

Power Equilibrium Among the Organs of the State: A Critical Analysis

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Abstract

The paper explores and explains the legal system as the central nervous system to balance the three pillars of political power of governance from Nepalese perspective. The key question is “How do the legal practices create a triangular equilibrium of political power among the organs of state for effective governance of Nepal?” This paper addresses the problem by adopting the qualitative research design, which enables the researcher to explore and explain the holistic phenomena like legal practices that binds and creates an equilibrium state between the three key political powers of governance: Legislation, Executive and Judicial powers. The case studies are both based on court practices with participant experiences as well as the secondary source artifacts for the completion of the paper. The interpretation concluded that the state powers such as legislative, executive and judicial powers need to be maintained at equilibrium through legal framework of constitution and courtroom epiphanies of judge made laws i.e. precedence.

Key words: Equilibrium, Organs, Power, State, Critical Analysis

Background

Nepal had been a feudal society ruled by absolute monarchy for over 200 years, which was further empowered with a godly belief system choreographed by Hindu culture and its morality. Hence, the political system had been run by the powerful king exercising all the powers of legislative, executive, and judiciary, which can be well illustrated by the statement of James Madison “The accumulation of all powers i.e., legislative, executive and judiciary, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny.” The transformation of Nepal from a monarchical system to a democratic system unfolded the absolute power of the king through the separation of power into legislative, executive, and judicial structures in 2047 B.S. The passage of time further demanded the requirement of republic system in Nepal achieved in 2063 B.S., which has been engraved in the current legal system of Nepal by the formulation of the Constitution of Nepal (2072).

The separation of power theory deals with specific functions, duties and responsibilities of the separate government organs with their specific allocation to a defined means of competence and jurisdiction. All three powers are separated and structured within the constitutional framework as executive, legislative, and judiciary with their important well-defined authority as given: (a) Power to make, amend, and repeal laws are done by legislative authority (b) Power to execute and enforce laws created by legislative are done by executive authority. (c) Power to resolve disputes by determining what the law is and how it should be used in disputes are performed through the judicial authority (Mojapelo, 2013).

In England, the separation of power doctrine is defined by Lord Mustill based on the precedence of *R v Home Secretary, Exp Fine Brigades Union 2* which states as: ‘It is a feature of the peculiar British conception of the separation of powers that parliament, the executive and the courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws it thinks right. The executive carries on the administration of the country in accordance with the powers conferred on it by law. The courts interpret the laws, and see that they are obeyed or being obeyed’ (Ganz, 1996).

As James Madison said, it is true that legislative, executive, and judicial powers are the three key integral powers of governance that exist as the sub-system of the whole government system. This should further, independently exist as a system in itself and functions as the sub-system of the integral system of the entire government where all three functions as parts of the complete system for the effective governance. The ideal governance is achieved only in the state where all the three sub-systems co-exist at an equilibrium point, breaking the balance within these power pillars and paving the path for the functioning of the state in the automatic natural system. It is very difficult to achieve this equilibrium state and can only be achieved through the legal framework and legal practices where legislative, executive and judicial powers are structured and programmed designing the requirement of living constitution.

Historically, the separation of state powers grew out of centuries of political and philosophical development that can be traced from the Aristotle’s treatise entitled *Politics*, described the three agencies of the government as the general assembly, the public officials and the judiciary. Even though the doctrine of separation of powers is rooted back in the time of Aristotle but the modern foundation to separate them as three distinct branches of power like the legislative, executive, judicial, were based on the writings of Locke and Montesquieu. Hence, the

theory of separation of power signifies three formulations of structural classification of governmental powers: i) The same person should not belong to more than one of the three branches of the government. ii) One branch of the government should not interfere with any other branches of the government. iii) One branch of the government should not exercise the functions assigned to any other branches (Massey, 2008).

