



# Powers, Functions And Limitations of Legislative Organs

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## ABSTRACT

Law is the body of principles recognized and applied by the state in the administration of justice. –sir John salmond

Law as it's different forms. It may be through the acts of the legislative bodies, through the acts of the executive or the judicial precedents and legal customs. But in the narrow sense we use term 'law' as the law made by the legislative bodies. So there arise a question as to who is a legislature and what is its role in the law making process.

## INTRODUCTION

Legislative organs can be said to be a body which represents people's will and transfer it to the will of the state in the form of laws. And in the separation of powers model, they also form the important part of the state. The term 'parliament' and 'legislature' are usually used interchangeably as generic terms for the elected represented body. But such legislative body in UK is called to be 'parliament' whereas the same in US is called to be

congress. The term 'parliament' also connotes the supreme law making body. And the law mad by them are called to be the primary and supremelegislations.

Powers and functions of these legislative organs also differs in different countries. As in the case of US, the legislative branch is the American congress which is a bicameral legislature and the same consists of the house of representative and also the senate. In case of UK, the British parliament consists of the house of commoners and the house of lords. Indian parliament consists of two houses that is , the upper house called the Rajya sabha , and the house of people the lok sabha also called as the lower house. Here the legislative power may be limited as in case of American congress and that of the Indian parliament, whereas the same would be a kind of 'unlimited' in the case of the British parliament. So the powers of legislative bodies may be strong or weak. It differs. Their functions are also not identical. The pertinent point to be noted is that it all depends upon the form of government a country adopts and upon the relationship between itsexecutive branch and the legislature.

## Functions of legislative organs:

### Function of law making

A modern parliament, either in India or in any other country, is not merely a law making body. It has many other functions to do. But still, the most important function among them is the function of law making. The place of a legislative body in the lawmaking process depends upon the character of the principle of separation of powers recognized in a country. For example separation powers are rigid in US and the same is flexible in UK. And the very same is not strictly applied in India too. In these countries the form of government also differs. The presidential form of government in US and the parliamentary form of government in UK and India also have different impacts.

When we have a look into the parliament of India, Indian constitution provides for parliament at the union with president and the Lok sabha and Rajya sabha as the two houses. The structure of state government closely resembles to that of the union Parliament . Legislature of the state consists of the governor and the two houses, namely legislative assembly and the legislative council where in the most of the states have adopted the unicameral way of legislature in the states i.e. the legislative assembly.

As in the Parliament , president does not actively participate in the deliberations of the two houses. But he is an essential element of the parliament as he has different functions such as to summon the two houses, to prorogue them and in dissolving the house of people. And a bill takes effect only after the president has given his assent to it.

Lok sabha or the house of people is elected directly by the people on the basis of adult suffrage. This house in its composition corresponds to that of the house of commons in UK and to certain extent to that of the house of representative in US.

The three main organs of the government are the legislature, the executive, and the judiciary . According to the doctrine of separation of powers, the powers and functions of the government must always be kept separate and be exercised only by the respective organs.

This is however a very basic view of the theory. According to Wade and Phillips, the theory has three manifestations:

Firstly, it means that one organ of the government should not discharge any function of the other two, as for instance a judge should not have legislative powers.

Secondly, It means that one organ of the government should not interfere with the other two organs when they are discharging their respective functions. For instance , the executive should not interfere with the judiciary, which should function as an independent body.

Lastly, it means that the same person should not belong to two (or more) organs of the government, as for instance , a minister should not be a judicial officer.

The legislature is the assembly of parliamentary members with the authority to make laws for a political entity such as a country or city. Laws enacted by legislatures are usually known as primary legislation. In addition, legislatures may observe and steer governing actions, with the authority to amend the budget involved.

### **Administrative accountability function**

In India, parliament does not interfere with the day to day administration of the executive but exercise surveillance on it. Parliamentary scrutiny is exercised through various procedures like questions, motions, discussions, etc.

