



BALANCE OF POWER BETWEEN THE LEGISLATURE AND THE JUDICIARY: A JUDICIAL PERSPECTIVE

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ABSTRACT:

The relative powers of these three branches are specified in our country's constitution. The principle of theory of separation of powers governs these three pillars. According to this theory, each organ of the government is independent of the other organ and functions without any interference from the other. However, in Indian context, since there exists no rigid separation of power, the functions of these organs overlap to some extent. As a result, the balance of powers between these three pillars of governance holds utmost importance. In the present environment, the concept of balance of power though nowhere expressly enshrined is more than just a philosophical ideal, but rather a practical notion that determines the form and organization of governments' day-to-day operations. As a result, the purpose of this thesis is to examine the concept of balance of powers, both in theory and in reality. Starting with the brief history of the doctrine and various aspects of its establishment, this thesis further highlights the doctrine's applicability as per constitutional provisions of the United States and the United Kingdom and then contrasts the two nations' practices with those of India. The researcher goes on to discuss the various articles of the Indian constitution while doing so. In addition, the researcher draws their conclusions on the inconsistencies between the constitutional design and the actual application of the doctrine, based on particular land-marking events, court proclamations, and the views of prominent jurists. Finally, the thesis emphasizes that the doctrine of a balance of powers though seldom implemented in its absolute form, is recognized as a fundamental part of the formation and functioning of most governments across the globe.

Key Words: Balance, Power, Judiciary, Legislative, Justice System

INTRODUCTION:

The *Merriam Webster* dictionary defines it as, “*an equilibrium of power sufficient to discourage or prevent one nation or party from imposing its will on or interfering with the interests of another.*”

The idea behind the Balance of power is that neither branch should be powerful enough to dominate the other. In American Constitutional Law, the metaphor originates from the Madison’s theory that government should be divided into three branches- executive, legislative and judicial- which must always remain in balance.¹ His idea in today’s world is interpreted to mean that balance should always be maintained and it is for the courts to ensure this.

This idea was first developed by English jurists in the middle of the 17th century in order to prevent abuses of government authority. John Locke expanded on the principle of checks and balances in order to limit the governmental power, while the French lawyer Montesquieu gave it a systematic form in his work "The Spirit of Laws." In accord with his forefathers, John Adams has emphasized this theory as a method of protecting a country from the wide range of harms caused by passionate prejudice, foolish judgments, and ambitious, self-serving conduct.

The theory of balance of power being one of the facets of theory of separation of powers ensures that each organ of the government while having its own powers exercises certain checking powers over the other organ of the government. Though the concepts of separation of power and balance of power have not been distinctively defined but the same remains a reality of most of the nations across the globe. It is also been said time and again that these theories cannot be given a rigid definition because they constitute the fluid component of constitutional administration, capable of adapting to the changing times. Thus, the idea of balance of powers has evolved into an intrinsic feature of the administrative architecture of several governments, whether embraced explicitly or by necessity. Even so, depending on circumstances and method in which it was implemented, the doctrine's actual implementation in a nation's administration may vary.

The primary premise of the balance of powers is that people are put in risk when power and authority reside in a single person or an organization. The whole idea behind is to distribute the power among different authorities thereby making its abuse by any single authority difficult. In a state, there are three primary government organs: the executive, legislature & judiciary, and as per this doctrine in a free democracy, these three government authorities must functions distinctively and they should be headed by three independent government entities, which is to say that executive or judicial authority cannot be exercised by legislature; legislative or judicial authority cannot be exercised by executive; and legislative or executive authority cannot be exercised by judiciary.

CHECKS AND BALANCES SYSTEM

The idea of checks and balances system was borrowed from the US constitution wherein it was first embodied. Their founding fathers were of the view that it would not be desirable to go for the system which prevailed in the UK because there the court of law cannot strike down or amend any law passed by the parliament.

