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Topic- Separation of Powers in the Indian Constitution - Relationship between Executive, Legislature and Judiciary

Separation of Powers in the Indian Constitution - Relationship between Executive, Legislature and Judiciary

The three branches of the government are the executive, the legislature and the judiciary. Although the three have distinct functions to perform, their scope sometimes meet. In this article, you can read all about the relationship between the three arms of the government for the polity section.

Separation of Powers

In India, a separation of functions rather than of powers is followed. Unlike in the US, in India, the concept of a separation of powers is not adhered to strictly. However, a system of **checks and balances** have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.

Today, most of the constitutional systems do not have a strict separation of powers between the various organs in the classical sense because it is impractical. In the following sections, we will see the prevailing system in India, what the relationship between each organ is, and the constitutional provisions thereof.

Before proceeding with the relationships, let us examine in brief what the functions of each organ of the government are.

What is the Legislature?

The chief function of the legislature is to enact laws.

- It is the basis for the functioning of the other two organs, the executive and the judiciary.

- It is also sometimes accorded the first place among the three organs because until and unless laws are enacted, there can be no implementation and application of laws.

What is the Executive?

The executive is the organ that implements the laws enacted by the legislature and enforces the will of the state.

- It is the administrative head of the government.
- Ministers including the Prime/Chief Ministers and President/Governors form part of the executive.

What is the Judiciary?

The judiciary is that branch of the government that interprets law, settles disputes and administers justice to all citizens.

- The judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.
- It comprises of the Supreme Court, the High Courts, District and other subordinate courts.

What is 'Separation of Powers'?

In the strictest sense, the doctrine of separation of powers is very rigid.

Background of the concept

- This concept was first seen in the works of Aristotle, in the 4th century BCE, wherein he described the three agencies of the government as General Assembly, Public Officials and Judiciary.
- In the Ancient Roman Republic too, a similar concept was followed.
- In modern times, it was 18th century French philosopher Montesquieu who made the doctrine a highly systematic and scientific one, in his book *De L' Esprit des Lois* (The Spirit of Laws).
- His work is based on an understanding of the English system which was showing a propensity towards greater distinction between the three organs of government.

Meaning of Separation of Powers

Although different authors give different definitions, in general, we can frame three features of this doctrine.

1. Each organ should have different persons in capacity, i.e., a person with a function in one organ should not be a part of another organ.
2. One organ should not interfere in the functioning of the other organs.

3. One organ should not exercise a function of another organ (they should stick to their mandate only).

Significance of the doctrine

Why do we need a separation of powers between the various organs of the State? Whenever there is a concentration of power in one centre/authority, there is bound to be greater chances of maladministration, corruption, nepotism and abuse of power. This principle ensures that autocracy does not creep in to a democratic system. It protects citizens from arbitrary rule. Hence, the importance of the Separation of Powers doctrine can be summed up as follows:

1. Keeps away autocracy
2. Safeguards individual liberty
3. Helps create an efficient administration
4. Judiciary's independence is maintained
5. Prevents the legislature from enacting arbitrary or unconstitutional laws

Constitutional Status of Separation of Power in India

The doctrine of separation of powers is a part of the basic structure of the Constitution, although not specifically mentioned. The legislature cannot pass a law violating this principle. The functions of the three organs are specifically mentioned in the Constitution.

Let us take a look at some of the articles of the Constitution which suggest separation of powers.

Article 50: This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.

Article 123: The President, being the executive head of the country, is empowered to exercise legislative powers in certain conditions.

Articles 121 and 211: These provide that the legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.

Article 361: The President and Governors enjoy immunity from court proceedings.

There is a system of **checks and balances** wherein the various organs impose checks on one another by certain provisions.

- The judiciary has the power of [judicial review](#) over the actions of the executive and the legislature.
- The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).
- It can also declare unconstitutional executive actions as void.
- The legislature also reviews the functioning of the executive.
- Although the judiciary is independent, the judges are appointed by the executive.

- The legislature can also alter the basis of the judgment while adhering to the constitutional limitation.

