Benxi, Liaoning, China 1,549 workers died. Over 3,000 people suffered deformities due to release of Mercury compounds for 37 years by petrochemical company in Minamata Bay, Japan. This disease was known as *Minamata* disease. In Italy a chemical manufacturing plant released toxins in the atmosphere in 1976 due to which 3,000 pets and farm animals died and more than 50,000 animals were affected. More than 200 people suffered from *chloracne* and other symptoms. In one of the worst industrial disasters in the history of Industrial disasters known as Bhopal Gas Disaster in India, occurred on 3rd December, 1984, due to release of poisonous gases from Union Carbide plant more than 5,000 people died and thousands of people are suffering from untold health hazards till today. It has affected a generation of people. In 1986 environmental hazards were created due to the release of Toxic agrochemicals in to Rhine River in Switzerland. In Dhaka, Bangladesh 1,129 people killed when an eight story building which housed five garment factories, collapsed.

Corporate Responsibility does not simply mean appropriate measures for avoiding industrial disasters. Corporate Social Responsibility thrusts upon the Corporate houses to contribute their part to the society, the environment, the local people, maintaining labour standards, fair trade practices and their accountability to not only the share holders but also to the stake holders. Strict measures are required to ensure compliance by the Global Corporate entities to practise Corporate Social Responsibility as a liability upon them. There should be a mechanism and legal framework to report complains and penal action against the defaulting companies.

The United Nations shall take a proactive role in formulating the norms of Corporate Social Responsibility for the Multi National Enterprises. The United Nations shall establish an accrediting and auditing agency to assess the Corporate Social Responsibility of the Global and Transnational Corporate entities. The entities which comply to the standards prescribed by the Union and its Agencies shall be given credence by the member states. Those who do not comply shall not be the preferred companies in International trade. The Business Corporations which comply with the National and International norms of Corporate Social Responsibility shall only be allowed to be listed in the Stock Exchanges. The Corporate Social Responsibility shall not be a mere exercise of enhancing the brand image. There should be a clear Reporting mechanism to examine the activities of Corporate Social Responsibility. After comprehensive scrutiny and review of Corporate Social Responsibility, the agencies designated by the United Nations shall accord grades to the Multinational Enterprises. A corpus fund shall be generated to meet the expenses towards rehabilitation of the victims of Industrial Disasters.

FORMATION OF A NEW STATE AND CONSTITUTIONAL PROCEDURE

By

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On 15.8.1947, the British India was granted independence as the separate dominions of India and Pakistan. The British Raj dissolved their treaty relations with more than 500 princely States and the said States have acceded to either India or Pakistan. Most of the States joined Indian union and a few to Pakistan. Bhutan and Hyderabad opted for independence and the Hyderabad with the armed intervention of India conquered

Hyderabad and brought into Indian Union. Since India is a country in unity with diversity of multi languages, castes, several religion and regions, in post independence era, there were several demands for formation of New States mostly based on the language and will of the people.

In the recent battle for separate Statehood, Telangana is created as a 29th State of Indian Union after 40 years old struggle for distinct identity. However the formation of new State will not happened overnight as it may take minimum one year to follow the constitutional mandate. When the Constitution of India came into force on January, 1950, India became a Union of States (earlier called Provinces) that had extensive autonomy, and Union territories, which were administered by the Central Government. Under the Constitution, there were three kinds of states-nine Part A states, eight Part B states and ten Part C states. Part A states were former governor's provinces in British India. Part B states were the former princely states. Part C states included a few princely states as well as former provinces governed by chief commissioners. India became the democratic republic in the year 1950, several issues have emerged between the States, Central Government and Parliament in the process of formation of New States from the year 1956 till the recent times of Telangana. The framers of Indian Constitution have clearly defined the role of the State Legislature, Union Government, Parliament and President of India in reorganizing the States.

One of greatest 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.

Dr. *Bhimrao Ramji Ambedkar*, as Chairman of the Constitution Drafting Committee, who was the Chief Architect of The Constitution of India. explained the position as to "Federation of States"[1]:

> "... that though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation and that the federation not being the result of an agreement, no state has the right to secede from it. The federation is a union because it is indestructible. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. ..."

The proviso of Article 3 makes it compulsory on the part of the President to refer the bill to the legislature of the 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.

