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A Comparative Study of India, USA, UK, and France Relating to the Separation of Powers

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ABSTRACT

The concept of the separation of powers serves as a cornerstone of a transparent and accountable government. Its fundamental objective is to safeguard citizens' liberty by effectively implementing laws formulated by the state. The doctrine aims to prevent any single person or body from holding all the powers. It is imperative that the powers and obligations of each branch of government are clearly defined and kept separate to ensure the freedom of the people. The separation of powers is essential in upholding the principles of democracy and protecting the rights of citizens.

The theory of the rule of law includes a fundamental component known as the separation of powers doctrine. It refers to the concept of keeping the legislative, executive, and judicial branches of government completely separate from each other. However, over time, the interpretation of the doctrine has changed significantly. The interactions between government organs in countries like France, the United States, the United Kingdom, and India clearly show this. The doctrine has evolved to recognize the interdependence of these organs, and it is now understood as a system of checks and balances. Although the classical interpretation of the doctrine is not applicable in the contemporary world, its intrinsic value cannot be negated. The core of the doctrine is still relevant today, as it calls for the distribution of central authority to avoid autocracy.

Keyword: *separation of powers, doctrine, legislative, executive, judicial, government.*

I. INTRODUCTION

The separation of powers is a fundamental principle in the governance of democratic nations. It aims to prevent the concentration of power within any one branch of government. A comparative study of India, the USA, the UK, and France in relation to the separation of powers provides valuable insights into the functioning of these democratic systems. Each country has its unique approach to the division of powers among the executive, legislative, and judicial branches. This approach influences the balance of authority and accountability within their

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respective governments.

India, as the world's largest democracy, has a parliamentary system where the executive branch is drawn from the legislature. This blurs the separation of powers to some extent. In contrast, the United States has a strict separation of powers, with distinct roles for the executive, legislative, and judicial branches outlined in the Constitution. The UK follows a system of parliamentary sovereignty, where the legislative branch holds supreme power. Meanwhile, France operates under a semi-presidential system, combining elements of both parliamentary and presidential governance.

Understanding the nuances of how these countries approach the separation of powers is crucial for comprehending the dynamics of their political systems. It also helps us understand the impact on governance and decision-making. This article will delve into the specific mechanisms and implications of the separation of powers in India, the USA, the UK, and France. It aims to shed light on the strengths and challenges of their respective democratic frameworks.

The essence of a federal constitution lies in the separation of powers and functions between the central government and the states. This principle, first coined by the Greek philosopher Aristotle and further developed by Montesquieu, dictates that the three forms of government - the legislature, executive, and judiciary - must be assigned distinct powers to ensure the effective functioning of the government system and to prevent any abuse of power.

A close examination of the federations currently existing in the world reveals that there is no fixed formula for the division of powers between the central and regional governments. Generally, some powers are exclusively assigned to the center, while others are exclusively assigned to the regions. Additionally, there may be areas where both the central and regional governments can operate simultaneously.

The main objective behind the concept of the separation of powers is to ensure transparency in the government's mechanisms and to safeguard the citizens' liberty through the effective implementation of all laws formulated by the state. The doctrine of separation of powers aims to prevent one person or body of persons from exercising all the powers. It stipulates that the powers and obligations of all three branches of government should be clearly defined and kept separate, as this is essential to ensure the freedom of the people.

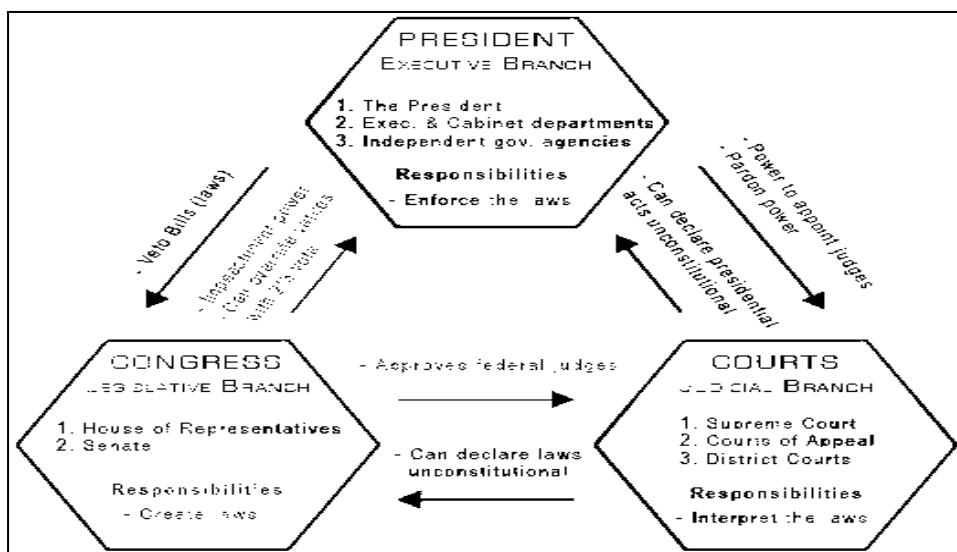
“The accumulation of all powers, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

