

SEPARATION OF POWERS

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What is separation of powers?

- The doctrine of the separation of powers refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another.
- It is also called as Horizontal distribution of powers
- Aristotle – Originated the concept
- Locke – Principles defined
- Montesquieu – Propounded (Main functions) – He says to promote liberty in its true sense, the powers should be separated and function independently.
- This doctrine signifies that one person or body of persons should not exercise all the three powers of the government.

3 Branches of Government

- Montesquieu stated in his book “the Spirit of Law” that in a free government, the Government should have three branches and their functions should be different:
 - Legislatures – To make law
 - Executive – To implement law
 - Judiciary – To interpret law
- These three branches would not intervene into each other work and they will work in their own sphere.

Theory of Montesquieu says that:

- “When the legislative and executive powers are united in the same person, or in the same body or Magistrate, there can be no liberty.
- Again, there is no liberty if the judicial power is not separated from the Legislative and Executive power:
 - Where it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator.
 - Where it joined with the executive power, the judge might behave with violence and oppression. There would be an end of every thing were the same man or the same body to exercise these three powers...

Theory of Wade and Philips says that:

- The doctrine of separation of powers implies:
 - (i) The same person should not form more than one organ of the Government.
 - (ii) One organ of the Government should not exercise the function of other organs of the Government.
 - (iii) One organ of the Government should not encroach with the function of the other two organs of the Government.

Significance of Separation of Powers

- **Prevents autocracy:** The separation of powers prevents any one branch of government from becoming too powerful.
- **Protects individual liberty:** The separation of powers safeguards liberty by preventing the government from making arbitrary or unconstitutional laws.
- **Maintains the independence of the judiciary:** The separation of powers ensures the judiciary's independence by giving judges security of tenure and making it difficult to remove them.
- **Checks and balances:** The separation of powers establishes a system of checks and balances so that the branches of government can collaborate while still operating independently.
- **Ensures an efficient administration:** The separation of powers helps create an efficient administration by dividing power and accountability among the three branches of government.

Separation of Powers in USA – The first country to apply SoP

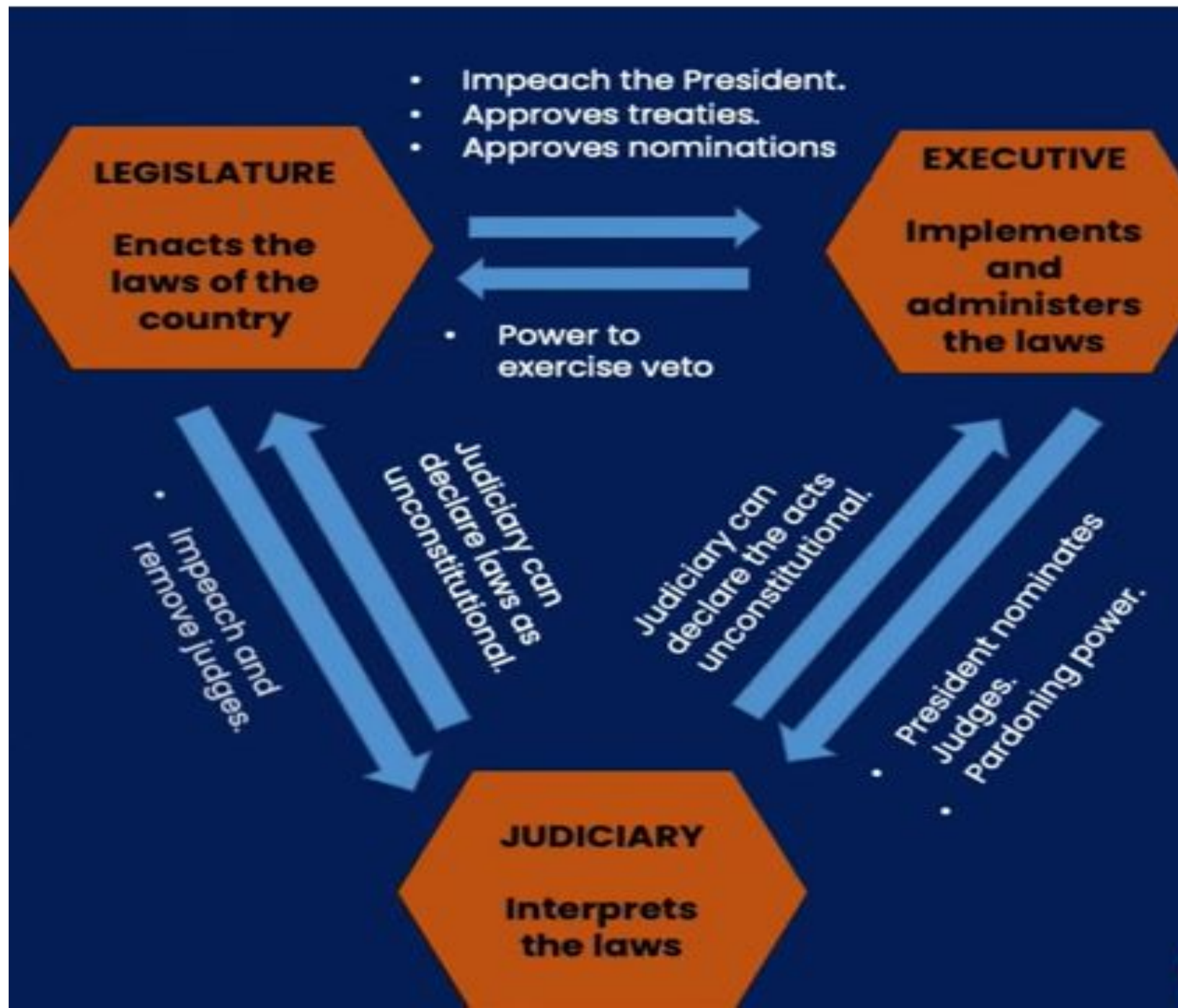
As per Constitution of USA:

