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The Role of Constitutional Reform Act 2005 in Reinforcing the Divisions of Power in the UK

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Dedication

This dissertation is wholeheartedly dedicated to our beloved parents, who have been our source of inspiration, those who never stop giving of themselves in countless ways , who continually provide their moral, spiritual, and emotional support.

To our teacherswho lead us through the valley of darkness with light of hope and support.

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Abstract

The aim of this study is to explore the various aspects of Constitutional Reform Act 2005 as well as its contribution in strengthening the power's divisions in the UK. The main question that is investigated in this research is the importance of the reform act in paving the way for more strict doctrine of separation of powers. In order to verify the validity of our hypothesis, the study adopts the descriptive method in order to strengthen the research 'vision. The results obtained from the study strongly confirm the hypothesis mentioned in our study: Constitutional Reform Act 2005 is of significant importance towards achieving true doctrine of power's divisions. This study is divided into two chapters. The first chapter works on presenting an overview about the political division of powers in the UK prior to the introduction of the reform changes. The Second one works on introducing the main sections and areas of the Reform Act, it also sheds light on the contribution of the Reform Act 2005 in reinforcing the powers' doctrine in the UK.

Keywords: constitution, contribution, divisions, power , reform, UK

list of Abbreviations and Acronyms

CRA: The Constitutional Reform Act

ECHR: The European Convention on Human Rights

HC: The House of Commons

HL: The House of Lords

HRA: The Human Rights Act

LC: The Lord Chancellor

SOP: The Separation of Powers

UK: The United Kingdom

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General Introduction

General Introduction

History has repeatedly shown that unlimited power in the hands of one person or group in most cases means that others are suppressed or their powers curtailed. Separation of powers simply refers to the division of government responsibilities into distinct branches and institutions in order to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. The doctrine of separation of powers in a democracy is to prevent abuse of power and to safeguard freedom for all people. The doctrine of separation of powers divides the tasks of the state into three organs: legislative, executive and judicial. These tasks are assigned to different institutions in such a way that each of them can check the others. Therefore, no one institution can become so powerful in a democracy as to destroy this system. Checks and balances system ensures that the three organs of government interact and work in an equitable and balanced way. The separation of powers is also based on the fact that certain functions must not be exercised by one and the same person, thus; separation of powers is an essential element of the Rule of Law, and is enshrined in the Constitution.

For decade, under the British constitution there was no such thing as a clear and absolute division of powers, therefore; the United Kingdom has been criticized for the huge mixture within the three organs of government. A lot of concerns were expressed in regard to the influence and interference of the legislative and executive among the judiciary issues, thus; many international organizations and human rights groups doubted different judicial rulings and called for more transparency and accountability within the judiciary.

The Constitutional Reform Act 2005 was an attempt by the Tony Blair labor government who came to power in 1997 to address the fear and concerns expressed in

regard to many judiciary issues. The CRA 2005 was an Act of the UK Parliament that was divided into three main parts. The first was due to make provision for modifying the office of Lord Chancellor as well as making provision related to the functions of that office. The second part established a Supreme Court of the United Kingdom, and abolished the appellate jurisdiction of the House of Lords in addition to making provision about the jurisdiction of the Judicial Committee of the Privy Council and the judicial functions of the President of the Council. The third part made other provision about the judiciary, the appointment and discipline; and for connected purposes.

The study in hand aims at examining the different aspects of Constitutional Reform Act 2005, starting from the controversy and discussion about the mixture among the three branches of government until the introduction of the constitutional changes and its aftermath on the UK's political scene. It is hypothesized that the Constitutional Reform Act 2005 is of a big importance in reinforcing the division of powers in the UK.

In order to confirm the hypothesis mentioned above, the researchers provide a deep study and analysis to different aspects of the British political system in two different phases, before and after Constitutional Reform Act 2005. The descriptive method is used in order to discuss and obtain general overview in order to strengthen the research vision.

The study is divided into two chapters. The first chapter is completely concerned with depicting the British political system before the introduction of the Constitutional Reform Act, it includes a general overview about the three institutions of government: executive, legislative and judiciary, it also highlights the controversy and overlaps within the judiciary in particular. The second chapter works on presenting the different various areas of Constitutional Reform Act 2005, it deeply explains the new reforms and provisions that were added to the constitution in an attempt to establish a clear doctrine of division of

powers. Additionally, it sheds light on the importance of Constitutional Reform Act 2005 and its actual contribution in reinforcing the division of powers in the UK.

Chapter One

The UK's Divisions of Power (Before Constitutional Reform Act 2005)

Chapter One :The UK's Divisions of Power (Before Constitutional Reform Act 2005)

Introduction

For ages, the idea of the separation of powers refers to the division of any democratic state into three branches of government : the legislature; the executive and the judiciary. The major aim is to prevent tyranny and safeguard liberty by ensuring that no one can accumulate despotic powers, and each institution acts independently as a check and balance on the others, so that one does not override the other. Such a separation, has been seen, prevents the abuses of power since the contribution of all the three branches is required for making, executing and administering laws, therefore; ensuring the accountability of the government's functions. The modern idea of separation of powers is to be found in one of the most famous sayings of Aristotle, who states: "There are three elements in each constitution...first, the deliberative, which discusses everything of common importance; second the officials; and third, the judicial element.". This clearly shows the three elementary functions that should be present for the organization of any Democratic society.

With all this in mind, many other theorists such as Montesquieu and John Locke come to describe those divisions as legislative, executive and judicial, and are carried out by Government. After studying the constitution of England, Montesquieu provided in his book *the spirit of the laws* such a profound analysis about the distinction between making law and putting it into effect, Montesquieu believed that no branch of the government should dominate or have more power than the other two, and he insisted on the idea that the legislative branch should be independent, and not to be dominated by the executive branch because when the legislative and executive powers are united in the

same person or in the same body of magistrates, there can be no liberty. Therefore; the doctrine of division of power is no longer a mere theoretical concept, nowadays; it is a practical concept which determines the organization of any democratic society as well as the functioning of its government.

Under the doctrine of separation of powers, the governance of a state is traditionally divided into three branches each with separate and independent powers and responsibilities: an executive, a legislature and a judiciary. In the UK, the executive branch consists of the Crown and the UK Government, including the Prime Minister and Cabinet Ministers. The executive formulates and implements policy. The legislature, Parliament, comprises the Crown, the House of Commons and the House of Lords. The judiciary comprises the judges in the courts of law holding judicial office in tribunals and the lay magistrates who staff the Magistrates' Courts. The Lord Chancellor in the judiciary who's appointed by the Monarch on the advice of the Prime Minister holds a very vast responsibilities as the head of the judiciary and responsible for the judges appointment and also acts as Speaker of the House of Lords.

1. Constitution of the United Kingdom

Constitution is often described as the rules ,values and practices that people of the state adhere to, and which determines the functions of the organs of central and local government in a state and regulates the relationship between the individual and the state. It is the document or documents embodying the most important laws. Generally, a constitution allocates authority within a country, by defining the powers of government and the rights of the citizen, Most states have a written constitution, one of the fundamental provisions of which is that it can itself be amended only in accordance with a special procedure (Watts , 2003).

The UK is considered as one of the most peculiar states in the world. It is one of those few states which do not have a clear written constitution to properly show how the government functions, instead it has an unwritten one formed of Acts of Parliament, court judgments and conventions and other various sources. Due to the absence of a formal written constitution, it is somehow possible to claim that there is no formal separation of powers in the UK. However, one should not presume that it does not exist. They do exist, but in a weak form because they overlap and work together (law teacher.net 17/04/2019).

