Statehood for Telangana : Some Constitutional Dinensions

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Let me at the very outset express my sense of humility at being asked to deliver Prof. B. Janardhan Rao Memorial Lecture. Prof. Janardhan Rao was a person of exceptional integrity, and he brought to his scholarship, and his activism, a deep empathetic understanding of the human dignity inherent in all, irrespective of their status in society. In his academic and social work relating to the issues confronted by tribal communities, and in his untiring efforts to promote the cause of statehood for Telangana, he was guided by the core principles of social justice. To be able to pay our respects to such a soul is to be afforded a fresh chance to rededicate ourselves to the cause of social justice, and thereby reconnect with our own humanity. I must also place on record our debt of gratitude to the family of Prof. B. Janardhan Rao, for sharing him with us in his lifetime, and sharing his memories with us through these memorial lectures. Mrs Janardhan Rao your family continues to enrich us all as human beings. Thank you.

I will speak about the cause of Telangana. To speak about anything else, at this memorial lecture, while the dignity of Telanganites is being denied, would mean that we would have to be untrue to the memory of Prof. B. Janardhan Rao.

There are many aspects to Telangana, its history, its culture, its people, and of course, the injustices suffered by Telanganites, especially those at the bottom of the social totem pole. We have spoken about such injustices, and have waged a ceaseless struggle for nearly six decades now for statehood of Telangana within the constitutional structure of a sovereign, democratic republic of India. That over such a long period the same issue finds sustained emotional response amongst the people of this region is indicative of the extent of discrimination and injustices suffered by them, particularly those belonging to socially disadvantaged segments. Let there be no doubt that the question of Telangana is one of consistent and extensive moral, political and constitutional neglect by successive governments at the levels of the Union of India and the state of Andhra Pradesh.

I have chosen to speak about the issue of statehood of Telangana from a constitutional perspective. This is important, both for those who live in Telangana, as well as all the other citizens with even a modicum of respect for constitutional values, because certain features and aspects of the Constitution are being deliberately ignored and flagrantly violated by the powers that be. Specifically, this lecture will touch upon the constitutional goals of justice -social, economic and political, the promise of promotion of a fraternity that

assures human dignity of individuals, the extent of powers vested in the Union of India, in Article 3 of the Constitution, and the imperatives of Article 38 of ensuring social justice in all walks of life and national institutions, and eliminate inequalities in status, facilities and opportunities, not only of individuals, but also amongst groups of them living in different areas. The denial of statehood for Telangana, over the past six decades, and the delay in its formation, after the Government of India made an official announcement on December 9, 2009, constitutes a fraud on the face of the Constitution.

The analysis that I will present here is not intended as an argument in a court of law. Whether a constitutional court would take cognizance of such issues depends on many factors, including the assessment of jurists as to whether deeply political aspects are amenable to judicial resolution at a particular point of time. Nevertheless, descriptions and analyses of constitutional neglect, in the context of governance and political discourses, is vital for the health of the constitutional project. Alternately stated, the arguments that constitutional values have been negated ought not to be premised only on the fact that constitutional courts have held so. Constitutionalism as a living spirit and a guide to social and political actions that maintain social harmony, and promote human dignity of all, cannot be seen as being merely dependent upon what a few judges say in a few of the billions of instances that the Constitution is implicated in daily life. Ours is a constitution that unequivocally places affirmative obligations on the nation-state, of which we the people are also a part of, to achieve a social transformation. Consequently, it is imperative that constitutional values be articulated in governance and political discourses to eliminate the conditions that truncate the delivery of protections assured and promises made, in the Constitution, to individuals and groups of people. It could also be reasonably surmised that such a practice would strengthen the social and political will to sustain the constitutional project.

