
WHO IS SOVEREIGN? A CONSTITUTIONAL INQUIRY IN THE AGE OF GLOBALIZATION

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ABSTRACT

This paper examines the changing idea of sovereignty in the context of globalization, particularly within the framework of Indian constitution and politics. It makes a distinction between internal and external sovereignty, tracing their historical evolution from medieval and Westphalian origins to present day pluralist and cosmopolitan views. Referencing classical and contemporary political philosophy from *Bodin* and *Hobbes* to *Laski* and *Pogge* the research investigates how sovereignty is understood in the Indian Constitution, especially through the perspective of the Constituent Assembly Debates and judicial interpretations.

Additionally, it assesses the conflict between national independence and international responsibilities, especially in fields like human rights, trade, and foreign relations. By considering both communitarian viewpoints, the paper advocates for a multidimensional interpretation of sovereignty that integrates the democratic desires of the populace and India's position in a globalized context. In the end, it aims to explore whether sovereignty in India belongs to the people, the Constitution, or the government, and how this influence governance, accountability, and international relations.

Keywords: Sovereignty, Internal sovereignty, External sovereignty, Globalization, Communitarian, Cosmopolitans, Constitution, Westphalia.

Introduction

The term 'sovereignty' in its general sense, means supremacy or the right to demand obedience. A sovereign State is one which is no subordinate to other. It is supreme over the territory under its control. Sovereignty is the chief attribute of statehood. Initially in the draft constitution the Preamble starts with "Bharat shall be a sovereign, independent, democratic, socialist Republic."¹ The term "sovereignty" impliedly denotes to Supreme and Independent authority, or in other words an authority which functions independently without any interruption from any other authority. But as *Salmond* argued, "sovereignty needs not mean unlimited supremacy as supposed by *Austin*. An authority may be sovereign within its sphere and in that sphere its power is uncontrolled."²

With the framing of the Indian Constitution, in the Preamble, which starts from the word "We the people of India"^{3,4}, somehow denotes that the sovereignty belongs to the people of India in a collective sense.⁵ Individual cannot claim sovereignty over the other individual or against the state, it's always the people at large who will be considered as a sovereign. Like in China the sovereignty rests in the whole people.⁶

Initially there was a debate over the inclusion of the word 'Sovereign', as which of the following should be included in the 'Preamble', "Sovereign Independent Republic, Sovereign Democratic Republic, or Sovereign Democratic State". In the draft Constitution, where the debate was going on with respect to the term of "state" it was the issue to decide, where the

¹ All powers of government, legislative, executive and judicial, shall be derived from the people, and shall be exercisable only by or on the authority of the organs of the government established by this Constitution.

² V.D. Mahajan, JURISPRUDENCE AND LEGAL, 103 (EBC Publisher, 5th Edition. 1987). Pp.103.

³ The Constitution of India, 1950, Preamble.

⁴ CONSTITUTIONAL ASSEMBLY DEBATE, Vol. VII, 15th November, 1948, pp. 416, Shri M. Ananthasayanam Ayyangar, with reference to the term 'we the people of India', he argued, we are the persons who have met to give a constitution for ourselves. Unless we are sovereign, we cannot give a constitution for ourselves.

⁵ CONSTITUTIONAL ASSEMBLY DEBATE, Vol. VII, 15th November, 1948, pp. 414, Shri Mahavir Tyagi argued, that the Preamble only causally mention and constitute India into a sovereign Union, a conclusion may be drawn from it that the sovereignty vests in the 'people'. He was not satisfying with this and demand the 'sovereignty' should be defined in the body of the constitution itself. Also, want that sovereignty should vest in the citizens and not to the state.

⁶ M.A. Carrai, *Introduction. In: Sovereignty in China: A Genealogy of a Concept since 1840*. Cambridge Studies in International and Comparative Law. Cambridge University Press; 2019:1-17.

sovereignty lies?⁷ Further, Shri Lokanath Misra,⁸ had also asked to the committee that to whom the sovereignty truly vests after freedom, either in the people of India? In the Cabinet? Or In the Government?⁹

The Evolution of sovereignty: From Westphalian sovereignty, colonia and post-independence.

In the Middle Ages, sovereignty in the sense of unfettered power of legislation was more easily associated with the Pope than with secular rulers. For the latter were regarded not only as bound by feudal law, but also as coming within the ecclesiastical jurisdiction, whereas the Pope was regarded as outside and even above the Church.¹⁰ The modern doctrine of 'sovereignty derived from two lines of development which heralded the end of the medieval period. On the one hand, with the rise of new states who anxious to assert their total independence in a new age of economic expansion and to reject all feudal notions of overlapping or papal interference; while on the other hand, a departure from the medieval idea of law where the customs been considered as law, and legislation was merely a form of declaring the existence of new customs.¹¹

The concept of Westphalian emerged in the late medieval Europe during the period of Feudalism to modern territorial statehood. The Treaties of Westphalia that ended the Thirty Years War in 1648 marked an important milestone in this transition. Westphalian sovereignty has served to legitimate and enshrine structures of political authority in response to its specific historical and geo-political contexts. It permits the state which can be represented by King or Queen, or a democratically elected government to claim control over the affairs within its territorial boundaries without interference from another state, also entitled the state to manage its relations with another state as being an independent and sovereign state.¹²

⁷Constitutional Assembly Debates, Vol. VII, 15th November, 1948 pp. 414, It was argued by Sir Mahavir Tyagi, as he found that the residence of sovereignty has not been described. Further, he argued that, "I shall be content if the Honorable mover of the Constitution would place before the house either in connection with the preamble or some other Article of the Constitution, an amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people. He also, warns the assembly that, if we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the king.

