao, P. P. (2005). Separation Of Powers In Democracy: The Indian Experience. Peace Research, 37(1), 113–122

Executive

The organs are responsible for executing, carrying out, or enforcing the needs of the state as brought up by the “Constituent Assembly” and the legislature. It is also their responsibility to execute, implement, or enforce this will. The organs receive the contents of the will. The Executive body of the U.S. Government is responsible for the administration of the nation's govt. This govt. agency is in charge for carrying out these responsibilities. It is sometimes referred to as the govt.'s mainspring due to the fact that if the executive branch fails, the govt. as a whole will fail as a result of becoming unbalanced. This is one reason why it is sometimes opined to as the govt.'s lifeblood. Consequently, it is frequently referred to as the government primary revenue source. When understood in its narrower context, executive refers not only to the minister in charge, but also to that minister's advisers, the head of the department, and any ministers who report to that individual.

Judiciary

It is a term used to describe public employees who are tasked with applying legislation enacted by the legislature to distinct situations while keeping in mind the concept of natural justice. Sometimes, the term administrative law judge is used. In certain situations, one may also encounter the term administrative law judge. It is also possible to encounter the term administrative law judge in certain contexts.

Significance

It is essential to be aware of this possibility, since it is a well-established truth that whenever lots of power is placed in a single administrative dominion, there is an increased likelihood of poor administration, corruption, and abuse of power. In light of this fact, it is crucial to be aware of the existence of this possibility. It is therefore of the utmost importance to be aware of the possibility that this may occur. This philosophical perspective contributes to the strengthening of the defense against the abuse of authority by bolstering the defense. This concept of the law protects individuals from being coerced into complying with arbitrary regulations. Even though the govt. is responsible for the violation, it is also the govt.'s duties to safeguard the individual liberty of the govt.'s constituents.

In a nutshell, the significance can be summarized by considering the numerous aspects discussed in

the following paragraphs:

1. It not only brings an end to oppression, but also ensures that individuals can maintain their autonomy.
2. It not only protects the individual's right to liberty, but also paves the way for the government as a whole to operate in a functional and efficient manner.
3. The ability of the legal system to make its own decisions should be emphasized as a crucial condition.
4. To prevent the legislature from enacting completely arbitrary legislation, the legislature must be prevented from establishing the regulation in the first place.

1.2 Historical Background/Origin

It was first sanctioned by Greece and shortly thereafter adopted by the Roman Republic. In subsequent years, it became known as the Constitution of the Roman Republic and was widely applied across the Roman Republic. Greece was the first nation to approve the proposal. Due to the fact that Aristotle and Plato included this notion in their catalogue of marvels, it is possible to trace its beginnings back to these two philosophers. It is often thought that "Charles de Montesquieu" originated the terms "separation of powers" and "trias-politica," yet both Aristotle and Plato counted this concept as one of their many marvels. Throughout the 16th and 17th centuries, important politicians from the U.K., several philosopher stated their opinions on this subject. Locke was one of these politicians with the highest notoriety. Justice Bodin was the second. Locke was one of these politicians with the highest degree of popularity. Locke was a prominent politician who was well-known around the world. Montesquieu is acknowledged as the first person to describe this notion in a scientifically accurate and systematic manner. In 1785, he published the work named "Esprit des Lois" in which he made these assertions. In the novel, he is infamous for this behaviour. These assertions may be found in the work entitled "The Spirit of Laws," where he mentioned them.¹⁰

It is generally accepted that French philosopher and scientist Montesquieu was the first to propose the concept of the principle of Separation of Power. The theory of Montesquieu was originally published in 1648. This notion was initially established in his 1747 work titled "Esprit des Louis,"

¹⁰Korn, J. (1997), The Power of Separation, The Good Society, 7(2), 69–74

which was made available to the general public for the first first time. The intended result of passing these laws. Montesquieu observed that the possibility for a dictatorial govt. arises wherever power is focused only in the hands of one man or a small group of individuals. When he made this comment, he was referring to the prospect of a totalitarian regime arising anytime power is concentrated in a single individual. He argued that the three organs of state government “the executive, the Legislature, and the Judiciary” should have unique power allocations in order to sidestep the situation we are presently facing and limit the amount of arbitrariness inside the govt. This action was taken to sidestep the difficulty we are presently facing and lessen the government's arbitrariness. This was done in order to circumvent the problem we are currently facing and to reduce the government's arbitrariness. This was done to bypass the issue we are presently facing and lessen the arbitrariness inside the government. These objectives were achieved by the execution of this action.

The following phase in Montesquieu's argument consists of his elaborating on the matter using his own words. There is no possibility of liberty if these three powers are not kept separate. Due to this, the judge would be in responsible of making the laws, freedom of the theme at risk to “arbitrary control” in locations where judicial and legislative authority were combined. In other words, the life and freedom of the individual would be susceptible to arbitrary control. In locations where its authority was combined with that of the president, the judicial branch was able to engage in harsh and repressive behaviour. If the same person or entity from the aristocracy or the people possessed all three of these powers—the authority to pass laws, the capacity to implement public choices, and the competence to assess the circumstances of individual citizens—everything would come to a standstill. In their research, Wade and Phillips provide three distinct interpretations of the concept of SOP, which might be stated as follows:

- The division of powers should be preserved; it is informal for one branch of govt. to carry out the duties of another body of govt., such as delegating legislative authority to ministers.
- That one arm of the government should not exert influence on another arm of the government or interfere with the operations of another arm of the government; that the separation of powers should be preserved; and that Separation of Power should be observed.
- It is advised that no individual simultaneously hold posts in more than one of the three houses that make up the government. This would be the situation if a single individual simultaneously held the position of Minister in both the House of Representatives and the Senate.

- “Separation of powers” encompasses 3 fundamentally distinct classifications of distinct aspects of ministerial authority: “executive, legislative, and judiciary”.

This section provides a simplified representation of these several strategies:

- It is exceedingly unethical for a single individual to work for the govt. in several positions, whether at the municipal, state, or federal level. It should be extremely difficult for govt. officials to enter the “House of Commons” and take their seats within the chamber in order to initiate proceedings.
- It is inappropriate for one governmental institution to interfere with the affairs of another.
- It is improper for one branch of the same govt. to transfer its obligations to another branch of the same govt.

A System Made Up of Several Kinds of Checks and Balances

A mechanism known as system of checks and balances is responsible for ensuring that various governmental entities remain accountable to one another. This method guarantees that the powers that are held by each component of the govt. are dispersed in an equitable manner. The term system of “checks and balances” refers to the way in which authority is parcelled out throughout the many branches of a govt., such as the legislative, executive, & judiciary in order to avoid one body from becoming too powerful. The framework of the Indian govt. the “legislative, executive, and judicial branches” all hold an equal amount of authority, but at the same time ensuring that there is a “system of checks and balances” amongst each other. The U.S was the first nation in the world to adopt a system of govt. in which functions were separated and delegated to distinct branches of govt.¹¹

1.3 Doctrine of checks and balances

The Constitution of U.S.A was the first legal instrument in the world to got a structure that included a “system of checks and balances”. The founding fathers of the United States of America, who were responsible for establishing the U.S Constitution. were heavily influenced by the ideas of William Blackstone and Montesquieu. They made the observation that in the English system of administration, the parliament held the position of supremacy, which indicates that a court of law is unable to change

¹¹ Powell, T. R. (1913), Separation of Powers: Administrative Exercise of Legislative and Judicial Power, Political Science Quarterly

any legislation that has been passed by the 'British Parliament'. This was because the parliament held the position of supremacy in the English system of administration. Those who were responsible for developing the Const. of the 'United States' were aware that in order to keep a vibrant democracy alive, it was vital to have a "system of checks and balances" in place. It was known by the individuals who were responsible for writing the Const. Later, India's independence from British control, the original architects of the Indian const. also designed a system of governance for the newly independent nation. This structure contained suitable "checks and balances" between the different bodies of authority.

Following the system of checks of balances, each arm of the govt. should be provided with its own set of procedures that are capable of limiting and balancing the powers that are granted to it by the other branches. In a govt. structured like a parliamentary democracy, the usual components that comprise the govt. are the legislative branch, the executive branch, and the judicial branch.

When there exist system of checks and balances government cannot take actions that have never been taken before and cannot become totalitarian. This protects against both of these potential outcomes. It is essential to have an understanding of the following topics in order to have a complete comprehension of "checks and balances".¹²

This word refers to the practice of dividing up responsibilities and authorities among the many agencies that make up the government in a horizontal fashion. It paves the way for the various govt. agencies to work together on the same level. Because of the way this organization is set up, it is impossible for one authority to have an inordinate amount of power over other bodies of authority. Because of this arrangement, the different branches of the govt. can "check and balances" each other different way.

The Implementation of Several Kinds of Checks and Balances throughout all of the State's Organs

To prevent single organ in the govt. from having extra influence over another, the const. of India includes a "system of checks and balances".

¹²Kurland, P. B. (1986), The Rise and Fall of the "Doctrine" of Separation of Powers, Michigan Law Review, 85(3), 592–613

On Executive

Under the context of its parliamentary democracy, Indian govt. makes use of a wide range of tools and processes, including motions of no confidence, question hour, and censor motions, amongst others, during the course of parliamentary proceedings. It is through the utilization of these tools and processes that it is guaranteed that the administration will be held responsible to the parliament. Judicial review is a feature that is instruct by the const. and in accordance, every piece of legislation that is enacted, changed, or repealed by the legislative branch is open to scrutiny by a judge or another legal authority. Judicial review is a feature that is mandated by the constitution. It is required that the essential concepts of India's constitution be adhered to by any new laws that are enacted as well as any changes that are made to pre-existing laws.

About the Legislative Branch

The Constitution helps to prevent lawmakers from interfering with executive tasks because it contains provisions that have this effect and because it contains these provisions. This is done to eliminate any possibility of a conflict of interest between the two most important branches of the governmental system. If the judiciary comes to the conclusion that a particular piece of legislation violates the fundamental principles outlined in the constitution or is otherwise incompatible with those principles, then they have the authority to apply its own theory of judicial review to that particular piece of legislation.

Regarding the Judicial System

The process of impeachment can be used to remove a sitting judge from the Supreme Court or High Court if has been proven that the judge did not comply with his obligations or engaged in any kind of misconduct. This is because the constitution allows for judges to be removed from office in this manner. The approval of the govt. is required for the appointment of judges and other judicial officials, even if that appointment has already been approved by the collegium.

Issues that might arise within the framework of the checks and balances system

Within framework of system of checks and balances, it is feasible for the following challenges to manifest themselves:

- a) Absurd extent to which the Judicial System reaches

It is not impossible for the judicial branch to participate in extrajudicial action by involving with the

function of “the legislative and executive organs of government. In a court of law, only the judiciary has the right to clarify laws that are enacted by the legislature. Because of this, it is conceivable for the judiciary to overstep the boundaries of its jurisdiction.

b) The several committees that make up the House of Commons

The constitution requires the establishment of legislative committees, the primary purpose of which is to relieve the executive branch of some of the obligations that it holds. Yet, the suggestions that these panels come up with are not necessarily going to be followed. It is not necessary for either the legislative or the executive branch to comply with the recommendations that are made by these committees because there is no duty to do so.

c) The activities and discussions that take place within Parliament.

