

# **Journal of Indian School of Political Economy**

**Volume: 35, No: 09  
July – December : 2023**



**A Journal  
devoted to  
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Indian  
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The Director,

Indian School of Political Economy,

“Arthabodh”, 968/21-22, Senapati Bapat Road, Pune-411016 (India)

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**AN ANALYTICAL ACCOUNT OF PARLIAMENTARY SOVEREIGNTY IN INDIA AND UNITED KINGDOM**

**Dr. Subhash Patil**, Associate Professor and Head, Dept of Political Science, Rani Parvati Devi College of Arts and Commerce, Belagavi, Karnataka.

**Abstract**

This paper examines the idea of parliamentary sovereignty, which is a cornerstone of constitutional law in many democratic nations, including the USA and the UK. This essay examines the historical development of parliamentary sovereignty, its position in modern constitutional systems, and the challenges it faces now. An in-depth analysis reveals that, given the complex political and legal landscape of today, parliamentary sovereignty is a dynamic and ever-evolving concept that requires careful consideration.

**Keywords:** rule of law, judicial review, legislative sovereignty, magna carta, and constituent assembly

**Introduction:**

The idea of parliamentary sovereignty, sometimes called the "crown jewel" of the British constitution, has served as the foundation for the legal and political structures of many democracies. It makes the argument that Parliament, as the highest legislative body, has unrestricted power to enact, amend, and abolish laws. The purpose of this essay is to give a thorough analysis of parliamentary sovereignty by tracing its historical development, clarifying its relevance and addressing the difficulties it faces. Parliamentary sovereignty has its roots in mediaeval England. Although the monarch had a lot of power during this time, he was dependent on the guidance and assistance of his clergy and nobles. To debate crucial topics like taxes and legal concerns, the king would call these nobles into councils or assemblies. An early example of a charter that established parliamentary sovereignty is the Magna Carta, which King John signed in 1215. It restrained the king's arbitrary powers and asserted certain legal rights, even if it did not create parliamentary sovereignty as we know it today. It established the idea that the king was subject to the law. A significant turning point in the development of parliamentary sovereignty is often regarded as having occurred with King Edward I's call for the Model Parliament in 1295. There were delegates from boroughs, counties, and the clergy present. This increased representation was a precursor to the notion that the consent of the governed was necessary for laws to be made.

The concept of parliamentary sovereignty was greatly influenced by the English Civil War, which pitted the Parliamentarians, led by Oliver Cromwell, against the Royalists, who were supporters of King Charles I. King Charles I was put to death as a result of the conflict in 1649, and Oliver Cromwell went on to establish the Commonwealth of England. In this time frame, parliamentary power increased dramatically. In the evolution of parliamentary sovereignty, the Glorious Revolution of 1688 was a turning point. It involved William III and Mary II taking the thrones when King James II was overthrown. The English Bill of Rights (1689), which further curtailed the monarch's rights and upheld parliamentary authority, was enacted as part of the settlement. This event solidified the notion that the monarch ruled with the consent of Parliament. The Works Made by Albert Venn Dicey Legal scholar made a substantial contribution to the development of the contemporary concept of parliamentary sovereignty in the 19th century. Dicey's work, particularly in his book "Introduction to the Study of the Law of the Constitution" (1885), established three fundamental concepts of parliamentary sovereignty:

Renowned constitutional scholar A.V. Dicey developed three fundamental ideas to clarify parliamentary sovereignty in relation to the UK. Dicey's Three Formulas of Parliamentary Sovereignty are these three guiding ideas, which are as follows:

**Parliamentary Supremacy:** The highest form of legislation in the nation is enacted by Parliament, which has the ultimate legal authority. This implies that an Act of Parliament cannot be contested or declared void by any other organisation or entity, even the courts.

**No Legal Restraints:** Dicey asserts that Parliament is legally empowered to enact and amend any legislation, and that the legitimacy of such laws cannot be contested by the courts. Put differently, the authority of Parliament to create and amend legislation is unrestricted by law.

**Equality of All Laws:** No legislation is outside the purview of Parliament. Dicey believes that Parliament has unrestricted authority to enact and repeal any law on any topic.

