

Separation of Power and Constitutionalism In Comparison To India USA and UK

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Abstract: The principles of separation of powers and constitutionalism play distinct but critical roles in the governance structures of India, the United States, and the United Kingdom. In the United States, the separation of powers is strictly enforced through a written constitution that clearly delineates the powers of the executive, legislative, and judicial branches. Each branch operates independently, with a strong system of checks and balances that prevents any single branch from dominating the others. Constitutionalism in the U.S. is deeply entrenched, with judicial review providing a mechanism for the Supreme Court to strike down laws that conflict with constitutional provisions.

In the United Kingdom, constitutionalism takes a unique form as the country lacks a single, written constitution. Instead, it relies on a combination of statutes, conventions, and legal precedents. The principle of parliamentary sovereignty traditionally limits strict separation of powers, with the legislature holding supremacy. However, the role of constitutionalism has evolved, especially with judicial review and the Human Rights Act 1998, giving the judiciary a greater role in ensuring that governmental actions align with individual rights and democratic principles.

In India, the Constitution explicitly establishes a separation of powers but also allows for flexibility through certain overlaps among branches, tailored to meet the needs of a vast, diverse nation. The Indian judiciary has significant powers of judicial review, enabling it to safeguard constitutionalism and protect fundamental rights. However, the principle of "checks and balances" is often challenged by the expanding roles of both the judiciary and executive in legislative affairs, leading to debates on judicial activism and executive overreach.

These varied approaches highlight how separation of powers and constitutionalism are adapted to each country's political culture and legal traditions, creating unique frameworks that balance authority, accountability, and the protection of rights within different democratic systems.

Keywords:- separation of power, constitutionalism, check and balance, senate, house of representatives, check and balance, Judicial review, legislature, executive, judiciary, House of people, council of states, basic structure, amendment.

1. INTRODUCTION

The concepts of separation of powers and constitutionalism are foundational to democratic governance, establishing the framework within which states uphold the rule of law and safeguard individual rights. The separation of powers, a theory advocated by political philosopher Montesquieu, divides government functions among the executive, legislative, and judicial branches to prevent any one branch from gaining excessive power. Constitutionalism complements this by ensuring that government operates within the confines of a written or unwritten constitution, maintaining checks and balances through legal frameworks and principles.

India, the United States, and the United Kingdom each embody these principles, but their approaches vary based on their unique historical, political, and legal contexts. The United States has a strict separation of powers upheld by a written Constitution and strong judicial review. India, influenced by both the U.S. and U.K. models, follows a flexible separation with a parliamentary system, where the executive is part of the legislature, though with significant judicial oversight. The United Kingdom, with its unwritten constitution, has traditionally operated with a fusion of powers, primarily due to its parliamentary sovereignty; however, recent reforms and the establishment of the U.K. Supreme Court have introduced more pronounced checks on executive and legislative actions. Each country's approach demonstrates a distinct balance between flexibility and rigidity in implementing separation of powers and constitutionalism, tailored to fit its governing philosophy and historical evolution.

2. MEANING AND CONCEPT

Separation of powers and constitutionalism are fundamental principles that uphold democratic governance and prevent authoritarian rule. These concepts aim to create a system of checks and balances within government, ensuring that power is

not concentrated in any single branch or authority. India, the USA, and the UK all implement separation of powers and constitutionalism to varying extents, reflecting their unique legal traditions, political histories, and constitutional frameworks.

2.1- Concept of Separation of Powers

The separation of powers is a governance model that divides government responsibilities into distinct branches—typically the executive, legislature, and judiciary—to prevent abuse of power and ensure a balanced government. The theory was famously articulated by French philosopher Montesquieu in his seminal work, *The Spirit of the Laws* (1748), and has since been integral to many democratic constitutions worldwide.

The purpose of this division is to prevent any one branch from becoming too powerful and to create a system of checks and balances. Each branch is supposed to act independently within its jurisdiction while remaining accountable to the other branches. However, how separation of powers is applied differs among nations, depending on their historical backgrounds and political systems.

