

**LL.M IIInd Sem**  
**Jurisprudence II (L- 2002)**  
**Concept of State**

**Introduction**

The word state has been derived from the Latin word 'status', which implies standing. So, in the etymological sense, the word state denotes position or standing of a person or of a body of person. The state is the highest form of human association. It is necessary because it comes in to existence out of the basic needs of life. The most important purpose of state is to make life possible and to protect the life.

**Definition**

**Salmond-** 'State or political society is an association, of human beings established for the attainment of certain ends by certain means'

**Goodhart-** "The purpose of state is to maintain peace and order within a particular society. Therefore, the most essential purpose of state is to make life possible."

**Aristotle** – 'State is a union of families and villages having for its end, a perfect and self-sufficing life, by which we mean happy and honourable life.

**Woodrow Wilson-** 'state denotes a set of people organized for law within a definite territory'

**Oppenheim-** 'a state comes into existence when people are settled in a country under their own sovereign government'

**According to Article 12** of the Constitution of India, the term 'State' can be used to denote the union and state governments, the Parliament and state legislatures and all local or other authorities within the territory of India or under the control of the Indian government.

### **Essential element of state**

1. **Population**-it implies a significant number of human beings living together. there is no existence of the state without population. State is a community of person .it is a human political institution without a population there can be no state.
2. **Territory** -it is a very important element of state. according to Laski 'the territory of a state is the region over which it exercises sovereignty'
3. **Government**- government is a organisation of machinery or agency or magistracy of the state which makes implements, enforces and adjudicates the law of the state .each government has three organs - legislature ,executive ,judiciary.
4. **Sovereignty**-it is the most exclusive element of a state. Without sovereignty no state can exist. Sovereignty is the basis on which the state regulates all aspects of the life of the people living in its territory.

### **Classification of state**

- 1) **Ancient classification** –According to Aristotle: -
  - a) Monarchy
  - b) Aristocracy

c) Democracy

d) Polity

## **2) Modern Classification-**

a) Independent and dependent state

b) Unitary and federal state

c) Confederation

d) Imperial state

## **Theories of origin and evolution of state-**

1-The divine theory

2-The force theory

3-The social contract theory

4-The evolutionary theory

5-hereditary theory-

a) patriarchal theory

b) matriarchal theory

## **Functions of state**

### **1-primary function-**

1-to defend the territory of the state from external aggression and armed rebellion

2-to maintain law and order within the society by administering justice

**2- secondary functions-**they are required for the welfare of citizens

## **Relationship between state and law-**

**State is superior to law**-this theory was propounded by John Austin, Thomas Hobbes, Hegel and Jeremy Bentham. As per this theory, it is the state which makes law. Therefore, state is superior to law. John Austin stated that 'law is the command of the sovereign.' Therefore, the sovereign [state] has the power to enact, amend and repeal the law. However, he himself is not bound by law.

**Law is superior to state**-this theory was propounded by Harold J. Laski, Leon Duguit, Ihering and Jennings. As per theory, law is superior to state. The state is bound by law. Leon Duguit's view that the ultimate objective or end of law is to promote social solidarity. Any law made by the state in violation of the principle of social solidarity is invalid. Laski's view that rule of law exists independently of the state. For example, in India the parliament can amend the constitution, but it cannot destroy the basic structure of the constitution by an amendment. So, in India the constitution is supreme and all the organs of the government are bound by it.

**State and law are the same**-according to Hans Kelsen, state and law are the same. There is no fundamental difference between state and law.

For further clarification you may reach us via

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