### **India's Parliamentary Sovereignty Evolution:**

In contrast to its equivalent in the United Kingdom, the concept of parliamentary sovereignty in India has a different history and evolution. India's parliamentary sovereignty is influenced by the country's political, historical, and constitutional development. Here is a summary of how parliamentary sovereignty came to be in India: from the middle of the 18th century until 1947, India was a British colony for almost two centuries. Through a number of colonial legislatures, the British Crown's authoritarian rule left its mark on India's government during this time. An important factor in forming India's conception of parliamentary sovereignty was the Government of India Act, 1935. It created the Federal Legislature, which has the authority to enact legislation on particular topics, as well as the provincial legislatures. But ultimately, the British Parliament retained final say. August 15, 1947, saw the end of British sovereignty in India.

The Indian National Congress, along with other leaders, had dreamed of a democratic, sovereign country with its own constitution before independence. The job of writing the Indian Constitution fell to the Constituent Assembly. Representatives from all throughout the nation with a range of political philosophies made up the group. The Indian Constitution's writing signalled a dramatic break from colonial control and paved the way for the country's transition to parliamentary autonomy. With the adoption of the Indian Constitution on January 26, 1950, India was recognised as an independent, democratic, and republican country. It established the parameters of India's parliamentary democracy. The separation of powers between the administration, legislature, and judiciary; the creation of a federal system with a strong centre; and the recognition of fundamental rights and freedoms are important aspects of the Indian Constitution that are pertinent to parliamentary sovereignty.

India's parliamentary system of government unlike the UK, India does not have parliamentary sovereignty vested in a single legislative body. Rather, it is vested in the Indian Parliament, which is made up of the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The Indian Constitution designates Parliament as the highest legislative body in Article 79, and Article 245 grants Parliament the authority to enact laws for the entire nation of India or any portion of it. However, the Supreme Court of India's judicial scrutiny and devotion to the fundamental rights entrenched in the Constitution place restrictions on India's legislative sovereignty. The Indian Constitution stipulates how amendments may be made to it. Over time, changes have been made to the Constitution to accommodate evolving difficulties and demands. Notably, the Preamble now emphasises India's sovereignty by the 42nd Amendment Act (1976). Parliamentary sovereignty is also influenced by India's federal system. State legislatures have authority over issues on the State List, whereas Parliament has the authority to enact laws on topics included in the Union List. Between the two, concurrent list subjects are shared.

### **Dicey's Triangle of Formulas for Legislative Sovereignty:**

Three fundamental tenets of parliamentary sovereignty were developed by eminent British jurist and constitutional scholar Albert Venn Dicey in his book "Introduction to the Study of the Law of the Constitution" (1885). These ideas are frequently cited as essential to comprehending parliamentary sovereignty in the UK and other common-law nations. The tenets of Dicey are as follows:

#### **The Parliamentary Prerogative:**

According to Dicey's first principal Parliament is the highest court in the United Kingdom. This implies that no other person or body has the authority to override or revoke the laws passed by Parliament, which is the final authority to establish, amend, or abolish any legislation. Parliament is the highest legal authority in the United Kingdom. Any topic may be brought before Parliament for legislation, and all other types of law—common law, customary law, and legal conventions—are superseded by its laws. The subjects on which Parliament may enact laws are unbounded by the law. Any law can pass, even if it goes against established precedent or legal precepts. There was no official system in place in the UK for judicial review of legislation at the time Dicey developed this idea. But over time, this feature has changed, and judicial review is now accepted in specific situations.

The second principle of Dicey holds that Parliament is exempt from the responsibilities of its forebears and successors. Laws passed by one parliament cannot be altered or repealed by subsequent parliaments. The idea that no Parliament can enact "entrenched" laws that are impervious to further legislation is reflected in this principle. This idea emphasises how parliamentary sovereignty is ever-changing. Every parliament has the same amount of legislative power, and no law is ever deemed to be final or unchangeable. The United Kingdom does not have a formal "constitution" in the conventional sense, in contrast to certain other nations that have written constitutions requiring specific procedures for revision. As a result, no law is given particular protection or constitutional perpetuity.