2.2- Concept of Constitutionalism

Constitutionalism is the principle that government authority is derived from and limited by a body of fundamental law or constitution. It ensures that the government is bound by rules and operates within a framework of legal constraints. A constitutional government is characterized by the rule of law, respect for human rights, and adherence to democratic principles. The constitution serves as a higher law that protects citizens from arbitrary governance and guarantees individual freedoms.

Constitutionalism also implies that the constitution is supreme and that no branch of government, including the executive, can supersede its mandates. In democracies like India, the USA, and the UK, constitutionalism is a core principle that shapes their governance structures and safeguards civil liberties.

3. HISTORICAL BACKGROUND OF SEPARATION OF POWER AND CONSTITUTIONALISM IN COMPARISON TO INDIA USA AND UK

The doctrines of separation of powers and constitutionalism serve as fundamental principles in

ensuring accountable and restrained governance in democratic nations. These principles are rooted in a long history of political theory and practice, which developed uniquely in different nations based on their historical, cultural, and political circumstances. Comparing India, the USA, and the UK provides a rich understanding of how separation of powers and constitutionalism evolved and were applied within distinct frameworks.

3.1- Historical Origins and Theoretical Foundation of Separation of Powers and Constitutionalism

The concept of separation of powers, aimed at dividing government functions to prevent concentration of power, traces its roots to ancient Greece and Rome. However, it was during the Enlightenment that these ideas were formally conceptualized by philosophers like John Locke and Montesquieu. Locke advocated for the separation of legislative and executive powers to prevent tyranny, while Montesquieu's *The Spirit of the Laws* (1748) articulated a three-branch model: executive, legislative, and judiciary. Montesquieu's framework heavily influenced modern democratic constitutions, including that of the United States.

Constitutionalism, on the other hand, emerged as the idea that governmental authority must be limited and defined by a written or unwritten constitution. This concept developed through centuries of struggle between monarchs and subjects, notably in England, where the Magna Carta (1215) and the English Bill of Rights (1689) laid the foundation for a constitutional system.

3.2- Separation of Powers and Constitutionalism in the United States

The USA embodies a formal and rigorous application of separation of powers and constitutionalism. The U.S. Constitution, drafted in 1787, was directly inspired by Montesquieu's ideas. It established a government with three distinct branches: the executive (President), legislative (Congress), and judiciary (Supreme Court). Each branch has distinct powers and checks on the others to prevent any single branch from becoming too powerful. For instance, while Congress makes laws, the President has the power to veto, and the Supreme Court has the authority to declare laws unconstitutional.

The U.S. Constitution is also a robust example of constitutionalism. It is a written document that

explicitly outlines the powers and limitations of each branch, ensuring that government functions within a legal framework. The Constitution's Bill of Rights, adopted in 1791, guarantees fundamental rights to citizens, further embedding constitutionalism by protecting individual liberties from government intrusion.

3.3- Separation of Powers and Constitutionalism in the United Kingdom

The United Kingdom's approach to separation of powers and constitutionalism is distinct because it does not have a codified constitution. Instead, it relies on an unwritten constitution comprising statutes, conventions, judicial decisions, and works of authority. This unique structure creates a more flexible, adaptable form of constitutionalism, yet one that is also steeped in history and tradition.

Unlike the United States, the UK follows a more integrated approach to separation of powers. The principle exists but is less formalized. For instance, the UK Parliament combines both legislative and executive functions, as the Prime Minister and Cabinet are members of Parliament. However, the judiciary remains independent, especially after the Constitutional Reform Act of 2005, which established the Supreme Court and separated the judiciary from the House of Lords.

The British system emphasizes parliamentary sovereignty rather than strict separation, meaning that Parliament holds the ultimate authority. While this may appear contrary to Montesquieu's ideas, constitutionalism is still preserved through the rule of law, historical documents like the Magna Carta, and conventions that limit the monarchy's powers. Constitutionalism in the UK is therefore more fluid, guided by tradition and precedent.

3.4- Separation of Powers and Constitutionalism in India

India's approach to separation of powers and constitutionalism draws inspiration from both the U.S. and the UK, yet reflects the unique needs of a diverse, post-colonial nation. The Constitution of India, adopted in 1950, establishes a three-branch government: executive, legislative, and judiciary. The Indian model incorporates checks and balances but allows for a more flexible separation of powers compared to the USA.

