

## ARTICLE

### Public Legal Provision of State Sovereignty: Experience of the People's Republic of China and the Republic of India

Violetta Belousova,

Kutafin Moscow State Law University (MSAL) (Moscow, Russian Federation)

Dmitry Zaytsev,

Kutafin Moscow State Law University (MSAL) (Moscow, Russian Federation)

Sergey Zubarev,

Kutafin Moscow State Law University (MSAL) (Moscow, Russian Federation)

<https://orcid.org/0009-0009-0385-6529>

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**Abstract.** This article examines the conceptual foundations and peculiarities of public legal provision of state sovereignty in the People's Republic of China and the Republic of India. It analyses the basic theoretical principles of the legal systems of China and India, the concepts of state sovereignty, and the legal design of state sovereignty of China and India. In China, the public legal provision of state sovereignty at the doctrinal level is based on the doctrine of Legism, which emphasises the idea of creating a strong state, the establishment of uniform laws and administrative orders that are binding on all members of the population, and the establishment of severe penalties for offences. In practice, this is reflected in the legislative framework, which is characterised by a relatively small number of acts as well as severe sanctions for crimes that infringe state sovereignty. In India, public legal provision of state sovereignty is based on the preservation of its centuries-old ancient culture and traditions, observance of the balance of legally enshrined rights and freedoms, and a respect

for spiritual values. The pacifism of Buddhism and the tolerance, as well as the high degree of universality of the core values of Hinduism, formed the basis of the concept of state sovereignty, as enshrined in the Constitution of 1950, which prioritises the fundamental rights of citizens. It is important to note, however, that there are not many normative prescriptions on state sovereignty in Indian law. Nevertheless, the Indian state, in response to new challenges, not only maintains its independence and autonomy at the national and international levels but also pays great attention to the protection of human rights as a foundation of state sovereignty.

**Keywords:** public legal provision; state sovereignty; public law; legal systems; People's Republic of China; Republic of India.

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## Introduction

The events of recent years have raised with particular acuteness the issue not only of the formation of a multipolar world but also of the preservation of the sovereignty of individual countries.<sup>1</sup> In this regard, the study of the experience of

<sup>1</sup> Troshev, D. B. (2024). *Administrative and legal protection of the sovereignty of the Russian Federation from hostile actions of foreign states* (pp. 3–5). Prospect. (In Russian).

public legal provision of state sovereignty of the People's Republic of China (PRC) and the Republic of India acquires both theoretical and practical importance.

The choice of these countries is justified by the following key factors.

Firstly, China and India, along with Russia, are members of the BRICS organisation, and in the conditions of new challenges and threats, act as states friendly to the Russian Federation.

Secondly, China and India are the largest countries in the world in terms of population (each with over 1.4 billion citizens), which have relatively recently gained independence (China in 1949 and India in 1947), possess nuclear weapons (China since 1964, India since 1974), and have a major collective impact on the international legal order.

Third, in 1954, China and India signed a joint communiqué declaring “five principles of peaceful coexistence,” namely (1) mutual respect for territorial integrity and sovereignty; (2) mutual non-aggression; (3) non-interference in each other's internal affairs; (4) equality and mutual benefit; and (5) peaceful coexistence and economic co-operation.<sup>2</sup>

Thus, China and India, as leading developing countries, play a major role in shaping the modern world order as well as function as states with strong state sovereignty. Consequently, the study of their experiences in ensuring state sovereignty could be highly significant for enhancing the public legal provision of state sovereignty of the Russian Federation.<sup>3</sup>

## **1. Public Legal Provision: China's State Sovereignty**

### **1.1. China's Legal System: General Provisions**

China can be described as both an ancient civilisation and a modern state due to its deep historical roots, as well as its ongoing rapid modernization. However, full and permanent state sovereignty (in the classical sense of the term) was acquired by the Celestial Empire only in the middle of the 20<sup>th</sup> century, following the end of the civil war (1927–1949) and the proclamation of the People's Republic of China (October 1, 1949).<sup>4</sup> The ramifications of this significant political and legal divergence resulted in a systemic duality within nearly all of China's social structures (and their constituent subsystems), as well as the institutions governing them. These entities have historically been—and continue to be—shaped by both indigenous, tradition-rooted administrative frameworks reflecting pre-modern statecraft and by progressive

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<sup>2</sup> Fokeev, G. V. (Ed.). (1987). *History of international relations and foreign policy of the USSR. 1917–1987. Vol. 2: 1945–1970* (p. 106). International Relations. (In Russian).

<sup>3</sup> Zubarev, S. M., & Troshev, D. B. (2024). The concept and essence of public law enforcement of state sovereignty. *Kutafin Law Review*, 11(3), 569–594. (In Russian).

<sup>4</sup> Tishkov, V. A., & Filippova, E. I. (Eds.). (2016). *Cultural Complexity of Modern Nations* (p. 16). ROSSPEN. (In Russian).

Western administrative theories and practices. The Chinese legal system serves as the most vivid illustration of such dual influence. Within this system, chronologically and substantively distinct philosophical and legal traditions—primarily Confucianism and Legalism—coexist in a manner largely devoid of overt antagonism.

Confucianism (“school of educated people”) is a doctrine founded by philosopher and official Confucius in the V–VI centuries BC. Confucius preached the ideals of a “society without law” and government without laws. “If one governs the people through laws and maintains order through punishments,” he believed, “the people will tend to evade [punishments] and will not feel shame.”<sup>5</sup> Instead, Confucius proposed organising human society based on ethical norms, such as trust, humaneness, justice, honesty, loyalty, modesty, reverence for elders, and others.

Legalism, or Legism (as is commonly used in the Chinese legal philosophy from the ancient Chinese term *Fa jia* 法家 meaning “school of legalists”), has several major representatives but is most often associated with its founder, philosopher, and official Shang Yang, who lived in the IV century BC. Shang Yang was an adherent of “governance through law” and denied all the precepts of Confucius. “An intelligent ruler,” he argued, “... takes power into his own hands, establishes law and through laws brings order.”<sup>6</sup> In practical terms, the thinker called for the construction of a “strong state,” the mandatory attributes of which, along with law and order, would be a despotic form of government and the strictest punishments (as a rule, the death penalty) for any, even the mildest, offences.

