

**A CRITICAL STUDY ON SOVEREIGN AND NON SOVEREIGN
FUNCTION OF THE STATE UNDER ARTICLE 300 OF INDIAN
CONSTITUTION**

¹A. HASHIKA

¹BBA,LLB (Hons) At Saveetha School Of Law , Saveetha Institute Medical And Technical
Sciences ,Saveetha University , Chennai- 77,Tamilnadu,India.

²R. DHIVYA

² Assistant Professor At Saveetha School Of Law , Saveetha Institute Medical And Technical
Sciences ,Saveetha University , Chennai- 77,Tamilnadu,India.

¹hashikasrk@gmail.com , ²divyar.ssl@saveetha.com

ABSTRACT

Sovereign Immunity is a legal doctrine by which the sovereign, or the state cannot, commit a legal wrong, and is immune from civil suit or criminal prosecution. The old and archaic concept of sovereign immunity that “the king can do no wrong” still haunts us, whereby the state claims immunity for its tortious acts and denies compensation to the aggrieved party”. The Indian courts, so as not let real claims be defeated, unbroken narrowing the scope of sovereign functions, so victims would receive damages. This doctrine held sway in Indian courts since the mid nineteenth century until recently. The principle says that a master is jointly and liable for any tort committed by his servant while acting in the course of his employment. When a genuine claim for damages is brought to the courts, and it is refuted by an ancient doctrine seemingly having no relevance, there is bound to be resentment and demands for review. It is necessary to take a look at Article 300 of the Constitution of India which spells out the liability of the Union or State in acts of the Government.

Keywords : Sovereign Immunity, legal wrong , doctrine , damages, Article 300 ,

INTRODUCTION

The recent and archaic idea of granting immunity that “King will do no wrong” still haunts United States of America, wherever the state claims immunity for its misconduct acts and denies compensation to the aggrieved party. Sovereign immunity could be a justification for wrongs committed by the State or its representatives, apparently supported grounds of public policy. Thus, even once all the weather of an unjust claim area unit given, liability are often avoided by this justification. The philosophical system of granting immunity relies on the Common Law principle borrowed from British Jurisprudence that the King commits no wrong which he can't be guilty of private negligence or misconduct, and intrinsically can't be chargeable for the negligence or misconduct of his servants. another side of this philosophical system was that it absolutely was an attribute sovereignty that a State can't be sued in its own courts while not its consent (“Reasons For the Growth of Administrative Law” n.d.). This philosophical system control sway in Indian courts since the middle nineteenth century to until recently. once a real claim for damages is brought within the courts, and it's refuted by an ancient philosophical system apparently having no relevancy, there's guaranteed to be gall and demands for review. The Indian courts, so as not let real claims be defeated, unbroken narrowing the scope of sovereign functions, so victims would receive damages.

The Law Commission to in its 1st report to suggested the conclusion of this out-of-date philosophical system. except for numerous reasons, the draft bill for the conclusion of this philosophical system was never passed, and therefore it absolutely was left to the courts to choose on the compatibility of this philosophical system in accordance with the Constitution of india . Before we have a tendency to proceed to debate the extent of granting immunity because it has been graven out over the years, it's necessary to take a verify the Article 300 of the Constitution of india that spells out the liability of the Union or State in act of the govt.

Aim of the Study:

To understand the function of sovereign and non sovereign function and article 300 of the indian constitution.

Research Question

Whether there is misuse of sovereign immunity ?

Objectives

- I. To find the sovereign and non sovereign function of State
- II. To understand the Article 300 of Indian Constitution
- III. To analysis the sovereign immunity

Hypothesis**Null Hypothesis**

There is not changes in Sovereign Immunity in recent times

Alternative Hypothesis

There is changes in Sovereign Immunity in recent times

Material & Method

Method used is Doctrinal Method i.e primary resources and the Materials are mainly primary resources referred like books , journals , articles and e sources.

Result of the Study

In intial times the sovereign immunity was superior but now the judiciary is stepping in to render justice to all people . Article 300 of Indian Constitution , 1950 ensures Sovereign immunity, but not in all the cases .

REVIEW OF LITERATURE

1. The doctrine of sovereign immunity is based on the Common Law principle borrowed from the British Jurisprudence that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants. another aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent.(“Website” n.d.)

