PART III

STATE GOVERNMENT

CHAPTER V

STATES AND UNION TERRITORIES

SYNOPSIS

A. TERRITORY OF INDIA

India has been characterised as a 'Union of States' [Art. 1(1)]. The territory of India comprises States, Union Territories and any other territory that may be acquired by the Government of India at any time [Art. 1(3)].

Today India has the following 27 States:[1] Andhra Pradesh; Assam; Bihar; Chattisgarh; Gujarat; Haryana; Jharkhand; Kerala; Madhya Pradesh; Tamil Nadu; Maharashtra; Karnataka; Orissa; Punjab; Rajasthan; Uttar Pradesh; Uttaranchal; West Bengal; Jammu & Kashmir; Nagaland; Himachal Pradesh; Manipur; Tripura; Meghalaya; Sikkim; Mizoram[2]; and Arunachal Pradesh.[3]

There are seven Union Territories as follows: Andaman and Nicobar Islands; Chandigarh; Delhi; Goa, Daman and Diu; Dadra and Nagar Haveli; Lakshadweep; and Pondicherry.[4]

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1. Arts. 1(2), 4 and 152 and the First Schedule to the Constitution.
2. Mizoram was a Union Territory. The Constitution (Fifty-Third) Amendment Act, 1986, conferred statehood on Mizoram. For this Amendment, see, Ch. XLII, *infra.*
3. The Constitution (Fifty-fourth) Amendment Act, 1986, conferred statehood on Arunachal Pradesh, another former Union Territory. For this Amendment, see, Ch. XLII, *infra.*
4. The First Schedule to the Constitution.

B. PARLIAMENT'S POWER TO REORGANISE STATES

(a) ADMISSION OF NEW STATES

Parliament is empowered to enact a law to admit into the Union, or establish, new States 'on such terms and conditions as it thinks fit' [Art. 2].

Under this provision, Parliament cannot admit or establish a new Union Territory. This can be done only by a constitutional amendment. Accordingly, constitutional amendments had to be passed under Art. 368 when Portuguese and French territories were taken over by the Government of India and admitted into the Indian Union as Union Territories of Goa, Daman and Diu, Dadra and Nagar Haveli and Pondicherry.[5]

The power to admit new States into the Union under Art. 2, as mentioned above, is very wide. In the very nature of the power it has to be wide. Its exercise is necessarily guided by political issues of considerable complexity many of which may not be judicially manageable. However, the words "on such terms and conditions as it thinks fit" used in Art. 2 do not confer on Parliament "an unreviewable and unfettered power immune from judicial scrutiny". The Supreme Court has observed in relation to Art. 2:[6]

> "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. This is not to say that the conditions subject to which a new state or territory is admitted into the Union ought exactly be the same as those that govern all other States as at the time of the commencement of the Constitution."

Thus, under Art. 2, Parliament cannot over-ride the constitutional scheme. If a law goes beyond the constitutionally permissible latitudes that law can be questioned as regards its validity.[7] "The contention that the *vires* of the provisions and effects of such a law are non-justiciable cannot be accepted".[8]

In an earlier case,[9] the Supreme Court had observed that the power conferred on Parliament under Art. 2 "is not power to override the constitutional scheme."

(b) REORGANISATION OF STATES

Art. 3 enables Parliament to effect by law reorganisation *inter se* of the territories of the States constituting the Indian Union.

The reasons for drafting Art. 3 as it is are as follows. When this article was being drafted, the Princely States had not been fully integrated. There was also in the air the possibility of reorganising the States on linguistic basis. The Constituent Assembly foresaw that such reorganisation could not be postponed for long. Accordingly, Art. 3 was incorporated in the Constitution providing for an easy and simple method for reorganisation of the States at any point of time.

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5. For discussion on Art. 368, see, *infra*, Ch. XLI.
6. *R.C. Poudyal v. Union of India*, AIR 1993 SC 1804, 1845 : 1994 Supp (1) SCC 324.
7. For further discussion on this point, see, *infra*, Ch. IX, sec. B, under the heading "Sikkim".
8. *Poudyal*, AIR 1993 SC, at 1845.
9. *Mangal Singh v. Union of India*, AIR 1967 SC 944, 946 : (1967) 2 SCR 109.

