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Case of Bifurcation of Andhra Pradesh
Any Lessons to be Learnt?**

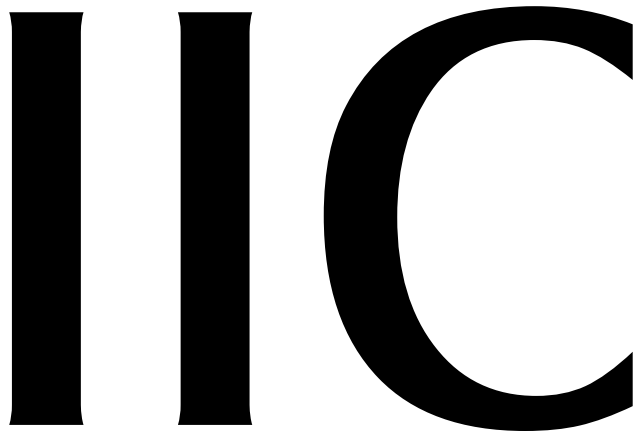
by

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Challenges of States' Re-organisation: Case of Bifurcation of Andhra Pradesh Any Lessons to be Learnt?*

Many political analysts are of the view that the bifurcation of Andhra Pradesh is one of the most controversial bifurcations of a State in recent history. After all, Uttar Pradesh, Bihar and Madhya Pradesh were bifurcated in the year 2000. There were problems in those States also, but none of the acrimony and bitterness that was seen in Andhra Pradesh. What really went wrong in Andhra Pradesh? Could it have been done differently? Are there any lessons that can be learnt?

This paper has been prepared by a civil servant who was directly involved in the process of bifurcation as the Chairperson of the Expert Committee for recommending the bifurcation of the State Public Sector Units. In the process, the Expert Committee members were exposed to aspects of the bifurcation of State Government assets and liabilities as well. The issues have been divided into three categories: political, legislative and administrative.

Political Background

The history of Telangana is long and complex. Telangana was a part of the Nizam State while Andhra was a part of the Madras Province under the British. Sri Potti Sreeramulu, a local leader in Andhra, undertook a fast in December 1952 to press for the long-standing demand of the Andhra people for a separate State. Unfortunately, on 15 December, he became a

* Lecture delivered by Sheela Bhide on 8 June 2019 at the IIC.

martyr. Finally, the Government of India gave in, and Andhra was formed as a separate State on 1 October 1953.

The States Reorganization Commission (SRC), in its report in 1956, recommended the linguistic basis for States' reorganisation. Surprisingly, the SRC did not recommend the merger of Andhra with Telangana, both of which were Telugu-speaking States. The leaders from Telangana were not in favour of the merger as they apprehended that the development of Telangana would be overlooked. The SRC recommended that the issue be deferred. After five years, if the Telangana Assembly agreed to merge, then it could be considered. However, Home Minister Govind Ballabh Pant convened a meeting in Delhi in February 1956 of the major recognised leaders of both sides, and hammered out a Gentlemen's Agreement for a merger. Thus, the bifurcation of the State in 2014, in effect, was a demerger.

The Gentlemen's Agreement is very important because it covers issues which keep coming up again and again like a refrain in the history of Telangana and Andhra. It was agreed that Cabinet representation for Andhra and Telangana would be in the ratio of 60:40. Telangana would have a Regional Council, a statutory body with 20 members, which would include MPs and MLAs from Telangana. This Regional Council was expected to protect the interests of Telangana. The expenditure of the Government would be borne proportionately by the two regions. The surplus income from Telangana would be spent only for the development of Telangana. There would be reservation of seats in educational institutions for Telangana students. 'Mulki' rules, reserving local jobs for local people, which had been issued by the Nizam in 1919, would be honoured and domicile rules were brought in so that Telangana people would get priority for Government jobs in Telangana.

Nehru was supportive of this Agreement as he was of the view that, if States are large, barriers would be fewer and progress faster. However, Nehru, an astute leader, made this comment: ‘An innocent girl, that is Telangana, is getting married to a very clever boy that is Andhra Pradesh. Let us see what happens.’ That statement turned out to be quite prophetic.