Actions such as the motion of no confidence and the question hours have the potential to have a detrimental influence on the functioning of the Parliament if they are used on a frequent basis.

As a consequence of this, a system of checks and balances guarantees various organs of govt. will continue to perform their roles and execute the responsibilities that are delegated to them. It is a distribution of the authority of administration in a horizontal fashion, and it provides for checks and balances to be exercised by the different organs of the govt. on each other at all levels of the system. The legislative branch, the executive branch, & the judicial branch are the branches of govt. that are normally present in a parliamentary system of govt. The Const. of India outlines the procedures that should be followed for the operation of parliament, and the parliamentary system in India adheres to those procedures. The Const. equips this branches of the federal govt. with the resources necessary to check and balance one another's power by the many responsibilities that fall under their purview.¹³

1.4 Montesquieu’s theory of separation of power

According to the words of Lord Acton, "Power tends to corrupt, and absolute authority has a tendency to corrupt completely." The people who hold power in a democratic government need to be held accountable to one another for maintaining the consistency of the system and secure that it continues to function properly and successfully. This was the central concept that served as the basis for everything else that Baron de Montesquieu suggested in “Esprit de Lois”. The “Separation of Powers”

¹³Miller, A. S., “Separation Of Powers”: An Ancient Doctrine Under Modern Challenge, Administrative Law Review, 28(3), 299–325.

doctrine was enhanced with the intention of making sure that the “legislative, judicial, and executive” body of govt. each carry out their responsibilities in a manner that is separate from the other two branches. This theory makes clear reference to the three different branches of the government. Montesquieu's Separation of Power Doctrine, as it was stated and envisioned by Montesquieu, has not been observed in India in its literal meaning since it represents a situation that does not exist. This is due to the fact that India does not have a monarchy. This is because India is not a society that can be described as being idealized. In the context of India, the three organs of government are unable to be segregated into hermetically sealed rooms; hence, the concept of Separation of Power is implemented in a manner that is both adaptive and flexible.¹⁴

Separation of Power, as Montesquieu envisioned it, is made of a few important components, including the following: (a) An individual should not serve in more than one of the three organs of the government at the same time. (b) There should be no interference between the several departments of government on the part of any of the government's branches.¹⁵ (c) It is inappropriate for one branch of the govt. to carry out the responsibilities that are the obligation of another part of the govt. It is clear that Montesquieu's third principle is violated in India due to the fact that there is a practical overlap, which goes against Montesquieu's first principle. When these principles are examined on their face, it is evident that Montesquieu's third principle is violated in India. It is possible to say that the executive branch has some influence on the shape of the judiciary as it maintains the power to appoint individuals to the positions of Chief Justice & other judges. Because of this power, it is possible to say that the executive branch has some influence on the structure of the judiciary. Due to this authority, the executive body has the capacity to render void certain law that have been enacted by the “legislative branch” in the event that the “judicial branch” determines that the laws in issue contradict the const.

Even in the U.S.A, the nation in which the doctrine of the Separation of Power is being advocated for with the most zeal, it has not been accepted in its purest, most unadulterated form. Even America, the nation in which the SOP is being advocated for with the most zeal (Bakshi 1956, 553). It is consequently inevitable that some of these tasks will have to be combined with those of others. One of the viewpoints that Durga Das Basu holds "in modern practice, the theory of separation of powers

¹⁴ Krause, S. (2000), *The Spirit of Separate Powers in Montesquieu*, *The Review of Politics*, 62(2), 231–265

¹⁵ Claus, L. (2005), *Montesquieu's Mistakes and the True Meaning of Separation*, *Oxford Journal of Legal Studies*, 25(3), 419–451

means an organic separation and the distinction must be drawn between 'essential' and 'incidental' powers and that one organ of government cannot usurp or encroach upon the essential functions belonging to another organ, but may exercise some incidental function thereof." this is one of the beliefs that he holds. This position might be understood in light of Montesquieu's second principle, which was provided in his theory. In addition to this, it reveals that the explanation of his theory has not been observed, and that the theory's practical application departs in some way from the fundamental idea that underlies it. The fact that this is the case gives credibility to the conclusion that a rigorous, straightjacket division of powers in line with the purist interpretation of Separation of power is not desirable in a democratic govt.

It is not only impossible but also impractical to completely separate the duties of the of the government because the very nature of their tasks requires some degree of interdependency between them. This makes it not only impossible but also impractical to completely separate the duties of these organs of the government. A situation in which they are totally isolated from one another in terms of their responsibilities or capabilities would lead to a government that is less effective. Using the case of the judiciary as an example, the legislative tasks of the judiciary include, among other things, the drafting of rules for its own practice and procedure as well as the filling of gaps in the law when the law stays quiet on a subject that the courts are presented with.

This ability is part of the executive authority held by the judiciary. Even if there exist some functions that are designed to overlap with those of other organs, there is still an inherent and organic distinction between the abilities that are associated with the various organs. This is apparent from the case *Bankey Singh versus Jhingan Singh*¹⁶, in which the court stated "the State Legislature is not competent to reverse the decisions and orders of the court because the power to nullify the decrees and orders of the court is purely a judicial prerogative."

So far, India is concerned, Separation of Power doctrine has neither given formal status in the const. nor in any legislation. This is despite the fact that the doctrine has been around for centuries. In spite of this, it has been acknowledged by the legal system, and decisions made by the court with allusion to the Basic Structural doctrine have given it force. It's possible to make the case that the Separation of Power has been applied as a guiding principle in India's government.¹⁷

¹⁶ A.I.R [1952]

¹⁷Bakshi, P. M. (1956), Comparative Law: Separation of Powers in India, American Bar Association Journal, 42(6), 553–595”

CHAPTER 2 – SEPARATION OF POWER IN INDIA

2.1 Constitutional conspectus

The Constitution was founded on a framework that embraces the principle of separation of powers as a fundamental component.

Considering the following Constitutional provisions that mention the principle of Separation of Powers:

Article 50

According to the conclusions of this study, the state should endeavour to maintain its executive branch and judicial branch separate with regard to the conveyance of public services. The separation of authority between the executive & judicial branches.

Article 123

The President of the U.S. is the leader of the executive branch of the govt., which enables him to exercise legislative powers and enact ordinances in specific circumstances. The Constitution confers this jurisdiction to him.

Articles 121 and 211 must be explicit.

In this, it is stated that legislators are not permitted to dispute the behaviour of a judge sitting on the Supreme Court or High Court. This restriction is applicable to both courts. They can only do so if the president is removed from office as a result of impeachment.

Article 361

As a result of their positions, the “President and Governors’ are excluded from lawful challenges.

Judicial pronouncement on separation of powers

KesavanandaBharati and other plaintiffs initiated a lawsuit against the State of Kerala. The nation's top court has determined that the Constitution's fundamental elements limit Parliament's amending

ability. Due to this, any alteration that contradicts the core characteristics would be deemed invalid.¹⁸ This legal case is referred to as *I.R. Coelho v. State of Tamil Nadu*¹⁹. The SC concluded that basic structure as presented in the earlier-discussed case, constitutes a violation of this doctrine because it affords unrestricted protection to specific pieces of legislation by preventing them from being subject to judicial review. In light of the scenario mentioned before, they reasoned in this fashion and reached this conclusion.

*Ram Jawaya Kapoor versus State of Punjab*²⁰: The court determined that the Indian Constitution does not recognize the idea of Separation of Power in its strictest form, and based its ruling on this conclusion. It is feasible to argue that our Const. does not foresee the takeover by one organ or portion of the state of tasks that basically attach to another since the court determined that the purpose of the various parts or branches of govt. are adequately divided. Yet, the court reached this verdict after concluding that the tasks of the several components or dept. of govt. are sufficiently distinct.

*P Kannadasan versus State of Tamil Nadu*²¹: According to the judge ruling, "the Const. grants the Constitutional Courts the authority to reject laws passed by Parliament and state legislatures that violate Constitutional boundaries." This was noted in the court's ruling.

This legal case involves *Golak Nath v. State of Punjab*²² It was established that the three branches of govt. must performed their obligations while keeping in mind the constitutional restrictions set on each of them in order to remain within their separate spheres of authority and perform the responsibilities allocated to them.

*Kartar Singh v. State of Punjab*²³: The Court held, "It is the job of the legislature to pass the legislation, the role of the executive to execute the law, and the obligation of the judiciary to interpret the law within the Constitution's constraints". It is possible to reach the conclusion that power should

¹⁸Garg, B. L. (1964), Problem of the Separation of Judiciary in India, The Indian Journal of Political Science, 25(3/4), 331–338

¹⁹ (2007) 2SCC AIR 2007 SC 861

²⁰ AIR 1955 SC 549

²¹ 1966 SCC 5 670

²² 1967 AIR 1963 SCR (2) 762

²³ 1961 AIR 1787

be kept separate in order to prevent its concentration in the hands single entity. In addition, power should be maintained distinct from other things in order to prevent its abuse. Nevertheless, it is difficult to secure the complete independence of all governing agencies; hence, there is a link between the three separate parts of government.

2.2 Legislature and judiciary

Because of the principle of Separation of Powers, the branches of government that make up a democratic government the executive, the legislative, and the judiciary are required to carry out distinct functions and behave independently of one another. The executive branch is entrusted with the responsibility of formulating and enforcing policies. The ability to make laws belongs to legislative arm of government. The judicial body is in charge of mediating disputes and finding solutions. Despite the fact that it is not spelled out explicitly anywhere in the document, the notion is an essential part of the Indian Constitution. Hence, no legislation that departs from the concept may be passed, and no modifications to the Const. can be enacted to reflect such a departure. There are checks and balances in place amongst a number of agencies, but those agencies are not allowed to interfere with the work of one another. As a result of this, judicial scrutiny is exercised over the operations of both the executive branch and the legislative branch, while the legislative assesses the performance of the executive branch. In extremely rare instances, judicial decisions have served as a source of policy and legal instructions. In the Vishakha case, the Supreme Court issued the guidelines; the court order directing the Centre to distribute food grains; and the appointment of the Special Investigation Team. In the same case that Justice Bhagwati started public interest litigation in India in 1983, Judge Pathak issued a warning against the "temptation of trespassing into areas legitimately belonging to the Legislative or Executive Government".²⁴

This warning was issued in the context of the same case. Judge Katju made the following statement: "Courts cannot create rights where none exist, nor can they continue to issue orders that are unenforceable or contrary to other laws or established legal principles." In order to prevent Judicial Activism from becoming judicial adventurism, the courts need to exercise vigilance and prevent. It is to be noted that the courts are powerless to manage the country. The role of the court should be limited

²⁴ Fairlie, J. A. (1923), "The Separation of Powers. Michigan Law Review,21(4), 393–436

to that of an alarm clock, waking up the executive branch and prompting it to carry out its responsibilities. In this article, we take a look at several recent cases of the legislature overriding judicial judgments by introducing retroactive legislation. M.J. Antony's piece for Business Standard outlines a selection of these situations. The Customs Amendment and Validation Bill, 2011 was approved by Parliament in 2011. This bill makes it possible to retroactively authorize all tariffs assessed and measures taken by various customs officials who were not previously empowered to carry out the aforementioned operations as per the Customs Act. In *Commissioner of Customs v. Sayed Ali*²⁵, which was heard by the Supreme Court in 2011, some of the imposed levies were contested. The Supreme Court overturned the imposition of taxes when such levies were imposed by workers who were not authorized to do so.

