



THE MODERN CONCEPT OF SEPARATION OF POWERS: A CRITICAL EXAMINATION OF ITS EVOLUTION AND CHALLENGES

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ABSTRACT

The purpose of this paper is to explore the historical evolution of the Separation of Powers from its classical theory to its contemporary applications, examining how various scholars have adapted and interpreted the doctrine of separation of powers in response to changing political situations. Whereas the classical model gave importance to the rigid separation, most modern democracies, including India, have adopted a more flexible and functional interpretation. The development of this doctrine has been traced starting from Aristotle to Montesquieu, has become a foundation for the formation of modern democratic governance. It advocates for a clear categorisation of powers between the three organs: that is Legislature, the Executive, and the Judiciary. The main purpose of this doctrine is to prevent each organ from encroachment. This principle has evolved significantly across different political systems. The study also highlights the continuing relevance of the Separation of Powers in promoting accountability, the rule of law, and institutional harmony. In modern democracies, the doctrine maintains a balance that helps for effective governance and protection of individual Rights. In the current scenario, the doctrine faces significant challenges such as the growing centralisation of power in the Executive, diminishing legislative oversight, and concerns over judicial encroachment. The study ensures the importance of maintaining equilibrium among the organs of the Government. The paper concludes with recommendations to strengthen democratic resilience by strengthening constitutional boundaries, promoting transparency and institutional integrity. In India, its insightful application assures that no organ of Government becomes too powerful. As society changes, this Doctrine continues to be necessary for preserving justice, fairness and the true spirit of the Constitution.

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INTRODUCTION

To maintain the stability of the Government, its functions and powers are distributed between the three organs of the Government. Powers are dispersed among the 3 organs to make them independent and not encroach on or interfere with each other's functions. This concept was earlier given by Aristotle and Locke, but the latter, for the first time, propounded by Montesquieu in his book *Esprit des lois*, *The Spirit of the Laws*, in 1747.¹ The objective of this doctrine is that one organ should not encroach each other. The legislative main function is to make laws, but it does not enforce them. The executive its function is to enforce the said laws made by the Legislature, but should not interfere with the law-making process. The judiciary upholds justice and the rights of citizens without interfering with the other organs.

The Doctrine of Separation of Powers was introduced in different countries in different ways, such USA, the UK and France. In USA strictly followed its Constitutional provisions. But UK and India, it is not strictly followed, implemented. The comparative analysis will help to understand how each of those countries follows and adapts the Doctrine of Separation of Powers.

In our current landscape, the strict divisions between branches are becoming more flexible. Collaboration often leads to a blending of roles that challenges traditional definitions. While this principle remains a key part of democratic frameworks.

RESEARCH METHODOLOGY

The research is done with the help of doctrinal research. Data is mainly collected from books, statutes, constituent debate, articles, journals, etc.

RESEARCH QUESTIONS

1. Whether the doctrine of separation of powers in accordance with the principle of checks and balances.
2. How does the separation of powers impact the democracy of a country?

¹ C K Takwani, *Administrative Law* (6th edn, Eastern Book Company 2020)

RESEARCH OBJECTIVES

1. To understand that this doctrine of separation of powers ensures impartial working of the government.
2. This research paper aims to identify the ideologies behind the development of the separation of powers.
3. To know how the separation of powers is consequently changing in the modern era.

MEANING OF SEPARATION OF POWERS

The Doctrine of Separation of Powers follows the principles of tries politics. The concept of this doctrine is to remove the misuse of power by the authorities. According to this principle, one organ or no organ of the government can exercise the power other than what is given the function or power is distributed to them. This Doctrine is based on four principles.²

- **Exclusive principle:** It's divided into three organs of the government, such as the Legislature, Executive, and Judiciary.³
- **Functional principle:** Which gives a limitation of the power of the organs and that one organ shall not perform the functions of another Court.
- **Mutuality principles:** It aims to create concord, not discord, cooperation, not confrontation, not estrangement.⁴

The main idea of this doctrine is that no man should be empowered with all these powers. It should be divided accordingly that the law is made by the Legislative, the administration of law should be done by the Executive and the Judiciary should uphold the law and provide justice.⁵

HISTORY AND EVOLUTION OF SEPARATION OF POWERS

Aristotle was a Greek philosopher, in his work “Politics” mentioned three branches of the government, namely the deliberative, executive, and judiciary. Roman writers like Cicero and

² C K Takwani, *Lectures on Administrative Law* (4th edn, Eastern Book Company 2004).