### **Question hour**

Question hour is the hour where members of the parliament can rise any question with regard to the administrative activity. There the concerned minister is obliged to answer to the parliament, either orally or in writing.

Question may be either starred or non-starred. Starred questions are those for which oral answer is expected and non-starred for which a written reply is expected. Generally a notice period of 15 days is to be given to the minister to make him reply to a question raised . But if it is urgent , with the permission of the speaker the same can be raised.

This question hour in Indian parliament is similar to that of prime minister questions in the house of commoners in UK, where during every Wednesdays at noon when the house of commoners is sitting, the prime minister spends around half-an-hour answering questions raised by the members. And where the prime minister is away on his official business, then his role is usually filled by the deputy prime minister and if he too is not available, the next most senior member of the cabinet will receive questions. This question hour procedure is also practiced in different countries in different names, as question period in Canada and question time in Australia. In US, as there is the presidential form of government, there is no particular procedure of question hour as such.

### **Discussions**

When the member who raised question feels that the answer given to a question is not complete , he may be allowed by the speaker of the house to raise a discussion in the house for half an hour. This is generally termed as the half an hour discussion. During discussions, the members have full liberty to criticize the administrator for their past performance and can even suggest how they should act in future. In UK also there is the half- hour debate where members raise questions in the west minister hall.

## Committees

Another method of having administrative surveillance is by way of parliamentary committees. They may be either standing committees or the Adhoc committees. Standing committees are constituted every year and they work on a continuous basis whereas the Adhoc committees both in Lok Sabha and Rajya Sabha. They exercise certain functions such as they enquire, scrutinise and review the whole range of administrative actions. These committees are similar to that of the select committees in UK.

## Executive Responsibility

In India, head of the executive is the President and the executive powers are vested in him and are taken in his name. But he is only the formal head as he acts only on the aid and advice of the Council of Ministers.

The parliamentary control over the executive is based on the constitutional provisions of collective responsibility of Council of Ministers to the House of People. This has been specifically enshrined in Article 75(3) of the Indian Constitution.

In UK also the concept of collective responsibility is accepted. US Constitution does not recognize this concept as there is President, who is having the ultimate power of decision making and he is the one who ensures that the law made by him is faithfully executed.

## Ingredients of Separation of Powers

The concept of Separation of Powers runs throughout the Constitution of India although the term has not been mentioned even once. It is a doctrine which is fundamental to the concept of a State and to the concept of Constitutionalism – insofar as it prescribes the appropriate allocation of powers.

The separation of powers doctrine does not insist that there should be three institutions of government each operating in isolation from each other. In fact, it is essential that there be a sufficient coordination between each institution of the State. It is for the executive for the most part to propose legislation for Parliament's approval. Once passed by the Parliament and given the President's assent thereto, the legislation becomes an Act, and thus, a law to be upheld by the judiciary. A complete separation of the three institutions could result in legal and constitutional deadlock. Rather than a pure Separation of Powers, the concept insists that the primary functions of the State should be allocated clearly and that there should be checks to ensure that no institution encroaches significantly upon the function of the other.

The author would like to briefly define the three organs of the State which broadly constitute the

The executive may be defined as that branch of the State which formulates policy and is responsible for its execution. In formal terms, the sovereign is the head of the executive. The Prime Minister, the Cabinet and other Ministers', for the most part, are elected members of the Parliament. In addition,

the Civil Service, local authorities, police and armed forces, constitute the executive in practical terms.

Parliament of India comprises the President of India, the Lok Sabha (House of the People) and the Rajya Sabha (Council of the States). The cardinal functions of the Legislature include overseeing of administration, passing of budget, ventilation of public grievances, and discussing various subjects like development plans, international relations, and national policies. All legislation requires the consent of both Houses of Parliament. In the case of Money Bills, the will of the Lok Sabha prevails. The Parliament is also vested with the power to initiate amendments in the Constitution. The various States also have their respective legislatures, the Legislative Assembly (Vidhan Sabha) and the Legislative Council (Vidhan Parishad) in a few States.