Parliament's acts are considered as the first source of the British constitution. They are actually laws that have attained the approval of the parliament, qualify to be part included within the UK's constitution. The House of Commons as well as the House of Lords forms part of the parliament and are directly responsible for passing the Parliamentary Acts depending on verywell organized procedures. The moment a bill is approved and assented by the sovereign, it automatically becomes a constitutional law. Therefore, Act of parliament has become one of the most important sources of the British constitution (Ronek, 2014.p: 167)

The second source of the British constitution is believed to be entirely based on the treaties. For decades, the most important treaties have formed part of the British constitution through the incorporation of the domestic laws. All the treaties have to be first approved by means of parliamentary act. Treaty of Union of 1707 which led to the creation of unitary state is one of the examples of a treaty forming part of the constitution, the 1707 treaty was signed by the governments of Scotland and England and then approved by the two parliaments. Through the treaty alongside other acts, there came into existence the Great Britain Kingdom (Ronek, 2014.p: 167)

Another well known source of the British constitution is the European Union Law. As any other European Union member, the British Government has to comply and adhere to the statutes and values governing the EU members. In Europe, The European Union laws are considered supreme and so have been approved by the House of Lords to be valid and reliable part of the British constitution. The biggest regard to the European Union laws is pegged on their being international laws. Thus, these laws depend on very tight treaties internationally signed.

The common law is also considered as one of the sources of the British constitution. Common laws always refer to describe the legal system of frame work existing in the Northern part of England, Wales and Ireland. It is the legal system that has got some common hybrid laws making up the constitution. These laws have extended to cover any government that has similar constitutional limitations to the representative assembly (Ronek, 2014.p: 167)

2. The Divisions of Power in the UK

The divisions of power doctrine is a model for the governance of a state. Under this model, a state's government is divided into different institutions, Barnett (2002) states that :

Separation of powers, together with the rule of law and parliamentary sovereignty, runs like thread throughout the constitution of the UK. It is a doctrine which is fundamental to the organization of a state and to the concept of constitutionalism- in so far as it prescribes the appropriate allocation of powers, and the limits of those powers, to differing institutions. The concept played a major role in the formation of constitutions. (p. 105)

In order for any democratic society to function properly, it is so significant to have a clear doctrine of separation of powers. Therefore; the power is given to separate branches within the government. Generally these branches are: executive, legislative and judicial. This doctrine of Separation of powers is well found in all the modern democracies and is probably seen as one of the most basic concepts underlying the majority of modern democracies. Thanks to this separation of powers which plays the core role in limiting the corruption within the government by advancing the system of checks and balance. However, it would be a mistake to think that each doctrine of separation of powers in the world functions to the same extent.

Broadly speaking, the United kingdom of Great Britain and Northern Ireland is a constitutional monarchy, it is a country governed by king or queen who receives the advice of the parliament. It is often described as a parliamentary Democracy country, it means the country's government is ruled by a parliament elected by people in a general election, in other words, the ruling system in the United Kingdom is not so different from anywhere else in Europe. It is believed that the highest positions in the government are filled by members of the directly elected parliament. As the case in many European countries, in Britain, the official head of the state, whether monarch or president, has a little real power.

Within a democratic system of government operating under the rule of law, the pivotal functions of the state can be separated into legislative, executive and judicial functions. In very broad terms, the legislative function involves making law, the executive function applying the law, and the judicial function interpreting the law. Checks and balances is one the features of the true existence of the doctrine of separation of powers, that each branch, along within its limited power, is able to check the powers over the two other branches(Ackerman,2008).

2.1 Executive Branch

The executive – the government- has a very wide ranging role, from the initiation of policy to the management and delivery of public services, it introduces laws into parliament. The executive branch literally refers to those persons who are in charge with responsibility for the administration of government and the implementation of laws made by the legislature. Technically, it includes the head of the state, member of the government and the officials who serve them, as well as the enforcement agencies such as the military and the police. However, more usually the term is used to denote the smaller body of decision-makers which actually takes responsibility for the direction and form of government policy (Watts, 2003).

2.1.1 The Crown

The British monarch, Queen Elizabeth II, is the head of state of the United Kingdom. Though she takes little direct part in government, the Crown often remains the fount in which ultimate executive power over government lies. These powers are always described as royal prerogative and can be used for a vast amount of things, such as the issue or withdrawal of passports, to the dismissal of the Prime Minister or even the declaration of war. These powers are delegated from the monarch personally, in the name of the Crown, and sometimes can be handed to various ministers, or other officers of the Crown, and can purposely bypass the consent of Parliament (politics.co.uk 23/04/2019).

The Crown's political powers nowadays are largely ceremonial, thus, The Queen is only a formal and symbolic head of State, though some are actively used by The Queen

such as at General Elections or are available in times of crisis and some are used by Ministers for expediency when needed (Royalcentral.co.uk 23/04/2019).

The Queen's powers vary and fall into different categories and areas as follows :

- Summoning/Proroguing Parliament – The Queen has the power to prorogue (suspend) and to summon (call back) Parliament – prorogation typically happens at the end of a parliamentary session, and the summoning occurs shortly after, when The Queen attends the State Opening of Parliament.
- Royal Assent – It is The Queen's right and responsibility to grant assent to bills from Parliament, signing them into law. Whilst, in theory, she could also decide to refuse assent.
- Secondary Legislation – The Queen can create Orders-in-Council and Letters Patent, that regulate parts to do with the Crown, such as precedence, titles. Orders in Council are often used by Ministers nowadays to bring Acts of Parliament into law.
- Appoint/Remove Ministers – Her Majesty also has the power to appoint and remove Ministers of the Crown.
- Appointing the Prime Minister – The Queen is responsible for appointing the Prime Minister after a general election or a resignation, in a General Election The Queen will appoint the candidate who is likely to have the most support of the House of Commons. In the event of a resignation, The Queen listens to advice on who should be appointed as their successor.
- Declaration of War – The Sovereign retains the power to declare war against other nations, though in practice this is done by the Prime Minister and Parliament of the day.

- Freedom From Prosecution – Under British law, The Queen is above the law and cannot be prosecuted – she is also free from civil action (Royalcentral.co.uk 23/04/2019).

2.1.2 The Office of Prime Minister

The Prime Minister (informally abbreviated to PM) is the most important person in the British politics. He or she is the leader of the party that wins the most seats at a general election. After having organized a general election, the monarch calls upon the leader of the largest party depending on the result of the election to form the Government. PM chooses the other Members of the cabinet and has a residence and offices at 10 Downing Street.

The powers of the PM within the British political system have developed in recent years to such an extent that many political analysts now refer to Britain as having a Prime Ministerial government instead of a Cabinet government. PM has not only the right to appoint his Cabinet. He or she has patronage elsewhere including the appointment of junior ministers (who will go further politically only if they impress the Prime Minister), senior civil servants, bishops and judges. Such vast power allows the PM to appoint people into these positions if he or she is certain that they will always back on his policies and not present a challenge to his rule. PM also presides over a number of select committees; at present the Defense and Overseas Policy Committee, the Constitutional Reform Committee, the Intelligence Services Committee and the Northern Ireland Committee. In these committees, policies may be determined; hence the Prime Minister has to be very influential in these committees (Historylearningsite.co.uk 25/04/2019).