A comparative study on the separation of powers in India, the USA, the UK, and France is of

great significance in the field of political science. The separation of powers is a fundamental principle followed by most democratic nations worldwide, which divides the powers of the government into three branches: the legislative, the executive, and the judiciary. Each branch has a distinct function and operates independently of the others.

India, the USA, the UK, and France are four nations that have adopted the principle of separation of powers in their constitutions, but the way in which this principle is implemented varies from country to country. A comparative study of these nations will help in understanding the similarities and differences in the functioning of their governments, identifying the strengths and weaknesses of their respective systems of governance.

This study will delve into the historical, political, and legal aspects of the separation of powers in India, the USA, the UK, and France. It will explore the evolution of the concept in each country and the factors that have influenced its development. Additionally, the study will analyze the effectiveness of the separation of powers in promoting democracy and protecting civil liberties. Overall, this comparative study will provide valuable insights into the functioning of democratic governments and the importance of the separation of powers in ensuring good governance.



II. HISTORICAL EVOLUTION OF SEPARATION OF POWERS

(A) India

The idea of separation of powers has its roots in ancient India. The Vedas, the oldest Hindu scriptures, describe the distribution of power among the king, the priest, and the common people. However, the modern concept of separation of powers was introduced by the British during their colonial rule. The Government of India Act of 1935 established the separation of

powers between the executive, the legislature, and the judiciary.

(B) USA

The United States Constitution is the first written constitution in the world that explicitly provides for the separation of powers. This means that the Constitution divides the powers of the federal government among three branches: the legislative, the executive, and the judiciary. The framers of the Constitution believed that the separation of powers was essential to preventing tyranny and safeguarding individual liberties.

(C) UK

The United Kingdom lacks a written constitution unlike the United States, and the idea of the separation of powers is not as clearly defined. However, there is still a separation of powers between the judiciary, the executive, and the legislature. The judiciary is entirely independent of the executive and the legislature, and the executive is accountable to the legislature.

(D) France

The idea of separating the powers of government can be traced back to the Enlightenment period in France. The French philosopher Montesquieu proposed that the powers of government should be divided among three branches: the legislative, the executive, and the judiciary. This concept was later incorporated into the French Constitution of 1958, which established the separation of powers between the executive, the legislature, and the judiciary. The President of the Republic leads the executive branch, while the National Assembly and Senate make up the legislative branch. The judiciary operates independently of the other two branches of government.

The historical evolution of the separation of powers in countries like India, the USA, the UK, and France has been shaped by their unique political, social, and cultural contexts. Although these countries have embraced the concept of separation of powers, the implementation of this idea varies.

III. CONSTITUTIONAL FRAMEWORK AND LEGAL PROVISIONS

The concept of separation of powers is rooted in the Constitutions of India, the USA, the UK, and France. Each country has its unique approach to the separation of powers, which is reflected in its constitutional framework and legal provisions.

(A) Separation of Powers in India:

In India, the Constitution provides for the separation of powers among the three branches of

government: the legislature, the executive, and the judiciary. The legislature has the power to make laws, the executive has the power to implement them, and the judiciary has the power to interpret laws and settle disputes. The Constitution also establishes an independent Election Commission, which is responsible for conducting free and fair elections.

(B) Separation of Powers in the USA:

The Constitution of the United States of America establishes a separation of powers among the legislative, executive, and judicial branches of government. Each branch has its own distinct powers and responsibilities. The legislative branch creates laws, the executive branch enforces laws, and the judicial branch interprets laws and resolves disputes.

(C) Separation of Powers in the UK:

On the other hand, the Constitution of the United Kingdom does not have a strict separation of powers. Instead, the powers of government are divided among the executive, legislature, and judiciary with significant overlap between these branches. The executive branch is responsible for implementing laws, the legislature is responsible for making laws, and the judiciary is responsible for interpreting laws and resolving disputes.

(D) Separation of Powers in France:

The Constitution of France mandates the separation of powers among the three branches of government - the legislative, executive, and judicial branches. The legislative branch is responsible for creating laws, the executive branch is responsible for executing laws, and the judicial branch is responsible for interpreting laws and resolving disputes. Furthermore, there exists an independent Constitutional Council that ensures all laws are in compliance with the Constitution.

