

FROM MONTESQUIEU TO MODERN INDIA: SEPARATION OF POWERS IN CONSTITUTIONAL PRACTICE

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ABSTRACT

The doctrine of separation of powers, as enunciated by Montesquieu to prevent tyranny, has undergone a considerable transformation in modern constitutional systems. The Constitution of India does not adopt a strict separation of powers between the legislative, executive and judicial branches; instead, it provides for a functional separation accompanied by a system of checks and balances. This paper examines the transformation of the separation of powers doctrine in India, tracing how the constitutional system has adapted Montesquieu's classical formulation to the governance needs of a welfare state. Adopting a doctrinal methodology grounded in constitutional text, judicial interpretation and comparative constitutional theory, the paper critically analyses the judiciary's role in scrutinising legislative and executive action and the resulting institutional tension. It argues that the Indian constitutional model represents a dynamic and pragmatic application of separation of powers rather than strict compartmentalisation, in which institutional overlap is constitutionally permissible provided it does not impair the essential functions of any organ, a principle the judiciary has since elevated to the status of a basic feature of the Constitution. The paper concludes that this flexible interpretation has strengthened constitutional governance even as it continues to test the boundaries of institutional restraint in contemporary India.

KEYWORDS: Checks and Balances; Constitutional Governance; Indian Constitution; Montesquieu; Separation of Powers

1. INTRODUCTION

"The Constitution has entrusted to each organ of the State its own distinct role."¹ The doctrine of separation of powers is among the most enduring features of constitutionalism, resting on the premise that liberty is best preserved where political power is not concentrated in a single hand. Although the doctrine's intellectual roots trace to ancient political thought, it was Montesquieu who gave it systematic constitutional form, famously asserting that there can be no liberty where legislative and executive power are united in the same person or body of magistrates.² What began as political ideal was thereby codified as a constitutional principle directed at preventing arbitrariness, despotism and the abuse of power, a concern captured succinctly in Lord Acton's observation that power corrupts and absolute power corrupts absolutely.³

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¹ Justice H.R. Khanna, *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

² Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws* bk. XI, ch. 6 (Thomas Nugent trans., Hafner Press 1949) (1748).

³ Letter from Lord Acton to Bishop Mandell Creighton (Apr. 5, 1887), in Lord Acton, *Historical Essays and Studies* 504 (1907).

The doctrine, in its classical form, hypothesises that the State's legislative, executive and judicial functions ought to be exercised by separate bodies, each occupying a distinct constitutional domain. Comparative constitutional practice, however, reveals that a strictly compartmentalised separation is neither realistic nor advisable in modern governance, and the doctrine has accordingly been moulded to accommodate supplementary dimensions of checks and balances, institutional interdependence and accountability. The growth of administrative governance, delegated legislation and judicial review in contemporary welfare states has produced functional overlap among the organs of the State, a development better understood as the doctrine's adaptive evolution than as its erosion; as constitutional theorists have observed, separation of powers today concerns the prevention of power's concentration considerably more than any strict division of function.⁴

The Indian Constitution represents a distinctive and pragmatic application of this evolved doctrine. Where the United States Constitution enacts separation of powers explicitly, the Indian constitutional scheme does not strictly compartmentalise governmental function, reflecting instead what may be termed a scheme of diffused functional separation in which powers are separated but not sealed off from one another.⁵ The constitutional provisions governing legislative competence, executive power and judicial independence, considered together, point to a design that promotes coordination without sacrificing institutional independence, a design the judiciary has consistently reinforced by treating separation of powers as a fundamental constitutional feature while stopping short of treating it as an absolute one.⁶ Judicial review supplies the most prominent field in which this doctrine operates in India, and the judiciary's growing role in scrutinising legislative and executive action has generated sustained debate over whether that role should be understood as a constitutional obligation, a discretionary safeguard, or, at its outer limit, an encroachment upon the domains properly reserved to Parliament and the Executive.⁷ This paper situates the Indian experience within the larger theoretical trajectory of separation of powers, from Montesquieu's original conception to contemporary constitutionalism, examining how Indian constitutional practice has sought to balance the exigencies of governance against the requirements of institutional restraint.

⁴ M.P. Jain, *Indian Constitutional Law* 382-83 (8th ed. 2018).

