

CREATION OF NEW STATES IN INDIA

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Abstract

The demand for creation of new states fuelled, more often than not, by linguistic and regional fanaticism, has once again assumed a new urgency. The increasing demand for new states raises a number of questions with regard to the well-being of India's federal democratic polity. This study is being conducted by the researcher to investigate into the demands for the creation of new states on linguistic basis in India and the Parliaments power to do so. The basic objectives are to know on what basis the Parliament creates new states, how Parliament deals with the demand for new states on linguistic basis and the Parliaments power to form new states. The questions that need to be asked are: Does India really needs such reorganization? Can the boundaries of Indian Union be redrawn piecemeal to satisfy the aspirants of a particular region and others with a stronger case are ignored? And, what will be the fallout of such reorganization in other regions if the centre keeps on creating new states?

Introduction

The Constitution of India is the supreme law of our country and hence every law enacted by the government of India must conform to it. We know that it came into effect on 26th January, 1950. Our Constitution avows the "Union of India" to be a sovereign, democratic republic, assuring its citizens of justice, equality, and liberty and to promote among them all fraternity. In 1976, by constitutional amendments, the words 'socialist', 'secular' and 'integrity' and 'Fraternity' were added. Our Constitution is the longest written constitution of any sovereign country in the entire world. It contains 395 (three hundred and ninety five) articles in 22 (twenty two) parts, 12 (twelve) schedules and 94 (ninety four) amendments. There are totally 117,369 words in our constitution. It was written in English. That too, it was also translated into Hindi language officially. Amendments to the constitution can be made by Parliament, yet the Hon'ble Supreme Court of India held (though it is rather controversial) that not every constitutional amendment is permissible. An amendment should respect the

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'basic structure' of the constitution, which is immutable. The procedure is laid out in Article 368.

One of special features of the Union of India is that the union is indestructible but the power conferred on Parliament includes the power to form a new state or union territory by uniting a part of any State or Union territory to other State or Union territory. The identity of States can be altered or even expunged by the Parliament. The Constituent Assembly declined a motion in concluding stages to designate India as " Federation of States".

Article 1 elucidates India a "Union of States". These states are specified in the First Schedule of the constitution. First Schedule lists the States and Territories of India and also lists if any changes to borders of them. Articles 2, 3 and 4 enable parliament by law admit a new state, increase, decrease the area of any state.

Formation of new State

The authors of Indian constitution, unlike the current generation of Indians, did not believe that the states, districts and mandals within India are static, unchanging, and permanent. They had the maturity to accept that states would evolve and change, and hence made provisions for creation of new states in Indian Union.

Constitution of India

Article 3 of Indian Constitution addresses the topic of 'Formation of new States and alteration of areas, boundaries or names of existing States'. It says; Parliament may by law

- a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- b) increase the area of any State;
- c) diminish the area of any State;
- d) alter the boundaries of any State;
- e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired Explanation I In this article, in clauses (a) to (e), State

includes a Union territory, but in the proviso, State does not include a Union territory Explanation II The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

Scope of Article 3

The States and the Territories thereof after the amendment of Article 1 (2) reads: State and the territories thereof shall be as specified in the First Schedule. The Constitution contemplates changes of the territorial limits of the constituent states and there is no guarantee about their territorial integrity.¹

The intention seems to be given an opportunity to the State legislature to express its view within the time allowed. If the State Legislature fails to avail itself of the opportunity such failure would not invalidate the introduction of the Bill. There is nothing in the proviso to indicate that Parliament must accept or act upon the view of the State Legislature. Indeed two State Legislatures may express totally divergent views. All that is contemplated is that the Parliament should have before it the views of the State legislature to the proposals contained in the Bill and then be free to deal with the bill in any manner it thinks fit and following the usual practice and procedure prescribed by and under the rules of business.² What is to be referred to the State Legislature is the proposal contained in the Bill. It is not necessary that every time an amendment of the proposal contained in the bill is moved and accepted, a fresh reference should be made to the State Legislature.³

Parliament has been vested with the exclusive power of admitting or establishing new states, increasing or diminishing the area of an existing State or altering its boundaries, the legislature or legislatures of the States concerned having only the right to an expression of views on the proposals. For making such territorial adjustments it is not necessary even to invoke the provisions governing constitutional amendments.⁴

Article 3 (a) enables Parliament to form a new State and this can be done either by the separation of the territory from any state or by uniting two or more States or parts of States, or by uniting any

¹ INDIA CONST. art. 1 (2) (e).

² Babulal Parathe v. State of Bombay, A.I.R. 1960 S.C. 51(53-54): (1960) 1 S.C.R. 605; 1960 S.C.J. 107.

