

SUPREMACY OF JUDICIARY OVER THE PARLIAMENT THROUGH INTERPRETATION OF LEGISLATIONS: REFERENCING THE CONSTITUTION OF REPUBLIC IN SRI LANKA

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ABSTRACT

This article aims to study to what extent judicial supremacy exists over the Parliament through interpretation of legislations according to the powers and responsibilities vested by the Constitution of Sri Lanka. The study limits the examination of the only jurisdiction of the Supreme Court to interpret the parliamentary Bills. This analysis has been done using doctrinal legal research methods and used the constitutional provisions, Standing Orders of the Parliament, case laws as Primary sources and related research papers and books as secondary sources. It is observed that the legal and political definition of sovereignty slightly differ. Further, the procedure of judicial review varies under common law jurisdiction and civil law jurisdiction. The researcher observes the Constitution to study the matter of supremacy through the power of the Supreme Court for the interpretation of legislations. Finally, it is observed that although the Judiciary has challenged the Parliament through its decisions, the Judiciary does not have ultimate supreme power over the Parliament.

Keywords: Judicial Supremacy, Parliamentary Supremacy, Judicial Review

CONCEPTUAL CLARIFICATIONS

Parliamentary Supremacy vs Judicial Supremacy

When discussing the term “supremacy” or “sovereignty” in the political realm, it naturally comes to the mind the concepts of parliamentary supremacy or parliamentary sovereignty because it is one of the headmost political concepts in the subject of political science over the years. The meaning of the word "sovereign" derived from the old French word "soyrain" and the Latin word of "super", means supreme.ⁱThe Latin word of *suprema potestas* (supreme power) simply means “highest ruling authority” comes to the vocabulary of political theory. According to the term of sovereignty defined in the Oxford Dictionary of Law, sovereignty is:

*“Supreme authority in a state. In any state sovereignty is vested in the institution, person or body having the ultimate authority to impose the law on everyone else in the state and the power to alter any pre-existing law. How and by whom the authority is exercised varies according to the political nature of the state. In many countries the executive, legislative, and judicial powers of sovereignty are exercised by different bodies. One of these bodies may ... retain sovereignty by having ultimate control over the others...”*ⁱⁱ Thus,, sovereignty can be identified as ultimate power without interfere from other institutions.

Sovereignty was recognized as a concept by Jean Bodin, the father of the modern theory of sovereignty, and he explained, ‘sovereignty which has absolutely nothing above itself. God was above the king and the king possessed human sovereignty’.ⁱⁱⁱIt is important to state that the notion of sovereignty is different in terms of judicial theory and political philosophy. Especially jurists and legal scholars have tried to explain the concept of sovereignty from a political point of view, for instance, Roland R. Foulke, in his study on a treatise on International Law stated that:

“[T]he word sovereignty is ambiguous ... we propose to waste no time in chasing shadows, and will therefore discard the word entirely. The word ‘independence’ sufficiently indicates every idea embraced in the use of sovereignty necessary to be in the study of international law”.^{iv}

Therefore, it is noted that the practice of the concept of sovereignty in both the Judiciary and Parliament are interpreted in different ways by jurists, legal scholars, and political scientists. The concept of sovereignty may be attached to tripartite institutions of the Executive, Legislature, and Judiciary of government in any country with more or less power which is granted by the Constitution. Political and legal philosophers tried to explain Parliament as the most supreme institution of the government and the Judiciary vice versa. For instance, John Austin argued that Parliament possessed the sole right to create and develop law. Therefore, Parliament has supreme power as the fount of legal validity.^v Brown and Dicey explained the legal and political supreme power in different ways; As A.V. Dicey said “that body is politically sovereign or supreme in a state the will of which is ultimately obeyed by the citizens of the State”.^{vi} Further, he explained on parliamentary supremacy in his book titled ‘Introduction to the study of the Law of the Constitution’, Dicey defines *‘the principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, 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’*^{vii}. According to the notion on Parliamentary sovereignty, following characteristics that is included;

- A Parliament cannot bind a future Parliament
- Parliament has unlimited law-making powers
- Laws made by Parliament cannot be questioned by another body^{viii}.

Whereas, Robert Brown said “the location of sovereignty in the State must be accepted as an axiom by legal theory in all highly developed communities”.^{ix} Further, Professor Willoughby as a follower of Brown and Dicey said, “this supreme, legally legitimizing will is termed sovereignty,” accepting juristic conception of the state.^x Therefore, it is observed that the attention of jurists, theologians, and philosophers on the debate of who is the supreme body of government was highly debatable.