⁵ 1 H.M. Seervai, *Constitutional Law of India* 36-38 (4th ed. 1991).

⁶ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

⁷ Upendra Baxi, *The Avatars of Judicial Activism: Explorations in the Geographies of (In)Justice*, in *Fifty Years of the Supreme Court of India* 156, 160-62 (S.K. Verma & Kusum eds., 2000).

1.1 Objectives of the Study

This study pursues four interrelated objectives: to analyse the theoretical foundations of the separation of powers doctrine, particularly Montesquieu's political theory, and to assess its continuing relevance;⁸ to examine the scheme of separation of powers the Indian Constitution actually envisages, including the extent of functional overlap it permits among the three branches;⁹ to critically assess the judiciary's role in developing and implementing the doctrine in Indian constitutional practice, evaluating whether that role has strengthened constitutionalism or at times intruded upon the domains of the other two branches;¹⁰ and to determine the implications of India's particular approach to separation of powers for democratic accountability and governance more broadly, situating Indian constitutionalism within comparative and international context.¹¹

1.2 Research Methodology

The methodology adopted is doctrinal and analytical, supplemented by comparative constitutional analysis and qualitative content evaluation. At the doctrinal level, the study undertakes a systematic textual and contextual analysis of primary legal sources, constitutional provisions, Constituent Assembly debates and major Supreme Court pronouncements, treating judicial decisions not merely as precedent but as the vehicle through which constitutional meaning concerning legislative competence, executive discretion, judicial review and institutional restraint has been progressively constructed.¹² The comparative dimension situates the Indian experience within the broader trajectory of separation of powers theory, testing Montesquieu's classical formulation against its practical application in the United States and the United Kingdom to identify points of convergence and divergence that illuminate why India's Constitution deliberately departed from a strict separation model.¹³ The study further draws on qualitative content analysis of constitutional commentary, including the writings of Vile, Seervai, Jain and Baxi, to move beyond descriptive exposition toward critical evaluation of the doctrine as a dynamic rather than static or formalistic constitutional principle.

⁸ M.J.C. Vile, *Constitutionalism and the Separation of Powers* 13-15 (2d ed. 1998).

⁹ H.M. Seervai, *Constitutional Law of India* 36-38 (4th ed. 1991).

¹⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India); Upendra Baxi, *The Role of the Judiciary in Democratic Governance*, 21 J. Indian L. Inst. 1 (1979).

¹¹ M.P. Jain, *Indian Constitutional Law* 382-83 (8th ed. 2018).

¹² Wolfgang Friedmann, *Law in a Changing Society* 5-7 (2d ed. 1972).

¹³ M.J.C. Vile, *Constitutionalism and the Separation of Powers* (2d ed. 1998).

2. THE CONSTITUTIONAL SCHEME: FUNCTIONAL SEPARATION WITH CHECKS AND BALANCES

The Constitution distributes governmental function among the legislature, executive and judiciary without compartmentalising them into watertight domains. Articles 74 to 75 and 163 to 164 assign executive authority to a Council of Ministers responsible to the legislature; Articles 79 to 122 and 168 to 212 govern the functioning of the legislature; and Articles 124 to 147 and 214 to 231 assign judicial authority in a manner designed to secure judicial independence.¹⁴ This design was not accidental. The Constituent Assembly Debates confirm that the framers deliberately declined to adopt strict separation, with Dr. B.R. Ambedkar observing, in the course of discussing parliamentary democracy, that coordination between legislature and executive is an essential requirement of parliamentary government that cannot be achieved through absolute separation.¹⁵ The framers' choice here reflected a considered institutional judgment rather than mere oversight: a parliamentary system, in which the executive derives its authority from and remains answerable to the legislature on a continuing basis, is structurally incompatible with the strict separation the American presidential model contemplates, since the very mechanism of ministerial responsibility that secures executive accountability under a parliamentary system presupposes an ongoing institutional relationship between the two branches that a rigid separation would foreclose.

