

FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

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Lecture-12



Definition and Nature of State:

Let us start with the definition of state given by Max Weber. He says: A modern state is a system of administration and law which is modified by state and law and which guides the collective actions of the executive staff; the executive is regulated by statute likewise, and claims authority over members of the association (those who necessarily belong to the association by birth) but within a broader scope over all actively taking place in the territory over which it exercises domination”.

In this definition Weber calls the state as a:

- (1) System of administration and law.
- (2) It is a symbol of collective action which means whatever the state performs is always for the general public of the community and not for particular group of people.
- (3) A modern state exercises domination over the community.
- (4) Domination of the state extends over the members of the association who are natural members that are members by birth.
- (5) According to Weber the state is a public organisation and its authority extends over all the inhabitants (members of the association) of the geographical area.
- (6) The state is independent. If it is not independent it would not be possible for it to exercise control over the members of the association.
- (7) The state is capable of taking decisions and selecting preferences.
- (8) When a political organisation is the state it is also capable of taking action with autonomy. Max Weber has viewed the state from both legal and sociological points of view. According to Weber the state is a collective legal body which has coercive power.

Elements of State:

Weber in his Economy and Society and also in other works pointed out certain elements of state. Although he did not specially mention the word element we do it for the sake of clarity of discussion. The elements, in fact, constitute the most important parts of his definition.

There are, according to Weber, three elements of state:

(1) Territoriality

(2) Violence

(3) Legitimacy

Though Weber has not directly mentioned the term nation-state, the term was quite alive in his mind when he spoke of territoriality. In the earlier centuries, history tells us, the states were involved in internecine warfare and this situation considerably troubled the border and territories of different states.

But today the concept of nation- state is very developed and there is not so much problem about the border. Each state can claim certain border and it is more or less respected by other states. Territoriality is, thus, a vital element of state in the opinion of Weber.

The second element is violence. The state can demand allegiance from citizens and in the situation where some people are reluctant to show allegiance the state does not hesitate to use violent measures. But in the opinion of Weber “force is certainly not the normal or only means of the state”.

However, the force is a special means the state can use when necessity arises. He says very beautifully, “The state is a relation of men dominating men, a relation supported by means of legitimate violence”. It means that the use of force or violence is backed by legitimacy. Except state no other political organisation is authorised to use force. Hence the force or violence is an important element of state.

The third element is legitimacy. Whenever the state uses violence or physical force, it is claimed that there is justifiability behind that use of force and this type of justifiability can conveniently be called legitimacy.

The legitimacy is based on any of the following factors. The legitimacy may be a belief. People believe that the state has the power to use force. That is all. This belief prevents people from opposing the use of force. Legitimacy may be based on law, constitution or statute.

This occurs when the authority of the state assumes power through democratic or constitutional means. “The legitimacy of the modern state is founded predominantly on legal authority that is commitment to a code of legal regulations”.

MCQ

The Patriarchal theory of the Origin of State holds that:

1. A. The eldest male member was the head of the family
B. The eldest female member was the head of the family
C. The King was the agent of God on this earth
D. None of the above

2. The Patriarchal theory of the origin of state is associated with the name of:

A. Jenks

B. Henry Maine

C. Laski

D. Morgan

3. The Matriarchal theory of the origin of state is associated with:

A. Sir Henry Maine

B. Adam Smith

C. Herbert

D. Jenks

4. According to the Matriarchal theory the head of the family was:

A. The eldest male member

B. The eldest female member

C. Nominated by the King

D. Nominated by the Chief Priest

5. The Social Contract theory deals with:

A. The nature of State

B. The functions of State

C. The purpose of State

D. The origin of State