
UNIT 9 SOVEREIGNTY

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9.1 INTRODUCTION

Generally, we say that the state is our state and it is for our benefit. All of us have rights given by the constitution and the state has to respect them. We also know that the government is responsible for the maintenance of peace and security. For this purpose, the government makes laws and it has a right to punish those who disobey them. But the question is why do we obey the law and what is state authority? We experience state authority everywhere in our routine life; for example, when we demand some favour from the authorities and the authorities refuse to grant us the same, we protest. We do it because we feel that we have a right to get what we think, we deserve and the government is duty bound to work for us. If all this is well known, then why, you might say, we have to study what we already know. But are we sure that we know it properly or our knowledge is just scanty? The fact is that we only have a dim view of the state power or sovereignty. It seems to be very simple, but the fact remains that it is one of the most complicated notions in Political Science and a rudimentary understanding has no meaning because state power is not something which is theoretical and confined to books. We have to face it especially, when our friends and we find the government unresponsive or

even insensitive. Therefore, while studying political theory, we need to go into details to study the concept of sovereignty very clearly and precisely; for after all it is with this and other basic concepts and definitions that we would later try to understand the great complexities of the societies we live in.

9.2 WHAT IS SOVEREIGNTY?

Sovereignty is a key concept in traditional political theory. It constitutes one of the four elements of the state without which statehood remains incomplete. Derived from the Latin term *Superanus*, which means supreme, sovereignty denotes the supreme power of the state to extract obedience from the people who inhabit it. It means that the power of the state is unquestionable and the state has a right to demand allegiance from its citizens. It also means that the violation of the command of the state would invite penalties or other punishment. This is also called 'internal sovereignty'. Internally, the state is supreme to any individual or organisation, living or functioning, within its boundaries, and they have to function under the laws and command of the state. None can claim superiority over or immunity to the state. The power of the state over them is original, total, unlimited and all comprehensive. Sovereignty also has an external connotation, which means that in the comity of states, every state is supreme and is free to cast its destiny. No other state or any international organisation can claim superiority to a state. The state may be subjected to certain treaties or other obligations, but they are self-imposed obligations on the part of the state. None can compel or enforce any obligation on the state, which it is not willing to accept. Thus, the state is equipped with internal and external sovereignty that gives it over-riding powers over individuals, groups and organisations and makes it absolute.

9.2.1 Some Definitions of Sovereignty

Sovereignty is "the supreme power over citizens and subjects unrestrained by law".
– Bodin

Sovereignty is "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden"
– Grotius

Sovereignty is "the supreme irresistible absolute, uncontrolled authority in which the supreme legal power reside".
– Blackstone

Sovereignty is "the commanding power of the state: it is the will of the nation organised in the state: it is the right to give unconditional orders to all individuals in the territory of the state".
– Duguit

Sovereignty is "the supreme will of the state."
– Willoughby

Sovereignty is "the exercise of final legal coercive power by the state".
– Soltaire

Sovereignty is "the concept which maintains no more-if no less-than that there must be an ultimate authority within the political society if the society is to exist at all".
– Hinsley

Sovereignty means "the political authority within a community which has the undisputed right to determine the framework of rules, regulations and policies within a given territory and to govern accordingly".
– David Held

9.2.2 Meaning Of Sovereignty

The above mentioned definitions of sovereignty project the traditional view of sovereignty, which emphasised the following points:

- i) Sovereignty is an attribute of the state.
- ii) It is the supreme will of the state.
- iii) It is a legal coercive power of the state.
- iv) The sovereign makes the laws and extracts obedience from the people.
- v) Sovereignty lies in a person or a body of persons.
- vi) The power of the sovereign is absolute and unlimited.

9.3 DEVELOPMENT OF THE CONCEPT OF SOVEREIGNTY

Sovereignty as the supreme power of the state is a modern concept. It came into existence with the rise of the nation-state in Europe when the powerful monarchs asserted their authority. But as such, the idea of sovereignty is very old and can be traced to the ancient Greek city-states. Aristotle, the father of Political Science, defined it as the supreme power of the state. But Aristotle did not discuss the nature of sovereignty. He concentrated on the location of sovereignty. Here, Aristotle had two views. According to him, the deliberative organ of the state should be sovereign and secondly, he held that the law should be sovereign. He preferred sovereignty to be vested in law. The Romans considered sovereignty as the fullness of the power of the state. It was generally accepted that the state should be the final authority in solving the disputes among its citizens and the law of the state was binding upon them. Romans are also credited with the idea of uniformity of law, centralised administration and common citizenship.

But in the medieval ages, feudalism prevailed where there was no unified authority and it seemed that all the achievements of the Roman Empire had gone to waste. In the feudal state, the king's authority was highly restricted. It was limited by the church which claimed immunity in both civil and criminal cases. Infact, the church was the organised group during the medieval times and the head of church-the Pope-claimed superiority over the king. Besides, the feudal overlords and the local communities or commons in the town also challenged the authority of the king. Thus, the king was not sovereign. His competitors came to be known as 'Estates' and feudalism was a state of these estates. Barker calls it as "a paradise of estates" rather than a pattern of a state where the authority of the state was sidelined. Thus, there could not be the modern concept of sovereignty. Further, the law of God was supposed to be superior to human laws, which also restricted the development of sovereignty as an absolute and indivisible concept.

