

CHAPTER- 6

STATE SOVEREIGNTY AND REGIONAL AUTONOMY OF NORTHEAST

STATES IN INDIA

6.1 Objective of the Chapter

In the recent years the nation-states are experiencing the ethnic upsurge almost all over the world. India is no exception to it. India's Northeast stand out amongst the most volatile areas in this context. Each state in Northeast have their own demand based on their ethnicity, distinct cultures, language which can be broadly categorized demand for independence, regional autonomy, separate state or anything short of Independence. Therefore, The biggest challenge before government was to guarantee the varying degrees of regional autonomy in Northeast states based on different ethnicity, culture, language but at the same time to assert sovereignty of a kind that would demonstrate the existence of one union of India.

In this background this present chapter is an attempt to trace the origin and development of traditional notion of sovereignty and current changing understanding about the sovereignty due to the development of human rights law, international humanitarian law. Various provisions relating to federalism in Indian Constitution have been analyzed to comprehend the regional autonomy granted to Northeast states for protection of their culture, distinct identity and language by balancing the state sovereignty in the federal

government.

6.2 Meaning of Sovereignty

Sovereignty is regarded as one of the essential element of the statehood. It denotes supreme power of the state and its competence, independence and unchallengeable power over a piece of territory. The concept of sovereignty is imbibed in the state to act freely on its territory without intrusions from other sovereign states. These matters include the choice of political, economic, social, and cultural systems and the formulation of foreign policy. The scope of the freedom of choice of states in these matters is not unlimited; it depends on developments in international law.³⁹⁹ Therefore, the sovereignty of states continues to be limited by internationalization and universalization of the human rights. Although state sovereignty is a basic principle of international law, the precise meaning of the term sovereignty is not clearly defined. Therefore the following possible definitions of sovereignty have been offered:

Jackson refers sovereignty as 'supremacy' in internal affairs and 'independence' in external affairs, these two aspects of sovereignty often seen as two sides of the same coin.⁴⁰⁰ Similarly, Eaton writes "sovereignty is based on 'the supreme power over a body politic' but also 'freedom from

³⁹⁹ Report of the International Commission, *Intervention and State Sovereignty*, (International Development Research Centre 2001)
<<http://responsibilitytoprotect.org/ICISS%20Report.pdf>> accessed 21 July 2018.

⁴⁰⁰ Robert Jackson, *Sovereignty: The Evolution of an Idea* (Polity Press, Cambridge 2007) 180.

external control”.⁴⁰¹ Based on various definitions of the authors sovereignty can be conceptualize in three variations:

- a) *Internal* sovereignty, which refers to effective government structures, including territorial control
- b) *External* sovereignty, which refers to recognition as a state from outsiders and
- c) *Westphalia* sovereignty, which refers to the independence from interference of outsiders.⁴⁰²

6.3 Historical Development of the State Sovereignty

Today the concept of state sovereignty has once again became the major issue for discussion. More recent academia has focused on changing nature of the sovereignty due to the involvement of new actors and their claims for new forms of authority. The legal scholar has noted that there is emerging right of democratic governance as a matter of international concern, to secure humanitarian objectives. Which has challenged the traditional and static conception of sovereignty.⁴⁰³ Therefore, this evolution reflects changing

⁴⁰¹ David J Eaton, 'The End of Sovereignty?: A Transatlantic Perspective [2006] Lit Verlag Hamburg, 221.

⁴⁰² George Kyris, 'Conflict, Statehood and Sovereignty in World Politics: the European Union and Unrecognized States [2017] University of Birmingham , EUSA Conference, Miami, 12.

⁴⁰³ Report of the International Commission, *Intervention and State Sovereignty*, (International Development Research Centre 2001) provides “Four challenges have appeared to the traditional and static conception of sovereignty: the increased salience of self-determination and the willingness to redraw borders, the ever-widening definition of threats to international peace and security, the recurring collapse of state authority, and the heightened importance attached to popular sovereignty” <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>> accessed 21 July 2018.

historical circumstances and state practice. In the light of above this part of the chapter will focus on the theoretical foundation of state sovereignty and its development in different phases.

