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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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THE ODYSSEY AND IMPLEMENTATION OF THE SEPARATION OF POWERS DOCTRINE WITHIN THE INDIAN CONSTITUTIONAL FRAMEWORK

AUTHORED BY - MEHAK REET SODHI

Symbiosis Law School, Pune

ABSTRACT

This article explores the doctrine of separation of powers within the Indian constitutional context, analysing its intricate interplay among the Legislature, Judiciary, and Executive. Amidst contemporary coalition politics, questions surrounding the boundaries of these branches have gained significance. The study delves into the diminishing role of Parliament in India's democracy and suggests that upholding judicial supremacy could serve as a potential remedy. The article advocates for the preservation of the separation of powers doctrine as an essential component of India's democratic fabric. Upholding judicial supremacy is posited as a potential solution to address the waning influence of Parliament, ensuring a robust equilibrium that safeguards democratic principles and individual rights.

KEYWORDS: Separation of Power, Constitution of India, Judiciary, Parliament, India

INTRODUCTION

The doctrine of separation of powers is integral to the Indian Constitution, outlining the distinct roles of the Legislature, Judiciary, and Executive. Amidst contemporary coalition politics, defining the boundaries of these branches has gained prominence. This article discusses the diminishing role of Parliament in India's democracy and suggests that upholding judicial supremacy could address this.¹ Originating from philosophers like Plato and Aristotle², the doctrine evolved through John Bodin,

¹ Rao, P. Parameshwar. "SEPARATION OF POWERS IN A DEMOCRACY: THE INDIAN EXPERIENCE." 37 PEACE RESEARCH, 113-22, (2005), <http://www.jstor.org/stable/24469690>.

² Krause, Sharon. "The Spirit of Separate Powers in Montesquieu." 62 THE REVIEW OF POLITICS, 231-65, (2000), <http://www.jstor.org/stable/1408037>.

Locke, and culminated in Montesquieu's systematic formulation in "The Spirit of the Laws".³ Montesquieu emphasized that merging legislative and executive powers risks tyranny in law-making and execution. Montesquieu's ideas stemmed from Locke's liberalism⁴ and his analysis of the British Constitution. This doctrine significantly impacted administrative law and governance. Blackstone and Madison echoed concerns about concentrating power. The doctrine's essence lies in checks and balances to curb executive abuse, advocating "government of law" over "official will." By dividing authority, the doctrine safeguards liberty. Embracing this notion can reinvigorate India's democratic balance, countering the fading parliamentary influence and asserting judicial supremacy as a remedy.

LITERATURE REVIEW

The author focuses on the comparison between the pre-constitutional structure and the separation of power with special emphasis on the relation and co-dependency between the two. (*P. M. Bakshi, 1956*)⁵

The literature published in the Student Bar Review analyses the scope and nature of the powers of Legislature and Judiciary. The author shed light upon the Doctrine of Separation of Powers for in depth understanding of the doctrine's utility. (*Shashank Krishna, 2006*)⁶

The literature of this paper analyses the recent momentum in context of coalition of power. The author comments on the supremacy provided to the legislature without any accountability given the judiciary. (*Karan Tyagi, 2008*)⁷

³ Montesquieu, Charles de Secondat, baron de, 1689-1755. *The Spirit of Laws*. London.

⁴ Hansen, Mogens Herman. "THE MIXED CONSTITUTION VERSUS THE SEPARATION OF POWERS: MONARCHICAL AND ARISTOCRATIC ASPECTS OF MODERN DEMOCRACY." 31 *History of Political Thought*, 509–31, (2010), <http://www.jstor.org/stable/26224146>.

⁵ Bakshi, P. M. "Comparative Law: Separation of Powers in India." *American Bar Association Journal*, vol. 42, no. 6, 1956, pp. 553–95. JSTOR, <http://www.jstor.org/stable/25719656>.

⁶ Krishna, Shashank. "Separation of Powers in the Indian Constitution & Why the Supreme Court Was Right in Intervening in the 'Jharkhand' Imbroglio." *Student Bar Review*, vol. 18, no. 2, 2006, pp. 13–37. JSTOR, <http://www.jstor.org/stable/44306653>.

