

American Constitution is a system of checks and balances. Explain and illustrate the statement.

How the system of checks and balances works in the US political system? Explain with examples.

ANS:-

Introduction:-

"The basic premise of the Constitution was a separation of powers and a system of checks and balances because man was perceived as a fallen creature and would always yearn for more power."

Roy Moore

Building on the ideas of Polybius, Montesquieu, William Blackstone, John Locke and other philosophers and political scientists over the centuries, the framers of the U.S. Constitution divided the powers and responsibilities of the new federal government among three branches: the legislative branch, the executive branch, and the judicial branch. The framers built a system of checks and balances designed to guard against tyranny by ensuring that no branch would

would grab too much power. The system of checks and balances works in practice in the United States; if one branch is given the power to take a given action, and another branch (or branches) is given the responsibility to confirm the legality and appropriateness of that action. This check and balance system is one of the most powerful weapons in the US Constitution which makes it one of the most important written documents in the world.

Necessity for Checks and Balances:

To weaken the authority of government, the fathers of the Constitution introduced checks and balances, so that one organ obstructs the other. They possibly apprehend that an organ of the government left to it completely, might degenerate and misuse its power, thus becoming tyrannical and oppressive. The Constitution has, therefore, provided for a system of internal checks and balances.

"If men were angels, no government would be necessary. In framing a government which

is to be administered by men over men, the great difficulty is this: you must first enable the government to control the governed, and in the next place, oblige it to control itself."

James Madison wrote in the Federalist Papers, of the necessity for checks and balances.

How the system of checks and balances works:-

Check and balances operate throughout the U.S. government, as each branch exercises certain powers that can be checked by the powers given to the other two branches. System of checks and balances can be studied as,

- A. Legislative check over Executive
- B. Executive check over legislative branch
- C. Legislative check over Judiciary
- D. Judiciary check over Legislative branch.
- E. Executive check over Judiciary
- F. Judiciary check over Executive

A. Legislative check over Executive!
The legislative branch (congress) has the power to make laws

according to constitution of U.S. but it also has some checks over executive branch of government which are listed below.

1. Article One, section seven outlines the procedure for passing bills and resolutions. A bill might arise in the House and passed with a simple majority. If then passed by the senate, it goes to the president for signature. Once signed, the bill becomes law. However, if the president vetoes the bill, both chamber can still pass the bill with a two-thirds vote. This is referred to as a vote to-override the veto. Thus, Congress may override Presidential vetoes by two-third votes.

2. During Presidential Elections, if no person gets a majority, the House of Representatives chooses the president from the top three candidates for that post and the senate chooses the vice president from the top candidates for that post.

3. The president (head of the executive branch) serves as Commander in chief of the military forces, but Congress (legislative branch) appropriate

gunds for the military and votes to declare war. In addition, the senate must ratify any peace treaties. This power was effectively used in 1919 when the senate refused to ratify the Treaty of Versailles, which had been accepted by the President Woodrow Wilson.

- The president nominates federal officials, but the senate confirms those nominations.
- Congress has the power of the purse, as it controls the money used to fund any executive actions.
- Senate is the court of impeachment against the President and other high official of the United States.

B: Executive check over Legislative Branch:

The purpose of legislative branch is to enforce and administer the laws and bills or resolutions passed by legislative branch. Following are the checks that executive has over the

Legislative branch:

- Veto power, once Congress has passed a bill, the president has the power to veto that bill. In turn, Congress can override a regular presidential veto by a two-thirds vote of both houses.
- The President controls the Congress in the sense that all Bills passed by the Congress must be submitted to him for his signature.
- He can exercise his pocket veto during the last ten days of the session of the Congress.
- President is the head of House of Representatives and Vice-president is head of Senate. So, both have a considerable influence on the proceedings.
- President is commander in chief of all forces which gives him an incredibly powerful position in times of war.

- ⊙ Executive has the ability to call special / Emergency session.
- ⊙ Executive can recommend legislature.

C: Legislative Check over Judiciary

The legislative branch (Congress) has the following checks over the Judicial Branch:

- ⊙ Congress can create lower courts.
- ⊙ Congress can increase or decrease the number of judges.
- ⊙ It has the power to fix salary of judges.
- ⊙ It gives final approval to Judicial Act.
- ⊙ By passing amendments to the Constitution, Congress can effectively check the decision of the Supreme Court.
- ⊙ Congress has the power to remove judges through impeachment.
- ⊙ Senate special committee approves appointment of judges.

D: Judiciary Check over Legislative Branch:

Judicial Branch (Supreme Court)

has following checks over legislative branch:

- ① The Supreme Court sets the framework, both negatively and positively, within which the government works.
- ② Only judiciary has the power to judge and interpret the law. The Supreme Court has given wide meaning to the words used in the Constitution. The implied powers of the Congress owe their origin to the Supreme Court.
- ③ The Supreme Court and other federal courts (judicial branch) can declare laws unconstitutional, in a process known as Judicial review.

E: Executive Check over Judiciary

The Executive has following checks over judiciary.

