

# **Constitutional Law and Public Administration in India**

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**Week- 02**

**Lecture-06**

## **Union & Its Territory – I**

The next topic for discussion is on the Union of India and its territory. Article 1 to 4, which is part I of the Constitution of India deals with the Union and its territory. And these four articles tell and describe what is the Federation of India in terms of the Federation of States, and what is Bharat as the Union of States. One will understand that the traditional name of India is Bharat and the modern name is India. Hence that the constituent assembly had adopted a mix of both India and Bharat. The Federation of States, is not in terms of what is there in the United States, but it is a different form of state seen in India.

India has a territory in which the states also have certain kinds of territories. So, the Union also has the Union territories which are administered by the central government. The State has a territory which is not a sovereign territory that sovereignty belongs to the Union. But of course, for a kind of federal governance and for public administration and application of public policy, the states have been divided in India as the division of the Union per se.

What does Union consist of? It consists of all the territories that have been constituted as states which are around 28 in number and Union territories which are around 8 or 9 in number. So, these states define the territory of India. One should also understand that India is one nation, it is an integrated nation which is not divided into states, but it's an integration of those states; that there are certain states that have special provision for governance under the Constitution. Because of special circumstances, we will have some discussion on it.

The Constitution does provide for the fifth and the sixth schedule of the Constitution, which contains certain special provisions in respect of administration of scheduled areas in tribal states within certain of these states. That is how it has been constituted as of now. In 1956, just after we adopted the Constitution, the country had only 14 states and 6 Union territories over a period of time that has increased to 28. Some of the Union territories have been declared as states and they include Himachal Pradesh, Manipur, Tripura, Sikkim, Goa, Arunachal Pradesh and Mizr. Also, it is important to maintain the sovereignty of the territory of India or the land.

India can actually have foreign territory being acquired, conquered and that this could be taken under a treaty. It could be taken on lease. This is under international law or it could be annexed to the territory of the Union of India through what we call as occupation. Goa, Daman, Diu, Puducherry, Sikkim are some of these territories that have been taken to the Union of India. However, all these territories were under some kind of foreign occupation. So that is something that one will have to take the note and consideration of. Time and again, talking about Article 2, it empowers the Parliament to admit into the Union or establish new states on such terms and conditions as it thinks fit. That is what the Parliament can do. Please note, Article 2 of the Constitution grants two basic powers to the Parliament. First, the power to admit into the Union a new state and the power to establish new states.

These are two powers that the Parliament has. The admission of states is a provision where a foreign territory is declared as a state and admitted into the Union or it could mean that some part of state reorganization or readjustment, which is internal, can also be made by the Parliament. Article 3 of the Constitution talks about the authority of the Parliament to form new states by separation of territory from any state or by uniting two or more states or parts of the state of any territory thereof. Article 3 also empowers the Parliament to increase the area of any state, diminish the area of any state, alter the boundaries of any state or alter the name of any state. Interestingly, you will notice that any such bill is not necessarily considered as a constitutional amendment.

So, state reorganization or state territory annexation is not necessarily some kind of a constitutional amendment and it is not some kind of a major process that is involved. The bill to look at territorial readjustment in the Union of India can be introduced by a simple majority. However, even before it can be used and passed by a simple majority, such a bill can be only introduced with the prior recommendation of the President of India. And the President is duty bound to refer such kind of state readjustment bills to the concerned state legislature for expressing their respective views. And once such views have been made by a simple majority, those bills can be brought into existence and act and the state territories can be readjusted.

So that is what is very clearly mentioned in the Constitution and hence, this kind of readjustment or reorganization of the state is not a constitutional process necessarily though it is defined between Article 1 to 4 of the Constitution of India. It does not require a constitutional amendment. Though it does not require constitutional amendment, most of the state reorganization and readjustments have happened through constitutional amendments. Article 4 of the Constitution declares that the law made for admission or establishment of new state or alteration of the areas and boundaries of the names of existing states are not considered as amendment under Article 368 of the Constitution. So that is what Article 4 actually states to the extent.

The Supreme Court in a case in 1969 has ruled that the settlement of boundary disputes between states or among states is something that can definitely be the prerogative of the parliament. Hence, the territory of India is something that the Union of India owns and the Union of India has the ultimate power to reorganize, readjust the territories of India amongst the state or amongst the Union territories as the case may be. Also, it is the power of the parliament to decide which territory will be managed by the Union government through the President of India as Union territories and which of the territories will be managed through a state government and statehood can be granted to such kinds of territories. The Union of India and its territory is not confined to the mainland. It also extends to islands, such as the islands in Lakshadweep, which are on the western side of the country, which are in the Arabian Sea and Andaman and Nicobar Islands which are in the Bay of Bengal.

