

University of Barishal



A Project on Critical Appraisal of the Theory of Separation of Powers in the Bangladesh Perspective.

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Contents

Introduction	3
Background	3
Separation of Powers in Bangladesh.....	4
Separation of the Judiciary in the Constitution of Bangladesh.....	4
Challenges to Judicial Independence in Bangladesh.....	6
The Masdar Hossain Case and Separation of Judiciary in Bangladesh	7
Background of the Masdar Hossain Case.....	8
The case cantered on the following core issues:	8
The Supreme Court's Judgment.....	9
Impact of the Masdar Hossain Case.....	10
Implementation of Judicial Independence in Bangladesh	11
Challenges to Judicial Independence in Bangladesh.....	12
Challenges and Ongoing Issues	14
Ensuring Judicial Independence through Separation.....	15
Challenges to Judicial Independence Despite Separation	15
Separation of Powers in the Context of Bangladesh, India, UK, and USA.....	16
Summary Comparison.....	20
Difference among judiciary, executive and legislative:	21
1. Legislature (Legislative Branch).....	21
2. Executive (Executive Branch)	22
3. Judiciary (Judicial Branch)	23
Conclusion.....	24

Introduction

The theory of separation of powers is a foundational concept in modern democratic governance, designed to prevent the concentration of power in a single branch of government. It advocates for the division of governmental authority into three distinct branches: the executive, the legislature, and the judiciary, each with clearly defined roles and functions. This division is intended to ensure a system of checks and balances, where each branch can monitor and limit the actions of the others, thus preserving individual liberties and preventing authoritarian rule.

In the context of Bangladesh, the Constitution of 1972 explicitly enshrines the separation of powers, outlining the responsibilities and powers of the executive, legislature, and judiciary in Articles 56, 65, and 94. However, while the theory of separation of powers is constitutionally guaranteed, its practical implementation in Bangladesh has faced significant challenges. Over the decades, the reality of governance in Bangladesh has often been marked by executive dominance, political interference in the judiciary, and a weak legislature, raising questions about the effectiveness of the separation of powers in the country's political and legal landscape.

This critical appraisal seeks to explore the theoretical underpinnings of the separation of powers in Bangladesh, assess its practical challenges, and examine how political dynamics, institutional weaknesses, and historical developments have shaped its application. By understanding these complexities, the paper aims to provide insights into the strengths and limitations of the separation of powers in Bangladesh and suggest potential reforms to strengthen democratic governance in the country.

Background

The separation of powers is a political doctrine that traces its roots to the writings of Montesquieu, a French philosopher, in his influential work *The Spirit of the Laws* (1748). Montesquieu argued that in order to prevent tyranny and safeguard liberty, the powers of government should not be concentrated in the hands of one individual or group. Instead, these powers should be distributed among different branches, each with distinct functions and autonomy to act independently while also maintaining some level of interaction with one another to ensure a system of checks and balances.

Montesquieu identified three main branches of government:

1. The Legislature: Responsible for making laws.

2. The Executive: Responsible for enforcing and implementing laws.
3. The Judiciary: Responsible for interpreting laws and adjudicating disputes.

By keeping these powers separate, Montesquieu believed that no single branch could dominate or oppress the others, thereby preserving individual freedoms and preventing abuses of power. His ideas greatly influenced the formation of democratic systems, particularly the political systems of the United States and Europe.

Separation of Powers in Bangladesh

The doctrine of separation of powers was enshrined in the Constitution of Bangladesh (1972), following the country's independence from Pakistan. Bangladesh's Constitution established the framework for a parliamentary democracy, recognizing the independence of the executive, legislature, and judiciary as essential components of the state's governance. The country's Constitution reflects the influence of both Montesquieu's principles and the British parliamentary system, as well as the American checks and balances model.

However, while the theory of separation of powers is enshrined in Bangladesh's legal and constitutional framework, its practice has often been challenged by political dynamics, power struggles, and institutional weaknesses. Over time, executive dominance, political interference in the judiciary, and a lack of effective checks and balances have undermined the ideal of a fully separated and balanced government. This situation continues to raise questions about the functioning and effectiveness of the separation of powers in Bangladesh, despite its clear constitutional basis.

In summary, the theory of separation of powers, originating from Montesquieu's ideas, has become a foundational principle in many democratic constitutions around the world. In Bangladesh, while the separation of powers is constitutionally provided for, practical challenges have complicated its full implementation, making it an important area of study and reform for strengthening democratic governance.

Separation of the Judiciary in the Constitution of Bangladesh

The Constitution of Bangladesh (1972), which came into effect after the country's independence, lays down the foundation for a democratic and just government, where the separation of powers is one of its central tenets. Among the three branches of government—executive, legislature, and judiciary—the judiciary is given special emphasis, particularly in ensuring the protection of fundamental rights and rule of law.