Jean Bodin is the first political philosopher who propounded the modern concept of sovereignty. He defined sovereignty as the supreme power over citizens unrestrained by law. He also defined citizenship as subjection to a sovereign. To Bodin, the power of sovereignty cannot be delegated; sovereignty is also perpetual and unlimited. Sovereign is the source of law and has the unconditional right to make, interpret and execute law. Bodin also discussed the location of sovereignty which, he argued, depended upon the form of government. Thus, it is located in the

king in a monarchy, while in a democracy it resides in popular bodies. But customary and constitutional law and the institution of private property limited Bodin's sovereign. Hobbes further developed on Bodin and attempted to make the theory of sovereignty perfect. To Hobbes, sovereignty is the creation of a social contract and the sovereign is that individual or assembly who is authorised to will for the general purpose of a peaceful life. Hobbes gave vast powers to his sovereign. His command is law and all laws are subject to his interpretation. His authority is absolute and unlimited and the individual cannot disobey him. Sovereignty is inalienable and indivisible. Hobbes pointed out that limited sovereignty is a contradiction in terms. But Hobbes very clearly put one limitation on sovereignty. The sovereign cannot command any individual to kill, wound or maim himself. He also made it clear that sovereignty is also limited by the purpose for which it was created. Hobbes also conceded the right to resist the sovereign in case the life of an individual is endangered. Infact, his theory of unlimited sovereignty is a necessary compliment to his individualism.

Another social contractualist, Rousseau located sovereignty in the people expressed as 'General Will'. To Rousseau, general will and sovereignty are inter-changeable concepts. Sovereignty is unlimited, supreme and absolute. It is also inalienable and indivisible. But unlike Hobbes, Rousseau's sovereignty is based upon the consent of the people. It is a free acceptance by every individual of the exercise of force by the whole group of which every individual is a part. Therefore, nobody can refuse to render obedience to the sovereign and anyone who does so may be constrained by the whole body of citizens. This means that the individual may be forced to be free. Unlike Hobbes who gave all powers of sovereignty to a monarch, Rousseau vested the power not in one individual but in the community. But both of them are one, so far as the characteristics of sovereignty are concerned. Both of them laid down the foundations of a totalitarian state. In between the two, John Locke stood for a limited government. Locke justified the results of the Glorious Revolution of 1688 which devoided the monarchy of its absolute powers in England and advocated the doctrines of popular sovereignty, supremacy of parliament, constitutional government, limited monarchy and the rule of law. Unlike Hobbes and Rousseau, Locke stood for a limited sovereignty. His government was a government based on the division of power and subjected to many limitations. He did not accept the view that the sovereign power was indivisible. He felt that different organs of the government should exercise the legislative, executive and federative powers of the state independently of one another. His state is subservient to the society and governance cannot be done arbitrarily. But Locke is not consistent in his views on sovereignty. At times, he suggests that sovereignty is located in the people and at times, it is the legislature that is supreme. He also seems to suggest that when there is a fusion of legislative and executive powers in one person, he may be called the sovereign. The weakness in Locke's argument is that he recognised the force of political sovereignty, but failed to fully comprehend legal sovereignty.

The French Revolution is another milestone in the development of the modern concept of sovereignty. The French Revolution stood for absolute and unlimited sovereignty on the ground that people being sovereign, there is no need to restrict the supreme power. The newly emerged nation-states also claimed total sovereignty, both internally as well as externally. They also asserted their right to expand at the expense of others. The Industrial Revolution expanded the activities of the state enormously and the importance of the state as a lawmaker was asserted. These developments led to the concept of absolute sovereignty. In England, the parliament became supreme and its supremacy was unlimited.

These ideas were reflected in Hegel who stood for constitutional monarchy, but his king had the power to veto over legislation. According to Hegel, “The State is a perfected rationality, the eternal and necessary essence of spirit, the rational in itself and for itself, an absolute fixed end in itself.” Hegel combined mysticism with his state. To him, the state is the march of God on earth. He completely subordinated the individual to the state. The state has the highest right over the individual and his freedom is the gift of the state. The state not only allows, but also enlarges the freedom of the individual. But the state acts through laws that must be rational. They must be applied equally. A constitutional government provides order and security in society. The exercise of authority is according to rules that limit the discretionary powers of officials. But the state is internally and externally supreme. Hegel also glorified war and his state had the right to wage war because the state of war reflects the omnipotence of the state and the victorious state can claim to be the agent of world spirit. Thus, Hegel’s sovereignty is absolute and beyond any control. Morality and international law also do not constitute any limitation on sovereignty. Hegel was followed by Austin who nevertheless freed the state and sovereignty from all the mysticism projected by Hegel. He advocated a legal view of sovereignty in which sovereignty was absolute, unlimited, inalienable and indivisible. The pluralists later on challenged Austin’s views. We will discuss both the legal and pluralist perspectives in details. But first let us understand the meaning of sovereignty.

9.4 KINDS OF SOVEREIGNTY

The term sovereignty has been used in many ways in Political Science that makes its comprehension very difficult. Therefore, it is necessary to understand its varied uses.

9.4.1 Real and Titular Sovereignty

A distinction is often made between real and titular sovereignty. Infact, this distinction came about due to a unique development in English Constitutional system. Initially, the king was all-powerful and actually exercised his powers. But with the development of democracy, the king was devoid of his powers and the parliament became supreme. However, the English people loved monarchy and did not abolish it. Instead, the powers of the king were transferred to an institution called the Crown. The monarchy in England still exists and all the powers are exercised in the name of the king or the queen but the real sovereign is the Crown. This distinction also exists in countries where the parliamentary form of government is prevalent. Like in India, where the president is the titular head while the real sovereign is the prime minister and his cabinet. In a country like the United States of America, no such distinction exists as the president is said to be both real as well as the titular sovereign. But this distinction makes sovereignty more an attribute of the government rather than that of the state.

9.4.2 Legal and Political Sovereignty

Another distinction is made between legal and political sovereignty. The legal sovereign is a constitutional concept, which means the identification of the holder or holders of power in the legal sense. There cannot be any confusion regarding the person or persons who exercise the power of sovereignty in the eyes of law. The legal sovereign commands and makes the law and such commands and laws are to be obeyed by the people. In case of violation, it is equipped with the necessary powers to punish the offender. Legal sovereign is determinate, all comprehensive and possesses coercive powers to implement its law and command. Thus, the authority of the legal sovereign is characterised by legal sanctity in which no individual or association can claim immunity. The best example of legal sovereignty is the British King-in-Parliament which, as one

political scientist puts it, 'may remodel the British Constitution, may prolong its life, may legalise illegalities... may give dictatorial powers to the government... may introduce communism, or fascism entirely without legal restriction'. This position of the British Parliament is also summed up in the saying that it can do everything except making a man a woman and vice versa, though it may do even that legally. Thus, the power of the legal sovereign is absolute, without any restriction.