By passing & enacting the Customs Bill of 2011, the legislature sidestepped the decision of the Supreme Court. They did this by changing the Act to let some officers to continue applying retroactive duties, even though the court had ruled that such charges were unconstitutional. Another instance in which a ruling from the Supreme Court was overruled by legislation passed by the legislature was the 2009 Essential Commodities (Amendment) Ordinance, which was ultimately made into a law. The Supreme Court came to the conclusion that the price at which the Centre buys sugar from the mill must include both the statutory minimum price and an additional amount of profits that are distributed to the farmers. The Amendment gave the Centre the authority to pay a fair & remunerative price rather than the SMP. In addition to this, there was no requirement to pay the additional sum. Beginning in 1974, the adjustment was included into each and every transaction involving the Center that involved the acquisition of sugar.

The judgment of the Court was virtually rendered null and void by the modification. The administration made an effort to avoid the decree of the Supreme Court by passing the Enemy Property (Amendment and Validity) Act in 2010. The court issued a writ directing the Custodian of Enemy Property to hand over certain items to the owner's heirs who were entitled to them. After then, Executive Committee passed an ordinance that gave the Custodian back all of the properties that the court had given to the heirs who were legally entitled to them. When the Ordinance had been in effect for its allotted time, a Bill was introduced to the Parliament. The House Standing Committee on the

²⁵ 2011 (265) 17 SC

Interior is in the process of analyzing the measure at the moment. These examples shed insight on situations in which the legislative branch has exercised its authority to overturn court rulings.

The judicial branch has, on several occasions, deviated into the ambiguous legal territory that lies between the bounds of its obligations and those of the executive and the legislative branches. The constitutional aim of India does not include a provision for the principle of the Separation of Power. As a consequence of this, it may be difficult to make a clear distinction between the two groups. Nonetheless, each pillar of the state can call for a sound convention that acknowledges and respects the spheres of authority of the others.

2.3 Legislature and executive

In presidential, parliamentary, and hybrid political systems, the connection between the legislative and executive dept. has given rise to a new set of idiosyncrasies. These idiosyncrasies have emerged as upbring of the evolution of connection. Prominant administrative volume is based on a desire for improved processes and more effective and acceptable governmental relations. This is the foundation for building nations with more effective govt. management. Collaboration and competitiveness, two of their partnership's distinguishing features, have alternated as the main dynamic within their dynamic. The interaction of the executive and legislative branches influences the establishment of national policy, which impacts the nation's progress.

The connection of the legislative and executive body has been the topic of extensive research and debate in both parliamentary and presidential systems for many years. Although it is commonly accepted that conflict is a necessary and advantageous condition for restricting and exercising control over the government, many people argue that it renders the latter useless. This is true, despite the widespread belief that conflict is a necessary and helpful prelude. In recent years, the importance of this subject's relationship to comparative politics has expanded. The constitutional prerogatives provided to both dept. form the structure of interactions of the executive and legislative branches of government Some people feel that if they can maintain amicable ties with one another, it will improve the operation of the nation's political institutions, improving public faith in the govt. and the methods it utilizes. It is the most crucial factor to consider while evaluating the practical characteristics of any

political system.²⁶

Both the Presidential and Parliamentary systems have specific qualities that emerge in this interaction.

The following are some of these characteristics:

In each of these governmental structures, political parties have affected the interplay between the legislative and executive branches of government. They are crucial components of every democratic society due to their significant role in the formation and execution of public policy. In order to accomplish their legislative tasks, parliaments are tasked with assessing existing legislation and enacting laws, amendments, and regulations that are critical to the progress of national development goals. By combining their separate responsibilities, the Legislative and Executive branches will be able to successfully refocus and reimagine the policy creation and implementation process, enhancing efficiency.

2.4 Executive and Judiciary

In the 18th century, Montesquieu is acclaimed being the originator of the concept Separation of Power. From his point of view, the organs of the govt. that make up the country are the Legislative, the Executive, and the Judicial bodies. In order to be considered to have a legislature, a political entity needs to have a well-organized body that is vested with the authority to draft new legislation. The executive Department. of the federal govt. in the USA is responsible for a variety of duties, including monitoring the way in which laws are carried out and representing the country in diplomatic settings. The passage of laws and the selection of officials for official positions. The judicial branch is part of the government, and it is responsible for carrying out the functions connected with the administration of justice. He was of the opinion that finest method to safeguard the independence of the people was to design two distinct components of the govt. that had the same level of authority but were kept entirely independent of one another. According to him, all three parts of the govt. have the capacity to check the extent to which the other two branches can use their authority. Without interfering with the processes that are taking place in the other two sections. There have been steps taken in the direction of adopting this kind of administration by a number of countries all over the world. After gaining independence from its colonial rulers, India set up a government. based on democratic

²⁶ Persson, T., Roland, G., & Tabellini, G. (1997) SOP and Political Accountability, *The Quarterly Journal of Economics*, 112(4), 1163–1202

principles. This form of govt. was endorsed in a number of parts of the Indian Constitution which resulted in India adopting it as its official system of government.

Due to the fact that these branches are so close to one another, India has recently been the scene of a conflict between them over encroachment on one another. Everyone had a much better understanding of this after the provisions of the 9th schedule of the Constitution of India were examined by the courts. It was hypothesized that the Legislative Branch had been trespassed upon by the Judicial Branch while they were acting in the guise of.

When the Supreme Court provided recommendations about the bill for a 27% quota for OBCs in educational institutions, many people considered that the judiciary had encroached on the legislative branch. This was another case in which many thought the court had overstepped its bounds. This was interpreted as an instance of the judicial branch trying to influence the decisions made by the legislative branch. After that ruling, there have been very few situations in which judicial overreach on the legislative branch has been questioned. It has been sixty years since that decision.

The most important question to ask in the scenario of judicial encroachment on the executive branch is whether or not the judiciary can be considered to have encroached onto the executive branch, as well as whether or not there are any legal or constitutional defenses available in the form of writs and PIL. If the answer to either of these questions is yes, then the encroachment of the judiciary onto the executive branch has occurred.

2.5 Judicial decision on separation of powers

The argument over whether or not there should be a division of powers, and precisely what that should mean in terms of the Indian govt. has been going on since before the Const. was ever written. The constitutional structure does not establish any kind of formalistic Separation of power, with the exception of the DPSP that are outlined in Part IV of the constitution. These principles stipulate that the judicial branch is distinct from the executive branch.²⁷

²⁷Casper, G. (1995), Executive-Congressional SOP, SLR 47(3), 473–497

Following the ratification of the Constitution, it was cited in a number of decisions that were laid down by the Supreme Court. The limits of the doctrine's applicability have been outlined in a series of court rulings that have been issued at various points in time.

With reference to the Delhi Laws Act case.

In the case of the *Re Delhi Laws Act*²⁸, the Supreme Court of India frame a groundbreaking observation when it stated, for the first time ever, that a single organ should not perform the tasks that are essentially accord to others is adhered to in India. This was the first time that the Supreme Court had ever made this observation. The SC decided by a vote of 5 to 2 that although while the principle of Separation of Power is not explicitly written into our Const. it may be inferred from certain clauses within the document itself in certain extraordinary situations. Chirf Justice Kania made the following observation:

"Although there is no express separation of powers in the Constitution of India, it is clear that the constitution creates a legislature and detailed provisions are made for making that legislature pass laws. This is despite the fact that there is no express separation of powers in the Constitution of India. Does it not indicate that other organizations, whether executive or judicial, are not intended to execute legislative tasks unless it can be deduced that they are intended to do so from other articles of the constitution?"

This judgment, in essence, suggested that all those organs of state govt. namely the Legislative, the Judiciary, and the Executive are enclose by and subject to the provisions of the Constitution, which delineates the distinct powers, liability, obligation, duties, and connection with one another. The Constitution can be broken down into three parts: the Preamble, Article I and II, and Article III & IV. In addition, it is safe to believe that none of the state's institutions, including the judicial system, will move in directions that is against with the authorities granted to them by the Constitution.

Kesavananda Bharti v. State of Kerela²⁹

In actual reality, disagreements continued to surface, from time to time, about the question of whether or not single organ of the state had gone beyond the bounds that the Const. had set for it. In the seminal

²⁸ 1951 AIR 332

²⁹ 1973 4 SCC 255 AIR 1973

case known as the Kesavananda Bharti Case from 1973, the question of what constitutes an excessive quantity served as the foundation for legal action. In this particular case, the U.S Supreme Court was asked to rule on a dispute concerning the scope of the legislative branch's authority to alter the Const. with the provisions underlined in the Const. itself.

It was asserted that Parliament was supreme thus, it reflected the needs of the public as the ultimate sovereign. Hence, court did not have the authority or the right to challenge whether or not a specific legislation was constitutional if it was changed by the rep. of the people in Parliament with the intention of restricting a freedom of the people. Nevertheless, the Court did not accept this reasoning, thus ruled in favour of the appellant on the grounds that principle of the Separation of Power constituted a component of what the Constitution refers to as the fundamental structure.

As a result, the principle known as separation of powers is recognized as an essential component of the fundamental characteristics of our Const. It is also understood that the provisions of the Constitution bind all the three branches of state govt., namely the Legislative, the Judicial, and the Executive, and that these branches are subject to the provisions of the Constitution. The Constitution defines the powers, jurisdictions, responsibilities, and relationship that each branch has with the others.

It is taken for granted that not a single instrument of state, including the judicial system, will act in a way that goes beyond the limitations placed on it by the Constitution. It is also anticipated, for the intention of advancing the general welfare of the nation as a whole, that all of the institutions, despite the fact that their spheres of authority are distinct from one another and clearly delineated, will collaborate with one another in an effort to achieve the greatest amount of public benefit possible.

As a result of this decision, there was no longer any need for ambiguity because the concept was expressly acknowledged as a part of the Indian Constitution, which means that it cannot be altered even by an Act of Parliament. As a result, the fundamental tenet of Separation of Power, as it is often known, has been included in the Indian legal system.

Nonetheless, it wasn't until after the seminal decision of *Indira Nehru Gandhi versus Raj Narain*³⁰

³⁰ AIR 1975 SCR 333

that the function of this concept in context of Indian law became more apparent. The judge Chandrachud made the following observation:

Separation of Power is only used in a general way throughout the Indian Constitution. A strict division of governmental authority, such as that required by the Const. of the U.S.A or the Const. of Australia, is not applicable in India. In the case of *Ram Jawaya Kapur v. State of Punjab*³¹, the Supreme Court held that even if the Separation of Power is not explicitly mentioned in the Constitution it still has the potential to be offended when the performance of 1 branch of government are execute by another. This is another case in which the doctrine of Separation of Power was expressly recognized to be a part of the Constitution and was further recognized to be an integral part of the Constitution.

This indicates that Constitution of India. had not in fact admit the doctrine of Separation of Power in its absolute rigidity. However, the functions of several parts of the Govt. have been absolutely differentiated, and hence, it is possible to say that our const. does not screw the assumption, by one organ or part of the state, of functions that are owned by another.

