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Separation Of Powers In India- Study On The Protection Of Primary Roles Of The Legislative, Executive And Judiciary

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Chapter 1-Introduction:

The three major wings of the government are executive, legislative and judiciary. The major functions of the executive wing of the government is enactment or legislation of laws. The major function of the executive wing is to implement the laws enacted by the legislature and the major function of the judiciary is interpreting the laws, and settling the practical issues faced during implementation of the law. These separation of powers or functions between the wings of the government could be termed as the concept of Separation of powers. However, there doesn't exist a clear demarcation of powers between the executive, legislative and judiciary. The legislative also performs the executive functions through the Parliamentary committees or sub- committees, along with judicial functions such As Enquiry commission. The executive also performs the legislative functions through delegated legislation and the judicial functions through discretionary powers, given to it in certain cases. The Judiciary also performs the legislative functions with respect to functioning of the court under Article 145 of the Constitution, and the executive functions by deciding on the tenders relating to the judiciary. Thus, it is evident that there is an overlap of functions between the wings of the government and there is no clear demarcation. However the basic functions of the legislature, executive and judiciary would still remain the same to some extent, and the primary roles would remain the same. This research project would try to analyze the concept of the primary roles remaining the same for the executive, legislative and judiciary. Apart from this, it would also try to check whether the primary roles of all the wings of the government are equally protected as it is mostly found that the legislative and judiciary's primary roles are protected the most when compared to the executive.

Statement of Problem:

The Separation of powers concept in the Indian scenario doesn't display a complete demarcation of functions between the wings of the government, rather the function are mostly overlapping. However the principal roles of the wings of the government should be demarcated. But, there exists a perception that the principal roles of the Judiciary and legislative are protected much efficiently when compared to the executive's primary duty of implementation of law. This primary problem drives us to do further research in this area.

Research Objectives:

1. To understand the concept of Separation of power in the Indian Scenario
2. To understand the mechanism in which the primary roles of the wings of the government are protected .
3. To analyze the mechanisms in which the primary roles are protected for the executive, legislative and executive, through separation of powers
4. To find out whether the primary roles of all the wings of the government are equally protected.

Research Hypothesis:

“There is no efficient protection of the primary roles of the executive wing when compared to the legislative and judiciary”.

Review of Literature:

M.P.Jain, SN Jain, “Principles of administrative law”, (Lexis Nexis, pp.22-32.)

This book talks about various concepts involved in administrative law, including separation of powers in broader terms.

Akash Triksha, “Seperation of Powers-Indian Perspective”, *Palarch;s JOAE*, (2020).

This journal article discusses the origin of the concept of sepeartion of powers and the true meaning of separation of powers.

Tej Bahadur Singh, Principle of separation of powers and concentration of authority, *IJTRL Journal* (1996)

This research paper talks about separation of powers concept and its application in various countries along with the opinion of the Indian Judiciary on the concept of Separation of Powers.

Nidhi Singh and Anurag Vijay, Separation of Powers: Constitutional Plan and Practise, 3 *International Journal of Scientific and Research Publication*, (2013).

This journal article talks about the concept of separation of powers with specific reference to non clear demarcation of boundaries between the wings of the government and the protection of primary roles.

Asif Hameed v. State of J and K -1989 AIR 1899.

The judgment in this case is a landmark judgment which established the primary role of the legislative within the wings of the government.

Epuru Sudhakar v. Govt. of AP- (2006) 8 SCC 161.

This judgment questioned the head of the executive of the state, .i.e the governor with respect to the decision made by him in respect to his pardoning powers.

Thus, after analysis of the available literature in this field, it is evident that all the literatures have concentrated on separate issue involved in the separation of powers and on describing the nature of separation of powers in India. The literatures have not tried to compare the efficiency of the wings of the government and the equality among them in protection of their respective principal roles. This research project would try to use this research gap for further study.

