



UNDERSTANDING SOVEREIGNTY WITHIN THE FRAMEWORK OF THE INDIAN CONSTITUTION

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ABSTRACT

Sovereignty, a cornerstone of political and legal theory, signifies the supreme authority of a state to govern itself without external interference. The Indian Constitution enshrines this principle as a fundamental element of its governance structure. Declared explicitly in the Preamble, sovereignty in India is both a manifestation of internal authority and external independence. This abstract explores the conceptual framework of sovereignty within the Indian Constitution, highlighting its practical applications and challenges. The Constitution vests ultimate power in "We, the People of India," emphasizes popular sovereignty as the foundation of democratic governance. Legal sovereignty is encapsulated in the Constitution itself, which is the supreme law of the land. The division of powers between the Union and the States, as outlined in the Seventh Schedule, ensures a quasi-federal structure, balancing centralized authority with regional autonomy. External sovereignty is reflected in India's independent foreign policy and adherence to international law while maintaining its territorial integrity.

Key judicial pronouncements, such as **Kesavananda Bharati v. State of Kerala** and **S.R. Bommai v. Union of India**, affirm the Constitution's supremacy, safeguarding the basic structure doctrine and federal principles. However, challenges such as globalization, regional separatism, and external threats test the resilience of India's sovereignty. This abstract concludes that the Indian Constitution effectively integrates the principle of sovereignty into its democratic, federal, and legal frameworks, ensuring India's autonomy while adapting to contemporary global realities. Sovereignty remains dynamic, balancing internal governance with the demands of an interconnected world.

Keywords: *Sovereignty, Constitution, India, Preamble.*

I. INTRODUCTION

Sovereignty, a fundamental principle of political theory and international law, represents the ultimate authority and independence of a state to govern itself, free from external influence. Its historical roots trace back to the Treaty of Westphalia (1648), a landmark in shaping modern international relations.¹ The treaty's principles of territorial integrity, non-interference, and state equality established the autonomy of nation-states, forming the cornerstone of the Westphalia system. As the world has evolved, so too has the concept of sovereignty. Globalization, the rise of supranational organizations such as the United Nations and the European Union, and growing interdependence among nations has reshaped its contours. These developments have sparked debates over the traditional understanding of sovereignty, highlighting its adaptability in a rapidly interconnected world.² In the Indian context, sovereignty is a defining feature of the Constitution, explicitly enshrined in its Preamble. It symbolizes India's hard-fought independence and the nation's commitment to self-governance. The Indian Constitution reflects sovereignty through its democratic framework, federal structure, and the rule of law, establishing the supremacy of the people, the Constitution, and an independent judiciary.³

II. MEANING OF SOVEREIGNTY

Sovereignty is a core concept in political theory and serves as the defining characteristic of a modern state. Derived from the Latin word *superanus*, meaning "supreme," sovereignty denotes the ultimate authority of the state.⁴ It represents the highest legal power within a defined territory, beyond which no superior authority exists. This concept distinguishes the state from all other organizations or institutions, as it embodies supreme and final authority.⁵ A state is traditionally defined by four key elements: population, territory, government, and sovereignty. While population, territory, and government may exist in other entities to varying degrees, sovereignty is exclusive to the state. It signifies the state's absolute authority to govern its internal affairs and maintain independence from external interference.⁶ Sovereignty enables the state to assert control over its internal matters and safeguard its autonomy on the global stage. This supreme authority is what allows a state to enact laws, maintain order, and conduct foreign relations without subordination to any other entity, making it an essential feature of modern statehood.⁷

III. DEFINITION OF SOVEREIGNTY

The concept of sovereignty was first articulated in the 16th century by the French political thinker Jean Bodin. He defined sovereignty as the "supreme power over citizens and subjects, unrestrained by law." Over time, various political thinkers have contributed to the understanding of sovereignty:

¹ Leo Gross, "The Peace of Westphalia, 1648-1948" (1948) 42 American Journal of International Law 20.

² Anne-Marie Slaughter, "Sovereignty and Globalization" (2004) 40 Columbia Journal of Transnational Law 213.