2.1.3 The Government

Government refers to the most powerful of the ministers, It is formed by the party which has the majority in Parliament and the Queen appoints its leader as the PM, Usually, there are at least twenty ministers in the cabinet, most of them are the heads of the government departments, members of the government are known as ministers. Unlike much of Western Europe, Britain often has single-party government, thus; most of the members of the government belong to the same political party. It is well known in Britain that most of the heads of the departments have their title “ *the secretary of the state* ” , for example Secretary of State for the Education. The cabinet meets once a week and takes decisions about new affairs and policies (Michalcikova, 2006).

In the UK, the Government is responsible for deciding how the country is run and for managing things, day to day. They set taxes, choose what to spend public money on and decide how best to deliver public services, such as:

- The National Health Service
- The police and armed forces
- Welfare benefits like the State Pension
- The UK's energy supply

2.1.4 The Civil Service

The civil service in the United Kingdom refers to the body of state employees who support the government in carrying out its work. The UK civil service is often responsible for developing and implementing government legislation. While overall policy directions will be set by the government of the day, much of the detailed thinking about government policy is implemented by civil servants. It is usually seen as permanent, independent of the government and politically neutral. Politicians make policy (based on a varying mixture of political and civil service advice) and civil servants then implement and act upon that policy, whether or not they personally to agree with it. However, as ministers may not stay in the same department for long, they will not have the same knowledge as a civil servant, who will tend to become highly expert in their particular area. For this reason, civil servants can have a high degree of influence on government policy (Northernbridge.ac.uk 27/04/2019)

2.1.5 Government Departments and Agencies

In the UK, the work of developing the majority of government policy and implementing legislation is divided among 24 ministerial departments, each department is headed by a Secretary of State (apart from the Attorney General's Office, led by the Attorney General, and the Offices of the Leaders of the Houses of Lords and Commons, led by the respective House Leaders). Ministerial departments are always considered responsible for public policy on different fields that impact on most of people and on the nation as a whole, such as health, education, defense, taxation, and law and order. The 22 non-ministerial departments are headed by a senior civil servant. These departments' remits tend to be much more specific than the ministerial departments, and are usually regulatory in nature. For instance, the Serious Fraud Office and the Food

Safety Authority are all non-ministerial departments. Other non-ministerial departments include the National Archives and Ordnance Survey (Northernbridge.ac.uk 27/04/2019).

Departments in the UK remain one of the most important institutions through which attempts are made to practice the accountability which lies at the heart of the theory of British Democracy. The day to day life of the departments, especially at the most senior levels, is completely dominated by making sure that ministers are indeed informed and able to defend the department's position (Moran,2005).

2.2 Legislative Branch

There is absolutely no doubt that law making is considered a key function of legislature, as the word suggests (by derivation, *legis* means law and *lator* mean proposer, thus the idea of someone who proposes law).

WATTS (2003) in presenting the significance of the legislature points out that :

The legislature is a branch of government which is empowered to make law, the term refers to the often -elected bodies which consider public issues and give assent to measures of public policy, and sometimes they are known assemblies or parliaments. In either case, they are forums of debates and deliberations.(p. 107)

The parliament is considered the senior legislative body and the highest authority in Britain. The activities of parliament in Britain are barely the same as those of any parliament in any Democratic state in the world , It has a legislative power which simply means having the ability to perform four primary duties: passing laws, authorizing taxes and government budgets, scrutinizing and investigating government administration, and debating current issues (Michelcikova,2016).

The British parliament works in a large building called the Palace of Westminster (popularly known as the House of Parliament). It contains two larger rooms, one of these is where the House of Lords holds its meetings (The Upper House), and the other is where the House of Commons holds its meetings (The Lower House). The British Parliament is divided into these two houses, it means it is bicameral and its members belong to one or other of them. However, only members of Commons known as MP (Member of Parliament) thus, the Commons is by far the more important of the two (Michelcikova,2016).

2.2.1 The House of Commons

The House of Commons, Parliament's lower house, consists of about 650 Members of Parliament (MPs), who are elected by British citizens. These MPs make laws, control the government's finances, and keep a close eye on government administration. Seating arrangements in the HC tell a lot about what is distinctive about the British Parliament. There are just two rows of benches facing each other, there are the government benches on the left, where the MPs of the governing party. On the right, there are the opposition benches. In the British context, the speaker is the person who chairs and controls discussions in the House, decides which MP is going to speak next and makes sure that the rules of procedures are all respected and followed (Moran,2005).

2.2.2 The House of Lords

The House of Lords is the second chamber of UK Parliament, which has no real power, and only very limited influence within the British political scene, though it plays a vital role in making and shaping laws and checking and challenging the government; it shares this role with the House of Commons. The House of Lords has a reputation for thorough and detailed scrutiny. Members come from many various walks of life and

bring experience and knowledge from a wide range of professions (Parliament.uk, 28/04/2019).

H L's members are not elected and consist of lords spiritual and Lords temporal. The Lords spiritual are the Archbishops of Canterbury, York as well as the bishops of London and Durham and the 21 most senior bishops of the church of England. The Lord Chancellor is the speaker of the HL that the House, through its Appellate committee, HL plays also a judicial role as the final court of Appeal for the whole of the UK in civil cases for England, Wales and Northern Ireland in criminal cases (Turpin&Tomkins,2007).

It is well accepted that HL remained more powerful than the HC for centuries, but the influence of the Lower House continued to grow, as democratic ideals took root in the UK, the upper house power has gradually been eroded. In 1997, The Labor Party included in its 1997 general election Manifesto a commitment to change some aspects within the British political system, including the denouncement of the hereditary peerage from the House of Lords. Their subsequent election victory in 1997 under Tony Blair led to the removal of the traditional House of Lords. The Labor Government introduced legislation to expel all hereditary peers from the Upper House as a first step in Lords reform. As a part of a arrangement, however, it agreed to permit 92 hereditary peers to remain until the reforms were complete, therefore , all but 92 hereditary peers were expelled under the House of Lords Act 1999 (Ronek,2014).

The power and the interference of the HL have aroused many doubt about the existence of clear doctrine of the divisions of power in the UK, many started showing their concerns about the Lords influence and interference, paving the way for more

discussions and debates which led to more commitments to introduce other reforms within the UK's political system.

2.3 Judiciary Branch

In nowadays world, there are few mechanisms by which we can challenge the operation of the state; however, the judiciary reviews allow the courts to decide on the legality of the rules and decisions made by the state institutions and, in some cases, overturn them. The judiciary is always viewed as the most powerful weapon for the individual to ensure that those in power do not exceed their authority. For this reason, the judiciary is an essential topic within any course on constitutional and administrative law to ensure the accountability and safeguard people and institutions from the misuse of delegated power (Taylor,2008).

In its simplest definition, Rule of law may be interpreted either as a philosophy or political theory which lays down fundamental requirements for law, or as procedural device by which those with power rule under the law (Barnett,2002.p. 73)

The judicial power is always considered the weakest of the three government branches in the UK's constitution, it can be simply overridden by Parliament that the courts recognize that body as being legislatively supreme.

In the UK ,one crucial aspect of the rule of the law is that of the independence of judges which is always under pressure. Traditionally speaking, the main concern about the effectiveness of the judicial independence is centered on appointment process as it was controlled by prime minister as well as the Lord Chancellor who had a very vast responsibilities (Lawteacher.com, 29/04/2019).