After the merger of the two regions, the State progressed steadily for over a decade. However, in 1969, Chenna Reddy, a Union Minister and a prominent leader of Telangana, lost an electoral case in the Supreme Court and was barred from holding any elected office for six years. On his return to Telangana, he observed that the people of Telangana were dissatisfied at the slow pace of development; students were aggrieved because of limited admissions to educational institutions and government servants from Telangana felt that they were being discriminated against in promotions.

Allegations were made that Telangana surpluses had been diverted to Andhra. The Government of India instituted the Justice Bhargava Committee to examine this issue. The Bhargava Committee report confirmed that approximately, ₹283 million surplus income from Telangana had been diverted to Andhra between 1956 and 1968. To make matters worse, on 28 March 1969, the Supreme Court declared the domicile rules as unconstitutional. That was the last straw and students and non-gazetted officers (NGOs), a very potent combination, started the agitation for a separate Telangana, spearheaded by Chenna Reddy’s Telangana Praja Samiti. The entire administration came to a halt in Telangana.

The Supreme Court, in a fresh judgement in October 1972, declared the domicile rules to be in accordance with the Constitution, exactly opposite

to the stand that another Bench had taken in 1969. Afraid that there would be discrimination against them in Government employment, the Andhra people started an agitation for a separate Andhra in 1972–73. Now both regions were up in flames. The Government of India called in the army and President's Rule was imposed.

Prime Minister Indira Gandhi looked upon Andhra Pradesh as a stronghold of the Congress Party. At the height of her power, she quelled the agitations with a firm hand. She implemented the Six-Point Formula for Peace in September 1973. This formula provided reservation of seats in educational institutions for Telangana students. Domicile rules were given protection through an amendment to the Constitution. A Presidential Order called the 'AP Public Employment, Organization of Local Cadres and Regulation of Direct Recruitment Order, 1975' was issued which facilitated creation of local cadres and promotions only within these local cadres. A Central University was set up in Hyderabad. Regional Development Boards were created and substantial funds given for the development of the backward areas in all the three regions, viz. Telangana, Andhra and Rayalaseema.

As a result of the strong political leadership in Delhi which kept the factional politics of the Congress Party in Andhra Pradesh in check, and these decisive measures of the Government of India to address the grievances of the people of Telangana, there was peace in the State for nearly 35 long years. Even after the Congress Party lost power in the State to the Telugu Desam Party (TDP) in 1982, the Telangana issue remained dormant. The new Chief Minister, N.T. Rama Rao, promised to protect 'Telugu pride' and successfully projected his image as a leader who would protect the interests of all the regions.

The 1970s and 1980s witnessed substantial industrial development in the State. The Information Technology sector developed from mid-1995 onwards and Hyderabad suddenly appeared on the map as a competitor to Bangalore. First generation entrepreneurs from Andhra region, who had benefited from the high quality technical education available in Andhra and many of whom had gone abroad for higher studies, returned to Hyderabad and took the lead in setting up manufacturing units and software companies in and around Hyderabad. Construction companies owned by Andhra people benefited from the construction boom around Hyderabad. Comparatively speaking, the people of Telangana were not able to take advantage of these new opportunities to the same extent. As observed by the Srikrishna Committee in its Report of 2010, Telangana (outside of Hyderabad) had lagged behind in educational institutions, in road infrastructure and irrigation facilities. All these factors, together with the non-implementation of some of the key commitments made in the Gentlemen's Agreement, contributed to the felt psyche of discrimination amongst the people of Telangana.

A crisis suddenly appeared in 2009. Y.S. Rajasekhara Reddy (Y.S.R.), Chief Minister who had kept the State together with a strong hand, died in a helicopter crash on 2 September 2009. This was certainly the turning point. K. Chandrasekar Rao (K.C.R.), leader of the Telangana Rashtra Samiti Party (TRS), felt that this was a good opportunity for him to come to prominence. He began a fast and matters became very tense when his health started deteriorating.

