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Supremacy of the Parliament and the Rule of Law in the UK: An Analysis

Syed Raza Shah Gilani*
Ali Mohammed Al-Matrooshi**
Aisha Nayab Qureshi***

Abstract

The United Kingdom is a constitutional monarchy, which means that the monarch must abide by a constitution that outlines the powers and limitations of the government. In the UK, the concept of the rule of law is central to the functioning of the legal system, and the principle of parliamentary sovereignty is considered to be a fundamental aspect of the constitution. However, the concept of the royal prerogative, which is the set of powers and privileges that historically belonged to the monarch, still exists. These powers include the right to appoint and dismiss ministers, to issue pardons, to grant honours and titles, to declare war, and to sign treaties. Although many of these powers have been transferred to the Parliament, some remain with the monarch and their use is subject to limited judicial review. While the concepts of the royal prerogative and parliamentary supremacy remain important aspects of the UK's constitutional framework, they must be balanced against the principle of the rule of law. The use of executive power must be subject to legal scrutiny, and Parliament must continue to act as a check on the government's actions to ensure that they are consistent with the rule of law.

Keywords: British Parliament, Rule of Law, Parliamentary Sovereignty, Legal System

* Dr. Syed Raza Shah Gilani is an Assistant Professor at the Department of Law, Abdul Wali Khan University Mardan, Pakistan. Email: sgilani@awkum.edu.pk.

** Dr. Ali Mohammed Al-Matrooshi is a Colonel in Dubai Police, General Department of Human Rights, Dubai. Email: a.matroshi@gmail.com.

***Ms. Aisha Nayab Qureshi is a Lecturer at the Department of Political Science, Woman University Swabi. Email: aishanayabqureshi@gmail.com.

Introduction

Parliamentary sovereignty is a constitutional concept in the United Kingdom that establishes legislative bodies as the ultimate political authority. In contrast to several other nations, the parliament in the United Kingdom is not bound by the constitution since it is not codified into a single legal text. No law or act of parliament may be declared null and void by the courts. Since the current parliament is not obligated to follow the laws that were enacted by previous parliaments, parliaments cannot pass laws that are immune to being overturned in future. In his article titled "Parliament," Albert Venn Dicey explained the concept of parliamentary sovereignty. Also, "no person or entity is recognized by the law of England as having the ability to overrule or set aside the laws of the parliament",[1] which indicates that courts and judges cannot overturn decisions made by parliament. This is true for both local and foreign laws. This is because, according to the English constitution, parliament has the power to pass or nullify any legislation it deems necessary. There are few exceptions to the need for laws to be approved by the House of Lords under the Parliament Acts of 1911 and 1949. Constitutional and administrative laws were two of Barnett's principal areas of interest in his writing, and he once said, that the key to appreciating parliamentary sovereignty lay in its acceptance—but not necessarily moral approval—by judges operating inside the legal system.

For this reason, the concept of sovereignty may be found throughout the common law. Parliament's sovereignty is guaranteed in Article 2 of the British Constitution, which states that "sovereignty shall remain the supreme rule of the constitution so as long as the judges do not deny or question its supremacy".[2] In cases "where there was an attempt to abolish judicial review," courts may reject laws passed by parliaments. The conventional notion of parliamentary sovereignty is broken down by Dicey into three parts: the power to create or unmake any law; the fact that no one can overrule the legislation of parliament; and the fact that the current parliament is not bound by the legislation of previous parliaments. This implies that Parliament has the absolute power to pass laws on any subject.

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[1] N. Hussain. *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press, 2019).

[2] J. McEldowney. “Populism, UK Sovereignty, the Rule of Law and Brexit”, in *Populist Challenges to Constitutional Interpretation in Europe and Beyond*, edited by Fruzsina Gárdos-Orosz and Zoltán Szente (London: Routledge, 2021), 459.