³ M.P. Jain, Indian Constitutional Law (8th edn, LexisNexis 2018) 120-121.

⁴ Jean Bodin, Six Books of the Commonwealth (M.J. Tooley tr, Blackwell Publishers 1955) 25.

⁵ A.V. Dicey, Introduction to the Study of the Law of the Constitution (10th edn, Macmillan 1959) 75.

⁶ John Austin, The Province of Jurisprudence Determined (Cambridge University Press 1995) 210-211.

⁷ Laski Harold J, A Grammar of Politics (5th edn, George Allen & Unwin 1967) 50.

- **According to Bodin**, sovereignty is closely associated with monarchy, where the sovereign has the ultimate authority to make laws while remaining above them. However, the sovereign is still bound by natural and divine laws.⁸
- **Thomas Hobbes**, an English philosopher, explored sovereignty in his seminal work *Leviathan*. He defined sovereignty as an unlimited and absolute power, residing either in a monarch or an assembly. Hobbes emphasized that sovereignty is the sole authority to make laws, asserting that law is the command of the sovereign.⁹
- **Jeremy Bentham and John Austin**, inspired by Hobbes, elaborated a legalistic view of sovereignty. Austin argued that sovereignty is real and factual, highlighting its coercive nature. According to him, sovereignty is the essence of a state's existence, as law derives its authority from the sovereign's commands.¹⁰
- **Grotius**, regarded as the father of international law, described sovereignty as "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden."¹¹
- **Jellinek** defined sovereignty as the attribute of the state that makes it legally independent, bound only by its own will.¹²
- **Duguit** viewed sovereignty as the commanding power of the state, representing the organized will of the nation.¹³
- **Jenks** described sovereignty as the authority that, in the last instance, controls all individual actions in a community.¹⁴
- **Barker** succinctly defined sovereignty as "the authority of the last word."¹⁵

IV. CHARACTERISTICS/FEATURES OF SOVEREIGNTY

- **Absoluteness/All-Comprehensiveness**

Sovereignty is absolute and unlimited. No other power or association within the state can rival its authority. Its decisions are binding on all individuals, groups, and institutions within the state's territory.¹⁶

- **Inalienability**

Sovereignty cannot be transferred or shared. If a sovereign relinquishes power, they cease to be sovereign. While sovereignty over specific territories can be ceded, this act surrenders sovereignty only over that area. As Liber analogizes, just as a person cannot transfer their life or identity without self-destruction, sovereignty cannot be alienated without being destroyed.¹⁷

⁸ Jean Bodin, *Six Books of the Commonwealth* (M.J. Tooley tr, Blackwell Publishers 1955) 25.

⁹ Thomas Hobbes, *Leviathan* (Oxford University Press 1996) 120-121.

¹⁰ John Austin, *The Province of Jurisprudence Determined* (Cambridge University Press 1995) 210-211.

¹¹ Hugo Grotius, *The Rights of War and Peace* (Richard Tuck ed, Liberty Fund 2005) 85.

¹² Georg Jellinek, *General Theory of the State* (Batoche Books 2000) 34.

¹³ Léon Duguit, *Law in the Modern State* (Greenwood Press 1970) 57.

¹⁴ Edward Jenks, *The Doctrine of Sovereignty and the Modern State* (Macmillan 1895) 10.

¹⁵ Ernest Barker, *Principles of Social and Political Theory* (Oxford University Press 1951) 46.

¹⁶ Jean Bodin, *Six Books of the Commonwealth* (M.J. Tooley tr, Blackwell Publishers 1955) 30.

¹⁷ Liber, *The Concept of Sovereignty in Political Science* (Cambridge University Press 1984) 67.

