



CHAPTER

1

Concept of State

UNIT I

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Learning Outcomes

Students will be able to:

- Define the term “State” in legal and political context especially international law
- Identify and explain the elements that are required by any political institution to be recognized as a State
- Define, identify and illustrate the various roles played by states in the context of the governmental control being exercised on the citizens
- Evaluate the relevance of Modern Welfare States in today’s global scenario

I. What is a State?

Black’s Law dictionary defines ‘State’ as “*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.*”

II. The concept of State and Article 12 of the Indian Constitution

Article 12 of the Constitution of India states that, “*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.*”

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As per the definition provided above, State includes the following:

1. The Government and Parliament of India, i.e., Executive and Legislature of the Union
2. The Government and Legislature of each State, i.e., Executive and Legislature of the State
3. All local and other authorities within the territory of India
4. All local and other authorities under the control of the Government of India

Quick Facts about Article 12

Facts about Article 12	
What is Article 12 of the Constitution?	It defines the term 'State' which is used in Part-III of the Constitution while mentioning the application of the provisions of Fundamental Rights of the Indian Citizen.
Is Article 12 a Fundamental Right?	Article 12 in itself is not a Fundamental Right technically, but it defines the term 'State' for the Fundamental Rights that are entailed in Articles 14 to 35.
Is judiciary a State under Article 12?	There is no explicit mention of judiciary (Supreme Courts, High Court, or Lower Courts) as a 'State' in Article 12. However, judiciary cannot make rules that are in itself violative of Fundamental Rights.

III. What is Government?

Black's Law dictionary defines 'Government' as "*the structure of principles and rules determining how a state or organization is regulated.*"

What is the difference between State and Government?

Some of the main differences between state and government are as follows:

STATE	GOVERNMENT
A State has four essential elements—Population, Territory, Government and Sovereignty.	Government is only one element of the State.
Sovereignty is the hallmark of the State. It belongs to the State.	The government exercises power on behalf of the State.
The State has sovereign ownership and jurisdiction over its territory. State is a territorial entity and territory belongs to it.	The government has the responsibility to preserve, protect and defend the territory of the State.



IV. Emergence of the State from Society

The State is usually described as 'society politically organized'. Society is an association of human beings, who live a collective life and form social relations to fulfil their needs of life. These may be physical, emotional, intellectual or spiritual. The presence of the societal institutions like family, clans, tribes, villages, religious institutions, educational institutions, work place associations etc. in a society is a fact, which cannot be denied. Society is the whole web of social relationship based on kinship, affinity, language affinity, religious affinity, common conscience of individuals and territorial affinity. Social relationships are governed by necessity, custom, courtesy, morality, mutual understanding, agreement or even contract.

When a society is governed by common set of laws, rules, regulations, and obey a supreme authority, it qualifies for being a State. The State fulfils the need of political organization of society to realize the purpose of collective living. This is what we understand from the famous phrases used by Aristotle (384-322 BCE) in his treatise Politics, where he observed that 'Man is a social animal; Man is a political animal'.

Thus, the State is formed out of society. The society is the primary association. A State is formed to regulate the political activity of individuals for social order. The State depends on society for its existence, and not vice versa.

R.M. MacIver (1882-1970) in his famous work 'The Modern State' has thus observed, 'There are social forms like the family or church or the club, which owe neither their origin nor their inspiration to the state; and social forces, like custom or competition, which the state may protect or modify, but certainly does not create; and social motives like friendship or jealousy, which establishes relationships too intimate and personal to be controlled by the great engine of the state..... The State in a word regulates the outstanding external relationships of men in society'.

V. Definition of State

According to J. W. Garner, 'state is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent or nearly so, of external control and possessing an organised Government to which the great body of inhabitants render habitual obedience'. The definition given by Garner contains all the elements of the state. The state must possess four elements, namely, population, territory, government and sovereignty.

