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Separation of Powers

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ABSTRACT

Separation of power is often understood as a constitutional doctrine that separates government from private institutions responsible for performing different functions. According to this model, legal powers make laws, administrative powers enforce laws, and judicial powers interpret laws. Each branch in theory only performs its function, and the people who work within each branch should not work simultaneously in another branch. The main reason for the separation of powers between the private sector is to prevent any individual or group from excessive accumulation of power and tyranny. The topic of research is related to the concept of 'Separation of power'. The researcher would like to highlight the concept of power separation and gradually reach the level of power distribution in United Kingdom and India After that the researcher would like to mention the Separation of power in India. It is very important in a democratic country that the effectiveness of government is to protect individual freedom and to avoid conflicts between the rule of law, administration and justice, the separation of powers by means of examination and evaluation is very necessary so that three members cannot escape. But in a strong sense it is not possible and balance and evaluation of the form is very possible which makes the dictatorship of the power of others because if one member gets these three powers in hand it turns completely and violent into human suffering in the country and the concept of democratic values and constitution will jeopardize. With the changing needs of the community it is important that the appropriate boundaries should be in the hands of the authorities, the judiciary and the computer system but not in a waterproof room.

Keywords: Government, Legislative, Executive, Judiciary, Check and Balances

I. INTRODUCTION

Separation of powers means the segregation of governmental executive, administrative and judicial functions into separate and private bodies. Such divisions, it is suggested, limit the opportunities for extremism by government, because the punishment of all three of these branches is necessary in the n, implementation and administration of laws. The doctrine may be traced to ancient and medieval theories of mixed government, which argued that the

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processes of government should involve the different elements in society such as monarchic, aristocratic, and democratic interests. The first modern formulation of the doctrine was that of the French political philosopher *Montesquieu* in *De l'esprit des lois*³ although the English philosopher John Locke had earlier argued that legislative power should be divided between king and Parliament. There are three separate functions for each government in which democracy is expressed. These are the government's legislative, administrative and judicial functions. Related to these three functions are the three spheres of government, namely the legislature, the executive and the judiciary. The legislative body makes laws, the authorities use them and the law enforcement agencies use them in certain cases that arise as a result of the law. Each member while performing his or her duties tends to interfere with the performance of the other function because strong design of the functions is not possible in their interaction with the general public. So, even if they do things in search of their own strength, overworked activities often occur in these organs.

Background

It is widely accepted that for a political system to be sustainable, power must be measured individually. The principle of separation of powers applies to the relationship between the three spheres of government, namely the legislature, the administration and the judiciary. This theory seeks to bring special function to the functioning of the three limbs so a strong design is the goal that this goal seeks to achieve. This doctrine reflects the fact that one person or body of people should not exercise all three powers of government. The important question here is whether there should be a relationship between these organs of state. Either there must be a complete separation of powers or there must be a connection between them. An analysis of the three members and their relationships will be conducted through experience in different countries and in India which will give a clear idea of this doctrine and its significance in a different Constitution. Today all systems may not opt for a strong division of power because that is unnecessary and impossible but the effects of this concept can be seen in almost all countries in its purified state.

Meaning

It is generally accepted that there are three main organs of the government in a state: i) the legislature, ii) the executive, and iii) the judiciary. Likewise, there are three main categories of governmental functions: i) legislative, ii) executive, and iii) judicial. According to the theory of separation of power, these three powers and functions of the government must, in a free

³ (1748; *The Spirit of Laws*)

democracy, always be kept separate and be exercised by three separate organs of the government. Thus, the legislature cannot exercise executive or judicial power; the executive cannot exercise legislative or judicial power and the judiciary cannot exercise legislative or executive power of the government. For a state to perform its functions and duties properly the power has to be separated into different organs and these organs of the state must be kept in their respective domains and not to overlap their power and functions with each other. It is necessary for a state to demarcate the power and functions of its organs clearly and without any shadow of doubt. The theory of separation of powers deals with the government and its functioning in state where different organs of the state performs their respective task. The ultimate aim of separation of power is to protect the life and liberty of an individual in the state.

II. MONTESQUIEU'S THEORY OF SEPARATION OF POWER

Montesquieu, a French scholar, found that the collection of power by an individual or a group of people resulted in dictatorship. And so the devolution of power to the dictatorship, he saw the need to devolve government powers to three different organs, the legislature, the executive and the judiciary. The principle states that each member must be independent of the other and no member must perform the other functions. Montesquieu's argument that liberty is most effectively safeguarded by the separation of powers was inspired by the English constitution, although his interpretation of English political realities has since been disputed. His work was widely influential, most notably in America, where it profoundly influenced the framing of the U.S. Constitution. That document further precluded the concentration of political power by providing staggered terms of office in the key governmental bodies. Modern constitutional systems reflect many provisions of legal, administrative, and judicial systems, and doctrine has thus lost its firmness and its integrity. In the 20th century, government involvement in many aspects of social and economic life led to an increase in the level of power, a practice that quickly accelerated after World War II. Some who fear the consequences of this development of individual liberties prefer to devise ways to challenge administrative and administrative decisions (for example, by the ombudsman), rather than trying to re-reinforce the doctrine of separation of powers.