These are a large number of islands that are also part of the territory of the Union of India. And please note, while these islands are not only important for strategic purposes, they are an integral part of mainland India. And because these islands are important, they have been kept as Union territories time and again and that is how the territory of India gets extended. Speaking about the Union of India and its territory in terms of islands. There are matters of international law at this point of time and exclusive economic zones. What can India explore in terms of the seaward area of land is also considered in this territory of India. Under international law, especially under the law of the United Nations Convention on the Law of the Sea, it becomes very important, because there are some kinds of extended territory for economic activities and economic purposes, called the horizontal and vertical territory of the Union of India. When it means vertical territory of the Union of India, it is about the air space, which is also a form of territory of the Union of India. So it is land, it is air. And it could be apart from being vertical, it can be horizontal. Under international law, that kind of horizontal measure includes the 12 nautical miles as the territorial waters. So, territory means not only territory on land, it also means under international law, territory of water as well.

It is important at this point of time to also discuss, maybe in some detail about Delhi, which is the administrative capital of the Union of India and Chandigarh, which is the administrative capital of two states, which is Haryana and Punjab. Now, these two are cities per se. However, these two cities have been a kind of a challenge and a problem because of the claim that exists. Delhi had to go for full statehood. Unfortunately, it was not granted full statehood. So, it is a unique state with limited powers. Chandigarh, which was supposed to be a city and both Haryana and Punjab actually claimed the same. Some of these cities or some of these territories had to be granted some kind of a special status, so as to amicably resolve territorial disputes, not only between states, but also between governments as the case may be, or between local representatives as the case may be. Because the history of creation of state's has been a kind of a volatile situation. Many of

these state reorganizations have happened due to some kind of a protest or due to some kind of an agitation or demand.

And many of these states were created basically on linguistic lines, but not necessarily so. And hence, keeping the demand of the population and the need of the political process at that point of time, the division and readjustment of states is a continuous process that has happened from time to time. Finally, it's important to have a brief look at the Jammu and Kashmir Reorganization Act of 2019. This was also a very important milestone in the organization of states in India. Jammu and Kashmir enjoyed special status under the Constitution of India, thanks to Article 370. India had made such a promise to the king of Jammu and Kashmir before it could be brought to the Union Territory of India. Finally, while Article 370 granting special status to Jammu and Kashmir has been taken away, the 2019 order very clearly now makes Jammu and Kashmir as the territorial integral part of the Union of India. To maintain that kind of a status, today Jammu, Kashmir and Ladakh have been declared as Union territories and they are being managed by the President of India through the Central Government. So, Article 370 has been taken off as the special status to J&K. J&K now becomes a part of India, which also clearly will tell you that the Constitution of India now extends to J&K. Earlier, most of the legislation would say this law applies to the entire country except to the state of J&K. So J&K under Article 370 was given that kind of autonomy to decide what can be the law and regulation that is administered to that country, to that state or to that territory. And hence J&K had been given that kind of an autonomous status from the application of laws from mainland India or from the Union of India. So, they could choose whether the same law will apply or with some kind of a modification.

The Constitution had granted that kind of a special status to J&K as a state under Article 370 that has been removed. The Constitution and all its provisions apply to J&K and all central laws inevitably apply to J&K and J&K becomes as good as any other state for the administration of the Union and its territory. Moving further, one would look at the state and the Union Government. Now moving on to state and the Union Government or the interrelationship between state governments and the Union Government, vis-a-vis territorial administration or what is called as territorial public administration and the application of public policy. Public policy in union territories can be defined by the central government, whereas a part of public policy in the states is determined by the state government.

This territorial administration is left to the states and public administration is defined by the aspirations of that state and that state government. That brings India into a very interesting quasi federal process. One must appreciate that in the previous slide, it is said that foreign territories can be acquired, conquered or taken away under a treaty or can be

readjusted under a treaty. The examples that we should look at in terms of boundary or territorial readjustment through a treaty is the exchange of territory between India and Bangladesh. This is a classic example, which happened post 2015.

But the history of the same goes back many years. Because India shares one of its longest boundaries with Bangladesh. In 2015, there was a constitutional amendment, which was the 100th constitutional amendment. This was brought in to give effect to the acquiring of certain properties of territory by India and transfer of certain territories by India to Bangladesh. So, India did transfer 111 enclaves to Bangladesh in exchange of 51 enclaves that India received from Bangladesh. So, this long boundary between India and Bangladesh was attempted to be readjusted through this treaty between India and Bangladesh through the agreement that was entered into by the two countries. This was entered in 1974, interestingly. But the 100th constitutional amendment allowed such readjustment of the Union Territory. And this 100th constitutional amendment also dealt with the transfer of adverse possession and the demarcation of nearly 61-kilometer border stretch area. And these provisions did affect the territory of the following states, which is very important because what the union does may affect state territory and state boundaries. There are four states that are having close boundaries with Bangladesh. First is West Bengal, of course, Assam, Meghalaya and Tripura. And this was something that was very interestingly done in terms of the foreign territorial readjustment as the case may be and demarcation of what was required in that process.

Also to talk about foreign territory, there were many princely states in India. And many of these princely states had to be cajoled to join the Union of India and handover the territories to India as well. As much as 552 princely states were within the geographical boundaries of India. And to be honest, of this 552, 449 joined India, but 3 did not. 449 out of 552 joined India and they were part of the Union of India, they handed over the territories to India, but 3 refused to do it. It was Hyderabad, Junagadh, and Kashmir. They refused to join India. However, in the course of time, the government of India and the Union of India was able to convince Hyderabad and integrate Hyderabad. Junaggar joined India through a referendum. This is very important because there are a couple of territories where a referendum was organized based on which they were actually integrated into the Union of India, Junagarh is one, Sikkim is another. Kashmir was brought into the Union territory through the instrument of accession.