In the case of *I.C. GolakNath v. State of Punjab*³², the Supreme Court relied on the “doctrine” of “basic structure” that was presented in the Kesvananda Bharati case. The Court stated that the Ninth Schedule violates this doctrine, and as a result, this Schedule was made subject to judicial review, which is also a component of the basic structure. It was discovered that:

Several constitutional bodies, namely the Union, States, & the Union Territory, are brought into existence as a result of the Const. It establishes three primary pillars of authority, namely the Legislative, the Executive, and the Judicial branches of govt. It outlines their jurisdiction quite specifically, and it is expected of them that they will utilize their separate powers without beyond the boundaries of their domain. They ought to operate within the realms that have been assigned to them. The traditional political theory of the Separation of Power gave rise to the idea of constitutional checks as an offshoot of that philosophy. The objective of this, as well as the later establishment of checks and balances was to ensure that governmental authority would not be abused in any way. This was accomplished by a combination of the two. In order to prevent one branch from becoming

³¹ 1975VAIR 865, 1975 SCR

³² AIR 1963, 1967 SCR

supreme, to shield the opulent minority from the greater part, and to uplift cooperation between the branches, govt. systems that use Separation of Power require a mechanism that can balance each of the branches. This was often done by the use of a “system of checks and balances,” the genesis of which is particularly ascribed to Montesquieu, likewise the Separation of power concept itself.

One department. is granted particular powers so that it can absolutely stop the other departments from exceeding the constitutional authority that they have been assigned. This is how the system of checks and balances works. It is within its power to protest to or fight any attempt to infringe upon its authority, and it is also within its power to question, if required, any conduct or acts that improperly interfere with its field of jurisdiction. The Indian Constitution protects against the possibility of one branch of government abusing its authority by establishing a system of checks and balances”between the government bodies. The executive branch, which includes the President of the India acting on the recommendation of the Prime Minister & the Chief Justice of the Supreme Court, is liable for appointing the members of the Supreme Court & High Court in each state. Therefore, the only way for them to be removed from office is if Parliament decides to impeach them. The judiciary is able to carry out its duties without being inhibited by fear of the executive branch thanks to this legislation. In a similar manner, the executive body of the centre is answerable to Parliament for how it conducts its day-to-day business. While the President is the one who chooses who will be the leader of the majority party or who he believes will command a majority in the Lok Sabha (also known as the House of the People or the Lower House), a government has an obligation to step down from power if the House votes to pass a motion expressing lack of confidence in the government.

By the same token, the judiciary uses the mechanism of judicial review to ensure that the laws passed by parliament and the acts performed by the “executive branch” are to scrutiny to determine whether or not they are in accordance with the const.

According to the provisions of Article 144 of the Constitution every authorities, both civil and judicial are required to provide assistance to the Supreme Court. According to the provisions of Article 141, the legislation that is proclaimed to be in force by the Supreme Court is obligatory on all lower courts within the territory of India. The authority to punish for contempt is specifically given to the Supreme Court of India under Articles 129 & 142(2), and Art. 215 gives the same power to the High Court of

the nation. This has been proved throughout history to be the most effective tool that the superior courts have at their disposal to coerce adherence to their will. It is only the prospect of being sentenced to incarceration that motivates clients and attorneys to behave themselves in front of the courts with discipline and respect, as well as to diligently conduct their instructions and judgments . It is therefore abundantly clear that the framers of the Const. of India did not permit the Indian Supreme Court to follow in the footsteps of the Supreme Court of the U.S, where an aggressive President has the ability to turn around and say, "the judge has made his decision; let him now enforce it."

Judicial review is a potent tool that may be used to prevent unconstitutional use of power by the two legislative and executive organs of government. But, the self made directions of judicial restraint is the only thing that can serve as a check on the authority of the judiciary. Because neither the powers nor any govt. can be kept in airtight cell, it is impossible for this philosophy to be freely applied to any modern government. Nor is it possible for any government to operate on the principle of rigorous Separation of powers.

In the case of *Suman Gupta v. State of J&K*³³ the state government of each respective state had a policy where it reserved seats in medical colleges for students who resided in that state on a reciprocal basis. This policy of the state was challenged on the grounds that it discriminated the students on the basis of where they were born, and it was found to be unconstitutional.

The Supreme Court ruled that the policy was unlawful as it discriminated against certain groups of people. However, by the time the policy was overturned, the students who would have benefited from it had already finished their prerequisite coursework. Since it would be against the principles of fairness to deny them admission at this point, the Supreme Court decided to follow the rule of prospective overruling. As a result, the govt. will no longer be able to use the policy in question beginning with the following school year.

Hence, the Supreme Court was able to preserve the delicate equilibrium that exists between the judicial branch and the other branches of the govt. by using the principle of prospective overruling in the aforementioned instances. It is also possible to keep it that way by requiring the judges to exercise

³³ 1983 4 SCC 339

The Supreme Court issued a stern reprimand to the High Court for its excessive activity in the case of *Diisional. Manager, Aravali Golf Club v. Chander Hass & Anr.*³⁴. The Supreme Court reached the conclusion that the first appellate court and the single judge did not have the authority to direct the said judge to create the post of tractor driver and to regularize the respondent's services since there was no sectioned post of tractor driver against which the respondent could be regularized as tractor drivers. The direction to do so was completely beyond their jurisdiction. The court has no authority to mandate the establishment of posts. The court cannot arrogate to itself this exclusively executive or legislative role and directly create posts in any org. since the establishment of posts and the sanctioning of posts is a prerogative of the executive or legislative authority. It further say that the formation of a position is a duty that is either performed by the executive or the legislative branches, and that it entails economic considerations. As a result, the courts are not permitted to assume the ability to create new posts for themselves.

In a case with the same name, *Madhu Holmagi v. Union of India*³⁵, one attorney challenged what is known as Agreement 123 by bringing a case in the name of the public good. The petitioner argued that the court must have the authority to investigate all docs. associating to Agreement 123 and should have the authority to prevent the Indian govt. from entering into “nuclear deal”. The petitioner was referring to the Indo-US nuclear treaty that was to be registered by the Indian government. In this particular instance, the court deny the petition and also direct the petitioner to pay a fee of Rs. 5000, claiming that the action constitutes an abuse of the judicial process. Since the issue brought up by the petitioner is one of a policy decision, which is something that should be handled by the parliament and not the judiciary, and because the petitioner has brought it up.³⁶

2.6 Contemporary Application

Examining of the Indian Const., it is evident that the Doctrine of Separation of Powers has been acknowledged in India; however, unlike the United States, India has followed the idea in a more

³⁴ (2008) 1 SCC 683

³⁵ 2006) 5 SCC 28

³⁶ (

rigorous rather than a more severe interpretation. This is due to India's bigger population than that of the United States. In Hindu culture, the activities of the three organs that make up the human body are cleanly divided into their own unique divisions. In India, there is duplication not just in terms of the activities that are performed, but also in terms of the individuals who perform those functions.

The superb system of checks and balances established by the Constitution and in place over each pillar of our democracy prevents unconstitutional and arbitrary uses of power. Each of the cornerstones of our democracy is protected by these checks and balances.

The premise of the Const. of India is that the state's legal sovereign authority has been divided among the following three institutions of the state's govt.:

The Legislative: This branch of government is obligated for drafting the laws and regulations that the general public and other branches of govt. must abide by. Due to that operating, implementation, & applying parts of the law cannot be carried out until the law itself has been prepared and approved, the Legislature is placed first among the three institutions. These rules and regulations are intended to express the will of the state. Therefore, the legislative's role is the foundation upon which the executive and judicial branches operate, illustrating the interdependence of the three branches.

Parliament, comprised of the Raj Sabha and the Lok Sabha is responsible for enacting national legislation. State Legislative bodies are responsible for enacting state-level legislation, with each body implementing state-specific laws.

Executive: The core responsibility of the executive branch is to put the state's will into action, which includes executing and enforcing it. This responsibility falls under the wider category of executive authority. The executive institution of government acts as the administrative hub and major engine of the state. It is also referred to as the government's lifeblood because, in the event of a breakdown in the executive branch, it might lead to the collapse of the government. Hence, it is frequently referred to as the government's lifeblood.

The President of India is the leader of the executive at the union, while the Governor of each state holds this post. In addition, the Indian executive comprises the minister in charge of the dept., his

advisors, the department head, and his ministers.

The Judiciary - The Judiciary is held liable for upholding the laws issued by the Legislative body in accordance with Natural Justice, Liberty, and Fairness. This division is responsible for the administration of passed laws. In addition, it is the assignment of the this dept. to guarantee that the established order and regulations are carried out in an acceptable manner.

(a) The Supreme Court, is regarded as the Apex-court in the nation; (b) High Court, which are regarded as the highest courts in each state's respective jurisdictions; and (c) Subordinate courts, which are located at various levels within the district based on the requirements of the governance. The Supreme Court is regarded as the highest court in the US.

Elements linked with the “Separation of Powers” idea as a legal framework

Articles of the Indian Constitution that explicitly incorporate the image of Separation of Power will be discussed in the following section. Those following items comprise this list:

Articles 52 to 78: The executive branch of the federal govt. is discussed in Chapter I of Part V of the Indian Constitution. These sections can be found in various sections of the Indian Const. In these articles, “he President, the Vice-President, the Council of Ministers, the Attorney-General for India, and any other location where govt. business is conducted are required to comply to all of the key standards and regulations governing the conduct of govt. business. The Attorney-General of India is also obligated to comply with these rules and regulations.

Articles 79 to 123: Chapter II of Part V of the Constitution defines the legislative requirements that the Parliament must comply to. These provisions are contained in the Const. These rules govern who can serve as Parliament officials, how parliamentary business is conducted, who can be disqualified from Parliament membership, who can be awarded rights, privileges, and immunities, and how the legislative process is conducted. It is the responsibility of the federal government to ensure compliance with these laws.

• **Articles 124 to 147:** Chapter IV of Part V of the Constitution covers the rules that the Judiciary must follow at the federal level. These criteria are specified in articles 124 through 147. These criteria

address the establishment and organization of the Court, the nomination of judges, their qualifications and disqualifications, as well as other civil and judicial authorities and comparable entities.

- **Articles 153 to 167** of Chapter II of Part VI of the Constitution are where the state executive branch is discussed. The order in which these articles appear in the constitution is provided for your convenience below. The Governor, the Council of Ministers, and the Advocate-General for the State are all obligated to adhere by the established laws as well as the laws that govern how the government shall carry out its duties. This comprises both the laws governing how the government should carry out its responsibilities and the laws that have been passed.

- **Articles 168 to 213:** Chapter III of Part VI of the Constitution is devoted to the State Legislature. The relevant things can be located in the state legislature. These articles address the establishment of the State Legislature, the appointment, qualifications, disqualification, powers, privileges, and immunities conferred to the officers of the State Legislative, as well as the legislative procedures that must be followed. In addition, these articles include requirements pertaining to legislative proceedings.

- **Articles 214 to 237:** Chapters V & VI of Part VI of the Const. include proviso governing the state judicial system. These statutes can be found in Articles 214 through 237. In these articles, themes related to the judicial system, such as the constitution of the state's High Court & Subordinate Courts, the appointment of judges, their powers, and their authority, are discussed.