Article 1 – Legislature would be handled by congress

Article 2 – Executive would be handled by President

Article 3 – Judiciary would handle court work to resolve the disputes and interpret the law

This division is not strict. They applied the concept of Check and balance. For example, Sometimes legislature brought by the Congress can be veto down by the President.



Separation of Powers in India

- Legislature – Parliament
- Executive – President
- Judiciary – SC/ HC/ subordinate courts

Locating separation of powers in Constitution

- **Article 50: Separation of judiciary from executive:** The State shall take steps to separate the judiciary from the executive in the public services of the State.
- **Article 121 Restriction on discussion in Parliament:** No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.
- **Article 122 Courts not to inquire into proceedings of Parliament**

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

- **Article 212: Courts not to inquire into proceedings of the Legislature**

[\(1\)](#)The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.[\(2\)](#)No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

- **Article 361: Protection of President and Governors:** shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

Exceptions to SoP

- President exercising Legislature and Judicial powers:
 - Article 123: Issuance of Ordinance: when both the houses of Parliament are not in session.
 - Article 357: President can exercise legislature function during proclamation of State emergency.
 - Article 103: Questions as to disqualification of members of Parliament.
 - Article 72: Pardoning powers of the President.
 - Article 217(3): If any question arises as to the age of the judges of HC, the question shall be decided by the President.

- Judiciary can exercise the function of Legislatures and executives under following circumstances:
 - Article 227: HC has supervisory powers over all subordinates courts and Tribunals.
 - Articles 145 and 225: SC and HC can make rules for regulating the practice and procedures of the court.
 - Article 13: Legislatures' laws are also subject to judicial review

Legislature can exercise judiciary and executive powers:

- Article 61: Impeachment of the President. One house works as investigator and other house works as Prosecutor.
- Article 54 and 55: Election of President by forming an electoral collage.

Drawbacks of SoP

1. **Gridlock and Delays:** The separation of powers can sometimes lead to legislative gridlock, where different branches struggle to reach an agreement. This often results in stalled progress and delays in decision-making, particularly on key issues that require cross-branch cooperation.
2. **Fragmented Response:** The distinct functions of each branch can cause fragmented responses to emerging challenges. The lack of synchronization between branches makes it difficult to implement a consistent approach to new issues, which may require a unified strategy for effective resolution.
3. **Ambiguity in Authority:** The separation of powers can blur the lines of responsibility, leading to confusion over which branch is responsible for addressing certain matters. This can result in disputes over authority, hindering prompt resolution of critical issues.
4. **Accountability Issues:** The division of powers may complicate efforts to pinpoint who is responsible for particular actions or decisions. This can create obstacles in holding public officials accountable, as it becomes unclear which branch or individual should bear the responsibility for missteps or failures.