Legislative practices including delegated legislation, ordinance-making under Article 123, and the exercise of parliamentary privilege each reflect constitutional acceptance of overlapping authority between the legislature and executive, an acceptance the framers built into the constitutional text rather than one courts have since had to improvise around.¹⁶ Article 123's ordinance-making power is a particularly striking illustration of this deliberate overlap: it vests in the executive a power that is, in substance, legislative in character, exercisable when Parliament is not in session and subject to subsequent parliamentary approval, a design that presupposes rather than denies the possibility of one branch temporarily exercising a function ordinarily associated with another, provided the underlying accountability relationship, here, the requirement of eventual parliamentary ratification, remains intact.

This functional design carries a structural implication worth making explicit: because the Constitution nowhere enacts separation of powers as an express, freestanding textual guarantee comparable to the American model, the doctrine's entire domestic force in India derives from judicial interpretation reading it into the Constitution's structure, a point that shapes both the doctrine's

¹⁴ The Constitution of India, 1950, arts. 74-75, 79-122, 124-147.

¹⁵ 7 Constituent Assembly Debates 953 (Dec. 4, 1948).

¹⁶ The Constitution of India, 1950, arts. 123, 312; M.P. Jain, *Indian Constitutional Law* 382-85 (8th ed. 2018).

flexibility, discussed in Part 3, and the institutional tension it has generated, examined in Part 5. This interpretive origin also explains why the doctrine's content in India has proved considerably more adaptable than in jurisdictions where separation of powers is entrenched as explicit constitutional text: a judicially constructed doctrine can be recalibrated through subsequent interpretation in a manner a textually fixed guarantee cannot, a flexibility this paper's analysis treats as a genuine institutional strength rather than a deficiency in constitutional design, provided that flexibility remains disciplined by the threshold principle Part 4 develops.

3. JUDICIAL ELABORATION: FROM RAM JAWAYA KAPUR TO THE BASIC STRUCTURE

The judiciary has played the decisive role in developing India's separation of powers doctrine. In *Ram Jawaya Kapur v. State of Punjab*, the Supreme Court clarified that while the Constitution endorses separation of powers as an organising principle, it does not enforce the doctrine rigidly, a foundational holding the Court reiterated in *Indira Nehru Gandhi v. Raj Narain* in the course of affirming constitutional supremacy over unrestrained legislative or executive action.¹⁷ The *Ram Jawaya Kapur* Court's reasoning bears close attention: the case arose from a challenge to the executive's authority to run a state textbook publishing business without specific legislative sanction, and the Court's holding that the executive may exercise powers not specifically assigned by statute, provided it does not encroach on a field occupied by existing law or infringe individual rights, established from the outset that Indian separation of powers doctrine would operate as a permissive default calibrated around the risk of specific institutional harm rather than a categorical prohibition on functional overlap as such. *Indira Nehru Gandhi v. Raj Narain* extended this logic into still more consequential territory, striking down a constitutional amendment that had purported to place the Prime Minister's election dispute beyond judicial scrutiny, on the ground that removing an entire category of dispute from judicial review offended the separation of powers implicit in the Constitution's basic structure, foreshadowing the fuller elaboration of that structural protection in *Kesavananda Bharati*.

The doctrine received its most consequential elaboration in *Kesavananda Bharati v. State of Kerala*, where the Court elevated separation of powers to the status of a basic feature of the Constitution, holding that even a constitutional amendment could not disturb it, a holding that converted the doctrine from an interpretive principle into a substantive limitation on the amending power itself.¹⁸ The significance of this move for the analysis in this paper is

¹⁷ *Ram Jawaya Kapur v. State of Punjab*, A.I.R. 1955 S.C. 549 (India); *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp S.C.C. 1 (India).

¹⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

considerable: by placing separation of powers within the basic structure, the Court ensured that no future political majority, however large, could use the constitutional amendment process under Article 368 to concentrate power in a single branch, a protection considerably stronger than the doctrine would carry if it operated merely as an ordinary principle of statutory or constitutional interpretation subject to legislative override. The Court has since cautioned against the doctrine's overextension in the opposite direction: in *Divisional Manager, Aravali Golf Club v. Chander Haas*, it warned the judiciary itself against overstepping into domains properly belonging to the legislature and executive, confirming that the basic-structure protection separation of powers now enjoys constrains judicial as well as political overreach.¹⁹ The Aravali Golf Club Court's specific concern, that judicial directions ordering the creation of particular administrative posts trespassed into a domain of executive personnel management the Constitution reserves to the executive itself, illustrates concretely how the threshold principle developed further in Part 4 operates in practice: the Court did not question the underlying merits of the administrative reform sought, only the judiciary's institutional competence to order it directly rather than merely reviewing the executive's own exercise of discretion.

