AN IDEA OF SOVEREIGNTY IN INDIAN LIBERAL CONSTITUTION: CONCEPT AND ANALYSIS

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ABSTRACT

Sovereignty is the most important of the elements constituting the state. No community can assume the form of a state until the dominion of state takes place. On the compliance of sovereignty vested invisible and inherent power in the state is the true outcome of compelling all the human and communities to respect and obey their order. Thus, the sovereignty vested an absolute and supreme power into the state authorities. The will of the state is final and must be obeyed in compliance of order passed by the state. Sovereignty is the 'will-power' of the state. Dicey remarked that the constitution consists all rules which directly or indirectly affects the distribution or the exercise of the sovereign powers in the state including all those rules which define the sovereign powers of member and the relation into such and the mode of power as well which is exercise by their authority. In theoretical form, it is absolute, comprehensive and permanent. This is the reason Earnest Barker considers the term ‘sovereignty’ to be the 'Authority of the Last Word'. This research paper is an attempt to reflect the notion of sovereignty in terms of historical evolution, with the help of main proponent and main scholars will elucidate the various ideas in this regard and also analyzed the context of sovereignty with respect to the Indian Constitution.

Keywords: Dicey, Sovereignty, Absolute, Permanent, Indian Constitution.

INTRODUCTION

The modern conception of sovereignty was first formulated in the latter part of the sixteenth century with reference to the new phenomenon of the territorial state. It referred in legal terms to the elemental political fact of that age - the appearance of a centralized power that exercised its lawmaking and law-enforcing authority within a certain territory. This power, vested at that time primarily, but not necessarily, in an absolute monarch, was superior to the other forces that made felt themselves in the respective territory. In the span of a century, it became unchallengeable either from within the territory or from without the territory. But in the end, it had become supreme.

By the end of the Thirty Years' War[i], sovereignty as supreme power over a certain territory was a political fact, signifying the victory of the territorial princes over the universal authority of emperor and pope, on the one hand, and over the particularistic aspirations of the feudal barons. On the other hand, the inhabitant of France found that nobody but the royal power could give him orders and enforce them. This experience of the individual French citizen was duplicated by the experience of the king of England or the king of Spain; that is to say, the supreme authority of the French king within French territory precluded them from exerting any authority of their own within that territory save by leave of the French king himself or by defeating him in war. But if the king of England and the king of Spain had no power in France, they had exclusive power in their own territories

The concept of sovereignty has been explained in different ways by the various scholars. According to Jean Bodin (1530-1596)[ii] , leading French thinker, used sovereignty in the sense of absolute and perpetual power within the state; and demonstrated the sovereignty as the highest power, not as civil servant or commissioner, but rather continuously and on their own authority, that is, by virtue of their own existence. He is bound by divine and natural law. However, the question of sovereignty is not an issue, but the issue is what if someone held accountable due to critical evaluation of legitimate status quo of political decision, who will decide in the case of conflict. Hence, the sovereignty must emerge and changed in requires circumstances i.e., in respect of time, place and individual.

Bodin In his chapter on sovereignty, speaks continuously about ideas such as annulling, squashing, rupturing, dispensing, and eliminating existing statutes and rights. Hobbes and Pufendorf present this essential perspective with systematic clarity during the seventeenth

century. The sovereign decides about that which advances the public good and the common use. In what does the state interest consist when it demands a rupturing or setting-aside of the existing law? All of these are questions that cannot be settled normatively. They receive their tangible content through a concrete decision by the sovereign organ.[iii]

The modern constitution arises in the French Revolution of 1789. Its intellectual prerequisite is the theory of the constitution-making power. The state theory of the French Revolution thus becomes a primary source, not only for the political dogma of the entire subsequent period but rather also for the positive legal, juristic construction of modern constitutional theory.

About fifty years after the Bodin, Hugo Grotius defined sovereignty in the sense that the Sovereignty is the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden. It is noteworthy here that the Bodin laid special emphasis on the internal sovereignty, while the Grotius raised the notion of sovereignty in external perspective. Jean Bodin states no individual group can claim that he is not liable under the subject matter of seigniory. While Grotius specifically emphasized that the state is completely independent in the matter of relations with the other countries.

