

# Separation of Powers in the Indian Constitution - Relationship between Executive, Legislature and Judiciary

The three branches of the government are the executive, the legislature and the judiciary. Although the three have distinct functions to perform, their scope sometimes meet. In this article, you can read all about the relationship between the three arms of the government for the [UPSC exam](#) polity section.

## Separation of Powers

In India, a separation of functions rather than of powers is followed. Unlike in the US, in India, the concept of separation of powers is not adhered to strictly. However, a system of **checks and balances** have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.

Today, most of the constitutional systems do not have a strict separation of powers between the various organs in the classical sense because it is impractical. In the following sections, we will see the prevailing system in India, what the relationship between each organ is, and the constitutional provisions thereof.

Before proceeding with the relationships, let us examine in brief what the functions of each organ of the government are.

### What is the Legislature?

The chief function of the legislature is to enact laws.

- It is the basis for the functioning of the other two organs, the executive and the judiciary.
- It is also sometimes accorded the first place among the three organs because until and unless laws are enacted, there can be no implementation and application of laws.

### What is the Executive?

The executive is the organ that implements the laws enacted by the legislature and enforces the will of the state.

- It is the administrative head of the government.
- Ministers including the Prime/Chief Ministers and President/Governors form part of the executive.

### What is the Judiciary?

The judiciary is that branch of the government that interprets law, settles disputes and administers justice to all citizens.

- The judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.
- It comprises of the Supreme Court, the High Courts, District and other subordinate courts.
- For more on [Indian Judiciary](#), click on the linked article.

### What is 'Separation of Powers'?

In the strictest sense, the doctrine of separation of powers is very rigid.

### Background of the concept

- This concept was first seen in the works of Aristotle, in the 4th century BCE, wherein he described the three agencies of the government as General Assembly, Public Officials and Judiciary.
- In the Ancient Roman Republic too, a similar concept was followed.
- In modern times, it was 18th-century French philosopher Montesquieu who made the doctrine a highly systematic and scientific one, in his book *De L' Esprit des Lois* (The Spirit of Laws).
- His work is based on an understanding of the English system which was showing a propensity towards a greater distinction between the three organs of government.
- The idea was developed further by John Locke.

### Purpose of the Separation

The purpose of separation of powers is to prevent abuse of power by a single person or a group of individuals. It will guard the society against the arbitrary, irrational and tyrannical powers of the state, safeguard freedom for all and allocate each function to the suitable organs of the state for effective discharge of their respective duties.

### Meaning of Separation of Powers

Separation of powers divides the mechanism of governance into three branches i.e. Legislature, Executive and the Judiciary. Although different authors give different definitions, in general, we can frame three features of this doctrine.

1. Each organ should have different persons in capacity, i.e., a person with a function in one organ should not be a part of another organ.
2. One organ should not interfere in the functioning of the other organs.
3. One organ should not exercise a function of another organ (they should stick to their mandate only).

Thus, these broad spheres are determined, but in a complex country like India there often arises conflict and transgression by one branch over the other.

### Significance of the doctrine

Why do we need a separation of powers between the various organs of the State? Whenever there is a concentration of power in one centre/authority, there is bound to be greater chances of maladministration, corruption, nepotism and abuse of power. This principle ensures that autocracy does not creep into a democratic system. It protects citizens from arbitrary rule. Hence, the importance of the Separation of Powers doctrine can be summed up as follows:

1. Keeps away autocracy
2. Safeguards individual liberty
3. Helps create an efficient administration
4. Judiciary's independence is maintained
5. Prevents the legislature from enacting arbitrary or unconstitutional laws

### Constitutional Status of Separation of Power in India

The doctrine of separation of powers is a part of the basic structure of the Constitution, although not specifically mentioned. The legislature cannot pass a law violating this principle. The functions of the three organs are specifically mentioned in the Constitution.

Let us take a look at some of the articles of the Constitution which suggest separation of powers.

**Article 50:** This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.

**Article 123:** The President, being the executive head of the country, is empowered to exercise legislative powers in certain conditions.

**Articles 121 and 211:** These provide that the legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.

**Article 361:** The President and Governors enjoy immunity from court proceedings.

There is a system of **checks and balances** wherein the various organs impose checks on one another by certain provisions.