CHAPTER 3 – SEPARATION OF POWER IN U.K.

3.1 Historical development

Henry St. John makes the observation that all three components can be found in Parliament, the King's Council, & the Courts of Law in that order. According to Maitland, the concept of having separate branches of govt. in England can be traced all the way back to the dominion of King Edward I. He makes the observation stating all these elements can be found in the form of the Courts of Law. He is generally regarded as being the first person to propose the concept of a division of powers in England. He placed a lot of attention on the balance of powers within the constitution, emphasising the fact that it would be deemed unconstitutional if there was an imbalance in those powers. He also emphasized the fact that the constitution was written in the English language. His position is that it is difficult to protect personal liberty and public safety at the same time in a state that is required to keep a balance between the Crown, Parliament, & the people of that state. His argument is based on the fact that it is necessary to maintain a balance between these three entities.

It's possible that Motesquieu got the idea of his Separation of Power from the British Constitution but it was never embraced in England in it's strictly literal sense at any stage in English history. In other words, it's possible that Motesquieu got the idea of SOP from the British Const. In other words, Motesquieu borrowed "the concept of Separation of Power" from the "British Constitution" when he was developing his theory. On the other hand, the notion of the integration of powers is one that is not only a reality in England but also one that has been acknowledged there. This is because England adheres to the Westminster type of government. Even though it is true that these powers are vested in three organs of the govt. and that each organ possesses its own set of distinctive traits, one cannot oppose the powers of the govt. are not "shared out" in any way. This is because one cannot argue that the powers of the government are not shared out. Even if he is the leader of the executive branch, the King is also an extremely important component of the legislative. This is owing to the fact that He is a public authority who is chosen by the people. In the same vein, each and every one of his Ministries also has a member that sits in either the House of Commons or the House of Lords. The Lord Chancellor is the most senior judge in the country and also hold the leader of the exec. organ, the legislature (the House of Commons), and the legislative branch. In addition to being one of the cabinet and holding the role of Chairman of the House of Commons, he is also the most powerful person in

the country. Even though there is judicial independence, judges on the higher courts can be detached from their seats with an address from either house of parliament. This is despite the fact that there is judicial independence.

Only inside the United Kingdom is it possible to provide evidence that Separation of Powers had any significance in English history. According to Daniel Ullman, "England is not the traditional home of the division of powers." This situation was concluded by the Donoughmore Committee using the following words: "Each power there has developed a personality of its own, while at the same time conserving the characteristics of the others."

The legislative, executive, & judicial branches of govt. are not completely & utterly distinct from one another under the confines of the British Constitution. Some constitutions such as the ones of France and the United States of America, there have been an effort made for maintaining a strict separation between the two, but these attempts have not been successful. Other constitutions, such as those of Canada and Australia, have also included such provisions. Nonetheless, similar approaches have been tried in the past. Yet, the difference exists and is capable of being... significant. "one of the main problems of the modern democratic state is how to preserve the distinction while avoiding too rigid an insistence on it," [xxvi] and this is the main issues with modern democratic states.

The U.K. does in point of fact have a division of powers, but one that, in contrast to that of the U.S, is significantly less formalized. The U.K. is an outstanding test case for this theory and serves as an essential component of Black Stone's theory referred to as Mixed Government. The concept of Separation of Power does not exist in the U.K. in a shape which is either indicative of its most pure form or its most widespread form. None of these forms exists in the United Kingdom Constitution. The three divisions are not, technically speaking, differentiated from one another, and their respective tasks continue to largely overlap with those of the other divisions.

The U.K. in particular as a consequence of Article 6 of the European Convention on Human Rights which safeguards the right to fairness in trial, is rising an increasing amount of worry with the Separation of power. As a direct result of the changes that were made to the position "Constitutional Reforms Act of 2005", lords would no longer be allowed to take part in legislative process. The

amendments to the constitution were responsible for bringing about these alterations. The Act for the Establishing of the Supreme Court has a section titled "Provisions for the Establishment of the Supreme Court of the United Kingdom," which may be found in its Section 23, Section 61 of the Act is accountable for establishing the Constitution of Judicial Appointments Commission. This commission is responsible for appointing judges to constitutional positions. This committee is responsible for appointing justices to both the SC and the Court of Appeals. Their authority extends to both of these courts. As a direct consequence of this, the said Act helped to make a significant contribution toward ensuring that the judicial branch would continue to be independent of the other branches of govt.

It has been reported that various leading judges in the United Kingdom have been cited as saying that they believe the legal system in that country possesses fundamental problems. The fundamental principle upon which the U.S. Const. is established is known as the "separation of powers." As a direct consequence of this, Lord Diplock ruled as follows in *Duport Steels Ltd. versus. Sirs*³⁷: "At a time when more and more cases involve the application of legislation that gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be strongly emphasized enough that the British Constitution, though largely unwritten, is firmly based in the separation of powers; Parliament makes the laws, and the judiciary interprets them".

3.2 Separation of executive and the legislature

"The legislative and executive" organs of the government are intersecting in the U.K. and other common law regimes. The bulk of the cabinet ministers, including the Prime Minister, also affiliate of Parliament and maybe found serving in the House of Commons. Hence, the executive branch has a significant presence within Parliament. While in the U.S.A, the President isn't allowed to be part of the legislative body which is the Congress and their election is held independently. Because of this, it is possible that the President will belong to a party that is distinct from that of the plurality of members of Congress.

It is believed that the integration of the executive and legislative in the government functioning of the

³⁷ UKHL J0201-1

U.K contributes to increased efficiency. The Prime Minister is frequently both the head of the executive organ and the chief in the legislature. In addition, Parliament may consign law-making powers to the Government by granting the Government the authority to delegated legislation. This can save Parliament from the obligation to scrutinize insignificant technical issues while still preserving the essential checks and balance provided by parliamentary approval. In this sense, the two branches of govt. in the U.K do not exercise independent authorization. Whereas, the presence of executive branch representatives in the house could probably make it easier to conduct oversight, provided that all of the required protocols are in place.³⁸

As an illustration, the practice known as "Question Time" may be an useful tool for keeping executive accountable since it places ministers in the "lion's den" of the legislative. Gordon Brown, who had served as Prime Minister previously, outlined some arguments in favour of the effectiveness of hybrid system, saying, "My hon. A friend has suggested that the British govt. adopt the constitution of the U.S. He is aware of the impasse that may frequently arise with the American const. when the President, Congress, and the Senate are unable to reach a consensus on what actions should be taken".

3.3 Separation of the legislature and judiciary

Another essential aspect of the Separation of Powers is the bisection that exists between the legislative & judicial body of govt. It is against the law for judges in the U.K. to seek election to the House of Commons because of the Disqualification Act”passed in 1975. It is anticipated of judges that they would interpret legislation in a manner that is adaptable with the intent of Parliament, in addition to the obligation that they have to shared to the expansion of the common law (judge-made law). The Upper courts have a practise of giving judges life tenure, which helps to preserve their judicial independence. A resolution needs to be approved by both chambers of parliament in order to impeach a Judge on the High Court and remove them. On the other hand, judges serving in lower courts can only be eliminated from their positions through the use of disciplinary procedures. In addition, judges are granted total privilege in reference to court proceedings, which protects them from any legal action that may be brought against them linking with the actions of their judicial duties.

According to statements made by Lord Phillips, who serves as President of Supreme Court of the

³⁸ Magill, M. E. (2000), The Real Separation in Separation of Powers Law, VLR, 86(6), 1127–1198

United Kingdom at the present time, general public should be given the opportunity to challenge the legality of administrative action in front of an impartial court. It is the responsibility of the executive branch to exercise the power of the state, and it is also the responsibility of the executive branch, in some form or another, to be the most regular litigant in the courts. Because of this, judges have a unique need to be shielded from any kind of pressure that originates from the executive branch. The Const. stipulates that the judicial system is meant to be submissive to Parliament and that the courts are not authorized to dare the legality of laws that have been approved by the legislative branch.

In spite of this, judges still have some leeway when it comes to interpreting statutes, which begs whether or not they possess authority to "create law." The growth of common law has included some level of judicial involvement in the formulation of brand-new laws. In the year 1952, the case of *Magor & St. Mellons Rural District Council v. Newport Corp*³⁹. was brought before the "House of Lords" and it was there that the decision of Lord Denning was reversed. In that decision, he observed whenever there were gaps in legislation, the courts should fill it up with their own interpretations and interpretations of the law.

The document provided further explanation for this point. Because of the proper connection that ought to exist amid the judicial system and the legislative branch, it is absolutely necessary that the judicial system be allowed to carry on with their responsibilities. The only restriction on media criticism is that it must not prejudice the upcoming trial, but Parliament must exercise extreme caution in this matter. It is crucial for the court to be viewed as being independent from political pressures for constitutional reasons, and it is essential for public trust. As a result, the constraints that are placed on legislative discourse ought to on occasion be made to be stricter than the constraints that are placed on media comment.

3.4 Separation of the executive and the judiciary

The third aspect of separation is comprised of the communication that takes place between executive and judicial departments. The goal of judicial oversight with view to the executive is to ensure that legislation that has been delegated is logical with the authority accorded by Congress. This is done to

³⁹ (1951) UKHL J1025-2

ensure that the acts performed by the Government and other institutions are inside what is permitted by the law. One of the duties of judicial review is to determine whether or not legislation that has been delegated is persistent with the extent of power granted by Congress. Judicial review is a procedure wherein the legitimacy of acts performed by public authorities can be questioned in court on the basis of a petition that was submitted by a person. In light of this, it is absolutely necessary for judges to maintain their independence from the pressure exerted by “the executive and the legislative branches.” In the course of historical research, it has been shown that judges have been known to exhibit deference in realms of command in which they viewed them as sufficiently prepared to execute judgments. This has been a common practise among judges for quite some time. In most circumstances, judges will abstain from taking part in legal proceedings that involve the royal prerogative.

Take the lawsuit that was filed against the Minister in Charge of the Civil Service by the Council of Civil Service Unions for a more tangible illustration of this commonly held point of view. A more recent case, *A v. Secretary of State for Home Department*⁴⁰ include the indefinite detention minus control of individuals suspected of belonging to international terrorist organizations in Belmar. The Attorney General argued in 2004 that these were matters of a political nature requiring an exercise of political and not judicial judgment and thus it was not for the courts to usurp authority properly belonging elsewhere. This case involved the indefinite custody of individuals in Be Lord Bingham, who presided over the case and issued the leading ruling, did not agree with this line of reasoning, however, and he dismissed it. He also conveyed the deciding judgment, ruled over the case while it was being heard. He came to the conclusion that "the function of independent judges charged with interpreting and applying the law is universally acknowledged as a cardinal function of the modern democratic state"

3.5 Constitutional reform Act 2005

In the U.K, several areas in which powers have been divided the least were targeted for change by the Govt. & Parliament in the Constitutional Reform Act of 2005. The minister in charge of the bill in the House, made the following statement to the chamber: "we want to ensure that we clearly define

⁴⁰ (2004) UKHL 56

the separation of powers, where it is appropriate, but that is not incompatible with having a partnership between the various branches of the state." This Act settled a distinct Supreme Court, and designated the Lord Chief Justice as the new head of the Judiciary in England & Wales. In addition to this, it made it the legal responsibility of ministers to protect the independence of the judiciary. The Bill was sent to a select committee after being recommended there.