This was so because of the parliamentary supremacy that prevailed in the UK. Thus, the framers of US constitution upheld the necessity of the checks and balances system for the efficient functioning of the democracy. The framers of the Indian Constitution later relied on the views of the US constitution for sustaining democracy in India. The two principles which can be said to govern the system of checks and balances are, first “power tends to corrupts and absolute power corrupts absolutely” and second, “the power alone can be antidote to power”. One of the characteristics of the separation of power theory is the doctrine of checks and balances. As a result of this characteristic, each organ has certain checking capabilities over the other two organs in addition to its own power. The inter-organ interactions are governed by doctrine of checks and balances. According to which, no organ should be given uncontrolled authority in its field. Instead one organ’s strength

is to be restricted and the same should be balanced against the power of the other two organs. By this way, arbitrary use of authority by any government entity can be controlled and balance would be maintained. Which is to say, the legislative authority in the hands of the legislature can be scrutinized by the executive and judiciary so as to prevent the legislature from abusing or arbitrarily exercising its powers. Likewise, the legislature and courts should have some authority to oversee the delegated power of executive. In a similar manner, legislature and the executive should limit the authority of judiciary in certain ways. To put it otherwise, each organ should have some check on the other organs, and there should be a balance among them, resulting in constitutionalism, in which no one is above the law and all government organs are equal. Lastly, many proponents urge for a system of checks and balances since it is not always applied strictly. This is a reasonable stance to take, given that its rigorous implementation might jeopardize the doctrine's intended goal of preventing tyranny. Indeed, effective checks and balances may well be a superior way to prevent tyranny, as this is after all the whole ideology behind it in its purest form.

NATURE OF BALANCE OF POWER

Palmer and Perkins describe several major features of Balance of Power (BOP):

1. Some Sort of Equilibrium in Power Relations:

The term Balance of Power suggests ‘equilibrium which is subject to constant, ceaseless change. In short, though it stands for equilibrium, it also involves some disequilibrium. That is why scholars define it as a just equilibriums or some sort of equilibrium in power relations.

2. Temporary and Unstable:

In practice a balance of power always proves to be temporary and unstable. A particular balance of power survives only for a short time.

3. To be Actively Achieved:

The balance of power has to be achieved by the active intervention of men. It is not a gift of God. States cannot afford to wait until it “happens”. They have to secure it through their efforts.

4. Favours Status quo:

Balance of power favours status quo in power positions of major powers. It seeks to maintain a balance in their power relations. However, in order to be effective, a foreign policy of balance of power must be changing and dynamic.

5. The Test of BOP is War:

A real balance of power seldom exists. The only test of a balance is war and when war breaks out the balance comes to an end. War is a situation which balance of power seeks to prevent and when it breaks out, balance power comes to an end.

6. Not a Device of Peace:

Balance of Power is not a primary device of peace because it admits war as a means for maintaining balance.

7. Big Powers as Actors of BOP:

In a balance of power system, the big states or powerful states are the players. The small states or less powerful states are either spectators or the victims of the game.

8. Multiplicity of States as an Essential Condition:

Balance of Power system operates when there are present a number of major powers, each of which is determined to maintain a particular balance or equilibrium in their power relations.

9. National Interest is its Basis:

Balance of Power is a policy that can be adopted by any state. The real basis that leads to this policy is national interest in a given environment.

The Golden Age of BOP:

The period of 1815-1914 was the golden age of Balance of Power. During this period, it was regarded as a nearly fundamental law of international relations. It broke down due the outbreak of First World War in 1914. It was tried to be unsuccessfully revived during 1919- 1939. However, the attempt failed and the world had to bear the Second World War.

The Second World War (1939-45) produced several structural changes in the international system as well as in the balance of power system. Under the impact of these changes, the Balance of Power system lost much of its relevance as a device of power management. It is now lost much of its relevance in international relations.

