

## Topic: 4. SOVEREIGNTY

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### Concept of Sovereignty

Sovereignty is the core concept in modern political theory as it is the most distinctive characteristic or attribute of the modern State. The term sovereignty is derived from a Latin word 'superanus' meaning 'supreme'. Sovereignty means 'Supreme Power'. In Political Science, Sovereignty denotes the supreme authority of the state. It symbolizes supreme and final legal authority, above and beyond which no legal power exists. It distinguishes state from all other associations and institutions. As we know that state consists of four elements, namely, population, territory, government and Sovereignty. The first three characteristics can also be found, in varying degrees, in other associations and institutions. But the State alone commands the possession of Sovereignty, i.e. supreme power or authority. Modern state claim supremacy in internal matters and freedom from the control of external government on the basis of the attribute of sovereignty. It is a hallmark of the modern state. There are two kinds of sovereignty:

- (i) **Internal Sovereignty** : means that the state has complete control over all the individuals, institutions, institutions and associations have to obey the laws of the state and, if any individual or association violates these laws. The state has the power to punish him.
  
- (ii) **External Sovereignty** means that the state is free from the control of any other state. There is no individual or authority outside the state which is in a position to issue orders and get obedience from that state. For example, before 1947, India was not a state. Although it had its population, fixed territory and government, but it lacked external sovereignty. As she was under the British government. The administration in India was run according to the laws passed by the British Parliament.

Thus, we can say that these four elements are sine qua non for the formation of state. State cannot exist in the absence of any one of them. Besides the above-mentioned four essential elements, recognition from other states has become an important factor these days. In international law it has been neatly observed and discussed with having an implication in case of non observance and interestingly, political science, too, has taken notice to this fact. But to term it as sine qua non for constituting a new state is dangerous as we have examples all around the

world. In international law it is a recognized principle that a state becomes a state only when it gets recognition from other states. It is, however, noteworthy that recognition is merely a matter of convenience for the state. A state, as a result of its policy, does not give recognition to a new state even though that state might have existed for a number of years. For example, the USA recognized the USSR only in 1932-33 although the USSR had come into existence in 1917. Bangladesh, after its separation from Pakistan, was established as a separate state only after it was recognized by other states.

### **Meaning of Sovereignty**

For the first time this idea of sovereignty was used by French Political thinker, **Jean Bodin** in 16<sup>th</sup> Century. He defines sovereignty as the “supreme power over citizens and subjects, unrestrained by law. In other words, Bodin identifies sovereignty with monarchy and the true character of the sovereign is the power to promulgate laws while keeping himself free from the laws. However, the sovereign is bound by natural and divine laws. Let us discuss some other definitions of sovereignty.

**Hobbes**, an English political thinker, known for writing a book namely *Leviathan*, discusses the idea and form of sovereignty in a modern state. He defines sovereignty as an unlimited and illimitable power. Hobbes asserts that sovereign is the sole law making authority in a state and law is the command of sovereign. Hobbes locates sovereignty in a monarch or in an assembly of men.

The conception of sovereignty as proposed by Hobbes and elaborated by Bentham has been the main fulcrum of **Austin's** view who gave a lawyer's view of sovereignty. According to him law is the command of sovereign and sovereign power is real and factual. Without sovereignty a state can perish. The essence of sovereign is its *coercive* nature. However the contemporary view on sovereignty has somewhat diluted the stress on the coercive aspect. The character of state has changed.

According to **Grotius**, the founder of International law, Sovereignty is “the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden”.

**Jellinck** defines sovereignty as “that characteristic of the state in virtue of which it cannot be legally bound except by its own will, or limited by any other power than itself.” This view echoes the sentiments of Bodin.

**Duguit** says that sovereignty is “the commanding power of the state; it is the will of the nation organized in the state; it is the right to give unconditional order to all individuals in the territory of the state”.

According to **Jenks**, sovereignty is “an authority which, in the last resort, controls absolutely and beyond appeal the actions of every individual member of the community”.

**Barker**-“Sovereignty is the authority of the last word”.

### **Characteristics/Features of Sovereignty**

- **Absoluteness/All-comprehensiveness**-means that no other power can bind it. ie sovereignty is unlimited power. No other agencies or human associations can practically command the same authority as commanded by sovereign. The decision taken by the State are applicable to all subjects, citizens, groups, associations and institutions within the territory of the state.
- **Inalienability**-It is absolute hence it is inalienable. There cannot be two sovereign authorities in a single state. If two persons claim sovereignty then there is a possibility of civil war. If the sovereign gives away his power, he ceases to be sovereign. In other words, when sovereignty is alienated it is destroyed. Liber said that as a man cannot transfer his life or personality without self destruction, sovereignty similarly cannot be alienated. Ritchie, however, states that the concept of inalienability of sovereignty is not supported by historical facts. When a state gives away a part of its territory to other, it surrenders its sovereignty over the ceded territory.
- **Indivisibility**-Hobbes says that there cannot be two sovereign in a single state. As he gives an analogy, if two men ride on the horse, one must ride in front. It practically means that the real sovereign can have no rival to his authority. However it is essential not that delegation is no division. A sovereign may delegate his authority to others as the modern state has become a big state where practically impossible for one person or institution to take care of every aspects of civic life. For example the power delegated to a local authority to collect taxes and administer an area, does not mean the division of sovereignty. It can be revoked at will. According to Calhoun, “Sovereignty is an entire thing; to divide is to destroy i.e. is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty.”
- **Permanence**-this implies that sovereignty is a permanent or timeless feature of the state. As long as state exists, its sovereignty also exists. The two are inseparable. It is inconceivable to think of a State without Sovereignty, like heat is a necessary and permanent attribute of fire. Sovereignty ceases when a state is conquered by another.

