Voichuk Alina Yuriivna

The peculiarities of the system of checks and balances in the parliamentary republics of South Asian states

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Voichuk Alina Yuriivna
PhD in Political Science,
Assistant at the Department
of Political Science
Taras Shevchenko
National University of Kyiv
Volodymyrska str., 64/13, Kyiv, Ukraine
ORCID: 0000-0002-1925-1307

The article is devoted to the study of the peculiarities of the system of checks and balances in the parliamentary republics of South Asia, which include India, Nepal, Bangladesh, and Pakistan. A comparative analysis of the system of checks and balances in the parliamentary republics of South Asia based on the constitutions and the practice of its implementation is carried out. The paper examines the methods of appointment and terms of office of public authorities, elements of checks and balances between the president, parliament, government and the judiciary. The author outlines both formal (constitutional) mechanisms of checks and balances and informal factors that influence their implementation. Special attention is paid to the independence of the judiciary and the procedure for appointing judges, which is important for maintaining the balance of power.

Under the parliamentary form of government, the key actors of interaction within the system of checks and balances are the head of state, the government, and the parliament. The nature of the interaction between the branches of government in parliamentary republics in South Asia largely depends on the political culture, level of political stability, party and electoral system, and historical experience of each particular state. In particular, India has a balance between the branches of government due to its developed legal system and independent judiciary. At the same time, in Bangladesh, the system of checks and balances is often leveled by the dominance of the executive branch. In Nepal, the functioning of the mechanisms of mutual control of the branches of power is significantly complicated by frequent political crises and changes in the constitutional system. In Pakistan, the effectiveness of the system of checks and balances is reduced by the influence of the military factor and the instability of democratic institutions. The article formulates the advantages, disadvantages and ways to improve the system of checks and balances in the parliamentary republics of South Asia.
Key words: *system of checks and balances, parliamentary republic, president, parliament, government, judiciary, South Asia.*

Introduction. In modern democracies, the principle of separation of powers and the existence of an effective system of checks and balances are fundamental to the functioning of the state. This mechanism is designed not only to prevent the usurpation of powers by one of the branches of government, but also to ensure their interaction, balance and accountability. The analysis of this system is especially relevant in South Asia, where parliamentary republics demonstrate both common features and significant differences in the structure of power relations due to historical, political and constitutional factors.

The parliamentary republics of South Asia – in particular, India, Nepal, Bangladesh and Pakistan – formally adhere to the principle of separation of powers, but in practice, the system of checks and balances is implemented with varying degrees of efficiency. Despite the nature of the interaction between the branches of government, the role of the president as a symbolic or influential actor, the functioning of parliamentary oversight, and the degree of independence of the judiciary vary considerably. In a number of cases, political concentration of power, lack of a developed political culture or party system weaken the effectiveness of checks and balances, turning them into a declarative constitutional mechanism.

Main studies and publications. Among the numerous studies and publications that examine the system of checks and balances in the parliamentary republics of South Asian states, the works of scholars such as Munir Bakht, Sudhish V. Pai.

The purpose of this article is to provide a comparative analysis of the peculiarities of the functioning of the system of checks and balances in the parliamentary republics of South Asia based on the provisions of the constitutions.

Methodology. The article uses systematic, comparative, and institutional methods. The systematic method allowed us to consider state authorities as an integral structure, where the president, government, parliament, and judiciary interact within a system of checks and balances. The comparative method made it possible to identify common features and differences in the implementation of the system of checks and balances in the constitutions of parliamentary republics in South Asia. The institutional method was used to analyze the status, powers, and functions of the president, government, and parliament in the parliamentary republics of South Asia.

Discussion. The presidents of India, Pakistan, Nepal, and Bangladesh are elected through indirect elections by the parliament or an electoral college formed on its basis. The President of Bangladesh is elected by the parliament for a term of five years. The Presidents of India, Pakistan, and Nepal are elected by an electoral college established on the basis of the parliament, also for a term of five years.

The parliaments of South Asian countries with a parliamentary form of government are elected as follows. Bangladesh has a unicameral parliament elected through a first-past-the-post system and indirect proportional representation. The parliament of Bangladesh is elected for a five-year term.

India has a bicameral parliament. The lower house, the Lok Sabha (House of the People), is elected through direct elections using the first-past-the-post system for a five-year term, with two members appointed by the president. The upper house, the Rajya Sabha (Council of States), is elected through a mixed system for a six-year term (indirect elections and 12 members appointed by the president). One-third of the Rajya Sabha is renewed every two years.

