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State

A State is a politically organised society of people living on a defined territory with a government that exercises authority and sovereignty over them.

Meaning of State

State is the political system of a body of people who are politically organised; the system of rules by which jurisdiction and authority are exercised over such a body of people.¹

In short, State is a politically organised society. **Political** implies government. **Society** implies an association of human beings, who live a collective life and form social relations to fulfil their needs of life.

Essential elements of a state

State is a community of persons more or less numerous, permanently occupying a definite portion of territory,

¹ Black's Law Dictionary

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independent or nearly so, of external control and possessing an organised Government to which the great body of inhabitants render habitual obedience.<sup>2</sup>

So, a state must possess four elements:

- population,
- territory,
- government, and
- sovereignty.

The first two element is present in a society but the third element ie government distinguishes a state from the society for a society is governed by social relations not by any organised government. Sovereignty is a special characteristic of an independent state.

## Nation

Barker defines that ‘a nation is a group of people who share common historical experiences, culture, language, and often territory, and who have a sense of collective identity and solidarity.’

Lord Bryce says that the elements that contribute to the formation of a nation are historical development, cultural cohesion, legal structures, and civic participation.

As per World Book Dictionary, ‘A nation is a body of people living in a certain territory under one government; a country.’

The distinguishing feature of a nation is its **collective identity and solidarity** which is not essential for a state which is merely a political entity. Delving upon the characteristic of collective identity and solidarity Barker suggested that **self-determination**

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<sup>2</sup> Garner, J.W. (1910) Introduction to Political Science: A Treatise on the Origin, Nature, Functions and Organization of the State

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could be seen as the right of a nation to govern itself and determine its own political future, free from external interference. This right of self-determination is now recognized as a cardinal principle of international law and has been approved by the United Nations Organization.

State under Indian Constitution

Art 12 reads as –

“In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

Significance of definition of State at the very beginning of Part III (Fundamental Rights) of the Indian Constitution is to preserve / guarantee the fundamental rights of a person from being infringed by the State or its organs.

Article 13(2) clearly states that – “the State shall not make any law which takes away or abridges the rights conferred by this Part³ and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

Meaning and Forms of government

Government, an essential element of the State, can be said to be a set of institutions that exercises control through legal devices and imposes penalties on those who break the law.⁴

Based on the number of rulers the government may take the following forms:

³ Part III

⁴ CBSE Legal Studies XI 2016 p 20

- i.) Monarchy
- ii.) Aristocracy
- iii.) Democracy⁵

Monarchy

Monarchy is the oldest form of government wherein the state machinery works according to the commands and rule of the monarch.⁶

One man command: In its widest sense, any government in which the supreme and final authority is in the hands of a single person is a monarchy, without regard to the source of his election or the nature and duration of his tenure. In this sense, it is immaterial whether his office is conferred by election (by parliament or people) or is derived by hereditary succession, or whether he bears the title of emperor, king, czar, president or dictator. It is the fact that the will of one man ultimately prevails in all matters of government which gives it the character of monarchy.⁷

Constitutional monarch: With the development of democratic form of government, monarchical form of government declined. In some cases, as in the United Kingdom, monarchs are merely retained as the 'ceremonial' or 'nominal' heads of government, devoid of key political powers for the reason⁸ that constitutional

⁵ Aristotle uses the term polity instead. Rather he termed democracy as the perverted form of polity. But since the term democracy is a shorthand for constitutional democracy, which was termed by Aristotle as polity, is more common and is regarded rather as the normal form similar to monarchy and aristocracy whose perverted form, as per Aristotle, is tyranny and oligarchy respectively. [CBSE Legal Studies XI 2016 p 20-21]

⁶ CBSE Legal Studies XI 2016 p 23

⁷ J.W. Garner (1871-1938) quoted in CBSE Legal Studies XI 2016 p 23

⁸ C.C.Roddey quoted in CBSE Legal Studies XI 2016 p 23

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monarch is loved and respected by their people as the symbols of unity of the nation or empire.<sup>9</sup>