In the case of Nepalese society, the three powers are basically known as the legislative, the executive, and the judiciary. They are well structured in the constitution, which represents the people and their will, and are responsible for the smooth administration of democratic government at the federal, state, and local levels. The legislative is the organ of the government that makes laws, amends them, and repeals them; the executive organ is responsible for the execution and enforcement of laws created by the legislative, and the judiciary deals with dispute resolution through interpretation of what and how part of the laws and their breach. Though the powers of the state have been separated into three different organs in the constitution with their specific roles, functions, and responsibilities at the implementation level, they tend to overlap with each other. Sometimes, they create a muddy scenario where it is hard to imagine the actual implementation of the separation of power doctrine, which is a serious issue for the political domain of a country. This scenario has raised many philosophical and jurisprudence debates among the people especially legal scholars and the law fraternity. This has raised the current focal point of contemplation on whether there should be a complete separation of powers or a well-coordinated system of distribution of power and has pointed out the need for a power balancing mechanism among the state organs. This gap of power balancing mechanism is the essence of the explanation, exploration, experience and the interpretation is the heart of the paper.

Research Problems

This paper deals with :

- a. How is equilibrium achieved among the legislative, executive and judicial powers of the state?
- b. How do the legal system and legal practitioners play role to enhance the implementation of equilibrium among legislative, executive and judicial powers of the state?

Objectives of the Research

The objectives of this research are:

- a. To analyze the process of achieving equilibrium among the legislative, executive, and judicial powers of the state and
- b. To overview the role played by the legal system and legal practitioners in enhancing the implementation of equilibrium among legislative, executive, and judicial powers of states.

Significance of the Study

The significance of the study is:

To discuss, explain, and explore the legal framework responsible for the maintenance of equilibrium among the organs of state from the perspective of legal practitioner.

Rationale of the Study

Due to the dearth of scholarly studies on law practices in legal systems, there is a strong necessity for legal professionals to have jurisprudential knowledge and lived experience to engage in evocative, analytical, and empirical research, creating a path for those practitioners who can influence and impart justice value system in the society. This inquiry unravels the integral transformation of centralized state powers into decentralized state power and the achievement of equilibrium among those decentralized power centers through a legal framework.

The balance of all three powers, executive, legislative, and judiciary, requires inclusiveness and cohesion following the simultaneous action with collective functioning of legal practitioners in the judicial domain carrying legal value, which consists of cognitive (Judiciary), emotional (parliament), and constructivism (engagement or executive). Further, the state powers are structured by the legal framework of constitution. Research has shown that legal practices, in courtroom and legal community, are an emergent domain for peace and sustainability. But the studies and practices are not being represented in legal community as requirement according to the legal value system forming the root of constitutional drafting. There is a need for studies regarding the strategies used by legal professionals for the balance of political power among the organs of the state. Such studies are required to be carried out by legal professionals themselves because such professionals can more authentically represent and interpret their experiences in the legal sector being bound by constitutional jurisprudence, giving insights into the cultural, historical, and social context of the power balancing system as well.

Limitations of the Study

This paper is limited to the separation of power and maintenance of equilibrium among the organs of the state concerning the court practices, i.e., writ cases. This paper is based on doctrinal sources of data. No empirical research has been conducted.

Organization of the Study

The research is divided into the introduction part where the concept of separation of power and equilibrium, i.e., check and balance, has been introduced, and the research problems have been identified along with the objectives of the research. The significance of the study has also been stated along with the limitation of the study, literature review addressing the literature gap. Further it concerns about the methods of study which consists of methodology adopted to complete the research, finding and analysis along with conclusion.

Literature Review

Power is defined as possession of control, authority, or influence over others based on Merriam-Webster dictionary but it is a complex phenomenon in social and political reality. It is the relation between people as well as a relation among the organs of the state like the legislature, executive, and judicial branches of the nation. The core meaning of the separation of power principle is the idea that the major government institutions, which consist of mainly the legislative, the executive, and the judiciary, should be functionally independent and that no person should have powers that span over these offices.

