CHAPTER - I

THEORY OF SOVEREIGNTY

The concept of sovereignty has been a riddle to political scientists; for its reality and its facade generally evinced incongruous features. Moreover, its various interpretations and political manoeuvring made it all the more complex. The reason was that all the explanations were intended to justify either the hypotheses of the scholars or the political manipulations of statesmen.

Sometimes, sovereignty was considered as an exclusive preserve of the church directly bestowed by God. Later on rebellious secularism justified it as a "supreme power over citizens and subjects unrestrained by law" it was later said to manifest itself in the "General Will" of people and made wholly responsible to them. Despite all these developments sovereignty was limited by democrats, divided by pluralists and even discarded by anarchists; yet it maintained its basic tenets.

Similarly, the metamorphosis of sovereignty at international plane confronted with the challenges by national self-determination, limitations by international law and binding force of international organizations. National sovereignty engulfed in complex world economy was usurped by the wild growth of transnational organizations and fast international communications. Growing interdependence of states marginalised states' sovereignty paving the way for politics of power and compromises on sovereign rights. However, national-ethnic upsurge with the quest for sovereignty, the post-communist world serves to show that the concept is still a vital force in international relations.

Origin of the Theory

The theory of sovereignty emerged as an attempt to identify and analyse the centre of power in the society. Jean Bodin (1530-1596) was the first political philosopher to develop a comprehensive theory of sovereignty. In his celebrated work De la Republique of 1577 he defined sovereignty as "the absolute and perpetual power within the state". Bodin reinforced the policy of centralisation of power with the French Monarchy against the feudal lords and rejected the claims of superiority by the Pope and the Emperor. His emphasis was that "the political bond may
self-sufficient even though the political community be divided by differences of religion and by the survival of local customary, and class immunities. The essential element of the political community is the presence of a common sovereign". (1) His analysis of sovereign power of the state distinguished it from all other human organisations. "According to Bodin, such power is the supreme power within a State without any restriction whatever except the Commandments of God and the Law of Nature". (2) As a corollary to this notion, the sovereign possessing supreme power was not himself bound by the laws he made. It was unrestrained by law because the sovereign was the source of law. Hence, no constitution could limit sovereignty.

With Hobbes (1588 - 1679), as in his Leviathan (1651), sovereignty was depicted as absolute and free from any limit. He maintained that a sovereign was not bound by anything and had a right over everything. Sovereignty was described as supreme authority, personal, indivisible and absolute. All powers were centered in the monarch. It became his personal attribute. In Hobbesian conception, the sovereign was representative but not responsible". (3)

John Locke and Jean Jacques Rousseau seriously attempted to democratise the sovereign power. The interpretations of sovereignty highlighted the words "people", "general will" as the sovereign. The French Revolution in 1789 adopted these ideas and sovereignty was purportedly placed in the hands of common man. Save the typical analysis of political systems, the state sovereignty, remained an arbitrary power; for they were mere idealization of the brute force. But as a result masses sunk" in poverty and superstition permitted kings and governments to exercise arbitrary sway" and the term sovereignty was still to be

attributed to "personal command" (4). States with individual sovereigns entered into or broke treaties in a way which particular citizens would not contemplate. Thus, in international relations, sovereigns remained beyond any significant control.

Hegel (1770-1831) also enunciated the theory of unlimited sovereignty which ultimately led to the use of concept of sovereignty in support of totalitarianism and expansionism. The sovereign was personified with the state rule and his greatness was embodied in the greatness of his state. Many international lawyers, particularly in Germany, developed the doctrine of sovereignty to the point, it became a veritable threat to international order. "The claim to unlimited external sovereignty would amount to the negation of international law and reduce it to a system of international morality". (5) Consequently, several western scholars of twentieth century, as the eminent French international lawyer George Scelle and Harvard's Hans Kelsen denounced the absolutist concept of state sovereignty and attempted to replace it with a notion of the international legal order.

**Development of the Theory**

The history of the notion of sovereignty shows that the meaning of a concept is related to the civilisation prevailing at a certain period and a major change in the political environment may entail a new meaning or nuance. (6) "The sovereignty of the state is a historical condition which arises from the breakdown of the medieval república Christina of the Middle Ages". (7) The era of state sovereignty began with the end of

the Middle Ages. The notion of sovereignty was used by territorial rulers in justifying their aspirations to free themselves from the influence of the Emperor and the Pope. (8). The word sovereign was used in France for an authority, political or other, which had no other authority above itself. (9) The urge for sovereign powers among European princes resulted in dissolution of the empires and the emergence of a new age of "sovereign equality" where even the smallest states arrogated to themselves all the rights and trappings of sovereignty. A Yugoslavian authority observed:

the ruler strove to unshackle his authority from the limitations of the medieval order, indeed from all forms of limitation, to achieve "an authority which did not depend upon any other authority", an authority "sovereign" in the literal, etymological sense of the term. (10)

Sovereignty in external aspects meant real independence from any superior authority and internally it claimed exclusive jurisdiction and control within the state on all questions including that of religion. This claim broadly coincided with the realities of European society in the transitional period from the Middle Ages to the Renaissance.