The Parliament of Nepal is bicameral. The lower house, the House of Representatives, is elected through a mixed electoral system for a five-year term. The upper house, the National Assembly, is formed through a combined method for a six-year term (indirect elections and three members appointed by the President). One-third of the National Assembly is renewed every two years.

The Parliament of Pakistan is also bicameral. The lower house, the National Assembly, is elected through a mixed electoral system for a five-year term. The upper house, the Senate, is elected through indirect elections for a six-year term. Half of the members of the Senate are re-elected every three years.

The judicial branch in these countries is formally independent. However, in India and Nepal, the Chief Justice and judges of the Supreme Court are appointed by the President. In Bangladesh, the President appoints Supreme Court judges at his own discretion. In Pakistan, the President's powers regarding judicial appointments are limited and require approval by the Parliamentary Commission.

The system of checks and balances in the Federal Democratic Republic of Nepal operates within the framework of a parliamentary republican form of government, where the powers of the legislative, executive, and judicial branches are clearly delineated. The Constitution of Nepal of 2015 [2] contains provisions regulating the interaction among these branches, aimed at preventing the concentration of power and ensuring balance.

The President of Nepal is the head of state and performs ceremonial functions. Nevertheless, the president plays a significant role in government formation and in the exercise of certain executive functions. According to Articles 66 and 76 of the Constitution of Nepal, the president appoints the prime minister – the leader of the party holding a majority in the House of Representatives. If no party holds a majority, the president appoints a person who is capable of forming a coalition (Art. 76(2)). The President of Nepal is also empowered to dissolve parliament upon the recommendation of the government (Art. 76(7)). This serves as an important means of influence over the legislative branch. Regarding the judiciary, the president appoints the Chief Justice of the Supreme Court on the recommendation of the relevant constitutional council (Art. 129); however, this procedure involves the participation of other branches of government, which limits the possibility of unilateral appointments [2].

Government formation is carried out in accordance with Article 76 of the Constitution of Nepal, which provides for several stages in the appointment of the prime minister and the formation of the Council of Ministers. The government is accountable to parliament, as it must receive a vote of confidence (Art. 76(4)) and may be replaced if it loses that confidence. The government influences the president through advisory powers – many of the president's decisions are made on the recommendation of the Council of Ministers (Art. 66(2)). As for the parliament, the executive branch may initiate bills and budget proposals, and also participate in the political process through coalition negotiations. Its influence over the judiciary is limited to the participation of executive representatives in constitutional bodies responsible for judicial appointments [2].

Parliament, as the key representative institution, holds the power to form the government, to express confidence or no-confidence in it, and to exercise oversight through committees and parliamentary hearings (Arts. 97, 105). The legislative branch approves the budget (Art. 117), enacts laws, and has the authority to initiate impeachment proceedings against the president for violations of the Constitution [2]. Parliament influences the judiciary through participation in the formation of bodies responsible for personnel policy in the justice system, for instance, through involvement in the Constitutional Council.

The judiciary, under Articles 126–134 of the Constitution of Nepal, ensures constitutional oversight and may invalidate laws or normative acts that contradict the Basic Law. The Supreme Court has the power to interpret the Constitution, annul executive acts that violate citizens' rights, and thereby acts as an arbiter among the branches of government. Judges are appointed with consideration for the balance of powers – through the Constitutional Council, which includes representatives from the executive and legislative branches, as well as the Chief Justice of the Supreme Court (Art. 284) [2]. This arrangement ensures a certain level of judicial independence while simultaneously limiting its autonomy in personnel matters.

Among the advantages of the system of checks and balances in Nepal, one should highlight its institutional equilibrium, particularly in the area of official appointments, as well as the existence of effective parliamentary oversight of the government. The involvement of different branches of power in the formation of the judiciary provides additional safeguards against the usurpation of power. However, the system also has certain drawbacks, such as potential political dependency in the formation of the government under a coalition system, frequent political crises due to parliamentary fragmentation, and the limited role of the president in resolving such crises – factors that may result in prolonged governmental instability.

Thus, the system of checks and balances in Nepal depends on political culture, the stability of the party system, and adherence to the rule of law. Interactions among the branches of government take place with regard to national specificity and the prevailing political context.

India is a parliamentary republic with a clearly defined system of checks and balances enshrined in the 1949 Constitution [1]. The Constitution affirms the principle of separation of powers among the legislative, executive, and judicial branches, each of which possesses its own competencies and mechanisms of influence over the others.

