

## SEPARATION OF POWERS AND CHECKS AND BALANCES

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### Abstract

*This is not only a key idea that defines the principle of separation of power and the system of checks and balances, but also the main lines of the organization of power in the United States. About India, these principles have been incorporated into the Constitution and act as an important means of checking and balancing the legislature, executive, and judiciary. Consequently, the paper seeks to analyze the emergence, application, and modern-day dynamics of the aforementioned principles in India's political and legal system. It closely examines as to how the Indian constitution defines the roles of each branch and how they can control and check on each other. The paper also identifies major Indian cases that have influenced the understanding or implementation of such principles. In addition, it highlights the pilots that are explored in connection with executive power, judicial power, and legislative power with specific cases of imbalance. Therefore, this paper's primary goal is to define and analyze checks and balances and separation of powers as they pertain to the Indian government or the constitution and to determine how these principles contribute to the development of a more democratic and responsible government.*

*Keywords:* Separation, Powers, Checks, Balances, Constitution, Judiciary, Legislature Executive

### Introduction

A key democratic principle and a safeguard against the rise of totalitarian regimes, the separation of powers ensures that the legislative, executive, and judicial branches of government are each subject to certain checks and balances. By the Constitution's provision for the division of powers among the three branches of government, this notion is deeply ingrained in the administration of the Indian state. Members of India's Constituent Assembly drew inspiration for the country's founding document from a variety of sources, including the American Constitution, the French model of division of powers, and the British model of parliamentary government. All three branches of government are defined in detail in both the Indian and American constitutions. The power to legislate rests with the national legislature (Parliament) and the state legislatures (Legislatures). Administrative responsibilities for implementing and enforcing laws are handled by the President, state governors, the executive branch, and the Council of Ministers. Their primary responsibility is to interpret laws and ensure that they are by the Constitution; the Supreme Court represents the judiciary at the national level, while the High Courts at the state level do the same.

Structural checks and balances are also incorporated into this framework in order to avoid domination of this branch or that one. For instance, the Parliament has the right to pass laws and the President to withhold his or her consent and the judiciary can right or set aside laws that are unconstitutional. In the same manner, an act of the executive branch can be annulled by the court of justice; the parliament on the other hand can check the power of the executive through a process known as question hours, debates, and even a motion of no confidence.

However, it must be noted that in the Indian context, the working of separation of powers & checks and balances has been subjected to several difficulties. The activism of the courts, with the judiciary voicing opinions and taking the lead on matters of social and political sensitivity, has been described as interference with the duties of the other two branches of government. On the other hand, cases of executive aggression that have seen the executive overrule legislative procedures and jurisdictions or even erode the independence of the judiciary have been seen as the weakening of the much-cherished democracy. The legislative branch experiences legislative delay or inaction in passing essential legislation, which also affects the relationship between these branches.

The meaning of the doctrine of separation in Indian law has received varied definition owing to several fresh judgements passed at the later dates. The Judiciary's modest endorsement in reconstructing a working check and balance mechanism is a competitive power struggle that, for instance, was captured in *Kesavananda Bharati v. State of Kerala* which concerned the dynamic interpretation of the Constitution's basic structure, or in the *S. R. Bommai v. Union of India* concerning the weakening of federalism spirit and strength resulting from the curtailment of the absolute power of the universe. It underlines such issues as the role of the court that protects the Constitution and such principles as checks and balances and separation of powers. Therefore, the objective of this study is to look at the theoretical framework and implications of checks and balances in India, its current state and future advancement. It is, therefore, relevant to ask, these are some principles, and any issues arising in the failure of checks, balances between the powers of the organs in the government and the discussions regarding rightful functions and responsibilities of the several forms of government. Thus, its goal is to enhance the awareness of these basic principles and their important parts in maintaining the democratic government in India by offering a richer definition of them.

## Objectives

1. For the purpose of brainstorming or for the sake of scrutinizing the historical evolution of this doctrine in India, checks and balances as well as separation of powers, have to be defined.
2. The present study is an attempt to methodologically analyse the realities of the functioning and issues associated with the principles of separation of powers and checks and balances in India.
3. In order to argue the extent to important judgments made by the judicial system concerning the issues of the separation of powers and checks and balances in India, the following broad objectives have been formulated:

## Origins and Evolution of Separation of Powers and Checks and Balances in India

Therefore, a fundamental tenet of contemporary democracies is the separation of powers. It verifies that the legislative, executive, and judicial branches of government work together as a check and balance system, each protecting the independence of the other. Its foundational political premise dates back to ancient times, when Aristotle, who advocated for the separation of powers, made important contributions.