⁸ One of the members of the Constitutional Assembly Debate.

⁹ *Ibid*, CAD, 15th November, 1948, pp. 418. He argued, that, I do not want to insist that this amendment should be passed and put in here, but it must be clear that there need to be no reservation in the minds of us that sovereignty does not lie in each one of the citizens of India.

¹⁰ W. Ullman, *Principle of Government and Politics in the Middle Ages*, (1961), pp. 72, 139, 150.

¹¹ Michael D.A. Freeman, *Lloyd's, Introduction to Jurisprudence* 195 (9th edition, 2014), pp/ 195.

¹² Harald Bauder & Rebecca Mueller, *Westphalian Vs. Indigenous Sovereignty: Challenging Colonial Territorial Governance*, GEOPOLITICS, 2021, pp. 158, <https://doi.org/10.1080/14650045.2021.1920577>, 16/02/2025.

Westphalian sovereignty has generally worked against Indigenous communities. Some scholars propose that European conquerors in North America did not adhere to the *terra nullis* doctrine. Instead, they presumed that Indigenous political authority was centralized in a sovereign power, similar to the monarchies of Europe.¹³ Westphalian sovereignty continues to uphold settler colonialism. Wherein the Indigenous people are considered participants of that settlement within the bounds of the nation state. Also, it prevents other countries or international bodies from interfering in the internal working of the state. It further allows settlers states to ignore international human rights standards and deny economic, social and political rights to Indigenous people who live within state boundaries. In addition to this the settler colonial state can also violate Indigenous land and sovereignty rights.¹⁴

In ancient times, there was no concept of sovereignty as it came from the Middle Ages and developed during the Reformation and Renaissance.¹⁵ A French political philosopher, *Jean Bodin*, argued, the state possesses absolute and perpetual power, and that sovereignty is indivisible and unlimited, except by divine and natural law.¹⁶

The emergence of sovereignty in Europe coincided with the period when European nations began expanding their influence through colonization.¹⁷ During this time, philosophical debates about sovereignty were occasionally linked to efforts to legitimize colonial practices. Several 16th century European philosophers, such as *Jean Bodin*, *John Locke*, *Baruch Spinoza*, *Jean-Jacques Rousseau*, *Immanuel Kant*, and *George Wilhelm Friedrich Hegel*, had made significant contribution to the discussion on sovereignty.¹⁸ *Immanuel Kant* argued, the right to visitation imposes certain limits on a sovereign's authority to bar foreigners from entering their territory. However, he clarified, this right does not grant foreigners the privilege of permanent residence but instead recognizes a universal right to temporary visitation. By distinguishing

¹³ Vine Deloria Jr., "Self-Determination and the Concept of Sovereignty" in J.R. Wunder (ed.) *Native American Sovereignty*, 107-14, New York, https://api.pageplace.de/preview/DT0400.9781135577032_A25033337/preview-9781135577032_A25033337.pdf, 16/02/2025.

¹⁴ Caitlin Gordon Walker, *Beyond Inclusion: Canadian and Indigenous Sovereignities in Mainstream Museums*, (2019) 199 *British Quarterly* 129-49, <https://ojs.library.ubc.ca/index.php/bcstudies/article/view/190327/188520>, 16/02/2025.

¹⁵ Janos Rapsak, "Sovereignty Past and Present", (1998) *Akademiai Kiado*, 1998, <https://www.jstor.org/stable/pdf/41468521.pdf>, 24/02/2025.

¹⁶ Jean Bodin, *The Six Books of the Commonwealth*, Book 1, Ch. 8, On Sovereignty, (10th printing, 2007), pp.1,7,8. According to him, the ruler is the source of all laws. He has the absolute power of law-making although the law of nature makes him respect proprietary rights and keep faith with another ruler.

¹⁷ Luke Glanville, *Sovereignty in Early Modern Europe*, in *Sovereignty and the Responsibility to Protect: A New History* (Chicago, IL 2013), <https://doi.org/10.7208/chicago/9780226077086.003.0003> (accessed July 14, 2025).