The rise of public interest litigation has tested this equilibrium directly. By relaxing standing requirements and permitting courts to address governance failures the political branches had left unaddressed, public interest litigation expanded the judiciary's practical role in governance and, at times, blurred the institutional boundaries. *Ram Jawaya Kapur* and *Aravali Golf Club* were designed to police, a development scholars have characterised as simultaneously a constitutional necessity and a potential threat to democratic accountability.²⁰ The judiciary's own development of continuing mandamus, most visibly in *Vineet Narain v. Union of India*, where the Court retained supervisory jurisdiction over an ongoing criminal investigation to ensure its independence from executive interference, illustrates how far judicial remedy can extend once a court concludes that ordinary adjudication cannot secure compliance with constitutional obligation, converting what began as adjudication into something closer to judicial administration of an ongoing executive function.²¹ The *Vineet Narain* proceedings arose from allegations that investigating agencies had deliberately stalled inquiries into politically connected individuals implicated in a hawala financing scandal, and the Court's response, retaining the matter before itself and issuing periodic directions to the investigating agencies over an extended period rather than disposing of the petition through a single final order, demonstrates the practical mechanics through which continuing mandamus operates: not a single act of adjudication

¹⁹ *Divisional Manager, Aravali Golf Club v. Chander Haas*, (2008) 1 S.C.C. 683 (India).

²⁰ Upendra Baxi, *The Avatars of Judicial Activism*, in *Fifty Years of the Supreme Court of India* 156 (S.K. Verma & Kusum eds., 2000).

²¹ *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226 (India).

but a sustained supervisory relationship that persists until the Court is satisfied the underlying constitutional obligation, here, an independent and effective investigation, has been genuinely secured. The Court has periodically acknowledged the risk this trajectory creates, cautioning against judicial governance in terms that confirm separation of powers operates as an effective constraint even upon the judiciary itself, reinforcing this paper's central claim that the doctrine functions in India as a mutual restraint mechanism rather than a one-directional check on the political branches alone.

4. FUNCTIONAL OVERLAP AS CONSTITUTIONAL DESIGN

The central analytical question this paper addresses is whether functional overlap among the legislative, executive and judicial branches undermines separation of powers as a constitutional principle. The evidence surveyed above supports a clear answer: such overlap is not incidental but constitutional in character. Parliamentary democracy itself presupposes that the executive remains accountable to the legislature, while the judiciary's review function necessarily requires it to examine the acts of both other branches; overlap of this kind is therefore built into, rather than a departure from, India's chosen system of government. Judicial pronouncements have consistently confirmed that the doctrine must be understood in substance rather than form, and the Supreme Court's own observation that the Constitution does not contemplate "watertight compartments" between the branches captures precisely this understanding, while its parallel insistence that no branch may "usurp" another's essential function supplies the doctrine's operative limit. Separation of powers in India accordingly functions as a threshold principle: overlap is constitutionally tolerated up to the point where it would displace, rather than merely interact with, another organ's core function.

Delegated legislation, ordinance-making and judicial review have each been upheld as constitutionally permissible precisely because none, properly exercised, usurps another institution's essential function; a constitutional violation arises only where such overlap tips into dominance, displacing rather than merely interacting with another branch's core role. This threshold framing also explains the *Kesavananda Bharati* basic-structure holding discussed in Part 3: by placing separation of powers beyond the reach of ordinary constitutional amendment, the judiciary ensured that the threshold itself, rather than any specific institutional arrangement existing at a given moment, remains permanently protected, even as the particular allocation of overlapping function between the branches continues to evolve with the practical demands of governance.