Methods of Balance of Power:

Balance of Power is not automatic; it has to be secured by the states following this policy. In fact, there are several methods by which states try to secure and maintain balance of power. “Balance of Power is a game which is played by actors with the help of several devices.”

Major Methods of Balance of Power:

I. Compensation:

It is also known as territorial compensation. It usually entails the annexation or division of the territory of the state whose power is considered dangerous for the balance. In the 17th and 18th centuries this device was regularly used for maintaining a balance of power which used to get disturbed by the territorial acquisitions of any nation.

For examples the three partitions of Poland in 1772, 1793 and 1795 were based upon the principle of compensation. Austria, Prussia and Russia agreed to divide Polish territory in such a way that the distribution of power among them would be approximately the same.

In the latter part of the 19th century, and after each of the two world wars of the 20th century, territorial compensation was used as a device for weakening the powers of the states whose actions had led to a violation of the balance. It was applied by the colonial powers for justifying their actions aimed at maintaining their imperial possessions.

II. Alliances and Counter Alliances:

Alliance-making are regarded as a principal method of balance of power. Alliance is a device by which a combination of nations creates a favourable balance of power by entering into military or security pacts aimed

at augmenting their own strength vis-a-vis the power of their opponents. However, an alliance among a group of nations, almost always, leads to the establishment of a counter alliance by the opponents. History is full of examples of such alliances and counter alliances.

Whenever any nation threatened the balance of Europe, other states formed alliances against it and were usually able to curb the power of the over-ambitious state. After the Triple Alliance of 1882, a rival alliance—The Triple Entente, was slowly formed through bilateral agreements over a period of 17 years (1891-1907).

In post-1945 period, alliances like NATO, SEATO, Warsaw Pact emerged as devices of Balance of Power. The first two were established by the USA and the third one was organised by the erstwhile USSR for strengthening their respective power positions in the era of cold war.

III. Intervention and Non-intervention:

“Intervention is a dictatorial interference in the internal affairs of another state/states with a view to change or maintain a particular desired situation which is considered to be harmful or useful to the competing opponents. Some times during a war between two states no attempt is made by other states to intervene. This is done for making the two warring states weaker.

As such intervention and non-intervention are used as devices of Balance of Power. Mostly it is used by a major power for regaining an old ally or for picking up a new ally or for imposing a desired situation on other states. British intervention in Greece, the US intervention in Grenada, Nicaragua, Cuba, Korea, Vietnam, and (Erstwhile) USSR’s interventions in Poland, Czechoslovakia, Hungary, and Afghanistan can be quoted as examples of interventions carried out by the big powers.

IV. Divide and Rule:

The policy of divide and rule has also been a method of balance of power. It has been a time honored policy of weakening the opponents. It is resorted to by all such nations who try to make or keep their competitors weak by keeping them divided or by dividing them. The French policy towards Germany and the British policy towards the European continent can be cited as the outstanding examples. The rich and powerful states now do not refrain from using divide and rule for controlling the policies of the new states of Asia, Africa and Latin America.

V. Buffer States or Zones:

Another method of balance of power is to set up a buffer state between two rivals or opponents. Buffers, observes V.V. Dyke, “are areas which are weak, which possess considerable strategic importance to two or

more strong powers, Buffer is a small state created or maintained as a separating state i.e. as a buffer state for keeping two competing states physically separate each stronger power then tries to bring the buffer within its sphere of influence but regards it as important, if not vital, that no other strong power be permitted to do so. The major function of a buffer is to keep the two powerful nations apart and thus minimise the chances of clash and hence to help the maintenance of balance.”

VI. Armaments and Disarmaments:

All nations, particularly very powerful nations, place great emphasis on armaments as the means for maintaining or securing a favourable position in power relations in the world. It is also used as a means to keep away a possible aggressor or enemy. However, armament race between two competitors or opponents can lead to a highly dangerous situation which can accidentally cause a war. In this way armament race can act as a danger to world peace and security. Consequently, now-a-days, Disarmaments and Arms Control are regarded as better devices for maintaining and strengthening world peace and security. A comprehensive disarmament plan/exercise involving nuclear disarmament can go a long way in strengthening the balance (peace) that exists in international relations.