Then, late night on 9 December 2009, Home Minister Chidambaram made an announcement that the Government of India was willing to take steps to initiate the process for the formation of Telangana. This led to a violent

reaction in Andhra. There was speculation that the midnight announcement on 9 December 2009 was because the Congress leaders in Delhi had received an IB report which stated that K.C.R.'s health was deteriorating, and they surmised that a 'Potti Sreeramulu moment' was around the corner. There was also speculation that Congress leaders were apprehensive that Jaganmohan Reddy, son of the late Chief Minister, would form a break-away party if he was denied the post of Chief Minister, and in such an eventuality, he would definitely win the elections in the Andhra region. They surmised that if Telangana was formed as a separate State, then the Congress Party had a chance to win at least in Telangana. K.C.R. had made a secret commitment to the Congress Party high command that after the elections in 2014, he was willing to merge his party with the Congress.

Another reason for the announcement may have been that Chief Minister Rosaiah had received a commitment from all recognised parties in the State in a meeting on 7 December 2009 to support the proposal for the creation of Telangana. Only the CPI(M) opposed it. Armed with this resolution, Chidambaram made the announcement on 9 December 2009. However, the reaction was so violent in the Andhra region that the Government of India had to quickly retreat. A Committee, headed by Srikrishna, a retired Chief Justice of the Supreme Court, was appointed to examine all aspects of the issue.

The Srikrishna Committee, after wide consultations with a cross-section of people in the State, submitted its report to the Government of India wherein it placed before it six options. However, since it considered four options as being not feasible, it actually recommended only the following two options:

- (1) Bifurcate the State of Andhra Pradesh into Telangana and Seemandhra as per existing boundaries, with Hyderabad as the capital of Telangana and Seemandhra to have a new capital.
- (2) Maintain a united State and create a new statutorily empowered Telangana Regional Council for socio-economic development of the Telangana region.

The Committee's clear recommendation to the Government of India was that bifurcation of the State should not be considered, that safeguards for the Telangana people should be continued, and socio-economic development of the backward areas of Telangana should be ensured.

Article 3 of the Constitution has given complete powers to Parliament to create new states, merge them, change the boundaries, etc. The Union Cabinet, in spite of the Srikrishna Report, decided to go ahead with the bifurcation and referred the Bill to the President. As is required by the Constitution, the President referred the Bill to the Assembly of the State for its views. There were heated discussions around the Bill in both the Houses of the Andhra Legislature and several amendments were proposed. Finally the Bill was rejected by both the Houses. In spite of this, the Government of India decided to go ahead with the bifurcation. The Bill was discussed on 18 February in the Lok Sabha and on 20 February in the Rajya Sabha. There was unprecedented acrimony in both houses. The Speakers adjourned the Houses several times because no discussions could be held. In the Rajya Sabha, the TV monitors were closed because the Ruling Party did not want the public to know the voting pattern. All amendments moved by the Opposition Members were either defeated by voice vote, or not put to

vote by the Chair on the grounds that there was disorder in the House.

During the discussion in the Rajya Sabha, in order to break the impasse, Prime Minister Manmohan Singh gave an assurance that Special Category Status would be given to Andhra Pradesh for five years. This was confirmed by the Cabinet on 1 March 2014. Still, there was fierce opposition in Andhra to the bifurcation. President's Rule was imposed on 1 March 2014, and the State Assembly was kept in suspended animation. Soon after, in May 2014, national and state elections took place. The Congress lost in both Andhra and Telangana; the TRS won in Telangana under K.C.R.; and the Telugu Desam won in Andhra under Chandrababu Naidu. Union Minister Jairam Ramesh, who was a very active member of the Group of Ministers and who spearheaded the Bill in Parliament, made this statement after the elections, 'The results were catastrophic for the Congress in Telangana, and cataclysmic in the State of Andhra Pradesh'.

Legislative Issues

The Andhra Pradesh Reorganization Act, 2014, which was passed by Parliament in great haste without reference to any Parliamentary Committees, had several errors and ambiguities. Only two examples are being given here to illustrate this, viz. Sections 53 and 82. The problems that the Expert Committee faced in interpreting these Sections of the Act and the internal process of decision-making within the Committee in the face of legislative infirmities are explained. This information is not in the public domain.