Chapter 2- Separation of powers- Nature and scope of the concept in India:

The doctrine of separation of powers deals with the functions of executive, legislative and judiciary and the relations between these three organs while performing its functions. The origin of separation of powers traces back to scholars such as Plato and Aristotle. John Locks was the first to categorize the wings of government into continuous executive power, non continuous legislative power and federative power. Apart from all these scholars, Montesque is the modern exponent of the doctrine of separation of powers. Montesque in his book titled “ L. Esprit Des Lois (Spirit of Laws) which was published in 1748 proposed the modern theory of separation of powers which added the aspect of ‘checks and balances’, to the doctrine of separation of powers, as he believed that accumulation of all the powers of wings of the government in a single body would affect the liberty of the citizens. Still, Montesque also argued that separation of powers doesn’t completely demarcate powers between the wings of the government in all scenarios. This concept was called as eclipse of liberty¹. Thus,

¹Tej Bahadur Singh, Principle of separation of powers and concentration of authority, IJTRL Journal (1996)

Separation of powers evolved in different times and has been added with the aspects of checks and balances and eclipse of liberty.

Now, with respect to India, the question of having a rigid or non rigid separation of powers was very much prevalent in the Constitutional Assembly debates. This issue started with the arguments of Prof. KT Shah, who proposed the insertion of Article 40-A, which read as follows,

“Article 40-A-There shall be a complete separation of powers as between the principle organs of the state, viz; the legislative, the executive and the judicial.”¹

This insertion of Article-40A denotes rigid or complete separation of powers, which was even agreed by Kazi Syed Karimuddin. However, it was dissented by K.Hanumanthiya, Prof. S.L.Saxena, who argued that complete separation of powers between the different wings of the government would result in three-fold conflict, and they suggested a harmonious structure between the different wings of the government.

Based on these arguments, Dr.BR Ambedkar, argued that, executive and judiciary should be separated. Still, the complete separation between the executive and legislative, as proposed by the Constitution of United States, need not be accepted totally, as the members of the legislative requires guidance from the members of the executive. Following these arguments, the insertion of Article 40-A, was turned down¹.

These aspects of the Constitutional Assembly debates, proves that the Indian framers didn't suggest separation of powers with complete demarcation of powers. This concept is very much evident in the Article 123 (1) of the Constitution which gives the promulgation powers (legislative powers) to the President, who is the head of the union executive, Article 357 of the Constitution, which gives the legislative powers to the President, in case of proclamation of emergency due to failure of Constitutional machinery of the state, Article 103 (1) of the Constitution which gives the judicial powers to the President on issues of disqualification of members of House of Parliament, along with judiciary role by the case of E.Peru Sudhakar v. State of AP². Thus, the executive is also allowed to perform the functions of the executive and judiciary in these given situations³.

With respect to legislature, it also performs the executive functions through the Parliamentary committees or sub- committees, along with judicial functions such as Enquiry commission and procedure involved in removal of President in accordance with Article 56 of the Constitution.

² E.Peru Sudhakar v. State of AP- (2006) 8 SCC 161.

³ Akash Triksha, “Seperation of Powers-Indian Perspective”, Palarch;s JOAE, (2020).

With respect to Judiciary, it also performs legislative functions while dealing with Constitutional questions of the enactment, which would be adapted by the amendments, and through Article 145 of the Constitution, and the executive functions by deciding on the tenders relating to the Judiciary. These provisions of the Constitution, establishes that India doesn't have a rigid separation of powers⁴.

Even, in the absence of a completely rigid separation of powers, still the primary roles of the wings shouldn't be given up unless expressly mentioned in the Constitutional provisions which are supported by the cases of In Re Delhi Laws Act case⁵, Ram Jawaya Kapoor v. State of Punjab⁶ etc, which talks about the differentiation of powers between the legislative-executive and legislative-judiciary respectively.

Similarly, the concept of independent judiciary was also supported by the cases of Chandra Mohan v State of UP⁷ etc.

Thus, the separation of powers in India is not completely rigid, as there are certain eclipses. Still, the separation of powers in India is not completely overlapping.i.e .even when it is not completely rigid, it is rigid to an extent.