³ S P Sathe, *Administrative Law* (7th edn, Lexis Nexis 2010).

⁴ J J R Upadhyaya, *Administrative Law* (11th edn, Central Law Agency 2019) 32–64.

⁵ William Bondy, *The Separation of Government Powers in History, in Theory and in the Constitutions* (Lawbook Exchange 1998) 36

Polybius praised the Republican Constitution of Rome because in it they found a balance between the Senate, Consuls and Tribunes.

French Philosopher Montesquieu visited England and observed the freedom enjoyed by its citizens. He concluded that this liberty was due to the Separation of Powers within the British Government.

There would be an end of everything, were the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the cause of individuals.”⁶

- Montesquieu

Montesquieu propounded this idea in his famous work *Esprit De Lois*(1748), i.e., ‘The Spirit of Laws’, where he highlighted that power tends to corrupt, and to prevent tyranny, Government powers must be divided among separate bodies. Each organ Legislative, Executive and Judiciary each power should exercise by a different organ of the government. One organ might not become so powerful that it maintains that there should be a system of “Checks and Balances.”⁷

He explained that:

1. The legislative power creates and modifies laws.
2. The executive power handles foreign affairs and enforces laws.
3. The judicial power interprets laws and settles disputes.⁸

The roots of the Separation of Powers are found in the Vedas in ancient India. If we study the Smritis, which are ancient sources, i.e. Dharma, we find such a type of separation. This principle is echoed in Narad Smriti. During that period, administrative positions were clearly distributed; the Deewan was the Chief of the Executive wing, the Senapati was in charge of law and order, and the Kaji was the chief of the judiciary. While all these officials functioned independently within their spheres, the ultimate supreme authority is the king. He not only

⁶ *Ibid.*

⁷ S R Myneni, Political Science (3rd edn, Allahabad Law Agency 2019) 351–353.

⁸ Vijay Sharma and Prabhpreet Singh, ‘A Comparative Study of Separation of Powers: An Aspect of Constitutionalism’ (2023) 25 Journal of Indian Law Institute 211 https://revistadepreconstitutional.ro/wp-content/uploads/1contents/2021_2/Vijaylaxmi_SHARMA_Prabhpreet_SINGH_UJ_Revista_de_drept_constititional_nr_2_2021_BT.pdf accessed 25 April 2025.

enforced the law but also played a Legislative role by creating laws, much like the modern-day Legislature.

SEPARATION OF POWERS: IMPORTANCE AND RELEVANCE IN THE CURRENT SCENARIO

The Separation of Powers mainly prevents the arbitrary use of powers. If absolute power is given to one person or an organ, then it is bound to misuse the powers. Thus, it ensures that powers are not in one single authority.

Each organ of the Government should work independently with the other to have good governance in the state. Each organ of the Government ought to honour the responsibilities of the others and refrain from interfering in their functions.

Independent Judiciary: Independent judiciary is an important aspect in the separation of powers, which makes sure that the Legislative or Executive does not interfere in upholding justice.

Protect Citizens' Liberty: In 'spirits of laws' Montesquieu states that liberty can be preserved only when the powers are not handed to one single person or organ; instead, powers should be distributed among a group of individuals or organs of the Government.

COMPARING THE SEPARATION OF POWERS ACROSS DIFFERENT NATIONS

This paper tries to make a comparative study of the provisions of the Constitution regarding to separation of powers in some other countries.

