The Doctrine Of Parliamentary Sovereignty Within The United Kingdom Constitution

The doctrine of parliamentary sovereignty within the United Kingdom constitution gives unlimited legal authority to Parliament (1). In describing this concept, Oxford law professor, A V Dicey said that Parliament has ‘the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.’ (2). Furthermore, this implies that Parliament can amend or revoke any previous legislation. These powers have been awarded to Parliament throughout numerous critical case law. The authority of Parliament is considered as one of the most significant elements of UK law. This essay will assess the Miller cases (2017 and 2019) as they offer a look into Parliamentary sovereignty and its central importance to UK public law. The two cases also highlight the scope of Parliamentary sovereignty as not always being unambiguous.

The Miller cases

In R. (on the application of Miller) v Secretary of State for Exiting the European Union, judgments split due to eight judges ruling in favour of the plaintiff Gina Miller. including “Lord Neuberger” the “President of the Supreme Court,” while three minority judges gave dissenting judgments. The case dealt with the EU Referendum Act of 2015, and the subsequent referendum held in June 2016. The main question posed was whether Government ministers had the authority to deliver formal notice of withdrawal from the Union and invoke Article 50 of the Treaty on European Union in the absence of a new Act proposed by Parliament.[2] The court held that Government could not lawfully use its prerogative powers to trigger Article 50. Moreover, It was decided that the case did not have any political implications regarding the withdrawal of the UK from the EU. Additionally, a core issue in resolving the case was surrounded by the powers of the “Secretary of State.”[3] Could the Secretary of State affect domestic law if he/she exercises his powers at the international level? With that thought, two conflicts arise as the Secretary of State has the authority to both enter and exit treaties generally without the need for a new Act of Parliament.[4] Secondly, the Secretary of State is not to use his/her authority if it means it would lead to a change in domestic law. The only exception is if he/she is authorised to do so under an Act of Parliament.[5] Therefore, the question becomes whether the second principle overrules the first principle.

In conclusion, it was held by Lord Hughes :

“There is no suggestion that the 2016 Referendum has legal effect. It has an enormous political impact. The question is ‘not whether but how the UK may lawfully set about leaving the EU’.”[6]

Where the plaintiff relied on the first rule, the Government was relying on the second rule. As such, it was noted that the reading of the “European Communities Act 1972”[7] would decide the answer as either possibility was conceivable. Lord Carnwath, in conjunction with Lord Reed and Lord Hughes, held that EU law under the European Communities Act1972 was “inherently conditional” in regard to the application of EU treaties to the UK, as well as its membership of

the EU.[8] The European Communities Act 1972 was silent on the matter of requiring an Act of Parliament to trigger “Article 50” (Brexit appeal). There was no need to limit the prerogative powers of the Government.[9]

However, the majority ruled in favour of the plaintiff and dismissed the appeal holding that an Act of Parliament was necessary to withdraw from EU treaties under “Article 50.” The Supreme Court recognised that the Parliament could have offered the authority to minister under the 1972 Act, however that interpretation was rejected due to the absence of clear wording. Thus, there are elements of the case that allude to the ambiguity found within the doctrine of Parliamentary sovereignty.

The Miller 2019 case was concerned with the accumulation of two appeals. One was from the “High Court of England and Wales,” and the other was from the “Inner House of the Court of Session in Scotland.”[10] The case was adopted over from Scotland, as the Parliament might be continued. The Prime Minister was sent a memorandum that held that his “Parliamentary Private Secretary” send a request to the Palace for prorogation as well as for a speech by the Queen.

At the Privy Council, held at Balmoral Castle by the Queen, an Order in Council was made that prorogued the Parliament between 9th to 12th September.[11] After this decision, Mrs. Miller underwent the proceedings to challenge the lawfulness of the prorogation. The main question posed was whether or not it was lawful for the Prime Minister to advise the Queen and the limitation of the powers of the Queen concerning the prorogation of Parliament. In that manner, did the decision hamper the functions of Parliament without there being a just reason?

As noted in “M v Home Office and another [1994]” the courts have jurisdiction in placing limitations on prerogative power. Therefore, the actions of the Prime Minister concerning the advice made to the Queen were noted to be lawful.[12][13] Nonetheless, it was also noted that the prorogation was unlawful as neither House could hold meetings, pass legislation, or have debate policies introduced by the Government. Moreover, the given it was held that Parliament had the right to voice its concerns about the changes to come. Therefore, it was held that the decision to suggest prorogue Parliament to the Queen was an unlawful action due to its frustrating/preventative influence on the abilities of the Parliament.[14]

The Government argued that Inner House was not in a position to declare any prorogation, which might have resulted from the advice, was not applicable as the prorogation in question was proceeding in Parliament.[15] Therefore, under the “Bill of Rights 1688”, the prorogation should not be questioned by the court. The court denied this argument stating that the prorogation was not a proceeding in Parliament. Instead, it was a foreign imposition that required the members of the Parliament to vote on. Thus, it was held that the advice to the Queen was unlawful and that Parliament would reconvene. In that regard, it can be noted that there are aspects of the sovereignty of Parliament that are slightly ambiguous.[16] In the aforementioned case, while the advice was seen to be lawful, implementation became unlawful.

Conclusion

The scope of the doctrine of Parliamentary sovereignty is often viewed as being clear, with Parliament enjoying absolute legal supremacy over the other branches of the UK Government.

However, there have been cases where this principle has been ambiguous, bringing light to some of the more enigmatic elements of the doctrine. Miller 2017 and 2019 are two core examples of case law that have brought this debate to the forefront. Indeed, both cases are noted to have relied on an interpretation of Parliamentary Supremacy and presenting contradicting ideas being addressed due to the unclear wordings of the law surrounding the doctrine of Parliamentary Sovereignty. In that manner, the notion is not as unambiguous as was initially believed by most legal practitioners.