The War Damages Act of 1965 overturned the Burma Oil Company v. Lord Advocate ruling, even though parliament generally does not legislate retroactively. In the 1935 case of British Coal Corporation v. R, which restricted parliament's legislative authority, it was decided that Canada and Australia should be given legislative independence. Even though the Parliament may pass laws on any topic, the decision of Madzimbanuto v. Lardner-Burke (1969) ruled that Zimbabweans were not bound by Westminster legislation. Parliament is not sovereign and cannot legislate on whatever issue it desires to legislate on, as shown by these decisions, which restrict parliament's legislative competence. A parliamentary act, as overruled by Thomas J., is superior to foreign law. The second component of Dicey's definition is that an Act of Parliament cannot be challenged because it is invalid. Parliamentary actions might formerly be challenged in court if they were deemed to be unconstitutional. Dicey, however, claims that due to recent developments, no one can challenge the constitutionality of parliamentary actions, regardless of how absurd they may be. This was established in the 1983 case Manuel v. Attorney General, which ruled that a court could not declare any legislative act to be outside the legislature's authority.[3]

The term "enrolled bill rule" describes this situation. A crucial "ultimate rule of recognition is that what the "queen in Parliament enacts is law," as HLA Hart put it. When the plaintiffs in Edinburgh v. Wauchope argued that the act was unlawful because they hadn't been given early notice of it, the court ruled in favour of the government. Despite Lord Denning's dissenting opinion in British Railway Board v. Pickin, written by Lord Reid, the majority upheld Lord Reid's ruling. Despite failing to safeguard the rights of the hunting community, the Hunting Act of 2004 was upheld as constitutional in Jackson v. Attorney General. This demonstrates that the laws passed by parliament are absolute and cannot be challenged, regardless of how unjust they may be. The third tenet of Dicey's position is that the current legislature is not bound by the legislation passed by its predecessors.[4]

[3] V. P. F. Bruey. A Critical Inquiry of the Legitimacy of Modern Democracies in England's Constitutional Monarchy (Thesis), 2016, available at https://www.researchgate.net /publication/353273164_A_Critical_Inquiry_of_the_Legitimacy_of_Modern_Democracies _in_England's_Constitutional_Monarchy.

[4] E. Andreoli. The rule of law under the threat of the pandemic, Echoes from the African constitutional justice, *DPCE Online* 46, no. 1 (2021).

Parliamentary sovereignty must be protected in a way so that subsequent parliaments may nullify legislation passed by earlier parliaments. It's possible for there to be some uncertainty regarding whose decision or act of parliament would be supreme if the new parliament disagrees with a piece of legislation established by the old parliament. According to the idea of implied repeal, newer actions supersede and so implicitly repeal earlier acts that conflict with their provisions. In the case of Vauxhall Estates Ltd. v. Liverpool Corporation, the courts concluded that a later provision would take precedence, and the earlier act of parliament would be impliedly abolished as a result. Parliament's absolute power is shown once again by the fact that it cannot be contained even by its own rules. In Thoburn v. Sunderland City Council, it was established that constitutional laws are immune to implied repeal, in contrast to ordinary legislation. However, recent events, such as EU legislation, devolution, and the extension of human rights laws, show that parliamentary dominance has been challenged.[5]

Until the Human Rights Act of 1998 was enacted, the Parliament of the United Kingdom had the authority to adopt laws on any topic, even if such laws infringed on the fundamental rights of the people. Dicey asserted that Parliament was responsible for safeguarding people's basic rights, while other justices believed that it was possible to revoke such rights. The European Convention on Human Rights became a legally enforceable document under British law when it was given that status by the Human Rights Act of 1998. The European Convention on Human Rights serves as the organisation’s guiding document, and "further effecting" civil and political rights and liberties is one of the organisation's stated aims. Nonetheless, the Human Rights Act of 1998 is only passing legislation in the United Kingdom. The Act's purpose is to safeguard basic rights without undermining the power of parliament since that would defeat the purpose of legislation. The pre-eminence of Parliament is reflected in the Human Rights Act of 1998, which establishes a new role of interpretation for courts (Section 3) and permits judges to issue a declaration of incompatibility if they find that a provision of the act is incompatible with another provision of the act (Section

[5] Marie-France Fortin. “Rule of Law, Parliamentary Sovereignty and Executive Accountability in English Legal Thinking: The Recent Revival of the King Can Do No Wrong”, *Journal of Constitutional History* (Autumn 2022).

