



Mains Marathon 2024

Day 15: The Indian Constitution reflects the principle of checks and balances rather than a strict separation of powers. Discuss. (250 words)

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Approach / Explanation / Answer

Approach

- Briefly explain the concept of separation of powers and the principle of checks and balances.
- Discuss the idea that the Indian Constitution adopts a system that incorporates checks and balances rather than a strict separation of powers.
- Conclude Suitably

Introduction

The Indian Constitution reflects the principle of checks and balances rather than a strict separation of powers. While the doctrine of separation of powers implies that each pillar of democracy - the executive, legislature and judiciary - performs separate functions and acts as separate entities, the Indian system ensures that these branches can regulate and balance each other's powers, preventing any single entity from becoming too powerful.

Body

Mechanisms of Checks and Balances in the Indian Constitution :

- **Legislative Oversight of the Executive:**
 - **Parliamentary Accountability:** The Prime Minister and the Council of Ministers are collectively accountable to the Lok Sabha (House of the People). This accountability is maintained through mechanisms such as Question Hour, debates, and discussions.
 - **No Confidence Motions:** The government can be dismissed by a vote of no confidence in the Lok Sabha, ensuring that the executive remains accountable to the elected legislature.
 - **Committees:** Parliamentary committees, such as the Public Accounts Committee and the Estimates Committee, scrutinize the executive's expenditure and policies, ensuring transparency and accountability.
- **Executive Control Over the Legislature:**
 - **Dissolution of Lok Sabha:** The President, acting on the advice of the Prime Minister, can dissolve the Lok Sabha, prompting new elections. This power ensures that the executive

can seek a fresh mandate from the electorate if necessary.

- **Legislative Proposals:** The executive can propose bills and policies, and the ability to shape legislation demonstrates the significant influence of the executive on legislative processes.
- **Judicial Review of Legislation and Executive Actions:**
 - **Judicial Review:** The judiciary has the power to review laws and executive actions to ensure they are constitutional. This power of judicial review acts as a crucial check on both legislative and executive actions.
 - Under Article 142, the Supreme Court functions as an Executive in order to bring about complete justice.
 - **Writ Jurisdiction:** The Supreme Court and High Courts can issue writs (such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari) to enforce fundamental rights and ensure that authorities do not exceed their powers.
- **Overlap and Cooperation:**
 - **Appointments and Removals:** The President appoints judges of the Supreme Court and High Courts, and the judiciary has a role in reviewing the legality of these appointments. Similarly, the President's powers are exercised on the advice of the Council of Ministers, which ensures executive accountability to the legislature.
 - **Legislative Control Over the Judiciary:** The Parliament has the authority to make laws affecting the jurisdiction and powers of the judiciary. Additionally, judges of the higher courts can be impeached by Parliament through a detailed process.
 - **Constitutional Safeguards:** The Constitution includes provisions to protect fundamental rights and ensure that any abuse of power by the executive or legislative branches is subject to judicial review.

Challenges to the Principle of Checks and Balances

- **Judicial Overreach:**
 - The judiciary has been criticized for encroaching upon the domains of the executive and legislature.
 - The Supreme Court has held the 99th constitutional amendment, which provided for the establishment of the National Judicial Appointments Commission as ultra-vires.
- **Executive Dominance:**
 - The executive branch, particularly under strong leadership, can exert significant influence over legislative processes, potentially undermining the checks provided by the legislature.
 - The use of emergency provisions under Article 352 and 356 has been controversial, as they grant significant powers to the executive, potentially bypassing legislative oversight.
- **Legislative Inefficacy:**
 - Frequent disruptions and inefficiencies in parliamentary proceedings can hinder effective legislative scrutiny of the executive.
 - Issues such as low attendance, political polarization, and lack of constructive debate often lead to the passage of important legislation without adequate discussion or review.
- **Political Influence on the Judiciary:**
 - Allegations of political influence and pressure on judicial appointments raise concerns about the independence of the judiciary.
 - This perceived lack of impartiality can weaken public trust in the judicial system and its ability to act as a check on the executive and legislature.

Conclusion

For a democratic polity and diverse society like India, a Constitutional system with strict separation of powers is undesirable and impracticable. However judicious and calculated constitutional functional overlapping makes way for democratic collaboration of the three organs of the government. Such mutual cooperation bridges the executive, legislative and judicial gap facilitating smooth functioning of government.

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