The debate on the topic of the doctrine of separation of powers in the UK, and it exactly what it involves in regard to governance in the country, is as old as the constitution itself. It well known that the UK has three separate legal systems; one each for England and Wales, Scotland and Northern Ireland. This clearly reflects its historical origins and the fact that both Scotland and Ireland, and later Northern Ireland, retained their own legal systems and traditions under the Acts of Union 1707 and 1800. It is well known also that the Highest Court of Appeal in the UK is the House of Lords Appellate Committee made up of Lords of Appeal in Ordinary, also known as Law Lords who were allowed to sit in HL and were also members for life. Judges are appointed by the monarch on the recommendation of LC, and Justices of the Court of Appeal are appointed by the monarch on the advice of PM and LC.

The following list shows examples of overlaps between the three functions of the of government which clearly indicate a fragile doctrine of separation of powers in the UK.

- Law Lords sit on the appellate committee of the HL and the judicial committee of the Privy Council as well as in the HL as a legislative body.
- Parliament exercises a legislative function and to lesser extent a judicial function in that it is responsible for the regulation of its internal affairs .
- Government ministers are in the judiciary to determine appeals in relation to disputes arising under, for examples, town and country planning legislature.
- Government ministers are members of the Executive function who do exercise a legislative function in the Parliament and also when they make delegated legislation.
- Courts legislate in the sense that they develop principles of Common Law as well as exercising a judicial function .

2.3.1 The office of Lord Chancellor

The office of the Lord Chancellor is one of the most ancient offices of the UK, dating back many centuries. The office of Lord Chancellor is appointed by the Monarch on the recommendation of the Prime Minister and is a senior member of the Cabinet. The office developed from a role as secretary to the King of England to one that spanned Parliament, government and the judiciary. During the 20th century, the Lord Chancellor's power expanded significantly. By 2003 the Lord Chancellor was one of the most important parliamentarians, Cabinet minister, and judge. He was also entitled to preside as Chairman of the Appellate Committee of the House of Lords (the Law Lords) and of the Judicial Committee of the Privy Council. As head of the judiciary, he was responsible, directly or by making recommendations, for a different number of judicial appointments, and for judicial discipline.

The main instance of overlap within the British constitution, in recent years, was the position of the LC as it has been continually cited to back the view that there is no clear doctrine of separation of powers in the UK. Historically, the position of the Lord Chancellor was distinctive in that he was a member of all the three branches of the government and exercised all three forms of powers. The LC had the right to sit as a speaker of HL (legislative branch) and was the head of the judiciary (judicial branch) as well as a senior cabinet minister (executive branch).

For much of the twentieth century such a mix of assignments was uncontroversial, in part, because the judicial roles were seen to dominate. However, during the latter decades it became evident not only that the lord chancellor's executive responsibilities had increased dramatically but also that the emphasis of the office had shifted—away from the judicial, toward the political. However, on 12 June 2003 the Tony Blair's government announced the abolition of the office of LC, the introduction of new system

of judges appointment as well as proposals to create a supreme court to replace HL, this announcement was received with surprise in many quarters (Academic.oup.com, 30/04/2019).

2.3.2 The European Attitude Towards the Lord Chancellor's Responsibilities

In the final decade of the twentieth century a number of developments raised questions about the effectiveness of LC's defense of judicial independence and, more generally, about what is required to secure that independence. Following the enactment of the Human Rights Act, concerns were expressed about the large responsibilities given to LC to sit as a member of the appellate committee of HL or judicial committee of the Privy Council and determine appeals heard by courts. Despite the fact the LC in the first Blair government, Lord Irvine, rarely sat during his period of his office of LC, despite the fact his successor, Lord Falconer, had stated publically that he would not sit judicially. It remained so controversial that member of the executive could potentially perform a judicial role in the Highest courts.

The European Convention on Human Rights is one of the most famous treaties which was approved by many European countries in an attempt to deal with the human rights issues in the continent. It is a treaty that was drafted in 1950. Each of the numbered "articles" protects a basic human right. Taken together, they allow people to have free and dignified lives. 47 European states, including the UK, are part of this treaty. That means that the UK commits to protecting the Convention rights. If a person's rights are being breached, and they can't get a remedy in the UK through the Human Rights Act, the Convention lets them take their case to the European Court of Human Rights (Amnesty.org.uk, 01/05/2019).

The ECHR into UK law considered the role played by judges within the political fields, blurred the boundary between law and politics, revived again the debate about the rule of law within a modern parliamentary democracy, and led to public tension between the judiciary and the other arms of government. The ECHR and its interpretation by the European Court of Human Rights also drew attention to the serious need for judges not only to be independent but to be seen as such and thus to the peculiar position of the highest court, the Appellate Committee of HL within the upper house of Parliament. The ECHR has repeatedly seen the active engagement of LC in the judicial role as conflict of interest with his executive and legislative position and thus calling into question the independence and impartiality of the head of the judiciary and of the highest court (Assembly.coe.int, 01/05/2019).

Conclusion

The doctrine of separation of powers essentially refers to the three functions performed by the Government : executive, legislative, and judicial. In a political system with a strict separation of powers, these branches or powers are each allocated to a distinct institution of government. It had influenced many philosophers, constitution makers, like Montesquieu and Aristotle who all had deep thinking to this doctrine. Separation of powers is commonly found in all the modern democracies and is probably one of the most basic concepts underlying the majority of modern societies. Therefore, The concept of separating government into different various branches with different goals, responsibilities, and powers is something of a fundamental feature of any representative democracy to ensure about the existence of checks and balances system which limits the power of each branch in order to prevent the abuse of power and safeguard the people's rights so that the power is shared and not concentrated within one branch.

In the UK, the doctrine of separation of powers had always been controversial due to huge mixture within the three organs of the government that the legislature is dominated by the executive and the judiciary is carried out by officials in both the legislative and executive institutions. The rule of law and the Independence of judiciary have always been described as the major features of the principle of SOP's doctrine, so as the judiciary has to be the guardian of the constitution, guarantor of the fundamental rights of the people and preserve the whole political system. The Lord Chancellor is always seen as a disregard to the doctrine of SOP. Prior to 2005, the LC acted as the head of the Judiciary, was a member of the Cabinet and presided over HL as its Speaker. This vast power given to the LC led so many to question the accountability of the judiciary system in the UK. In an attempt to make an end to this controversial mixture in 1997, the Blair's Labor government pledged, many changes to be introduced to reform the confusion within the institutions of the UK's government.

Chapter two

The Constitutional Reform Act 2005

ChapterTwo : The Constitutional Reform Act 2005

Introduction

It is absolutely and irrefutably clear nowadays that constitutional reform is the means by which changes are made to the way a country is governed. It may include some new radical changes and arrangements that reshape the power balances. Like so many other countries around the world, the United Kingdom has experienced many constitutional reforms which paved the way for greater fundamental changes within its political scene, the constitutional reform is always seen as an attempt to modernize the constitutional arrangements and introducing a stricter representation of strict doctrine of separation of powers. Important changes had affected many different areas within the UK's political system starting from the membership of the House of Lords to the creation of the supreme court.

Constitutional Reform Act 2005 is an Act of the UK Parliament that was divided into three parts, to make provision for modifying the Office of the LC and to establish a Supreme Court of the UK and to abolish the appellate jurisdiction of the HL. Previously, the highest court in the land had been the Appellate Committee of H L, and the Lord Chancellor - a minister - was also head of the Judiciary. This meant that the highest court of appeal in the UK was within the H L, and thus it was suspected that appeals would be subject to political influence.

The creation of the Supreme Court sought to achieve a clearer SOP between the legislature and the judiciary. The Court has its own building, the Middlesex Guildhall, on the other side of Parliament Square, separate and independent from Parliament. When the Supreme Court was created, eleven of the twelve Justices of the Supreme Court were recruited from the previous top judges (the "Law Lords"). Though they still possess their

titles, they cannot sit or vote in the House of Lords. Future recruits will not be given peerages.

