



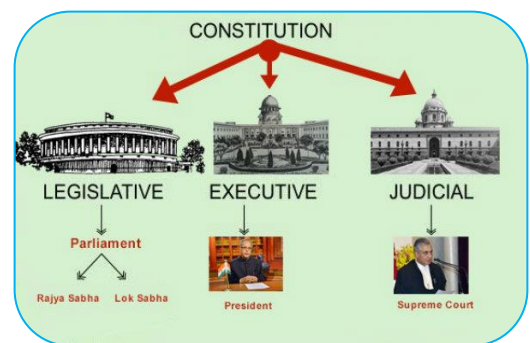
SEPARATION OF POWERS IN INDIA: CONSTITUTIONAL FOUNDATIONS AND INSTITUTIONAL INTERPLAY

Dr. Ritu

**Associate Professor , Department of Political Science,
Aggarwal College, Ballabgarh.**

ABSTRACT :

This paper explores the evolving practice of the separation of powers in India, assessing how its constitutional framework balances authority among the executive, legislature, and judiciary. Rooted in both British parliamentary traditions and American principles of judicial review, India's model reflects a hybrid structure shaped by its postcolonial context. The study outlines the institutional roles of each branch and examines emerging tensions—ranging from executive centralisation and the frequent use of ordinances, to concerns about judicial overreach and limited legislative autonomy under party control. Key developments such as the collegium system and landmark rulings are analysed to assess their impact on institutional balance. A comparative reflection with the UK, US, and China highlights India's distinctive approach to constitutional design. The paper concludes that preserving this balance requires renewed attention to parliamentary scrutiny and greater transparency in judicial appointments, reinforcing the resilience of India's democratic framework.



KEYWORDS : Executive, Legislature, Judiciary, Separation of Powers.

INTRODUCTION:

The separation of powers is a fundamental doctrine in political theory, articulated most notably by the 18th-century French philosopher Baron de Montesquieu. In his seminal work, *The Spirit of the Laws* (1748), Montesquieu argued that liberty could only be safeguarded if governmental authority were clearly delineated among distinct branches. This concept posits that political power must be distributed across separate and autonomous institutions to prevent abuse and uphold individual freedoms. Montesquieu's principle prescribes a division of governmental responsibilities into three branches — the executive, the legislature, and the judiciary — each with defined functions, independent status, and mutual checks on the others [1-4].

The executive branch is responsible for implementing and enforcing laws, managing state administration, and conducting international relations. In the Indian context, this power primarily resides in the President, Prime Minister, and the Council of Ministers, who collectively steer policy execution [5]. The legislature, comprising Parliament at the national level (Lok Sabha and Rajya Sabha) and state legislative assemblies at the regional level, is charged with making and amending laws,

representing the electorate's interests, and scrutinising the government's actions [6]. Meanwhile, the judiciary interprets and adjudicates laws, safeguards constitutional principles, and ensures governmental actions comply with fundamental rights and freedoms. At its apex is the Supreme Court of India, supported by a structured hierarchy of high courts and subordinate courts, tasked with impartial and independent interpretation of the law [7].

The motivation behind adopting such a division of governmental authority is multifaceted. Foremost is the prevention of tyranny: separating powers serves as a robust safeguard against the concentration and abuse of political authority, ensuring no single branch becomes dominant. Furthermore, the system promotes accountability, enabling each branch to exercise oversight over the others, thereby fostering transparency, responsiveness, and responsible governance. By establishing clear institutional boundaries and mechanisms for mutual oversight, the separation of powers underpins democratic stability, upholds the rule of law, and preserves civil liberties [1,4].

India's constitutional design embeds a calibrated division of functions across the legislature, executive, and judiciary. Given the historical legacy of colonial centralisation and authoritative control, India's constitutional architects were keenly aware of the necessity of preserving institutional autonomy while allowing for pragmatic coordination where governance demands it. This article explores how this principle has evolved in India's democratic journey, its contemporary relevance, and the ongoing challenges it faces in ensuring balanced governance.

Historical Context: From Colonial Rule to Constitutional Democracy

To fully grasp the contemporary structure of India's separation of powers, it is essential to consider the historical context in which India's constitutional arrangements were formed. The principle of dispersing governmental power was not explicitly articulated in India's early political experience, largely due to the country's colonial history. Under British colonial rule, political authority was highly centralised, with limited scope for any meaningful separation of powers [8,9].