In modern scholars, the definition of sovereignty given by Austin, Blackstone and Holland is particularly notable. According to the John Austin, an English jurist, (1790–1855) explained sovereign as a person (or determinate body of persons) who receives habitual obedience from the bulk of the population, but who does not habitually obey any other (earthly) person or institution. He considered the body or group or institution as the dominance over the most of the people who obey their order accordingly even though they are not in the habit of obedience will be the 'sovereign' of that society and thus society will be redeem as a political and independent society.

Whereas, Blackstone considered sovereignty to be the 'Supreme, Irresistible and Uncontrollable Authority'. On the other hand, Holland in his well-known book ‘Element of Jurisprudence’ that such part of the society to be known as sovereign – who is 'omnipotent' because omnipotent in itself is the source of all laws, and thus no laws cannot be held unconstitutional in principle manner.

Based on the above definitions, Stephen Leacock has provided a very simple and straightforward explanation of sovereignty. He said that "somewhere within the state there will exist a certain person or body of person whose command receive obedience. Unless there is

such a body, it is possible to constitute the state. The command thus given are called laws. A law, then, is a command issued by the state. Can there be any limit, any legal limit, to the sovereignty, or the legal supremacy of the state? Obviously not for such a limit would imply a contradiction in terms."

HISTORICAL EVOLUTION OF SOVERIEGNTY

Sovereignty or sovereignty is the essence of the state, but the current concept of sovereignty is different from the ancient or medieval era. In Ancient times there was no concept of sovereignty as it is understood in Modern Times the concept of state sovereignty came into being after the middle ages and develop during their reformation and renaissance. Therefore, there is a need to know the historical development of sovereignty. Sovereignty is generally divided into four periods - the ancient age, the middle age, the sixteenth century to the end of the nineteenth century and the present period.

In the First age in this regard would be the "Ancient Age", the notion of Sovereignty was developed by the Ancient Greek thinkers, and Plato have discussed the city-states. The city-state is not only the highest authority (Sovereign), but it is also an institution with a puritanical purpose, that is to say, religion, school, and the only organization which oversees green agriculture and trade. Thus, it has been observed the state as a supreme power. There was no difference between 'state' and 'society' for Greek thinkers. So far as concerned with the Roman writers are concerned, in his compositions, two words are mentioned the first one is - *Summa Potestas*[iv] and the second one is – Imperium. *Summa Potestas* hereby means the highest power and the word 'Imperium' is the highest power. Therefore, even in ancient Rome, it was customary to consider the state as supreme. In ancient Indian political philosophy, the state has always been regarded as a religion. Religion, practice and conventions rested on the power of the king. The works of the Aristotle and Justinian code would be seeming as the first approached for the establishment of universities.[v]

The Second age for the development of concept sovereignty is the "Medieval Age", this age is not an easy way to describe into one description. The medieval period commencing with the 5th century of the collapse of the Roman Empire and coming to a close with the 15th century renaissance; the roman empire was successively run and expand overt the larger part of the

present Europe. The struggle for the autonomy begun in between the Church and Roman which was further facilitate by the reformation.

Two famous treatise laying the initial foundation of the stat building process. The treaty of Augsburg in 1555 established the principles that sovereign could decide the religion of citizens within their territory.[vi] Another one treaty is the treaty of Westphalia of 1648 divided Europe into separate, secular territories under the authority of sovereigns. The treaty recognized that head of state control internal affairs and have the rights to defend territorial boundaries.[vii]

The mid to late medieval period is the generally known for the development of Germanic customary law in written (codified) form; feudal law (mostly unwritten); development of *lex mercatoria*[viii]and canon law of the Roman Catholic Church and the revival of roman law by the universities.[ix] This period exhibited three major axes coexisting, overlapping bodies of law with different geographical reaches, coexisting institutionalized system and conflicting legal norms within a system.

Whereas in the first part of the age we do not find sovereignty in the works of medieval European thinkers. This is may be due to the, in practical terms, the concept of 'nation-states' had not been emerged yet. Many regions of Europe were part of the Roman Empire. The rulers of these regions were not sovereign because they were not free to establish relations with foreign countries.

