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THE ROLE OF EXECUTIVE IN THE FRAMEWORK OF SEPARATION OF POWER IN INDIA AND USA: A COMPARATIVE ANALYSIS

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ABSTRACT

The doctrine of separation of power is the fundamental principle governing legislative, executive, judicial branches having its own distinguished power in the constitution. This paper compares how the executive branch works in India and the USA. The montesquieu is to prevent concentration of power and ensure checks, balances. In India, the Prime Minister and ministers come from the ruling party in Parliament. In the USA, the President leads the executive branch independently, with powers like vetoing laws and issuing executive orders. In both systems India and USA balance power, their differences, and how they adapt to changing political and legal challenges. It covers the role of executives within the framework in India and the USA, and their similarities and differences.

Keywords: separation of power, executive, presidential, parliamentary, India, USA.

INTRODUCTION

The executive power in India is distributing the power between the Union (Central Government) and the States. The executive power includes the President of India and the Governors of the States both are the constitutional heads. According to Montesquieu, by dividing the function of the government as three organs, the one who operates balance against the other organ and the power should be checked on power which is 'Le pouvoir arrete'. The power and the functions of the president is to protect the laws in India under Article 60 of Constitution of India. The president is the head of the independent authority, under Article 3, Article 111, Article 274, Article 74(2), Article 78 c, Article 108, Article 111 of the Constitution

of India. The legislation relating to the role of the President and Governor in special circumstances are Article 356 is President's rule in a state, Articles 352, 356, and 360 is about the emergency powers. In the USA, the separation of power and its structure of constitution is based on the legislation which is Article 1, section 1 relating to the legislative power in the Congress, Article 2, section 1 relating to the executive power by the president of the United States of America. Article 3, section 1 relating to the judicial power by the Supreme Court. The Court should not interfere with executive powers of the government. India is following a parliamentary system with a flexible separation of powers and the executive is part of the legislature and responsible to it. The USA follows a presidential system with a strict separation, it ensures the independent functioning of the legislature, executive, and judiciary with strong checks and balances¹.

LITERATURE REVIEW

- P.M. Bakshi's The Constitution of India (19th edition, 2023) by Universal, LexisNexis, this book covers the provision relating to executive powers under the Indian Constitution. It explains about the roles, responsibilities, and authority of the President, Governors, Prime Minister, and Council of Ministers in governance to the important Articles under the Constitution of India.
- Monika Mahawar, critical analysis of separation of power in India, UK, and USA - this article is dealing with the separation of power in India, and the USA and the concept of comparison in both countries. The essential of the doctrine of the separation of the power to avoid the conflict between the three organs of the government. The one organ should not interfere with the other organs. Each of the organs should perform their duties and enjoy their powers. The essential principle is to protect the rights of the individuals and to maintain the democracy in society. In the USA, the concept of separation of power is strictly applied but not in India. The checks and balances which protect the individuals and maintain the democracy.
- Sharma, Vaishnavi, separation of power: a comparative study of India, USA and France - this article is relating to the separation of power is the doctrine which is recognised worldwide and the applicability will be varied in different countries. The separation of the power refers to the strict division of the power and it had three organs of the government. It analyses comparative study in the different countries about the doctrine

¹ DR. B. R. Ambedkar, The Constitution of India, 2023

of separation of power and focuses on the application of the doctrine. It includes the importance of the executive power in both the countries and the stick practice of separation of power in India.

- Kitts, Eustace J, Executive and judicial function in India - this article is about the functions of the executive branch of government in India. The article talks about the old issue especially in Bengal asking for the separation for many years and the mind problem is officials like District Magistrates have both the executive and judicial powers. It is focusing on the fact that the executive and judicial power was not still separate in India.

