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THE UNWRITTEN CONSTITUTION: CONSTITUTIONAL CONVENTIONS IN CONTEMPORARY INDIA

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ABSTRACT

Constitutional conventions occupy a distinct position within the Indian constitutional structure. These unwritten norms have historically ensured the functioning of the parliamentary democracy in the country. Recent controversies concerning the prolonged vacancy of the Deputy Speaker, the exercise of the Speaker's procedural powers, Money Bill certification, gubernatorial discretion, coalition politics and judicial appointments indicate that constitutional conventions are no longer merely supplementary constitutional practices but have become central to debates concerning democratic accountability and institutional legitimacy. While existing scholarship on constitutional conventions tends to focus upon the theoretical or institutional aspects of the system, the conventions have transformed in their role within the country's constitutional structure.

This paper argues that the principal constitutional challenge facing India is not the disappearance of constitutional conventions but instead the transformation of those silences in the Constitution into opportunities for constitutional strategy. It contends that while constitutional actors increasingly comply with the formal text of the Constitution, the weakening of convention-based restraints has diminished the capacity of unwritten constitutional norms to regulate institutional conduct effectively. It demonstrates that constitutional conventions can be preserved without codifying them into the Constitution. Finally, it suggests a structure for preserving those conventions and allowing for the flexibility that is necessary to a functioning constitutional democracy in India.

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This study explores a crucial constitutional issue: do constitutional conventions still serve as meaningful checks on institutional power in modern India? Or have the gaps in the Constitution turned into opportunities for strategic manoeuvring that undermines democratic accountability, all while staying within the bounds of the Constitution.

Keywords: Constitutional Conventions; Constitutional Morality; Unwritten norms; Constitutional Silences; Parliamentary democracy; Westminster Model.

I. INTRODUCTION

The Constitution of India is often celebrated for its remarkable constitutional detail, yet some of its most significant constitutional practices continue to operate outside the constitutional text. The election of the Deputy Speaker, the political neutrality of the Speaker, the appointment of a Prime Minister following a fractured electoral mandate, the exercise of gubernatorial discretion during government formation, and several aspects of judicial appointments are governed as much by constitutional convention as by constitutional law. These practices suggest an important constitutional design choice: the framers deliberately left certain institutional questions open, expecting constitutional governance to emerge through convention, constitutional morality and democratic practice rather than exhaustive legal prescription. Constitutional silences were not constitutional omissions but were designed to preserve institutional flexibility in a constitutional democracy.

But the working of these constitutional silences has been subjected to increasing scrutiny by the constitutional court. Controversies today over the long-standing vacancy in the office of the Deputy Speaker, the certification of Money Bills, the recurrent litigation concerning the exercise of gubernatorial discretion, coalition governments and judicial appointments all demonstrate that constitutional conventions have emerged as a central element of contemporary constitutional adjudication and political contestation. These developments are frequently examined as independent institutional controversies. But together they point to a deeper constitutional transformation: the growing inability of convention-based constitutional governance to regulate institutional behaviour with the same normative force as it once did. The constitutional issue, therefore, is not whether conventions still exist but whether they still perform the constitutional function for which they were originally intended.

The most important constitutional challenge facing India today is not erosion of constitutional conventions as such but the incremental transformation of constitutional silences from space for democratic flexibility to space for strategic constitutional behaviour. Constitutional actors are increasingly operating within the formal limits of the constitutional text. But the weakening of convention-based restraints has allowed institutional discretion to be exercised in ways that often undermine democratic accountability without attracting direct constitutional invalidation. Accordingly, this study examines whether constitutional conventions continue to function as effective constitutional restraints within India's parliamentary democracy and whether existing constitutional mechanisms remain adequate to preserve their institutional legitimacy.

Adopting a doctrinal and comparative methodology, the paper analyses Constituent Assembly Debates, constitutional jurisprudence, parliamentary practice, commission reports and comparative Westminster constitutional experiences to examine both the evolution and the contemporary operation of constitutional conventions. It is based on the hypothesis that the continuing relevance of constitutional conventions depends less upon their legal enforceability, than upon the constitutional culture that sustains them. In light of this context, the paper initially explores

To address these questions, the paper is divided in five parts. It begins with the conceptual foundations and constitutional relevance of conventions, followed by an analysis of functioning of institutions within the Indian constitutional framework. Then it connects to the current challenges to convention driven governance, draws comparative insights from selected Westminster democracies, and ultimately provides a way forward aimed at reinforcing constitutional conventions in India while preserving their essential flexibility.

