

**THEORY OF SEPARATION OF POWERS AND TYPES OF POLITICAL EXECUTIVE  
AND CASE STUDY ON FORM OF GOVERNMENT IN THE CONSTITUTION OF THE  
REPUBLIC OF INDIA (PRESIDENTIAL OR PARLIAMENTARY) (UNDERSTOOD  
THROUGH AN ANALYSIS OF 2 PROPOSED AMENDMENTS IN THE INDIAN  
CONSTITUENT ASSEMBLY)**

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Most countries around the world today consider themselves to be democratic, and although the basic principles they follow are the same there are some variations found in different democracies around the world. One of the most basic principles of democracy is the separation of powers between the executive and legislative branches of the government. Based on the relationship between these two organs democracies can be broadly divided into two categories, that are – Parliamentary form and the Presidential form. India is the largest democracy in the world and choosing the system for its governance was no easy task and thus led to a great deal of debate and discussion on the issue. In India, we have a parliamentary form of democracy both at the Union and state levels. Article 74 and 75 of the Indian Constitution deals with the parliamentary system of government at the central or the union level and articles 163 and 164 contain provisions concerning states for the same. Articles 124 and 217 deal with the appointment of judges of the Supreme Court and the high court respectively. These indicate and include the independence of the judiciary from the other organs of the government which starts with the appointment of judges. The constitution also by Article 32 and Articles 226 and 227 conferred the power of judicial review on the Supreme Court and the High Court respectively. This establishes the judiciary in India as the protector of the constitution and the guardian of the rights of the citizens. Additionally, as observed by the doctrine formulated by the Supreme Court later in the Kesavnanda Bharti Vs State of Kerala case, all the above-mentioned features and provisions form a part of the basic structure of the constitution and thus cannot be changed or removed.

### **SEPARATION OF POWERS**

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'Trias Politica' or separation of powers is one of the most basic features of a democracy and goes back thousands of years. The very first instance of separation of powers in practice was seen in the Republic of Rome which forms the basis for most of the political and governance structure we have today, although it was first developed in Ancient Greece. The Roman empire in totality including the period of kingdom or republic or any other political structure lasted for at least around 2000 years. The roman republic laid the foundation for this thought both in theory and practice. After the fall of Rome, all regions except Britain had a hereditary ruler or king with a belief in the divine right to rule. The US was the first country to adopt a different form of governance from kings or parliamentary executives in the form of a presidential executive. The Magna Carta laid the foundation for democracy and separation of powers in the modern world in 1215 CE and the US constitution when it came into force in 1789 CE introduced a different form of separation of powers.

A combination of these 2 systems led to the formation of the semi-presidential or mixed system of Executive or the French/Russian system. Thus, different countries around the world have different types of executives and even countries that have the same type have many differences in their exact functioning, composition, and various other aspects. Just like a line of literature can be understood and interpreted in multiple ways so can the concept of executive and even the particular system adopted can be and actually is interpreted and understood by different countries differently. Today, most if not all countries around the world call themselves democratic and 'claim' to be democratic and thus share one of the most basic tenets of democracy, i.e., the system of 'Separation of powers'. This system requires there to be 3 different organs of the government i.e., Legislature, Executive, and Judiciary. These 3 organs shall perform the functions of law-making, law implementation, and legal dispute resolution and interpretation respectively. It also provides that these 3 organs shall be separate and that these 3 functions shall not be performed by a single entity. This theory of Separation of powers has been compounded by multiple people throughout history since its inception and has been interpreted differently by different people and countries at different points in time. Today, broadly three different systems of executive exist in the world are based on this theory. These 3 systems have also come to be known popularly by the country where they mainly originated and from where they propagated to different countries. These 3 systems along with the countries associated with them are: -

- Presidential System or American system**

- **Parliamentary system or British System**
- **Semi – Presidential or Mixed system or French/Russian System**

To be able to understand each of these systems, and analyze the pros and cons of each it is essential to first understand their common theoretical basis i.e., the theory of separation of powers, its various key aspects and interpretations, and how they have been incorporated in these 3 systems. We shall first look at the philosophical and theoretical formation of this theory as given by different philosophers.