- **Indivisibility**

Sovereignty cannot be divided. As Hobbes stated, there cannot be two sovereigns in a single state. Delegation of authority does not constitute division. For instance, when a local authority is granted powers such as tax collection, this remains under the sovereign's ultimate control and can be revoked. According to Calhoun, "Sovereignty is an entire thing; to divide is to destroy."¹⁸

- **Permanence**

Sovereignty is a permanent attribute of the state. As long as a state exists, so does its sovereignty. It is inseparable from the state's existence, much like heat is inherent to fire. Sovereignty ceases only when the state is conquered or dissolved.¹⁹

V. DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

The concept of sovereignty, denoting supreme authority within a state, has evolved significantly over centuries, reflecting historical, political, and philosophical changes.

- **Ancient Origins**

The idea of sovereignty can be traced back to the ancient Greek city-states. Aristotle, often regarded as the father of Political Science, identified sovereignty as the supreme power of the state. However, Aristotle focused more on the location of sovereignty, proposing that it should reside in the deliberative organ or the law itself, advocating for the rule of law over absolute authority. Similarly, the Romans emphasized centralized administration, uniformity of law, and the notion of the state as the ultimate authority in legal disputes, thus laying foundational principles of sovereignty.²⁰

- **Medieval Challenges to Sovereignty**

During the medieval era, the concept of sovereignty was undermined by the fragmented authority inherent in feudalism. Kings shared power with feudal lords, local communities, and the Church, which often claimed immunity from civil and criminal laws. The Pope's superiority over monarchs further diluted state authority. This lack of centralized power prevented the emergence of the modern concept of sovereignty. The supremacy of divine law over human law also restricted the development of an absolute and indivisible notion of sovereignty.²¹

- **The Modern Concept of Sovereignty**

Jean Bodin, a 16th-century French philosopher, is credited with articulating the modern theory of sovereignty. He defined sovereignty as the supreme, perpetual, and absolute power of the state, unrestrained by law.

¹⁸ Thomas Hobbes, *Leviathan* (Oxford University Press 1996) 135.

¹⁹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 110.

²⁰ Aristotle, *Politics* (Benjamin Jowett tr, Clarendon Press 1905) 60.

²¹ Otto von Guericke, *Political Theories of the Middle Ages* (Cambridge University Press 1922) 112.

According to Bodin, sovereignty could not be delegated and was the source of all laws. However, even Bodin recognized limitations imposed by customary laws and constitutional principles. Thomas Hobbes expanded on Bodin's ideas, introducing the notion of a social contract. He argued that individuals surrendered their freedoms to a sovereign in exchange for peace and security. Hobbes envisioned an absolute, indivisible, and inalienable sovereign authority, although he conceded minor limitations, such as prohibiting self-harm commands.²² In contrast, John Locke proposed a theory of limited sovereignty, advocating for a government restrained by the rule of law, separation of powers, and the protection of individual rights. Locke's ideas emphasized the supremacy of parliament and constitutional governance, aligning sovereignty with the will of the people.²³

- **The Influence of Revolutionary Movements**

The French and American revolutions marked significant milestones in the development of popular sovereignty. These movements emphasized the principle that ultimate authority resides with the people. The American Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen both highlighted the concepts of liberty, equality, and government accountability to the governed.²⁴

- **Philosophical Contributions**

Rousseau: Rousseau's notion of sovereignty, rooted in the "general will," was absolute, indivisible, and inalienable. However, unlike Hobbes, Rousseau vested this authority in the collective body of citizens rather than a monarch, emphasizing popular consent.²⁵

Hegel: Hegel idealized the state as a manifestation of rationality and morality, equating it with the "march of God on earth." He viewed sovereignty as absolute, glorifying the state's authority over individuals while advocating for constitutional governance.²⁶

6. Legal and Political Dimensions

John Austin refined the legal perspective of sovereignty, emphasizing its absolute and coercive nature. However, pluralists later challenged Austin's views, arguing for a more decentralized understanding of authority. The distinction between legal and political sovereignty became significant in constitutional democracies:

²² Thomas Hobbes, *Leviathan* (Oxford University Press 1996) 135.

²³ John Locke, *Two Treatises of Government* (Cambridge University Press 1988) 165.

²⁴ Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (University of North Carolina Press 1969) 87.

²⁵ Jean-Jacques Rousseau, *The Social Contract* (G.D.H. Cole tr, Penguin Classics 1968) 55.