The President of India serves as the nominal head of state but holds several levers of influence, through which they participate in the functioning of all three branches of government. According to Articles 74 and 75 of the Constitution of India, the president acts on the advice of the Council of Ministers headed by the prime minister, yet it is the president who formally appoints the latter (Art. 75(1)). In the absence of a clear majority in parliament, the president exercises discretionary powers in appointing the prime minister, which grants a certain level of political influence. The president may also dissolve the Lok Sabha (the lower house of parliament) upon the advice of the government (Art. 85), issue ordinances during parliamentary recess (Art. 123), and participate in the legislative process through the power of assent or suspensive veto. In the judicial sphere, the president appoints judges of the Supreme Court and the High Courts of the states (Arts. 124(2), 217), although this is carried out based on consultations with a collegium of judges, which significantly limits the president's actual influence [1].

The government of India is formed by the party or coalition holding a majority in the lower house of parliament – the Lok Sabha. As stipulated in Article 75(3) of the Constitution of India, the government is collectively responsible to the Lok Sabha. The executive branch, represented by the Council of Ministers, plays a crucial role in the legislative process: it initiates the majority of bills, prepares the draft budget (Art. 112), and conducts both domestic and foreign policy. Although the government does not have formal control over the president, it executes the head of state's executive functions through the mechanism of the "duty to act on advice" (Art. 74(1)) [1]. Regarding the judiciary, the government may participate in the process of appointing judges via the Ministry of Justice. However, following the Supreme Court's decision in the Third Judges Case (1998), the final say on judicial appointments belongs to the collegium of judges, which significantly limits the government's influence over the judicial system.

The Parliament of India, consisting of two chambers – the Rajya Sabha (Upper House) and the Lok Sabha (Lower House) – possesses significant instruments of oversight over both the government and the president. It holds the right to express a vote of no confidence in the government (Art. 75(3)), controls fiscal policy through budget approval, tax legislation, and expenditure oversight. Parliament also has the authority to initiate impeachment proceedings against the president (Art. 61) and Supreme Court judges (Art. 124(4)), which exemplifies the checks mechanism. Furthermore, Parliament may amend the Constitution (Art. 368), although this requires a special procedure and, in some cases, ratification by at least half of the states [1].

The judiciary in India is independent and vested with the power of constitutional review. According to Articles 32 and 226 of the Constitution, the Supreme Court and High Courts have jurisdiction to hear petitions concerning the violation of fundamental rights. Under Article 141, decisions of the Supreme Court are binding on all courts in the country [1]. The judiciary also has the authority to annul laws and executive acts that contravene the Constitution, including actions of Parliament and the government, affirming its role as a guardian of the rule of law.

Among the strengths of India's system of checks and balances are the high degree of judicial independence and the presence of parliamentary oversight mechanisms over the executive. However, the system also has certain weaknesses – such as the risk of excessive concentration of power in the hands of the executive when a stable majority is present, lengthy judicial appointment procedures, and the occasional political use of presidential ordinances (Art. 123) [1] to bypass Parliament.

Thus, the effectiveness of the system of checks and balances in India depends on the equilibrium among the branches of power, political culture, and the active involvement of civil society in upholding the rule of law.

The system of checks and balances in the Islamic Republic of Pakistan is based on the 1973 Constitution [3], which establishes a parliamentary form of government. The Constitution provides for the separation of powers into legislative, executive, and judicial branches. However, in practice, the interaction among these branches is largely shaped by political realities – in particular, the influence of the military and the past instability of democratic institutions.

According to Articles 41–49 of the Constitution of Pakistan, the President is the head of state with primarily ceremonial functions. However, the president retains a certain degree of influence over other branches of government. The president appoints the prime minister from among the members of the National Assembly who command the majority's support (Art. 91(1)). In the absence of a majority, the president has discretionary power to appoint a caretaker prime minister (Art. 224-A). The president also appoints provincial governors, the Chief Justice of the Supreme Court, and judges of the higher courts (Art. 175-A); however, these appointments are made upon the recommendation of the Parliamentary Committee on Judicial Appointments, which limits presidential autonomy. Under Article 58(1) of the Constitution, the president may dissolve the National Assembly upon the advice of the prime minister, and under Article 58(2)(b), may do so independently if, in the president's opinion, the government can no longer function in accordance with the Constitution – a provision that has been repeatedly used as a tool of political pressure [3].