### **THEORETICAL TIMELINE OF “THEORY OF SEPARATION OF POWERS”**

**ARISTOTLE:** Aristotle is one of the greatest philosophers who have ever lived and was thus unsurprisingly the first person to write about the separation of powers in his book “Politics”. In it, he described three agencies of government as were – General Assembly, Public Officials, and Judiciary. He also in this book first mentioned the idea of ‘mixed government’ or hybrid government and drew on various constitutional forms of ancient Greece. His ideas and work formed the basis for future work and development.

**JOHN CALVIN:** He favoured the system of mixed government wherein political power was divided between democracy and aristocracy. He also suggested the setting up of various institutions which would complement and control each other to prevent the misuse of power. Thus, he can be regarded as the first person to introduce the concept of ‘Checks and Balances’.

**JOHN LOCKE:** He studies the English constitutional system and from it deduced the advantages of dividing political power between the legislature for making laws and the executive (the monarch in this case) for implementation of the laws, administration, and protection of the country. The three branches of government – emerged in his book “Two treatises of Government” (1689) although with different names but he did not consider them to be co-equals. He considered the legislative organs to be supreme. His views and model corresponded with the dual form of government existing in England at that time – Parliament and Monarchy.

**MONTESQUIEU:** He was a French philosopher who is best known for his theorization of the concept of “Separation of Powers” in his book “The Spirit of the Laws” in 1748. He laid

down his theory largely on the English system of governance at that time and gave greater emphasis and importance to the political and personal liberty of citizens. He considered the union of the executive and legislature to be despotic and the union of executive and judiciary as not safeguarding the liberty of citizens against the state. Thus, his theory called for total separation of the three organs, something which no one before him had done. His views take inspiration from his real-life experience of living during the rule of King Louis XIV of the Bourbon Dynasty who although one of the greatest French rulers is considered to be despotic. Thus, summarizing his theory, it said that the three organs of the government should not be combined, and neither should they or their functions be given to one or two organs or entities. He is thus deservedly credited as the father of the modern-day theory of "Separation of powers". However, he is also criticized by some for misconstruing what he saw in England.

### **MEANING OF SEPARATION OF POWERS**

This theory simply advocates that the 3 main functions of government should be performed by 3 separate organs. Their powers, duties, and responsibilities should be clearly defined and kept separate. This is essential for protecting the liberty of the people. The basic premise behind this is when power gets concentrated in a person or group of persons, it can and is dangerous to people and their rights. The meaning of this concept can be summed up as: -

- The same person should not form part of more than one of the three organs of the government. Example: Ministers should not be made to sit in Parliament.
- One organ of the government should not control or interfere with the exercise of its functions by another organ. For example, the judiciary should be independent or the Ministers should not be made responsible to the Parliament.
- One organ of the government should not exercise the functions of another. Example: Ministers are not to have legislative powers.

### **ADOPTION OF THEORY AND ITS USE**

The theory of the Separation of Powers guided the Declaration of Rights adopted after the French Revolution of 1789. It clearly stated that "every society in which separation of powers is not determined has no constitution." The real and large support for this theory however came from the founding fathers of the Constitution of the USA. They accepted its importance

as the essential safeguard for preserving liberties and property.’ The Constitution of the USA adopted the idea of separation of powers as its guiding principle. It laid down a governmental structure that supported this theory. It gave the legislative powers to Congress, the executive powers to the US President, and therefore the judicial powers to the US Supreme Court. Each organ was kept separate from the other two. The Universal Declaration of Human Rights, as adopted by the UN General Assembly on 10 December 1948, also accepted the principle of separation of powers. All contemporary democratic constitutions do provide for a separation of powers in one way or the other.