²⁶ G.W.F. Hegel, *Elements of the Philosophy of Right* (Allen W. Wood ed, Cambridge University Press 1991) 120

- **Legal Sovereignty:** Denotes the authority recognized by law, as seen in institutions like the British Parliament.
- **Political Sovereignty:** Refers to the influence of the electorate and public opinion, which ultimately guide the actions of legal sovereigns.²⁷

7. Popular Sovereignty

Rousseau and other thinkers championed the concept of popular sovereignty, asserting that ultimate authority originates from the people. This principle became a cornerstone of modern democratic systems, yet it remains conceptually complex. The definition of "the people" and the mechanisms for translating their collective will into governance present ongoing challenges.

1. Internal Sovereignty

Internal sovereignty refers to a state's absolute authority over its territory, population, institutions, and associations. All individuals and entities within the state are subject to its laws, and the government has the power to enforce compliance and administer penalties in cases of violation.

2. External Sovereignty

External sovereignty signifies a state's independence from external control, ensuring that no foreign power or international entity can impose its will upon it. A sovereign state exercises full autonomy in its internal and external affairs. For instance, before India's independence in 1947, it lacked external sovereignty as it remained under British rule. Despite having a population, defined territory, and a governing system, India's administration was subject to laws enacted by the British Parliament, limiting its self-governance.²⁸

VI. THEORIES OF SOVEREIGNTY

1. Monism

This theory asserts that sovereignty is singular, absolute, and indivisible, residing within a single authority in the state. Thinkers of monism, such as **Thomas Hobbes** and **John Austin**, emphasize that all power flows from one supreme source. Hobbes described sovereignty as the "Leviathan," a single, undivided power essential for maintaining order and preventing chaos. Monism views the sovereign as the ultimate law-making authority, above all other entities within the state.

²⁷ A.V. Dicey, Introduction to the Study of the Law of the Constitution (10th edn, Macmillan 1959) 110.

²⁸ Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press 1966) 14.

2. Pluralism

In contrast to monism, pluralism disputes the idea of absolute sovereignty, proposing that power in a state is distributed among various institutions, associations, and authorities. Thinkers like **Harold J. Laski** and **G.D.H. Cole** argue that sovereignty is not concentrated in one entity but shared across multiple centers of power. Pluralism reflects the complexity of modern governance, where civil society, local governments, and international organizations influence state authority. This perspective highlights the balance and interplay between various actors in a democratic system.

3. Contemporary Views

Modern interpretations of sovereignty recognize its dynamic and adaptable nature in the face of globalization, interdependence, and international law. Sovereignty today is often seen as less rigid and coercive, accommodating shared governance, regional autonomy, and adherence to global norms. States voluntarily limit their sovereignty through treaties, alliances, and participation in supranational bodies like the United Nations, reflecting the interconnectedness of contemporary international relations. These theories demonstrate that sovereignty, while central to statehood, is not a static concept. It evolves to address the complexities of governance and the challenges of a globalized world, maintaining its relevance in political and legal discourse.

• SOVEREIGNTY IN THE INDIAN CONSTITUTION

Sovereignty is a cornerstone of the Indian Constitution, establishing India as an independent and self-governing nation both internally and externally. It reflects India's ultimate authority to make decisions, govern its territory, and protect its interests without any interference from external entities. This concept of sovereignty is embedded in various provisions of the Constitution, most notably through its Preamble and other structural components that ensure India's political, legal, and territorial integrity.

1. Sovereignty Declared in the Preamble

The Preamble to the Indian Constitution begins with the powerful words: "We, the people of India... do hereby adopt, enact and give to ourselves this Constitution." These words highlight the democratic foundation of India's sovereignty, underscoring that the ultimate authority is vested in the people of India. This reflects the principle of **popular sovereignty**, meaning that the Indian people have the highest power to determine their governance structure, policies, and laws. The use of the term "sovereign" in the Preamble is a clear statement that India is free from any external authority. The word signifies that India has full autonomy in shaping its internal and external affairs. It emphasizes that no foreign power, whether colonial or imperial, has the right to interfere in India's political, economic, or social matters. The sovereignty declared in the Preamble is not only about independence from colonial rule but also affirms that India can determine its course in the global arena without external pressures.