Lack of Judicial Review Dicey's third principle, which is frequently linked to the British legal system during his era, posits that an Act of Parliament cannot be questioned by any court or authority. To put it simply, there is no system in place for judges to evaluate legislation and decide if it is lawful or constitutional. This principal highlight Parliament's primacy in the legal system. According to Dicey's concept, courts should not invalidate or contest parliamentary laws, even if they seem unfair or irrational. It's vital to remember that Dicey's principles have changed over time. The judiciary has acknowledged certain types of judicial review in the modern UK legal system, especially when it comes to instances involving human rights and constitutional issues. Even though Dicey's ideas had a significant impact on how parliamentary sovereignty was understood, it's important to acknowledge that the idea has changed and evolved in response to shifting constitutional, political, and legal changes. The relationship between the legislature, the court, and constitutional conventions is a common topic of discussion in modern parliamentary sovereignty debates, which may lessen the absolute character of Dicey's original ideas.

### **Dicey's concept Indian Context:**

The two nations' different legal and constitutional systems mean that India cannot directly implement Albert Venn Dicey's three parliamentary sovereignty ideas, which were developed in the context of the United Kingdom. India's parliamentary sovereignty differs from that of the UK in that it is governed by a federal framework and is subject to specific constitutional restrictions. But first, let's examine how Dicey's ideas may be modified or understood in the context of India:

### **Authority of the Parliament:**

In the Indian setting, Parliament's sovereignty is acknowledged to some degree, although it is constrained by the constitution. The Indian Constitution designates Parliament as the highest legislative body, endowing it with the authority to enact, amend, and abolish laws pertaining to a broad spectrum of topics. the Constitution specifies that Parliament cannot pass laws on specific subjects that are solely the purview of state legislatures (State List) or both Parliament and state legislatures (Concurrent List). This illustrates how India's government is federal in structure. The fundamental rights granted to Indian citizens limit the legislature's authority. Parliament cannot pass laws that violate these fundamental rights, and courts have the authority to review and overturn such laws. With the ability to conduct judicial review, the Indian court is able to assess whether laws enacted by Parliament are constitutional. The courts have the authority to declare a law void if it is determined to be unconstitutional.

### **Lack of Statutory Restrictions:**

Similar to the UK, India lacks a specific concept of legal restrictions on the legislative power of the parliament. The idea of no legal boundaries is not without its drawbacks. The Constitution itself lays out a process for amending itself, even though there is no legal restriction on the kinds of laws that Parliament can enact. Certain sections of the Constitution can only be changed with the approval of a majority of state legislatures, and amendments require special majority support in Parliament. The Indian Supreme Court created the "basic structure doctrine," which suggests that although the constitution is amendable, some of its fundamental ideas and characteristics are unchangeable. This premise subtly restricts the power of Parliament.

### **Lack of Judicial Review:**

The concept of no judicial review is not followed in India, in contrast to Dicey's third principle. In India, the judiciary—more specifically, the Supreme Court—possesses the authority to conduct judicial reviews. If laws passed by Parliament are determined to be unconstitutional, to violate fundamental rights, or to be at odds with the fundamental framework of the Constitution, it has the authority to examine and overturn them. One fundamental aspect of India is the rule of law, which is upheld by the Constitution. This implies that the law and the Constitution apply to all authorities, including Parliament. Parliament is not above the law.

### **Parliamentary Sovereignty Indian Context:**

The influence of judicial interpretations, the federal system, and constitutional provisions on parliamentary sovereignty in India is noteworthy. This study examines how parliamentary sovereignty influences India's legal and political system. Article 79 of the Indian Constitution states that Parliament is the highest legislative authority in the nation. This indicates that parliament has the final say over the creation, modification, and repeal of legislation pertaining to a variety of topics. The supremacy of Parliament in law is additional evidence that representative governance is a democratic principle. It is the duty of elected members of Parliament to enact laws that represent the interests and desires of the Indian populace.