The judiciary is that branch of the State which adjudicates upon conflicts between State institutions, between State and individual, and between individuals. The judiciary is independent of both parliament and the executive. It is the feature of judicial independence which is of prime importance in relation to the protection of liberty of the citizen against the executive.

Quite recently, the press has been described as a "fourth estate" because of its considerable influence over public opinion, as well as its indirect influence in the branches of government by, for example, its support or criticism of pending legislation or policy changes. There is no provision in the Constitution of India providing guarantee for the freedom of the press but the Supreme Court in *Sakal Papers v. Union of India* [4] interpreted the scope of Article 19(1) (a) widely to include within its fold the freedom of the press which is regarded as a 'species of which freedom of expression is a genus'.

### **Separation of Powers in India**

On reading the provisions of the Constitution of India, one may be inclined to say that the Constitution accepts the doctrine of Separation of

Powers. [5] Under the Indian Constitution, the executive powers are vested with the President, [6] the legislative powers with the Parliament, [7] and the judicial powers with the judiciary [8] (the Supreme Court, the High Courts and Subordinate Courts). The President holds his office for a fixed period. His functions and powers are enumerated in the Constitution itself. Parliament of India is competent to make any law, subject to the provisions of the Constitution and there is no other limitation on its legislative power. It can amend the law prospectively or even retrospectively but it cannot declare a judgment delivered by a competent court void or of no effect.

Parliament has also inherited all the powers, privileges and immunities of the British House of Commons. Similarly, the judiciary is independent in its field and there can be no interference with its judicial functions either by the executive or the legislature. The Supreme Court and High Courts are given the power of judicial review and they can declare any law passed by Parliament or Legislature as ultra vires or unconstitutional.

Taking into account these factors, some jurists are of the opinion that the doctrine of Separation of Powers has been accepted in the Constitution of India and is a part of the basic structure of the Constitution. Separation of functions is not confined to the doctrine of Separation of Powers. It is a part of essential structure of any developed legal system. In *Kartar Singh v.*

*State of Punjab*, [9] Justice K. Ramaswamy stated: "It is the basic postulate under the

Indian Constitution that the legal sovereign power has been distributed between the legislature to make law, the executive to implement the law and the judiciary to interpret the law within the limits set down by the Constitution.”

The constitutional provisions do not declare the doctrine of Separation of Powers to be followed in its strict sense. There is no provision in the Constitution of India itself regarding the division of functions of the Government and the exercise thereof. Though under Articles 53(1) [10] and 154(1) [11], the executive power of the Union and of the States is vested in the President and the Governors’ respectively, there is no corresponding provision vesting the legislative and judicial power in any particular organ. Thus, the doctrine of Separation of Powers is not fully accepted in the Constitution of India, and therefore the observations of Justice Mukherjea in *Ram Jawaya v. State of Punjab* [12] are important in this regard, wherein he stated that : “The Indian Constitution has not indeed recognized the doctrine of Separation of Powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can be very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to one another.”

Thus, the legislature writes and enacts laws, Enacts taxes, authorizes borrowing, and sets the budget, has power to declare war, may start investigations, especially against the executive branch, often appoints the heads of the executive branch, appoints judges, ratifies treaties.

The judiciary determines which laws apply to any given case, determines whether a law is unconstitutional, has sole power to interpret the law and to apply it to particular disputes, may nullify laws that conflict with a more important law or constitution, determines the disposition of prisoners, has power to compel testimony and the production of evidence, enforces uniform policies in a top-down fashion via the appeals process, but gives discretion in individual cases to low-level judges. (The amount of discretion depends upon the standard of review, determined by the type of case in question), polices its own members and is immune to frequent arbitrary dismissal by other branches.

Each organ while performing its activities tends to interfere in the sphere of working of another functionary because a strict demarcation of functions is not possible in their dealings with the general public. Thus, even when acting in ambit of their own power, overlapping functions tend to appear amongst these organs.