In contrast, the concept of political sovereignty is very vague and confusing. It is pointed out that behind the legal sovereign lies the political sovereign to which the legal sovereign has to bow. Political sovereignty is not recognised by the law. It is not determinate also in the sense that its identification is a very difficult task. Yet its existence cannot be ignored. It influences and controls the legal sovereign. One writer has identified the political sovereign as the sum total of all influences, which lie behind the law. In a system of direct democracy where the people participate in law making and decision-making, the distinction between the legal and the political sovereign is blurred. But in a representative democracy, this distinction becomes obvious where people participate in law making and decision-making indirectly through their representatives. In such cases, political sovereignty lies with the electorate, which has the power to make or unmake a government at regular intervals when the elections are conducted. Infact, the elections are the best forum in which the will of the political sovereign is expressed.

9.4.3 Dejure and Defacto Sovereignty

Often the dejure sovereign and the defacto sovereign are the same because the person or persons holding power are also recognised by the law. The distinction between the two becomes real in some situations of crisis which may be the result of a coup or any other kind of violent overthrow of the government. For example in Russia, the communists overthrew the Tsarist Government. While the law recognised the latter as the holder of power, in reality the former was in command and using the authority. Similarly, during the First and the Second World Wars, many countries were defeated by Germany and the German rulers became defacto rulers, but the laws in the respective countries still recognised the overthrown government as the ruler. In 1971, as a result of liberation from Pakistan, Bangladesh became a new country but as per the law, the Pakistani President was the dejure sovereign. In such a situation, the rule of a defacto ruler is based upon force or on the fact that the situation is under his control. In contrast, the de jure sovereign has the legal sanctity to rule. However, this distinction between the two remains for sometime, and ultimately they become one. The defacto ruler makes the necessary changes in the law of the land and thus, becomes the dejure ruler also.

9.4.4 Concept of Popular Sovereignty

Modern democracy is based on the concept of popular sovereignty which means that the source of all authority is the people. J.J. Rousseau is credited with espousing it in modern times. But earlier also, the concept of popular sovereignty was not unknown. In medieval times, Cicero pointed out that the state was 'people's affairs'. He held that the state was a moral community, a group of persons and the authority arose from the collective power of the people. Later on, Althusius also said that the people as a corporate body held sovereignty and this power could not be transferred to any other person or organisation. Althusius forcefully argued that the people as a corporate body gave power of administration to the administrators, through a contract for specific purposes and the power would go back to the people, in case they forfeit it due to any reason. Althusius also gave the people the right to resist tyranny. Similarly, John Locke also based his civil society on the basis of consent of the people. According to him, the

government existed for the welfare of the people and there could not be any arbitrary rule. To Locke, Government was a trustee constituted through a social contract for the protection of life, liberty and property of the people. If the government failed in its duty of protecting the life, liberty and property of the people, they had a right to rebel against it and overthrow it.

But Rousseau is considered the father of the concept of popular sovereignty. According to Rousseau, men by their very nature are free and equal and the system of government has to be based upon the free will of men. This, in turn, can be achieved when the individual enters into a contract with each other, as a result of which they become an indivisible part of a body of sovereign people which has the supreme power of lawmaking. Rousseau also made a clear distinction between the state and the government. To him, the government is merely an agent of the state having a limited authority. Infact, it is the people who have delegated the power to rule to the government and this power can be withdrawn by their will. This will of the people becomes sovereign in Rousseau's state to which Rousseau gave the name of the General Will. In Rousseau's scheme, the sovereign can only act for the welfare of the people. He writes, "It is impossible for the sovereign body to hurt its members. The sovereign for its part cannot impose upon members any fetters that are useless to the community".

According to Asirvatham, the concept of popular sovereignty contains the following valuable ideas:

- i) Government does not exist for its own good. It exists for the good of the people.
- ii) If people's wishes are deliberately violated, there is a possibility of revolution.
- iii) Easy means should be provided for a legal way of expressing public opinion.
- iv) Government should be held directly responsible to the people through such means as frequent elections, local self-government, referendum, initiative and recall.
- v) Government should exercise its authority, directly in accordance with the laws of the land and not act arbitrarily.

The concept of popular sovereignty was accepted as the basic principle of governance in the American and French revolutions. The American Declaration of Independence expressly declared, "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of happiness— that to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed..." The Declaration clearly recognised the people's right to alter or abolish any government, which was destructive of the inalienable rights of life, liberty and pursuit of happiness. The Declaration also noted the fact that the British King had become a tyrant by his acts and therefore, unfit to be the ruler of a free people. The French Revolution declared, "Men are born and remain free and equal in rights". It also pointed out that "right to liberty, property, security and resistance to oppression are the aim of any political association and the law is the expression of general will" and all citizens have the right to take part personally or through their representatives in its formation" and that "all officials of the state are responsible to the people."

