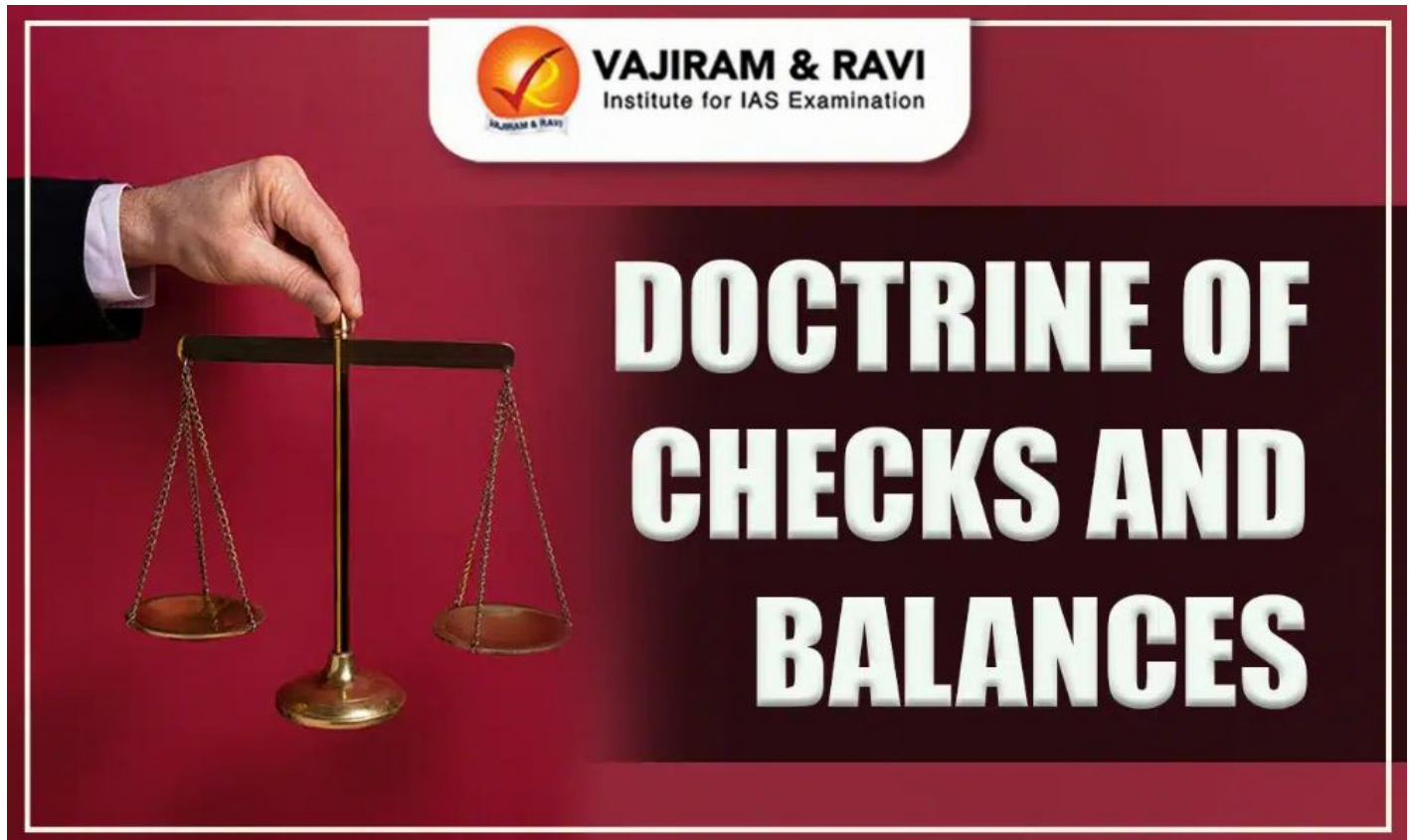


Doctrine of Checks and Balances

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What is the doctrine of checks and balances?

The doctrine of checks and balances states that each organ of the government shall act on the other organs in such a way as to prevent them from becoming totalitarian and to prompt them towards fulfilling their constitutional obligations.

- Checks and balances manifest through various procedures set in place to reduce errors, prevent improper functioning, and decrease the risk of centralization of power.
- Various provisions under the Indian Constitution provide for checks and balances in the governance framework of the Indian State.

What is the relationship between the doctrine of separation of powers and the checks and balances?