India has a federal system of government, which divides the legislative authority between the state legislatures and the federal government (Parliament). The Seventh Schedule of the Constitution describes this separation of powers. The separation of powers between the federal government and the states limits parliamentary sovereignty in India. State legislatures are in charge of subjects on the State List, whereas Parliament is in charge of those on the Union List. Additionally, some topics are concurrent, which allows both houses of government to pass laws. This federal framework makes that several legislative bodies maintain distributive powers rather than centralised sovereignty. Part III of the Indian Constitution guarantees citizens' fundamental rights. Certain rights, such as freedom of speech, equality, and immunity from discrimination, are enforceable against acts of the state, including legislation made by Parliament. The Indian judiciary possesses the power of judicial review, whereas Parliament possesses the capacity to enact laws. The judiciary has the authority to review whether laws passed by Parliament are constitutional. A statute may be overturned if it is determined that it infringes upon fundamental rights or other sections of the constitution. Part XX of the Indian Constitution allows for amendment on its own; however, only a special majority in Parliament and, in certain situations, the approval of a majority of state legislatures may amend certain provisions of the Constitution, even though parliamentary sovereignty cannot be restricted by outside forces. This guarantees that the federal structure and tenets of the Constitution are difficult to change. The Indian Supreme Court created the "basic structure doctrine," which maintains that although the Constitution is amendable, some of its fundamental ideas and characteristics cannot be changed. This idea prevents Parliament from changing the fundamental structure of the Constitution by serving as a check on its power. Sovereignty and Judicial Review in the Indian legal and constitutional system, are parliamentary sovereignty and judicial review. Despite their seeming conflict, they coexist and communicate in a way that keeps the balance between the judicial and legislative branches of

government. An examination of the operation of parliamentary sovereignty and judicial review in India is provided below.

### **Constitutional Mandate:**

The Indian Constitution itself provides the authority for judicial scrutiny. Articles 13, 32, and 226 expressly give the judiciary the power to assess the legality of laws and government actions. In India, executive actions, administrative decisions, and policies are all subject to judicial review in addition to legislative acts. The judiciary is able to review the full range of government actions because of its broad purview. Protecting the fundamental rights of citizens, as stated in Part III of the Constitution, is one of the main functions of judicial review in India. A law passed by Parliament may be ruled unconstitutional by the courts if it infringes on fundamental rights. Indian courts frequently evaluate laws and actions using the proportionality theory. This idea makes sure that the government doesn't overly restrict people's rights and liberties and that its acts are appropriate for the purpose for which they are meant.

### **Supreme Legislative Authority:**

Article 79 of the Indian Constitution designates Parliament as the nation's supreme legislative body. Parliament may enact, amend, or repeal legislation relating to the topics listed in the Seventh Schedule of the Constitution. India's federal system of government places restrictions on parliamentary sovereignty. The Seventh Schedule defines the division of legislative authority between the federal government (Parliament) and state governments (State Legislatures). Both houses of government can pass laws on some topics because they are concurrent. Although Parliament's jurisdiction is unrestricted by external laws, the Constitution itself outlines a process for amending it. Only a special majority in Parliament and, in some situations, the approval of the majority of state legislatures are required to modify certain parts of the Constitution. This guarantees the preservation of the federal system and fundamental constitutional values. One of the most important checks on Parliament's authority is the judicial review process. It guarantees that Parliament does not act in a way that is at odds with the essential framework of the Constitution or infringes upon the citizens' fundamental rights. The judiciary is essential to maintaining the rule of law and safeguarding the principles of the constitution. Parliament has the authority to overturn legislation even if it conflicts with fundamental principles.

### **Preservation of Core Principles:**

Judicial review keeps Parliament from changing the core structure of the Constitution or violating fundamental rights, even if it is still the ultimate legislative body. A careful balance must be struck between the ideas that no authority, including Parliament, is above the Constitution and the rule of law and that Parliament has the power to enact laws through the relationship between judicial review and parliamentary sovereignty. India's parliamentary sovereignty has had to contend with a number of modern issues that have changed throughout time. These difficulties are a reflection of how Indian democracy and government are evolving. It's crucial to remember that things have changed much more since then. The following are some of the major challenges that India's parliamentary sovereignty is currently facing:

1. Constitutional Limitations and Judicial Review: The Indian judiciary's judicial review authority and its role in interpreting the Constitution are occasionally seen as infringing upon parliamentary sovereignty. The power of the judiciary to overturn laws established by Parliament may cause a rift between the two arms of government. It is still difficult to strike a balance between Parliament's legislative authority and the judiciary's responsibility to protect constitutional values. The judiciary has always highlighted that upholding the separation of powers principle and safeguarding the Constitution and fundamental rights are its most concerned aspect.

2. State autonomy and federalism: Sovereignty disputes may arise from India's federal structure, which divides legislative authority between the federal government and the states. There are times when states

believe that national laws or policies are undermining their autonomy. To keep the balance between the federal government and state legislatures, it is crucial to uphold the constitutional division of powers and use cooperative federalism to address the problems of the states.