Section 53 covers the bifurcation of the assets and liabilities of State Undertakings:

- (1) The assets and liabilities relating to any commercial or industrial undertaking of the existing state of Andhra Pradesh, where such undertaking or part thereof is exclusively located in or its operations are confined to a local area shall pass to the State in which that area is included on the appointed date, irrespective of the location of its headquarters. Provided that where the operation of such undertaking becomes interstate by virtue of the provisions of Part II, the assets and liabilities of:
 - (a) the operational units of the undertaking shall be apportioned between the two successor States on location basis.
 - (b) and the headquarters of such undertaking shall be apportioned between the two successor States on the basis of population ratio.
- (2) Upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement, or by making payment or adjustment through any other mode, as may be agreed to by the successor states.

At first, the formula for apportionment of assets appeared to be simple. All the assets and liabilities of the operational units were to be apportioned on location basis; while all the assets and liabilities of the headquarters of the PSU were to be divided according to the population ratio of 58:42. However, in reality many complications arose in implementing this provision because no definitions of terms like ‘headquarters’, ‘operational units’, ‘assets of headquarters’, ‘assets of operational units’ were provided in the Act.

For the purpose of determining the headquarters of a PSU, the Expert Committee initially thought of adopting the address of the ‘registered headquarters of the PSU’ as it appears in the records of the Registrar of Companies (ROC). However, it soon found that in the case of several PSUs, the actual headquarters as on 2 June 2014, the Appointed Day, was different from that indicated in the ROC records. The reason for this was that when most of the PSUs were registered, the address of a subordinate office of the Department was shown as the headquarters in ROC’s records. In subsequent years, budget releases were made to the PSU and the Management rented new premises or constructed their own office buildings. However, they did not bother to change the address of the registered office in the ROC’s records.

Therefore, the Expert Committee had to examine documentary evidence such as ownership title deeds, rental deeds, Government Orders and Board Resolutions to determine the location and contours of the headquarters. In cases where land was allotted by the Government to the PSU to construct its headquarters building, if the title of the land had been actually transferred by the Government to the PSU, then the asset was apportioned on population basis. However, where the Government did not transfer the title to the PSU, the ownership of the land was retained by the State Government on location basis. If the Government gave land to a PSU as its equity contribution, then the land was treated as a liability in the Balance Sheet of the headquarters of the PSU and apportioned on the basis of the population ratio.

The AP Women’s Finance Corporation presented a peculiar problem. In 1985, the Corporation built its Head Office at Ameerpet in Hyderabad on land which was allotted to it by the Government. This was the Registered

Office of the Corporation as shown in the records of the ROC. In 2006, the Government of India sanctioned a project to the APWFC called Andhra Pradesh Training of Women in Agriculture (ANTWA). Land was allotted by the Government to the Corporation for the project office in the up-market area of Jubilee Hills in Hyderabad and an imposing building was built for the project office out of ANTWA project funds. The Board of the Corporation passed a resolution in 2006 to move its Head Office to this new project office. However, the Accountant General of Andhra Pradesh objected to the use of an asset of an externally-aided project by the Corporation for its own Head Office. Several questions were raised in the Legislative Assembly on this impropriety. In view of this controversy, APWFC moved its Head Office back to Ameerpet in 2009. Some years later, when a portion of the land of the Ameerpet building was to be acquired for the Metro Rail Project, the Management of the Corporation in 2013 decided to move the Head Office, once again, to the ANTWA project office in Jubilee Hills, but this time, without obtaining approval of the Board. On 2 June 2014, the headquarters of APWFC were physically in the project office in Jubilee Hills while its own building in Ameerpet had been handed over to the Regional Director of the Department.

In these rather unusual circumstances, the Expert Committee decided to recommend allotment of the ‘occupation rights’ of the Jubilee Hills project office to the two Corporations on the basis of the population ratio and allotment of the ‘ownership rights’ in the Ameerpet Headquarters building also on the basis of the population ratio.