Chapter 3- Rigidity of Separation of Powers with respect to Legislature and Judiciary:

From the case of Kesavanda Bharathi v State of Kerala⁷, it is suggested that the separation of powers between the legislative, executive and judiciary is a part of the basic structure doctrine. This suggests as stated earlier that India has some amount of rigidity in separation of powers, as the primary roles of the wings of the government should be protected.

Protection of primary role of Judiciary:

This aspect of protection of primary role of judiciary in the Indian Separation of Powers is concerned with the concept of having an Independent Judiciary, without the intervention of the executive and legislative, as the primary role of judicial body is to act judicially and decide cases without any influences, which is possible only if there is a presence of independent judiciary.

This aspect of protecting the primary roles of the Judiciary was further supported by the case of

⁴Nidhi Singh and Anurag Vijay, Separation of Powers:Constitutional Plan and Practise, 3 International Journal of Scientific and Research Publication, (2013).

⁵ In Re Delhi Laws case- 1951 AIR 332.

⁶ Ram Jawaya Kapoor v. State of Punjab- AIR 1955 SC 549 ⁷Chandra Mohan v. State of UP- AIR 1966 SC 1987.

⁷ Kesavanandha Bharathi v. State of Kerela- AIR 1973 SC 1461.

Jayanti Lal Amrit Lal v. SM Ram⁸ and SCOARO v. Union of India⁹, which argued this aspect of protection of judiciary's primary roles with the concept of Solomon's Throne, as mentioned by Francis Bacon in his "Essay of Judicature", which mentioned that Solomon's throne was supported by the two lions, and the two lions were not superior to the Solomon's Throne.

This aspect of having an independent Judiciary was also supported by the case of Chandra Mohan v. State of UP⁷, which stated that, "Even when the Indian Constitution has not accepted the complete separation of powers, as been accepted by the Constitution of America. Still, it provides for having an independent Judiciary. This aspect could further be supported by the knowledge of the pre-Independence agitation which requested for having a Judiciary independent of the legislature and executive." Based on these cases, it is very much evident that the concept of Separation of powers in the Indian context, is rigid to an extent with respect to judiciary as it protects the primary role of judiciary (fair trail), through maintenance of an Independent Judicial body.

This aspect of protection of primary role of judiciary through maintaining an Independent Judicial body is seen evidently from the evolution of Judiciary's opinion on appointment of Judges over a period of time.

The evolution of Judiciary's opinion on Judicial appointments started with the case of SP Gupta v. Union of India (1982), which analyzed the Article 124 (2), which was existing before the 99th Constitutional Amendment, which stated that the President should appoint the Judges of the Supreme Court by consulting with the judges of High Court, Supreme Court as the President deems fit and the Chief Justice of India. As the President acts on the aid and advise of his council of ministers according to Article 74 (2), which creates an executive bias, if the President should just consult with the judiciary. The first case of SP Gupta v. Union of India, illustrated that the process of consultation as mentioned by Article 124 (2), doesn't refer to concurrence and the primacy is with the executive.

However, the case of Supreme Courts Advocates on Records Association v. Union of India (1993)¹⁰, stressed that the Judicial independence is the soul and purpose of the appointment of the judges, which would be done justice only if consultation process becomes equivalent to concurrence. Hence, this case stressed that the primacy in appointment of Judges should be with the Judiciary to ensure Judicial independence. The case of In Re Special reference (1998)¹⁰ case further explained the reasons for giving the primacy to judiciary in Judicial appointments by adopting a structural approach by referring to the Constitutional scheme.

⁸ Jayanti Lal Amrit Lal v. SM Ram- 1964 SCR (5) 294.

⁹ SCAORO v. UOI- 1998 7 SCC 739.

¹⁰ In Re Special reference- AIR 1999 SC

1.¹²SCOARA v UOI- 1991 SCC 574.

Now, following the 99th Amendment, consultation was replaced by recommendations and the National Judicial Appointment Commission was created by Article 124-A. The composition of NJAC and the NJAC Act, flowing from the Constitution, was found that the primacy was with the executive according to the case of *SCOARA (2015)*¹². But, the court while deciding this case stated that the aspect of having an Independent Judiciary by giving primacy to Judiciary is a part of the Basic Structure doctrine as established by the case of *Kesavandha Bharathi v. State of Kerala*⁸, and declared the 99th Constitutional Amendment and the NJAC Act as unconstitutional.