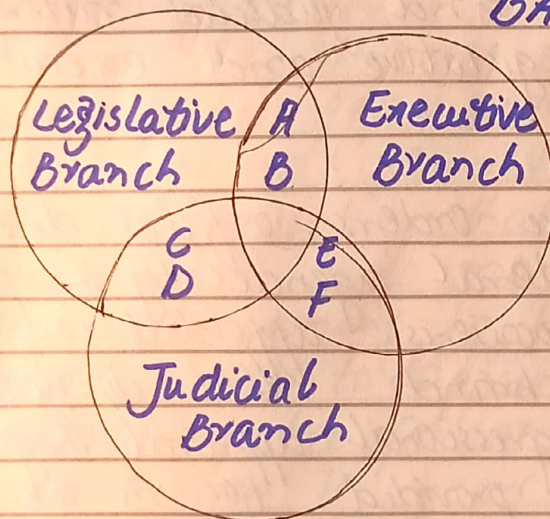
- ① President has the power to appoint judges of the Supreme Court and Federal courts.
- ② President can pardon Federal offenders.

F. Judiciary check over Executive :-

Judicial branch (supreme court) has following checks over Executive:

- ⊙ Judge once appointed for life, are free from controls from the executive branch.
- ⊙ Courts can judge executive actions to be unconstitutional through the power of judicial review.

SYSTEM OF CHECK AND BALANCES:-



where A: Legislative check over Executive

B: Executive check over Legislative Branch.

C: Legislative check over Judiciary

D: Judiciary check over Legislative Branch

E: Executive check over Judiciary

F: Judiciary check over Executive.

Checks and Balances in Action:-

The system of checks and balances has been tested numerous times throughout the centuries since the constitution was ratified.

In particular, the power of the executive branch has expanded greatly since the 19th century, disrupting the initial balance intended by the framers. Presidential vetoes - and congressional overrides of those vetoes - tend to fuel controversy, as do congressional rejections of presidential appointments and judicial rulings against legislative and executive actions.

Executive orders, official directives issued to federal agencies by the president, ~~to~~ are powers afforded to the executive branch that do not require congressional approval. They are not directly provided for in the U.S. Constitution, but rather implied by Article II, which states that the president "shall take care ^{that the} laws be faithfully executed." Executive orders can only push through policy changes; they cannot create new laws or appropriate funds from the United States treasury.

Overall, the system of checks and balances has functioned as it was intended, ensuring that the three branches operate in balance with one another.

Challenges to Checks & Balances System:

1- Roosevelt and the Supreme Court:

The checks and balances system withstood one of its greatest challenges in 1937, thanks to an audacious attempt by Franklin D. Roosevelt to pack the Supreme Court with liberal justices. After winning reelection to his second term in office, FDR faced the possibility that judicial review would undo many of his major policy achievements. In 1937, Roosevelt asked Congress to ^{empower him to} reappoint an additional justice for any member of the Court over 70 years of age who did not retire, a move that could expand the Court to as many as 15 justices.

Roosevelt's proposal provoked the greatest battle to date among the three branches of the government. In the end, Chief Justice Charles Evans Hughes wrote an influential open letter to Senate against the proposal; in addition, one older justice resigned,

allowing FDR to replace him and shift the balance on the court. The nation had narrowly averted a constitutional crisis, with the system of checks and balances left shaken but intact.

2. The War Power Act and Presidential veto:

The United States Congress passed the War Powers Act on November 17, 1973, overriding an earlier veto by President Richard M. Nixon, who called it "unconstitutional and dangerous" check on his duties as Commander-in-Chief of the military.

The war pact stipulates that the president has to consult Congress when deploying American troops. It was made to check the mounting war power exercised by the White House.

Controversy over the War Powers Act continued after its passage. President Ronald Reagan deployed military personnel to El Salvador in 1981 without the consulting or submitting a report to Congress.

• President Bill Clinton continued a bombing campaign in Kosovo beyond the 60-day time in 1999.

o In 2011, President Barack Obama initiated a military action in Libya without congressional authorization.

In 1995, the U.S. House of Representatives voted on an amendment that would have repealed many of the Act's components. It was narrowly defeated.

3. State of Emergency :-

The first state of emergency was declared by President Harry Truman on December 16, 1950 during the Korean War. Congress did not pass the National Emergencies Act until 1976, formally granting Congress checks on the power of the president to declare National Emergencies. The National Emergencies Act included several limits on presidential power, including having states of emergency lapse after a year unless they are renewed.

Presidents have declared almost 60 national emergencies since 1976, and can claim emergency powers over everything from land use and the military to public health. They can only be stopped if both houses of the U.S. government vote to veto it or if the matter is brought to the court.

More recent declarations include

President Donald Trump's February 15, 2019 state of emergency to obtain funding for a border wall with Mexico.

Criticism:-

The principle of separation of powers has been considerably marred in actual practice by the system of checks and balances.

According to Finer, the problems that have arisen as a result of this in the United States, have been very obstinate and have frustrated the modern social will.

In his 'American Government and Politics', Charles Beard states, "By the time a proposed Law runs the gauntlet of all these independent agencies of government, the passions of those who support it are likely to be cooled and the will of majority tempered by much reflection."

But there are others who regard this system of checks and balances as a necessary corollary to the principle of separation of powers. There can never be a

complete separation of administration is to be run smoothly.

According to Lord Bryce,

"The ultimate fountain of power, popular sovereignty, always flows full and strong, swelling up from its deep source, but it thereafter diverted into many channels each of which is so confined by skillfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

Conclusion:

American constitution works on the principle of checks and balances to guard against tyranny by ensuring that no branch would grab too much power. Though it has faced severe challenges as in the form of the war power Act, Roosevelt's attempt to pack up the supreme Court with liberal justices and also in account of declaration of state emergency, yet it has functioned as it was intended to do. Thus, American constitution guarantees smooth running of

its administration through the process
of checks and balances.