4).[6] In the case of Ghaidon v. Godin-Mendoza (2002), it was shown that the courts are required by Section 3 of the Convention to interpret all legislation "in so far as it is practicable to do, in a way which is compatible with Convention rights".[7] This was demonstrated by the fact that the case was decided in 2002. If this cannot be done, then the high court or higher tribunals may proclaim a proclamation of incompatibility under Section 4 of the HRA 1998. This indicates that national courts have the authority to determine that national laws infringe on rights guaranteed by the Convention. Yet, this pronouncement does not in any way call into question the legitimacy of the legislation that was approved. Baroness Hale argues that the purpose of this statement is not to weaken Parliament's power but rather to warn the government and Parliament that the UK is in breach of its international commitments. Given that the Human Rights Act of 1998 has not been established and is subject to repeal at any moment, Baroness Hale argues that the purpose of this statement is not to weaken the Human Rights Act of 1998.

The European Communities Act of 1972 recognizes the need to maintain communal sovereignty. Community law supersedes national laws, as the European Court of Justice has made very clear. As a result, whenever possible, EU decisions will take precedence over those of the UK Parliament. The Van Gend en Loos decision mandates that all member states adhere to the standards established by community law. This was established by the Costa-Ezel court. U.K. domestic courts must give legislation an interpretation that is compatible with community laws, as mandated by Article 2(1) of the European Communities Act of 1972. In the event of a disagreement between a national law and an EU statute, Lord Bridge ruled in R v. Secretary of State for Transport, ex parte Factortame, that the EU law applied.[8]

Dicey's orthodox view of parliamentary sovereignty is at odds with Factortame; therefore, Parliament may be constrained in rare circumstances. Miller v. Secretary of State for Exiting the European Union, however, established that Parliament is supreme in the end since the

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[6] K. Khumalo. *Towards Establishing the 'Security Laws' Interpretation Regime' which will Facilitate the Interpretation of State Security Laws in a Manner that Upholds and Protects the Rule of Law and Human Rights: A South African Perspective,* 2020.

[7] J. Meierhenrich & M. Loughlin. *The Cambridge Companion to the Rule of Law* (Cambridge University Press, 2021).

[8] R. A. Cosgrove. *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (UNC Press Books, 2017).

European Communities Act of 1972 is not a permanent part of UK law. If the European Parliament votes to abolish the ECA, domestic courts will no longer be required to uphold the provisions of the ECA. Here it is made abundantly evident that although the European Union does restrict Parliament's authority, it does so only to a limited level, as Parliament may ultimately overturn the entire Act. Devolution may also be seen as a check on Parliament's absolute power. Devolution refers to the decentralization of government authority to subnational entities. The Scotland Act of 2016 gave the Scottish Parliament and Government more authority over matters such as income tax, elections, and the ability to change provisions of the law that directly affects them. It was argued that this undermined Parliament's authority, but the case Miller v. Secretary of State for Exiting the EU established that the British Parliament was, in fact, supreme. Even though Section 4 of the HRA 1998 makes it clear that it may declare an act of Parliament incompatible with the ECHR, it still cannot proclaim it unconstitutional. As a result, the UK Parliament remains the most supreme law-making authority in the UK. The European Communities Act of 1972 provides that the EU is paramount, although as recent judgements have shown, this is not always the case. Since neither the Human Rights Act of 1998 nor the Equal Pay Act of 1972 are enshrined in the UK's legal system, they might be overturned at any moment. It must also be considered that with Brexit, the UK has removed the very source that constrained its sovereignty; therefore, there is room for debate regarding the supremacy of EU law. Scottish and Welsh powers have been delegated by the UK Parliament, but as the Miller case shows, this has not compromised Parliament's authority.[9]

Most people agree that a constitution's "rule of law" provisions are crucial in keeping the government in check. There has been a lot of discussion about this in scholarly circles. From the get-go, there is a major rift over what constitutes the rule of law. Others have argued that it should be "content-full," meaning that it should include the substance components of laws that are needed to conform with basic rights, while still, others have argued that it should be "content-free," engaging only with the form of law and administrative issues.[10]

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[9] B. Ackerman. *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* (Harvard University Press, 2019).