According to the French comparativist René David, for many centuries Confucianism has generally triumphed over Legalism. Although modern China has laws in principle, they

are not the normal means of resolving conflicts between people ... there should be a great deal of discretion in their execution and application, and the ideal is that laws should not be applied at all and judgements should not be made.<sup>7</sup>

In addition, compared to other countries, the number of laws and regulations in the Middle Kingdom is quite small. Thus, if in 2010 the total population of China was 1,340.9 million people<sup>8</sup> and their activities were regulated by 236 laws, 690 administrative acts, and just over 8,600 local acts.<sup>9</sup> Apparently, in the Chinese system of social norms, the palm of primacy belongs not to legal norms at all, and this fact should be taken into account when studying the ways of ordering social relations in China.

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<sup>5</sup> Cited by Leist, O. E. (2006). *History of political and legal doctrines: Textbook* (p. 23). Zertsalo. (In Russian).

<sup>6</sup> Perelomov, L. S. (Trans. & Ed.). (1993). *The Book of the Ruler of the Shang Region (Shang Tszyun Shu)* (2<sup>nd</sup> ed., p. 392). Ladomir. (In Russian).

<sup>7</sup> David, R. (1988). *The main legal systems of modernity* (p. 440). Progress. (In Russian).

<sup>8</sup> Wang, S., Jia, X., & Mishchuk, S. (2023). Changes in China's demographic policy in 2010–2021. *Population*, 26(3), 66, 67.

<sup>9</sup> Troshchinsky, P. V. (2015). Legal system of the People's Republic of China: Formation, development, and characteristic features. *Courier of Kutafin Moscow State Law University (MSAL)*, 5, 109. (In Russian).

Today, the Chinese legal system is developing in a harmonious manner, including in the direction of overcoming internal contradictions. Chinese legism is gradually absorbing the basic postulates of European normativism and positivism, and Confucianism is filling the substantial gaps in the law, particularly in the implementation of the discretionary powers of public authorities. However, these processes are not yet complete and, according to some experts, "Chinese legislation remains ineffective in many respects."<sup>10</sup>

### **1.2. The Concept of State Sovereignty in China**

The issue of state sovereignty is extremely sensitive for China, which has existed as a colony of the Mongols and Manchus, as a foreign protectorate, as an occupied territory, etc. For millions of Chinese people, the highest but unattainable value for many centuries has been the independence of their country. It is, therefore, rather surprising that the Chinese language has lacked a special term for state autonomy for thousands of years.

The concept of state sovereignty was not introduced to the Chinese until 1865, when Presbyterian missionary William A.P. Martin translated into Chinese the seminal work published in 1836 by American lawyer and diplomat Henry Wheaton, *Elements of International Law*.<sup>11</sup> The translator coined the binomial "主权" for the word "sovereignty," consisting of the characters "主" (from the Chinese word for "master") and "权" (from the Chinese terms for "power," "force" or "right").<sup>12</sup> Accordingly, a literal back-translation yielded the idiom "master power," and this is how internal state sovereignty was perceived in China for a long period of time (and partly is still perceived today—see below).

At first glance, it may seem that the term "master power" is not the most appropriate synonym for the category we are analysing. A Russian lawyer who hears this term might, for instance, associate it with the founding father figure found in domestic labour law, L.S. Tala, who described an employer's legal status as "master's power."<sup>13</sup> However, if we consider the fact that in the 19<sup>th</sup> century the Chinese state was still an empire, this rationale behind the translation becomes much clearer. The main point to keep in mind is that in a number of Old World monarchies, the emperor was officially called the "master" (for example, during the census in 1897 Emperor

<sup>10</sup> Borodina, S., & Kovalev, S. K. (Eds.). (2010). *Investments in the BRIC countries: Risk assessment and corporate governance in Brazil, Russia, India and China* (p. 356). Alpina. (In Russian).

<sup>11</sup> Petukhin, L. A., & Skvortsova, E. M. (2023). Features of 'Chinese' sovereignty and the evolution of approaches to it by the country's leadership in the context of globalization. *East Asia: Facts and Analytics*, 4, 39, 43.

<sup>12</sup> Krivokhizh, S. V. (2019). Correlation of the categories 'sovereignty' and 'human rights': Beijing's position. *Problems of the Far East*, 4, 77, 78. (In Russian).

<sup>13</sup> Tal, L. S. (1916). *Sketches of industrial law* (p. 22). Printing House of G. Lissner & D. Sovko. (In Russian).

Nicholas II listed his occupation as “Master of the Russian land”<sup>14</sup>). In view of this, William A.P. Martin’s translation should be recognised as fairly accurate.

Moreover, the definitions of Chinese external state sovereignty hardly deserve scrupulous study as they largely mirrored the well-known definitions of European and American jurists. Thus, in the second half of the 19<sup>th</sup> century, the diplomat Liu Sihong believed that a sovereign state is “a state in whose internal policy other states do not interfere,”<sup>15</sup> and the ambassador Xue Fucheng equated sovereignty, autonomy, and independence.<sup>16</sup> Later on as well, the Chinese understanding of state sovereignty showed little departure from the established concepts, and even the establishment of a socialist republic in the Celestial Empire brought no significant adjustments to it (except that now some formulations were borrowed from international legal acts).

It appears that the lack of original interpretations of state sovereignty by Chinese authors is determined not due to the secondary and mediocre nature of Chinese legal thought (on the contrary, on the whole it is quite original), but by purely pragmatic, utilitarian motives. China needed the terms “sovereignty,” “sovereign state,” and “sovereign rights of the state” exclusively to defend its interests on the world stage and in the international legal field. The development of an independent concept of state sovereignty, and participation in foreign policy dialogue on that basis, did not take place precisely because doing so would have hindered the achievement of that goal.

Thus, state sovereignty in China represents one of the few institutions of public law that is semantically devoid of any distinctive national character. The Chinese interpret sovereignty in the same way as the French, British, Germans, Americans, or Russians.

