



## Special Report: Doctrine of Separation of Powers

**For Prelims:** Parliament, Rajya Sabha, Lok Sabha, President, Prime Minister

**For Mains:** Objectives of the Indian Constitution, Importance of Separation of Powers,

The [Indian Constitution](#) lays down the structure and **defines and determines the role and functions of every organ of the State** and establishes norms for their inter-relationships and [checks and balances](#). The doctrine of separation of powers implies that each pillar of democracy - **the executive, legislature and judiciary - performs separate functions and acts as separate entities.**

### What are the Objectives of the Indian Constitution?

- The Constitution is the **supreme law of the land, and it helps to maintain integrity in society and to promote unity** among the citizens to build a great nation.
  - The **main objective of the Indian Constitution is to promote harmony** throughout the nation.
- **The factors which help in achieving this objective are:**
  - **Justice:** It is necessary to maintain order in society which is promised through various provisions of [Fundamental Rights](#) and [Directive Principles of State Policy provided by the Constitution of India](#). It comprises three elements, which are social, economic, and political.
    - **Social Justice:** Social justice means that the Constitution wants to create a society without discrimination on any grounds like [caste](#), creed, [gender](#), [religion](#), etc.
    - **Economic Justice:** Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person **must be paid equally for an equal position and all people must get opportunities** to earn their living. **For example, Article 39** (equal pay for equal work for both men and women).
    - **Political Justice:** Political Justice means all people have an equal, free and fair right without any discrimination to participate in political opportunities. **For example, Article 14-18** (Equality Rights).
  - **Equality:** The term 'Equality' means no section of society has any special privileges and all the people have been given equal opportunities for everything without any discrimination. **Everyone is equal before the law (Article 14).**
  - **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life and have political views and behaviour in society. Liberty does not mean freedom to do anything, **a person can do anything within the limit set by the law.**
  - **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment to the country and all the people. Fraternity **helps to promote dignity and unity in the nation.**

### What is the History of the Separation of Powers?

- The concept of separation of powers was **first seen in the works of Aristotle in the 4<sup>th</sup> Century BC** wherein he described the **three agencies of the government as General Assembly, Public Officials and Judiciary.**
- In the **ancient Roman Republic**, a similar concept was followed the **term trias politica or separation of power was coined by Charles Louis de Secondat an 18<sup>th</sup>-century French social and political philosopher.**
  - His publication **“Spirit of the laws”** is **considered one of the great works** in the history of political theory and jurisprudence. His ideas had a **profound impact on the architects of the American constitution.**
  - Under his model, **the political authority of the state is divided into legislative, executive and judicial powers.** He asserted that to most effectively promote Liberty these three powers **should be separated and operate independently.**

## Why Separation of Powers is Important?

- **Power Concentration:** Erosion of the doctrine of separation of powers **seeks to protect the centralisation of power in one hand** as history has repeatedly demonstrated this can lead to disastrous outcomes.
- **Transparency:** The application of this principle makes the government liable, accountable and answerable to its citizens for its actions thereby aiding in the promotion and protection of **Human Rights.**
- **Elimination of Other Administrations:** Separation of power eliminates one of the most serious weaknesses of other forms of administration such as **monarchy** or dictatorship in which the king is not accountable to his people.
- **Natural Justice:** The following principle creates a balance of parts inside the government in which the functions of the government bodies are kept in check by one another while remaining separate from each other, **this assures that the laws are just fair and adhered to the Natural Justice.**

## What are the three Pillars of the Government?

- **Executive:**
  - **President:**
    - The President is **elected by members of an electoral college** consisting of elected members of both the houses of Parliament and Legislative Assemblies of the states in accordance with the system of proportional representation **by means of a single transferable vote.**
    - The **executive power of the Union is vested in the President** and is exercised by him either directly or through subordinate officers in accordance with the Constitution.
      - The **supreme command of the Defense Forces of the Union also rests with the President**
  - **Vice President:**
    - The **Vice President** is elected by members of an electoral college consisting of members of both houses of Parliament in accordance **with the system of proportional representation by means of a single transferable vote.**
    - He **must be a citizen of India not less than 35 years of age** and eligible for election as a member of the Rajya Sabha.
      - His **term of office is 5 years and he is eligible for re-election.**
    - He/she is also the **ex-officio chairman of the Rajya Sabha and acts as a President** when the latter is unable to discharge his or her functions **due to absence illness or any other cause or till the election of a new president**
  - **Prime Minister:**
    - The Prime Minister is **appointed by the President** who also appoints other ministers on the advice of the Prime Minister.
    - It is the **duty of the Prime Minister to communicate to the President regarding all decisions** of the **Council of Ministers** relating to the administration of Affairs of the union and proposals for legislation and related

information.