Thus, through a period of time, the Indian Judiciary is considering that the Independence of Judiciary should never be compromised, which is nothing but the protection of primary role of Judiciary. It could be concludes that even when the Separation of Powers in the Indian context, is not completely rigid, still its rigidity with respect to the Judiciary is to an extent of having an Independent Judiciary without the intervention of executive and legislative.

Protection of Primary role of Legislature:

Secondly, the concept of Separation of powers with respect to Legislature, is rigid to an extent as it protects the primary law making power of the legislature, even when it is not completely rigid. This aspect of protection of legislative power is being protected both from the judiciary as well as from the executive.

Firstly, the case of *Asif Hameed Ali v State of Jammu and Kashmir*¹¹ is an evident example, on the protection of legislative power from the judicial control. In this case, the lower courts directed the legislature to create a statutory independent body for the screening of candidates enrolled for admission into medical colleges, which was disputed in the Supreme Court. The court while deciding the case, explained two concepts namely wise exercise of power and limitation of power, where judicial review was not allowed for the prior and was allowed for latter as mentioned in the case of *Trop v Dulles*¹². Based on these reasoning elements, the court finally decided that the formation of procedure required for admission in colleges was the legislative power of the parliament and the court couldn't direct the legislature in this regard. The court could decide on the constitutionality or other issues attached with the process, only if it is framed by the legislature and not otherwise. This case evidently showcases the scenario in which the primary role of the legislature is being protected from interference by the Judiciary.

¹¹ *Asif Hameed Ali v State of Jammu and Kashmir*- AIR 1989 SC 1899.

¹² *Trop v Dulles*- 356 US 86 (1958)

Secondly, the aspect of delegated legislation, is an evident example of giving up of legislative functions to the executive. In such cases of delegated legislation, the concept of delegation of essential legislative functions are mostly reviewed by the Judiciary, and the legislature is not allowed to give unguided power by this concept of essential legislative function. In the case of *In re Delhi Laws act*, the court declared that the power to amend or repeal are completely legislative powers and it shouldn't be completely given up by the Legislature through delegation. Adding on to this concept of not giving up of primary roles, the concept of providing sufficient guidance was added by the cases such as *Hari Shankar Bhagala v State of MP*¹³, *KT Moopil Nair v State of Kerala*¹⁶, *Gwalior Silk Manufacturing industries v. CST*¹⁴, which referred to the principle of giving discretion only in presence of proper guidance as mentioned by the case of *Schester v United States*¹⁵. Thus based on these cases, it is very much evident that the primary rule making power of the legislature has not been compromised or given up in way of discretion to the executive, unless it is for a purpose or with sufficient guidance. Thus based on these analysis, it could be concluded that the doctrine of separation of powers in the Indian context is, with respect to the legislature is rigid to an extent as the primary role of the legislature is protected from interference by the executive and judiciary.

Finally, Chapter 3 of this research projects clearly explains that the degree of rigidity for the legislature, judiciary in the concept of separation of powers in Indian context is to an extent of protecting the primary roles of the legislature and judiciary. This concept could be understood by the aspect of protection of Independent judiciary which is a starting point towards protecting the judiciary from being interfered from the executive or legislature, which helps the judiciary to perform its primary role of adjudication and by the concept of protection of legislature from giving up its primary rule making power unless it is done for a purpose or with guidance. Thus the separation of powers, with respect to legislature and judiciary is not completely protected, still the primary roles of these two organs are protected by it.

Chapter 4- Separation of Powers and protection of primary roles of the executive:

The separation of powers in India, even if it doesn't support complete demarcation of powers, still it protects the primary roles of the legislature and judiciary. Following this, the presence of protection of the primary role of executive in the concept of separation of powers, is a primary question. But, it is found that the primary role of executive, i.e implementation of law is not mostly protected by the

¹³ *Hari Shankar Bhagala v State of MP- AIR 1954 SC 465*

¹⁶ *KT Moopil Nair v State of Kerala- AIR 1961 SCC 552.*

¹⁴ *Gwalior Silk Manufacturing industries v. CST- (1967) 20 STC 430.*

¹⁵ *Schester v. US- 295 US 495 (1935).*

concept of separation of powers due to various reasons.

