

Working of the Constitution on Check & Balance Theory

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Abstract - In the United States Constitution, there is a framework designed to limit the amount of authority each branch of government possesses. Our government relies heavily on a system known as "checks and balances." This essay examines how the checks & balances theory has been applied & constitution in the US constitution with reference to foreign policy. Using a system of checks and balances, one area of government is able to exert control over another. Overlapping powers are designed to keep one part of the government from gaining too much authority. The principle of limited government is a foundation of the American political system. When it comes to maintaining a level playing field, a three-branched government is essential.

Keywords - Checks and Balances, Separation of Powers, Constitution, Working Mechanism

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INTRODUCTION

Political science's fundamental fields of study, such as democracy, constitutional engineering, & constitutionalism, have been increasingly popular in recent decades, both in the academic community and in younger countries that are attempting to implement constitutional democracy. Countries first looked to other countries they considered "role models" for inspiration (e.g. Nigerian studies of the U.S. constitution & Federalist Papers). Countries that are active in constitutional engineering have recently focused more on countries that have encountered similar problems, such as diverse populations, ethnic & religious differences, cultural & socioeconomic trends, and so forth. 1 This essay will examine how the separation of powers principle's check and balance mechanisms have been applied. This essay will also examine the connections between foreign policy and this mechanism and philosophy. In ancient Athens, the concept of checks and balances and the division of powers was prevalent throughout the council and assembly. To the council, assembly, and citizens, the thought of concentrating power in one person or one institution created political hazards. There has always been and always will be intrinsic importance in the symbolism of this latter fear of concentration of power leading to political peril. Montesquieu, Rousseau, Locke, and others laid down the foundations for the modern division of powers in their great works. Each citizen's right to political liberty must be upheld through upholding the constitution. There are many different ways in which constitutional law is enforced, & academics have a responsibility to examine these issues honestly and critically. This is the opinion of the author.

The Constitution's checks and balances are in place to ensure that the three branches of government are kept apart from one another. Even while each branch has its own duties, this ensures that the other parts of the government can object & take action if one of those branches is deemed to be unconstitutional in its actions. In the United States, the 3 branches are:

- Legislative branch
- Executive branch
- Judicial branch

In order to prevent one arm of government from dominating the others, the checks and balances system was established during the drafting of the Constitution. To better understand how checks & balances work, this course will present examples for each branch of government and explain how they work.

Working of Checks and Balances

There are three branches of the United States government: legislative, executive & judicial branches. Each branch has its own checks and balances. The federal and state constitutions bind it to the principles & activities that are permitted by a constitutionally restricted government.

A system of checks and balances is essential in any company or organization when a single person has the power to make choices that have a significant impact on day-to-day operations. Internal & external

theft can be difficult to detect without the use of checks and balances, which can be both expensive & inefficient.

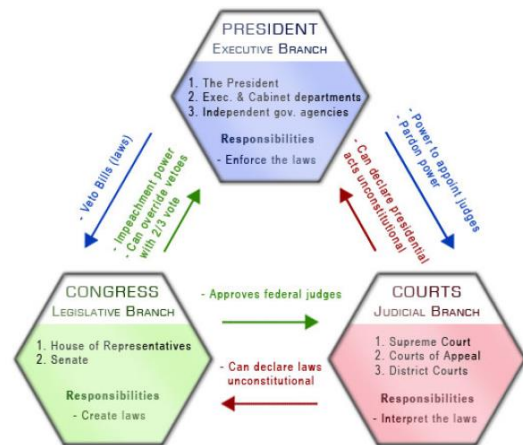
To ensure that rogue employees or executives cannot harm a company without the participation of other employees, businesses & organizations need to carefully divide the duties of diverse employees into clearly defined roles. A company's operational efficiency may benefit from the use of certain sorts of internal controls.

Checks and balances are used in the internal control systems of publicly listed companies in the United States. The Sarbanes-Oxley Act stipulates this as a necessity. An internal control system that incorporates checks and balances is required by law for the directors of these companies.

There had to be a new kind of government established after the American Revolution. The Articles of Confederation were the country's first attempt at self-government. The goal of this constitution was to prevent the formation of a new monarchy by spreading political authority away from the national government. Nevertheless, this governmental structure failed miserably because of its lack of authority to deal with the demands of an expanding nation. A new constitution with a more powerful national government was drafted in response to the Articles of Confederation's flaws. In 1787, however, the Constitutional Convention remained concerned about the perils of an overly concentrated political authority. For James Madison, who was a key figure in the founding of the United States, the concentration of power in the hands of a small number of people, whether they be hereditary or self-appointed or elected, was "the very definition of tyranny." Constitutional framers recognized this problem and devised a two-tiered system to limit the concentration of power.