All countries have accepted that sovereignty is practiced by the people under democratic values, and, therefore, if one organ represents people, it can enjoy supreme power. In practice, three organs try to exercise supremacy as power and responsibilities given by constitutions. In

the United States of America (USA), *Cooper v Aaron*^{xi} was the seminal case of the Supreme Court and it provides “the federal judiciary is supreme in the exposition of the law of the Constitution”^{xii}. Thus, constitutional supremacy or judicial supremacy requires strong judicial review and also judiciary should have strong connection with political system through decision or policy making. As Veit Bader in his study mentions that judicial supremacy functions in following situation.

- (1) The courts settle important issues for the whole political system
- (2) Those settlements are treated as absolutely binding on all other actors in the political system
- (3) The courts do not defer to the positions taken on these matters in other branches^{xiii}.

The definitions of judicial supremacy are defined by constitutional dialogists, scholars, and authors in different ways in dissimilar contexts. It is noted that judicial supremacy defines its meaning as the answer to the fundamental question: who is the final authoritative interpretation of the constitution? ^{xiv} Judicial supremacy states that the Judiciary has the ultimate power as the prime purveyor of the constitution. Here, the ‘Jursitocracy’ a new dimension demonstrates that political power should be held in reserve away from elected politicians and shifted it to unelected judges with a strong Judiciary.^{xv}

Separation of Power

According to the *trias politica* principle, the government is divided into three branches: legislative, executive, and judicial, and each branch should have independent and distinct powers and responsibilities. This is called "separation of power", which is an approach coined by Charles Montesquieu to enhance liberty and freedom by avoiding one branch's conflict with those of other branches without overlapping each other.

Separation of Power and Judiciary

Charles Montesquieu, a French philosopher, developed the modern doctrine of separation of power in his book *De L’Esprit des Lois* (1748) *Sprit of Laws*. He stated that

"When the legislative and executive powers are united in the same person, or the same body of magistrates, there can be no liberty. Again, there is no liberty if the judicial power is not

separated from the legislative and executive powers where it is joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Where it joined with executive power, the judge might behave with violence and oppression. There would be an end of everything where the same man or the same body exercises these three powers.^{xvi}

According to his argument, the doctrine of separation of powers demonstrates how to divide power among three branches of government, the legislature, the executive, and the judiciary, while protecting democratic values such as liberty and transparency. The doctrine discusses how, if all forms of government power, are vested in a single or two hands; it would be dangerous and harmful to protect freedom. This dogma ensures that the powers and responsibilities of all three forms of government in a country's constitution are distinct and clearly defined as follows:

- The Legislature should make laws, but not administer or enforce them
- The Executive must administer the laws that have been made, but must not influence the legislature in the making of those laws or stand in judgment of those laws; and the
- Judiciary must determine rights and uphold justice without taking over the functions of law-making or administration^{xvii}.

However, in a realistic scenario, it is difficult to keep demarcation power as rigid separation; therefore, all organs should exercise their power with adequate checks and balances without confrontation among institutions. Supriya Rani, a legal scholar, argued that the concept of separation of powers is only structural and not functional; comparing it to the constitutions of the United States, India, and the United Kingdom. As a result, in practice, the rigid scene of power separation is diluted (Rani, 2020, p.786). Further, case law jurisprudence also pointed out that the powers and responsibilities of political organs should be separated without overlapping each other. In the case of *J. W. Hampton & Co. v. the United States, 276 U.S. 394 (1928)*, the importance of keeping power separate among the three oranges of government in the United States was emphasized. *Nehru Gandhi v. Raj Narain* also observed the distribution of powers among three organs under the Indian constitution. The rule pointed out

that "That is the Indian Constitution there is the separation of powers in a broad sense only. *Duport Steels Ltd. v. Sirs* (1980), Lord Diplock stated that: "At a time when more and more cases involved in the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasized that the British Constitution, though largely unwritten, is firmly based in the separation of powers; Parliament makes the laws, the judiciary interprets them".^{xviii}

The dogma of separation power has accepted that the Judiciary vest separate power and responsibility as an independent body, and that portraying mechanism balance and control executive and legislature.