In India, the President is the head of the executive but largely performs a ceremonial role, while the real executive power resides with the Prime Minister and Council of Ministers, who are part of the Parliament. This structure resembles the British system where executive members are also part of the legislature. However, India's judiciary is entirely independent, and the Supreme Court has extensive powers, including judicial review, allowing it to strike down unconstitutional laws. This judicial review power was inspired by the U.S. system.

India's Constitution emphasizes constitutionalism by being the supreme law of the land. It outlines the rights of citizens in its Fundamental Rights section, similar to the U.S. Bill of Rights, ensuring protections against government overreach. The Constitution is also relatively flexible, with provisions for amendments, allowing it to adapt over time to changing needs while maintaining constitutional principles.

3.5- Comparative Analysis of the Three Systems

Each of these three nations interprets separation of powers and constitutionalism differently, reflecting their unique histories and political structures:

3.5.1- Strict vs. Flexible Separation: The USA has a strict separation of powers with clear boundaries between branches, while the UK operates on a more fluid model, emphasizing parliamentary sovereignty. India adopts a middle path, with some overlap between executive and legislative branches but with a strong, independent judiciary.

3.5.2- Written vs. Unwritten Constitution: The USA and India have written constitutions that codify the powers and limitations of government. The UK relies on an unwritten constitution, creating a flexible yet precedent-based form of constitutionalism. India's Constitution combines features of both systems, being adaptable yet comprehensive.

3.5.3- Role of the Judiciary: In all three nations, the judiciary plays a key role in upholding constitutionalism. The U.S. and Indian Supreme Courts exercise judicial review to invalidate unconstitutional actions. The UK judiciary, though traditionally more limited, has grown in authority, especially since the establishment of the UK Supreme Court in 2009.

4. CURRENT SCENARIO OF SEPARATION OF POWER AND CONSTITUTIONALISM

4.1-Separation of Powers and Constitutionalism in the USA

The USA embodies one of the most rigid applications of the separation of powers, as outlined in its Constitution. The framers of the U.S. Constitution were keenly aware of the dangers of centralized power and thus established three separate branches: the executive, legislative, and judicial branches, each with specific powers and functions.

4.1.1- Executive Branch: Headed by the President, the executive branch enforces laws. The President has veto power over legislative bills, command over the armed forces, and the authority to appoint federal judges, subject to Senate confirmation.

4.1.2- Legislative Branch: The U.S. Congress, comprising the Senate and the House of Representatives, is responsible for making laws. It has the power to check the executive by overriding presidential vetoes, controlling appropriations, and approving appointments.

4.1.3- Judicial Branch: The judiciary, headed by the U.S. Supreme Court, interprets laws and ensures their constitutionality. Judicial review, established in *Marbury v. Madison (1803)*, allows the Supreme Court to invalidate laws or executive actions that violate the Constitution, reinforcing judicial independence and constitutionalism.

The U.S. Constitution firmly adheres to the separation of powers doctrine, with numerous checks and balances to maintain balance. For instance, the President's veto can be overridden by a two-thirds majority in Congress, while the judiciary can strike down laws that contravene the Constitution. This structural rigidity helps to prevent overreach by any branch, promoting a stable constitutional order and strong protection for individual rights.

4.2- Separation of Powers and Constitutionalism in the UK

The United Kingdom has a unique approach to separation of powers and constitutionalism. As an unwritten constitution, the UK lacks a single codified document; instead, its constitutional framework is derived from statutes, common law, historical documents like the Magna Carta, and constitutional conventions.

4.2.1- The Monarchy and the Executive: The UK has a constitutional monarchy, where the monarch's powers are largely ceremonial, with the real power vested in the Prime Minister and the Cabinet. The executive is responsible for implementing laws and managing day-to-day governance.

4.2.2- Parliament: Parliament, comprising the House of Commons and the House of Lords, holds legislative power. It is the supreme legal authority and plays a central role in maintaining constitutional balance. Unlike the USA, the UK Parliament exercises absolute legislative supremacy, meaning no law passed by Parliament can be declared unconstitutional.