Doctrine of Separation of power:

There will be an end to everything, be it the same person or the same body, be it the nobles or the people, the exercise of those three powers, that of making laws, that of making public decisions, and of trying the causes of each individual. Through his teaching Montesquieu tried to explain that a union of authorities and legal powers would lead to the rule of an official,

because we could get whatever laws they wanted to have, whenever they wanted them. Similarly the union of legislative and judicial powers will not provide a personal defense against the state. The importance of doctrine lies in the fact that it seeks to preserve one's freedom by avoiding the focus of power on the individual or in the human body

III. SEPARATION OF POWER UNDER DIFFERENT CONSTITUTIONS

Despite the protection it offers, dictatorships find it extremely difficult to enforce it. Basically they go for power separation and power reduction at the same time.

UNITED KINGDOM (U.K.)

Before going to India, it is important that you know the constitutional establishment of the country where India was a colony and ultimately owe the kind of government you have. The U.K. follows the form of parliamentary government in which the Crown is the head of the appointment and the actual legal functions performed by Parliament. The existence of a cabinet system contradicts the doctrine of total separation of powers. It is the real chief executive of the executive, instead of the Crown. It initiates legislation, regulates the legislature, and has the power to end a meeting. The rest of the two energies in one body therefore deny the fact that there is any kind of separation of power in England.

INDIA

The Indian Constitution, it is clearly stated that the administrative powers of the Union and the State are vested in the Constitution with the President and the Governor, respectively, by Articles 53 (1) and 154 (1), but there is no corresponding provision. It is therefore held that there is no solid power separation. Although it is prima facie seems to be our Constitution based on the doctrine of separation of powers. The judiciary is independent in its field and there is no interference in their judicial functions whether it is the executive or the legislature. The Constitution prohibits ethical debates from any judge in Parliament. The High Courts and the Supreme Court have been empowered to review the judiciary and may declare any law passed by parliament to be unconstitutional. Supreme Court Judges are appointed by the President in consultation with the Chief Justice of India and Supreme Court. Supreme Court jurisdictions have the power to make rules for the conduct of business. It is noteworthy that Article 50 of the Constitution places an obligation on the state to take steps to separate the courts from the authorities. However, as with Directive Principles of State Policy, it is therefore not mandatory. In the same way, certain provisions of the Constitution also provide for the powers, rights and protections of Members of Parliament, the protection of legal proceedings against the judiciary, and the like. The Constitution provides for the delegation of executive authority to the

President. His powers and duties are enshrined in the constitution itself. The President and the Governor enjoy the security of public debt and crime.

However, a closer look reveals that the doctrine of segregation was not accepted in India as a whole. The executive is part of the legislature. It has a legislative responsibility for its actions and derives its legislative authority. India, as a system of parliamentary government, is therefore based on close communication and close communication between the legal and administrative organs. However, the administrative power rests with the President but, in fact, is the official head and, of course, the real head is the Prime Minister and their Council of Ministers. The study of Article 74 (1) makes it clear that the head of state must act in accordance with the assistance and advice provided by the cabinet. The legislature is usually a repository of legislative power but, in some cases, the President has been given the power to perform legislative functions. Just as when issuing a proclamation, enclosed laws and regulations relating to matters of public service, legislation is enacted while the declaration of a state of emergency is in force. These are just some of the situations in which the head office became a hotbed of activity. The President also performs judicial functions. On the other hand, in some cases Parliament uses judicial functions.

It may decide on the issue of infringement of its rights, and in the event of a violation of the President; both houses play an important role and decide on cases in which Judges, in India, can also be seen performing administrative duties when presiding over all the lower courts. It has the power to legislate and manifest itself in the enactment of laws governing their process of litigation and dismissal. This constitution itself speaks for it. The doctrine, therefore, was not given the status of a Constitution. Therefore, every part of government is required to perform all three functions. Also, each organ, in a sense, relies on another organ that tests and evaluates. The reason for the dependence on other countries can be given the rule of law in our country. However, this does not mean that this doctrine is not followed in India at all. Unless the constitution gives effect to the body, the principle that one organ should not perform the functions of others is primarily followed. This observation was made by the Supreme Court in the case of the *Re Delhi Laws Act*⁴ case, where, it was ruled by a majority of 5: 2, that, the idea of separation of powers is not part of our Constitution. However, it was also held that except in exceptional circumstances such as in Article 123, Article 357, it is clear that the constitution intends that the power of law be exercised only by the Legislature. As *Kania*, Chief Justice, observes-

⁴1951 AIR 332

“Although there is no clear separation of powers in the Indian constitution, it is clear that the legislature is constituted by the constitution and detailed details are provided to enable that legislature to pass laws. Doesn't that mean that unless it can be collected from other constitutional provisions, other governing bodies or the judiciary - are not intended to perform legal function.”