Role of Judiciary as a Constitutional Safeguard

Judicial review is also a part of judicial supremacy and it simply means unelected judges overturning the will of a democratically accountable Legislature based on open-ended and abstract constitutional guarantees. In the United States, several cases have proved that the Judiciary is the supreme branch of the government; it has hyperactive power of judicial review over the laws passed by the Legislature. The U.S Supreme Court case *Marbury v Madison* (1803),^{xix} established judicial review of legislation and executive action. It may well be the Supreme Court's most important, celebrated opinion.^{xx} Chief Justice John Marshall's ruling in *Marbury v Madison*,^{xxi} was the first to assert judicial review over congressional statutes, allowing laws and executive actions to be struck down as unconstitutional. In the UK, their legal systems in the developed theory of English constitution, judges possess a dual authority as in the legal sphere and in the political sphere.^{xxii} The court plays a political role by interpreting controversial laws and making decisions that are adverse to the law.

Barber stated that a judge reacts to a relevant statute in six different ways as follows:

1. The Judge may apply the statute
2. The Judge may develop the statute in a manner required by the law
3. The Judge may develop the statute in a manner not required by the law
4. The Judge may develop the statute in a manner not forbidden by the law
5. The Judge may change the statute in a manner required by the law

6. The Judge may change the statute in a manner not required by the law.^{xxiii}

The above functions have shown that the Judiciary has competence to develop and alter statutes to an impartial position. Therefore, the Judiciary has given political functions through judicial review involving interpretation of parliamentary statutes. As a result of this, Parliamentary supremacy is challenged and fatally weakened. Parliament may listen to judicial decisions and carried out parliamentary debates based on them. It is obvious that Parliament has taken judicial recognition for their legislation only.

Richard Ekins in his article on judicial supremacy and the rule of law stated that this interpretation power of the Judiciary can be described as judicial supremacy.^{xxiv} His article exemplifies the juxtaposition of parliamentary versus judicial supremacy. He defined the term “judicial supremacy” as denoting a “constitutional order in which the Judiciary, rather than the Legislature, has the final legal authority to determine what is or is not the law, following fundamental principle”.^{xxv} Hence, no one could dispute that the Judiciary has final authority to determine what is or is not law.

DISCUSSION ON PARLIAMENT AND JUDICIARY SUPREMACY UNDER THE CONSTITUTION OF REPUBLIC OF SRI LANKA

The current constitution of Sri Lanka promulgated on 07 September 1978, with unicameral Parliament and an executive president. The constitution has clearly defined each power of responsibilities of the three organs of the government. Under the Constitution, power and responsibilities of government are vested by the parliament (legislature), the President (Executive), and the judicial institutions. The constitution has vested powers clearly to these institutions; however, when considering the constitution, those powers of institutions are overleaped. Further, this combination is politically a fair way to control excess powers through checks and balances. Nevertheless, these relations should not exercise to extirpate one institution to another.

In Sri Lanka, the Supreme Court is the highest and final superior court of record and is empowered to exercise its powers, subject to the provisions of the Constitution. Article 118 of the Constitution of 1978 describes the jurisdiction of the Supreme Court. According to the provisions, the Supreme Court exercises jurisdictions in respect of constitutional matters, jurisdiction for the protection of fundamental rights, consultative jurisdiction are significant among the other jurisdictions. Therefore, the Supreme Court has the power to resolve the tension between the legislature and the executive. The court assists as a trustee over the constitution, resolving the tension between the other organs of the government.

The Supreme Court has actively intervened in politics to enhance governance, for instance providing checks and balances on executive abuse, upholding the supremacy of law, and protecting the rights of citizens in Sri Lanka.

According to the Constitution, there is a reciprocal relationship between the Parliament and Judiciary. Both institutions exercise the sovereignty of the people (Article 3 of the Constitution).^{xxvi} Conversely, Article 4 of the Constitution states that the judicial power of the people is exercised by the Parliament through courts, tribunals, and other institutions.^{xxvii} Further, Article 105 (2) states:

“All courts, tribunals, and institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, other than the Supreme Court, shall be deemed to be courts, tribunals, and institutions created and established by Parliament. Parliament may replace or abolish, or amend the powers, duties, jurisdiction, and procedure of, such courts, tribunals, and institutions”.^{xxviii}

Therefore, the Judiciary and other judicial institutions are created through the Parliament and exist even after maintaining close relationships with the Parliament. As per the above provision, Parliament can abolish and replace these institutions because the Parliament consists of elected people representatives who excesses supreme power.

