

# **Concept of Sovereignty**

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# Meaning and Definitions of Sovereignty

The Term “Sovereignty” has been derived from the Latin word “**Superanus**” which means supreme or paramount.

Aristotle spoke of the “supreme power of the state”

The use of the term “Sovereignty” in Political Science dates back to the publication of Bodin’s “**The Republic**” in 1576

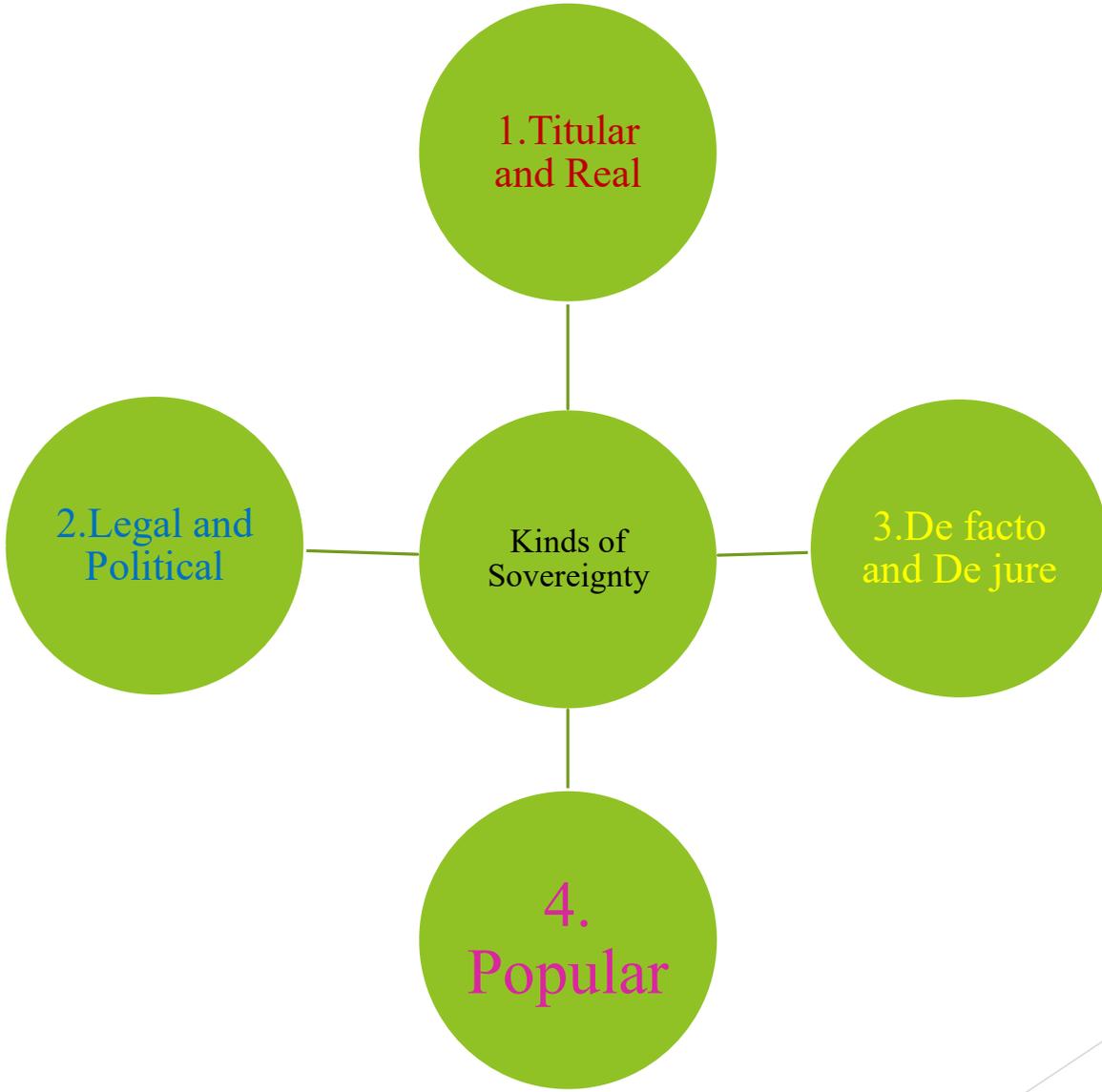
# Definitions of Sovereignty

- ▶ **“Sovereignty is the sovereign political power vested in him whose acts are not subject to any other and whose will cannot be over-ridden”– Grotius**
- ▶ **“Sovereignty is the supreme power of the state over citizens and subjects unrestrained by law”-- Bodin**
- ▶ **“Sovereignty is the supreme will of the state”– Willoughby**
- ▶ **“Sovereignty is the daily operative power of framing and giving efficacy to the state”—Woodrow Wilson**