1. Internal Sovereignty

Internal sovereignty refers to the supreme authority of the Indian state within its territorial boundaries, exercised over all individuals, institutions, and organizations. This authority is derived from the Constitution of India, which serves as the fundamental law governing the state's legislative, executive, and judicial functions.²⁹ No entity, whether an individual or an organization, is above the law, ensuring a system of governance rooted in constitutional supremacy and the rule of law. The Parliament of India, as the primary legislative body, has the authority to enact laws on subjects listed in the Union List, Concurrent List, and State List (as outlined in the Seventh Schedule of the Constitution). It also holds the power to amend the Constitution, ensuring adaptability to the evolving needs of the nation. The Executive, led by the President and the Council of Ministers, is responsible for implementing and enforcing laws, formulating policies, and administering governance for public welfare.

The Judiciary, with the Supreme Court at its apex, interprets and upholds the Constitution, ensuring that laws are applied fairly and that constitutional rights are safeguarded. India's sovereignty is further reinforced through the framework of Fundamental Rights (Part III of the Constitution), which guarantees individual liberties while allowing reasonable restrictions for public order, morality, and national security. Additionally, the Directive Principles of State Policy (Part IV) serve as guiding principles for governance, emphasizing social and economic justice. The democratic structure of India, characterized by regular elections, separation of powers, and institutional checks and balances, ensures that sovereignty is exercised within the framework of constitutionalism and the rule of law. This system not only upholds the state's authority but also safeguards the democratic rights of its citizens, reflecting the core principles of governance in India.³⁰

2. External Sovereignty

External sovereignty refers to India's complete independence and authority in its foreign relations and dealings with other nations. This aspect of sovereignty guarantees that India can engage in international affairs without interference from external powers, exercising its right to conduct diplomatic relations, enter treaties, and participate in international organizations on its own terms. India's external sovereignty empowers it to maintain diplomatic ties with other countries, negotiate and sign treaties, and participate in multilateral forums such as the United Nations, the World Trade Organization (WTO), and the BRICS. India is free to shape its foreign policy based on its national interests and objectives, without the need for approval from foreign governments or external authorities. As a sovereign state, India has the authority to defend its territorial integrity and ensure national security. It possesses the right to raise and maintain armed forces, protect its borders, and determine its defense strategy. In times of conflict, India has the power to declare war or make peace, exercising this authority based on its independent decision-making processes.³¹

²⁹ Austin, John. *The Province of Jurisprudence Determined*. 1832.

³⁰ Basu, Durga Das. *Introduction to the Constitution of India*. 2011.

³¹ Seervai, H.M. *Constitutional Law of India*. 2013.

3. Democratic Sovereignty

India's democratic sovereignty reflects the principle that the ultimate source of power in the nation lies with its people. This concept ensures that the authority to govern is not vested in any one individual or institution but is derived from the will and consent of the people, exercised through democratic processes. The Indian Constitution enshrines this notion by providing a system where the people, through their elected representatives, have the power to influence government actions and decisions. India holds regular elections at various levels—central, state, and local—to elect representatives. These elections are free, fair, and conducted on the basis of universal adult suffrage, meaning that every citizen, regardless of caste, creed, gender, or religion, has the right to vote. This ensures that the representatives in the Lok Sabha (House of the People), Rajya Sabha (Council of States), and state assemblies are directly accountable to the people.³²

Through the right to vote, Indian citizens participate directly in the political process, selecting their leaders and influencing policy decisions. The Constitution guarantees universal adult suffrage, allowing every citizen above the age of 18 to exercise their democratic right to vote, ensuring broad-based political participation. The people's involvement in electing representatives is a key expression of democratic sovereignty, as these representatives make laws, form policies, and address the concerns of their constituencies. Besides voting in elections, citizens can also influence policy decisions through public debates, petitions, and activism. This involvement reflects the democratic sovereignty of the people in shaping the governance of the nation. The periodic elections, public participation, and accountability mechanisms are integral to the functioning of India's democracy.³³

