

DIVISION OF POWERS

- It was the French philosopher and jurist, Montesquieu who first clearly elaborated the notions of separation of powers and moderate government that later formed the foundational frame of many constitutions, including that of the U.S.

French Philosopher and Jurist, Montesquieu (1689-1755)



- Montesquieu ideas are important as they were counterposed to the feudal structure.
- He stood for moderate government – whether moderate monarchy or moderate republic.
- He was of the view that the various functions of government should be entrusted to distinct agencies of government, which would be independent of each other in the exercise of their functions.

- “When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty...Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end

to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals”.

'Means to an End'

Explanation and Examples

Means	End
Traffic Lights	An Efficient Transport System
Road Signs	
Zebra Crossings	
Libraries	Recreational Facilities for Citizens
Parks	
Stadiums	

Means	End
Curbs on Vehicular Pollution	
No burning of garbage or leaves	Clean Environment
Waste segregation and Composting	
Free and fair elections	
Individual Freedoms	Constitutional Democracy
Transparency in decision making	
Division of governmental powers	

What is meant by 'division of powers'?

- Division of governmental powers mostly simply put, is a distribution of powers among different institutions of government.
- It is the opposite of concentration of or fusion of powers in a single institution or person.
- For example:

Concentration of power in a single institution is  Monarchy

Concentration of power in a single person is  Dictatorship

Division of Powers or Roles: Non-political Examples

In a Company	
	Manufacturing/Operations
	Sales
	Accounts
	Public Relations

For More Productivity and Profits

In a Game	
	Goal-keeper
	Defenders
	Strikers

For Winning the Game

In a University	
	Admission branch
	Examination branch
	Faculty
	Vice Chancellor

For a Critical and Smooth Knowledge
Generation

The aim of this non-political separation of powers or roles is:

Efficiency

Effectiveness

Goal Achievement

- The aim of political separation of powers or roles is to:

Avoid duplication of work

Avoid overburdening one particular institution or individual

Infuse specialist knowledge in a task

Bring About a Structured Participation

Prevent Hasty Decision Making

Prevent concentration of power and thus, abuse of power

James Madison (1751-1836)



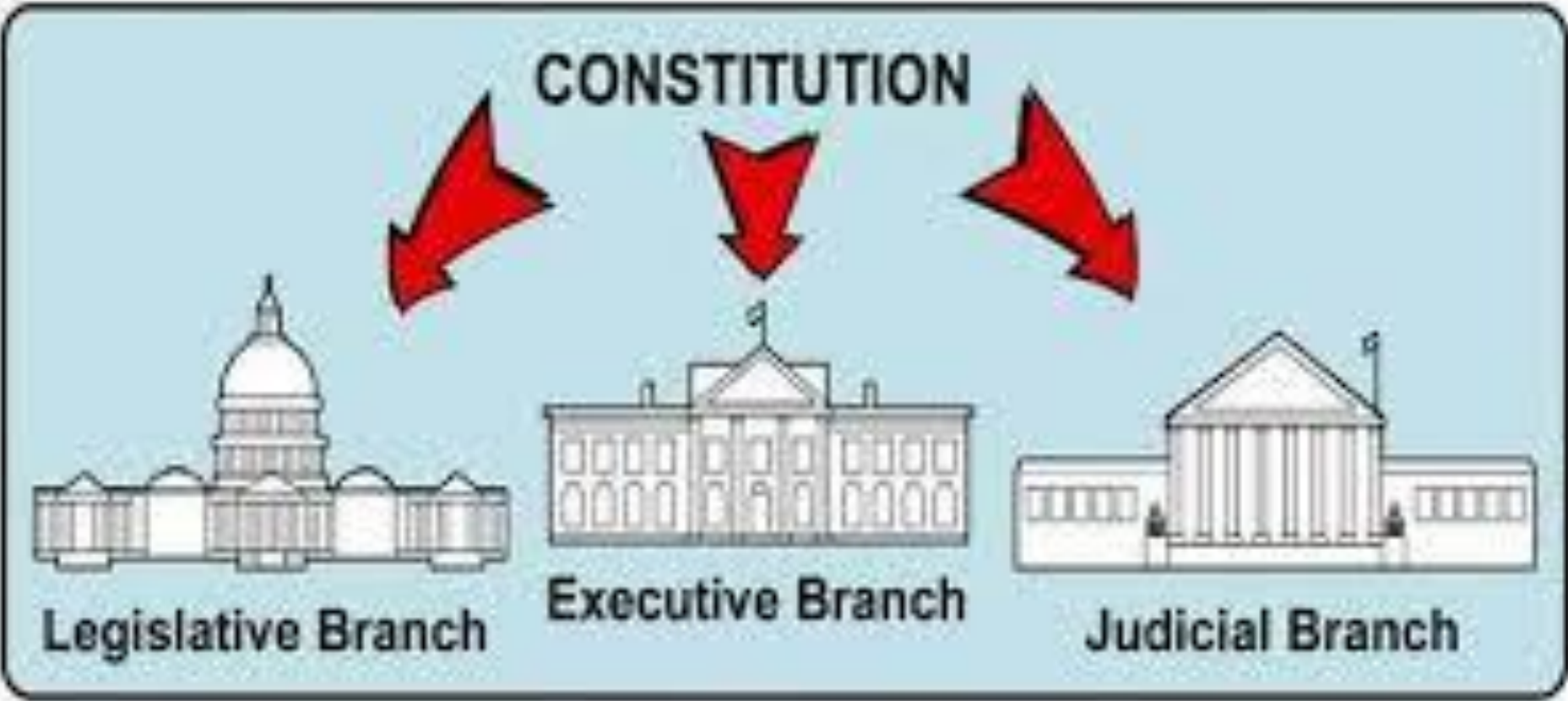
James Madison (One of the founders of the American Constitution)

