



# ST. LAWRENCE HIGH SCHOOL

A JESUIT CHRISTIAN MINORITY INSTITUTION

CLASS - XII

STUDY MATERIAL



**TOPIC: ORGANS OF THE GOVERNMENT**

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## **Central Idea of the Theory of Separation of Powers:**

The Theory of Separation of Powers holds that the three organs of government must be separate and independent from one another. Any combination of these three functions into a single or two organs is harmful and dangerous for individual liberty. Separation of powers of the three organs is essential for the efficiency of the government and the liberty of the people. Government can work systematically and efficiently only when each of its organs exercises its own powers and functions. Similarly, the liberty of the people can be protected only when there is no concentration or combination of the three governmental powers in the hands of one or two organs. The theory of Separation of Powers holds that for keeping the government limited, which is necessary for protecting the liberty of the people, the three functions of government should be separated and performed by three separate organs.

## **Meaning of Separation of Powers:**

In simple words, the theory of Separation of Powers advocates that the three powers of the government should be used by three separate organs. Legislature should use only law making powers, Executive should undertake only law enforcement functions, and Judiciary should perform only adjudication/Judicial functions. Their powers and responsibilities should be clearly defined and kept separate. This is essential for securing the liberty of the people.

## **Separation of Powers: Views of Montesquieu:**

In his book 'The Spirit of The Laws' (1748), Montesquieu enunciated and explained his theory of Separation of Powers. He wrote,

- (1) If the legislative and executive powers are combined in the same organ, the liberty of the people gets jeopardized because it leads to tyrannical exercise of these two powers.
  - (2) If the judicial and legislative powers are combined in the same organ, the interpretation of laws becomes meaningless because in this case the law-maker also acts as the law interpreter and he never accepts the errors of his laws.
  - (3) If the judicial power is combined with the executive power and is given to one-person or one organ, the administration of justice becomes meaningless and faulty because then the police (Executive) becomes the judge (judiciary).
  - (4) Finally if all the three legislative, executive and judicial powers are combined and given to one person or one organ, the concentration of power becomes so big that it virtually ends all liberty. It establishes despotism of that person or organ.
- As such, the three powers should not be combined and given neither to a single organ nor to two organs. These three powers should be used by three separate organs of the government. It is essential for safeguarding the liberty of the people.

## **Use of Separation of Powers in Modern Constitutions:**

The theory of Separation of Powers guided the Declaration of Rights adopted after the French Revolution of 1789. It clearly stated that, "every society in which separation of powers is not determined has no constitution." The real and big support to this theory came from the founding fathers of the Constitution of the USA. They accepted its importance as the essential safeguard for preserving liberties and property. The Constitution of USA adopted the theory of separation of powers as its guiding principle.

## **Theory of Separation of Powers: Criticism:**

### **1. Complete Separation is not possible:**

The government is a single entity. Its three organs can never be completely separated. The legislative, executive and judicial functions are interdependent and inter-related functions and hence cannot be fully separated.

### **2. Complete Separation is not desirable:**

Complete separation of three organs of government is neither possible nor desirable. It is not desirable because without mutual coordination these cannot carry out its functions effectively and efficiently. Complete separation of powers can seriously limit the unity and co-ordination needed by the three organs.

3. Impracticable in itself:

We cannot fully use separation of powers. The function of law-making cannot be entrusted only to the legislature. The needs of our times have made it essential to provide for law-making by the executive under the system of delegated legislation. Likewise, no one can or should prevent law-making by the judges in the form of case law and equity law.

4. Unhistorical:

The theory of Separation of Powers is unhistorical since it has never been operative in England. While formulating and advocating this theory, Montesquieu advocated that it was at work in England. Under the British parliamentary system of government, there was and continues to be a close relationship between the British Parliament and the Cabinet. Even there is no separation of judiciary from legislature in so far the British House of Lords acts as the highest court of appeals. The British Constitution has never been based on the theory separation of powers.

5. The three Organs of Government are not equal:

The Theory of Separation of Powers wrongly assumes the equality of all the three organs of the government. The legislature of the state is always regarded as the primary organ of government. The work of the government begins by law-making. However, in actual practice the executive acts the most powerful organ of the government. The judiciary is the weakest of the three organs, yet it is always held in high esteem by the people. Hence the three organs are neither equal nor equally respected.

6. Separation of Powers can lead to deadlocks and inefficiency:

Separation of powers can lead to deadlocks and inefficiency in the working of the government. It can create a situation in which each organ can get engaged in conflict and deadlocks with other two organs.

7. Liberty does not depend only upon Separation of Powers:

The critics reject the view that liberty can be safeguarded only when there is a separation of powers among the three organs of the government. They argue that in the absence of fundamental rights, independence of judiciary, rule of law, economic equality and a spirit of democracy, there can be no liberty even when there may be present full separation of powers.