The goals of the Constitution have been most eloquently articulated in the Preamble. The purpose of constituting ourselves as a nation-state was to assure for every citizen: JUSTICE – Social, Economic and Political; LIBERTY – of thought, expression, belief, faith and worship; EQUALITY – of status and opportunity, and to promote amongst all the citizens a FRATERNITY assuring the dignity of the individual, and the unity and integrity of the Nation. The Preambular exhortations find their expression, inter alia, as an imperative in Article 38 which provides that ***"(1) The State shall strive to promote the welfare of the***

people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life; (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." It is important to point out that the aforesaid principles, though not enforceable by the courts, as stated in Article 37, are ***"nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws."*** Consequently, we must understand that the task of informing all national institutions with social justice, and elimination of inequalities in status, facilities and opportunities of people residing in different regions to be "fundamental to governance" and indeed a "a duty of the State". The expression "the State" refers to both the Central Government as well as the government at the level of the sub-national politico-administrative units, such as individual states.

The great souls who led us to freedom, and the framers of our Constitution, had a vast understanding of human history, including the struggles of mankind to ensure the dignity of the individual and groups of them. The principal lesson learnt by mankind, by the time India became an independent nation-state, was that without justice prevailing in the affairs of people, peace and fraternity would not be possible, and that the only desirable politico-social collective was one which was informed by justice. A primordial task of a nation-state is the promotion of a fraternity, in which justice, equality and liberty would prevail, and thereby assuring the individual and groups of them their inherent human dignity. Such a task can be sustained if and only if every individual, and groups of them, feel the dedicated gaze of concern of the nation-state as to the extent that conditions of justice, liberty and equality prevail as a consequence of constitutional governance. Where injustices, and inequalities are allowed to fester, and the expression of dissatisfaction with prevailing conditions is met with repression, one would have to conclude that the soul of the nation state has been lost.

Our freedom movement was one of intense struggle, over a very long period, against a colonial power that was indifferent to principles of justice, liberty and equality, and their application in the affairs of those they ruled. Our Constitution, by placing the goals of justice, equality and liberty, and the promise of a fraternity that protects human dignity of

individuals and groups, as the very essence of governance, articulates the premise that the soul of the nation would remain lost so long as such goals are not being consistently sought to be achieved and the pledge redeemed. The framers of our constitution realized that unless freedom was used for, and self-governance is tuned towards, achievement of those goals, the lasting peace of a just fraternal order would not be feasible within the boundaries of the nation-state that they were helping the people of India to constitute. To struggle for creation of an environment in which such a pursuit is unrelenting is to struggle to reclaim our national soul, and the human dignity of all Indians. If within an existing politico-administrative unit at the sub-national level, such as a state, injustices and discriminations are perpetuated against vast swaths of people of an area or a region, then to not struggle for the creation of a new state that would enable those people to benefit from a proper constitutional governance, is to abandon the soul of the Constitution. To not wage a peaceful but sustained struggle for a new state, especially when those who have suffered and continue to suffer grievously, belong to the most disadvantaged segments of our population, is to abandon our own claim to humanity and human dignity. In such a situation, the nation would be lost irretrievably.

We attained our independence as one nation, and constituted ourselves as a nation-state. Local politico-administrative units, such as states, within the geographic region of that nation-state, cannot be deemed as permanent and inviolable entities. When we became a nation-state, given the national purpose, outlined above, and our historical experiences, we placed the primordial, though not the sole, responsibility of ensuring equitable social, political and economic development of all the citizens and groups of them living in different regions, and of ensuring the sustenance of the hope that constitutional values evoke, on the Union of India. One such primordial responsibilities of Union of India is to redraw the boundaries of the states, and where necessary create new ones if people of any region are consistently being denied the benefits of anxious constitutional governance that seeks to achieve conditions of justice, equality, liberty, and a fraternal order in which human dignity, of the individual and the group, is protected.

The Union of India is permanent within territorial limits set forth in Article 1, and thus held to be indestructible. In as much as the nation-state of India was constituted by the people of India as a nation by our Constitution, the indestructibility of the nation-state is premised on the continuing faith of the people in the Constitution itself. Within such an

indestructible nation-state, by virtue of Article 2 to 4 of the Constitution, the states and other similar politico-administrative units are not assured of any territorial integrity. The Constitution itself recognizes the need for states, in order to ensure, inter alia, better delivery of constitutional governance on account of legislative and executive competence within a limited set of fields that may have greater resonance and specificity at the local level. The permanence and inviolability of permanently marked boundaries of a state within the Union of India is neither assured, nor would it appear as desirable if the very goals of delivery of benefits of constitutional governance do not reach individuals or groups of them living in particular areas.