Separation of powers was the initial step in the process. Key political authorities were separated into three branches in order to ensure that the allocation of governmental authority was equitable and that the branches were kept in control. Legislation was the responsibility of the legislature. Laws were enforced by the executive branch. The judiciary, the final body, was granted the authority to decide conflicts involving national problems. Separation of powers did not satisfy the founding fathers, who questioned whether or not it would keep the various branches of government distinct. The concept of checks and balances was incorporated into the constitution as a way to ensure that political power was being held in check at all times. As a political mechanism, checks and balances requires the branches to share important powers and

provides each branch some control over the other branches. Each branch's political authority is checked by the other two branches, ensuring that power is evenly distributed among the three branches.



SEPARATION OF POWERS

"Separation & independence of government's legislative, executive, and judicial branches. Separation between the legislative, executive and judicial departments has been suggested as a way to minimize government's capacity for arbitrary overreach. Constitutional separation of powers aims "to avoid any hazards of excessive political authority of one branch over the others and/or beyond the citizens' needs and/or the state's fundamental interests," according to a statement.

"Washington" model's well-known symbolism of the separation of powers between the executive and legislative branches of government. The meaning of the separation of powers has evolved through time from "a government of different institutions sharing authority" to "a government of separate institutions fighting for shared power." Separation, Sartori claims, means that the executive is separated from parliament, whereas power sharing means that the executive relies on and relies on parliament's support. 26 The separation of powers in the US Constitution is based on these standards. As a result, neither the President nor the Legislative Branch can dissolve the executive branch or intervene in its internal affairs. Separation of powers dictate that "particularly cannot dismiss (impeachment aside) a president." It is Sartori's contention that the American model, that is known as the Washington model, is defined not by its checks and balances, but rather by "an executive power that subsists in separateness — on its own right as an independent body."

CHECKS AND BALANCES IN THE WORLD ECONOMY

An international court of justice, an assembly, a council on economic and social affairs & secretary-general are just six of the United Nations' six internal bodies.

International peacekeeping, policy analysis & recommendations on economic, social & environmental issues, as well as an international court are only some of the obligations that each of these organizations is tasked with.

They can't influence each other, and neither can the people working in these bodies. It's vital that different UN directives are handled by different entities in order to avoid a concentration of power because the UN has a vast worldwide influence & affects most governments across the world.

Example of Checks and Balances

The three branches of the U.S. government, the legislative, executive, & judicial, are separated by the U.S. Constitution, which provides checks and balances for the government. In order to prevent any one branch of government from amassing an overwhelming amount of authority, the Constitution grants each of these three branches particular powers.

The U.S. government uses the following methods to ensure that the system is working properly. As the legislative branch passes legislation, the executive branch grants the president veto authority, which allows the president to keep the legislative branch from overreaching its boundaries.

Laws passed by the legislature may be deemed valid by the legislative branch but may be declared unlawful by the judicial branch.

Additionally, a two-thirds "supermajority" vote by both houses of Congress is required to overturn a veto by the executive branch. Presidents can't utilize their power for personal benefit because of this. The executive branch has the power to issue executive orders that indicate how particular laws should be executed, but the judiciary has the power to rule these orders unlawful.

Executive Orders

When an executive order is issued for the good of the country, it is rarely viewed as unconstitutional by the courts. For example, on April 19, 2016, President Obama issued an executive order banning all Libyans from entering the United States, as well as excluding all Libyans from owning property in the United States. 2 The president's directive was upheld by the judiciary in this case.

Another illustration of Trump's executive power is his declaration of a national emergency on Feb. 15, 2019, to free up billions of dollars for a projected border wall after attempts to get the financing approved through Congress failed.

LITERATURE REVIEW

Maslii et al. (2021) The U.S is well-known for being one of the world's most politically stable countries. As a result of the stability of the American political system, a system of checks and balances was created. It was not long ago that the United States of America was not the democratic country it is today. Since the American political system has evolved over the course of more than two centuries, it can be attributed to the Constitution's enshrined flexibility. The Constitution of the United States of America is a condensed document of less than 8,000 words. It doesn't cover every aspect of the country's operations, but it provides clear principles that must be followed by the President and Congress in drafting laws and the courts in interpreting them. Alexis de Tocqueville, an American thinker, observed that American constitutionalism was able to put the classical ideals of separation of powers into effect in the United States. It was also noted that in the United States, emphasis is paid to the judiciary's contribution to state power separation mechanisms, whereas in the theoretical advancements of European scholars, this topic has not been adequately addressed [3, p.72]. As a result, the thinker voiced concern that the judiciary's independence and autonomy are so high that it is sometimes unable to be affected by the administrative and legislative branches of government. Separation of powers prohibits the use of one power over another or at the expense of another, because it requires both delineation and interaction. In practice, the balance of power in the United States does not remain constant because of the constant battle between the legislative and the administration, which often favors the latter.