Montesquieu, a French political philosopher, was the one who popularized the modern interpretation of the principle of separation of powers. Political liberty, according to Montesquieu's 1748 treatise "The Spirit of the Laws," is best protected by dividing government power among three separate branches: Legislative power rests with the German parliament, executive power with the chancellor at the helm, and judicial power with the Federal Constitutional Court at the helm. According to him, the system of checks and balances and division of powers would prevent any branch of government from abusing its position of authority.

### Incorporation into the Indian Constitution

To sum up, the constitution makers of India borrowed several features from the various world constitutions with addition from the British parliamentary model, the American constitution model, and the model of the French separation of powers. They wanted to establish a sound governance architecture that would help the avoid the centralization of power and enhance good governance.

The 1950 Indian Constitution lays out the three arms of government. Legislative bodies at the state and federal levels, as well as the national Lok Sabha and Rajya Sabha, are the only venues where new laws can be introduced by the executive branch. It is the responsibility of the President or state governors, in conjunction with their individual state's council of ministers, to carry out the policies established by the legislature. Laws are reviewed by the courts to ascertain whether they are in line with the Constitution. This is done by both the federal Supreme Court and state supreme courts.

**Table 1: Constitutional Provisions for Separation of Powers in India**

Branch	Key Roles and Responsibilities	Constitutional Provisions
Legislative	Enacting laws, amending the Constitution	Articles 79-122 (Parliament), Articles 168-212 (State Legislatures)
Executive	Implementing and enforcing laws	Articles 52-78 (Union Executive), Articles 153-167 (State Executive)
Judicial	Interpreting laws, ensuring constitutional compliance	Articles 124-147 (Supreme Court), Articles 214-237 (High Courts)

## Evolution and Implementation

Over the years, the principle of the separation of powers in India has various degrees of enhancement through legislative, executive and judicial measures. The judiciary has particularly had a most influential part to play in this by defining/clarifying these principles through precedents.

### 1. Kesavananda Bharati v. State of Kerala (1973):

The "basic structure doctrine" was established by this landmark case, which states that certain provisions of the Constitution, like the separation of powers, are immune to revision. As a result of this idea, the separation of powers in the government is maintained, as the essential principles of the Constitution cannot be changed.

### 2. S.R. Bommai v. Union of India (1994):

This case played a significant role in reviving the idea of federalism and reining in the executive branch's power, particularly about the states and the misuse of Article 356 (the President's rule). Conversely, the court has maintained its function as a check and balance by reiterating the state's sovereignty, particularly regarding the connection between the federal and state governments, as stated in the majority's decision.

**Table 2: Landmark Cases Shaping Separation of Powers in India**

Case	Year	Key Issue	Outcome
Kesavananda Bharati v. State of Kerala	1973	Constitutional amendments	Established the Basic Structure Doctrine
S.R. Bommai v. Union of India	1994	Misuse of President's rule	Reinforced federalism and limited executive power

## Practical Challenges and Judicial Activism

However, in the day-to-day working of the Indian system, there are several criticisms to have been observed in the working of the separate arms of government. Evaluations of judicial activism in which courts actively engage themselves in social and political issues have at times been viewed as invasive into the business of other branches of government. On the other hand, some cases of mega president, that is where the executive branch has overstepped the powers of the legislative department or compromised the independence of the judiciary branch, gives cause to worry in terms of democracy. Another factor between these branches is legislative stagnation, in which there are slowdowns or inactivity in enacting key laws.

For instance, in the case of the guidelines for sexual harassment in the workplace – Vishaka Guidelines and the Right to Food case it was positive that the judiciary intervened to attend to issues of non-interference by other branches. Although the interventions came with the noble aim of improving the welfare of the general public, they raised questions about the admissible uses of judicial activism.

## **Practical Implementation and Challenges of Separation of Powers and Checks and Balances in India**

### **Introduction**

Every democracy can hardly operate without the separation of powers, this is because it prevents one arm of government from dominating the others. In India, under the Constitution, there is a specified character of Legislature, Executive and Judiciary. This system is meant to foster checks and balances in the power wielded and at the same time take responsibility. However, there are several issues that organizations encounter while applying this principle.