The concept of popular sovereignty is very attractive. But it is shrouded with vagueness. It is very difficult to explain it in practical terms. It is good to say that people are the basis of any political system and their will must be reflected in the governance. But the question is what does

the term people mean? How do we identify them? Obviously the entire mass living in a state cannot be identified as people because there are infants, invalids, criminals, insolvent, aliens and others who cannot have any participation in the political system. If they constitute people then the concept, as such, does not make any sense at all. Even the electorate cannot be called as people because they do not constitute a political entity. Further, all people do not participate in the election. Then the elections are won on the basis of majority. So does it mean that we should equate people with the majority of the electorate? In any case, the number of electorate in any country is very small in comparison to the total population and they cannot be regarded as legally sovereign. Infact, the more we go into the details, it is only confusion and nothing else. If we study the dynamics of modern democracy, we find that a voter is subjected to many influences and manipulations. People's choices are manufactured in the modern age of science and technology and democracy has become infected with mobocracy. Popular sovereignty may be successful in a small state with a system of direct democracy where the people directly participate in law making. It may also reflect in devices such as the referendum. But the modern state is a big state with a huge population. It is also a fact that the business of modern state has become too complex and it cannot run on the basis of referendum. The concept of popular sovereignty creates another problem. In the present system of democracy, the ruling elite as well as the opposition claim to be reflecting the will of the people and in such cases, it becomes increasingly difficult to discover the truth and if the concept of popular sovereignty is implemented legally, then it may lead to instability in the government. Yet all said and done, the concept of popular sovereignty has made a permanent contribution in Political Science because besides advocating the idea of popular control over the government, it is a strong repudiation of dictatorship and totalitarianism.

9.5 AUSTIN'S CONCEPT OF SOVEREIGNTY

The legal view, also called the monistic view or traditional view of sovereignty, was propounded by John Austin (1779-1859), a great jurist, in his book, *Lectures on Jurisprudence* (1832). According to Austin, "If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society; and the society (including the superior) is a society, political and independent". According to Austin, following are the characteristics of sovereignty:

- i) Sovereignty is necessary for the state. Sovereignty is one of the four elements of the state. There cannot be a state without sovereignty. If state is the body, sovereignty is its spirit. The state cannot alienate itself from the power of sovereignty. The end of sovereignty means the end of state.
- ii) Sovereignty has to be determinate .It resides in a person or a body of persons. To Austin, State is a legal order in which the sovereignty can be located very clearly. It cannot be the people or the electorate or the General Will since all of these are vague expressions. It is not vested in God also. Sovereign must be a human being or a body of human beings who can be identified.
- iii) Sovereign is the supreme power in the state. He is the source of all authority in the state. His authority is unlimited and absolute. He does not take commands from any one as nobody has a right to command him. But he commands every one within the state. His authority is universal and all comprehensive. Sovereignty is independent from any internal or external control.
- iv) The Sovereign receives habitual obedience from the people. Thus, the authority of the sovereign is not casual. It is continuous, regular, undisturbed and uninterrupted. If a significant part of the population refuses to accept him and renders disobedience, then he is no longer a sovereign.

Similarly, a short term obedience is not an attribute of sovereignty. The power of the sovereign has to be permanent in society.

- v) Law is the will and the command of the sovereign. He is the source of law. Law is a command given by a superior to the inferiors who are in a state of subjection or dependence. Sovereign is above the customs and traditions of society. They exist with his permission. Whatever the sovereign permits, that alone can exist. The rights and liberties of the individual also emanate from the sovereign and do restrict the operation of the individuals' sovereignty.
- vi) Sovereignty has the legitimate physical force to exert command and obedience and enforce its laws.
- vii) The power of sovereignty is exclusive and indivisible. It is a unit in itself that cannot be divided between two or more persons. Division of sovereignty means its destruction.

Thus according to Austin, sovereignty is the supreme power of the state that is absolute, permanent, universal, inalienable, exclusive and indivisible. However, these characteristics are not acceptable to the pluralists who reject the entire thesis of Austin in toto.

9.6 PLURALISTIC ATTACK ON AUSTIN'S CONCEPT OF SOVEREIGNTY

The prominent pluralist writers are Dr.J.Neville Figgis, Paul Boncour, Durkheim, MacIver, Laski, Barker, Duguit, Krabbe, G.D.H.Cole and Miss Follet. Here we will study the pluralist attack on Austin's concept of sovereignty with special reference to Laski and MacIver.

The pluralists do not believe that the sovereign is determinate. According to them, the determination was possible in old days when the king ruled with absolute powers. But in modern times the political system is based upon the concept of popular sovereignty in which the government is responsible to the people who can make or unmake the government. The constitutions clearly proclaim the sovereignty of the people, but Austin will not accept people as sovereign. Similarly, the electorate cannot be termed as sovereign because both the terms- "people" and "electorate" are vague and do not constitute determinate human being in the Austinian sense. The task of locating sovereignty becomes more difficult in case of a federation in which the powers are divided between the centre and the units and both are supposed to be sovereign in their respective fields. In such a system, the constitution is supposed to be supreme but it is not a human being and hence, cannot be sovereign. Even in Britain where the supremacy of the parliament is the basic law of the land, the parliament cannot be termed as totally sovereign as it also works under limitations. Laski rightly points out that the real rulers of a society are not discoverable.

The pluralists believe that Austin's concept of sovereignty cannot be verified from history. According to Laski, historically, sovereignty has always been subjected to limitations except for a very small period when we really had a sovereign in Austin's sense. This was the period when the nation-state arose and the kings asserted their authority. This nation-state was the result of the religious struggle of the 16th century and the emergence of the sovereign state was a vindication of the primacy of the secular order over religion. Thus, there were certain historical factors which were responsible for the creation of absolute sovereignty of the state. And if we leave this brief period, we do not find any example of absolute sovereignty. In modern times, sovereignty is limited. The only exception could be the British King-in-Parliament but as Laski argues, 'everybody knows that to regard the King-in-Parliament as sovereign body in the

Austinian sense is an absurd'. No parliament can disfranchise the Roman Catholic church or prohibit the existence of trade unions. Therefore, Laski says, "No sovereign has anywhere possessed unlimited power; and the attempt to exert it has always resulted in the safeguards." Infact, every sovereign has to work within the society and the society works through customs and traditions, which are the result of a long historical process and no ruler, no matter how ruthless he is, can violate them. It has been pointed out that internally the rights of the individual limit the sovereignty and externally, the international law restricts the operation of sovereign power. Besides the concept of popular sovereignty gives ultimate powers to the people and accordingly, the legal sovereign has to bow before them.

