



# "Balancing Acts: A Comparative Analysis of the Separation of Powers - India and USA"

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## Abstract

The federal institutions and the division of powers of the United States of America and the Republic of India are thoroughly compared in this research paper. This study's goal is to examine the complex systems that underlie the division of authority between the several parts of government in these two federal democracies, stressing their parallels and divergences as well as any practical ramifications<sup>4</sup>. The study takes a multidimensional approach, taking into account institutional, political, historical, and legal aspects. It starts by tracing the development of federalism and the idea of separation of powers throughout history in both countries, providing insights into the socio-political environments that influenced each country's unique constitutional system. The written and unwritten provisions of the constitutions are then closely examined, with an emphasis on how governance is impacted by the division of powers between the legislative, executive, and judicial branches. The article also explores the function of federalism and the division of powers in preserving political stability, defending private property rights, and promoting economic growth. It evaluates the efficiency of the systems in use and their capacity to respond to current issues by scrutinizing significant case studies and seminal judicial rulings. In conclusion, this study offers a thorough analysis of federalism and the division of powers in India and the USA, showing the advantages and disadvantages of each system. It adds to the larger conversation on constitutional law and comparative governance by illuminating the complex interactions between federal systems and the separation of powers in two of the biggest and most varied democracies in the world. The results of this study could help policymakers, students of law, and political analysts gain a better understanding of how federal systems operate in various international situations.

## Keywords

Federal, division of power, republic, democracy, constitution, constitutionalism, judicial rule

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<sup>4</sup> <https://www.britannica.com/topic/political-system/Federal-systems>

## Introduction

An essential component of any federal framework, the division of powers forms the cornerstone of democratic governance. It serves as the foundation upon which the systems of checks and balances, accountability, and authority are created. In this study, the separation of powers is compared in two well-known federal systems: India and the United States of America. Understanding the nuances and variations in how the separation of powers is applied between India and the USA has broad global implications. These two countries, which have different historical origins and constitutional underpinnings, provide special insights into how federal governments operate. This study hopes to clarify the following research question and objectives by contrasting them:

### Research Question:

- How does the separation of powers function within the federal framework in India and the USA, and what are the key differences and similarities?

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### Objectives-

1. To look into the background and genesis of the separation of powers in India and the USA.
2. To examine the constitutional clauses and checks and balances that both countries' constitutions use to define and uphold the separation of powers.
3. To evaluate the difficulties in maintaining a balanced separation of powers in each federal system as well as their practical implementation.
4. To use the comparative analysis to make recommendations and learn from it for other federal systems and nations that want to better their democratic institutions.

## Literature Review and analysis

### Theoretical framework of federal constitution of USA and India

- Concept of separation of power in USA

The concept of the separation of powers, which has its origins deeply ingrained in the political theories of Enlightenment intellectuals, is essential to the political systems of both India and the US. The U.S. Constitution was written in the late 18th century, which is when this idea first appeared in the country. The ideas of Montesquieu, James Madison, Alexander Hamilton, and other thinkers shaped the drafters of the US Constitution as they sought to establish a form of government in which the legislative, executive, and judicial branches could operate independently of one another.<sup>5</sup> It was hoped that by separating the authorities, no one branch would become overly dominant and perhaps even abuse its power.

- Concept of separation of power in India

<sup>5</sup> Pandya, Khushi, Separation of Powers - An Indian Perspective (April 22, 2013). Available at SSRN: <https://ssrn.com/abstract=2254941> or <http://dx.doi.org/10.2139/ssrn.2254941>

<sup>6</sup> <https://www.britannica.com/topic/separation-of-powers>

On the other hand, the concept of the division of powers has a more varied historical background in the context of India. The Dharmashastra scriptures, which highlighted the division of authority among the king, the council of ministers, and the judiciary, are where the contemporary Constitution of India, which was approved in 1950, may be found. However, the discussions and deliberations of the Constituent Assembly had a significant impact on how people today understood the division of powers in India. In order to design a system where the executive, legislative, and judicial branches would operate independently to ensure checks and balances, leaders like Dr. B.R. Ambedkar, who was instrumental in the formulation of the Indian Constitution, drew inspiration from a variety of sources, including Western political thought. Despite the historical and cultural differences between the US and India, the division of powers is a key component of each country's system of government. Both countries have drawn on a rich tapestry of philosophical and historical sources to construct a framework that ensures the separation of powers among the executive, legislative, and judicial institutions and, ultimately, safeguards the values of democracy and the rule of law.