2.1. Section One: Areas of Constitutional Reform Act 2005

The primary aim of the Act is to reform the UK institutional make-up in order to allow for a stricter separation of powers and divide the mixture of executive, judicial and legislative powers in the same unelected body. Accordingly, the Act reformed the office of the Lord Chancellor, introduced the Supreme Court of the UK, and regulated the appointment of judges outside of the auspices of the House of Lords.

2.1.1 Reason for Reform

No doubt at all that the constructive relationships between the three organs of government – the executive, legislative and judiciary – are the key functions for the maintenance of the constitution and the rule of law. Recently, the character within the UK's political system has changed significantly as it witnessed many different reforms and rearrangements which almost affect each aspect of government and governance from the devolution, reform of the upper house to the introduction of the Human Rights Act in 1998.

Throughout the UK's modern political system, Conservatives, as their name tells, have not shown so much support to the modernization of the organs of government so that they are less likely to make constitutional reform as they traditionally feel that institutions are there because they work and shouldn't be 'fixed' unless they are broken. So the UK has not seen major constitutional changes under the 1979-97 Conservative governments.

Since the return of the labor party in 1997, many discussions and debates have been held so that the pace of the constitutional reforms has accelerated. Tony Blair re-affirmed

his belief that building a proper modern constitution for Britain is very important to tackle today's global changes . Since then, actions have been taken in many different fields and the program for the constitutional changes is well underway (Moran,2005).

Some radical innovations can be traced to the new labor coming are as follows :

- The incorporation of the European Convention into the British law;
- The introduction of a new electoral system for European election;
- The abolition of the hereditary system in the HL , in addition to the establishment of the a commission to work out the basis for a new body to replace the existing House of Lords;
- The introduction of devolution for Scotland, Wales, and Northern Ireland.
- The creation of a new authority for London, including an elected mayor , along with provision for the adoption of elected mayors in the other parts of the country.

Constitutional changes and reform processes within any particular country are often about responding to broad challenges of peace building as well , reconciliation, inclusion and socio-economic development in a way that is seen as legitimate and is widely accepted. In the UK, the pressure has been building for a clear cut separation of powers between the judiciary on the one hand and the legislative and executive on the other. Two main sources used to express their concerns that the current powers do not address the procedures of a true rule of law; domestic politics and European Human Rights Law. Because judges are appointed by the Lord Chancellor who holds vast power as a member of the Prime Minister's Cabinet and effectively the Minister of Justice, they cannot be publically independent. Similarly, because the Lord Chancellor and Lords of Appeal who together constitute the Appellate Committee of the House of Lords – the Law Lords – also have the right to sit in the Upper House, which is a part of the legislative so that their

decisions cannot be considered to be politically impartial. Additionally, some rulings in the European Courts of Human Rights imply that decisions of the Appellate Committee of the House of Lords are totally incompatible with some Articles of the European Convention on Human Rights (Dingle & Miller,2005).

Furthermore, the Labor Party itself has repeatedly expressed some concerns about the idea of the British Bill of Rights or incorporation of the European Convention into British law has been based on anxieties about passing power from elected politicians to unelected, unaccountable and often right-wing judges. Moreover, labor suspicion did not rest purely on the grounds of their background. It was much proved and influenced by a series of unfavorable verdicts from which the labor movement has suffered in the nineteenth and twentieth century in the courts (Watts,2005).

It is very accepted that a rigid application of the doctrine of separation of powers in relation to the law Lords would require not only the conceptual separation of their legislative judicial roles but the actual separation. The usual position for is for there to be a clear line between the judiciary, the legislative and the executive. This is always considered as necessary to maintain the integrity and independence of the judiciary. While the Appellate Committee of the House of Lords has dealt with many different controversial issues as it makes determinations under the Human Rights Act 1998 and in relation to devolution disputes, may imply that it is difficult to allow Law Lords to sit in the House. Additionally, the existence of a clear division between the Law Lords and the legislative may become necessary to ensure the Law Lords not only are, but also clearly appear to be, an impartial and independent branch of government (Cornes,1999).

In order to address the growing concerns of the human rights groups as well as reconstructing the political system, the Labor Party sets out a range of proposals that

government believes will meet the its objects. In 2003, the government conducted series of consultations and discussions in various ways to ensure the proposals can be well implemented.

2.1.2. The Process of Constitutional Change

According to the Committee on the Constitution, legislation frequently has constitutional implications, some of which are intended, but some unintentional. However, it is rare for an Act to proclaim by its title that its goal is to reform and reconstruct the constitution. In fact, the CRA's main goal is lesser than its title implies since it is concerned exclusively with the position of the courts and the judiciary in relation to the other two organs of government, executive and Parliament, and with modifying the functions of the Lord Chancellor who possesses a huge power. The Act does not confer new jurisdiction on the courts; so it is somehow considered less significant than the Human Rights Act 1998 (House of Lords, 2005).

Based on one of its earliest reports, the Committee investigated the process of constitutional reform and published a flow-chart emanating from the then Lord Chancellor, Lord Irvine, to show the process—in a somewhat idealized form. In the beginning, the CRA passed through a very different process, starting from the Prime Minister's announcement of the removal of the office of Lord Chancellor in the course of a Cabinet re-shuffle on 13 June 2003; there followed a consultation and discussions process from which were excluded the key decisions already taken by government, particularly the question of whether the office of Lord Chancellor should be retained or removed. And when the Constitutional Reform Bill was published, the Government tried without success to terminate the legislative process within the 2003–04 session. Against the Government's wishes, the House's decision to send the Bill to a select committee ensured that the Bill

received detailed examination. In fact, the select committee left many various disputed questions unanswered. It would probably have found it easier to express a view on the disputed issues if the government had not already committed itself to the contents of the Bill (House of Lords, 2005).

No doubt at all that the constitutional change is often likely to be politically motivated. Here, the manner in which the legislative process was commenced made it much more difficult than it would otherwise have been for the proposals to be considered on their merits. In the event, the details of the proposals were considered by the House, some more than once. The process in its earlier stages put considerable pressure on the relationship between the Government and the judiciary institution in the person of the Lord Chief Justice. The preparation of the “concordat” between the Lord Chancellor and the Lord Chief Justice in January 2004 did much to alleviate this pressure. One of the most important points made in the concordat (prepared on the assumption that the office of Lord Chancellor was to be removed) was: “The key respective responsibilities of the Secretary of State and the Lord Chief Justice should be set out in statute, so as to provide clarity and transparency in their relationship”. This aim remained equally valid when at a later date the Government accepted that the office of Lord Chancellor should remain in place. A rather different approach by the Government from the outset would have enabled the concordat process to be implemented in a calmer and transparent atmosphere (House of Lords, 2005).

2.1.3. Arrangements to Modify the Office of Lord Chancellor

In response to the increasingly growing concerns that were raised about the position of the Lord Chancellor in particular, the Constitutional Reform Act 2005 has significantly changed the office of Lord Chancellor. The Lord Chancellor is no longer the head of the

judiciary or presiding officer of the House of Lords, and since 2007 the office has been combined with that of the Secretary of State for Justice. The lord chancellor does, however, retain some duties concerning judges' appointment, additionally, the LC has a statutory duty to uphold judicial independence and the rule of law.