The doctrine of separation of powers is a fundamental principle in a democratic government, which entails dividing the powers of the state into three separate branches: the legislative, executive, and judicial. Checks and balances are designed to maintain the system of separation of powers, keeping each branch in its place.

- And so, the Indian Constitution does not accept the principle of strict separation of powers rather, it mostly relies on the principle of checks and balances
- This **pairing of separated powers with an intricate system of checks and balances** is designed to give each branch fortifications against encroachments by the others.
- The aim of this principle is to **prevent the concentration of unchecked power** and to provide for checks and balances, in which the powers of one branch of government are limited by the powers of another branch to prevent abuses of power and avoid autocracy.

What are the various instruments of checks and balances under the Indian polity?

Checks and balances between Legislature and Executive

Legislature control on Executive	Executive control on Legislature
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• Article 61: Provision for the Impeachment of the President by the Parliament. • Article 75: Calls for a responsible government where the council of ministers shall be collectively responsible to the House of people. • Through the use of legislative devices like - ◦ Question Hour ◦ No-confidence Motion ◦ Vote of Thanks on the President's address. ◦ Approval of Budget • Parliamentary committees: They study and deliberate on a range of subject matters, bills, and budgets of all the ministries and ensure checks to the Executive.	• Article 85: The President can summon, prorogue both Houses of Parliament and dissolve the House of People from time to time. • Article 86: The President may send messages to either House of Parliament with respect to a Bill then pending in Parliament or otherwise. • Article 103: President finally decides on the disqualification of the members of Parliament based on the opinion of the Election Commission. • Article 108: The President can summon a joint sitting for both houses of the Parliament. • Article 111: Veto Power of the President of India where he/she can exercise an absolute veto, suspensive veto or pocket veto with regard to legislative bills. • Article 118: President makes rules for the procedure with respect to the joint sitting of the Parliament after consultation with the Chairman and the Speaker. • Article 123: The President may promulgate ordinances when the Parliament is not in session. • Delegated legislation: Where the executive makes rules and passes orders to give effect to the laws.
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Checks and balances between Legislature and Judiciary

Legislature control on Judiciary	Judiciary control on Legislature
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• Article 124: Judges of Higher Judiciary can be removed by order of the President only after the address by each house of the Parliament. • Article 124: Parliament prescribes the total strength of the Supreme Court. • Article 138: The Supreme Court shall have such jurisdiction and further powers with respect to any of the matters in the union list as the Parliament may by law confer. • Article 140: The Parliament has the power to confer upon the Supreme Court such supplemental powers as necessary. • The legislature has the power to amend laws declared ultra vires by the Court and revalidate them.	• Article 13: Power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void if it finds them to conflict with the Part III of the Constitution. • Doctrine of Basic Structure: In Kesavananda Bharati (1973), the Supreme Court held that Parliament can amend the Constitution only to the extent that it does not alter its “basic structure”. • Article 142: The Supreme Court in the exercise of its jurisdiction, may pass such decree or order as is necessary for doing complete justice. • Article 32 and Article 226: The Higher judiciary can issue writs, orders or directions.
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Checks and balances between Executive and Judiciary

Executive control on Judiciary	Judiciary control on Executive
• Article 124 and Article 217: The President appoints all the judges of the higher judiciary. • Article 124: Also, a Judge of the Supreme Court shall be removed by an order of the President passed after an address by each House of Parliament. • Article 145: The Supreme Court can make rules for regulating the procedure of the court with the approval of the President. • Article 72: The Constitution provides the President with clemency powers as a check against judicial errors.	• Article 13: Power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void if it finds them to conflict with the Part III of the Constitution of India. • Article 32 and Article 226: The Higher judiciary can issue writs, orders or directions against the executive action. • Article 142: The Supreme Court, in the exercise of its jurisdiction, may pass such decree or order as is necessary for doing complete justice.

What are the various factors which undermine the principle of checks and balances?

The system of checks and balances is designed to prevent any one branch of government from becoming too powerful and abusing its authority. However, there are several limitations to this system:

- One issue is the **lack of clear demarcation** and separation of powers between the different branches of government, leading to **overlaps** and **conflicts**.
- Another issue is the **concentration of power** in the Executive branch, particularly the **Prime Minister's Office**, which can lead to a lack of accountability.
- The Judiciary has been criticised for **judicial overreach**, which implies excessive interference of the judiciary with the legislature and the executive.
- **One party dominance** in the house of people, instances of **bypassing parliamentary accountability mechanisms such as standing committees**, is eroding the checks of the Legislative over the Executive.

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