[10] P. Seaward. “Shaftesbury and the Royal Supremacy”, In Anthony Ashley Cooper*, First Earl of Shaftesbury 1621–1683* (Routledge, 2016), 51-76.

It is believed that the rule of law is nothing more than a "cover" for a set of principles that are fundamentally different. This view has been met with some resistance. Others think that the rule of law is nothing more than a rhetorical tactic or political theory, and as a consequence, the information contained inside it is meaningless. This viewpoint represents the end of the spectrum. The "content-free" approach takes into consideration issues such as these. On the other hand, any rules that are not in compliance with the supreme law are invalid and do not have any force or effect. This view provides access to a significant quantity of information. It is the responsibility of the judicial system in the United Kingdom to interpret statutes in a manner that "gives effect" to the rule of law and ensures that particular governmental activities and laws are accorded the legitimacy they deserve. Additionally, it is the responsibility of the judicial system in the United States to interpret statutes in a manner that "gives effect" to the rule of law. In addition to this, the rule of law serves as the foundation for the validity of individual legislation. Although there is considerable disagreement over the specific definition of the phrase "rule of law," this is how the legal system is meant to function.

With the fall of the Roman Empire, the majority of people began to believe that members of the aristocracy were immune from the law and were only answerable to God for their actions. This idea persisted even after the fall of the Roman Empire.[11] The establishment of the rule of law in official institutions made some headway, but eventually, it stalled. At the time of the signing of the Magna Carta in 1215, it had already been proven beyond a reasonable doubt that the monarch was not above the law. In a time of domestic unrest caused by the King's emphasis on foreign warfare and his rise in taxes to pay for the war with France, the Barons pressured King John into signing the Charter. This occurred about the same time that the King also increased the amount of money that was taxed. This took place at a time when the King's attention was primarily focused on France.

To inform the King of the Magna Carta's enshrined rule of law, the Barons wrote the Petition of Rights in 1628. Several of the fundamental tenets of the Magna Carta were expanded upon in greater detail in a document called the Petition of Rights, which was essential in further establishing the rule of

[11] S. R. S. Gilani & H. U. Rehman. "The Limitation Clauses on Human Rights and Fundamental Freedoms: The Role of the Court of Justice of the European Union (CJEU)", *Journal of European Studies* 36, no.2 (2020): 83-99.

law and due process. These provisions encompassed both the rule of law and due process protections. The right to Habeas Corpus would be the subject of many following regulations and is consequently essential to the rule of law, even though it is not explicitly stated in the Magna Carta document itself. It was with the Petition of Rights that it reached its complete formal maturity. The defendant has to be brought before a judge so that the judge may decide whether or not the inmate's incarceration violates the Constitution. The Habeas Corpus Act was passed in 1679, and it allowed prisoners to petition the court for a hearing in which they might question the legality of their confinement.

According to the Bill of Rights from 1689, Parliament's approval is required for any legal changes such as enactment, removal, or suspension. Subjects were now allowed to sue the monarch in court without fear of Crown interference. Neither the monarch nor the judges could circumvent habeas corpus's mandates. The bill also lays out the underlying norms by which the system of law functions.[12]

The rule of law is still an issue today, and Dicey's views from the 19th century remain instructive. Dicey believed that the rule of law was what truly distinguished Britain from its competitors. Dicey differentiates between three related perspectives on the supremacy of law. Without resorting to the legal system, it is impossible to hold anyone accountable for their actions. Everyone, even the Prime Minister, is subject to the law and must follow its dictates. As the Constitution's overarching concepts are based on precedents set by the courts, the rule of law penetrates it.[13]