In Bangladesh, the judiciary is constitutionally separated from both the executive and the legislature, reflecting the importance of an independent judicial system that can

operate free from political interference. This separation is vital for maintaining the checks and balances essential to a functioning democracy.

Key Constitutional Provisions on the Judiciary

1. Article 22 – Independence of the Judiciary:

- Article 22 of the Constitution explicitly mandates that the judiciary shall remain independent. This provision aims to ensure that the judicial branch can carry out its functions without undue influence from the executive or legislature. It states:

"The State shall ensure the separation of the judiciary from the executive."

This provision reflects the core principle of judicial independence, ensuring that the courts are not subjected to the control of the executive branch (e.g., the Prime Minister or the President) or the legislature (i.e., the Jatiya Sangsad or National Parliament).

2. Article 94 – Establishment of the Judiciary:

- Article 94 of the Constitution establishes the Supreme Court of Bangladesh, which consists of the Appellate Division and the High Court Division. The article further clarifies that the Chief Justice is the head of the Supreme Court, and the Justices of the Supreme Court are appointed by the President.
- This provision ensures that the judiciary is a separate entity with clearly defined roles, institutions, and powers that are distinct from those of the executive and legislative branches.

3. Article 95 – Appointment of Judges:

- Article 95 provides the procedure for the appointment of judges to the Supreme Court. Judges are appointed by the President, but this appointment is made on the recommendation of the Prime Minister, with the President serving as a formality. However, the Constitution envisions that the appointments should be based on merit, ensuring that judges are individuals of good standing, impartiality, and competence.
- While this procedure intends to ensure the proper functioning of the judiciary, critics have argued that the political influence exerted during appointments can undermine judicial independence, as the executive branch plays a significant role in selecting judges.

4. Article 96 – Tenure of Judges:

- Judges of the Supreme Court are given security of tenure under Article 96, which means that once appointed, they can serve until the age of 67, unless removed for cause. This provision seeks to protect judges from arbitrary removal, allowing them to make decisions free from political pressures or external influences.

5. Article 105 – Jurisdiction and Powers of the Supreme Court:

- The Constitution also grants the Supreme Court jurisdiction over matters related to the interpretation of the Constitution and other significant legal issues. This includes the power of judicial review, where the court can examine whether laws passed by Parliament or executive actions are consistent with the Constitution.
- Judicial review is a powerful tool for ensuring that the actions of the legislature and executive are within the bounds of constitutional authority, further solidifying the judiciary's role in maintaining the separation of powers.

6. Article 109 – Supervision of Courts:

- Article 109 provides that the Supreme Court has the authority to oversee and regulate the activities of lower courts in Bangladesh. This provision affirms the role of the judiciary as the ultimate authority on legal matters within the country, reinforcing its independence from other branches of government.

Challenges to Judicial Independence in Bangladesh

While the Constitution enshrines judicial independence and separation of powers, in practice, the judiciary's independence in Bangladesh has been subject to various challenges:

1. Political Influence in Judicial Appointments:

- Despite constitutional safeguards, judicial appointments in Bangladesh have often been influenced by the executive branch, leading to concerns about the politicization of the judiciary. For example, appointments to the Supreme Court are made by the President based on the advice of the Prime Minister, and there have been instances where the appointment process has been viewed as politically motivated.
- This has raised concerns about the impartiality of the judiciary, especially in cases involving high-profile political matters or disputes between the government and opposition.

2. Executive Control Over Judicial Resources:

- The executive branch controls the allocation of resources to the judiciary, including budgetary matters. Inadequate funding and resources for the judiciary can undermine its ability to function effectively, leading to delays in justice and challenges in maintaining judicial independence.
- Judicial infrastructure in Bangladesh, including courtrooms, legal staff, and access to legal research, has often been underfunded, which hinders the judiciary's capacity to operate efficiently.

3. The 16th Amendment and Judicial Independence:

- A significant constitutional challenge to the judiciary's independence occurred in 2014 with the passage of the 16th Amendment to the Constitution. This amendment granted Parliament the power to remove Supreme Court judges through a process of impeachment.
- The amendment was criticized as undermining judicial independence because it could potentially allow the executive and legislature to exert undue influence over the judiciary. In 2017, the Bangladesh Supreme Court ruled that the 16th Amendment was unconstitutional, thereby reaffirming the importance of judicial independence.

4. Executive Overreach and Judicial Decisions:

- At times, the judiciary has faced challenges from the executive branch, especially when judicial decisions have gone against the government's interests. For instance, when the judiciary has ruled against government actions or in favor of human rights and civil liberties, the executive has occasionally shown resistance, and the judiciary's ability to enforce such rulings has been questioned.

5. Delays and Backlog in the Judiciary:

- The overburdened judicial system and backlog of cases in Bangladesh have also been cited as significant challenges to the effective functioning of the judiciary. Despite the constitutional mandate for judicial independence, these practical issues undermine the judiciary's efficiency and its role as a check on the other branches of government.