LakshitLashkarBhadu et al. (2021) Tyranny can be defined as "the concentration of all the powers of legislative, executive & judicial in the hands of the same person whether it is one, a few or many and whether it is hereditary, self-appointed or elected."

Madison, James Separation of powers and the rule of law are intertwined in fundamental ways. Absolute power should not be exercised at the whims of those who hold it in a system defined by the rule of law. As a result, the possibilities of a body wielding power capriciously increase as there is no repository of authority to begin with. In spite of their philosophical differences, both appear to have advocated against the acceptance and growth of administrative law over time.

The administration, judiciary, and legislature are the three branches of government that represent the people & their will in our country, and they are in

charge of ensuring that a democratic government operates smoothly. Legal issues often arise when one or more of these three branches—the legislature, the executive branch, or both come into conflict about who is in charge of enacting and enforcing legislation. As a result, they are all constituent parts of the federal government, and their responsibilities and duties frequently overlap because the three cannot be considered separate entities. Not only has this sparked heated political controversy in the United States, but it has also sparked philosophical and jurisprudential disagreements among legal scholars. To what extent should there be a total division of powers or an organized framework for the distribution of powers therefore becomes the central question. As part of the assignment, students must first review the history of the doctrine of separation of powers before delving into its nuances. Focus will then turn to the UK and US before comparing the situation in India, where a complete knowledge of the doctrine under our parliamentary style of government will be made. In order to follow the development of this dispute, landmark cases will be examined. Following this proviso, we would discuss how the system of checks and balances and how this paradoxical idea coexist in our constitutional framework would be implemented.

BakhtMunir et al. (2020) It's no surprise that Pakistan is no exception to the constitutional principle of separation of powers outlined in the U.S. Constitution. This paper uses qualitative research models to explore the following topics: the origin & evolution of the theory of separation of powers with regard to formalist & functionalist theories, the utilization of tripartite government in the context of Pakistan, why the use of could not receive its due appreciation in Pakistan, the function of the military as a supplemental unavoidable stakeholder in the evolvement of tripartite government While describing how state institutions can help establish their jurisdictional boundaries to avoid confrontation, this essay also indicates that self-realization of restrictions can play a significant role in the transition of institutional demarcations to understand constitutionalism's spirit.

Mudassir Nazir et al. (2017) Separation of powers refers to the relationship between the legislative, executive, & judicial branches of government. This principle dates back to Plato & Aristotle's time, and it has been around ever since. This is the first time that Aristotle & Locks have laid out a framework for categorizing government duties into three categories: deliberative, magisterial, and judiciary. Locks classed the government's powers into 3 categories: continuous executive & federative. The terms "continuous executive authority," "discontinuous legislative power," and "federative power" all refer to the same thing: the ability to make and enforce rules. When Montesquieu published *L. Esprit Des Lois (The Spirit of Laws)* in 1748, he introduced the concept of division of powers for the first time.

Ibnu Sina Chandranegara (2017) On the Subject of Research It is common to see "checks and balances"

referred to in legal studies as a doctrine, principle, or legal theory, or perhaps the formula for political power. It has been documented in history that concerns about constitutional separation, division, and smelting power are topics that are frequently brought up both before and after the constitution is established. As a result, determining the proportion & posture of checks and balances in the constitution is an important topic. Legal normative methodology will be used in this study, while comparative studies on the constitution will be undertaken utilizing both classic & contemporary constitutional law literature. This study will employ a variety of methods, including historical, political, and economic ones, in order to gain a better understanding of the checks and balances that are found in many national constitutions. The conclusion of this paper is that power can be divided in a variety of ways. Some constitutions use a variety of divisions, while others use just a handful. For all countries at all times, there is no one right way to share power. What really matters here is that different methods of distributing power have varying outcomes. Constitutionalists have spent a lot of time studying the impact of various ways to divide power, both alone and in combination, because checks and balances are at the heart of constitutionalism. However, no constitutional system is perfect; there is always a cost or a trade-off to consider when making a decision. Constitutions can be crafted in such a way that they are more inclusive than stable, or they can be more exclusive while still maintaining a pattern of political offense. Constitutional politics can arise from systems that prioritize ideology over local interests, from those that prioritize local politics over ideology, and so on. There are positives and negatives to any system.