Sir Ivor Jennings (1903–1965) was a Fabian socialist who argued for government regulation of businesses and welfare programmes. Jennings said that Dicey's 1933 book, *The Law and the Constitution*, failed to address governmental duties. He claims that Dicey was more interested in the political relationships between Great Britain and Northern Ireland than he was in the correlations between poverty, disease, and increased industrialization. Jennings questioned Dicey's narrow interpretation of the rule of law since it only considered tort law and the fact that private citizens

[12] S. R. S. Gilani, I. Khan & S. Zahoor. "The Historical Origins of the Proportionality Doctrine as a Tool of Judicial Review: A Critical Analysis", *Research Journal of Social Sciences and Economics Review* 2, no.1 (2021): 251-258.

[13] A.V. Dicey. *Introduction to Constitutional Law*, 10th ed., 1885 (Macmillan & Co., 1959).

can sue public authorities for damages caused by their intentional or negligent behaviour. According to Jennings, "rule of law" is a "majestic appellation" that requires far larger problems to be solved. Dicey's three principles have been criticized, but they continue to have a significant impact and are frequently cited by modern justices.[14]

In the case of R v. Rimmington (2006), all of Lord Bingham's arguments assert that criminal behaviour should be labelled as such and that individuals shouldn't be punished for things that weren't crimes at the time they were committed. According to Lord Bingham and Lord Walker of the Privy Council in Sharma v. Brown-Antoine [2006], the rule of law should be applied without exception. Because of the priority of law and the common law relationship between the government and the person, everyone, no matter how high up they are, must obey the law.

One of the most significant and debatable topics is the question of whether the rule of law ought to be "content-free" or "content-heavy." Please refer to the article titled "The Rule of Law and its Virtue," which was written in 1977 and published in the 195th issue of the Law Quarterly Review. This article has further information on the former. According to his understanding, the only aspect of societal life that the rule of law should be concerned with is the legislative process. There is nothing that stands out as particularly exceptional within the boundaries that have been set for the perspective. The judiciary should be independent; public officials' decision-making should adhere to procedural fairness; the court should have review powers over decisions; courts should be easily accessible; all laws should be prospective, transparent, and unambiguous; laws shouldn't be subject to constant change; laws should be created utilising clear and general rules; this information can be found in "The Rule of Law," which can be found in Interactions between the Executive, the Judiciary, and Parliament: 6th R. v. Rehn According to Craig, the power of law should be used for more than just ensuring that laws are consistent with "positive" ideals. He believes that the force of the law should be used for other purposes as well. There has already been a great deal written on the right, and it ought to continue to exist for as long as there is such a thing as a just society; but, discussions over the right ought to be kept apart from the rule of law. It is extremely important

[14] S. R. S. Gilani, H. U. Rehman & I. Khan. “The Conceptual Analysis of the Doctrine of Proportionality and, its Role in Democratic Constitutionalism; A Case Study of UK”, *SJESR* 4, no.1 (2021): 204-210.

to discuss problems on social justice and to preserve individual liberties, but we shouldn't do it in the context of the legal system.[15]

Ronald Dworkin, in his essay "Political Judges and the Rule of Law" from the book A Question of Principle, builds a case for this alternative point of view by calling into question the notion that the rule of law has no value. This article can be found in A Question of Principle. According to Dworkin's interpretation of the rule of law as a "rule book," true justice does not constitute a component of the ideal of the rule of law but rather a separate ideal. After that, he contrasts this perspective with the 'rights' understanding of the authority that the law possesses. The moral and political commitments that individuals have to the state and one another are taken for granted. This interpretation of the rule of law rejects the notion that legal equality is synonymous with the rule of law and instead maintains that the norms within the code encompass and preserve moral rights. In other words, this interpretation of the rule of law is a moral rights preservation interpretation. More than just a set of guidelines to adhere to is required if you want to get the most out of this perk. Compliance with the ruleset on its own is in no way adequate to ensure justice; rather, a violation of the principle of the rule of law presented in the guidebook would result in injustice. Nonetheless, the notion of rights under the law must be protected for a society to be considered fair.