The Second split of this age would be begun with the Roman Empire is the ruler of the whole Rome and other kings of Europe embraced Christianity being claimed by the Pope that every king of the Christian world would be considered under the power of the Pope.

The Third split of this age would be, after the fall of the Roman Empire, the kings distribute their land between the feudal and subcontinent. There was no strict control of the kings over the feudal lords. In the feudal age, the power of the powerful central power was high or due to which the state could not be considered as the highest 'power'.

The Fourth split of this age would be considered with the, those days where was a tendency to consider law as the divine rule, due to which theologians had the right to interpret the law. In other words, natural and theocratic laws were also the elements of limiting the power of kings.

The Fifth split of this age would be considered as with the people engaged in various industries and crafts had their own separate occupations, who were also rivals of the king. The king had the power to change their customs.

The third phase of the development of this concept would be the "Modern Age" begin with the 16th century till the end of 19th century- The rise of 'nation-states' in Europe around the 16th century can be seen as the establishment of nation states in England, Spain, the Netherlands and the Russia. The rulers established themselves as the representative of the Divinity thus they not interrupt in the field of education, culture and trade system but also interfere in the religious matters of the subjects. Thus, along with the development of the nation-state, the rise of modern principles of sovereignty also evolved. The thinkers who laid special emphasis on the principle of sovereignty are Jean Bodin, Grotius, Hobbes, Rousseau, Bentham and John Austin are particularly notable.

Jean Bodin[x] considered sovereignty to be a power that "cannot be obstructed or limited by law." But he also said that the king had to intervene in the divine law or to make arbitrary laws concerning personal property. Grotius gave birth to the notion of 'external sovereignty'. According to Thomas Hobbes, after the establishment of the state, people do not have any rights left. The French thinker, Rousseau also considered the state as autocratic, but he also mentioned that sovereignty lies not in the individual but in the general will.

Jeremy Bentham, though believed in the 'maximum happiness of the most people', was opposed to the principle of natural rights. According to him, the source of rights is 'law' and the source of law is the state. No act of the state can be considered illegal. Natural and divine rules cannot restrict the sovereignty of the state.

The sovereignty theory of John Austin (1790–1859) is considered the most authoritative in legal terms. According to Austin, "The order given by a tall person to a lower person is law." "It is on this basis that he has asserted his sovereignty principle. According to Austin, every person and every substance is subject to the sovereignty of the state. All individuals and communities are required to obey the orders of the state. Austin has asserted sovereignty the following elements - Comprehensive, Indivisible, Absolute and Unlimited.

The modern principles of Sovereignty today we experience was the outcome of in the form rage or revolution against the notion of sovereignty to be absolute and boundless. In the

twentieth century, a serious reaction had begun against this infinity of sovereignty. Those who challenged the supremacy of the state are called pluralists or pluralists.

Lindsey, Barker, Laski and McIver etc. scholars stated the fact that the state should not have unlimited rights. No state can be empowered to become unresponsive. There are many more associations and communities in the society apart from the state institution, such as family, church, trade union, university and cultural community etc. How can this power be given to the state that it also interferes with the internal system with the other communities.

According to these scholars, the principle of supreme power of the state is not only against civil rights but it also threatened international peace. Referring to the 1914 World War, McIever wrote that there was a dispute between the farmers of Russia and Germany. 'This means that states should curb sovereignty so that they cannot snatch women from their husbands and mothers from their sons by declaring wars[xi]. Due to the pluralistic attacks upon sovereignty, the requirement of other associations and communities felt important. In addition to the statement, pluralism also hit the autocracy system and paved the way for the protection of public rights, but as far as sovereignty is concerned in practice, it remains the same today as before.

As a result, the jurisdiction of the government whether socialist and non-socialist states constantly increasing, and thus gradually, considering all the important aspects which was once done by private institutions into his own hands that is to say., education, industry, medicine, marriage, divorce and religion are no longer purely private matters. Therefore, the internal sovereignty of the states is constantly being confirmed. As far as external sovereignty is concerned, various governments follow the policies of the United Nations which are considered convenient and do not follow those which they find inconvenient. Even hardcore pluralists like Laski later had to admit their mistake. He said that "As far as the law is concerned, no one can deny the truth that there is a power in the state which has no limit on powers."