The Masdar Hossain Case and Separation of Judiciary in Bangladesh

The Masdar Hossain case (also known as Masdar Hossain v. Bangladesh, 1999) is a landmark decision by the Supreme Court of Bangladesh that significantly impacted the

relationship between the judiciary and the executive, particularly concerning the separation of powers in Bangladesh's governance system. The case primarily dealt with the judicial independence and the separation of powers between the judiciary and the executive branch, and it reaffirmed the Constitution's commitment to ensuring an independent judiciary free from executive control.

Background of the Masdar Hossain Case

In 1997, the government of Bangladesh issued an ordinance under the Judicial Service Ordinance (JSO) that sought to centralize the administrative control over judges, shifting certain responsibilities regarding judicial administration from the judiciary to the executive branch, particularly the Ministry of Law. The judicial administration was to be supervised by the Executive, which would have the power to determine the conditions of service and the posting of judicial officers.

The case arose when Masdar Hossain, a Senior District Judge, challenged the government's move. He argued that this attempt to bring the judiciary under executive control violated the Constitution, which mandates the independence of the judiciary (Article 22) and its separation from the executive branch (Article 95).

Key Issues in the Case

The case cantered on the following core issues:

1. Judicial Independence:

- Whether the government's attempt to bring judicial administration under the Ministry of Law violated the constitutional principle of judicial independence. The petitioner argued that such an act would make judges susceptible to political influence and interfere with the judiciary's independence, which is guaranteed by the Constitution of Bangladesh.

2. Separation of Powers:

- Whether the executive could be involved in the administrative control of the judiciary without violating the separation of powers principle. The petitioners contended that the executive and judiciary must be kept separate and that the judiciary must function free from executive interference.

3. Constitutional Interpretation:

- How the Constitution of Bangladesh, particularly Articles 22, 94, and 95, should be interpreted in the context of judicial administration and the role of the executive in overseeing the judiciary.

The Supreme Court's Judgment

The Supreme Court of Bangladesh delivered its judgment in 1999, and the decision was a historic one in terms of the separation of powers and judicial independence. The Court ruled in favor of Masdar Hossain, declaring that the government's move to transfer judicial administration to the executive violated the Constitution.

The key aspects of the judgment were:

1. The Judicial Service Is Not Part of the Executive:

- The Court held that the judicial branch must remain independent of the executive. While the executive branch is responsible for enforcing laws, it does not have a role in managing judicial matters. The Court ruled that the Constitution mandates the judiciary to be free from any political or governmental control. The administrative functions of the judiciary must be under the Supreme Court, not the executive.

2. Separation of Powers Is Fundamental:

- The Court emphasized that the separation of powers between the executive, legislature, and judiciary is a fundamental principle of the Constitution. The executive branch should not interfere with the judiciary's functioning, particularly in administrative and personnel matters.

3. Judicial Independence:

- The Court reiterated that judicial independence is essential for upholding the rule of law and protecting fundamental rights. The judiciary must be free from any influence by the executive, which can undermine the fair and impartial administration of justice.

4. Reorganization of Judicial Administration:

- The Court directed that judicial administration should be under the Supreme Court and Chief Justice. It also noted that judges should be appointed and transferred by the President on the advice of the Chief Justice to ensure that the process is independent and free from executive influence.

5. Judicial Appointments and Control:

- The Court clarified that the appointment and promotion of judges must remain a function of the judiciary itself, under the supervision of the Chief Justice. The executive's role should be limited to formalizing the process, not controlling it.

Impact of the Masdar Hossain Case

The Masdar Hossain case had significant implications for the judiciary and the separation of powers in Bangladesh:

1. Reaffirmation of Judicial Independence:

- The ruling reinforced the idea that an independent judiciary is a cornerstone of Bangladesh's democracy. It made clear that the executive cannot encroach upon the judiciary's functions or undermine its independence. This decision was a significant step in ensuring that judicial decisions are free from external pressures.

2. Clarification of the Separation of Powers:

- The case clarified the practical application of the separation of powers in Bangladesh's constitutional framework. The Court affirmed that the executive should have no direct involvement in the administrative or personnel matters of the judiciary. This judgment strengthened the separation between the branches of government, particularly the judiciary and the executive.

3. Judicial Reforms:

- Following the Masdar Hossain ruling, judicial administration in Bangladesh underwent significant reforms. The judicial service was reorganized, and judicial independence was made more robust. The Supreme Court was given full control over the judicial administration, ensuring that judges' appointments, transfers, and promotions were made by the Chief Justice, without interference from the executive.

4. Creation of a Judicial Pay Commission:

- As part of its reforms, the government established a Judicial Pay Commission to address issues of judicial salaries and other matters related to judicial service conditions. The reforms were aimed at enhancing judicial independence and ensuring that judges were not financially beholden to the executive.

