

have got to be understood with reference to the effect of such violations mentioned in Section 4 of the Act. So, though sub-sections (1) to (3) of Section 3 declare that a transfer of an assigned land by the assignee to any other person in general, even for consideration, is *null* and *void*, such transfer by an assignee in favour of another landless poor person effected on or before 29.1.2007 for consideration is exempt from the curse of the effect of such transfer in general, as mandated in Section 3. This Amendment Act 2008 was not brought to the notice of the learned Judge, who delivered the judgment above referred. Had this Amendment Act 2008 been brought to the knowledge of the learned Judge, the said learned Judge would not have delivered the judgment in the manner he did. This Amendment Act 2008 in crystalclear terms saves the purchase of assigned land from the second defendant by the plaintiff-decree holder in the above cited decision and hence he is entitled for the relief as prayed for by him in his E.P. 148 of 2001. This Amendment Act 2008 was

not brought to the knowledge of the executing Court, the Appellate Court or the Revision Court (High Court). Without taking risk of repetition, I am of the honest view that the decision reported in 2011 (4) ALT 345 is *per incuriam* and did not rule the law correctly relating to the purchase of assigned land by a landless poor person from the original assignee or his legal heirs before 29.1.2007, as it held that such transfer/sale of assigned land is void, in the teeth of Amendment Act 2008 (Act 21 of 2008) as the said Amendment Act 2008 (Act 21 of 2008) was not brought to the notice of the learned Judge, which came into force with effect from 6.5.2008 and which is applicable to all kinds of transfers effected on or before 29.1.2007 by assignee in respect of assigned land in favour of another landless poor person, for consideration, declaring such transfers to be valid, without becoming prey of the curse under sub-sections (1) to (4) of Section 3 of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977).

## LEGAL CONCEPT OF SOVEREIGNTY IN THE PRESENT SCENARIO

By

—Dr. PULLURU SATYANARAYANA, L.L.M., Ph.D.  
Dean, Faculty of Law,  
Sebastian Kolowa University College,  
TANZANIA

*Nothing is Permanent Except Change - Anonymous*

**Sovereignty** is the quality of having supreme, independent authority over a geographic area, such as a territory<sup>1</sup>. Sovereignty is the power of State to do everything necessary to govern itself such as

making executing and applying laws, imposing and collecting taxes. Making war and peace and forming treaties or engaging in commerce with foreign nations. Literally speaking or legally speaking every country is sovereign and equal on par with the other countries. In reality are they really sovereign when they are having relationship or dependant on other countries or groups of countries educationally, politically, economically, culturally, socially, religiously and even to defend themselves by external aggression by the mighty countries.

1. "sovereignty (Politics)" Britannica Online Encyclopedia.

<http://www.britannica.com/EBchecked/topic/557065/sovereignty>. Retrieved 5 August 2010.

In the present scenario, we can say no but earlier they were sovereign. To become a member of Family of Nations only sovereign States are entitled. The United Nations Charter<sup>2</sup> says “The Organization is based on the principle of the sovereign equality of all its Members”.

According to the *Austin*, “If a determinate human superior, receive habitual obedience from the bulk of a given society, (including determinate superior) is a society political and independent”. This definition shows the internal sovereignty; whereas sovereignty over a territory is shown in the following definition “Sovereignty is the quality of having supreme, independent authority over a territory<sup>3</sup>.” As per *Austin*, sovereignty is indivisible and illimitable but sovereignty is not indivisible and illimitable because “Sovereignty has been divided and subdivided, acquired and lost, restricted and enlarged, times without number, and by various means, during the world’s history..... The history of the world is full of examples of two or more nations being merged into one, and one divided into two or more; of sovereignty lost by conquest or by voluntary surrender, and sovereignty acquired by rebellion or voluntary association. To say that a State cannot surrender or merge her own sovereignty is to deny the existence of sovereignty itself; for how can a State be sovereign (having supreme power above all other things in life and not be able to)..... dispose of herself<sup>4</sup>.” Sovereignty has been defined<sup>5</sup> as “the supreme authority in an independent political society. In this present world the supreme authority of a ruler is weakening if it comes to the violation of Human Rights of his own people by way of Crimes against humanity or Genocide as he is punished individually by the International Criminal Court.