⁷ Tyagi, Karan. "THE DOCTRINE OF SEPARATION OF POWERS AND ITS RELEVANCE IN TIME OF COALITION POLITICS." *The Indian Journal of Political Science*, vol. 69, no. 3, 2008, pp. 619–25. JSTOR, <http://www.jstor.org/stable/41856450>.

Published in the Indian Journal of Law and Legal Research, the article focuses on the analysis of doctrine of separation in contrast to the governmental system of United States and United Kingdom. It further focused on the Judicial system of the said countries. (M. Umesh, 2019)⁸

CRITICAL ANALYSIS

CONSTITUTIONAL FRAMEWORK:

The doctrine of separation of powers constitutes an essential element of the Indian Constitution. In this framework, executive powers are vested in the President, legislative powers in Parliament, and judicial powers in the judiciary, encompassing the Supreme Court, High Courts, and subordinate courts. The cardinal principle of the separation of powers is intricately interwoven into the very fabric of India's constitutional tapestry, even though it remains unarticulated within the Constitution. Embedded within the Indian Constitution lies a meticulous demarcation of roles for each branch, tailored to preserve their autonomous spheres while artfully nurturing a system of vigilant checks and harmonious balances.⁹ The Legislative organ bears the mantle of enacting laws, the Executive shoulders the mantle of execution, and the Judiciary, wielding its pivotal authority, steers the course of interpreting and upholding the sanctity of both constitution and statutes.¹⁰ This constructs an impregnable bulwark against the perilous spectre of power concentration, thus thwarting the potential encroachment of authoritative excess.¹¹

It is, however, salient to acknowledge that the Indian constitution does not adhere rigidly to the stark confines of the separation of powers doctrine.¹² Instead, it embraces a more nuanced stance, one that cautiously creates a symphony of functional allocation among the branches. This calibrated structure permits a measured degree of interplay and coordination, meticulously created to foster efficacious governance. The prominent presence of Executive figures within the Cabinet eloquently exemplifies this dynamic interweaving.

⁸ Moolimani Shamanth Umesh, A Comparative Study of Separation of Powers with India, USA and UK, 5 INDIAN J.L. & LEGAL Rsch. 1 (2023).

⁹ Constituent assembly debates (proceedings)- volume VII- Friday, 10th Dec, 1948

¹⁰ Rao, P. Parameshwar. "SEPARATION OF POWERS IN A DEMOCRACY: THE INDIAN EXPERIENCE." 37 Peace Research, 113-22, (2005), <http://www.jstor.org/stable/24469690>.

¹¹ Bakshi, P. M. "Comparative Law: Separation of Powers in India." 42 American Bar Association Journal, 553-95 (1956), <http://www.jstor.org/stable/25719656>.

¹² Syed Umam Fatima Hasan & Mohd Faiz Khan, *Separation of Powers*, 4 INT'L J.L. MGMT. & HUMAN. 2016 (2021).

As the foundational bedrock, the separation of powers motif resonates within the contours of India's constitutional tapestry, forming a scaffolding that bolsters its democratic edifice. This arrangement, within a broader spectrum, underscores the cherished facets of collaboration, adaptability, and accountability.¹³ The cohesion enacted between the branches, while sustaining the effulgence of democratic vitality, concurrently serves as a bastion guarding individual liberties against the spectre of autocratic consolidation. This equilibrium is nurtured through a reverence for constitutional articles, including the Articles 50¹⁴, 53¹⁵, 74¹⁶, 121¹⁷, and 142¹⁸, which etch the enduring foundations of the separation of powers doctrine within the vibrant vivacity of India's democratic polity.

JUDICIAL APPRAISAL:

The Judiciary, often hailed as the vanguard of constitutional rectitude, assumes a pivotal role in upholding the sanctity of the separation of powers. It stands sentinel, unwavering in its vigilance to ensure that each branch treads within its constitutionally ascribed precincts, dutifully adhering to the tenets etched within the Constitution.¹⁹ The Judiciary's wielded authority to wield the sword of judicial review empowers it to nullify legislative enactments or executive decrees that transgress the Constitution. This distribution of legal sovereign authority reflects the core tenet of the Indian Constitution, where the legislature formulates laws²⁰, the executive enforces them, and the judiciary interprets them within constitutional boundaries, as articulated in Kartar Singh v. State of Punjab.²¹ Whilst the fundamental principles are generally acknowledged, practical disputes often emerge over whether a particular state organ has exceeded the provided constitutionally designated limits. The landmark case of Kesavananda Bharati v. State of Kerala²² in 1973 exemplified this, focusing on the legislature's power to amend the Constitution. The Supreme Court affirmed the concept of the "basic