6.4 Traditional Understanding of Sovereignty

Sovereignty, is a concept which has evolved with the time and it did exist in ancient and medieval times in the very idea of supreme power. Various political scholars have given various theories of sovereignty depending on the situation and circumstances during that time. Jean Bodin (1529-1596), Thomas Hobbes (1588-1679) and John Austin (1790-1859) articulated the 'Monistic theory' of sovereignty. This theory emphasizes more on supreme power in a single authority which will have the power to make the laws.⁴⁰⁴

6.4.1 Jean Bodin (1529—1596)

Jean Bodin was one of the prominent political philosopher of the sixteenth century. His theory of sovereignty gained much attention published in his famous *Six books of a Commonwealth* in 1576. Bodin lived at a time of great upheaval, when France was ravaged by the wars of religion between the Catholics and the Huguenots.⁴⁰⁵ According to Jean Bodin, the concept of sovereignty primarily entails absolute, and perpetual power of law making within the territorial boundaries of a state.⁴⁰⁶ Here the word 'absolute' signifies that a sovereign is free from all obligations and 'Perpetual' signifies

⁴⁰⁴ C.G Haines, *The Revival of Natural Law Concepts* (Mass, Cambridge 1930) 21.

⁴⁰⁵ <<https://www.iep.utm.edu/bodin/>> accessed 11 June 2018.

⁴⁰⁶ Wm. A. Dunning, 'Jean Bodin, on Sovereignty (Mar.1896) 11 *Political Science Quarterly*, 82.

sovereignty is permanent in nature. Designating law as the command of sovereign Bodin emphasised that law-making power resides with only sovereign power. Therefore, traditional understanding of sovereignty as absolute and supreme authority may be attributed to Jean Bodin.

6.4.2 Thomas Hobbes (1588-1679)

The theory of Sovereignty forms a central concern of Hobbes's political science. Part 1 of work Leviathan, culminates the discussion about the state nature, which is intended to establish the necessity of Hobbes's theory of sovereignty and therewith its justification. Hobbes emphasised more on absolute sovereignty. According to him sovereignty should be unlimited, inalienable, irrevocable and indivisible. The English civil war of 1642 made him realize that order and peace were indispensably needed for a state to exist and state absolutism was essential for social solidarity.⁴⁰⁷ Hobbes offers a rational explanation for unlimited sovereignty and justifies it in detail by explaining the concept of social contract theory. He begins his philosophy with the analysis of human psychology.⁴⁰⁸

He mentioned that people surrender their power and liberty to a person or group of people for their own security and protection. Therefore, this authorized person becomes the sovereign and the rest are his subjects. Hence, the ultimate aim of sovereign power is to establish peace, justice and

⁴⁰⁷ B.N Ray, *Political Theory: Interrogations and Interventions* (Authors Press, Delhi 2006) 50.

⁴⁰⁸ T. C Salmon and M.F Imber, *Issues in International Relations*, (Routledge, 2nd ed, London 2008) 37.

maintain security.⁴⁰⁹ According to Hobbes sovereign can never be unjust since injustice signifies violation of contract and a sovereign is not bound by any covenant. As we can see Bodin and Hobbes both have emphasised on stability of the state and state unity by giving the power to sovereignty.

6.4.3 John Austin (1790-1859)

Austin, was one of the legal philosopher in early-nineteenth-century known as a founding father of the school of “legal positivism”. His wrting were immensely inspired by Hobbes and the conditions then prevailing in England. He has propounded the theory of ‘positive law’ which is the ultimate will of supreme legal sovereign in the state. His work published in “*The Province of Jurisprudence Determined*” which defined sovereign is ‘determinate and absolute’ and his will is without any limitation. He further considers the will of the sovereign to be ‘indivisible’ and ‘inalienable.’⁴¹⁰

Since Austin writing was inspired at the time when England was in need of vast legislative reforms. So his theory was guided and influenenced by situation which is clearly reflected in his theories. Austin’s doctrine of sovereignty emphasis on following points

“If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience, from the bulk of a given society, that

⁴⁰⁹ ibid

⁴¹⁰ J.W Garner, *Political Science and Government* (World Press Calcutta, 1955) 171.

*determinate human superior is sovereign in that society, and that society (including the superior) is a society political and independent.”*⁴¹¹

Thus, we can see Jean Bodin, Thomas Hobbes and Austin, all three thinkers advocated for absolute sovereignty which enjoys unrestrained and indivisible power. Therefore, monistic theory of sovereignty was considered an essential elements of state till the nineteenth century.

6.5 The Pluralistic Theory of Sovereignty

The main objective of the Pluralistic theory was to oppose the unlimited state sovereignty developed by Bodin and Hobbes and refined by John Austin. This theory is based on the views of various thinkers, which includes Robert M. MacIver, Leon Duguit, Follet, Ernest Barker, Harold J. Laski, George Douglas Hobhouse etc.

