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SEPARATION OF POWERS IN INDIA AND THE UNITED KINGDOM: A COMPARATIVE STUDY

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ABSTRACT

The separation of powers seeks to prevent the concentration of governmental authority by distributing legislative, executive and judicial functions among different institutions. India and the United Kingdom share a parliamentary form of government in which the executive is drawn from the legislature, but they differ in the legal foundations and enforcement of institutional limits. India follows constitutional supremacy: the Constitution binds every organ of the State, and courts may invalidate laws that violate constitutional limits. The United Kingdom follows parliamentary sovereignty, under which courts generally cannot invalidate an Act of Parliament. This short doctrinal and comparative study examines the constitutional framework, judicial independence, judicial review and legislative accountability in both countries. It argues that India provides stronger legal protection against unconstitutional action, while the United Kingdom relies more heavily on statutes, conventions and political accountability. Both systems, however, face risks of executive dominance and institutional overreach. The article concludes that India can benefit from more transparent judicial appointments and stronger legislative scrutiny without adopting parliamentary sovereignty.

KEYWORDS: Separation of Powers; Constitutional Supremacy; Parliamentary Sovereignty; Judicial Review; Judicial Independence; India; United Kingdom.

1. INTRODUCTION

The doctrine of separation of powers is a central principle of constitutional government. Montesquieu associated liberty with preventing legislative, executive and judicial powers from being concentrated in the same hands. In practice, however, modern democratic systems

rarely maintain a strict separation. Parliamentary systems commonly permit overlap between the executive and legislature, while preserving institutional checks to prevent abuse.

India adopted the Westminster model of parliamentary government but placed it within a written and supreme Constitution. The United Kingdom, by contrast, retains an uncodified constitutional framework based on statutes, conventions, common law and the principle of parliamentary sovereignty. The comparison is useful because the two countries share a parliamentary executive but use different methods to maintain institutional balance.

This article examines how the doctrine operates in both jurisdictions and considers what lessons India may draw from the British experience.

2. RESEARCH METHODOLOGY

The article adopts a doctrinal and comparative method. It relies on constitutional provisions, legislation and leading judicial decisions, together with established academic commentary. The comparison is functional: it considers how each system protects judicial independence, controls executive power and maintains legislative accountability. No interviews, surveys or original empirical fieldwork were undertaken.

3. Constitutional Position in the United Kingdom

The United Kingdom does not follow a rigid separation of powers. The Prime Minister and ministers are normally members of Parliament, and the executive remains in office while it commands the confidence of the House of Commons. This creates a fusion of legislative and executive functions.

Nevertheless, judicial independence has been strengthened through constitutional statutes. The Constitutional Reform Act 2005 recognised the duty of ministers to uphold judicial independence, established the Supreme Court as a separate institution and created the Judicial Appointments Commission. These reforms strengthened the institutional distinction between the judiciary and the other branches.

British courts can review executive action and ensure that public authorities act within legal limits. Decisions such as Miller (2017) and Miller/Cherry (2019) demonstrate that the executive cannot use prerogative powers to bypass statutory requirements or frustrate Parliament’s constitutional functions. However, under parliamentary sovereignty, courts generally cannot strike down primary legislation enacted by Parliament. The Human Rights Act 1998 allows courts to interpret legislation compatibly with Convention rights where possible and to issue a declaration of incompatibility, but such a declaration does not

invalidate the statute.

Thus, the British model relies substantially on parliamentary accountability, constitutional conventions, statutory safeguards and judicial review of executive action. Its effectiveness depends in part on political self-restraint.

4. Constitutional Position in India

The Constitution of India does not expressly declare a strict separation of powers. Instead, it distributes functions and creates checks through several provisions. Article 50 directs the State to separate the judiciary from the executive in public services. Articles 121 and 211 restrict discussion of the conduct of judges in legislatures, while Articles 122 and 212 protect legislative proceedings from certain forms of judicial inquiry. At the same time, India has a parliamentary executive, with ministers drawn from the legislature.

The Supreme Court has held that the Constitution does not adopt separation of powers in an absolute or rigid form. In Ram Jawaya Kapur v. State of Punjab, the Court recognised functional differentiation while accepting that some overlap is inevitable. The doctrine acquired stronger constitutional force through the basic structure principle. In Kesavananda Bharati

v. State of Kerala, the Supreme Court held that Parliament cannot use its amending power to destroy the Constitution's basic structure. Separation of powers, judicial review and judicial independence have subsequently been treated as important constitutional features.