However, because the concept of state sovereignty was artificially and one-time transplanted to Chinese soil, rather than nurtured step by step in the natural conditions of public-law development, it has not inherited some of the strong immanent links with related legal categories that were and still are characteristic of the perception of sovereignty in European powers. In particular, the Chinese do not see the familiar dependence of state sovereignty on popular sovereignty (popular power). Martin Jacques, a professor at Cambridge University, notes in this regard that in China “the accountability of the government to the people is very weak because state sovereignty is preferred to popular sovereignty: the government is essentially accountable to itself through an ethical assessment of its performance.”<sup>17</sup>

<sup>14</sup> Mironov, B. N. (2018). *Russian Empire: From tradition to modernity. Vol. 1* (2<sup>nd</sup> ed., p. 93). Dmitry Bulanin. (In Russian).

<sup>15</sup> Cited by Carrai, M. A. (2019). *Sovereignty in China: A genealogy of a concept since 1840* (p. 67). Cambridge University Press.

<sup>16</sup> Carrai, 2019, p. 67.

<sup>17</sup> Jacques, M. (2009). *When China rules the world: The end of the western world and the birth of a new global order* (p. 219). Penguin Press.

### 1.3. The Legal Formation of China's State Sovereignty

It is generally accepted that China began to build a state based on the rule of law after 1978, during the period of implementation of the national programme of the "Reform and Opening-up Policy."<sup>18</sup> However, this construction was and is still being carried out taking into account the Chinese cultural matrix and relying on Chinese traditions of social management. The rule of law in the Celestial Empire is intertwined with Legist dogmas and Confucian canons, making it difficult, at times, to determine how this or that norm will be interpreted and applied (or even whether it will be applied at all). In this respect, the provisions of Chinese legislation on state sovereignty differ from the rest of the normative body in that they are based primarily on the "school of legal scholars" and only then on the "school of educated people."

The Constitution of the PRC of December 4, 1982 mentions sovereignty only in its preamble. In particular, it states that in its relations with foreign countries, "China ... firmly adheres to five principles—mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence"<sup>19</sup> (as it is easy to see, the listed principles almost verbatim duplicate the "five principles of peaceful coexistence" enshrined in the 1954 joint Sino-Indian communiqué).<sup>20</sup> The norms on state or people's sovereignty do not appear once in the Basic Law.

For a country that has only relatively recently achieved its independence, this minimalistic approach may appear too lapidary. In reality, however, it fits perfectly with the views of Shang Yang. According to James D. Sellmann, a professor at the University of Guam, the "silence" on sovereignty is explained by the fact that "the Chinese constitutional tradition has in some sense inherited ... the tyrannical elements of traditional feudal monarchy" because "the Chinese emperor has always acted according to the laws of Fajia (so-called Legalism) and the principles of tyrannical power."<sup>21</sup> Simply put, state sovereignty in China is still predominantly identified with authoritarian "master power," and its content simply does not need to be disclosed in an act that was created to limit such power.

<sup>18</sup> Yan, L. M. (2012). Theories of public administration in the legal doctrines of China. *Vestnik of Omsk University. Series 'Law'*, 1(30), 26, 30. (In Russian). For more details, see, e.g., Gudoshnikov, I. M., & Gudoshnikov, L. M. (2007). *Political system and law of the People's Republic of China in the process of reform 1978–2005* (p. 464). Russian Panorama. (In Russian); Shen, H. (2021). *Xi Jinping and the policy of reform and openness* (p. 799). Chance. (In Russian).

<sup>19</sup> Constitution of the People's Republic of China. (2014). In D. V. Kuznetsov (Ed.), *Constitutions of the countries of the world: Chrestomathy. Part 4* (p. 999). Blagoveshchensk State University Press. (In Russian).

<sup>20</sup> Timofeev, O. A. (2012). Evolution of the concept of state sovereignty in China. *Problem Analysis and State-Management Design*, 2, 114, 114–115. (In Russian).

<sup>21</sup> Sellmann, D. D. (2017). Constitution of the People's Republic of China: A critical assessment. *Russian Political Science*, 4, 73–79. (In Russian).

However, in other Chinese legal acts regulating state sovereignty, the consequences of the colonial past are much more evident.

One of the most important Chinese legal acts is the Law of the People's Republic of China of March 15, 2000 "On Lawmaking,"<sup>22</sup> which defines the procedure for enacting laws and regulations. Article 8 of this Law stipulates that laws, but not administrative or local acts, should be adopted on matters of state sovereignty. Thus, on the one hand, the exceptional value of Chinese sovereignty is emphasised, and on the other hand, departmental separatism and political decentralisation are suppressed.

Also of interest is the PRC Law of March 14, 2005 "On Counteracting the Splitting of the Country."<sup>23</sup> This Law is unique and has no analogues in foreign legal orders. It comprises only ten small articles on the complex relationship between China and Taiwan. Over time this law provoked another international discussion on the status of Taiwan, mass protest rallies in Taiwan, and a conciliatory statement from the Chinese leadership.<sup>24</sup> Article 1 of the Law declares that it was enacted "in accordance with the Constitution to counter and deter separatist forces seeking Taiwan independence."

Furthermore, Article 2 of the Law notes that "there is only one China in the world, located on the mainland and on the island of Taiwan. China's sovereignty and territorial integrity extend equally to its mainland and Taiwan."

Finally, Article 8 of the Law states that if Taiwan's *de facto* independence worsens or the possibility of peaceful unification disappears, China will resort to "non-peaceful means and other necessary measures to protect the sovereignty and territorial integrity of the country."

State sovereignty in China is under special criminal law protection. Article 13 of the Criminal Code of the People's Republic of China defines as crime:

All acts that harm the state sovereignty, territorial integrity and security of the state, aimed at splitting the state, undermining the power of the people's democratic dictatorship, overthrowing the socialist system, disturbing the social and economic order, infringing on the state or collective property of the working masses, on the personal property of citizens, their personal, democratic and other rights, as well as other acts that harm the socialist system of the People's Republic of China.<sup>25</sup>

<sup>22</sup> Law of the People's Republic of China of 15 March 2000 "On Lawmaking." (2004). In L. M. Gudoshnikov (Comp. & Ed.), *Modern legislation of the People's Republic of China: Collection of normative acts* (p. 57). Zertsalo-M. (In Russian).

<sup>23</sup> Gudoshnikov, L. M., & Troshchinsky, P. V. (Eds.). (2012). *Modern law of the People's Republic of China (law review 1978–2010). Part 2: 2002–2010* (p. 51). Institute of Far Eastern Studies of the Russian Academy of Sciences. (In Russian).

