G.S. PAPER II – CONSTITUTION & POLITY

SEPARATION OF POWERS BETWEEN VARIOUS ORGANS DISPUTE REDRESSAL MECHANISMS AND INSTITUTIONS

1 INTRODUCTION

"Power corrupts and absolute Power tends to corrupt absolutely"

We know that it the government's role to protect individual rights, but governments have historically been the major violators of these rights. Thus, a number of measures have been derived to reduce this likelihood. The concept of Separation of Powers is one such concept. The basic assumption behind this is that when a single person or group has a large amount of power, they can become dangerous to citizens. The Separation of power is a way of removing the amount of power in any group's hands, making it more difficult to abuse.

The doctrine of separation of power claims that state power is not a single entity but rather a composite of different governmental functions (i.e. legislative, executive, and judicial) carried out by state bodies independently of each other. The legislature enacts laws; the executive enforces laws; and the judiciary interprets laws.

This idea of separation of functions stems from the logical conclusion that if the law-makers should also be the administrators and dispensers of law and justice, then the people at large will be left without a remedy in case any injustice is done as there will be no superior authority.

The value of this doctrine lies in that it attempts to preserve human liberty by avoiding the concentration of powers in any one person or body of person. As stated by Madison- "The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." And for the prevention of this tyranny, the doctrine of separation of power holds its greatest importance.

2 ORIGIN

The theory of separation of powers may be traced back in the writings of classical and medieval thinkers such as Aristotle (384–322 BC). For instance, Aristotle in his book ("The Politics") proclaimed that:

There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these elements. The three are, first, the deliberative, which discusses everything of common importance; second, the officials; and third, the judicial element.

Further, Aristotle believed that any single form of government was unstable leading to a permanent cycle of disasters. In the same vein, Cicero preferred powers to be vested in the people and authority in the state. Apart from Aristotle and Cicero, other thinkers who rebelled against concentrating powers in one absolute leader were John Locke and Jean Bodin. For instance, Locke stressed that the executive and legislative powers should be separate for the sake of liberty. As liberty is likely to suffer when the same human being makes the law and execute them.

Such thinking during the Age of Enlightenment (reasons) in Europe were refined and reformulated as a doctrine in the mid-18th Century by the celebrated French philosopher, **Charles de Secondat, Baron de Montesquieu** (1689-1755) in his book, "**De l'Esprit des Lois**" (*i.e.* **the Spirit of Laws**), 1748.

Between 16-18th Centuries, the doctrine of separation of powers occupied an upper hand in the struggle of the bourgeoisie against absolutism and the arbitrary rule of kings (i.e. feudal monarchy). Again, the doctrine was used in a number of countries to justify a compromise between the bourgeoisie, which had won control over the legislature and judiciary, and the feudal-monarchical circles that had retained executive power. With the establishment of the capitalist system the principle of separation of powers was proclaimed as one of the fundamental principles of bourgeois constitutionalism.

3 DEFINITIONS

The phrase '*separation of powers*' is 'one of the most confusing in the vocabulary of political and constitutional thought'. According to **Geoffrey Marshall (1971:97)**, the phrase has been used '*with varying implication'* by historians and political scientists, this is because the concept manifests itself in so many ways. In understanding the concept of 'separation of powers' one has to take on board the three approaches *i.e.* **traditional** (classical), **modern** (contemporary) and **Marxist-Leninist** approaches.

3.1 TRADITIONAL (CLASSICAL) APPROACH

The traditional views are presented by **Montesquieu** who vigorously advocated for a *"strict or pure or total or complete or absolute"* separation of powers and personnel between three organs of the state *i.e.* the Executive, Legislature and Judiciary.Power being diffused between three separate bodies exercising separate functions with no overlaps in function or personnel.

