Parliamentary Sovereignty: The Debate On The Parliamentary Supremacy

The essay question recalls the debate on parliamentary supremacy. The supremacy of the parliament is the fundamental constitutional principle upon which the United Kingdom constitution is based. It makes the parliament a supreme legal authority in the United Kingdom. The doctrine dates back to the 17th Century when there was a long lasting struggle between the crown and the parliament. As a result of the Glorious Revolution that took place in the year 1688, the Supremacy of the parliament was admitted and the law made by the parliament as the highest form of the law.

One of the earliest explanation of the concept was illustrated by the Sir A.V.Dicey. He was of the view point that the parliament is recognized as the most supreme law-making body in England which has the right to make as well as the right to unmake any law. The second point was that there is no body recognized in England that can set aside the law made by the parliament. As far as the meaning of Sovereignty is concerned in the views of the Dicey, it means that exists no limitation upon the subject matter upon which the parliament may legislate.

The explanation provided by the Professor Wade was that legislation owes its authority to rule and that the law does not owe its authority to legislate. Thus the Diceyan view was once again renounced. Moreover in the famous case of the Madzimbamuto v Lardner Burke, Lord Reid was of the view that even if the law is said to be immoral, socially or morally corrupt, this doesn't mean that the said law has lost its validity.

Moving onto the concept of the Enrolled Bill Rule, which underpins the judicial approach towards the parliamentary sovereignty. In the case of the Edinburgh Dalkeith Co v Wauchope where the Lord Campbell was of the view point that the court is very much reluctant to challenge the validity of an act of parliament and the only thing in which the court can enquire is that where that Act has passed both the house and got the royal assent than there is no court recognized in England that can set aside the validity of an Act of Parliament. Similar view was adopted by the courts in the case of the Pickin v Railways Board.

The next element that takes into account the sovereignty of parliament is that of the express repeal in which the later or the current day of the parliament can set aside an earlier act of parliament. There is a quite complex situation in relation to the implied repeal. Here on the basis of the inconsistency the courts impliedly repeal the previous act of parliament as can be illustrated from the cases of the Vauxhall Estates and the Ellen Estates. However in the case of the Thoburn v Sunderland City Council, the court was not willing to impliedly repeal the European Communities Act 1972 and follow the Weights and Measures Act 1985 as the Laws LJ was of the view point that the constitutional statutes could only be expressly repealed and not impliedly repealed. The constitutional statute was defined to be the one that underpins the relationship between the state and the citizen. Moreover it guarantees the protection of certain fundamental rights.

The sovereignty of parliament was definitely brought to a question under the manner and form argument. This is a restriction that is imnposed by the earlier parliament. The subject matter of

the legislation can never be restricted. However the manner and form can be restricted as can be illustrated from the case of the Ministry of Interior v Harris.

However the doctrine of parliamentary sovereignty was once again brought to light in the Parliament Act 1911 and 1949. The historical background was that the House of Commons couldn't legislate without the approval of the House of Lords and therefore the Prime Minister of the liberal government threatened to overturn the majority of the conservative peers in House of Lords if the parliament Act 1911 was not enacted. Under the parliament act 1911, the bill shall directly go for the Royal assent in the second session after waiting for the one year even if the House of Lords disagree. The change was brought with regard to the time that it was reduced to six months in parliament act 1949. In the case of Jackson v Attorney General, the court was of the view point that the parliament act 1949 is a valid primary legislation and any enactment made under this Act would also be a primary legislation such as the Hunting Act 2004. So a new enacting formula was devised which upheld the sovereignty of parliament once again.

Furthermore referring to the Act of Union 1706 which was with regard to the Scotland. In the case of the McCormick v Lord Advocate, the court was of the opinion that the parliamentary sovereignty is a peculiar feature of the English Constitutional law that has no counterpart in the Scottish Constitutional law.