The age of nationalism gave a new character to the concept of sovereignty. The French Revolution in its Declaration of Rights of Man of 1789 declared that "the Principle of all sovereignty rests essentially in the nation". Thus nationalisation assimilated the doctrine of sovereignty for its own ends. During eighteenth century, the national upsurge came into conflict with the traditional monarchial and imperial forces of sovereignty challenging it both domestically and internationally. People's

9. L. Oppenheim, International Law, Supra Note No2, p.120
demands for independence under the banner of nationalism resulted in dissolution of the Empire of Turkey, Austria-Hungary and Russia. A diverse repercussion of nationalism was observed as unifying factor among the peoples which were previously divided into separate ethnic and other entities. Major states, such as Germany and Italy achieved unification in this period, smaller states such as Serbia, Montenegro, Bulgaria, and Rumania, became for the first time independent national states. "Nationalist ideology professed the goal of ethnic self-determination, the creation of polities in which each ethnic group would be free to exercise its natural right to national sovereignty ..."(11) Thus sovereignty was, in fact, the product of the age of the nation-state. Nation, state and sovereignty were closely bound up with one another in the era of the nation-state. (12)

Rise of capitalism gave impetus to nationalism. "The bourgeoisie took the lead in the struggle against medieval feudalism, as well as in the organisation of nations and of centralised national states".(13) A Soviet authority Victor Shevtsov observed:


states to coincide as nearly as possible with the boundaries of nations. (15) On the other hand, competitive nationalism intensified the assertion of sovereign powers among existing nations which increasingly influenced the attitudes and actions of the major states resulting into expansionism and wars in the international society.

The outbreak of World War I focussed on dangerous influences of national sovereignty on international society and mankind. International law and international organisations were devised to control the unbridled sovereignty of nations. On the other hand communist ideology gained prominence in the early years of the twentieth century which hampered nationalism. The October Revolution in Russia devoted to the promotion of ideological ends than to national goals.

Motives ... were not so much territorial as political: concerned not with defeating or destroying states but with the type of government established in existing states. (16)

Under the impact of ideology, the process of internationalisation resulted in supersession of national loyalties by ideological loyalties. This major shift of state policy caused external stability coupled with internal instability. The adherents of one particular ideology could betray their own nation for the sake of their political faith. The communist party of India was accused of supporting the British during the Second World War in the midst of freedom struggle.

The allegiance to ideology prompted nations to form alliances and engage in joint endeavour to further the interest of their political faith. After 1945 the Soviet Union secured the


accession to power of loyal communist governments throughout the Eastern Europe, while the U.S.A. successfully strove to achieve the same in Guatemala, the Dominican Republic, Laos and other sensitive areas. During the post-World War period there emerged new ideological doctrines antagonistic to both the main rival creeds of U.S. led democracy and Soviet led communism. The process led to deeper ideological confrontation between the two victorious forces of communism and democracy which was to dominate the world scene for long. Under the influence of community interests or an ideological alliance the intensity of the cooperative conduct pattern of nations impelled in many instances, the abdication of internal or external autonomy. This could be characterized as intervention by the traditional norms of sovereignty which no sovereign state normally would have accepted. (17) The phenomenon of military alliances and cold war led to the different interpretations of national sovereignty which were not always compatible with the general principles of international relations.

The deideologisation of Eastern Europe and disintegration of the Soviet Union virtually marked the end of the role of ideology in international relations. Assertion of national sovereignty in Eastern Europe under the liberal atmosphere of Perestroika proved irreversible. National ethnic upsurge launched the quest for identity and national sovereignty in the post-Communist world. Recent events prove that national sovereignty has emerged as a major fulcrum of change in international politics especially in the erstwhile communist world.

**Basic Ingredients and Nature of State Sovereignty**

The doctrine of State sovereignty retained from its history its two essential characteristics - internal supremacy and external independence. In a classical perspective "a sovereign State was one which exercised undivided authority over all persons and property within its borders and was independent of direct

control of any other power". (18) L. Oppenheim observed the traditional features of state sovereignty: "Sovereignty in the strict and narrowest sense of the term implies, therefore, independence all around, within and without the borders of the country". (19) State sovereignty was generally accepted in theoretical terms, as defined by Djura Nincic, a Yugoslavian authority:

Sovereignty is an essential feature of state power, that it signifies "supremacy" of the state in its internal and independence in its external relations. (20)

Sovereignty was the supreme authority by which any state was governed. In its sphere of operation there was no power within the state which might compete with it. This state power was original power in the sense that it did not flow from any other authority. Being original in its essence, it also did not acknowledge any superior to it within or without the state. A total perspective represented the dual nature of sovereignty. "... sovereignty has two facets first an exclusive competence, and, second, the relative independence of law making entities from outside intervention". (21) Traditionally, there was complete absence of subordination to a foreign authority in international sphere and in domestic affairs it assumed predominance over any power vested in groups or individuals within the state.

The traditional notion of sovereignty emerged with the rise of territorial state. Sovereignty of the state appeared as "a centralized power that exercised its law-making and law enforcing

19. L. Oppenheim, International Law, Supra note No. 2, p.119
20. Djura Nincic, The Problem of Sovereignty, Supra note no.10, p. 5
authority within a certain territory". (22) The exclusiveness of state powers within a certain territorial jurisdiction related to the power of legislation, adjudication and administration. The illimitability of sovereignty involved "the unlimited right to govern; the unlimited capacity to rule; the unlimited concentration of granted rights; unlimited authority within the domain of the state". (23) John Austin's theory of sovereignty viewed that the determinate human superior enjoyed habitual obedience of the members of the political society. "The mutual relation which subsists between that superior and them, may be styled the relation of sovereign and subject, or the relation of sovereignty and subjection". (24) This bond of relationship ultimately resulted in unlimited legal sovereignty.

The state sovereignty was not merely concerned with the force or power of the sovereign. The doctrine of sovereignty was concerned with the question of authority. Political philosophers maintained that "sovereign", meant a supreme legal authority in so far as it was also a moral authority. Domocratisation of sovereign power by Jean Jacques Rousseau reflected the General Will of the people. "Sovereignty", says Bosanquet, is the exercise of the General Will", which "is expressed in law, in so far as law is what it ought to be". (25) But the idealistic interpretations of sovereignty could not limit the power of the sovereign and its all embracing authority. It always signified the supreme right and power of the state to determine the conditions of its internal structure and order.


