Separation of Power

By Social Contract Theory

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CREATE THE STATE

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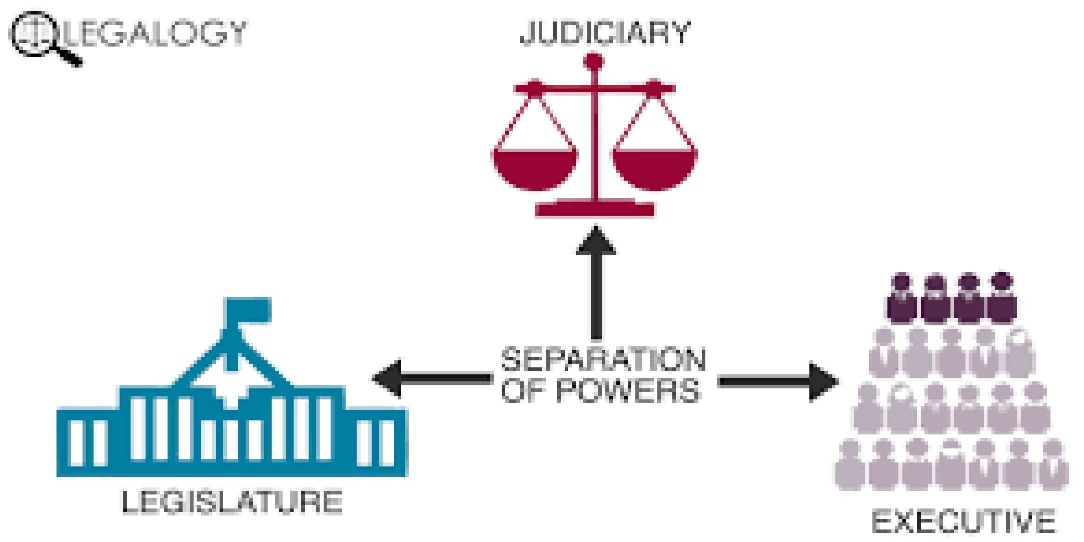
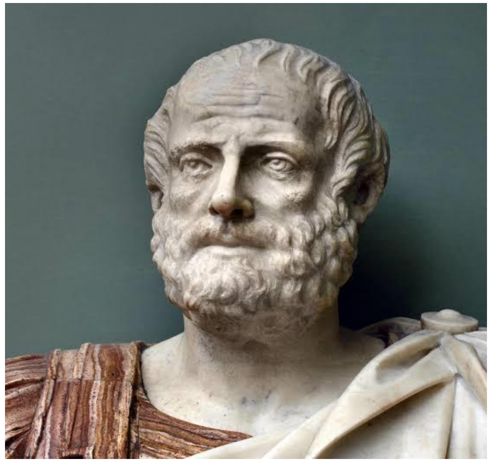
Dedicate to Monarch

Absolute control over society

What is separation of Power ?

Separation of powers refers to the division of a state's government into "branches", each with separate, independent powers and responsibilities, so that the powers of one branch are not in conflict with those of the other branches. The typical division into three branches of government, sometimes called the trias political model, includes a legislature, an executive, and a judiciary.





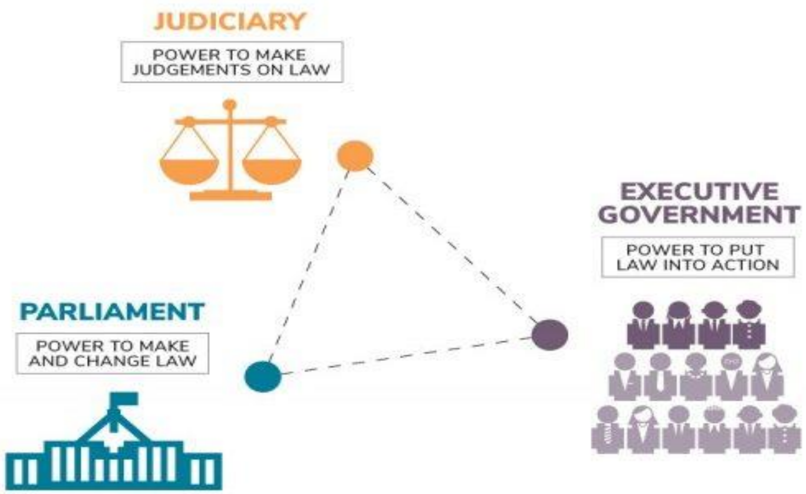
Aristotle 384BC-322BC
Originated the idea