## **EXECUTIVE**

In our context, this relates to all government functionaries, apparatus, personnel, etc. who are responsible for the implementation of the laws and policies of the government and the administration of the state. The rise of welfare states around the world has consequently increased the responsibilities and functions of the state, the fulfillment of which including their manner, type, and magnitude are other aspects that are directly dependent on the executive. Thus, there has been a massive increase in the powers and duties of the executive in every state in the world. The executive is further divided into two types based on their method and basis for the appointment, duration of term, functions, etc., they are:

- Political Executive**
- Permanent Executive**

The political executive includes the heads of governments and ministers who are tasked with the overall responsibility of government policy, are elected by the people, and have a fixed duration of the term. On the other hand, the permanent executive includes the civil servants or bureaucratic officials and is responsible for the day-to-day administration. While there are different systems for political executives in different countries around the world, permanent executives are similar for the most part.

## **TYPES OF POLITICAL EXECUTIVES AND FEATURES OF EACH**

As mentioned earlier, there are mainly 3 types of political executive. These three systems are based on 2 different principles, they are:

- Principle of collective leadership**
- Principle of individual leadership**

Now let's look into the three different systems and their features in detail. The 3 types along with their features are:

### **A. PARLIAMENTARY EXECUTIVE**

This system of the executive is based on the principle of collective leadership. This system is also known as the British system or the English system since that is its origin and source of propagation. The foundation of this system can be traced back to the signing of the Magna Carta in England in 1215. The head of the government is usually styled as the prime minister. They are the leader of the majority party in the Legislature. The executive comprises the Prime Minister and the council of ministers. They hold office as long as they enjoy a majority in the legislature, thus they along with the cabinet of ministers can be removed by the legislature via a vote of no confidence. Here, the Prime Minister is the leader of the majority party in the legislature and the party is elected directly to the legislature. The President on the other hand is directly or indirectly elected. In this type of system of executive, the executive is intricately linked with the legislature in the sense that the executive arises from within the legislature and continues to be a part of it. It is accountable to the legislature. Thus, here there is no complete or strict separation of powers as advocated for by Montesquieu. The head of state in this system is ceremonial or nominal, in whose name all executive action is taken but does not enjoy any real political power. Here, the role of the President or monarch as the head of state is largely ceremonial or nominal in nature and the Prime Minister along with the Council of Ministers wields effective power. Based on the type of this ceremonial head of state, this system can be further divided as:

- Constitutional Monarchy (Monarch)**
- Parliamentary Republic (President)**

## B. SEMI – PRESIDENTIAL EXECUTIVE

This system like the previous one is also based on the principle of collective leadership. This system is also known as the mixed system is seen in multiple countries, most evidently in France and Russian Federation. Here, there is a president as the head of the state, but unlike in the parliamentary republic, the president holds real political power exercisable in day-to-day administration. There is also a Prime Minister as the head of the government, who along with his council of ministers is responsible to the legislature. Sometimes the Prime Minister and the President may belong to the same party, while at times it is also possible that they both belong to different parties. This system can be further divided into two categories based on whether the president can dismiss the prime minister and cabinet from office, they are:

□ **Premier – Presidential System (France):** herein the President chooses the Prime Minister and cabinet but only the parliament can remove them from office via a vote of no confidence

□ **President Parliamentary system (Russia):** herein the President chooses the Prime Minister and the cabinet without the confidence vote from the parliament but must have the support of the parliament majority for their choice. The Prime Minister and the cabinet can be removed from office either by the President or by a vote of no confidence by the legislature

This system combines the elements of the parliamentary and the presidential systems and produces a new system in its own right. There are wide variations in the implementation, details, and other related aspects of this system in the countries where it has been adopted in.

## C. PRESIDENTIAL EXECUTIVE

This system unlike the previous two systems is based on the principle of individual leadership. Here, there is a president who is both the head of the state and the government. The President is directly elected by the people and is accountable to the people. He is not accountable to the legislature and thus, cannot be removed from office by a vote of no confidence. This system portrays a stricter and clear separation of powers between the three organs, as advocated for by Montesquieu. The office of the President is very powerful both in theory and in practice. This system has come to be known as the US or American system as it is the country of its origin and source of propagation. It was the first system to come into

practice post the parliamentary system when the American constitution came into force in 1789.