II. CONSTITUTIONAL CONVENTIONS IN THEORY: THE CONSTITUTIONAL BASIS OF UNWRITTEN GOVERNANCE

The presence of constitutional conventions depicts a vital constitutional reality: no written constitution, no matter how much elaborative, it can cover every aspect of constitutional governance. While constitutional texts lay down the legal foundation of the State, they cannot foresee every political situation, institutional relationship, or constitutional practice that

emerges with democratic governance.² Thus, every constitutional order whether it is codified or uncoded relies on unwritten constitutional norms that regulate the exercise of public power in areas where the constitutional text is silent.³

Constitutional conventions are neither simple anomalies in the constitution nor are they merely political traditions. They arise from well-established institutional practices, the responsibilities outlined in the constitution, and the needs of a functioning democracy. These conventions help guide constitutional actors, keep institutional balance and support effective governance, even if they are not officially written down. Classical scholars, especially Dicey, made a clear distinction between conventions and constitutional law, highlighting that conventions can't be enforced by the judiciary.⁴ In contrast, contemporary scholarship challenges this strict separation. Barber⁵ posits that law and convention exist on a spectrum of institutional formalization, while Farrah Ahmed, Richard Albert, and Adam Perry illustrate that courts are increasingly acknowledging conventions in constitutional adjudication.⁶ Thus, conventions cannot be perceived as separate from constitutional law; they are essential to constitutional governance as they influence the practical application of constitutional authority.

This theoretical evolution is especially significant in India, where constitutional conventions play a crucial role in turning constitutional silences into effective tools for governance.⁷ These silences are not accidental, they represent deliberate choices within the constitution that recognize the need for democratic governance to be adaptable, going beyond rigid legal stipulations.⁸ By relying on conventions, institutions can respond to changing political landscapes without constantly amending the constitution. Their legitimacy comes not from legal mandates but from a sense of constitutional morality, the understanding that those in

²A.V. Dicey, *Introduction to the Study of the Law of the Constitution* chs. XIV–XV (10th ed. 1959); Sir Ivor Jennings, *The Law and the Constitution* ch. III (5th ed. 1959).

³Geoffrey Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability* ch. 1 (1984).

⁴ Supra note 1

⁵ N.W. Barber, *Laws and Constitutional Conventions*, 125 L.Q. Rev. 294 (2009).

⁶ Farrah Ahmed, Richard Albert & Adam Perry, *Judging Constitutional Conventions*, 17 Int'l J. Const. L. 787 (2019); Farrah Ahmed, Richard Albert & Adam Perry, *Enforcing Constitutional Conventions*, 17 Int'l J. Const. L. 1146 (2019).

⁷ Supra note 1, Sir Ivor Jennings

⁸ Brian Galligan & Scott Brenton eds., *Constitutional Conventions in Westminster Systems: Controversies, Changes and Challenges* (2015).

power should exercise their authority with restraint and a commitment to constitutional morality⁹.

The Constituent Assembly intentionally recognize that constitutional governance couldn't just depend on legal rules alone. Dr B. R. Ambedkar pointed out that the real effectiveness of the constitution would rely on the people responsible for upholding it. Thus, many institutional practices were intentionally left unwritten, allowing conventions to evolve naturally through constitutional practice.¹⁰ While India adopted the Westminster style of parliamentary governance but made its own by embedding it in a written Constitution that emphasizes constitutional supremacy, federalism, judicial review, and republicanism.¹¹ As a result, conventions gain their authority not from colonial legacy but from their alignment with India's constitutional framework and democratic ideals. However, since conventions depend on voluntary adherence rather than judicial enforcement, their efficacy ultimately relies on constitutional commitment and institutional restraint. When that commitment diminishes, constitutional silences become susceptible to strategic political manipulation, a shift that lays the groundwork for analysing the evolution and current disputes surrounding constitutional conventions in India.

A. WESTMINSTER TO THE INDIAN CONSTITUTIONAL FRAMEWORK

The constitutional evolution of India does not signify a total break from British constitutionalism, nor does it represent a mere adoption of the Westminster model.¹² The architects of the Constitution intentionally selected aspects of parliamentary governance that aligned with a sovereign, democratic, and republican framework, while opting for constitutional supremacy over parliamentary sovereignty.¹³ As a result, India embraced the institutional structure of parliamentary governance, integrating it into a written Constitution, judicial review, and a federal allocation of powers. Thus, constitutional conventions were incorporated into the Indian constitutional framework not as remnants of colonialism, but as

⁹ Tarunabh Khaitan, *Constitutional Directives: Morally-Committed Political Constitutionalism*, 82 *Mod. L. Rev.* 603 (2019).

¹⁰ 7 Constituent Assembly Debates (Nov. 4 & Dec. 30, 1948).

