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SEPARATION OF POWERS AND HYBRIDIZATION IN MODERN INSTITUTIONS

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ABSTRACT

The Constitution of India, as most other modern democratic constitutions, splits the bulk of the State power three-fold, i.e. the law-making by the legislature; the law-interpreting by the Courts and the law-implementing by the executive. Various theories suggest various rationales for preferring this separation of Governmental powers. While some jurists have an approach to “preventive rationale” as that of Montesquieu, Madison and as reflected in the dissenting opinion of Brandies J.¹, while others prefer an “efficiency rationale” as can be found in various works of N.W. Barber² behind the concept of separation of powers. Advocates of the preventive rationale argue that separation of powers is necessary to check arbitrary or tyrannical exercise of power. On the other hand, writers preferring efficient rationale view suggest that the reason for having separation of powers is to promote efficiency. The great British constitutional philosopher, Sir Walter Bagehot said “[t]he efficient secret of the English [sic] Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers.”³

KEYWORDS: Constitution, synergy, separation of powers, hybrid institutions