Parliament is empowered to enact a law to reorganise the existing States by establishing new States out of the territories of the existing States, or by uniting two or more States or parts of States, or by uniting any territory to a part of any State; or by altering their boundaries, or by separating territory from, or increasing or diminishing the area of, or by changing the name of, a State [Art. 3].

The power of Parliament is exclusive and plenary[10]. That is why it has been said that "India is an indestructible Union of destructible units".[11]

The exercise of this power by Parliament is subject to the following conditions : (1) A Bill for any such purpose cannot be introduced in a House of Parliament except on the recommendation of the President.

(2) If the Bill affects the area, name or boundaries of a State, then before recommending its consideration to Parliament, the President has to refer the same to the State Legislature concerned for expressing its views on it within such time as he may fix [Proviso to Art. 3].

The term "State" in Art. 3 includes a 'Union Territory', but in case of a 'Union Territory', no reference need be made to the concerned Legislature to ascertain its views and Parliament can itself take any action it likes in the matter [Explanation I to Art. 3].

The purpose of the provision is to give an opportunity to the State Legislature concerned to express its views on the proposals contained in the Bill. Parliament is in no way bound by these views. All that is contemplated is that Parliament should have before it the views of the State Legislature affected by the proposals contained in the Bill, but the Parliament is free to deal with the matter in any manner it thinks fit and may accept or reject what the State Legislature says. Parliament is not bound to accept or act upon the views of the State Legislature.

If the State Legislature fails to express its views within the stipulated time, Parliament is free to proceed with the matter as it likes. If once a Bill has been referred to the State Legislature, it can later be amended by Parliament and no fresh reference to the State Legislature is required to ascertain its views on the proposed amendments.[12]

When Parliament acts, under the above-mentioned constitutional provisions, to admit or create new States, or to reorganise the existing States, it can also effect such amendments in the First and the Fourth Schedules to the Constitution as may be necessary to effectuate the new proposals [Art. 4(1)].[13]

Parliament may also make all consequential, supplemental and incidental provisions as may be necessary to effectuate the new proposals, such as representation of new units in Parliament, setting up of the legislative, executive and judicial organs of the State essential to the effective state administration under the Constitution, expenditure and distribution of revenue, apportionment of assets

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10. *Mullaperiyar Environmental Protection Forum v. Union of India*, (2006) 3 SCC 643, 653 : AIR 2006 SC 1428; See also *State of Orissa v. State of A.P.*, (2006) 9 SCC 591, 595.

11. *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184, 248, 291 : (2007) 2 JT 1.

12. *Babu Lal Parate v. State of Bombay*, AIR 1960 SC 51 : 1960 (1) SCR 605.

13. The First Schedule to the Constitution contains the names of the States and the Union Territories and defines their territories and boundaries.

The Fourth Schedule to the Constitution lists the number of seats allotted to the various States and Union Territories in the Rajya Sabha, *supra*, Ch. II.

and liabilities, provisions as to services and other related matters. Any such law enacted under Arts. 2, 3 and 4 is not regarded as an amendment of the Constitution for the purposes of Art. 368 [Art. 4(2)].[14] This means that a law made by Parliament to reorganise the States would not be invalid even if it is inconsistent with any constitutional provision. Parliament thus has plenary and comprehensive powers to pass legislation to reorganise the States and Union Territories and to deal with all problems—constitutional, legal, administrative—arising as a result thereof.

Rejecting a challenge to the constitutional validity of section 108 of the States Reorganization Act, 1956, it was held in *Mullaperiyar Environmental Protection Forum*[15] that the power of Parliament to make law under Articles 3 and 4 is plenary and traverses over all legislative subjects as are necessary for effectuating a proper reorganization of States. Constitutional validity of a law made under Articles 3 and 4 cannot be questioned on the ground of lack of legislative competence with reference to the Lists of the Seventh Schedule and the power of the State to enact laws in List II of the Seventh Schedule is subject to parliamentary legislation under Articles 3 and 4.