VI. Theories on the origin of State

Political philosophers have given different theories on the origin of the state.

Theory of Kinship

The theory of kinship on the origin of State is based on sociological facts. The earliest advocate of this theory is Aristotle (384-322 BCE). In his treatise, 'Politics' Aristotle states, 'Society of many families is called a village and a village is most naturally composed of the descendants of one family, the children and the children's children..., for every family is governed by the elder, as are the branches thereof, on account of their relation, there unto.... and when many villages so entirely join themselves together as in every respect to form but one society, that society is state and contains in itself that perfection of government'.

In other words, family was the unit of society at the beginning. The blood relationship and kinship brought the members of the family together and they all accepted the authority of the head of the family. The name of the common ancestor was the symbol of kinship. Kinship created society and

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society in turn created the State. With the expansion of family arose new families and multiplication of families led to the formation of clans. With the expansion of clans, tribes came into existence and ultimately the state came into existence. Family, discipline, command and obedience are supposed to represent the origin of government. This view finds support from the writings of R.M. MacIver (1882-1970) according to which curbs and controls that constitute the essence of government is first seen in the family. There is a difference of opinion among the scholars regarding the nature of kinship.

Patriarchal Theory

According to Patriarchal Theory, in the origin and development of State, the eldest male descendant of the family had an important role to play. The Patriarchal theory finds its support from Sir Henry Maine (1822-1888). In his book 'The Spirit of Laws' (1861), Maine explained that the state developed out of the family as legitimate legal system developed out of the unrestrained autocracy of the family head (patria potestas). Under patria potestas, the eldest male parent of the family had the final and unqualified authority over the family and the household. He expanded the family ties by polygamy and thus created the bondage among the individuals on the basis of kinship to form a state. The congregation of families formed villages, and extension of villages formed tribes or a clan, ultimately to form State.

Matriarchal Theory

Matriarchal Theory finds support from political thinkers like McLennan (1827-1881), and Edward Jenks (1861-1939). According to them, patriarchal families were non-existent in the primitive ages. Polyandry (where a woman had many husbands) was the highest authority of the household. McLennan described mater familias (mother as the head of family) as the martia potestas (mother as the final authority) in matters of possession and disposal of property of the family.

Edward Jenks illustrates this process from his studies of primitive tribes in Australia. The Australian tribes were organized in some sort of tribes known as totem group. The totem groups were not organized on the basis of blood relationship but they were united by a common symbol like a tree or an animal. Men of one totem group would marry all the women of their generation belonging to another totem group. Thus, the system of marriage included polygamy as also polyandry. Kinship and paternity in such cases could not be determined but maternity was a fact.

Edward Jenks points out that with the passage of time and beginning of pastoral stage in human civilization, the matriarchal society evolved into the patriarchal one.

Patriarchal and matriarchal theories have been criticized on the ground that the authority of a state as a political institution over its individuals is not by nature but by the choice of individuals. The purpose of forming a state also differs to a great extent from that of a family. The authority to run a state is conferred on the ruler not because of his seniority, but on account of his status and competence.



The Minangkabau is the largest matriarchal society in the world. They are the indigenous tribe of the Sumatra region of Indonesia which is made up of 4.2 million members. Ownership of land, as well as the family name, is passed from mother to daughter whereas men are involved in political matters.

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Divine Theory

According to the Divine Theory, state is established and governed by God or some super human power or the King as his agent and the religious scriptures. As God created the animals, plants, trees, rivers, hills and other inanimate objects, the God also created the state for a particular end in view, that is, peace, protection and preservation of creatures on this earth. This theory found support from political thinkers such as James I (1566-1625) and Sir Robert Filmer (1588-1653). This theory implies individuals to obey and support some definite ruler with a high moral status equivalent to God. This theory adds moral character to state functions. Laws backed by religious sanctions appealed more to the primitive man to live under the authority of the king.