2. This doctrine held sway in Indian courts since the mid nineteenth century to till recently. When a genuine claim for damages is brought in the courts, and it is refuted by an ancient doctrine seemingly having no relevance, there is bound to be resentment and demands for review. The Indian courts, in order not let genuine claims be defeated, kept narrowing the scope of sovereign functions, so that victims would receive damages. The Law Commission too in its very first report too recommended the abolition of this outdated doctrine. But for various reasons, the draft bill for the abolition of this doctrine was never passed, and thus it was left to the courts to decide on the compatibility of this doctrine in accordance with the Constitution of India. (“Website” n.d.)
3. Uniform jurisprudence on Sovereign immunity still seems a long distance away in international sphere for the reason that the national laws and approaches adopted by the States govern this issue. There have been attempts in the past to somehow streamline the approach by adopting legislations and, in a broader sense, by bringing a multilateral treaty. India still does not have a separate legislation on foreign state sovereign immunity as U.K and the US have. However, it did sign the United Nations Convention on the Jurisdictional Immunities of the States and their Property. Even though the convention is not in force yet, it shows India’s inclination to formally adopt a qualified immunity approach. The case laws developed over the years show that the courts have adopted the same approach of no absolute immunity from jurisdiction. (“Website” n.d.)
4. Sovereign immunity is essentially “A government’s immunity from being sued in its own courts without its consent.” Sovereign immunity has been enshrined under the British Common Law principle of *rex non potest peccare* i.e. the king can do no wrong. In the England the growth of the doctrine of sovereign immunity has been influenced by the immunity of the local sovereign. Sovereign immunity as a concept got embedded in Indian legal system with the arrival of the British. When the British colonized India, they brought along with them new ideas, ideologies, culture and laws. One of these many new introductions to our nation was the Doctrine of Sovereign Immunity. (“Website” n.d.)

5. Sovereign immunity is a government's right not to be held into court without its consent. Whatever its theoretical provenance, it has been a part of American procedure for a long time. Read for all it is worth, it might be a bar to nearly all affirmative judicial relief against government action. But government officers have long been held to be sutable in their own right, without the government's immunity, meaning that in most cases sovereign immunity recedes into the background("[No Title]" n.d.)
6. The State liability for the acts of omission and commission committed by its servants, not being a static concept, has been governed by written or unwritten laws. Liability of State for the tortious acts of its servants known as tortious liability. of State makes it liable for the acts of omission and commission, voluntary or involuntary and brings it before Court of Law in a claim for non liquidated damages for such acts. This liability is also a branch of Law of Torts. Law of Torts like various other laws has travelled to this country through the British in India and now stands varied due to being regulated by certain local laws and Constitutional Provision("[No Title]" n.d.)
7. It further indicated what those conditions should be as regards the type of breach in hand, namely the non-transposition of a directive within the required period (a pure omission). The following three prerequisites apply: (i) the result prescribed by the directive should entail the granting of rights to individuals; (ii) the contents of those rights must be identified on the basis of the provisions of that directive; and (iii) `the existence of a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties'. ("[No Title]" n.d.)
8. One area in the current discourse on state immunity that has attracted the least attention is the issue relating to the employment of persons in missions of foreign state and intergovernmental organizations. This concerns with the legal rights of persons, mostly nationals of the receiving state, working for a foreign government in its diplomatic or consular missions and other entities in a receiving country. More specifically, the questions relate to the employee's right to seek redress under the laws of forum state as any other citizen, in matters relating to, if applied would dictate a different result. In this context, this

paper attempts to identify the rights and remedies available for locally recruited nationals and permanent residents of India employed by foreign states in their Embassies, consulates and other entities in India, particularly their right to seek local remedies under the Indian laws, like any other citizen. In this context, the paper analyses the international law and practice of states on foreign state immunity particularly in the context of the United Nations Convention of the Jurisdictional Immunities of States and their Property 2004, and the Indian law and practice, with a focus on one exception (“Website” n.d.)

9. In a welfare state, the functions of the state are not only to defence of the country or is administration of justice or maintaining law and order but it extends regulating and controlling commercial, social economic, political and even material. The demarcating line between sovereign and non-sovereign power for which no rational basis survives has largely disappeared. Therefore, barring functions, such as, administration of justice, maintenance of law and order, and repression of crime etc. which are among primary and unalienable functions of constitutional government other functions are not sovereign functions. (“What Is the Demarcating Line between Sovereign and Non-Sovereign Functions?” 2013)
10. Vicarious liability is a form of strict, secondary liability that arises under the common law doctrine of agency – respondeat superior – the responsibility of the superior for the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator. The liability is placed, not on the tortfeasor, but rather on someone who is supposed to have control over the tortfeasor. The most common form of vicarious liability that we come across is the liability arising out of a ‘Master – Servant’ relationship. This is sometimes referred to as the doctrine . The principle says that a master is jointly and liable for any tort committed by his servant while acting in the course of his employment. As Lord Brougham said: “The reason that I am liable is this, that by employing him I set a whole thing in motion; and what he does, being done for my benefit and under my direction, I am responsible for the consequences of doing it. This implies that the liability for the injured party’s loss is properly shifted to the

person or entity whose enterprise was benefited by the relationship, and created the occasion for the act or omission. (“Website” n.d.)