¹¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966).

¹² *Supra* note 7.

¹³ 7 Constituent Assembly Debates (Dec. 30, 1948).

intentional constitutional tools that support the effective functioning of parliamentary democracy.

Conversations about the Prime Minister's appointment, how the cabinet is formed, the relationship between the Head of State and the council of ministers, and the legislative processes highlighted a deliberate preference for flexibility within institutions rather than sticking rigidly to the constitution. Dr. B. R. Ambedkar pointed out that some constitutional choices, particularly the selection of a Prime Minister who could garner legislative backing, couldn't be completely laid out in writing, since no constitutional framework can predict every possible political scenario.¹⁴ Consequently, such discretion was anticipated to function through constitutional conventions and democratic accountability.

This highlights a wider constitutional viewpoint that the intentional gaps in the constitution are actually chances for institutional growth, rather than signs of its flaws. Unlike legal statutes, conventions evolve through constitutional political situations without the need for constant amendments to the constitution. Unlike the United Kingdom, where conventions serve as fundamental constitutional limitations within an uncodified Constitution, Indian conventions function within a framework of constitutional supremacy and judicial oversight. Consequently, their legitimacy is derived not solely from historical continuity but also from their alignment with the constitutional framework, responsible governance, and democratic accountability.

Thus, constitutional conventions in India are most effectively viewed as institutional mechanisms that convert constitutional silences into functional governance. Their authority stems from their ongoing ability to uphold responsible governance, institutional restraint, and democratic accountability, which lays the groundwork for the parliamentary, executive, and judicial conventions discussed in the subsequent sections.

B. PARLIAMENTARY CONVENTIONS

Parliamentary conventions play a crucial role in India's constitutional framework as they govern the daily operations of representative democracy beyond what is outlined in the constitutional text.¹⁵ While the Constitution establishes Parliament and its various offices, their

¹⁴ Ibid (Speech of Dr. B.R. Ambedkar)

¹⁵ M.N. Kaul & S.L. Shukdher, *Practice and Procedure of Parliament* (7th ed.).

effective operation relies on parliamentary rules, established precedents, and constitutional conventions that enhance legislative legitimacy, neutrality, and accountability.¹⁶

The role of the Speaker illustrates the connection between constitutional text and convention. Although Articles 93–97¹⁷ create the office, they do not provide specific instructions on how to wield its powers. Because of this, a parliamentary tradition has emerged, once selected, the speaker is expected to act with total political neutrality, prioritizing the dignity of the house above any party interests. This practice, which has been intentionally borrowed from Westminster model, is crucial for maintaining the legitimacy of legislative process.¹⁸

The convention surrounding the Deputy Speaker really underscores how vital yet delicate constitutional conventions can be. Article 93 states that house should elect both a speaker and a deputy speaker “as soon as may be,”¹⁹ but it doesn’t lay out a strict timeline for doing so. As a result, parliamentary practice has developed a convention where the deputy speaker is usually chosen from the main opposition party. This approach not only fosters institutional neutrality but also encourages accountability via bipartisan participation. The significance of this role extends far beyond just political compromise and the Deputy Speaker acts as an institutional safeguard, ensuring that parliamentary administration remains accountable to both the Treasury and the Opposition.²⁰ The prolonged vacancy in the Seventeenth Lok Sabha highlights not just a disregard for established norms but also a weakening of an important institutional check meant to enhance democratic accountability. It shows how constitutional gaps can be exploited when political traditions are ignored.

Another key convention relates to the Leader of Opposition (LoP). Although the constitution doesn’t define this role or specify the qualifications needed for it, parliamentary practice has resulted in its formal recognition through the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977.²¹ The credibility of this office is based on the idea that a parliamentary democracy needs a strong institutional opposition to effectively scrutinize the actions of the executive. The frequently mentioned “10 per cent rule” doesn’t actually have any grounding in the Constitution or the 1977 Act, it started from the speaker’s directions about recognizing

¹⁶ Subhash C. Kashyap, *Parliamentary Procedure*.

¹⁷ INDIA CONST. arts. 93–97.

¹⁸ *Supra* note 11

¹⁹ INDIA CONST. art. 93.

²⁰ National Commission to Review the Working of the Constitution, Chapter on Parliament (2002).