Further, Parliament can get involved in the removal of Judges of the Supreme Court and Court of Appeal by supporting the President with a majority of the total number of Members of Parliament (including those not present) proving misbehavior or incapacity of judges (Article

107(2)).^{xxix} In addition, Parliament Standing Orders also provide all matters relating to the presentation of such an address, including the procedure for the passing resolutions, and proof of incapacity, and the right of such a judge to appear and to be heard in person or by a representative. Besides, Article 108(1) states that the salaries of the Judges of the Supreme Court and the Court of Appeal shall be determined by Parliament.^{xxx}

This constitutional evidence shows that Parliament has exclusive authority to direct over the judicial institutions through Parliamentary sovereignty. Although functions of the Judiciary also come under peoples' sovereignty, the judicial institutions were born from the Parliament (as per Article 4 of the Constitution).^{xxxi} Therefore, Parliament has supreme power consisting of people's representatives. On the other hand, these powers of the Parliament, for controlling judicial institutions may tend to affect judicial independence too.

As per the constitutional provisions, the Judiciary (Supreme Court) can challenge the Parliament through their jurisdictions to interpret the Constitution. The public has been given the right to interpret government Bills (Ordinary Bills, Constitutional Amendment Bills, and Appropriation Bills) after publication in the Gazette of the Democratic Socialist Republic of Sri Lanka and the first readings at the Parliament. Judiciary has the authority to give their judicial recognition for Parliament interpreting Bills constitutionally.

As per Article 118, the Supreme Court exercises the highest and final superior Court of record in the Republic including jurisdiction in respect of constitutional matters, protection of fundamental rights, consultative jurisdiction, respect of any breach of the privileges of Parliament, and respect of such other matters which Parliament may by law vest or ordain.^{xxxii}

Constitutional Interpretation of Parliamentary Bills

The Article 120 of the Constitution states that the Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution:

- (a) The only question that the Supreme Court can decide in the case of a Bill that is described in its long title as being for the amendment of any provision of the Constitution, or the

repeal and replacement of the Constitution, is whether such Bill requires approval by the People in a Referendum under the provisions of Article 83.

- (b) Where the Cabinet of Ministers certifies that a Bill, which is described in its long title as being for the amendment of any provisions of the Constitution; or the repeal and replacement of the Constitution, is intended to be passed with the special majority required by Article 83 and put forward to the people in a referendum.
- (c) When the Cabinet of Ministers certifies that a Bill that is not described in its long title as being for the amendment of any provision of the Constitution or the repeal and replacement of the Constitution is intended to be passed with the special majority required by Article 84, the Supreme Court's only question is whether the Bill requires approval by the People at a Referendum or whether such Bill is required to comply with paragraphs (1) and (2) of Article 82; or
- (d) Where the Cabinet of Ministers certifies that any provision of any Bill which is not described in its long title as being for the amendment of any provision of the Constitution or the repeal and replacement of the Constitution is intended to be passed with the special majority required by Article 84, the only question which the Supreme Court may determine is whether any other provision of such Bill requires to be passed with the special majority required by Article 84 or whether any provision of such Bill requires the approval by the People at a Referendum under the provisions of Article 83 or whether such Bill is required to comply with the provisions of paragraphs (1) and (2) of Article 82.^{xxxiii}

In addition, Standing Order No. 55 of the Standing Orders of the Parliament provides the process of how Parliament applies Supreme Court determinations.^{xxxiv} The opportunity for the challenge before the Supreme Court is given at the stage of the second reading. Sub-section (2) of this provision of the Standing Order stated it as follows:

“When the jurisdiction of the Supreme Court to determine whether any Bill or any provision thereof is inconsistent with the Constitution has been invoked under Article 121 of the Constitution and a copy of the reference or petition has been delivered to the Speaker”–

- (a) Such reference or filing of a petition shall be conveyed to Parliament by the Speaker on the first day of a meeting of Parliament after such reference is made or such petition is filed;
- (b) No proceedings with such Bill shall be in operation until the determination of the Supreme Court in respect thereof has been made and communicated to the Speaker or until the expiration of a period of three weeks from the date of such reference or filing of such petition, whichever occurs first;
- (c) Upon receipt of the determination of the Supreme Court it shall be announced to Parliament by the Speaker and no debate shall be permitted on such announcement. ^{xxxv}

There are certain limitations of Parliament proceedings that can be seen when petitions are filed before the Supreme Court. Further, the Standing Order states that members should not bring amendments inconsistent with any decision made upon any previous part of the Bill that may be proposed by the Supreme Court.