“The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny”.

Main Powers of a Government

- Legislative: To make laws
- Executive: To implement laws
- Judicial: To adjudicate laws

Division or Separation of Powers



Why is division of governmental powers important?

- As noted earlier, it is important for
 - Efficient working of the system
 - Bringing specialist knowledge
- Involving more people in decision making – fostering participation and bringing expertise
 - Preventing, abuse of power
 - Safeguarding individual liberty
 - Preventing tyrannical rule

Division of Powers in the US

Branch	Institution
Executive	President Vice President Cabinet
Legislature	Congress – Senate and House of Representatives
Judiciary	Supreme Court, other federal courts

Presidential System

Division of Powers in India

Branch	Institution
Executive	President, Prime Minister, Cabinet, Civil Services, Government Departments
Legislature	Parliament – Rajya Sabha and Lok Sabha
Judiciary	Supreme Court, High Courts, Sessions Courts

Parliamentary System

Can Division of Powers be Rigid?

A division of powers cannot be rigid.

Rigidity can result in breakdowns, logjams and abuse of power.

To prevent this, countries adopt a system of *checks and balances*.

Checks and balances ensure interdependence and cooperation in work.

Checks and Balances in the US

- The president can veto legislation passed by Congress and nominates heads of federal agencies.
- Congress confirms or rejects the president's nominees and can remove the president from office in exceptional circumstances (impeachment).
- The Justices of the Supreme Court, who can overturn unconstitutional laws, are nominated by the president and confirmed by the Senate.

Constituent Assembly of India



Checks and Balances in India

- The executive can dissolve the legislature.
- The legislature can pass a no-confidence motion against the executive.
- The Supreme Court has power to annul the laws passed by the legislature and the actions taken by the executive if they violate any provision of the Constitution or the law passed by the legislature in case of executive actions.

- The President can set a law passed by the legislature aside or an advise given by the Council of ministers when it is inconsistent with the constitution of India.
- The executive can affect the functioning of the judiciary through appointments of Chief Justice and other judges.

Examples of Checks and Balances in India

- June 1975 - Allahabad High Court verdict convicts Prime Minister Indira Gandhi of electoral malpractices and debarred her from holding any elected post falls in this category. Paved the way for imposition of Emergency.
- 1993 – Supreme Court held that the total number of reserved seats/places/positions cannot exceed 50% (Indra Sawhney vs. the Union of India).
- May 1996 – PM Vajpayee lost the floor test after 13 days in office

- April 1999 – ‘No trust’ motion lost by PM Vajpayee after 13 months in office
- May 2006 – Religious Conversion Bill of Rajasthan returned by President Pratibha Patil
- April 2016 – High Court struck down President’s rule in Uttarakhand
- June 2019 – SC asks U.P. police to release freelance journalist, arrested for posting a tweet and facebook post on U.P. chief minister Yogi Adityanath.

- Election Commission of India and its checks on the ruling party and other political parties.

It prohibits use of communal and caste propaganda and use of official machinery for elections. It also puts curbs on the amount of money that can be used in campaigning for elections.

Democratic Rule

Thus, the primary aim of division of governmental powers and the system of checks and balances is to prevent accumulation of power and its abuse at the hands of the power holders.

The goal is also to see that the various institutions of government work together and share power in the task of running the country democratically.

References

- 'Montesquieu and the Separation of Powers', *Online Library of Liberty*, <https://oll.libertyfund.org/pages/montesquieu-and-the-separation-of-powers> accessed on 14 June 2019.
- <https://www.usa.gov/branches-of-government>