Section 53 mentions that it is ‘the assets of the headquarters’ of the PSU, and not the headquarters per se, that have to be bifurcated. Yet, there is no

definition of ‘an asset of the headquarters’ given in the Act. There were several instances where the PSU headquarters were located in a particular place but certain assets of the headquarters such as liaison offices or guest houses were located in different cities. For instance, Singareni Collieries Company Ltd (SCCL) maintained offices and residences of the CMD and its senior officers at its headquarters in Khammam District, but also maintained similar offices and residences for them in Hyderabad, the State capital, to facilitate better coordination with the Government.

Another ambiguity in the Act related to the issue of Common Facilities. Section 53 states that operational units must be apportioned on the basis of location. However, there were several operational units of PSUs which operated as Common Facilities because, though they were located in one place, they had their jurisdiction and operations throughout the State of Andhra Pradesh.

The Government of Andhra Pradesh decided to ask for a clarification from the Government of India on the definition of headquarters and the treatment to be given to operational units which were ‘Common Facilities’.

The Government of India issued an Office Memorandum on 18 May 2017 that stated that the term ‘headquarters’ would be ‘coterminous with the Principal Office of the undertaking, as per its ordinary dictionary meaning’. The Expert Committee, after examining several leading dictionaries, finally decided to adopt the Oxford dictionary meaning of headquarters as ‘the premises serving as the managerial and administrative centre of an organization’. The origin of the term is military terminology: it is the headquarters of the Commander-in-Chief and all his officers and subordinates. The emphasis is

on ‘premises’ and not on any particular ‘office building’.

The Government of India Memorandum did not provide definitions of the terms ‘an asset of the Headquarters’ and ‘an asset of an operational unit’, terms that have been used in Section 53 of the Act. Therefore, the Expert Committee had to arrive at its own definitions of these terms, taking care that these should appear to be logical and in conformity with the spirit of the Act.

The Expert Committee decided that an asset should be considered to be an ‘asset of the Headquarters’ (1) if it had been created out of the funds of the Headquarters; (2) if it was maintained out of funds released annually by the Headquarters; (3) if the staff maintaining the asset was on the rolls of the Headquarters and their salaries were borne by the Headquarters; and (4) if the asset was essential to the Headquarters to carry out its functions as reflected in the Memorandum of Association or any other document.

The Andhra Pradesh Dairy Development Cooperative Federation (APDDCF) was a particularly complex case for determining the ‘assets of the headquarters’. There was a disagreement between the Managing Directors of both the Andhra and Telangana Federations whether the Milk Products Factory (MPF) located in Secunderabad and the Cold Storage Facility located in Somajiguda in Hyderabad should be considered as ‘assets of the headquarters’ or as ‘assets of operational units’.

These two assets belonged to the erstwhile Andhra Pradesh Dairy Development Corporation (APDDC). In 1981, under the Operation Flood Project, the Government of Andhra Pradesh agreed to create a three-tier cooperative structure in the State, viz. Village Milk Producers’

Cooperatives, District Milk Unions and a Federation of District Milk Unions at the State level. The Government of Andhra Pradesh registered the APDDCF under the Andhra Pradesh Cooperatives' Act in October 1981 with headquarters in Secunderabad, and handed over all the assets of the APDDC to the new Federation on a long-term lease for an annual rental of ₹1,000.

The APDDCF handed over on lease basis the assets located in those particular districts to the newly formed District Milk Unions by entering into Transfer Agreements with them. It was observed by the Expert Committee that the Federation did not, at any point of time, hand over the Milk Products Factory and the Cold Storage Facility to any District Milk Union but had, in fact, kept them directly under its own management control.

As per the Memorandum of Association of the APDDCF, the Federation was responsible for finalising annual production plans for the entire State in consultation with all the District Milk Unions. Only surplus milk, which could not be processed by the District Milk Unions, was brought to the Federation's MPF for processing. The Federation stored the milk products in the Cold Storage Facility and sold them as per market demand. It was evident from this arrangement that it was essential for the Federation to have the MPF and the Cold Storage Facility as its own assets to process and store highly perishable commodities such as raw milk and milk products. The Federation over the years invested substantially in the expansion and modernisation of the facilities at the MPF and at the Cold Storage. In 2014, at the time of bifurcation, the MPF received raw milk, at an average of 1.76 lakh litres per day from the Andhra Region and 1.43 lakh litres per day from the Telangana Region. Thus, it was quite clear that the MPF served

both the regions of the State. For all these reasons, the Expert Committee recommended that the assets of the MPF and of the Cold Storage Facility should be treated as assets of the headquarters (i.e. the Federation) and be apportioned on the basis of the population ratio.