It will not be wrong to suggest that the pluralists have a great distrust of power and those who exercise it. That is the reason why Laski objected to the absolute powers of the sovereign. To him it is ethnically indefensible. It is ethically wrong as it retards the development of the individual and his moral stature. Austin makes the individual completely servile to the state and such an absolute sovereign would never grant any liberty to the individual. Laski stood for decentralisation and argued that the state should be responsible for its actions. The state should also protect and respect certain rights of the individual without which the individual cannot develop his personality. Laski reminded that the state is not an end in itself; rather it is merely a means to an end, the end being the enrichment of human lives and the position of the state will always depend upon its capability in achieving this end.

The Pluralists also reject the notion of law as advocated by Austin. According to Austin, law is the command of the superior and this command is from higher to inferior. Laski termed this as ridiculous. He pointed out that to call law, as a command from the higher to the inferior, is to strain its definition to the verge of indecency. Laws are universal in character and are applied on both the lawmaker as well as the subjects. But in the case of a command, the commanding authority is over and above its command and is not bound by it. Similarly, MacIver criticised Austin's concept of law as misleading as it denies two of the basic attributes which every law exhibits- its universality and formality. These attributes, MacIver argues, are necessary consequences of the structure and operation of every political system. Besides, the command belongs to the sphere of administration, as it is a means of execution. Command does not belong to legislation, as it is not a form of enactment. Infact, law is both permanent and fundamental than command. MacIver also pointed out that there are many kinds of law. For example, there are social laws, which are based on the customs and traditions of society, and some of them also become state laws. But, MacIver says, in the great book of the law, the state merely writes new sentences here and there and scratches out an old one. Much of the book was never written by the state at all, and by all of it, the state is itself bound, save as it modifies the code from generation to generation."Therefore to MacIver, the state is both the child as well as the parent of law and the authority of law is greater than the authority of state. The state is merely an official guardian of law rather than its maker. It has to uphold the rule of law. Laski stressed the fact that law is an instrument of satisfying social needs and the laws are followed not because of any coercion, but because they satisfy the requirements of the people. Duguit rightly says that, "Law is the product of our social life. We obey law because they are for social interest and that it is impossible to maintain social order without them". The absence of law would mean anarchy where no human existence would be possible.

The Pluralists also point out that there are customs and traditions in society, which were neither created by the state, nor the state has any control over them. Even the most dictatorial ruler had to bow before them. Laski gives the example of the Sultan of Turkey, who, even at the height of his power, was bound by a code of observance and it was compulsory for him to obey

them. Similarly, Sir Henry Maine gave the example of King Ranjit Singh who enjoyed absolute powers over his subjects and even the slightest violation could invite severe punishment, but even he did not violate the conventions of society. However in defense of Austin one may point out that Austin does not deny the existence of customs and traditions by saying that whatever the sovereign permits, he commands. But Pluralists do not accept this argument. Laski points out that the Sultan of Turkey had the power to change the social laws in theory only, in practice he survived by willing not to will those changes which might have proved him the sovereign of Austinian jurisprudence. MacIver forcefully asserted that the state cannot destroy the customs, because customs, when attacked by law, retaliate in return and in their retaliation, they attack not only the particular law but also the spirit of law-abidingness which is the basis of state.

The Pluralists view the state as an association. Here, firstly, they distinguish between state and society. According to MacIver, to identify the social with the political is to be guilty of the grossest of all confusion, which completely bars any understanding of society. The state exists within the society but it is not even the form of society. Infact, the society is composed of different associations and the state is one of them. There are many associations like the family and the church, which are as natural as the state and the state had no role in their formation. Legally, the state may be unlimited because it is the source of legal enactment but then the same is true of the Church because it happens to be the source of ecclesiastical law. The objective of an association is to develop human personality in the specific area for which it is formed. Thus, every association serves certain interests in society. Similarly, the state also looks after certain interests and all these associations including the state have their own distinctive identity and personality. Therefore, there cannot be one supreme power or as MacIver prefers to call, a single all comprehensive authority in society. Laski asserts that we are not a universe, but multiverse and the associations are as real as the state. The associations have their interests to promote and functions to serve and they are not dependent on the state; rather, they grow in the whole environment as a natural response to factors in that environment. They have an inner life that is as autonomous as the state itself. According to MacIver, "The difference between other associations and the state lies just in this: that the other associations are limited primarily by their objective, which is particular, whereas the state is limited primarily by its instrument, which is particular, while its objective is general, within the limits so imposed." State laws are universal and they have coercive sanctions and therefore, the state should concern itself with those interests that are universal. Pluralists do not deny the essential differences between the state and associations. The state has a power to inflict corporal punishment over its citizens while the associations lack this power. Membership of a state is compulsory while in case of an association it is voluntary. The state is also territorial in nature while the association may cross the boundaries of different states. Similarly, unlike the associations, the state is permanent. MacIver says, "if a state dissolves, it is like convulsion of nature. If it breaks into two, it is with violence and fierce repulsion. This is not true in case of other associations".

But nevertheless the state is an association and the above mentioned differences cannot give the state a special status. At the most, state can be, as Asirvatham suggests, first among equals and nothing more. It is only a particular group. Laski writes, "We then give to this particular group (i.e. the state) no peculiar merit. We refuse it the title of creator of all else. We make it justify by its consequences. We stimulate its activities by making it compete with the work of other groups co-extensive with or complementary to itself." As an association, the state protects the interests of men as citizens. The state regulates the common needs in society. But it cannot control the internal affairs of other associations. It can neither determine their purposes nor (for the most part) their methods. As the human life and culture is diversified therefore, the doctrine of absolute sovereignty if actually practiced would be, in the words of

MacIver, fatal to the harmony of social life. Laski says that the structure of society is federal and therefore the authority must also be federal. It will be wrong to give all the sovereign powers to the state. Laski also felt that the allegiance to various associations depended upon their performance. Men belong to many groups at a time and a competition for allegiance is continuously possible and no group, including the state, can claim total loyalty from the individual. He wrote, "The only state to which I owe allegiance is the state in which I discover moral adequacy, and if a given state fails to satisfy that condition I must, to be consistent with my moral nature attempt experiment...Our first duty is to be true to our conscience". The state, as an association, cannot regulate the total life of man. Its functions are merely to coordinate the activities of different associations in the society.