If a State wants to join in the club of Nations, it has to forego its part of the sovereignty which is clearly manifested in the charter which has provided<sup>6</sup> “Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations”. It means that each member State has duties to perform which is prescribed by the charter or else the consequences follows. This clearly shows that States follow international law because they have by their consent reduced their powers. With regard to the relation between the States, *Max Huber* in island of Palmas Arbitration defined Sovereignty as “Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State.”<sup>7</sup>

Treaties are considered a part of international law and can impact internal affairs. In other words, ..... internal sovereignty [via treaties] ..... are subject to international law, i.e., to obligations owed to other States under international law”<sup>8</sup>. The relationship between nations are made by treaties and the treaties are part of International Law<sup>9</sup> and it is binding on the signatories<sup>10</sup> i.e., the States who ratified it owe certain duties to the other member States of the treaty. Therefore the concept of indivisible and illimitable of sovereignty is gradually diminishing. *Sabyasachi Mukerji*, C.J.<sup>11</sup> observed: “Any State in the modern times has to acknowledge and accept customary restraints

2. Article 2(1) of the Charter of United Nations

3. (<http://en.wikipedia.org/wiki/Sovereignty>)

4. *Amos Kendall, Autobiography of Amos Kendall*, William Stickney, ed., 1872, p. 597

5. *P.G. Osborne, A Concise Law Dictionary*, 5th Edition, p.297.

6. Article 4(1) of the Charter of United Nations

7. See *A.J.I.L.* (1928), Vol.22 at p.875.

8. Mohammed Bedjaoui, *International Law: Achievements and Prospects*, 1991, p. 600

9. Article 38 of the statute of the International Court of Justice

10. Article 26 of Vienna Convention on the Law of Treaties, 1969

11. *Union of India v. Sukumar Sen Gupta*, AIR 1990 SC 1692 at p.1706

on its sovereignty inasmuch as no State can exist independently and without reference to other States. Under the general international law the concept of interdependence of States has come to be accepted.” The obligations undertaken by the States by way of Treaties in order to make relations with other countries restricting the unfettered discretion of external sovereignty but internally the States are exercising more sovereignty compared to the former. Judge *Lauterpacht* said: “International Law, whether codified or not, implies essentially a restriction of the sovereignties of States whose relations it governs”<sup>12</sup>.

In internal sovereignty again the dispute comes whether exercised by the people or by the ruler. In this regard *H. Hinsley*<sup>13</sup>, commented: “To ensure the effective exercise of power.... It placed the sovereignty in the rulership. As the community became still more complex the thesis of the sovereignty of the ruler was challenged by the thesis of the sovereignty of the people, and even by the thesis that the State and the notion of the sovereignty were dispensable.” Human life would be “nasty, brutish, and short” without political authority [or any kind of Government]. In its absence, we would live in a State of nature, where we each have unlimited natural freedoms, including the “right to all things” and thus the freedom to harm all who threaten our own self-preservation; there would be an endless “war of all against all” (*Bellum omnium contra omnes*). To avoid this, free men establish political community *i.e.*, civil society through a social contract<sup>14</sup>.

Legal sovereignty implies that each State has the legal competence to, *inter alia*, participate in the international system on an

equal footing with other States, conclude treaties on the basis of consent, exclude other States from interfering in its internal affairs, govern the affairs of its domestic territory, and control its borders<sup>15</sup>. National sovereignty is the cornerstone of modern international law, even in the context of globalization. . . [and the] non-interference principle is . . . [one of its] the core values. Today, however, international law is also a law for humanity; individual people are international legal subjects<sup>16</sup>.

## Historical Background of Sovereignty

### Classical Period

In 390 BC, Plato and Aristotle discussed sovereignty although sovereignty was in place ages before they wrote about it. They called it by a different name (“omnipotence”), but it was, in fact, sovereignty or Governmental supremacy, which was always a pivotal part of every ancient kingdom and is still a core concept of the law of nations today. Justinian (483-565) in his compilation of Roman Law called “*Corpus juris*” described the “*lex regia doctrine*,” which perfectly describes sovereignty, which is called “*imperium*” where “... the People transfers to him [the monarch] and into his hands all its own right and power”<sup>17</sup>. The Roman Jurist *Ulpian* observed that the Emperor exercised absolute form of sovereignty. He is not bound by Law but his word is law and he is the law making and abiding force<sup>18</sup>. The Mediterranean basin was [considered to be] the [real] cradle of our [present worldwide] system of independent States and international organization [which went back thousands of

12. *H. Lauterpacht*, “Codification and Development of International Law”, A.J.I.L., Vol.49 (1955), p.16 at p.38

13. Sovereignty (end edn, 1986) pp.222, 225

14. [http://en.wikipedia.org/wiki/Social\\_contract](http://en.wikipedia.org/wiki/Social_contract)

15. *Richard H. Steinberg*, *Who Is Sovereign?*, 40 STAN. J. INT'L L. 329, 329 (2004)

16. *Robert Jackson*, *Sovereignty: Evolution of an Idea*, 2007, p. 123

17. *Francis Harry Hinsley*, *Sovereignty*, 2nd. ed., 1986, p.44

18. <http://en.wikipedia.org/wiki/sovereignty>

years to the advances of law by Moses, the great law giver of Israel, to the great philosophers and jurists of the ancient Greeks and Romans in the area which is generally called the cradle of civilization<sup>19</sup>.

