

Separation of Powers

The doctrine of separation of powers among the three arms of the Indian government was introduced to maintain the balance of power. There is a separation of function among the Legislature, the Executive, and the Judiciary to prevent misuse of power and create a balance in the country's administration.

- The separation of powers in India seems to be an impractical concept. That is why most constitutional systems in the classical sense have no strict actions of separation of powers in administration between the three organs of the government.
- So, to maintain the equity of powers, a procedure of checks and balances has been instituted.
- This system of checks and balances justifies the judicial authority to nullify any law against the constitution passed by the legislature.

About Legislature, Executive and Judiciary

Below are the functions performed by the Legislature, Executive, and Judiciary bodies of the Indian government. There is a separation of power at numerous strata such as the legislature, executive, and judiciary. Each organ possesses different authority and different functions that lead to the smooth functioning of democracy. Check here the **separation of powers between different organs** between the **legislature, executive and judiciary**.

What is Legislature?

The legislature forms the basis for the smooth functioning of the other two bodies. The legislature is responsible for enacting the laws. It is considered to be one of the major bodies because if there is no one to enact the laws, these laws will not be executed properly.

What is Executive?

The executive is the administrative head of the government responsible for implementing the laws enacted by the legislature and enforcing the will of the state. The members of the executive include President/Governors and Prime/Chief Ministers.

What is Judiciary?

The governmental body that is responsible for the settlement of disputes, administering justice to all citizens, and maintaining laws is the Judiciary. It comprises the district courts, high courts, Supreme courts, and subordinate courts. The Judiciary is set to watchdog democracy. Along with protecting democracy, the judiciary is also considered the safeguard of the Indian constitution. Know more about **Judicial Activism** and Judicial Overreach for a better understanding.

Doctrine of Separation of Powers

The doctrine of separation of powers indicates the representation that was set by the government where the three bodies, i.e., the legislative, executive, and judiciary, are segmented into different branches instead of working as a single unit. However, this is not mentioned in the Indian constitution. The separation of power is aided by the following articles of the Indian constitution.

- **Article 50:** According to Article 50 of the Indian constitution, the state can take necessary actions to separate executive power from the judiciary. This separation is required to ensure that the judiciary works independently.
- **Article 53 and 154:** It states that the executive power of the state shall be vested with the governor. In the case of the Union, the President shall vest the executive powers. Both enjoy immunity from criminal and civil liability.
- **Articles 122 and 212:** As per these articles, the proceedings of the legislatures and the parliament cannot be questioned in any court. Also, the parliamentary statement cannot be used against the legislature in any case.
- **Article 121 and 211:** Article 121 and 211 of the Indian constitution state that the Parliament and Supreme court is not subjected to the judicial conduct of a high court or supreme court's judge.
- **Article 361:** For performing and exercising the powers and duties of the office, neither the Governor nor the **President** is answerable to any court.

Features of Doctrine of Separation of Power

There have been a lot of authors that have defined the doctrine as per their understanding. In general, the doctrine of separation of powers can have the following features:

- There must be a separate member in capacity in each body. This means that one person with a particular role in one organ cannot be a part of the rest of the two organs.
- There must be zero interference in the functioning of the three organs.
- There should be zero imposition of function among the organs.

History of Separation of Powers Between Different Organs

The original concept of the separation of powers can be seen back in the work done by Aristotle. The time period of these works was the 4th century BCE. At that period, Aristotle described the three functioning bodies of the government as,

- General Assembly
- Public Officials
- Judiciary

This concept was followed by the Ancient Roman Republic as well. However, this idea was developed by a French philosopher named Montesquieu in the 18th century. He came up with the book *De l'esprit des Lois* wherein he mentioned the concept of the doctrine of separation of power as a highly systematic and scientific one. His understanding was influenced by the English system, in which he found the inclination toward a huge difference between the three organs of government. John Locke further modified the idea.

Importance of Separation of Powers in Indian Constitution

Since the Indian constitution provides its constituents with certain rights and powers, individuals or groups can make unnecessary use of their powers. So, the concept of separation of powers was created with the sole purpose of preventing the abuse of power. It will guard society against the state's tyrannical, irrational, and arbitrary powers.

Along with this, it is responsible for safeguarding the freedom of all and allocates each function to the suitable organs of the state for the effective discharge of their respective duties. The significance of the separation of powers can be summarized as follows:

- It keeps a check on autocracy.
- It helps in creating a better administration that works efficiently.
- It maintains the independence of the three organs.
- It safeguards the liberty of an individual.
- It prevents the legislature from enacting unconstitutional laws and arbitrary.

Judicial Cases Validating Separation of Powers Doctrine

There have been two cases, and these were,

- **Kesavananda Bharati Case (1973):** For the Keshavananda Bharti case the highest court meaning the supreme court stated that the Parliament's amending power is based on the basic features of the Indian Constitution. So, if there is any amendment that violates the basic features, it will be nullified as against the constitution.
- **Swaran Singh Case (1998):** For the case of Swaraj Singh, the Supreme Court using the separation of power, stated the Uttar Pradesh's Governor's pardon of a convict against the constitution.