The division of powers, between the Union of India and states is quasi-federal in nature, with the final responsibility of safeguarding the constitutional project being placed on the Union of India. The quasi-federal structure can also be discerned by the fact that, inter-alia, the power of delineation of the boundaries of a state, a localized politico-administrative unit, was left to the Union of India. This power is expected to be used, inter-alia, to enable the nation-state to choose the areas that are to be demarcated as states, with legislative competence on subject matters enumerated in the State List of the Seventh Schedule read with Article 246 of the Constitution. Obviously, the powers to exercise such choices were vested in the Union of India to meet new circumstances, including situations in which people of one region or area of an existing state are consistently being denied the benefits of proper constitutional governance. Once the Union of India, through the operation of its powers, specifically located in Article 3 – which we will examine shortly – creates the states, the division of powers between the Union of India, and the various states, as provided in the Constitution comes into play, and the structure of governance would then take on more federal features, all as enumerated in the Constitution. This implies that the powers to create a new state, or alter the boundaries of an existing state, or increase or decrease the area of a state, or change the name of a state are all prior in stature to the subsequent division of legislative competencies.

One of the mischievous arguments often propagated, and repeated ad nauseam without much thought, by opponents to the formation of Telangana as a separate state, is that formation of such a state would violate the federal character of the nation-state, and thereby violate the Constitution. This is far from the truth. It is indeed true that Article 1 specifies that India shall be a Union of States. However, that expression needs to be

understood in the context of the very first line of the Preamble, in which the phrase "We the people of India" is used. Consequently it is to be understood that we, the people belonged to one nation, and constituted ourselves into a nation-state, with one citizenship and not into pre-existing sub-national politico-administrative units. As explained by Dr. Babasaheb Ambedkar,[1] the word "union" was chosen to indicate that (i) the Indian federation is not the result of any agreement of the units; and that (ii) the component units have no freedom to secede from it. While the definition of India as a "Union of States" indicates the important role that states, i.e., local politico-administrative units, have to play in governance of the people living in different regions of the Country, the Union itself not being the result of an agreement of units (i.e., states or any other politico-administrative units), and the Union having preceded the formation of such states, the power to create new states or alter the boundaries of existing states vested in, and continues to vest in, the Union of India. The word "union" was deliberately selected by the Drafting Committee from the Preamble to the British North America Act to make it clear that the type of federation that the Constitution was creating was more akin to the Canadian type and not the type in United States. The Supreme Court has explained this very well:

> *"In a sense, therefore the Indian Union is federal. But, the extent of federalism in it is largely watered down by the deeds of progress and development of a country which has to be nationally integrated, politically and economically coordinated and socially, intellectually and spiritually uplifted".*[2]

From the above, one could confidently state that how the geographic regions within the boundaries of our country are organized into local politico-administrative units below the level of national government is dependent upon the assessment of the Union of India as to whether the constitutional project is being best served by existing demarcation of states, or whether further or new demarcation is necessary. The sustenance of the hope that Union of India will always pay anxious attention to whether groups of people residing in different parts of the country are receiving appropriate levels of constitutional attention, and the benefits of proper constitutional governance, in various states is thus an important and essential aspect of the structure of our Constitution.

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[1] Constituent Assembly Debates, Vol VII, No. 1, p.43.
[2] State of Rajasthan v Union of India (1977) 3 SCC 592.

It is in light of the above that one needs to read and understand the purport of Article 3 of the Constitution. In particular, it reads as follows:

> ***Formation of new States and alteration of areas, boundaries or names of existing States: Parliament may by law:***
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> ***(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.*** (emph. added)***.***

The text of Article 3 clearly indicates powers of widest amplitude that have vested in the Union of India. Such powers are necessary to effectuate a better pursuit of the constitutional goals, and to assure to the people living in various regions that the Union of India has the constitutional capacities to discharge its responsibility of being the primary or ultimate protector of constitutional rights. The exercise of such power would be imperative where the people of a region have been denied the benefits of constitutional governance within the boundaries of an existing state, and instead been subjected to widespread injustices and discrimination. Such an imperative, within the constitutional schema, has to be seen as a command for urgent action, when attempts by the Union to mitigate the conditions of injustice and discrimination within the existing state have failed. When numerous attempts have been made, over decades, to ensure the benefits of constitutional governance to the people of a region, and they have failed, no reasonable government, functioning in accordance with the spirit of the Constitution, ought to shirk from its responsibility to come to the conclusion that denial of statehood to the people of such a region would be to perpetuate conditions of injustice, inequality, bondage and a social order not marked by fraternity or conducive to human dignity. The failure to act in such

circumstances would be to ignore the Constitution, and undermine its very moral authority. That would be tantamount to a clear fraud on the face of the Constitution.

