

COMPARISON OF SEPERATION OF POWERS IN INDIA, US AND UK

AUTHOR – V S REYTVIN, STUDENT AT THE TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY, SCHOOL OF EXCELLENCE IN LAW.

BEST CITATION – V S REYTVIN, COMPARISON OF SEPERATION OF POWERS IN INDIA, US AND UK, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 718-721, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

This article says the doctrine of power of separation and the importance of doctrine of separation which is mentioned in constitution of USA India and UK. Basically in USA the doctor of separation of power is not mentioned in the constitution but in India it has an separate article. The doctrine provides basic and very important principle which ultimately aims to achieve the liberty and principle of checks and balances. This article also includes limitations associated in separation of power in India UK and USA. Doctrine of separation of power aims to ratify power between legislature executive and judiciary. Doctrine of separation of power is applicable in both India and USA. Under doctrine of separation of powers the government is divided into many branches and sets a specific function for each braches.

Introduction:

The separation of powers of USA and India is different from each other in several ways, which are Judicial authority, Legislative authority, Executive authority, Checks and balances. The power of a branch of government has been limited. There is no power or right of an organ to take control over the other organ's power and responsibilities. There are totally three organs of government which are legislature executive and judiciary and the each organ is distinct separate and sovereign from other organ. One branch cannot trespass the territory of the other. The father of political science Mr aristole analysed that the government should be divided into three different branches but he did not mention their separation. The Indian constitution is deriver with the reference of the constitution of USA, So the doctrine of separation of India and USA will be moreover the same.

SEPARATION OF POWER IN INDIA

The Government of India Act, 1935, laid down the foundation for the federal setup. Though in every respect the distribution of powers between the union and the states as

contemplated in the 1935 Act has not been adopted in the Constitution but the basic framework is the same. As per the Indian constitution, presidentially powers are in terms of the executive level, legislative powers are given to the Parliament, and judicial powers are conferred upon the judiciary (Supreme Court, High Court, and Subordinate Court). The constitution brings into existence different constitutional entities namely, the union, the states and the union territories. It creates three major instruments of power, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function with the spheres allotted to them.

This doctrine of separation of powers has not been accepted in strict sense in India. There is functional overlapping as well as personal overlapping. For example, the Supreme Court has been vested with power to declare null and void the laws enacted by the legislature and actions taken by the executive, in case they are violative of any provisions of the constitution or the laws enacted by the legislature in case of actions by the executive. On the other hand the

executive has the power to influence the role of the judiciary by appointing people for the post of Chief Justice and other Judges. Indira Nehru Gandhi v/s Raj Narain^[2] observed that in the constitution there is separation of powers in a broad sense only a rigid separation of power as the under the American constitution does not apply to India.

SEPARATION OF POWERS IN USA

In U.S.A the federation came into existence as a result of the voluntary compact between 13 sovereign states. These states surrendered a part of their sovereign powers to a federal entity and retained with themselves the unsundered residue. The U.S.A constitution was enacted in the year 1787 and, hence it is considered to be one of the oldest and the most respected member of the family of modern federal constitution and is indeed considered a forerunner in this field of modern federalism. The U.S constitution adopts a very simple method for centre-state distribution of powers. It has only one list specifically enumeration of the powers of the centre. A few enumerated and specified powers have thus been allocated to the centre, and the unenumerated residue of powers has been left to the states. The doctrine of separation of power forms the basis of American constitutional structure. The Article I, II, III delegate and separate powers of the centre and the states. Article 1 vests legislative power in the congress, Article 2 vests executive powers in the president and Article 3 vests judicial powers in the Supreme Court. In U.S.A there is presidential form of government which is based on the theory of separation of powers between the executive and the legislature. The President is the head of the state as well as chief executive. He appoints and removes other executive officers and thus controls the policies and actions of the government departments. The persons in charge of different departments designed as the secretaries of state hold office at his pleasure and responsible to him and are more like his personal advisors. The President is not bound to accept the advice of a secretary and the ultimate decision rests with the

President. Neither the President nor any member of the executive is a member of the congress and a separation is maintained between the legislative and executive organs.

This system of government is fundamentally different from the parliamentary system prevailing in India. In U.S.A the President is not answerable to the congress as in India, where the cabinet is collectively responsible to the parliament. The president has a definite tenure of office and does not depend on majority support in the congress. Even before the expiry of his term, he can be removed only by the extremely cumbersome process of impeachment. The President cannot reject the congress whereas in India Prime Minister has the power to seek dissolution of the Parliament. The executive therefore is not in a position to provide effective leadership to the legislature and it is not always that the congress accepts the programmes and policies proposed by the executive. The U.S constitution guarantees the independent judiciary. However at the district as well as in the Supreme Court the judges are appointed by the President and their term of office is lifetime. And at the state or provincial level courts the judges are elected by the citizens of that state or province and that too for lifetime.

SEPERATION OF POWER IN ENGLAND

Although Montesquieu has defined the concept of separation of power from British constitution, but still at no point of time his doctrine was accepted in strict sense in English. On the contrary, England has adopted the theory of Integration of Power. It is quite correct that the three powers are vested in three organs and each has its peculiar features, but it cannot be said that there is no sharing out of powers of the government; therefore, the King is the executive head as well as an integral part of the legislature. Similarly, all the ministers are also members of one or the other houses of the parliament. The Lord Chancellor is head of the judiciary, chairman of the houses of commons (legislature) a member of the executive and

often a member of the cabinet. The house of commons ultimately controls the legislature. The judiciary is independent but the judges of the Supreme Court can be removed on an address from both houses of parliament. There is this idea of separation of power in U.K but not in the formal sense of its practice in U.S.A. The idea of mixed government with checks and balance as put forward by Blackstone is more dominant in U.K. Three wings are not clearly separated and have overlapped until now like in India. The separation of powers is the most important constitutional doctrine underpinning the UK, USA, and India, but it operates differently in the three countries because of their own peculiar legal and political contexts. Under this heading is a general overview of the principle together with the *case laws* that illustrate its application within each jurisdiction.