Indivisibility

Alan James maintained that state sovereignty implied "three main features: it is a legal, absolute, and unitary condition." (26) Indivisibility constituted its main feature. The nature of functions discharged by the sovereign authority within a state could not afford the division of sovereignty in political reality. The theory of division of sovereignty came into light in political theory when in 1787 the United States of America was transformed into a federal state from a confederation of states. While political philosophers defended the indivisibility of sovereignty L. Oppenheim, keeping in view the existence of semi-independent states, observed, "it may well be maintained that sovereignty is divisible". (27) The Constitution of the Soviet Union of 1977 also reflected the divisibility of sovereignty of the state by granting sovereign rights to republics within the Union which ultimately resulted in the exercise of full sovereignty by the republics in the post communist world.

But the traditional notion of state sovereignty did not concede the division of sovereignty. Hans Morgenthau observed, "He who is supreme is by logical necessity superior to every body else; he can have no superior above him or equals beside him". (28) Hence, the member-states of a federation could not claim sovereign rights especially in conflict with the federal government. During Constitutional convention of 1787 in U.S.A., Madison wrote to Randolph, "that an individual independence of the states is utterly irreconcilable with the idea of an aggregate sovereignty". (29) In the words of Hamilton: "Two sovereignties cannot co-exist within the same limits". (30) Thus the traditional concept never approved the division of state sovereignty.

27. L. Oppenheim, Supra note no.2 , p.122
28. Hans Morgenthau, Supra note no. 22 , p.312
Independence  

External independence of the state was also concomitant aspect of sovereignty with its internal supremacy. According to Francis Harry Hinsley, "the idea of sovereignty was the idea that there is a final and absolute political authority in the political community, and no final and absolute authority exists elsewhere". (31) "... no state can give orders to another state, for ... the legal imperatives of the latter would cease to have the character upon which ... the internal character of statehood depends". (32) Autonomy, independence and equality were the three basic elements of sovereignty as recognized by the norms of international relations among European states. The external aspect of sovereignty became important after the rise of the nation-states in the sixteenth and seventeenth centuries and development of interaction among several states in Europe. Independence of the State was recognized as an essential ingredient of sovereignty in the Island of Palmas Arbitration in these terms:

Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of state. (33)

Each state was free to manage its external affairs according to its discretion, in so far as it did not contradict with any specific treaty or general principles of international law. A nation's sovereignty in a general sense, merged with the national

independence. State sovereignty implied that it was independent and that there was no authority above it. The concept of sovereignty involved "independence from any other" "sovereign" authority but not "independence" from norms which should apply equally to all these "sovereign" states". (34) However, the traditional theory of sovereignty continued its emphasis on the independence of the state implying exclusiveness, autonomy and full competence.

The concept of sovereignty was also enriched through the addition of an extremely important principle of international law— the principle of non-intervention, of non-interference in the internal affairs of other countries. A U.N. General Assembly noted in its resolution in 1970:

No state or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all forms of interference ... are in violation of international law ... Every state has an inalienable right to choose its political economic, social and cultural systems, without interference in any form by another state... (35)

The Helsinki Final Act of 1975 also highlighted the principle of non-intervention in international relations. The duty of non-intervention is a master principle which draws together many particular rules on the legal competence and responsibility of states (36). The essential element of independence and equality of states could only survive with the observance of this principle of international law.

34. Djura Nincic, The Problem of Sovereignty, Supra note No. 10, p.12.


Sovereign states were recognised as juridical units in international law and the principle of sovereign equality emerged as an accepted principle of international relations. Hence externally, sovereignty did not mean supremacy but equality. Independence entails the equality of states in their mutual relations. "Equality is actually inherent in the concept of sovereignty - independence pars in parem non habet judicim. By equality, in this sense, is meant legal equality rather than equality in rights, formal rather than actual equality". (37) State sovereignty was essentially a legal expression delineating the status of equality with other sovereigns in international relations. Equality was considered the principal attribute of sovereignty. The principle of sovereign equality of states was established as a consequence of the emergence of new nations, and became one of the cornerstones of the entire international system. This principle was enunciated by the United Nations General Assembly in 1970 as follows:

All states enjoy sovereign equality They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. (38)

Sovereign equality among independent states aimed at free development of states and protection of "small states from imperialist policies of diktat and subjugation". (39) As the equality of sovereignty was acknowledged by all powers, regardless of the size, strategic value and power of the states concerned, many sources of conflict were eliminated. (40) The principle of sovereign equality ensured an equal participation of each state in the process of international organizations and in the general conduct of international affairs.

State sovereignty confronted several challenges to its internal and external aspect of supremacy and independence from its inception. Even the founder of the theory, Bodin conceded that sovereign was bound by the law of God and of nature. The paradox originated with the theory that "the sovereign is at once the source of law and the subject of certain constitutional laws which he has not made and cannot change". The sovereign could not command something contrary to natural law. Absolute sovereignty was liable to question. Bodin had no doubt that there might be cases so flagrant that the sovereign ought to be disobeyed. (41)

In the present times, the growing realisation of the fact that unlimited power of the sovereign usually lead to the abuse of the government authority. The principle of rule of law emerged as a generally recognised basis of sovereign authority. The principle of rule of law maintains that the State is the creature and not the master of the law. Hence, state sovereignty is limited by law depriving its arbitrariness and absolute authority over its citizens. "The principle of world political morality" observed Wilfred Jenks, was "that the law, once acknowledged to be such, is not subject to the will of the state". (42) The doctrine of "auto-limitation" means that the sovereign state itself limits its own power. The "sovereign" state, illogical it may seem, does not exercise unlimited power. Its supposedly unlimited authority in internal affairs is, in fact, limited by the totality and unity of the rule of law.