One of the falsehoods propagated by those opposed to grant of statehood for Telangana has been that the demand for Telangana constitutes a threat to national integrity, especially the territorial integrity of the country. This is not merely a dubious proposition, but also an attempt to deny to the people of Telangana the solicitude of Parliamentary action to safeguard their constitutional rights. In a democracy, which we believe we are, the wishes of the people are essential elements of what is considered by Constitutional functionaries, such as the President, and institutions of constitutional governance, such as the Parliament. To declare, as a knee jerk reaction, the very demand for Telangana as even remotely anti-national is to deny the opportunity to the people of Telangana to express their views regarding how the promise of constitutional governance, and the hope of achievement of the goals of fraternity and human dignity, marked by conditions of justice, liberty and equality, are being denied to them, within the politico-administrative unit called Andhra Pradesh. When such a knee jerk reaction translates into brutal action by the apparatus of the State, against protagonists of statehood of Telangana, it would be reasonable to conclude that the Constitution is being denuded of the sanctity of democratic participation of the people, and also its moral content. For a body, allegedly functioning as a committee of inquiry on behalf of the Central Government, to recommend measures to squelch the voices of the people of Telangana, by means unholy and unconstitutional, is to demonstrate the willingness on the part of many of those opposed to the grant of statehood to Telangana to defile the Constitution, and hence the nation itself.

The history of the struggle for statehood of Telangana is itself a testimony to the denial of constitutional governance in the region. The unification of certain provinces of the erstwhile state of Hyderabad with districts of the State of Andhra was itself opposed by the people of this region. This was so, on account of the fears of the people of this region that on account of their relatively lesser degree of progress on the political and economic fronts, they would become victims of exploitation by politico-business classes of the other regions being fused with Telangana districts. These fears were clearly recognized by the States Reorganisation Commission. This was also recognized by no less a person than the then Prime Minister of India, Pandit Jawaharlal Nehru. It was the spirit of patriotism, coupled with a belief in the promises being made by “gentlemen” from the other regions that made the people of Telangana accept the formation of Andhra Pradesh. There is also the not so small

matter of the promise, by Panditji himself, that if the fusion worked to the detriment of the people of Telangana, then the only morally acceptable course would be to grant statehood to Telangana. For decades thereafter, not withstanding the repeated protests by the people of Telangana, about injustices and discriminations perpetrated against them, and imploring the Union for assurances of constitutional governance that can come about only through the formation of a separate state of Telangana, the people of this region have been subjected to horrific discriminations, and perpetuation of injustices on a vast and unfathomable scale. All political compromises, and even constitutional amendments, have been systematically frustrated at the very first opportunity by the ruling elite from the other two regions, the loot and plunder of resources of Telangana were allowed to continue unabated, and very few benefits allowed to reach the people of Telangana.

It is clear from the kind of constitutional analysis that I have engaged in, and appreciation of the history of the injustices wreaked on the people of Telangana, and their struggle for the promise of constitutional governance that statehood would imply, that not forming the state of Telangana for so long a period itself ought to be viewed as a constitutional failure of very grave purport. In as much as the Union of India has the primary responsibility to ensure that the benefits of constitutional governance reach the people of all the regions of this country, its failure to act for so many decades has to be discerned as a continuing fraud on the face of the Constitution.