India's democratic system is based on the idea of the separation of powers, which attempts to prohibit any one branch of government from having excessive power. The Indian Constitution does not specifically express this notion, but it is subtly embedded through a number of laws and court rulings. A notable case that made a substantial contribution to this concept is the **State of Punjab v. Ram Jawaya Kapoor case**<sup>7</sup>. Despite being absent from the written constitution, the Supreme Court of India characterised the separation of powers as a "basic feature" in the 1955 decision. The Court upheld the idea that the legislative, executive, and judicial branches of government each have unique roles to play and shouldn't conflict with one another. This decision made clear how crucial it is to keep this precarious balance in place in order to protect the rule of law and thwart totalitarian impulses.

The Ram Jawaya Kapoor case was a major turning point in Indian constitutional law. It emphasized how crucial the court is to maintaining the separation of powers and defending citizens' rights and liberties. This choice has had a long-lasting effect on Indian democracy by highlighting the necessity of a multi-branch system that promotes accountability and fairness in the political system.

A key component of the democratic system is the idea of the separation of powers, which guarantees that no one branch of government has undue authority and that all operate as checks and balances on one another. This principle was tested in the setting of the historic case of "**Indira Gandhi vs. Raj Narayan**"<sup>8</sup>, and the result had a profound impact on the political climate in India.

The matter in question was India's 1971 election of Indira Gandhi as prime minister. After being accused of electoral malpractice by her opponent, Raj Narayan, the matter was eventually brought to the Allahabad High Court. The judiciary played a pivotal role in this case because it was charged with resolving a disagreement that had the potential to change the direction of Indian politics. This case served as an example of how the separation of powers should be applied.

Prime Minister Indira Gandhi represented the executive branch, which was accused of electoral malpractice and power abuse. Since the accused in this case was also the head of state, the legislature was unable to conduct an unbiased investigation into the situation. Contrarily, the court was qualified to act as an impartial and independent arbiter of justice, underscoring the significance of having a distinct and independent judicial department.

Under the direction of Justice Jagmohanlal Sinha, the Allahabad High Court ruled that Indira Gandhi had engaged in electoral malpractice and invalidated her election, preventing her from running for office for a

<sup>7</sup> Rai Sahib Ram Jawaya Kapur And Ors. vs The State Of Punjab on 12 April, 1955, Equivalent citations: AIR 1955 SC 549, 1955 2 SCR 225 Author: Mukherjea Bench: Mukherjea, V Bose, Jagannadhadas, V Ayyar, Imam

<sup>8</sup> Supreme court of india, Indira Nehru Gandhi vs Shri Raj Narain & Anr on 7 November, 1975 Bench: A.N. Ray (Cj), H.R. Khanna, K.K. Mathew, M.H. Beg, Y.V. Chandrachud CASE NO.: Appeal (civil) 887 of 1975

period of six years. As the court used its power to restrain the executive branch's abuses, this judicial intervention demonstrated the idea of checks and balances in action.

The High Court's decision did not, however, bring an end to the division of powers. When Indira Gandhi filed an appeal with the Indian Supreme Court, the judiciary was once again vital. By a vote of 4-1, the Supreme Court maintained the Allahabad High Court's ruling. This emphasized the importance of the judiciary in upholding the rule of law and serving as a check on executive excess.

In the end, Indira Gandhi's reaction to the court's decision in this case showed respect for the division of powers. She honored the judiciary's authority and voluntarily resigned from government rather than contesting their rulings. She later came back to power through the democratic process.

The case of "Indira Gandhi vs. Raj Narayan" serves as an example of how important it is for any democratic system to maintain the separation of powers in order to prevent any one arm of government from becoming too dominant. It highlights how crucial an independent court is to maintaining the rule of law and acts as a historical point of reference for India's political and legal system, which upholds democracy, accountability, and the rule of law.

## Constitutional Framework of separation of power in USA and India

- Constitutional Provisions of USA

Two different democracies, the United States and India, use different constitutional provisions and checks and balances to protect and define the division of powers within their respective administrations<sup>9</sup>. A fundamental element of the United States Constitution is the division of powers, which is predicated on a tripartite framework that designates discrete roles for the legislative, executive, and judicial branches of government. Each arm of the system is given distinct authority to prevent any abuse by the others, and the system is strengthened by checks and balances. A two-thirds majority in Congress, for example, has the power to override the veto of legislation issued by the President. Nonetheless, the court can examine and overturn choices made by the legislative and executive departments.

