

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 hitherto 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.

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 atleast 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".

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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

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

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

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.