VII. The Holder of the Balance or the Balancer:

The system of balance of power may consist of two scales plus a third element ‘holder’ of the balance or the balancer. The balancer is a nation or a group of nations, which remains aloof from the policies of the two rivals or opponents and plays the role of, “the laughing third party.” It poses temptations to both parties to the balance, and each contending party tries to win over the support of the laughing third party—the balancer. Normally, the balancer remains away from both the parties but if any party to the balance becomes unduly weak resulting into a threat to the balance, the balancer joins it and helps the restoration of balance. After that the balancer again becomes aloof. Traditionally Britain used to play the role of a balancer in Europe. However in the era cold war no state could perform the role of a balancer in international relations.

The rise of unipolarity after 1991, involving the presence of only one super power has now further reduced the chances for the emergence of a balancer in international relations. These are the seven major methods or devices of Balance of Power. These have been traditionally used by nations pursuing the policy of a balance of power.

BALANCE OF POWERS IN INDIA

When it comes to the Indian constitution, one of its most magnificent features is how finely it balances the powers between the different pillars of the government. This balance is based on the fact that government authority is divided into: executive (promulgating laws), legislative (making laws), and judicial (applying and interpreting laws). The need for balancing arises from the logical conclusion that if lawmakers are also administrators and executor of law and justice, the general public will have no recourse in case of injustice because there would be no higher authority. The idea allows for the formation of a consolidated and balanced government with protections in place to prevent the occurrence of abuse of power. The antithesis of totalitarianism and absolutism, according to Vile, is "diffusion of power among diverse centers of decision-making." The ultimate goal behind which is to ensure symmetry of power. The concept of balance of powers is implicitly provided in India's constitution. Notwithstanding that the concept of separation of power is not expressly recognized in the Indian Constitution, in its absolute form, the constitution allows for a decent division of powers and duties between the three organs of the government. In India we basically conform to the system of checks and balances. Although the Constitution, via Articles 53(1) and 154(1) vests the executive authority of the Union and the States in the President and Governor respectively, but no such matching provisions exists which vests the judicial and legislative authority in any single institution. However, since we have a written constitution the powers, functions and authority of each branch must be determined from the document alone. Thus, with the exception of special clauses such as Articles 123, 213, and 357, it is clear that the constitution mandates that legislative powers be exercised only by the legislature. Likewise, judicial powers should be vested and exercised by the judiciary. As a result, a system is put in place where no organ can take over the explicit and allotted power of another organ, nor can they relieve themselves from important functions and responsibilities that are assigned to them by the constitution.

Despite this, there exists no complete division of powers between these three branches of the government. As the Union's leader, the President executes his constitutional powers with the help and advice of the council of ministers. And at the same time, he exercises legislative authority to exclusively create and publish ordinances, during the recess of Parliament. After an emergency is declared under Article 356 of the constitution, he has additional powers to create laws for the state and perform solely legislative tasks granted by Articles 372 and 372-A. Coupled with this, the President also exercises judicial powers, like the authority to decide on Member of Parliament disqualification cases and to award pardons. Similarly, parliament has been given judicial powers, allowing it to evaluate issues of infringement of any parliamentary privileges and, if the violation is proven, to penalize for contempt. In addition to this, in case of impeachment of the President, as provided under Article 61, one of the Houses will function as a prosecutor and the other house will act as an investigator to establish the authentication of allegation.

Another example of function fusion is when the High Court's within a certain marginal sphere conducts administrative tasks. Their supervisory authority over lower courts, as guaranteed by Article 227, falls within administrative purpose instead of a judicial one. They also set regulations for the efficient functioning of the lower courts thereby discharging a legislative function.