8. Separation of Functions and not of Powers:

The name 'Separation of Powers' is wrong because this theory really advocates a separation of functions. Power of the government is one whole. It cannot be separated into three separate parts. It is at the back of the functions of all the three organs of government.

The theory of separation of powers is really a theory of separation of functions. Thus, the theory of Separation of Powers has several limitations. All scholars accept that absolute and rigid separation of powers is neither possible nor desirable. Three organs of government cannot be and should not be totally separated into unrelated water-tight compartments.

**Separation of Powers and Checks and Balances:**

Further for using the theory of Separation of Powers, we need the adoption of another theory i.e. the theory of Checks and Balances. Under this theory each organ, along with its own power, enjoys some checking powers over the other two organs. In the process a system of checks and balances governs the inter-organ relations. The theory of Checks and Balances holds that no organ of power should be given unchecked power in its sphere. The power of one organ should be restrained and checked with the power of the other two organs. In this way a balance should be secured which should prevent any arbitrary use of power by any organ of the government. The legislative power should be in the hands of the legislature but the executive and judiciary should have some checking powers over it with a view to prevent any misuse or arbitrary use of legislative powers by the legislature. Likewise, the executive powers should be vested with the executive but legislature and judiciary should be given some checking powers over it. The same should be the case of the judiciary and its power should be in some respects checked by the legislature and executive. In other words, each organ should have some checking power over the other two organs and there should prevail, a balance among the three organs of government. In fact, the theories of Separation of Powers and Checks and Balances always go together. These have been together in operation in the US Constitution. The theories Separation of Powers and Checks and Balances have to adopt simultaneously.

**Bureaucracy: Meaning, Features and Role of Bureaucracy**

Bureaucracy or the Civil Service constitutes the permanent and professional part of the executive organ of government. It is usually described as the non-political or politically neutral, permanent, and professionally trained civil service. It runs the administration of the state according to the policies and laws of the government political executive. Upon the qualities and efficiency of bureaucracy depends the quality and efficiency of the state administration. It, however, works under the leadership and control of the Political Executive.

**Meaning and Definition:** The terms bureaucracy, civil service, public servants, public service, civil servants, government service, government servants, officials of government, officials, permanent executive and non-political executive are used

to describe all such persons who carry out the day to day administration of the state. The terms 'Bureaucracy' and 'Civil Service' are popularly used as synonyms.

#### **Main Features:**

**1. Permanent Character:** The civil servants hold permanent jobs in government departments. They mostly join their services during their youths and continue to work as government servants till the age of retirement which is usually 58 to 60 years.

**2. Hierarchical Organisation:** Bureaucracy is hierarchically organised in several levels. Each official is placed at a particular level of hierarchy and he enjoys the privileges and powers which are available to his co-level officials. He is under his immediate higher level officials and is above his immediately lower level officials. The principle of rule of the higher over the lower governs the inter-relations between various levels of bureaucracy.

**3. Non-partisan Character:** The members of the Bureaucracy are not directly involved in politics. They cannot join political parties and participate in political movements. They are not affected by the political changes which keep on coming in the political executive. Whichever party may come to power and make the government, the civil servants remain politically neutral and carry out their assigned departmental roles impartially and faithfully.

**4. Professional, Trained and Expert Class:** The Bureaucracy constitutes the educated and professionally trained class of persons which helps the political executive in carrying out its functions. The members of civil service are recruited through competitive examinations for appearing in which they have to possess some minimum educational qualifications. Before their appointments, they get special trainings. During the course of their service they attend orientation and refresher courses. They have the knowledge, training and expertise necessary for carrying out their administrative work.

**5. Fixed Salaries:** Each member of the Bureaucracy receives a fixed salary. Right at the time of appointment he is allotted a scale of pay, which depends upon the nature and level of his job-responsibility. All the civil servants belonging to a particular class of administrative hierarchy are placed in one scale of pay. Each job also entitles them to some allowances.

**6. Bound by Rules and Regulations:** The Bureaucracy always works in accordance with 'rules and regulations'. 'Strict obedience to rules', 'Through Proper Channel', 'Decision-making after satisfying the rules', are the principles which always guide, direct and regulate the working of bureaucracy. Each official works only within the sphere prescribed for him by the rules of his department.

**7. Class Consciousness:** The Civil Servants are highly class conscious. They jealously work to protect and promote the interests of their class of civil servants. They are called the white-collar class because of their faith in their 'superior status' as government officials.

**8. Public Service Spirit as the Ideal:** Modern Bureaucracy identifies itself with public service spirit. It always tries to project itself as the civil servants devoted to the promotion of public welfare through the satisfaction of public needs. They are expected to behave as 'officers' responsible for public welfare, with service as their motto.

**9. Bound by a Code of Conduct:** The civil servants have to follow a code of conduct. They have to act in a disciplined way. Their rights, duties and privileges stand clearly defined. The procedure of work is definite and settled. They can be punished for misbehavior, incompetence or negligence or for a violation of their conduct rules. In short, Bureaucracy is characterised by political neutrality, professional competence, permanent/ stable tenure, fixed salaries and strict obedience to rules.