3.1.1 MONTESQUIEU'S STRICT DOCTRINE (TRIPARTITE SYSTEM)

- In every government there are three sorts of power *i.e.* legislature, executive and judiciary. The **executive**, makes peace or war, send or receives embassies, establishes the public security and provides against invasions. The **legislature**, prince and magistrate enact temporary or perpetual laws and amend or abrogate those that have been already enacted. The **judiciary**, punishes criminals, or determines the disputes that arise between individuals.
- **Montesquieu** warned his countrymen about the danger of vesting all state powers in one person or body of people as follows;

  When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty…….Again, there is no liberty if the power of judging is not separated from the legislative and executive. If it were joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. If it were joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, if the same man, or the same body, whether of the nobles or the people, were to exercise those three powers, that of enacting laws, that of executing public affairs, and that of trying crimes or individual causes.

  - That concentrated power is dangerous and leads to despotism of government (tyranny);
  - Legislature should not appoint members of the Executive [i.e. Parliament should not elect the President or the Prime Minister]; and for the same reason the Executive should not have a role in electing members of the Legislature. Neither the Executive nor the Legislature should appoint members of the Judiciary, for if they do the Judiciary will lose its independence. Again, judges should not appoint members of the Executive.
  - That it is the people who should elect members of executive, legislature and judicial officers.
  - State officials should not form part of or belong to two or more organs.
  - He argued, if separate powers of government are placed in different hands, no individual or group of people can monopolize political powers (*i.e.* differentiation of functions). Thus, he was against absolute power residing in one person or body exercising executive, legislative and judicial powers.
  - To him, the state will perish when the legislature power become more corrupted than the executive.
  - He based this model on the Constitution of the Roman Republic and the British constitutional system. **Montesquieu** took the view that the Roman Republic had powers separated so that no one could usurp complete power.
  - He (mistakenly) believed that the English constitution establishes functional separation between the legislature, executive and judicial powers. In England, the monarch exercises executive powers, legislative power are shared by hereditary nobility and the peoples' elected representatives, judging powers vested in persons drawn from the body of the people.

3.1.2 SUMMARY OF DOCTRINE

The Doctrine of Separation of powers includes the following distinct but overlapping aspects;

- **Institutional separation of powers:** (*a tripartite separation of powers)* – the need to have three major institutions or organs in a state *i.e.* Legislature, Executive and Judiciary.
- **Functional separation of powers:** state power/functions must be vested and exercised by three separate institutions or organs *i.e.* law making, enforcement and interpretation.
- **Separation of personnel:** (*each organ with own personnel)* – no person should be a member of more than one organ.
- **Limitation of appointing powers:** state organs should not appoint or elect members for each other.

3.2 MODERN (CONTEMPORARY) APPROACH

The doctrine of separation of powers has become an integral part of the governmental structure. But, the practical application of the doctrine differs to a great extent. In theory, the doctrine of separation of powers is supposed to have a threefold classification of functions and corresponding organs. But because of the diverse and complex nature of a modern state, where the process of law making, administration and adjudication cannot be clearly demarcated or assigned to separate institutions, the application of this doctrine in strict sense is very difficult.

This approach somehow departs or otherwise tries to refine Montesquieu's strict doctrine of separation of powers. Essentially, this approach point out practical difficulties in the application of Montesquieu's strict doctrine and thus advocates for a '***mixed government***' or **'*weak separation of powers*' with '*checks and balances*'** to prevent abuses. Therefore, this concept insists that the primary functions of the state should be allocated clearly and that there should be checks to ensure that no institution encroaches significantly upon the function of the other.

To them, Montesquieu's strict doctrine presents the following problems:-

- A complete separation of the three organs may lead to constitutional deadlock (disunity of powers). Thus, a complete separation of powers is neither possible nor desirable.
- Partial separation of powers is required to achieve a mixed and balanced constitutional structure.
- It would be impractical to expect each branch of government to raise its own finances.
- The theory is based on the assumption that all the three organs of the government are equality important, but in reality it is not so. In most cases, the executive is more powerful of the three branches of government.

3.3 MARXIST-LENINIST APPROACH

Unlike, the other two approaches, the Marxist-Leninist approachrefute the application of the doctrine by arguing that the theory of the separation of powers is "*nothing but the profane industrial division of labour applied for purposes of simplification and control to the mechanism of the state*". In essence, Marxist-Leninist theory rejects the theory of the separation of powers because it ignores the class nature of society. The existence in a socialist state of state bodies with different jurisdiction means that a certain division of functions in exercising state power is essential while maintaining the unity of state power.