HISTORICAL BACKGROUND OF BALANCE OF POWER

Historical examples of power balancing are found throughout history in various regions of the world, leading some scholars to characterize balance of power as a universal and timeless principle. During the Period of the Warring States in China (403-221 BC), the development of large, cohesive states accompanied the creation of irrigation systems, bureaucracies, and large armies equipped with iron weapons. These Chinese states pursued power through a constantly shifting network of alliances.

In ancient Greece during the Peloponnesian War (431-404 BC), the rising power of Athens triggered the formation of a coalition of city-states that felt threatened by Athenian power. The alliance, led by Sparta, succeeded in defeating Athens and restoring a balance of power among Greek cities. In the 17th century the Habsburg dynasty, which ruled Austria and Spain, threatened to dominate Europe. During the Thirty Years' War (1618-1648), a coalition that included Sweden, England, France, and The Netherlands defeated the rulers of the Habsburg Empire.

Early in the 19th century, french emperor Napoleon I repeatedly made efforts to conquer large areas of Europe. A broad coalition of European states—including Britain, Russia, Austria, and Prussia—defeated France in a series of major battles that climaxed with Napoleon's defeat at the Battle of Waterloo in 1815.

The classical European balance of power system emerged thereafter in an alliance known as the Concert of Europe, organized in 1815 by Austrian statesman Klemens von Metternich. This loose alliance between Britain, Russia, Austria, Prussia, and France ensured that a handful of great powers would coexist, with none able to dominate the others. Under this system, and with Britain playing a balancer role, peace largely prevailed in Europe during the 19th century. During World War II, Germany's rising power, aggressive conquests, and alliance with Italy and Japan triggered yet another coalition of opposing states—notably the capitalist democracies of Britain and the United States, and the Communist Soviet Union.

The dispute over the theory of balance of powers in India, and what it entails in terms of administration, is as ancient as the country's constitution itself. The constituent assembly discussed it extensively. When the Constituent assembly debates were going on, the separation of the executive from the judiciary was included in the Constitution.⁴ However, Professor K.T. Shah was in favor of embodying complete separation of powers between the three organs of the government. He was of the view that “If you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contract between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle

BALANCE OF POWER AND COLD WAR

Balance of power so perfectly described the polarity of the Cold War that it became integral to, indeed practically synonymous with, the concept of the East-West order. Although the image was so familiar as to be almost transparent, a great deal of political presumption was locked within its crystalline structure. East and West existed, and there was a "balance" between them that presumably somehow "weighed" a quality called power, possessed by the enemies, each side, in the way material objects possess mass. This enemy, real enough, but also postulated by the balance of power-without an enemy, what would be balanced?-served to solidify political alliance, and hence political identity, on both sides. Throughout the Cold War, divisions among states party to the North Atlantic Treaty Organization (NATO) or the Warsaw Pact, as well as divisions within each state, were obscured by the need to maintain a common front against the enemy.

In the context of the balance of power, the discipline of strategic studies turned on a single inquiry: to what extent did an event, either actual or possible, enlarge the military potential of one side or the other? This inquiry often raised nice issues of judgment. For example, both the United States and the Soviet Union long maintained inefficient capacity for the manufacture of steel in order to serve anticipated wartime needs. Within the contours of the strategic argument, the precise relationship between the capacity to manufacture steel and military fitness was debatable, but the stakes and the terms of the argument were clear. Equally clear was what was not at issue in the security debate, viz. broader questions of political conduct. Political questions, such as how to pay for the subsidy, were not unrelated, but were considered analytically separable inquiries. Just as participants in a sport rarely consider the appropriateness of the rules that inform their game, the balance of power so well defined strategic questions that larger questions went unasked.