The issues which impinge on the creation of new State(s) are dealt with under Articles 2, 3 and 4 of the Constitution of India

Article 2: Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Article 3: Formation of new States and alteration of areas, boundaries or names of existing States— Parliament may by law—

1. The Constituent Assembly debates.

(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

Article 4: Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters—(1) Any law referred to in Article 2 or Article 3 shall contain such provisions in the amendment of the First Schedule and the fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of the constitution for the purposes of Article 368.

Scope of Article 2:

This Article provides that foreign territories which, on acquisition, become part of the territory of India under Article 1(3)(c) can by law be admitted into the Union under Article 2. Such territories have to be admitted into the Union or may be constituted into the States on such terms and conditions as Parliament may think fit; and such territories can also be dealt with by law under Article 3(a) or (b)

Scope of Article 3

When the writers of Constitution were drafting Article 3, our nation was not fully integrated or well organized as some Princely States were not included and States Reorganization Commission was working on forming linguistic states. Keeping in view the need for formation of new states, an enabling provision giving power to the Parliament was incorporated in Article 3. For this purpose the Constitution provided a simple and easy process for 'reorganizing' a new State. Article 3 says that Parliament can enact a law to reorganize the existing states by separating new state out of 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. If the Parliament acts as per these provisions of the Constitution, it will automatically effect a change in the Schedules, without necessitating a separate Constitutional Amendment. The Bill approved by the Parliament would change those schedules to suit the new state. Hence Constitutional amendment is also not required.

The steps for creating a new state are as follows: A bill on a new State has to be recommended by the President. In India it

is the Executive *i.e.*, the Union Cabinet based on a proposal of the Department of States, Ministry of Home Affairs, GoI which requests the President to do that. *Article 3 makes it clear that the Parliament is the sole authority on making a decision on a new State.* President then refers the bill to the State Assembly for its views giving it a certain period of time. Parliament is not obligated to follow the views of State Assembly. If the State Assembly does not express its opinion within the specified period of time, the bill could be introduced in the Parliament after the expiry of the specified period.

The convention started within the Home Ministry in the re-organisation process started in 2000 has been that the process of creation of a new state starts with a Resolution passed by the State Legislature that a separate State be formed from its existing territory. However, this is not mandatory and raises the following questions. Why did the authors of the constitution put complete responsibility of creating new states only with the Parliament? Why did they not provide a bigger role for a State Assembly other than expressing 'its views' on the topic?

To understand the intentions behind a certain clause in our Constitution the Constituent Assembly Debates (CAD) can be referred to. When the Constituent Assembly was deliberating in November 1948 on the scope and content of Article 3, there was a proposal by Prof. *KT Shah* that the *legislation constituting a new State from any region of a State should originate from the Legislature of the State concerned.* Had this procedure been approved, the power to decide the statehood of a region seeking separation would have been vested with the State Legislature dominated by the elite of developed regions. Opposing the same and using the then demand for an Andhra Province as an example, Shri *K. Santhanam* stated as under: "I wonder whether Professor *Shah* fully realises the implications of his amendment. If his amendment is adopted, *it would mean that no minority in any State can ask for separation of territory… unless it can get a majority in that State Legislature.* Take the case of Madras Province for instance. The Andhras want separation. They bring up a resolution in the Madras Legislature. It is defeated by a majority. There ends the matter. The way of the Andhras is blocked altogether. They cannot take any further step to constitute an Andhra province." Thus Article 3 emerged in its current form.

It is thus the Constitutional intent that *the will of the people of a region to form a separate State be the sole criterion for the Centre to initiate the process of State formation.* This is the Constitutional Benchmark for creating a new State for a region, as amply demonstrated in the deliberations of the Constituent Assembly and as reflected in the current phraseology of Article 3 of the Constitution of India. This interpretation of Article 3 prevailed over creation of many new states in modern India thereby nearly doubling the number of States in the last fifty years.

The sole exception to the plenary power of the Parliament under Article 3 is that of the State of Jammu and Kashmir which has its own Constitution and it would not be possible for the Parliament of India to increase or diminish the area of J&K, to alter its name or boundaries in the manner provided under Articles 3 and 4, unless the Legislature of J&K consents.