The colonial governance structure was dominated by a powerful executive, represented primarily by the office of the Viceroy (formerly the Governor-General), who acted as the monarch's representative and wielded extensive legislative and administrative powers. The administrative centralisation of colonial India—anchored in the office of the Viceroy—was not incidental but structurally embedded in British imperial strategy, designed to assert metropolitan authority and suppress centrifugal political pressures across the subcontinent. Judicial authority, although notionally separate, operated under significant British supervision, with the ultimate appellate authority vested in the Privy Council in London. This effectively subordinated the judiciary to the colonial administration, limiting judicial autonomy and independence [10,11].

Legislative powers during the British period were nominally exercised through councils that gradually evolved to include limited Indian representation. Notably, the Government of India Acts of 1919 and 1935 attempted incremental reforms to address increasing demands for political participation by Indians. The Act of 1919 introduced the concept of "dyarchy" [12], partially dividing legislative responsibilities between British officials and elected Indian representatives, but real executive power remained firmly in colonial hands. Subsequently, the Government of India Act 1935 further extended legislative powers and representation, establishing provincial autonomy and elected legislative bodies. Yet even under this framework, executive authority—particularly central oversight—remained largely insulated from democratic accountability [13,14].

The experience of colonial centralisation strongly influenced India's political leaders and constitution-makers in their pursuit of an independent constitutional framework. When independence was attained in 1947, the Constituent Assembly (1946–1949) undertook extensive debates regarding the ideal structure for India's future government. Key figures, including Dr B.R. Ambedkar, Jawaharlal Nehru, Sardar Patel, and others, expressed the urgent need to establish clear and robust checks against any potential abuse of governmental power, reflecting their profound concerns shaped by colonial

history. Ambedkar, as the principal architect of the Indian Constitution, was particularly conscious of the necessity to balance executive effectiveness with legislative accountability and judicial independence [15,16].

The Constitution of India, adopted in 1950, embedded the separation of powers implicitly rather than explicitly. Drawing heavily on the UK's Westminster parliamentary model, India's constitution adopted a parliamentary democracy where the executive branch derives its legitimacy from and remains accountable to the legislature. Yet, uniquely among parliamentary democracies, India also incorporated certain elements inspired by the United States, notably the institution of judicial review and constitutional supremacy. The Indian judiciary was entrusted with substantial autonomy and the power to strike down legislative or executive actions that violated constitutional provisions or infringed fundamental rights [15,17].

This hybrid constitutional design was intentionally constructed, informed deeply by India's political experiences under colonial rule. By implicitly embedding a balanced institutional framework, India's constitution-makers aimed to prevent a recurrence of centralised authoritarianism while ensuring stability, accountability, and the safeguarding of democratic freedoms. The historical legacy of colonial governance, therefore, provided both a cautionary tale and a foundational rationale for adopting a nuanced approach to the separation of powers—one that continues to evolve and adapt in contemporary India [15].

Separation of Powers in Contemporary India

The carefully balanced distribution of governmental authority envisaged by India's founding constitutional framers continues to shape governance today, evolving dynamically with India's democratic experience, with its three branches:

Executive Branch: The executive branch in contemporary India is headed by the President, who formally embodies the nation's sovereignty, while practical executive power resides primarily with the Prime Minister and the Council of Ministers. The Prime Minister, chosen from the majority party or coalition in the lower house of Parliament (Lok Sabha), effectively directs government policy and administration, ensuring that executive authority remains closely intertwined with legislative support. This overlap between executive and legislature—characteristic of parliamentary democracy—ensures government accountability but occasionally challenges the principle of clear institutional separation [5,17].

India's executive authority is further implemented by an extensive administrative bureaucracy, the civil service, which operationalises laws, manages public administration, and provides continuity across elected governments. While ostensibly politically neutral, the civil service often becomes a powerful actor within the executive branch, influencing policy execution and occasionally impacting legislative priorities. Hence, the nature of India's parliamentary system, with executive power intimately linked to legislative majorities, frequently blurs strict institutional distinctions, compelling continued vigilance against executive overreach [18,19].