AUSTIN'S THEORY OF SOVEREIGNTY

The nature of sovereignty is explained by John Austin[xii], in his words:

> "If a determinate superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinates

> superior is sovereign in that society receive habitual obedience from the bulk of a given society that determinate superior is sovereign in that society and to the society, included the superior, is a society political and independent. To that determinate superior, the other members of the society are dependent. The position of its other member towards the determinate superior is a state of subjection or a state of dependence. The mutual relation with subsists between that superior and them maybe styled the relation of sovereign and subject, or the relation of sovereignty and subtraction."[xiii]

According to Austin, in every independent political society, there is a sovereign power. The chief characteristic of sovereignty lies in the power to exact habitual obedience from the bulk of the members of the society. Sovereignty is the source of law. Every law is said either directly or circumstantially by a sovereign person or body to a member or members of the independent political society wherein that person or body is sovereign. Sovereign is that authority in the state which can make and unmake and any and every law. The power of the sovereign is legally unlimited.

Salmond points out that till 1911, a Supreme Judicature was recognized by the British Constitution. The House of Lords in its judicial capacity as a final court of appeal was sovereign. Without its consent, its judicial powers could not be impaired or controlled. Thus, the House of Lords was the supreme judicial power. However, the Parliament Act of 1911 made it possible for a bill passed by the House of Commons to become law even without the concurrence of the House of Lords. By that Act, the power of the House of Lords over general legislation was curtailed practically to a suspensive veto of two years. Thus, the House of Lords was reduced to a position of subordination and could not be regarded as a sovereign organ.

Therefore, the Austin's theory of indivisible sovereignty breaks down in the case of federal States. Sovereignty is divided into legislative, executive and judicial sovereignty. This division is taken as axiomatic in a federal Constitution. These three branches are independent of one another in federal States.

PLURALISTIC NOTION OF SOVEREIGNTY

Machiavelli, Bodin and Holmes and other scholars has endorsed the monarchy system. But Later on, scholars like Bentham, Austin and Holland described the nature of the state as the state should be 'full- fledged Sovereign State' so that no divine rules, natural rights and moral beliefs able to curtail the power of the sovereignty. All the scholars consensually agreed with the fact that the sovereignty to be in the nature of Comprehensive, Indivisible, Absolute and Original. According to them, the sovereignty is the fundamental and permanent power of the state. In other words, the state has got no rights against the Pope or any other authority. German idealists like Kant and Hegel also supported the supremacy of the state. These views are likely known as monistic theory of sovereignty. Against the notion of monistic view, the pluralistic view came forward which is the present notion of sovereignty.

A serious backlash against the sovereignty of the state began in the twentieth century. The thinkers who challenged the supremacy of the state are called pluralists or pluralists. The Pluralists reject the idea of State sovereignty. According to them, the State is one of the many associations an individual joins for the satisfaction of his needs. The State is only one of the many associations. Associations compete among themselves for the allegiance of human beings. The State cannot demand exclusive allegiance from the people.

HAROLD J. LASKI (1893-1950)

Laski while explaining the concept of sovereignty critically analyse the nature of the state with the comment that the state has not been prosperous from the beginning. Ancient and medieval state dominions were also not complete in itself. In the Middle Ages, the church became very powerful and prosperous. As a result, it was being opposed by the state. Gradually the power of the Pope declined and nation states emerged. In the countries where Protestant religion had spread, it was said that the king has supreme authority in both temporal and religious subjects. Thus, the doctrine of sovereignty is associated with the religious conflicts of Europe.

Hobbes (1588–1679) supported the autocratic monarchy, but the influence of his idea was the then circumstances of England was seen on his ideas. Troubled by the turbulence and disorder of that era, he proposed a theory that could end chaos. Its purpose was to provide political stability to the country. Laski further said that the theory that had emerged in the era of conflict, even in today's conditions, does not seem appropriate to repeat the same. The monotheistic

theory of sovereignty has no longer been rationalized due to the notions of 'public' and federal rule developed in the twentieth century.