Hindus, Christians, Muslims, Jews, and many other faiths of this world hold a similar view, that the origin of political authority had divine sanction. Hinduism considered King Rama and King Krishna as divine incarnations on this world. The Islamic states also seek to uphold the reign of God (Allah) on earth. Christianity also traced the origin of political theory to the will of God.

Social Contract Theory

The Social Contract Theory traces the existence of the State to the mutual agreement and mutual consent of the people, to form a State. Thomas Hobbes and John Locke, both from England, and Jean Jacques Rousseau from France, are the three political philosophers who propounded this theory. They assumed that, to escape from the pre-political condition of society, individuals entered into a social contract. These theories served as the basis for modern democracy. This theory established the obedience to political authority and that ultimate political authority rested with the consent of the people. The pre-political condition of mankind was described as the state of nature.

Thomas Hobbes (1588-1679), an English political philosopher, in his literary work *Leviathan* explains the origin of the state. He explains that prior to the emergence of a civil state, human beings were in the state of nature. Hobbes began his thesis with the concept of a state of nature, which he characterised as the pre-social phase of human nature. Their lives were under constant struggle with nature. The state of nature was a condition of unmitigated selfishness and capacity. It was a condition of perpetual war 'where every man was enemy to every other man'. The life of a human being was 'solitary, poor, nasty, brutish and short'.



@ Social Contract

<https://www.politicalscienceview.com/the-theory-of-social-contract/>

To evade the state of nature, and for securing their natural rights of life, liberty and property as civil rights, individuals entered into a social contract to establish a state. The people authorized their right of governing themselves to the sovereign, which came into being as a result of the contract. The person or assembly of persons to whom the rights were surrendered became the sovereign and the individuals who agreed to submit to the authority become subjects. Sovereign here meant the King. The ruler was not a party to the contract, and was not bound by any terms of social contract and free to rule as per his whims. The commands of the sovereign were laws for the governed and the sovereign was not accountable to people. People gave their ruler unquestioned obedience.

In the words of R.G Gettle, Hobbes created the all powerful sovereign on account of his belief that without such sovereign power, law, order, peace and security could not be maintained in society.

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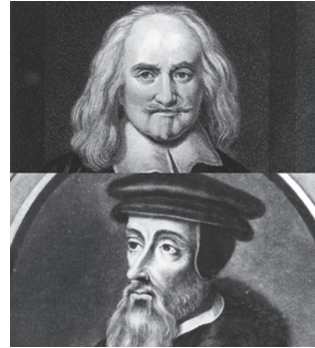


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Hobbes deprived the people of their right to revolt against the sovereign. Hobbes allowed individuals to disobey the commands only when the sovereign deprived them of their right to self-preservation or the ruler got conquered and submitted authority to a new emperor.

According to Hobbes, a change in the government meant the dissolution of the State. Thus, he did not maintain the difference between state and government as a political institution.

John Locke (1632-1704) in his book 'Two Treatises of Government' explained that the state of nature was not a state of war, but a state of peace, natural rights, preservation, goodwill and mutual assistance.



Fact:
Hobbes was named for the 17th-century philosopher Thomas Hobbes, while Calvin's name came from the 16th-century theologian John Calvin.

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Locke's state of nature was pre-political. The people were social and had rights and liberties. The state of nature ensured three rights to individuals relating to life, liberty and property. The state of nature was one of inconvenience. Life was inconvenient because each individual had to interpret the law of nature for himself and had also to enforce it without the help of any other authority. The state of nature did not have the machinery to enforce the natural rights of individuals. To preserve such state of affairs two contracts were made: social and governmental.

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Social contract led to the formation of civil society and governmental contract to the establishment of government. Social contract was among the individuals to surrender their natural rights in exchange of civil rights. Governmental contract was between the individuals and the ruler, to establish a system of law and justice in the form of a State. The ruler was the party to the contract and was bound by its terms. Unlike Hobbes, Locke traces the source of government's authority to the consent of the community.