5. Increased Role of the Judiciary in Governance:

- The ruling helped solidify the judiciary's role in interpreting and upholding the Constitution, acting as a check on the powers of the executive. It reaffirmed the judiciary's role in safeguarding the rights of individuals against potential abuses of executive power.

Implementation of Judicial Independence in Bangladesh

Judicial independence is a cornerstone of democratic governance, ensuring that the judiciary operates free from interference by the executive or legislature. In Bangladesh, judicial independence is not only a constitutional guarantee but also a necessary condition for upholding the rule of law, protecting fundamental rights, and ensuring that the government remains accountable. However, while the Constitution of Bangladesh (1972) guarantees judicial independence, its practical implementation has been a subject of considerable debate and challenge.

Constitutional Framework for Judicial Independence

The Constitution of Bangladesh explicitly outlines the framework for judicial independence in several provisions:

1. Article 22 – Independence of the Judiciary:
 - Article 22 mandates that the State shall ensure the separation of the judiciary from the executive. This provision is a cornerstone in guaranteeing judicial independence by preventing the executive from controlling or interfering in the functioning of the judiciary.
2. Article 94 – Establishment of the Supreme Court:
 - The Constitution establishes the Supreme Court of Bangladesh, which consists of the Appellate Division and the High Court Division. The judiciary's independence is safeguarded by placing the Chief Justice at the head of the Supreme Court, with the independence of judges being ensured by the tenure provisions.
3. Article 95 – Appointment of Judges:
 - Judges of the Supreme Court (both Appellate and High Court Divisions) are appointed by the President but on the recommendation of the Prime Minister. While the provision aims to ensure judicial independence, the political nature of the appointment process has led to concerns over the potential influence of the executive in judicial appointments.
4. Article 96 – Tenure and Removal of Judges:
 - Judges of the Supreme Court have security of tenure until the age of 67. They can only be removed through a presidential order, and this can only happen after an impeachment process in Parliament. This provision provides a critical safeguard against arbitrary removal, ensuring that judges are not subject to political pressure.
5. Article 101 – Power of the Supreme Court to Supervise Lower Courts:

- The Constitution grants the Supreme Court the authority to supervise the administration of lower courts, further ensuring the judiciary's control over its own functioning and autonomy from the executive.

Challenges to Judicial Independence in Bangladesh

Despite the constitutional provisions, judicial independence in Bangladesh has been undermined by various challenges over the years. These challenges include political interference, executive overreach, insufficient resources, and institutional weaknesses.

1. Political Influence in Judicial Appointments

- The executive branch, particularly the Prime Minister, plays a significant role in the appointment of judges, as the President appoints judges on the advice of the Prime Minister. This system has been criticized for allowing the executive to exert undue influence over the judiciary, as political considerations may influence appointments, especially in high-profile cases.
- Political patronage has led to concerns that judges may be appointed based on their political affiliations rather than merit, potentially compromising their impartiality and undermining judicial independence.

2. Judicial Control by the Executive

- The executive branch has historically maintained significant control over judicial administration, including budgeting, infrastructure, and resource allocation. As a result, the judiciary has often faced delays in judicial processes, insufficient resources, and lack of proper infrastructure. This control has the potential to compromise the judiciary's autonomy, as it may be susceptible to pressures from the executive.
- Additionally, the Ministry of Law previously had substantial administrative control over the judicial service, such as appointments, transfers, and discipline of judges, leading to concerns about the politicization of the judicial system. Although the Masdar Hossain case (1999) addressed this issue by ruling that the judiciary must maintain administrative control over itself, the implementation of this ruling has sometimes faced hurdles.

3. Interference in Judicial Decisions

- Executive overreach has been a recurring issue, with the executive occasionally attempting to influence or challenge judicial decisions, particularly those that go against the government's interests. Judicial review, an essential function of the judiciary, allows courts to strike down laws or executive actions that violate the Constitution. However, there have been instances where the executive has undermined judicial decisions or resisted their enforcement.

- In some cases, the judiciary has faced pressure from the executive to delay or modify decisions that could negatively impact government interests. High-profile political cases, corruption cases, and decisions regarding human rights often expose the vulnerability of the judiciary to political pressures.

4. Institutional Weaknesses and Delays

- Despite constitutional safeguards, the judiciary in Bangladesh suffers from significant institutional weaknesses, including an overburdened court system, backlog of cases, and underfunded judicial infrastructure. These factors compromise the judiciary's effectiveness, potentially reducing its ability to act as an independent check on the powers of the executive and legislature.
- The case backlog in the lower courts, along with delays in the higher judiciary, affects the delivery of timely justice, which undermines the credibility and functioning of the judiciary. Moreover, inadequate funding and logistical challenges in the judicial sector limit its capacity to operate effectively and independently.