On December 9, 2009, after another decade long struggle and articulation for statehood, it seemed to the people of Telangana that the Union of India was finally ready to undo the historical and continuing injustices. The statement issued by the Union Minister for Home Affairs, on behalf of the Government of India, categorically asserted that “the process of forming the State of Telangana will be initiated” and “an appropriate resolution will be moved in the State Assembly.” We rejoiced because it seemed that at long last the Union of India has correcty assessed, as indeed the people of this region have been saying for decades, that the only way of assuring the people of Telangana the full measure of the benefits of constitutional governance is by the grant of statehood to Telangana.

In fact the second statement of the Home Minister, in the first week of January 2010, clearly underscores the fact that the Government of India had arrived at the decision to carve out the state of Telangana based on both the reality of historical injustices as well

as the prevailing conditions of the people of Telangana. It is worth citing that statement in extenso:

> *"There are a number of misconceptions surrounding the issues that have brought us here today. There is a misconception that the Central Government acted in haste; that the political parties were not consulted; and that I, as Home Minister, acted as an individual. As you are well aware, none of these misconceptions is supported by facts…. You are all aware of the long history behind the demand for a separate State of Telangana. It is sufficient to refer to the report of State Reorganisation Commission; the Gentlemen's Agreement of 1956 and the amendment of Article 371(1) of the Constitution; the Six Point Formula of 1973; and the introduction of Article 371D in the Constitution….. You are aware of the proceedings of the Business Advisory Committee of the Andhra Pradesh State Assembly on December 7, 2009 followed by the proceedings of the all party meeting convened by the Chief Minister of Andhra Pradesh later in the evening of the same day."*

Even though the meeting in which the above statement was necessitated by the volte face of political parties on their previous categorical support for forming a state of Telangana, and the stage managed agitations in the other regions, we were hopeful, maybe naively, that on account of the Home Minister acknowledging the historical truths that the Union of India would not backtrack on its decision. It seems that we had forgotten the admonition of Babasaheb Ambedkar that if constitutional promises are not kept, and constitutional provisions fail, it is not because the Constitution was bad, but because of vileness of man. The powers that be in Delhi have turned out to be as vile as the leaders of political parties in Andhra Pradesh.

It is now well over two years since the announcement by the Government of India, on December 9, 2009, that the process of forming the state of Telangana would be initiated. A statehood that every reasonable person, with a sense of justice and acutely aware of the possibility of injustice, had recognized was the moral and constitutionally right course of action in 1956, a statehood that was denied even as every experiment to make the fusion with other two regions work was scuttled by the political leadership, constituted mostly by the politico-business class from those regions – that statehood has been again put on hold, and the promise of the Constitution reneged upon. When the Constitution vests certain

powers in an organ of the State, it so vests it with the intent that it be exercised when the necessity arises. The necessity of a Telangana state had arisen way back in 1956 itself, when the state of Hyderabad was being split up; and had continued to exist through long decades of discrimination and injustice perpetrated against the people of Telangana in Andhra Pradesh. To delay grant of statehood to Telangana, any further, is to unambiguously pervert the values of the Constitution.

In order to cover up the constitutional fraud the powers that be, at both the national and state levels, have engaged in a series of steps and discourse that clearly indicate an unwillingness to heed constitutional imperatives and commands. The first step was the formation of a so called commission to examine the issues of Telangana. The report of the said commission, ostensibly comprising of people with knowledge of the Constitution, has been justifiably condemned by people of Telangana and various scholars as full of lies, and twisting of facts. One would have thought that truth was the platform on which fraternal feelings are built, except of course when it comes to the alleged "family called Andhra Pradesh", in which case Telanganites are expected to summon fraternal feelings for the people of other regions even as the truth of injustices committed against them are denied. Not stopping there, the said report went so far as to recommend, in a secret chapter, that the movement, news and leadership of Telangana be "managed" such that the people of Telangana are deprived of news of the actions of their fellow Telanganites in their struggle for statehood, their capacity to organize themselves politically decimated, their leadership given inducements to not pursue the just cause of the people, and above all even deny the people of India the necessary information to form a correct assessment of the situation in Telangana. In addition to all of the above, the said commission has also recommended action by the State, both unethical and unconstitutional, to suppress the voices demanding a Telangana state. The soul of our Constitution has been brutally gouged out.