**Dictatorship:** Dictatorship is a perverted form of monarchy. This is the government of one man who has not obtained the position by inheritance, but either by force or consent or a combination of both. He possesses absolute sovereignty, that is all the political power emanates from his will and it is unlimited in scope. Power is exercised in an arbitrary manner, by decree rather than by law. The authority of the dictator is not limited in duration, is not subject to any other authority, for such a restriction would be inconsistent with his absolute rule.<sup>10</sup>

Modern dictatorship plays the role of **totalitarian states**.<sup>11</sup>

## Aristocracy

The word 'Aristocracy' originates from the Greek word '*aristo*' which means 'the best' and another Greek word, '*kratein*', which means 'to rule'. In aristocratic form of government, political powers of the state are vested in the hands of **a few people**. It is a form of government in which relatively small proportion of people determine the policies of the government. It can be a combination of priests, soldiers, professionals, landowners or men of wealth.

**Limited say:** In such form of government relatively a small portion of citizens have a voice in choosing public officials and in determining public policies<sup>12</sup>.

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<sup>9</sup> CBSE Legal Studies XI 2016 p 23

<sup>10</sup> Alfred Cobban (1901-1968) quoted in CBSE Legal Studies XI 2016 p 25

<sup>11</sup> CBSE Legal Studies XI 2016 p 25

<sup>12</sup> Garner quoted in CBSE Legal Studies XI 2016 p 25

**Ruling class:** Those few people are chosen from among the people of the state on varied basis, such as wealth (land owning class), education (nobles), religious positions (priestly class), family, succession, physical force etc. The ruler is considered as a class separate and superior from the ruled.<sup>^13</sup>

## Democracy

Democratic form of Government is the most popular form in the modern civilized states. The word, 'democratic' originated from the Greek word '*Demos*' meaning people and '*Kratia*' meaning rule. In democratic form of government people are powerful.<sup>^14</sup> The ruling power of the state is vested not in a particular class or classes but in the **community as a whole**.<sup>^15</sup>

So, democracy is a 'government of the people, by the people and for the people.'<sup>^16</sup> 'Government of the people' implies equal distribution of political powers and influence among the citizens of the state, 'government by the people' implies participation of all citizens in forming a government, 'government for the people' implies the rule of government for the promotion of public welfare.

## Types of democracy

Democracy exists in two major forms: Direct or pure democracy and indirect or representative.<sup>^17</sup>

### Pure democracy

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<sup>13</sup> CBSE Legal Studies XI 2016 p 25

<sup>14</sup> Pericles (495-429 B.C.) quoted in CBSE Legal Studies XI 2016 p 25

<sup>15</sup> Bryce quoted in CBSE Legal Studies XI 2016 p 25

<sup>16</sup> Abraham Lincoln (1809-1865) quoted in CBSE Legal Studies XI 2016 p 26

<sup>17</sup> CBSE Legal Studies XI 2016 p 26

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A direct or pure democracy so called is one in which will of the state is formulated or expressed directly and immediately through the people in mass meeting or primary assembly, rather than through the medium of delegates or representatives chosen to act for them.¹⁸ The political power is in the hand of the citizens of the state as a whole to enact legislations, to administer regulations and the citizens, by common vote, elect their public officers. This is referred to as initiative, plebiscite or referendum.¹⁹

Initiative is where a specified number of voters prepare a bill for acceptance or approval by legislature or general public. **Referendum** is where the bill passed by the legislature is forwarded to the voters for final ratification.