Pluralist theory supporters were against the unrestrained and indivisible power of sovereignty. For them state is one of social institution among various other associations rather than a sovereign entity. They believed that variety of associations as one of the basic quality of modern society. Which correspond to different needs of man in modern society. This signifies that each of these associations works in their respective area with their functional freedom. Therefore, Pluralist theory advocated for group interest and

⁴¹¹ David G. Ritchie, 'On the Conception of Sovereignty, (Jan.1891) 1, The Annals of the American Academy of Political and Social Science, 385.

autonomy of different associations.⁴¹²

Hence, the main contribution of the pluralist theorist was to decentralize the power and forbid the centralization of power in one entity. They aim for a democracy with active participation of the people by giving them maximum opportunity for self-expression of their needs and demands.⁴¹³ The Pluralists contended that the complexity of the economic and political relations of the modern world cannot be tackled with a monistic approach. Therefore, the management of society must be divided among various associations in proportion to their contribution in social good. Hence, the state should rather be federally organized and not be absolute with indivisible power. As Laski puts it, "But because society is federal, authority must be federal also."⁴¹⁴ This joint venture of various associations to sovereignty makes states very strong and more effective in its functioning for the welfare of the citizens.

6.6 Types of Sovereignty

6.6.1 External and Internal Sovereignty

Throughout the history, sovereignty has both an internal and an external element. Both internal and external elements are complementary to each other. The internal sovereignty may be defined as the competence of the states and ability to control the people, resources, and institutions within their border. It is demonstrated through a country's capacity to manage its affairs.

⁴¹² B.N Ray, *Political Theory: Interrogations and Interventions* (Authors Press, Delhi 2006) 177.

⁴¹³ *ibid* 111.

⁴¹⁴ H. J Laski, *A Grammar of Politics* (George Allen & Unwin Ltd., London 1925) 272.

Therefore, internal sovereignty comprises the entire body of rights and attributes that a state possesses in its territory.

On the other hand external sovereignty generally comprehended as legal independence from all foreign powers, thus protecting the state's territory against all intervention from outside. According to Perrez external sovereignty broadly includes international independence.⁴¹⁵ In a view of Mac Cormick the distinction between internal and external sovereignty helps to understand the limitation of the state sovereignty.⁴¹⁶

6.7 Popular Theory of Sovereignty

The idea of popular sovereignty Implies giving ultimate sovereignty to the people. Therefore, the real sovereignty holds by the people, and they assigned duties to state for the betterment of society. Since, this sovereignty resides in the whole community and not in an individual or a group.⁴¹⁷

Political Philosopher like Rousseau and John Locke endeavored to democratize the sovereign power by emphasizing the words like “people”, “common will” as the sovereign power. The French Revolution in 1789 further revived these thoughts of equality and power was purportedly placed in the hands of common people. They consider that sovereignty originally belonged

⁴¹⁵ <[http://www.ijhssi.org/papers/v6\(8\)/Version-3/B060830812.pdf](http://www.ijhssi.org/papers/v6(8)/Version-3/B060830812.pdf)>accessed 12 July 2018.

⁴¹⁶ Neil MacCormick, *Questioning Sovereignty: Law, State, and Nation in the European Common Wealth* (Oxford University Press, 1999) 43.

⁴¹⁷ <http://shodhganga.inflibnet.ac.in/bitstream/10603/55459/9/09_chapter%204.pdf> accessed 10 July 2018.

to the people and not the state. State works as an instrument of society for achieving social equity and justice.

Further, Laski believed that state is neither superior to the people, nor its authority will become coercive to the people and the group coexisting with it in society. Actually, it is society which decides the power and functions of the state however, it doesn't imply that the state has no capacities at all to discharge function in the society and that it should, therefore be abolished. Laski has never favored the abolition of the state entity. He emphasized that, to accomplish few purpose state usually undertakes sometime the work of adjusting and coordinating the manifold life of society.⁴¹⁸ Its functions keep changing as per the requirement and need of the society.

6.8 Changing Concept of Sovereignty

As it can be seen from the previous discussion that the concept of sovereignty does not have any fixed meaning, but evolving and this evolution reflects changing conditions of state practice. With rising interdependence in the worldwide emerging international system and internal pressure within the state have restricted the unilateral control of the state in exercising its sovereign rights within its state. The concept of absolute sovereignty advocated by Jean Bodin, Thomas Hobbes and Austin, has been reduced drastically during the twentieth century. There has been a clear shift from 'state interest' to 'individual interest'.