The roles of executive to take sufficient steps to ensure efficient implementation of law, and to ensure good governance is fulfilled through various administrative actions such as administrative directions, administrative discretion etc.

Firstly, administrative directions which are issued by the executive completely requires support from the legislature according to the cases of *CS Gill v Union of India*¹⁶ and *Amarjeeth Singh v State of Punjab*. This illustrates that the doctrine of separation of powers in India doesn't protect the primary roles of the executive by allowing the executive to issue any such directions as it deems fit to ensure efficient implementation of law, rather the executive could perform its role only when it is backed by the legislature.

Secondly, administrative discretions which are granted to the executive, to ensure good governance and efficient implementation of law is also not completely given to the executive, rather it is considered as a quasi judicial function, which needs compliance with the principles of Natural Justice such as *audi alterem partem*, duty to act judicially etc. according to the cases of *Gullaballi Nageshwara Rao v. State of Andhra Pradesh*¹⁷, *Province of Bombay v Kusaldas*²¹ etc.

This illustrates that the doctrine of separation of powers doesn't protect the judiciary from interference with the executive in administrative discretions.

Thirdly, even when certain powers are delegated by the legislature to the executive through the concept of delegated legislation, the power to repeal or amend cannot be given as it an essential legislative function according to the principles of delegated legislation.

Now from these cases and situations, it is very much clear that the concept of separation of powers in India is not rigid enough to protect the primary roles of the executive (i.e. steps to effect the enacted laws).

This aspect of separation of powers in the Indian context could be understood from the structure of the Indian Constitution as India has adopted a parliamentary form of government rather than adopting a Presidential form of government. In Parliamentary form of government, the executive would lose power if the legislature loses confidence through failing in No Confidence Motion.

¹⁶ *CS Gill v UOI- (2000) 5 SCC 742.*

¹⁷ *Gullaballi Nageshwara Rao v. State of Andhra Pradesh- 1959 AIR 308* ²¹
Province of Bombay v Kusaldas- AIR 1950 SC 222.

This supports the in effective protection of primary roles of the executive in the concept of Separation of powers.

Apart from this, Article 74 of Constitution, talks about the supremacy of Council of Ministers over the head of the executive (President) and Article 75 of the Constitution talks about the accountability of the Council of Ministers to the Legislature. Thus, the aspect of having legislative bias in administrative directions is very much justified by the legislative bias as prescribed by the Indian Constitution.

The legislative bias in the delegated legislation is also justified by the aspect that, only the powers of legislature has been delegated and it is not the inherent power of the executive, and delegation with sufficient guidance as provided by *Harishankar Bhagla v. State of Bihar*¹⁵ is allowed.

The requirements of administrative discretions could also be justified, as it only applies in case of conflict between the parties as mentioned by the case of *Province of Bombay v. Kusaldas*²¹, and not in all situations.

Thus the aspect of non protection of the primary roles of the executive in the Indian Separation of powers, could be justified by the presence of Parliamentary government system in India. Still, the aspect of complete legislative control over the administrative directions or instructions couldn't be justified, and the executive should be allowed to issue certain directions even without the support of the legislature, to ensure efficient implementation of the enactments. This drawback is very much conclusive in the case of *JR Ragupathy v State of AP*¹⁸, which established that the administrative directions are not binding in case of lack of legislative support. This non binding nature of administrative directions which lacks legislative support has certain exceptions according to the cases of *BS Minhas v. Indian Statistical Institute*¹⁹, *Khet Singh v Union of India*²⁰ etc. Still, these exceptions are only for certain situations and not for most of the situation.

Thus, it could be concluded that primary roles of the executive such as administrative directions, administrative discretion and subordinate legislation functions are not protected by the Indian separation of powers. The aspect of non protection of executive powers in administrative directions, subordinate legislation could be justified by the presence of Parliamentary form of government. Still, the complete non protection of executive roles in administrative discretions couldn't be justified and it has only few exceptions.