Plebiscite is where an important issue could not be decided by the government, and is decided by the votes of people.²⁰

Greek city and Switzerland: This form of democracy operated in Greek city state, Athens during 4th and 5th century BC and in Rome during the early stages of the Roman polity, as an ideal system of popular participation. This form of democracy is not possible in the states having large population and territory. In contemporary times, this form of democracy is prevalent in the provinces of Switzerland. The voters meet in open air Parliament known as Federal Assembly, to deliberate upon and decide public affairs by way of Initiative.²¹

Representative or indirect democracy

¹⁸ Garner quoted in CBSE Legal Studies XI 2016 p 26

¹⁹ CBSE Legal Studies XI 2016 p 26

²⁰ CBSE Legal Studies XI 2016 p 27

²¹ CBSE Legal Studies XI 2016 p 26-27

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Representative or indirect democracy is on the basis of universal suffrage. In this form, citizens of the country elect their representatives on the basis of popular votes. The will of the state is formulated and expressed through the representatives. The representatives form a **law making** and **law-executing** agency for a fixed term. On the matters of governance, the representatives are accountable and answerable to the public in general. This kind of democracy resembles its pure form in the sense that political power remains vested in the people, but the two differ in respect to their exercise.^{^22}

Types of representative democracy

On the basis of relation between law making and law executing bodies, representative democracy may be classified into parliamentary system and presidential system.

Parliamentary system

In parliamentary system the legislature and the executive are related to each other, by way of membership in the two bodies and their accountability. This form of government is well prevalent in India and United Kingdom. The executive body, while implementing laws and discharging its responsibilities like health, education, food and public distribution, defence, police services etc., is responsible to the legislature.^{^23}

Collective responsibility: A notable principle underlying the working of parliamentary government is the principle of **collective responsibility** which represents ministerial accountability to the legislature. The principle of collective responsibility means that the council of ministers works as a

²² Garner quoted in CBSE Legal Studies XI 2016 p 27

²³ CBSE Legal Studies XI 2016 p 27

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team, as a unit and is responsible as a body for the general conduct of the affairs of the government. All the ministers stand or fall together in Parliament, and the government is carried on as a unity.²⁴ This form of government is also termed as **cabinet government**²⁵ or **prime ministerial government**²⁶.

Presidential system

In presidential system, executive branch of the government is independent of the legislature for its tenure and actions. The chief executive is independent of the legislature as to his tenure and, to a large extent, as to his policies and acts; the nominal head of the state is also the real executive.²⁷ This form of government is prevalent in United States of America and Argentina. The president is elected by the people, whether directly or indirectly, for a fixed period unless removed on impeachment by the legislature on the grounds stated in the constitution of the country. The President appoints secretaries as executive heads of the departments, though with formal approval of law-making body. These secretaries are not members of law-making body, and do not take part in legislative deliberations or in voting a bill. The President formulates national policy, mobilizes military troops and can declare state emergency subject to ratification by the law-making body. Similarly, the bills passed by the law-making body are subject to ratification or veto of the President. Moreover, Supreme Court of the State is empowered to declare void the acts and actions of the legislature and executive. Thus

²⁴ M. P. Jain quoted in CBSE Legal Studies XI 2016 p 28

²⁵ Sir Ivor Jennings (1903-1965)

²⁶ Richard Crossman (1907-1974)

²⁷ Garner quoted in CBSE Legal Studies XI 2016 p 28

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this system works on the principle of 'separation of powers' and 'checks and balances'.²⁸

Union and provinces

Larger states are unions of smaller units or provinces. Such smaller units are states without sovereignty ie these are not independent states but subservient to the union of states. Based on the relation between union and composing units a government is classified as unitary and federal.

Unitary form of government

Unitary form of government is one where the whole state with all its units is organized under a single central Government. The local or provincial governments are created by the central Government as its subordinates for better administration. The central Government delegates powers and authority to the local or provincial Government. The whole power of Government is conferred by the constitution upon a single central organ or organs from which the local governments derive whatever authority or autonomy they may possess, and indeed their very existence. It is the characteristic of this form of government that there is no constitutional division or distribution of powers between central government of the state and subordinate local governments.²⁹

Federal form of government

Federal government as distinguished from a unitary government is a system in which a totality of governmental power is divided or distributed by the national Constitution or the organic act of Parliament creating it, between a central government and the