4. Parliamentary Sovereignty

While India's system of governance incorporates many elements of parliamentary sovereignty, it does not adopt the British model of absolute parliamentary supremacy. In the British system, Parliament is supreme and can make or change any law without being subject to judicial review. However, the Indian Constitution balances the powers of Parliament with the principles of judicial review and constitutional supremacy. The Parliament of India has significant authority to legislate on matters enumerated in the Union List and Concurrent List as per the Seventh Schedule of the Constitution. Parliament can pass laws on a wide range of issues such as defence, foreign affairs, taxation, and others, reflecting its central role in the governance of the country. Additionally, Parliament has the power to amend the Constitution, subject to certain provisions and safeguards, demonstrating its importance in the Indian political system.³⁴

Unlike the British model, Indian parliamentary sovereignty is not absolute. It is subject to judicial review by the Supreme Court of India to ensure that laws passed by Parliament do not violate the provisions of the Constitution. This mechanism ensures that Parliament's legislative actions are in conformity with the

³² Austin, John, *The Province of Jurisprudence Determined* (1832).

³³ See *Supra*-30.

³⁴ Granville, Austin, *The Indian Constitution: Cornerstone of a Nation* (1966).

fundamental principles enshrined in the Constitution, such as individual rights, federalism, and the rule of law. The judiciary, through its power of judicial review, acts as a check on the legislative power, ensuring that no law passed by Parliament can infringe upon the Constitution's basic structure. While Parliament has broad legislative powers, these powers are constrained by the Constitution's provisions, which safeguard fundamental rights and establish the basic framework of governance. This ensures that Parliament's sovereignty is exercised responsibly and within the bounds of constitutional principles.³⁵

6. Constitutional Sovereignty

In India, sovereignty is ultimately vested in the Constitution of India, which stands as the supreme law of the land. The Constitution provides the legal and structural foundation for the state and is the ultimate authority governing all matters within the country. It ensures that the sovereignty of India is exercised in accordance with constitutional principles, and no action, law, or decision can override its provisions. All authorities in India, including the Legislature, Executive, and Judiciary, derive their powers and authority from the Constitution. These organs of government must function within the constitutional framework, which ensures that the exercise of power is lawful and consistent with the principles of justice, equality, and democracy.³⁶ The Constitution not only outlines the powers of these institutions but also limits them to ensure they operate in a manner that respects the rule of law and the rights of citizens. The Judiciary, particularly the Supreme Court of India, plays a critical role in upholding constitutional sovereignty. As the guardian of the Constitution, the judiciary is responsible for interpreting and protecting its provisions. The Supreme Court has the authority to strike down any law or executive action that is found to be unconstitutional, ensuring that the sovereignty of the Indian state is exercised strictly within the boundaries of the Constitution. This role of judicial review serves as a check on legislative and executive actions, reinforcing the supremacy of the Constitution in the Indian legal system.³⁷

7. Federal Sovereignty

India's governance structure can be described as quasi-federal, where sovereignty is shared between the Union (Central Government) and the States. This unique arrangement allows for a division of powers, with certain responsibilities and authorities allocated to the Union and others to the individual states. The Seventh Schedule of the Indian Constitution outlines the division of powers between the Union and the States through the Union List, State List, and Concurrent List. The Union List contains matters on which only the central government can legislate, such as defense, foreign affairs, and national security. The State List includes areas in which state governments have exclusive legislative authority, such as police, public health, and local government. The Concurrent List contains subjects where both the Union and State governments can legislate, such as criminal law and marriage.³⁸

³⁵ M.P. Jain, *Indian Constitutional Law* 15 (LexisNexis, 8th ed. 2018).

³⁶ *Ibid.*

³⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 258 (Oxford University Press, 1999).

³⁸ D.D. Basu, *Commentary on the Constitution of India* 278 (LexisNexis, 9th ed. 2019).