The principle of rule of law perceived that political legitimacy henceforth was to be derived from popular support; governmental authority was based on the consent of the people in the territory in which a government exercised to its power. Leonid Sobolev, a Russian authority observed:


... a rule-of-law state is a law abiding state which shares equal responsibilities with all citizens, organizations and associations their inter relationships being regulated by legislation. (43)

This non-traditional Soviet view of the state provides a new character to the concept of sovereignty justifying its divisibility.

It resembles with the theory of pluralism. The notion of pluralistic sovereignty as propounded by Leon Duguit, H. Hugo Krabbe and Harold J. Laski, also attacked on the traditional features of supremacy and indivisibility of the state sovereignty.

... the concept of an absolute and independent sovereign state which demands an unqualified allegiance to government from its members, and enforces that allegiance by the power at its command, is incompatible with the interests of humanity. (44)

Pluralist theory maintains that the individual belongs to various associations, and the state has preeminence in so far as this is approved by consent based on moral values. Absolute authority of the state over associations was considered unacceptable.

But because society is federal, authority must be federal also ...

... It means the abandonment of the sovereign state in the sense which equates the latter with society and gives it, thereby, the right to dictate to associations within the society. (45).


45. Ibid, p. 271.
Hence, decentralization of state authority is essential even for its adaptability with the new political developments and aspirations of the people in a changing world. Should state sovereignty remain as a viable political idea, its content will likely become decentralized and dispersed.

The process of democratisation and decentralisation of the state power is now universally recognised. The process might be termed as "a loosening of monolithic sovereignty..." (16). Consequently, doubts are growing concerning the viability, extent and usefulness of the concept of sovereignty as supreme and absolute power in a political society at the close of the twentieth century.

The monolithic legal sovereignty of the state was further diluted with the recognition of the fact that sovereignty is primarily a political and not a legal concept which "ensures the primacy of politics over law and puts the sovereign state in a position to act potentially against the law." (47) The role of political ideology had immense impact on the exercise of sovereign rights of a state in relation with other states as well as in its domestic system.

So ideological commitments not only determine state policy, but reflect it. State interests not only follow ideology but determine it" (48)

The state system encouraged a sense of particularity where politics of ideology required a sense of unity among followers of particular ideological interests, all over the world. Politics emerged as "the arena of combat as well as the arena for the combination of

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47. Gerhard Leibholz, Politics and Law ( A.W.SYTHOFF-LEYDEN, 1965) p.218

48. Evan Luard, Types of International Society, Supra note No16, p.106
these interests". (49) This led to the different interpretations of sovereign rights of the state. The smaller states in the socialist and capitalist camps were considered satellite states of the Soviet Union and the U.S. accordingly. Even armed intervention were justified and purported to be a sacred duty to protect the sovereignty of the satellite state. Though recently the end of cold war resulted in the end of a certain kind of ideology, the ideological perceptions of sovereignty still defy scientific and objective definitions of state sovereignty. A western authority perceives a violation of sovereignty through recent political developments:

The Chinese Government's massacre in Tiananmen Square to maintain an oligarchy against the wishes of the people was a violation of Chinese sovereignty. The Ceausescu dictatorship was a violation of Romanian sovereignty. President Marcos violated Philippine sovereignty. General Noriega violated Panamanian sovereignty, and the Soviet blockade of Lithuania violated its sovereignty. Fidel Castro violates Cuban sovereignty by mock elections... (50)

With such perceptions, the concept of internal supremacy of the State cannot be sustained. In fact, peoples' sovereignty or the sovereignty of the individual to assert human rights virtually leads to the denial of state sovereignty.

... a principle that privileges the sovereign individual or the sovereign group over the sovereign state and, if universally implemented, would


lead to the destabilization of the international system and to the internal deligitimation of their own rule. (51)

In fact the concept of "peoples' sovereignty was from its inception an ambitious attempt at taming the Leviathan and rejecting the basic absoluteness of state power. Initially the liberal constitutions endeavoured to check sovereign discretion by subjecting it to the control of representative popular organs and making executive action dependent on the consent of the parliamentary institutions. With the words "We the people", (52) from the United States Constitution of 1787 to the Indian Constitution in 1952 and further, the concept of the popular will; also the theoretical and operational source of political authority, was now well recognised. Article 21(3) of the Universal Declaration of Human Rights provided that "the will of the people shall be the basis of the authority of the government..."(53)

The "will of the People" has become the paramount source of political legitimacy throughout the world. (54) Protection of human rights within the state is now an international concern. Violations of the peoples' rights cannot be permitted under the garb of national sovereignty. "An authority which is guilty of this crime (Genocide) cannot claim respect for its sovereignty, since it is itself infringing national (popular) sovereignty and it thereby deprives itself of the right to be the source of legal power". (55) Now, no serious scholar supports the contention that internal human rights are "essentially within the domestic jurisdiction of any state" and hence insulated from international law. W. Michael Reisman observed the drastic change in the concept of sovereignty:

52. Preamble of the US Constitution and the Indian Constitution.
Although the venerable term "sovereignty" continues to be used in international legal practice, its referent in modern international law is quite different. International law still protects sovereignty, but not surprisingly— it is the people's sovereignty rather than the sovereign's sovereignty. (56)

The conception of popular sovereignty, while revolutionising the traditional concept of sovereignty, helped its sustenance and adaptability in the changing political environment and state structures. During its interpretations, revisions, the concept of people's sovereignty "provided the national democratic state with a potent political weapon". (57) In the last resort, the people as the political sovereign is always in a position to assert itself either inside the framework of a federal constitution or by a revolutionary action. (58) But the rise of democracy and federalism has involved a loosening of the notion of sovereignty. (59)

In the federal structure of states of U.S.A and U.S.S.R. the state sovereignty in its traditional sense, lost the characteristic of indivisibility. In the USSR, Union Republics exercised their sovereign rights both directly and through the Union of Soviet Socialist Republics. (60) The traditional theory of sovereignty was subjected to modification in the federal system of the USSR.