4 DOCTRINE OF SEPARATION OF POWERS IN INDIA

Indian state represents a contemporary approach in constitutionalising the doctrine of separation of powers. Essentially, there is no **strict** separation of powers under constitution, both in principle and practice.

In India, there are three distinct activities in the Government through which the will of the people are expressed. The legislative organ of the state makes laws, the executive forces them and the judiciary applies them to the specific cases arising out of the breach of law. Each organ while performing its activities tends to interfere in the sphere of working of another functionary because a strict demarcation of functions is not possible in their dealings with the general public. Thus, even when acting in ambit of their own power, overlapping functions tend to appear amongst these organs. The question which is important here is that what should be the relation among these three organs of the state, i.e. whether there should be complete separation of powers or there should be co-ordination among them.

In the words of Dr. Durgas Das Basu,

"So far as the courts are concerned, the application of the doctrine (the theory of separation of powers) may involve two propositions: namely,

a) that none of the three organs of Government, Legislative Executive and Judicial, can exercise any power which **properly** belongs to either of the other two;

b) that the legislature cannot delegate its powers."

What is significant is the word "**properly**" and therefore conceives of a **broad division of powers** where the **core function** is one which is exclusively conferred on that particular organ of State, though there may be some overlap in regard to the fringe areas of the topics so entrusted. The pronouncement on this aspect of law by the courts is that under the Indian Constitution there is a **broad** separation of powers.

4.1 CONSTITUTIONAL POSITION

4.1.1 SEPARATION OF POWERS

The Constitution of India embraces the idea of separation of powers in an implied manner. Despite there being no express provision recognizing the doctrine of separation of powers in its absolute form, the Constitution does make the provisions for a reasonable separation of functions and powers between the three organs of Government.

By looking into the various provisions of the Constitution, it is evident that the Constitution intends that the powers of legislation shall be exercised exclusively by the legislature. Similarly, the judicial powers can be said to vest with the judiciary. The judiciary is independent in its field and there can be no interference with its judicial functions either by the Executive or by the Legislature. Also, the executive powers of the Union and the State are vested in the President and the Governor respectively.

The constitution of India lays down a functional separation of the organs of the State in the following manner:

- Article 50 lays down that State shall take steps to separate the judiciary from the executive. This is for the purpose of ensuring the independence of judiciary.
- Article 122 and 212 provides validity of proceedings in Parliament and the Legislatures cannot be called into question in any Court. This ensures the separation and immunity of the legislatures from judicial intervention on the allegation of procedural irregularity.
- Judicial conduct of a judge of the Supreme Court and the High Courts' cannot be discussed in the Parliament and the State Legislature, according to Article 121 and 211 of the Constitution.
- Articles 53 and 154 respectively, provide that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
- Article 361 declared that the President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

4.1.2 FUNCTIONAL OVERLAP

- The legislature besides exercising law-making powers exercises judicial powers in cases of breach of its privilege, impeachment of the President and the removal of the judges.
- The executive may further affect the functioning of the judiciary by making appointments to the office of Chief Justice and other judges.
- Legislature exercising judicial powers in the case of amending a law declared *ultra vires* by the Court and revalidating it..
- While discharging the function of disqualifying its members and impeachment of the judges, the legislature discharges the functions of the judiciary.
- Legislature can impose punishment for exceeding freedom of speech in the Parliament; this comes under the powers and privileges of the parliament. But while exercising such power it is always necessary that it should be in conformity with due process.
- The heads of each governmental ministry is a member of the legislature, thus making the executive an integral part of the legislature.
- The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.
- Legislative power that is being vested with the legislature in certain circumstances can be exercised by the executive. If the President or the Governor, when the legislature or is not in session and is satisfied

that circumstances exist that necessitate immediate action may promulgate ordinance which has the same force of the Act made by the Parliament or the State legislature.

- The Constitution permits, through Article 118 and Article 208, the Legislature at the Centre and in the States respectively, the authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution. The executive also exercises law making power under delegated legislation.
- The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions. Administrative tribunals which are a part of the executive also discharge judicial functions.
- Higher administrative tribunals should always have a member of the judiciary. The higher judiciary is conferred with the power of supervising the functioning of subordinate courts. It also acts as a legislature while making laws regulating its conduct and rules regarding disposal of cases.