³ *Id.*

⁴ *Id.*

territory to a part of any state. There can be no doubt that foreign territory which after the acquisition becomes a part of the territory of India under Article 1 (3) (c) is included in the last clause of Article 3 (a). Thus Article 3(a) deals with the problem of the formation of a new state and indicates the modes by which a new state can be formed.⁵

Article 3 (b) provides that a law may be passed to increase the area of any State. This increase may be incidental to the reorganization of States under Article 3 (b) may have been taken out from the area of any state may also be the result of adding to any state any part of the territory specified in Article 1 (3) (C). Article 3 (d) refers to the alteration of the boundaries of any State and such alterations would be the consequence of any of the adjustments specified in Article 3 (a), (b), (c). Article 3 (e) refers to the alteration of the name of any State.⁶

In *R.C. Poudyal & Ors. v. Union of India*⁷, Article was discussed and it was observed: “It cannot be predicted that the article confers on Parliament an unreviewable and unfiltered power immune from judicial scrutiny. The power is limited by the fundamentals of the Indian constitutionalism and those terms and conditions which the Parliament may deem fit to impose, cannot be inconsistent and irreconcilable with the foundational principles of the Constitution and cannot violate or subvert the constitutional scheme. The validity of a statute is to be tested by the constitutional power of the Legislature at the time of its enactment by that Legislature, and if thus tested, it is beyond the legislative power, it is not rendered valid.

Criterion for the formation of new States

The demands for the formation of linguistic states began in August 1946, little more than a month after the elections to the Constituent Assembly. Pattabhi Sitaramayya, a member of the Congress Working Committee and Congress President in 1948, called for the formation of linguistic states and said that ‘the whole problem must be taken up as the first and foremost problem to be solved by the Constituent Assembly.

During the freedom movement, the Indian National Congress had favoured the provincial division of the country on linguistic basis. The Nehru Committee of All Parties Conference in 1928 said

⁵ Ref. by President of India under Article 143 (1), A.I.R. 1960 S.C. 845 (859): (1960) 3 S.C.R. 250 : (1960) S.C.J. 933.

⁶ *Id.*

⁷ *Id.*

“language as a rule corresponds with a special variety of culture, tradition and literature. In the linguistic area all these factors will help in the general progress of the province.” However, after attaining Independence the top leaders of the Congress were not unanimous on provincial division of the country on linguistic basis.

The Linguistic Provinces Commission also known as Dhar Commission, which was appointed by the Government on June 17, 1948 at the recommendation of Constituent Assembly considered it “inadvisable” to reorganize the Provinces mainly on linguistic basis. It suggested that geographical continuity, and financial self sufficiency, administrative convenience, capacity for future development should be generally the recognized test for reorganization of provinces.

Similarly, the Jawaharlal- Vallabhbhai- Pattabi Committee, that was appointed in the same year by the Indian National Congress in its findings sounded a caution against linguistic principles and shifted its emphasis on security, unity and economic prosperity of the country for reorganization of states. The JVP Report, submitted on April 1, 1949, contained a perceptive analysis of the situation, and two of its sentences reflect its own difficulties as well as the dilemma racking India: “We feel that the present is not an opportune moment for the formation of new provinces.” Yet the members also believed that “If public sentiment is insistent and overwhelming, we, as democrats, have to submit it, but subject to certain limitations in regard to the good of India as a whole....”.⁸

In the absence of unanimity among the then central leadership on provincial division on linguistic consideration, reorganization of states was kept in abeyance for some time. However, Sriramalu, a prominent Congress leader from Telugu speaking region of the then Madras Province went on fast unto death from October 19, 1952 demanding a separate state for Telugu speaking people. Large scale violence that followed his death after 56 days of fasting on December 15, 1952, compelled the Government to announce the creation of the first state on linguistic consideration and Andhra Pradesh was formally created on October 1, 1953. This opened a flood gate of demands for creation of new states and the Government finally appointed a State Reorganization Commission (SRC) in 1954 with Justice Fazl Ali as Chairman and Hriday Nath Kunzru and K.M. Pannikar as members. By and large the SRC recommended creation of states taking into consideration

⁸ Indian National Congress, *Report of the Linguistic Provinces Committee*, pp.9 and 15.

the preservation of the unity and security of the nation, linguistic and cultural affinity of the people and financial, economic and administrative viability.

Supreme Court verdict

A constitutional democracy also refers to legal verdicts which decide on the interpretation and set a precedent on applicability of a certain clause from Indian constitution.

Back in 1960 a Bill was introduced in the Indian Parliament proposing the formation of Maharashtra and Gujarat. This Bill was referred by the President to the State Assembly to obtain their views. Upon receiving the views, the Bill was passed in the Parliament. A petition was filed against this by Babulal Parante in High Court of Bombay:

His contention was that the said Act was passed in contravention of the provisions of Art. 3 of the Constitution, since the Legislature of Bombay had not been given an opportunity of expressing its views on the formation of the composite State. The High Court dismissed the petition.