The concept of sovereignty in the context of state structure of the USSR cannot be duly perceived in legal sense, which draws a parallel between it and


57. Hans J, Morgenthau, Politics Among Nations - Supra Note No.22 p.303


59. Ruth Lapidoth, "Sovereignty in Transition", Supra note no.8, p.332

exclusive power. (61)

The right of the Union Republics to enter into relations with foreign states and to participate in the activities of international organisations elevated the Republics to the equal states as subjects of international law. The federal state structures led to the idea of dual sovereignty of the Union and component states. Recent developments have brought forth notions of divided sovereignty, residual or de-jure sovereignty, de-facto sovereignty and sovereignty - association inconsistent with the concept of unlimited and full sovereignty.

National self-determination being the people's right to exercise the supreme power in the territory, represents a force which is a constant challenge to the traditional concepts of sovereignty. The historic declaration on the granting of independence to colonial countries and peoples, affirmed:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (62)

However, the rule of self-determination was a 'principle' and not a 'right'. Or that even, if it was right, it was basically people's right to secede from colonial rule, the right to exercise the supreme power in the territory. But the "compliance with the principle of equal rights and self-determination of peoples", was not to "dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states." (63)

The political philosophers confronted a dilemma that the national self-determination was difficult to survive and succeed in

62. UN General Assembly Resolution 1514 (XV), 14 December 1960
63. Resolution 2625 (XXV), 24 October 1970.
the face of powerful sovereign state. W. Friedmann observed in the 1940's:

... the inherent self-contradiction of the ideal of the sovereign State based on national self-determination and the impossibility of a satisfactory solution as long as the sovereign national State remains the ultimate standard of value. (64)

Earlier the powerful national states were not really threatened by the movements desiring for political sovereignty of national groups living in the state. In order to maintain their sovereignty, the powerful states generally suppressed such movements for national self-determination and were able to justify their position by invoking the ideals of international peace and order. They refused to surrender the segments of national sovereignty to other political group, claiming for political independence. Sovereignty remained less adversely affected in the case of powerful states, in particular of those that occupied the hegemonial position. (65) But the gradual change in the political environment has increased the feasibility of success of national self-determination challenging the absolute state sovereignty. Alfred Cobban asserted that "nationalism has passed from the state-making to that of state breaking." (66) National self-dermination emerged as "a disintegrative force within the framework of modern (nation) state system". (67)

National self-determination does not confine to the people's right to secede from a colonial power or to safeguard non-self governing territories against 'saltwater colonialism'. During early 1970s, the developments in Pakistan and Bangladesh demonstrated


amply enough that the right to secede did not apply against colonialism only and it might also operate in a number of other circumstances when a portion of a state secedes from its own independent state by challenging erstwhile sovereignty.

Recent developments in international politics with a new phenomenon of national ethnic upsurge serve to show that the principle of national self-determination has proved a real threat to state sovereignty.

The characteristic nationalist movements of the late twentieth century are essentially negative, or rather divisive. (68)

The loosening of federal state sovereignty in the Soviet Union gave birth to popular movements in the Soviet republics for independence and national sovereignty. This process ultimately resulted in the disintegration of a sovereign state. Recognition of the right to self-determination in case of a multi-ethnic state poses a real threat to the sovereignty of a State. The complex repercussions of the principle were analysed by an authority on the subject:

... the right to self-determination reinforces the state and its sovereignty. However, the sovereignty and territorial integrity of a heterogeneous state will certainly be endangered by the concept of self-determination. (69)

Recent events in the post-communist states of East and Central Europe as in Yugoslavia and Czechoslovakia, the principle of self-determination has proved a death-knell of state sovereignty. This neo-nationalism is a unique phenomenon. Its motivating force is "the


search for meaningful identity in the modern world. " (70) This has caused assertions of national sovereignty on the basis of ethnic, cultural or linguistic community. This feature is most pronounced in the post-communist world.

International law comprises a system of institutions and rules designed to govern the international relations between sovereign states. Rights of the individual are also a growing concern of international law and international organizations. Rules of international law cover almost every facet of inter-state activity which implicitly impedes the traditional expression of internal supremacy and absolute independence of the sovereign state.

To be a sovereign state is not to be above law; it is to be subject, from the moment of its foundation, to all the existing rules and obligations of international law. (71)

Hence, external sovereignty does not mean 'supremacy' but equality. A sovereign state participates in the international system on a level of legal or formal equality with other members of the system. State's independence in external affairs means independence in foreign policy within the framework of general international law.

... a state which is sovereign may also be 'bound' by, or have an obligation under, international law. (72)

Earlier, International law was not considered sufficiently effective to exercise control on the sovereign states. The less


controlled the sovereign, the greater abuse or violation of international law occurred in international politics. The incompatibility between a sovereign state and principles of international law was not glaring in the absence of a strong and effective popularly supported norms of international law. The state sovereignty was itself considered the cause of ineffective international legal system. Hans Morgenthau observed:

> It (sovereignty) is not at all inconsistent with a decentralized, and hence weak and ineffective, international legal order. For national sovereignty is the very source of that decentralization, weakness and ineffectiveness. (73)

After the second World War; the growing importance of international law and United Nations facilitated the development of various norms curbing the arbitrariness of sovereign states. Urge for international peace and fear of co-destruction helped in taming the national sovereignty.