Laski believed that there is no state which possessed unlimited power. According to Laski the Parliament in England is considered as having unlimited power, but in practice the same Parliament cannot make any law against the voter of the Roman Catholic in the sense they are not eligible to cast their votes. So far as concerned with the unlimited power no democratic country has it unless the system is totalitarian or monarchy or in dictatorship form.

He also believed that the Sovereignty should be limited. No state can be empowered to become unresponsive or irresponsible. Elections should be held from time to time, so that the public gets an opportunity to evaluate the successes and failures of the present government. No party can be given the right to remain ruling forever. Laski believes that power 'corrupts even the virtuous people. The success of any state can be gauged from what it has done to elevate the citizens. Only "its action is right to the degree that they maintain rights"[xiv].

Laski assumed the fact that society in nature is federal characteristics hence, the authority too should be federal. The requirements of human beings are many and with discourse of the time he becomes a political animal is the reason behind the birth to the state institution. But at the same time, he forms many more associations and communities to fulfill its social, economic, cultural and religious goals. Among the institutions, the state is only one of the majority communities. He further concluded that human beings also have an allegiance with the other communities. It is possible that a person may experience many times that what his family or church or trade union is saying is more just than the orders of the state. That is why Laski's statement is hereby noteworthy:-

"I shall be with my church and against the state, with my trade union and against the state, If the impact of the state upon my experience seems inadequate compared to the impact of the church or the trade union."[xv] "'In other words, it is necessary that a man obey the decree. He should do only what is morally appropriate.

Laski criticised the Austin command theory, where Austin stated that the law is simply a command. According to laski, it is a matter of ancient times to consider law as the order of the sovereign. Austin's doctrine reminds us of those days of autocratic monarchy, when the king was considered above the laws. In modern democratic countries, obeying the law is necessary

not only for the common people but also for those who have made it. In addition, many laws are also based on ethos and customs. In practice, all laws cannot be based on 'orders'.

Laski against the absolute dominance; he believed that the notion of a prosperous state is fatal to the well - being of the humanity; thus, it is required for the world peace to develop the state and its institution should not be develop in the absolute dominance sense. Advising his countrymen, he said that England should adopt the policies that benefit the whole of humanity. In his words: "Our problem is so to act that the policy of England naturally implies the well-being of a humanity."[xvi]

No country can be empowered to invade another country whenever she wants. In the words of Laski, "Those who know the terrible consequences of war will never want a handful of the people (politicians) should be empowered to declare wars." The doctrine that the state is not subject to any external power in its foreign affairs was dictated in those days when there was no effective international organization; but now the situation has been changed and it is now being realized that a powerful organization must be established which interferes with the international affairs of the states.

The first and foremost condition for the establishment of democracy is the decentralization of power. In this regard, there are two aspects of decentralization – first one is the separation of powers means that the powers to make laws, implement them and interpret them should not be concentrated in the hands of any individual or department; and the second on is the territorial decentralization means the establishment of federal governance. The core of federalism is that the powers be distributed between the central and regional governments. In addition, Local Self-Government should also be confirmed. Citizens are given the right to govern themselves by institutions like Panchayat, Municipal and District Board etc.

While concluding the Laski evaluation regarding his notion of sovereignty, he in the beginning was the staunch supporter of pluralism but gradually his ideas began to change. He felt that there is no other way to control the so many classes and communities prevailed in the society, only the state as an absolute sovereign institution would be essential to knot them into one piece.

In his famous book 'The State in Theory and Practice' published in 1935, he stated that "it is by the possession of the Sovereignty that the state distinguished from all other forms of human association." The faith of the Laski influenced and inspired by the ideas of Karl Marx's

communism. One of his famous works 'Democracy Crisis', supported the dictatorship government of the workers. He wishes to endorse the socialism principles by democratic way – by mean of both production and distribution of wealth in the socialist system ought to be done by the states. As a result, the interference of the state in various cases would be overserved at optimum level. Thus, Laski tried to reconcile both 'pluralism' and 'socialism'.