# “Dual Aspect”

Internal

External



- ▶ **Titular Sovereignty:** By titular sovereignty we mean sovereignty by the title only. It refers to the sovereign powers of the king or monarch who has ceased to exercise any real authority.
- ▶ In theory he may still possess all the powers but in practice some other person or body of persons enjoys sovereign power.
- ▶ Titular sovereign is only a symbol of authority, a legacy of past. Britain presents a good example of titular sovereign.
- ▶ The king is the titular head and he does not enjoy any real powers.
- ▶ Actual powers are enjoyed by council of ministers and parliament.
- ▶ In India president is a titular sovereign and the cabinet is a real sovereign.



▶ **Legal and Political Sovereignty:**

- ▶ Distinction is some times drawn between legal and political sovereignty. The sovereign is supposed to be absolute and omnipotent.
- ▶ It functions according to its own will. Law is simply the will of sovereign. There is none to question its validity.
- ▶ Legal sovereign grants rights to its citizens and there can be no rights against him. It means rights of citizens depend on the will of legal sovereign and any time he can take away.

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- ▶ **Legal sovereign has following characteristics- .**
  - ▶ The legal sovereignty is always definite and determinate.
  - ▶ . Legal sovereignty may reside either in one person or in a body of persons.
  - ▶ . It is definitely organized, precise and known to law. .
  - ▶ Rights of citizen are gift of legal sovereign; The will of state is expressed by the legal sovereign only; Legal sovereignty is absolute.
  - ▶ It cannot be question

- ▶ But behind the legal sovereignty there is another power, which is unknown to law. It is political sovereignty.
- ▶ In practice absolute and unlimited authority of the legal sovereignty does not exist anywhere. Even a dictator cannot act independently and exclusively.
- ▶ The will of legal sovereignty is actually sharpened by many influences, which are unknown to law. All these influences are the real power behind the legal sovereign; and this is called political sovereignty.
- ▶ As Professor Gilchrist says- “The political sovereign is the sum total of the influences in the state which lie behind the law.”
- ▶ Law does not know the political sovereignty.
- ▶ In modern representative democracies the political sovereignty is very often identified with either the whole mass of the people or with electorate or with public opinion.



- ▶ The legal sovereign cannot act against the will of political sovereign.
- ▶ Dicey says that “body is politically sovereign which the lawyers recognize there is another sovereign to whom the legal sovereign bow- that body is political sovereignty; that which is ultimately obeyed by the citizens of the state.”
- ▶ A lot of confusion arises when we attempt the exact definition of political sovereignty. It is a vague and indeterminate and cannot be located with exactness. It is suggested by some writers that there is no justification for making a distinction between legal and political sovereignty, as that involves the division of sovereignty, which is not possible

▶ **De Facto and De Jure Sovereignty:**

- ▶ De facto sovereignty indicates to a sovereign who without legal support or constitutional support enjoys sovereign power.
- ▶ De jure sovereign is recognized by law or the constitution, but not in position to practice its power.
- ▶ In case of revolutions, that is a successful overthrow of Theory of Sovereignty, by the existing regime in a state tree may be de facto and de jure sovereigns.
- ▶ For example when Mussolini came to power in Italy in 1922, de facto sovereignty passed into his hands although Victor Emmanuel was the de jure sovereign