However, the principle of consent reigned supreme in international law. This was vigourously pursued by the communist nations. Only those rules of international laws, were binding upon states independence in international affairs, which it had consented to. Hence, international law could not encroach upon the sovereign powers of the states. A. N. Ushakov observed:

> Conceptions which proclaim sovereignty and international law as incompatible are scientifically invalid, irrespective of whether they proceed from the position of absolute sovereignty or negate it. (74)


Recently, this view has also undergone a considerable change. The policy of Perestroika and Glasnost conceded that universal principles of international law were applicable to all nations. The communist nations also developed deeper faith in international law and in United Nations.

The theory of consent was, in fact, philosophical in character to justify the sovereign power of the state in international system. Principles of international law have acquired an independent role and the states are bound to follow them. Harold J. Laski described this phenomenon thus,

... states consent to the rules of international law not because they so choose, but because they have, in fact, no alternative. (75)

International law regulates the conduct between members of the international political system. Hence, there must necessarily exist some norms, based on reciprocity, which restrain the power of a state within its own territory in the interest of the community. A state cannot enjoy its exclusive and general rights within its territory under international law without at the same time assuming corresponding obligations.

It (state sovereignty) is limited by the sovereignty of others. It is relative, because the relativity of sovereignty is the imperative condition of the right to all nations to equality. (76)

Recent emphasis on human rights has shifted "the fulcrum of the system from the protection of sovereigns to the protection of people..." (77) The issue of the implementation of the standards of


76. Ales Bebler, National Sovereignty in the Nuclear Age (New Delhi, 1972), p. 7.

77. W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law", Supra note No. 50, p.872
international human rights programme stresses on "the reduction of the gap between international commitments and the domestic performance of governments". (78) These demands on the sovereign states make them amenable to new social and universal needs. Traditional pattern of national sovereignty in a new fabric of international relations is fast losing its relevance.

New system of international relations which is forming in the revolutionary epoch does not confine itself to the traditional legal framework. (79)

International agreements and general obligations under international law do not normally constitute a limitation on state sovereignty. But the development of international law in regard to international protection of human rights has resulted in severe limitation on the exclusive right of the state to govern its own citizens according to its own discretion. Now international law justifies the right to humanitarian intervention in the internal affairs of the state, in case of a serious infringement of human rights. The U.S. aid to Kurds in Northern Iraq in 1991 was considered by Iraq to be a violation of its sovereignty. But the scholars perceive the drastic change in the progressive principles of international law.

The traditional concept of sovereignty no longer fits the necessities of modern international law. The idea that sovereignty can neither be limited or divided is contrary to modern developments in international society. (80)

78. Ian Brownlie, Principles of Public International Law, Supra note no. 36, p. 577.
Increased faith in the principles of international law, and quest for world peace impelled the political philosophers to search for an alternative of international system of sovereign states. If war was a product of the nation-state system, then the role of the state was to be diminished. Some looked for a United World Federation. The United World Federalists aimed to prevent absolutism of state power.

We do not need to end nationalism; we need only modify the present absolute nature of national sovereignty. (81)

In addition to its frontal assault upon absolute sovereignty world federalists sought to supervene strident nationalism. Their intention was to eradicate the nationalistic consequences of sovereignty as well as national sovereignty itself. Federalism emphasised on the division of national sovereignty to harness it into functionalism to serve the interests of international community.

The crucial need is for an effective division of the internal and external sovereignty while helping all nations to pool their separately held fragments of international sovereignty for transfer to world federal government. (82)

The concept of world government basically envisaged a supra-state authority or effective restraints imposed on the sovereign state by other states. In a World - State, there was "no room for separate sovereignties". (83) In fact, the world government or world federation could be materialised by the virtual elimination of sovereignty, or at least by division of authority.


The federalist argues for the head on attack on sovereignty, proposing a once-for-all fusion of sovereign powers within a supreme constitution which would distribute authority between the federal centre and the peripheral states. (84)

It is noteworthy that Soviet view was unequivocally opposed to any restrictions on sovereignty through internationalism or world government. However, G. Shakhnazarov agreed that it was "possible to be in favour of sovereignty and of world agreement simultaneously." (85) But the federalist movement could not progress as desired due to ideological antagonism of social systems, Cold War and the nuclear arms race. Hence, functionalism through international institutions was the only alternative to control unbridled state sovereignty.

The institutional aspects of organizations of states pose serious challenge to the principle of sovereign equality and independence of the member-states. The majority voting and also a system of weighted voting in the organization may curtail the sovereign rights of the state. Similarly, various organs of the organization may be permitted to take decisions, or even to make binding rules, without the express consent of all or any of the member states. In the United Nations Security Council, the five permanent members had a voting privilege known as the 'veto'.

An international organization is an association of states established on the basis of a treaty and in accordance with international law in order to achieve specific objectives. It possesses a system of organs and rights and duties that are distinct from those of the member-states.

84. F.S. Northedge and M.J. Grieve, A Hundred Years of International Relations, Supra note no. 71, p.348.

The international organizations have international legal personality and this may give them competence. But they are secondary subjects of international law and do not possess sovereignty. (86) However, the continuing internationalization and intensification of economic, scientific relations and the growing need of joint ventures by all or group of states add to the formation of international organizations. Enhanced role of these organizations in the inter-state relations gradually undermines the sovereign rights of the member-states.