<sup>24</sup> Stafeeva, M. S. (2007). The problem of the relationship between the parties of the Taiwan Strait at the present stage. In *Global and regional problems of our time: Origins and prospects: Materials of the Scientific conference of young scientists, Yekaterinburg, April 28, 2007. Issue 2* (p. 159). Ural University Publishing House. (In Russian).

<sup>25</sup> Korobeev, A. I., & Chuchayev, A. I. (Eds.). (2017). *Criminal Code of China: Collection of documents* (p. 38). Contract, INFRA-M. (In Russian).

Thus, the Chinese legislator has placed the safeguarding of state sovereignty and territorial integrity of the country at the top of the pyramid of social relations protected by criminal law (unlike European criminal codes, in which the rights, freedoms and interests of the individual always take precedence<sup>26</sup>). Each of the offences against state sovereignty may be punishable by the death penalty, even in cases where the death penalty is not listed as a sanction in the relevant article of the special part of the Criminal Code of the People's Republic of China.<sup>27</sup>

The essence of state sovereignty is also revealed in some other Chinese laws (such as the PRC Law of February 26, 2010 "On Defence Mobilisation,"<sup>28</sup> the Civil Procedure Code of the People's Republic of China,<sup>29</sup> etc.). We will not, however, quote and comment on the norms enshrined in these laws, as they all proceed from the same Legist logic. The country should be powerful, independent, territorially integral, and ready to respond promptly and effectively to any threats; be governed from one centre, devoid of any influential opposition groups; possess strict and extensive criminal legislation and enforce it impartially—this, in essence, is the administrative model that is used in the legal safeguarding of Chinese sovereignty.

Unfortunately, this model correlates very poorly with the institution of human rights. As O.A. Timofeev states, "the principle of prioritising sovereignty over human rights prevails in the PRC."<sup>30</sup> Chinese lawyers usually consider this problem from a different angle. They argue that the protection of citizens' rights cannot be effective if sovereignty is threatened.<sup>31</sup> However, upon contemplation of these positions, one realises that there is no conceptual difference between them: each expresses the predominance of collective rights over individual rights.

Thus, state sovereignty in China is ensured by ancient doctrinal teachings and a modern and relatively developed legal framework based on them. The increased rigidity of the relevant laws is conditioned by China's dramatic history and the legislator's natural desire to mitigate the slightest risks to the country's independence. However, the balance between state sovereignty and human rights

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<sup>26</sup> Chuchaev, A. I., & Korobeev A. I. (2022). Criminal Code of China: A fusion of legal thought and national specificity. Part 2. *Asia-Pacific Region: Economy, Politics, Law*, 24(3), 172, 174.

<sup>27</sup> Chuchaev, A. I., & Korobeev A. I. (2022). Criminal Code of China: A fusion of legal thought and national specificity. Part 1. *Asia-Pacific Region: Economy, Politics, Law*, 24(2), 119, 129.

<sup>28</sup> Kozhin, P. M., & Rumyantsev, E. N. (Eds.). (2011). *Law of the PRC of February 26, 2010 "On the Law of the People's Republic of China on Defensive Mobilisation"* (p. 48). Institute of the Far East of the Russian Academy of Sciences. (In Russian).

<sup>29</sup> Civil Procedure Code of the People's Republic of China. (2004). L. M. Gudoshnikov (Comp. & Ed.), *Modern legislation of the People's Republic of China: Collection of normative acts* (pp. 259–313). Zertsalo-M. (In Russian).

<sup>30</sup> Timofeev, O. A. (2011). Evolution of perceptions of sovereignty in modern China. *Bulletin of the Amur State Sovereignty*, 52, 55, 57. (In Russian).

<sup>31</sup> Qiucen, L. (2019). Specifics of the law of the People's Republic of China and features of its modern development. *Jurisprudence*, 63(2), 327, 335. (In Russian).

has not yet been found, and the legal reality in the Middle Kingdom is clearly skewed in favour of the former.

#### **1.4. Trust as the Basis of State Sovereignty in China**

As previously noted, the ideas of both Legism and Confucianism are widespread in Chinese society. The latter has penetrated into all spheres of state administration, managerial practice and even interpersonal relations. The “school of educated people” has not been overlooked in ensuring state sovereignty (although this area is, of course, primarily influenced by Legism).

Confucius was convinced that the state is based not on law and coercion, but on trust in authority. He told his disciples: “If the people stop trusting, the state will not stand.”<sup>32</sup> Another judgement of Confucius, which can be applied both to the head of the country and to government officials, has been preserved: “How can you deal with a person who cannot be trusted? If a cart has no axle, how can one ride in it?”<sup>33</sup>

Indeed, if the people do not trust the authorities, then in the state appear objective prerequisites for the most terrible social upheavals—riots, rebellions, coups, and revolutions.<sup>34</sup> The opposite is also true: people’s trust is a condition for stability and development. Chinese legal scholars are well aware of this connection. For example, in 2022, Zhu Jinwen, a professor at the School of Law of the Chinese People’s University, published an article in Rossiyskaya Gazeta entitled *Citizens’ Trust in Government Remains the Key to Prosperity and Harmony in China*.<sup>35</sup>

At times, Confucian trust is seen as an integral complement to Legist law in Chinese philosophical and legal thought. A striking example of this is the dualistic perception of offence as transgression of the law and loss of trust at the same time. China’s top officials regularly speak out in this context. For example, Xi Jinping, General Secretary of the Central Committee of the Communist Party of the People’s Republic of China, once demanded “to improve ... mechanisms for punishing those who break the law and lose trust, so that a person simply does not dare, simply cannot lose trust.”<sup>36</sup>

A similar approach is found in the Chinese understanding of corruption. According to E.A. Antonyan, “in China, corruption ... is viewed in two types: corruption as bribery and corruption as decomposition.”<sup>37</sup> Legist methods are used to fight the first type

<sup>32</sup> Cited by Perelomov, L. S. (1998). *Confucius: ‘Lun Yu’* (p. 383). Eastern Literature. (In Russian).

<sup>33</sup> Cited by Oldenburg, S. F. (2017). *Confucius. Life, activity, thoughts* (p. 145). Tsentrpoligraf. (In Russian).