Mr Abhishek Bajaj (2017) Separation of powers deals with the relationship between the legislative, executive and judicial branches of government, as well as their interdependence. These principles strive to establish clear lines between the three branches of government, making it impossible for any one branch to exercise any authority over the others. French scholar Montesquieu found that tyranny emerges from the concentration of power in a single individual or a group of individuals. In order to ensure that the government's power was decentralized to prevent arbitrariness, he argued that the legislative, executive, and judicial branches of government should all have equal authority. A fundamental tenet of organ autonomy is that no one organ should fulfill the functions of another. A key impact on the American and French Revolutions, as well as subsequent democratic and constitutional movements, was this school of thought. "Separating power on behalf of what?" is the more specific question we must address. Democracies are the first and highest ideals to strive for. Separation can help or hurt the goal of people self-government in several ways. Professional competence is the second ideal. Until courts and bureaucracy can apply democratic laws fairly, they are just words on a page. The third ideal is to safeguard and improve fundamental

rights. Democratic government & professional administration can easily become tools of tyranny if they aren't supported by these factors.

Prothama Dutta Roy et al. (2017) In most democratic systems, the legislative, executive, and judicial branches are the three most essential working bodies. As Montesquieu stated, this research will concentrate on the construction of a concept that distinguishes their functioning in a crude and critical manner; discussing the advantages and disadvantages of this notion. Negative viewpoints on his fears will be part of the investigation. The doctrine's importance and, thus, the necessity of implementing it in a democratic society, are discussed in the following study. As part of the discussion, a brief description of how the United States has implemented separation of powers in its democracy will be given, which will lead to a specific attitude toward developing democracy. India's Constitution has the theory in its fundamental framework, and the importance of incorporating it will be extensively explored. There have been many instances where democracy has fallen short of its full potential because of the doctrine's rigid insistence on rudimentary division, which will be discussed in depth in the following paragraphs. The study will also examine the connection between democracy and the separation of powers in order to provide more clarity on the matter at hand. Democracies can only function properly when all of the system's components work together as a cohesive unit, which is impossible if the organs of the system aren't functioning independently of one another, which is why the probe must include a solution that has been tested or at least has the potential to be tested.

CONCLUSION

In their constitutions, there are provisions for the separation of powers and a system of checks and balances. For any country to function well, citizens must exercise critical judgment and be involved in processes that ensure checks and balances are in place, even if they do so against their better judgment. However, the legislative and judicial arms of government, who currently hold the ability and competence to uphold the checks and balances mechanism, hold the most sway in shaping the implementation of that system.

REFERENCES

1. Bajaj, M. A. -"SEPARATION OF POWER IN INDIA IN ITS DILUTED FORM". AGU International Journal of Research in Social Sciences & Humanities <http://www.aguijrssh.com> (AGUIJRSSH) 2017, Vol. No. 5, Jul-Dec e-ISSN: 2455-1554; p-ISSN: 2455-6084
2. Bhadu, LakshitLashkar, Separation of Powers: A System of Checks and Balances (March 1, 2021).
3. Borchard, Edwin M., 1946. American Government and Politics: Treaties and Executive Agreements. The American Political Science Review vol. 40, No. 4 (Aug., 1946), pp. 729-739
4. Chandranegara, I. S. (2017). Genealogy of Checks and Balances Formula on the Constitution. *IMC 2016 Proceedings*, 1(1).
5. David Gray Adler, Foreign Policy and the Separation of Powers from Judging the Constitution
6. Dutta Roy, P. (2017). Strengthening Democracy-A Study with Reference to Separation of Powers. Available at SSRN 2996099.
7. Gwyn, William B., 1965. The Meaning of the Separation of Powers. Tulane University New Orleans.
8. Maslii, M. S. (2021). Features of the distribution of power of the united states through the prism of the system «checks and balances» (Doctoral dissertation, National Aviation University).
9. Munir, B., Cheema, Z. I., &Riaz, J. (2020). Separation of Powers and System of Checks and Balances: A Debate on the Functionalist and Formalist Theories in the Context of Pakistan. *Global Political Review*, V(III), 11-23. [https://doi.org/10.31703/gpr.2020\(V-III\).02](https://doi.org/10.31703/gpr.2020(V-III).02)
10. Nazir, Mudassir and Ahmad, Tauseef and Khan Afghani, Mohammad Aman, Separation of Power: A Comparative Analysis (June 9, 2018). *Commonwealth Law Review Journal*, Volume 3, September 2017, Available at SSRN: <https://ssrn.com/abstract=3193479>
11. Teacher, Law. (November 2013). Checks and Balances within the United States Constitution. Retrieved from <https://www.lawteacher.net/free-law-essays/constitutional-law/checks-and-balances-system-of-government-constitutional-law-essay.php?vref=1>
12. Zabavska, K. (2018). Political Analysis of the Checks and Balances System Main Elements. *Humanitarian vision*, (4, Num. 2), 7-13.

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