In this case, *Babulal Parante v. State of Bombay*⁹, the Court explains the provisions of Article 3 of Indian Constitution:

The period within which the State Legislature must express its views has to be specified by the President; but the President may extend the period so specified. If, however, the period specified or extended expires and no views of the State Legislature are received, the second condition laid down in the proviso is fulfilled in spite of the fact that the views of the State Legislature have not been expressed.

The intention seems to be to give an opportunity to the State Legislature to express its views within the time allowed; if the State Legislature fails to avail itself of that opportunity, such failure does not invalidate the introduction of the Bill.

Nor is there anything in the proviso to indicate that Parliament must accept or act upon the views of the State Legislature.

Clearly, Indian Constitution envisioned a situation where a state may refuse to provide its view or provide negative views about a

⁹ 1960 A.I.R. 51, 1960 S.C.R. (1) 605.

formation of a new state, and therefore gave full powers to Indian Parliament to go ahead with its decisions irrespective of opposition from the State Assembly.

The case of Telangana

Hyderabad is the largest city of the Telangana region in Andhra Pradesh. A Movement for separate Telangana State is a burning topic since 1948. Telangana came under the Muslim rule of the Delhi Sultanate in the 14th century. In 1948, Indian Army ousted Nizam to include Hyderabad and its regions into India. In 1953, Andhra was formed as a State under Reorganization of States based on linguistic lines. Though there was a demand for a separate state of Telangana in the year 1956, it was merged with Andhra, which has resulted in several protests in Hyderabad. It was quelled by police killing and also, some of the protestors.

Conclusion

The constitutional provision under Article 3 was incorporated with a benevolent idea to realize geographical and economic unification of India but now it seems that this provision has become a tool for satisfying regional and linguistic aspirations of people and an instrument to achieve electoral gains. The two terms “Linguistic” and “Cultural” have never been more misused than in recent times.¹⁰

It is difficult to understand what has happened to our power of assimilation and why the feeling of linguistic and regional fanaticism is gaining ground day by day. The increasing demand for new states apparently manifests this tendency cropping up in our country and unfortunately by creating more states, our government has further intensified the problem.

The notion of “small is beautiful” seems to be illusionary; at least past experiences suggest that. It would be the most profound mistake if anyone thought that creation of new states is panacea for all the problems. The need of the hour is to concentrate more on development of the states already existing. It is immaterial whether the state is small or big; what is required is a strong political will to govern with full honesty and sincerity. Development requires a conducive atmosphere to be created by both; leaders and citizens.¹¹

¹⁰ Sharma Siddharth (2003), *Creation of New States: Need for Constitutional Parameters*, ECONOMIC AND POLITICAL WEEKLY, p. 3973.

¹¹ *Id.*

The provision under Article 3 of the Constitution, that the centre may destroy the very existence of a state by altering its boundary lines in a way it chooses, gives a picture of unitary form of government actually prevailing in our country in the garb of federalism. The fundamental principle that a federation depends upon the territorial integrity of states seems to have been overlooked.

The further division of the country has led to turmoil and agitation in the country leading to a further growing demand for creation of new states, where everyone wants a state according to his/her own whims and fancies. The regional ties have become so strong that it has given rise to a phase where in the regional roots have gained predominance over the national unity and integrity. There are fasts until death and people are coming out on roads asking for their own state as if state is nothing but a toy that could be handled and modified according to them. And all of this is being done in the name of Linguistic division to support the development of the state and ensure better governance.

The research done in this project on the basis of the data collected goes on to prove the hypothesis that “The power to form new states is resulting into divisions of nation and thus is a threat to national integrity.”

Suggestions

Under the cover of reorganization of states, a gradual balkanization of the country should not be encouraged, as that would defeat the Preamble mandate of and our persistent quest for ‘national integrity.’

The need of the hour is to concentrate more on development of the states already existing. It is immaterial whether the state is small or big; what is required is a strong political will to govern with full honesty and sincerity. Development requires a conducive atmosphere to be created by both; leaders and citizens and not division of states on the claims of aiding the development of the states.

There should be formation of a new body which looks into state reorganization. Formation of new states should be left to a competent commission or to any other body or authority that may be set up either ad hoc for a particular purpose or in general terms as a kind of statutory, constitutional authority having quasi-judicial character that may decide upon the issue. Economic viability is an important aspect as many times we have

witnessed that a newly created State lacks required financial resources to carry on its functions. Therefore, no new state should be created unless it has the resources or revenue to incur at least 60 per cent of its expenditure from the day of its coming into existence.”¹²



¹² *Id.*