

# THE COMMONWEALTH AND REPUBLIC OF INDIA: AN ANALYSIS OF THE PRINCIPLE OF SOVEREIGNTY WITH RESPECT TO FREEDOM AND INDEPENDENCE IN LEGAL AND POLITICAL TERMS

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## ABSTRACT

*This paper examines the relationship between the Commonwealth and Republic of India by analyzing the principle of sovereignty with respect to freedom and independence in legal and political terms. Various concepts like monarchy, sovereignty, empire, dominions, commonwealth, and republic are analyzed in order to make sense of this relationship. Also discussed are some of the problems regarding the concept of sovereignty in relation to the Constitution of India.*

**KEYWORDS:** Constitution of India, Commonwealth, Sovereignty, State, Crown, Empire, India.

Just after the start of revolt of 1857 the rebel leaders proclaimed the 81 year old Mughal Badshah a.k.a. Bahadur Shah II as the Badishah-e-Hind, or Emperor of India, in other words the paramount power. (The Tribune. May 10, 2007) After the revolt's failure at the hands of their opponent, the British East India Company (EIC), and their subsequent exiling of the Emperor of India, the British Crown in the person of Victoria, Queen of the United Kingdom of Great Britain and Ireland assumed power in 1858. Through this, "Britain's possessions and protectorates on the Indian subcontinent were formally incorporated into the British Empire" and the rule was called Crown rule in India, or indirect rule in India. Hereafter, Hindustan (later India) became the 'Indian Empire.' In 1874 after the dissolution of the EIC by the British government, Queen Victoria was proclaimed Empress of India on April 28, 1876 in the United Kingdom and on January 1, 1877 in India. Queen Victoria was the 7th monarch of the Kingdom of Great Britain and the United Kingdom. ([https://en.wikipedia.org/wiki/List\\_of\\_British\\_monarchs](https://en.wikipedia.org/wiki/List_of_British_monarchs))

## MONARCH AND SOVEREIGNTY

The word monarch is defined as "a sovereign head of state, especially a king, queen, or emperor." and comes from the Greek monarkhēs, from monos 'alone' + arkhein 'to rule.'<sup>5</sup> In other words the rule of a single person. In Britain there can only be one monarch at a time, either male or female, with the present monarch Elizabeth II being the 12th.<sup>4</sup> A monarch can at once be King/Queen to his/her Kingdom and Emperor/Empress to his/her empire. The then monarch of India, Queen Victoria whose title of 'Empress of India' signifies her specific relationship with India, and since her, other male monarchs used the title of 'Emperor of India.' The British sovereign's other title of King Emperor or Queen Emperor shows the

sovereigns relationship between United Kingdom and the Empire. Interestingly George VI who had the title of King Emperor till June 22, 1948, became monarch of India or King of India thereafter until India became a sovereign democratic republic on January 26, 1950 by virtue of the Constitution of India.(Ibid)

The above titles of the emperor perfectly explain the relationship between monarchy, sovereignty and law. When the Indian empire was partitioned in 1947 Emperor of India became King Emperor. And when the dominion of India became a republic he renounced that title and assumed another title of Head of Commonwealth following the London Declaration of 1949. Now Commonwealth replaced Empire and Head of the Commonwealth replaced King Emperor.

Sovereignty which the sovereign expresses, on the other hand means 'supreme authority' or the absolute power to make law and stand above it. Sovereignty in modern terms means the right to self-government. Whereas the British sovereign is above law the President of India merely enjoys a few immunities of law only while only in office. Therefore the government of India is sovereign because it is the Queen's government run by elected Indian representatives.

## EMPIRE AND DOMINIONS

The word empire is defined as "the dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command."( <http://thelawdictionary.org/empire/>) Here empire means territory and dominion means rule, therefore an area where a king has authority.

In this regard the alteration of the Queen's / Sovereign's official title is instructive. Her title following the

independence of India in 1947 was 'Elizabeth the Second, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, Queen, Defender of the Faith,' and in 1953 was changed to "Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith." This alteration was done "in order to reflect more clearly the relation of the members of the Commonwealth to one another and of their recognition of the Crown as a symbol of their free association." (<http://royalcentral.co.uk/>) Here, along with other changes Dominions beyond the Seas is changed to Head of Commonwealth.

Whereas in international law, the Balfour Declaration of 1926 described Great Britain and its dominions as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations. (<https://www.britannica.com/topic/dominion-British-Commonwealth>)" This definition suggests the complete equality of status of the dominions with the British Commonwealth by virtue of being the dominions of the sovereign.

Further, the Statute of Westminster 1931 provided dominion status to Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland. This act provided complete legislative authority in the legal sphere and the right of dominion ministers to directly access the sovereign. In other words these countries were constitutional monarchies. But unlike the Statute, India's dominion status flows from Indian Independence Act, 1947 and has more power in relation to the Statute. Through this Act United Kingdom's 'Indian Empire' was made into a dominion state. In other words a dominion is autonomous or a self-governing state.