ROBERT M. MACIVER (1882-1970)

Robert M. MacIver, Like Harold Laski, had a prominent place in modern political philosophers. Along with politics, he has written many fundamental texts on social science as well. From the state point of view his two textbooks are notable – first one is the 'The Modern State' and the second one is the 'The Web of Government'. McIver criticized the sovereignty principle of Hobbes, Bentham and Austin. In his words, "They (Hobbes, Bentham and Austin) interpret sovereignty as an extreme master-servant relationship, but their account is far more applicable to a slave plantation than to the actuality of political life."[xvii]

According to MacIver, State is but one among the great associations, the duty of man is not only towards the state but also own some duty towards the family, caste, fraternity and ourselves. It is possible that difference may be arose in between the state and the clan, in that case it would not be good for the state to play with the autonomy of other communities.

MacIver against the doctrine of an Absolute state. His statement in this regard is that the people in the past already faced the poverty, tolerated the ignorance and superstitions of tyrannical system, but now in the changed circumstances no one especially parliament like state institution, who legislates the bill, not be able to rule upon them in an autocratic manner. The subject matter such as Art, literature, music, religion and culture should be free from the state interference. The state has no right to ban the freedom of thought and speech.

According to MacIver Law is not simply the fiat of the state, the word 'order' hereby use no in the sense that as if there is an authority in the state that commands others will not be bound by the same order themselves. The state itself bound by laws. For example, if someone take a loan with the promise that he will it with principal and interest of the loan. Same case with the when government authorities harm someone, citizens will have to right to go the court for the redressal of their grievances.

Additionally, the state is not only the source of all laws. Many practices are also prevalent which are followed with as much fidelity as laws are followed whether by the command of devotion or belief.

According to MacIver the doctrine of sovereignty is hollow even in terms of external relations. The state cannot be given the freedom to declare war arbitrarily. The state does not have the right to jeopardize the family, their businesses and cultural life of citizens to fulfill their political objectives. While writing about the Great War of 1914, MacIver reflect the struggle between the farmers of Russia and the farmers of Germany and raised a number of question for the European government as they played with their own peoples life, thus asked 'why should the state be empowered to take away wives from husbands and mothers from sons'.[xviii]

MacIver tried to established the relationship between the state and other associations and further acknowledges that in order to protect the public interest, the state can control other communities and can also determine their rights and duties, but this does not mean that the state should also started interfering in the internal affairs of the communities also. By this, it also does not mean that we started to consider the state as the supreme or highest power. The abode of the highest power is ultimately in the public.

McIver endorsed Lindsey's statement that "…The state, therefore, can have control over the corporations within it only if, and so far as, the citizens are prepared to give it such power."[xix]

CONCEPT OF INDIAN SOVEREIGNTY

The Indian modern cultural field from the framework of state reason is rooted in the colonial era; With the struggle begun against the imperial power Indian political members began to visualize the domain of sovereignty within the society, despite differences in the realm of cultural or spirit values colonized hold both the inner and outer domain of the sphere of economy, science and technology, defined the task of the people to wrestling back and take control of the outer domain without contaminated by the colonial.[xx] Though the British policies drained the wealth of Indian grain, the rights to the Indian to govern themselves especially on economic grounds vested by creating the property rights as the fundamental rights but, later by the 44th Amendment of 1978, was further removed.

From the preamble of The Constitution of India, it is clear that the intention of the constituent maker wished to constitute India into a Sovereign Socialist Secular, Democratic Republic, though the term 'Sovereign' has been inserted by the Constitution Forty- Second Amendment Act, 1976. India became an independent nation after the commencement of the Constitution of India by declaring that on this twenty sixth day of November, 1949 do hereby adopt, enact and give to ourselves this Constitution added a new chapter for the history of New India which we were never witnessed nearly a two hundred century.