Regarding the separation of power principle, Montesquieu provided one of the earliest and clearest statements back in 1748. According to his claim, if the same person has both legislative and executive powers combined or in the same body of magistrates, then there is no liberty. Similarly, there is no liberty if the powers of judging are not separated from the legislative and executive powers. Still, the most dangerous state is when all three powers are rested in the same man and the body and happen to exercise them together, then it is the end of everything (Montesquieu, 1748).

The tension between the doctrine of separation of power and the need for balanced government - an arrangement more on "checks and balances" within the system than on a formalist separation of power since the dawn of history. Sir Ivor Jennings has interpreted Montesquieu's words to mean that the legislature and the executive should can have influence over the other, but they should not exercise the power of the other (Blackstone, 1765).

In his famous book '*The Spirit of the Law*,' Montesquieu (1748) wrote about state power, stating that constant experience shows that any man having power happens to abuse and carry out till he is confronted. Concentrating more power in a single man is a very dangerous scenario, especially for leaders with absolute power. The concentration of power can be avoided only by division or separation of the functions of the executive, legislative and judicial departments of the government. For liberty and good governance, the state power should not be used absolutely by a single authority.

In order to safeguard against any potential abuse of power, the highest law of the land, which is the constitution, uses the strategy of check and balance between the three government organs, namely the legislature, the executive, and the judiciary. This can be well illustrated through an example: the executive is responsible to Parliament in its day-to-day functioning while the President appoints the leader of the party with majority votes in the parliament as the government head or Prime Minister, but the government is duty bound to resign or loses the power once vote of no confidence is brought and passed by the Parliament. Similarly, the judges of the Supreme Court and the High Courts in the States are appointed by the executive, i.e., the President acting on the recommendation of the Prime Minister and the Chief Justice of the Supreme Court. Still, they may be removed from the office only if the Parliament impeaches them. This measure helps the judiciary to function without any fear of the executive. Hence, the executive, legislative, and judicial powers are well-neutralized through the check and balance system of the Constitution (Mojapelo, 2013).

The separation of power well is articulated in the Constitution of the United States. The three powers of the government, the legislative, the executive, and the judiciary, are structured with their respective functions and powers in Article I, Article II, and Article III of the US Constitution, respectively. Article I of the Constitution grants powers to the legislature, Article II gives executive power to the President, and Article III creates an independent judiciary. President, as the executive power, is elected separately from the Congress and does not sit as part of the legislature. The Supreme Court can declare the acts of both Congress and the President to be unconstitutional. However, in many countries like the UK, the separation of powers is implemented with a more compromised model constitution where some functions are shared between the institutions of state and the powers of Parliament, Government, and courts are closely intertwined. Especially the executive and legislature are seen as a close union, a nearly

complete fusion of the executive and legislative power viewed as the efficient secret of the English constitution (Bagehot, 1867).

The President of the UK Supreme Court, Phillips (2011), explained that the citizen must be able to challenge the legitimacy of executive action before an independent judiciary. Since it is the executive that exercises the power of the State and because it is the executive, in one form or another, that is the most frequent litigator in the courts, it is from executive pressure or influence that judges require particularly to be protected. Based on the spirit of the constitution, judges are subordinate to the Parliament and may not challenge the validity of Acts of the Parliament (Bailey, 2023). However, there remains some leeway for judges to interpret statutes, and this raises the question of whether the judges are able to “make law”. There is an element of judicial law-making in the evolution of common law (Barnett, 2019) where the precedence can form the judge-made laws through the realistic practices of the judicial system. For example, in *Major and St. Mellon's Rural District Council v Newport Corporation* (1952), the House of Lords rejected the approach of Lord Denning, who had stated that where gaps were apparent in legislation, the court should fill those gaps.

The three branches of power centers in the government are closely interlinked, and power separation is maintained through the check and balance principle. The executive power is derived from the legislation and the constitution, while the courts may declare invalid any exercise of power by the executive that is not authorized by law. Legislation is passed, may be amended or repealed by the legislature and even the constitution may be amended by the parliament. In practice, the legislature has the power to circumscribe or determine the power of the executive.