*The Constitution of the United States*<sup>10</sup> contains a basic principle known as the separation of powers. It is essential to the country's democratic structure, which makes sure that no one branch of government has too much authority. Articles I, II, and III of the United States Constitution serve as the main frameworks for the division of powers.

The United States Congress is the legislative branch of government, as defined by Article I. The House of Representatives and the Senate are its two chambers. Because both houses must concur on legislation before it can be passed, the bicameral system guarantees that various regions of the nation are represented. Congress is able to enact laws, impose taxes, and control trade. A good illustration of the separation of powers is the allocation of power between the two houses and their respective duties.

The President leads the executive branch, which is established by Article II. This branch is in charge of carrying out and upholding the legislation passed by Congress. The President can order the armed forces, veto legislation, and pardon people. Congress, however, has the power to impeach and remove the President from office, therefore it checks the President's authority. The system of checks and balances, in which one branch has the authority to restrict the power of the others, clearly illustrates the division of powers.

The judicial branch, which consists of the Supreme Court and other federal courts, is established by Article III. Interpreting the law and ensuring that it is administered equitably and consistently are the duties of the judiciary. The ability to judge whether legislation and executive actions are constitutional gives the courts the

<sup>9</sup> [The Constitution of the United States-A Bibliography](#) Edward W. Carter, Charles C. Rohlfing The Annals of the American Academy of Political and Social Science, Vol. 185, The Constitution in the 20th Century (May, 1936), pp. 190-200

<sup>10</sup> Constitution of USA, Article 1, Article 2, Article 3



power of judicial review. A crucial component of the separation of powers is the ability to review and possibly overturn laws, which helps to avoid abuses of power by the other branches.

The founders of the U.S. Constitution created a system of checks and balances to protect individual liberties and rights while also preventing the concentration of power in one arm of government. The fundamental component of American democracy is the separation of powers, which prevents any one part from being too powerful or despotic.

- Constitutional provisions in india

The President, Parliament, and judiciary's legally mandated responsibilities in India serve as a stark reminder of the separation of powers. In carrying out his or her limited administrative duties as the ceremonial head of state, the President receives advice from the Council of Ministers. Similar to the US Congress, the Indian Parliament is made up of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Each house has its own set of legislative responsibilities. In addition, the Indian judiciary is supervised by the Supreme Court of India, which has the authority to examine and overturn legislation and executive decisions that violate the Constitution. This power is known as judicial review.

To further uphold the division of powers, both countries employ particular phrases and provisions. The "Necessary and Proper Clause" (Article I, Section 8) of the U.S. Constitution gives Congress the power to pass laws that are necessary for it to perform its designated duties. The creation of a separate and independent judiciary in India is required by Article 50 of the *Directive Principles of State Policy*<sup>11</sup>, which emphasises the separation of the executive and judicial institutions.

In conclusion, despite having different constitutional structures, both the US and India use a variety of branches, checks and balances, and specific clauses to uphold the fundamental idea of the separation of powers. This prevents any one branch from becoming overly dominant and ensures that the balance of power is maintained within their democratic systems.

### Practical Application: Challenges to separation of power

The way the separation of powers is really implemented in India and the United States is a reflection of their respective fundamental democratic principles and political systems. With three separate parts of government—the legislative, executive, and judicial—India's Constitution upholds the separation of powers. Laws are created by the Indian Parliament (legislature), are carried out by the President (executive), and the constitution is upheld and interpreted by the judiciary<sup>12</sup>. However, the parliamentary system's ability to give the executive sway in the legislature can occasionally result in confrontations that undermine the separation of powers.

Indian challenges to the separation of powers have generated discussion and worry. For each of the aforementioned issues, the following are some salient aspects and case studies:

1. **Appointment of Judges:** - Challenge: There have been accusations of disproportionate executive branch involvement in the selection of judges.

An attempt was made to alter the appointment process in 2014 with the introduction of the "NJAC Act" (National Judicial Appointments Commission Act). However, the Supreme Court overturned it in the 2015 case of Supreme Court Advocates-on-Record Association v. Union of India because they thought it went against the independence of the judiciary.

<sup>11</sup> Constitution of India, Article 50, Directive Principles Of State Policy

<sup>12</sup> <https://byjus.com/free-ias-prep/separation-power-indian-constitution/>

## 2. Judicial Activism – Judges Making Laws:

- Problem: The judiciary has occasionally come under fire for going beyond what is expected of it by dictating policy and giving orders to the executive branch.