Austin's concept of absolute sovereignty has also been criticised by the pluralists on the basis of dangers that it poses to the maintenance of international peace and tranquility. The Pluralists point out that the doctrine of absolute sovereignty is incompatible with the interests of humanity as it leads to destructive wars. They believe that it is due to the notion of external sovereignty that the world had to face the two world wars that brought so much of suffering and destruction. With the stockpiling of nuclear weapons which can destroy the world many times and which can only lead to mutually assured destruction (MAD), there is an urgent need to restrict state sovereignty. Laski writes, "Internationally it is not difficult to conceive the organisation of an allegiance which reaches beyond the limits of the state. To leave with a handful of men, for instance, the power to make war may well seem anachronistic to those who envisage the consequences of war. When state sovereignty in international affairs was recognised, there was no authority existent to which that type of control might be entrusted. It is at least arguable now that an authority predominant over states may be conceived which is entrusted the regulation of those affairs or more than national interests. It involves at any rate, on the international side, abolition of state sovereignty." To Laski, international government is "axiomatic in any plan for international well-being. But international government implies the organised subordination of states to an authority in which each may have a voice, but in which also, that voice is never the self-determined source of decision". Laski firmly believed that the concept of the sovereignty of state would pass away, just as the divine rights of king had. Infact, the pluralists regard state sovereignty as an obstacle towards the establishment of international order, as such a concept has no concern for world peace and security.

Maxey sums up the major postulates of pluralism as follows:

- i) "That the state is but one of the numerous social, economic, political and other grouping through which men in society must seek to satisfy their interests and promote their welfare;
- ii) That these different groupings are not creatures of the state but arise independently and acquire power and authority not given by the state;
- iii) That the functions of such voluntary associations as churches, labour unions, trade organisations, professional societies and the like are as necessary as those of the state;
- iv) That the monistic state is not only incapable of wielding absolute authority over such bodies, but is incapable of regulating their affairs intelligently or administering them efficiently;
- v) That the monistic concept of sovereignty is a mere legal fiction which not only misses the truth but does incalculable harm in obstructing the evolution of society along more natural beneficial lines".

9.6.1 Pluralistic View of Sovereignty-A Critique

The pluralist assumptions and their critique of the legal view of sovereignty have been criticised on many grounds. Firstly, the pluralists suffer from an inner contradiction. On the one hand, they stand for decentralisation of power and autonomy of groups or associations, on the other hand, they also want the state to play a regulating role by coordinating the activities of the various associations. But the question is as to how the state will perform this function without overriding powers. Infact, by assigning the job of coordination, the pluralists give back the power of sovereignty with all its characteristics in Austin's sense to the state. Secondly, it is pointed out that modern society is highly complicated and the state must have power as the final judge in reconciliation of the interests of divergent groups. The concept of welfare state and planning has increased the activities of the state and it is dominating the entire life of an individual. No doubt, the individual is organised in groups and the groups play a commendable role in the enrichment of human personality but, that in any case, does not affect the primacy of state. Besides, various groups also perform functions that are over-lapping and the pluralists seem to have ignored this fact. These groups do not run on parallel lines and this is likely to clash and create disorder and chaos in society and the state will have to intervene to restore order. Finally, Austin himself will not object to what the pluralists stand for. He has only given a legal interpretation of sovereignty, which is the true statement of facts. International law is still in the developing stage and cannot be regarded as a limitation on sovereignty and legally speaking, customs and traditions are also no restraint on sovereignty. The inadequacy of the pluralist argument can be well understood when we find that even a strong advocate like Laski, later on, criticised the pluralist view of sovereignty. He pointed out that the pluralists failed in understanding the state as an expression of class relations. Laski accepted Austin's monistic doctrine when he said, "Legally no one can deny that there exists in every state, an organ whose authority is unlimited."

The significance of pluralism lies in its assertion of the importance of group life. As against the absolute authority of the state, the pluralists argued for democracy and decentralisation. Though it is difficult to accept the pluralistic abolition of state sovereignty, their contribution in explaining and emphasising the importance of groups or associations in the context of modern complex life can never be underestimated. As for state sovereignty, we are inclined to agree with Sabine that, "For my own part, then, I, must reserve the right to be a monist when I can and a pluralist when I must".

9.7 SOVEREIGNTY AND GLOBALISATION—NEW CHALLENGES

The modern world is often called the global village. Globalisation means the increasing interaction of the inhabitants of the world that has been hither to unknown in the history of mankind. It is also seen as the process of integrating the national economy, culture, technology and even governance into a global system. The global interconnectedness, which is both reality as well as a necessity, has thrown many challenges to state sovereignty. State sovereignty today does not mean state autonomy or in other words, the right to do anything it likes. We know that the sovereignty of the state has never been in doubt, but it has always been under strains. It has never been absolute, except legally. The limitations on state sovereignty were recognised by Bodin, Hobbes, Hegel and Austin during the days when globalisation was not on the agenda of internationalism.