## **TWO SYSTEMS AND THEIR MERITS AND DEMERITS**

There are various advantages and disadvantages to both the system of government and the system that best suits a country's particular circumstances is the one most suitable for it. The drafters of the Indian Constitution deliberated at great length to determine which form or system of government would be most suited for the newly independent state. Both of these systems originally evolved and were adopted in specific countries from where they spread to various parts of the world. The parliamentary system came into existence as a result of various developments that took place in Britain over the course of several centuries and has thus come to be known as the British system. On the other hand, the Presidential system first came into existence in the United States of America in the aftermath of the American Revolutionary War and is thus known as the American system. The distinction that exists between these systems is based on the type of executive or the relationship between the executive and the legislature. There also exists another mixed form or system of democracy, i.e., the Swiss system. This system found in the country of Switzerland includes a mixed type of executive taking features from both the parliamentary and presidential systems. The constituent assembly that drafted our constitution discussed in great length to determine the system best suited for our country. They critically examined the constitutions of various countries and also referred to various previous legislation that had been enacted by the British such as the Government of India Act, 1935. Members expressed their views on various topics including but not limited to these documents and the draft constitution, their vision for what a future India should look like, how that state shall be achieved, various branches of democratic setup and the rationale behind all of these. Different members made different observations and while some were agreed upon by the majority, many were negative. The choice of a system is a very fundamental question for any constitution to answer. The method of discussion that took place in the Indian Constituent Assembly was raising questions and amendments on the Draft constitution presented before it by the Drafting Committee and while some amendments were accepted by the members of the committee, others had to be voted upon and decided.

## TOPICS COVERED AND PEOPLE'S VIEWS

The major difference among the different systems is the separation of powers between the different organs of government and the type of executive which includes its removability and the process of choosing various ministers. Another point was the type of government at the union or the state level, which in turn formed the basis for various future provisions and discussions. Though the constituent assembly voted for and eventually adopted the parliamentary system of executive, few advocated for the presidential form of the mixed form as well. They raised amendments to the draft constitution prepared by the Drafting committee chaired by Dr. B.R. Ambedkar and expressed their views and justifications. We shall look into and examine two such amendments raised on the draft constitution wherein the first dealt with the nature of the executive at the union level, and the second dealt with the separation of powers between the different organs of the government.

Although both of these proposed amendments were eventually negated, they brought a new perspective to the discussion and contributed greatly to the drafting of the Constitution. We shall look into and critically examine the points and justifications both given for the amendments and against them, their impact on the final constitution, and whether these statements and proposed amendments are relevant and hold any merit or not in today's scenario. Mr. Kazi Syed Kamrudhin, Mr. Imam Hassan, Mr. Mehboob Ali Baig Sahib Bahadur, and Prof. K.T. Shah are just a few of these people. Mr. Imam Hassan brought forward many of the positive aspects of the American presidential system and countered some of the remarks made concerning it by several other members. Mr. Kazi and Prof. K.T. Shah along with Mr. Mehboob Ali advocated for the mixed or Swiss system. They all gave various reasons to explain how the British parliamentary system was not the best suited to India. They explained how the American and the Swiss systems were formulated as a response to the variation in capabilities and difficulties faced by the British system. Discussions took place both at the time of the passing of recommendations of the Provincial Constitution Committee and the Union Constitutional Committee.

### **PROPOSED AMENDMENT ANALYSIS 1: (AMENDMENT NO. 221)**

Mr. Kazi raised to move amendment number 221 to be added to the end of clause 10 of the Union Constitution Committee report, the amendment proposed was as follows:

*'That the Executive of the Union shall be non-parliamentary, in the Sense that it shall not be removable before the terms of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.*

*The Prime Minister shall be elected by the whole House by a single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote'."*

In his speech accompanying the aforementioned amendment he noted that the parliamentary system had failed miserably as under the Government of India Act of 1935 covering the local self-government, local boards or municipalities are concerned. He mentioned that the parliamentary system created favouritism and nepotism and led to the opposition's neglect. He further explained that India is a land of many cultures, languages, and peoples and despite America not having any communal issues, they still adopted the presidential system. He mentioned that it was the need of the hour to have a strong, stable government that would be a bulwark against aggression and would not bow down to the whims of the people. He pleaded with the house to support his amendment and concludingly stated "The salvation of Indian people lies in this".