Legislative Branch: India's legislative power is exercised at both central and state levels. At the national level, Parliament comprises two chambers: the Lok Sabha (House of the People), representing direct popular sovereignty, and the Rajya Sabha (Council of States), which embodies federal interests through indirect representation. Similarly structured state legislatures mirror this framework, reinforcing democratic decentralisation [6,17].

Parliament is responsible not only for law-making but also for ensuring that executive actions remain accountable through robust oversight mechanisms, including debates, parliamentary committees, question hours, and motions of no-confidence. However, the practical effectiveness of these mechanisms can be curtailed by party discipline, electoral dynamics, and centralisation of authority within political parties. The dominance of party leadership, often led directly by the executive, means

legislative autonomy can occasionally become secondary to political imperatives, thus posing challenges to the effective separation of powers envisioned constitutionally [20,21].

Judicial Branch: India's judiciary, structured in a hierarchical form, includes the Supreme Court at its apex, followed by High Courts in each state and a network of subordinate courts. The judiciary is vested with the critical power of judicial review, a principle borrowed from the United States, empowering courts to interpret the constitutionality of executive and legislative actions. This ensures not only compliance with the Constitution but also protection of fundamental rights and individual liberties [7,22].

Crucially, judicial independence remains a cornerstone of India's democratic framework. This autonomy has been carefully guarded through mechanisms such as the collegium system, wherein judges themselves recommend judicial appointments, thereby insulating the judiciary from executive interference [23].

RECENT DEVELOPMENTS

In recent decades, India's judiciary has actively engaged in interpreting and enforcing constitutional rights through both judicial activism and restraint, significantly impacting the balance of governmental powers. Landmark cases such as the *Kesavananda Bharati* judgment (1973)—which established the doctrine of the Constitution's "basic structure"—have profoundly shaped the limits of parliamentary sovereignty, constraining legislative amendments that infringe essential constitutional principles [22,24].

Further landmark judgments, including those on Aadhaar (2018) [25], privacy rights (*Puttaswamy* judgment, 2017) [26], and the NJAC (2015) [27], have illustrated the judiciary's readiness to confront executive and legislative overreach. Such interventions have sometimes been characterised as judicial activism, eliciting criticism about judicial overreach into legislative and executive domains [22]. Conversely, the government's frequent use of ordinances, bypassing legislative scrutiny, has raised alarms about executive dominance undermining parliamentary oversight [28].

Thus, contemporary India reflects an intricate tension within its separation of powers framework: executive assertiveness, legislative responsiveness constrained by party dynamics, and an increasingly proactive judiciary safeguarding constitutional principles. The interplay between these branches is dynamic, periodically recalibrated through political events, landmark judicial decisions, and evolving public discourse. Maintaining this delicate balance remains pivotal not only for democratic integrity but also for sustaining citizens' confidence in India's constitutional democracy.

COMPARATIVE ANALYSIS

Understanding the separation of powers in contemporary India benefits greatly from comparative reflection on the governance models of other significant global powers—the United Kingdom, the United States, and China. Each offers distinct insights into how the interplay between executive, legislature, and judiciary shapes the effectiveness of governance and protection of democratic freedoms [29].

i. United Kingdom

India's parliamentary democracy was closely modelled on the British Westminster system, yet critical differences emerged due to divergent historical experiences and constitutional objectives [15]. A fundamental distinction lies in the concept of parliamentary sovereignty in the UK, contrasting sharply with India's constitutional supremacy. In the UK, Parliament holds ultimate authority, empowered theoretically to enact or repeal any law without constitutional constraints. By contrast, India's Parliament operates within clear constitutional limits, subject to judicial review and constitutional interpretation, a safeguard against potential legislative excesses [30].

Moreover, while both countries employ parliamentary systems leading to a considerable overlap between executive and legislative branches—executive members being drawn directly from the legislature—the Indian judiciary maintains significantly greater autonomy. The UK's judiciary is traditionally deferential to parliamentary sovereignty [31], unlike the constitutional authority exercised by India's Supreme Court [27]. Consequently, judicial review in the UK remains limited primarily to administrative actions [32], whereas Indian courts actively engage in constitutional adjudication and have consistently demonstrated independence through landmark rulings [26].

ii. United States

The US political system, premised explicitly upon separation of powers [33], provides another valuable comparison. Unlike India's parliamentary structure, the US operates a presidential system, where executive authority, vested in a President elected independently from the legislature, is formally distinct and autonomous. This explicit constitutional separation ensures stronger institutional checks and balances, compelling constant negotiation and compromise among Congress, the Presidency, and the Supreme Court [34].