- The judiciary has the power of [judicial review](#) over the actions of the executive and the legislature.
- The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).
- It can also declare unconstitutional executive actions as void.
- The legislature also reviews the functioning of the executive.
- Although the judiciary is independent, the judges are appointed by the executive.
- The legislature can also alter the basis of the judgment while adhering to the constitutional limitation.

Checks and balances ensure that no one organ becomes all-too powerful. The Constitution guarantees that the discretionary power bestowed on any one organ is within the democratic principle.

## Judicial Pronouncements Upholding Separation of Powers Doctrine

**Kesavananda Bharati Case (1973):** In this case, the SC held that the amending power of the Parliament is subject to the basic features of the Constitution. So, any amendment violating the basic features will be declared unconstitutional.

**Swaran Singh Case (1998):** In this case, the SC held the UP Governor's pardon of a convict unconstitutional.

### Other SC Judgements

- The Honourable Supreme Court in *Ram Jawaya Kapoor V State of Punjab* held that the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can be very well said that our Constitution does not contemplate assumption by one organ or part of the state of functions that essentially belong to another.
- In *Indira Nehru Gandhi V Raj Narain, Ray, CJ* observed that in the Indian Constitution there is a separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India. The Court further held that adjudication of a specific dispute is a judicial function which Parliament even acting under a constitutional amending power cannot exercise. Apart from difficulties inherent in the enforcement

of the strict doctrine of separation of powers in the functioning of the modern government, there is also an inherent difficulty in defining, in workable terms, the division of powers into executive, legislative and judicial.

- In *P Kannadasan V State of Tamil Nadu*, it was held, “the Constitution has invested the Constitutional Courts with the power to invalidate laws made by Parliament and the state legislatures transgressing Constitutional limitations. Where an Act made by the legislature is invalidated by the Courts on the basis of legislative incompetence, the legislature cannot enact a law declaring that the judgement of the Court shall not operate; it cannot overrule or annul the decision of the Court. But this does not mean that the legislature which is competent to enact the law cannot re-enact the law. Similarly, it is open to the legislature to alter the basis of the judgement. The new law or the amended law can be challenged on other grounds but not on the ground that it seeks to in effectuate or circumvent the decision of the court. This is what is meant by “checks and balance” inherent in a system of government incorporating separation of powers.

## Constituent Assembly and Separation of Powers

There are chiefly two reasons why the Constituent Assembly did not insert the separation of powers doctrine explicitly in the Constitution.

1. The founding fathers thought that it was too late to be inserting this principle as the Constitution was already drafted.
2. Also, India adopted the British parliamentary form of government. So, they thought it was better to avoid adopting a complete separation of powers doctrine like the American model.

## Relationship between Legislature and Judiciary

Even though the functions of the executive and the judiciary are well-defined in the Constitution, the system of checks and balances ensures that each one can impose checks on the other.

- The judiciary can strike down laws that it considers unconstitutional or arbitrary.
- The legislature, on its part, has protested against [judicial activism](#), and tried to frame laws to circumvent certain judgements.
- Judicial activism is said to be against the principle of separation of powers.
- There have been instances where the courts have issued laws and policies through judgements. For example, the Vishakha Guidelines where the SC issued guidelines on sexual harassment.
- In 2010, the SC directed the government to undertake distribution of food grains.
- If the judiciary oversteps its mandate and crosses over into the territory of the legislature or the executive, it is called [judicial overreach](#).

### Judicial Supremacy and Parliamentary Sovereignty

To strike a balance between the judiciary and the legislature, the Indian constitution uses the following principles:

- The doctrine of Parliamentary Sovereignty has been adapted from the British Constitution.
- The doctrine of Judicial Supremacy has been adapted from the American Constitution.
- The power of judicial review of the Supreme Court of India is narrower in scope than the Supreme Court of the USA.
- The Constitution of India guarantees ‘established procedure by law’ in Article 21 instead of the ‘due process of law’ provided in the American Constitution.
- The Indian Constitution has opted for an amalgamation of Britain’s principle of parliamentary sovereignty and the judicial supremacy of the USA.