Checks and balances ensure that no one organ becomes all-too powerful. The Constitution guarantees that the discretionary power bestowed on any one organ is within the democratic principle.

Judicial Pronouncements Upholding Separation of Powers Doctrine

Kesavananda Bharati Case (1973): In this case, the SC held that the amending power of the Parliament is subject to the basic features of the Constitution. So, any amendment violating the basic features will be declared unconstitutional.

Indira Gandhi Vs Raj Narain Case (1975): In this case, the SC held that the adjudication of a dispute is a judicial function and parliament cannot exercise this function.

Swaran Singh Case (1998): In this case, the SC held the UP Governor's pardon of a convict unconstitutional.

Constituent Assembly and Separation of Powers

There are chiefly two reasons why the Constituent Assembly did not insert the separation of powers doctrine explicitly in the Constitution.

1. The founding fathers thought that it was too late to be inserting this principle as the Constitution was already drafted.
2. Also, India adopted the British parliamentary form of government. So, they thought it was better to avoid adopting a complete separation of powers doctrine like the American model.

Relationship between Legislature and Judiciary

Even though the functions of the executive and the judiciary are well-defined in the Constitution, the system of checks and balances ensures that each one can impose checks on the other.

- The judiciary can strike down laws that it considers unconstitutional or arbitrary.
- The legislature, on its part, has protested against [judicial activism](#), and tried to frame laws to circumvent certain judgements.
- Judicial activism is said to be against the principle of separation of powers.
- There have been instances where the courts have issued laws and policies through judgements. For example, the Vishakha Guidelines where the SC issued guidelines on sexual harassment.
- In 2010, the SC directed the government to undertake distribution of food grains.
- If the judiciary oversteps its mandate and crosses over into the territory of the legislature or the executive, it is called [judicial overreach](#).

Judicial Supremacy and Parliamentary Sovereignty

To strike a balance between the judiciary and the legislature, the Indian constitution uses the following principles:

- The doctrine of Parliamentary Sovereignty has been adapted from the British Constitution.
- The doctrine of Judicial Supremacy has been adapted from the American Constitution.
- The power of judicial review of the Supreme Court of India is narrower in scope than the Supreme Court of the USA.
- The Constitution of India guarantees 'established procedure by law' in Article 21 instead of the 'due process of law' provided in the American Constitution.
- The Indian Constitution has opted for an amalgamation of Britain's principle of parliamentary sovereignty and the judicial supremacy of the USA.
- The Supreme Court, on the one hand, can declare the parliamentary enactments as unconstitutional using the power of judicial review.
- The Parliament, on the other hand, can amend a large chunk of the Constitution using its constituent power.

Relationship between Legislature and Executive

The Constitution states that the executive branch of the State (Council of Ministers) shall be collectively responsible to the Legislature (Lok Sabha). This implies that the Parliament should supervise the work of the government and hold it accountable for its actions.

- In a parliamentary form of government, the executive is not separated from the legislature in that the members of the council of ministers are members of the legislature.
- The executive loses power when it loses the confidence of the legislature. The executive/ council of ministers is dismissed if it loses the legislature's confidence before its tenure is over. So, the legislature controls the executive through a vote of no-confidence.
- The head of government and head of state are different. The head of the government is the Prime Minister while the head of state is the President.
- The parliament makes laws in general broad terms and delegates the powers to the executive to formulate detailed policy and implement them.
- In a presidential form of government, the executive is not accountable to the legislature. One person is the heads of both the State as well as the government. A minister need not be from the legislature.

Relationship between Executive and Judiciary

There are several provisions in the Constitution which makes the judiciary independent. This is because, it is believed that for a democracy to remain efficient and effective, the judiciary must be independent. The judiciary is said to be the guardian of the constitution. If the executive also assumes judicial powers, that sort of a government tends to become oppressive.

However, there are some judicial functions which are performed by the executive as well. They are:

1. The appointments of the judges are made by the executive.
2. The President and the Governors also enjoy the power to pardon, reprieve, etc. These are direct judicial functions.
3. Under the system of administrative adjudication, the executive agencies have the power to hear and decide cases involving particular fields of administrative activity.