In contrast, India's system, while also upholding a separation in principle, features significant practical overlaps, given the executive's dependency on legislative majority support [15]. However, both nations share similarities in judicial strength, especially regarding judicial review [22]. The US Supreme Court historically enjoys considerable autonomy, interpreting constitutional limits and exercising robust oversight over executive and legislative actions [35]. Similarly, India's Supreme Court exerts influential judicial authority, though appointments processes differ markedly—US judicial appointments, made by the executive and confirmed by the legislature [36], contrast starkly with India's collegium system [27], intended to insulate judicial selections from political pressures.

iii. China

In contrast to the democratic frameworks of the United Kingdom, the United States, and India, China follows a distinct governance model shaped by the institutional leadership of the Communist Party of China (CCP). Within this system, the separation of powers is approached differently, with a high degree of integration among the legislative, executive, and judicial branches. The National People's Congress, China's primary legislative body, largely functions within the broader structure of party-led governance, with its legislative role closely aligned with policy directions set by the CCP [37, article 1 and 3].

The judiciary in China also operates within this integrated model, where courts are considered components of the administrative system [37, article 128]. While the Constitution provides for judicial functions, the adjudicative process is guided by institutional priorities that reflect broader governance considerations [37, article 3]. As a result, judicial independence and constitutional interpretation function differently than in systems such as India's, where the Supreme Court has developed a strong tradition of asserting constitutional principles and reviewing legislative and executive actions [22]. Despite India's parliamentary system involving close interaction between branches of government, its judiciary has consistently demonstrated an active role in upholding constitutional boundaries.

Comparing India's governance structure with the UK, US, and China underlines both unique strengths and persistent challenges in its constitutional system, including constitutional constraint, judicial oversight and institutional checks intended to prevent authoritarianism.

Through these comparisons, India's system emerges as distinctly adaptive—integrating parliamentary responsiveness with judicial safeguards yet continually navigating tensions inherent in democratic governance. Analysing these international contexts enriches India's ongoing commitment to maintaining a balanced and accountable political structure, vital for sustaining democratic legitimacy and constitutional integrity.

Challenges and Critiques

Despite India's robust constitutional framework and explicit safeguards, the separation of powers faces persistent challenges that test the resilience and integrity of its democratic institutions. These challenges—ranging from executive dominance to judicial overreach and parliamentary inefficiencies—highlight the need for continual reflection and reform to sustain a balanced and accountable governance structure [38].

Executive Dominance

One of the foremost challenges confronting the separation of powers in contemporary India is the increasing centralisation and dominance of the executive branch. Although parliamentary democracy inherently merges executive and legislative roles, there is a growing perception of the executive overshadowing legislative autonomy. Frequent recourse to executive ordinances—temporary laws promulgated without immediate parliamentary approval—illustrates how legislative scrutiny can be circumvented, thereby undermining democratic oversight and weakening parliamentary effectiveness.

Additionally, historical experiences such as India's Emergency period (1975–1977) remain cautionary examples of executive overreach, demonstrating how emergency provisions and expansive executive powers, if unchecked, can severely compromise democratic institutions and civil liberties. More recently, centralisation tendencies within the executive—manifested through powerful prime ministerial offices or central administrative control—risk diminishing democratic accountability, highlighting the need for clearer institutional checks and balances [15,20,38].

Judicial Overreach and Judicial Independence

Parallel to concerns about executive dominance are growing debates over judicial activism and alleged judicial encroachment into executive and legislative domains [22]. India's judiciary, particularly the Supreme Court, is frequently celebrated for its proactive protection of fundamental rights and constitutional governance [26]. Yet, critics increasingly warn of judicial overreach, arguing that courts have ventured beyond their interpretative role, influencing policy areas traditionally reserved for elected representatives. Landmark cases involving wide-ranging directions on governance, environmental regulations, and administrative appointments exemplify scenarios where judicial decisions blur boundaries between judicial and legislative authority [38].