Therefore, in international law, under the Vienna Convention on Succession of States in respect of Treaties, 1978 U.K.'s 'Indian Empire' is a predecessor state; Dominion of India, a successor state; and Dominion of Pakistan because of its partition from India, a 'newly independent state.' And as a result has the freedom to elect the government. This act clearly mentions vide Sec. 2 (1) that "territories of India shall be the territories under the sovereignty of His Majesty."

During this time the Viceroy which is the Sovereign's representative had the additional function of Governor-General of India, but after 1947 the title of Viceroy was removed and Governor-General became the representative of the Sovereign and head of state. In the next section we will see how after

becoming a republic within the commonwealth, the President becomes the representative of the Sovereign and head of state. It is interesting that, whereas the Governor-General had a tenure of 5 years, the President can have unlimited number of terms but only 5 years at a time if re-elected. This shows that the President is a mere office-bearer of the Republic of India similar to the Governor General than a sovereign.

### COMMONWEALTH AND REPUBLIC OF INDIA

"Imperial Conferences (Colonial Conferences before 1907) were periodic gatherings of government leaders from the self-governing colonies and dominions of the British Empire between 1887 and 1937, before the establishment of regular Meetings of Commonwealth Prime Ministers in 1944." These meetings which emphasized imperial unity "became a key forum for dominion governments to assert the desire for removing the remaining vestiges of their colonial status." With the end of World War II Imperial Conferences were "replaced by Commonwealth Prime Ministers' Conferences, with 17 such meetings occurring from 1944 until 1969, all but one of the meetings occurred in London. The gatherings were renamed Commonwealth Heads of Government Meetings (CHOGM) in 1971 and were henceforth held every two years with hosting duties rotating around the Commonwealth." ([https://en.wikipedia.org/wiki/Imperial\\_Conference](https://en.wikipedia.org/wiki/Imperial_Conference))

Meanwhile, in 1948, at the "Prime Ministers Conference, the agenda of which was dominated by the imminent decisions of two states—India and Ireland—to declare themselves republics. At the meeting, Indian Prime Minister Jawaharlal Nehru proposed a Ten Point Memorandum on the settlement between India and the Commonwealth. Nehru's ten-point memorandum which was submitted by VK Krishna Menon, who was independent India's negotiator as the first High Commissioner, to British Prime Minister Clement Attlee dated 28th October 1948 after being rejected was revised by reducing reduced to 8 points and re-sent. Attlee responded saying that, "We are prepared to consider minor changes but it will be very difficult to introduce any major change." ([https://archive.org/stream/ReminiscencesOfTheNehruAgeBy-m-o-mathai/ReminiscencesOfTheNehruAgeBy-m-o-mathai-part-2of2\\_djvu.txt](https://archive.org/stream/ReminiscencesOfTheNehruAgeBy-m-o-mathai/ReminiscencesOfTheNehruAgeBy-m-o-mathai-part-2of2_djvu.txt))

Later, in 1949, the fourth Commonwealth Prime Ministers' Conference was held at United Kingdom. The main topic of the meeting was to discuss the legality of future relationship of India with the Commonwealth. The commonwealth which had been an association of Britain and British Dominions shared the British sovereign as their head of state. The legal problem was that whether India by becoming a republic by abolishing monarchy could still stay within the commonwealth. If it remained what would be India's and other independent republics status with the commonwealth? And,

more importantly, the legal position of the British Sovereign with respect to dominions which had constitutional monarchy as well others which were republics. It was at this juncture that VK Krishna Menon's definition of the King as "the symbol of the free association of the Commonwealth's independent member nations and as such the Head of the Commonwealth" was finally accepted.

In the same conference Nehru, seeking above all to avoid two-tiered membership of the commonwealth, conceded to a more agreeable three-point programme, based upon common Commonwealth citizenship, a declaration of India's continued membership, and recognition of the monarch in a separate capacity than that as monarch. This three-point programme also known as the 'compromise plan' is reproduced here in full:

Firstly, that India should become a Republic. Secondly, the President should automatically become the King's representative in external relations with foreign powers. Thirdly, the King to be head of the Commonwealth as a whole.

It may be noted that whereas the President of India is the Head of the State, the British sovereign is the Head of the Commonwealth vide The London Declaration, 1949. And Nehru by signing [emphasis mine] the Declaration made India a subordinate member of the commonwealth with respect to sovereignty or head of the commonwealth, when it "declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of The King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth." The declaration also eliminated India's dominion status and adopted the new name of 'independent member nation' or 'independent and equal sovereign state' as it falls within the territory of the commonwealth. Therefore by staying within the commonwealth Republic of India enjoys autonomy and independence in the sense that it is not dependent on the British parliament for its laws or in other words India governs itself on the basis of indigenous constitution and laws. It also enjoys sovereignty by virtue of being a member state of commonwealth as the President is a representative of the sovereign and also being subordinate to the sovereign as Head of Commonwealth.