11. Position in India: Unlike Crown Proceedings Act, 1947(England), we do not have any statutory provisions mentioning the liability of the State in India. The law in India with respect to the liability of the State for the tortious acts of its servants has become entangled with the nature and character of the role of the East India Company prior to 1858. It is therefore necessary to trace the course of development of the law on this subject, as contained in article 300 of the Constitution. The position of State liability as stated in Article 300 of the Constitution is as under: Clause (1) of Article 300 of the Constitution provides first, that the Government of India or the Government of a State may sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or be sued, “if this Constitution had not been enacted”, and thirdly, that the second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution. (“Website” n.d.)
12. While performing a sovereign function, if any servant or agent of the Crown does any tortious act or breach of the contract, such agent or servant is not held liable. In such cases, the Doctrine of Defence to Sovereign Immunity applies. While performing a non-sovereign function, if any servant or agent of the Crown does any tortious act or breach of the contract, such agent or servant is held liable. In such cases, the Doctrine of defence to Sovereign Immunity does not apply. The answer depends upon the circumstances of the cases. The facts of each case differs. For Example, there are certain disturbances in a locality. The highest officer issues curfew orders and warns the people not to come into the streets. The police constable is not held liable, as the performance of firing is done here as a part of “Sovereign Function (“Difference between ‘Sovereign Functions’ and ‘Non-Sovereign Functions’” 2013)

13. As per the dictionary meaning the word sovereign means “one possesses supreme political power”; and another meaning of the word is “having independent authority and the right to govern itself”. The Preamble of India proclaims India as a state to be sovereign, it testifies to the fact that India is no longer a dependency or colony or possession of British Crown. As a sovereign independent state, India is free both internally and externally to take her own decisions and implement these for her people and territories. While we compare the legislature system then we say that the British Parliament is a sovereign legislature and the Parliament of India is non-sovereign legislature. The doctrine of “sovereignty of Parliament” is associated with the British Parliament and this principle has three implications:(“Website” n.d.)
14. In india, the crown assumed sovereignty of india in 1858 and took over the administration of india in hands of the company . the act declared that the secretary of state in council to be a body corporate for the purpose of suing , and being sued. This very provison been incorporated in article 300 (i) of the constitution of india. (Suresh 2014)
15. A few years back there is a huge protest in Hong Kong that Republic of China should give them full freedom. How different from Hong Kong to other countries. Do Hong Kong is called a sovereign country?If a country is called as sovereign country then what are the guidelines they follow? Can you list these type of countries like Hong Kong in the world. I guess Taiwan one more country... Knowledgeable members please respond to the question.(Bhushan, Mohan, and Kumar n.d.)
16. India as a sovereign, socialist, secular, democratic republic has to establish an egalitarian social order under rule of law. The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive Principles of State Policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity, and so is an essential part of the sovereign functions of the State as a welfare

State. It is not, therefore, an industry. (“Sub-Divisional Inspector Of Post, Vaikam And Others v. Theyyam Joseph And Others| Supreme Court Of India | Law | CaseMine” n.d.)

17. In all progressive societies there exists the desire to extend equality before the law between government as a legal entity and as an employer and the citizen who has suffered damages as a result of official action . the modern welfare state is increasingly embarking on varied activities indistinguishable from those performed by private persons . where government runs a factory operating machinery employing an army of servants , where it builds houses or tracts patient in hospitals , the concept of equality requires that it should be at par with private employers. (“[No Title]” n.d.))
18. sovereign authority in accordance with the provisions of the Constitution and legislation. He represents the Principality with respect to foreign powers. Total or partial review of the Constitution is subject to joint agreement by the Prince and the National Council, an assembly elected by Monegasque citizens. Legislative power is shared between the Head of State who initiates laws and the National Council that passes them. Executive power is under the supreme authority of the Prince, and the Principality is governed by a Minister of State who represents Him, who is in turn assisted by a Council of Government. (de Monaco n.d.)
19. Interestingly enough, the advent of participants with new ideological orientations, like the socialist States or the developing countries, has not detracted from this State-centred perspective. Despite their claims for a more progressive world order, statehood and the exclusive prerogatives attached to it have been very prominent in their programmes. This classical model of international law as the law to be applied among sovereign States has undoubtedly served useful purposes, but it also has serious shortcomings. The concentration of authority at the level of national governments has facilitated the abuse of power. The internal exercise of power has largely been insulated from the scrutiny of the larger community by such concepts as sovereign prerogative and internal affairs. The need to protect the national community from external danger frequently serves as a justification for internal repression. (“[No Title]” n.d.)

