

Supremacy of Parliament

This article was written by a law student for the general public.

Democracy is known as “government by the people”. Representative democracy acknowledges that it is impossible to have every decision made by multitudes of individuals, and it therefore creates various institutions to make laws and other decisions required in the day-to-day life of the state. The two main models of representative democracy – parliamentary democracy and constitutional democracy – differ in their institutional design.

In a parliamentary democracy, the Parliament is supreme and no other governmental institution has the power to nullify its laws. If a citizen finds a certain law repugnant, his only option is to mobilize a change in Parliament (for example, by campaigning in favour of a certain issue or by joining a political party), such that Parliament changes that law. There is nothing a citizen can do against a law that is believed to have violated his rights other than push for political change.

In a constitutional democracy, Parliament is not omnipotent. Its powers are constrained by the Constitution. In most constitutional democracies, if a citizen believes that a certain law violates a certain provision in the Constitution, she can file an action in a court of law. Courts have the power of judicial review on the constitutionality of legislation. If the court finds that the law does indeed violate the Constitution, it can strike the law down.

Prior to 1982, Parliamentary supremacy reigned in Canada. The *British North America Act* set the division of powers between Parliament and the provincial legislatures where each legislature was supreme such that, within its jurisdiction, no other institution had the power to declare its laws unconstitutional. This situation changed in 1982 with the adoption of the *Canadian Charter of Rights and Freedoms* as part of the *Constitution Act, 1982*. This Act prescribes that “the Constitution of Canada is the supreme law of Canada” (s.52). Thus constitutional supremacy replaced Parliamentary supremacy in Canada. Consequently, if Parliament or any provincial legislatures now enact a law which violates a section of the *Charter*, a court has the power to strike this legislation down.

Some commentators argue however, that since s. 33 of the *Charter*, the notwithstanding clause, allows Parliament and the provincial legislatures to override certain provisions of the *Charter*, Canadian legislatures are still partially supreme.