

Doctrine of Separation of Powers – Concept Class Polity Series #1

#1 What is the doctrine of separation of powers?

- (1) horizontal distribution of power vs vertical distribution of power.
- (2) distribution of power among 3 organs of the state (E, L, J)
- (3) each organ supreme in its sphere

#2 Why should we have separation of powers?

- (1) Prudent Argument vs Moral Argument
- (2) With power comes responsibility; one Institution not capable of performing all functions
- (3) Prevents concentration of power in single body; power corrupts, and absolute power..?
- (4) provides system of checks and balances
- (5) provides legitimacy to the State.
- (6) Conflicting Trinity vs Harmonious Government
- (7) Constitutional Vision & Mandate → Article 50

#3 Do we have complete separation of powers?

- (1) Montesquieu's Theory of Separation of Power → one person not in 2 or more organs, non-interference, one organ should not perform function of other, trias politica
- (2) No rigid / watertight separation → neither possible, nor desirable (Appointment of Judges)
- (3) Indian model → principle of flexibility & interdependency
- (4) Not possible in a Parliamentary form of govt → Executive part of Legislature

#4 How does Indian Model compare to American Model? *

- (1) American System – Presidential System – Complete Separation of Power
- (2) Watertight/Complete Separation vs Fused Model (Ordinance Making Power, Parliamentary Majority of the Executive, Appointments to Judiciary, Doctrine of Complete Justice, President Decides Disqualification of Members of Parliament)
- (3) Based on Systems of Checks and Balances

* Covered separately in Concept Class on Prime Ministerial vs Presidential Form of Government

#5 What are some examples of violation of Separation of Powers?

- (1) Article 123, Executive has membership of Legislature
- (2) Judicial Overreach → Vishakha Guidelines, Policy Decisions etc.

#6 What are the challenges with Indian Model of Separation of Power?

- (1) Slows down decision making → checks and balances, too many stakeholders etc.
- (2) Tyranny of the Executive behind Parliamentary Majority
- (3) Judicial Action turns into Judicial Overreach (Ban on Sale of Alcohol, Policy Paralysis etc.)

#7 Conclusion

- (1) Indian Model designed to suit Indian Polity & Indian Concerns post-Independence
- (2) Sacrifices speed and efficiency for checks and balances & prevention of power concentration
- (3) Complete separation neither feasible nor desirable
- (4) Each organ must respect the sphere of others, harmonious balance needed.

Associated Concepts: Judicial Activism, Presidential vs Prime Ministerial Form of Govt, Presidentialisation of Prime Ministerial Govt etc.