²¹ The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977

parliamentary parties but has slowly been treated as a rigid constitutional necessity. The way it was applied in the Sixteenth Lok Sabha shows how procedural norms can turn into points of constitutional contention²² When we look at the roles of various statutory bodies like the Central Vigilance Commission and Lokpal, it's clear that they expect the Leader of the Opposition or the head of the largest opposition party to be involved. This goes beyond just a symbolic gesture in Parliament; it touches on deeper issues of constitutional accountability.²³

Parliamentary committees are a great example of how constitutional conventions work in practice. While the Constitution provides a broad framework for institutions, it's the conventions that ensure we have bipartisan representation, proportional party involvement, and collaboration among institutions.²⁴ Take the Public Accounts Committee (PAC), for instance; the tradition of having its chairperson come from the Opposition is vital for maintaining the public's trust in Parliament's ability to oversee financial matters. These conventions show us that while the Constitution sets up the structure of Parliament, its real effectiveness hinges on a culture that values neutrality, bipartisanship, and institutional restraint. When these conventions are respected, they allow for a flexible and adaptable democracy. On the flip side, ignoring them can lead to constitutional conflicts.²⁵

C. EXECUTIVE CONVENTIONS

Executive conventions form the practical basis of India's parliamentary system by regulating executive authority, particularly where the constitutional text intentionally avoids providing comprehensive rules. While Articles 74 and 75 outline the constitutional framework for the Union Executive, essential elements of executive functioning such as government formation, gubernatorial discretion, coalition management, and cabinet practices have primarily developed through constitutional conventions.²⁶ This ensures that constitutional discretion is exercised in alignment with democratic legitimacy rather than mere political convenience.²⁷

²² Lok Sabha Secretariat, Directions by the Speaker

²³ The Central Vigilance Commission Act, No. 45 of 2003, Acts of Parliament, 2003 (India); Lokpal and Lokayuktas Act, No. 1 of 2014, Acts of Parliament, 2013 (India).

²⁴ Lok Sabha Secretariat, Parliamentary Committees Series,

²⁵ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (1999).

²⁶ INDIA CONST. arts. 74–75.

²⁷ Supra note 12

The convention related to the appointment of the Prime Minister exemplifies the constitutional importance of unwritten norms in maintaining responsible government. Article 75 grants the President the authority to appoint the Prime Minister without detailing the criteria for such an appointment. Consequently, constitutional practice necessitates that the President invite the individual most likely to secure the confidence of the Lok Sabha, especially in cases of fragmented electoral outcomes and coalition governments. Thus, constitutional convention converts presidential discretion into a defined constitutional obligation, ensuring that executive authority remains accountable to legislative confidence.²⁸

The rise of coalition governments has further broadened executive conventions through practices that govern pre-poll alliances, post-election coalition formation, common minimum programmes, and cabinet distribution. These conventions illustrate the flexible nature of constitutional governance, allowing the parliamentary executive to embrace political pluralism without necessitating a constitutional amendment.

Among executive conventions, those concerning with the Governor have generated the greatest constitutional controversy. Although Articles 163 and 164²⁹ recognize limited gubernatorial discretion, they do not prescribe principles governing government formation, floor tests, reservation of Bills or recommendations under Article 356. Constitutional practice therefore evolved conventions requiring Governors to act with political neutrality, respect legislative majority and exercise discretion as constitutional trustees rather than political actors. Indian constitutional jurisprudence has progressively reinforced these conventions. In *S.R. Bommai v. Union of India*,³⁰ the Supreme Court established the floor-test doctrine as the preferred constitutional mechanism for determining legislative majority, a principle reaffirmed in *Rameshwar Prasad v. Union of India*³¹ and *Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly*.³² These collective decisions do not supplant constitutional conventions; rather, they enhance them by converting long-standing constitutional expectations into standards that can be reviewed by the judiciary. As a result, executive conventions have progressed beyond traditional Westminster practices, evolving into constitutional limitations

²⁸ Supra note 1, Sir Ivor Jennings

²⁹ INDIA CONST. arts. 163–164.

³⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

³¹ *Rameshwar Prasad v. Union of India*, (2006) 2 SCC 1

³² *Shivraj Singh Chouhan v. Speaker, Madhya Pradesh Legislative Assembly*, (2020) 17 SCC 816

that uphold responsible governance, maintain federal balance, and ensure democratic accountability within India's written constitutional framework.

