

Q2) 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.

Answer:

Separation of powers is a doctrine in which three organs of the government, the legislative, the executive and the Judiciary have separate functions and powers. The one organ of the government does not interfere in the functioning of the other.

Nature of the Separation of Power:

- To prevent the absolute power at one hand creating despotism, Nepotism, Corruption and Autocracy.
- Abuse of power can be prevented.
- To reinstate the democracy with checks and

Balances.

- It forms the basic structure of the Constitution.
- Checks and Balances in the Constitution:

* Article 50 of the Indian Constitution mentions the separation of Judiciary from Executive, the division of power. This is because, the law implementing body ~~is~~ Executive cannot deliver justice impartially. But under Article 72, President can grant a Punishment or sentence of the Judiciary in his executive capacity, to ~~the~~ correct judicial errors and to offer relief from harsh punishments.

* The President can also legislate laws when the parliament is in recess. This ordinance making power under Article 123 overlaps the legislative function of the legislature.

* Judiciary has the power to check the lawfulness of a decision by the government and the laws enacted by the legislature under Judicial Review using Article 13.

So unlike American doctrine of separation of powers which is absolute, Indian Constitution does not strictly enforce the separation of powers and functions. Rather it is a unique blend of separation with overlapping functions rightly crafted to act as the checks and balances of the organs.