Rule of law and the separation of powers Everything we've spoken about thus far fits under what some have termed a "formal" or "thin" vision of the rule of law, which places no constraints on the content of the law and tolerates serious misconduct. Some of the numerous people who hold this reductionist position are Dicey, Hayek, and Raz. Some who embrace a substantive view of the rule of law argue that actual moral limits on the exercise of state authority are necessary in addition to the formal restraints on power that have been explored. In his article, Cameron Stewart explores this point of view in depth. According to the rule of law's essence notion, law should be superior to all other types of will, including the will of freely elected parties. The concept that the rule of law is a "higher" law that might supersede legislative power can be traced back to the natural law tradition. For instance, Trevor Allan argues that laws that violate fundamental human

[15] D. K. Coffey. “Constitutional Law and Empire in Interwar Britain: Universities, Liberty, Nationality and Parliamentary Supremacy”, *Northern Ireland Legal Quarterly 71*, no.2 (2020): 193.

rights like due process, equality, and freedom of speech are incompatible with a rule of law society. According to his logic, the foundation of the rule of law is public consensus in favour of just legislation. He argues that regulations that violate people's fundamental liberties are incompatible with the rule of law since they would never have the consent of the governed. The United Kingdom has a long history of receiving high marks from constitutional experts for its commitment to the rule of law. In countries with written constitutions, the courts must be given the ability to interpret and apply its provisions to preserve the rule of law. As the United Kingdom does not have a written constitution, common law serves as its legal framework. Court decisions involving challenges to the legality, rationality, or formal validity of governmental or public body activities or their conformity with the Human Rights Act of 1998 have helped define what it means to live under the rule of law. The basics of the legal system and judicial reasoning are covered.[16]

Due to Section 1 of the Anti-Terrorism, Crime, and Security Act of 2001, the issue of the application of the death sentence has been brought back into the spotlight. The respondents in the case A and others v. Secretary of State for the Home Department [2004] UKHL 56 were detained indefinitely without going through a trial because they were suspected of engaging in activities related to terrorism, and there were allegations that they posed a threat to the general public. Appellants contended that they should not be deported since doing so would put their lives in danger in the countries in which they were originally from. The Home Secretary has given her approval for the offenders to remain in jail without any new criminal charges being brought against them.[17] All the replies were not from British nationals, the Earl of Bingham of Cornhill said in the House of Lords. They had all been cleared of any misconduct allegations. The right to liberty is guaranteed to every person under Article 5(3) of the European Convention on Human Rights (ECHR). In the wake of the September 11, 2001, terrorist attacks, the United Kingdom tried to use Article 15 of the European Convention on Human Rights to get out of adhering to the ECHR. The House of Lords has ruled that life sentences without trial are always unlawful and are only

[16] C. Cross. *The Royal Supremacy in the Elizabethan Church* (Routledge, 2021).

[17] S. M. Foster. "Divine Kingship, Royal Supremacy, and Romans (1526–36)", In *Reading the Reformations* (Brill, 2023), 74-98.

justified in exceptional cases.[18] The law was unlawful because it discriminated against immigrants.

Conclusion

The idea of parliamentary supremacy says that Parliament is the last and highest authority when it comes to making laws in the UK. Any other body, including the government or the court, cannot invalidate or overturn a piece of legislation that Parliament has approved. Nonetheless, the rule of law necessitates that all laws be enforced uniformly and equitably and that both the government and the judiciary act within the bounds of the law. There have been fears that the government's use of executive authority in recent years, especially about Brexit, has weakened the rule of law in the United Kingdom. In 2019, for instance, the administration tried to prorogue (suspend) Parliament, but the Supreme Court ruled that this was unconstitutional.

[18] A. Blick & R. G. QC. Using the Prerogative for Major Constitutional Change: The United Kingdom Constitution and Article 50 of the Treaty on European Union, 2016.