IV. CHECKS AND BALANCES

The principle of government under which separate branches are empowered to prevent actions by other branches and are induced to share power. Checks and balances are applied primarily in constitutional governments. They are of fundamental importance in tripartite governments, such as that of the United States, which separate powers among legislative, executive, and judicial branches. The Greek historian Polybius analyzed the ancient Roman mixed constitution under three main divisions: monarchy (represented by the consul); aristocracy (the Senate); and democracy (the people). He greatly influenced later ideas about the separation of powers.

Checks and balances, which modify the separation of powers, may operate under parliamentary systems through exercise of a parliament's prerogative to adopt a no-confidence vote in a government; the government, or cabinet, in turn, ordinarily may dissolve the parliament. The British Parliament is supreme, and laws passed by it are not subject to review by the courts for constitutionality. In France, under the Fifth Republic (1958), a Constitutional Council of nine members (appointed for nine years by the president, Senate, and National Assembly) reviews the constitutionality of legislation. The Federal Republic of Germany combines features of parliamentary systems and of federal systems like that of the United States. It vests the right to declare a law unconstitutional in the Federal Constitutional Court (1951).

The framers of the U.S. Constitution, who were influenced by Montesquieu and William Blackstone among others, saw checks and balances as essential for the security of liberty under the Constitution: “It is by balancing each of these powers against the other two, that the efforts in human nature toward tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution” (John Adams). Though not expressly covered in the text of the Constitution, judicial review—the power of the courts to examine the actions of the legislative and the executive and administrative arms of government to ensure that they are constitutional—became an important part of government in the United States. Other checks and balances include the presidential veto of legislation (which Congress may override by a two-thirds vote) and executive and judicial impeachment by Congress. Only Congress can

appropriate funds and each house serves as a check on possible abuses of power or unwise action by the other. Congress, by initiating constitutional amendments, can in practice reverse decisions of the Supreme Court. The president appoints the members of the Supreme Court but only with the consent of the Senate, which also approves certain other executive appointments. The Senate also must approve treaties. From 1932 the U.S. Congress exercised a so-called legislative veto. Clauses in certain laws qualified the authority of the executive branch to act by making specified acts subject to disapproval by the majority vote of one or both houses. In 1983, in a case concerning the deportation of an alien, House of Representatives had overturned the Justice Department's suspension of the alien's deportation). The decision affected clauses in some 200 laws covering a wide range of subjects, including presidential war powers, foreign aid and arms sales, environmental protection, consumer interests, and others. Despite the court's decision, Congress continued to exercise this power, including the legislative veto in at least 11 of the bills it passed in 1984 alone. Checks and balances that evolved from custom and Constitutional conventions include the congressional committee system and investigative powers, the role of political parties, and presidential influence in initiating legislation. In one-party political systems the U.S. Supreme Court held that legislative vetoes were unconstitutional (the , informal, and perhaps even illegal, checks and balances may operate when organs of an authoritarian or totalitarian regime compete for power.

V. CONCLUSION

It has been well said by Lord Acton:-

Power corrupts and absolute Power tends to corrupt absolutely. Conferment of power in a single body leads to absolutism. But, even after distinguishing the functions, when an authority wields public power, then providing absolute and sole discretion to the body in the matters regarding its sphere of influence may also cause abuse of such power. Therefore, the doctrine of separation of powers is a theoretical concept and is impracticable to follow it absolutely. The state of the modern world is very different from what it was in the past. We have changed a lot from a small, non-social situation, where we have a lot of roles to play, such as those of a protector, mediator, regulator, provider. This omnipresence of government has given its functions diversity and problems, relying on each other's great efforts to define and differentiate those functions can create inefficiency in government. Thus, a distinction is made between vital forces and organ. According to this division one member does not want power which is actually the other member because that would be a violation of the law of separation of powers. However, it may require the use of certain functions of another organ. This separation prevents

the entry of an organ into an important field of operation of another. In a democratic country goals are enshrined in the constitution and the state machinery is then setup accordingly. And here it can be seen that constitutional provisions are made as such to support a parliamentary form of government where the principle can't be followed rigidly. The Supreme Court rulings also justify that the alternative system of checks and balances is the requirement, not the strict doctrine. Constitutionalism, the philosophical concept of the constitution also insists on limitations being placed upon governmental power to secure basic freedoms of the individual. Hence, the conclusion drawn out of the study is that there is no strict separation of powers but the functions of the different branches of the government have been sufficiently differentiated.