The government of Pakistan is formed by the parliamentary majority and is headed by the prime minister, who, in accordance with Article 91 of the Constitution, is the head of government. The cabinet of ministers, appointed by the prime minister, bears collective responsibility to the parliament (Art. 91(6)). The government initiates most legislative acts, drafts the budget (Art. 73), and implements both foreign and domestic policy. Through its control over the administrative apparatus, the government effectively exercises all executive powers formally vested in the president. In the judicial sphere, the government indirectly influences judicial appointments through its participation in the Parliamentary Committee on Appointments (Art. 175-A(13)) and through the Ministry of Justice [3]. However, following the 2010 reforms, executive control over judicial appointments has been significantly reduced.

The Parliament of Pakistan is bicameral, consisting of the National Assembly and the Senate, and holds broad authority within the legislative branch. It exercises oversight of the government through the vote of no confidence procedure (Art. 95), parliamentary debates, and committees. Parliament holds the power to approve the national budget (Arts. 73–84), ratify constitutional amendments (Art. 239), and conduct impeachment proceedings against the president (Art. 47) [3]. In the judicial domain, Parliament does not exercise direct control over the functioning of the courts but participates in the appointment process through the aforementioned committee. Parliament also enacts legislation that defines the organizational foundations of the judiciary, thus enabling normative influence.

The judiciary of Pakistan, represented by the Supreme Court and the High Courts, exercises control over the constitutionality of acts issued by the parliament and the government. According to Article 184(3) of the Constitution, the Supreme Court has the authority to hear cases involving violations of fundamental rights, even on its own initiative. The Court may invalidate laws that contradict the Basic Law, including reviewing the legality of parliamentary dissolution (for example, the 2022 ruling on the unconstitutionality of the dissolution of the National Assembly by the president upon the prime minister's advice). Under Article 175-A, the judiciary also participates in the appointment of new judges through the Judicial Commission, which includes sitting judges [3].

Among the strengths of Pakistan's system of checks and balances is the functioning of an independent Supreme Court, which has repeatedly acted as an arbiter in conflicts among branches of government, as well as the existence of parliamentary mechanisms for controlling the executive branch. The establishment of the Parliamentary Committee on Judicial Appointments is a step toward achieving a more balanced approach to appointments. However, the system also has serious drawbacks – in particular, the historically frequent intervention of the military in the political process, the concentration of power in the hands of the prime minister amid weak party discipline, and the politicization of the judiciary. In addition, the extraordinary powers of the president under Article 58(2)(b) [3], although limited by constitutional amendments, remain a potential instrument of destabilization.

Thus, while the system of checks and balances in Pakistan is formally based on the principle of separation of powers, its effectiveness largely depends on political culture, adherence to constitutional procedures, and the influence of the military. Improving this system is possible through strengthening the institutional independence of parliament and the judiciary, as well as minimizing executive pressure on the processes of forming state bodies.

The People's Republic of Bangladesh is a parliamentary republic under the 1972 Constitution [6]. The foundation of the system of checks and balances in Bangladesh lies in the principle of separation of powers among the legislative, executive, and judicial branches, with the parliament playing a central role and the president fulfilling primarily ceremonial functions. At the same time, institutional and political mechanisms of mutual oversight and constraint are preserved within the system.

The President of Bangladesh is elected by the parliament pursuant to Article 48 of the Constitution and performs the duties of the head of state, including appointing the prime minister (Art. 56(3)), provided that, in the president's judgment, the individual enjoys the confidence of the parliamentary majority. The president's powers are generally exercised on the advice of the prime minister in accordance with Article 48(3), which significantly limits presidential political autonomy. The president formally appoints judges of the Supreme Court (Art. 95(1)) without parliamentary involvement, although this competence is largely nominal, as it is carried out through an internal judicial consultation process. The president also has the authority to summon and dissolve parliament (Art. 72), but only on the advice of the prime minister, further underscoring the president's subordinate role within the executive hierarchy [6].

The government of Bangladesh is formed by the parliamentary majority. The prime minister, as head of the Council of Ministers, holds constitutionally established broad powers (Art. 55), including determining the state's political direction and appointing or dismissing ministers [6]. In relation to parliament, the government is accountable for implementing its decisions and is required to report regularly to the legislature. With respect to the judiciary, the government is involved in the process of judicial appointments, but its influence over the courts is limited to administrative and financial support of the judicial system.

