

21/11/19  
8.2.  
Comment on the nature of the separation of powers envisaged by the constitution of India. How successful has been the constitutional scheme in the Indian context? Discuss.

Unlike the complete separation of powers of the legislature, Executive and Judiciary in the American constitution, the Indian Constitution provides for a system of checks and balances with overlapping functions.

Salient Features:

(i) Parliamentary System:

↳ The Prime Minister and his/her Council of Ministers are drawn from the Indian Parliament and hence they act both as an executive and a legislator.

(ii) Judicial Appointments:

↳ Though the Collegium recommends the name of Judges, the government may reject to recommend the names to the President.

(iii) Flexibility between Legislature and Judiciary:

In USA, the Supreme Court's decision is final while in the U.K. the Parliament's decision is final. The Indian Constitution

provides for flexibility. The judiciary can declare any law or executive action null and void while, the legislature can pass new laws circumventing Judicial pronouncements.

Success of the Concept of Checks and Balances:

↳ Ordinance Misuse of Ordinance making power of executive to circumvent legislature.

↳ Superseding Judicial Appointments like that of during emergency, etc can be seen as drawbacks of not entirely having a system of separation of powers.

However, we have come a long way of over seven decades with the constitution. It is our duty and responsibility to act and work harmoniously to overcome such drawbacks and work towards successful implementation of the constitutional provisions.