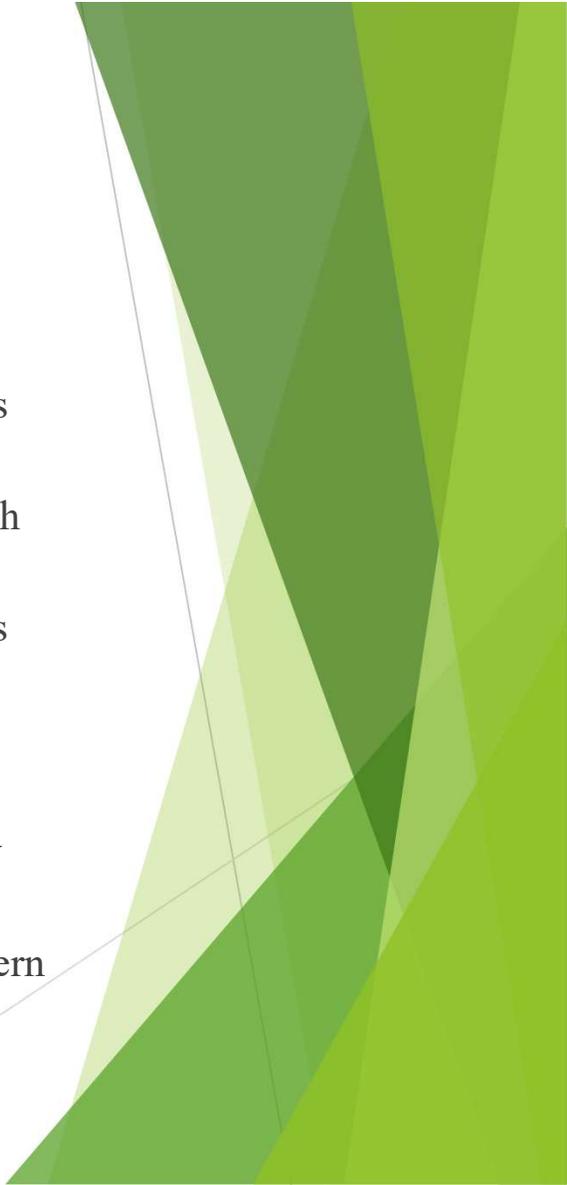
. The military dictatorship of the present world, established after a coup d'état also represents de facto sovereignty until it evolves suitable means to legitimize its authority.

Usually de facto and de jure sovereign stay together for a very short period and the de facto sovereign tries to become De Jure sovereign.

The de facto and de jure sovereigns should ultimately coincide; otherwise there is danger of conflict between them.

New laws are made in order to give him definite status to the de facto sovereign to give it legal support.



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- ▶ **Popular Sovereignty:** When the sovereignty resides in the people of the state it is called as popular sovereignty.
  - ▶ This theory was expounded by Rousseau, which later became the slogan of the French Revolution.
  - ▶ The doctrine of popular sovereignty regards people as the supreme authority. It is people who decide right or wrong.
  - ▶ People are not bound by any natural or divine law. Government exists only as a tool for the good of the people.
  - ▶ It should be held directly responsible to the people. It can exercise authority only on the basis of the law of land.
  - ▶ Will of the people should not be ignored; popular sovereignty is the basis of the modern democratic system.

# “Titular and Real Sovereignty”

## Titular Sovereignty

1. Titular sovereign is one who enjoys all the legal powers in theory.
2. The best example of a titular sovereign is afforded by the king or Queen of UK

## Real Sovereignty

1. In actual practice his powers are enjoyed by some other authority.
2. The parliament of UK is thus the real sovereign because it enjoys real and effective authority.

# “Legal and Political sovereignty”

## Legal Sovereignty

Legal sovereignty represents the  
Lawyer’s conception of sovereignty  
It is associated with the supreme  
Law-making authority in the state.

## Political Sovereignty

The body which has the power to  
issue final commands in the form of  
laws is the legal sovereign in a state.  
This power may be vested in one  
person and body of persons. It may  
a king or dictator or parliament.

# “De-facto and De-jure Sovereignty”

## De-facto Sovereignty

**De-facto sovereign is one who has no legal claim to sovereignty but Possesses it in fact and exercises necessary force to make and Enforce its laws.**

## De-jure Sovereignty

**De-jure sovereign is one who has a legal claim to sovereignty but does not possess it in fact.**



# “Popular Sovereignty”

**Popular Sovereignty** or the sovereignty of the people’s rule is the principle that the authority of a state and its government is created and sustained by the consent of its people, Through their elected representatives who are the source of all political power.



# Features of Sovereignty

1. **Permanence**
2. **Exclusiveness**
3. **Originality**
4. **Absoluteness**
5. **Indivisibility**
6. **Comprehensiveness**
7. **Inalienability**
8. **Imprescriptibility**
9. **Unity**



# John Austin's theory of Sovereignty

- ▶ **Monistic theory of Sovereignty or Non-plural theory or Absolute theory of sovereignty**
- ▶ **He is an English jurist. He has given the definition of law and sovereignty.**
- ▶ **Law is a command of a superior to an inferior**
- ▶ **State and sovereignty is superior. People are inferior.**

# John Austin's theory of Sovereignty

- ▶ **Features of the theory:-**
- ▶ **Every state has a determinate human superior**
- ▶ **The human superior will not obey the orders of like superior**
- ▶ **The entire society will follow the orders of determinate human superior**
- ▶ **His command is a law.**
- ▶ **Violation of his command will result in punishment**
- ▶ **The society which has a determinant human superior is a political society, which is independent and free from external control.**