¹⁸ Harald Bauder & Rebecca Mueller, *Westphalian Vs. Indigenous Sovereignty: Challenging Colonial Territorial Governance*, 2021, *Geopolitics* 158, available at <https://doi.org/10.1080/14650045.2021.1920577>, 17/02/2025. Wherein the author referred to the work of Raia Prokhovnik, *SOVEREIGNTY HISTORY AND THEORY*, published in May 28th, 2013.

between visitation and permanent settlement, *Kant* aimed to challenge the legitimacy of conquest and colonization.¹⁹

India's sovereignty did not solely rely on national citizenship but embraced a broader, non-national concept.²⁰ Over the time, this understanding evolved through practice and debate. The commonwealth negotiation among newly created Republic state 'India' and the British regime, which was surrounding to sovereignty challenged the notion that India rigidly adhered to a strict Westphalian model. Instead, the pursuit of equality after independence led India to adopt a flexible and innovative approach, considering various political configurations.²¹ Further, the negotiations demanded for the equal status and treatments for the Indian citizens who were one of the British colonies, among the other one who were considered as "White Dominions".²²

With respect to the independent domestic governance, the Government of India Act 1919 enacted and aimed to increase Indian Participation in the administration and set a target for self-governance within the British Empire. Additionally, Indians actively campaigned for grater equality in the imperial structure. Further the Government of India Act 1935, made little headway in securing agreement over India's status in the British Empire.²³

In September 1946, with the establishment of the Interim Government, Nehru assumed the role of Vice-President of the Council, giving him significant influence over India's relationship with Britain.²⁴ As independence approached, he introduced key conceptual changes by aligning the seemingly conflicting ideas of India independence with a Commonwealth connection. Two pivotal actions marked this shift: the adoption of the Objective resolution in the Constituent

¹⁹ Imanuel Kant, *Perpetual Peace: A Philosophical Essay*, (Swan Sonnenschein & Co. Lim. 1903) [1975]. Translated with Introduction and Notes by M. Campbell Smith.

²⁰ Raphaëlle Khan, Sovereignty After the Empire and the Search for a New Oder: India's Attempt to Negotiate a Common Citizenship in the Commonwealth (1947-1949), (2021) *Journal of Imperial and Commonwealth History* 1146, Aug. 10th, 2021, pp. 1146, <https://www.tandfonline.com/doi/full/10.1080/03086534.2021.1950322#:~:text=While%20studies%20often%20focus%20on%20the%20transformation%20of,a%20basis%20for%20its%20relation%20to%20the%20Commonwealth.16/02/2025>.

²¹ *Ibid*, Raphaëlle Khan, Sovereignty After the Empire and the Search for a New Oder: India's Attempt to Negotiate a Common Citizenship in the Commonwealth (1947-1949).

²² *Ibid*, At the start of the century, Indian nationalists recognized the need for a new constitutional structure to address India's unequal status compared to Britain and the White Dominions. The 1926 Balfour Declaration reinforced this disparity by granting autonomy and equal status to self-governing Dominions while excluding India. This inequality was further formalized by the Westminster Statute of 1931, which solidified the unity of the Dominions through a shared allegiance to the Crown.

²³ *Ibid*, pp1147.

²⁴ V.P. Menon, The Transfer of Power in India Ch. 12–13 (History Blogspot ed., n.d.), <https://archive.org/details/in.ernet.dli.2015.98638>.

Assembly, which proclaimed India as an 'independent sovereign republic', and the decision for India to remain a Dominion upon gaining independence.²⁵ Nehru later emphasized India's commitment to cooperating extensively with other nations, including Britain and the Commonwealth.

Hereabove, there are two perspectives of the sovereignty author tried to show, one where the sovereignty rests to the citizens with the inception of the Indian Constitution, along with the shift in the sovereign principle where the 'Indian State' being a country, been considered as a sovereign and tried to make a part of the commonwealth along with separate and independent dominion status who is sovereign in its functioning.

The key question addressed is whether India's sovereignty ultimately belongs to its citizens or the state itself.?

Polycentric Sovereignty and Democratic Authority: A Reappraisal of Monistic and Pluralistic Theories.

A sovereign is supreme over the territory under its control.²⁶ Its power to exact obedience from its members is the mark of internal sovereignty.²⁷ Early political thinkers such *Machiavelli*²⁸, *Bodin*²⁹ and *Hobbes*³⁰ supported the idea that sovereignty should rest with a single ruler, such as monarch.³¹ However, later thinkers like *Locke*³² and *Rousseau*³³ opposed this absolutist view, advocating instead for popular sovereignty, where authority resides with the people. This principle of popular sovereignty is now seen as a cornerstone of modern democratic theory. As

²⁵ *Ibid*, footnote 20. Raphaëlle Khan, Sovereignty After the Empire and the Search for a New Order: India's Attempt to Negotiate a Common Citizenship in the Commonwealth (1947-1949).

²⁶ Sir Arthur Watts, "Sovereignty", *Encyclopedia Princetoniensis*, Princeton University, <https://pesd.princeton.edu/node/671>, 24/02/2025.

²⁷ V.D. Mahajan, *Jurisprudence and Legal Theory*, 103 (EBC Publisher, 5th Edition. 1987), pp.103.

²⁸ Niccolo Machiavelli's argument in *The Prince* (any edn. Referenced) is designed to demonstrate that politics can only coherently be defined in terms of the supremacy of coercive power; authority as a right to command has no independent status.