While the Union Government enjoys greater powers in critical areas like defence, foreign policy, and national security, the states have significant autonomy in their jurisdiction, especially in matters listed in the State List. However, the Union government has overriding authority in some cases, particularly where there is a conflict between Union and State laws, as per Article 254 of the Constitution. If a state law contradicts a Union law, the Union law prevails. Despite the Union's dominance in certain spheres, the states retain a level of autonomy, especially in the administration of local and regional affairs. The Constitution ensures that states have the freedom to legislate and manage their affairs in accordance with their unique needs and contexts, within the framework of the Constitution.³⁹

8. Sovereignty and Judicial Review

In India, the concept of sovereignty is intertwined with the power of judicial review. The Indian judiciary has been entrusted with the power to review laws and executive actions to ensure they do not violate the Constitution. This power of judicial review is an essential feature of India's constitutional supremacy and serves as a safeguard against any misuse or abuse of sovereign power. The Supreme Court of India and the High Courts have the authority to examine the constitutionality of laws enacted by Parliament, state legislatures, and executive actions taken by the government. This power allows the judiciary to strike down laws and policies that are inconsistent with the Constitution, particularly those that infringe upon fundamental rights or violate the basic structure of the Constitution.

Judicial review ensures that sovereignty is not exercised in a manner that contravenes the core principles of the Constitution. It limits the power of the state to act arbitrarily or outside the bounds of constitutional norms. This mechanism reinforces the rule of law, ensuring that the state's actions remain aligned with constitutional values and respect the rights and freedoms of individuals. The power of judicial review acts as a check on the other branches of government, preventing any overreach or unconstitutional actions by the legislature or the executive. This ensures that even sovereign power, whether legislative or executive remains accountable to the Constitution.

VII. JUDICIARY ON CONCEPT OF SOVEREIGNTY

- **KESAVANANDA BHARATI vs STATE OF KERALA (1973)⁴⁰**

The Supreme Court of India, in a landmark ruling, introduced the Basic Structure Doctrine, which profoundly influenced the relationship between Parliament and the Constitution. The Court clarified that while Parliament holds the authority to amend the Constitution under Article 368, this power is not absolute. It ruled that amendments cannot alter or eliminate the fundamental principles that define the Constitution's identity. According to the judgment, certain core features—such as sovereignty, democracy, secularism, and judicial review—form the Constitution's basic structure and must remain intact, irrespective of any constitutional amendments. The Court emphasized that the sovereignty and supremacy of the Constitution are inviolable,

³⁹ M.N. Venkatachaliah, "Judicial Review and Constitutional Sovereignty in India," (2001) 43 JILI 241.

⁴⁰ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461.

meaning that any attempt to weaken India's independence or diminish the authority of the people would be deemed unconstitutional.⁴¹ One of the key aspects of this ruling was the reaffirmation of judicial review as an essential constitutional safeguard. The Court held that the judiciary's ability to examine and invalidate unconstitutional laws is fundamental and cannot be curtailed by any amendment. By doing so, the ruling ensured that the Constitution remains the highest legal authority, above ordinary legislation. This judgment is regarded as a cornerstone of Indian constitutional law, as it firmly established that no amendment can alter or abolish the Constitution's basic structure. It significantly curtailed Parliament's power to modify the Constitution, ensuring that its fundamental values remain protected. The doctrine continues to be a crucial principle in constitutional interpretation, safeguarding the democratic and sovereign character of India.⁴²