4.2.3- Judiciary: The judiciary in the UK has historically been less powerful in terms of judicial review compared to its American counterpart. However, since the establishment of the UK Supreme Court in 2009, the judiciary's role has evolved. The court now interprets laws and safeguards fundamental rights, with some judicial review authority over actions by public bodies under the Human Rights Act 1998 and European Union law.

In the UK, separation of powers is less rigid. The Prime Minister and many Cabinet members are members of Parliament, blending executive and legislative functions. Nevertheless, the judiciary is independent, and constitutional conventions serve as checks on governmental power. Constitutionalism is maintained through parliamentary sovereignty and a strong rule of law, though Parliament's supreme authority can, in theory, allow it to bypass certain democratic norms.

4.3- Separation of Powers and Constitutionalism in India

India combines elements of both the British parliamentary system and the American model of checks and balances. The Constitution of India establishes a clear separation of powers, albeit with a degree of flexibility.

4.3.1- Executive: India's executive power is vested in the President and the Prime Minister, though the real power lies with the Prime Minister and the Council of Ministers. The President is the head of state and performs ceremonial roles, while the Prime Minister is the head of government, responsible for day-to-day administration.

4.3.2- Legislature: The Indian Parliament, comprising the Lok Sabha (House of the People) and Rajya Sabha (Council of States), holds legislative power. Parliament can enact, amend, or repeal laws, and it also exercises oversight of the executive through mechanisms like question hour and parliamentary committees.

4.3.3- Judiciary: The Supreme Court of India is the apex judicial body, with the power of judicial review. Indian courts have a strong tradition of upholding fundamental rights and have frequently exercised judicial activism to address social justice issues and governmental abuses. This power of judicial review reinforces constitutionalism and ensures that no law or executive action violates the Constitution.

India's separation of powers is more flexible than in the USA but more defined than in the UK. The Indian Constitution provides for checks and balances, with each branch having some degree of authority over the others. For example, the judiciary has struck down unconstitutional amendments, and Parliament can impeach judges in cases of proven misconduct. Furthermore, the Parliament can amend the Constitution but not to the extent that it alters its "basic structure" (a doctrine established in *Kesavananda Bharati v. State of Kerala*).

4.4- Comparative Analysis

4.4.1- Rigid vs. Flexible Models: The USA maintains a strict separation of powers, while the UK is characterized by a flexible system in which Parliament holds supreme authority. India occupies a middle ground, incorporating checks and balances within a parliamentary framework.

4.4.2- Judicial review: is a powerful tool in the USA and India, where the judiciary actively ensures constitutional adherence. In the UK, judicial review exists but is more limited due to parliamentary sovereignty.

4.4.3- Role of the Executive: In the USA, the President operates independently of the legislature. In contrast, the UK's Prime Minister and India's Prime Minister are integral parts of the legislature, though India's Constitution offers clearer boundaries between branches than the UK's conventions.

5. CASE LAWS RELATED TO SEPERATION OF POWER AND CONSTITUTIONALISM

There are some landmark case laws related to separation of powers and constitutionalism in India, the USA, and the UK. These cases illustrate how courts in each country have interpreted and enforced these principles.

5.1- India

5.1.1- Kesavananda Bharati v. State of Kerala (1973)

This landmark case established the basic structure doctrine, where the Supreme Court of India held that certain fundamental features of the Constitution, including the separation of powers, cannot be altered by Parliament through constitutional amendments. This doctrine protects the Constitution from changes that could undermine its core principles, thus upholding constitutionalism.

5.1.2- Indira Nehru Gandhi v. Raj Narain (1975)

In this case, the Supreme Court ruled that judicial review is a part of the Constitution's basic structure, reinforcing the judiciary's role in upholding constitutionalism. It struck down an amendment that attempted to put the Prime Minister's election beyond judicial scrutiny, asserting the separation of powers and preserving judicial independence.

5.1.3- I.R. Coelho v. State of Tamil Nadu (2007)

The Supreme Court reiterated that certain rights and features, including the right to equality, are integral to the Constitution's basic structure and cannot be altered, even by amendments. The case upheld judicial review as a key component of constitutionalism and reinforced the judiciary's role in protecting fundamental rights.

