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Sovereignty in Indian Constitution

Published On: 10-05-2023

Why in News: Campaigning for the recent Karnataka Assembly elections, Prime Minister Narendra Modi alleged that the “royal family” of the Congress was “openly advocating” Karnataka’s secession from the Indian Union and the BJP moved the Election Commission of India (ECI) against Congress leader Sonia Gandhi, asking for an FIR and “exemplary punitive action” against her by saying that “The Congress will not allow anyone to pose a threat to Karnataka’s reputation, sovereignty or integrity.”

What is meant by sovereignty?

Sovereignty is simply the idea of having supreme authority over a defined territory. From the 17th century onwards, Western philosophers used the concept to describe the supremacy of the state — along with its institutions such as the government, the judiciary, and parliament — over the people being governed.

The 17th century English philosopher Thomas Hobbes, for instance, believed that in exchange for the protection offered by the government to its people, and its role in keeping society cohesive and at peace through its control over law and order, the state had a legitimate claim to sovereignty.

As territories began getting more defined over the next few centuries, the idea of sovereignty gained further legitimacy.

Sovereignty debate in Constitution Assembly

The word sovereignty appears in the beginning of the Preamble to the Constitution of India, as the first attribute of the independent republic of India.

Its placement as the first among the core principles of the republic underlines its importance in the Constitution.

The Constituent Assembly debated whether the word ‘sovereignty’ should be made part of the Preamble. Brajeshwar Prasad argued against “any undue emphasis upon this word sovereignty”, saying “sovereignty leads to war; sovereignty leads to imperialism”.

Acharya J B Kripalani, however, had a different perspective: “As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word ‘democracy’... A Minister says ‘Our Government’ not ‘The People’s Government’.

The Prime Minister says ‘My Government’ not ‘The People’s Government’. Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly, that sovereignty resides in and flows from the people.”

Dr B R Ambedkar similarly meant for the word to reaffirm the role that the people of India had played in the drafting of their Constitution.

“No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament... In fact, we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this

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Constitution,” Babasaheb said.

“I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.”

Today, the Preamble says, “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC...IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

How does the Constitution use the word ‘sovereignty’?

In his authoritative ‘Introduction to the Constitution of India’, the great jurist Durga Das Basu wrote that the word ‘sovereignty’ is invoked in the Indian Constitution to “declare the ultimate sovereignty of the people of India and that the Constitution rests on their authority”.

This is illustrated in the fact that India was totally independent on January 26, 1950, while Pakistan continued to be a British Dominion in 1956, meaning it still had the British monarch as the Head of State, Basu wrote.

Sovereignty is mentioned in the Constitution under Fundamental Duties, which are to be followed by all Indian citizens but cannot be legally enforced. Article 51A(c) states that it is the duty of all citizens “to uphold and protect the sovereignty, unity and integrity of India.”

It is also mentioned in the oaths for positions like the Chief Justices, Union Ministers and Members of Parliament under the Third schedule: “...I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India...”

Relationship of the Indian states with the sovereign Union

Article 1(1) of the Constitution sets out the fundamental relationship between the states and the Centre: “India, that is Bharat, shall be a Union of States.” Dr Ambedkar explained this to mean that a) the Indian federation is not a result of an agreement by the units, and b) that the component units have no freedom to secede or break away from it, Basu wrote.

In its structural composition, the Indian political system is described as “quasi-federal”. The political theorist K C Wheare described it as “a Unitary State with subsidiary federal features rather than a Federal State with subsidiary unitary features.”

Wheare meant that the Indian setup is more unitary in nature (where the central government has more powers) than federal (where states have significant autonomy).

The latter system is in place in the United States. The choice of a unitary bias that the Constitution makers made was possibly rooted in the turmoil of the Partition, and the difficulty in getting around 600 princely states to accede to India.

Provisions of the Constitution attest to the superior position of the Centre

Basu wrote, “In India, except in a few specified matters affecting the federal structure, the States need not even be consulted in the matter of amendment to the bulk of the Constitution.”

Also, the Governors in states, seen as representatives of the Union in the States, are appointed “during the pleasure” of the President.

The Sixteenth Amendment of 1963, amending Article 19(2) of the Constitution, which details the “reasonable restrictions” on the right to freedom of speech (under Article 19), laid down that even the advocacy of succession will not be protected under law.

After the amendment, Article 19(2) reads, “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred... in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence...”

Further, the right to alter the boundaries of states and to create new states lies with Parliament alone. Basu wrote that the Constitution offers no guarantee to the States against their territorial integrity without their consent since it was not a result of an ‘agreement’ between the States.