5. INSTITUTIONAL TENSIONS: EXECUTIVE ASCENDANCY AND JUDICIAL OVERREACH

Two distinct institutional pressures test the equilibrium this paper has traced. The first is the ascendancy of executive power, sustained not only by constitutional design but by a degree of legislative abdication of active governance responsibility. Reliance on delegated legislation and ordinances reflects genuine welfare-state governance needs, but it simultaneously signals institutional weakness where Parliament fails to exercise the oversight the Constitution contemplates over the executive action it has authorised.²² Reports of the Law Commission of India, while accepting that some delegation of legislative power is inevitable in a modern administrative state, have repeatedly expressed concern regarding the resulting concentration of power in executive hands, and reports of the Comptroller and Auditor General have similarly flagged persistent weaknesses in parliamentary control over executive expenditure, reinforcing the same underlying concern from a different institutional vantage point.²³ The scale of this delegation deserves emphasis: modern Indian governance operates substantially through subordinate legislation, rules, regulations and notifications issued by the executive under statutory authority, rather than through primary legislation debated and passed by Parliament itself, and while each individual instance of delegation may be modest, their cumulative effect is to shift the practical locus of lawmaking activity toward the executive branch to a degree the Constitution's formal textual allocation of legislative power to Parliament does not, on its face, anticipate.

This paper's central claim regarding executive ascendancy is that separation of powers ceases to function effectively not when powers overlap as such, but when the accountability mechanisms meant to police that overlap themselves fail; where Parliament cannot or does not effectively scrutinise executive action, the system of checks and balances becomes skewed regardless of how the underlying constitutional text allocates formal authority. Parliamentary committees, in principle, supply precisely this scrutiny function, and in practice their capacity to do so varies considerably depending on resourcing, technical expertise and the political incentives of the ruling coalition to permit genuinely searching review of its own executive's conduct, a variability that means the formal existence of committee oversight mechanisms does not by itself guarantee their effective operation.

The second and countervailing pressure is judicial overreach, the risk that a judiciary empowered to correct executive arbitrariness and legislative inertia through public interest litigation and continuing mandamus, examined in Part 3,

²² Law Commission of India, 14th Report: Reform of Judicial Administration (1958).

²³ Comptroller and Auditor General of India, Report on Union Accounts (latest ed.).

may itself begin to exercise a policy-making function the Constitution reserves to elected, politically accountable institutions. Critics of expansive judicial review point to the judiciary's structural limitations for this task: judges are neither elected nor directly accountable to the electorate, typically lack the specialised technical or economic expertise that complex policy questions demand, and adjudicate through an adversarial process ill-suited to weighing the full range of competing social and economic interests a legislature would ordinarily consider before enacting policy. The judiciary's periodic self-caution against judicial governance, noted above, reflects institutional awareness of this risk rather than its resolution, and the tension remains, on the evidence this paper has surveyed, a live and unresolved feature of Indian constitutional practice rather than one settled definitively by any single doctrinal development.

Executive ascendancy and judicial overreach are best understood as two faces of the same underlying structural problem: a legislature insufficiently vigilant in exercising the oversight function the Constitution assigns it creates a vacuum that both the executive and the judiciary are institutionally positioned, for different reasons, to fill, and the resulting equilibrium accordingly depends less on any single branch's self-restraint than on Parliament's willingness to occupy the space the Constitution reserves for it. This diagnosis carries an important implication for constitutional reform discourse more generally: proposals aimed solely at curbing judicial activism, or solely at restraining executive rule-making, address only one symptom of a problem whose root cause, on this paper's analysis, lies substantially in the comparative weakness of legislative oversight capacity relative to the scale and complexity of contemporary executive governance.

6. COMPARATIVE CONSTITUTIONAL PRACTICE

Comparative practice reinforces the conclusion that India's flexible approach to separation of powers reflects a broader constitutional trend rather than a distinctively Indian departure from settled doctrine. Even in the United States, historically the jurisdiction most closely associated with strict separation, the functional areas of overlap between the branches have expanded considerably through the growth of administrative agencies combining rule-making, enforcement and adjudicative functions within a single body. The United Kingdom's uncodified constitution relies still more heavily on convention and judicial restraint rather than textual demarcation, illustrating that formal constitutional entrenchment of separation of powers is not a precondition for its practical operation as a constraint on the concentration of power. International instruments addressing democratic governance, the rule of law and institutional accountability, while rarely articulating separation of powers as such, consistently reinforce the underlying concern with diffusing authority to prevent

its concentration, supplying an international normative backdrop consistent with, though not determinative of, India's own constitutional trajectory.²⁴ Taken together, this comparative record supports treating separation of powers as a constitutional principle sensitive to political and administrative context rather than a fixed institutional template capable of uniform application across jurisdictions.