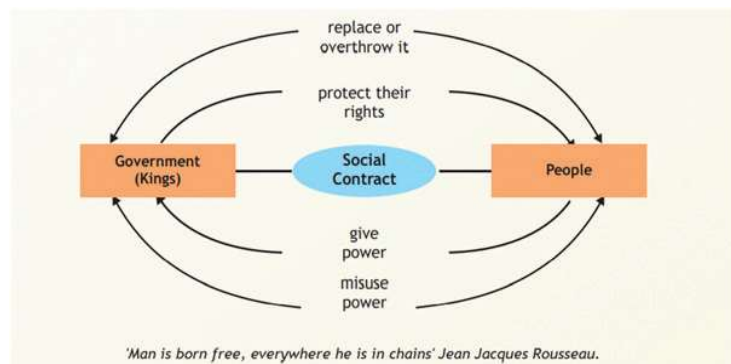
Locke introduced the concept of limited government, in terms of the rulers, their powers, functions and tenure. He believed in limited monarchy. The King was the trustee of the people. If the ruler abused his powers and breached the popular trust, he may be changed by revolt by the people.

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According to **Jean Jacques Rousseau** (1712-1778) 'the general will of the people' led to the creation of the institution called the State. Rousseau in his literary work, 'The Social Contract' described the state of nature as a state of bliss and happiness. With the passage of time, increase in population and disparity of wealth and power, life became intolerable. Simplicity and happiness disappeared. Human beings then started to build their relations on cooperation and dependency. They entered into a 'social contract' to preserve their natural rights without submitting or subordinating to any ruler or authority.

Individuals surrendered their rights to the general will of which individuals themselves were part, and hence they shared rights even after transferring them. Individuals were governed by a new

authority in the name of general will (common good) of the people, in the form of direct democracy. Rousseau regarded general will of the people as sovereign. The common good depends on the prevailing circumstances of a society. According to Rousseau, the government is merely the tool to execute the popular will. Thus, popular sovereignty is in continuous



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exercise and there is no scope of revolt in his theory.

This theory is criticized on certain common counts. First, the individuals who were naive to the concept of political authority and civil rights could not, from any particular point of time, enter into an agreement and start living a collectivized civil life. Second, if the existence of state is based on agreement of the members of a society, then the old agreement may be revoked for new in accordance with the self-interests of the members. Thus, a mechanically originated state will run under the constant fear of destabilization.

VII. Elements of a State

A. Population

The state is a human association constituted by the people living there. Population is an essential element of a state. It is the people who make a state, without them there can be no state. The people are the ones who create the state. They also maintain the resources, live on the land, and form the Government. The population must be large enough to make a state and sustain it.

Plato (429-347 B.C.E) in his book 'The Laws' suggested a figure of 5040 citizens for constituting an ideal State. Aristotle (384-322 BCE) states that the population of a state should neither be so large that administration may be inconvenient nor so small that people may not lead a life of peace and security.

Stephen Leacock (1869-1944), an English political writer had stated that the population must be sufficient in number to maintain a state organization, and that it ought not to be greater than the territorial area and resources that the state is capable of supporting.

On the nature of population, it may be homogeneous or heterogeneous in respect of race, religion, language or culture. Countries such as India, United States of America, and Canada have population marked with such diversity. People's Republic of China has a population of more than 1400 million people, whereas the smallest state in the world Vatican has a population of only 821 people.

B. Territory

A state is a territorial institution. The fixed territory and population of a state gives it a physical identity in the eyes of municipal law and international law.

The functions of a state, as a political and legal community of human beings, must first of all be exercised in a given territory. Territory is a geographical area that is owned and controlled by a government or country to exercise state sovereignty. Aristotle (384-322 BCE) favoured the State having moderate size. Montesquieu (1689-1775) said that there is a necessary connection between the size of the state and the form of government best suited to it. The fact is that the states of the world vary in terms of demographic strength. San Marino has an area of 36 sq. miles, whereas the United States of America has a territory of 37,38,395 square miles.