Today, a strategic study is a far trickier business. The East-West order, which defined both the actors and the objectives, no longer exists. In the words of Polish politician Bronislaw Geremek, we are confronted by dangers, not enemies. There is no balance of power with danger, no conflict with danger. Danger may be assessed. But without a hard-edged notion of conflict to provide a context in which probability can be calculated, danger assessment is a hazy enterprise. Suppose, for plausible example, that the European Union is somehow at risk from unrest in Southern Europe. Should the Union attempt to integrate its forces to defend itself against Southern Europe? Should a new wall be built? Or should the Union attempt to integrate Southern Europe into its defense structure, either through NATO or the Western European Union, in the hopes of minimizing the risk of violent disorder? How much of Europe (what is Europe?) should be included in this process of integration? Should this process be limited to the military sector, or should it include the economy? How complete, and how swift, is this effort to be? And so forth.

Strategy that would confront such threats requires a view of politics considerably more nuanced than polarity; policy cannot be determined by argument that one "side" enjoys some military advantage over the other. Strategic thinking now entails politics, economics, and history, in addition to its traditional focus on military capability, because a strategic world where security is threatened by dangers rather than enemies is complex and vague in ways that the old strategic world was not. In response to uncertainty, the new strategic thinking seeks stability more avidly than it seeks some ill-defined "advantage." Stability is hardly a new concern; what

is new is that stability has become virtually the only concern. So, for example, it recently appeared to make strategic sense to cut the size of our military, in part because the federal deficit was thought to hamper national competitiveness and economic unrest was seen as a greater threat to our security than invasion.

Similarly, it makes strategic sense for Western European states to give money to help the young governments of Central and Southern Europe stabilize their economies, not because those governments plan to invade, but because their failure may lead to massive immigration or civil war. Rather than the purchase of military hardware, security concerns now impel the provision of loan guarantees. Strategy used to mean the attainment of military superiority, or at least deterrence; it now means the pursuit of social stability. Politics writ large has absorbed strategic studies.

The vague character of threats to social security means that when we cannot quarantine social instability (as we frequently do with those chaotic Africans), intervention is likely. In a dangerous world, security is obtained by proactive measures designed to shore up the social order. In contrast, in the traditional world of enemies, security is the capability to respond to the threat posed by the enemy. (Only rarely has security been thought best obtained by preemptive attack.) So we long preserved the capacity to respond to Soviet aggression with nuclear force, if necessary. The very language of the cliché is reactive. Today, the United States is criticized not for its lack of readiness, but for not taking enough action within the former Soviet Union to help ensure that the weapons of mass destruction remain in sane hands. In this light, the invasion of Panama and the signing of the North American Free Trade Agreement may be understood as attempts to establish a viable social order in situations that present profound threats to our security, our lust for drugs and the weaknesses peculiar to a highly technological economy.

If security is now better procured than defended, then early intervention will often be more effective and cheaper than late intervention. Contemporary strategic thinking inclines to the adage "a stitch in time saves nine." Diffuse threats to security should be addressed before they have time to gain focus and momentum. The task for contemporary strategic thinking is therefore the avoidance, rather than the development, of the logic of war. For example, it has for some time been argued that more decisive action by the European Community (and then the European Union) and the United Nations at the outbreak of violence in Yugoslavia might have prevented at least some of the carnage and associated risks. War, even civil war, has its own awful logic, and the various factions in what was Yugoslavia fought within that logic, to regain territory lost by military action, to avenge loved ones, and so bloody on, in the gyre of public and private violence bemoaned since the Oresteia. Had the logic of violence not been established, Yugoslavia might be merely politically fractious, like Belgium or even what was Czechoslovakia. The transformation of strategy amounts to an imperative to intervene, militarily, if necessary, in the service of order.