### *Medieval Period*

Writing on the authority of the emperors of Rome, Baldus de Ubaldis (1327-1400), an Italian jurist and professor of law, explained this principle of transfer: . . . The people's authority was given over to the emperor. . . . It is one thing when the people entrust its jurisdiction [to someone as in a republic], but another when it transfers and abdicates it. If, therefore, someone who could do so sets up a superior for himself, he remains the inferior and the subject and loses sovereign authority. . . . [From this point on] sovereignty does not lie in the hands of the . . . people<sup>20</sup>.

The Monarchs were not sovereign because they were constrained by and share power with their feudal aristocracy and also were constrained by customs<sup>21</sup>. Treaties are the most common way that nation-States surrender internal control to outside entities. Even the ancient monumental Peace of Westphalia in the 1600's resulted in the kings and sovereign princes of Europe, giving up a portion of their internal sovereignty. They abandoned their authority and power over religious practices and adopted religious tolerance and freedom as the former practice severely threatened the stability and well-being of the whole European continent<sup>22</sup>.

### *Modern Period*

*John Bodin* who in 1576 in his book, "De-

Republic" has explained about the concept of sovereign. He said that, the essential element of sovereignty is the law-making power of the sovereign. Since the sovereign makes the law, he does not intend to bind himself by that law. But he rejected the notion the transfer of sovereignty from people to sovereign. Natural law and divine law confer upon the sovereign the right to rule. "No person . . . denies the historical existence of sovereign States in the ancient and mediaeval world before *Bodin*."<sup>23</sup> "Legal arrangements limiting sovereign States in the exercise of their sovereignty are numerous."<sup>24</sup>.

*Hobbes*, in his book "Leviathan" (1651) Stated that people must join in a "commonwealth" and submit to a "Sovereign Power" that is able to compel them to act in the common good. *Hobbes'* hypothesis that the ruler's sovereignty is contracted to him by the people in return for his maintaining their safety, led him to conclude that if the ruler fails to do this, the people are released from their obligation to obey him.

The second book of *Jean-Jacques Rousseau's* "Du Contrat Social, ou Principes du droit politique" (1762) deals with sovereignty and its rights. Sovereignty, or the general will, is inalienable, for the will cannot be transmitted; it is indivisible, since it is essentially general; it is infallible and always right, determined and limited in its power by the common interest; it acts through laws.

The 1789 French Revolution shifted the possession of sovereignty from the sovereign ruler to the nation and its people.) Pope Pius VI commenting on the horrors and foolishness of the French Revolution and popular sovereignty declared, ". . . After having abolished the monarchy, the best of

19. Pittman B. Potter, *An Introduction to the Study of International Organization*, 1922, p. 24

20. Joseph Canning, *The Political Thought of Baldus de Ubaldis*, 2003, p.59

21. Ibid

22. Stephen D. Krasner, "The Hole in the Whole of Sovereignty, Shared Sovereignty, and International Law," *Michigan Journal of International Law*, Vol.25, Summer 2004, p. 12

23. Satinder Kumar, *Metaphysical Polity in Ancient India*, 2000, p.60

24. Adrian Tokar, "Something Happened. Sovereignty and European Integration." In: Extraordinary Times, IWM Junior Visiting Fellows Conferences, vol.11: Vienna 2001, p.3

all Governments, it [the French Revolution] had transferred all the public power to the people — the people . . . ever easy to deceive and to lead into every excess.”<sup>25</sup>.