Mr. Tajamul Hussain and Mr. H.V. Kamath strongly opposed this amendment and expressed their appreciation for the British system. Mr. Tajamul mentioned that to him the non – parliamentary complexion of the executive seemed anti-democratic or against democracy and that if the executive did not enjoy the support of the house it should not remain in power, not even for 1 minute. He also mentioned that he did not appreciate bringing in a judicial tribunal and said that if a minister did not enjoy the support of the house and if there was something against him, the legislature is the one that should remove him, not the judiciary. Mr. H.V. Kamath stated that the above-mentioned amendment seeks to weaken the executive of the country. He explained that to have a dynamic executive it is necessary to have a parliamentary executive and stated how in the case of a dynamic executive the lesser the number of heads, the better. He also quoted a few lines from Mr. Rabindranath Tagore's famous poem: 'Where the mind is without fear' to better explain his views. Post this, the President called for Mr. Jawaharlal Nehru to speak and Mr. Nehru in his speech expressed his disagreement with the above-mentioned agreement and his justification for the same.

Mr. Imam Hussain next took the floor and spoke in support of the amendment and appreciated the American system. He stated that although the matter of whether the executive should be parliamentary or non – parliamentary is of great academic interest it is not practical politics due to the opinion in India being immensely in support of the British model which consequently makes praising the American system redundant and useless. He also mentions that constitutions are made with an element of finality about them but only for a time and went on to say that he would wish to one day see the British system removed and dethroned in the same manner the British administration was. He then further went on to explain that the executive is removable in Britain but does not differ in the day-to-day administration from the irremovable found in the American system. He goes on to explain that although there exists the Presidential veto in the American system the fact that it can be overthrown by a 2/3 majority of the house of representatives and the senate ultimately means, that in both the systems the power of the legislature is absolute. He mentions that in both cases the legislature is supreme but with certain safeguards and that the mere fact of whether the person who is appointed is a member of the legislature or not is not a matter of concern in the day-to-day administration. He replied to some of the colleagues who did not share his view on the topic, that if it's better to have one head in times of a crisis by the very nature of a crisis it is also better to have one head in times of no crisis. He states that in his opinion a President who is elected by no less than 51 percent of the entire population is a much better custodian of the nation as compared to a Prime Minister who is elected from only one constituency and enjoys the support of the majority of members from his party. He also countered the example given by Mr. Tajamul and explained how a member who has defected from his party to another party will never get a single vote from that party which he has left. He also mentioned that in reality, the executive is more easily removable in the American system as the President's authority in the matter is not questioned and gave the example of Lord Templeton during the Spanish crisis General Marshall to illustrate his point. He concluded by mentioning that the American system was not as bad as it was being painted by some of his colleagues.

Next, Mr. Mehboob Ali took the floor and went on to explain if the Swiss form of government proposed by Mr. Karimuddin was undemocratic, impracticable, and do not meet the present circumstances of that time in the country. He stated that the parliamentary executive ceases to be democratic as the leader of the majority party may choose anyone they wish to choose and that the electorate which is the real sovereign cannot turn out the

cabinet. He also advocated for the need for introducing the system of proportional representation for the election of ministers to be provided in the constitution. Concludingly he strongly advocated the Swiss system which incorporates the changes mentioned above and commended the amendment raised by Mr. Kazi.

Mr. Nehru rejected this agreement and thus it went to voting. He strongly advocated for a replica of the British system and coincided with some of the points raised by his colleagues in support of the British system.

**Final Result:** - As per the voting, the proposed amendment was negated.

It can be seen that several points raised in favour of this amendment do hold some merit today. Although the existing system which has now been working for over 70 years carried out its task, there have been several issues observed such as favouritism, nepotism, and several others mentioned above which could have been improved upon by the American or Swiss systems.