<sup>34</sup> Zaitsev, D. I. (2023). Genealogy of administrative discretion. *Siberian Legal Review*, 20(3), 272, 279. (In Russian).

<sup>35</sup> Zhu, J. (2022, November 9). *Citizens’ trust in the government remains the key to prosperity and harmony in China*. Rossiyskaya Gazeta. <https://rg.ru/2022/11/10/u-kogo-bolshe-vlasti.html>. (In Russian).

<sup>36</sup> Cited by Gordon, A. V. (2020). The doctrine of Xi Jinping’s rule. *Social and Humanities. Domestic and Foreign Literature*, 9(2), 158, 189.

<sup>37</sup> Nechevin, D. K. (Ed.). (2023). *History of countering corruption in the civil service of Russia and foreign countries in the 20<sup>th</sup> century* (p. 89). Prospect. (In Russian).

of corruption, while Confucian methods are used to fight the second type. It is no coincidence that China's anti-corruption campaign, literally translated as "Hunting Tigers and Flies" (i.e., large and small bribe takers), launched in 2013, focused on two tasks: "(a) to make all officials aware of the inevitability of responsibility for corruption offences; and (b) to restore public trust in the authorities."<sup>38</sup>

The question that arises is: How can civil servants earn the trust of the public? The easiest way is to comply with the law, i.e., to not lose trust. This thesis forms the basis of the Chinese concept of the rule of law. In this concept, law and order have no independent value; they are important only as tools to create trust between the government and society.

In terms of ensuring state sovereignty, this concept unites and "reconciles" Confucianism and Legism. The following cyclical algorithm emerges: (a) for the state to become sovereign, the people must trust the authorities; (b) for the people to trust the authorities, the authorities must respect the laws; (c) if the authorities violate the laws, they will lose the trust of the people; (d) if the authorities lose the trust of the people, the state will lose its sovereignty.

### **1.5. Impact of Globalisation on the Concept of State Sovereignty in China**

All states of the modern world are engaged in globalisation, which can be described as "the process of universalisation, the formation of unified structures, connections, and relations for the entire planet Earth across various spheres of social life." This process inevitably affects the state sovereignty of any country, yet scholars assess its impact in markedly divergent ways. For instance, P.A. Tsygankov argues that "globalization undermines national sovereignty," while according to A.A. Moiseev, "it would be incorrect to claim that globalization leads to the limitation of state sovereignty." Without endorsing either position, we shall examine how globalisation influences China's state sovereignty and its corresponding theoretical concept.

Beijing is an authoritative actor in international relations and integration processes. Its foreign policy is characterised by diplomatic restraint and consistent mercantilism. For contemporary China, any form of interstate engagement that provides third countries with potential pretexts or resources to exert political pressure is unacceptable. Conversely, as the "world's industrial workshop," China itself can dictate specific terms to its counterparts. As U.S. President Donald Trump noted in one of his books, China–U.S. trade resembles a "one-sided game" due to China's unilateral advantages.

Today's Beijing avoids total isolation and autarky, establishing comprehensive partnerships with foreign states, including capitalist ones, while striving to occupy—if not a dominant—at least an autonomous position within them. American

<sup>38</sup> Galiullina, S. D., Lifanova, M. V., Gerasimova, D. I., & Safina, E. A. (2020). Chinese model of fighting corruption: origins and peculiarities. *Problems of Oriental Studies*, 2(88), 8, 12 (In Russian).

political scientist Samuel Kim, a professor at Columbia University, characterises this behavioural model in the international system as a “maxi-mini approach,” expressed through “maximizing benefits from system participation while minimizing normative costs, such as dependency and loss of sovereignty.”

Thus, globalisation not only fails to constrain China’s state sovereignty but may progressively strengthen it. Here we fully align with the thesis of Russian philosopher A.G. Dugin, who claims that “China is not forfeiting its sovereignty; rather, it is pragmatically leveraging the opportunities globalization offers.” Yet does this imply that the shift in China’s international strategy is transforming its conceptualisation of state sovereignty?

Formally, no grounds exist for such hypotheses. China still adheres to the conventional understanding of state sovereignty, declares commitment to respecting all nations’ autonomy and territorial integrity, advocates for a multipolar world order, and condemns neocolonialism and hegemonism. However, the scale of China’s global engagement and its depth of involvement in world economics and politics suggest that China’s sovereignty now depends less on its own independence and more on the (at least partial) dependence of other states on China. Consequently, the PRC may soon develop a fundamentally new concept of state sovereignty aligned with its global stature and international interests. Modern history offers precedents such as the United States’ adoption of the doctrine that “a state forfeits sovereignty if it violates human rights within its territory,” granting other nations the right to conduct “humanitarian interventions.”

Therefore, globalisation reinforces China’s state sovereignty, which in turn may catalyse a comprehensive—or more likely a partial—revision of China’s sovereignty doctrine in the future.

## **2. Public Legal Provision of State Sovereignty: Sovereignty of India**

### **2.1. Indian Legal System: General Provisions**

India is one of the world’s oldest and most unique states, having successfully been able to preserve its self-identity while integrating elements of different legal systems. It is paramount to pay attention to the source of the polity’s formation, which is religion. India’s two predominant religions, Hinduism and Muslimism, have both directly influenced the formation of the legal system of the state. These two religions have presented a united front, particularly during various turbulent periods throughout history. However, later the differences between them became significant, which led to the division of the territory into two independent states, India and Pakistan. Consequently, customs and some religious views got their consolidation in “dharmashastras” which are ancient Hindu extensive sets of rules attributed to famous scholars. The best known of these are the Laws of Manu, which were a set of legally enforceable rules. They reflected ideology and defended the caste system and

social inequality, essentially proclaiming that “only punishment rules all creatures, only punishment is awake over them when they sleep, the wise consider punishment (identical to) law.”<sup>39</sup>

Subsequently, elements from various legal systems were gradually integrated into the Indian legal system. It should be noted that the Indian legal system exhibits characteristics of the Romano-Germanic, Anglo-Saxon, Hindu, and Muslim legal families, as well as systems of religious and customary norms. Naturally, this is due to the historical conditions of the formation of this ancient state and the prolonged colonisation of India (from the early 17<sup>th</sup> to the mid-20<sup>th</sup> centuries). The influence of the Romano-Germanic legal family is less pronounced; nevertheless, it is evident in the codification of public and private law norms, as well as the delineation and development of distinct branches of law.