5. Impeachment and Removal of Judges

- Although judges of the Supreme Court have security of tenure under Article 96, they can be removed only through a formal impeachment process in Parliament. The involvement of the legislature in the removal process raises concerns about potential political interference, especially when a judge is seen as opposing government interests.
- In the past, there have been concerns about the use of the impeachment process for political purposes. For example, in 2014, the 16th Amendment to the Constitution, which empowered Parliament to remove judges, was seen as an attempt by the executive to assert control over the judiciary. The Supreme Court, in 2017, declared the 16th Amendment unconstitutional, thereby reinforcing the principle of judicial independence.

Recent Developments and Efforts to Strengthen Judicial Independence

In recent years, there have been both positive and negative developments in the implementation of judicial independence in Bangladesh:

Positive Developments

1. Strengthening of Judicial Oversight:
 - The Supreme Court has gradually asserted its authority over the administration of lower courts, ensuring that the judiciary can maintain control over its own affairs. The Masdar Hossain case (1999) and

subsequent reforms have helped clarify that judicial administration must remain under the judiciary's control, not the executive's.

2. Judicial Pay and Service Conditions:

- In response to concerns about judicial independence, the government has occasionally revised the pay and service conditions for judges. The establishment of a Judicial Pay Commission is one example of an effort to improve the welfare and independence of judges by addressing concerns related to salaries, allowances, and retirement benefits.

3. Supreme Court's Role in Constitutional Interpretation:

- The judiciary has maintained a strong role in interpreting the Constitution, upholding fundamental rights, and reviewing laws and executive actions through the power of judicial review. For instance, the Supreme Court's decision to declare the 16th Amendment unconstitutional reaffirmed the judiciary's autonomy.

Challenges and Ongoing Issues

1. Continued Executive Influence:

- Despite constitutional provisions, executive influence over judicial appointments and administrative control remains a concern. Political patronage and the selection process for judges still pose risks to the judiciary's independence, as appointments can be made based on political allegiance rather than merit.

2. Weak Infrastructure and Overburdened Courts:

- The judiciary continues to suffer from an overburdened court system and insufficient resources, which affects its ability to function effectively and independently. The backlog of cases and inadequate judicial facilities make it difficult for the judiciary to assert itself as an independent institution capable of ensuring justice and the rule of law.

3. Challenges in Ensuring Accountability:

- While judges enjoy security of tenure, ensuring that the judiciary itself remains accountable to the public and free from corruption is an ongoing challenge. The lack of a robust system for the accountability of judges outside of impeachment proceedings can sometimes hinder efforts to ensure transparency within the judiciary.

Ensuring Judicial Independence through Separation

The separation of the judiciary from the executive and legislature is a fundamental principle designed to ensure judicial independence. While the Constitution of Bangladesh guarantees this separation, its effectiveness in ensuring true judicial independence has been mixed, with both advancements and challenges.

Key Measures Ensuring Judicial Independence through Separation

1. Constitutional Safeguards:

- Article 22 ensures that the judiciary is separate from the executive, which is essential for maintaining impartiality in judicial decision-making.
- Article 94 establishes the Supreme Court and outlines its distinct role in the governance structure, further emphasizing judicial autonomy.
- Article 96 provides security of tenure for judges, protecting them from arbitrary removal and political pressures, which is critical for independence.

2. Judicial Administration:

- The Masdar Hossain case (1999) confirmed that the judiciary must control its own administration, including judicial appointments and transfers, rather than the executive. This has strengthened the separation and independence of the judiciary in terms of day-to-day functions.

3. Judicial Review:

- The judiciary's ability to exercise judicial review—the power to review laws and executive actions for constitutionality—acts as a key mechanism ensuring that both the executive and legislature cannot overstep constitutional boundaries. This reinforces judicial independence by positioning the judiciary as an autonomous check on government power.

Challenges to Judicial Independence Despite Separation

1. Political Influence in Judicial Appointments:

- Despite the separation of powers, judicial appointments remain heavily influenced by the executive, with the Prime Minister advising the President on judicial appointments. This process can lead to appointments based on political considerations, which raises concerns about judicial impartiality and undermines the true separation of powers.

2. Executive Control Over Judicial Resources:

- The executive branch controls the funding and resources allocated to the judiciary, which can impact the judiciary's ability to function effectively. If the executive controls the budget, there is a risk of withholding resources to pressure the judiciary or to undermine its independence.

3. Interference in Judicial Decisions:

- While judicial independence is enshrined constitutionally, the judiciary has at times faced executive overreach. High-profile cases that challenge government policies or actions have sometimes led to accusations of political interference, questioning the practical implementation of judicial separation.

4. Judicial Accountability:

- The impeachment process in Parliament, although meant to ensure accountability, can be subject to political manipulation, undermining the idea of a fully independent judiciary. The involvement of the executive and legislature in removing judges creates a potential conflict of interest.

