

LL.M IIInd Sem
Jurisprudence II (L- 2002)
Sovereignty

Introduction

Sovereignty is one of the essential requirements of statehood. Sovereignty is the life and soul of state. The term “Sovereignty” has been derived from the Latin word “Superanus” which means supreme or paramount. Although the term “Sovereignty” is modern yet the idea of “Sovereignty” goes back to Aristotle who spoke of the “supreme power of the state”.

The terms “Sovereign” and “Sovereignty” were first used by the French jurists in the fifteenth century and later they found their way into English, Italian and German political literature.

Definition

According to Jean Bodin - Sovereignty is the supreme power of the state over its citizens and subjects, unrestrained by law .

Blackstone- Sovereignty is the supreme, irresistible, absolute and uncontrolled authority in which the *jura summi imperii* [right of supreme dominion] resides.

Leon Duguit – Sovereignty is the commanding power of the state. It is the will of the nation organized in the state. It is a right to give unconditional order to all individuals within the territory of the state.

Pollock -Sovereignty is that power which is neither temporary nor delegated, nor subject to particular rules which it cannot alter, nor answerable to any other power or earth.

Hugo Grotius -Sovereignty is the supreme political power vested in him whose acts are not subject to any other, whose will cannot be overridden.

Jellineck -That characteristic of the state by virtue of which it cannot be legally bound except by its own or limited by any power other than itself.

Willoughby - Sovereignty is the supreme will of the state.

Austin - "If a determinate human superior not in a habit of obedience to a superior receives habitual obedience from the bulk of a given society that determinate superior is sovereign that society ,independent political society."

Characteristic of the Sovereignty-

(1) Permanence: [permanent] Permanence is the chief characteristics of sovereignty. Sovereignty lasts as long as an independent state lasts. The death of the king, the overthrow of the government and the addition of power does not lead to the destruction of sovereignty.

We should keep in mind the basic fact that the king or the ruler exercises sovereign power on behalf of the state and, therefore, sovereignty lasts as long as the state lasts.

The death of the king or the overthrow of the government does not affect sovereignty. This is the reason why people in England used to say "The King is dead, long live the King".

(2) Exclusiveness: By exclusiveness we mean that there can be two sovereigns, in one independent state and if the two sovereigns exist in a state, the unity of that state will be destroyed. There cannot exist another sovereign state within the existing sovereign state.

(3) Universality: - It means that the sovereignty of the state covers every individual, group and association within its boundary. Nobody can claim exemption from sovereignty of the state. However, there is one exception to this rule .It is said that ambassador of a country ,his residence and his embassy are exempted from the sovereignty of the state .This is called the 'principle of extraterritoriality .'In fact this is a concession and an exemption . Every state in the world wishes to maintain peace .For this purpose ,they believe in the freedom of the diplomats ,without which it would not be possible for any state to know what is being done in another state .

(4) Inalienability: [not transferable] Sovereignty is inalienable. By inalienability we mean that the State cannot part with its sovereignty. In other words, we can say that the sovereign does not remain the sovereign or the sovereign state, if he or the state transfers his or its sovereignty to any other person or any other state.

Sovereignty is the life and soul of the state and it cannot be alienated without destroying the state itself. Lieber has very aptly remarked in this connection: “Sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality to another without self-destruction”.

(5) Unity: Unity is the very spirit of Sovereignty. The sovereign state is united just as we are united.

(6) Invisible: [not seen] Sovereignty is invisible. it is not seen , but their effect is always exists in every where , it can be only feel .

(7) Indivisibility: [not divided] Indivisibility is the life-blood of sovereignty. Sovereignty cannot be divided state, American statesman Calhoun has declared, “Sovereignty is an entire thing; to divide it is to destroy it. It is the supreme power in a state and we might just well divide it is to destroy it.

It is the supreme power in a state and we might just well speak of half square or half a triangle as half a sovereignty”. Gettell, has also very aptly remarked in this regard, “If sovereignty is not absolute, no state exists. If sovereignty is divided, more than one state exists”.

(8) Absoluteness or illimitability: [no limit] Sovereignty is absolute and unlimited. The sovereign is entitled to do whatsoever he likes. Sovereignty is subject to none.

(9) Originality: By originality we mean that the sovereign wields power by virtue of his own right and not by virtue of anybody’s mercy.

Theory of Sovereignty

- 1) Bodin's Theory of Sovereignty** -according to this theory "sovereignty is the highest power in a state which is subject to no laws but is itself the maker and master of them" it may reside in either one person or in a number of persons ,but in either case it is above law ,incapable of any limitation and having an absolute claim to the obedience of all. He admitted that in some way the sovereign is subject to law of god and laws of nature ,and is therefore bound to respect the right of property and personal freedom ,
- 2)-Hobbes s theory of sovereignty-** Law is will of sovereign .sovereignty are unlimited, indivisible and inalienable in this theory.
- 3) Rousseau's theory of sovereignty-** Sovereignty is the general will of the people. Government is the only agent of the people. It is permanent and non-transferable.
- 4) Bentham's theory of sovereignty-** According to him ,sovereignty are indefinite ,absolute.
- 5) Austin's Theory of Sovereignty** - According to this theory sovereignty are indivisibility, unlimited, essentiality.
- 6) Sovereignty in Britain:** - In Britain the government system is unitary.
- 7)Sovereignty in USA:-**In USA a the government system are federal. The American constitution adopted the principle of separation of power like executive, judiciary, and legislative.
- 8)Sovereignty in Indian Constitution:** - Indian constitution neither federal nor unitary it is quasi federal. In India the constitution is supreme and all the organs of the government are bound by it.

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