#### **Role of Bureaucracy: Functions:**

Bureaucracy or Civil Service plays a key role in running the Public Administration by performing the following functions:

##### **1. Implementation of Governmental Policies and Laws:**

It is the responsibility of the bureaucracy to carry out and implement the policies of the government. Good policies and laws can really serve their objectives only when these are efficiently implemented by the civil servants.

##### **2. Role in Policy-Formulation:**

Policy-making is the function of the political executive. However, the Bureaucracy plays an active role in this exercise. Civil Servants supply the data needed by the political executive for formulating the policies. In fact, Civil servants formulate several alternative policies and describe the merits and demerits of each. The Political Executive then selects and adopts one such policy alternative as the governmental policy.

##### **3. Running of Administration:**

To run the day to day administration in accordance with the policies, laws, rules, regulations and decisions of the government is also the key responsibility of the Bureaucracy. The political executive simply exercises guiding, controlling and supervising functions.

##### **4. Advisory Function:**

One of the important functions of the Bureaucracy is to advise the political executive. The ministers receive all the information and advice regarding the functioning of their respective departments from the civil servants. As amateurs, the ministers have little knowledge about the functions of their departments. They, therefore, depend upon the advice of bureaucracy. As qualified, experienced and expert civil servants working in all government departments, they provide expert and professional advice and information to the ministers.

##### **5. Role in Legislative Work:**

The civil servants play an important but indirect role in law-making. They draft the bills which the ministers submit to the legislature for law-making. The ministers provide all the information asked for by the legislature by taking the help of the civil servants.

#### **6. Semi-judicial Work:**

The emergence of the system of administrative justice, under which several types of the cases and disputes are decided by the executive, has further been a source of increased semi-judicial work of the bureaucracy. The disputes involving the grant of permits, licences, tax concessions, quotas etc. are now settled by the civil servants.

#### **7. Collection of Taxes and Disbursement of Financial Benefits:**

The civil servants play a vitally important role in financial administration. They advise the political executive in respect of all financial planning, tax-structure, tax-administration and the like. They collect taxes and settle disputes involving recovery of taxes. They play a vital role in preparing the budget and taxation proposals. They carry out the function of granting of legally sanctioned financial benefits, tax reliefs, subsidies and other concessions to the people.

#### **8. Record-Keeping:**

The Civil Service has the sole responsibility of keeping systematically all government records. They collect, classify and analyse all data pertaining to all activities of the government. They collect and maintain vital socio-economic statistics which are used for the formulation of Public policies and plans.

#### **9. Role in Public Relations:**

The era of modern welfare state and democratic politics has made it essential for the government to keep close relations with the people of the state. The need for maintaining active and full public relations is a vital necessity of every state. The civil servants play an active role in this sphere.

They are the main agents who establish direct contacts with the people. They serve as a two way link. On the one hand, they communicate all government decisions to the people, and on the other hand, they communicate to the government the needs, interests and views of the people. Thus, Bureaucracy plays a vigorously active and highly important role in the working of the government.

#### **Control over Bureaucracy:**

The rise of modern welfare state and increase in its functions has been a source of big increase in the powers and role of Bureaucracy. It has, therefore, given rise to an additional need for exercising control over bureaucracy. An effective control system has become essential both for preventing the civil servants from abusing their powers as well as for ensuring their active and positive role. In fact, every state maintains a system of internal and external control over Bureaucracy.

#### **(A) Internal Control:**

It means control applied from within the organisation i.e. by the administrative machinery. The administrative organisation is hierarchical and is divided into wings, divisions, branches and sections. There are present some internal controls in its every section. The tools of control are budgeting, accounting, auditing, reports, inspections, efficiency surveys, personnel control, code of conduct, and discipline and leadership control. In particular, regular internal inspections, auditing of accounts and evaluation of the performance of each civil servant act as main means of internal control over Bureaucracy. Internal control is necessary for keeping the bureaucracy efficient and productive of desired results.

#### **(B) External Control:**

External control is that which flows from outside agencies. These agencies are the people, the legislature, the executive and the judiciary.

#### **A. Important questions :-**

1. Critically discuss the theory of Separation of Power.
2. Distinguish between Separation of Power and Division of Power.
3. Classify the executive as the organ of the government.
4. Analyse the functions of the executive.
5. Discuss the role of bureaucracy as an organ of the government.
6. Discuss the function of bureaucracy as an organ of the government.
7. What do you understand by the structure of legislature in terms of an organ of government.
8. List the functions of the legislature.
9. Analyse the argument in favour and against bicameralism.
10. List the functions of the Judiciary.
11. What do you mean by the independence of the judiciary.

Teacher's Name: Rituparna Banerjee