United Kingdom: Basically, the UK has an Unwritten Constitution. And it follows the Parliamentary form of Government. Even though it is considered to be one of the countries to have the doctrine of Separation of Powers. Three organs of the Government said to their own significance, but there is no absolute Separation of Powers between the three organs. But it's clear overlapping in three organs. In the UK, the Separation of Powers is not enforced in a strict sense. This doctrine is an informal way in the UK.⁹

⁹ Moolmani Umesh, 'A Comparative Study of Separation of Powers with India' (2023) 5 Indian Journal of Law and Legal Research 311 <https://www.ijllr.com/post/a-comparative-study-of-separation-of-powers-with-india-usa-and-uk> accessed 26 April 2025

In the UK King is head of the Executive, and he is part of the Legislature. He and his ministers are also members of one of the Houses of Parliament. This Doctrine states that this concept goes against it, i.e. one person cannot hold or be part of the Government.¹⁰ In England Chancellor is the head of the Judiciary. And also, at the same time, he is chairman of the House of Commons. At the same time, also a member of the Executive and also member of the Cabinet. The concept of 'Checks and Balances', this concept of separation of power, has become the UK's major concern due to Article 6 of the European Convention on Human Rights protects the right to fair trial.¹¹

Present Scenario: The UK Supreme Court has been in charge of its judicial duties since 2009, bringing an end to one of the significant periods in the history of the UK legal system. Activities and functions of the House of Lords were fundamentally altered as a result. In 2009, the new Supreme Court divided the judicial role of Parliament. Now it has become limited jurisdiction over all civil and criminal proceedings.¹²

Legislative and Executive branches, there is total "fusion" that is held in the same hands. However, there is a sliver of belief that the Judiciary in England is free from any Executive influence, meaning that the idea of the separation of powers has vestiges in England in the Judiciary's degree of independence and its role in the administration of justice.¹³

USA: The Separation of Powers principles were embraced when the American Constitution was being written in 1787. The USA Constitution whole, organised framework. Article I, Sec.1 states that all Legislative powers herein granted shall be vested in the Congress of the United States of America.¹⁴ Article III, Sec. 1, the Judicial power of the USA shall be vested with one Supreme Court, in such Inferior Courts as the Congress may from time to time ordain and establish.¹⁵

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Moolimani Umesh, 'A Comparative Study of Separation of Powers with India' (2023) 5 Indian Journal of Law and Legal Research 311 <https://www.ijllr.com/post/a-comparative-study-of-separation-of-powers-with-india-usa-and-uk> accessed 26 April 2025

¹³ M P Jain and S N Jain, Principles of Administrative Law (6th edn, LexisNexis Butterworths Wadhwa Nagpur 2011) 25

¹⁴ US Constitution art I, § 1

¹⁵ US Constitution art III, § 1

Despite the explicit inclusion of this idea in the Constitution, the United States incorporates specific exceptions to the Doctrine of Separation to implement the Checks and Balances mechanism.

Power of the Legislative: In the USA Legislative body is Congress. Article I, sec. 8 provides Congress has complete power. It is the sole authority to legislate to provide laws and exercise all the functions granted to the government. Congress does not make broad grants of authority, Supreme Court acts less strictly.¹⁶

Power of the Executive

In the USA, Article II, Sec 1 states that Executive power is vested in the President, with specific limitations and qualifications.

Power of the Judiciary

In the USA Supreme Court and subordinate courts set by Congress have the power to settle issues and conflicts. Judges are elected by the president with the approval and consent of the Senate. If the Judges of a Court lack these qualities, the court may not perform the judicial power of the USA. In the United States, Legislative Courts are not permitted to exert judicial power.

Marbury V. Madison¹⁷ in this case, it served as the foundation for judicial review in the USA, Article III of the Constitution. This case is marked first instance throughout Western history where a court declared a statute unconstitutional.

Present Scenario

In USA contains the following characteristics, which are used in contemporary practice.

- In the USA presidential system of Government is built on a division between the executive and legislative branches. The President is the head of the State and Government.
- The President performs legislative duties by communicating with Congress and using his or her veto power

¹⁶ US Constitution art II, § 1

¹⁷ Marbury v Madison, 5 US (1 Cranch) 137 (1803).

- In the USA, Congress has the authority to use the legal process of impeachment to remove the President from office. Some appointments of administrative agencies are executive.
- Congress has the authority to use the legal process of impeachment to remove the President from office. And numerous administrative agencies have been given authority to legislate by the Congress; these organisations carry out a wide range of duties.

