

CHECKS AND BALANCES OF USA AND FRANCE

(COMPARATIVE STUDY)

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ABSTRACT

As every coin has its other side likewise the doctrine of separation of power has the other side i.e. doctrine of checks and balance in order to keep a check on the each other's functions. It is the doctrine that is being coined after the doctrine of separation of powers. This research paper deal with the comparative study of doctrine of check and balance in USA and FRANCE.

Keywords: Doctrine of Checks and Balances, USA, FRANCE.

INTRODUCTION

The most important system of constitutional scheme is checks and balances. All the three organ have to work in a proper and systematic way to one another to achieve a meaningful sustenance and purposeful progress of citizens. Aristotle has first observed the classification of function each Constitution, later other theorists like Montesquieu, John Locke and James Harrington defined these functions as legislative, executive and judicial. All the theories that were promoted by these political thinkers. The three organs can practically not be keep apart into three watertight compartments because they are some or the other way dependent on one another to ensure effectual governance. So this doctrine is effective to maintain cordial relation between all the three organs of the government.[1]

CHECKS AND BALANCES IN USA

Montesquieu gives another doctrine on the either side of separation of power i.e. "checks and balance. Checks and balances doctrine limits the powers of the various organs of the government that they do not cross their ambit such as the Congress has a power to alter the composition and jurisdiction of the federal courts. Each branch has powers that it can use to check and balance the operations and power of the other two branches. The doctrine was meant to keep the balance

between three branches. Even though there have been many occasions when one branch has become dominant, overall the three branches have achieved a feasible balance with no one branch holding all the governmental power.[2]

CHECKS AND BALANCES IN FRANCE

A semi-presidential system of governance came into existence with the 5th Republic of France, and under this system the cabinet still retains a certain connection with the Parliament. The prime minister is chosen by the President, however the National Assembly is entitled to censure and even force the President to repeal this decision. If that happens – and it has happened in 1962, only once – the president can dissolve the legislature and hold new elections. Like the U.S., it is argued that if French people want to avoid cohabitation and reinforce the presidential office, they could eliminate a link between the legislative and executive bodies and become a straightforwardly presidential system. It is true that the former frequently leads to deadlocks between the White House and Capitol Hill; nevertheless, the president still has a plenty of power to govern without permission from Congress. The French political system has a very interesting history. Since 1958, contemporary political institutions have developed in France. Even though the 3rd and 4th Republics had come to perpetuate political instability in France, the 1962 legislative election brought a new opinion on president's predominant power to examine the government's general issues. Furthermore, in terms of law-making process the executive power received significant preferences and prerogatives.[2]

Obviously, on the understanding of doctrinal frameworks of public law of France these developments had significant impacts, in particular the “constitutionalisation of law and of political life”. The French institutions are also criticized for not referring to any parliamentary doctrine in the legal issues; however, idea is that how balance among them is distributed. Constitutional analysis have notion of “contre-pouvoirs” present in it. It introduces the concept of balance through control in French constitutionalism, although it should not be assimilated to the rigid power-separated American doctrine of “Checks and Balances.

CONCLUSION

The doctrine of checks and balance modify with the change in the legal system like in USA there is strict checks and balance doctrine is being followed i.e. the powers are being properly distributed among all the three organs of the government and proper check is been kept on one another whereas in FRANCE very less checks and balance doctrine is been followed i.e. the executive is supreme in all the spheres.

REFERENCES

- [1] A. Scalia, “The Rule of Law as a Law of Rules,” *Univ. Chicago Law Rev.*, 1989.
- [2] S. Emmrich and B. M. Pützer, “Checks and balances,” *Cell Cycle*. 2010.