Since the enactment of CRA 2005, the appointment of LC goes through a new very different process, section 2 of CRA provides that a person may not be recommended for appointment as Lord Chancellor unless he or she appears to have got some various qualifications, he or she must appear to the Prime Minister to be qualified by experience. Relevant experience for this position may include experience as a Minister of the Crown, or a Member of either House of Parliament. Experience as a qualifying legal practitioner or as a teacher of law at a University could also be considered and taken into account, as could any other experience considered by the Prime Minister to be relevant and accepted (Gay, 2005.P.2).

Additionally, it is entitled, "Guarantee of continued judicial independence". A duty is imposed on the Lord Chancellor, other Ministers and "all with responsibility for matters relating to the judiciary or otherwise to the administration of justice" to guard the "continued independence of the judiciary and rule of law". Ministers must respect the rule of law so that no one seeks to interference or to influence particular judicial decisions "through any special access to the judiciary". It is a duty for the Lord Chancellor to "have regard to" the need to defend judicial independence and show the rule of law, the need for the judiciary to have support necessary for them to exercise their functions, and the need for the public interest to be represented in matters relating to the judiciary and the administration of justice. For the purposes of these duties "the judiciary" is recognized to include all different courts in the UK as well as international courts such as the European

Court of Justice at Luxembourg and the International War Crimes Tribunal (House of Lords, 2005).

Furthermore, section 5 of CRA 2005 illustrates the most obvious mechanism to deal with such concerns related to the judiciary, the Lord Chief Justice, in respect of England and Wales, is allowed to deliver to Parliament written representations on issues that appear to him to be matters of importance concerning the judiciary issues or otherwise to the administration of justice(House of Lords, 2007).

A similar new power is given to the Lord President of the Court of Session in respect of such important issues that are not within the devolved powers of the Scottish Parliament and Executive. (House of Lords, 2005).

The Lord Chief Justice is the head of the Judiciary of England and Wales and the president of the Courts of England and Wales. Under Constitutional Reform Act 2005 that was effected in 2006, the Lord Chief Justice assumed most of the judicial functions of LC, as well as the new title of president of the courts of England and Wales. In that capacity, the Lord Chief Justice is responsible for representing the views of the judiciary to Parliament and the government and for managing the affairs of the courts, including the training and deployment of judges and the allocation of work. Formerly appointed by the crown on the nomination of the prime minister, the lord chief justice is now appointed by a special panel of an independent Judicial Appointments Commission (britannica.com, 26/05/2019).

Sections 8 and 9 of 2005 CRA create new senior judicial posts in the form of Head and Deputy Head of Criminal Justice and Head and Deputy Head of Family Justice. Except for the Head of Family Justice, this title will be assumed by the President of the Family Division of the High Court, the Lord Chief Justice has power after discussions with the

Lord Chancellor to appoint judges from the Court of Appeal to these posts (House of Lords, 2005).

Section 12 of the CRA 2005 implies that the power to make rules for matters such as the procedure of the courts is vested in the Lord Chief Justice, who may in general act only with the agreement and consultation of the LC and subject to annulment under a negative resolution of either House. By Section 13 and Schedule 2, a similar power is vested in the Lord Chief Justice, acting with the agreement of the LC, to issue practice directions that will normally be supplementary to the procedural rules, but with the difference that there is no provision for parliamentary scrutiny (House of Lords, 2005).

One part of the scheme of reform within the Act is to make new provision for judicial appointments, to replace powers that at present are vested in the Lord Chancellor (in the case of appointments below the High Court) or in the Queen on the advice of the Lord Chancellor. Since the LC will lose many of these powers, but judicial appointments are still to be made in the name of the Queen, the Queen will in future make these appointments. The exercise of this formal power will in practice be subject for the appointment of District Judges to the recommendation of the LC and subject to the new tasks of selection of candidates placed on the Judicial Appointments Commission. One key result of the changes in the office of LC is that it has been necessary to separate the functions that he exercised as a holder of senior judicial office from the functions that he exercised as a member of the Government with executive responsibilities for administering the machinery of justice. Many of these functions have simply been removed, for example, the Lord Chancellor's functions as a judge under the Habeas Corpus Act 1679; many other duties have been given to the Lord Chief Justice; some other duties have been transferred to the Lord Chief Justice acting jointly or after consultation with the Lord Chancellor (House of Lords, 2005).

Constitutional Reform Act 2005 provides a detailed provision for the rank-order by which other senior judges are to carry out the functions of the Lord Chief Justice while this office is vacant or while its holder is incapacitated (Section 16). Section 17 of the CRA 2005 depicts a new form of oath for the LC as follows (“I ... will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible”). The Act also provides the opportunity to the House of Lords to elect its own Speaker by replacing references to the LC in statutes such as the Parliamentary Publications Act 1840 and the Statutory Instruments Act 1946 with references to “the Speaker of the House of Lords” (Section 18 and Schedule 6). In addition to the very lengthy Schedule 4, re-allocating the Lord Chancellor’s statutory functions as mentioned, power is delegated by Section 19 for the Lord Chancellor to make various orders including, the transfer, modification or abolition of his existing functions. When the House of Lords insisted on the retention of the office of L C, it did not want the office and its core duties to be subject to the power of the Prime Minister under the Ministers of the Crown Act 1975 to create new ministerial posts and departments and to transfer powers between ministers. Section 20 of the CRA gives protection against this happening to the statutory duties of the Lord Chancellor set out in Schedule 7 (House of Lords, 2005).

2.1.4.The Creation of Supreme Court

After centuries of the House of Lords serving as the highest court in the land, it is now the Supreme Court, completely independent of the Lords, which many agreed it is a big step to pave the way for much more accountability and transparency within the judiciary. This part of the Act will break the institutional link between the H L, as a legislative institution of government, and the judicial duty of the 12 Lords of Appeal in Ordinary. Based on Section 23 of CRA 2005, at an indeterminate date in the future, a Supreme Court

of the UK to be established, comprising of no more than 12 judges to be known as “Justices of the Supreme Court of the UK”, including a President and a Deputy President. This Reform Act indicates that the first members of the Supreme Court will be the 12 persons who immediately before Section 23 comes into effect are then the Law Lords (Jones, 2013).

Prior to 2005, the legal qualifications for appointment require two years holding of high judicial office; or 15 years practice as a qualifying practitioner. The CRA 2005 creates an entirely new method of selection including :

- (a) to notify the name to the Prime Minister for the appointment to be made;
- (b) to reject the name if he considers that the person is unsuitable;
- (c) to require the commission to reconsider the selection if he considers that there is insufficient evidence on certain key matters (Section 29)

(House of Lords, 2005).

After a rejection, the commission may not propose the same name again, but after reconsideration the same name may be proposed again. In respect of any given vacancy, the LC has only one opportunity to reject, and only one opportunity to require reconsideration. If at the first two stages he uses these two opportunities, he must at the third stage notify the name then selected by the commission to the PM; but he may choose to notify to the PM the name of a selected person whom he had previously required to be reconsidered, provided that that person had not thereafter been rejected (House of Lords, 2005).

The tenure of a judge at the Supreme Court will be, as the same as before the enactment of the Reform Act, that the judge holds office during good behavior, but he may be

removed on the address of both Houses of Parliament (Section 33). A judge will be able given the right to retire or resign and there is procedure for declaring his office to be vacant if he is permanently disabled from performing his functions and is for the time being incapacitated from resigning (Section 36). In very special cases, judges in the Court of Appeal and equivalent courts in Scotland and Northern Ireland may be asked by the President of the Supreme Court to sit as acting judges, and so many members of a supplementary panel comprising persons who have recently held high judicial office and are under the age of 75 (House of Lords, 2005).