HISTORY OF SEPARATION OF POWER IN INDIA AND USA

The doctrine of separation of power by Montesquieu about absolute status and the various functions between the three organs which are legislative, executive and judiciary. The theory of separation of power gives the three categories of government's functions and powers in which the same person should not be part of more than one of the other organs, for example ministers should not sit in the parliament. The one branch of government should not interfere with the other branch of the government. The one organ of the government should not perform or exercise the other duties of the organs. The separation of power means it is the distribution of the powers for specified roles of government. All the powers of the government will fall under these three categories which are enactment of the making of the legislations, interpretation of the law and enforcement of the law. The three organs of the government have the specified functions and such division is called classical division. The separation of power was found by Montesquieu and Locke and also in the Vedas. The Smriti is related to the source of law, Dharma is separation of power and Narad Smriti was relating to the principle of separation of power². According to Montesquieu, by dividing the function of the government as three organs, the one who operates balance against the other organ and the power should be checked on power which is 'Le pouvoir arrete'. According to his viewpoint, when the legislative power and the executive power are with the same person then there will be absence of Liberty when the judicial power is not separate from legislative and executive powers. There will be the end of everything away if the same person is exercising all the power. In India it is a parliamentary form of Government, there is the category between the head of the Government

² Kitts, Eustace J, Executive and judicial function in India, HEIN ONLINE, (March 01, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/lqr18&div=40&start_page=349&collection=journals&set_as_cursor=1&men_tab=srchresults

and the state for example, the President of India is the head of the state and the Prime Minister is the head of the government. In India the executive is the President and state level the governor is executive. The history of executive power in the U.S. began in 1787, the President having the power to enforce the laws, command the military, and conduct foreign policy. The Supreme Court cases like *Youngstown v. Sawyer* (1952) and *U.S. v. Nixon* (1974) which set the limits, reinforcement of the checks and balances³.

MONTESQUIEU'S THEORY AND DOCTRINE OF CHECKS AND BALANCES

According to Montesquieu, when the same organ has exercised all three functions of the government there will be an end to everything. The separation of power or trias politica by Charles de Montesquieu. The executive power over legislative under constitution of India Article 123 deals with the ordinance the same force made by parliament or state legislation. The executive power under delegated legislation. Under Article 118 and 208, both the houses of parliament have the power to make the rules for the purpose of regulations in the conduct of business. The executive power over judiciary, the executive is made to perform that duty of the judiciary by the judges under Article 71 of Constitution of India where the president performs the judicial power like granting pardon, remission of punishment and commuting the sentence when any person is convicted by any offence. Under article 124 and 217 relating to the president a discharges the judicial functions in respect to the dispute relating to age of the judges and for the retirement. The part of the executive which includes the Tribunal and quasi judicial body relating to judicial power and the executive body as the power to decide the cases relating to the administrative in the administrative adjudication. The 'spirit of law' by Montesquieu, the law which is about political liberty with the Constitution. He separated the legislative from the executive and placed the judiciary. Doctrine of checks and balances, India has adopted the doctrine, the doctrine of Judicial review is one of the important concepts for conducting the checks and balances. In India, the Supreme Court is the highest authority and has the power of judicial review and check for all the provisions which are consistent and valid with respect to the fundamental rights as per the article 32 and 136 of the Constitution of India and it should not violate the basic structure of the Constitution. The quasi-judicial function performed by the bodies like tribunals is also checked by the higher courts⁴. The important

³ Mukherjea, A Comparative Analysis of the Separation of Powers of India and USA, (March 03, 2026, 05:00 AM), <https://www.ijnrd.org/papers/IJNRD2311056.pdf>

⁴ Sharma, Vaishnavi, separation of power: a comparative study of India, USA and France, HEIN ONLINE, (March

feature of the US constitution is about the political philosophy of the Constitution about the separation of power for the inseparable structure of the document. The checks made by the one department to the another department have been established in the constitution. The power to legislate by congress under check by the executive which is the President exercising the veto power to legislate in some of the matters also have the power to call the Congress for disposal. In the US, the President is the real head of the executive and has a fixed tenure, by the process of impeachment the President can be removed from office. The President is not answerable to Congress and no need to consider the decision of the secretary. The rules made by the President can be checked for constitutionality and if it is inconsistent then it cannot be enforced and the check is maintained as per under Article III, section 1. The delegated legislation in the USA, it applies the stricter separation of power than India and the legislative cannot delegate its rule making power to any other organs of the government. The doctrine of checks and balances is effective governance. In the United States of America, there are the three departments of Government and each functioning by its own. Article I of the US Constitution defines legislative power provided by congress. Article II of the US Constitution defines the executive power vested with the President and Article III defines the judiciary power by the Supreme Court⁵.