The influence of the Anglo-Saxon legal family on the formation of India's legal system appears more substantial. Despite Britain not being the first coloniser in India, it exerted a direct influence not only on the form of the state but also on the sources and structure of Indian law, “attempting to adapt local customary law to the objectives of efficient administrative governance.”

The system of sources of law in India is particularly interesting, encompassing statutes, delegated legislation, subordinate legislation, precedent, and custom. It should be noted that case law is recognised as a source of law in India, yet possesses a certain peculiarity. More specifically, only the decisions of the Supreme Court of India and the High Courts can be recognised as sources of law. This is clearly stated in Article 141 of the Constitution of India. Custom played an important role in the development of Indian law, but its role became secondary after India gained independence. This shift is due to the codification of the primary issues and concerns of Hindu law in numerous statutes. Moreover, custom can only be applied if expressly permitted by statute.

Notably, a distinctive feature of the legal system lies in the courts' application of norms from various religious families based on “personal laws,” which codifies customs and traditions. These norms are applied exclusively to private individuals and only upon the application of a citizen. As an example, we can cite the Muslim Personal Law (Shariat) Application Act, 1937. Both Hindu personal law and Muslim personal law are directly applied in matters concerning the personal status of citizens and also regulate the legal status of minors, guardianship and custody, adoption, spousal property, maintenance obligations, inheritance, and other such personal and family matters. Simultaneously, determining the applicable “personal law” for an individual in India is quite complex, as each state is inhabited by adherents of various religious communities. Therefore, the norms of Indian law are binding on all citizens residing in India, irrespective of their nationality or religion.

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<sup>39</sup> Cited by Leist, 2006, p. 39.

India has also absorbed the institutions of other legal orders. Despite the strong influence of British legal culture, India did not blindly duplicate the Anglo-Saxon legal system but acted selectively. The Indian Constitution of 1950 reaffirmed that the law created earlier continued in force; at the same time, the Supreme Court of India determined that British legal instruments applied unless they conflicted with national sovereignty. In 1960, the British Statutes (Application to India) Repeal Act was passed, repealing 258 British statutes.

## **2.2. Concept of State Sovereignty in India**

Colonial India, shaped by the perspectives of both Muslim and British society, formulated, developed, and realised the ideas of independence. However, state sovereignty was questioned soon after its attainment as it was a “dynamic and interconnected process arising out of an “unstable mixture of law and violence.”<sup>40</sup> This understanding emerged shortly after India’s independence, which led to forceful solutions to territorial problems and victimisation of the population. Border disputes with its neighbours and internal conflicts threatened the unity of the country. Nevertheless, the accession documents explicitly affirmed India’s “sovereignty”, allowing individual principalities and states to join the federation on different terms, without the possibility of further secession into independent territorial entities. In doing so, the states “retained control over internal administration and were exempt from federal legislative powers, except in areas defined by law and further restricted by the terms of accession.”<sup>41</sup> Thus, “the sovereignty resulting from the division of territory was presented as peace rather than betrayal, and the suffering of the survivors as a call to collective action and discipline.”<sup>42</sup>

At the same time, a debate arose regarding the enshrinement of state sovereignty in the Constitution of India as a fundamental attribute of the state. One position argued that anchoring state sovereignty at the level of the fundamental law would lead to authoritarianism. From another perspective, sovereignty belongs to and emanates from the people.

B.R. Ambedkar, regarded as the “father of the Indian Constitution” and a proponent of Buddhism, “actively championed the cause of vulnerable segments of the population, advocating for social, intellectual, economic, and political freedom, and for equality between women and men, which also constitute the fundamental principles of Buddhism.” The appeal to Buddhist ethics and its philosophy of non-violence, which occurred both during the struggle for independence and the formative period of the young state, became the ideological foundation for

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<sup>40</sup> Purushotham, S. (2021). *From raj to republic: Sovereignty, violence, and democracy in India* (p. 360). Stanford University Press.

<sup>41</sup> Purushotham, 2021, p. 360.

<sup>42</sup> Purushotham, 2021, p. 360.

transformation. By the time India gained independence, the state faced numerous deeply rooted problems, largely attributable to religion (Hinduism) with its “varna-caste” foundations, which presuppose that occupations are predetermined for individuals—not based on their aptitude or capacity for learning but solely on the social status of their parents. Thus, this predetermination deprives individuals of choice and prevents them from realizing their potential through dignified labour; people do not strive for a better life, and therefore “would rather starve than engage in other work, and the reason for this lies in the caste system. Caste has become the direct cause of mass unemployment in India.” Furthermore, “Hinduism is a religion not founded on morality.” The sole aim of this doctrine is to provide the state or society with a means to absolve itself of responsibility for the plight of the poor and the weak.

Therefore, in the context of independence and in order to strengthen statehood, the need to resolve a range of internal challenges increased significantly. These included poverty and employment; territorial disparities; low levels of health care and education; poor efficiency of industrial production; and environmental concerns (such as deforestation, air pollution in cities, and waste management issues).

Recognising the vulnerability of the state as a result of these circumstances, the country’s leadership came to a new understanding of state sovereignty based on the protection and care of human life and the strengthening of public order. It is these conceptions of sovereignty that were legally enshrined in the Constitution of India in 1950. Article 38 notes:

The State shall ensure a social order conducive to the welfare of the people. The State shall endeavour to promote the welfare of the people by securing and safeguarding as effectively as possible a social order in which social, economic, and political justice defines the essence of all institutions in which the life of the nation is embodied.<sup>43</sup>

Even so, the term “sovereignty” appears sparingly in the Constitution of India, most notably in Article 51A(c)), which stipulates that it is the fundamental duty of every citizen of India to “maintain and protect the sovereignty, unity and integrity of India” (Art. 51A(c)).