20. The concept of sovereignty is a foundation of global politics. The countries that constitute the international system are supposedly defined by their ability to exercise supreme political authority over their entire territorial domains. But sovereignty in practice is often qualified, its limits varying as the context changes. This is particularly true in the United States. The problem of sovereignty in the U.S. dates back to the foundational debates over whether the new country would be a confederation of independent states or a single federal state. (Lewis n.d.)

HISTORY OF DOCTRINE

PRE CONSTITUTIONAL ERA

In India the story of the birth of the school of thought of immunity begins with the choice of Peacock C.J. in *P. and O. Navigation Company v. Secretary of State for India*³ - (1861) 5 Bom HCR , during which the terms "Sovereign" and "non sovereign" were used whereas deciding the liability of the East Indies Company for the torts committed by its servants. During this case the availability of the Govt. of India Act, 1858 for the primary time came before the urban center Supreme Court for judicial interpretation and C.J. Peacock determined the vicarious liability of the East Indies Company by classifying its functions into "sovereign" and "non sovereign". Two divergent views were expressed by the courts when this landmark call during which the foremost vital call was given by the Madras state supreme court within the case of *Hari Bhanji v. Secretary of State*⁴ - (1882) ILR 5 Mad 273 , wherever the Madras state supreme court control that the immunity of the 'East India' company extended solely to what were referred to as the 'acts of state', strictly therefore referred to as which the excellence between sovereign and Non-sovereign functions wasn't a well supported one. The supreme court in one in all its earlier cases of *Nobin Chunder Dey v. Secretary of State*⁵ - (1876) ILR 1 Cal 12 , had taken the read that in respect of acts drained the exercise of sovereign perform by the East Indian company no suit may be amused against the corporate. once more just in case of *Secretary of State v. Cockraft*⁶ - (1916) ILR 39 Mad 351, the Courts else an additional check that if the State derived enjoy the exercise of Sovereign powers, it

³ (1861) 5 Bom HCR

⁴ (1882) ILR 5 Mad 273

⁵ (1876) ILR 1 Cal 12

⁶ (1916) ILR 39 Mad 351

might be liable. No try but has been created within the cases to draw a transparent and coherent distinction between Sovereign and Non-Sovereign functions in any respect.

POST INDEPENDENCE

After the commencement of the Constitution, maybe the primary major case that came up before the Supreme Court for the determination of liability of presidency for torts of its staff was the case of *State of Rajasthan v. Vidyawati*⁷ - 1962 AIR 933, 1962 SCR Supl. (2) 989. during this case, court rejected the plea of immunity of the State and command that the State was accountable for the wrongdoing act of the driving force like all different leader. Later, in *Kasturi Lal v. State of U.P.*⁸ -1965 AIR 1039, 1965 SCR (1) 375 the Apex court took a distinct read and therefore the entire factor got confused once more. during this case, the Supreme Court followed the rule set down in P.S.O. Steam Navigation case by characteristic Sovereign and non-Sovereign functions of the state and command that abuse of police power could be a Sovereign act, thus State isn't liable. In observe the excellence between the acts drained the exercise of sovereign functions which drained non-Sovereign functions wouldn't be very easy or is at risk of produce right smart problem for the courts. The court distinguished the choice in Vidyawati's case because it concerned associate activity that can not be aforesaid to be due to to, or ultimately supported the delegation of governmental powers of the State. On the opposite hand, the facility concerned in Kasturilal's case to arrest, search and seize ar powers characterised as Sovereign powers. Finally the court expressed that the law during this regard is disappointing and therefore the remedy to cure the position lies within the hands of the legislative assembly.