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461

This case is related to land reforms where Kesavananda Bharati, the head of a Hindu monastery in Kerala has challenged Kerala Land Reforms Act, 1963. The issue is related to violation of the fundamental rights under the constitution of India and the Parliament's power to amend the constitution under Article 368 of the Constitution of India. The Article 368 of the Constitution of India is about the power of Parliament to amend the Constitution. Article 14 of the Constitution of India is about equality affecting the land reforms laws. Article 19(1)(f) of the Constitution of India is right to property which is restricted by the government's land reforms. This case is regarding the basic structure doctrine which prevents the executive and legislative and violating the fundamental constitutional principles. It is about the executive cannot override the constitutional limitations through the Parliament's amendment power⁶.

06, 2026, 07:00 AM),
https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw9&div=280&start_page=1&collection=journals&set_as_cursor=3&men_tab=srchresults.

⁵ Rajamani Shankar, Comparative Study on Separation of Power in India and the USA, INDERSCIENCE, (March 09, 2026, 09:00 PM), <https://www.inderscience.com/info/inarticle.php?artid=133756>

⁶ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461

LAWS RELATING TO EXECUTIVE POWER IN INDIA

The executive power in India is distributing the power between the Union (Central Government) and the States. The executive power includes the President of India and the Governors of the States both are the constitutional heads. The more powers are with the Prime Minister and the Chief Ministers along with the Councils of Ministers. The legal provisions under the Constitution of India for the Executive Power of the Union (Central Government) are Article 52 is the President of India. Article 53 is the executive power of the Union. Article 74 is a council of ministers to aid and advise the President. Article 75 is the appointment of Prime Minister and Ministers. Article 77 is the conduct of Business of the Government of India. Article 78 is the duties of the Prime Minister with respect to the President. Under the constitution of India, Article 52 is about the President serving as Head of the State and India shall have a President. The role of the President is to represent the country both nation level and international level who acts as the ceremonial leader. In India, the President does not have the power to exercise real executive power. The real executive power is vested in the Prime Minister and the Council of Ministers. The role of the President is mainly focusing on formal and symbolic, and to ensure the continuity and stability in governance⁷. Article 53 is about the Executive Power of the Union which declares that power of the Union is vested in the Constitution President. The power is being exercised by the Prime Minister and the Council of Ministers on behalf of the President. On the advice of the Council of Ministers, the President should act. There are few exceptions such as during an emergency. The President has power to delegate executive functions to state governments when it is needed⁸. Article 74 deals with based on the advice of the Council of Ministers the President should act and it is by the Prime Minister. The president does not have the power with respect to independent decision making in India and India having parliamentary democracy rather than a presidential system⁹. Article 75 deals with whether the President appoints the Prime Minister and also has the power to appoint the other ministers with respect to the Prime Minister's advice. The Council of Ministers will be responsible to the Lok Sabha, for example if a no-confidence motion is passed, the complete government must resign¹⁰. Article 77 deals with the executive actions that are done in the name of the President and taken by the government of India and the decisions made by the government must be in writing in accordance with the rules by the government of

⁷ Article 52 of the Constitution of India, 1949

⁸ Article 53 of the Constitution of India, 1949

⁹ Article 74 of the Constitution of India, 1949

¹⁰ Article 75 of the Constitution of India, 1949

India. It deals with government action that should be transparent and to maintain good governance¹¹. Article 78 deals with the responsibility of the Prime Minister towards the President to inform the essential government decisions, policies in relation to the administration department and specific detail regarding governance. The Prime Minister must advise the president when any particular or a specific matter needs reconsideration by the Council of Ministers¹².