3. Intricacies of coalition politics: With several parties pursuing disparate interests, India's coalition politics have made governing more complicated. Occasionally, this might result in legislative deadlock, which makes it difficult to pass significant legislation. To handle the difficulties presented by coalition politics and make sure that crucial legislation is not delayed, effective leadership and consensus-building techniques are required.

4. Insufficient Parliamentary Examining Powers: The effectiveness of legislative scrutiny has been questioned, with limited debate and discussion on significant laws. The executive's sway in the chamber can occasionally compromise parliament's ability to serve as a check on the government's actions. To ensure thorough parliamentary examination, it is imperative to fortify parliamentary committees, promote well-informed debates, and augment the role of the opposition in ensuring government accountability.

5. Obstacles to Dissent and Free Speech: The safeguarding of fundamental rights has come under scrutiny due to instances of stifling dissent and free speech. Legislation and practices that limit the right to free speech may be considered violations of legislative sovereignty. It is critical to strike a balance between the protection of freedom of expression and dissent and national security concerns. Finding the ideal balance between judicial scrutiny and legal protections is a problem that requires focus.

6. Changing Social and Technological Environment: As technology and society develop quickly, new issues arise that can call for legislative solutions. It might be difficult to make sure that legislation follows constitutional principles and adapts to these developments. To effectively handle these concerns, legislative processes must be modified to be more responsive to new issues. Additionally, professionals and civil society must be involved in the lawmaking process.

7. Concerns about the environment and economy: It's difficult to strike a balance between social fairness, environmental sustainability, and economic prosperity. Decisions made by legislators in fields like economic policy and environmental protection frequently have broad effects. It is a constant challenge to develop thorough and well-thought-out legislation that balances the interests of all stakeholders, protects the environment, and ensures economic prosperity.

8. International Accords and Liabilities: As India joins international treaties and agreements, concerns about how they may affect parliamentary sovereignty may surface. These agreements frequently call for modifications to national legislation. It can be difficult to make sure that international agreements adhere to national legal frameworks and fundamental constitutional ideals. Ratifying such agreements is a crucial function of Parliament, with transference and accountability process.

9. Parliamentary decorum and norms are being eroded: The way Parliament operates has been impacted by the deterioration of parliamentary culture and traditions, including disruptions. This may make parliamentary sovereignty less effective. The key to overcoming this obstacle is to promote a culture of deference to parliamentary institutions, conformity to standards, and productive discussion. The legislative sovereignty of India may be challenged by international human rights commitments and treaties, which impose external legal frameworks that must be followed even when they may be at odds with local laws or policies. This assessment examines the ways in which international human rights treaties and obligations pose a threat to India's parliamentary sovereignty:

10. Global Commitment: India voluntarily signs international human rights treaties and conventions, committing itself to the obligations set forth in these agreements. This can be interpreted as a restriction on parliamentary sovereignty since national legislation needs to comply with these international obligations. Realising the value of international collaboration on human rights concerns, India frequently engages in international treaties and conventions only after giving them considerable thought. Indian legislators and policymakers need to tackle this difficulty by making sure that domestic laws comply with international duties in order to prevent conflicts.

11. Conflict between International Obligations and Domestic Laws: There are situations where national laws and customs conflict with international human rights norms. Tensions may arise between India's adherence to international human rights standards and its sovereign power to enact laws when this happens. When it comes to settling disputes between national laws and international commitments, Indian courts—especially the Supreme Court—play a critical role. The judiciary has the authority to interpret the Constitution in a way that harmonises domestic legislation with international human rights standards. Legislative changes can also be necessary to bring domestic laws into compliance with international standards.

12. Judiciary Review and Implementation: The judiciary may be given the authority to assess whether domestic laws are in line with international human rights commitments when such obligations are integrated into Indian law by legislative or judicial rulings. As a result, the judiciary may overturn or amend laws passed by Parliament. Under the judicial review principle, Indian courts frequently assess the constitutionality of laws by comparing them to international human rights standards. This may put parliamentary sovereignty in jeopardy, but it also guarantees the rule of law and the preservation of human rights.

13. Values of the Constitution: A number of the values found in the Indian Constitution itself, such as freedom of speech, the right to equality, and the prohibition against discrimination, are in line with international human rights standards. In the event that domestic legislation is contested on the basis of human rights, these constitutional provisions may limit parliamentary sovereignty. Interpreting the Constitution and making sure that national laws follow its ideals are important tasks for the Indian court. Assuring that the Constitution continues to be the ultimate law of the land necessitates striking a careful balance between constitutionalism and parliamentary sovereignty.