The Courts in later years, by liberal interpretation, restricted the immunity of State by holding a lot of and a lot of functions of the State as non-Sovereign. within the case of *State of M.P.v. Ram pratap*⁹ - 1999 (3) AWC 2049, (1999) 2 UPLBEC 1452 , the state was created accountable for injury caused by a truck happiness to P.W.D. Similarly, in *Amulya Patnaik v. State of orissa*¹⁰ -

⁷ 1962 AIR 933, 1962 SCR Supl. (2) 989

⁸ 1965 AIR 1039, 1965 SCR (1) 375

⁹ 1999 (3) AWC 2049, (1999) 2 UPLBEC 1452

¹⁰ AIR 1967 Ori 116, (1968) ILLJ 64 Ori

AIR 1967 Ori 116, (1968) ILLJ 64 Ori , the state was command accountable for the death of someone

whereas traveling in a very black Maria by rash and negligent driving of its driver. In *Shyam sunder v. State of Rajasthan*¹¹ -AIR 1967 Ori 116, (1968) ILLJ 64 Ori , the court command the state accountable for the wrongdoing act of a teamster engaged within the State famine relief work. to make sure the non-public liberty of people from abuse of public power, a brand new remedy was created by the Apex court to grant damages through judicial writ petitions below Article thirty two and Article 226 of the Constitution. within the case of *Rudul sovereign v.State of bihar*¹² - (1983) 4 SCC 141 , the Supreme Court for the primary time awarded damages within the judicial writ petition itself. In , then principle set down in Rudal sovereign was more extended to hide cases of unlawful detention. in a very petition below article thirty two, the Apex court awarded Rs. 50,000 by manner of compensation for wrongful arrest and detention. *SAHELLI, a Women's Resource Centre v. Commissioner of Police, Delhi*¹³ - 1990 AIR 513, 1989 SCR 488 , was another daring call of the Apex court to offer direction to metropolis Administration to pay compensation just in case of death because of police atrocities. In *Nilabati Behra v. State of orissa*¹⁴ - 1993 AIR 1960, 1993 SCR (2) 581 , the Apex court awarded the compensation to the petitioner for the death of her son in police custody. The court command that the principle of exemption doesn't apply to the general public law remedies below Article thirty two and Article 226 for the social control of the elemental rights. in a very landmark call within the case of , the Supreme Court of India went a step more and command that the court's power to grant injury can not be restricted only if the elemental right to life and private liberty below Article twenty one is desecrated the most recent case of on the purpose clearly indicates that the excellence between Sovereign and non-Sovereign powers don't have any connection within the gift times. The Apex Court command that the belief of exemption isn't any longer valid

¹¹ AIR 1967 Ori 116, (1968) ILLJ 64 Ori

¹² (1983) 4 SCC 141

¹³ 1990 AIR 513, 1989 SCR 488

¹⁴ 1993 AIR 1960, 1993 SCR (2) 581

SOVEREIGN AND NON SOVEREIGN FUNCTION

NEED FOR DISTINCTION

The Supreme Court has stressed upon the importance of creating such a distinction as within the contemporary world once, within the pursuit of their welfare ideal, the varied governments “naturally and licitly enter into several business and alternative undertakings and activities that haven't any relation with the normal thought of governmental activities within which the exercise of sovereign power is involved”. Therefore, it's necessary to limit the world of sovereign powers, so acts committed in regard to “non-governmental and non-sovereign” activities failed to go unpaid

INTERPRETATION

The immunity of the crown within the uk was supported the federal notions of justice, namely, that the King was incapable of doing wrong, and, therefore, of authorizing or instigating one, which he couldn't be sued in his own courts currently that we've got, by our constitution, established a Republican variety of Government, and one in all its objectives is to determine a socialist. State with its varied industrial and alternative activities, using an oversized army of servants, there's no justification, in theory, or publicly interest, that the State shouldn't be control responsible for its acts. However, because the Competition Act, 2002, specifies that any activity of the govt. relatable to the sovereign functions of the govt. together with all departments of Central Government managing nuclear energy, space, defence and currency area unit excluded from the Act's ambit, establishing a distinction between the sovereign and non sovereign functions becomes inevitable.