Representative Parliamentary Democracy is an integral part of the Constitution of India. Great importance is attached by the constitution about who are to be the representative of the people, what should be their qualifications, whether they have representatives of the people, whether they have incurred any disqualifications, A disqualified person cannot be chosen as a member of parliament or the state legislature. From the set of ideals and philosophical aspects veteran member amongst the society requires to hold the auspicious position as setup by this renowned Constitution of India. No doubt the incumbent person will be posed as a constitutional person, in other words such will be deemed to be as the legal sovereignty and the political sovereignty lies with the people of India. This is the main attribute of the Indian Constitution to indulge all the people directly or indirectly participate to choose their representative, elect the people for prestigious position for the sake of efficiency of administration, fulfillment of aspirations , lays down the goals and aspiration setup by the constituent maker ,in their dark age of life, which they were looking forward to create such a place ensuring fraternity , unity and integrity, and social, economic , political justice without discrimination. Thus, The Constitution of India can be compared to the Grund norm.[xxi]

Thus, by this declaration we created and made the constitution "Parens Patriae" for the people who living within the territories of India. The term "Parens Patriae" hereby means literally 'parent of the country' and refers traditionally to the role of the state as a sovereign and guardian of persons under legal disability. Conceptually, the parens patriae theory is that it is the obligation of the state to protect and take into custody the rights and the privileges of its citizens for discharging its obligation and thus, our Constitution makes it imperative for the state to secure to all its citizens the rights guaranteed by the Constitution.[xxii]

In addition to the above statement, this doctrine can be invoked by the state while in discharging of sovereign obligation come forward. Even if the damages have been caused by the multi-national company and the company have potential in regard of damages, the State by assuming

responsibility on behalf of the victim suffered at the hands of the company can asked to the company for the redressal.[xxiii] Moreover, the state also in its quasi sovereign capacity is entitle to bring suit against a private individual to enjoin a corporation within the state territory.

Upon the nature of sovereignty remarkable statement however by the Mukharji, C. J. in the case of **Union of India v. Sukumar Sen Gupta** [xxiv] is that: It is now considered and accepted as both divisible and limitable and we must recognize that it should be so. Sovereignty is limited externally by the possibility of general resistance. Internal Sovereignty is paramount power over all action within and is limited by the nature of power itself."

It is quite impossible to reflect in one line or one-word that upto what extent the sovereignty exists and whether it is possible that sovereignty can ever be altered or curtailed. In respect of India, being a Sovereign State, India is free from any type of external control. It can acquire foreign territory, and if necessary, cede a part of the territory in favor of a foreign state, subject to certain constitutional requirement.[xxv]

Now the question may be arise in regard of distinction between the sovereign powers and other i.e., non-sovereign powers there is no clear cut or definite statement but what we can understood with the sovereign function are such acts which are of such a nature as cannot be performed by the private individual or association unless powers are delegated by the sovereign authority of the state.[xxvi]

CONCLUSION

In the work of Hobbes, Bentham, Austin the term law came to be reserved for the edict of the sovereign power. But in Dicey framework, the principles of government under law was converted into the 'rule of law' by which he meant with the universal subjection to the ordinary law as applied by the ordinary courts. In this form, the concept of the 'rule of law' will reinforced the doctrine of parliamentary sovereignty which is the most authoritarian expression of law other than the ordinary law enacted by the parliament.

The distinction between the ordinary law and the fundamental or sovereign law, is that the formal expression is basically concerned with the establishment of the governmental authority that is to say, the laws by which the government formed and the latter expression reflect the instrument of governing authority.

In the Present context, the term 'Sovereignty' is very difficult to define, but in general understood it means the independent authority of a state. It has the power to legislate on any subject, and that is not subject to the control of any other state or any external power. by its nature of things can be understood with the latin maxim – *salus populi suprema lex esto* which implies the welfare of the people shall be the supreme law regarded for the public welfare is the highest law; The evolution of the sovereignty is happened by means of a written statement led by the majority of people agreed to constitute the body or institution or association which will be the superior ,and ruled over to him, but would be remain under evaluation every time by the native people, something like contract was made and thus finally termed as Constitution; and with the coming up of the Constitution we agreed to transfer certain power over which no individual can control itself ,unless it would be made by the majority of the body for the purpose of development and protection for the social, civil and political rights.