The Parliament of Bangladesh has the authority to express no confidence in the government, although this procedure is not explicitly stipulated in the Constitution, it follows from the principle of governmental accountability to parliament. However, Article 70 of the Constitution restricts MPs' freedom of action by prohibiting them from voting against the party line, thereby reducing the effectiveness of parliamentary oversight. Parliament approves the budget (Art. 87), enacts legislation, may initiate constitutional amendments (Art. 142), and theoretically may impeach the president (Art. 52) in cases of constitutional violation or serious criminal offense [6]. Nonetheless, parliament's influence over the judiciary is limited and is primarily exercised through the adoption of normative acts, which may be subject to judicial review.

The judiciary of Bangladesh, represented by the Supreme Court, consists of two divisions: the Appellate Division and the High Court Division (Art. 94). The judiciary is formally independent (Art. 94(4)), and judges are guaranteed security of tenure and immunity. The judicial branch is vested with the authority to interpret the Constitution and to nullify acts of the executive and legislative branches that contradict the Basic Law. The judiciary may exercise constitutional review, as confirmed in practice – notably in the case of Secretary, Ministry of Finance v. Masdar Hossain (1999), where the court established limits on executive influence over the judicial system. The judiciary also has the power to issue writs for the protection of fundamental rights under Article 102 of the Constitution [6]. However, the appointment of judges remains entirely controlled by the executive, which undermines the independence of the judicial branch.

The strengths of the system of checks and balances in Bangladesh include the formal separation of powers, the accountability of the executive to parliament, and the judiciary's authority to exercise constitutional review. Nonetheless, there are significant weaknesses: the de facto concentration of executive power in the hands of the prime minister, the restriction of parliamentarians' independence due to strict party discipline (Art. 70) [6], and the lack of a balanced mechanism for judicial appointments, which creates risks of political interference in the judiciary. The effectiveness of the checks and balances system depends on political culture, the structure of the party system, and the actual practice of interaction among state institutions.

Conclusion. To improve the effectiveness of the system of checks and balances in parliamentary republics in South Asia, it is advisable to improve the mechanisms for appointing judges by establishing independent commissions devoid of political influence; reform parliamentary procedures to ensure real accountability of the government through strong and autonomous committees; review provisions that excessively restrict the freedom of MPs (in particular, Article 70 of the Constitution of Bangladesh); balance the powers of the president and prime ministers in terms of personnel policy; and ensure the independence of the judiciary. At the same time, it is important to improve the level of political culture, legal awareness of the elites, and the independence of the judiciary as an institutional basis for democratic control.

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Особливості системи стримувань та противаг у парламентарних республіках держав Південної Азії

Войчук Аліна Юріївна

доктор філософії з галузі соціальних
та поведінкових наук
зі спеціальності Політологія,
асистент кафедри політичних наук
Київського національного університету
імені Тараса Шевченка
вул. Володимирська, 64/13,
Київ, Україна
ORCID: 0000-0002-1925-1307

Стаття присвячена дослідженню особливостей функціонування системи стримувань і противаг у парламентарних республіках Південної Азії, до яких належать Індія, Непал, Бангладеш, Пакистан. Здійснено порівняльний аналіз системи стримувань та противаг парламентарних республік Південної Азії на основі конституцій та практики його реалізації.

У роботі розглядаються способи призначення та строки повноважень органів державної влади, елементи противаг та стримувань між президентом, парламентом, урядом та судовою гілки влади. Окреслено як формальні (конституційні) механізми стримувань і противаг, так і неформальні чинники, що впливають на їх реалізацію. Окрему увагу приділено питанням незалежності судової влади та процедурі призначення суддів, яка є важливою для підтримання балансу влади.

За парламентарної форми правління ключовими суб'єктами взаємодії в межах системи стримувань і противаг виступають глава держави, уряд, парламент. Характер взаємодії гілок влади в парламентарних республіках у державах Південної Азії значною мірою залежать від політичної культури, рівня політичної стабільності, партійної та виборчої системи та історичного досвіду кожної конкретної держави. Зокрема, в Індії спостерігається баланс між гілками влади завдяки розвинутій правовій системі та незалежній судовій владі. Водночас у Бангладеш система стримувань і противаг часто нівелюється через домінування виконавчої влади. У Непалі функціонування механізмів взаємного контролю гілок влади істотно ускладнене частими політичними кризами та змінами конституційного устрою. У Пакистані ж ефективність системи стримувань і противаг знижена впливом військового фактора та нестабільністю демократичних інституцій. У статті сформульовані переваги, недоліки та шляхи удосконалення системи стримувань і противаг у парламентарних республіках Південної Азії.

Ключові слова: *система стримувань та противаг, парламентарна республіка, президент, парламент, уряд, судова влада, Південна Азія.*

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