

SEPARATION OF POWER:

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The doctrine of separation of power is an idea which talks about functioning of government is at its best when the powers are not solely given to a single authority but is sub divided into different branches. This principle is not followed in a very strict sense but is adopted by many nations. It was first adopted by United States of America. In India the doctrine of Separation of power was developed in 17th century. Where the thinkers pointed out three powers of the government which were power to make laws, power to enforce law and power to interpret law.

The idea behind this doctrine is that no man should be empowered with all these three powers. These should be divided accordingly that the law should be made by legislative, administration of law should be done by executive and judiciary should uphold the law and provide justice. Montesquieu believed that the decentralization of power should be done or else the justice becomes capricious. The three organs Legislative, executive and judiciary should work independently and there should be no overlap between the powers of these organs. According to him the basic assumption behind this principle is that if all the power is given in the hands of one body, it can be dangerous for the citizens because then the law becomes arbitrary and flawed.

DOCTRINE OF SEPARATION OF POWER -

- Separation of powers is the **division of the legislative, executive, and judicial functions of government.** article 50 says that states shall take steps to separate the Judiciary from the Executive.
- The constitutional demarcation precludes the concentration of excessive power by any branch of the government.
- The **Indian Constitution** lays down the structure and defines and determines the role and functions of every organ of the State and establishes norms for their inter-relationships and checks and balances.

In India there are three major powers of government and each of them is performed by separate organ. Legislature is responsible for making the laws, executive is responsible for enforcing law and judiciary is responsible for implementing laws. The major question that arises is that should there be dependence of these organs on each other or whether there should be a strict separation of powers among them. There is strict provision that defines separation of powers absolutely but there are provisions in Constitution of India that have made distinction between the powers of the organs of the government. Even though there is no express provision for this doctrine, but it is followed in India in an implied manner. It has defined the roles of each organ of the government. The constitution of India had laid separate functions of the organs of the government in following ways:

1. The judiciary is independent as laid down under Article 50. The conduct of the judges cannot be taken about in the parliament and state legislature as provided under Article 121 and 211. The powers of executive are vested with president and in a state is vested with governor as per Article 53 and 154.
2. The legislature in certain cases like impeachment of the president or removing of the judges may have judicial powers. Likewise, the executive has certain powers to appoint the judges and chief justice which can affect the functioning of the judiciary.

3. The executive can exercise the powers of the legislature in circumstance when the legislature is not in session and there is an urgent need to make law. This is provided as under Article 123 to promulgate ordinance. The constitution has also provided a system where checks and balances are done to prevent misuse of powers that have been vested. This clearly shows that the constitution of India does not provide a rigid structure of this doctrine of separation of power. It is used in a broad sense and the three organs can exercise their powers and functions even with some overlap.

Significance of the Doctrine

This principle ensures that autocracy does not creep into a democratic system. It protects citizens from arbitrary rule. Hence, the importance of the separation of powers doctrine can be summed up as follows:

- a. Keeps away autocracy
- b. Safeguard individual liberty
- c. Helps create an efficient administration
- d. Judiciary's independence is maintained
- e. Prevents the legislature from enacting arbitrary or unconstitutional laws.