5.1.4- Judges Appointment Case (2015)

The Supreme Court struck down the 99th Constitutional Amendment, which sought to replace the collegium system of judicial appointments with the National Judicial Appointments Commission (NJAC). The Court ruled that judicial independence is part of the Constitution's basic structure, thus reinforcing the separation of powers and ensuring that the judiciary remains free from executive interference.

5.2- United States

5.2.1- Marbury v. Madison (1803)

This foundational case established the principle of *judicial review*, allowing the U.S. Supreme Court to invalidate laws passed by Congress that are unconstitutional. It was the first instance where the Court asserted its role in checking the powers of the legislature and executive, firmly establishing separation of powers and judicial oversight as essential to constitutionalism.

5.2.2- Youngstown Sheet & Tube Co. v. Sawyer (1952)

During the Korean War, President Truman attempted to seize and operate steel mills to prevent a labor strike, citing executive powers. The Supreme Court ruled against this, emphasizing that the President could not exercise powers beyond those granted by the Constitution or Congress. The case reinforced the separation of powers by limiting executive overreach.

5.2.3- United States v. Nixon (1974)

In this case, the Supreme Court ruled that President Nixon had to comply with a subpoena to produce tapes related to the Watergate scandal. The Court held that executive privilege could not be used to withhold evidence in a criminal investigation, thus reaffirming judicial authority over the executive branch and reinforcing the separation of powers.

5.2.4- Clinton v. City of New York (1998)

The Court ruled that the Line Item Veto Act, which allowed the President to veto individual parts of bills, was unconstitutional because it violated the Presentment Clause. By giving the President legislative powers, the Act disrupted the separation of powers, as only Congress has the authority to legislate.

5.3- United Kingdom

5.3.1- Entick v. Carrington (1765)

This early case established that government officials cannot act without legal authority. It held that actions by the government (in this case, searching and seizing private property without legal authority) must be grounded in law. This decision is a foundational case in British constitutionalism, asserting the rule of law as a check on executive power.

5.3.2- Anisminic Ltd v. Foreign Compensation Commission (1969)

The House of Lords ruled that an ouster clause attempting to limit judicial review of a government commission's decisions was ineffective. This case underscored the importance of judicial oversight in upholding the rule of law and protecting individual rights, affirming the judiciary's role as a check on the executive and legislative branches.

5.3.3- R (Miller) v. Secretary of State for Exiting the European Union (2017)

Commonly known as the "Brexit case," this judgment by the UK Supreme Court held that the executive could not trigger Article 50 (to initiate Brexit) without parliamentary approval. The ruling reinforced the separation of powers by ensuring that executive actions affecting national sovereignty require legislative consent, reflecting constitutionalism through the preservation of parliamentary authority.

5.3.4- R (Miller) v. Prime Minister (2019)

In this case, the UK Supreme Court ruled that Prime Minister Boris Johnson's advice to prorogue (suspend) Parliament for five weeks was unlawful. The Court stated that proroguing Parliament prevented it from carrying out its constitutional functions without reasonable justification, thus asserting the judiciary's role in upholding constitutionalism by preventing executive overreach.

6. CONCLUSION

In conclusion, while the principles of separation of powers and constitutionalism serve as fundamental pillars for ensuring democratic governance and the protection of individual rights, their application and interpretation vary across countries like India, the USA, and the UK. In the United States, these principles are codified in a written Constitution, with a clear separation of powers and an active judiciary that exercises judicial review to maintain constitutional limits. India, while also having a written Constitution, follows a more flexible model of separation, with some overlap between the executive and legislature, but still upholding a strong, independent judiciary that safeguards constitutionalism. The UK, with its unwritten constitution, offers a more integrated system, where the executive and legislature are closely linked, yet constitutionalism is preserved through legal precedents, parliamentary sovereignty, and judicial oversight. Despite these differences, all three nations

demonstrate a shared commitment to maintaining the rule of law, preventing the concentration of power, and ensuring that government actions are aligned with constitutional principles. Ultimately, the comparative analysis reveals that while the structural nuances may differ, the core ideals of separation of powers and constitutionalism remain central to upholding democratic values and protecting citizens' rights in each of these countries.