

# Doctrine, Debate, and Democratic Discipline”

Posted at: 07/05/2025

## Separation of Powers in India: Doctrine, Debate, and Democratic Discipline.

### Introduction

The doctrine of separation of powers is a key feature of the Indian Constitution, ensuring that the legislature, executive, and judiciary function within their own spheres. Recent remarks by Vice-President Jagdeep Dhankhar, questioning the judiciary's powers and calling it a "super Parliament," have sparked fresh debate on the balance between these three organs and the boundaries of judicial intervention in a constitutional democracy.

#### 1. Constitutional Doctrine: Separation of Powers

#### Key Features

- A foundational principle of the Indian Constitution
- Ensures that the three organs of government — Legislature, Executive, Judiciary — operate independently within their defined roles

#### Points to Note

- Article 50 of the Directive Principles: Advocates separation of judiciary from the executive
- In *L. Chandra Kumar vs. Union of India* (1997), the Supreme Court reaffirmed that judicial review and independence form part of the basic structure
- Separation of powers is not rigid in India (as in the U.S.), but it ensures functional independence

- Violation of this balance leads to constitutional overreach and erosion of accountability

## 2. Supremacy of Constitution & Rule of Law

### Constitutional Provisions

- The Constitution is supreme, not Parliament, Executive, or Judiciary
- Article 13: Any law inconsistent with the Constitution is void
- Rule of Law (basic structure doctrine): No one is above the law, not even high constitutional authorities

### Points to Remember

- Even the President (Article 52) acts only on the aid and advice of the Council of Ministers (Article 74)
- Governors and Presidents are bound by constitutional norms — refusal or delay in assent to bills can face judicial review
- No authority can claim immunity if their actions violate constitutional boundaries

## 3. Analysis of Vice-President's Remarks

### Remarks Made

- Judges are acting like a “super Parliament”
- Judiciary has no authority to question the President or Governor's discretion
- Judges are not accountable under existing laws

### Constitutional Perspective

- Misleading Term - “Super Parliament”

- Judiciary does not legislate but ensures laws do not violate the Constitution
- Judicial review does not override Parliament; it upholds constitutional supremacy
- Presidential Assent & Judiciary
  - As per Articles 52, 74, 78, the President is a constitutional head and must act on advice
  - Courts may intervene in cases of undue delay to protect popular sovereignty

## Implications

- Such remarks from the second-highest constitutional authority weaken public trust in institutions
- Questioning judicial accountability without proposing structured reforms reflects political overreach

## 4. Judicial Accountability & Checks and Balances

### Constitutional Mechanisms

- Judges are accountable under the Constitution
- Article 124(4): A Supreme Court judge can be removed for “proved misbehaviour or incapacity”
- The Judges (Inquiry) Act, 1968 governs the removal process

### Role of Parliament

- Parliament can override judicial rulings by passing laws, if done constitutionally
- Balance of power is maintained through mutual checks — Judicial Review vs. Legislative Re-enactment

## Points to Remember

- Judiciary is not above the Constitution, but not subordinate to Parliament or Executive either
- Judicial independence is essential to protect fundamental rights and uphold constitutional morality

### 5. Judicial Activism, Popular Sovereignty & Article 142

#### Article 142 - "Complete Justice"

- Empowers the Supreme Court to pass any order necessary to do complete justice in any case
- Often used in gaps or failures of legislative or executive action

#### Judicial Activism

- Criticized as judicial overreach, but justified in matters where:
  - Public interest is at stake
  - Constitutional machinery fails
- Used to ensure accountability when other organs are passive or politically motivated

#### Popular Sovereignty

- Judiciary defends the will of the people by upholding constitutional values
- Timely judicial interventions (e.g., fixing deadlines for gubernatorial assent) ensure functioning democracy

## Conclusion

In a constitutional democracy like India, the separation of powers ensures that no organ of the State becomes omnipotent. The judiciary acts as a guardian of the Constitution, not a parallel

legislature. Recent statements by the Vice-President challenge this balance and risk undermining public faith in institutions.

As per the UPSC syllabus (GS-II), this issue highlights:

- Importance of constitutional morality
- Need for institutional respect and cooperation
- Role of judiciary in democratic resilience

Way Forward

- All constitutional authorities must act responsibly and within their limits
- Emphasis must remain on rule of law, accountability, and respect for institutional roles
- Public discourse should be guided by constitutional literacy and not political posturing



AKKA IAS ACADEMY  
www.akkaias.com