If an organization has considerable independence and power to intervene in the affairs of member states, the latter may come to have a status akin to that of membership in a federal union. (87)

Complex world economy has begun to cast serious doubts on claims of state sovereignty. International economic relations extend both to relations among physical and legal persons of various countries and to relations among states. The economic dimensions as the productive capacity of the economy and the economy's dependence on international trade and finance determine the nature and exercise of state sovereignty in international relations. Developed states have capacity to manipulate the economy of the underdeveloped state.

The requirements of economic, military and political cooperation have narrowed the traditional domain of domestic jurisdiction. (88)

International trade, credit and financial relations, transportation and industrial cooperation among nations have risen to immense proportions. The system of international trade produces a specialized economic pattern which seems largely unaffected by


87. Ian Brownlie, Principles of Public International Law. Supra note no. 36, p.682.

administrative decisions and actions at the level of government (89) State's self-contained economic system is increasingly obsolete in the face of inter-connected world-wide financial markets, modern systems of communications, free trade agreements and common markets. In the interest of international economic security, the emphasis is always on, "How promptly and effectively individual countries agree to subordinate their national sovereignty and independence to the interests of international monopoly capital". (90)

The nation today is visible in the process of loosing an important part of its old functions, namely that of constituting a territorially bounded 'national economy' which formed a building block in the larger 'world economy' at least in the developed regions of the globe. (91)

Some scholars still hope that the modern state and capitalism can and do occupy relatively autonomous spheres, although politics and economics obviously intersect and overlap. (92) But the internationalization of capital poses new problems and requires new forms of state apparatus and state intervention, to secure and maintain socio-economic relations in favour of capital accumulation on a world scale. (93) It is certain, that traditional state sovereignty cannot with stand the pressures and pushes of world economy, which needs smooth economic transactions, unobstructed movement of people in pursuance of the new objectives.

The process of internationalization involves economic, scientific, technical, cultural and other cooperation among states. But the "state-centric" models of world order as state sovereignty and inter-governmental organizations are superseded by transnational organizations in certain respects of socio-economic international relations. The role of 'national economics' is undermined by transnational or multi-national enterprises of all sizes. These new international centres and networks of economic transactions are for practical purposes, outside the control of state governments. (95) In the economic sphere, "Participants in these relations will more often be independent enterprises, organizations and groups, not states". (96) XXVII CPSU Congress also observed the adverse impact upon national sovereignty:

The transnational corporations are undermining the sovereignty both of developing and of developed capitalist countries. (97)

Transnational links and institutions limit the political leaders' abilities to conduct mercantilist strategies and weaken the state's control over the domestic economy. (98) There are many transnational groupings of the people and organizations, most of them having little or no connection with national governments. These transnational organizations facilitate in "denationalizing" the

95. E.J. Hobsbawm, Nations and Nationalism Since 1780, Supra Note No. 68, p. 174.
energies of the people and take governments out of focus at the centre of international transactions. (99) These organizations have emerged as optimal instrument of integration. John Kenneth Galbraith noted that

the multinational corporation is the nearly inescapable accommodation to international trade in modern capital and consumer goods. (100)

In fact, the transnational and non-governmental organizations sometimes function as policy influencers attempting to put pressure on states and intergovernmental organizations. This process ultimately leads to the formation of supra-national organizations, which may prove national sovereignty a spent force. A Soviet scholar observed:

... a new knot of contradiction has emerged between TNCs and national state from political organization of society. Monopolies ... are undermining the sovereignty not only of developing, but also of advanced capitalist countries. (101)

The transnational groups and organizations emphasise upon radical restructuring of the international political system. They undermine the national sovereignty and tend to infringe the accepted rules and customs of inter-state relations. Conducive scientific and technological developments have increased their impact on the existing political institutions.

... processes below or above the inter-state level ... namely, the technological revolution which created physical communities


irrespective of political borders; economic transnationalism, often too dynamic to be controlled by either separate nation-states or regional coalitions. (102)

The force of circumstances is such that the transnational organizations have emerged as the convenient platforms for catering to social needs, as well as, to the solutions of global problems. Traditional national barriers and rigid control of the state are considered impeding the spontaneous economic and cultural development today.

In the modern world, the nation state seems unable to provide cultural or physical security for its citizens; perhaps transnational organizations represent the first step towards the creation of a new and more efficient political system on a world scale. (103)

Supranationalism Dramatic advancement in communications, the increased mobility of people and money, and also the huge concentration of corporate power in the hands of international business have brought into question the existing economic and political order. Supranationalism has tamed the nation-state to adapt to the ever-increasing demands and expectations of its citizens and the changing circumstances of international society. Supra-national organizations have the authority above the state and are capable of compelling it within carefully defined limits. Supranational institutions "have power to take decisions binding on the members whether they have participated in the decision or not". (104)

In this situation sovereignty could be said to have been lost by the state, and the supranational character of the international institution strengthened as a direct challenge to the state's survival. ..(105)

The member states of the European Communities now accept that law made by the institutions of the European Communities in Brussels is to be followed by domestic courts without the requirement of any special act of approval by national governments or national assemblies. This, in fact, represents a revolutionary change in the nation-state system by encouraging obedience to the "law" of the international institution and corresponding reluctance of citizens to obey national law. Europeans welcome this allegiance to supra-national authority.

Finally the loss of sovereignty involved in 1992 would be counterbalanced by a gain in pooled sovereignty jointly exercised (106).