Separation of Powers in the Context of Bangladesh, India, UK, and USA

The separation of powers is a fundamental principle of governance that ensures the independence of the three branches of government—the Executive, the Legislature, and the Judiciary. This principle is central to preventing the concentration of power and maintaining a system of checks and balances. However, the way this principle is applied varies across countries based on their constitutional framework and political context. Below, we examine the separation of powers in Bangladesh, India, the United Kingdom, and the United States.

1. Bangladesh

Bangladesh, as a parliamentary democracy, follows the separation of powers to ensure that the executive, legislature, and judiciary are distinct and independent, as outlined in its Constitution of 1972. However, the separation is not absolute, especially between the executive and legislature.

Constitutional Provisions:

- Article 22 of the Constitution explicitly mandates the separation of the judiciary from the executive. This provision ensures that the judiciary remains independent and functions without interference from the other two branches of government.
- Article 94 and Article 95 establish the Supreme Court and the process of appointing judges, with some degree of influence from the executive. Judges are appointed by the President but on the advice of the Prime Minister, which introduces an element of executive control.
- The Parliament (Jatiya Sangsad) has significant power over the executive, with the Prime Minister and the Cabinet drawn from the majority party in Parliament, indicating a fusion of powers between the executive and the legislature. This is typical of parliamentary systems, where the executive is accountable to the legislature.

Challenges:

- Political influence in judicial appointments and transfers can undermine judicial independence.
- The executive's control over the budget and resources for the judiciary can limit the effective functioning of the courts.

2. India

India operates under a parliamentary system similar to Bangladesh but with stronger checks and balances among the three branches of government, largely due to the Indian Constitution (1950), which incorporates elements of federalism and separation of powers.

Constitutional Provisions:

- Article 50 of the Indian Constitution mandates the separation of the judiciary from the executive, ensuring that judicial independence is constitutionally protected.
- Judicial Review: The Indian judiciary has a robust power of judicial review, where courts can strike down laws or executive actions that violate the Constitution. This is a key feature of India's system of separation of powers.
- Article 124 and Article 217 of the Indian Constitution define the process for the appointment of judges, where the President appoints judges of the Supreme Court and High Courts based on the advice of the Prime Minister, but with a

collegium system that allows the judiciary itself a significant role in selecting judges.

- In India, while the executive and legislature are separate, the Prime Minister is directly accountable to Parliament, and the cabinet is composed of members of Parliament, suggesting a partial fusion of powers between the executive and legislature.

Challenges:

- Judicial appointments have been a contentious issue, with the executive seeking to exert influence over judicial selections. The collegium system was designed to minimize executive interference, but it has also faced criticism for lack of transparency and accountability.
 - In practice, the executive sometimes exerts substantial influence over the judiciary, especially in terms of appointments, resources, and political cases.
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3. United Kingdom (UK)

The United Kingdom follows a parliamentary system with no written constitution but a series of statutes, conventions, and common law principles. While the separation of powers exists, it is more flexible compared to the countries with written constitutions.

Constitutional Framework:

- In the UK, the executive (the Prime Minister and the Cabinet) is drawn from and accountable to the House of Commons, the elected legislature. This creates a fusion of powers between the executive and the legislature.
- The monarch is the head of state, but most powers are exercised by the Prime Minister and the Cabinet, reflecting the shift toward a parliamentary democracy.
- Judicial Independence: The UK judiciary is independent, and the Constitutional Reform Act of 2005 separated the Judicial and Legislative branches more clearly. The Lord Chancellor, who once held both legislative and judicial functions, was removed from the judiciary.
- The Supreme Court of the UK (established in 2009) serves as the highest court, separate from the House of Lords, which previously had judicial functions.

Challenges:

- The fusion of powers between the executive and legislature in the parliamentary system means that the executive is often dominant in policy-making.
 - While the judiciary is formally independent, political influence on appointments and legislative actions can occasionally blur the line between judicial review and political considerations.
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4. United States (USA)

The United States operates under a federal system with a written constitution (the U.S. Constitution, 1787) that strongly adheres to the doctrine of separation of powers, ensuring distinct separation between the executive, legislature, and judiciary.

Constitutional Provisions:

- Article I establishes the Legislature (Congress), which makes laws.
- Article II establishes the Executive (the President), who enforces laws.
- Article III establishes the Judiciary, including the Supreme Court, which interprets laws and ensures that both the executive and legislature act within their constitutional bounds.
- The U.S. Constitution provides for checks and balances. For instance, the President can veto legislation passed by Congress, but Congress can override a veto. Similarly, the Supreme Court has the power of judicial review to strike down laws or executive actions that are unconstitutional.