The plenary powers of the Parliament were confirmed again by the Supreme Court in the case [*Mullaperiyar Environmental Protection Forum v. U.O.I*][2] on 27.2.2006 when it observed that: "The creation of new States by altering territories and boundaries of existing States is within the exclusive domain of Parliament. The law making power under Articles 3 and 4 is paramount and is not subjected to nor fettered by Article 246 and Lists II and III of the Seventh Schedule. The Constitution confers supreme and exclusive power on Parliament under Articles 3 and 4 so that while creating new States by reorganisation, the Parliament may enact

2. AIR 2006 SC 1428.

provisions for dividing land, water and other resources; distribute the assets and liabilities of predecessor States amongst the new States; make provisions for contracts and other legal rights and obligations. The constitutional validity of law made under Articles 3 and 4 cannot be questioned on ground of lack of legislative competence with reference to the lists of Seventh Schedule. The new State owes its very existence to the law made by the Parliament. It would be incongruous to say that the provision in an Act which gives birth to a State is *ultra vires* a legislative entry which the State may operate after it has come into existence…….. The power of Parliament to make law under Articles 3 and 4 is plenary and traverse over all legislative subjects as are necessary for effectuating a proper reorganisation of the State".

Supreme Court Verdict

A constitutional democracy also refers to legal verdicts as well as Presidential References under Article 143(1) to the Supreme Court 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 Shri. *Babulal Parate* in High Court of Bombay:

His contention was that the said Act was passed in contravention of the provisions of Article 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*[3], the Supreme Court explained the provisions of Article 3 as follows:

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.*

Prior to the amendment of provision in 1955 (5th Constitutional Amendment) the view so the State Legislature were to be ascertained not only with respect to the proposals to introduce the bill but also with respect to the 'provisions' of the Bill. The amended proviso has omitted these words and it now requires only a reference of the Bill which comes within the purview of Article 3. Now an opportunity is given to the concerned State Legislature and the Government to express their views without giving them a veto. If they fail to avail the opportunity, the Bill can take its due course, and they are then bound to accept the award of the Union Parliament.

Thus is there nothing 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 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. It is also not necessary to make a fresh reference to the State Legislature nor is any fresh reference recommendation of the President required every time an amendment of the proposal contained in the Bill is moved and accepted in accordance with the rules of procedure of Parliament. The States Reorganisation Bill, 1956 when referred to the Bombay Legislature, proposed for the reorganisation of the State of Bombay into three separate units, namely,

3. AIR 1960 SC 51 = 1960 (1) SCR 605.

(i) UT of Bombay, (ii) State of Maharashtra and (iii) State of Gujarat. But the Bombay State Re-organisation Act provided for a composite state of Bombay. In the same *Babulal Parate v. State of Bombay*[4], the Supreme Court held that even though it was a substantial modification that does not mean that it was not a proper amendment of the original proposal or that the State Legislature had no opportunity of expressing its views on all aspect of the subject-matter of the proposal. Mention may be made that the views of the State Legislature are not binding on the Parliament. This view has also been reiterated in the Supreme Court judgment where a challenge was made to the previous State Reorganisation Acts enacted in the year 2000 in the case *Pradeep Choudhury and others v. U.O.I.*[5], Transfer Case (Civil) No.62 of 2002. The Supreme Court in its judgment delivered on 5th May, 2008 had held that "consultation with the State Legislature although is mandatory but its recommendations were not binding on the Parliament. 'Consultation' in a case of this nature would not mean concurrence. It also *inter-alia* held that even in a case where substantive amendment is carried out, the amended Parliamentary Bill need not be referred to the State Legislature again for obtaining its fresh views".

Effect of Re-organisation of territories on existing laws

In the case of *State of Maharashtra v. Narayan Shamrao Puranik*[6], the Court held that such powers vested by virtue of an Act under Article 3 would continue to exist unless specifically repealed by an act of Parliament. It observed that, *'The Act is a law under Article 3 for reorganisation of States. Article 4 of the Constitution provides that the law referred to in Article 3 may contain "such supplementary, incidental and consequential provisions, as Parliament may deem necessary'…. These powers continue to exist by reason of Part V of the Act, unless Parliament by law otherwise directs. The Act is a permanent piece of legislation on the statute book. Section 14 of the General Clauses Act, 1897 provides that, where, by any Central Act or Regulation, any power is conferred, then unless a different intention appears, that power may be exercised from time to time as occasion arises.'* The Supreme Court in *Ram Kishore v. UoI*[7], made it clear that when an adjustment or reorganisation of territories takes place, the existing laws as well as administrative orders in a particular territory continue to be in force and continue to be binding upon the successor state, so long as they are not modified, changed or repudiated by the successor state. This position was further amplified by the Supreme Court in *State of Punjab v. Balbir Singh*[8] in which it held that, "*When there is no change of sovereignty and it is merely an adjustment of territories by the reorganisation of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified changed or repudiated by the Governments of the successor States. No other view is possible to be taken. The other view will merely bring about chaos in the administration of the new States.*"