The American Revolution, Russian Revolution has brought the change in Sovereignty that is from the Monarchy, Anarchy to its people. The concept of Self determination started which made the people to fight against the colonial masters and got Independence. The First World War has given birth to League of Nations which tried to maintain Sovereignty among nations but was not successful and has culminated into Second World War. The Second World War has given birth to the United Nations. In 1945, the United Nations was created, and the Universal Declaration of Human Rights was signed in 1948. In 1976 the two conventions on human rights, the Convention on Political and Civil Rights and the Convention on Social, Economic and Cultural Rights took effect. States are now expected, indeed they are charged under international human rights law, not only with the responsibility of protecting their citizens and foreign residents on their territories [from human rights violations] but with that of protecting the citizens of residents of foreign countries as well<sup>26</sup>. The General Agreement on Tariffs and Trade was created in 1949 and has been regulating tariff rates ever since. The International Monetary Fund and the World Bank, both established in 1945 have lent money to sovereign States and have been imposing structural conditions on them, requiring more than simple repayment of the loan. In addition, involvement with organizations such as the International Monetary Fund impacts internal rule via powerful regulations impacting one of the most important things to Governments and that is their monetary resources and

economies<sup>27</sup>. There after the cold war between two groups of nations the Warsaw nations and NATO nations. During this time the sovereignty of the countries are respected to some extent. The Union of two Germanys and the breakage of USSR into independent republics put an end to the Cold War. The hegemony of the Sole Super Power, the America started. New type of colonialism which directly or indirectly involved in the Sovereignty of the other nations, when they did not obey the dictates of the America which led to interference in the internal affairs of Afghanistan, Iraq, Libya and other countries.

### Sovereignty and Self Determination

The sovereignty in this nation was devolved on the “people” by *King George* the 3rd in the Treaty of Peace of 1783<sup>28</sup>. The sovereignty of a State does not reside in the persons who fill the different departments of its Government, but in the People, from whom the Government emanated; and they may change it at their discretion Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and State Government<sup>29</sup>. The people of different countries are no longer tolerating the dictatorship rulers and they want the change in the regime in a free and democratic manner through self determination. In that process the Jasmine Revolution erupted in Tunisia. Tunisia’s uprising was driven by the youth of the country. It all started with a young man who set himself ablaze, igniting a popular rebellion. The young dominated the scene and over the past month dozens of young people have been killed confronting the authority’s use of deadly force. In a country where half the population is under the age

25. Pourquoi Notre Voix, 17th June 1793

26. H.W. Blom and Laurens C. Winkel, *Grotius and the Stoa*, 2004, pp. 198-199

27. Adrian Tokar, “*Something Happened. Sovereignty and European Integration*.” In: Extraordinary Times, IWM Junior Visiting Fellows Conferences, vol. 11: Vienna 2001, p. 3

28. [http://massachusettsrepublic.org/?page\\_id=243](http://massachusettsrepublic.org/?page_id=243)

29. *Spooner v. McConnell*, 22 F 939 @ 943.



of 25, that is a lot of disenfranchised, disenchanted ... just plain dissed young people. It was a popular, organic revolt, with no external influence or firebrand clerics leading it. There was really no prominent leadership at all - just young people expressing their seething frustrations and taking to the streets. Some have called it the Facebook or Twitter Revolution because social media played a critical role in fanning the flames of discontent and spreading the news to a captivated world. Tunisian President *Zine El Abidine Ben Ali* for 23 years ruled with a iron-fist fled the country<sup>30</sup>. The first Arab Revolution of the 21st century has just happened, the flame for freedom was lit in Tunisia and has ignited in Egypt. As the dictator and his despotic regime try desperately to cling to power, the people have crossed the line of fear and determined to take back their country and make it free once more. There is no turning back now. After 30 years of suffering, the people have decided enough is enough! United for Change and Justice-A Free Egypt is on the horizon<sup>31</sup>. Libya, an oil-rich nation in North Africa, spent more than 40 years under the firm, if erratic, leadership of Col. Muammar el-Qaddafi. But in February 2011, the unrest sweeping through much of the Arab world erupted in several Libyan cities. Though it began with a relatively organized core of antiGovernment opponents in Benghazi, its spread to the capital of Tripoli was swift and spontaneous<sup>32</sup>. The International Criminal Court in The Hague issued arrest warrants for Col. Muammar el-Qaddafi, his son Seif al-Islam and his chief of intelligence, Abdullah Senussi, on charges of crimes against humanity, including murder and persecution, stemming from the first two weeks of the uprising in Libya<sup>33</sup>. After days of often acrimonious debate played out against a desperate clock,

the Security Council Resolution 1973 on the situation in Libya, is a measure that was adopted on 17 March 2011 authorises all necessary means to protect civilians and civilian-populated areas<sup>34</sup>, that led to a NATO bombing campaign. Millions of people are protesting in a civilized peaceful manner to request the change of the Yemeni President (Ali Abdullah Saleh) and ruling party and the Government is killing its people with cold blood<sup>35</sup> and suppressing the revolution ruthlessly. Syrian are protesting against tyranny of Bashar AL Assad. More widespread protests in Syria including demonstrations in and around Damascus, led to the deaths of many people. Syrian human rights groups now put the total death toll in more than three months of unrest at over 1300, and in response economic sanctions on Syria are being tightened by the US and Europe<sup>36</sup>. This process of self determination has become a chain reaction in different States of the World and the fire is catching up in other countries like Saudi-Arabia *etc.*