- Case Study: *Vishakha v. State of Rajasthan* (1997) is an illustration of a case in which the Supreme Court outlined rules for preventing sexual harassment at work. Although significant, others contend that this was a legislative duty<sup>13</sup>.

3. **The speaker of the house interpret laws to maintain decorum of the house:-** Speaker's position as an unbiased arbiter in the legislature has been called into doubt when they are a member of a political party. The Speaker of the Legislature interprets laws to maintain decorum.

Case study- The Speaker's decision to disqualify dissident MLAs during the 2019 political crisis in Karnataka was hotly contested because it seemed to favor the ruling party.

4. **The executive branch has the authority to enact ordinances** without parliamentary approval, which has the potential to undercut the legislative process.

## Lessons and Recommendations

Two different democracies, the United States and India, use different constitutional provisions and checks and balances to protect and define the division of powers within their respective administrations. A key component of the U.S. Constitution is the separation of powers, which is based on a tripartite structure with distinct functions for the judicial, executive, and legislative branches of government. The system is reinforced by checks and balances, and each branch is granted specific authority to guard against any abuse by the others. For instance, the President may veto legislation, but a two-thirds majority in Congress can overrule the President's veto. However, the court has the authority to review and invalidate decisions made by the executive and legislative branches.

The division of powers is a fundamental concept in both the American and Indian governments, serving to guarantee checks and balances among the branches of government and avoid the consolidation of power. In the context of India, a number of suggestions and thoughts can be made to strengthen this idea. The executive, legislative, and judicial departments should have stronger authority separation in order to avoid infringing on one other's jurisdictions. Additionally, to protect them from political meddling, India may benefit from greater independence and autonomy of important institutions like the judiciary and election commission.

There is room for improvement in the US as well when it comes to upholding a strong separation of powers. One suggestion is to deal with executive overreach, which has become an issue recently.<sup>14</sup> This might entail giving Congress more authority to approve military operations and control the use of emergency powers. Additionally, initiatives to exclude politics from the selection of judges, particularly for the Supreme Court, could contribute to the maintenance of an unbiased judiciary. To hold public officials accountable for their acts, both nations should improve transparency and accountability measures. This includes stronger ethics rules for elected representatives and other government officials as well as increased financial disclosure. Separation of powers is a fundamental tenet of democratic administration, and even though both India and the

<sup>13</sup> <https://www.legalbites.in/vishaka-ors-v-state-of-rajasthan-1997/>

<sup>14</sup> Ackerman, Bruce. "The New Separation of Powers." *Harvard Law Review*, vol. 113, no. 3, 2000, pp. 633–729. JSTOR, <https://doi.org/10.2307/1342286>. Accessed 31 Oct. 2023.

US have it in their constitutional frameworks, continual reform efforts and vigilance are necessary to uphold and strengthen it.

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In conclusion, despite having different constitutional structures, both the US and India use a variety of branches, checks and balances, and specific clauses to uphold the fundamental idea of the separation of powers. This prevents any one branch from becoming overly dominant and ensures that the balance of power is maintained within their democratic systems.

## Conclusion

In conclusion, the comparison of the federal systems of India and the USA's separation of powers illustrates a nuanced interplay between institutional frameworks, historical contexts, and political cultures. Although the executive, legislative, and judicial departments of both countries are intended to function in harmony, there are differences in the ways in which these branches operate and the difficulties they encounter. The parliamentary structure of India, which is firmly based in its multifaceted and federal nature, promotes a synthesis of powers that may increase executive authority. In contrast, the tight division of powers that characterizes the presidential system in the USA frequently leads to checks and balances that might slow down decision-making. The formation of these systems has also been influenced by historical developments, with post-colonial nation-building in India and revolutionary ideas of limited government in the USA. Their approaches to government, and specifically the function of the court, are influenced by these diverse origins. Both nations have shown resiliency in retaining democratic norms and constitutional principles, despite obstacles to maintaining an ideal separation of powers, such as executive overreach or legislative impasse. In the end, this study emphasizes the significance of comprehending the complex dynamics of the separation of powers within various federal frameworks, realizing that a one-size-fits-all approach is impractical, and that context matters greatly in achieving the delicate balance that supports the operation of democratic societies. For policymakers and academics alike, further investigation of these issues may offer insightful information on how to promote efficient governance in various federal systems.