#### **AMENDMENT ANALYSIS 2 (AMENDMENT NO.1030)**

Mr. K.T. Shah raised an amendment to the Draft Constitution to add a new article 40 – After article 40. Article 40 – A, as proposed by him reads as follows: -

*“There shall be complete separation of powers as between the principal organs of the State, viz, the Legislative, the Executive, and the Judicial.”*

In his speech accompanying the proposed amendment, he explained the need for this amendment and pleads with the house to accept it.

The very basic requirement of a liberal constitution and he mentions that a complete separation between these 3 organs of the government was of utmost importance. He states that the ideal which has guided many states to base their constitutions on it is a result of “bitter past experiences”. He explained that this was necessary to maintain the independence of the Judiciary which is of the highest importance for the maintenance of civil liberties and the rule of law. He further stated that the undue influence of the Executive on the Judiciary would lead to the misleading or misdirecting of the judiciary. He then moved on to the relationship between the executive and the legislature and explained that the executive is in a position to corrupt the house or influence the votes of the members by several gifts or

favours they have in their power to confer and bestow and event went on to say that they were trying to recreate the situation as seen in Britain where a large number of people are indebted to and influenced by the Executive. He also mentioned that this separation has worked very well in America for around 156 years even in extreme cases of war and even internal civil war and commended the ideas of Thomas Jefferson and his type in advocating for the separation of the organs and concluded by saying that if the US had started on the same lines that the “Whigs” used, they would never be able to maintain their freedom, liberty and the constitution itself.

Mr. K. Hanumanthaiya next took the floor and declared that the proposed amendment was not in agreement or in tune with the constitutional structure adopted i.e. the parliamentary one. He also mentions that it was better to have a “harmonious governmental structure” rather than “a conflicting trinity”. He explained that if there is a complete separation between these organs then conflicts would be bound to occur. He further went on to say that the judiciary should not be the master of the executive or even be on par with the executive government. He justified this by explaining that sometimes the executive has to take certain actions which displease certain people and that these people might try to utilize this opportunity. He says that in his interpretation the independence of the judiciary means that the executive or its officers shall not interfere in the day-to-day administration of justice. He concluded by saying that he opposed this amendment for the reason that it was out of place in the constitutional structure adopted.

Next, the floor was taken by Mr. Shibban Lal Saxena who said. That he agreed to a great extent with the reasoning provided by Prof. Shah. He mentioned that though the assembly had chosen the parliamentary system, he agreed with the evils of the system and said that even though it had worked well in England, it was not possible for us to do the same and commended the reasoning provided by Prof. Shah. He concluded by stating that the Supreme Court’s independence should not be in any way minimized.

Mr. Kazi Syed Karimuddin who took the floor next started by declaring his disagreement with the proposed amendment. He justified his stance by explaining how since 1920, they had seen the working of the Government of India Act and other Local Self-Government Acts based on the Parliamentary system of Government to be a miserable failure. He further stated that in a parliamentary system political opponents are “practically crushed, neglected and ignored” and mentions that in such a system we have no convention and no discipline.

He further stated that for tranquillity and political opposition to thrive in the country, the presidential system was necessary. Next, he mentions that it had been practically accepted by the house that under the parliamentary system the judiciary could never be independent and stated that in such a case it would be “impossible to have protection under the Fundamental Rights and to have decisions which will be based on independent considerations.” He proceeded further by countering his fellow member from Madras by explaining that parliamentary government was not a ‘harmonious’ one and that a ‘harmonious’ structure is one in which all parties are allowed to work in a way in which the opposition is accommodated. Next countering the point concerning the conflict between the organs, he mentioned that an independent judiciary and one which disagrees with the excesses committed by the executive is a sign of a democratic state, one in which political frenzy will have no room and political opposition will be tolerated and one in which ministers will not have to please their supporters for their continuance in office. He concluded by expressing his strong support for the proposed amendment.