The report of the Select Committee on the Constitutional Reform Bill was prepared in June of 2004. It includes some particulars on the issues about the SOP. The position of "Lord Chancellor" served as a link amongst the various branches and dept. of the state govt. In addition to being a member of the Govt. & the Speaker of the House of Lords, he also served as the head of the judiciary and was responsible for the nomination of judges. In the case of *McGonnell ve. United Kingdom*⁴¹ the Lord Irvine, stated unequivocally that "the Lord Chancellor would never sit in any case concerning legislation in the passage of which he had been directly involved nor in any case where the interests of the executive were directly engaged."

As a result of the "Constitutional Reform Act of 2005" the Lord Chancellor no more performs any judicial tasks, and the of the head of the judiciary is now occupied by the Lord Chief Justice. The position of Speaker of the House is no more held by the Lord Chancellor because the House of Lords now chooses its own Speaker. The purpose of this was to establish a clearer and more official division of authority. Others, on the other hand, saw the 'Lord Chancellor' as a voice for the judiciary in the Constitution Committee's report that was published in 2007 on relations between the executive, the judiciary, & legislature. Thus, judicial appointments were made on the recommendation of the Lord Chancellor who was a governmental minister.⁴²

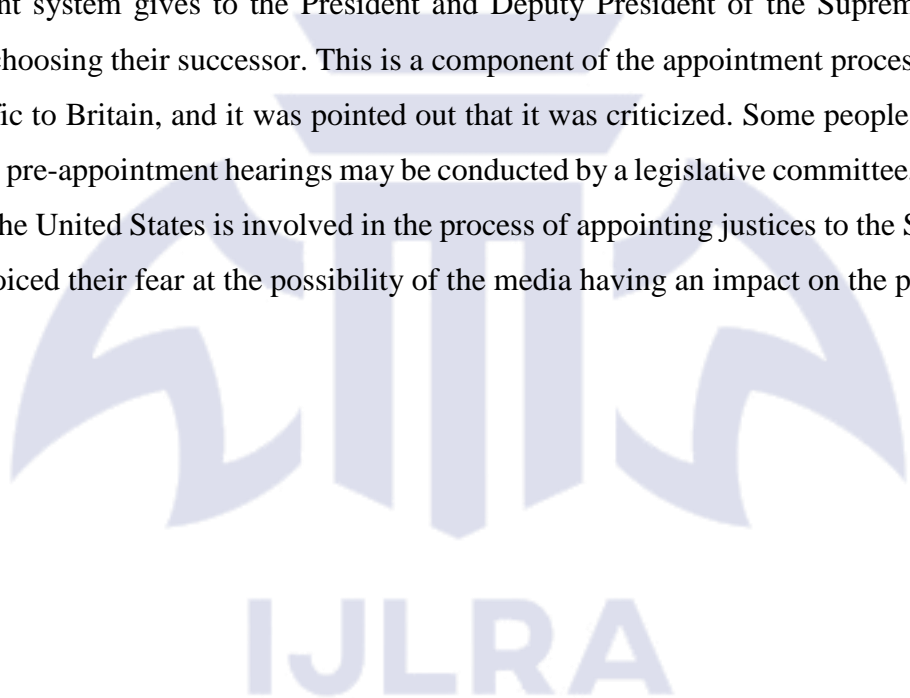
Judicial appointments were made on recommendation of the Lord Chancellor who was a governmental minister. Because of this piece of legislation, England & Wales now have their own autonomous Judicial Appointments Commission. Though there are some judges on the commission, they do not constitute a majority, and hence, shall be chaired by a member of general public. The Act sited a specific statutory duty on the Commission to encourage diversity in the range of persons

⁴¹ (2000) 30 EHRR 289

available for selection for appointments. Separate measures apply to the appointment of Supreme Court judges, which took into account the fact that the Court has jurisdiction over the U.K.⁴³

The new procedure has been criticized for a various of reasons, such as it is a long process and because it involves the President and Vice President of the Supreme Court” in the nomination of their inheritor. These topics are now the focus of investigation under a research project being conducted at the Constitution Unit at University College London.

The duration that the new system takes was another aspect that was criticized, as was the participation that the present system gives to the President and Deputy President of the Supreme Court in the procedure of choosing their successor. This is a component of the appointment process that is almost entirely specific to Britain, and it was pointed out that it was criticized. Some people have proposed that in Britain, pre-appointment hearings may be conducted by a legislative committee, similar to how the Senate in the United States is involved in the process of appointing justices to the Supreme Court. Some, have voiced their fear at the possibility of the media having an impact on the proceedings.



⁴³ Foerster, S., & Raymond, R. (2017), The US-UK Special Relationship at a Critical Crossroads, Atlantic Council

CHAPTER 4 – SEPARATION OF POWER IN THE U.S.A

4.1 Historical background

The political notion of separation of powers may be sourced back to Charles de Secondat, Baron de Montesquieu's "The Spirit of the Laws", where he advocated for constitutional govt. with various independent parts, each with specified powers to “check the other branches” power. Here is where "separation of powers" was first mentioned. This idea significantly influenced the U.S. Const., which mandates that the 3organs of government the Legislative, Executive, and Judiciary must be put distinctly to avoid misuse of power. In U.S, the allocation of power is commonly referred to as system of checks and balances.

Others, like Thomas Hobbes, were adamantly opposed. Montesquieu was a strong proponent of keeping the 3 branches of govt. distinct. Alexander Hamilton and other participants in the Constitutional Convention of 1787, which produced the document that founded the government of the United States, were profoundly influenced by his works.⁴⁴

During the 18th century, a number of American Governments did not strictly adhere to the principle of Separation of Power. The governor also presided over the state's highest court and one of the state legislature's chambers.. To add, state legislatures selected candidates for executive vice president. Members of the executive councils of “Delaware and Pennsylvania” also sat on both states courts. Yet, a few southern states have mandated the Separation of Power. These branches of government of Maryland, Virginia, North Carolina, and Georgia remain "independent and distinct" from one another.

Before legislation may become law in the United States, it must be enacted by Congress. The non-delegation principle held that Congress cannot moved any of its legislative powers to another entity. The Supreme Court in *Clinto v. City of New York* ⁴⁵that the President cannot employ a "line-item veto" over legislation without amending the Constitution. This alternative was chosen since the President was unable to exercise his veto power in this circumstance.

⁴⁴ Sharp, M. P. (1935), The Classical American Doctrine of “The Separation of Powers.” The University of Chicago Law Review, 2(3), 385–436

⁴⁵ 534 U.S. 417

In areas where Congress does not undertake significant and far-reaching power transfers, the Supreme Court tends to be more lenient. *Wayman v. Hard*⁴⁶ litigated in the U.S District Court for the “Tenth Circuit”, was one of the earliest cases to examine the limits of non-delegation. It was maintained that the deputation of legislative authority to the courts by Congress in the form of judicial procedure-making authority was unconstitutional. The argument was predicated on the ostensible judicial authority conferred to Congress in this area. Justice John Marshall differentiated between important and non-essential issues, recognising that the adoption of procedural standards was a legislative need. According to one of Marshall's articles, "a broad provision may be made, and those who are to work under such fundamental parameters are permitted the authority to fill in the particular."

In addition to Marshall's words, the future judicial decisions provided Congress a great deal of discretion in delegating authority. The S.C did not find that the contested transfer of jurisdiction was illegal until the 1930s. In *A.L.A. Schechter Poultry v. United States* ⁴⁷, the Supreme Court ruled Congress could not transfer to the president the ability to implement fair competition legislation; rather, it was the guilt of Congress to place norms for the conduct of executive officials. In this instance, the National Recovery Authority was established. The Supreme Court has determined that fair and reasonable, public interest, and public convenience are suitable phrases.

4.2 The constitutional provisions

Montesquieu is praised as being one who initially established the Separation hypothesis. Despite this, its primary use was in the work that the framers of the United States Constitution did. This idea was not only acknowledged by them, but they also adopted it as viable theory in order to protect the integrity and liberty of the people by maintaining a balance between the institutions of the government. This viewpoint has been completely embraced by the Philadelphia Conventions.

While not explicitly stated in any one provision of the Constitution, the principle of Separation of Powers included in the document that established the U.S.A. The U.S Supreme Court, which serves as the Constitution primary guarantor, protector, and interpreter, has stated on numerous occasions that the Separation of Powers is the fundamental commandments upon which the constitutional order

⁴⁶ 23 U.S. 1 (1825)

⁴⁷ 925 U.S. 495

that was established by the United States Constitution is based. In the U.S, Separation of power is guaranteed by three articles of the Constitution: the legislative powers are vested in the Congress, the executive powers are vested in the President, and the judicial powers are vested in the Supreme Court.

- The phrase “All the legislative powers are vested in Congress” may be found near the beginning of Article I, Section 1 of the American Constitution.
- The phrase “All the executive functions are vested in the President” may be found in the first section of Article II of the U.S Constitution.
- The phrase "All the judicial functions are vested in the federal courts and the Supreme Court" may be found in the first section of Article III of the United States Constitution.

4.3 The Practice Scenario

The problem of Separation of Power has been put up as a contentious essence as a result of a number of factors, including the conundrum of judicial independence, political consciousness to expand judges accountability for the work they do, the evasion of competing interest, & improprieties that certain judges mostly disrespect the norms of procedure, “statutes & precedent” from higher courts. Other factors include “the question of judicial independence, political efforts to increase judges' accountability for the quality of their work, and the avoidance of conflicts of interest and maintaining the independence of the judiciary.”⁴⁸

The idea that the various parts of govt. should each have an equal amount of jurisdiction despite the existence of separate branches of government is a common misconception that exists among members of Congress. This mistaken belief originates from misconception of what separation of powers actually means in practice. One school of thought maintains not only that it is impossible for any one branch to act independently on any matter (with the possible exception of extremely minor issues), but also that all branches need to reach some type of agreement with one another in order to function properly. This view holds that the only exception to this rule would be for extremely minor issues. If we're talking about something as inconsequential as this, it's very possible that this is the lone instance in which the rule is broken. Others contend that the idea of "checks and balances ought to be applied to the Judicial branch of government in the same manner as it is applied to the Executive branch, the

⁴⁸Jon (Sean) Jasperson, Carte, T. A., Saunders, C. S., Butler, B. S., Henry J. P. Croes, & Weijun Zheng. (2002), Review: Power and Information Technology Research: A Metatriangulation Review, MIS Quarterly, 26(4), 397–459

Legislative branch, and the Judicial branch respectively. The fact that Congress and state legislatures, respectively, are in responsible of writing regulations for the administration of federal and state courts, as well as exercising authority over judges and judges, is one illustration of how this concept is put into practice. Another illustration of this would be the administration of state and federal courts. Another illustration of this would be the drafting of regulations that define the procedures that should be followed in state and federal courts. Even though these powers were assigned to the S.C for the sake of convenience due to the Supreme Court's great competence, Congress retains the authority to revoke this delegation at any time, regardless of the fact that these powers were delegated to the Supreme Court for the sake of convenience. The U.S. congress is the body that has the authority under the law to resolve issues of this nature, despite the fact that similar matters are routinely considered by the Supreme Court of the U.S.A.