Territory is therefore generally described as land which belongs to the state and individuals, internal waters and territorial sea (straits) which state claims for sovereignty and the airspace above this territory (land, bodies of water, atmosphere and natural resources). Resources such as agriculture, livestock, minerals, oil, natural gas and forestry can be found on land.

Territories constitute the physical basis of the state. Nomads and gypsies can have no state because they lead a wandering life. It is important that a state should possess an undisputed territory of its own over which it should have exclusive jurisdiction. Furthermore, it should have territorial contiguity, i.e., geographically it should be one composite whole. A fixed territory is

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not essential to the existence of a state provided that there is an acceptable degree of what is characterized as 'consistency' in the nature of the territory in question, and of its population. In fact all modern states are contained within territorial limits.

In brief, a territory does not need to possess geographical unity, and it may even consist of territorial areas which lack connection, or are distant from one another. For instance, islands or other territories which are part of the mainland still constitute of territory of a state.

C. Government

Government is the political and administrative organ of a State. The state operates through its government. The state consists of all its citizens, and is a broader concept. The Government is the sum total of legislative, executive, and judicial activities of a state. It also includes internal bodies, sub-state governing authorities at the local and regional levels, such as the Municipal Corporations, Municipal Councils, Panchayats and Gram Sabhas in India. The government of a state makes provisions for the services of defence, foreign relations, levy of taxes, issue of currency, building of roads, bridges, transportation, communication, water supply, electricity, health education and other types of social and physical infrastructure. The government of a state shall be so organized that it enforces law to maintain order, peace and security. As the role of a state changes, so does the form of government.

D. Sovereignty

Sovereignty is the crucial factor that distinguishes the state from other associations. Without Sovereign there can be no state in the technical sense of the term. Sovereignty is the most essential ingredient and characteristic in the formation of the state. No state can exist without internal and external sovereignty. Internal sovereignty means that the people residing within the territory of the state give their unqualified obedience and support to the authority of the state, and further that the state is supreme in all its internal matters. It is by virtue of its sovereignty that the state makes its laws and decisions and issue commands which are binding on all citizens. The right to use legitimate coercion in its own right is exclusive to a state. Internal revolts or external aggressions may disturb a state, but the state continues to exist so long as it has legitimate sovereignty.

External sovereignty is understood as the freedom of state from external control and influence. The state should be treated at par with other states and should not be assigned any inferior position. The state should be free to enact its own laws as well as foreign policy without any external pressure.

Presently 'international recognition' is also considered as an essential element of the state. That implies the recognition of the sovereignty of the state over a given territory and population by other states.

VIII. Role of a State

Political thinkers have different opinion regarding the role of the state. In the words of Professor MacIver, "the state has no finality, can have no perfected form. The state is an instrument of social man." To many scholars the functions of the state are also different. Some consider state as a moral and ethical institution whereas others consider it as an evil institution. MacIver has referred to different notions of the state such as class organization, legal institution, mutual insurance agency, unnecessary evil, necessary evil, the march of God on earth, welfare system, power system, state as an organism etc.

Andrew Heywood, an English political writer in his book Politics, classifies the role of the state based on the functions or responsibilities that are fulfilled by the state and the ones that are left to private individuals. It will be instructive to examine the following classifications:

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A. Minimal States

The ideal of minimal states is a contribution of classical liberals. Names of political thinkers such as John Locke, Jeremy Bentham, J. S. Mill, Herbert Spencer, Robert Nozick, Friedrich Von Hayek and Milton Friedman are generally associated with this approach. The idea is to ensure the widest possible individual liberty. People who ascribe a minimal role to the state believe that a laissez-faire ('let it be' or 'leave it alone') approach to the economy is most likely to lead to economic prosperity. States' role is to protect individuals from interference in their liberty and that transactions between private individuals are voluntary and free. According to John Locke's theory, 'state acts as a night watchman' whose services are called upon when orderly existence is threatened. The state must exercise the basic role of providing protection from external attacks, enforcing agreements and maintaining domestic order. Minimal states play a minimum role in interfering with the social and economic life of the subjects.