Besides the functional overlapping, the Indian system also lacks the separation of personnel amongst the three departments.

Applying the doctrines of constitutional limitation and trust in the Indian scenario, a system is created where none of the organs can usurp the functions or powers which are assigned to another organ by express or necessary provision, neither can they divest themselves of essential functions which belong to them as under the Constitution.

Further, the Constitution of India expressly provides for a system of checks and balances in order to prevent the arbitrary or capricious use of power derived from the said supreme document. Though such a system appears dilatory of the doctrine of separation of powers, it is essential in order to enable the just and equitable functioning of such a constitutional system. By giving such powers, a mechanism for the control over the exercise of constitutional powers by the respective organs is established.

This clearly indicates that the Indian Constitution in its plan does not provide for a strict separation of powers. Instead, it creates a system consisting of the three organs of Government and confers upon them both exclusive and overlapping powers and functions. Thus, there is no absolute separation of functions between the three organs of Government.

4.2 JUDICIAL PRONOUNCEMENTS ON THE DOCTRINE IN INDIA

The debate about the doctrine of separation of powers, and exactly what it involves in regard to Indian governance, is as old as the Constitution itself. Apart from the directive principles laid down in Part-IV of the constitution which provides for separation of judiciary from the executive, the constitutional scheme does not provide any formalistic division of powers. It appeared in various judgments handed down by the Supreme Court after the Constitution was adopted. It is through these judicial pronouncements, passed from time to time, that the boundaries of applicability of the doctrine have been determined.

4.2.1 RE DELHI LAWS ACT CASE

In the ***re Delhi Laws Act case***, it was for the first time observed by the Supreme Court that except where the constitution has vested power in a body, the principle that one organ should not perform functions which essentially belong to others is followed in India. By a majority of 5:2, the Court held that the theory of separation of powers though not part and parcel of our Constitution, in exceptional circumstances is evident in the provisions of the Constitution itself.As observed by Kania, C.J.:

"Although in the constitution of India there is no express separation of powers, it is clear that a legislature is created by the constitution and detailed provisions are made for making that legislature pass laws. Does it not imply that unless it can be gathered from other provisions of the constitution, other bodies-executive or judicial-are not intended to discharge legislative functions?"

In essence, this judgment implied that all the three organs of the State, i.e., the Legislature, the Judiciary, and the Executive are bound by and subject to the provisions of the Constitution, which demarcates their respective powers, jurisdictions, responsibilities and relationship with one another. Also, that it can be assumed that none of the organs of the State, including the judiciary, would exceed its powers as laid down in the Constitution.

4.2.2 KESAVANANDABHARTI CASE

In practice, from time to time, disputes continued to arise as to whether one organ of the State had exceeded the boundaries assigned to it under the Constitution. This question of what amounts to an excess, was the basis for action in the landmark ***KesavanandaBharti* case** of 1973. The question placed before the Supreme Court in this case was in regard to the extent of the power of the legislature to amend the Constitution as provided for under the Constitution itself. It was argued that Parliament was "supreme" and represented the sovereign will of the people. As such, if the people's representatives in Parliament decided to change a particular law to curb individual freedom or limit the scope of judicial scrutiny, the judiciary had no right to question whether it was constitutional or not. However, the Court did not allow this argument and instead found in favour of the appellant on the grounds that the doctrine of separation of powers was a part of the "basic structure" of our Constitution.

Thus, the doctrine of "separation of powers" is acknowledged as an integral part of the basic features of our Constitution. It is also agreed that all the three organs of the State, i.e., the Legislature, the Judiciary, and the Executive are bound by and subject to the provisions of the Constitution, which demarcates their respective powers, jurisdictions, responsibilities and relationship with one another. It is assumed that none of the organs of the State, including the judiciary, would exceed its powers as laid down in the Constitution. It is also expected that in the overall interest of the country, even though their jurisdictions are separated and demarcated, all the institutions would work in harmony and co-operation to maximize the public good.