CONSTITUTION AND THE INDIAN LEGISLATURE

The constitution serves as the fundamental legal framework for any nation, providing the foundation for its governance and defining the powers and limitations of its institutions. Among these institutions, the legislature holds a significant position as it represents the voice of the people and plays a crucial role in shaping public policy. This part of the thesis explores the relationship between the constitution and the legislature, examining how the constitution influences the structure, responsibilities, and decision-making processes of the legislative

branch. In order to understand the word legislature, we need to know where it came from. It is derived from the Latin word “lex” which according to Collin’s dictionary means a “system or body of laws”. And the institution which is responsible for enacting them is called legislature. Across the globe, there are many different forms of government, namely federal, unitary, parliamentary and presidential. However, here we are only concerned with the latter two. Based on the kind of relation that exists between the executive and the legislature, the various governments are categorized into parliamentary and presidential. The parliamentary form of government also popularly called Westminster Model, Cabinet government or responsible government is the one in which the executive is responsible to the legislature for its actions. Whereas, the presidential form of government is based on separation of power, where the executive headed by the president is independent of the legislature.

In India our forefathers, with far sighted view of greater representation of people of country, favored parliamentary system over presidential system. This is because the parliamentary system will guarantee a greater representation of the people from varied cultural & traditional background. Unlike presidential system where one person is required to be a leader, parliamentary system offers opportunities to leaders elected from different communities. These leaders can create coalitions in order to hold majority in control and provide more effective solution in guarding against one-man authoritarian rule.

CONSTITUTION AND THE INDIAN JUDICIARY

In India, the Government Act of 1935 was responsible for the creation of Federal Court. What is important to note is the fact that though this act envisaged various federal agencies but the one which exerted major influence over the Constitution of India was the provision of federal court. Federation involves the demarcation of powers essentially between the centre and the states. Such a demarcation is bound to bring to fore the dispute between the two, involving questions regarding the boundaries of their respective authority within which they are required to function. This calls for the existence of an agency which will settle the disputes. It is where the role of federal judiciary comes into picture. In India the first judicature at all India level was the federal court. Though it encompassed within its sweep only British India provinces, nonetheless, it for the very first time provided the vision for all India Supreme Court for the future. After India attained Independence, the Supreme court came into existence on 28th January 1950.

In India we have a unified judicial system at the top level we have Supreme Court below which there are high courts and then the subordinate Judiciary. The Supreme Court under article 32 of the Indian Constitution has been assigned the crucial role of protecting the fundamental rights guaranteed under the Constitution. The Supreme Court has the sacred duty to ensure that these rights are not violated by the Union as well as the State governments. Not only this, it protects the citizens by declaring arbitrary acts of the executive as unconstitutional. The Supreme Court is designated as the guardian of the constitution. It is called the ultimate interpreter of the Indian constitution. The Judiciary of any country discharges the crucial role of interpreting the various provisions of the Constitution and to settle disputes between the state and the citizen as per the law laid down. In countries where there is a written constitution like in India, the Supreme Court is further conferred with the duty of ensuring the constitutional supremacy and of ensuring that its provisions are

adhered to by all the functionaries. In addition to this, judiciary in a federal country discharges another major role of settling disputes between the centre and the states and also between the states as well. For the proper discharge of all these functions the existence of an independent and impartial Judiciary is a must. The Composition and jurisdiction of the Hon'ble Supreme Court of India are outlined in detail in our Constitution from Article 124 to 147. In India, the judiciary is linked with the other two departments, the government and legislative. Because of the concept of precedents, even if there may be High Courts in states, the law proclaimed by the Hon'ble Supreme Court shall be binding on all subordinate courts within the territory of India (Article 141).