D. JUDICIAL CONVENTIONS

Judicial conventions hold a unique status as they govern institutional independence instead of political accountability. While Articles 124 and 217³³ lay down the constitutional structure for judicial appointments, the intricate appointment process has largely developed through constitutional convention and judicial interpretation. Over time, conventions concerning consultation, judicial primacy, and seniority have gained constitutional importance, significantly altering the dynamics between the Executive and the Judiciary.³⁴

The Collegium System represents the clearest example of convention acquiring constitutional authority. The Second Judges Case³⁵ and the Third Judges³⁶ Case developed conventions governing judicial appointments through constitutional interpretation rather than constitutional amendment, while Supreme Court Advocates-on-Record Association v. Union of India (2015)³⁷ reaffirmed judicial independence by invalidating the National Judicial Appointments Commission, even as it renewed debates concerning transparency and accountability. Judicial conventions thus demonstrate that constitutional conventions extend beyond Parliament and the Executive, enabling constitutional institutions to preserve functional independence while adapting to changing constitutional expectations. At the same time, continuing controversies surrounding judicial appointments confirm that conventions, irrespective of the institution they regulate, ultimately depend upon institutional legitimacy, public confidence and constitutional restraint.³⁸

E. CONSTITUTIONAL CONVENTIONS AS INSTITUTIONAL RESTRAINTS

³³ INDIA CONST. arts. 124 & 217.

³⁴ M.P. Jain, *Indian Constitutional Law* (8th ed. 2018).

³⁵ *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441

³⁶ *Re Presidential Reference*, (1998) 7 SCC 739

³⁷ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1

³⁸ *Supra* note 5 Farrah Ahmed, Richard Albert & Adam Perry, "Enforcing Constitutional Conventions.

The development of parliamentary, executive, and judicial conventions illustrates that constitutional governance in India transcends the written Constitution.³⁹ While constitutional provisions define institutional frameworks, conventions guide their functioning by promoting neutrality, accountability, cooperation, and restraint. Their legitimacy is not solely derived from political expediency or historical continuity, but rather from their ongoing alignment with constitutional values and democratic governance.

In contrast to legal rules, conventions rely on institutional acceptance and constitutional responsibility instead of judicial enforcement. Provided that constitutional actors adhere to them voluntarily, constitutional silences serve as tools of democratic flexibility, however, when conventions are selectively ignored or strategically manipulated, those same silences can lead to constitutional ambiguity and institutional disputes. Current constitutional practices increasingly reflect this shift in areas such as parliamentary neutrality, executive discretion, and judicial accountability, highlighting that the durability of India's constitutional framework relies not only on the constitutional text but also on the constitutional culture that upholds it. The subsequent section will therefore explore how recent political developments have subjected convention-based constitutional governance to heightened constitutional pressure.

III. CONSTITUTIONAL CONVENTIONS IN CONTEMPORARY INDIA: INSTITUTIONAL CONTESTATION AND DEMOCRATIC ACCOUNTABILITY

F. PARLIAMENTARY NEUTRALITY AND INSTITUTIONAL CONTESTATION

The current issue facing constitutional conventions is not their elimination, but rather the slow decline of their normative authority as institutional constraints. Historically, parliamentary conventions have maintained legislative neutrality, encouraged bipartisan collaboration, and upheld the independence of constitutional offices through a shared understanding that specific constitutional practices would be honoured regardless of political gain. However, modern parliamentary practices indicate a transition from consensus-driven constitutional governance to the tactical exploitation of constitutional ambiguities, where conventions are increasingly adhered to political convenience rather than constitutional duty.

³⁹ Supra note 12, Constituent Assembly Debates, Vol. VII

The extended vacancy in the Deputy Speaker's position exemplifies this shift. While Article 93 mandates that the House of the People elect both a Speaker and a Deputy Speaker "as soon as may be," neither the Constitution nor the Rules of Procedure stipulate a fixed timeline.⁴⁰ This intentional constitutional ambiguity mirrored the framers' anticipation that convention would ensure prompt adherence, with parliamentary tradition typically assigning the role to a member of the Opposition as a sign of bipartisan trust.⁴¹ Thus, the ongoing vacancy during the Seventeenth Lok Sabha, along with similar issues in the Eighteenth Lok Sabha, signifies not just an administrative oversight but also the deterioration of a convention designed to uphold parliamentary accountability.⁴²

A similar trend can be observed in the constitutional role of the Speaker. The Constitution assigns the Speaker considerable procedural authority including the certification of Money Bills and adjudication under the Tenth Schedule while presuming that these powers will be executed with institutional impartiality. Recent disputes regarding Money Bill certification and delays in resolving disqualification petitions have turned the conventions of parliamentary neutrality into frequent constitutional litigation. Judicial decisions in *Roger Mathew v. South Indian Bank Ltd.*,⁴³ *Nabam Rebia v. Deputy Speaker*⁴⁴ and *Subhash Desai v. Principal Secretary, Governor of Maharashtra*⁴⁵ reveal an emerging constitutional pattern in which courts increasingly safeguard institutional equilibrium where conventions no longer command political adherence. Rather than representing isolated constitutional disputes, these developments demonstrate the growing judicialization of parliamentary conventions and the declining capacity of convention-based governance to regulate parliamentary conduct independently.

