

## SEPARATION OF POWER AS IMPORTANT ELEMENT OF RULE OF LAW

Dr. Kusum Dixit Chouhan, Dept. of Law

Rabindranath Tagore University, Bhopal

### ABSTRACT

*‘Separation of Powers’ is an essential principle whereby powers are divided among the legislative branch, executive branch, and judicial branch. The selection procedure for the officials of each branch are different and serve different terms of office; each branch can keep eye on the working of each other through the system of checks and balances. The framers of the Constitution considered this system to safeguard that no one branch would accumulate too much power and that issues of public policy and welfare would be given comprehensive consideration before any action was taken.*

**KEYWORDS:** Separation of Power, Check and Balances

### INTRODUCTION

It has been well said by Lord Acton: - “Power corrupts and absolute Power tends to corrupt absolutely”. According to the doctrine of Separation of Powers, these three powers and functions of the Government must be in a free democracy, always be kept distinct and be exercised separately by the three separate organs of the Government which are independent on each other i.e. that three main classifications of governmental functions (i) Legislative, (ii) Executive, and (iii) Judicial. Likewise, there are three main organs of the Government in a State (I) Legislature, (ii) Executive, and (iii) Judiciary. No such kind of distribution where one type of powers of government give to one person or body of persons, the power should be distributed among all the three organs. The legislature should exercise exclusively their legislative functions and powers and should not direct or enforce it. The executive should not regulator the legislature nor should it take over the functions of the judiciary. There three organs serves in their own sphere and do not interfere in the working of one another or we can say it do not trespass in the territory of other.[1]

## GENESIS OF SEPARATION OF POWER AS IMPORTANT ELEMENT OF RULE OF LAW

The concept of Rule of Law is that the state is governed by the law not by the rulers, leaders or the nominated representatives of the people. Basis of law is the rule of law it is considered as a supreme authority of the state from which all other law derives its authority. The monarch or the representatives of the republic are governed by the laws derived out of the Grundnorm and their powers are limited by the law. The King is not the law but the law is king. The phrase, Rule of Law“ is derived from the French phrase, la Principe de legalite“ (the principle of legality) which refers to a government based on principles of law and not of men. Rule of law is one of the basic principles of the English Constitution and the doctrine is accepted in the Constitution of U.S.A and India as well.[2]

Origin of the concept of rule of law came from the history itself. As discussed by Aristotle it deals with the ideas of justice, fairness. There were various incidents happens in the past in ancient Indian epics Mahabharata and Ramayana the rules of war was addressed; the concept of rule of law leads to the foundations of religious thought such as the Ten Commandments and the Dharma Chakra and in historical documents such as the Magna Carta, which embodied the principle that government itself is bound to abide by the law. Now today’s situation is that the Rule of Law is the base of good governance.

“A V Dicey stated three principles to the term 'Rule of Law”.

1. Supremacy of Law: Law is the absolute supreme and predominant as opposed to influence of arbitrary power or discretionary power.
2. Equality before Law: There must be equality before law or equal subjection of all classes to the ordinary law.
3. Predominance of Legal spirit: The rights are a result of court judgments rather than from being enshrined in the Constitution.”

The genius is of separation of power with the checks and balances are the important element of rule of law, when there is a proper separation of power with checks and balances between all three organs of the government then only rule of law prevails in the country appropriately, the power are beings distributed between all the three organs of the government and there are functioning accordingly in their own spheres without interrupting in the working of one another. The power between all three organs is distributed in such a manner that they can kept eye on one another without interfering with each other. Checks and balances and the separation of powers both run

hand in hand to ensure the smooth running of democracy. Checks and balances operate to ensure that no one body or group of people have insured with so much of power that they started to misuse it and badly influence the legal system of the country this is one way of helping to ensure the long and successful life of democracy.[3]

## CONCLUSION

The doctrine of separation of power can only be establishment when proper rule of law is being prevailing in that jurisdiction. There should not be any kind of abuse of power or any kind of biasness. If all the government organ is responsible such as, executive, judiciary and legislature then separation of powers maintain easily.

## REFERENCES

- [1] T. Persson, G. Roland, and G. Tabellini, "Separation of Powers and Political Accountability," *Q. J. Econ.*, 1997.
- [2] G. Lamond, "The rule of law," in *The Routledge Companion to Philosophy of Law*, 2012.
- [3] A. Scalia, "The Rule of Law as a Law of Rules," *Univ. Chicago Law Rev.*, 1989.