7. TOWARDS A MORE RESILIENT EQUILIBRIUM: RECOMMENDATIONS

The analysis above points toward five concrete measures capable of strengthening the operation of separation of powers in Indian constitutional practice. Parliamentary oversight mechanisms over executive action require strengthening, particularly through better-resourced parliamentary committees capable of scrutinising delegated legislation, ordinances and executive policy on an ongoing rather than sporadic basis, addressing the legislative-oversight deficit identified in Part 5 directly rather than leaving that deficit to be filled by judicial intervention after the fact. Concrete institutional steps toward this end could include mandatory committee review of subordinate legislation before it takes effect, rather than the largely post hoc laying procedures presently in place, and dedicated technical secretariats attached to key parliamentary committees capable of matching the executive's own analytical capacity on complex regulatory questions.

Judicial self-restraint should be treated as an integral, rather than merely aspirational, component of separation of powers: judicial review remains indispensable to constitutional governance, but courts should exercise particular caution when litigation would require them to enter genuinely polycentric policy domains better suited to legislative or executive resolution, reserving the more intrusive remedy of continuing mandamus, examined in Part 3, for cases where ordinary adjudication has demonstrably failed to secure compliance with a clear constitutional obligation rather than treating it as a routine tool of first resort. Clearer statutory and constitutional guidance on the permissible scope of delegated legislation would help ensure that delegation continues to serve administrative efficiency rather than becoming a vehicle for executive overreach, converting the presently informal threshold discussed in Part 4 into a more precisely calibrated legal standard, for instance by requiring that enabling statutes specify the essential legislative policy themselves and confine delegated power to filling in administrative detail consistent with that policy, a distinction Indian courts have long recognised in principle but have not always applied with consistent rigour in practice.

²⁴ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, U.N. Doc. A/RES/70/1 (Sept. 25, 2015).

Sustained constitutional education for legislators, administrators and judges would help inculcate the institutional self-awareness this paper's analysis suggests is necessary for the threshold principle to operate as intended, since a threshold that officials do not understand cannot reliably constrain their conduct; this is not a merely rhetorical recommendation, since much of the institutional friction traced throughout this paper arises precisely where one branch appears to misunderstand, rather than deliberately disregard, the boundaries of its own constitutional role. Finally, continued engagement with comparative constitutional experience, of the kind traced in Part 6, would allow Indian constitutional practice to draw on the accumulated experience of other democracies confronting the same underlying tension between institutional specialisation and institutional accountability, while preserving the distinctive features of India's own constitutional design, in particular the parliamentary accountability structure that Part 2 identifies as the foundational reason India's framers rejected strict separation in the first place.

8. CONCLUSION

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, may justly be pronounced the very definition of tyranny."²⁵ This paper has traced the transformation of that classical warning from Montesquieu's eighteenth-century formulation into its considerably more nuanced application within Indian constitutional practice. The Indian Constitution's provisions, the judiciary's sustained interpretive elaboration from *Ram Jawaya Kapur* through *Kesavananda Bharati* to *Aravali Golf Club*, and the comparative record examined in Part 6 together demonstrate that Indian constitutionalism treats separation of powers not as an institutional doctrine demanding rigid compartmentalisation but as a substantive principle directed at preventing the concentration of power, operationalised through a threshold that tolerates functional overlap while forbidding institutional usurpation. The paper has also shown that this equilibrium remains genuinely contested rather than settled. Judicial activism, indispensable to the protection of fundamental rights and constitutional supremacy, has periodically generated tension with democratic legitimacy and institutional boundary, while executive ascendancy, enabled as much by legislative abdication as by constitutional design, has generated a parallel and connected challenge. Neither tension admits of a permanent doctrinal resolution; both instead require the sustained institutional vigilance, across all three branches, that this paper's recommendations in Part 7 are directed at strengthening. Separation of powers in India survives, ultimately, not as a fixed rule but as a continuing constitutional dialogue among institutions, disciplined by constitutional morality and mutual restraint, and its future vitality will depend on whether that dialogue continues to be conducted

²⁵ James Madison, *The Federalist* No. 47.

with the institutional modesty the doctrine, properly understood, requires of every branch of the Indian State.

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