Nevertheless, the power does not authorise Parliament to override the constitutional scheme. "No State can, therefore, be formed, admitted or set up by law under Art. 4 by the Parliament which has not effective legislative, executive and judicial organs."[16]

Article 170 fixes the minimum strength of a State Legislature Assembly at 60. When the Haryana State was established in 1966, the strength of the interim legislature was fixed at 54. The provision was challenged as being inconsistent with Art. 170, but the Supreme Court upheld it under Art. 4. *Prima facie*, the provision undoubtedly was an amendment of the Constitution but under Art. 4(2) it was not to be treated as such.[17]

Elucidating the scope of the power conferred upon Parliament by Arts. 2, 3 and 4, the Supreme Court has pointed out in *Mangal Singh v. Union of India,*[18] that the law referred to in Arts. 2 and 3 may alter or amend the First Schedule to the Constitution which sets out the names of the States and description of territories thereof, and the Fourth Schedule allotting seats to the States in the Rajya Sabha.

The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to setting up of the legislative, executive and judicial organs of the State essential to the effective state administration, expenditure and distribution of revenue, apportionment of assets and liabilities, provisions as to services and other related matters.[19]

Power conferred on Parliament by Arts. 2 and 3 is to establish new States conforming to the democratic pattern envisaged by the Constitution, and is not power to override the constitutional scheme.

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14. Art. 368 lays down the formal procedure to amend the Constitution, See., Ch. XLI, *infra*.
15. *Supra.*
16. *Mangal Singh*, *supra*, note 9, at 946.
17. *Ibid*. See also *Manohar S. Prabhu v. Union of India,* 1987 (1) Bom CR 130.
18. AIR 1967 SC 944, 946.
19. *State of Uttaranchal v Siddharth Srivastava,* (2003) 9 SCC 336 : AIR 2003 SC 4062.

In *Poudyal*,[20] consequent on the conferment of full-fledged statehood on Sikkim within the Indian Union, and the enactment of Art. 371F for the purpose,[21] two crucial questions were raised for the consideration of the Supreme Court:

(1) Can a seat be reserved in the State Legislature for a representative of a group of religious institutions to be elected by them; and

(2) can seats be reserved in favour of a particular tribe far in excess of its population in the State?

Provisions to this effect made in Art. 371F and various enactments were challenged. Art. 371F was challenged on the ground that it was inconsistent with the basic features of the Constitution,[22] *viz.*, equality and secularism.[23] The Court by a majority upheld these provisions in the light of historial, cultural and political background of Sikkim. The majority ruled that "the provisions in the particular situation and the permissible latitudes, cannot be said to be unconstitutional" and that:

> "the impugned provisions have been found in the wisdom of Parliament necessary in the admission of a strategic border-state into the Union. The departures are not such as to negate fundamental principles of democracy."[24]

Since the inauguration of the Constitution, Parliament has passed several Acts to reorganise the States and settle boundary disputes between one State and another. In 1956, an extensive reorganisation of the States was undertaken on a linguistic basis, and Parliament passed the States Reorganisation Act, 1956, for this purpose.[25]

In all, up-to-date Parliament has passed 23 Acts under Arts. 3 and 4 since 1950 to effect changes in the areas, boundaries and names of the States.[26]

In the U.S.A., the consent of the concerned State Legislature is essential before a State can be reorganised.[27] In Australia, in addition to the consent of the State Legislature, the consent of the electors in the affected State is also stipulated.[28] On the other hand, in India, what is needed is a mere reference of the proposals to the concerned State Legislature for expression of its views and, subject to this stipulation, the matter of State reorganisation rests solely with Parliament. But, in practice, it is one thing to have a formal or legal power and quite another thing to exercise it. Keeping the political realities in view, Parlia-

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20. *Supra*, note 6.
21. For Art. 371F, see, Ch. IX, *infra.*
22. See, *infra*, Ch. XLI, for discussion on the Doctrine of Basic Features of the Constitution.
23. See, *infra*, Chs. XXI and XXIX for discussion on these concepts.
24. AIR 1993 SC at 1852.
25. *REPORT OF THE STATES REORGANISATION COMMISSION*, (1955).
Besides language and culture, the Commission also took into account such other factors as preservation and strengthening of the unity and security of India; financial, economic and administrative considerations; planning and promotion of the welfare of the people in each State as well as of the nation as a whole.
26. *REPORT OF THE SARKARIA COMM.*, 73. A suit has been filed by Maharashtra in 2004 for transfer of certain Marathi-speaking areas in Karnataka. During its pendency, a petition has been filed in 2009 by Maharashtra in the Supreme Court challenging the Constitutional validity of certain provisions of the States Reorganisation Act, 1956 and the Bombay Reorganisation Act, 1960.
27. Art. IV, s. 3(1) of the U.S. Const.
28. Ss. 123 & 124 of the Australian Constitution Act, 1900.