The words as envisaged under the Preamble of The Constitution of India – "WE THE PEOPLE OF INDIA……. adopt , enact and give to ourselves to this constitution" it declare the ultimate sovereignty of the people of India and that the constitution rests upon the authority. There is no disputed point the political sovereignty vests with the people of India and the legal sovereignty vested into the Constitution of India and the people cannot rise above the constitution. The Constitution of India is the supreme legal document it lays down the fundamental principles for the sake of better tomorrow rests upon the representatives and enforcement machinery to indulge themselves to fulfill the aspirations and goals setup uunder the Indian Constitution. Sovereignty rise amongst the member of the Indian society and thus the same will possibly be taken up. The process continues till the ends achieve.

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III. ***Cases***:

- Maganbhai Ishwarbhai Patel v. Union of India (1970) 3 SCC 400.
- Nandram Heeralal v. Union of India AIR 1978 MP 209,212: 1978 ACJ 215.
- Charan Lal Sahu v. Union Of India (1990) 2 SCC 396
- Union of India v. Sukumar Sen Gupta AIR 1990 SC 1692.
- B R Kapoor v. State of Tamil Nadu (2001) 7 SCC 231.

ENDNOTES

[i] Thirty year war was a fought between 1618-1648 Between the Protestant and Catholic State in the Holy Roman Empire
[ii] The sixteenth century jurist, was the first writer who used the term "Sovereign" in his book "Six Books of the State" (1577).
[iii] M. J. Tooley (ed.), Jean Bodin *Six Books of the Commonwealth* 25 (Ch. 8, Bk. I) (retrieved from the http://www.constitution.org/liberlib.htm)
[iv] Latin phrase meaning "highest authority" or "totality of power". It refers to the final authority of power in government.
[v] Brian Z. Tamanaha, Understanding Legal Pluralism: Past to Present, Local To Global, Legal Studies Research Paper (May 2008).
[vi] Hendrik Spruyt, The Sovereign State and its Competitors 191 (Princeton: Princeton Univ. Press 1994).
[vii] Supra 4.
[viii] Latin expression in English language it means commercial law, the body of commercial was formed by merchants for trade throughout the Europe during the medieval period. It evolved similar to English common law as a system of custom and best practice, which was enforced through a system of merchant courts along the main trade routes
[ix] A detailed account of the different laws and institutions can be found in O.F. Robinson, T.D. Fergus, and W.M. Gordon, European Legal History (London: Butterworths 2000).
[x] *Supra* 3 at 19. The Bodin's most original conceptions is characterise the sovereign in terms of power which break the traditional view of the king, enshrined in coronation oaths in use everywhere, that he was in virtue of his office essentially the embodiment of justice, and his primary function was to judge his subjects.
[xi] R. M. MacIever, *The Modern State* 163 (Oxford University Press, London, 1932)
[xii] In his Book 'Lectures on Jurisprudence' discussed the sovereignty of the state in great detail and his ideas have great importance in politics.
[xiii] Wilfrid E. Rumble (ed.), John Austin *The Province of Jurisprudence Determined* 166 (Cambridge University Press, Cambridge, 2001)
[xiv] Harold J. Laski, *A Grammer of Politics* 57 (Yale University Press, New Haven, 2nd edn., 1926).
[xv] Laski. *Id.* at 251.
[xvi] *Id.* at 64.
[xvii] Robert M. Maciver. *Supra* 5 at 14.
[xviii] Robert M. Maciver. *Supra* 5 at 162.
[xix] A. D. Lindsay, Quoted by MacIver. *Id.* at 477.
[xx] Partha Chatterjee, *The Nation and its Fragments* (1993).
[xxi] B. R. Kapoor v. State of Tamil Nadu (2001) 7 SCC 231.
[xxii] Charan Lal Sahu v. Union Of India (1990) 2 SCC 396.
[xxiii] Ibid.
[xxiv] AIR 1990 SC1692 at p. 1701.
[xxv] Maganbhai Ishwarbhai Patel v. Union of India (1970) 3 SCC 400.
[xxvi] Nandram Heeralal v. Union of India AIR 1978 MP 209,212: 1978 ACJ 215.