The power relation and check and balance principle between executive and legislative entities can be illustrated through social science research; the empirical work on political budget cycles (PBCs) implicitly assumes the executive has full discretion over fiscal policy. Once there is legislative limitation over executive discretion through legislative checks and balances, moderate PBCs are found in countries with high compliance with the law. More effective check and balances help to explain why cycles are weaker in developed countries and in established democracies, while the significant cycles occur in all democracies when the discretionary component of executive power is isolated. (Streb et al., 2009).

According to the doctrine of separation of power, in principle, the executive organ should not resolve legal disputes between individuals, and the judiciary should not execute laws or their

own orders. The leading spirit of the separation of power is to maintain the independence of the judiciary. In order to maintain judicial Independence, the judges need to be absent from interference both at the institutional and decision-making levels.

Democratic theorists who believe in liberal constitutionalism have a longstanding debate over the rights protection method, as there are two methods, namely the legislative and the judicial. Some democrats argue that the legislative method best achieves moderate policy outcomes, while others argue for the judicial method. This issue can be examined by comparing two commonwealth countries, Canada and Australia, which are distinctly placed on opposite sides of the debate. A case study design compares the policy process and outcome in the two countries on the issues of prisoner voting and homosexual marriage. The data suggest that bicameral legislatures best serve their moderating functions when the government is not in control of the upper chamber. In contrast, rights-based judicial involvement in policymaking promotes extreme policy outcomes. However, The evidence is mixed, and the existence of counter-examples points to research further (Banfield & Knopff, 2009).

Literature Gap

In the above-mentioned literature, the concept of separation of power and check and balance has been cleared along with its advantages and disadvantages. However, the process of achievement of equilibrium among the organs of the state and the role played by the legal system and legal professionals in enhancing the implementation of equilibrium among organs of the state has not been studied from the Nepalese legal practices. All these powerful organs are either checked or balanced under the constitutional framework as well as the precedence choreographed through legal practices, thus, this paper aims to explore these key gaps for the maintenance of equilibrium among the organs of the state in the legal arena.

Methods of the Study

Research Design

This research was based on a qualitative research design. A qualitative method was applied to describe the present situation of separation of power and the process of check and balance for assessing the problem towards the maintenance of equilibrium among powers exercised by the organs of the state. In this context, this research is based on interpretive research (Denzin, N. R. & Lincoln, Y. S. , 2005).

Nature and Sources of Data

This research is based on primary data i.e., case laws and live experience of the researcher and secondary data collected through doctrinal sources i.e., the books, journal articles and so on.

Cases related to the Separation of Power and Maintenance of Equilibrium among the Organs of the State

Primary data: Experienced through being and doing. Nepalese legal practices and three powers of government, their experiences.

Case 1: Writ Cases: Sher Bahadur Deuba and others vs. Office of the President of Nepal et al., 2078 (Writ No. 077-WC-0071)

Results and Discussions

The fact of the Case

The petitioners of the writ filed are the members of the House of Representatives. On 2077/11/11, the Supreme Court of Nepal gave its verdict on the writ petition (077-WC-0037) for the reinstatement of the dissolved House of Representatives. The respondent Prime Minister is dismissed from his position for failing to obtain the vote of confidence from the House of Representatives on 2078/01/27. Honorable President summons for the formation of a government within three days. The parties could not submit their claim as per article 76(2) of the Constitution within the stipulated time. The president appointed candidate KP Sharma Oli as the Prime Minister in accordance with Article 76 (3) of the constitution of Nepal as the leader of the parliamentary party with the largest number of members in the House of Representatives. Based on article 76(4) of the Constitution of Nepal, the Prime Minister appointed as per Article 76(3) must get a vote of confidence from the House of Representatives no later than thirty days after the date of such appointment. On 2078/02/06, Prime Minister KP Sharma Oli recommends the President start the process of formation of an alternative government in accordance with article 76(5) without getting a vote of confidence from the House of Representatives as per article 76(4). Based on article 76(5), the President summons the members of the House of Representatives to present a ground for obtaining a vote of confidence in the House of Representatives in order to appoint the Prime Minister, giving an estimated date and time, i. e., 5 pm of 2078/02/07. The petitioners, responding to the summon of the president, submit the claim in the Office of the President on behalf of the President of the Nepali Congress as well as the leader of the Nepali Congress Parliamentary Party and the member of the House of