Mr. K. Santham was the next speaker on the floor and started by stating that this was a matter of great Constitutional importance but a little too late as the assembly had already decided on the parliamentary system and that based on that decision, the entire constitution has been prepared by the Drafting Committee and thus called the amendment hardly a practicable one. He then went on to explain how even in the American constitution complete separation is a myth and said that President after President in the US had tried to manipulate the Supreme Court by nominating judges that support their views. He then stated that our constitution shall be independent of the executive and the legislature as is in the case of the Supreme Court of the US and to this extent Prof. Shah’s desires had already been fulfilled. He then mentions that it is essential that the executive and the legislature and the parliament at the Centre should form one integral whole and function as one unit. He concluded by declaring his opposition to the proposed amendment and asked Prof. Shah to reconsider his views.

Next, the Vice President called upon Dr. Ambedkar to speak.

Dr. Ambedkar started by stating that there was no dispute whatsoever that the executive should be separated from the judiciary. Next with regards to the separation of the executive from the legislature, he mentions that it is true that such a separation does indeed exist in the constitution of the US, it is also to be noted that many Americans themselves were quite

dissatisfied with the rigid separation between these two organs and that one of the proposals made is to obviate and do away with the separation. Further, he repeated the separation of the executive from the judiciary and mentioned that this does not depend at all on the presidential or parliamentary form because even under the parliamentary form the separation of the judiciary was now an accepted provision. He concluded by declaring that for the above reasons he cannot support the amendment proposed.

**Final Result** – As per the voting, the proposed amendment was negated.

The separation and independence of the judiciary discussed here have been enshrined in the Indian constitution and are a part of the very basic structure of the constitution. The topic of the separation between the executive and the legislature has been time and again discussed over the years. Over the years, it has been seen that the executive has tried to influence the legislature and work towards pleasing its supporters.

## SUMMARY AND CONCLUSION

India eventually adopted a parliamentary form of government when the constitution was adopted on 26 November 1949 and further when it came into force on 26 January 1950, but the debates and discussions of which a small part can be found above are in favour of the presidential government had an impact on the constitution. The debate on the separation of powers led to the independence of the judiciary and it formed a part of the basic structure of the constitution. The very form of government that we shall have in our country also forms a part of the basic structure. The learned members of the constituent assembly deliberated upon and critically analysed the forms of government adopted by Britain and the US, discussed their merits and demerits, and adopted the system and provisions that were best suited for India and the circumstances of the time. The form of government acts as the basic constitutional principle upon which many provisions are then based. At the time of the framing of the Constitution, there was huge support for the British system amongst the people for which multiple reasons have been accredited. The members of the assembly also took provisions from various previous legislation enacted such as the Government of India Act, 1935. Various amendments were raised to the draft constitution of which 2 are mentioned and explained above to illustrate the debate that took place in the assembly about the system of government. All of the arguments given had an impact on the final draft of the constitution and its interpretation, no matter how minute it may be. Some of the

arguments given have proven to hold merit through the test of time such as the Stability of government. Apart from this as well, most arguments given were not in regards to a specific event or circumstance and thus hold at least the same amount of merit they held then if not more. The discussions that took place in the assembly formed the basis of many provisions of the constitutions, judicial review for example.

It is, therefore, safe to say that the views in favour of the American president or the mixed Swiss system did not go wasted, and had a positive impact on the constitution and the country. With more than 70 years being passed since the constitution came into force, the government and system enshrined in it have been working smoothly ever since its inception. Different people have different opinions on this and all of the opinions need to be respected. It should also be kept in check that the demerits of the current system do not overwhelm the merits and to make sure that the system in place is according to the time and the goals and aspirations of the people and the society. Both the theoretical and practical aspects of this need to be considered when discussing this, as it was done in the constituent assembly. People might not agree with the decision of the assembly but they should respect it and keep in mind the fact that they did what they felt was the best keeping in mind the time and circumstances. This is a question whose answer can keep on changing with time and circumstances and this should be kept in mind.

In conclusion, we should appreciate and commend the efforts of the members of the assembly and at the same time understand the topic and various arguments both in its favour and against it, and finally form our own opinion and understanding of the same based on valid and sound reasoning and rationale and not get influenced by others opinion easily. We should work together for the collective good of the country and its people and do everything possible to give effect to the various principles and ideals enshrined in the constitution.