On the other hand, some judges are of the opinion that the Separation of Power assures that judiciary is immune to outside influence and cannot be challenged inside the bounds of judicial processes. This view is shared by a minority of judges. This perspective exemplifies the opposing argument to the one that is being presented here. Only the Judiciary possesses all of the applicable judicial authority, and neither the Legislative nor the Executive have the right to interfere with the Judicial branch in any way, shape, or form, according to this clarification of the phrase separation of powers. This is due to the reason that, with the exception of the Presidency, the Judiciary is the only branch that possesses all of the applicable authorities.

4.4 System of checks and balances

The ability of the president to veto legislation serves as a check on the legislative branch of the govt.; however, Congress possesses power to disallow any veto (with the exception "pocket veto") with a majority vote of two-thirds in each house. This is the only way that a veto can be overridden. In the event that both chambers of Congress are unable to accept on a date for Congress to adjourn, the president retains the authority to make the ultimate determination regarding when Congress will recess. It is within the president's authority to convene an emergency session of either the House of Representatives or the Senate. Notwithstanding the fact that the Vice President presides over the Senate in his capacity as President, the Vice President's vote is only taken into consideration in the event of a deadlock.

As was said before, the president is the one who is responsible for picking judges; however, the Senate is contacted and must provide its consent before the president can move further. They also have the authority to grant pardons and reprieves to criminals who have already been convicted. Both the House of Representatives & the Senate are exempt from having to provide their approval for these pardons, and the individual who is going to benefit from the pardon is also exempt from having to offer their permission. The Supreme Court orders need not have to be followed by the President of the United States of America since it is not essential. The only element of the government that has the authority to really bring out what the laws say is the executive; the Supreme Court does not have this kind of jurisdiction. So, the executive branch has the capacity to serve as a check on the Supreme Court by refusing to carry out the Court's directives; but, because of the reputation of the Court, this is a very difficult undertaking to accomplish.⁴⁹

The U.S President is the highest-ranking civilian commander in charge of both the United States Army & the U.S Navy. This gives the President overall authority over both branches of the United States armed forces. They have the ability to instruct them to carry out any necessary military activities in the event that a catastrophe that was not expected befalls the planet. Yet it is entirely up to Congress to decide whether or not a war should be declared, as well as how many troops should be sent, how much they should be paid, and how they should be maintained. It is the obligation and the jurisdiction of Congress to prescribe the rules and regulations that control how the armed forces operate, such as the Uniform Code of Military Justice. In addition, before to beginning their terms of service, all generals and admirals who are nominated by the president must first get confirmation from the Senate by a vote that receives a simple majority.

The courts are responsible for exercising supervision over both the legislative and executive branches of government via the use of judicial review. Despite the fact that a significant number of the persons who contributed to the Constitution had this concept in mind, it was ultimately decided not to include it in the document. The SC established a standard for judicial review with its decision in the case of *Marbury v. Madison*⁵⁰. Complaints were filed against this option, the major motivation for which was the need to further one's political career. Despite this, the political realities of the circumstance

⁴⁹ Powell, T. R. (1912), Separation of Powers: Administrative Exercise of Legislative and Judicial Power, Political Science Quarterly, 27(2)

⁵⁰ 5 U.S. 137

prohibited opposing views from getting momentum in this specific case, which is why the option was chosen. As a result of this, the idea that a court can strike down legislation that it finds to be unconstitutional is something that has only come into origin as a result of the application of precedent. It is a widespread misconception that the Supreme Court is the only court with the authority to decide whether or not something satisfies the criteria of being lawful; in actuality, lower courts also have this competence. Nonetheless, the only rulings that are legally binding everywhere in the country are those made by the Supreme Court. For instance, the decisions handed down by a Court of Appeals are only legally binding within the specific circuit that comes within the purview of that particular court.

The authority of the courts to decide whether or not a piece of law violates the Const. can be limited by Congress at its discretion. Congress has the power to rule on a no. of problems, which include those pertaining to jurisdictional extent of the judicial system. The Constitution specifies that only the Supreme Court has the ability to determine the scope of jurisdiction that can be performed by the judicial system. In all instances, the Supreme Court can only exercise its appellate jurisdiction, with the exception of situations that involve foreign ambassadors, ministers, or consuls and states. This is the single restraint that the Const. places on Congress's power to determine the scope of the judicial system, and it may be found here.

The Chief Justice acts as the presiding judge during an impeachment trial that is being held in the Senate against a sitting president. Notwithstanding this, the rules of the Senate sometimes confer an extremely restricted amount of authority onto the person in command of the chamber. As direct consequence of this, the Chief Justice is solely accountable for a portion of this component of the work.

The decision that was handed down in the case of *McCulloch v. Maryland*⁵¹ in 1819 established two primary tenets of legal doctrine. One of them explains why individual states are unable to hinder the legally lawful authority that is exercised by the federal government. This is because of the separation of powers that exists between the federal & state government's. The second school of thought maintains that Congress already holds the unspoken authority that is required to carry out the

⁵¹ 17 U.S. 316

Constitution's presents power to establish a national govt. that is capable of operating efficiently.

Each of the three branches of the American govt. is responsible for certain responsibilities, and these responsibilities are intertwined with the responsibilities of the other two branches. The express powers are a component of these authorities, which means that they are one of their components. The Constitution makes it quite clear that each of these functions can be exercised by a separate arm of the govt. In addition to that, there are powers that can be figured out. These are the necessary abilities that must be had in order to obtain the aforementioned skills. In addition, there is a difference to be made between capabilities that are inherent and those that are concurrent. Intrinsic powers are those that are not specified in the Constitution but can still be used by the various branches and agencies of the federal government. These powers are not delegated to any particular branch or agency. Concurrent authorities are those that are granted to two or more levels of govt. at the same time, such as the state government and the federal government. Constitution do not include an entire list of all of the powers that have been delegated to the federal government, these powers do not violate the Constitution in any way. After then, the federalist system turns these obligations over to the various states to handle on their own.⁵²

In addition to this, they are responsible for the creation of any laws that are required and appropriate for the fulfilment of the duties assigned to other authorities. In addition, the process of naturalization in the United States is governed by laws that are passed by the Congress of the United States. With the assistance of implied authorities, the control of taxation, the draught, immigration, the protection of persons with disabilities, the maintenance of the minimum wage, and the prohibition of discrimination are all kept in order. The administration of international affairs, the acquisition of additional territory, the defense of the state against revolt, and the determination of whether or not immigrants should be permitted to live in the country are all fundamental tasks that fall under the purview of Congress. Because of the presence of concurrent powers, both the federal government and state governments are allowed to legislate, which allows for the protection of the environment, the administration of national parks and prisons, as well as the provision of law enforcement services. In addition, the judicial arm of the government is authorised to exercise jurisdiction in the areas that

⁵² Avey, P. C. (2012), *Confronting Soviet Power: U.S. Policy during the Early Cold War*, *International Security*, 36(4), 151–188

fall under its purview. When it comes to the formulation of brand new laws and regulations, they have the capacity to draw on both their explicit and concurrent authorities. They rely on the power that they have stated in order to accomplish tasks such as the interpretation of laws and the carrying out of judicial reviews. This branch of the government is able to declare legislation that have previously been approved by a lower court to be in violation of the Constitution by making use of the implicit powers that it possesses. They even have the authority to make use of explicit powers in order to declare invalid legislation that is presently in the process of being passed legislation that is currently in the process of being passed. With concurrent powers, state courts are able to conduct trials and interpret laws without the approval of federal courts; however, federal courts are able to accept appeals from lower-level state courts. State courts with concurrent powers have the ability to conduct trials and interpret laws without the approval of federal courts. This is due to the fact that federal courts have the authority to hear matters that have previously been tried in lower-level state courts. The executive branch is given its own authorities, which it utilises in the process of making new laws and regulations. These authorities are vested in the executive branch. This section makes use of authority that has been both expressly and inferred upon, as well as that which is inherent. The Constitution grants the President the right to approve or disapprove individual pieces of legislation, as well as to negotiate and enter into international treaties and accords. Through the use of their power, the President is permitted to fulfill the constitutional mandate that they guarantee the laws are faithfully administered, and they do so in order to fulfill this obligation. He makes advantage of the authority that comes with his office in order to issue executive directives and negotiate international treaties. The executive branch makes use of its inherent powers in order to create executive privilege, which grants it the ability to carry out legislation and laws that have been established by Congress. This authority allows the executive branch to circumvent the legislative process. In addition to this, they are vested with the authority to enforce the Constitution as well as any treaties that were negotiated by other government ministries.

The checks and balances system in the government ensures that no single element of the government has more authority than the others and that no single branch of government may unilaterally overturn the decisions made by the other branches. It establishes the required checks and balances or among the several dept.'s of authority, which are essential for the efficient functioning of a govt. This ensures that each division, in the great majority of circumstances, adheres to a specified set of behavioural

criteria. If one part of the govt. believes that the operation of another part of the govt. constitute illegal activity, it has the ability to, in a sense, "call them out."⁵³

Each component of the government has the ability to investigate the inappropriate behaviour of the other components and adjust it to better meet the requirements of the population that it serves. Although there is a long history of power abuse throughout the human race as a whole, the present system of checks and balances makes it far more difficult for this to occur. This is due to the fact that there are several levels of checks and balances. Also, the fact that every branch is handled by a number of different persons affords the possibility for argument and discussion prior to the making of choices inside a single branch. This occurs before any decisions are made.

In spite of this, certain laws have been passed, only to have them overturned at a later date due to an abuse of authority committed by one of the branches of government. The people who drafted these laws were more concerned with safeguarding their own interests than the welfare of the people whose interests they were ostensibly protecting by creating these laws. They did this because they saw their own interests as more important than those of the people whose interests they were ostensibly protecting. They did this because they considered their own interests to be more important than those of the individuals whose interests they were purportedly safeguarding. These people were the ones whose interests they were apparently protecting. Even though this is a terrible circumstance, it is something that may and does occur in real life on occasion. Yet, this does not rule out the possibility that the item may be fixed in any way. Once mistakes have been made by earlier branches of the government, it is not impossible for another branch of the government to put things in order and make things right.

There is nothing inherently impossible about the possibility of the federal government being engaged in the daily lives of Native Americans who live on reservations. They are able to cooperate with the Native Americans, construct a treaty that is beneficial for both parties, create reservations for them to live on, and ensure that the people living there are not disrupted by the outside world and are free to live their lives as they see fit. They were able to create reservations for themselves. Because of their

⁵³ Krent, H. J. (1988), Separating the Strands in Separation of Powers Controversies, Virginia Law Review, 74(7), 1253–1323

ability to establish and uphold treaties, all of these things are within their reach. The states have equal liability for ensuring that this requirement is met. This is because the formulation of treaties falls within the competence of the federal govt., whereas reservations are the responsibility of individual state government's. Following that point, it will be up to the states to honour the treaties that the federal government had negotiated in the past and to keep up connections with the Native Americans who reside on such reservations.