AN ANALYSIS OF EXECUTIVE POWER IN USA AND ITS LEGISLATION

The legislation relating to executive power of the President in the United States of America is section of Article II of the U.S. Constitution. Article II of the U.S. Constitution is related to the Executive Branch. Under section 1 is about the President. It is about the position of the President in the United State of America and the election of the President. The election system is called the Electoral College, in each of these states it has a number of electors voting for the President. The age of the president must be at least 35 years old and to have citizenship in the United State of America, and the President must live for at least 14 years and finally, the President must take an oath of office¹³. Under section 2 is about the major powers of the President. In the United States of America, the President is the Commander-in-Chief in relation to armed forces having the power over the military but the president does not have the power to declare war, the Congress has the power. Except in the case of impeachment, the President has power to grant pardons and the power to make treaties¹⁴. Under section 3 is the duties of the President. It is about the regular duties of the President. The duty of the President is to provide the report to Congress on the state of the country. This will be held every year and is known as the State of the Union Address¹⁵. The President can recommend any new legislation for Congress to consider, and call the Congress into a special session in any special situation. It's the responsibility of the President that the laws are followed and being enforced properly in the United States of America¹⁶. Under section 4 is about the impeachment, it is how the

¹¹ Article 77 of the Constitution of India, 1949

¹² Article 78 of the Constitution of India, 1949

¹³ Article II of the U.S. Constitution

¹⁴ Article II, section 2 of the U.S. Constitution

¹⁵ Sharma, Vaishnavi, separation of power: a comparative study of India, USA and France, HEIN ONLINE, (March 13, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw9&div=280&start_page=1&collection=journals&set_as_cursor=3&men_tab=srchresults

¹⁶ Article II, section 3 of the U.S. Constitution

President can be removed from the office. The officials like the President, Vice President, or other government officials who commit any illegal acts such as treason, bribery, or other serious crimes, and they can be impeached. When the Senate finds such officials as guilty after the trial process then they can be removed from office¹⁷.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

President Harry S. Truman issued the executive order to seize and operate the steel mills across the U.S. to prevent a nationwide strike during the Korean War. It is national security as steel production and the steel companies, led by Youngstown Sheet & Tube Co has challenged the order arguing that the President has no power to control over the private industry without congressional approval. The legislations relating to this case are Article II, Section 1 defining the executive power of the President, Article II, Section 2 is about the President as Commander-in-Chief. The Fifth Amendment which protects against government seizure of private property without due process. The legal issue is does the US President control the private property without congressional authorisation. The Supreme Court ruled 6:3 that President Truman did not have the constitutional authority to seize the steel mills. The other issue is the President's action which violates the separation of power. The president cannot bypass the Congress to exercise the executive power which is beyond the constitutional limits. The Supreme Court held that executive power is limited and it cannot override the legislative authority which means the Congress does not have that authorisation. The legal issues of whether parliament has unlimited power to amend the constitution which includes the fundamental rights. The other issue is the executive Government has no checked power in implementation of the loss after the fundamental constitutional principles. The 13 judge bench of the Supreme Court ruled with a 7:6 majority. The Parliament amended the constitution under Article 368 not to alter the basic structure. The executive power to ensure the government actions to align with constitutional principles¹⁸.

AN ANALYSIS OF EXECUTIVE POWER OF THE STATES IN INDIA

The legal provisions under the Constitution of India for the Executive Power of the States are Article 154 is the Executive Power of the State, Article 163 is the Council of Ministers to Aid and Advise the Governor, Article 164 is the appointment of the Chief Minister and Other

¹⁷ Article II, section 4 of the U.S. Constitution

¹⁸ Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

Ministers, Article 166 is the conduct of business of the State Government, Article 167 is the duties of the Chief Minister towards the Governor. Article 154 deals with the constitutional head of the state, the Governor is the constitutional head of the state similar to how the president is headed to the national level. The Chief Minister and the Council of Ministers are exercising the real executive power. The duty of the Governor includes performing the ceremonial duty¹⁹. Article 163 deals with advice of the Chief Minister and the Council of Ministers. It is the duty of the Governor to act in accordance with them. But in some of the cases were the Governor can act himself with his own discretion for example sending a report recommending President's Rule in the state²⁰. Article 164 deals with appointment of Chief Minister by the Governor who is the leader of the majority party in the State Legislative Assembly. And the ministers are being appointed by the advice of the Chief Minister. On the advice of the Chief Minister, the other ministers are being appointed. The Council of Ministers will be held accountable for the State Legislature²¹. Article 166 deals with the executive actions that will be held in the name of the Governor in respect to the State Government. The main aim is to maintain transparency and accountability in governance²². Article 167 deals with the duties of the Chief Minister to communicate to the Governor in respect to some of the important government decisions in relation to the administration and to advise the Governor by the Council of Ministers when there is any reconsideration²³.