In *Ram Jawaya v. State of Punjab*, [13] the Hon’ble Supreme Court observed that we follow a separation of functions and not of powers. And hence, we don’t abide by the principle in its rigidity. An example of it can be seen in the exercise of functions by the Cabinet ministers, who exercise both legislative and executive functions. Article 74(1) of the constitution of India, gives them an upper hand over the executive by making their aid and advice mandatory for the formal head. The executive, thus, is derived from the legislature and is dependent on it, for its legitimacy.

On the question that where the amending power of the Parliament lies and whether Article 368 confers an unlimited amending power on Parliament, the Supreme Court in the *Kesavananda Bharati v. The State of Kerala and Others* [14] case held that amending power was now subject to the basic features of the constitution. And hence,

any amendment tampering these essential features will be struck down as unconstitutional. Justice Beg added that Separation of Powers is a part of the basic structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the other. This scheme cannot be changed even by resorting to Article 368 of the Constitution. There are attempts made to dilute the principle, to the level of usurpation of judicial power by the legislature. In a subsequent case law, the Supreme Court had occasion to apply the Kesavananda ruling regarding the non-amendability of the basic features of the constitution and a strict adherence to doctrine of separation of powers can be seen. In *Indira Nehru Gandhi v.*

*Raj Narain*, [15] where the dispute regarding Prime Minister's election was pending before the Supreme Court, it was held that adjudication of a specific dispute is a judicial function which parliament, even under constitutional amending power, cannot exercise. So, the main ground on which the amendment was held ultra vires was that when the constituent body declared that the election of Prime Minister won't be void, it discharged a judicial function which according to the principle of separation it shouldn't have done. The place of this doctrine in Indian context was made a bit clearer after this judgment. In a nutshell we can say that the Separation of Power is a method of removing the amount of power in any group's hands, making it more difficult to abuse.

## **V. Conclusion**

It can be argued that there is no natural distinction between executive and legislative forms of government: legislation that is passed must always be executed, and much executive action requires new laws. As such, the division can be said to be an artificial one. This is borne out by the fact that there is currently no constitutional system which has a complete separation of powers where there is a distribution of the three functions among three independent organs with no overlapping or cross-coordination.

In parliamentary systems such as India, the three "powers" are not separated (although the judiciary is independent). However, this has not threatened Indian stability, because the strong tradition of parliamentary sovereignty serves the purpose of limiting executive power.

Alternatively, if the executive branch is granted few powers, there is the danger of political gridlock. When the executive cannot control or cannot operate alongside the legislature, then government action to solve society's problems can be limited. Political scientists have also noted the tendency for separation-of-power systems, especially those with strong executives, to develop into two-party systems.

As the executive is as a "winners-take-it-all" position, voters and lobby groups tend to adopt a strategy of supporting their preferred choice from the two leading candidates, the perception being that a vote or donation to a third-party candidate is a waste. As the executive is usually considered the most important position in government, members of the legislature will coalesce into groups supporting the two dominant executive candidates.

The categories of the functions and corresponding powers of government are inclined to become blurred when it is attempted to apply them to the details of a particular constitution. Some hold that the true distinction lies not in the nature of the powers

themselves, but rather in the procedure by which they are exercised. Sometimes systems with clearly defined separation of powers are difficult for the average person to understand, resulting in a nebulous political process and leading to a lack of engagement. Proponents of parliamentary systems claim that they make it easier to understand how

“politics is done” by providing a clearer view of who does what, who is responsible for what, and who is to blame. This is important when it comes to engaging the people in political debate and increasing citizens’ interest and participation in politics. However, for a parliamentary system to work effectively, institutional arrangements such as fair electoral laws, freedom of the press, independent courts, due process, and the independence of the Houses of Parliament must be so designed as to prevent executive supremacy over the legislative and judicial branches while also encouraging a culture of public debate, open government, accountable office holders, and policy contestability and compromise, rather than a culture of “winner takes it all” political domination.

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