

DOCTRINE OF SEPARATION OF POWERS: INDIAN PERSPECTIVE

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Abstract

In India Constitution is sovereign, Separation of Powers is an inherent feature of the Constitution of India. Separation of Powers essentially includes the concept of checks and balances. Since Court being the guardian of the Constitution, it always interfere in the matters affecting the constitutional mandates, but country observed the clashes among the organs, specifically, in reference to Constitutional amendments. Court evolved the Principle of basic structure of the Constitution. This concept has also created confusion as to the applicability of this principle. This paper is an effort to analyse the concept of basic structure of separation of powers and its functions.

Key words: *Autonomous Bodies, Constitutional Law, Judicial Powers, Separation of Powers.*

"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 laws, that of executing public resolutions, and of trying the causes of individuals." Montesquieu

Introduction:

Power means ability. Separation of power means power's separation from one to another. When a power is divided into three branches executive, legislative and judicial, they are called separation of powers. Government is process of governing. It is the use of power deprived from the law that is approved by legislature. It means methods, manners, or system of governing society and organisation. Government is most essential attributes of state. We cannot have a clear idea about state without it.

Meaning of Separation of Powers:

The doctrine of separation of powers means that separate of the organ of the government the legislative, executive or judicial should ever exercise the powers of the others. It means that three departments of

governments are to be separate and distinct. They are to be independent of one another and each can exercise only the types of authority. Legislative, executive or judicial.

Concept of Separation of Powers:

1. The Executive Branch

It is the enforcer of law, it enforces laws made or enacted by the legislature, it is also held responsible for the government administration system. It has the authority to adjourn and dissolve the legislature. The formulation and execution of governmental policy is also the responsibility of the executive. It issues regulations for the governance of the government department. As the executive body including all the government servants it held the responsibility for developing service such as healthcare, welfare, education.

2. The Legislature Branch

It makes the law, amends and replaces old laws, it controls, criticise, supervise and scrutinizes the administration or activities of the executive and influences the policies of the government. It is also the representative for the people. It also has the power to elect the head of the state. India for example, the lower and the upper house and the state legislature bodies elect the president. Lastly the legislature also control the national finance.

3. The Judiciary Branch

It is a branch of government that is concerned with the administration of justice. It is the guardian of the constitution, if the laws made by the judiciary or the state are conflicted with the constitution, the judiciary could declare the laws are invalid. It interprets laws, the constitution and the statutes. It also makes laws when the existing laws are blur or confusing or conflicting each other in same cases.

Functions:

Legislature:

1. Law making

The first and foremost function is to make laws. In ancient times laws used to be either derived from customs, traditions, religious scriptures or issued by the kings as their commands. However, in the

contemporary era of democracy, legislature is the chief sources of laws. It transforms the demands of the people into authorities of laws/statutes.

2. Deliberative Functions

Though this function, the legislature reflects the public opinion over various issues. To deliberate matters on national importance, public issues, problems and needs is an important function of a modern legislature. The debates held in legislature have great educative value of the people.

3. Custodian of National Finances

It upholds the purse of the nation and controls the finances. No more money can be raised or spent by the executive without the approval of the legislature. Each year the executive has to prepare and get passed from the legislature the budget coming for the financial year. In the budget, the executive has to place the account of the actual income and expenditure of the previous year and estimated income and expenditure for the new year. The legislature maintains a control over all financial transactions and expenditures incurred by the executive.

4. Control over the Executive

A modern legislature has the power to exercise control over the executive. In a parliamentary system of government, the legislature has the power to remove the executive by passing a vote of no-confidence or by rejecting a policy or budget or law of the executive.

5. Constituent Functions

It is the legislature which has the power to amend the constitution. For this purpose the legislature has to pass special laws called amendments. In accordance with the procedure laid down in the constitution.

6. Electoral Functions

A legislature usually performs some electoral functions. The houses of the parliament elect the president of elected MP's.

Executive:

1. To Run the Administration

Executive branch is the most important branch of government because executive members run the administration. To run day to day administration in accordance with the policies, laws, rules, regulations and decisions of the government is also the key responsibility of the bureaucracy. The political executive simply exercises guiding, controlling, and supervising functions.

2. To Perform Different Public, Welfare Related Functions

In this welfare state, government of a country takes care of its citizens from cradle to grave. It has to perform different welfare related function like social safety net program, Immunization, vaccinations, prevention of early marriage, providing scholarship for meritorious to stimulate them towards education. All the activities are performed by the executive organ of the government.

3. To Perform Financial Function

The civil servants play a vitally important role in financial administrations. They advise the political executive in respect of all financial planning, tax structure, tax administration. They collect taxes and settle disputes involving recovery of taxes. They play a vital role in preparing the budget and taxation proposals. They carry out the functions of granting of legally sanctioned financial benefits, tax reliefs, subsidies and other concessions to the people.

4. To Perform Diplomatic Function

It means the conduct of foreign relations. The executive appoints diplomatic representatives to foreign states and receives representatives from them. Treaties and international conventions are negotiated and concluded by the executive, often subject to the approval of one or both houses of the legislature.