### **2.3. Legalisation of India’s State Sovereignty**

The legal entrenchment of India’s state sovereignty began in 1947 with the passage of the Indian Independence Act by the British Parliament, which gave the country the status of a dominion (sovereign state). In 1950, India adopted the Constitution, which is the supreme law of India. Note that the Constitution of India enshrines the rights of citizens to equality (Arts. 14–18), freedom (Arts. 19–21),

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<sup>43</sup> Constitution of India. (2014). In D. V. Kuznetsov (Ed.), *Constitutions of the countries of the world: Chrestomathy. Part 4* (p. 414). Blagoveshchensk State University Press. (In Russian).

protection from exploitation (Arts. 22–24), freedom of religion (Arts. 25–28), culture and education (Arts. 29–31), and constitutional guarantees (Arts. 32–35), which are considered to be universal goods. In addition, the basic law of India enshrines the possibility of “reasonable restrictions” on the civil rights of citizens (such as freedom of speech and expression; the freedom to assemble peacefully and without arms; and the freedom to form associations or unions) that may be established by law in the interests of ensuring the sovereignty and integrity of India (Art. 19).

For example, the press has the right to exercise its freedom of speech and expression by publishing material that does not infringe on the rights of other citizens and that does not violate the sovereignty and integrity of India, the security of the state, public order, decency, and morality.<sup>44</sup> However, the people of India have the right to know about every public action of officials.<sup>45</sup> Thus, the right to freedom of speech can be restricted only when the interests of the state are encroached upon.

Although there is no clear definition of state sovereignty, the general conceptions of state sovereignty in the Constitution of India are enshrined in other statutory enactments. One such fundamental enactment is the Prevention of Unlawful Activities Act (1967). It states that unlawful activities are those which jeopardise the sovereignty of India.<sup>46</sup>

The preamble to the Armed Forces (Special Powers of Armed Forces) Act (1990)<sup>47</sup> states that

the armed forces shall be used to assist the civil administration in rebellious districts, to prevent terrorist activities and any activity which jeopardises the territorial integrity of the country, seeks withdrawal of part of the territory from India or insults the national symbols such as the Constitution, the Anthem and the Flag of India.

Separate norms on state sovereignty are also contained in the subordinate legislation. For example, under the Passport Act 1967,<sup>48</sup> the powers of the passport office and control officials must be in the interest of the sovereignty, integrity, and security of India. It is noteworthy that the identity of the applicants is taken into account when considering passport applications, as their activities may pose a threat to the sovereignty and integrity of India even outside its territory. Therefore, a public authority can refuse to issue a passport on the ground of (possible) engaging in activities outside the state which are prejudicial to the sovereignty and integrity of India.

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<sup>44</sup> *Prabha Dutt v. Union of India*, AIR 1982 SC 6.

<sup>45</sup> *State of California v. Raja Narain*, 1975 SCR (3) 333.

<sup>46</sup> Unlawful Activities (Prevention) Act of June 17, 1966. Legislative Department. [https://lddashboard.legislative.gov.in/sites/default/files/legislative\\_references/1955-1967\\_0.pdf](https://lddashboard.legislative.gov.in/sites/default/files/legislative_references/1955-1967_0.pdf)

<sup>47</sup> Indian Armed Forces Special Powers Act of July 5, 1990, No. 21. Pashkov Library. <https://constitutions.ru/?p=9363>. (In Russian).

<sup>48</sup> Passports Ordinance of May 5, 1967. Legislative Department. [https://lddashboard.legislative.gov.in/sites/default/files/legislative\\_references/1955-1967\\_0.pdf](https://lddashboard.legislative.gov.in/sites/default/files/legislative_references/1955-1967_0.pdf)

The Commissions of Inquiry Act<sup>49</sup> and the Telecom Regulatory Authority Act<sup>50</sup> emphasise that the exercise of powers of public authorities should not be exercised in any manner that is against the interests, sovereignty, and integrity of India, or the security of the state.

In light of emerging challenges and threats, it would be particularly relevant to place a little emphasis on digital sovereignty, as India, like other BRICS member states, is a “sovereignty hawk”<sup>51</sup> in the field of information technology. Therefore, India is building its own media structure, including television and internet.<sup>52</sup> Ensuring state sovereignty presupposes that the country has its own information platforms, search engines, network services, and mechanisms to control the dissemination of information and the processing, storage, and transmission of data. In this regard, the Information Technology Act<sup>53</sup> was enacted in 2000 to regulate the activities of authorised persons to capture and intercept any information transmitted through any computer resource that is against the interest of the sovereignty or integrity of India and the security of the state.

In 2021, the Government of India adopted the Information Technology Guidelines for Intermediaries (Information Technology Rules), which enshrine strict content moderation requirements for online platforms and contain numerous references to safeguarding state sovereignty.<sup>54</sup> In particular, they specify that on social media platforms, the operator shall monitor the posting of information that may create a substantial risk of harm to India’s sovereignty and integrity, state security, friendly relations with foreign states, or public order through the use of technology.

## **2.4. The Impact of Modern Technologies on Strengthening India’s State Sovereignty**

The concept of state sovereignty in India entails the pursuit of independence within the high-technology sector of the economy. Technological self-reliance and

<sup>49</sup> Commissions of Inquiry (Amendment) Ordinance of May 14, 1986. Legislative Department. [https://liddashboard.legislative.gov.in/sites/default/files/legislative\\_references/ord1986%20to%201995\\_0.pdf](https://liddashboard.legislative.gov.in/sites/default/files/legislative_references/ord1986%20to%201995_0.pdf).

<sup>50</sup> Telecom Regulatory Authority of India Ordinance of January 27, 1996. Legislative Department. [https://liddashboard.legislative.gov.in/sites/default/files/legislative\\_references/1996-2000\\_0.pdf](https://liddashboard.legislative.gov.in/sites/default/files/legislative_references/1996-2000_0.pdf)

<sup>51</sup> Zinovieva, E. S. (2024). BRICS on the way to acquire digital sovereignty? *Problems of National Strategy*, 2(83), 144–163. (In Russian).

<sup>52</sup> Polikarpov, V. S. (2014). Information sovereignty of Russia and information-intellectual wars. *Information Counteraction to Threats of Terrorism*, 23, 285–290. (In Russian)

<sup>53</sup> Law on Information Technology of June 9, 2000. Department of Agriculture & Farmers Welfare. <https://agriwelfare.gov.in/en/ActsDigiAgr>

<sup>54</sup> Ministry of Electronics and Information Technology Notification, New Delhi, February 25, 2021. Ministry of Information and Broadcasting. <https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20%20Code%29%20Rules%2C%202021%20English.pdf>

competitiveness are closely linked to the active development, implementation, and widespread adoption of modern technologies.