²⁹ For further understanding the term sovereignty from the Bodin's perspective refer to John Bodin's, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, Julian H. Franklin, (tr. & ed.). (Cambridge University Press, Tenth Print 2007), New York, Book 1.

³⁰ Thomas Hobbes, *Leviathan*, Ch. XVII (Oxford World's Classic 1660), If the state in totality is an artificial person, sovereignty is the soul of this person contract make up the body of the Leviathan with the sovereign being the head who rules over them and sovereignty being the life-giving soul to this artificial person.

³¹ As the overriding merit of vesting sovereignty in a single individual was that sovereignty would then be indivisible; it would be expressed in a single voice that could claim final authority.

³² Raghuveer Singh, "John Locke and the India of Sovereignty" (1959). Vol.20, No. 4, *Indian Journal of Political Science* pp. 320-334, available at <https://www.jstor.org/stable/42743527>, 16/02/2025.

³³ Rousseau, espoused popular sovereignty, acknowledge the 'general will' which was indivisible whole which could only be articulated by a single individual, who he called 'the legislator'.

the foundational concept of this sovereignty belongs to the principle of “Let a hundred flowers bloom”, particularly in Indian context where diversity of communities their traditions and cultures prevail.³⁴

The later thinkers were united with the view that ‘sovereignty could be and should be located in a determinant body.’³⁵ This is the traditional doctrine of sovereignty which is called the ‘*Monistic Theory of Sovereignty*’.³⁶ Later on, in the age of *Pluralistic and Democratic Government*, Harold J Laski and other pluralists have argued that the ‘monistic theory’ is intrinsically linked to its absolutist past and so is frankly undesirable.³⁷ They emphasized that the political power in any given society does not rest only in the state apparatus, but is shared by a number of groups and institutions other than the state in that society. Thomas Pogge, also talked about vertical indivisibility where the absolute sovereignty shared among different levels of governance.³⁸ The concept of sovereignty is seen as outdated in modern governments, which operates through checks and balances. Pluralists argue that liberal-democratic principle oppose sovereignty and call for limits on state power.³⁹ However, they overlook the monistic view, which asserts that the state alone has legal authority to enforce its laws within its territory. Only

³⁴ As it is entirely appropriate that different communities, cultures, and religions should have different ideas about the relevant value of all the necessary and desirable social goods and also about the distributive criteria appropriate to each.

³⁵ Thomas Hobbes, “Leviathan”, ch.18 (1660). Where he argued that, when many men consent and make a treaty, it is called generality; each agrees with one another that whoever person or group of men is given the right to represent them all by majority, namely to become their representatives; everyone, whether they voted for it or against it, shall authorize all actions and decisions of that person or group of men as if they were his own, so that they may live together in peace and be safe from other men.

³⁶ John Austin, *The Province of Jurisprudence Determined*, Lecture 1, he introduced the concept of sovereignty and distinguishes between the sovereign and the subjects of law. John Austin was closely associated with the ‘monistic theory of law’, His theory emphasizes the idea that the sovereign has ultimate authority and power, and that the law is the command of the sovereign enforced through sanctions. Further, he outlines the idea that sovereignty is indivisible and rests with a single, central authority, which is the hallmark of his monistic theory. This theory contrasts with the pluralistic or dualistic approaches, which suggest multiple sources of authority.

³⁷ Harold J. Laski, *Studies in the Problem of Sovereignty*, ch.1 (Yale Univ. Press 1917). While criticizing the absolute sovereignty he advocated the significance of non-state actors in shaping societal structure and decisions. He argued on, “. ‘Everywhere the One comes before the Many. All manyness has its origin in Oneness and to Oneness it returns’”, Where a single, unified source of authority (one) is considered the origin and center of power that subjugates all pluralistic elements (many) within the state. However, he does not use this notion to support it, but rather to highlight its limitations. He suggests that “many” emerges from “one” and ultimately returns to it – implying that a singular perspective reduces the complexity and diversity of society to a single source of authority, which he deems unacceptable.

³⁸ Thomas Pogge, *Cosmopolitanism and Sovereignty*, Chicago Journal, (1992) 103(1) Ethics, 48-75, available at <https://www.jstor.org/stable/2381495> What he argued that government authority or sovereignty be widely dispersed in the vertical dimension. What we need is both centralization and decentralization, a kind of second order decentralization away from the now dominant level of state.

³⁹ *Ibid*, supra note 33, (Harold J. Laski, *Studies in the Problem of Sovereignty*).

the state's actions are final; appeals cannot be made against its sovereign power.⁴⁰

It can be argued that neither level of government can be considered truly sovereign, as sovereignty ultimately lies with the constitution, which distributed power between the different levels.⁴¹ However, since the authority to interpret the constitution is vested in the Supreme Court, one might conclude that the Supreme Court holds the true sovereign power.⁴² However, the Supreme Court cannot be regarded as the ultimate constitutional authority, as its interpretations can be overridden through amendments to the original documents. Therefore, it can be argued that sovereign can be seen as residing with the body authorized to amend the Constitution. In India, constitutional amendments require a two-thirds majority in both Houses of Parliament and the approval of a least half of the states.⁴³ With this we can say that sovereignty ultimately resides with the people, as reflected in the Preamble, which begins with the words “We the people of India.”⁴⁴ The people exercise this sovereign during elections when they choose their representatives to govern on their behalf.⁴⁵ The Parliament, as the first pillar of democracy, operated through these elected representatives, who advocate for the welfare of the populace. This welfare is ultimately achieved through the enactment of codified laws and statutes. Given these complexities, a “Polycentric Concept of Sovereignty”,⁴⁶ has emerged in federal states.