⁴¹⁸ <http://shodhganga.inflibnet.ac.in/bitstream/10603/71981/7/07_chapter%203.pdf> accessed 10 July 2018.

Further, adoption of UN Charter and development of international human rights law, environmental concern and growth of various international institutions has in many ways challenged the principle of sovereignty. Today state cannot claim the right of state sovereignty absolute if it has failed in its duty to maintain and protect its population as a result of internal war, insurgency, repression etc. Therefore, if a state violates its international obligation and unable to maintain peace and security. Then it justifies to overstep and dismissal of sovereignty rights of that particular state. For instance the European Union and the United Nation endorse the right to independence of secessionist Yugoslavian republics, the UN and its peace keeping force has intervened in Somalia, Iraq and Rwanda for humanitarian reasons and apply sanctions on Haiti on behalf of democracy, all without the consent of concern states. Therefore, this emerging right to democratic governance makes domestic government a matter of international concern, and EU states make new progress toward the “pooling” of authority in a common institution. These trends are still evolving; whether they will become durable norms in the new world order or not is yet uncertain.⁴¹⁹ But if they do, together they will amount to one of the rare international revolutions in sovereignty since medieval times.

⁴¹⁹ Thomas Franck, 'The Emerging Right to Democratic Governance' (Jan.1992) 86 The American Journal of International Law, 46.

6.9 Indian Federalism and Regional Autonomy of Northeast States

Federalism being an important Constitutional device for balancing national unity and power with maintenance of State rights is endowed with significant economic, cultural and social dimensions.⁴²⁰

The demand for more autonomy is one of the most controversial issues of the Indian federalism, despite the fact that federalism is an essential element of the Constitutional structure of the Indian democracy. Every federal polity enshrined distribution of powers between the Union and the states government. The scheme of division of powers between the Union and the states is very much influenced by socio-economic, cultural, political, and historical factors and as such there is no uniform framework of the federal system in the contemporary world.

The historical backdrop of federalism in India can be followed to the third and fourth decade of the twentieth century when nationalists were demanding complete independence. The presence of a large number of princely states and different nationalist required a set up wherein they could restore their separate identity while ensuring unity.⁴²¹ The federal form of the government was considered more suitable form of government to ensure the protection of

⁴²⁰ P Ishwara Bhat, *Constitutionalism and Constitutional Pluralism* (LexisNexis- 2013) 24.

⁴²¹ Ranjit Singh, 'Indian Federalism and the Demand for State Autonomy: The Akali Perspective, *Pakistan Horizon*' (Oct. 2009) 62, Pakistan Institute of International Affairs, 56.

this distinct ethnic, linguistic, religious, and cultural diversity of the people. Therefore, the drafter of the Indian Constitution carried forward the provisions of the Government of India Act 1935 related to federation and incorporated them into the Constitution of India.

The Constituent assembly was aware of the various challenges of administration that would confront the infant nation. The biggest challenge before it was to guarantee the varying degrees of self-determination and regional autonomy on the basis of different ethnicity, but at the same time to assert sovereignty of a kind that would demonstrate the existence of one union of India.⁴²² The chairman of the drafting committee vindicated the use of the term 'Union' on the ground that the Indian federation was not the consequence of an agreement among the units, and they had no right to secede from the Union. Article 1 of the Indian Constitution provides that India that is Bharat is a "union of states". Features like division of subjects between the union and states, dual administration, enactments of various personal laws, protection of cultural and educational rights of the linguistic and religious, secular citizenship are significant features of the Federalism. All these features highlights the regional autonomy on the basis of different diversities in each state.

⁴²² C. Raj Kumar, 'State Sovereignty and Regional Autonomy in India: Human Rights and Governance' (Apr 9-12, 2008) 102, American Society of International Law, Cambridge University Press, 119.

