

Constitutional Reform Act 2005 and its effect on the Separation of Powers

Before constitutional Reforms Act 2005 the head of the judiciary of England and Wales, a member of cabinet, and the speaker of the House of Lords was Lord Chancellor. He was part of all three organs of state and this was exception to doctrine of the separation of powers.

Visible overlaps are found in legislative, judiciary and executive however system of checks and balances are there. This involves each branch having eye on the others but also required each organ to be protected against interference by others out of their perimeters. The prime minister can advise the queen to dissolve a Parliament but it must meet within a year. The Queen in emergency can dissolve or refuse to dissolve Parliament. Individual ministers are accountable before Parliament. House of Lords is a partial check over the executive. Judicial appointments are made either by Queen on the recommendation of Lord Chancellor or in the case of lay magistrate and certain other junior judges by Lord Chancellor directly. The senior judicial element must be chosen by the judges' Council. The lay members must be selected by a panel of four persons. These comprise a lay chair, the Lord Chief Justice and the chair of Commission. Civil servants are not members of commission. The Lord Chancellor can increase the number of member's subject to the approval of Parliament. Commissioners cannot hold their office for more than ten years in total. In exceptional cases, Lord Chancellor can remove judges on medical ground. Superior court judges must retire at seventy. Courts cannot abolish Act however courts can check whether a document is genuine Act. The Human Rights Act 1998 provides a balance between the three branches by requiring the courts to scrutinise acts of all branches in the light of main provision of ECHR. However, Parliament can override Convention rights by using very clear language. House of Lords held that the courts can look in Hansard where the language of an Act is ambiguous.

Constitutional Reforms Act 2005 provides latest reforms to strengthen these checks and balances also to stop the misuse or abuse of powers. It also helps determine better powers of separation in United Kingdom. It is an Act to make provision for modifying the office of Lord Chancellor, and to make provision relating to the functions of that office. Thus, Lord Chancellor's role changed dramatically and now he can be from either Commons or Lords. And judicial independence is now enshrined for the first time. The other key reforms are: a duty on ministers to uphold the independence of judiciary; introduction of Lord Chief Justice; introduction of new independent Supreme Court with its own separate appointment system, budget and own building as well and it abolishes the appellate jurisdiction of the House of Lords (law lords). From late 2009 onwards, the Appellate Committee of the House of Lords will be transferred to a Supreme Court, consisting of twelve 'Justices of the Supreme Court'. When the court is first established there will be the same twelve judges comprising the above Appellate Committee (the Law Lords). Until such transfer of functions and personnel has been effected. Judges of the Supreme Court will not be able to sit or vote in the House of Lords and also membership from the House of Commons. The monarch will make appointments to the Supreme Court advised by the Prime minister. A selection process will take place prior to submitting nomination for royal approval, the selection process will be taken by an ad hoc Selection Commission of five members. Lord Chief Justice and other senior judicial figures will be included in the commission. Commission proposals will then be transmitted to the Lord Chancellor who may, at that stage:

- Mention the name to the Prime Minister;
- Decline the name if they consider the person unsuitable;

Constitutional Reform In America Essays On The Separation Of Powers

Padhraic Smyth



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