This discussion invites a deeper inquiry: if sovereignty resides with the people of India, what

⁴⁰ For further understanding on the Pluralistic views on sovereignty, see, Harold J. Laski's, *A Grammar of Politics*, Ch. 2 & 7 (4th edn., George Allen & Unwin Ltd., Feb 1938).

⁴¹ India's internal sovereignty is embedded in its Constitution, which declares India to be a sovereign state. Article 1, “India, that is Bharat, shall be a Union of States”, affirming India's status as a sovereign nation with supreme authority within its borders. It further includes, “Separation of Power”, “Role of Federalism and State Autonomy in Sovereignty”.

⁴² *Kesavandanda Bharti v. State of Kerala*, AIR (1973) 4 SCC 225 ¶ 1106 (India) (Jaganmohan Reddy, J., concurring).

⁴³ Procedural requirement of Article 368 of The Constitution of India, 1950.

⁴⁴ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299; *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501.

⁴⁵ A question could be asked at this point whether the people who are sovereign, withdraw their votes if their elected representative acted with ill-intent and against the public interest? If the answer is ‘yes’ then by what means, and if the answer is ‘no’ then it poses a doubt about the sovereign authority of people at large.

⁴⁶ Elizabeth Baldwin, Andreas Thiel, et al, Empirical Research on Polycentric Governance: Critical Gaps and a Framework and a Framework for Studying Long-term Change, (15 August 2023) *Policy Studies Journal*, (unpublished manuscript, available at, file:///D:/Business%20Law%20(LLM)/Sem%202/Law%20and%20Justice%20in%20Globalised%20World/Sovereignty/Baldwin%20-

%20Empirical%20research%20on%20polycentric%20governance%20%20Critical%20gaps%20and%20a%20framework%20for.pdf. The polycentric concept of sovereignty is an intriguing idea that reimagines how authority and governance are structured. Unlike, traditional models of sovereignty, where power is centralized within a single entity, polycentric sovereignty envisions a more decentralized and interconnected approach.

does that entail, and how does it contribute to their well-being? The tension between absolutist sovereignty and global ethical frameworks highlights the need for nuanced approaches. As *Michael Walzer* contends, justice must evolve beyond humanitarian aid, grounded in the cultural and political contexts of each society⁴⁷ underscores the significance of local traditions and collective values. This aligns with *Lincoln's* enduring democratic principle: "government of the people, by the people, for the people," reaffirming the centrality of citizenry.⁴⁸ Notably, the Preamble of the Indian Constitution bestows meaningful recognition upon its people, while simultaneously obliging the state to uphold their rights and dignity.

The Principle of External Sovereignty: India's Constitutional Independence and Global Autonomy.

A sovereign state exercises supreme authority within its territory and stands as an autonomous entity in the global order.⁴⁹ This independence legitimizes domestic governance and democratic functions, anchored in a constitution codified or customary that embodies the people's collective will. Constitutional sovereignty thus affirms the state's distinct and self-governing identity among nations.⁵⁰

In *Kantian* terms, such sovereignty is not about arbitrary command but about adherence to a system of universalized laws created by and for rational agents. *Kant* argues that a rightful civic constitution must derive legitimacy from the consent of free and equal citizens⁵¹, making the state's autonomy morally defensible.

With reference to the external sovereignty sovereign state exercises exclusive jurisdiction over its territory as stated above⁵² along with its resources, population and domestic events. This concept traces its formal roots to the 1648 Peace of Westphalia, which institutionalized non-intervention particularly in religious matters and affirmed the principles of territorial integrity

⁴⁷ Michael Walzer, *Global and Local Justice*, Straus Institute Working Paper No. 08/11 (2011), available at <http://nyustraus.org/index.html>. Michael Walzer distinguished between maximalist justice and egalitarian vision of global redistribution and minimalist justice, which calls for immediate relief in cases of human suffering. Walzer critiques maximalist approaches as potentially overreaching.

⁴⁸ Lincoln, Abraham, *The Gettysburg Address*, in Dale Salwak (ed.), *America's Most Famous Speeches*, Random House, New York, 1984, p.16.

⁴⁹ V.D. Mahajan, *Jurisprudence and Legal Theory*, 103 (EBC Publisher, 5th Edition. 1987), pp.103.

⁵⁰ Janice E. Thomson, *State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research*, OXFORD UNIVERSITY PRESS on Behalf of THE INTERNATIONAL STUDIES ASSOCIATION, (June 1995), <https://www.jstor.org/stable/2600847?seq=1>, 17/02/2025.