ROLE OF THE PRESIDENT AND GOVERNOR IN INDIA

The legislation relating to the role of the President and Governor in special circumstances are Article 356 is President's rule in a state, Articles 352, 356 and 360 is about the emergency powers. Article 356 deals with the President's Rule in a state when the state government is not working in accordance with the Constitution and the President's Rule period is for six months but with parliamentary approval can be extended for up to three years. Article 356 when there is failure of constitutional machinery, then it allows the President's rule in a state²⁴. Article 352 deals with national emergency, in any case of war, external aggression, or armed rebellion, the President has the power to declare a National Emergency²⁵. Article 360 deals with financial emergencies, it allows the President to declare financial emergency when India's

¹⁹ Article 154 of the Constitution of India, 1949

²⁰ Article 163 of the Constitution of India, 1949

²¹ Article 164 of the Constitution of India, 1949

²² Article 166 of the Constitution of India, 1949

²³ Article 167 of the Constitution of India, 1949

²⁴ Article 356 of the Constitution of India, 1949

²⁵ Article 352 of the Constitution of India, 1949

financial strength is threatened. During the emergency period, the power of the President will increase and the Union Government can assume full control over governance²⁶. Some of the other important Articles under the Constitution of India are which Article 123 is ordinance making power of the President, Article 213 is ordinance making power of the Governor, Article 256 is obligation of States and Union, Article 257 is control of the Union over States. Article 123 deals with the issue of ordinances, the President having the power to issue ordinances when Parliament is not in session, the power to the President when there is an urgent need for the purpose of lawmaking hence, this power is only for urgent circumstances. It is to prove the ordinances within six weeks of reassembly²⁷. Article 213 is similar to Article 123, Article 213 deals with the issue ordinance by the Governor when the State Legislature is not in session. In some cases, the approval by the President before the Governor can issue an ordinance²⁸. Article 256 deals with when the legislations are made by the parliament and it should be implemented in proper manner by the state governments. Both the state governments and the Union Government have the authority to interfere with the law²⁹. Article 257 deals with the issue of directives to state governments by the Union Government in relation to good governance³⁰. Article 356 deals with the invoking of the President's Rule³¹. Hence, the executive power in India helps in balancing the power between the Union and the States. The President and Governors are the constitutional heads and real power being exercised by the Prime Minister and Chief Ministers with their Councils of Ministers. The main purpose of checks and balances under the Constitution is to prevent misuse of power and ensure democratic governance³².

A COMPARATIVE ANALYSIS OF EXECUTIVE POWER IN INDIA AND USA

The power and the functions of the president is to protect the laws in India under Article 60 of Constitution of India. The president is the head of the independent authority, under Article 3, Article 111, Article 274, Article 74(2), Article 78 c, Article 108, Article 111 of the Constitution of India. The president of India is the head of the state and has the cabinet form of Government system. The executive power is vested in the President which can be exercised

²⁶ Article 360 of the Constitution of India, 1949

²⁷ Article 123 of the Constitution of India, 1949

²⁸ Article 213 of the Constitution of India, 1949

²⁹ Article 256 of the Constitution of India, 1949

³⁰ Article 257 of the Constitution of India, 1949

³¹ Article 356 of the Constitution of India, 1949

³² P.M. Bakshi, The Constitution of India, Universal, LexisNexis, 19th edition, 2023

