



## Checks & Balances

This article is based on [“The Red Lines”](#) which was published in The Indian Express on 27/11/2020. It talks about the issues and solutions related to the principle of checks and balances in Indian Polity.

Recently, the [All India Presiding Officers Conference](#) was conducted at Kevadia in Gujarat. The conference discussed many issues largely on the theme of harmonious coordination between the legislature, executive, and judiciary.

At the conference, the Prime Minister of India highlighted the ethos of separation of powers and checks & balances that are built into the Indian constitutional design.

However, recently [there are many instances](#) which undermine the [doctrine of separation of powers and weakens the system of checks & balances](#). This loss of integrity may erode people’s trust in the functioning of the government.

### The Doctrine of Separation of Powers

- Separation of powers is the division of the legislative, executive, and judicial functions of government.
- Since the sanction of all three branches is required for the making, executing, and administering of laws, it minimises the possibility of arbitrary excesses by the government.
- The constitutional demarcation precludes the concentration of excessive power by any branch of the government.

### Instruments of Checks & Balances

#### Legislature Control

- **On Judiciary:** Impeachment and the removal of the judges. Power to amend laws declared ultra vires by the Court and revalidating it.
- **On Executive:** Through a no-confidence vote it can dissolve the Government. Power to assess works of the executive through the question hour and zero hour. Impeachment of the President.

#### Executive Control

- **On Judiciary:** Making appointments to the office of Chief Justice and other judges.
- **On Legislature:** Powers under delegated legislation. Authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution.

#### Judicial Control

- **On Executive:** [Judicial review](#) i.e. the power to review executive action to determine if it violates the Constitution.
- **On Legislature:** Unamendability of the constitution under the [basic structure doctrine](#)

pronounced by the Supreme Court in Kesavananda Bharati Case 1973.

## Weakening System of Checks & Balances

- **Weakened Opposition in India:** Democracy works on the principle of checks and balances. It is these checks and balances that prevent democracy from turning into majoritarianism.
  - In a Parliamentary system, these checks and balances are provided by the opposition party.
  - However, the majority of a single party in the Lok Sabha has diminished the role of an effective opposition in the Parliament.
- **Weakened Legislature Scrutiny:** According to data by PRS Legislative Research, while 60% of the Bills in the 14<sup>th</sup> Lok Sabha and 71% in the 15<sup>th</sup> Lok Sabha were referred to Department-related Standing Committees (DRSCs) concerned, this proportion came down to 27% in the 16<sup>th</sup> Lok Sabha.
  - Apart from the DRSCs, there are negligible bills referred to Select Committees of the Houses or Joint Parliamentary Committees.
- **Judiciary Being Averse to Checks & Balances:** The Supreme Court has held the 99th constitutional amendment, which provided for the establishment of the [National Judicial Appointments Commission](#) as ultra-vires.
  - The National Judicial Appointments Commission (NJAC) could guarantee the independence of the system from inappropriate politicization, strengthen the quality of appointments, enhance the fairness of the selection process, promote diversity in the composition of the judiciary, and rebuild public confidence in the system.
- **Judicial Activism:** In many recent judgments, the Supreme Court has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive.
- **Executive Excesses:** Executive in India is alleged of over-centralisation of power, weakening of public institutions like CIC & RTI and passing laws to strengthen law, order & security of the state but curbs freedom of expression as well like UAPA.

## Way Forward

- **Introducing Legislative Impact Assessment (LIA):** A detailed framework for pre and post-legislative Impact Assessment was needed whereby every legislative proposal is evaluated on account of social, economic, environmental and administrative impact for wider awareness.
  - A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted.
  - This can check any overreach by the executive that may curb the civil liberties.
- **Strengthen the Role of the Opposition:** In order to strengthen the role of the opposition, the institution of shadow cabinet can be formed in India.

## Shadow Cabinet

- 'Shadow Cabinet' is a unique institution of the British cabinet system.
- It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office.
- In such a system each action of Cabinet Minister must be countersigned by the minister in the shadow cabinet.
- **Judiciary Should Lead By Example:** Supreme Court is the custodian of the constitution that checks any overreach by legislature and executive. Therefore, the judiciary should lead to the adherence of maintaining constitutional morality by proactively making the collegium system transparent.
  - Until a better mechanism is evolved, the Supreme court can take steps to make collegium more transparent and accountable to make it's functioning democratic.

## Conclusion

Repeated interventions of one organ into another's functioning can diminish the faith of the people in the integrity, quality, and efficiency of the other organs. It also undermines the spirit of democracy as too much accumulation of powers in organs of government undermines the principle of check and balance.

***Drishti Mains Question***

Repeated interventions of one organ into another's functioning can diminish the faith of the people in a democracy. Discuss.

This editorial is based on [“Vexatious Dragon, Resolute India: Strong India, to keep China’s rise peaceful”](#) which was published in The Economic Times on November 26th, 2020. Now watch this on our Youtube channel.

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