So that is how the territories of India got integrated geographically. Most of the princely states, most of them agreed, 3 resisted, but slowly all the 3 came around and the geographical area of India was integrated as one. Also, the first linguistic demand for a state was from the Telugu speaking population. This happened in 1953 and after a prolonged popular agitation and the death of a popular Congress leader called Sri Ramulu who actually went on a hunger strike demanding the Telugu state, states different from

Madras state and that is how Andhra became a linguistic demand of a state being created. So that is something that also can be taken note and consideration of.

These are some of the aspects that could be critical and important and that which were the states or territory of states in 1956. By 1956 Andhra was there, Assam was there, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore which turned into Karnataka, Odisha, Punjab, Rajasthan, Uttar Pradesh and Bismillah. These were the territory of states that it created. In 1956, from 14 states that we had, now we have increased to 28. What is the public policy in the creation of states? For example, one may argue that the public policy in creation of state is that larger states are difficult to administer. Two, the states have to be created by linguistic and other ethnic and cultural considerations and they get better managed when they are divided. So, a smaller state, better administration, larger state may not be better administration. Three, the political process has demanded on several occasions where the creation of states has been resulted in terms of the political process that was involved. For example, that the state of Nagaland had to be created because of the Naga tribes demand and the kind of agitation and movement, a state like Nagaland was created in 1963. So, these are unique issues and unique circumstances in which the creation of states did happen.

Also, you will notice that Maharashtra and Gujarat were actually one state and in 1960 again on linguistic line, the two states were divided because of the Gujarati speaking populations demand and please note Gujarat became the 15th state in the union. So all of these are very interesting developments as one would see and also one would also look at Sikkim. Now the history of Sikkim is quite intriguing for the simple reason is that China does claim Sikkim as some kind of its territorial extension of land and India has always said that Sikkim is an integral part of the territory of the Union of India. Now the history of Sikkim goes back to again a princely rule that Sikkim was in and Sikkim was is even now quite a remote distant place in the Himalayan belt in the northeast and it had a king that was ruling that place. The British ruled Sikkim, but once the British left there was a choice in India to actually integrate the geographical territory of Sikkim, but Pandit Nehru hesitated in integrating Sikkim as a complete territorial land of the Union of India. Pandit Nehru at that point of time believed that doing so many kinds of antagonizing China and at that point of time what the Union of India decided was they would make Sikkim as the protractor of India.

So, it is like giving protection and saying that in Sikkim if there is any issue of defense, or external affairs or any issue of communication then the Union of India will always be a protector of Sikkim and for these purposes India would support Sikkim but for other purposes Sikkim would be an independent and autonomous state. However, in Sikkim again there was a popular protest and a movement against the king and the princely rule and India was forced to get into Sikkim. There was a referendum in Sikkim whether the people of Sikkim would want to join India. This referendum happened in 1975 and in that

referendum the people of Sikkim overwhelmingly voted for abolition of the institution of the prince and the king and consequently by the 36th constitutional amendment Sikkim was made a full-fledged state of India. So, this very clearly also looked at a special provision in the constitution which is called article 371 F providing for special provision for the administration of Sikkim. This is how Sikkim was or the territory of Sikkim was brought into the Union of India. Also, reorganization of states happens quite often in India and the recent reorganizations we can take a discussion upon and those are the creation of Chhattisgarh, Uttarakhand, Jharkhand and Telangana.

Now in the year 2000, three more states were created, one out of Madhya Pradesh, two out of Uttar Pradesh and one out of Bihar and these became the 26th, 27th and 28th states of India. Telangana is the 29th state. Telangana was bifurcated Andhra Pradesh in 2014 though both Telangana and Andhra Pradesh are Telugu speaking population. Again, in terms of state reorganization this was understood that Andhra Pradesh was bifurcated due to cultural and regional issues. Telangana happens to be the youngest state in India but that is just the bifurcation of state and nothing more than that. Finally, under part one of the constitution of India states can be renamed, one should not forget that even some of the states have been renamed, spellings have been changed, union territories have also been renamed so that the colonial British pronunciations or the way of calling it can be changed. For example, Pondicherry is now Puducherry and the state of Mysore is now the state of Karnataka because Kannada and that is the language. So, why was it called the state of Mysore because the Mysore king was ruling a part of the territory of Karnataka So, such kind of change of name can also happen and interestingly some of them have happened through constitutional change and constitutional amendment. For example, Orissa is now Odisha and the state of Madras is now Tamil Nadu. So, one should not forget some of these developments that did happen under the constitution of India. So, there have been many acts that were passed as I told you through the recommendation of the president and the expression of the state legislature. These were mostly because of the state reorganization act and the latest state reorganization act happens to be the JNK reorganization act which bifurcates JNK into three that includes Ladakh and declares the same as a union of three as well.