Representatives Sher Bahadur Deuba for the appointment of Prime Minister with the support of majority members in the House of Representatives. The respondent Prime Minister KP Sharma Oli has also claimed for the same post.

The press release issued by the Office of the President on 2078/02/07 has said that the claim submitted by the Honorable member of the House of Representatives Sher Bahadur Deuba has signature of 149 members. The Honorable member of the House of Representatives KP Sharma Oli, with 153 members' signatures on the claim submitted, shows enough ground to obtain the vote of confidence in the House of Representatives. Out of 149 signatures obtained by the Sher Bahadur Deuba, 12 signatures are from the members of Janta Samajhbadi Party Nepal and 26 signatures are from the members of CPN (UML). 153 signatures obtained by KP Sharma Oli includes the signatures of 121 members of CPN (UML) and 32 members of Janta Samajhbadi Party Nepal. The leaders of the parliamentary party and the chairperson of the parties CPN (UML) and Janta Samajhbadi Party Nepal request to quash the signatures of members from their parties, stating the signatures are against the conduct and dignity of the party and the members will be expelled from the House of Representatives. Neither claimant seems to have enough ground to get the vote of confidence from the House of Representatives as per article 76(5). Thus, both candidates were disqualified to be appointed as the Prime Minister.

On 2078/02/08, the respondent Council of Ministers decided and recommended to the President for the election of the House of Representatives by dissolving the previous one following two steps on 2078/07/26 and 2078/08/03 following article 76(7) of the Constitution of Nepal. The decision on the claim submitted for the appointment in the post of the Prime Minister by the petitioners and the decision along with work procedure by the President for the election of House of Representatives by dissolving previous one as recommended by Council of Ministers are against the Constitution of Nepal. Thus, the writ petition of certiorari and mandamus is filed concerned with the act of the President and the Council of Ministers contradicting the fundamental law of the land, the Constitution of Nepal.

Verdict of the Court

The end of the written constitution is limited government where the limitation of each and every organ is determined by the constitution. The concept of constitutionalism carries the values of limitation in government's power, separation of power and authority vested in different organs of the state and operation of the government responsible towards people. The characteristics of

the written constitution is to maintain effective balance between powers by limiting the authority of every organ of the state.

Taking reference to the case Advocate Rabiraj Bhandari vs. Prime Minister Manmohan Adhikari and the others, 'it is the duty of the court to protect the constitution not allowing encroachment in the jurisdiction and rights of different constitutional organs, bodies or officials guaranteed by the constitution and law', the court stated each organ of the state must exercise its powers within the limitation set by the constitution and the law. The prohibition or neutralization of other organs of the state will create undue obstacles in adherence to the principles of separation of powers and check and balance. Executive power cannot be exercised in matters not permitted by the Constitution. It is the parliamentarians who play a role in the parliament.

Separation of Power and Check and Balance is a value maintained in the Constitution of Nepal, creating the situation for Constitutional Objectivity. The functions carried out by the country's President fall under the jurisdiction of executive functions. If the functions executed by the President are kept out of the subject of judicial review, it might encroach on the principle of Separation of Power and Check and Balance, creating the condition of arbitrariness and tyranny. It is the court's responsibility for final interpretation of the rights and limitation of functions of constitutional organs and officials.

If any member provides a ground for obtaining the vote of confidence in the House of Representatives based on article 76(5) of the Constitution of Nepal, such member shall be compulsorily appointed as the Prime Minister. The Constitution does not permit to use discretionary rights to the President for not appointing the Prime Minister in case any member provides a ground to obtain vote of confidence. The President shall not decide based on the presumption of the result inside the House of Representatives.

