BLOGS

Separation of Powers under the Indian Constitution

Ruchika Mohapatra · 02 May 2025

Introduction

The doctrine of separation of powers is a fundamental principle in constitutional law, ensuring that governmental functions are distributed among different organs to prevent the concentration of power.

This doctrine, rooted in Montesquieu's political philosophy, forms the bedrock of democratic governance. Montesquieu argued that a political system must divide power among different branches to prevent authoritarian rule and ensure liberty.

Under the Indian Constitution, however, the separation is not absolute but rather functional and flexible, allowing for interdependence among the Legislature, Executive, and Judiciary.

Concept of Separation of Powers

The separation of powers doctrine divides government responsibilities into three branches:

1. Legislature: Responsible for making laws (Parliament and State Legislatures).
2. Executive: Implements and enforces laws (President, Prime Minister, Council of Ministers, Bureaucracy, etc.).
3. Judiciary: Interprets laws and ensures justice (Supreme Court, High Courts, and subordinate courts).

This classification is intended to prevent abuse of power and ensure a system of checks and balances.

The concept of checks and balances ensures that no branch exercises absolute power. Each branch has mechanisms to oversee and restrain the actions of the others, creating a balanced governance framework.

However, in India, these branches are not entirely independent of each other but rather function in a manner that allows for coordination and cooperation.

Constitutional Provisions Reflecting Checks and Balances

Legislative Checks on the Executive and Judiciary

1. Executive Oversight: The Legislature holds the Executive accountable through mechanisms such as the power of impeachment, parliamentary committees, and budget approvals.
2. Judicial Appointments and Laws: In many countries, the Legislature has a role in appointing judges or framing laws governing the judiciary's functioning.
3. Impeachment of Judges: The Legislature can remove judges for misconduct, ensuring judicial accountability. In India, Article 124(4) of the Constitution provides for the impeachment of Supreme Court judges.

Executive Checks on the Legislature and Judiciary

1. Veto Power: The Executive (e.g., the President or Governor) can veto legislation passed by the Legislature.
2. Ordinance-making Power: In certain jurisdictions, such as India, the Executive can issue ordinances under Article 123 when the Legislature is not in session.
3. Appointment of Judges: The Executive plays a role in appointing judges, subject to constitutional provisions and judicial scrutiny.

Judicial Checks on the Legislature and Executive

1. Judicial Review: Courts can review the constitutionality of laws and executive actions. In India, this power is derived from Articles 13, 32, and 226 of the Constitution.
2. Protection of Fundamental Rights: The Judiciary ensures that legislative and executive actions do not violate fundamental rights. Landmark cases such as Kesavananda Bharati v. State of Kerala established the basic structure doctrine, limiting legislative amendments that violate the Constitution's core principles.
3. Contempt of Court: The Judiciary can punish individuals, including government officials, for contempt of court to uphold its authority.

Case Laws on Separation of Powers

Indian courts have played a significant role in defining and refining the principle of separation of powers. Some landmark cases include:

Kesavananda Bharati v. State of Kerala

In this case, the Supreme Court established the Basic Structure Doctrine, holding that certain fundamental aspects of the Constitution, including the separation of powers, cannot be altered or destroyed through amendments under Article 368.

The Court ruled that while Parliament has vast powers to amend the Constitution, it cannot change its basic structure, which includes maintaining the independence and distinct functions of the three organs of the state.

Indira Nehru Gandhi v. Raj Narain

This case arose from a challenge to Prime Minister Indira Gandhi's election, which was declared void by the Allahabad High Court. In response, the 39th Constitutional Amendment was introduced to prevent judicial review of election disputes involving the Prime Minister and other high officials.

The Supreme Court struck down this amendment, reaffirming the independence of the judiciary and emphasizing that Parliament cannot immunize itself from judicial scrutiny. The judgment reinforced the doctrine of separation of powers by preventing the legislature from usurping judicial functions.

Golak Nath v. State of Punjab

The Supreme Court, in this case, held that Parliament cannot amend fundamental rights, thereby restricting its legislative authority from exercising judicial or executive functions.

The Court observed that the Constitution does not permit any organ to transgress its assigned domain, thereby reinforcing the doctrine of separation of powers. This decision laid the foundation for the later development of the Basic Structure Doctrine in Kesavananda Bharati.

Ram Jawaya Kapur v. State of Punjab

In this case, the Supreme Court examined the working relationship between the three branches of government and ruled that while India does not follow a rigid separation of powers, the Constitution ensures a functional division among the executive, legislature, and judiciary.

The Court clarified that executive authority is derived from legislative enactments but must operate within constitutional limitations. The judgment highlighted that while overlaps may exist, no organ can exercise absolute control over another.

Criticism of Separation of Powers

While separation of powers ensures efficiency and prevents authoritarianism, it also faces challenges in India:

1. Judicial Overreach: Courts have, at times, encroached upon executive and legislative domains, leading to accusations of judicial activism.
2. Legislative Encroachments: Parliament has occasionally tried to curb judicial independence through amendments, such as the National Judicial Appointments Commission (NJAC), which was struck down in 2015.
3. Executive Dominance: The fusion of the executive and legislature, as seen in the parliamentary form of government, raises concerns over executive accountability.

Conclusion

The doctrine of separation of powers in India is not rigid but rather pragmatic, ensuring coordination among government branches while maintaining a system of checks and balances. By preventing excessive power concentration, this doctrine upholds constitutional supremacy, democratic governance, and individual freedoms. However, its effectiveness depends on the mutual respect and autonomy of the three organs. Any imbalance- whether in the form of executive overreach, judicial activism, or legislative dominance can threaten the constitutional order.

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