⁵¹ Immanuel Kant, *Perpetual Peace: A Philosophical Essay*, Swan Sonnenschein & Co, LIM., London, 1795

⁵² *Ibid*, p.1

and political independence. Echoing this legacy, the Charter of the United Nations urges its members to refrain from the threat or use of force against any state's territorial or political integrity, or from actions contrary to the UN's core objective.⁵³ All this mark an identity of a country as a separate entity which have its own institutional existence along with different nations. Which is autonomous in nature and functions independently.

India's constitutional framework, notably the Preamble, Article 51 and 253, lays the foundation for a vision of sovereignty this is ethically grounded and globally relevant. This vision, while upholding constitutional supremacy, actively engages with transnational obligations and global norms. Such duality finds resonance in *Thomas Pogge's* theory of institutional cosmopolitanism, where sovereignty is neither monolithic nor territorially insular, but dispersed across multiple level of governance.⁵⁴

Pogge critiques *Hobbesian* and *Kantian* conceptions of absolute sovereignty, asserting instead that "law-governed coexistence is possible without a supreme and unconstrained agency".⁵⁵ *Pogge* defines social-justice cosmopolitanism as a designing global institution that take equal account of the interests of all human beings.⁵⁶ Unlike Rawl's nation-centric theory of justice, *Pogge* argues that transnational institutional arrangements must be morally assessed, especially when they foreseeably create avoidable human rights deficits.⁵⁷ This is highly relevant to India's treaty making capacity, which under article 253 allows parliament to legislate for the entire nation to fulfill international obligations, thus integrating external sovereignty into constitutional praxis. India reflects this through its engagement in multilateral forums (UN, WTO, BRICS) while maintaining strategic autonomy.

Further, *Pogge's* proposition that global institutional schemes impose shared moral responsibilities complements India's constitutional commitment to justice and peace.⁵⁸ The Directive Principles (art. 51) reinforce this ethical posture, encouraging "respect for international law and treaty obligations." India's foreign aid programs, climate diplomacy, and cautious stance on humanitarian intervention demonstrate this ethical pragmatism.

⁵³ Charter of the United Nations and Statute of the International Court of Justice, 1945, 2(4), San Francisco.

⁵⁴ Thomas Pogge W. "Cosmopolitanism and Sovereignty." (1992) 103(1) *Ethics*, 48-75. University of Chicago, available at Press. <http://www.jstor.org/stable/2381495>.

⁵⁵ *Ibid.*, 59.

⁵⁶ Thomas Pogge, "Cosmopolitanism: A Path to Peace and Justice, (2008) 1(1) *Journal of East-West Thought* 14.

⁵⁷ *Ibid.*, 17.

⁵⁸ *Ibid.*, 58, footnote 51, Pogge, Thomas W. "Cosmopolitanism and Sovereignty."

Judicial interpretations, such as *Kesavananda Bharti v. State of Kerala*⁵⁹ and *Indira Gandhi v. Raj Narain*,⁶⁰ underscore sovereignty as a people centric and constitutional construct, not merely an executive prerogative. Pogge's call for democratic participation by those significantly affected by decisions thus finds constitutional echo in India's democratic ethos and federal inclusiveness.

India's external sovereignty is reflected in its independent status in international relations, characterized by active participation in multilateral organizations like the United Nations (UN), World Trade Organization (WTO), and BRICS to influence global policies on trade, security, and climate change. India exercises strategic autonomy through a balanced foreign policy, maintaining platforms like the Quadrilateral Security Dialogue (QUAD) to secure its economic and geopolitical interests. This autonomy allows India to collaborate globally without compromising its sovereign decision-making power. The Non-Aligned Movement (NAM) laid the foundation for this approach, enabling India to avoid rigid alliance during the Cold War while pursuing national interests in a multipolar world. India's ability to assert its sovereignty while adhering to international norms demonstrates its commitment to peaceful coexistence and independent foreign policy.^{61,62}

In addition to this, in case where the country functions as a sovereign, *Michael Walzer* concedes in his work that sovereignty cannot be an inviolable shield when a state fails its fundamental duty to protect its people. Instances of genocide, ethnic cleansing, and mass atrocities demand a pragmatic and morally constrained response. Under his minimalist conception of global justice, humanitarian intervention is justified not to restructure regimes or imposes political values, but solely to halt suffering and prevent further harm.⁶³

Internal vs. External Sovereignty: Conflicts and Challenges.

India's internal cultural diversity, regional disputes, and political complexities play a critical

⁵⁹ *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

⁶⁰ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

⁶¹ World Trade Organization, "What We Do", available at https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm. 17/02/2025.

⁶² Ministry of External Affairs, Government of India, *Annual Report 2023*, available at, <https://www.mea.gov.in/>. 17/02/2025.