As if all of the above were not enough, a pernicious argument has been put forward that, in order for the Union of India to exercise the powers vested in it under Article 3 of the Constitution, there needs to be unanimity and consensus amongst all political parties regarding Telangana, both at the national level and at the state level. This stance sets a dangerous precedent that would truncate the powers of Union of India to pursue the constitutional project and protect the constitutional interests of people residing in various

regions in the event they are denied the benefits of proper constitutional governance in existing states. The requirement of unanimity and consensus among political parties to form a new state in order to ensure better constitutional governance for the people in a region would be tantamount to enactment of a constitutional amendment without the operation of Article 368. Such a position, leading to the truncation of powers of Union of India to effectuate better constitutional governance by formation of new states or altering the boundaries of existing states, would be a violation of the basic structure of the Constitution.

The speciousness of the posited requirement of unanimity and consensus amongst all political parties can be assessed by analysing three aspects of the text of Article 3: (i) the meaning of the phrase, "Parliament may by law", (ii) the implications of the phrases "expressing its views", with respect to state legislatures, of the states whose area, boundaries and name(s) would be affected by a bill recommended by the President to the Parliament; and (iii) purport and implications of the phrase "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."

A written constitution sets forth, inter-alia, the permissible modes of conduct in analytically differentiable, but overlapping and intertwined, spheres of political, economic and social action. While the drafting of the constitution is a result of political negotiation and compromise, regarding how the people in a nation-state ought to govern themselves, once the constitution comes into existence, those compromises are etched as normative and legal guidelines for the conduct of the affairs of governance. One such etched feature of the Constitution are the powers vested in Union of India pursuant to Article 3. If one were to choose legal positivism as the principal constitutional attitude, then one could look at the Constitution, and its provisions such as Article 3 as the grund-norm in almost Kelsian terms of the pure law.[3] In a similar fashion, Justice Mathew recognized and articulated in his separate opinion in *Keshavananda*[4] the powers in Article 368 to be such an element in the constitutional grund-norm. However, the majority in Keshavananda did not take the content of the grund-norm to be Article 368 read in isolation, but as being limited when read in the context of the Constitution as a whole. The majority conceived certain features of the Constitution to be beyond the pale of powers of even the amending bodies mentioned in the Constitution, and held that the identity of the Constitution of India can be changed only

[3] Hans Kelsen, Pure Theory of Law.
[4] (1973) 4 SCC 225.

by the people of India as a nation, and not transient majorities. However, when a constitutional amendment does not alter the identity of the Constitution, i.e., does not alter its basic structure, then the courts have to necessarily accept a constitutional amendment as valid[5]. This is so, even in instances where a constitutional amendment were to partly truncate some of the fundamental rights assured to all the citizens. Let it be clear that such constitutional amendments do not require unanimity or consensus of all political parties. Certainly it must then be agreed that the requirement of consensus and unanimity amongst all political parties, as being sought by Government of India, to enact a law to form the state of Telangana, pursuant to Article 3, is not a constitutional requirement. It would appear that the Government of India has concocted that requirement out of wholly fictitious cloth. However, it does not appear that the Government of India is really bothered by the damage it does to the constitutional schema by creating such excuses to give political protection to the party heading the coalition government in Delhi.

Article 3 is a comprehensive code, both in terms of unambiguity of its text, and also when read holistically with other parts of the Constitution, such as the Preamble and the Directive Principles of State Policy. The Supreme Court of India has clearly explained, in Re: Berubari Union[6], that where the case does not involve cessation of territory to a foreign power, the Parliament to effectuate any of the actions and consequences enunciated in Article 3 may do so by ordinary law. The exercise of powers vested in Union of India under Article 3 is ultimately within the exclusive domain of the Parliament, the reorganization of a state or states cannot be taken to mean it would violate fundamental rights of any citizen and further, the law enacted pursuant to Article 3 cannot be treated as a constitutional amendment.[7] Clearly, the reticence on the part of Government of India to act upon the conclusions that it had arrived at, as of December 9, 2009, that the formation of state of Telangana is necessary to ensure constitutional governance for Telanganites, on the specious requirement of consensus and unanimity of political parties is nothing but a smokescreen to cover up its abdication of constitutional responsibility in this matter.