As per this ruling, there was no longer any need for ambiguity as the doctrine was expressly recognized as a part of the Indian Constitution, unalterable even by an Act of Parliament. Thus, the doctrine of separation of powers has been incorporated, in its essence, into the Indian laws.

4.2.3 INDIRA NEHRU GANDHI V. RAJ NARAIN

However, it was after the landmark case of ***Indira Nehru Gandhi v. Raj Narain*** that the place of this doctrine in the Indian context was made clearer. It was observed: "That in the Indian Constitution, there is separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India."Chandrachud J. also observed that the political usefulness of the doctrine of Separation of Power is not widely recognized. No Constitution can survive without a conscious adherence to its fine check and balance.

4.2.4 OTHER CASES

The doctrine of separation of powers was further expressly recognized to be a part of the Constitution in the case of ***Ram JawayaKapur v. State of Punjab***, where the Court held that though the doctrine of separation of powers is not expressly mentioned in the Constitution it stands to be violated when the functions of one organ of Government are performed by another. This means the Indian constitution had not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of different parts or branches of the Govt. have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belongs to another.

In ***I.C. GolakNath v. State of Punjab***, Supreme Court took the help of doctrine of basic structure as propounded in KesvanandaBharati case and said that Ninth Schedule is violative of this doctrine and hence the Ninth Schedule was made amenable to judicial review which also forms part of the basic structure theory. It was observed: "The Constitution brings into existence different constitutional entities, namely, the Union, the States and the Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them."

4.3 CHECKS AND BALANCES

The concept of constitutional checks arose as an outgrowth of the classical theory of separation of powers. The purpose of this, and of the later development of checks and balances, was to ensure that governmental power would not be used in an abusive manner. To prevent one branch from becoming supreme, protect the "opulent minority" from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers

need a way to balance each of the branches. Typically this was accomplished through a system of "checks and balances", the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Under the system of checks and balances, one department is given certain powers by which it may definitely restrain the others from exceeding constitutional authority. It may object or resist any encroachment upon its authority, or it may question, if necessary any act or acts which unlawfully interferes with its sphere of jurisdiction and authority.

The Indian Constitution provides for a scheme of checks and balances between the three organs of government namely, the legislature, the executive and the judiciary, against any potential abuse of power. For example,

- The judges of the Supreme Court and the High Courts in the States are appointed by the executive i.e. the President acting on the advice of the Prime Minister and the Chief Justice of the Supreme Court. But they may be removed from office only if they are impeached by Parliament. This measure helps the judiciary to function without any fear of the executive.
- Similarly, the executive is responsible to Parliament in its day to day functioning. While the President appoints the leader of the majority party or a person who he believes commands a majority in the LokSabha (House of the People or the Lower House) a government is duty bound to lay down power if the House adopts a motion expressing no confidence in the government.
- Similary the judiciary keeps a check on the laws made by Parliament and actions taken by Executives, whether they conform to the constitution or not, using the tool of Judicial Review.

4.4 JUDICIAL REVIEW

There is, however, one facet in any democratic constitution which cannot be wished away, and that is, the necessity to have a machinery by which an authority is brought into existence to decide on the interpretation of constitutional provisions, or as to what the Constitution says and means and to resolve disputes, with finality, between the Central Government and the States, or between the three organs of the State *inter se*. In every such democratic Constitution it is the apex court of the country, which is conferred such jurisdiction and powers.

Article 144 of the Constitution declares that all authorities, civil and judicial, shall come to the aid of the Supreme Court. Article 141 is to the effect that the law declared by the Supreme Court is binding on all courts within the territory of India. Articles 129 and 142(2) expressly confer the power of contempt on the Supreme Court of India and Article 215 correspondingly confers such power on the High Courts of the country. This, history has shown, is the most potent weapon in the hands of the superior courts to compel obedience to its will.

It is only the fear of being sent to jail, which makes the clients and lawyers to be disciplined and respectful to the judges and to faithfully carry out their judgments and orders. It is therefore clear that the founding fathers did not allow the Indian Supreme Court to go the way of the US Supreme Court where a belligerent President could turn around and say, *"the judge has made his decision, let him now enforce it."*

Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. However the only check on judicial power is the self-imposed discipline of judicial restraint. Therefore this doctrine cannot be liberally applied to any modern government, because neither the powers can be kept in water tight compartments nor can any government can run on strict separation of powers.