²⁸ CBSE Legal Studies XI 2016 p 28

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governments of individual states or other territorial sub divisions of which the federation is composed. Local or provincial government is considered as part of central government with full autonomy.^{^30}

Indian Constitution: Indian Constitution despite having adopted federal features does not claim to establish India into a federation of states; India's system of government is federal in character and unitary in spirit.^{^31}

Organs of government

A government normally functions by distributing its functions between its organs with each organ performing some specific functions. It primarily performs three functions: making the laws, enforcing the laws and interpreting the laws while adjudicating disputes. These three essential functions are termed legislative, executive and judicial functions. A government achieves **purpose of a state** through the performance of these functions. These functions constitute the minimal requirements of any form of government. Based on these functions, a government is classified into legislature (for making laws), executive (for executing laws) and judiciary (for interpreting laws).^{^32}

Legislature

The legislature formulates and expresses the 'will of the state' in the form of an Act. The 'will of state' in a representative democracy is the will, opinion and sentiments of its citizens and the public issues concerning them. The Acts are the direct source

²⁹ Garner quoted in CBSE Legal Studies XI 2016 p 31

³⁰ Garner quoted in CBSE Legal Studies XI 2016 p 29

³¹ K C Wheare quoted in CBSE Legal Studies XI 2016 p 30

³² CBSE Legal Studies XI 2016 p 20

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of law to control and regulate the institutions running in a state and society.<sup>^33</sup>

## Executive

Executives is the law enforcement agency of the government of a State, though it is commonly referred to as the government of the State. The chief function of the executive is the maintenance of internal and external administration - law and order, financial matters, infrastructure and industrial development, welfare and development of the people (health, education, labour, employment, rural and local development), environment and forests, natural resource management, trade and commerce etc., on the internal front and defence, foreign affairs, international relations etc on the external front.<sup>^34</sup>

## Judiciary

Judiciary refers to the set of courts having civil and criminal jurisdiction. With the expansion and diversification of state and its agencies, and expansion of arbitration and conciliation, tribunals and various fora have also become part of the conventional judicial system.<sup>^ 35</sup> The first and the foremost function of the judiciary is to hear and decide a case according to the law of the land. While deciding the case it has to ascertain the meaning of law which is commonly referred to as interpreting the law.<sup>^36</sup>

## Types of legislatures

Legislature may be organized as bicameral and unicameral.

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<sup>33</sup> CBSE Legal Studies XI 2016 p 32

<sup>34</sup> CBSE Legal Studies XI 2016 p 35

<sup>35</sup> CBSE Legal Studies XI 2016 p 37

<sup>36</sup> CBSE Legal Studies XI 2016 p 37

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Bicameral legislature

Bicameral legislature, implies two houses or chambers of the legislative body. The purposes and functions of the second chamber are to check hasty and ill-considered pieces of legislations, with the sober advice of experts and eminent persons. Thus, it becomes possible to examine issues from different standpoints, and to safeguard the interests of states in a federal system.^{^37}

Indian Parliament is a bi-cameral legislature, its houses being the House of People (Lok Sabha) and Council of States (Rajya Sabha). In the States of the Indian Union, the legislature consists of the Vidhan Sabha (lower house) and Vidhan Parishad (upper house). However, certain states have only one house. The House of People (Lok Sabha) consists of the representatives of citizens of the entire country living in states and union territories. Council of States (Rajya Sabha) consists of the representatives elected by the Legislative Assemblies of the states, and other nominated members from the field of art, culture, academics, sports, literature science and social service.^{^38}

In United Kingdom, the legislative houses are known by the names of House of Commons and House of Lords. In United States of America, the Congress is the legislative organ having two chambers namely House of Representatives and Senate.^{^39}

Unicameral legislature

Unicameral legislature implies one legislative house. This system is supported by the reason that the legislative body representing