In conclusion, the constitutional framework and legal provisions of India, the USA, the UK, and France exemplify their unique approaches to the separation of powers. Although each country has its distinctive system, they all share the same objective of preventing power from being concentrated in any one branch of government.

IV. EXECUTIVE, LEGISLATIVE, AND JUDICIAL INTERACTIONS

(A) India's Power Dynamics:

The Constitution of India provides a clear separation of powers between the three branches of the government - the executive, legislative, and judicial. However, their interactions are not always clearly defined. The executive branch, headed by the Prime Minister, holds significant control over the legislative branch, as the ruling party often enjoys a majority in Parliament.

This can lead to the executive branch exerting considerable influence over the legislative process. Furthermore, the Constitution grants significant immunity from judicial review to both the executive and legislative branches, which limits the judiciary's power to check the actions of the other branches.

(B) USA's Checks and Balances:

In the United States, a system of checks and balances is in place to ensure that no single branch of government becomes too powerful. The executive branch, led by the President, can veto legislation passed by the legislative branch. However, the legislative branch has the power to override the veto with a two-thirds majority vote. Additionally, the judiciary branch has the power of judicial review, which enables it to declare laws passed by the legislative branch or actions taken by the executive branch unconstitutional. This system of checks and balances guarantees that no one branch of government can become too dominant.

(C) UK's Parliamentary Sovereignty:

On the other hand, in the United Kingdom, the doctrine of parliamentary sovereignty means that the legislative branch is the most powerful branch of government. The executive branch, headed by the Prime Minister, must be accountable to the legislative branch and must maintain the support of the majority in Parliament to remain in power. The judiciary branch has limited power to check the actions of the other branches, as Parliament has the authority to pass laws that overrule judicial decisions.

(D) France's Semi-Presidential System:

France operates under a semi-presidential system, where the President and Prime Minister share executive power. The President is elected directly by the people, whereas the Prime Minister is appointed by the President. The legislative branch, which is headed by the National Assembly, has significant power to check the actions of the executive branch. The judiciary branch has the power of judicial review, enabling it to declare laws passed by the legislative branch or actions taken by the executive branch as unconstitutional. However, the President has the authority to dissolve the National Assembly, which can cause a significant shift in power between the branches.

V. CASE STUDIES AND LANDMARK JUDGMENTS

(A) India's Judicial Pronouncements:

India's Supreme Court has played a crucial role in interpreting and defining the separation of powers in the Indian Constitution. In the landmark case of *Kesavananda Bharati v. State of*

Kerala, the court held that the Constitution has a basic structure that cannot be amended by the Parliament. This decision was crucial in preserving the independence of the judiciary and ensuring that the Parliament does not encroach upon the judiciary's domain.

Another important case is *S.R. Bommai v. Union of India*, where the Supreme Court held that the President's power to dismiss a state government is subject to judicial review. This decision strengthened the federal structure of the Indian Constitution and ensured that the state governments are not at the mercy of the central government.

(B) USA's Supreme Court Cases:

The United States Supreme Court has played a significant role in interpreting the separation of powers in the U.S. Constitution. In *Marbury v. Madison*, the court established the principle of judicial review, which gives the court the power to declare acts of the Congress unconstitutional.

Another important case is *United States v. Nixon*, where the court held that the President's claim of executive privilege is not absolute and can be overruled by the judiciary. This decision was crucial in ensuring that no branch of the government becomes too powerful and that the Constitution's checks and balances are maintained.

(C) UK's Legal Milestones:

In the United Kingdom, the separation of powers is not explicitly defined in the Constitution. However, the judiciary has played a crucial role in interpreting and defining the separation of powers. In the case of *R (Miller) v. Secretary of State for Exiting the European Union*, the Supreme Court held that the government cannot trigger Article 50 of the Treaty on European Union without the Parliament's approval.

Another important case is *A v. Secretary of State for the Home Department*, where the Supreme Court held that the government's power to detain foreign nationals is subject to judicial review. This decision was crucial in ensuring that the government's power is not absolute and that the judiciary can intervene to protect individual rights.

(D) France's Constitutional Council Rulings:

In France, the Constitutional Council is responsible for ensuring the constitutionality of laws. In the case of *Loi relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, the Constitutional Council held that the government cannot require public officials to declare their assets and interests publicly. This decision was crucial in protecting individual privacy and ensuring that the government's power is not absolute.

Another important case is *Loi relative à la sécurité et à la lutte contre le terrorisme*, where the

Constitutional Council held that the government's power to conduct surveillance is subject to judicial review. This decision was crucial in ensuring that individual rights are protected and that the government's power is not absolute.