⁴⁰ The Hindu, "The Post of Deputy Speaker is Not Symbolic or Optional," 29 April 2025 [The post of Deputy Speaker is not symbolic or optional - The Hindu](#)

⁴¹ National Commission to Review the Working of the Constitution, Chapter on Parliament (2002); Lok Sabha Secretariat, Office of the Deputy Speaker.

⁴² The Indian Express, "Strikes at Heart of Parliamentary Democracy": Congress Questions Vacant Lok Sabha Deputy Speaker Post (Feb. 15, 2026) ['Strikes at heart of parliamentary democracy': Congress questions vacant Lok Sabha Deputy Speaker post](#); The Indian Express, No-Confidence Move Against Speaker Om Birla Revives Debate on Seven-Year Vacancy of Deputy Speaker's Post [No-confidence move against Speaker Om Birla revives debate on seven-year vacancy of Dy Speaker's post](#)

⁴³ *Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1

⁴⁴ *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1

⁴⁵ *Subhash Desai v. Principal Sec'y, Governor of Maharashtra*, (2023) 8 S.C.C. 103

G. EXECUTIVE DISCRETION, FEDERALISM AND CONSTITUTIONAL HARDBALL

The current discourse on executive conventions no longer revolves around the existence or extent of gubernatorial discretion; constitutional practices, commission reports, and judicial precedents have significantly clarified these issues.⁴⁶ The main constitutional issue we're facing today revolves around how executive discretion has shifted from being bound by constitutional conventions to being shaped more by strategic constitutional considerations. While these conventions haven't completely disappeared, their influence has certainly waned, turning constitutional ambiguities into bargaining chips in political negotiations instead of serving as checks on constitutional power.

This shift is particularly clear in the ongoing debates about forming governments, conducting floor tests, and exercising gubernatorial discretion. Even though various commissions have consistently urged Governors to exercise their constitutional powers in line with established norms of political neutrality, objective constitutional standards, and legislative accountability, we're still seeing persistent conflicts over government formation invitations, the timing of confidence motions, the reservation of Bills, and recommendations made under Article 356.⁴⁷ These disputes are noteworthy not due to any ambiguity surrounding the Governor's legal powers, but rather because the conventions designed to govern those powers are no longer consistently upheld by institutions.⁴⁸ Also the Judicial intervention has correspondingly evolved from interpreting constitutional provisions to preserving convention-dependent constitutional principles. The Court in the case of *S.R. Bommai v. Union of India*⁴⁹ did not merely lay down the floor-test rule but also limited the Governor's subjective satisfaction, thereby reinforcing the constitutional convention that legislative confidence must be determined by the House rather than the Raj Bhavan.

When considered as a whole, these developments are more effectively analysed through the lens of constitutional hardball rather than as separate constitutional violations. Constitutional hardball does not involve breaching the constitutional text; instead, it refers to the strategic

⁴⁶ Agnidipto Tarafder & Avantik Tamta, Reassessing the Role of the Rajpramukh: An Analysis of the Continuing Relevance of the Governor's Position.

⁴⁷ Anmol Jain & Sayantani Bagchi, Marking the Imprecise Territory of Gubernatorial Discretion to Call for a Trust Vote, 7 Indian L. Rev. (2021). <https://doi.org/10.1080/24730580.2021.1967655>

⁴⁸ Sarkaria Commission, Report of the Commission on Centre-State Relations (1988); Punchhi Commission, Report of the Commission on Centre-State Relations (2010).

⁴⁹ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1

manipulation of constitutional powers, procedural uncertainties, and practices reliant on conventions to gain institutional advantages while technically adhering to constitutional boundaries.⁵⁰ Executive conventions are especially susceptible to this manipulation, as they depend on voluntary compliance rather than legal enforcement. So, the big constitutional challenge that modern India is grappling with isn't just about the growing power of the executive branch. It's also about how the traditional ways of governing under the Constitution are slowly fading away. Instead, we're seeing a shift towards what's called strategic constitutionalism, where those in power stick to the exact wording of the Constitution but stray from the established practices that have guided us for so long.

H. JUDICIAL CONSTITUTIONALISM AND THE LIMITS OF CONVENTION-BASED GOVERNANCE

In contrast to parliamentary and executive conventions, judicial conventions hold a unique constitutional status as they have primarily developed through the process of constitutional adjudication itself. This situation presents a constitutional paradox: conventions that were originally designed to govern institutional conduct outside the realm of enforceable law have gradually gained constitutional importance through judicial interpretation.⁵¹ As a result, current discussions regarding judicial appointments transcend the structural framework of the Collegium, raising a more extensive constitutional issue whether governance based on conventions can maintain institutional legitimacy in the absence of transparency, accountability, and widespread constitutional agreement.