⁶³ *Ibid*, Michael Walzer, *Global and Local Justice*, Straus Institute Working Paper No. 08/11 (2011), This understanding of the concept given by Walzer aligns with a pluralistic framework of sovereignty, where the legitimacy of intervention is measured against the urgency of human need, rather than ambitions of global governance.

role in shaping its external sovereignty and diplomatic engagements. Boundaries between domestic and foreign policy in India is increasingly indistinct, as domestic tensions in regions like Kashmir, Punjab, Tamil Nadu, and the Northeast often extended into India's international relations with neighbor like Pakistan, Sri-Lanka, Bangladesh, Nepal and Myanmar.⁶⁴ Furthermore, India's pursuit of strategic autonomy on the global stages faces growing pressure from international norms, especially regarding human rights, humanitarian interventions like the Responsibility to Protect (R2P), and global legal obligations. India frequently opposes external interventions, interpreting them as a challenge to its sovereignty and non-interference policy, particularly over regions like Kashmir.⁶⁵

It can be broadly argued that countries like United States and India experience a political divide, with two dominant factions influencing governance according to their respective agendas. In the United States, the Democratic Party often advocates for cooperation with international organizations such as the United Nations, embracing a cosmopolitan approach that emphasizes multilateralism and global governance. Conversely, the Republican Party tends to prioritize national interest and adopts a nation-state or communitarian approach, often expressing skepticism towards global commitments. A notable example is former President Donald Trump's withdrawal from the Paris Climate Agreement⁶⁶ after his election victory, reflecting his administration's pursuit of capitalist growth and energy independence. While cosmopolitans advocate for collective assistance to underdeveloped countries through joint efforts by developed nations, Republicans typically favor providing unilateral aid. This approach aims to reinforce U.S. dominance rather than fostering collaborative engagement with other advanced economies as they looked for during the Cold-War era. Similarly, in India, the Indian National Congress generally aligns with international bodies like the UN and UNHRC, promoting human rights, media freedom, and global cooperation.⁶⁷ In contrast, the Bhartiya Janata Party

⁶⁴ Johannes Dragsback Schmidt, The Internal and External constraints on foreign policy in India, exploring culture and ethnic sensitivities, (2017) *Third World Quarterly*, Vol 38, 2017 – Issue, TAYLOR & FRANCIS, LTD Online, available at, <https://www.tandfonline.com/doi/full/10.1080/01436597.2017.1282311>, 20/02/2025.

⁶⁵ *Ibid*,

⁶⁶ Such decision was completely contrary to the Democratic President's commitment towards Green Climate Fund. As Barack Obama Administration had committed to contributing to the Green Climate Fund (GCF), which helps developing countries mitigate and adapt to the impacts of climate change. With the U.S. out of the agreement, funding for this initiative was immediately cut, leaving nations primarily in the Global South without critical resources, see report by Nik Popli, *What Happened the Last Time Trump Withdrew from the Paris Agreement*, TIME, Jan. 21st 2025, <https://time.com/7208955/trump-paris-climate-agreement-withdraw-impact/>, 20/02/2025.

⁶⁷ During the tenure of the Indian National Congress, number of the statutes being enacted while considering the Human Rights, for instance, Right to Information, 2005, Right to Elementary Education, 2009, Protection of Women from Domestic Violence Act, 2005, Amendment to the Hindu Succession Act, 2005 etc. on the other hand, an scheme was passed namely, the UJJWALA Scheme, even which was not executed properly, See, *Refills under Ujjwala scheme too low, says CAG report*, Dec. 11th 2019,

(BJP) is perceived as emphasizing national sovereignty or nationalism and self-reliance, often resisting external pressures on human rights and press freedom.⁶⁸⁶⁹ These contrasting approaches highlights the ongoing tensions between internal governance priorities and external obligations in both democracies.

India's sovereignty is defined by its ongoing effort to balance domestic priorities with global commitments. As globalization increasingly blurs the distinction between national and international governance, India's approach to regional security, human rights, and diplomacy will influence its ability to assert sovereignty while engaging in global affairs. Internal sovereignty entails a government's responsibility to its citizens, ensuring their welfare, security, and rights through a communitarian approach that prioritize the national interests and self-governance, certainly in India where the "people are sovereign" so it is required for the government to act according to the will of the people. It further grants state autonomy in policy decisions, governance and law enforcement without external intervention.

In contrast, external sovereignty extends beyond national borders, aligning state's role with international obligations, because here state as a whole consider as a sovereign not the citizens, such as justice, human rights, economic cooperation, and poverty alleviation, reflecting a cosmopolitan perspective that considers global well-being and work for distribution of primary social goods.⁷⁰

Additionally, the Atmanirbhar Bharat initiative exemplifies the paradox of sovereignty, where India asserts economic self-reliance while remaining deeply engaged in global economic networks. Launched in response to the COVID-19 pandemic, this initiative aims to reduce import dependency, promote domestic manufacturing, and enhance industrial self-sufficiency through policies like Production-Linked Incentives (PLI) scheme and import substitution measures. However, despite its protectionist stance, India continues to seek foreign

<https://economictimes.indiatimes.com/news/economy/policy/refills-under-ujjwala-scheme-too-low-says-cag-report/articleshow/72481139.cms>, 20/02/2025.