To stimulate domestic production, initiatives such as “Make in India,” “Digital India,” “Startup India,” and the “Smart Cities Mission” were launched. The comprehensive “Digital India” programme aims to reform the activities of governmental bodies in the delivery of public services through the adoption of digital technologies and ensuring broad citizen access to mobile communications and internet resources. Under this program, Centres of Excellence are being established nationwide, bringing together representatives from government, academia, and industry. These centres foster advancements in virtual reality, big data, robotics, and artificial intelligence, while government agencies create conditions for their implementation. The Government of India regularly develops and publishes strategic documents defining development directions, goals, and regulatory tasks in innovative fields such as artificial intelligence, blockchain, robotics, computer vision, drones, etc. For instance, the Science, Technology, and Innovation Policy (STIP) emphasises India’s focus on unresolved challenges across all spheres of societal life to ensure public welfare and prosperity. Research solutions encompass diverse options for various regions and socioeconomic strata, concentrating on issues within specific domains of public administration. Such an approach also necessitates developing products, processes, and technologies that incorporate interaction, testing, and end-user feedback at early stages to ensure deployment, impact, and societal benefit.

Notably, the public communication program “Information for All” operates as part of “Digital India,” alongside the *Digital Saksharta Abhiyan* (DISHA), or National Digital Literacy Mission (NDLM). The latter was designed to train citizens in information technology and enhance nationwide digital literacy, enabling individuals lacking IT skills to participate effectively in the development of the state and society.

India places particular emphasis on creating favourable conditions for utilising modern technologies in specific economic sectors. Mechanisms for coordinating innovation implementation have been developed across various Indian ministries, including those responsible for agriculture, animal husbandry, veterinary science, entomology, wildlife conservation, and forestry.

Strengthening India’s state sovereignty is facilitated not only by a focus on domestic high-tech development but also by adapting and integrating imported technologies into diverse societal spheres. This process begins by defining needs based on resolved challenges and evolving methods for addressing remaining issues. To attract foreign capital (investments) while aligning with national priorities, India accords significant attention to startups. Significantly, India positions itself as a new technological hub.

Consequently, some experts predict technological leadership for India—potentially establishing it as the next “Silicon Valley”—for several reasons: close collaboration with China in the high-tech sector, intensive startup development, continuous pursuit

of new technologies and their integration into governance systems, and reduced risk for foreign investments.

Ensuring state sovereignty through the development of new technologies is feasible only under the condition of upholding human rights and freedoms. The personality, dignity, and privacy of citizens are guaranteed and protected by provisions on fundamental human and civil rights enshrined in the Constitution of India. However, considering the influence of modern technologies, additional legal frameworks are required to address rights such as the protection of digital identity, the right to access or refuse access to new technologies, and the protection of biometric and personal data, among others.

### **Conclusion**

The present study has illuminated certain distinctive features of the public legal safeguarding of state sovereignty in the People's Republic of China and the Republic of India, yielding the following conclusions.

In China, the doctrinal foundation of public legal sovereignty assurance largely draws upon the tenets of Legalism, emphasising the creation of a strong state, the establishment of unified laws and administrative decrees binding on all citizens, and the imposition of severe penalties for offences. In practice, this is manifested through a legislative framework characterised by a relatively limited number of statutes, including unique laws such as the "Law on Countering Secession," alongside stringent sanctions for crimes undermining state sovereignty.

Concurrently, Confucianism retains significant ideological influence. This doctrine posits that safeguarding state sovereignty requires not radical coercive measures but rather trust-based relations between the populace and authorities. In matters pertaining to sovereignty, the Chinese government navigates between Confucian and Legalist philosophies, strategically invoking elements of both schools.

A central challenge in China's public legal sovereignty framework is the absence of equilibrium between state sovereignty and human rights. Achieving such balance constitutes the primary trajectory for developing legislation that is aimed at ensuring national independence. Adopting a logical approach would entail a gradual, phased process, accounting for the progressive growth of legal culture within both state institutions and society. It is therefore imperative that practical guarantees for fundamental personal rights—such as the rights to life, health, inviolability, honour, and dignity—be prioritised. Continuous refinement of legislation and law enforcement should subsequently shield political, economic, social, cultural, and other civil rights from infringement. This approach necessitates not only revising certain postulates of the sovereignty concept but also substantial legislative amendments and, crucially, transformative changes in the practical operations of state bodies, their officials, and civil servants. Following the example of the other BRICS nations, the comprehensive

adoption of administrative procedures that are designed primarily to protect citizens' rights and freedoms could represent a significant step forward.

India's public legal safeguarding of state sovereignty is founded on preserving its ancient culture and traditions while maintaining a balance between legally enshrined rights, freedoms, and spiritual values amid contemporary challenges. The pacifism of Buddhism and principles of tolerance, alongside the high degree of universality inherent in core Hindu values, underpin India's sovereignty concept, establishing the primacy of fundamental civil rights within its 1950 Constitution. Notably, explicit normative prescriptions concerning state sovereignty remain limited in Indian legislation. Nevertheless, in responding to emerging challenges, the Indian state not only preserves its independence and autonomy at the national and international levels but also prioritises the protection of human rights as the foundational source of state sovereignty.

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### Information about the authors

**Violetta Belousova (Moscow, Russian Federation)** – Assistant, Department of Administrative Law and Procedure, Kutafin Moscow State Law University (MSAL) (9 Sadovaya-Kudrinskaya St., Moscow, 125993, Russian Federation; e-mail: [vvbelousova@msal.ru](mailto:vvbelousova@msal.ru)) – **corresponding author**.

**Dmitry Zaytsev (Moscow, Russian Federation)** – Assistant, Department of Administrative Law and Procedure, Kutafin Moscow State Law University (MSAL) (9 Sadovaya-Kudrinskaya St., Moscow, 125993, Russian Federation; e-mail: [dizajcev@msal.ru](mailto:dizajcev@msal.ru)).

**Sergey Zubarev (Moscow, Russian Federation)** – Professor, Head, Department of Administrative Law and Procedure, Kutafin Moscow State Law University (MSAL) (9 Sadovaya-Kudrinskaya St., Moscow, 125993, Russian Federation; e-mail: [smzubarev@msal.ru](mailto:smzubarev@msal.ru)).