BLOGS

Separation of Powers and the Theory of Checks and Balances- II

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Introduction

The separation of powers establishes a system of checks and balances, where each branch has distinct powers and can limit or restrain the actions of the other branches. This system is designed to prevent abuse of power, promote accountability, and safeguard individual rights and liberties. By distributing power among different branches, it helps to maintain a system of government that is accountable, transparent, and responsive to the needs of the people.

Separation of Powers

The Indian Constitution also incorporates certain features that blur the strict separation of powers. For example, the President and state Governors have some executive powers, and members of the legislative branch can be appointed to executive positions. Additionally, the President has a role in the legislative process, as certain bills require the President's assent before becoming law.

Three important questions can be raised from an Indian Constitution perspective.

1. What are the specific powers and functions vested in the three branches of government?
2. What are the limitations imposed on such powers and functions.
3. What are the limitations that can be imposed on such powers and functions by the other two branches, i.e., checks and balances?

Check on Legislative Powers

1. Judicial Review: The judiciary, particularly the highest court in the country, has the power of judicial review. This allows the courts to examine the constitutionality of laws passed by the legislature. If a law is found to be inconsistent with the constitution, the judiciary can declare it invalid or unconstitutional.
2. Executive Veto or Assent: In many democratic systems, including some parliamentary systems, the executive branch (headed by the President or the Prime Minister) has the power to veto or withhold assent from legislation passed by the legislature. This provides a check on the legislature's power by allowing the executive to prevent the enactment of laws it deems inappropriate or unconstitutional.
3. Bicameralism and Legislative Scrutiny: In countries with a bicameral legislature, such as India, the presence of two legislative chambers (like the Rajya Sabha and Lok Sabha) provides a system of checks. Bills and legislative proposals must often be approved by both chambers before becoming law, allowing for a more thorough examination and scrutiny of legislation. The upper house, often representing regional or state interests, can act as a check on the lower house's decisions.
4. Parliamentary Committees and Oversight: Legislative bodies often establish various committees to oversee the work of the executive branch and hold it accountable. These committees can investigate government actions, examine policy decisions, and scrutinize the implementation of laws. By conducting inquiries and hearings, they ensure that the executive branch is acting within the boundaries set by the legislature

Check on the Executive Powers

1. Legislative Oversight: The legislative branch, typically through committees and hearings, exercises oversight over the executive branch's actions. This includes reviewing and scrutinizing executive policies, actions, and expenditures. The legislature can demand explanations, request documents, and conduct investigations to hold the executive branch accountable.
2. Confirmation and Approval: In many democratic systems, the legislative branch plays a role in confirming key appointments made by the executive branch. This ensures that executive officials are subject to scrutiny and approval by the representatives of the people. For example, the appointment of cabinet members, judges, and other high-ranking officials may

require confirmation by the legislature.

3. Budgetary Control: The legislature holds the power of the purse, meaning it controls the allocation of funds and approves the government's budget. This control allows the legislature to exercise influence over the executive branch's priorities and policies. The executive must seek legislative approval for its proposed budget and spending plans, providing an opportunity for scrutiny and negotiation.
4. Judicial Review: The judiciary, particularly the highest court in the country, has the power of judicial review. It can review executive actions, policies, and laws to ensure their conformity with the constitution and other legal standards. If the court finds executive actions to be unconstitutional or in violation of the law, it can strike them down or order remedies.
5. Impeachment: In some systems, the legislature has the power to impeach and remove executive officials, including the head of state or government, in cases of serious misconduct or abuse of power. Impeachment proceedings allow the legislature to hold the executive accountable for their actions.

Specific Limitations

Art. 329, Art – 122, Art. 262(1) and (2): Parliament may by law provide for the adjudication of any dispute or complaint with respect to use, distribution or sharing of powers between the three branches.

In the Indian system, besides broad separation, there is functional overlap, i.e., checks and balances. The Supreme Court has the power to declare void the laws passed by the legislative and the actions taken by the executive if they violate the constitution or law passed by the legislative in the case of executive actions. Similarly, it is open to a legislative body to act on the basis of the judgement.

The President of India, in whom the executive authority of India is vested, exercises law-making power in the name of ordinance.

- A check of the executive is that the "Council of Ministers" is responsible for the house of people. (Art. 75(3)
- The president may be impeached by the president. Art 61/56
- Judges can also be impeached by parliament (Art. 124(4)).

- President's power to assent the bill, Art. (1)

Check on the Judiciary

- The appointment and removal of the High Court and Supreme Court judges are done by the head of the executive, but now in practice, this power has been taken over by the Supreme Court. (Supreme Court Advocates on Record Association v. Union of India)
- The judges of superior courts may be removed through impeachment by Parliament on the grounds of incapacity and proved misbehaviour.

Supreme Court on Separation of Powers

In the **Delhi Law Act case,** Chief Justice Kania noted that despite the absence of an explicit provision for the separation of powers in the Indian Constitution, the responsibility for enacting laws primarily lies with the legislature.

In the case of **Rai Sahib Ram Jawaya v. State of Punjab** it was opined that the Indian Constitution does not acknowledge the absolute doctrine of separation of powers, as noted by the esteemed Chief Justice B.K. Mukherjea. However, the functions of distinct branches of government have been adequately distinguished.

In **Ram Krishna Dalmia v. Justice Tendolkar** the esteemed Chief Justice S.R. Das expressed his view that while the Indian Constitution does not contain a distinct provision for the separation of powers akin to the American Constitution, there exists an implicit allocation of powers among the legislative, executive, and judicial branches.

In Kesavananda Bharti v. State of Kerala Chief Justice Sikri asserted that the division of powers among the legislative, executive, and judicial branches constitutes a fundamental component of the Constitution's fundamental framework and is impervious to any manner of amendment.

Smt. Indira Nehru Gandhi v. Raj Narain pertains to a matter of law that was brought before the Supreme Court of India. In his statement, Justice Chandrachud noted that although the Indian Constitution does not expressly allocate the three types of power to distinct branches of the state, the principle of separation of powers should not unduly restrict the functions of these branches.

In the case of **Hari Shankar Nagla v. State of M.P.**, the Court determined that although some delegation to the executive is acceptable, the legislature cannot delegate the fundamental legislative power.

In **Asif Hameed versus the State of Jammu and Kashmir** the Court opined that while the doctrine of separation of powers is not acknowledged in an absolute sense, the Constitution delineates the roles of distinct state organs, and each organ is obliged to operate within its own domain.

In **Sita Ram versus the State of Uttar Pradesh, as reported in the All India Reporter in 1972** the learned Justice Hegde articulated the present court's stance on the delegation of legislative authority, recognizing the indispensability of delegation in the intricate contemporary society.

The aforementioned cases shed light on the viewpoints of the Indian judiciary regarding the principle of separation of powers and the distinct roles played by the legislative, executive, and judicial branches.

Conclusion

The fundamental objective of the division of powers and the implementation of checks and balances is to avert the accumulation of authority in any particular branch of government and to ensure the protection of the rights and freedoms of the populace. As societal changes persist, it is crucial to maintain these principles and guarantee their efficacy in promoting responsible, open, and democratic administration.