### **Practical Implementation**

#### **Legislature**

With the system of the Indian Parliament includes The Lok Sabha, a House of the People, and The Rajya Sabha, a Council of States, it is the law-making body as well as the representative body and the evaluating body of the executive. Through several checks, the legislature is involved in the controlling process of the executive significantly. They can debate on matters of policy, call the Prime Minister or any other minister for an answer, and investigate government activities. "The Question Hour" is session time where members of the parliament grill ministers with questions that may be pointed. Further, parliamentary committees, like the Public Accounts Committee PAC and the Estimates Committee, deal with matters of investigation, bills scrutiny and govt. functioning. That is, these committees can requisition records and compel officials' attendance to demand accountability and disclosure. The Lok Sabha also has the power to implead a vote of no confidence against the government so that the executive branch is always subordinate to the legislative. An example is the no-confidence motion on V.P Singh as the Prime Minister in the year 1990. Parliament can change the Constitution through passed laws, although these changes have to go through the review of the courts. For example, the Constitution (42nd Amendment) Act, 1976 was a comprehensive amendment as it brought changes in many articles of the Constitution. Impeachment of the judges of the Supreme Court and High Courts for proven misbehavior or disability is also among the powers of Parliament. The impeachment process of Justice V. Ramaswami in is an example.

## **Executive**

The Executive mainly made up of the President, the Prime Minister, and the Council of ministers made up of ministers, is responsible for the administration of affairs of state, law-making, law enforcement, international relations, defense and management of the state. The executive can also check the legislature through some of the options like the presidential veto whereby the President can refuse to give his assent to the bills that are passed by Parliament. For instance, in 2006 President Dr A. P. J. Abdul Kalam kept the Office of Profit Bill in suspension. The President may also issue ordinances in cases that do not require an act of Parliament, which although enjoyed the force of law, require the Parliament's ratification once the Parliament reopens within six weeks. In the matter of the appointment of the judicial officers the executive participates in the process but this is done in consultation with the judiciary through the collegium system. Also, the President has influences of pardon, and may grant reprieves, respite or remission of punishment.

## **Judiciary**

The Judiciary, namely; Supreme Court and High Court is responsible for making decisions on rights interpretation, dispensing justice, upholding constitution and otherwise enforcing fundamental rights. The first mechanism is the system of checks, and balances vice versa the judiciary controls the legislature through the mechanism of judicial review by possessing the power to review the legislation passed within the parliamentary system. For instance, the Kesavananda Bharati case of 1973 recognized the Basic Structure thereby placing certain restraints on the Parliament's amendment power. Courts were defined as the interpreters of the laws and may declare certain laws as unconstitutional. The judiciary also checks the executive branch with regards to its activities with a view of ascertaining whether it adheres to the Constitution or not. An example where the Supreme Court seen to have checked the misuse of President's Rule by the executive is in the S. R. Bommai case in 1994. In this context, the judiciary plays the role of guarding the citizen's fundamental rights against any actions that may be considered as overboard by the executive arm of government. The recognised cases of this position are the Maneka Gandhi case (1978) which broadened the coverage of Article 21.

## Challenges in Implementation

Although the distribution of powers and the process of checks and balances are transparent at this level, there are several obstacles hindering the key constitutional principles in India.

### 1. Legislative Overreach and Inefficiency

This political maneuver detors the efficacy of the Parliament since relatively frequent use of this practice disables the legislative route. For instance the Land Acquisition Ordinance which was in disfavour was re-promulgated in 2014-2015 despite being thrice in defiance of the rigorous check and balances of the legislative scrutiny. Further, the problems of too many interruptions and the frequent prorogation of Parliament interfere with lawmaking. Major business, bills and other issues are either stalled or can hardly receive healthy discussion. During the Winter Session of Parliament in 2010, parliament became a theatre of unending disturbances, thus prompting a very low output of passed legislation.

### 2. Executive Dominance

Centralization of powers results in capturing the political power by the PMO thus leading to dominance of the executives over other branches. For example, during Indira Gandhi's time, the concentration of power in the PMO escalated to the point where ministers and other relevant institutions got marginalized. For example, the process of judicial appointments has at some point been accused of influence from the executive and a lack of openness even with the new system of collegium. The conflict about the National Judicial Appointments Commission Bill, NJAC in the year 2015 exemplified the confrontation of the judiciary with the executive branch.

### 3. Judicial Activism and Overreach

Courts have been quite active especially on Public Interest Litigations (PILs) occasioning criticism of judicial activism. Although the PILs have given many social causes, like Vishaka guidelines for protection against sexual harassment, the excess of the judiciary in the policy matters is not good and may cause overlap of the branches. Decisions that are more or less expected to be made by the executives or the parliament can also be considered as judicial overreach. For instance, the manner in which the Supreme Court ordered the interlinking of rivers was interpreted as an infringement on the executive branch's duties.