## Conclusion

In summary, sovereignty is not power and control, it is a legal right or entitlement to rule. This is its exclusive domain. As *Hugo Grotius* said, "We must ... distinguish in Sovereignty,... between the Right itself, and the Exercise of that Right..."<sup>37</sup>. When this understanding is clearly comprehended, it is easy to understand how sovereignty is absolute, ultimate and supreme or above all, but does not have absolute or ultimate power; because control is, and always has been, limited and constricted in one way or another. This is an important distinction that can resolve much of the confusion that exists in this

30. <http://islamist.com/videos-tunisia-revolution.cfm>

31. <http://islamist.com/videos-egypt-revolution.cfm>

32. Tuesday, July 19, 2011, The New York Times.

33. June 27, The New York Times

34. <http://www.un.org/apps/news/story.asp?NewsID=37808&Cr=libya&Cr1=>

35. <http://islamist.com/videos-yemen-revolt.cfm>, August, 4, 2011.

36. <http://islamist.com/videos-syria-revolt.cfm>, June 24, 2011.

37. *The Rights of War and Peace*, Book I, Chapter 4, No.24

important area. In other words, "... At root [meaning fundamentally], sovereignty, both internal and eternal, is a legal principle [or entitlement] and should not be confused with power [or its exercise]...."<sup>38</sup>. The 1948 Universal Declaration of Human Rights has made the Sovereignty to diminish or torn down from its pedestal of supremacy as the center piece of all international law. This led to the resolutions of Security Council against the erring countries. The powerful countries like NATO taking this as an advantage particularly the US and its allies misusing the resolution to drive regime change and political assassinations which was reiterated by *Jacob Juma*<sup>39</sup>. "The Security Council Resolution is flawed, it allows everything and is

reminiscent of a medieval call for a crusade," *Putin* said "In fact, it allows intervention in a sovereign State"<sup>40</sup>. Under the guise of supporting self determination of the people by interfering in the sovereignty of other countries and helping the rebels by way of giving money, arms and ammunition by US and its allies resulting in the deaths of many people culminating to unrest in the remaining parts of the world should be discouraged or else leads to havoc in the world. The emerging trends in sovereignty is changing its colours to suit the changing situations around the World is neither taking away the power of a State completely nor making the power of a State illimitable and indivisible.

—Dr. P. SATYANARAYANA,  
H.No.5-5-110, Lashkar Bazar,  
Hanamkonda, Warangal - 506001  
9440282569

## RESPONSIBILITY OF POLICE AND LAWYERS IN SPEEDY CRIMINAL JUSTICE

By

—R. VENKATESWARA SHARMA, M.A., LL.M., DCA,  
II Metropolitan Magistrate for Railways,  
VIJAYAWADA

I have gone through the views expressed by my learned brother on the topic of role of Public Prosecutors in speedy criminal justice, and the remedies suggested for reducing the backlog of criminal cases, published in Law Summary 2011 Part 13 dated 15.7.2011. I have my own conclusions, which I would like to discuss here.

Though the Public Prosecutor has a great role in dispensation of criminal justice system, in a speedy manner, many more things are

contributing for the delay in disposal of cases, involving so many agencies. The system has to work undoubtedly with the co-operation and assistance of the said agencies. Not only the Police, Public Prosecutor and Court, and in-fact, the main pillar for smooth functioning of the work in criminal Courts, is the Counsel defending the accused. Truly speaking, cases are being adjourned, considering the request of the parties, representing through their Counsel. Can we say that, the parties are strictly invoking the provisions of Section 309 Cr.PC while seeking adjournment, and if that could be so,

38. *Richard W. Mansbach and Kirsten L. Rafferty, Introduction to Global Politics*, 2008, p. 66

39. Mail & Guardian, Johannesburg, South Africa- Jun 14, 2011.

40. NBC News and news services, updated March 21, 2011, 18.25 PM.