¹³ Krishna, Shashank. "Separation of Powers in the Indian Constitution & Why the Supreme Court Was Right in Intervening in the 'Jharkhand' Imbrolio." 18 STUDENT BAR REVIEW, 13-17 (2006), <http://www.jstor.org/stable/44306653>.

¹⁴ India Const. art. 50.

¹⁵ India Const. art. 53.

¹⁶ India Const. art. 74.

¹⁷ India Const. art. 121.

¹⁸ India Const. art. 142.

¹⁹ Garg, B. L. "Problem of the Separation of Judiciary in India." 25 The Indian Journal of Political Science, 331-38 (1964), <http://www.jstor.org/stable/41854047>.

²⁰ Aparna Padmakavi R., *Balancing Judicial Interpretation and the Doctrine of Separation of Powers*, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022).

²¹ Kartar Singh v. State of Punjab, 1994 SCC (3) 569.

²² Kesavananda Bharati & ors v. State of Kerala, (1973) 4 SCC.

structure," asserting that certain fundamental features of the Constitution were immutable and could not be altered even by parliamentary legislation. In the case of I.R. Coelho v. State of Tamil Nadu²³, the Supreme Court ruled that the previously established notion of the "basic structure" doctrine, along with the protective umbrella afforded by the Ninth Schedule to certain legislations, contradicts this very doctrine. The Court held that this combination violates the principles enshrined within the "basic structure" doctrine by effectively exempting specific laws from judicial scrutiny. This decision was challenged by making the Parliamentary stance equivalent to the sovereign will of the said particular state and declared parliament to have a supreme decision-making authority in connection to law modification including cases where in freedom of an individual was scrutinized.

The landmark case of Ram Jawaya Kapoor v. State of Punjab²⁴ further elucidated upon the adherence to the concept of Separation of Powers and asserted that the absence of absolute demarcation within the various constitutional branches does not intend for one particular branch to intrude upon the core functionality of another. In the case of P. Kannadasan v. State of Tamil Nadu²⁵, the court emphasized that the Constitution empowers the Constitutional Courts with the authority to invalidate laws created by both Parliament and state legislatures, in cases where these laws exceed the limits defined by the Constitution itself.

In Golak Nath v. State of Punjab²⁶, the court highlighted that the three branches of government are expected to operate within their respective boundaries, whilst taking into account the parameters established by the Constitution. This signifies that each branch must effectuate its functions without encroaching upon the jurisdiction allotted to the others. In Asif Hameed v. State of J & K²⁷, the court clarified the previously made stance that while the doctrine of separation of powers isn't explicitly recognized in the constitution, the functions of the state's organs are meticulously defined. Each branch—Legislative, Executive, and Judiciary must operate within its allocated sphere without encroaching on others. While Legislative and Executive possess considerable powers, the Judiciary lacks control over these areas. Nevertheless, it's empowered to ensure that the other branches adhere

²³ IR Coelho v. State of Tamil Nadu AIR 2007 SC 861.

²⁴ Ram Jawaya Kapoor v. State of Punjab (1955) 2 SCR 225.

²⁵ P. Kannadasan v. State of Tamil Nadu, 1975 AIR 865.

²⁶ Golaknath v. State of Punjab, 1967 AIR 1643.

²⁷ Asif Hameed v. State of J&K, AIR 1989 SC 1899.

to constitutional limits, serving as a guardian of democracy.²⁸

The Indian Constitution positions the Judiciary as an independent entity, impartially overseeing and preventing overreach by other branches. Notably, a constitution framer clarified that judicial independence doesn't entail acting as a super-legislature or super-executive, but rather interpreting the constitution and settling disputes.²⁹ India's judicial system doesn't hold supremacy over co-equal organs. It serves as a vigilant overseer, ensuring adherence to constitutional boundaries. By ingeniously merging separation of powers and parliamentary sovereignty principles, the Constitution establishes a dynamic system that upholds parliamentary democracy while maintaining flexibility.