Distinct Separation:

- The separation of powers in the U.S. system is one of the clearest examples of a strict application of the doctrine. Each branch is constitutionally empowered and operates independently of the others.
- Judicial Review: The U.S. Supreme Court plays a critical role in checking the powers of the executive and legislature. Landmark cases, such as *Marbury v. Madison* (1803), firmly established judicial review as a core principle of U.S. constitutional law.

Challenges:

- Judicial appointments: While the judiciary is independent, the process of appointing judges to the Supreme Court and lower courts is highly politicized.

Judges are appointed by the President and confirmed by the Senate, which often leads to partisan battles over nominations, especially for the Supreme Court.

- Executive overreach: Despite the clear separation of powers, there have been instances of executive overreach, where Presidents have taken actions that challenge constitutional limits, sometimes leading to judicial intervention.



Supreme Court of Bangladesh

Summary Comparison

Feature	Bangladesh	India	UK	USA
Constitutional Framework	Written Constitution (1972)	Written Constitution (1950)	Unwritten (Common law and statutes)	Written Constitution (1787)
Separation of Powers	Judiciary separated; executive-legislative fusion	Judiciary separated; judicial review	Executive-legislative fusion; judiciary independent	Strict separation with checks and balances
Executive and Legislature	Fusion in the parliamentary system	Fusion in the parliamentary system	Fusion in the parliamentary system	Strict separation with distinct roles
Judiciary Independence	Constitutionally guaranteed, but issues in implementation	Constitutionally guaranteed, though influenced by political appointments	Judiciary independent but historically influenced	Constitutionally guaranteed, judicial review is firmly entrenched
Judicial Review	Limited, but courts can review laws	Strong judicial review	No formal judicial review (Parliament sovereign)	Strong judicial review (Marbury v. Madison)

Difference among judiciary, executive and legislative:

The Judiciary, Executive, and Legislature are the three primary branches of government, each with distinct powers, functions, and responsibilities. Their separation is a foundational principle in democratic governance, aiming to prevent the concentration of power and ensure checks and balances. Below is a detailed explanation of the differences among these three branches:

1. Legislature (Legislative Branch)

Definition:

The Legislature is the branch of government responsible for making, amending, and repealing laws. It represents the people and ensures that the interests of society are reflected in the law.

Key Functions:

- **Law-making:** The primary function of the legislature is to create, debate, and pass laws. It can propose new laws or amend existing ones.
- **Budget and Finance:** The legislature approves the national budget and allocates funds for government operations.
- **Oversight:** The legislature has the power to scrutinize the actions of the executive through debates, committees, and questioning ministers. It can hold investigations and hearings to ensure accountability.
- **Representation:** Members of the legislature represent the views and interests of their constituencies or regions.
- **Ratification:** In some countries, the legislature ratifies treaties and international agreements made by the executive.

Example:

- In the United States, the Congress is the legislative body, consisting of the Senate and the House of Representatives.
- In Bangladesh, the Jatiya Sangsad (National Parliament) serves as the legislature.

Main Powers:

- Enacting laws

- Approving budgets
 - Impeaching officials (in some systems)
 - Ratifying treaties
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2. Executive (Executive Branch)

Definition:

The Executive is the branch of government responsible for enforcing laws, managing day-to-day governance, and ensuring that the laws passed by the legislature are implemented.

Key Functions:

- **Implementation of Laws:** The executive ensures that laws passed by the legislature are implemented and enforced.
- **Policy-making and Administration:** The executive formulates public policies, manages government agencies, and oversees the functioning of various governmental services.
- **National Defense and Foreign Affairs:** The executive is responsible for maintaining national security and managing foreign relations, including defense, diplomacy, and international agreements.
- **Appointments:** The executive appoints senior government officials, including judges (in some systems), ambassadors, and bureaucrats.
- **Emergency Powers:** In some situations, the executive may be given emergency powers to deal with national crises (e.g., wartime, economic disaster, or internal unrest).

Example:

- In the United States, the President is the head of the executive branch, and is supported by the Cabinet (composed of senior government ministers).
- In Bangladesh, the Prime Minister heads the executive branch, with the President serving a largely ceremonial role.

Main Powers:

- Enforcing laws

- Formulating policies
 - Directing government operations and administration
 - Conducting diplomacy and managing defense
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3. Judiciary (Judicial Branch)

Definition:

The Judiciary is the branch of government responsible for interpreting laws, resolving disputes, and ensuring that laws are applied fairly. It acts as a check on the other branches of government to ensure their actions conform to the constitution.

Key Functions:

- **Interpreting Laws:** The judiciary interprets and applies laws in specific cases. This ensures that laws are understood and followed properly.
- **Judicial Review:** The judiciary has the power to review the constitutionality of laws and executive actions. This ensures that neither the legislature nor the executive violates the Constitution.
- **Dispute Resolution:** Courts adjudicate civil, criminal, and administrative disputes, ensuring justice is served and rights are protected.
- **Protecting Rights:** The judiciary protects fundamental rights by ruling in favor of citizens in cases of constitutional violations or abuses by the executive or legislature.