This declaration was subsequently ratified by the Constituent Assembly as well by the Indian National Congress's All India Congress Committee (AICC).

#### **CONSTITUTION OF INDIA AND THE PROBLEMS OF SOVEREIGNTY**

The Objectives Resolution was moved by Jawaharlal Nehru who was the then Vice President of the Executive Council, External Affairs and Commonwealth Relations of the Cabinet of the Interim Government of India in the Constituent

Assembly on December 13, 1946. The resolution which states the purpose for the creation of the assembly for the first time describes sovereignty and its relation to the people of India.

The resolution which is akin to United States Declaration of Independence says that India is an Independent Sovereign Republic and has to write a Constitution for her future governance and that "all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people."

In his reply to the question of aims and objects of this resolution Nehru says that: "I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs."<sup>18</sup> The British Cabinet, through its Cabinet Mission Plan defined its purpose as to discuss the transfer of power from the British government to the Indian leadership, led to the creation of the Constituent Assembly. Here, the rights to the dominion remained with the British, and only administrative freedom is granted to Indian leadership [emphasis mine].

He further says that "free India can be nothing but a republic." What this means is the resolution and the resultant Constitution is clearly limited by the provisions and conditions of the United Kingdom Cabinet Mission of 1946 or Cabinet Mission Plan. Nehru further alludes to the principle of freedom in his famous 'tryst with destiny' speech when he says on August 15, 1947 that "India will awake to life and freedom." It is interesting the word freedom is nowhere mentioned in any of the legal documents with regard to India including its Constitution.

Further, in the preamble to the Constitution of India, 1949 it is reiterated that the Republic of India is sovereign and it is proclaimed by 'We, the people of India.' But the fact of appended signatures of the members of Constituent Assembly of India tells that such members and not the people of India are referred to as 'We, the people of India.' Here people are given the legal name 'citizens.' This shows that sovereignty of the Republic was derived from assembly members as they are officials of the Queen and will be exercised by the Government of India from the day the Constitution comes into effect.

The following are some of the problems with respect to the location of sovereignty in relation to India and the commonwealth and problems connected with it, with reference to the Constitution of India.

Can people of India, legally called the 'citizens' be sovereign. It is as if saying around one billion people are sovereign. The practical and real fact that citizens have to stand in a queue to withdraw their own money, to board public transport, to elect their representatives by voting makes a

mockery of sovereignty. It also entails a legal question as to whether the citizens as law-abiders can still be called sovereign (based on the principle of popular sovereignty) as opposed to the principle of real sovereign as a law-giver and one who stands above the law.

The President cannot be a sovereign as his powers and privileges are limited by the Constitution. The constitution merely says vide article 52 that: "there shall be a President of India." Also the fact that the President has to have a Type-D / Diplomatic passport [emphasis mine] and is required to carry a visa cannot be considered as a privilege of sovereignty although all Indian passports are issued in his name. And it is vide second point of the 'compromise plan.'

- The parliament is also not sovereign as its acts can be challenged in a court of law.
- The Constitution also cannot claim sovereignty as it is merely a piece of paper.
- There cannot also be more than one sovereign in a commonwealth.

Therefore we can say that only the Republic of India is sovereign and not the Citizens of India, President of India, or its Constitution. The word 'republic' suggests a form of government elected by the people, and with regard to the 'Republic of India' it is understood that only 'the state' enjoys sovereignty. In other words the state called Republic of India is sovereign, as was 'Dominion of India' before it vide Indian Independence Act 1949, and 'Indian Empire' even before, vide paramountcy. And as a result, only the state and its offices, but not including the office-holders is sovereign and enjoys sovereignty vide not just being a member state of the commonwealth but the commonwealth itself being sovereign as it is headed by the British monarch. In contrast the powers of the President is petty compared with the exclusive royal prerogative of the monarch.

It must be noted that, the Republic of India cannot enjoy full sovereignty or freedom unless it completely cut off all ties with the British sovereign by exiting the commonwealth (which is a very big political unit in the international level or to put it bluntly it is like a small state like Goa claiming absolute sovereignty despite being a part of and being within the territorial boundary of the Republic of India) as a member state. Until then India can be only said to enjoy mere administrative independence and not full sovereignty which is the most defining and exclusive element of a 'free state.'

## CONCLUSION

After the analysis of the concept of sovereignty we can safely conclude the idea of India's freedom is a myth which has absolutely no legal or political basis, and solely exist as a product of imagination inspired by the speeches of this country's leaders. And what happened with India becoming a republic within the commonwealth was it became from the position of a dependent state to an independent state only in terms of legislation, administration and adjudication by means of transfer of power and self-government. Through this act the power of the British Sovereign stayed as it was without any reduction. Independence in other words only mean, by using current vocabulary, the function of governance being outsourced; and republic, to administer the government on behalf of the Head of the Commonwealth.

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