### **Theories of Sovereignty-Monism, Pluralism and Contemporary**

#### **1. Monism (Austin)**

Monism theories implicate that Sovereign is essentially a single monolithic virtue to possessed in singularity. This view has lot of inheritance and the major credit goes to John Austin, an English Jurist. In his “Lectures on Italics Jurisprudence”, Austin propounded a

theory that popularly became the Lawyer's view of sovereignty. He defines sovereignty as "*If a determinate human superior not in a habit of obedience to a like superior receives habitual obedience from the bulk of a given society, that determinate superior is sovereign and the society is a society, political and independent*". The idea of a single sovereign state is the hall-mark of the monists view on sovereignty chiefly propounded by Austin and further buttressed by many others in modern state. The implications of Austin view are:

- Sovereignty is based on his view on law.
- Law is a command given by a superior to an inferior.
- What the sovereign permits is command, i.e., law.
- Such a law is a positive law laid down and enforced by authority.
- The test of sovereignty is *habitual obedience* to a superior.
- The superior must be a determinate body not subject to legal checks.
- The power of the determinate superior, or sovereign, is indivisible, absolute and incapable of limitations.

**Criticism of Monism**-The major criticism comes from the Historical school who contested that the presence of the sovereign is essential to every state and it is chiefly vested in one authority. Sir Henry Maine points out that Austin's theory is inapplicable to some of the oriental communities and secondly a historical study of oriental societies reveal an enormous body of opinions, prejudices and superstitions and which collectively called a code of customs. He gives the example of the Sikh Kingdom under Maharaja Ranjit Singh as a parallel power co existed with the British state. Similarly an oriental sultan is absolute but even he cannot go against the injunctions of Koran.

The ideal applauded by the Monists that sovereign power is indivisible is not true in some interpretations of constitutions. There may be different authority for different purposes. In British Constitution one can find the semblance of Legislative and Executive authority as the Legislative Sovereign is Crown or Queen, the House of Lords and the House of Commons whereas the Executive sovereign comprised the Crown and his Ministers. In USA there is a division of the sovereign power between the federations and states, each of them independent and co ordinate. Each has a sphere of legislative authority in which other cannot interfere.

Further no Monists has ever maintained that the actual policy of the sovereign is not modified by popular opinion, or by the possibilities of effective disobedience. Even Austin points out that the sovereign is restrained by morality, opinion and sentiments prevalent in a community.

This view goes against the idea and preferences of modern democratic state as this theory does not allow popular sovereignty at all.

## 2. Pluralism (Laski and MacIver)

As the term suggests, the pluralists believe in multiple source of sovereign authority. It is a revolt and reaction against the monism and their idea of authority an embedded one. According to Pluralists that many other associations other than State are the source of authority. They regard State as just another association exercising sovereignty over the individual. Laski says that due to the proliferation of various groups and associations in modern society, society and sovereignty should be 'federally organized'. Many pluralists like Gierke and Figgis have asked for more and more freedom for associations as such associations and groups also aim at obtaining the loyalty of the individual.

Pluralists also maintained that monist theories have no historical basis as society is not a monolithic society. They refuse to accept the state as a superior association. Moreover they reject the monist view that laws are obeyed because of the fear of punishment. But the fact remains, according to Pluralists, that laws are obeyed because they are beneficial. Further, law is not simply a command of single sovereign rather it should be seen in the context of customs, traditions, morality, etc. MacIvers asserts that "Law is the very anti thesis of Command". It aptly anchors the predominant aspect of Pluralist view of sovereignty.

This theory has also been hugely criticized. The idea of divided loyalty as their belief that state is just like any other association, in modern times a sure prescription for anarchy and recipe of disaster. As we can look around we can find that how state is struggling to cope up with these dissenting groups, sometimes leading to inordinate subjection of violence.

Further a state cannot be equated with other association as it is a "super association", i.e. all inclusive one. Its membership is compulsory unlike that of other associations.

Without having faith and regard to the sole regulatory authority of the State, the society is a full of chaos and anarchy. Therefore it is in the best interest of the society that state possess supreme authority to settle contentious matters and reconcile differing conflicting interests.

Last but not the least the state that possesses coercive power and sovereignty and it, in the words of Max Weber, alone can indulge in "legitimate violence".

### Contemporary view on Sovereignty

In modern times the concept of sovereignty has evoked sharp reactions and it finds itself in a piquant situation when the world is increasingly becoming a porous and borderless world. David Held has tried to explain the idea of modern democratic state and the redundancy of the supreme power as states are bound to cooperate in modern times. It is not hypothetical and finds its arrangement in terms of separation of power. There is erosion of state sovereignty after the Second World War as many treaties and agreements had dented the ability of state to be a sovereign actor on all occasion as you can see the crises of Sovereignty in Corona Virus crisis had ushered in a limitless possibility of cooperation among nations.

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