Today, globalisation has become a fact of our times, a fact that has raised many questions regarding the state and its sovereignty. The following aspects pointed out by David Held need our attention:

- i) With the increase in global connectedness, the number of political instruments available to governments and the effectiveness of particular instruments has shown a marked decline; border controls have lessened; and flow of goods and services, ideas and cultures has increased. The result is a decrease in policy instruments, which enable the state to control activities within and beyond its borders.
- ii) States can experience a further diminution in options because of the expansion in transnational forces and interactions, which reduce and restrict the influence particular governments can exercise over the activities of their citizens. The impact, for example, of the flow of capital across borders can threaten anti-inflation measures, exchange rates and other government policies.
- iii) In the context of a highly interconnected global order, many of the traditional domains of state activity such as defence, communication and the like cannot be fulfilled without resorting to international forms of collaboration. As the demands on the state have increased in the post-war years, the cooperation of other states has become necessary.
- iv) Accordingly, states have had to increase the level of their political integration with other states so as to control the destabilising effects that accompany global interconnectedness. They have to strengthen, for example, organisations like the International Monetary Fund (IMF) and the World Trade Organisation (WTO).
- v) With the growth of a vast number of institutions and organisations, a basis for global governance has already been laid. The new global politics involving among other things, multibureaucratic decision-making within and between governmental and international bureaucracies, and the like has created a framework in and through which the rights and obligations, powers and capacities of states have been redefined.

The sovereignty of the state continues, but the sovereign structure of the state is heavily influenced by global tendencies, besides those found within the boundaries of the state itself.

9.7.1 Sovereignty and Power-Blocs

The development of global system of states as it appears in the form of numerous power-blocs has immensely influenced state's authority and integrity. This is clear from the following:

- i) After the Second World War, the world was divided between the two blocs led by the U.S.A. and the USSR. Both of them exerted a great influence on their bloc-members in the operation of their domestic and foreign policy. This was the reason why India and many other non-aligned countries refused to join any of the two blocs, because in plain terms it meant putting restriction on the country's sovereignty and accepting the dictates of the bloc leader. After the disintegration of the USSR, we have a unipolar or multipolar world, in which the states are dependent on each other. The U.S.A. exerts a large measure of influence on the domestic and external policy of many states, especially the small and the weaker states.
- ii) The dominance of the U.S.A. and the USSR in their power alliances constrained numerous states from making decisions themselves or independent of their bloc leader. The NATO (North

Atlantic Treaty Organisation), the SEATO (the South East Asian Treaty Organisation), the CENTO (the Central Treaty Organisation), the OAS (the Organisation of American States), all under the American influence and the Warsaw Pact under the Soviet leadership gave meagre international choice to their respective member-states. Held says, “A state’s capacity to initiate particular foreign policies, pursue certain strategic concerns, choose between alternative military technologies and control weapon systems located on its own territory are restricted by its place in the international system of power relations.”

- iii) Each of these military alliances has its own structure, its own procedure and method of functioning and its own policy as developed by the member-states. But the influence of the leader goes unquestioned and the other member-states have limited options to operate on. Giving the NATO example, Held says, “Its (NATO’s) concern with collective security has trodden a fine line between, on the one hand, maintaining an organisation of sovereign states, and, on the other, developing an international organisation which operates defacto, if not de jure, according to its own logic and decision-making procedures.” The NATO is an example of a supranational organisation in which the USA commands while the other member states merely submit.
- iv) But even without a commitment to a NATO armed conflict, Held says, “state autonomy as well as sovereignty can be limited and checked”. This is because, he continues “the routine conduct of NATO affairs involves the integration of national defence bureaucracies into international defence organisations.” Such organisations create transgovernmental decision making systems which escape the control or even consultation of any single-member state. They lead to establish informal and yet powerful, transgovernmental personnel networks or coalitions outside the control of and accountability to any national mechanism.
- v) The membership of NATO or any other power-bloc does not abolish state sovereignty but it certainly compels the member-states to compromise on many issues.

9.7.2 Sovereignty and Global Economy

In economic field, no country can claim self-sufficiency. One sees the rise of the global economy in which national economies have no option but to readjust and redefine their priorities and goals. Here, following points need careful attention :

- i) The internalisation of production has been made possible through the organisation of multinational corporations. These corporations work across the borders and function outside the domain of national sovereignties. The Multinational Corporations (MNCs), says Held, “plan and execute their production, marketing and distribution, with the world economy firmly in mind.” Though these MNCs have a national base, the nation from where they originate, their interest is always global, as is their strategy. The states do little in controlling these corporations, while these corporations have much to do in guiding the policies of the states where they operate.
- ii) The financial organisations such as banks are becoming global progressively, no matter from where they function- London, New York or Tokyo. A greater role is being played by the new information technology in so far as it helps in the mobilisation of economic units-currencies, stocks, shares and the like-for financial and commercial organisations of all kinds.
- iii) With the technological advancement in communication and transportation, the separate market-boundaries, necessary for independent national economic policies are losing importance. In spite of the fact that the distinctive identities are kept preserved, markets and societies are becoming

more sensitive to one another. To a great extent, the possibility of a national economic policy has, accordingly, reduced so as to suit itself to the claims of international financial and fiscal system. Likewise, as Held says, “the levels of employment, investment and revenue within a country are often subordinated to the decisions of MNCs...”

- iv) As no country is self sufficient, especially in economic matters, the states have to organise themselves regionally and globally. There are such groups, though loose, as West-West, North –South, South-South, East-West, the developed and the developing. These groups do affect the economy of each individual state.

Thus we see that the internationalisation of production, finance, management and distribution is unquestionably eroding the capacity of each individual sovereign state to do what it wants to do. No country, howsoever strong it may be, has control over its future economic policies, for it has to affect and get affected by the economic policies as they are pursued globally. There is a definite diminution of state autonomy in the face of world economy.