### 4. Weak Checks and Balances Mechanisms

The process of removing the judges has been cumbersome, and the procedure of impeachment has been rarely invoked raising issues on accountability. Another experience revealing the difficulties of judging a judge was the impeachment process in connection with Justice V.Ramaswami in 1993 despite the presenting fabricative proofs of misconduct. Parliamentary monitoring organs like committees are usually poorly endowed in terms of human and

financial resources to properly monitor the executives. The operation of these committees may also be hindered by politics.

The doctrine of separation of powers and the doctrine of checks and balances is very important in sustaining democracy in India. Of course, the Constitution does afford substantial protection for such matters, but getting them to work in the real world is far from easy. Regulations and laws lack efficiency due to the following reasons; legislative constraints, executive intervention, judicial encroachment, and poor supervision and monitoring. Solving these problems presupposes the changes that will improve the activity of each branch and the accountability systems. This will ensure a better and fair governance system which will in turn respect the provisions of the Constitution and the democratic dispensation.

Branch	Key Roles	Checks on Other Branches
Legislature	Enacts laws, represents people	Questions and debates, committees, no-confidence motions, constitutional amendments, impeachment of judges
Executive	Implements and enforces laws, conducts foreign relations, manages defense and administration	Presidential veto, ordinances, judicial appointments, granting pardons
Judiciary	Interprets laws, ensures justice, protects Constitution and fundamental rights	Judicial review, protection of fundamental rights, interpretation of laws

Challenges	Description	Examples
Legislative Overreach and Inefficiency	Frequent ordinances bypass legislative process, parliamentary disruptions hinder work	Land Acquisition Ordinance (2014-2015), 2010 Winter Session disruptions
Executive Dominance	Concentration of power in PMO, lack of transparency in judicial appointments	Indira Gandhi's tenure, NJAC controversy (2015)
Judicial Activism and Overreach	Excessive judicial intervention in policy matters, blurring lines between branches	Vishaka guidelines, interlinking of rivers order
Weak Checks and Balances Mechanisms	Cumbersome impeachment process, lack of resources and expertise in parliamentary oversight	Justice V. Ramaswami impeachment attempt (1993)



## **Key Judicial Decisions and Their Impact on the Interpretation of Separation of Powers and Checks and Balances in India**

In India, the judiciary has been very active in performing the constitutional duties especially in the area of constitutional interpretation so as to maintain the institutional structures of check and balances among the three arms of government. As the years went by, some significant court cases that played a crucial role in defining the principles are as follows. In the following section, we analyze some of the major judgements and their effect on the application of principles of separation of powers and checks and measures in India.

### **Kesavananda Bharati v. State of Kerala (1973)**

When it comes to Indian constitutional law, the Kesavananda Bharati case is right up there among the most well-known instances. The extent to which Parliament may make changes to the Constitution was the subject of this debate. Because they violated basic rights, the petitioner wanted certain amendments that Parliament had approved to the Constitution declared illegal. Parliament may have wide rights to amend the Constitution, but it cannot alter its fundamental framework, the court ruled. 'The Basic Structure theory,' put out in a subsequent case, suggested that some parts of the constitution, such the theory of separation of powers, cannot be changed through amendments. Because the legislature cannot pass laws that are in conflict with the Constitution, this judgment also made sure that the government's system of checks and balances was optimized. It confirmed the concept of judicial review, which allowed courts to strike down amendments that attempted to change the Constitution's fundamental framework, including the checks and balances.

### **Indira Gandhi v. Raj Narain (1975)**

It stemmed from the electoral alleged frauds of the then Prime Minister Indira Gandhi during 1971 election general. The high court of Allahabad convicted her which resulted in the disqualification. It was however subjected to a Supreme Court decision. The Supreme Court although in overturning the direct disqualification held other amendments to the Constitution (39th Amendment) which down played the election of the Prime Minister, as unconstitutional. The judgment also stressed that judiciary can interfere with the amendments and actions of the legislature and the executive branches of the government as to prevent the branch power from becoming dominant over other branches. It upheld the adage that even the president is subject to the laws of the land and thus strengthening of the institutions of democracy.

