

THEORIES OF SOVEREIGNTY

From time to time, various thinkers have been trying to define the concept in terms of its nature leading towards the emergence of a number of theories. Mainly we will discuss two following theories of sovereignty.

- Monistic Theory of Sovereignty / Austin's Theory of Sovereignty.
- Pluralistic Theory of Sovereignty.

MONISTIC / AUSTIN'S THEORY OF SOVEREIGNTY

The classical theory of sovereignty as articulated by thinkers from Jean Bodin to John Austin emphasises primarily on the legal character of the sovereignty. It is also known as the legal theory of sovereignty. It considers sovereignty as absolute, universal, inalienable and indivisible. It ordains that the state be one and indivisible. It became dominant in late nineteenth century due to the doctrine of German philosophers like Hegel and Treitschke. Jean Bodin, Hobbes, Rousseau, Bentham, Austin are some of the advocates of legal theory of sovereignty.

John Austin (1790-1859), an English jurist, was the main supporter of monistic theory of sovereignty. He was greatly influenced by Thomas Hobbes and Jeremy Bentham. John Austin discussed this theory in his book, *Lectures on Jurisprudence* (1832) in the basis of his idea on positive law. Austin rejected the concept of natural law and stated that sound changes cannot be brought in Europe through natural law. So his main aim was to design a coherent system of law and for it he divorced law from morals, ethics, religion and other social norms. He defined law as a command given by superior to an inferior. According to Austin, law is binding on the people because of the superior's power to impose punishment on them. It is the duty of the people to obey the command of the sovereign. Austin classified laws into two categories, i.e., positive law and positive morality. The former are laws consisted of commands lined by the political superior. The positive law is characterised by four elements command, sanction, duty and sovereignty. On the other hand, there are laws which are not set directly or indirectly by a political superior. In this category are diverse types of rules: customs, rules of clubs, laws of fashion and of honour, laws of natural science, the rules of so called international law and the principles and precedents of constitutional law. To all these, Austin gives the name of 'positive morality.'

John Austin states his 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 given society that superior is sovereign and that society (including the superior) is a society political and independent."

The following are the main points of this theory:-

- In every independent political community there are some persons or a body of persons who exercise sovereign power.
- The sovereign is a determinate body or a body of persons. This determinate authority is the source of the supreme and he exercises it.
- The will of the determinate human is supreme and is not subject to any kind of control. Therefore, he does not obey any other authority.
- The sovereign must receive habitual obedience from the bulk of the community. The obedience must be a matter of habit and not mere occasional.
- The command of the determinate human superior is the essence of law.
- Sovereign power is indivisible. The division of sovereignty is its destruction.

CRITICAL EVALUATION OF THE MONISTIC /JURISTIC/LEGAL/ AUSTIN'S THEORY OF SOVEREIGNTY

Some of the criticisms are given below:

1) The monistic theory is criticised for asserting that the sovereign is absolute and no limitations exist on its authority. In fact, the sovereign authority is restrained both by internal as well as external limitations. Customary and religious laws are big limitations.

2) Austin has defined law as a command lined by the political superior. But the critics are of the view that all laws are not necessarily in the nature of commands and all commands cannot be considered as law. For example, the law that gives people the right to vote is not a command. Moreover, no sovereign can receive habitual obedience from the bulk of the society unless its laws, in the opinion of the citizens, promote common interest.

3) The monistic theory defines sovereignty as indivisible. But in every state, whether it is democratic or not, we see division of functions among various organs of government to ensure efficiency of administration.

4) Austin is of the view that sovereign is the supreme law maker and whatever he commands becomes law. But all laws do not emanate from determinate superior. There are some customary laws that are not derived from the command of the sovereign, but have been evolved over a long period of time.

5) Pluralists criticise this theory on the ground that society is federal and plural rather than monistic. State is only one out of many associations in society. There are numerous associations and groups in society established independently of the state.

6) It is not only impossible to exercise unlimited powers, but also undesirable to confer unlimited powers to anybody.

7) This theory does not stand the test of practical reality.