14. Foreign Coercion and Diplomacy: When it is thought that India is not living up to its duties, its adherence to international human rights standards may occasionally result in pressure or criticism from other countries. This may put the administration in a difficult political position and affect its ability to make policy unilaterally. These difficulties can be lessened with the assistance of diplomatic talks and interactions with foreign allies. India can maintain its sovereignty while addressing issues through positive discourse and talks.

15. Implementation and Capacity at Home: Cultural diversity, administrative capabilities, and resource constraints may all make it more difficult for India to carry out its domestically mandated international human rights duties. Ensuring adherence to global standards might present difficulties. In order to successfully carry out its commitments under international human rights law, the government must allot resources, develop capacity, and raise awareness. The media and civil society organisations are also involved in lobbying for compliance and keeping an eye on implementation. Careful changes that strike a balance between the protection of individual rights, the rule of law, and democracy are needed to address India's parliamentary sovereignty concerns. Over the years, numerous reform ideas have been put forward to improve parliament's operation and fortify democratic institutions.

The following are a few reforms and suggestions:

1. Strengthen the function and efficiency of parliamentary committees to closely examine laws, policies, and government actions. These committees ought to have enough time, money, and experience to carry out their duties well.
2. Question Hour Reforms: Make the Question Hour better by making sure that ministers respond to queries from lawmakers in a timely and thorough manner. Put in place procedures to make ministers accountable for unresponsive responses.
3. Dispersion of Authority Empowering Local Entities: Give municipalities and panchayats, the local self-governing entities, additional authority and resources. Decentralisation has the potential to improve local participation and guarantee that decisions about governance are made closer to the people.
4. Legislative Reforms: To lessen the impact of money in politics, implement extensive reforms to electoral funding. Increase the openness of political spending and donations.
5. Criminalization of Politics: Hasten the legal procedure and create specialised courts to handle prosecutions of politicians

accused of crimes more quickly. People who are being investigated for major crimes should not be allowed to run for office.

6. Proportional Representation: To improve the inclusivity and representation of the legislative process, take into account electoral system reforms like proportional representation.

7. Function of the Opposition: Acknowledge and value the opposition's vital role in keeping the government responsible. Assure the availability of information and sufficient resources for the opposing parties.

8. Court Reforms: Take action to reduce the backlog of cases and judicial delays so that justice can be served as soon as possible. Improve the judiciary's effectiveness through implementing procedural and structural changes. The establishment of systems for judicial accountability is necessary. These should include open and transparent procedures for managing complaints directed at judges.

9. Reforming Anti-Defection Laws: To achieve a balance between individual lawmaker autonomy and party discipline, make sure that lawmakers are able to vote in the best interests of their constituents and that the law does not suppress dissent.

10. Right to Information: To guarantee openness in governmental decision-making processes and to enhance public accessibility to information, the Right to Information (RTI) Act should be strengthened. Establish and provide the Lokpal (ombudsman) and Lokayuktas with the authority to look into and handle allegations of public official corruption at the state level.

11. Simultaneous Elections: To cut down on election-related costs and disruptions to governance, investigate the possibility of holding simultaneous elections for the state legislative assemblies and the Lok Sabha, the country's parliament.

12. Campaign Finance: Put in place policies to lower election expenditure limits, increase campaign finance transparency, and lessen the influence of black money in politics.

13. Reforms to the Constitution: To maintain the freedom of legislators to voice dissent while avoiding political horse trading, think about reviewing or modifying the Anti-Defection Law.

14. Federal Reforms: Examine and elucidate the allocation of authorities and duties between the federal government and state governments, resolving any uncertainties that could give rise to disputes.

15. Encouraging Civic Awareness and Education: Encourage civic education in communities and schools to raise people's understanding of the value of active citizenship, the Constitution, and democratic values.

### Conclusion:

A fundamental component of constitutional law in the UK and many other democracies is still parliamentary sovereignty. This guiding concept is complicated, as seen by its historical development, relevance and difficulties. The concept and practice of parliamentary sovereignty must change along with democratic societies in order to satisfy the demands and ideals of the twenty-first century. The purpose of this research paper is to clarify the complex relationship between parliamentary sovereignty and the contemporary governance debate.

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