Judicial review is a significant difference between the two systems. Indian courts may invalidate legislation or executive action that violates the Constitution. In Indira Nehru Gandhi v. Raj Narain, the Supreme Court rejected an amendment that attempted to place a particular election beyond judicial determination. In Supreme Court Advocates-on-Record Association

v. Union of India (the NJAC case), the Court invalidated the constitutional amendment and legislation establishing the National Judicial Appointments Commission, holding that judicial primacy in appointments was part of the basic structure.

Indian courts have also issued directions where legislative or executive action was absent or inadequate. Vishaka v. State of Rajasthan is an example of judicial guidelines operating until legislation was enacted. Such interventions may protect rights, but they also raise concerns about courts entering areas better addressed by elected institutions. The doctrine therefore requires both judicial independence and judicial restraint.

5. Comparative Analysis

The principal similarity is that neither country applies a completely rigid separation of powers. In both, the executive and legislature are connected through parliamentary government. Both systems also recognise judicial independence and permit courts to review the legality of executive action.

The principal difference concerns the status of the Constitution and the power of courts over legislation. In India, constitutional supremacy permits courts to invalidate laws that conflict with constitutional provisions or the basic structure. In the United Kingdom, parliamentary sovereignty generally prevents courts from invalidating an Act of Parliament. British courts instead use statutory interpretation, declarations of incompatibility and review of executive action.

Judicial appointments provide another point of contrast. The United Kingdom uses a statutory Judicial Appointments Commission, which includes a lay chair. India's collegium system gives senior judges a leading role in appointments, but it has been criticised for limited transparency and the absence of a clear statutory framework. The NJAC judgment demonstrates the importance attached to judicial independence in India, while also leaving continuing questions about accountability and openness.

The systems also differ in legislative scrutiny. The United Kingdom has established parliamentary committee structures that examine legislation and delegated powers. India has parliamentary committees as well, but the extent of referral and scrutiny can vary. Effective legislative scrutiny is important because it allows elected representatives to examine proposed laws before disputes reach the courts.

Neither model is free from difficulty. The Indian system may experience judicial overreach and conflict between institutions, while the British system may face executive dominance where a government controls a strong Commons majority. The comparison therefore does not establish that one model is universally superior. It shows that constitutional balance depends on both legal rules and the strength of political institutions.

6. FINDINGS AND RECOMMENDATIONS

The study leads to four principal findings. First, India and the United Kingdom share a parliamentary fusion of executive and legislature, but differ in the source of constitutional limits. Secondly, India's written Constitution and basic structure doctrine provide stronger judicially enforceable limits on legislative power. Thirdly, judicial independence must be balanced with transparency and accountability, particularly in appointments. Fourthly,

effective legislative scrutiny can reduce the need for courts to intervene in matters that should receive proper parliamentary consideration. India may consider the following reforms:

1. Judicial appointments should be governed by clearer and more transparent procedures, including published criteria, reasoned decisions and an effective permanent secretariat, while preserving the constitutional requirement of judicial independence.

2. Bills, other than those for which a different procedure is constitutionally required, should ordinarily receive committee scrutiny. Any decision to bypass such scrutiny should be supported by recorded reasons.

3. Disqualification disputes under the Tenth Schedule should be decided promptly and impartially. The proposal for an independent adjudicatory mechanism deserves serious consideration.

4. Ordinance-making should remain an exceptional power. Governments should explain the urgency, place ordinances before the legislature promptly and avoid repeated repromulgation.

5. Courts should exercise restraint when issuing directions in policy matters, while retaining the power to protect constitutional rights where genuine legal gaps or violations arise.

India should not import parliamentary sovereignty from the United Kingdom. Its federal structure, written Constitution and enforceable fundamental rights require constitutional supremacy. The useful lesson is instead to strengthen transparency, legislative scrutiny and institutional conventions within India's own constitutional framework.

7. CONCLUSION

The separation of powers in India and the United Kingdom is shaped by their different constitutional traditions. Both systems permit overlap between the executive and legislature, but India relies on constitutional supremacy and judicial review, whereas the United Kingdom relies more heavily on parliamentary sovereignty, statutes, conventions and political accountability. India's model offers stronger legal protection against unconstitutional action, but it must guard against judicial overreach and improve transparency in appointments. The British model demonstrates the value of statutory safeguards and parliamentary scrutiny, but remains vulnerable to executive dominance and the limits of parliamentary sovereignty. A balanced constitutional system requires independent courts, accountable governments and legislatures that scrutinise laws effectively.

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