Another issue that had to be considered by the Expert Committee was the definition of an 'asset of an operational unit'. In several PSUs, there were assets of operational units on which there were no industrial or commercial operations on the appointed day for the reasons that the asset had been bought by the PSU for its future expansion or because the operational unit had become sick and had closed its operations. The Expert Committee recommended that even if there was no commercial and industrial activity on any asset of an operational unit on the appointed day, it should still be considered as an asset of the operational unit and be apportioned on the basis of location.

The Act did not distinguish between an operational unit which had its operations confined to a local area and a Common Facility which, though located in one particular region, had a mandate to serve the entire State and had its operations throughout the State. The Office Memorandum of the Government of India, Ministry of Home, was not clear on this issue and was interpreted in different ways by both the State Governments. To explain the complexity of the issues involved, the example of Andhra Pradesh State Road Transport Corporation (APSRTC) is given below.

There were 14 institutions over which there was disagreement between the Managing Directors of APSRTC and TSRTC. The Expert Committee examined the nature, objectives and functions of each of these 14 institutions

to consider whether they should be considered as ‘assets of the Headquarters’ or as ‘assets of operational unit’ or as ‘Common Facilities’.

Out of 14 institutions, the Expert Committee found that six of them could be considered as assets of the headquarters, namely (1) Bus Bhavan (Head Office of APSRTC); (2) Old Administrative Building of the Head Office; (3) MD’s Residence and Officers’ Bungalows; (4) Open space used by headquarters for parking chassis and newly built buses prior to dispatching them to various depots; (5) APSRTC Bus Body Works and Printing Press; and (6) APSRTC Academy.

The Expert Committee considered four institutions operational units having only local operations. They were (1) Light Vehicles Maintenance Depot; (2) APSRTC Employees’ Quarters at Kachiguda; (3) APSRTC Employees’ Quarters at Chilkalaguda; and (4) APSRTC Dispensary. The Expert Committee recommended that these four institutions should be apportioned on location basis.

The Expert Committee recommended that the four remaining institutions would fall in the category of operational units which were in the nature of Common Facilities serving the entire State. These were: (5) APSRTC Hospital; (6) APSRTC Guest House; (7) APSRTC Kala Bhavan and Kalyana Mandapam; and (8) APSRTC Wind Energy Project in Ananthapur District. Since the Act was silent on the issue of treatment of Common Facilities, the Expert Committee recommended that these four Common Facilities should be finally allotted on location basis but both sides should be allowed to use them till such time as there is ‘financial adjustment between both the entities so as to ensure just, reasonable and equitable apportionment of

the assets' as enjoined in Section 47 (3) of the Act.

One more special case was that of Singareni Collieries (SCCL) and AP Heavy Machinery (APHMEL). They are shown as separate items in Schedule Nine: Singareni at Item 7, and Heavy Machinery at Item 34. Singareni Collieries held 82 per cent of the shareholdings of APMEL. The Telangana Government argued that as per Schedule 12 of the Act, SCCL had been allotted to Telangana in its entirety. Therefore, APMEL, which is its subsidiary, should also be given to Telangana. However, the Expert Committee did not agree with this argument for several reasons. Both these PSUs were listed separately in Schedule Nine. Section 53 does not mention anywhere that shareholding is to be considered a criterion for apportionment of a PSU. The APMEL was not mentioned in Schedule Twelve; it was registered as an independent company many years before SCCL acquired its shares. Small farmers who held lands around Vijaywada had contributed their lands for the setting up of this factory to provide jobs for the local youth. There was thus an emotional link between the local farmers and this factory. Therefore, the Expert Committee recommended that APMEL, which is shown as a separate entity in Schedule 9, should be apportioned in terms of Section 53 (1) entirely to Andhra Pradesh on the basis of location as all its assets were located in this State.