The evolution of the Collegium System illustrates both the resilience and vulnerability of convention-based constitutionalism.⁵² While the Second Judges Case and the Third Judges Case transformed judicial consultation into a convention of judicial primacy, the challenge to the National Judicial Appointments Commission exposed continuing concerns regarding

⁵⁰ Mark Tushnet, *Constitutional Hardball*, 37 J. Marshall L. Rev. 523 (2004); David E. Pozen & Mark Tushnet, *Constitutional Hardball*, 127 Harv. L. Rev. 961 (2014).

⁵¹ *Supra* note 5, Farrah Ahmed, Richard Albert & Adam Perry, *Enforcing Constitutional Conventions*.

⁵² Gautam Bhatia, *The Sole Route to an Independent Judiciary? The Primacy of Judges in Appointment*, in *Appointment of Judges to the Supreme Court of India: Transparency, Accountability, and Independence* 237 (Arghya Sengupta & Ritwika Sharma eds., Oxford Univ. Press 2018).

institutional accountability and democratic legitimacy.⁵³ The constitutional controversy therefore extends beyond competing appointment mechanisms to whether conventions deriving their authority primarily from institutional acceptance can remain effective once they become subjects of sustained constitutional contestation.⁵⁴

I. FROM CONSTITUTIONAL MORALITY TO STRATEGIC CONSTITUTIONALISM: REASSESSING THE FUTURE OF CONSTITUTIONAL CONVENTIONS

The preceding analysis highlights that the real constitutional challenge facing modern India isn't about getting rid of constitutional conventions. Instead, it's about how the context in which these conventions operate is changing. Historically, conventions acted as unwritten rules, with constitutional actors, recognizing that wielding public power came with a responsibility for constitutional accountability. Nowadays, however, we see a shift in approach: conventions are increasingly being replaced by the strategic decision-making. This means that procedural grey areas, institutional discretion, and gaps in the constitution are being used to gain political advantage, all while pretending to stay within constitutional limits.

The prolonged absence of deputy speaker, the ongoing disputes over money bills certification, the constant legal battles over gubernatorial discretion, and the never-ending debates about judicial appointments, these aren't just random constitutional hiccups, they point to a broader trend. Even though the constitutional text itself remains unchanged, the conventions that guide its application are becoming more contentious or are being cleverly sidestepped. The real issue isn't that the text is flawed, but rather that unwritten constitutional norms are losing their power to regulate how institutions behave without some form of external enforcement.

This emerging trend is better captured by the term strategic constitutionalism rather than just the slow erosion of constitutional conventions. Unlike clear-cut violations of the constitution, strategic constitutionalism operates within the accepted framework of constitutional language, yet it weakens the practices that give those provisions their democratic weight. More and more,

⁵³ K.T. Thomas, *Judicial Review and Parliamentary Power: Reorienting the Balance*, in *Appointment of Judges to the Supreme Court of India: Transparency, Accountability, and Independence* 118 (Arghya Sengupta & Ritwika Sharma eds., Oxford Univ. Press 2018).

⁵⁴ Rangin Pallav Tripathy, *Unveiling India's Supreme Court Collegium: Examining Diversity of Presence and Influence*, 18 *Asian J. Comp. L.* 179 (2023).

constitutional actors are following the letter of the law while drifting away from the institutional norms that have historically ensured constitutional accountability. This shift transforms constitutional silences from being tools for democratic flexibility into potential vulnerabilities.

This change highlights the shortcomings of convention-based constitutionalism in an era of increasingly competitive democracies. While courts might uphold constitutional legality, commissions can suggest procedural safeguards, and legislatures may refine institutional rules, none of these measures can substitute for the constitutional culture that legitimizes conventions. As a result, the future of constitutional conventions hinges not just on stronger legal enforcement but also on reviving parliamentary accountability, ensuring institutional neutrality, promoting constitutional transparency, and fostering the constitutional morality necessary for conventions to turn constitutional silences into democratic legitimacy. This broader constitutional challenge naturally invites a look at how other Westminster democracies have worked to sustain convention-based governance in the face of similar pressures.

IV. REIMAGINING CONSTITUTIONAL CONVENTIONS IN INDIA: A FRAMEWORK FOR DEMOCRATIC CONSTITUTIONALISM

This shift highlights the shortcomings of convention-based constitutionalism, especially as democracies face increasing competition. While courts can affirm the constitution's legality, commissions can suggest procedural safeguards, and legislatures can adjust institutional rules, none of these measures can genuinely substitute for the constitutional culture that lends conventions their legitimacy. As a result, the future of these conventions hinges not just on stronger legal enforcement but also on revitalizing parliamentary accountability, ensuring institutions stay neutral, fostering transparency within the constitution, and cultivating the constitutional morality necessary for conventions to turn constitutional silences into democratic legitimacy. This broader constitutional challenge naturally prompts us to look at how other Westminster democracies have successfully navigated convention-based governance under similar pressures.