Table 1: Numbers of bills interpreted by the Supreme Court under Article 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978

Year	No. of Bills	Year	No. of Bills	Year	No. of Bills	Year	No. of Bills
1979	10	1989	16	1999	04	2009	03
1980	05	1990	19	2000	06	2010	03
1981	04	1991	05	2001	04	2011	03
1982	06	1992	02	2002	14	2012	03
1983	03	1993	01	2003	17	2013	15
1984	05	1994	01	2004	11	2014	01
1985	02	1995	01	2005	11	2015	06
1986	03	1996	02	2006	11	2016	13
1987	05	1997	03	2007	08	2017	07
1988	26	1998	03	2008	05	2018	09

(Official website, Parliament of Sri Lanka)^{xxxvi}

It is obvious there are many parliamentary Bills including constitutional amendments that were challenged before the Supreme Court under Article 121 of the Constitution.^{xxxvii} When considering court decisions that were given to the Parliament, the Parliament should have the responsibility to carry out its functions constitutionally respecting court decisions because an independent Judiciary gives their rulings impartially using their power for protection of the Constitution including fundamental rights.

In addition, all Bills and Constitutional Amendments are put forward to the legislature by the executive and only the legislature has the authority to pass those legislations with majority votes. In these circumstances, the executive may also appear with the Legislature and give its

fullest support to pass legislation with the majority without rejections. However, if the court gives its rule mentioning the Bill is unconstitutional, most of the time the executive may manipulate the legislature using executive power and it creates a conflict between the Judiciary and the executive/legislature.

For instance, the decisions given by the Supreme Court, most of the time the Parliament has acted upon accepting those decisions and passed Bills accordingly. A recent example of this would be where the recently-passed Bill of the Colombo Port City Economic Commission was challenged before the Supreme Court (SC) after considering 19 petitions. According to the Constitution, the SC determinations on the Bill were announced by the speaker on the 18th of May. Following consideration of all the petitions, its determinations were given by the Supreme Court saying it could be passed by simple majority amending key clauses. Parliamentary debates were held on the 19th and 20th of May 2021. The Act was then passed with the amendments by a simple majority of the Parliament. Article 121 of the Constitution has given the Supreme Court the right to determine the Bill or any provisions of the Bill that are inconsistent with the Constitution.^{xxxviii} The determination included more than twenty amendments proposing the requirement of either special majority in Parliament to be enacted and in some cases two-thirds in the House and a referendum of the people.

However, The Divineguma Bill,^{xxxix} which was tabled on the order paper of 10th August 2012 was challenged by petitioners before the Supreme Court under Article 121 of the Constitution.^{xl} Finally, the Supreme Court gave the determination mentioning that the Bill is inconsistent with the Constitution and the Speaker informed the Parliament of the decision: the Bill related to matters on the provincial council list, and hence could not become law unless it was referred to each provincial council. After the court determination, it created an uncompromising tension between the Judiciary and the Legislature and finally, the battle culminated in succeeding Parliament as the name of the parliamentary supremacy.^{xli} Further the speaker Hon Chamal Rajapaksa gave land mark rule on Parliamentary supremacy due to the the determination of the Supreme Court on the Divineguma Bill, in his rule he mentioned “ *the rights and privileges of Parliament that have been defended and sustained to safeguard the Supremacy of Parliament by my honorable predecessors cannot be relinquished or abandoned by Your*

Speaker who has to maintain the respect and esteem of this House and to enable me to hand the mantle to my successor – of a title and office which is not to be devalued or debased”.

Thus, it seems that the Judiciary has the sole power to challenge the Parliament legislation if it is inconsistent with the Constitution and give recommendations through their powers and responsibility to interpret Bills before passing by Parliament. Further, the Parliament of Sri Lanka has abided by the Supreme Court determinations respecting the Constitution and citizens’ fundamental rights.