by the president directly or by the subordinate to him according to the Constitution of India. The executive functions by the President which are head of the union, appointments, appointment of the Prime Minister and other Ministers, majority in lok sabha, Supreme Commander. The President is the head of the union executive and all the powers exercised by his name. The power of the President in exercising the executive power of the Union which extended with respect to Parliament's power in relation to law making, treaty and agreement. The president has the power to appoint the Governors of the state and the judges of the Supreme Court, High Court. The President also appointed the Prime Minister and the other minister with the advice of the Union Council of Ministers. The Union Council of Ministers remains five years in the office under the President to satisfy the Council of Ministers in respect to the majority of Lok Sabha³³. Article 75(2) of the Constitution, relating to the President, also dissolved the Union Council Ministers. The president is the head of the state and acting as Supreme Commander for armed forces in India and responsible for declaring the war and concluding the treaty. The other powers of the President are financial power, the money bill can be introduced after the recommendation from the President³⁴. In respect to the Constitution of India, the annual financial statement should be placed before the house of parliament by the President. It is related to the revenue, expenditures of the central government for the upcoming years. The approval of the President is very important for the proposal of taxation and expenditures. Also, in respect of raising the revenue, the approval of the President is important³⁵. The emergency power of the President is to proclaim the three kinds of emergency which are national emergency, financial emergency and emergency for failure of constitutional machinery in the state. Under the National emergency, the President may issue a proclamation of National emergency when the security of India is being threatened by war and external aggression. The executive power of the state will be exercised by the direction given by the Central Government. If there is five years of constitutional machinery in the state then the president has the power and authorised authority to make proclamation. The duration of this type of constitutional machinery emergency is three years. The president has the power to issue proclamations of finance and the central government gives direction to the state. The diplomatic

³³ Monika Mahawar, critical analysis of separation of power in India, UK, and USA, HEIN ONLINE, (August 17, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw11&div=209&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults

³⁴ Article 75(2) of the Constitution of India, 1949

³⁵ Vinita Choudhury, Separation of Powers: A Comparative Study of India, USA, UK, and France, NLIULAWREVIEW, (March 20, 2026, 07:00 AM), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2021/11/SEPARATION-OF-POWERS-A-COMPARATIVE-STUDY-OF-INDIA-USA-UK-AND-FRANCE-Article-6.pdf>

power of the President of India is the president of India in International forums such as chiefly ceremonial. The role of President is to send and receive diplomats and officers from the Indian foreign service. The military power of the President is the supreme commander of Indian armed forces. The president will declare war and conclude peace with the help of the Union Council of Minister's advice, headed by the Prime Minister. All the important treaties are made in the name of the president and the president appoints chiefs of services from the armed forces. The president has the power to grant pardons, reprieves or remissions of punishment to any person who is convicted of any offence committed by an individual. According to Article 72 of the Indian Constitution, the president has power to grant pardon, punish the crime against the Union law, punish by military Court and death sentence³⁶. In most of the cases the president exercises the power with respect to the advice of the Prime Minister and the cabinet³⁷. In the USA, the separation of power and its structure of constitution is based on the legislation which is Article I, section 1 relating to the legislative power in the Congress, Article II, section 1 relating to the executive power by the president of the United States of America³⁸. Article III, section 1 relating to the judicial power by the Supreme Court. The Court should not interfere with executive powers of the government³⁹.

United States v. Nixon, 418 U.S. 683 (1974)

In this case, Nixon refused to hand over the tapes, claiming executive privilege, arguing on the right to keep communications confidential to prevent national security and government operations. The legal issue is that the President has the absolute rights in the executive privilege to withhold the information from the judicial investigation. The US Supreme Court held the decision against Nixon that executive privilege is not absolute and it cannot be used to restrict the judicial investigation unless there is military secrets. The Court ordered Nixon to hand over the tapes which had incriminating information as the result Nixon resigned from the presidency on August 8, 1974, to avoid the process of impeachment. This case is about the limit on executive authority and to ensure even no President can be above the law; thus, the executive branch of the government cannot use the privilege to obstruct justice. The role of the judiciary in checking the presidential power, and even the President must comply and follow the court

³⁶ Eustace J. Kitts, Executive and Judiciary function in India, HEIN ONLINE, (September 26, 2025, 06:00 AM), https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/lqr18&id=359&men_tab=srchresults

³⁷ Article 72 of the Constitution of India, 1949

³⁸ Article II, section 1 of the U.S Constitution

³⁹ Article III, section 1 of the U.S Constitution

orders⁴⁰.

The President has the executive authority in the United States of America, the President's power mentioned under the constitution and elected in a separate election which is for the four years of fixed term. President is the de jure head in India but in the USA both de jure and definition facto head. The power of the President is to nominate and it is much the executive officer like the cabinet in-charge of the state department. The purpose of this is to maintain the executive and legislative branches of the government. The President is immovable from the office but the Senate has the power to remove the President through the process of impeachment if any crime committed by the president like bribery or treason. Also, in India the president can be removed by the parliament through impeachment if there is any violation of the constitution of India. The President is liable for the nomination of candidates to fill the vacancy and such nomination submitted to the Senate and referred to the Senate judiciary committee. Then the process of nominee's qualification and full Senate votes on the nomination⁴¹.