6.10 Northeast's Autonomy under Constitutional Framework

In Northeast the most important structural change was grant of political autonomy and statehood. This occurred back in the British Period when the Interim Government of India had appointed a sub-committee to the Constituent Assembly of North- East Frontier (Assam) Tribal and Excluded Areas under the chairmanship of first Assam Chief Minister Gopinath Bardoloi. The committee prescribed setting up of autonomous district councils to provide due representative to the local level of the tribal population. The recommendation given by the committee was later incorporated into Sixth Schedule article 244 (2) & Article 275(1) of the Indian Constitution.⁴²³ These provision of Indian Constitution provides Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

6.10.1 Special Constitutional Provisions for North Eastern States under Article 371

The Indian Constitution envisaged a framework for autonomy for the Northeastern states under Article 371 namely for Assam (Article 371-B), Arunachal Pradesh (Article 371-H), Mizoram (Article 371-G), Manipur (Article 371-C), Nagaland (Article 371-A) and Sikkim (Article 371-F). These provisions provide protection of tribal customary laws, procedures and land rights. In addition, it provides for the creation of an autonomous region within

⁴²³ <<https://blog.ipleaders.in/autonomous-councils-north-east-india/>>accessed 12 July 2018.

an autonomous district in the event that a minority tribal group resided in the jurisdictional area of the district.⁴²⁴

6.10.2 Special Provisions for Assam

Article 371B provide special provision for Assam according to this, President may by order provide for the constitution and functions of a committee of the Legislative Assembly of the state consisting of members of that Assembly elected from the tribal areas specified in Sixth Schedule. There are three autonomous districts created under this namely, The North Cachar Hills District Council (1970) and The Karbi Anglong District Council (1976) and the Bodo Territorial Council (2003).⁴²⁵ Further, President can also direct that the governor shall have special responsibility to secure proper functioning of that committee of the Legislative Assembly of the State.

6.10.3 Special Provisions for Manipur

Article 371C provides special provision with respect to the State of Manipur. It provides that President may provide for the constitution of a committee of legislative assembly of the state, consisting of members of that assembly elected from the hill areas of Manipur. According to this article the “Hill Areas” means such areas as the President may, by order, declare to be Hill areas. Further President can give the responsibility to the governor for the

⁴²⁴ Ashustosh Kumar, *The Constitutional and Legal Routes, in the politics of autonomy: Indian Experience* (Ranabir Samaddar ed., 2005) 98.

⁴²⁵ <http://shodhganga.inflibnet.ac.in/bitstream/10603/55860/9/09_chapter%203.pdf> accessed 8 July 2018.

administration of the Hill areas and it is obligation on the Governor to submit an annual report to the President regarding the administration of Hill areas.

Above mentioned provision of the Constitution relating to the Northeast states region demonstrates varied structural design and institution that could be comprehended under the concept of asymmetrical federalism. These special provisions shows that Indian government has been the most open to asymmetrical innovations where the need of diverse ethnic communities in the North east states has been required to be protected.

6.11 Democracy and Federalism Satisfying the Urge of Regional Autonomy in Northeast States in India

India is a multinational and ethnocultural pluralism nation and with regard to the Northeast States there are numerous ethnic communities with their distinct identity, culture, religion and governance system. Therefore, drafter of the Indian Constitution realised the need to protect their culture, land and traditional system therefore, they incorporated the special provisions in the Constitution of India. Such cases include those communities whose autonomy may not be viable from defense or economic point of view⁴²⁶. They may need a more extensive federal polity to protect their legitimate claims of freedom. Therefore, democracy and federalism can be effective tool to satisfy the regional autonomy of the Northeast people.

⁴²⁶ Balraj Puri, 'Sovereignty, territorial Integrity and Right of Self Determination' (Jan. 2001) 36 Economic & Political Weeley, 27.

6.12 Analysis and Findings

The special status under the asymmetrical federalism as discussed above can be seen as promoting equality, since it ensures the protection of national identity of minorities. In such cases democracy and federalism can be seen effective tool to meet the demand and expectation of Northeast people. Tamil nationalism, which was fiercer and which had sought a secessionist even before Kashmiri nationalism, got reconciled with Indian nationalism through this tool.⁴²⁷ Though several attempts have been made by Indian government to achieve this target, things have slipped back time and again to the original position. This may be due to lack of political will and peace proposals which were basically ad hoc in nature. India's attempts to maintain the territorial integrity of the country may have been successful. But this should not be taken to mean that its strategy to provide autonomous frameworks for governance has worked well.

As we have discussed India's northeast state insurgency roots are improper exercise of state authority, ineffective protection of human rights of the people and most importantly, lack of a good governance mechanism has led to various demand ranging from right to independence, secession, regional autonomy, separate state or anything short of Independence. Therefore, It is important to recognize that human rights, development and good governance as a fundamental framework for balancing the needs for promotion of regional autonomy while protecting state sovereignty.

⁴²⁷ ibid 28.