



## SEPARATION OF POWERS - POLITY AND GS II MAINS

Q. Discuss the significance of the separation of powers doctrine in India along with its shortcomings on Indian conditions. (10 marks, 150 words)

**News:** *What is the Doctrine of Separation of Powers?*

### What's in the news?

- The Supreme Court recently by passing a few orders – such as the quashing of the Chandigarh mayoral poll results, directing governments to undo a rule that weakened the protection of forests, and abolishing of electoral bonds – upheld the principle of checks and balances.
- This principle is a culmination of the doctrine of separation of powers in India.

### Separation of Power:

- The doctrine of separation of powers stands for a form of government in which the mechanism of governance is divided into three branches, namely Legislature, Executive and the Judiciary in the majority of democratic nations.
- The doctrine of separation of powers evolved with the famous work of Aristotle, *The Politics*, in which he discussed the concept and stated that every constitution should include different branches of government, namely the judiciary, public officials, and the deliberative branch.
- Legislature makes the law, executive organ implements the law and judiciary interprets the law.

### Separation of Powers in Indian Constitution:

- India has a parliamentary form of government modelled on the British parliamentary system. But it also took some lessons from the United States and established the judiciary as the guardian of the constitution.
- As a result, the judiciary in India is vested with the authority of judicial review of the actions of the legislature and the executive.
- Many provisions in the Indian Constitution clearly indicate the existence of the idea of separation of powers, which is upheld by both the federal government and the states
- Article 50 of the constitution has asked the state to separate the executive and judiciary.

### Purpose of the Separation of Power:

1. **Prevent the concentration of power** in the single branch of the democracy.
2. **Distribution of authority** to all the three organs.
3. To maintain a system of **checks and balances**.
4. **Promoting accountability** on the organs of democracy.



## How does Executive Affects Separation of Power:

Since the 1980s, the executive has affected the separation of power by three different routes to capture judicial power.

### 1. Judicial Tribunals:

- By creating judicial tribunals to take over various judicial functions hitherto exercised by the judiciary and giving bureaucrats an opportunity to be appointed to the tribunals as “technical members” have reduced the judiciary’s power in certain fields.

### 2. Statutory Regulators:

- By creating a new class of statutory regulators such as the **Securities and Exchange Board of India, and the Competition Commission of India (CCI)** which had powers to punish the private sector with punishing fines;
- Virtually all these regulators ended up being headed by senior bureaucrats.

### 3. Adjudication Officers:

- Governments created some adjudication officers under acts like Prevention of Money Laundering act and IT act.
- These officers have adjudication and penalty powers. All these officers are generally from bureaucracy.

### 4. Delegation of Legislative Power:

- Delegated legislation means the powers given by the legislature to the executive or administration to enact certain laws.
- The increasing tendency of this delegate legislation has severely affected the independence of the legislature.

## Measures Taken to Ensure Separation of Power to be Maintained:

### Constitutional Provisions:

#### 1. Article 50:

- It says that states shall take steps to separate the Judiciary from the executive.

#### 2. Articles 121 & 211:

- These articles state that the judicial conduct of a judge of the Supreme Court and the High Courts cannot be discussed in Parliament and the state legislature.

#### 3. Articles 122 & 212:

- The validity of proceedings in Parliament and the legislatures cannot be called into question in any Court.



## 4. Article 361:

- The President or the Governor shall not be answerable to any court for the exercise and performance of the past and duties of his or her office.

## Supreme Court Judgements:

### 1. Kartar Singh vs State of Punjab (1994):

- It was stated that the function of the legislature is to make the law, the executive is to implement the law, and the judiciary to interpret the law within limits set down by the Constitution.

### 2. Indira Gandhi vs Raj Narain (1975):

- The Supreme court invalidated a clause of Article 329A inserted to immunize the election dispute to the Office of the Prime Minister from any kind of judicial review.
- In this case, It is held that the separation of powers is a part of the Basic structure.

## Way Forward:

### 1. Judicial independence:

- The judiciary should be more independent, this can ensure the accountability of the executive.
- Judicial review power of the judiciary should be strengthened.

### 2. Restrictions on Delegated Legislative Power: Legislature should promote the reduction of delegation of legislative power to the executive.

- Parliamentary standing committees will be provided the delegation of legislative power instead to the government.

### 3. Legislative Tools:

- Legislature should actively promote the use of zero hour and question hour to make the executive more accountable to the legislature.

### 4. Strengthening the Role of Parliamentary Standing Committees:

- All the bills in the legislature should be reviewed by the parliamentary standing committees.
- This will reduce the arbitrary enactment of laws.