VI. COMPARATIVE ANALYSIS

The concept of separation of powers is implemented differently in India, USA, UK, and France. A comparative analysis of these countries' systems and approaches towards the executive, legislative and judicial branches can help in understanding how each country functions.

(A) Executive Power Comparison

- In India, the President serves as the head of state, while the Prime Minister serves as the head of government. The President's role is primarily ceremonial, while the Prime Minister holds the real power. The President is elected by an electoral college, whereas the Prime Minister is elected by the members of the Lok Sabha, which is the lower house of the Indian Parliament.
- In the USA, the President holds both the head of state and head of government positions. The President is elected by the Electoral College, comprising representatives from each state. The President has the power to veto legislation passed by Congress, but Congress can override the veto with a two-thirds majority vote.
- In the UK, the Queen is the head of state, while the Prime Minister is the head of government. The Queen's role is primarily ceremonial, while the Prime Minister holds the real power. The Prime Minister is appointed by the Queen and is usually the leader of the political party that has a majority in the House of Commons, which is the lower house of the UK Parliament.
- In France, the President serves as the head of state, while the Prime Minister serves as the head of government. The President is elected by popular vote, whereas the Prime Minister is appointed by the President. The President has the power to dissolve the National Assembly, which is the lower house of the French Parliament.

(B) Legislative Authority Comparison:

- In India, the Parliament consists of two houses: the Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower house, and its members are elected by popular vote. The Rajya Sabha is the upper house, and its members are elected by the members of the State Legislative Assemblies.

- In the USA, Congress is also composed of two houses: the House of Representatives and the Senate. The House of Representatives is the lower house, and its members are elected by popular vote. The Senate is the upper house, and its members are elected by the people of each state.
- In the UK, Parliament is made up of two houses: the House of Commons and the House of Lords. The House of Commons is the lower house, and its members are elected by popular vote. The House of Lords is the upper house, and its members are appointed by the Queen.
- In France, the Parliament is also composed of two houses: the National Assembly and the Senate. The National Assembly is the lower house, and its members are elected by popular vote. The Senate is the upper house, and its members are elected by local officials.

(C) Judicial Independence Comparison:

- India: The highest court is the Supreme Court. The President appoints the Chief Justice of India, who then advises the President on the appointment of other senior judges.
- USA: The highest court is the Supreme Court. The President appoints the justices, but they must be confirmed by the Senate.
- UK: The highest court is the Supreme Court. The Queen appoints the judges based on the advice of the Prime Minister and other senior judges.
- France: The highest court is the Constitutional Council. Its members are appointed by the President, the President of the National Assembly, and the President of the Senate.

VII. IMPACT ON GOVERNANCE AND DEMOCRACY

(A) India's Democratic Processes:

India's Constitution establishes a federal structure with a parliamentary system of government. The Constitution ensures the separation of powers among the executive, legislature, and judiciary. However, corruption is a major issue in the Indian political system, which hinders the effectiveness of the separation of powers. Moreover, the concentration of power in the hands of the executive has led to the weakening of the independence of the judiciary and legislature. This has further resulted in the erosion of democratic processes in India.

(B) USA's Federal Governance:

The United States of America has a federal system of government with a separation of powers

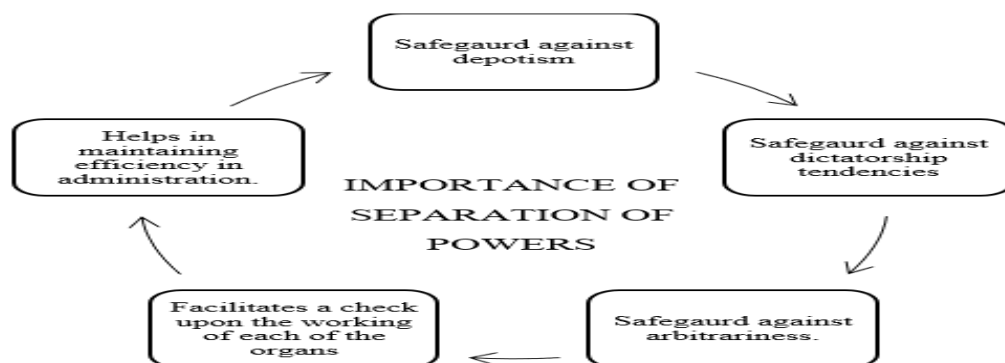
between the executive, legislature, and judiciary. The Constitution provides for checks and balances to ensure that no single branch of government can become too powerful. The separation of powers has been effective in maintaining the independence of the judiciary and the legislature. However, the concentration of power in the hands of the executive has led to concerns about the erosion of civil liberties and the abuse of power. The checks and balances provided by the Constitution have been tested in recent years, and the effectiveness of the separation of powers has been questioned.