### **S.R. Bommai v. Union of India (1994)**

In this situation, the dismissal of several state governments was done in accordance with Article 356 of the Constitution, which, under specific conditions, allows the President to exercise his power over a state. As stated in the case 'M.S.Misra,' the petitioner was against President's Rule in Karnataka. The Supreme Court laid forth pretty detailed guidelines for implementing President's Rule a decade ago. Accordingly, the court ruled that state government dismissals should have the logic and applicability of Article 356 and that it might be subjected to judicial review. Additionally, the ruling strengthened the federal system and the power relation between the Centre and the states by ending the unjust dismissal of state governments by the President. It ensured that the judicial branch may examine actions taken by the executive branch, protecting the division of powers and the concept of checks and balances.

### **Vineet Narain v. Union of India (1997)**

The case was devised from a PIL, which was for preventing corruption related cases against top politicians and bureaucrats, popular as the Jain Hawala case. By the judgement of the honourable Supreme Court, the government set up an autonomous Central Vigilance Commission (CVC) to investigate CBI and different investigative bodies. The court underlined the fact that these agencies' authorities should not be affected by political influence. Doing so elucidated on the concept of an independent investigative machinery that should not be under the direct control of the executive arm thus enhancing on the check and balances within the system. It showed how the judiciary can be used to prevent the abuse of the society by the leadership by demanding for accountability.

### **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007)**

This case concern with the disqualification of some MPs for the cash-for-query scam in which MPs have taken money to ask questions in Parliament. The expelled MPs objected to the decision on the basis of excessive encroachment of the legislature's authority. The Supreme Court agreed with the decision to expel the member since the Parliament has the power to expel members for misconduct in order to protect the image of the Parliament. But at the same time the court also held that such actions can be challenged to ensure that they are not arbitrary. This case demonstrated how the judiciary deals with legislative privilege and its interface with accountability to meet the checks and balances functions without encroaching on the independence of parliament.

These two are among the most important judicial decisions that shaped the meaning and practice of the principles of separation of power and checks and balances in India. They have helped strengthen the judiciary to scrutinise the legislative and executive arms of government and guarantee that none of the arms trespasses the provisions of the constitution. Thus, through the formulation of doctrines like the Basic Structure Doctrine and claiming judicial supremacy by recommending judicial review, the Supreme Court of India has a significant part in the preservation of the envisaged balance of power and democracy in India. These are some of the decisions which show the flexibility of Indian Constitution to meet the new challenges while remaining stable at the base.

## Conclusion

The system of divide of powers and balances of powers are also very important for the effective operation of a democracy government since no branch has full control of the other branches and must ensure they check on each branch occasionally. In India these principles are included in constitution that outlines the functions and authority of the Legislature, executive and Judiciary branches of the government. However, the experience in the relations' practical application reveals problems, such as legislative dysfunctioning, executive predominance, and judicial encroachment.

A number of judgments have been landmarks in understanding or implementation of the doctrines of the separation of power and checks & balances in India. The landmark case of Kesavananda Bharati decided the Basic Structure Doctrine that keeps the fundamental part or structure of the Constitution beyond the alteration of the Parliament so as basic structure like separation of powers is not breached. Thus the observations in case of Indira Gandhi vs. Raj Narain again brought back the judicial review power in legislation and executive functions, thus to balance the three organs of the state. Through the S. R. Bommai case, the judiciary strengthened the role of the judiciary in review of the executive actions, especially the misuse of President's Rule and the federal structure of the country asserting that the executive should not take over the power of the state governments without proper reason. The Vineet Narain case brought in need of the independence of Investigative machinery which is not under the control of executive and the judiciary was aware of it.

These judicial decisions have indeed brought about shifts in the concept of separation of powers and checks and balances in operation in India strengthening the important watchdog role of the judiciary. It shows growth of the Indian Constitution that has evolved to meet the new situations of the country without under going any major change in the core principles. Solving the identified practical problems of these principles' implementation requires further improving the work of each branch and the development of accountability systems. Changes to the legislative process should have an essence of decreasing on the inefficiencies that Parliament suffers from in its task of making laws and scrutinizing the executive branch. The executive reforms that could be contemplated to counter this perceived

threat should centre on decentralization of power and openness of decision-making especially in the appointment of judges. Such reforms should strive to bring activism in the judiciary's activities so that it does not overstep the bounds of clearly distinguished branches of the government.

To summarize, it can be stated that the Indian Constitution most closely adheres to the principles of separation of powers and checks and balances; however, further vigorous actions are still required to prevent deviations from the theory and provide real protection against the crossing of the powers' boundaries. Thus, ensuring a proper balance and accountability in the governance structure will allow the country to develop demo-scrutiny and preserve the values of democratic system enshrined in the Constitution of India.