These grounds of interpretation create subsistence of judicial supremacy through the challenge of the original Bills of Parliament by the Judiciary. When considering the legal definition of sovereignty, it is defined as an ultimate authority to impose the law on everyone else in the state and the power to alter any pre-existing law. The Judiciary of Sri Lanka is also vested with supreme authority over the Parliament through interpretation. As per the legal definition, to some extent, it is obvious that the Judiciary may retain its sovereignty by having a power challenge over the Parliament. Nevertheless, the Judiciary could have vested such power with following limitations:

1. The Judiciary can determine the Bills only if the Bill is inconsistent with the Constitution; therefore, it is questionable to say whether the Judiciary has ultimate power compared to the Parliament?
2. Could the Judiciary refrain from completely rejecting the original Bill of the Parliament? The Judiciary can only give recommendations, but Parliament has the authority to pass it appreciating those recommendations without withdrawal.
3. Sri Lankan Judiciary is involved in the early stage (before the second reading of the Bill) of the legislative process (*priori* review), but the Judiciary does not have post-judicial review authority (*posteriori* – after a Bill becomes law). After the certification of the Speaker, no one can amend the Acts other than the Parliament.^{xliii}

When considering the Supreme Court stand of the supremacy, it is emphasized that principle of checks of balances are important to protect Sovereignty of each institution of government. For example According to the S.N Silva CJ held [2002 3 SLR 85 at p.98] that “...*This balance*

of power between three organs of government, as in the case of other Constitution based on a separation of power is sustained by certain checks whereby power is attributed to one organ of government in relation to another".^{xliii} And also, ***Jathika Sevakasangamaya vs Sri Lanka Hadabima Authority*** [SC Appeal 13/2015 decided on 16th December 2015] pointed out the doctrine of separation is enshrined in article 4 read with Article 3 of the constitution of the country, because of this, there are separated three distinct functions involved in government namely legislative, the executive and the judiciary functions. Those have constitutionally equal status and are also independent from one another. One organ should not control or interfere with the powers and functions of another branch of government and should not be in a position to dominate the others and each branch operates as a check on the others^{xliv}. As per the judgments, the principle of checks of balances as modern and developed principle of separation of power is vital instrument to control and interfere of another branch of government organs. Therefore, it is obvious that the Supreme Court should have power to check legislative functions through interpretation.

CONCLUSION AND RECOMMENDATIONS

In conclusion, it is significant to mention that when considering the political definition of sovereignty, parliamentary sovereignty has unanimously been accepted because Parliament is represented by people's representatives. On other hand, a commonwealth country like Sri Lanka recognizes principles and values of the Westminster model; therefore it is noticeable that Parliament is the supreme body. However, Sri Lankan constitution was created with some features of the constitution of the United States, the principle of checks and balances has accepted to control three organs. As a result, the constitution gives for judicial interpretation to check parliamentary legislation before it is passed.

Concurrently, judicial supremacy would have the menace with a close connection with the Judiciary under the Constitution from the confinement of judicial institutions within the Parliament. Such a constitutional basis may have created stabilization of parliamentary supremacy over judicial supremacy. it is notified that although Sri Lankan constitution has

accepted some constitutional principle like Check of balances, the country still maintain the Westminster parliament practices as well. For example any one could not challenge the act which is passed by the Parliament or after certification of the Speaker. Further, the British system, members of parliament are protected under the separate privileges and immunities, the Section 7 of the Parliament (Powers And Privileges) act (No.21 of 1953) clearly states that “Parliament and the members thereof shall hold, enjoy and exercise, in addition to the privileges, immunities and powers conferred by this Act, such and the like immunities as are for the time being held, enjoyed and exercised by the Commons House of the Parliament of the United Kingdom and by the members thereof”^{xlv} Thus, in practice parliament may rise with its supremacy over the judiciary. Therefore, although the article 4 clearly mentions the supremacy, in practice constitution has created some confusion setting on it. In this background, it is recommend that judicial interpretation as a tool of the principle of checks of balances should be extended to the post-judicial review authority. Finally, as the national constitution of is currently blended with myriad of kinds of constitutions of the world namely Westminster and Non-Westminster models, it is strongly recommended that the national constitution should necessarily be amended protecting supremacy of both judiciary and parliament.

ENDNOTES

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- ^{xlii} 'Government Bills' (Parliament of Sri Lanka, 19 March 2021) <<https://www.parliament.lk/en/how-parliament-works/government-bills?showall=&limitstart=>>> accessed on 22 August 2021.

^{xliii}The Supreme Court of the Democratic Socialist Republic of Sri Lanka, “Twentieth Amendment to the Constitution , SC .SD No. 01/2020-39/2020. p.25

^{xliiv}The Supreme Court of the Democratic Socialist Republic of Sri Lanka, “Twentieth Amendment to the Constitution , SC .SD No. 01/2020-39/2020. p. 26

^{xliv} the Parliament (Powers And Privileges) act (No.21 of 1953)