(C) UK's Constitutional Reforms:

On the other hand, the United Kingdom has a parliamentary system of government with a fusion of powers between the executive and the legislature. The judiciary is independent, but its powers are limited. The UK has undergone significant constitutional reforms in recent years, including the creation of a Supreme Court and the devolution of powers to Scotland, Wales, and Northern Ireland. These reforms have strengthened the separation of powers and the independence of the judiciary. However, concerns remain about the concentration of power in the hands of the executive and the lack of a written constitution.

(D) France's Political Landscape:

France, on the other hand, has a semi-presidential system of government with a similar separation of powers between the executive, legislative, and judiciary branches. The President acts as the head of state, while the Prime Minister is the head of government. The judiciary in France is independent, but its powers are limited. The French political landscape is known for having a strong executive but a weak legislature. This concentration of power in the hands of the executive has led to concerns about the erosion of civil liberties and the abuse of power. Although the separation of powers has been effective in maintaining the independence of the judiciary, the weakness of the legislature has limited its ability to provide effective checks and balances.



VIII. CONTEMPORARY CHALLENGES AND REFORMS

(A) India's Recent Developments:

India's Constitution mandates a separation of powers between the executive, legislative, and judiciary branches. However, in recent years, concerns have been raised about the erosion of this separation of powers. The current ruling party has been accused of interfering with the functioning of the judiciary and using the executive branch to target political opponents. Additionally, there have been concerns about the concentration of power in the Prime Minister's Office.

To address these concerns, the Indian government has proposed reforms to strengthen the separation of powers. For instance, the government has suggested creating a separate body to oversee the appointment of judges, which would decrease the influence of the executive branch. The government also aims to limit the power of the Prime Minister's Office and fortify the role of Parliament.

(B) USA's Political Polarization:

The United States has a political system based on separation of powers among the executive, legislative, and judiciary branches. However, recent years have seen growing political polarization, which threatens this separation. The current political climate has led to increased partisanship and gridlock, making it difficult for the different branches of government to work together. This has raised concerns about the erosion of the checks and balances that are essential to a healthy democracy.

To address these concerns, some people have proposed reforms such as redistricting reform and campaign finance reform. These reforms would reduce the influence of special interests and promote greater accountability. Some have also suggested strengthening the role of Congress and limiting the power of the presidency.

(C) UK's Brexit Implications:

Brexit has raised questions about the UK's separation of powers. Unlike the US, the UK does not have a written constitution and does not have a clear separation of powers between the executive, legislative, and judiciary branches. There is a need for greater clarity and accountability in the UK's political system. Some have proposed reforms such as codifying the UK's constitution and creating a written bill of rights. Others have suggested strengthening the role of Parliament and limiting the power of the executive branch.

(D) France's Administrative Changes:

France's political system has historically been dominated by a strong executive branch. However, recent efforts have been made to strengthen the legislative and judiciary branches. In 2019, the French government proposed reforms to reduce the number of MPs and senators and limit their terms in office. Additionally, the government proposed reforms to decrease the influence of the executive branch and empower the judiciary. These reforms aim to promote transparency, accountability, and an equitable distribution of power across all branches of the French government.

IX. CONCLUSION

In conclusion, the Separation of powers is a fundamental principle of modern democratic systems. Various countries like India, the USA, the UK, and France have adopted different models of separation of powers, each with its own strengths and weaknesses.

India's system of separation of powers is unique in that it has a quasi-federal structure with a strong center. The judiciary in India has been very active in interpreting the constitution and enforcing fundamental rights. However, the executive often tries to influence the judiciary, and corruption is a major problem in the country.

The USA has a strict separation of powers with a federal structure. The judiciary in the USA is very independent and has the power of judicial review. However, political polarization and gridlock in the country have led to a breakdown of the system of checks and balances.

The UK has a parliamentary system with a fusion of powers. The judiciary in the UK is not as independent as in the USA or India, and the executive has significant control over the legislature. However, the UK has a strong tradition of the rule of law and an independent civil service.

France has a semi-presidential system with a strong executive. The judiciary in France is very independent and has the power of constitutional review. However, the French system of separation of powers is often criticized for being too centralized and lacking in checks and balances.

Each country's system of separation of powers has its strengths and weaknesses. It is important for each country to constantly evaluate and improve its system to ensure that it is functioning effectively and promoting democracy.

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