The right to the final interpretation of the constitution and laws is vested in the court according to the principles of democratic values, the rule of law, constitutionalism, and separation of power. Constitutional morality, adherence to the core principles of constitutional democracy, is a constitutional order against the arbitrariness, tyranny, or monopoly of the state's high officials, encouraging officials to follow their duty.

Separation of Power and Checks and Balances are fundamental aspects of constitutionalism. If an individual-centered governance system is applied, ultimately, it will give rise to arbitrariness and tyranny.

The House of Representatives should not be considered a subordinate body running under the will and control of the government. It is an institution that controls and makes the government accountable. It is one of the three organs of the state according to the principle of separation of power and from the point of view of the nature of work, it is also an institution that has to play a direct role in making the government controlled and accountable. The government has to facilitate the meeting of the House of Representatives to form a government and discuss and decide on any important issue of the public interest. It is also the natural right of the House of Representatives to discuss about the activities of the executive and take necessary decision in the meeting. Therefore, the process of formulation and development of jurisprudence on issue of dissolution of House of Representatives to be decided by House of Representatives itself is forwarded. This means, in special circumstances, even if the session or meeting of the House of Representatives is not convened, at the initiative of the Speaker of the House, the members of the House of Representatives shall exercise the authority of summoning meeting provided by the constitution. Summoning a meeting is a matter of procedure. The responsible involvement of the representatives of the sovereign people in the governance of the state is a fundamental and substantial issue. The fundamental or the substantive matter shall not be unduly affected by procedural matters. If there is any unwanted or unreasonable obstruction in this regard, it is necessary for the House of Representatives to pave the way for the removal of such obstruction.

The present controversy regarding the dissolution of the House of Representatives should be looked at from the viewpoint of fairness or impartiality. Every action taken on behalf of the state should be fair, impartial, reasonable and rational. Prejudicial, arbitrary or biased actions cannot achieve judicial legitimacy. No state organ or official is allowed to make arbitrary decisions. Naturally, it is a subject to judicial scrutiny when the decisions are made on prejudice or arbitrariness.

If any question arises regarding the use, follow up or interpretation of the constitution in the process of appointment of the Prime Minister, the court adheres to the duty and responsibility of the final interpretation of the constitution on the dispute to provide a reliable judicial remedy. It is the duty and responsibility of all state organs and office bearers, including the president, to act in accordance with the order issued by the court to interpret the constitution. Failure to comply with the court's order means that the provisions of the constitution have been violated and no one can be excused to remain in authority by violating the constitution.

Secondary data: Experience through knowing, the power theories, the legal system theories that balance all the powers

Case1, Judicial precedence: Marbury vs. Madison, a landmark case of Judicial Review

Marbury vs. Madison is a classic case that formed the basis for the exercise of judicial review in the United States under Article III of the Constitution, which illustrates the check and balance of judicial power and executive power. A petition was filed to the Supreme Court by William Marbury, who had been appointed by President John Adams as Justice of the Peace in the District of Columbia but whose commission was not subsequently delivered. Marbury petitioned the Supreme Court to force Secretary of State James Madison to deliver the documents, but the court, with John Marshall as Chief Justice, denied Marbury's petition, holding that the part of the statute upon which he based his claim, the Judiciary Act of 1789, was unconstitutional. Based on this case it was the first time that the Supreme Court declared something unconstitutional and established the concept of judicial review that helped define the system of 'check and balance of power separation doctrine in the American system (Corwin, 1914).

Case 2, Judicial precedence: Kesavananda Bharati vs. State of Kerala and Other (Basic structure of the Indian constitution: doctrine of constitutionally controlled governance)

This is another classic case of checks and balances of power separation between legislative (Parliament) and judicial powers. The case of Kesavananda Bharati, the plaintiff, is a critical case in the constitutional history of India based on which the basic structure of the Indian constitution was defined. This doctrine empowers the Parliament to amend the Constitution provided there is no change in the fundamental rights and other provisions that constitute its basic structure which are the separation of power structure of legislative, executive and judicial at equilibrium coexistence. This case, ranging for 68 days, citing over 100 other cases and using the constitution of over 70 countries, was the longest case in history of India.