9.7.3 Sovereignty and International Organisations

Modern times have witnessed the growth and development of a large number of international organisations, which limit state sovereignty. The following points need attention in this context:

- i) The international organisations are making global decisions and the states have to respect them. In today’s world, no state can take the United Nations for granted and each state has to function within the framework of the UN Charter. The international organisations are setting up international standards to be followed by the individual states. For example, the preamble of the UN Charter asserts its determination to affirm faith in fundamental human rights, in the equal rights of men and women and the nations, large and small. The Universal Declaration of Human Rights contains those rights which are universal and transcend national boundaries. They are very comprehensive and include all kinds of rights like civil, political, economic, social, cultural and collective rights like the rights of minorities, indigenous people and the right to development. It is becoming increasingly difficult to the states to violate these human rights. The states have to observe these rights in their dealings with the secessionist and ethnic groups also. Infact, there are many international organisations and numerous pressure groups that influence the activities and policies of the national states.
- ii) Then there are international organisations which work in technical areas and are non-controversial like the Universal Postal Union (UPU), the International Telecommunication Union (ITU), the World Meteorological Organisation (WMO). These organisations supplement the services offered by the individual states to their citizens. These non-political and technical organisations do influence some notable aspects of the foreign policies of individual states and as such do not allow them to act arbitrarily.
- iii) But then there are many controversial organisations like the International Monetary Fund (IMF), the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organisation (WTO) which are non-state actors and have usurped the functions of state. They even take up a supranational role in certain areas.
- iv) The operations of the IMF go a step further and almost grab the sovereign rights of a nation. While giving loan to a particular state, the IMF may insist on certain conditions such as a cut on public expenditure, devaluation of currency, a cut on welfare programmes, liberalisation and

privatisation of economy and all this diminish the sovereignty of the concerned state. The developing countries have to tolerate the intervention of the IMF, even if it leads to many internal troubles like food riots, or the fall of a government or even imposition of martial law.

- v) Another important international organisation that has become highly controversial is the World Trade Organisation (WTO). The World Trade Organisation is a permanent legislative body and acts as a watchdog in the spheres of trade in goods, services, foreign investment, intellectual property rights and in all these spheres, state sovereignty has been curtailed. The constitution of the WTO makes the provision for the further expansion of the jurisdiction of WTO activities. It has been pointed out that the WTO has emerged as a virtual parliament in economic matters and possesses power to make laws on the subjects which hitherto have been the domain of state legislation. No state can go against the decisions of WTO even if it harms their interests.
- vi) The European Union (EU) provides a bigger threat to the sovereignty of the states. Members of the EU have delegated their sovereignty in certain matters to the Union. It has an executive body in the form of the President and members of the European Commission, legislative body in the form of the European Parliament and the European Council (the Council is the main decision making body and also the union legislative body which exercises legislative power in co-decision with the European Parliament), a Court of Justice and a Court of Auditors. There is also a European Bank with the responsibility of framing and implementing monetary policies. The EU can make laws that are, or can be, imposed on the member-states. The EU has become, more or less, a supranational agency, for within it, the Council has the power to make or enact policies. It also coordinates international agreements, on behalf of the EU with one or more states or international organisations. Accordingly, the member-states of the EU are no longer the sole centres of power within their own borders. Within the Union, sovereignty is clearly divided; any conception of sovereignty, which assumes that it is indivisible, unlimited, exclusive and a perpetual form of public power-embodied within an individual state is defunct.

9.7.4 Sovereignty and International Law

International law has also affected the sovereignty of the state. This is clear from the following:

- i) By state sovereignty, we mean the right of the state to act independently and under no explicit influence of any other foreign government. It implies, among other thing, two points; (a) that a state is powerful enough to protect its own autonomy in all matters of foreign policy, and (b) to prevent domestic courts from ruling on the behaviour of foreign states. Such aspects of state sovereignty are under strain. The EU laws, for example, hardly ensure national sovereignty to any of its members.
- ii) The UN Declaration of Human Rights and other conventions, which are the part of international law and are increasing by becoming binding on the states, are not the results of the states acting individually. They may not take away the sovereignty of a state, but certainly fashion it.
- iii) The European Convention for the Protection of Human Rights and Fundamental Rights is a typical case, which does not fit in the framework of sovereignty. Any citizen belonging to the European Union can demand the introduction of any right included in the Convention, but not incorporated in the constitution of the concerned state. Obviously, the European Union does not leave an individual state free to treat its own citizens, as it thinks fit.
- iv) Though the international law is a law applicable for states, the individual is also becoming the

subject of international law. The International tribunal at Nuremberg stated that “crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced”. The tribunal also made clear that when international rules concerning humanitarian values come into clash with state laws, individual laws must transgress the state laws.

- v) Infact the international law is no longer a law between the states only and exclusively. It is changing and gaining ground for itself increasingly on the norms of co-existence and cooperation. Unlike the traditional international law which assumed the separateness of the individual states, the new international law is binding itself on the concept of togetherness and closeness of the numerous states.

9.8 SUMMARY

Sovereignty is the supreme power of the state by which the state exerts its authority. Legally speaking, there cannot be any restriction to its power of exerting obedience. It also monopolises the power of using legitimate physical force. This view is best represented in Austin’s concept of sovereignty in which sovereignty has been depicted as permanent, absolute, universal, inalienable, exclusive and indivisible. The state essentially functions on the basis of this doctrine only. But it is also a fact that state sovereignty has always been subjected to limitations and in practical terms, the power of sovereignty has never been supreme. The pluralists have remarkably projected this view where they conceived state as an association. They argued for a limited state and division of sovereign powers between the state and other associations. Though legally the pluralistic views cannot be acceptable, politically and socially they are very attractive since they depict modern democratic ideals. It is also a fact that time is changing very rapidly and theoretically the concept of state sovereignty still exists but very important in-roads have been made especially since globalisation has curtailed the effectiveness of the state supreme power.

9.9 EXERCISES

1. Explain the development of the concept of sovereignty.
2. Define sovereignty. What do you understand by internal and external sovereignty?
3. Differentiate between (a) real and titular sovereignty and (b) legal and political sovereignty.
4. What do you understand by de jure and de facto sovereignty? Explain the concept of popular sovereignty.
5. Discuss the characteristics of sovereignty as advocated by Austin.
6. Discuss the pluralist critique of Austin’s concept of sovereignty.
7. To what extent do you think the pluralists’ criticism of Austin’s concept of sovereignty is justified? Do power alliances limit the sovereignty of a state?
8. Do you think that world economy, international organisations and international law have really affected state sovereignty?