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Q1

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.

UPSC Civil Services Mains 2019 · GS II · 10 marks · Separation of Powers

Separation of powers between various organs; dispute redressal mechanisms and institutions.

Core demand of the question

- State whether the Constitution of India accepts a strict separation of powers
- Explain how it is instead based on checks and balances

Revision summary

India does not follow a rigid American separation of powers.

Ram Jawaya Kapur (1955) treated the Cabinet as part of a parliamentary legislature.

Articles 13, 32 and 226, charged judicial salaries, and a hard removal process are mutual checks.

Kesavananda and Minerva Mills keep judicial review inside the basic structure.

The design is checks and balances, not sealed branches.

Introduction

A strict separation of powers would keep the legislature, the executive, and the judiciary in sealed boxes, as in a pure reading of Montesquieu. The Constitution of India copies the functions of those three organs, but it also lets each organ check the others. The Supreme Court said this plainly in **Ram Jawaya Kapur v. State of Punjab (1955)**: India does not follow a rigid American separation.

Body**No strict separation**

- **Articles 53 and 74** place executive power in the President, who acts on the aid and advice of the Council of Ministers, so the political executive sits inside the legislature through **Articles 75 and 88**.
- Ordinance power under **Article 123**, and the power of the Houses to punish for contempt of themselves, mix law-making with executive and quasi-judicial work.
- **Article 50** asks only for separation of the judiciary from the executive in the public services of the State; it is a Directive Principle, not a wall between all three organs.
- Delegated legislation, parliamentary committees that examine the executive, and judges sitting on commissions show daily overlap of functions.
- Ram Jawaya Kapur held that the Indian design is a parliamentary system in which the Cabinet is a part of the legislature, not a rival sealed branch.

Checks and balances in the text

- **Articles 13, 32, 136, 141, 142 and 226** give courts the power to strike down statutes and executive acts; that is a judicial check on the other two organs.
- **Articles 121 and 211** bar discussion of a sitting judge except on a removal motion; salaries of judges are charged, and removal needs a parliamentary address, so the legislature cannot casually punish the Court.
- Parliament can impeach a judge, create courts under **Articles 124 and 247**, and amend the Constitution under **Article 368**, which is a political check on the judiciary.
- The President and Governors, the Rajya Sabha's share in some appointments, and **Article 356** as read in **S.R. Bommai v. Union of India (1994)** check the Union executive in the federal field.
- **Kesavananda Bharati v. State of Kerala (1973)** placed separation of powers and judicial review inside the basic structure, so even an amendment cannot wipe out the balance.

How the balance works in practice

- **Indira Nehru Gandhi v. Raj Narain and Minerva Mills v. Union of India** show the Court stopping Parliament when it tries to make itself the last judge of elections or of fundamental rights.
- The executive checks the Court through the collegium's need for a Memorandum of Procedure and through the power to appoint after consultation; the failed **National Judicial Appointments Commission** still shows the tension, not a sealed separation.
- **A fair explanation therefore agrees with the question:** India chose checks and balances, not a strict separation of powers.

Flow diagram

Three organs in the text -> Functional overlap
 Three organs in the text -> Checks and balances
 Checks and balances -> Arts 13 32 226 review
 Checks and balances -> Parliament removal and money
 Checks and balances -> Kesavananda basic structure
 Arts 13 32 226 review -> Balanced constitutional government

Conclusion

The Constitution does not accept a strict separation of powers. It assigns functions to three organs and then binds them through judicial review, parliamentary control, charged salaries, and the basic-structure limit. That is the Indian principle of checks and balances.

Facts & figures

Ram Jawaya Kapur v. State of Punjab (1955)

Held that the Indian Constitution does not recognise a rigid separation of powers and that the executive is part of the parliamentary system.

Article 50

Directive Principle asking the State to separate the judiciary from the executive in public services; not a full Montesquieu wall.

Articles 121 and 211

Bar discussion of a sitting judge's conduct in Parliament or a State legislature except on a removal motion.

Kesavananda Bharati v. State of Kerala (1973)

Listed features such as judicial review and separation of powers among those that **Article 368** cannot destroy.

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

Subjected **Article 356** to judicial review and treated secularism and federal limits as checks on executive power.

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