Article 3 and the State Legislature under Article 356

On July 5th, 1966, the President made his proclamation under Article 356 regarding the State of Punjab and declared that the powers of the Legislature of the said State shall be exercisable by or under the authority of Parliament. He suspended certain provisions of the Constitution in relation to Punjab which were the proviso to Article 3 and clause 1 and sub-clause (a) of clause (2) of Article 174. The validity of the relevant sections of the Punjab Re-organisation Act, 1966 was challenged on the ground that the views of the Punjab Legislature were not ascertained while making changes in the boundaries of the State in *Manohar Lal v. UoI*[9]. However it was held that in view of the clear power conferred by Article 356(1)(a)(b) to declare that 'the power of the Legislature of the State shall be exercisable by or under the authority of the

4. AIR 1960 SC 51 = 1960 (1) SCR 605.
5. (2009) 12 SCC 248.
6. (1982) 3 SCC 519.
7. AIR 1966 SC 644.
8. AIR 1977 SC 629.
9. AIR 1970 Del. 178(180).

Parliament', it enacted the Punjab Re-organisation Act by which all the powers of the Legislature of the concerned State to make laws were conferred on the President. This situation arose only as a direct consequence of the Legislature being unable to meet for any purpose whatever during the period when the Governor's power to summon the Legislature was itself suspended. Thus, Article 3 remains validly in use, without referring the bill to the State Legislature to express its view where the State is under the President's rule.

Effect of Article 255

Under Article 3, a bill can be introduced on fulfilling two conditions: (i) recommendation of the President, and (ii) reference of the Bill to the Legislature of the affected State. But Article 255 debars the Courts from enquiring into the validity of a law on the ground that the Bill was introduced without such recommendation, but Article 255 shall not apply to the State of J&K.

Scope of Article 4

The effect of Article 4 is that the laws relatable to Article 2 or 3 are not to be treated as constitutional amendments for the purpose of Article 368, which means that if legislation is competent under Article 3, it would be unnecessary to invoke Article 368. In fact using this provision, Article 371 was amended when new States were created - Bombay Reorganisation Act of 1960 when Maharashtra and Gujarat were formed and in 1971 when Article 371(B) was amended by the North Eastern Areas (Reorganisation) Act.

The Supreme Court in *Mangal Singh v. UoI*[10] had rejected the argument for a constricted reading of Article 4 by specifically observing as follows:

> "*On the plain reading of Article 4, there is no warrant for the contention advanced by Counsel for the appellants that the supplemental, incidental and consequential provisions, which by virtue of Article 4 Parliament is competent to make, must be supplemental, incidental or consequential to the amendment of the First or the Fourth Schedule. The argument that if it be assumed that Parliament is invested with this wide power it may conceivable exercise power to abolish the legislative and judicial organs of the State altogether is also without substance. We do not think that such power is contemplated by Article 4. Power with which Parliament is invested by Articles 2 and 3 is power to admit, establish, or form new States which conform to the democratic pattern envisaged by the Constitution; and the power which parliament may exercise by law is supplemental, incidental or consequential to the admission, establishment or formation of a State as contemplated by the Constitution, and is not power to override the constitutional scheme. No state can therefore be formed, admitted or set up by law under Article 4 by Parliament which has not effective Legislature, executive and judicial organs.*"

The Constitutional procedure mandated in Articles 2, 3 and 4 make it clear that the Parliament is having sole authority on making a decision on New States and the Parliament is vested the absolute powers by the Constitution of India in order to maintain political unity of the nation by taking a decision to sort out the internal demand of the people of particular region. However the makers of the Constitution were wise enough and the opinion of the State Legislature is also sought for discussions in the Parliament for giving a representation to reflect the will of the people of the concerned State. Besides this even the High Court and Supreme Courts can also have judicial review of the Acts pertaining to creation of New States. In this regard the Apex Court and various High Courts have rendered the verdicts clearly interpreting the powers of the Parliament and the State Legislatures. The fathers of our Constitution have realized at the time of drafting Articles 2, 3, 4 and 5 and visualized about the situation of disintegration of unity of the Country and therefore the Parliament was made as a Supreme in creating the New States in the Country and accepted the genuine demands of the people for New States on the basis of language, region and culture.

10. (1967) 2 SCR 109.