In ***Suman Gupta v. State of Jammu and Kashmir,***the respective State Government reserved certain seats in medical colleges for the students residing in the particular state on reciprocal basis, this policy of state was challenged on the ground that it discriminate among the students on the ground of place of birth. The Supreme Court rejected the policy on the ground of discrimination but meanwhile the students who are the beneficiaries of this policy had completed their substantial education, and now it is not in the interests of justice to cancelled their admission, therefore here supreme court applied the doctrine of prospective overruling and held that the government must not apply the impugned policy from next academic year.

Therefore, by using the doctrine of prospective overruling in the above to cases, the Supreme Court maintained the balance between judiciary and other organs of the government. It can also be maintained by using the self restraint by the judges.

In ***Divisional Manager, Aravali Golf club v. Chander Hass and Another***, the Supreme Court warned the High court for its over activism. The Supreme Court held that since there was no sectioned post of tractor driver against which

the respondents could be regularized as tractor driver, the direction of the first appellate court and the single judge to create the post of tractor driver and regularizing he services was completely beyond their jurisdiction. The court cannot direct the creation of post. Creation and sanction of post is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization. The court further said that the creation of a post is an executive or legislative function and it involves economic factors. Hence, the courts cannot take upon themselves the power of creation of post.

Similarly, in ***MadhuHolmagi v. Union of India***, wherein one Advocate filed a public interest litigation challenging the "Agreement 123" i.e. Indo-US nuclear treaty proposed to be entered by the Indian government, petitioner contended that court must have to scrutinize the all documents relating to the agreement 123 and must have to prevent the Indian government from entering in to the nuclear deal. In this court dismissed the petition and also imposed a cost of Rs 5000 on the petitioner stating that it is an abuse of court proceeding. Because the question raised by the petitioner is a question of policy decision, which is to be decided by the parliament and not by the judiciary.

5 SEPARATION OF POWER IN OTHER COUNTRIES

5.1 SEPARATION OF POWER IN USA

The United States Constitution has a more rigid separation of powers than the Constitutions of other democracies. In the United States Constitution, Article 1 Section I gives Congress only those "legislative powers herein granted" and proceeds to list those permissible actions in Article I Section 8, while Section 9 lists actions that are prohibited for Congress. The vesting clause in Article II places no limits on the Executive branch, simply stating that, "The Executive Power shall be vested in a President of the United States of America." The Supreme Court holds "The judicial Power" according to Article III, and it established the implication of Judicial review in Marbury v. Madison.

Checks and balances allow for a system based regulation that allows one branch to limit another, such as the power of Congress to alter the composition and jurisdiction of the federal courtsThe following are illustrations where there are checks and balances:

a) the lawmaking power of the Congress is checked by the President through its veto power, which in turn maybe overturn by the legislature
b) the Congress may refuse to give its concurrence to an amnesty proclaimed by the President and the Senate to a treaty he has concluded
c) the President may nullify a conviction in a criminal case by pardoning the offender
d) the Congress may limit the jurisdiction of the Supreme Court and that of inferior courts and even abolish the latter tribunals
e) the Judiciary in general has the power to declare invalid an act done by the Congress, the President and his subordinates, or the Constitutional Commissions.

5.2 SEPARATION OF POWER IN ENGLAND

Although the doctrine of separation of power plays a role in the United Kingdom's constitutional doctrine, the UK constitution is often described as having "a weak separation of powers". For example, in the United Kingdom, the executive forms a subset of the legislature, as did—to a lesser extent—the judiciary until the establishment of the Supreme Court of the United Kingdom. The Prime Minister, the Chief Executive, sits as a member of the Parliament of the United Kingdom, either as a peer in the House of Lords or as an elected member of the House of Commons (by convention, and as a result of the supremacy of the Lower House, the Prime Minister now sits in the House of Commons) and can effectively be removed from office by a simple majority vote. Furthermore, while the courts in the United Kingdom are undoubtedly amongst the most independent in the world, the Law Lords, who were the final arbiters of judicial disputes in the UK sat simultaneously in the House of Lords, the upper house of the legislature, although this arrangement ceased in 2009 when the Supreme Court of the United Kingdom came into existence.

