

Comparative Study of Separation of Powers in India & Canada

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Abstract:

Both India and Canada are democratic and common law countries and both countries had adopted similar provisions of separation of powers to run their governmental organs. Saving the human rights and minority rights are main mottos of both countries. In both Countries, Judiciary is an independent organ and working in a fearless manner. A number of dissenting opinions delivered by the Justices of Apex Courts of both countries shows the independence of Judiciary from political pressure and this is the main reason for flourishing of people happiness, because they get justice from the temple of law. In spite of a number of similarities, there are some differences also, in separation of powers between the three organs of the government in both countries. In this paper, the author beautifully describes the separation of powers and implementation of Constitutional provisions, rules and regulations and other statutory provisions of both countries. The objective of this study is to explore more better options for the advancement of democratic countries and to raise the voice of common man.

Introduction:

The governance of a country has a significant impact on its performance and organization. Executive, Legislation and Judiciary, all three different organs of any government are most important branches for smooth functioning of the any government, implementation of rules and regulations to ensure transparency, protection of human rights, to protect the nation from any subversive act of arm forces, rebellion groups or any other external threat, to ensure the protection of minorities and minority rights and to make the nation a progressive state.

The separation of powers refers to the division of governmental responsibilities and functions among different branches of government to prevent any one branch from accumulating too much power. Both Canada and India are democratic and common law countries that have adopted the concept of separation of powers, but they implement it

in slightly different ways due to their unique historical, legal, and constitutional contexts. Here's a comparative study of the separation of powers in Canada and India:

Executive Branch: In Canada, the executive branch consists of the Prime Minister and the Cabinet. The Prime Minister is the head of the government and exercises executive power. Cabinet members are drawn from the majority party in the House of Commons and are responsible for implementing government policies. In Canada, the executive branch is crucial to law and policy execution. The king, as the ceremonial head of state, is at the top of this branch. The Governor General and Lieutenant Governors serve as the monarch's representatives.

The Prime Minister, as head of state, holds significant decision-making power in the executive branch. The prime minister directs the government, creates policies, and represents Canada at home and abroad. Cabinet Ministers are chosen by the prime minister to lead ministries and organizations. The executive branch has duties like appointing judges and officials, and handling crises. It can make agreements and sign contracts for Canada. In India, the executive branch consists of the President, who is the head of state, and the Prime Minister, who is the head of government. The President's role is largely ceremonial, while the Prime Minister holds the real executive power and leads the Council of Ministers.

In both countries, the executive branch holds significant power. However, the role of the President in India is more symbolic compared to the Prime Minister's role, who wields real executive authority.

Legislative Branch: The legislative branch consists of the Parliament of Canada, which is composed of the House of Commons and the Senate. The House of Commons is made up of elected representatives, while the Senate is composed of appointed members. The Parliament of Canada is responsible for making laws, analyzing government activities, and representing the people. It is made up of the House of Commons and the Senate. MPs are elected by the public in general elections to the House of Commons. They represent Canadian voices, fostering discussion, deliberation, and legislation. The Senate consists of Senators nominated to review and provide a second opinion on legislation passed by the House of Commons. Their role

is to review bills, suggest amendments, and ensure legislation aligns with stakeholders' interests.

The legislative branch is governed by the Constitution Act, 1867, which outlines the powers and composition of Parliament, as well as other statutes and parliamentary rules that shape the lawmaking process (Constitution Act, 1867, 1867)

The Indian Parliament consists of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Members of the Lok Sabha are directly elected, while members of the Rajya Sabha are elected by the state legislatures. There are similarities and differences between the roles of the head of state and head of government in Canada and India. In Canada, the monarch is the symbolic head of state. The monarch is represented by the Governor General and Lieutenant Governors at the federal and provincial levels, respectively. In India, the President serves as both the head of state and government. In both countries, the executive powers and choices are similar. In Canada, the Prime Minister is chosen by the Governor General, who then forms a Cabinet of Ministers responsible for government tasks. The President of India selects the Prime Minister, who appoints Ministers for the Council of Ministers.

Articles 52-62 of the Indian Constitution, which explain the duties and authority of the President, and Articles 74-75, which outline the duty and obligations of the Council of Ministers led by the

Prime Minister, are relevant constitutional provisions in India. These provisions determine the Indian government's executive branch (Constitution of India).