4.5 Judicial pronouncements

Judicial power, including the jurisdiction to decide specific cases and problems, is exercised by the S.C and lower courts enacted by Congress. Judges be nominated by the president with the approval of the senate, once appointed they serve indefinitely without the possibility of removal, and their salaries may not be cut while they are actively serving. If a court's judges lack these characteristics, that court may be unable to carry out the judicial authority the United States has delegated to it. Constitutional courts refer to the courts that have the authority to exercise the judicial power, while legislative courts are created by Congress but do not resemble judicial agencies or commissions and do not provide their members with the same job security or pay as the judges of the constitutional courts. In the U.S , legislative court cannot serve as courts of law. The SC declared in *Murrays Lessee v. Hoboken Land & Improvement Co.*⁵⁴ that a legislative court cannot judge on a claim at the common law, or in equity, or in admiralty, because these types of cases are judicial in nature. This choice was taken due to the reality that a legislative court would be unable to rule on such a case. Legislative courts only hear public rights cases. While the United States may not adopt the Separation of Powers in its strictest form, the logic behind it has fascinated the architects of most modern constitutions, especially in the 19th century.

The case of *Marbury v. Madison*⁵⁵ is often regarded as a watershed moment in the evolution of American law. Article III of the Const. establishes the framework for the judicial review procedure used in the United States. This case was taken to the Supreme Court by William Marbury. The matter was taken up by the Supreme Court. In an effort to force Secretary of State James Madison to hand over the document, Marbury filed a petition with the SC; however, the court denied Marbury's

⁵⁴ 59NU.S. 272

⁵⁵ 5 U.S. 137 (1803)

petition. The court found that various part of the “Judiciary Act of 1789” on which Marbury relied to establish his argument was unconstitutional.

This was the landmark decision that forwarded the concept of judicial review in the U.S. To date, this was the only occasion in which the Supreme Court has ever declared an issue to be unconstitutional. Recently, it has become clear that the principle of Separation of Power is at the centre of some heated debates and political efforts to increase the accountability of judges for the standard of their work, the evasion of apartheid, and allegations that some judges reportedly disregard procedural rules, statutes, and higher court decisions.

The argument on one side of this debate holds that Separation of Powers necessitates a decentralised system in which no single branch of govt. may act unilaterally on any given issue. It is argued that the judicial branch, like the rest of government, should be subject to the checks and balances idea. On the other side of this debate, one might make the case that the separation of powers protects the court from bias and events inside its own purview. From this vantage point, Separation of Power means that neither the legislative nor the executive branches may interfere with the judicial function, and that the judicial branch alone holds all the authorities that are pertinent to the judicial function.

The theory of separation was developed in the U.S. It is the bedrock upon which the United States constitutional system rests. The founders of the U.S Const. observed that separation of powers would serve to prevent the surge of a dictatorial form of govt. by removing the possibility that an individual or bunch of people might wield an excessive amount of power. Article I of the Const. relegates legislative authority to Congress, while Article II delegates exec. authority to the President and Art.III delegates judicial authority to the Supreme Court. The goal was to prevent any branch of govt. turning into extra high-powered through a “system of checks and balances.” This alternative arrangement avoids the emergence of a dominating organ by decoupling its duties from the others.⁵⁶

Although this principle is spelt out in the Const., the govt. of America has chosen to follow it in a way that allows for some exceptions to set up a system of checks and balances. To give just one eg., the President can utilise his legislative power to veto a bill that has been passed by the two houses.

⁵⁶Konings, M. (2009), The Construction of US Financial Power. Review of Int. Studies, 35(1)

The President also has the authority to enter into treaties, but they will not become binding unless and until they are ratified by the Senate. The Senate's exercise of executive power was one of the reasons the United States was denied admission in the League of Nations. The Supreme Court of the United States can rule that a statute passed by Congress is unconstitutional. Some organs perform the duties of other organs, among their many other roles. To guarantee that no single organ or entity has absolute power, India, like the United States, has instituted a system of checks and balances. The American system served as a model for this.

This suggests that the activity of one organ is limited by that of another, with the goal of preventing any abuse of power. So, the constitution has opted to weaken powers, much like India's constitution did, despite making a good mention of the theory in its provisions but not following it in its rigour.



CHAPTER 5 - COMPARISON OF SEPARATION OF POWER IN INDIA, U.K, AND U.S.A.

In contrast to the situation in the United States, neither India nor the United Kingdom has a well-defined line dividing the legislative from the executive branches of their respective governments. In the U.S, the legal system mandates the maintenance of this separation of powers.

They use a parliamentary form of government which entails two distinct ideas: first, the close connection that exists among “the legislative and the executive branches” and second, the duty that the executive branch has in front of the legislative branches. This form of government is utilised by these individuals. These individuals subscribe to this particular system of governance. In the present moment, this particular form of govt. is utilised in the administration of these states and countries. Notwithstanding this, both the constitution of India as well as the constitution of the United Kingdom make it very plain who has the legislative and executive authority in each of their different governments. The judicial system in India operates as an independent apparatus that performs its operations independently of any impact or dominance from the legislative or exec. arms of the Indian government. This allows the judicial system in India to fulfil its responsibilities without interference. This is due to the fact that India's judicial system is completely separate and distinct from both of these institutions of government. In the U.K, there is not a single circumstance in which the “division of powers” has been put into practice anywhere.

The building that serves as both the United Kingdom highest court of appeal & the upper chamber of Parliament is known as the House of Lords. Both of these institutions take up residence in one building. The House of Lords may be found in the city of “London.” As a direct result of this, it is now in a position to have some degree of influence on the executive department of govt. that operates in the U.K. On the other hand, in contradiction to these, the Const. of the “United States of America” not only contains a division of powers between the three independent organs of govt., but it also provides a system of checks and balances between each of these organs. This is the case because the Const. of the U.S contains a “system of checks and balances” amid each of these organs.

A Presidential form of government such as the one that is used in the U.S, necessitates not only the Separation of Powers but also a system of checks and balances in between the three distinct dept. that make up the federal govt. This is the case even though the United States of America does not use a parliamentary type of govt., this is due to the fact that the presidency is the office that has the most authority in the country. This is a result of the fact that the presidency is the office that has the most authority in the country the Legislature, Executive, and Judiciary.



CHAPTER 6 – CONCLUSION & SUGGESTIONS

6.1 Conclusion

It is not feasible to implement the idea of separation of authority in the way that it was first meant to be utilised in any contemporary nation, including the United States of America, France, or other countries like these. This applies to all other modern nations as well. Nonetheless, despite the advances made in society, this method of thinking is still relevant in today's world. Our national government is a well-oiled machine that is famously difficult to deconstruct and separate into hermetic compartments. This is due to the fact that our national govt. is divided into ternion organs: executive, legislative, and judicial. This is as a result of the notoriously complex nature of our national government, which makes it tough to dismantle.

Without collaboration and coordination betwixt the legislative, executive, and judiciary of any government., it is impossible to have efficient system of Government. Because it is difficult to accurately categorize the functions that are performed by each organ, Professor Garner stated that "this notion is impractical as a working principle of Government."

Even though the preservation of liberty is heavily reliant on there being a healthy equilibrium between the three dept. of the govt. there has been a shift in authority to the executive branch as a sequel of burgeoning concerns for welfare and security. These worries are the direct result of a rise in the total number of dangers to people's well-being and safety. In an ideal society, each person's right to personal liberty, together with that person's health and the safety of the state, should each be given the same amount of weight as the other. Other considerations, such as the safety of the state, should also gave importance. It is important to take into consideration a variety of factors, not the least of which is the protection of the state. Without a question, this would call for the establishment of a powerful govt. On the other hand, it would also call for the establishment of a "system of checks and balances" in addition to the separation of powers. Hence, it is the highest significance because it safeguards an individual's liberty against arbitrary control and stops organs from usurping the principal assignment of one another's organs. In other words, it prevents organs from stealing thunder from one another. Both of these advantages are of the utmost significance.

Although the degree to which it is significant varies from nation to country, it is applicable in almost every country to some extent. The degree to which it is applicable, however, varies greatly. Even though it is undesirable and impractical to strictly apply the doctrine of Separation of Powers, which is why it has not yet been fully welcome in any country up to this point, this does not imply that the doctrine is irrelevant in today's world. It just means that strict operation of the doctrine Separation of Power is undesirable and impractical. On the other hand, strictly clinging to the principle of the division of powers is not only unnecessary but also impossible to implement. Hence, this does not indicate that the theory is not applicable to the society of today in any way, shape, or form. The train of thought that underpins this idea is one that is relevant to the modern environment in which we live. Because the stream of thought that underpins the concept is predicated on polarity rather than precise categorization, it suggests centre powers should be dispensed in order to avert the emergence of absolutism. When powers is concentrated upon single institution, absolute authority is the unavoidable consequence that must inevitably follow. There is an ancient proverb that states, "Power corrupts, and absolute power has the tendency to corrupt completely." For this reason, even though it is essential that power should not be centralised in the hands of one body, a system of checks and balances still needs to be maintained in order to guarantee that everything operates effectively. This can be said even though it is essential that power should not be centralised in the hands of a single organisation.

6.2 Suggestions

In spite of its widespread acceptance, the Separation of Powers thesis suffers from a number of drawbacks, some of which will be addressed in the following passages:

1. The Government is a Unitary Mechanism and its Organs cannot be separated thoroughly- The government is a unitary and thus its organs cannot be totally separated. The legislative, executive, and judiciary are inextricably linked to one another and mutually dependent on one another; hence, they cannot exist in total isolation from one another. The three organs are unable to work together in any capacity that is necessary for normal function.
2. It is not possible for us to fully separate the branches of government at this time - It is not possible for the legislative branch alone to be solely responsible for the process of lawmaking. Because of the demands of our current day, it is very necessary to establish a system of

delegated legislation that allows for law to be established by the executive. The idea that the organs of government are on an equal footing is a fallacy propagated by the separation of powers thesis, which makes the mistaken assumption that all these dept. of government are on an equal footing - The state legislature is universally acknowledged to be the single most essential component of, or organ within, the state government. The process of establishing laws is the first step in the job that the govt. does. Nonetheless, as to day-to-day operations, the executive branch has evolved into the utmost influential and crucial branch of the govt. Because of this, they are not treated with the same level of respect.

3. The argument that liberty can be preserved barely when there is a separation of powers is not supported by the critics since they believe that liberty can be preserved regardless of whether or not there is such a division - They claim that even if a state's constitution has provisions for the complete separation of powers there can be no liberty as long as basic rights, the independence of the judiciary, the rule of law, economic equality, the spirit of democracy, and everlasting vigilance do not exist.
4. This theory may have unintended consequences - In practise, Separation of power may result in the creation of three government such as legislative government, an executive government, and a judicial government within one government. These governments may conflict with one another. These kinds of situations frequently result in gridlock, constitutional disputes, jealousies, and a general lack of productivity. The pulls and pushes that come from the government's three organs in their three distinct orientations have the potential to cause the government to fail. It would be exceedingly risky for them to operate without cooperating with one another and coordinating their efforts, particularly in times of crisis.
5. The doctrine of separation of power in practical sense is not absolute and rigidly following because to some extent, every organ has some relations with one another. Despite that, we need separation of power in order to remove the risk of dictatorship and autocracy, thus it is necessary to separate power and limit the jurisdictions of each organs.

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