



## Mains Practice Question

**Q.** How does the doctrine of separation of powers reduce the possibility of arbitrary actions by the government in India? Give examples to illustrate your answer. (250 words)

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### Approach

- Start your answer by briefly introducing about separation of powers as prescribed in Indian constitution.
- Discuss how it reduces arbitrary action of government with examples.
- Conclude accordingly.

### Introduction

- The concept of separation of powers was first proposed by the French philosopher Montesquieu in his book, "The Spirit of the Laws," published in 1748. He argued that the powers of the government should be divided among three branches namely, **the legislative, executive, and judicial**.
  - As, this concept would prevent any one branch from becoming too powerful and ensure that the government is accountable to the people.

### Body

- The Constitution of India, which came into effect in 1950, lays out the framework in **article 50 of the Indian Constitution** which provides for the separation of powers in India. It divides the powers of the government into three branches, the legislative, executive, and judicial where:
  - The legislative branch is responsible for making laws, the executive branch is responsible for implementing laws and policies, and the judicial branch is responsible for interpreting laws and settling disputes.
  - **Constitutional provisions:**
    - **Article 121** of the constitution provides for the separation of powers between the **legislature and the executive**, stating that there shall be no discussion in the legislature of the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.
      - This ensures that the legislature does not interfere in the work of the judiciary, and that the judiciary can carry out its work without fear of retaliation.
    - **Article 74** of the Indian Constitution provides for the separation of powers between the **executive and the legislature**, stating that there shall be a council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.
      - This means that the executive branch, headed by the Prime Minister, is responsible for carrying out the laws and policies of the government, while the legislature, made up of the President, elected parliamentarians and the council of Ministers, is responsible for framing the laws.
  - The separation of powers in India is **not absolute**, as there is some **overlap and interdependence between the branches**.

- For example, the executive branch can make recommendations to the legislative branch for the creation of new laws.
  - Additionally, the judicial branch can review the actions of the executive and legislative branches to ensure they are in compliance with the Constitution.
  - Further, one of the drawbacks of Indian government system is interconnectedness of legislature and executive.
- **The doctrine of separation of powers reduces the possibility of arbitrary actions by the government:**
    - **Keeps Checks and Balances:** The separation of powers creates a system of checks and balances, where each branch of government has the power to limit the actions of the other branches.
      - For example, the judiciary has the power to review and strike down laws that are unconstitutional, thus preventing the legislative branch from passing arbitrary laws.
    - **Accountability:** Each branch of government is accountable to different bodies or institutions. The executive is accountable to the legislature, the legislature is accountable to the electorate, and the judiciary is accountable to the Constitution.
      - This ensures that each branch is held accountable for its actions and prevents arbitrary actions by the government.
    - **Independent Judiciary:** The independence of the judiciary is crucial in ensuring that the government does not take arbitrary actions.
      - The judiciary acts as a check on the actions of the other branches of government and ensures that the government acts within the boundaries of the Constitution.
  - **Examples of Reducing Arbitrary Actions:**
    - **The case of Kesavananda Bharati v. Union of India (1973):** In this case, the Supreme Court held that the power of the parliament to amend the Constitution is not absolute and that it cannot be used to destroy the basic structure of the Constitution.
      - This judgement established the principle of the basic structure of the Constitution, which limits the power of the government to amend the Constitution and prevents arbitrary actions.
    - **The case of S. R. Bommai v. Union of India (1994):** In this case, the Supreme Court held that the President's power to dismiss a state government is not absolute and that it can be exercised only on the basis of material provided by the Governor.
      - This judgement established the principle of the Governor's report, which limits the power of the government to dismiss a state government and prevents arbitrary actions.

## Conclusion

The separation of powers creates a system of checks and balances, where each branch of government has the power to limit the actions of the other branches, and ensures that each branch is held accountable for its actions. The examples given above illustrate the importance of the doctrine of separation of powers in reducing the possibility of arbitrary actions by the government in India.