

Q: Why monistic or absolute concept of sovereignty has been abandoned? Analyze legal concept of sovereignty.

Ans: There are so many criticisms and limitations on monistic or absolute concept of sovereignty, which makes this notion of sovereignty inapplicable in this modern world.

1- Criticisms and limitations :

Many critics has criticised the monistic concept of 'sovereignty'.

The pluralists, for example, has criticized the concept as they believe that the sovereignty is divided and shared among different individuals and groups in the society rather than

concentrated in a single entity 'state' as defined by monistic concept of sovereignty.

Moreover, this concept has so many limitations and is therefore not applicable in today's world.

1.1- Indivisibility of Sovereignty :

The monistic concept of sovereignty has been criticized as it says

sovereignty is indivisible and it resides in a single body. But the critics are of the view that the sovereignty is divisible and can be shared among different individuals and associations.

For example: In every state, whether it is democratic or not, we see divisions of functions among different groups of government to ensure efficiency of administration.

The English philosophers, Madison and Hamilton have criticized it and said that;

"In the federal system as that of USA, power is distributed among the federal union on the one hand and federating units on the other hand"

Laski has also highlighted the federal system as a main factor for the abandonment of monistic idea.

Pluralists believed that the society is federal and plural

rather than single body. State is only association out of many associations of the society.

1.2. The sovereign power is absolute and unlimited: The absolute concept of sovereignty states that;

"The sovereign power is absolute and there is no limitation on it"

But actually there are limitations on sovereign external as well as internal.

(i) The customary and religious laws are the main limitation.

(ii) In the modern world, every person has basic fundamental rights.

(iii) The constitutional laws are the limitations to sovereignty.

As Laski, has pointed out that no sovereign state has unlimited power and the ways to exercise it has always results in establishing ~~safeguards~~ safeguards.

2- Inapplicability : The monist or absolute concept of sovereignty was a dominant concept till (WWII) World War II but it appeared outdated as the emergence of regional government and supra-national institutions (Like : European Union EU) happend and it required modifications.

2.1 - Divided government system :
It is not applicable in the system of divided government based upon the separation of powers, bicameralism and federalism in order to resist majoritarianism and to provide a minority voice as advocated by James Madison in The Federalist papers.

For example : The role of sub-national actors (like; local governments and non-state entities (NGOs)) in decision-making process can not be defined on the basis of

the monistic concept of sovereignty.
2.2 - Global Governance Mechanisms :

It is inapplicable in this modern era because of the increasing importance of global governance mechanisms as international treaties, organisations, supra-national institutions etc. for negotiations and ~~national~~ integration between the nations at international level.

In a nutshell, the absolute or monistic concept of sovereignty is impractical and unrealistic in this modern and coherent world.

1 - Legal Sovereignty :

The concept of legal sovereignty is applicable in modern, indirect and representative democracy where people elect their representatives ~~on their behalf~~ who run government on their behalf. These elected representatives constitute **legal sovereignty** because they have the power to make and enforce laws. The legal sovereign, thus, is

the authority within the government which by law has the power to issue final command.

It is the authority to whose directions law of the state contributes final legal force. In every state people must obey the laws which are enforced by the legal sovereign.

The legal sovereign can be vested in a person or body of persons.

The legal sovereign's ^{power} is absolute, indivisible, illimitable and inalienable.

Law is simply the will of legal sovereign as advocated by Thomas Hobbes; In the sphere of law there is no such thing as an unjust command.

The sovereign can do whatever he happens to desire. All the rights enjoyed by the citizens are granted by the legal sovereign and no right is against him. Another great exponent of the notion of legal sovereignty is

Jean Bodin. He accounted sovereignty as an untrammelled

and undivided power to make laws.

This power we call the power of legal sovereign.

2- Legal theory of Sovereignty :

This is the classical concept of sovereignty which is attributed by thinkers Jean Bodin to John Austin.

This theory emphasizes on the

legal character of sovereignty.

thus it is called legal theory of sovereignty also known as monistic

theory of sovereignty. It considers

sovereignty illimitable, absolute, indivisible and universal. This

view sees sovereignty as solely residing within the state and

its legal monopoly over violence and law making.

The German philosophers Jean Bodin, John Austin, Thomas Hobbes,

Jeremy Bentham, Rousseau,

Hegel and Treitschke are some

of the advocates of legal theory of sovereignty.

2.1-

John Austin's view of legal sovereignty
John Austin (1790-1859), an English jurist, was the main supporter of the legal theory of sovereignty. He was greatly influenced by Thomas Hobbes and Jeremy Bentham. He discussed this theory in his book lectures on jurisprudence in 1832 on the basis of idea of positive law. He believed that sovereign is essential in every society. as he said in every society there exists an authority to whom large mass of citizens show obedience. He stated that state is a legal order in which there is a supreme power to use force. Sovereignty is concentrated in man and there must be a human superior who issues commands and obeys enforces laws. He rejected the concept of natural laws as he believed that sound changes can not be brought in Europe on the basis of natural laws. Therefore, he wanted to establish

a coherent system of law and divorced all laws based on morals, ethics, religion and other social norms.

He defined law as the command of superior to an inferior.

According to Austin, law is binding to people because of sovereign's power to impose punishment on them. It is the duty of the people to obey the commands of sovereign.

He classified law into:

Positive law

Positive morality.

Positive laws are the commands of ~~political~~^{legal} sovereign. Positive law is characterized by sovereignty, command, duty and sanction.

On the other hand, there are laws which are not set directly or indirectly by legal sovereign which includes diverse type of rules (like: customs, laws of fashion and of honour, laws of natural sciences, ~~laws~~^{rules} of international law and the principles of constitutional law) to these he

behavior categorized into positive morality.

John Austin has defined Legal theory of sovereignty as under ;
"If a determinate human superior not in the habit of obedience to a like superior receives habitual obedience from the bulk of a society that the superior is sovereign and that society (including sovereign) is the society independent and political"