In India, the Parliament has two chambers: Lok Sabha (House of the People) and Rajya Sabha (Council of States). Lok Sabha is directly elected and represents constituencies across the country. More powerful than Rajya Sabha, it has major responsibility for making laws. Rajya Sabha represents Indian states and union territories, chosen indirectly by state legislatures. It serves as a forum.

Constitutional provisions related to the Indian legislative branch can be found in Articles 79-122 of the Indian Constitution. These provisions outline the composition, powers, and procedures of the Parliament, as well as the roles and qualifications of the members (Legislature).

In Canada, the House of Commons is the more powerful chamber of the Parliament, while in India, the Lok Sabha holds greater legislative authority. Additionally, the process of electing members to the legislative bodies differs between the two countries.

Judicial Branch: The judicial branch is independent and is responsible for interpreting and applying the law. The highest court in Canada is the Supreme Court of Canada, which has the authority to make decisions on constitutional and legal matters. In Canada, the judicial branch is autonomous, unbiased, and upholds the supremacy of law and human rights. The Supreme Court of Canada is the final appeal court. The judicial branch includes federal, provincial, and territorial courts. Its key concept is independence from other branches of government. Judges are nominated based on skills and expertise, ensuring neutrality and objective evaluation and application of the law. The Supreme Court of Canada interprets laws and protects people's liberties and rights, ensuring legislation's legitimacy and consistency with the "Canadian Charter of Rights and Freedoms"¹, a fundamental aspect of the "Constitution Act of 1982"². The Supreme Court's decisions set precedents, guiding legislation interpretation and protecting individual rights. Similar to Canada, the judicial branch in India is independent. The Supreme Court of India is the highest judicial authority and has the power to interpret the constitution and settle disputes.

The Supreme Courts of Canada and India have identical roles and functions as the highest judicial authorities. They interpret laws, protect rights, and preserve the constitution. Both countries' judiciaries are influenced by historic cases and constitutional requirements, with the

Supreme Court in Canada playing a crucial role in establishing and defending rights under the Canadian Charter of Rights and Freedoms.

For example, in *R. v. Oakes*, the Supreme Court created the "Oakes test" to determine whether limits on individual rights are justified (*R. v. Oakes*, 1986)³.

¹ The Canadian Charter of Rights and Freedoms, *available at*: <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html> (visited on August 18, 2023).

² The Constitution of Canada, *available at*: https://en.wikipedia.org/wiki/Constitution_of_Canada (visited on August 18, 2023).

³ (1986) 1 S.C.R. 103

Similarly, the Indian Supreme Court has been critical in upholding the Indian Constitution and defending fundamental rights. Notable cases include “Keshvananda Bharati v. State of Kerala”, where the Supreme Court upheld the doctrine of the "basic structure" of the “Indian Constitution”⁴, safeguarding key constitutional principles in the landmark case of “Keshvananda Bharati v. State of Kerala”⁵. In both cases, judiciary played a vital role to protect the State intervention and violation of human rights.

Both Canada and India have independent judicial branches, with supreme courts responsible for interpreting the constitution and ensuring the rule of law. These courts have the authority to strike down laws that are inconsistent with the constitution.

Conclusion

Canada is a federal country with significant powers granted to its provinces, while India's federal structure includes states with their own legislative and executive powers. Canada's constitution is largely unwritten, relying on statutes, conventions, and judicial decisions. India's constitution is a comprehensive written document that outlines the distribution of powers and functions.

Overall, while both Canada and India adhere to the principle of separation of powers, the specific structures and functioning of their branches of government differ due to their historical and constitutional contexts. Both countries have judicial review, which lets courts check if laws and government actions follow the constitution. This power overlooks the legislative and executive branches, keeping the constitution in charge. In summary, despite having different government structures and rules, Canada and India share key similarities and differences in the roles of their executive, legislative, and judicial branches. Analyzing these parallels and variances sheds light on the distinct approaches of these two democratic nations. This comparison has highlighted the structural and functional similarities and differences in the governments of Canada and India. Both countries follow democratic principles and the rule of law, but with varying mechanisms and processes. Understanding these similarities and differences enriches

⁴ The Constitution of India, *available at*: <https://legislative.gov.in/constitution-of-india/> (visited on August 18, 2023).

⁵ (1973) 4 SCC 225; AIR 1973 SC 1461

our knowledge of governance systems and promotes a global appreciation for the complexities of democracy. government and rights preservation.

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