The enactment of the European Communities Act 1972 that enabled the law of the European Union to have direct effect and directly available in the United Kingdom has directly affected the sovereignty of parliament. In sec 2(1) of the European Communities Act 1972, it was provided that all the rights, duties, powers, liabilities and obligations that are arising time to time in union law shall be directly available in the domestic courts of the United Kingdom.

Moreover sec 2(4) of the European Communities Act 1972 was with regard to the interpretation as it provided that any Act that is passed by the parliament must be construed and have an effect subject to the directly applicable community law. This simply provides the rule of interpretation that the courts would try to give effect to the European Union provisions. In the case of Macarthy's Ltd v Smith, Lord Denning expressed his view point that there is an obligation to give meaning to the statute purposively because of the sec 2(4) of the European Communities Act 1972.

In the case of Jackson v Attorney General, the court was of the opinion that with the enactment of the European Communities Act 1972, the sovereignty of parliament has been affected.

The main issue arose in the case of the R v Secretary of State for Transport ex parte Factortame where for the first time the court granted an injunction against a statute named as the Merchant Shipping Act 1988. Here the Spanish fisherman were being stopped from shipping as provided under the domestic law. However such a right was available under the European Union law. The European Court of Justice gave the preliminary ruling and the House of Lords in the ground breaking judgment held that whenever there is a conflict between the national law and the union law, it is the union law that will prevail. Hence the supremacy was greatly affected.

Similar views were expressed in the case of the Simmenthal Spa as well as the Van Gend en Loos. Moreover in the cases of the Costa v Enel the court once again reiterated the view that in the area of conflict, it is the union law that will prevail.

Amidst of all the debate, in the year 2016 a referendum was held in order to decide that whether to leave the European Union and regain the lost sovereignty of parliament. Therefore the voice was raised in the favor of the Brexit-ers leaving the European Union. The referendum was conducted in the year 2016 under the leadership of then Prime Minister David Cameroon. The results of the referendum were 52% people voting in favor of Brexit and 48% against it. The Prime Minister resigned and the new Prime Minister Theresa May from the conservatives was elected. After joining her office she triggered the Article 50 that further allows the member state to leave the European Union in the period of two years. In the year 2018 a Withdrawal (from EU) Act 2018 was also passed by the parliament. Later on the Prime Minister Theresa May tried to strike some deal with the European Union but unfortunately she got the vote of no confidence from her own parliament. After this she also resigned from the office and the new general elections were announced. The conservative party once again came on the steering and Boris Johnson was elected as the new Prime Minister. The voting was once again held in the parliament which resulted in the favor of Brexit. Ultimately the United Kingdom left the European Union on the 31st January 2020 and the transition period of 11 months has begun.

Furthermore I shall discuss the impact of the Human Rights Act 1998 upon the legislative sovereignty. There is no formal reduction in the powers as it doesn’t empower the courts to strike down the primary legislation and only enables the courts to issue the persuasive declaration of incompatibility.

It is provided in section 3 of the Human Rights Act 1998 that as far as possible read and give effect in a way that the law becomes compatible with the convention rights. Hence it can be argued that the legislation must be made convention compatible. In the case of the R v A (Complainants Sexual History) where the House of Lords was willing to transform the meaning of the legislation in order to make it compatible with the convention rights. This explicitly suggests us that the Human Rights Act has obtained the status of the constitutional statute. A similar approach can be observed from the case of Bellinger v Bellinger as well as the Ghaidan v Godin Mendoza.

Moreover section 4 of the Human Rights Act 1998 provides us that if the compatibility is not possible then the court may issue a declaration of Incompatibility. However this shall not affect the validity of an Act of Parliament and the national law will be applied. The impact on sovereignty is that it can affect the political stability of the government of the day. The most recent example of the application of the sec 4 Human Rights Act 1998 is that of the R (on the application of Joint Council For the Welfare of Immigrants) v Secretary of State for the Home Department.

Here it can be concluded that parliamentary sovereignty is the basic fundamental constitutional principle which is deep rooted into the constitutional structure. The doctrine was only greatly affected due to the accession to the European Union but now it has been restored after the Brexit.