In this case The Supreme Court of India dealt on the question where the amending power of the legislative (Parliament) lies and whether Article 368 confers and unlimited amending power on the legislative, the supreme court held that amending power was a subject to the basic features of the constitution. Hence , any amendment tapering to the essential features of the constitution will be struck down as unconstitutional which is further supported by Beg J. who writes that separation of power is a part of the basic structure of the constitution. None of the

three separate organs legislative, executive and judiciary of the republic can take over the functions assigned to the other even by resorting to Article 368 of the constitution. Supreme Court has applied the Keshavanand ruling as a part of case law to quash the attempts where legislative (Parliament) tried to surpass the judicial power through the principle of the non-amend ability of the basic features of the constitution and strict adherence to separation of power doctrine. (Kumar, 2007).

Findings and Conclusion

Separation of power diffuses state power into three organs where the legislature's primary function is the enactment of making laws, the executive's primary function is enforcement of the laws, and the judiciary's primary function is an interpretation of those laws. The separation of power accompanied by checks and balances to maintain the value of democracy and constitutionalism can be found in the above-mentioned case, where legislative functions have been tried to supersede by the executive. Thus, the executive's action is being challenged utilizing an appropriate writ in the judiciary where the judiciary is interpreting the laws.

The head of the state, the honorable president, while executing the constitution of Nepal article 76(5) misinterpreted the constitution and encroached on the power of legislature while exercising its own, thus, the judiciary, the Supreme Court of Nepal as per article 133(3) using its extra-ordinary jurisdiction interpreted article 76(5) reinstating House of Representatives and giving mandamus to appoint Sher Bahadur Deuba the Prime Minister as per article 76(5) being a member able to present a ground for obtaining a vote of confidence in the House of Representatives.

The Supreme Court of Nepal, emphasizing the values of democracy, i.e., rule of law and separation of power accompanied by the notion of check and balance concurring, presents an effective base against the abuse of power and superiority of power. Further clarifying, the Supreme Court being independent judiciary interpreted the functions to be carried out by the parliamentarian inside the parliament as well as executive functions. The House of Representatives is an institution that controls and makes the government accountable and is not a subordinate body running under the will and control of the government. If the function and power of any organ is prohibited or neutralized, the principle of separation of power could have been breached.

The importance of separation of power is to protect the state from arbitrary rule and tyranny, limiting every organ in terms of the power and its extent to which it can exercise. The Supreme Court, taking reference to Advocate Rabiraj Bhandari vs. Prime Minister Manmohan Adhikari et al., limits the power of organs of the state. The court also points out the concept of constitutional objectivity and morality, which also supports the doctrine of separation of power. Constitutional morality associated with self-restraint and freedom helps to ensure constitutional democracy along with the values where separation of power is given more priority so that the arbitrariness, tyranny, and monopoly of the power can be controlled, ensuring the rule of law and making government accountable to people.

Thus, the case is completely based on the separation of power and check and balance where legislative functions have been secured which have been breached by the executive can be corrected by the judiciary. Judiciary upholding its primary function of interpretation of laws interpreted the constitution article 76 clarifying the possible intent of law makers behind the provision, thus, nullifying the decision of the executive ensuring the fair and impartial justice to the authority of legislature with judicial review on the filed petition using its extra-ordinary jurisdiction. The court, following its rights and authority, establishes landmarks in history regarding the rights, functions, and authority of organs of state, limiting the criteria to operate, thus adopting the doctrine of separation of power so that the monopolization of power is avoided, ensuring democracy and rule of law in Nepal. In this way, the equilibrium is achieved among the legislative, executive, and judicial powers of the state.

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