

**Question:** Do you think that Constitution of India does not accept principle of strict separation of powers rather it is based on the principle of ‘checks and balance’? Explain.

**Answer:**

India, the land of diversity has its Governance mechanism designed in a way to protect and promote its Unity and Diversity hand in hand. The constitutional supremacy through checks and balances ensures that neither of organs of governance viz. The legislature, Judiciary or Executive doesn't become authoritative.

### **Executive and Legislature**

The Constitution of India states that the Executive branch of the State (Council of Ministers) shall be collectively responsible to the Legislature (House of the People). This implies that Parliament should oversee the work of the government and hold it responsible for its actions and omissions. Members of Parliament also have the responsibility of passing laws, authorising the expenditure of the government, and representing the interests of their constituencies. While the legislature holds the Executive accountable through parliamentary proceedings, the executive which holds the majority ensures the parliament doesn't become an obstacle for the Governance. The executive can even recommend the dissolution of the legislature. Checks and Balances were also one of the primary reasons for India to adopt a Parliamentary system rather than a presidential system of governance.

### **Legislature and Judiciary**

The doctrine of separation of powers implies that each pillar of democracy – the executive, legislature and the judiciary – perform separate functions and act as separate entities. The executive is vested with the power to make policy decisions and implement laws. The legislature is empowered to issue enactments. The judiciary is responsible for adjudicating disputes. The doctrine is a part of the basic structure of the Indian Constitution, Even though it is not specifically mentioned in its text. Thus, no law may be passed and no amendment may be made to the Constitution deviating from the doctrine. Different agencies impose checks and balances upon each other but may not transgress upon each other's functions. Thus, the judiciary exercises judicial

review over executive and legislative action, and the legislature reviews the functioning of the executive.

There have been some cases where the courts have issued laws and policy related orders through their judgements. Eg: The order of the Court directing the Centre to distribute food grains (2010).

The appointment of the Special Investigation Team to replace the High-Level Committee established by the Centre for investigating black money deposits in Swiss Banks.

### **Executive and Judiciary**

The extra-constitutional measures of the executive can be quashed by the judiciary as ultra vires. Through the principle of Separation of powers enshrined under Directive Principles of State Policy under Article 50, a great emphasis has been laid down on separating judiciary and executive.

The higher judiciary also has the power to strike down laws and actions of the Executive as invalid, if they violate the Constitution. This is called the power of judicial review.

Though there is no clear delineation, The Constitution provides for a separation of powers between Executive, Legislature and the Judiciary by demarcating their roles and responsibilities. It also lays down various ways by which

- (i) the Judiciary may guard against the unconstitutional exercise of power by Parliament, and
- (ii) (ii) Parliament may legislate on or act as a check-in matter related to the Judiciary.

So, each institution acts as a check and balance on the others' powers.

### **Concerns:**

To see that judicial activism does not become judicial adventurism the courts must act with caution and proper restraint.

The judiciary should act only as an alarm bell.

There has been some discussion on the issue of activism by the judiciary, Also it must be noted that there are also instances of the legislature using its law-making powers to reverse the outcome of some judgements. ( eg: Issues regarding Customs Amendment and Validation Bill, 2011 issue)