***SEPARATION OF POWERS OF THE BRITISH CONSTITUTION***

There Is No Absolute Doctrine Of Separation Of Powers In The UK Constitution. Overlaps Exist Both In Terms Of The Functions Of The Organs Of State And The Personnel Operating Within Them. The UK Relies On A System Of Checks And Balances To Prevent Against Abuses Of Power. Examine How The Checks And Balances Work To Prevent Against Potential Abuses Of Power And Discuss The Extent To Which The Current Administration Has Sought To Strengthen These Checks And Balances In Recent Years.

The doctrine of separation of powers had influenced many philosophers, constitution makers, like Montesquieu who all had deep thinking to this doctrine. Even though UK constitution is unwritten but it is a golden principle of separation of powers for the world to follow.

In 1748 the French jurist, Montesquieu, put forward his theory that ‘there can be no liberty’ and also said that “everything would come to an end if the legislative, executive and judicial powers of government were to be exercised by the same person or authority” (L’Esprit des Louis 1748).

The UK has a separation of powers; there are clear overlaps both in terms of personnel and function between the three organs of government which may be discerned. The government powers should be exercised by legislative, executive and judicial, within their own limitations and should also check each and other.

Britain’s concept of separation of powers that Parliament, executive and courts each have their own perimeters and each should exercise their powers accordingly. Monarchy used to influence over government but now it is like a symbolic for government however it is sovereign. John Lock and Charles Montesquieu are the significant figure for this doctrine . According to Montesquieu vision, the separation of powers is an idea where checks and balances works like you running after someone in a circle and they running after you. One person should not should not perform his duties in three organs of government at a time. Each organ of government should not interfere with the other organ e.g. ministers should not have legislative powers . The executive consists of government, including the Prime Minister and the Cabinet other than in the legislative functions of Parliament The role of the executive is to implement government policies. These include implementing legislation, security, providing social and economic welfare, administrating public services and also try to make good relations with other countries. Therefore the executive function techniques ranging from the formation of broad policies to the detailed management of daily routine services.

In the UK, new law is enacted when the Bill has been approved by the House of Commons and Lords and has received Royal assent, however Under the Parliaments Act of 1911 and 1949 legislation maybe enacted even though it has been rejected by the House of Lords, House of Lords only can delay it up to twelve months. The interpretation of statutes is a vital part of the law-making process, because after such interpretation that is known whether the intentions of those who framed the law have been carried into effect. During this procedure the judges must not challenge the political authority of the legislature to decide what net laws should be made.

The judiciary includes all judges in the courts of law, including those who have judicial offices in tribunals and lay magistrates who staff the magistrates’ courts. This is preside in the civil and criminal courts by professional judges. Civil jurisdiction covers both private law issues and also public law questions. they the courts exercise certain minor legislative functions such as making rules, governing court procedures and also administrative functions.

Separation of powers divided into three organs of states and these organs must communicate with each other to run the country effectively even if constitution is written still certain requirements has to be followed to govern the country smoothly because if these three organs are conflicting with each and other it can be destruction for the country and its people.At the end of day all the things separation of powers, organs of states and Monarch etc. are for the welfare and rights of people of that country. Cabinet direct the activities of central government departments , through their majority in the House of Commons, exert a controlling influence over its timetable, business and legislative output. The government legislates in the form of regulations controlled in statutory instruments. 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 members 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 weather 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.

After the 1688 settlement the house of lord was regarded as holding the constitutional balance of power. Life peers were introduced in 1960 but there constitutional role remained controversial. By convention and law the Lords must defer to Commons. Although Commons exercised a control by executive, yet the House of Lords is accountable to no one. All above are the checks and balances to prevent against abuses of powers in United Kingdom. Hence we can say in trying to accomplish a state in which separation of powers exist it is imperative to accomplish a system of checks and balances. Now we see what the current administration has sought to strengthen these checks and balances. The theme of `modernization` has been integral to new Labour project ever since Tony Blair became leader of the party in 1994. At Labour party Conference 1994 Tony Blair said, “The government has a mission to modernize, the biggest program of change to democracy ever proposed”.

William Hague, opposition leader argued in a full scale debate on parliament and executive said that labour government has rapidly accelerated the process of declining parliament in relation with executive. Now we talk about Gordon brown and most recent modifications, 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. As a result 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;

Require further thought by the commission.

The Constitutional Reform Act 2005 was the reason why the practical and legal operation of the doctrine of separation of powers were given clarity and effect. The primary purpose of the Act was to achieve a more distinct separation of functions and personnel between the legislature, in the form of House of Lords and judiciary. This has been done by providing for the creation of a Supreme Court in the United Kingdom, to replace the Appellate Committee of the House of Lords, and by removing the Lord Chancellor from the judicial process.