John Locke 1632-1704
Develop the principles and defined.
BOOK- The second treatise of Civil Govt.

Montesquieu 1689-1755
Propounded
BOOK -The Sprit of Laws

Separation of Power

Montesquieu



Doctrine of Separation of Power: It contains **three formulations** of governmental powers:

- An individual should not serve in more than one capacity within any one of the three branches of governmentAny interference from one governmental organ with another is improperOne organ shouldn't do the duties that belong to another organ.

The term "tripartite system" is commonly ascribed to French Enlightenment political philosopher Montesquieu, although he did not use such a term but referred to the "distribution" of powers. In The Spirit of Law (1748), Montesquieu described the various forms of distribution of political power among a legislature, an executive, and a judiciary. Montesquieu's approach was to present and defend a form of government whose powers were not excessively centralized in a single monarch or similar ruler (a form known then as "aristocracy"). He based this model on the Constitution of the Roman Republic and the British constitutional system. Montesquieu took the view that the Roman Republic had powers separated so that no one could use complete power. In the British constitutional system, Montesquieu discerned a separation of powers among the monarch, Parliament, and the courts of law.

Merits and Demerits of Separation of Powers

Merits of the Theory of Separation of Powers

1. Protection of Liberty and Rights
2. Increase in Government's Efficiency
3. Promotes Order in Governance
4. Prevents Abuse of Power
5. Ensures Judicial Independence

Demerits of the Theory of Separation of Powers

1. Wrong Reading of British System
2. Not Fully Attainable
3. Administrative Complications
4. Could Lead to Confusion and Deadlock
5. Inequality of Powers
6. Not the Sole Factor of Liberty
7. Could Disturb the Balance of Power

U.S.A. SEPARATION OF POWER

Legislature

Executive

Judiciary

Checks and Balances

Checks and balances usually ensure that no one person or department has absolute control over decisions, clearly define the assigned duties, and force cooperation in completing tasks.

The term is most commonly used in the context of government but also refers to limiting power in businesses and organizations.

KEY POINTS

Checks and balances refer to the separation of power to avoid one entity or body wielding too much power.

Checks and balances can help reduce mistakes and prevent improper behavior in organizations.

Checks and balances are most commonly used in the context of government, for example in the U.S. government through the establishment of the executive branch, the legislative branch, and the judicial branch.

Checks and balances are important in businesses and other organizations where one individual can make decisions that affect operations, such as the CEO or a majority shareholder.

The idea of checks and balances dates back as far as the Roman empire.

INDIA'S Separation of power

Bicameral Legislature

The Executive

Judiciary

Some of Articles of the constitution:

Article 50: This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.

Articles 53 and 154: It provide that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.

Articles 121 and 211: These provide that the legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.

Article 123: The President, being the executive head of the country, is empowered to exercise legislative powers (Promulgate ordinances) in certain conditions.

Article 361: The President and Governors enjoy immunity from court proceedings., they shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

There is a system of checks and balances wherein the various organs impose checks on one another by certain provisions-

The judiciary has the power of judicial review over the actions of the executive and the legislature

The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).

It can also declare unconstitutional executive actions as void.

The legislature also reviews the functioning of the executive.
Although the judiciary is independent, the judges are appointed by the executive.

The legislature can also alter the basis of the judgment while adhering to the constitutional limitation.

Checks and balances ensure that no one organ becomes all-too powerful.

The Constitution guarantees that the discretionary power bestowed on any one organ is within the democratic principle.