CONCLUSION AND SUGGESTIONS

The separation of power in India is not strictly followed and used as the division of the powers focusing on the executive organ must implement the execute laws. No organ of government should function other than their power. The Constitutional legislations ellipse in supporting parliamentary form of Government. India is following a parliamentary system with a flexible separation of powers and the executive is part of the legislature and responsible to it. The USA follows a presidential system with a strict separation, it ensures the independent functioning of the legislature, executive, and judiciary with strong checks and balances. The application of separation of power was stricter in the United States of America than India. The difference in both countries was leadership exercised on the President and executive. In the USA legislative and vice versa or less effective than in India in relation to control of executive over the legislation. In the USA, it is a presidential form of government and the president is the real executive head and the president has the power of a function independently and is not responsible to the legislative. But in India the president can be considered only as nominal if the President acts in accordance with advice of the Council of Ministers who are the part of the

⁴⁰ United States v. Nixon, 418 U.S. 683 (1974)

⁴¹ Jasdeep Kaur, A Comparative Study of Separation of Powers: India and USA, RESEARCHGATE, (September 24, 2026, 06:00 am), https://www.researchgate.net/publication/352180591_A_comparative_study_of_Separation_of_Powers_India_and_usa_by_jasdip_kaur_phd_research_scholar_law

legislative body and the Prime Minister is the real head. Therefore there must be a balance of separation of power to maintain the democratic integrity and to have good transparent governance.

REFERENCE

- DR. B. R. Ambedkar, The Constitution of India, 2023
- P.M. Bakshi, The Constitution of India, Universal, LexisNexis, 19th edition, 2023
- Dr. P.K. Agrawal & Virag Gupta, The Constitution of India Bare Act
- Constitution of India, 1949
- Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)
- Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461
- United States v. Nixon, 418 U.S. 683 (1974)
- Kitts, Eustace J, Executive and judicial function in India, HEIN ONLINE, (March 01, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/lqr18&div=40&start_page=349&collection=journals&set_as_cursor=1&men_tab=srchresults
- Mukherjea, A Comparative Analysis of the Separation of Powers of India and USA, (March 03, 2026, 05:00 AM), <https://www.ijnrd.org/papers/IJNRD2311056.pdf>
- Sharma, Vaishnavi, separation of power: a comparative study of India, USA and France, HEIN ONLINE, (March 06, 2026, 07:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw9&div=280&start_page=1&collection=journals&set_as_cursor=3&men_tab=srchresults
- Rajamani Shankar, Comparative Study on Separation of Power in India and the USA, INDERSCIENCE, (March 09, 2026, 09:00 PM), <https://www.inderscience.com/info/inarticle.php?artid=133756>
- Sharma, Vaishnavi, separation of power: a comparative study of India, USA and France, HEIN ONLINE, (March 13, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw9&div=280&start_page=1&collection=journals&set_as_cursor=3&men_tab=srchresults
- Monika Mahawar, critical analysis of separation of power in India, UK, and USA, HEIN ONLINE, (March 17, 2026, 06:00 AM), https://heinonline.org/HOL/Page?public=true&handle=hein.journals/injlolw11&div=209&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults

- Vinita Choudhury, Separation of Powers: A Comparative Study of India, USA, UK, and France, NLIULAWREVIEW, (August 20, 2026, 07:00 AM), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2021/11/SEPARATION-OF-POWERS-A-COMPARATIVE-STUDY-OF-INDIA-USA-UK-AND-FRANCE-Article-6.pdf>
- Eustace J. Kitts, Executive and Judiciary function in India, HEIN ONLINE, (September 23, 2026, 06:00 AM), https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/lqr18&id=359&men_tab=srchresults
- Jasdeep Kaur, A Comparative Study of Separation of Powers: India and USA, RESEARCHGATE, (September 24, 2026, 06:00 AM), https://www.researchgate.net/publication/352180591_A_comparative_study_of_Separation_of_Powers_India_and_usa_by_jasdip_kaur_phd_research_scholar_law