ment is not free to act at its sweet will without some sort of public acceptance of, or acquiescence into, the proposed measure of reorganisation.

Hitherto, proposals for reorganisation have been implemented by Parliament in response to public clamour. Parliament has been given such an extensive power under the Constitution to re-organise the States because the demand for reorganisation of the States on a linguistic basis was already in the air at the time of Constitution-making and the Constitution-makers thought it advisable to devise a machinery to complete the task of reorganisation smoothly and without much difficulty as and when it was taken in hand in future. The consent of the States to reorganisation was not made mandatory as there was an apprehension that some States might not like the idea that parts of their territories be taken away to constitute new States or to be merged with other States.

A question being debated at present is whether there ought to be a few more States by breaking some colossal States existing at present. There are local agitations here and there for carving out a few more States.[29] In principle, there seems to be nothing wrong in having a few more States than the present 27. If the U.S.A., with a population of 27 crores can have 50 States, India with one billion people can also have more than 27 States. It is well known that a big State is administratively unwieldy and unmanageable. Comparatively speaking, a smaller State can be administered more efficiently.

Though India can very well afford to have a few more States, what is necessary is that the new States ought not to be carved out on an *ad hoc* basis in a piecemeal manner keeping only political expediency in view. A commission should be appointed to study the question of formation of States deeply in all its aspects keeping in view *inter alia* such factors as administrative convenience, geographic homogeneity, economic viability *etc*.

C. CESSION OF TERRITORY

The powers given to Parliament to reorganise States cannot be availed of by it to cede any Indian territory to a foreign country. This point was settled by the Supreme Court in an advisory opinion in 1960.[30]

To settle certain boundary disputes, India had agreed to transfer some territory to Pakistan. A question referred to the Supreme Court by the President for advice under Art. 143 was whether Parliament could cede Indian territory to a foreign country by making a law under Art. 3, or was an amendment of the Constitution under Art. 368 necessary?

The Supreme Court held that Art. 3, broadly stated, "deals with the internal adjustment *inter se* of the territories of the constituent States of the Indian Union". The authority of Parliament "to diminish the area of any State" envisages taking out a part of the area of a State and adding it to another State; the area diminished from one State must continue to be a part of India and it "does not contemplate cession of national territory in favour of a foreign country". Thus, Indian territory can be ceded to a foreign country only by enacting a formal

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29. Demands for the creation of Telangana out of Andhra Pradesh and a separate "Bundelkhand" state from Uttar Pradesh, are some present instances.

30. *In ref. on Berubari,* AIR 1960 SC 845 : 1960 (3) SCR 250, *supra,* Ch. IV, Sec. F.

amendment of the Constitution under Art. 368 to modify the First Schedule to the Constitution.

Explaining the above ruling later, the Supreme Court stated in *Maganbhai v. Union of India*,[31] that a constitutional amendment is necessary in a case where *de jure* and *de facto* Indian territory is ceded to a foreign country. But settlement of a boundary dispute between India and another country stands on a different footing. The settlement of a boundary dispute cannot be held to be cession of territory. This matter rests with the Executive.

The factual situation in the instant case was as follows. Hostilities broke out between India and Pakistan on a boundary dispute in Kutch. The matter was then referred by both countries to a tribunal for arbitration. The question arose whether the award of the tribunal could be implemented by an executive act, or was a constitutional amendment necessary? The Supreme Court ruled that it could be done by executive action as it involved no cession of territory, but amounted only to demarcation of the boundary line on the surface of the earth.[32]

31. AIR 1969 SC 783.
32. Also see, *Union of India v. Sukumar Sengupta*, AIR 1990 SC 1692 : 1990 Supp SCC 545.