- The Supreme Court, on the one hand, can declare the parliamentary enactments as unconstitutional using the power of judicial review.
- The Parliament, on the other hand, can amend a large chunk of the Constitution using its constituent power.

## Relationship between Legislature and Executive

The Constitution states that the executive branch of the State (Council of Ministers) shall be collectively responsible to the Legislature (Lok Sabha). This implies that the Parliament should supervise the work of the government and hold it accountable for its actions.

- In a parliamentary form of government, the executive is not separated from the legislature in that the members of the council of ministers are members of the legislature.
- The executive loses power when it loses the confidence of the legislature. The executive/council of ministers is dismissed if it loses the legislature's confidence before its tenure is over. So, the legislature controls the executive through a vote of no-confidence.
- The head of government and head of state are different. The head of the government is the Prime Minister while the head of state is the President.
- The parliament makes laws in general broad terms and delegates the powers to the executive to formulate detailed policy and implement them.
- In a presidential form of government, the executive is not accountable to the legislature. One person is the heads of both the State as well as the government. A minister need not be from the legislature.

## Relationship between Executive and Judiciary

There are several provisions in the Constitution that make the judiciary independent. This is because, it is believed that for a democracy to remain efficient and effective, the judiciary must be independent. The judiciary is said to be the guardian of the constitution. If the executive also assumes judicial powers, that sort of a government tends to become oppressive.

However, there are some judicial functions which are performed by the executive as well. They are:

1. The appointments of the judges are made by the executive.
2. The President and the Governors also enjoy the power to pardon, reprieve, etc. These are direct judicial functions.
3. Under the system of administrative adjudication, the executive agencies have the power to hear and decide cases involving particular fields of administrative activity.

Read more about the [Supreme Court of India](#).

The judiciary also performs some executive functions. It can review the actions of the executive and declare them void if found unconstitutional.

## Checks and Balances

The strict separation of powers that was envisaged in the classical sense is not practicable anymore, but the logic behind this doctrine is still valid. The logic behind this doctrine is of polarity rather than strict classification meaning thereby that the centre of authority must be dispersed to avoid absolutism. Hence, the doctrine can be better appreciated as a doctrine of checks and balances.

- In Indira Nehru Gandhi's case, Chandrachud J. observed - No Constitution can survive without a conscious adherence to its fine checks and balances. Just as courts ought not to enter into problems intertwined in the political thicket, Parliament must also respect the preserve of the courts. The principle of separation of powers is a principle of restraint which "has in it the precept, innate in the prudence of self-preservation; that discretion is the better part of valour".
- The doctrine of separation of powers in today's context of liberalization, privatization and globalization cannot be interpreted to mean either "separation of powers" or "checks and balance" or "principles of restraint", but "community of powers" exercised in the spirit of cooperation by various organs of the state in the best interest of the people.

### **Judicial Overreach**

The Supreme Court has been accused time and again of pronouncing judgements that are often termed as judicial legislation. This happens when in the guise of giving guidelines and creating principles, they assume the powers of the legislature, for instance, by laying down the basic structure doctrine, the Supreme Court has put limitations on the legislature's power to make and amend laws. The judiciary through the collegiums system has also been accused of infringing on powers of other branches. The essential function of the judiciary is to interpret the law rather than to be keen in the appointment of judges. After all, ours is a parliamentary form of democracy wherein parliamentarians are elected by people and they have to face the people, they are filling the slogan of "We the People"; as compared to this, judges are enjoying fixed tenure. They are accountable to none as such and they should concentrate on justice delivery rather than the appointments.

### **UPSC Questions related to Separation of Powers**

#### **What is separation of powers in the Constitution?**

It is a doctrine in which the three organs of the government, the executive, the legislature and the judiciary have separate functions and powers, and one organ does not interfere in the functioning of the others.

#### **What do you mean by checks and balances in Indian Constitution?**

It is a system by which no organ of the government abuses its own power. Checks and balances ensure that one organ does not become all too-powerful.

#### **Who introduced separation of powers?**

18th century French political philosopher Charles Louis de Secondat, Baron Montesquieu propounded the doctrine in a scientific and systematic manner, although the principle was used even in ancient times.