Until 2005, the Lord Chancellor fused the Legislature, Executive and Judiciary, as he was the ex officio Speaker of the House of Lords, a Government Minister who sat in Cabinet and was head of the Lord Chancellor's Department which administered the courts, the justice system and appointed judges, and was the head of the Judiciary in England and Wales and sat as a judge on the Judicial Committee of the House of Lords, the highest domestic court in the entire United Kingdom, and the Judicial Committee of the Privy Council, the senior tribunal court for parts of the

Commonwealth. The Lord Chancellor also had certain other judicial positions, including being a judge in the Court of Appeal and President of the Chancery Division. The Lord Chancellor combines other aspects of the constitution, including having certain ecclesiastical functions of the established state church, making certain church appointments, nominations and sitting as one of the thirty-three Church Commissioners. These functions remain intact and unaffected by the Constitutional Reform Act.

In 2005, the Constitutional Reform Act separated the powers with Legislative functions going to an elected Lord Speaker and the Judicial functions going to the Lord Chief Justice. The Lord Chancellor's Department was replaced with a Ministry of Justice and the Lord Chancellor currently serves in the position of Secretary of State for Justice.

5.3 SOME OTHER COUNTRIES

The Commonwealth of Australia Constitution Act, 1900 clearly demarcates the boundaries of the three organs and therefore provides for a very rigid separation of powers. Similarly, the French Constitution also provides for separation of powers and divides the national government into the executive, legislative and judicial branch.

6 CONCLUSION

The doctrine of separation of power in its true sense is very rigid and this is one of the reasons of why it is not accepted by a large number of countries in the world. The main object as per Montesquieu in the Doctrine of Separation of Power is that there should be government of law rather than having will and whims of the official. Also another most important feature of the said doctrine is that there should be independence of judiciary i.e. it should be free from the other organs of the State and if it is so then justice would be delivered properly. The judiciary is the scale through which one can measure the actual development of the State. If the judiciary is not independent, then it is the first step towards a tyrannical form of government i.e. power is concentrated in a single hand and if it is so then there is a very high chance of misuse of power. Hence the Doctrine of Separation of Power does play a vital role in the creation of a fair government and also fair and proper justice is dispensed by the judiciary as there is independence of judiciary.

The doctrine of separation of powers has come a long way from its theoretical inception. Today, the doctrine in its absolute form is only recognized in letter as it is entirely unfeasible and impractical for usage in the operational practices of a government. With the passage of time, States have evolved from being minimal and non-interventionist to being welfare oriented by playing the multifarious roles of protector, arbiter, controller and provider to the people. In its omnipresent role, the functions of the State have become diverse and its problems interdependent hence, any serious attempt to define and separate the functions would only cause inefficiency in the government.

The modern day interpretation of the doctrine does not recognize the division of Government into three water-tight compartments but instead provides for crossing rights and duties in order to establish a system of checks and balances. The mere separation of powers between the three organs is not sufficient for the elimination of the dangers of arbitrary and capricious government. Even after the distinguishing the functions, if an authority wielding public power, is provided an absolute and sole discretion within the body in the matters regarding its sphere of influence, there will be a resultant abuse of such power. Therefore, a system of checks and balances is a practical necessity in order to achieve the desired ends of the doctrine of separation of powers. Such a system is not dilatory to the doctrine but necessary in order to strengthen its actual usage.

In conclusion, it is evident that governments in their actual operation do not opt for the strict separation of powers because it is undesirable and impracticable, however, implications of this concept can be seen in almost all the countries in its diluted form. The discrepancies between the plan and practice, if any, are based on these very grounds that the ideal plan is impractical for everyday use. India relies heavily upon the doctrine in order to regulate, check and control the exercise of power by the three organs of Government. Whether it is in theory or in practical usage, the Doctrine of Separation of Powers is essential for the effective functioning of a democracy.