2.1.5. Judicial Appointments and Discipline

Generally speaking, judicial independence is so vitally important to the rule of law, and particularly, to public confidence in judges as a means of upholding the law and representing the judiciary. It allows people to be assured that when their rights are all protected by the law and no one to oppress people's right, or when others' duties need to be enforced, the appropriate action will be taken. It simply assures people that justice will be ultimately applied when a criminal allegation is made. It also helps to sustain international confidence in Britain as a stable country in which, and with which, it is safe to do business. One of the most important ways of securing judicial independence is to ensure that the appointments process does not result in politically biased judges, or judges who are, or feel, beholden to the appointing body or person, or to any individual or organization. This in turn helps to ensure that the judges who are appointed are able to act independently, free from political or other improper pressure, in office (Secretary of State for Justice, 2007).

Constitutional Reform Act 2005 paved a way for a new Judicial Appointments Commission began to operate. Prior to the introduction of CRA 2005, judicial

appointments were made on the recommendation of the LC who was also a government minister. The legislative body of government established an independent Judicial Appointment Commission for England and Wales. Judges are represented on the Commission, but do not hold a majority and the Commission has to have a lay chair. The Commission recommends candidates to the LC, who has a very limited power of Veto. The Act gives the Commission a specific statutory duty to encourage diversity in the range of persons available for the selection for appointments (Benwell & Gay)

This Act creates a Judicial Appointments Commission to play a very important role in making all judicial appointments in future , other than the Supreme Court. The commission will be comprised of a lay chairman (“lay” refers to someone who has never held judicial office or been a practicing lawyer), together with 14 other members, as follows:

- 5 judges (1 from Court of Appeal, 1 from High Court, 1 from either Court of Appeal or High Court, 1 circuit judge, 1 district judge),
- 2 practicing lawyers,
- 5 lay members,
- 1 legal tribunal member,
- 1 lay magistrate.

(House of Lords, 2005).

This part of the CRA 2005 includes provision for complaints about the appointment process:

- The appointment must be for a fixed period of not more than 5 years and no person may be the Ombudsman for more than 10 years.

- Complaints about the appointment process may allege maladministration by the Judicial Appointments Commission or the Lord Chancellor's Department.
- Complaints made within 28 days after the matter complained of must be investigated by the Commission or the Department (House of Lords, 2005).

2.1.6. Other Provisions Relating to the Judiciary

For decades, Judges have long been disqualified from sitting in the lower chamber under the House of Commons Disqualification Act 1975. The disqualification under that Act have not been of course applied to the Law Lords, since they were disqualified from the Commons by virtue of their life peerages. By Section 137, judges of the new Supreme Court will be disqualified from the H C, and members of the H L will be disqualified from sitting and voting in that House if they hold a judicial post that disqualifies them from the Commons. If therefore the existing Law Lords become judges of the new Supreme Court, they will until they retire from that Court be unable to sit or vote in the H L. Once the Supreme Court has come into being, its judges will therefore be unable to take part in the proceedings of the House. This will apply also to the Lord Chief Justice or other senior judges on whom a life peerage has been conferred (House of Lords, 2005).

2.1.7.Position of the Lord Chief Justice

The Lord Chief Justice office is one of the significant changes brought in by Constitutional Reform Act 2005, The Lord Chief Justice of England and Wales is the Head of the Judiciary of England and Wales and the President of the Courts of England and Wales. The changes to modify the office of LC will impact directly upon the Lord Chief Justice. It appears that the DCA do not intend to issue an updated version of the concordat agreed between Lord Woolf and Lord Falconer in January 2004,¹⁶ since its main goal was to secure agreement of the judiciary to what the Government were intending to include in

the Constitutional Reform Bill, and that aim was achieved. Some functions formerly exercised by the Lord Chancellor as head of the judiciary (for example, in relation to judicial discipline and dealing with complaints against judges) will in future be exercised jointly by, or after consultation between, the Lord Chief Justice and LC. Other functions will be transferred to the Lord Chief Justice. Senior judges will need to take on administrative functions that hitherto have been carried on by the LC and his officials, whether this Council will become a body representative of the entire judiciary, or will exercise as broad a range of functions as the Judicial Conference in the USA, that has been active for some 80 years. But under the new dispensation it will be necessary for there to be a clear structure within the judiciary that could, for example, properly respond to government proposals for legislation affecting the judiciary. And support from such a body could strengthen the hand of the Lord Chief Justice in his dealings with government (House of Lords, 2005).

The effect of the Act in extending the duties of the Lord Chief Justice is likely to lead to calls for some form of judicial accountability and transparency to Parliament, as he or she represents the views of the Judiciary of England and Wales to Parliament and Government. Additionally, he or she holds the responsibility of the office of judicial complaints accompanied by the Lord Chancellor office, the body which examines complaints forwarded against judicial office-holders. As being President of the Courts of England and Wales, he's up to hear cases in any English, Welsh court, including Magistrate's Courts (House of Lords, 2005).

2.2. Section Two: Measuring the Success of the Constitutional Reform Act 2005

The ultimate goal of constitutional changes is to strengthen democracy in the UK by improving the participatory components of strong democracy in which the doctrine of

separation of powers truly exists. Globally, the doctrine of separation of powers system has enjoyed very different degrees of implementation that the parliamentary systems of government have always united the two organs of executive and legislative for the sake of expediency. The Tony Blair's government suggested that in its changes of the judiciary in the Constitutional Reform Act 2005, it was moving toward a formal division of powers. In many occasions, the labor party argued that the principle of CRA is related to distribution of powers between the three organs of the state, that each organ has certain functions assigned to it, that are to be exclusively performed by it. The three principal branches of government are the legislature which makes law, the judiciary which solves disputes concerning the law and the executive which carries out the law and adheres to it.

Constitutional Reform Act 2005 was in regard to the judiciary branch of government. This reform has enormously reshaped the UK political scene as well as it helped the judiciary to become much more separate from the other two institutions of government: the executive and the legislature, but a real separation of powers between the executive and the legislature remained as it was since the main goal of the CRA was to maintain judiciary independence.

2.2.1 Towards an independent judiciary

It is undoubtedly that most constitutional reforms and changes in regard to doctrine of separation of powers require that the judiciary is entirely independent and separate from the government, in order to ensure that the law is enforced impartially and consistently no matter who is in power. The primary purpose of the Act was to achieve a more distinct separation of functions and redraw the relationship between the judiciary and the other branches of government and to put it on a "modern footing". This has been done by

providing three important changes to profoundly impact on the political system of SOP (politics.co.uk, 25/05/2019).

Constitutional Reform Act 2005 has dramatically reshaped the judiciary and established three significant changes that hugely impact on the judiciary: the reform of the LC's office, the establishment of the Supreme Court of the UK and the creation of the judicial appointments commission .

2.2.2 The Aftermath of the CRA 2005

In a successful attempt, Constitutional Reform Act 2005 significantly provides for a SOP between the parliament and judiciary by demarcating the offices and responsibilities, it also grants various ways for the judiciary to guard itself against the unconstitutional influence and interference of parliament, as a result; the judiciary accountability has been strengthened since it enjoys more formal structure.