Article 124, clause (1), says that India will have a Supreme Court consisting of the "Chief Justice of India (CJI)" and other judges of the Supreme Court. The process for appointing judges to the Supreme Court is outlined in Article 124(2). According to this provision, the president appoints every judge of the Supreme Court by warrant under his hand and seal. But before making such appointment, he must consult with as many judges of Supreme court and high court as he deems necessary. In addition, if a judge other than the CJI is to be appointed, the president will have to do it after consulting with the CJI. The two things that must be noted here is that, while Art.124 (2) gives the impression that the president appoints judges, as a matter of fact, the union executive has the actual authority. On the recommendation of the council of ministers, the president makes such an appointment. Secondly, the constitution provides for consultation for the purpose of limiting the executive's power in making judicial appointments, since it was believed that giving the executive complete control over the appointment process could destroy the independence of the judiciary. This is an apt example of the separation of powers and the checks and balances system, because no single authority has sole authority to appoint judges of the higher judiciary, and the word "consultation" acts as a check on both the executive and judiciary wings.

LIBERAL REALISM AND BALANCE OF POWER

Liberal realism's concern with the balance of power necessitates that liberal states must be willing to use power and force to support the balance of power against threats hostile to self-interest and liberal values. The Reagan administration believed that it was necessary to counter the Soviet threat in order to purge the "intense emotional resistance against the use of U.S. power for any purpose" created by the American experience in Vietnam. Again, the Reagan administration's perspective included prudence and liberal conviction. Kirkpatrick suggested that "[w]hat is called the conservative revival is just this: the return of American confidence in our values, and in our capacities, and of American determination to protect ourselves--from war and defeat." Kirkpatrick also emphasized the broader liberal conviction in the Reagan administration's willingness to use American power. The restoration of the conviction that American power is necessary for the survival of liberal democracy in the modern world is the most important development in U.S. foreign policy in the past decade. It is the event which marks the end of the Vietnam era, when certainty about the link between American power and the survival of liberal democratic societies was lost.

The Reagan administration's sensitivity to the prudential and liberal aspects of the balance of power and its willingness to use American power to confront threats to self-interest and liberal values illustrate well the liberal realist tradition's perspective on the balance of power.

BALANCE OF POWER TODAY

The collapse of the Soviet Union in 1991 left the United States as the world's sole superpower. Balance of power theory suggests that without the Soviet threat the United States, as the dominant world power, will face difficulties in its relations with such states as China and the European powers. For example, key countries such as China, Russia, France, and Germany all opposed the United States invasion of Iraq in 2003 in diplomatic arenas such as the United Nations. Yet this opposition did not stop the United States from acting, exposing the significant gap in military capability that now exists between the United States and the rest of the world. Small states that fear the United States are no longer able to join a counterbalancing coalition to protect their security. Instead, many are developing nuclear weapons in an attempt to dramatically expand their military capability. For example, North Korea claimed in 2003 that it was developing nuclear weapons to balance against U.S. power.

The changing nature of power in the contemporary international system further complicates the operation of the global balance of power. Globalization, the Internet, weapons of mass destruction, and other technological developments have made it possible for small states and even non state groups to acquire significant power. These factors also dilute the relative importance of military power. For example, after the terrorist attacks of September 11, 2001, the United States assembled a broad coalition to invade Afghanistan, using military force to topple the Taliban government and end the Taliban's support for al-Qaeda terrorists. This application of military power did not provoke a balancing coalition of other states, but it also did not end the terrorist threat to the United States. In the future, the balance of power may continue to operate among states engaged in prolonged disputes, but it is less applicable to conflicts involving terrorists and other non state groups.

CONCLUSION

The balance of power has been a central concept in the theory and practice of international relations for the past five hundred years. It has also played a key role in some of the most important attempts to develop a theory of international politics in the contemporary study of international relations. Another basis for the realist theory is the idea of a balance of power and the anarchic nature of the global system as there is no effective global government and the world system is anomic (without rules). This ties in well with the idea of global relations being one of self help and each state striving to promote its own interests at the expense of others. In short, realists see the global system as one of self help. The idea of the balance of power is put in place to explain the situation where states will ally themselves to prevent the hegemony of one state over all others. Balance of Power, theory and policy of international relations that asserts that the most effective check on the power of a state is the power of other states.