B. Developmental States

A developmental state is characterized by having strong state intervention, as well as extensive regulation and planning. The term 'developmental state' describes the states' essential role in harnessing national resources and directing incentives through a distinctive policy-making process. The first person to seriously conceptualize the developmental state was Chalmers Johnson (1931-2010). Johnson defined the developmental state as a state that is focused on economic development and takes necessary policy measures to accomplish that objective.

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C. Social Democratic States

Social democratic states are the ideal type of states viewed by modern liberals and democratic socialists. The state functions on the principle of fairness, equality and equal distribution of wealth to achieve social, political and economic justice, equality and empowerment of its people. The state is considered necessary to promote economic growth and social well-being of its people.

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D. Collectivized States

They undertake the control of economic life, by bringing common ownership of all economic resources under their own control for the welfare of all. The state makes laws to control the private property of their citizens. People's Republic of China follows such a policy. The state takes care of the economic needs of its citizens i.e. provides food, shelter, employment and the citizens must not act against the government policies.

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E. Totalitarian States

Philosophers like Hegel and dictators such as Hitler and Mussolini held that the state must have absolute powers and individuals have no right against the state. According to this view, the state can do no wrong. The whole life of an individual is within the jurisdiction of the state.

F. Modern Welfare State

Irrespective of the classification, functions of a modern welfare state include the maintenance of law and order, establishment of justice, defence, public security and foreign relations, maintenance of public health and sanitation, water supply, transport and communication system, supply of power, electricity and essential commodities, control of banking, currency and inflation, preservation of forests, checking of trading and control of prices and measurements etc. Other functions include the removal of social exploitation and establishment of social unity, provision of economic and other benefits to weaker sections, social security to old age people, widows, orphans and disabled, protection of workers by regulating minimum wages, pension, education

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of the masses, encouragement of art and literature, scientific and technological research and cultural exchanges to increase the spirit of cultural unity and harmony among the masses.

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IX. Exercises

Based on your understanding, answer the following questions:

Q-1 Write short notes on the following-

1. Patriarchal Theory
2. Developmental States
3. Social Contract Theory
4. Totalitarian States
5. Article 12 of the Constitution of India

Q-2 Write one point of difference between the following-

1. Internal and External Sovereignty
2. Matriarchal and Patriarchal theory of State
3. Minimal and Collectivised State
4. Social Contract theory by Hobbes and Locke
5. State and Government

Q-3 Answer the following questions briefly-

1. List down the various theories on the origin of State.
2. Briefly explain the elements of a State.
3. What are the various states on the basis of its role?

Q-4 Answer the following questions in about 200 words

1. Explain the comparative views on social contract theory.
2. Define State.
3. Explain the emergence of State.

Q-5 Hobbes stated 'Man is born free, everywhere he is in chains'. In light of this statement, in which type of state would a man be chained the most and why? Give an example of such a State. If given a choice of residence, in which type of state would you like to reside? Give reasons.

Q-6 Patria, a locatable place on the world map, having a considerable territory under its control, consisted of a population of 1 million people. It was ruled by Col. George, however, the place did not gain any international political recognition as one of the major elements was missing. Identify and explain all the elements of state.

Q-7 How has the concept of state been defined in the Constitution of India? Why do you think it has been included in Part III of the Constitution?

Q-8 How would you differentiate between India as a state and the various states of India?

Q-9 Imagine yourself living in a state of nature. Which aspects of your life would you want to give up and what would you expect in return? What kind of social contract would you enter into and with whom?

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