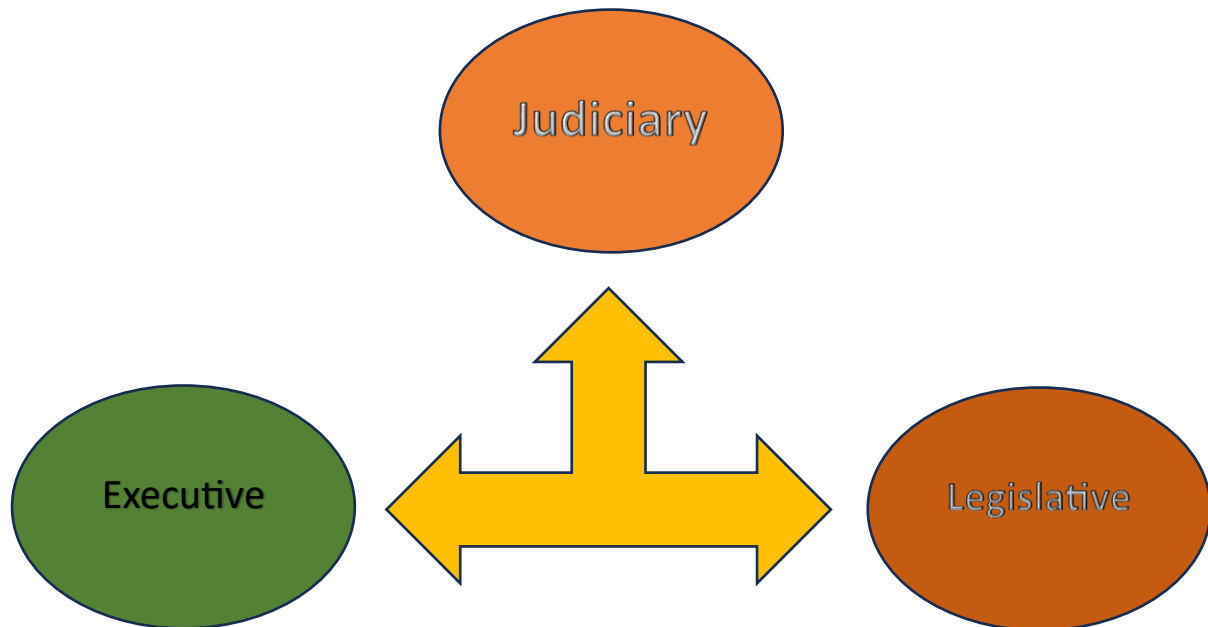
Example:

- In the United States, the Supreme Court is the highest judicial body, and the lower courts (e.g., federal district courts and circuit courts) are part of the judicial system.
- In Bangladesh, the Supreme Court is the highest court, consisting of the Appellate Division and the High Court Division.

Main Powers:

- Interpreting laws
- Judicial review of laws and executive actions

- Resolving disputes between individuals, institutions, and government bodies
- Protecting fundamental rights and freedoms



Conclusion

The **separation of powers** between the **Legislature**, **Executive**, and **Judiciary** is a foundational principle that ensures a balanced, effective, and accountable government. Each branch has distinct functions and powers, which are designed to prevent any single branch from becoming too powerful and to maintain a system of **checks and balances**.

- The **Legislature** (or law-making branch) is responsible for creating, amending, and repealing laws. It represents the people and ensures that government actions align with public interests and constitutional principles. It also holds the executive accountable through oversight and budget approval.
- The **Executive** (or law-enforcing branch) is tasked with implementing and enforcing laws, managing national policies, and overseeing the daily operations of the government. It holds significant power in areas such as

foreign relations, defense, and administration but must act within the limits set by the legislature and judiciary.

- The **Judiciary** (or law-interpreting branch) plays a critical role in interpreting the laws passed by the legislature and ensuring that the actions of both the executive and legislature conform to the **Constitution**. Through judicial review, the judiciary protects fundamental rights and ensures that the government operates within the bounds of the law.

The interaction between these branches fosters a system of **accountability**, **transparency**, and **fairness**. However, the effectiveness of this separation depends on how well each branch respects its limits and collaborates within the framework of the **Constitution**.

While the separation of powers is a cornerstone of democratic governance, practical challenges such as political influence, appointment processes, and the potential for overreach can undermine the independence and effectiveness of these branches. For a truly robust democracy, it is essential that each branch maintains its autonomy while working in harmony to serve the public interest and uphold the rule of law.

In countries like **Bangladesh**, **India**, the **United States**, and the **United Kingdom**, the specific application of the separation of powers varies according to their respective **constitutional** frameworks, but the central goal remains the same: to create a government structure that prevents the abuse of power and ensures the protection of individual rights and freedoms.