1. United Kingdom

The UK doesn't strictly separate powers like some other systems, like the USA. That seems more of a balancing act between powers within the government branches, and that would be the executive, legislature, and judiciary.

Executive and Legislature: In the UK's parliamentary model, the executive (Prime Minister and Cabinet) are drawn from the legislature (Parliament), which creates naturally some overlap.

Judiciary: With the help of Constitutional Reform Act 2005, this independence has been further built upon by constituting the UK Supreme Court in 2009. A clear separation, therefore, of the judicial function from the House of Lords.

Case Law:

R (Miller) v Secretary of State for Exiting the European Union (2017): This was another case addressing the power of the executive in the process of Brexit. The Supreme Court decision there determined the government could not use its prerogative to trigger Article 50, which would have started the process of Brexit, without being legally authorized to do so by the Parliament. It

thus reaffirmed the primacy of legislative supremacy over the executive.

R v Secretary of State for the Home Department, ex parte Fire Brigades Union (1995) : Here the courts came to hold that the executive cannot act in a manner blind to the process of legislation and thereby reasserted the requirement of judicial review of executive action to preclude the exercise of arbitrary power.

2. United States

The USA has a strict separation of powers enshrined in its Constitution. The three branches—executive, legislature, and judiciary have distinct powers, with a system of checks and balances.

Executive: Governed by the President, acts to enforce laws.
Legislature: Congress (House of Representatives and Senate) enacts laws.

Judiciary: The federal courts, headed by the Supreme Court, interprets laws.

Case Law:

Marbury v. Madison (1803): In this landmark case, the Supreme Court established the principle of judicial review, as courts should be authorized to declare the enactments of the legislature and the acts of the executive departments as unconstitutional. The case further confirmed an essential role of the judiciary in checking the powers of the other branches—the basic concept of separation of powers in the USA.
United States v. Nixon (1974): President Nixon was ordered by the Supreme Court to obey a subpoena for tape recordings surrounding the Watergate scandal. This decision reinforced the rule that no one, not even the president, is above the law. It helped to strengthen the judiciary's ability to temper and balance powers within government, particularly the executive branch of government.

Youngstown Sheet & Tube Co. v. Sawyer (1952): The Court declared that the President (Truman) did not have executive power to seize control of the steel mills in an ongoing strike because it

exceeded the reach of his power, holding that there must be a clear division between what is authority for the executive and what is prerogative for the legislature.

3. India

India has a parliamentary system similar to the UK but with a written constitution like the USA. The Constitution of India combines a functional division of powers among the Executive, Legislature, and Judiciary, with a system of checks and balances.

Executive: The President of India (formal head), together with the Prime Minister and the Cabinet, exercises executive power.

Legislature: The Parliament (Lok Sabha and Rajya Sabha) makes laws.

Judiciary: The Supreme Court and High Courts interpret and protect the law and Constitution.

Case Law:

Kesavananda Bharati v. State of Kerala (1973): While the landmark case of the basic structure doctrine evolved, it was established that Parliament cannot alter the "basic structure" of the Constitution even through constitutional amendments. Consequently, it exercised judicial review over parliamentary proceedings and ensured that the judiciary would play its part in upholding such constitutional provisions.

Indira Nehru Gandhi v. Raj Narain (1975): The Supreme Court struck down an amendment which had attempted to place certain acts of the Prime Minister out of judicial review. This case substantiated judicial intervention preventing an attempt by the legislature from fettering judicial review, thereby maintaining the balance of power.

Minerva Mills Ltd. v. Union of India (1980): The Supreme Court restated the basic structure doctrine whereby excessive powers of amendment conferred upon Parliament cannot infringe essential constituent elements of the constitution, one being the doctrine of separation of powers.

Summary Comparison:

UK: Overlapped and blurry distinction between the executive and legislature but an independent judiciary, especially after the Constitutional Reform Act 2005.

USA: Strict separation, very clearly with checks and balances. The judicial review is a significant mechanism through which this check and balance is ensured.

India: Functional separation of powers where the judiciary has been actively contributing to the protection of the Constitution, in its practice, under the doctrine of basic structure. Judiciary acts as a significant instrument of check on this power-triangle arrangement in all three countries, ensuring the effectiveness of the separation of powers in not allowing any one branch of the government to overbalance others.

CONCLUSION

Comparing the scheme of distribution of powers in the U.S.A with that in India we find that in America there is only one list while in India there are three lists. In America only the exclusive powers of the centre are defined; there is no concurrent field and the residue vests with the states. These exhaustive powers of the centre as well as the states have been defined; there exists a very large concurrent area and the residue vests in the centre and not the states. Functions conferred upon the center in India are more in number and in scope than those conferred upon the center in the U.S.A. Defence and external affairs are central subjects in both the countries but the centre's external powers appears to be broader in India than in the U.S.A. The Supreme Court in the U.S.A has helped in the growth of the centre as a powerful entity; whereas in India the centre has been conceded a powerful status by the constitution itself which is more pervasive than that of the centre in the U.S.A.