INDIA

The INDIAN government is divided into 3 organs Legislature, the Executive and the Judiciary.

Legislature: Legislative powers are vested with Parliament.

Executive: Executive powers vested with the President.

Judiciary: Judicial power is vested with the Judiciary (Supreme Court, High Court and Subordinate Courts).¹⁸

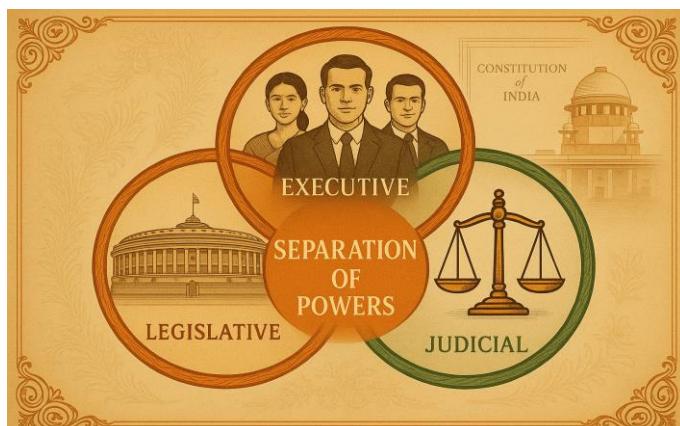


FIG 1: shows the structure of the three organs of the Government

CONSTITUTIONAL PROVISIONS

The separation of Powers is implicitly supported in the Indian Constitution. This Doctrine is not expressly recognised in the Constitution, its absolute form the conditions provides provisions for a fair division of duties and authority among the three branches of Government.

The Indian Constitution establishes functional division by various organs of the Government.

¹⁸ Durga Das Basu, *Commentary on the Constitution of India* (8th edn, LexisNexis 2011) 24.

Article 50: It states state must take action to keep the Judiciary and Executive branches apart. It protects the independence Judiciary.¹⁹

Articles 122 and 212: The Judiciary cannot challenge the legality of Legislative proceedings. It protects the Legislature independent to Court intervention on claims of procedural irregularity.²⁰

Articles 121 and 211: It prohibits prohibit discussion of the Judicial actions of Judges of the Supreme Court and High Courts in Parliament and the State Legislature.²¹

Articles 53 and 154: The President and Governor are granted Executive authority over the Union, and the States are exempt from both civil and criminal culpability.²²

Present scenario

In India, there is no functional overlap, but also personal overlap. If any Article or any Legislation is violated, the Supreme Court has the authority to declare all laws passed by the Legislature and all Executive acts invalid.

JUDICIAL APPROACH TOWARDS SEPARATION OF POWERS

Indian approach: There have been several landmark judgments related to the Doctrine of Separation of Powers. These are discussed below:

Ram Jawaya Kapur V. State of Punjab²³ in this case, the Supreme Court observed that the Indian Constitution doesn't strictly adhere to the Doctrine of Separation of Powers.²⁴

Indira Nehru Gandhi V. Raj Narain²⁵ in this case, Ray CJ also observed that in the Indian Constitution Separation of Powers is present in the broad sense only. It is not present in its rigid sense under the US Constitution or the Australian Constitution.

¹⁹ Constitution of India Art.50.

²⁰ Constitution of India Art.122 & 212.

²¹ Constitution of India Art.121 & 211.

²² Constitution of India Art.53 &154.

²³ *Ram Jawaya Kapur v State of Punjab* AIR 1955 SC 549.

²⁴ I P Massey, *Administrative Law* (7th edn, Eastern Book Company, Lucknow 2007) 37.

²⁵ *Indira Nehru Gandhi v Raj Narain* (1975) Supp SCC 1: AIR 1975 SC 2299

Kesavananda Bharati V. State of Kerala²⁶ mainly deals with Legislative powers and the principle of separation of powers. J. Beg highlighted that this principle is a key element of the Constitution's Basic Structure. Each branch of the Government, that is Legislature, Executive and Judiciary, has distinct roles that cannot be encroached by another branch. This framework laid out in the Constitution is so Fundamental that it cannot be altered, even though Article 368 generally allows for amendments.