The most pressing reform involves the Deputy Speaker, whose ongoing vacancy underscores the limitations of depending solely on political convention. This role is not just ceremonial; it

serves as an institutional assurance of bipartisan trust and parliamentary continuity. The continued absence of this position signifies a democratic deficit rather than just an administrative oversight. Instead of pursuing a constitutional amendment, Parliament should implement a binding parliamentary resolution or Speaker's Direction that mandates the election of the Deputy Speaker within a reasonable timeframe, along with written explanations for any delays.⁵⁵ The convention of appointing the Deputy Speaker from the Opposition should similarly be reaffirmed through a formal parliamentary resolution, strengthening institutional legitimacy without converting convention into strict law.

Similarly, the conventions that protect the neutrality of constitutional offices need to be reinforced institutionally, rather than replaced by legal measures. Parliament ought to create cross-party conventions that bolster the Speaker's political independence post-election, discourage political parties from challenging a sitting Speaker, promote greater bipartisan representation in parliamentary committees, and mandate well-reasoned constitutional orders when it comes to convention-sensitive powers like certifying Money Bills or handling delayed disqualification cases. Instead of increasing judicial intervention, we should focus on transparency as a more fitting safeguard for institutional trust.⁵⁶

In a similar spirit, we should strengthen executive conventions with clear constitutional guidance. While the Sarkaria Commission, the Punchhi Commission, and various constitutional scholars have laid out solid principles on gubernatorial discretion, government formation, and floor tests, the uneven application of these principles continues to pose a real challenge. Creating a publicly available Constitutional Practices Manual that brings together established conventions, commission recommendations, and judicial principles without giving them the force of law—could enhance constitutional clarity while still allowing for institutional flexibility.

At the end of the day, upholding constitutional conventions hinges more on fostering a strong constitutional culture than on strict legal enforcement. No number of constitutional amendments or court decisions can substitute for the institutional trust, mutual restraint, and democratic accountability that conventions have traditionally depended on. Looking at the experiences of the United Kingdom, Canada, and Australia, it's clear that conventions endure

⁵⁵ Democratic Deficit: Deputy Speaker's Role and the Alarming Delay in Appointment, Legal SYNK (2025). [Democratic Deficit: Deputy Speaker's Role and the Alarming Delay in Appointment \(2025\) - Legal SYNK](#)

⁵⁶ Anmol Jain, Political Process Failure in the Indian Parliament: Studying Abuse of Power by the Chair and How It Can Be Addressed, 6 CALJ, Issue II (May 2022).

because constitutional actors see them as binding commitments rather than just optional political practices.

V. Conclusion

Constitutional conventions play a vital role in India's constitutional landscape, shaping the relationships between institutions in ways that go beyond what's written in the constitution. Historically, these conventions have been essential for the smooth operation of parliamentary democracy, guiding constitutional discretion, ensuring a balance among institutions, and turning vague constitutional principles into actionable practices. The framers of the constitution deliberately left certain aspects of governance unwritten, recognizing that effective constitutional governance depends not just on legal texts but also on the conventions that are upheld by a sense of constitutional morality and democratic accountability.

This analysis highlights that the main constitutional challenge facing contemporary India isn't the decline of these conventions, but rather the slow transformation of constitutional silences from areas that allow for democratic flexibility into opportunities for strategic manoeuvring. Issues surrounding the Deputy Speaker, the Speaker's procedural authority, the certification of Money Bills, the discretion of governors, and judicial appointments aren't just isolated disputes; they reflect a broader constitutional shift where conventions are losing their previous power to guide constitutional behaviour effectively.

Thus, the future of constitutional conventions it's clear that it doesn't hinge on just having everything written down or on stricter judicial enforcement. What we really need is to strengthen the environment where these conventions operate. This means enhancing parliamentary accountability, ensuring that constitutional decision-making is transparent, documenting constitutional practices, and reigniting our commitment to constitutional morality.

In the end, the strength of the Indian Constitution isn't just about how solid its written rules are and it's also about the vitality of its unwritten traditions. That's why keeping constitutional conventions alive is so important as it helps us maintain democratic accountability, build trust in our constitution, and encourage responsible governance. This way, any gaps in the Constitution can serve as opportunities for democratic growth instead of being exploited.