¹⁸JR Ragupathy v State of AP- 1988 AIR 1681.

¹⁹ BS Minhas v. Indian Statistical Institute- 1984 AIR 363.

²⁰ Khet Singh v Union of India- AIR 2002 SC 1450.

Chapter 5- Conclusion:

Thus, this research project examined the scheme of separation of powers in the Indian context, and the aspect of protection of primary roles of wings of the government and it was found that

1. The legislature's primary role of law making was protected to an extent by essential legislative functions.
2. The judiciary's primary role of adjudication is very much protected by maintaining an Independent Judiciary
3. The executive's primary role of implementation is not very much protected with respect to administrative direction, discretions and subordinate legislation.

Finally, it could be concluded that the separation of powers in India is not completely rigid except for protecting its primary roles. Still, the protection of primary roles of executive are not efficient as protection of roles of legislature and judiciary which proves the hypothesis framed for this project, "There is no efficient protection of the primary roles of the executive wing when compared to the legislative and judiciary". Still, this ineffective protection could be justified due to presence of parliamentary forms of government.

However, through analysis of protection of primary roles of executive, it could also be suggested that administrative directions should be protected to an extent as this protection has just been in the shape of exceptions and not otherwise.

List of Authorities

Books, Journal articles:

M.P.Jain, SN Jain, "*Principles of administrative law*", (Lexis Nexis, pp.22-32.)

Akash Triksha, "Seperation of Powers-Indian Perspective", *Palarch;s JOAE*, (2020).

Tej Bahadur Singh, Principle of separation of powers and concentration of authority, *IJTRL Journal* (1996)

Nidhi Singh and Anurag Vijay, Separation of Powers:Constitutional Plan and Practise, 3 *International Journal of Scientific and Research Publication*, (2013).

List of case laws referred :

Asif Hameed v. State of J and K, 1989 AIR 1899. *Rameshwar*

Prasad V. Union of India, AIR 2006 SC 960

Epuru Sudhakar v.Govt. of AP, (2006) 8 SCC 161.

Swaran Singh v. State of UP, 1998 (4) SCC 75.

S.R.Bomma v. Union of India, 1194 AIR 1918.

Ram Sahib Ram Jawaya Kapoor v. State of Punjab, AIR 1955 SC 549.

Aravalli Golf club v. Chander Hass, (2008) 1 SCC 683.

DN Agarwal v. State of MP, 1990 AIR 1311. *State of Madras v. C.Dorairajan*, AIR 1951 SC 226
In Re Delhi Laws case- 1951 AIR 332.

Ram Jawaya Kapoor v. State of Punjab- AIR 1955 SC 54

Chandra Mohan v. State of UP- AIR 1966 SC 1987.

Kesavanandha Bharathi v. State of Kerala- AIR 1973 SC 1461.

Jayanti Lal Amrit Lal v. SM Ram- 1964 SCR (5) 294.

SCAORO v. UOI- 1998 7 SCC 739
In Re Special reference- AIR 1999 SC 1.
SCOARA v UOI- 1991 SCC 574.

Asif Hameed Ali v State of Jammu and Kashmir- AIR 1989 SC 1899.

Trop v Dulles- 356 US 86 (1958)

Hari Shankar Bhagala v State of MP- AIR 1954 SC 465

KT Moopil Nair v State of Kerala- AIR 1961 SCC 552.

Gwalior Silk Manufacturing industries v. CST- (1967) 20 STC 430.

Schester v. US- 295 US 495 (1935).

CS Gill v UOI- (2000) 5 SCC 742.

Gullaballi Nageshwara Rao v. State of Andhra Pradesh- 1959 AIR 308

Province of Bombay v Kusaldas- AIR 1950 SC 222

JR Ragupathy v State of AP- 1988 AIR 1681.

BS Minhas v. Indian Statistical Institute- 1984 AIR 363.

Khet Singh v Union of India- AIR 2002 SC 1450