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[5] The doctrine of basic structure was placed beyond any doubt by a unanimous nine judge bench decision of the Supreme Court in I.R. Coelho v State of Tamil Nadu, (2007) 2 SCC 1.

[6] (1960) 3 SCR 250

[7] In re: Berubari, supra n. 6; Mullaiperiyad Environmental Protection v. Union of India, (2006) 3 SCC 643; Director of Industries and Commerce v. V. Venketa Reddy, AIR 1973 SC 827; Mangal Singh v Union of India, AIR 1967 SC 944; and Babulal Parati v State of Bombay, AIR 1960 SC 5.

Indeed, a bill introduced in the Parliament pursuant to Article 3 requires the recommendation of the President; and where such a bill affects the area, boundaries or name of any existing state, the appropriate legislatures are provided an opportunity to express their collective views on the same. The phrase in Article 3, "expressing its views" is important. Expression of views cannot be transmuted into the requirement of assent. In fact it is of a lesser purport than even the requirement to "ascertain", which had been amended in 1955.[8] Moreover, Article 3 permits the Parliament to proceed on the bill, even in the absence of an expression of views, as for instance the failure of state legislature to act within the time period specified Even where views are expressed by a State within the time frame prescribed, the Parliament is not bound to accept such views.[9]

The stance taken by powers that be in Delhi, that unanimity and consensus is required amongst all the political parties stands in stark contrast with the width of the powers of Union of India assured in Article 3. It is this stark contrast that gives us a measure of the degree of constitutional mischief brought into the discourse about statehood for Telangana. As a matter of constitutional provisions, when even the process of expression of views by the state legislatures can only be time bound, and the views of the concerned state legislature, if expressed, can be ignored by the Parliament in its wisdom (because it represents the entire nation), the stance of Government of India, in the case of Telangana, that unanimity and consensus is required amongst political parties is clearly an abdication of its constitutional duties and surrender of the powers of the Union of India.

The powers enumerated in Article 3, have been so vested in the Union of India to effectuate the project of governance of the entire country within the four corners of permissibility, and in accordance with the values enshrined in the Constitution. This includes the responsibility of ensuring that people living in various areas, who have been hitherto subjected to constitutional neglect, are provided the opportunity to access the benefits of proper constitutional governance in a new state. Even though the purpose of protection of the constitutional project will be served by the forming of Telangana, and is in fact necessary, the excuses being made by Government of India are tantamount to curtailment of the width and amplitude of the power of the Union of India. By setting a wrong

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[8] See for instance the States Reorganisation Bill, 1956, in which the opportunity was given to the legislatures of the states to express their views within one month.

[9] Babulal v. State of Bombay (1960) 3 SCR 250.

precedent, for pure political gains, the Government of India is actually truncating the powers of the nation-state iteself. This is a de facto alteration of the basic structure of the Constitution. To deny the people of Telangana the right to a consideration of their constitutional status by the national Parliament, even after the Government of India had formed the opinion that forming the state of Telangana is constitutionally desirable and necessary, given the history of injustices suffered by the people of Telangana, is to undermine the democratic project in India.

To be sure the admonition to seek unanimity and consensus, where probable, may some times have both ethical and utilitarian justifications. However, the requirement of unanimity and consensus, as a necessity, for exercising the powers of Union of India as enumerated in Article 3 would necessarily be a curtailment of the flexibility that the Constitution itself provides in order to secure the constitutional project. It is not without reasons that the Constitution does not require unanimity and consensus in order to exercise the powers granted by it. No aspect of human affairs could be reasonably be expected to lead to a unanimity of views, and consensus, by all the stakeholders – the requirement of unanimity and consensus, ab-initio, is to foreclose the possibility of collective action by the State. The stance by Union of India, that unanimity and consensus is required amongst all the political parties with respect to formation of Telangana state, strikes a blow at the very notion that the State would have to act to protect the interests of the people, of the entire country as well as in different regions, and afford them the protections of the Constitution not withstanding political opposition. In as much as it strikes at the capacity of the State to transcend politics, even when the necessity to act exists, the stance taken by the Government of India with respect to formation of Telangana indicates an incapacity to govern the nation in accordance with the principles of the Constitution.