The process of supranationalism is also considered a progressive evolution of political institutions and participation of nation-states in it is an expression of their adjustment to new conditions. However, this does not amount to breach of sovereignty: for the decisions in a supra-national organization are taken with the consent of the states concerned. But this legalistic pattern of transactions is tempered with the amalgam of prime groups and agencies transcending national frontiers, together with the political agencies associated with a supranational institutions. Hence, in practice, this transformation of political power from the nation-state to international organization is rapid. A German scholar observed this change:


More and more problems are removed from the control of a national government. A growing number of decisions are taken at European Community level. More and more actions appear on the international state... Our age is characterised by the overcoming of the former power-oriented nation-state. (107)

**Neo-Globalism**

New international political scenario poses fresh challenges to the global image of state sovereignty. These challenges focus on exploring new political forms perceiving 'nation-states' and 'nations' as retreating before resisting, adapting to the new supranational restructuring especially in western Europe. The new forms of political community resist spatial categorization; and new modes of transborder behavior seek to link the claims of humanity at large with those of particular sovereign entities (108). Practical developments in the spheres of economics, communications, technology and certain legal trends tend to reduce the importance of state sovereignty in the international political system. The capacity of the international system to defend the state system has shrunk. (109). Large scale movement of people, ideas and criminals at international level make the borders of nations out of genuine sovereign control. The process of international economic transactions and people's direct participation negates national sovereignty.

One of the main results of the internationalization of social and economic life is that national problems became global. These national problems cannot be resolved without some degree of international influence. This logically leads to a gradual


transformation of conceptions of the convergence type into theories of a "global" or "transnational" consciousness (110) Modern technology has engendered the creation of an increasingly unified world. This has necessitated rethinking the concept of sovereignty. A Soviet Scholar assessed the impact of neoglobalism as follows:

Neoglobalism means total disregard for generally recognised norms of international relations and violations of the sovereignty of nations. (111)

The horizontal proliferation of organs to perform specialized functions in the world policy process framework does not explicitly convince the governments to relinquish national sovereignty. But the nature of certain tasks as control of international violence, expose the incapability of nation-state system to solve the crises which are crucial to the well-being of mankind. Hence, the rise of global departments to deal with specific global tasks impel the national sovereignty retreat from its traditional role. However, the territorial state does not run the risk of becoming extinct, but the current statist view of state sovereignty requires considerable modification. (112)

Global interdependence of nations poses a great threat to national sovereignty. Sovereignty has undergone drastic changes due to growing interdependence of states. This phenomenon in international system has made it necessary to constrain the elements of policy over which the states have unilateral control.

Individual states do strive to pursue individual interests and to maintain their autonomy, yet in doing so they are enmeshed in webs of interdependence... There


112. Thomas Spira, Supra Note no. 108 ,p.630.
is always a tension between sovereignty and the interdependence that sets limits on that sovereignty. (113)

The evolution of an emergent, collaborative, world-wide political civilization is unavoidable. Emergence of a global civilization promotes "a loosely integrated form of world order" where sustenance of standards of sovereignty may not be possible.

And given the existence in international relations of many varieties and degrees of dependence it follows that the states concerned are not completely sovereign, if sovereignty amounts to political independence of a quantitative kind (114).

New technical devices such as televisions without frontiers in the form of star T.V. and travel revolutions with cultural assimilations along with the global problems of economic development and exchange of resources, and flow of drugs, crime and terrorism drive the nations to cooperate and depend on each other. Even Harold J. Laski highlighted the role of international dependence:

What impresses us is not national separation but international dependence, not the value of competition, but the necessity for cooperation (115).

The political alliances and competing military organizations could not deter the "increasing awareness of mutual interdependence despite great differences and the high cost instability". (116)


Even Communist leaders concede that interdependence of today's world "exists in a state of complex and delicate balance of its component parts, of an equilibrium of interests and of centrifugal and centripetal forces". (117) The picture, therefore, is of a world in which states are in the process of losing, or may have already lost, a good part of their sovereignty. (118) Global vision and forces of interdependence are transforming the sovereign state beyond its recognition.

The transformation wrought by a growing interdependence will eventuate in what might be called the "tamed" state, the state from which the sharp teeth of sovereignty have at least been drawn... (119).

Modern history has gradually led the sovereign national states towards their interdependence and mellowed down their unilateralism and seclusion. "... the world has moved from colonial dependence to a struggle for independence, and auto universal interdependence .... Interdependence is normally expressed in the voluntary self-limitation of state sovereignty on the basis of reciprocity, or in the partial devolution of sovereign powers to international organizations". (120) The most pronounced feature of modern world is its unity and interdependence. The urge for state independence is submerged in the world interdependence. Mikhail Gorbachev also observed:

... in this day and age each country and nation the smallest as well as the biggest ones regard independence as their

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118. Alan James, Sovereign Statehood, Supra note no. 114, p. 179.


highest value and spare no effort to defend it. And yet we are witnessing the growing interdependence of States. (121)

At the close of twentieth century, the viability, extent and the usefulness of the concept of sovereignty is also questioned. A Professor of law agreed that sovereignty must be mitigated by the exigencies of interdependence for it is adaptable to new situations and exigencies. (122) Wilfred Jenks had also suggested that the concept deserves to be "rejected by a deliberative act of policy as a snare and a delusion", for "the world has outgrown sovereignty". (123) However, the world still remains inclusive.

The European Community treaty signed in December 1991 in Maastricht, the Netherlands laid out a plan for economic and eventual political integration of Europe transcending national sovereignty of the states. Yet during 1992, Europe succumbed to the lure of state sovereignty. In June, Denmark "narrowly voted down the new treaty in a referendum - a sign of the resentment throughout Europe at the idea of ceding national sovereignty to faceless Eurocrats in Brussels". (124) On the other hand, the erstwhile communist world witnessed a new wave rather stormy crave for national - ethnic sovereignty which virtually reversed all the objectives and drives for world revolution, classless and state-less society. From a vision of a 'world state' to the uncompromising Republican sovereignty - the communist theory of sovereignty had a phenomenal experience.