Further intensifying this debate is controversy surrounding judicial appointments. The collegium system, where judges select other judges, has been criticised for lacking transparency, accountability, and democratic legitimacy. The failed attempt to introduce the National Judicial Appointments Commission (NJAC) in 2015 illustrates a profound constitutional tension between the judiciary's desire to protect its independence and the legislature's attempt to introduce greater transparency and oversight [27].

Legislative Accountability and Effectiveness

The legislature, crucial to the democratic principle of representative governance, also faces substantial challenges that constrain its effectiveness. Parliamentary oversight mechanisms, while formally robust, are often weakened by strict party discipline and the anti-defection law, which restrict individual lawmakers' ability to vote independently, thus consolidating legislative control within party leadership. Electoral dynamics further exacerbate this issue, with MPs frequently prioritising party directives over constituents' interests or legislative scrutiny [15,20,39].

These conditions erode the legislature's capability to function effectively as a check on executive actions. Limited accountability and restricted deliberative processes undermine democratic responsiveness, prompting concerns about the health and vitality of India's parliamentary democracy [20].

DISCUSSION AND CONCLUSION

India's constitutional framework, grounded in a commitment to the separation of powers, has long been credited with maintaining a delicate balance among the executive, legislature, and judiciary. Over the decades, this structure has enabled institutional resilience and democratic continuity. Yet, in recent years, tensions within this balance have become more apparent, raising questions about the evolving nature of institutional roles and responsibilities.

The effectiveness of parliamentary oversight, judicial independence, and executive accountability is increasingly being tested. While none of these pressures signal an imminent breakdown, they underscore the need for sustained attention to how these institutions interact in practice—and whether current arrangements remain fit for purpose in a changing political environment.

Several areas emerge as priorities for reform and institutional recalibration. First, strengthening the capacity and autonomy of parliamentary committees would contribute significantly to more meaningful legislative scrutiny. Committees equipped with adequate resources and the authority to hold the executive to account could help reassert Parliament's role in shaping and reviewing policy.

Second, the process of judicial appointments remains a matter of ongoing debate. While judicial independence must be preserved, the current system would benefit from greater transparency and a more structured role for non-judicial actors. A revised appointments mechanism that allows for balanced participation across branches, while safeguarding against politicisation, could enhance public confidence in the judiciary without compromising its autonomy.

Third, the use of executive ordinances and emergency powers continues to raise concerns about bypassing legislative processes. Introducing clearer procedural checks and reinforcing the role of judicial review could help contain any undue concentration of power within the executive and ensure greater institutional accountability.

These considerations reflect broader implications for India's democratic trajectory. An effective separation of powers is not merely an abstract constitutional ideal; it has direct consequences for governance, policy outcomes, and public trust. When institutions are seen to operate independently yet cohesively, the legitimacy of the democratic process is strengthened.

Conversely, when boundaries blur and mechanisms of accountability are weakened, democratic institutions risk losing credibility. As India confronts contemporary governance challenges, maintaining a well-calibrated institutional balance will be key. The task ahead lies not in redesigning the constitutional framework but in ensuring its continued relevance through practical reforms, institutional vigilance, and a renewed commitment to constitutional principles.

REFERENCES

- [1]: Goldie, M., & Wokler, R. (Eds.). (2006). The Cambridge history of eighteenth-century political thought. Cambridge University Press, pp 151-158
- [2]: Charles de Secondat, baron de Montesquieu, The Spirit of the Laws (L'Esprit de lois), Chapter 1
- [3]: Claus, Laurence, "Montesquieu's Mistakes and the True Meaning of Separation" (2004). University of San Diego Public Law and Legal Theory Research Paper Series. 11.
- [4]: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2000\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2000)021-e), last accessed 01 January 2025
- [5]: <https://knowindia.india.gov.in/profile/the-union/executive.php> last accessed 01 January 2025
- [6]: <https://knowindia.india.gov.in/profile/the-union/legislature.php> last accessed 01 January 2025
- [7]: <https://legalaffairs.gov.in/sites/default/files/chapter%207.pdf> last accessed 01 January 2025
- [8]: Lange, M. K. (2004). British colonial legacies and political development. World development, 32(6), 905-922.