Thus, a shot has been created to tell apart the sovereign and non-sovereign functions with the assistance of principles set down within the numerous judgments rendered by the Apex Court. However, as no interpretation of the term , sovereign functions in context of exists, the differentiation must be created with the assistance of interpretation of the term as has been administered for alternative legislations. On the question of 'what is sovereign function', totally different opinions are given time and once more and makes an attempt are created to elucidate in several ways:

1. Primary and Inalienable Functions: Krishna Iyer J. in urban center facility case aforesaid that the definition of 'industry' though of wide amplitude are often restricted to require out of its scope bound sovereign functions of the State restricted to its 'inalienable functions'. on what square measure "inalienable functions", Lord Watson, in *Coomber v. Justices of Berks*¹⁵- [1883] 9 AC 61 describes the functions reminiscent of administration of justice, maintenance of order and repression of crime, as among the first and In appropriate functions of a constitutional Government. However, the Supreme Court has conjointly command that the definition will embrace the noble primary and inalienable functions of the State, although statutory delegated functions to an organization and also the reach of such functions can't be extended therefore on embrace the activities of a contemporary State and should be confined to legislative power, administration of law and judicial power

2. Regal & Non-Regal: Isaacs, J. in his dissent judgment within the united fill college *The Federated State School Teachers' Association of Australia v. The State of Victoria*¹⁶ - [1929] HCA 11; 41 CLR 569, in brief states therefore at "Regal functions square measure unavoidable and inalienable. Such square measure the legislative power, the administration of laws, the exercise of the judicial power. Non-regal functions could also be assumed by suggests that of the legislative power. however once they square measure assumed the State acts merely as an enormous corporation, with its legislation because the charter. Its action beneath the legislation, to this point because it isn't imperial execution of the law is just analogous to what of a non-public company equally authorised. These words clearly bound the range of the imperial functions as distinguished from the opposite powers of a State

3. Governmental Functions: What is meant by the utilization of the term "sovereign", in regard to the activities of the State, is a lot of accurately brought out by victimisation the term "governmental" functions though there area unit difficulties here additionally inasmuch because the Government has entered mostly new fields of business. Therefore, solely those services that area unit ruled by separate rules and constitutional provisions,

¹⁵ [1883] 9 AC 61

¹⁶ [1929] HCA 11; 41 CLR 569

like Articles 310 and 311 ought to, to be precise, be excluded from the sphere of business by necessary implication

4. Constitutional Functions: The learned judges in the *Bangalore water & Sewerage Board v. A. Rajappa*¹⁷ -1978 AIR 548, 1978 SCR (3) 207, a Sewerage Board case appear to possess confined solely such sovereign functions outside the horizon of 'industry' which might be termed strictly as constitutional functions of the 3 wings of the State i.e. executive, law-makers and judiciary. However, the idea continues to be a similar with insubstantial variations between the terms. this could be detected by the subsequent observation by the Court in *Nagender Rao and Co. v. The State of AP*¹⁸ -1994 AIR 2663, 1994 SCC (6) 205, on that perform can be, and will be, taken as imperial or sovereign perform has been recently examined by a Bench of the Court, wherever within the words of Hansaria J, the previous and archaic idea of a sovereignty doesn't survive as sovereignty currently vests within the individuals. it's attributable to this that in associate degree Australian case the excellence between sovereign and non-sovereign functions was classified as imperial and non-regal. In some cases the expression used is State perform, whereas in some Governmental perform

CONCLUSION & SUGGESTION

The "sovereign powers" of a government embody all the powers necessary to accomplish its legitimate ends and functions. Such powers should exist all told sensible governments. they're the incidents of sovereignty, all told governments of constitutional limitations "sovereign power" manifests itself in however 3 ways. By travail the proper of taxation; by the proper of eminent domain; and thru its police power. So, sovereign operate within the new sense could have terribly wide ramification however basically sovereign functions square measure primary inalienable functions that solely State might exercise. Thus, numerous functions of the State, could also be ramifications of 'sovereignty' however all of them can not be construed as primary inalienable functions. broadly speaking it's taxation, legal right and police power that covers its field.

¹⁷ 1978 AIR 548, 1978 SCR (3) 207

¹⁸ 1994 AIR 2663, 1994 SCC (6) 205

Suggested by the Courts in India is to figure out if the perform of the sovereign might are delegated to a non-public party. For anyone UN agency has studied the executive state here and abroad, the foremost sophisticated question is to grasp wherever the road between public and personal is drawn. usually the trouble is abandoned as unproductive. however once confronted with the development of "privatization,". to make a decision if privatization has reached its limits, we have a tendency to should apprehend whether or not inherent sovereign functions of presidency ar being delegated. bound exercises of public authority within the liberal state still should be performed by government. These duties ar nondelegable, or a minimum of not delegable while not continued governmental oversight. however bound government functions could also be thus basic as to not be transferable to non-public hands underneath any circumstances. There is changes in sovereign immunity pre and post independence .

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