



## Mains Practice Question

**Q.** Analyze the doctrine of separation of powers in the Indian context. Discuss the challenges to its effective implementation and suggest measures to strengthen the system. **(250 words)**

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### Approach

- Introduce the answer by implementing what is separation of powers
- Highlight the constitutional provisions related to it and key features
- Mention challenges to its effective implementation
- Suggest measures to strengthen the system

### Introduction

The **doctrine of separation of powers** is a fundamental principle underlying India's constitutional framework, aiming to **prevent the concentration of power and ensure checks and balances** among the **legislature, executive, and judiciary**.

### Body

#### Separation of Powers in India:

- **Doctrine:** While not explicitly mentioned in the Constitution, this doctrine is derived from **Article 50, 121, 122, 211, and 361 of the Constitution** and woven into its fabric of Indian democracy through various provisions.
- **Key features:**
  - Legislature (Parliament): Makes laws
  - Executive (Government): Implements laws
  - Judiciary (Courts): Interprets laws and ensures constitutional compliance
- **Example:** The landmark case of ***Kesavananda Bharati v. The State of Kerala (1973)*** established the '**basic structure doctrine**', emphasizing that even **Parliament's power to amend the Constitution is subject to judicial review**, thus reinforcing the separation of powers.

#### Challenges to Effective Implementation:

- **Judicial Overreach:** While judicial review is crucial for maintaining checks and balances, excessive judicial activism can **blur the lines between the judiciary and other branches**.
  - In ***Mohit Mineral Pvt. Ltd. v. Union of India***, the Supreme Court held that the recommendation of the GST council is only recommendatory and not binding, that can be considered as judicial overreach.
- **Executive Dominance:** The executive often **overpowers other branches**, particularly through ordinance-making powers and control over the bureaucracy.
  - **Example:** The repeated **re-promulgation of the Enemy Property Ordinance** between 2010 and 2016.

- In ***Krishna Kumar Singh v. State of Bihar Case 2017***, the Supreme Court of India ruled that repeatedly re-promulgating ordinances without legislative consideration is unconstitutional and a **fraud on the Constitution**
- **Erosion of Legislative Scrutiny:** Declining number of parliamentary sittings and hasty passage of bills. **Sitting days in Lok Sabha** have declined from an annual average of 121 days during 1952-70 to **68 days since 2000**.
  - **Example:** The **Farm Bills of 2020** were passed in Rajya Sabha by voice vote amid protests.
- **Weak Institutional Autonomy:** Bodies like the ED, CBI, and CVC face challenges to their independence.
  - **Example:** Controversy over the removal of **CBI Director Alok Verma in 2019**.
  - In ***Vineet Narain v. Union of India***, SC laid down guidelines for CBI's functioning to ensure its autonomy.

### Measures to Strengthen the System:

- **Judicial Reforms:**
  - **Transparent Appointment Process:** Establish a new system for judicial appointments, balancing judicial independence and accountability.
    - This may include a **modified version of the National Judicial Appointments Commission (NJAC)** with adequate safeguards.
  - **Judicial Accountability Law:** Enact a comprehensive law to ensure judicial accountability without compromising independence.
    - This may include a refined version of the **Judicial Standards and Accountability Bill, 2010**.
- **Legislative Strengthening:**
  - **Increase Parliamentary Sittings:** Mandate a minimum number of working days for Parliament.
  - **Empower Parliamentary Committees:** Strengthen the role of Department-related Standing Committees in scrutinizing bills and policies.
    - Make it mandatory for **all important bills to be referred to relevant committees** before being passed.
  - **Reform Anti-Defection Law:** Amend the Tenth Schedule to **balance party discipline and legislative independence**.
    - Allow **free voting on all issues except no-confidence motions and money bills**.
- **Executive Accountability**
  - **Strengthen Lok Pal:** Fully implement and empower the **Lokpal institution**.
    - Ensure timely appointments and provide adequate resources for investigations.
  - **Reform Civil Services:** Implement comprehensive civil service reforms to ensure bureaucratic neutrality and efficiency.
    - Fixed tenures for key posts as recommended by the **2<sup>nd</sup> Administrative Reforms Commission**.
- **Institutional Autonomy**
  - **Statutory Independence for Key Institutions:** Enact laws to ensure functional and financial autonomy of institutions like the **ED, CBI, and CVC**
    - The Supreme Court's guidelines in the Vineet Narain case for CBI autonomy could be codified into law.

### Conclusion

While India's separation of powers faces challenges, it remains a **vital democratic principle**. The dynamic interplay between the three branches, **guided by judicial pronouncements and public discourse**, continues to shape and refine this doctrine in the Indian context. The key lies in maintaining a **delicate balance, ensuring robust checks and balances**, and fostering **institutional integrity and public trust**.

