

"Distribution of power" in democracies

teacherplus.org/2025/2025/april-2025/distribution-of-power-in-democracies/



Prakash Iyer

Ira: Last time you quoted Madhav Khosla as saying that the Constitution is also meant to serve as a pedagogical tool to educate us into a democratic culture. But we know so little of the Constitution – rights and duties – and even lesser about how the Constitution functions in governmental spaces. As citizens, we know our rights and duties, which is such a small part of the Constitution – barely 30 pages of the total 260 and more pages. There must be a lot more to the Constitution that we need to be aware of.

I vaguely remember learning about the Legislature, Executive, and Judiciary and how they ought to be separated from each other. I don't quite get what the purpose of it all was, and in what way it is mandated in the Constitution. I remember them as the three pillars of our democracy, but how and why are they different and separated?

Anubhuti: Yes, it is quite complex. It is fairly clear what the Judiciary is – courts and judges who uphold the Constitution, and the laws derived from them like the Indian Penal Code (now Bharatiya Nyaya Sanhita), family law, civil law, etc. The Judiciary ensures that laws are being interpreted correctly and are being applied in the right situation in the right way. It also recommends new laws from its experience in specific cases and points out flaws in any law recommended by the Legislature.

Legislatures are the representatives of all people – the entire parliament – and they have the authority to make laws and recommend amendments to the Constitution since they represent the general will. We need to remember that the Legislature includes the opposition parties as well.

The Executive is separate from the Legislature. The Executive includes the government, which is the party or parties in power, the president, the extensive bureaucracy, and the police system who implement the laws.

Ira: Hmm... I get that. But why worry about separation of powers? They should work together in harmony, shouldn't they? I think we human beings unnecessarily politicize everything.

Surely, whether they are Legislature or Executive, they do not have power over us citizens. Their power is limited to the existing laws, which have been decided upon and accepted by us citizens.

Anubhuti: Yes, you are right in that their power over us is limited to the laws that have been ratified by the Judiciary. But the Legislature also has the power to come up with new laws, or to change existing laws. They are internally regulated by the opposition, by the need for a majority for significant laws, and they are also regulated by the president (the head of the state) who ratifies laws.

In India, the Judiciary can also point out if a new law, or modification or repeal of an existing law abides by the Constitution. If this upsets any fundamental principle of the Constitution, the Judiciary can nullify a law. The Judiciary is also in a way regulated by the Executive. Appointment of judges is recommended and approved by the president.

Ira: What is the role of the bureaucracy in all this?

Anubhuti: Well, the Executive represents people's general will, but they are not legal experts or for that matter experts in any other policy area, whether industrialization, environmental issues, finance, political science, sociology, etc. The bureaucracy, therefore, helps convert the general will into specific policies and laws with their knowledge.

Ira: So the buck stops at the Executive and bureaucratic machinery! That makes sense. We need experts to manage the country, not just politicians.

Anubhuti: Ha ha ha. Do you realize the serious problem with what you are saying? You seem to be proposing epistocracy – ruling by knowledge and expertise. That argument is a slippery slope. You want experts to rule the country, then you will have to say we have to listen to everything they say, and then any law they come up with has to be accepted by us. Our life will be controlled by them. We will have to live the way they decide we should live. We, who are not experts in anything, will not have a say in law or policy. In principle that is contradictory to democracy, which is basically rule of the *demos*, the people.

Ira: What! Yes, you are right. Experts know their subject areas, but how can they know how others should live their lives? I would not want a scientist, a technocrat, a historian, political scientist, or even a philosopher to tell me how I should live my life. Isn't that the basic principle of democracy – everyone has their own idea of a good life, and the state should not be deciding how we live our lives?

Anubhuti: Exactly! The Right to Freedom is not only speech, expression, practising the religion we want. All of them put together amount to the Right to Life – living the way we want to live.

Therefore, the Executive is also *controlled* or *regulated* by the Judiciary. They act as a balance to decrease the power the Executive (let me say government) has over people. Again, the basis on which the Judiciary makes this judgment is the Constitution. The Judiciary is also regulated by constitutional mandates.

Ira: So this is a triangular relationship. Legislature is regulated by the Judiciary, and they in turn regulate the Executive. The Executive is regulated by the Judiciary and the Legislature (through the opposition). Does that make the Legislature – representatives of the people – most powerful?

Anubhuti: The triangle does not end there. The Legislature is also internally regulated by the opposition, and the laws and policies they enact have to be ratified by the Judiciary. That completes the triangle – if you can imagine the overlap in their functions as the vertices of the triangle.

Ira: How is all this mandated by the Constitution?

Anubhuti: In two ways. One, by clearly identifying the functions of each pillar of our democratic state. Two, the overlaps in their functions and jurisdictions are also clearly articulated in the Constitution. Why do you think it is considered one of the largest constitutions in the world?

Ira: Tell me the fundamental reason why such a complex situation has been created?

Anubhuti: It all goes back to a French philosopher and judge called Baron de Montesquie. He famously said that power in any state should not reside in one arm of the state – Legislature, Executive, or Judiciary, because that will then result in tyranny. For instance, if all the power resided in the Legislature, it is the tyranny of the majority who voted for the incumbent government.

Ira: Aah! Now I see where the phrase *tyranny of the majority* comes from.

Anubhuti: I find Deendayal Upadhyay's statements very useful here. He said, "The Legislature, the Judiciary or the people, none of these is supreme. Some will say 'Why! People are sovereign. They elect.' But even the people are not sovereign, because people too, have no right to act against *Dharma*. If an elected government allows people to go against *Dharma* and does not punish them, then that government is in reality a government of thieves....The Legislature, the Judiciary or the people, none of these is supreme." When I read this, I replaced *Dharma* with the basic structure of the Constitution and found myself agreeing wholeheartedly with him!

Ira: Come to think of it, once we vote and a government is formed, we have to let them, and this triangle of pillars of democracy, rule us – at least for five years.

Anubhuti: Aren't you forgetting something? What about the fourth pillar? Media and civil society. Ideally, the media is supposed to be neutral and oversee the government and even the Judiciary. They make choices of who to invite in popular debates to critically analyze all significant decisions made by the State (a combination of the aforementioned three pillars). Not all experts are part of the bureaucracy, isn't it? Many of them raise their voices against any decision when they see mistakes. The primary role of civil society is this – just in case they also find the popular media biased.

Ira: Not a triangle, you are describing a pentagon – Legislature, Executive, Judiciary, Media, and Civil Society. Not to mention active citizenship which most of us practise or are expected to. We have the right to ask for information from the government, raise questions, or even submit petitions challenging all these pillars.

Anubhuti: Democracies are so complex and beautiful. The world would be boring and mundane, or even tyrannical, if not for these complexities.

Ira: I am reminded of this joke I heard. Democracy may not be the perfect solution to organize societies, but this is the best solution human beings have come up with...so far!

Anubhuti: Yes, and democracy has so many variants. Nowadays, the political discourse is about Republicanism – direct democracy practised by all citizens. Let's see how that works in India.

You know democracy ought to be dynamic and ever-changing. If we become static and complacent, we are not being democratic. It is a lot of continuous work. Democracy is eternally a work-in-progress – always in the becoming, but never being.

Prakash Iyer teaches Philosophy of Education and Curriculum theory at Azim Premji University, Bengaluru. He can be reached at prakash.iyer@apu.edu.in.

April 2025, Cogitations

Tags:

constitutionDemocracydistributionexecutiveIndiajudiciarylegislaturepeoplepillarspowerwil
|