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01

SOVEREIGNTY A INDIAN PERSPECTIVE

Dr. Meer Basharat Ali

Associate Professor in Law,
Narayanrao Chavan Law College, Nanded
Research Supervisor,
S.R.T.M.U. Nanded

ABSTRACT:-

Sovereignty always resided with kings. Gradually democracy enhanced the concept of sovereignty and than it resided with Parliament. The paper aims to understand where it resides after the introduction of constitution.

Whether:-

- 1] it resides with the legislature as sovereign.
- 2] The legislature is sovereign within its capacity
- 3] The constitution itself is sovereign
- 4] The citizen of India are sovereign.

In this paper we are going to analysis the Indian perspective with historical background.

Pre Constitution era of Sovereignty:-

Political theory uses sovereignty since the centuries, this term has been always associated with the violent conflicts and revolutions in the political society. ¹There is no fixed definition; however it varies with time and places. According to Bodin, ² sovereignty is 1) Personal 2) Indivisible 3) Absolute. However in a written constitution it can not be personal, it is neither indivisible nor absolute. Dicey divided it between the citizens and Parliament. Dicey defined Sovereignty as Political sovereignty resides with citizens and legal sovereignty resides with Parliament. ³ His parliament is omnipotent which means it can make the law and unmake the law, whether it is fundamental and or ordinary in

nature

Sovereignty has dominance on legislation which is limit less and exhaustive in nature on other authority can nullify the laws made by parliament as per the article 368 of constitution parliament can amend from constitution but the claim militates against the majority Judgment of supreme court in Golaknath v state of Panjab that article 368 gives power to amend the constitution but the power is not independent and absolute in nature.

Sovereignty in India:-

We have a federal polity, and accordingly the subjects of legislation are apportioned between Parliament and the state legislature. Parliament's choice as to legislation is ordinarily confined to the subjects enumerated in lists I and III of the seventh schedule⁴. According to article 100 an ordinary law may be passed by a majority of the votes of the members present and voting in either House. But article 368 prescribes two different procedures for amending the Constitution. Provisions other than the ones enumerated in the proviso may be amended by a majority of the total membership of either House and by a majority not less than two-thirds of the members present and voting in either House. An amendment of any of the provisions specified in the proviso would require, besides the foregoing majority, previous ratification by the legislatures of not less than one-half of the states. As to these provisions, Parliament does not hold the monopoly of the amendatory power. It may initiate an amendment at its will, but the legislatures of a majority of states may make its will infructuous and inoperative. They have been armed with a veto power.

Sovereignty necessarily implies a power to make and unmake a citizen. Entry 17 of list I of the seventh schedule empowers Parliament to legislate with respect to citizenship, naturalization and aliens. The word "citizenship" would comprehend the termination of citizenship. This is put beyond doubt by article 11. Parliament