We must address the issue of damage that the retreat by Government of India with respect to its December 9, 2009 statement on Telangana issue does to the national institutions of governance. Our Constitution is a finely wrought balance between power to accomplish the goals of the nation enunciated in the Preamble, and the limitations on manner and modes of exercise of power that would undermine those very goals. Our Constitution was written by one of the greatest generations of Indians who had ever lived, and indeed arguably amongst the finest human beings in the history of mankind. What they poured into it was the collective wisdom of entire mankind, forged through the fire of the

struggle for freedom. To upset that finely wrought balance in that Constitution, on the anvil of vile political opportunism, should surely count as a violation of the text and the spirit of the Constitution. The deliberate delay in formation of the state of Telangana, on specious reasoning of requirement of unanimity and consensus, is to now set the grounds to shackle the Union of India from exercising its powers under Article 3 with respect to other regions, under new and exigent circumstances that may arise in the future.

Let us assume that for now, by following the unethical, undemocratic and unconstitutional recommendations of the hitherto alluded to commission on Telangana, the powers that be succeed in suppressing the movement demanding statehood for Telangana. What exactly would be the message sent to the people of Telangana? That the next iteration of the movement, which surely will come, would need to be far more intense? Where would such heightened intensity lead the people of this region to? Where would it lead the people of the other two regions to? And, indeed the country, to? What message does it send to other people, in other parts of the country, who are being denied the benefits of proper constitutional governance? That they need to start their movements at a level of intensity far above what mostly peace loving Telanganites have achieved so far?

Constitutional identity can be altered beyond recognition by abdication of constitutional responsibilities. Our Constitution is not merely a document that sets forth negative limits on exercise of powers by instrumentalities of the State; but it is also one that casts affirmative obligations on instrumentalities of the State to achieve the welfare of the people – all the people, and such welfare necessarily includes conditions for realization of justice – social, economic and political for individuals and the groups in which they belong to and reside in various parts of India. Constitutional wisdom can be a razor's edge – of demanding the sacrifice of temporary political gains for the protection of constitutional values. To refuse to walk that razor's edge, even though the hope of constitutional governance would be lost for many crores of people, is the worst form of moral abdication. The precedent that the political sphere is setting, by delaying the process of debate on a bill for the formation of Telangana in the Parliament, is to deny the people of Telangana the protections of democratic deliberations guaranteed by the Constitution. This undermines the authority of the Parliament as the final institutional arbiter in the political sphere. We have seen the people of India respond to the appeals of respect for Parliament's authority to frame laws to combat corruption. Such respect is what sustains the constitutional project,

because it still leaves hope amongst people that such constitutional institutions will provide the platform for their grievances to be heard, at some point or the other. To undermine the powers of such an institution, especially the powers that are explicitly granted by the Constitution and tied to a duty, is an extremely dangerous move.

In the end, I must express my fervent hope that there are still reasonable people at the helm of affairs who care about the constitutional values and proceed to act on the repeated promises made to people of Telangana. I am no soothsayer; and I cannot give you any assurances as to whether that will happen in any foreseeable future. All I can say is this: the struggle for statehood for Telangana must go on. To accept the argument that proper constitutional governance is possible, with respect to people of Telangana, within the integrated state of Andhra Pradesh would be a betrayal of the people of Telangana, and also a suspension of all foundations of reasoned thought and action. Indeed, it would be an abdication of our responsibility as citizens of India, and a defilement of the values enshrined in our Constitution to not continue to struggle for the formation of the state of Telangana. The worst sufferers on account of the non-extension of benefits of proper constitutional governance in this region have been the socially and economically disadvantaged. To stutter in our struggle for Telangana would be an act of moral abandonment of our brothers and sisters, a denial of our responsibility to further the constitutional project, and a denigration of our own humanity, and indeed the humanity of the people of India. For nearly six decades we have waged a peaceful struggle placing hopes in the constitutional machinery. Ultimately constitutions fail or succeed on the strength of support of the people as a nation. Even as politicians betray the constitutional project, trust the people of this country – they are a great people who will not allow injustices and discriminations against Telanganites to be continued for long. As long as we adhere to the four corners of constitutional permissibility, we will always be moral claimants on the nation. The history of the people of this nation has been that they have always made good their moral debts.