Golak Nath V. State of Punjab²⁷ in this case, the Judges observed that the three organs of the Government are expected to exercise their functions within their limits and keeping in mind certain encroachments assigned by the Constitution.²⁸

APPROACH ADOPTED BY OTHER JURISDICTIONS

Trump V. United States,²⁹ this case, Donald Trump is charged with four counts stemming from his post-election actions in 2020. The indictment accuses him of conspiring to nullify the election outcome by knowingly disseminating false allegations of voter fraud. Trump sought dismissal, citing absolute presidential immunity from prosecution for official acts. Trump's motion to dismiss was rejected by the District Court, holding that ex-Presidents enjoy no federal criminal immunity for any acts. This decision was affirmed by the D.C. Circuit.³⁰

CHALLENGES REGARDING SEPARATION OF POWER

- Emergency powers can validate provisional centralisation of power.
- A Coalition Government can cause excessive influence between branches.
- Ambiguous boundaries result in institutional tension and overlap of jurisdictions.
- Globalisation and international law can circumvent national branches.
- Technocratic Government (regulatory agencies, commissions) obliterates conventional divisions.
- Public opinion and media can influence independent institutions.

²⁶ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461

²⁷ *Golak Nath v State of Punjab* AIR 1967 SC 1643

²⁸ Vajiram & Ravi, 'Separation of Powers in India, UPSC Notes' (31 August 2025)

<https://vajiramandravi.com/upsc-exam/separation-of-powers/> accessed 26 April 2025.

²⁹ *Trump v United States* 603 US 593 (2024).

³⁰ 'Trump v United States, 603 US 593 (2024)' <<https://supreme.justia.com/cases/federal/us/603/23-939/>> accessed 26 April 2025.

- Electronic governance and surveillance bring novel power interplays outside the three branches.

CRITICAL ANALYSIS

After the discussion, we find that in India, we did not follow the strict sense because India follows the system of Checks and Balances. But there are some advantages with the acceptance of this Doctrine it increases efficiency of the organs of the same time consumption of functioning of each department is decreases since because of Separation of each department have the expert in their fields so they will handle the matter so the purity and correctness in the result increase, the division of work increase the skill of employees in particular department.

In the USA constitution, we find a rigid sense of Separation of Powers.

In the UK, there is no absolute power of Separation of Powers; they believe the Checks and Balances system maintains transparency. To avoid arbitrary power, there should be a distribution of power among three organs.³¹

CONCLUSION AND SUGGESTIONS

The Doctrine of Separation of Powers cannot be adopted rigidly, but it can be seamlessly blended with the systems of Checks and Balances and adapted accordingly to the Constitution of different nations.

This Doctrine has to be applied and interpreted with the general objective of serving the greater good of the people. Any excessive encroachment by one organ of the State into the sphere of another threatens to diminish public confidence in the integrity, competence, and impartiality of our institutions.

In the Indian context, the doctrine has not been embraced with the same rigidity as under the United States Constitution. India's Constitutional framework, instead, adopts a more flexible and balanced approach, combining Checks and Balances for functional Separation. This interplay can be observed in all the sectors of governance and adjudication.

³¹ Rakesh Sha, 'Constitutional Scheme of Separation of Powers: Issues and Challenges with Special Reference to Judicial Review' (2023) 5 International Journal of Law Management & Humanities 5 <https://ijlmh.com/wp-content/uploads/Constitutional-Scheme-of-Powers-Issues-and-Challenges-with-special-reference-to-Judicial-Review.pdf> accessed 27 April 2025.

In summary, the Doctrine of Separation of Powers in today's world must needs to exceed a dual interpretation of either strict Separation or cooperative oversight.

Checks and Balances over Rigid Division: Checks and Balances offer a flexible approach to power distribution, unlike rigid separation. This promotes accountability, cooperation and stability in governance.

Transparent appointment mechanisms: Introduce greater transparency mechanisms, e.g., judicial review, parliamentary oversight, by doing regular audits and reporting to prevent misuse of powers.

Address emerging challenges: update doctrines to handle new power centres like regulatory bodies, media, and tech platforms.

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