⁶⁸ Chris Fitzgerald, The World Needs to Confront India's Human Rights Record, *The Organization for World Peace*, 29 June 2022, available at <https://theowp.org/reports/the-world-needs-to-confront-indias-human-rights-record/>, 20/02/2025.

⁶⁹ Kalpana Jain, In Modi's India, Press Freedom Is Curbed and Journalists Are under Threat for Doing Their Jobs, *Berkley Forum*, 14 Aug. 2023, <https://berkleycenter.georgetown.edu/responses/in-modi-s-india-press-freedom-is-curbed-and-journalists-are-under-threat-for-doing-their-jobs>, 20/02/2025.

⁷⁰ For discussion on primary social goods, see, Rawls, John, *A Theory of Justice*, (Cambridge: Belknap Press of Harvard University Press, 1971).

investments, sign trade agreements, and integrate into global supply chains, highlighting the tensions between internal sovereignty and external dependencies.⁷¹

The Preamble of the Universal Declaration of Human Rights (UDHR) establishes that member states are committed to promoting universal respect for human rights and fundamental freedoms in cooperation with the United Nations.⁷² It affirms that all human beings are born free and equal in dignity and rights development concept. In India, it enacted the Protection of Human Rights Act, 1993, which defines human rights as rights relating to life, liberty, equality and dignity, as guaranteed by the Indian Constitution or recognized in international covenants and enforceable by Indian courts.⁷³

State sovereignty plays a vital role in shaping human rights laws, as each nation's regional and socio-economic conditions are unique. Therefore, it is essential that a country makes its own laws without external interference. An important debate under the UDHR is whether human rights development qualifies as social reforms or falls under political liberties.⁷⁴ In India, social reforms are classified as Red Rights, which imposes a positive duty on the state to promote the welfare of citizens.⁷⁵ These rights are outlined in Chapter four of the Indian Constitution under the Directive Principle of the State Policies (DPSP), which are not legally enforceable. In Contrast, Blue rights (political liberties) impose negative obligations on the state, dictate when and how it can intervene, and these can be enforced in court.⁷⁶ This raises the question of whether human rights serve as a tool for social reform or as a mechanism for political liberty?

In India, socio-economic rights (Red Rights) remain unenforceable, as they depend on the country's specific socio-economic conditions. If human rights development, as per the UDHR, mandates states to protect human rights as an enforceable duty, it may conflict with India's governance structure. Moreover, the Indian Constitution does not clearly define human rights, raising concerns as to why they are not included as fundamental rights. While fundamental

⁷¹ Dr. Mrs. Suneeta Pimpale, Aatmanirbhar Bharat: Fostering Self-Reliance in India's Economic Landscape, (2024) 11 *JETIR*, JETIR2412137.pdf, 20/02/2025.

⁷² United Nations General Assembly, Universal Declaration of Human Rights (1948), available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited July 14, 2025)

⁷³ The Protection of Human Rights Act, No. 10 of 1994, India Code (1993), available at <https://indiankanoon.org/doc/281913/> (last visited July 14, 2025)

⁷⁴ Sathe, S.P., *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press, New Delhi, 2002, p.119.

⁷⁵ Aakash Singh Rathore, *Ambedkar's Preamble: A Secret History of the Constitution of India*, Ch 2 (Vintage Books/Penguin India 2020)

⁷⁶ *Ibid.*

rights, such as equality, liberty, protection against discrimination, and the right to life and liberty (Art. 21), from the basis of human rights protection in India, however they are not absolute. Equality is subject to the principle of equity and liberty and is interpreted as civil liberty rather than individual liberty. This reflects a balancing approach that ensure that Constitutional Rights are aligned with national interests and public welfare rather than imposing international legal obligations on a sovereign nation.

Conclusion

The idea of sovereignty, which initially emerged from the absolute power of monarchies and later from the strict Westphalian model, has significantly changed in today's globalized world. In India, sovereignty is not a singular or fixed concept; rather, it is a complex and evolving construct. It is fundamentally based on the people's will, as stated in the preamble of the Constitution "We the People of India". This popular sovereignty is enacted through democratic institutions but it also influenced by constitutional frameworks, judicial interpretations, and federal systems. On the international front, India expresses its sovereign identity through strategic independence, multilateral diplomacy, and selective adherence to global standards.

Nonetheless, this duality is accompanied by certain tensions. The obligations of internal pluralism encompassing cultural, linguistic, and regional diversity frequently organizations and treaties. The emergency of global human rights framework, trade commitments, and transnational issues such as climate changes progressively complicate the distinctions between domestic and international sovereignty. India's strategy, illustrated through initiatives like Atmanirbhar Bharat and its sophisticated foreign policy, signifies an effort to harmonize these conflicting demands.

This document asserts that the concept of sovereignty in India is most effectively characterized as polycentric, encompassing various institutions, governance levels, and normative structures. While the populace constituted the ultimate source of authority, their collective will be expressed through a constitutional framework that reconciles autonomy with accountability, as well as national interest with global obligations. As India persistently addresses the intricacies of a globalized context, its developing understanding of sovereignty will be pivotal to its democratic identity and international stance.