³⁷ CBSE Legal Studies XI 2016 p 30

³⁸ CBSE Legal Studies XI 2016 p 30

³⁹ CBSE Legal Studies XI 2016 p 31

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people's interest must be one, failing which delays and conflicts may arise in the enactment of legislation.<sup>40</sup>

Legislature of Turkey which is known by the name of Grand National Assembly of Turkey is unicameral one. Similarly, legislature of Bangladesh which is known by the name of House of Nation is a unicameral one.<sup>41</sup>

## Separation of power

In the words of Lord Acton, 'Power tends to corrupt, and absolute power corrupts absolutely.' So, for the preservation of the political liberty of the individuals and democracy, it becomes necessary in a state to establish different organs for the exercise of powers of a government. The powers shall be so defined and divided to create a system of checks and balances of powers among the organs of the government.

**Three organs:** The powers of the government are generally divided between its organs in accordance with the nature of powers to be exercised. Broadly, the powers of a government in a State have been classified as the power to:

- i. Enact laws i.e., powers of the Legislature.
- ii. Interpret laws i.e. powers of the Judiciary.
- iii. Enforce laws i.e. powers of the Executive.

**Independence of organs:** The theory of separation of powers<sup>42</sup> in its simplest form implies that all the above functions should be

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<sup>40</sup> CBSE Legal Studies XI 2016 p 31

<sup>41</sup> CBSE Legal Studies XI 2016 p 31

<sup>42</sup> The doctrine of separation of powers emerged as a distinct doctrine in the famous book of French philosopher Charles de Montesquieu titled *Esprit Des Lois* (The Spirit of Laws) published in 1748. Montesquieu, who saw the oppressive and despotic rule of French King Louis XIV (1661-1715) wherein the ruler enjoyed the absolute powers of State and liberty of the people was suppressed (the prevailing dictum was 'I am the State'), on his visit to England experienced the sense of liberty and freedom enjoyed by the citizens of England.

entrusted to three different authorities. The three organs of the government should be kept separate and distinct. One organ should be independent of the control of others. Each organ shall exercise its powers within its own sphere. This doctrine entails that each organ shall not encroach upon or interfere with the powers and independence of other organs of government. If any organ encroaches into the terrain of the other organ, it shall be checked by another organ of the government. Thus, no new organ is created over and above the existing organs of government, to check encroachment. On the whole, separation of powers requires the existence of a written Constitution to define the formal powers of each organ. The powers shall be so defined and divided to create a system of checks and balances of powers among the organs. This view finds support from the writings of Carl J. Friedrich (1901-1984), a German-American political theorist. In the words of Wade and Phillips (Constitutional Law, 1960), separation of powers may mean three different things<sup>43</sup>:

- i. The same persons should not form part of more than one of the three organs of the Government
- ii. One organ of the government should not control or interfere with the exercise of its function by another organ
- iii. One organ of the government should not exercise the functions of another

**Check and balance:** If any organ of the government encroaches into the terrain of the other organ, it shall be checked by another organ; without necessitating creation of any new organ to oversee and check the encroachment. This entails a system-based

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He was very impressed with the thoughts of John Locke (1632-1704), the English political thinker.

<sup>43</sup> Wade and Phillips (Constitutional Law, 1960) quoted in CBSE Legal Studies XI 2016 p 42

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regulation which allows one branch to limit another. The powers shall be so defined and divided to create a system of checks and balances of powers among the organs. This means that the executive organ shall exercise some control over legislative and judiciary, the legislative organ over executive and judiciary, and the judiciary over legislative and executive organs. The system of checking the encroachment of powers by each organ and thus balancing the division of powers is termed as the system of checks and balances.⁴⁴ This kind of overseeing is captured by the maxim *le pouvoir arrete le pouvoir* (power halts power). By separating the functions of the executive, legislature and judiciary, one power may operate as a balance against another and thus have a check on the power exercised by another.⁴⁵

⁴⁴ The origin of the concept of check and balances is specifically credited to Montesquieu.

⁴⁵ CBSE Legal Studies XI 2016 p 42