5. To Act as Adviser of Member of Parliament

One of the important functions of the executive branch is to advise the political executive. The ministers receives all the information and advise regarding the functioning of the respective departments from the civil servant. As amateurs, the ministers have little knowledge about the functions of their departments. They, therefore, depend upon the advice of bureaucracy. As qualified, experienced and expert civil servants working in all government departments, they provide expert and professional advice and information to the ministers.

6. To Represent Country Before The Foreign Country

The Prime Minister needs to go abroad to deal with foreign about different issues for the development of the country in this age of globalization. So, here prime minister of one country represents his country to other foreign country. It is obviously a greater responsibility of the executive branch of the government as Prime Minister of country belongs to executive branch.

Judiciary:

1. It Interprets The Laws

A number of cases are brought before the judges in whom the question of the interpretation of the law arises, because in such cases the laws are not clear. Even such matters are brought before them in which the laws are silent. In these cases of matters the judges give their decisions. Later these decisions are quoted in similar cases. In this way courts expand the laws in an indirect manner.

2. Protector of Civil Rights

People are given many rights by the state through the laws of the parliament. The courts protect these rights.

3. Deciding Cases

Many cases relating to the disputes between the citizens or between the government and the citizens are brought before courts. The courts give their decisions on such disputes.

4. Custodian of Fundamentals Rights

In modern times many countries grant fundamentals rights to the people in the constitution. The supreme court there act as the custodian of these rights. It is the duty of the courts to protect the rights of the government. Our high court and supreme court have many cases in which the question of the violation of the fundamentals rights are involved.

5. Guardian of The Constitution

If a law passed by the parliament violates the constitution that law shall be declared as void because the custodian is the highest law of the land and it is the duty of the courts to protect. For the protection

of the constitution, many have been declared illegal which violated any law or any clause of the constitution.

6. Advisory

The judiciary branch acts as advisory body. The supreme court has been given the right in the constitution to render advice on legal matters when asked for by the president.

The Relationship Among The Three Organs of The Government:

These three organs of the government are closely related to one another. The legislature makes the law, the executive implements them and the judiciary interprets them and awards punishment for the violation of the laws. In our country a parliamentary form of government has been established. In a parliamentary form of government the judiciary and legislature are under the control of executive. In our country the executive is responsible to the parliament and the parliament can remove the executive by a non-confidence motion. It can also ask question and supplementary questions. The executive have sufficient influence over the parliament because the prime minister begins the leader of the majority party in the parliament. In modern times the most important function of legislature of law making. Ordinary bill can be introduced by the members of the parliament and by the ministers while money bills can be introduced by the minister in the lower house. The executive prepares bills and introduced them in legislature. The legislature can be majority vote accept or reject any bill. The members of the legislature or the parliament enjoys the full freedom of speech and also of criticism of the politics of the government. The legislature has control over the budget of the executive and without its approval the executive cannot spend even a single penny. In parliamentary form the legislature or the parliament exercises full control over the executive or council of ministers. The parliament has the right to ask the question or supplementary questions to the cabinet. In certain countries the legislature has to perform certain judicial function. That's why three organs are related with each other.

Judicial Interpretation:

1. Ram Jawaya Vs. State of Punjab¹

¹ Ram Jawaya Vs. State of Punjab AIR 1955 SC 549 (India).

The first major judgment by the judiciary in reference to Doctrine of separation of power. The court within the above case was of the opinion that the doctrine of separation of power wasn't fully accepted in India. Further, the view of Mukherjea J. adds weight to the argument that the above-said doctrine isn't fully accepted in India. He states that: "The Indian Constitution has not indeed recognized the doctrine of separation of powering its absolute rigidity but the functions of the various parts or branches of the govt are sufficiently differentiated and consequently it can alright be said that our constitution doesn't contemplate assumption, by one organ or a part of the state, of functions that essentially belong to another".

2. Indira Nehru Gandhi Vs. Raj Narain²

Then in this case where the dispute regarding Prime Minister's election was pending before the Supreme Court, it had been held that adjudication of a selected dispute may be a judicial function which parliament, even under constitutional amending power, cannot exercise. So, the most ground on which the amendment was held ultra vires was that when the constituent body declared that the election of Prime Minister wouldn't be void, it discharged a judicial function that consistent with the principle of separation it shouldn't have done. The place of this doctrine within the Indian context was made a touch clearer after this judgment.

3. Keshvananda Bharti Vs. Union of India³

The Supreme Court was in the view that amending power was subject to the essential features of the Constitution. And hence, any amendment tampering these essential features are going to be struck down as unconstitutional. Beg, J. added that separation of powers may be a part of the essential structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the opposite. Hence this further confirmed the opinion of the court in reference to the doctrine of separation of power.

Conclusion:

Although complete independence of these three organs of a government is impossible and hampers the checks and balances of the government, required level of independence, especially independence of judiciary from legislative and executive, it's important to maintain the constitutional right and development for a democratic country.

² Indira Nehru Gandhi Vs. Raj Narain 1975 Supp SCC 1 (India).

³ Keshvananda Bharti Vs. Union of India (1973) 4 SCC 255 (India).