GLOBAL PERSPECTIVE:

The doctrine of Separation of Powers isn't new, tracing back to the 16th and 17th centuries. Notable figures like Aristotle, John Locke, and Montesquieu in 1747 shaped this concept. In ancient India, the Narada Smriti depicted this idea. The United States Constitution, influenced by Montesquieu, incorporated provisions for the three branches: Legislative, Executive, and Judiciary. This research compares separation of powers provisions in different countries to explore similarities, differences, and their impact on Constitutionalism.

United Kingdom: Although the UK has an unwritten constitution and a parliamentary system, it aligns with the separation of powers concept informally.³⁰ The king, who leads the executive, is part of the legislature. The Lord Chancellor heads the judiciary, chairs the House of Commons, and is in the cabinet. This blend challenges the doctrine. The European Convention on Human Rights' Article 6³¹ and the House of Lords' shift in 2009 to the Supreme Court aim for clearer separation.

United States: The US, governed by a written constitution and a presidential system, strictly follows the Separation of Powers doctrine.³² The Constitution's first three articles establish separation among

²⁸ Vishaka v. State of Rajasthan & Ors, (1997) 6 SCC 241).

²⁹ Bandhuva Mukti Morch v. Union of India, AIR 1952 SC 332

³⁰ Constitutional Reforms Act, Section 61, (2005) Government of UK.

³¹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 6 as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at <https://www.refworld.org/docid/3ae6b3b04.html>

³² Bakshi, P. M. "Comparative Law: Separation of Powers in India." 42 AMERICAN BAR ASSOCIATION JOURNAL, 553–95, (1956) <http://www.jstor.org/stable/25719656>.

the Legislative, Executive, and Judiciary branches.³³ The President, Congress, and Supreme Court have distinct roles, although practical application involves checks and balances.³⁴ For instance, the President can veto Congress's decisions and appoint judges. In practice, while the separation of powers appears stringent, it's more nuanced. The President's veto power influences Congress³⁵, and their authority overlaps in appointments. Congress also affects the judiciary through laws and judge approvals. Despite these interactions, the doctrine's core tenets endure.

CONCLUSION

In summation, the doctrine of separation of powers stands resolute as an integral cornerstone within the intricate edifice of the Indian Constitution. Its significance is universally recognized, ensuring that the Legislature, Judiciary, and Executive operate within the parameters delineated by the Constitution. This constitutional triad delineates their powers, responsibilities, and interconnections, fashioning the very architecture of governance.

Against the backdrop of evolving coalition politics both at the central and state levels, inquiries regarding the scope of each organ's authority have acquired renewed prominence. Amidst these shifting dynamics, the role of Parliament has experienced a diminution in its impact on the mechanisms of India's democracy. A potential remedy to this challenge resides in upholding the doctrine of judicial supremacy.³⁶ Through this measure, a robust equilibrium can be reinstated, addressing power imbalances and jurisdictional delineations, while ensuring the vitality of the democratic process.

The interplay among these branches, encompassing legislative, judicial, and executive functions, constitutes the bedrock of India's democratic ethos.³⁷ As the nation forges ahead, the judicious preservation of this doctrine will not merely safeguard the sanctity of the Constitution but also nurture a democratic landscape characterized by vigilant checks, harmonious equilibriums, and the safeguarding of citizens' entitlements. Within this finely tuned equilibrium lies the true essence of

³³ The Constitution of United States of America, 1789.

³⁴ *Panamma Refining Company v. Ryan* 293 US 388 (1935)

³⁵ *Marbury v. Madison*, 5 USA 137 (1803).

³⁶ *Duport Steel Ltd. v. Sirs and Ors.* (1980) 1 WLR 142.

³⁷ Manish Tiwari, "*The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism.*" UNIVERSITY OF TORONTO PRESS, 223-55, (2017), <http://www.jstor.org/stable/10.3138/j.ctt1whm97c.12>.

democracy, guiding the nation towards a more luminous and promising future.³⁸

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³⁸ Aparna Padmakavi R., *Balancing Judicial Interpretation and the Doctrine of Separation of Powers*, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022).