There are plenty of reasons why to claim that Constitutional Reform Act 2005 is of a big importance in strengthening the power's institutions in the UK. The main changes brought in by the CRA 2005 are as follows :

- The Reform Act makes it a duty on government ministers to support and back the independence of the judiciary, preventing them from any attempt to interfere or influence judicial decisions through any special access to judges;
- Reform of the post of LC, giving the judicial functions to the President of the Courts of England and Wales – a new title given to the Lord Chief Justice. The Lord Chief Justice is now responsible for judges matters including: the training,

guidance and deployment of judges and represents the views of the judiciary of England and Wales to the legislative and ministers;

- The establishment of the Supreme Court of the UK, it is now independent and separate from the HL and with its own independent appointments system, staff, budget and building;
- An independent Judicial Appointments Commission has been created , responsible for selecting candidates to recommend for judicial appointment to the Secretary of State for Justice. The Judicial Appointments Commission makes sure that merit is the sole criterion for appointment of judges and the appointments system is modern and transparent;
- An Judicial Appointments and Conduct Ombudsman, in charge with investigating and making recommendations in case of complaints about the judicial appointments process, and handling the judicial complaints in accordance with the scope of the Constitutional Reform Act 2005 (Judiciary.uk 28/05/2019).

Some of the changes mentioned above was a successful attempt to address the concerns of the human rights groups and go in accordance with the European Court of Human Rights (ECHR) which insists, the tribunal must not only appear to be independent but must actually be independent. Prior to these reforms, LC was part of all three branches of the government, compromising the independence of judiciary and the principle of SOP.

One of the most important aspects brought in by CRA 2005 is the creation of Supreme Court of the UK, completely separate from the parliament, it was for sure a quantum leap toward a more independent and transparent judiciary, the main objective of its establishment is to get rid of the Appellate Committee from HL, serving as the final court in the land and establish more stricter separation between the judiciary and parliament that the potential for more accusations of no impartiality is reduced. Additionally, the abolition

of the highest court from the HL strengthens Montesquieu idea of strict SOP in regard to the separation of judiciary and legislative. Constitutional Reform Act 2005 reduced also the engagement of the LC in the affairs of the new Supreme Court.

Constitutional Reform Act 2005 does not impact too much the relationship between the executive and legislative. The functions of legislature and executive are always considered overlapping. However, this is not a unique case for the UK alone. PM still performs as the head of the executive as well as the leader of the majority party in the HC (House of Commons, 2011).

Constitutional Reform Act 2005 enshrined in law the independence of the judiciary and dramatically reformed the criteria in which the judges are appointed. The UK now has a system where the whole process of selection and appointment is in hands of the independent Judicial Appointment Commission, although the arrangements for making judicial appointments enjoyed some changes following the CRA 2005, the government provides opportunities to consider the changes in wider constitutional context. As a result of the Reform Act, the influence of the executive on the judiciary has dramatically limited as it constraints its role in the judges appointment in regard of LC who is a member in the Prime Minister cabinet (Ministry of Justice, 2007).

Constitutional Reform Act 2005 is a successful move towards achieving transparent and independent judiciary in the UK as well as a more stricter application of the principle of separation of powers. It is achieved through reforming the LC's responsibilities in the judiciary, executive and legislature, which disperses the concentration of power. The establishment of the Supreme Court truly reflects the existence of a full separation between the legislature and judiciary. The Creation of the Judicial Appointment Commission to select and appoint judges has paved the way for a greater transparency and specialization which enables the doctrine of separation of powers for much more develop. Despite the

fact that the CRA 2005 tremendously contributed for a stricter SOP between the judiciary and the other two institutions of government, the overlaps with the legislative and executive remained in place and were not well recognized.

Conclusion

Since the UK did not have a codified constitution with a frank definition of a constitutional change. UK had to have the constitution implemented with statutes, conventions, practices and underlying principles such as parliamentary sovereignty and the rule of law.

The office of LC whose position was questioned due to having numerous functions which overloaded his role since it was seen as a disregard to the doctrine of SOP, which clouded the practices of that office and made it stand against probable modifications, transfers and abolitions of existing functions of the LC. The latter had to go through fairly-weighted changes on his positions which meant to clarify the controversial views.

The free-standing Supreme Court meant to separate the highest Appeal Court from the Second House of the Parliament. HL was the highest court – the Supreme Court of Appeal. The latter took measures as the final points of law for the entire of the UK and for England, Wales and Northern Ireland in criminal cases. The bellow courts were simply bound by its decisions. As members of the HL, the judges did not only used to hear cases, but were also able to become part of debating and the succeeding enactment of Government legislation. The new Supreme Court is a new UK body, legally separate from the England and Wales Courts. It falls outside of the remit of the Lord Chief Justice of England in his role as head of the judiciary of England and Wales.

Her Majesty, by the transferring of Appointment Functions, can now appoint civil District Judges and give the Lord Chief Justice the power to assign them to their districts.

This protection brings civil District Judges strictly into line with District Judges (Magistrate's courts) and with more senior members of the judiciary. Some of the Lord Chancellor's functions were transferred to the Lord Chief Justice of Northern Ireland, which enable the latter to delegate functions, transferred to him by the Act, to other office holders to ensure flexibility and the Lord Chief Justice can proceed to fulfill his primary role as a judge. The Lord Chief Justice is consulted by the Lord Chancellor when making rules without a committee. His role represents a solid core for the new laid judiciary system.

General Conclusion

General Conclusion

By looking at the UK's political system and balance of power's divisions prior to 2005, we concluded that the UK had such a weak form of doctrine of separation of powers. The Lord Chancellor, on one hand, had vast responsibilities as he served in the three institutions of government. On the other hand, the Law Lords of the legislative performed judicial duties and serving as the highest court in the UK, these overlaps within the UK's divisions of powers encouraged the Labor government to introduce the Constitutional Reform Act 2005 which played significant role in reconstructing the power's divisions, mainly in regard of the independence of judiciary .

In fact, no one should doubt the significance of Constitutional Reform Act 2005. After all, the law lords, who existed from 1876 until 2009, are no more there in the HL to serve a judicial duties and as from today, the senior judges no longer sit in the legislature – which is another step in the too-slow series of the transformation of the upper house of parliament in an attempt to achieve a stricter separation of powers.

After tracing the development and the implications of Constitutional Reform Act 2005, we strongly believe that CRA 2005 achieved a quantum leap in the nature of the relationships between the three organs of the UK's government, it dramatically reinforced the separation between the judiciary and the two other branches by changing and reforming duties and creating new commissions and institutions.

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APPENDICES

Abstract in French

Résumé

L'objectif de cette étude est d'explorer les différents aspects de la Réforme Constitutionnelle Acte 2005 ainsi que sa contribution au renforcement des divisions du pouvoir au Royaume-Uni. La principale question examinée dans le cadre de cette recherche est l'importance de la réforme pour tracer le chemin à une doctrine plus stricte de la séparation des pouvoirs. Afin de vérifier la validité de notre hypothèse, l'étude adopte la méthode descriptive afin de renforcer la vision de la recherche. Les résultats de l'étude confirment fortement l'hypothèse évoquée dans notre étude: la loi de 2005 sur la réforme constitutionnelle revêt une grande importance pour la mise en place d'une véritable doctrine des divisions du pouvoir. Cette étude est divisée en deux chapitres. Le premier chapitre consiste à présenter un aperçu de la division politique des pouvoirs au Royaume-Uni avant l'introduction des réformes. Le second vise à présenter les principaux articles et domaines de la loi de réforme, et met également en lumière l'apport de la loi de réforme de 2005 sur le renforcement de la doctrine des pouvoirs au Royaume-Uni.

Mots clés : contribution, constitution, divisions, pouvoir, réforme, Royaume-Uni