- **Council of Ministers (COM):**

- It is **headed by the Prime Minister** to aid and advise the President in the exercise of his functions.
  - The **council is collectively responsible to the Lok Sabha.**
- The COM **consists of three categories of ministers**, namely, cabinet ministers, ministers of state, and deputy ministers. **At the top of all these ministers stands the Prime Minister.**

- **Legislature (The Indian Parliament):**

- **About & Functions:**

- Parliament is the supreme legislative body of India, as in other parliamentary democracies **the parliament in India has a cardinal function of legislation overseeing administration** passing of the budget ventilation of public Grievances and discussing various subjects like development plans, national policies and international relations.
- It is a place **where the laws are framed, the country's future is debated, and the people's representatives are held accountable.** It is the **living epitome of freedom and sovereignty** of the people of India.
  - It **occupies a pre-eminent and pivotal position in the constitutional structure of the nation.**

- **Power of Removal:**

- The Parliament is **vested with powers to impeach the President and to remove the judges** of the Supreme Court and the High Courts, the Chief Election Commissioner and the [Comptroller and Auditor General](#) **in accordance with the procedure laid down in the Constitution.**

- **Composition:**

- Parliament **consists of the President** and two houses the **Rajya Sabha** also known as the **Council of states** and the **House of the People** also known as **Lok Sabha.**
- **Rajya Sabha:** The **maximum strength of Rajya Sabha is 250** (out of which 238 members are representatives of the states & UTs (elected indirectly) and 12 are nominated by the President).
- **Lok Sabha:** The **maximum membership of the Lok Sabha allotted by the Constitution of India is 552** out of which 530 members to represent the States, 20 members represent the Union Territories, and **2 members are nominated by the President from the [Anglo-Indian Community.](#)**

- **Judiciary:**

- **About:**

- India has a **single integrated judicial system.** The Judiciary in India has a **pyramidal structure with the [Supreme Court \(SC\)](#) at the top. [High Courts \(HC\)](#) are below the SC, and below them are the [district and subordinate courts.](#)**
  - The lower courts function under the direct superintendence of the higher courts.

- **Appointment of Judges:**

- **[Articles 124 \(2\) and 217](#)** of the constitution **deal with the appointment of judges to the SC and HC.**

- **Functions:**

- The **principal role of the judiciary is to protect rule of law and ensure the supremacy of the law.** It safeguards the rights of the individual, settles disputes in accordance with the law, and **ensures that democracy does not give way to individual or group dictatorship.**

## What are the Issues with the Separation of Powers?

- **Weakened Opposition in India:** Democracy works on the principle of checks and balances. It is these checks and balances that prevent democracy from turning into majoritarianism.
  - In a Parliamentary system, these checks and balances are **provided by the opposition party.**
  - However, the majority of a single party in the Lok Sabha **has diminished the role of an**

### effective opposition in the Parliament.

- **Judiciary Being Averse to Checks & Balances:** The Supreme Court has held the [99<sup>th</sup> constitutional amendment](#), which provided for the establishment of the [National Judicial Appointments Commission](#) as ultra-vires.
  - The **National Judicial Appointments Commission (NJAC) could guarantee the independence of the system from inappropriate politicization**, strengthen the quality of appointments, enhance the fairness of the selection process, promote diversity in the composition of the judiciary, and rebuild public confidence in the system.
- **Judicial Activism:** In many recent judgments, the Supreme Court has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive.
- **Executive Excesses:** Executive in India is alleged of over-centralisation of power, weakening of public institutions and passing laws to strengthen law, order & security of the state but curbs freedom of expression as well.

## What are the Constitutional Provisions in this Regard?

- Constitutional provisions ensuring the separation of powers are:
  - **Article 50:** It says that states shall take steps to separate the Judiciary from the executive.
  - **Articles 121 & 211:** These articles states that the judicial conduct of a judge of the Supreme Court and the High Courts cannot be discussed in Parliament and the state legislature.
  - **Articles 122 & 212:** The validity of proceedings in Parliament and the legislatures cannot be called into question in any Court.
  - **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

## UPSC Civil Services Examination Previous Year Questions (PYQ)

### Prelims

**Q1. With reference to the election of the President of India, consider the following statements: (2018)**

1. The value of the vote of each MLA varies from State to State.
2. The value of the vote of MPs of the Lok Sabha is more than the value of the vote of MPs of the Rajya Sabha.

**Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (a)**

**Q2. Consider the following statements: (2013)**

1. The Chairman and the Deputy Chairman of the Rajya Sabha are not the members of that House.
2. While the nominated members of the two Houses of the Parliament have no voting right in the presidential election, they have the right to vote in the election of the Vice President.

**Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (b)**

**Q3. A Parliamentary System of Government is one in which (2020)**

- (a) all political parties in the Parliament are represented in the Government
- (b) the Government is responsible to the Parliament and can be removed by it
- (c) the Government is elected by the people and can be removed by them
- (d) the Government is chosen by the Parliament but cannot be removed by it before completion of a fixed term

**Ans: (b)**

**Q4. There is a Parliamentary System of Government in India because the (2015)**

- (a) Lok Sabha is elected directly by the people
- (b) Parliament can amend the Constitution
- (c) Rajya Sabha cannot be dissolved
- (d) Council of Ministers is responsible to the Lok Sabha

**Ans: (d)**

### **Mains**

**Q.** Do you think that Constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. **(2019)**

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