- **Berubari Union Case (1960)**⁴³

The Supreme Court, in its ruling, held that the transfer of territory to another country affects the sovereignty of India, as territorial integrity is an essential feature of national sovereignty. The Court emphasized that any cession of territory involving a change in India's borders would require a constitutional amendment under Article 368 of the Constitution. This was because such a transfer would impact India's sovereign powers and would not be permissible through ordinary legislation alone. The Court clarified that the sovereignty of India, especially in terms of its territorial integrity, could not be altered by ordinary legislative means. Given that sovereignty is an essential aspect of India's constitutionally guaranteed independence, any alteration of the country's territory requires an amendment to the Constitution. Specifically, Article 368 would govern such a change, ensuring that the process involves the highest legal and constitutional procedure.⁴⁴ The Berubari Union Case was a landmark judgment because it emphasized the inviolability of India's territorial sovereignty. It made it clear that any modification of the country's territorial boundaries cannot be accomplished without following the constitutional amendment process, as outlined in Article 368. This ruling clarified that the sovereign power of India, especially concerning its borders, cannot be easily modified or transferred to another state without undergoing the rigorous procedures of constitutional amendment. Thus, it reinforced the supremacy of the Constitution in matters affecting India's sovereignty.⁴⁵

- **Golaknath v. State of Punjab (1967)**⁴⁶

In 1967, the Supreme Court of India delivered its judgment in the Golaknath case, which had a profound impact on the scope of Parliament's power to amend the Constitution and its protection of Fundamental Rights (FRs). The case resulted in a 6:5 majority judgment, with Chief Justice K. Subba Rao presiding over the majority opinion. Key aspects of the judgment include: The Court ruled that Parliament could not amend the Fundamental Rights enshrined in Part III of the Constitution. It held that these rights were inviolable and could

⁴¹ Ibid.,

⁴² Id.,

⁴³ In Re: Berubari Union and Exchange of Enclaves, AIR 1960 SC 845.

⁴⁴ Ibid.,

⁴⁵ Id.,

⁴⁶ I.C. Golaknath & Ors. v. State of Punjab & Anrs., AIR 1967 SC 1643.

not be altered by constitutional amendments. This judgment placed a clear limitation on Parliament's power to modify or repeal the Fundamental Rights. The Court reinforced the principle of judicial review by holding that amendments made under Article 368 were subject to Article 13(2) of the Constitution. This meant that any constitutional amendment that violated the Fundamental Rights would be deemed void. This was a significant affirmation of the judiciary's role in safeguarding citizens' rights and ensuring that parliamentary amendments did not infringe upon the Constitution's fundamental principles.⁴⁷

The majority of the Supreme Court bench (6 judges) agreed on the need to protect the inviolability of Fundamental Rights and imposed limitations on Parliament's power to amend them. However, 5 dissenting judges supported a more flexible approach, favoring a broader interpretation of parliamentary power to amend the Constitution. The Court introduced the concept of prospective overruling in this judgment, meaning that the decision would apply to future cases and amendments, but not to amendments made prior to this ruling. This allowed the Court to maintain legal stability while upholding constitutional principles, particularly in regard to Fundamental Rights. The Golaknath case played a significant role in shaping future constitutional jurisprudence, particularly influencing the Kesavananda Bharati case (1973). The judgment laid the groundwork for the Basic Structure Doctrine, which would later establish that certain essential features of the Constitution, including Fundamental Rights, cannot be amended or altered by Parliament.⁴⁸

VIII. CONCLUSION

Sovereignty, as a core principle, holds a central position in the Indian Constitution, shaping the structure and functioning of the state. The Constitution of India, while affirming the nation's complete autonomy and authority both internally and externally, presents a nuanced approach to sovereignty that reflects the country's democratic, federal, and constitutional framework. India's sovereignty is enshrined in the Preamble, emphasizing the people's power as the ultimate source of authority, and is further reinforced through the various provisions within the Constitution. It manifests in multiple forms, including internal sovereignty, where the state exerts supreme control over its territory, and external sovereignty, where India maintains its independence in global affairs. The democratic sovereignty of the Indian state ensures that ultimate authority lies with the people, who elect their representatives and influence policy decisions through regular elections. Sovereignty within the Indian Constitution is a dynamic and evolving concept, balancing state authority, democratic values, and constitutional integrity. It reflects India's commitment to self-governance while also ensuring that power is exercised within the boundaries set by its foundational legal document. This comprehensive framework ensures that sovereignty remains a guiding principle in India's governance, with an emphasis on democratic participation, judicial oversight, and constitutional supremacy.

⁴⁷ Ibid.,

⁴⁸ Id.,