- [9]: <https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislative scrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/government-of-the-raj-1858-1914/> last accessed 01 January 2025
- [10]: Tomlinson, B. R. (1975). India and the British Empire, 1880-1935. *The Indian Economic & Social History Review*, 12(4), 337-380.
- [11]: Howell, P. A. (1979). *The Judicial Committee of the Privy Council 1833-1876: Its Origins, Structure and Development*. CUP Archive.
- [12]: Tomlinson, B. R. (1976). *The Indian National Congress and the Raj, 1929-1942: the penultimate phase*. Springer.
- [13]: Muldoon, A. (2016). *Empire, Politics and the Creation of the 1935 India Act: Last Act of the Raj*. Routledge.
- [14]: Sarkar, S. (1989). *Modern India 1885-1947*. Springer, Chapter 1
- [15]: Austin, G. (1966). *The Indian Constitution: cornerstone of a nation*. London, Clarendon Press, Oxford University Press, 1966, pp. 164-172
- [16]: Constituent Assembly Draft Making Debates, 24-May-1949, Parliament of India Digital Library, https://eparlib.nic.in/bitstream/123456789/763256/1/cad_24-05-1949.pdf
- [17]: D.D. Basu (1960), *Introduction to the Constitution of India*
- [18]: Das, S. K. (2013). *The Civil Services in India: Oxford India Short Introductions*. OUP Catalogue.
- [19]: https://en.wikipedia.org/wiki/T._S._R._Subramanian_v._Union_of_India last accessed 01 January 2025
- [20]: <https://prsindia.org/legislatures/discussion-papers/parliamentary-oversight-of-the-executive> last accessed 01 January 2025
- [21]: Khosla, M., & Vaishnav, M. (2024). Democracy and defections. *International Journal of Constitutional Law*, 22(2), 400-430.
- [22]: S.P. Sathe (2002), *Judicial Activism in India* (Oxford University Press) 2002
- [23]: Seventeenth Law Commission Report 195, *The Judges (Inquiry) Bill, 2005*, Law Commission of India.
- [24]: https://en.wikipedia.org/wiki/Kesavananda_Bharati_v._State_of_Kerala, https://digiscr.sci.gov.in/view_judgment?id=MzI1NTk= last accessed 01 January 2025
- [25]: https://digiscr.sci.gov.in/view_judgment?id=MTg2OQ== last accessed 01 January 2025
- [26]: https://digiscr.sci.gov.in/view_judgment?id=NjEwMg== last accessed 01 January 2025
- [27]: http://digiscr.sci.gov.in/view_judgment?id=MTQzODY= last accessed 01 January 2025
- [28]: https://digiscr.sci.gov.in/view_judgment?id=MTQ0NjI= last accessed 01 January 2025
- [29]: Choudhry, S. (Ed.). (2007). *The Migration of Constitutional Ideas*. Cambridge: Cambridge University Press.
- [30]: Dicey, A. V. (1885). *Lectures Introductory to the Study of the Law of the Constitution*. Macmillan and Company.
- [31]: *Jackson v Her Majesty's Attorney General* [2005] UKHL 56, [2005] <https://erskinemay.parliament.uk/section/5058/jackson-v-attorneygeneral> last accessed 01 January 2025
- [32]: <https://publications.parliament.uk/pa/bills/lbill/58-02/051/5802051en04.htm> last accessed 01 January 2025
- [33]: *The Federalist Papers* No. 47 and 51, James Madison, https://avalon.law.yale.edu/18th_century/fed47.asp, https://avalon.law.yale.edu/18th_century/fed51.asp last accessed 01 January 2025
- [34]: Ackerman, B. (2000). The new separation of powers. *Harvard law review*, 633-729.
- [35]: <https://www.archives.gov/milestone-documents/brown-v-board-of-education> last accessed 01 January 2025

- [36]: <https://constitution.congress.gov/browse/article-2/section-2/> clause 2 last accessed 01 January 2025
- [37]: https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html last accessed 01 January 2025
- [38]: Shourie, A. (2001), Courts and their judgments: premises, prerequisites, consequences, New Delhi: Rupa & Co. 2001
- [39]: O'Brien, D. (2017), Inside Parliament: Views from the Front Row, Harper Collins, 2017