The apportionment of assets and liabilities of the headquarters of a PSU under Section 53 of the Act was to be done on the basis of the population ratio as per the population census of 2011. This was the ratio of human population between Andhra and Telangana regions. However, this ratio actually had no relevance to some of the subjects that these PSUs were dealing with. For example, the Andhra Pradesh Sheep and Goat Federation was entrusted

with development of sheep and goat population in the State. Logically, the apportionment of the assets and liabilities of the Federation ought to have been done on the basis of the ratio of sheep and goats in the two regions and not on the basis of the human population ratio. The cases of AP Pradesh Mineral Development Corporation, AP State Fishermen Cooperative Societies Federation Limited, AP Forest Development Corporation, AP Scheduled Castes Cooperative Finance Corporation, AP Scheduled Tribes Cooperative Finance Corporation, AP Tribal Power Company, AP Tribal Mining Company were similar. Rather than the human population ratio, the more relevant criteria for these PSUs would have been their region-wise activity and location of their assets. Not surprisingly, several inconsistencies and irrationalities arose in applying the single formula of population ratio to all PSUs across the board.

Section 82 of the Act reads ‘the corporate body of the PSU shall determine the modalities for the distribution of the personnel between the two successor States.’ However, soon after the bifurcation of the State, the two successor State Governments agreed to issue common guidelines for all PSUs to avoid contradictions, disputes and legal complications. Unfortunately, both the State Governments failed to reach a consensus. Several PSUs went ahead with ad hoc allotments.

In the midst of this situation of uncertainty, Telangana power utilities such as Telangana GENCO, Telangana TRANSCO and the DISCOMs took a sudden and unilateral action in July 2015 to relieve 1,157 officers from their posts and directed them to report for duty to the respective utilities in the State of Andhra Pradesh on the grounds that they ‘belonged to the Andhra Region’. The affected officers obtained stay orders from the High

Court. The case dragged on for long in the High Court, and later in the Supreme Court.

Ultimately, the Government of India, Ministry of Home Affairs, stepped in to break the log-jam. While issuing the orders for the continuation of the tenure of the Expert Committee in September 2016, they stated that ‘the Expert Committee will complete the task of apportionment of the assets and liabilities of the Schedule Nine PSUs, including the distribution of the employees of the PSUs’.

The demand of the Telangana PSU Employees’ Unions was that the Domicile Rules (or the nativity principle) should be applied to them as in the case of the State Government employees. The Expert Committee Members took the stand that the Andhra Pradesh Employment (Organization of local cadres) and Regulation of Direct Recruitment Order of 1975, which had been issued in terms of Article 371 D of the Constitution, was applicable only to State Government employees. Therefore, inclusion of the PSU employees in the Six Point Formula arrangements would be completely against the provisions of the Constitution.

The Union leaders expressed anger over the stand taken by the Expert Committee. They demanded that written guidelines be issued by the Expert Committee to the PSU managements regarding the principles to be followed for the distribution of PSU employees. After internal deliberations, the Expert Committee decided not to issue any written guidelines to the PSUs. Section 82 explicitly gave powers to the body corporate of the PSUs to finalise the distribution of the employees. The Act did not provide either the State Governments or the Government of India a role in this matter. Therefore,

the Expert Committee Members were apprehensive that a Government Order authorising the Expert Committee to make recommendations in the matter may be challenged in a court of law. In these circumstances, the Expert Committee Members decided to take abundant precaution and to give only 'verbal guidance' to the Managements of the PSUs as to how they should proceed.

The Expert Committee advised the managements that employees who were working in operational units on the appointed day should be allotted to the State where the operational units were located. The distribution of the employees working in the headquarters on the appointed day should be done on the basis of the population ratio. The logic of this rather simplistic formula was that the assets, liabilities and employees must go together, for if the assets of the PSUs were separated from the employees, then these PSUs would become completely dysfunctional. Accordingly, the managing directors prepared the proposals and obtained the approval of their Boards. Where the proposals were found in order, the Expert Committee noted that it 'concurred with the proposal'. However, the Expert Committee did provide some flexibility to the managements. It allowed the MDs and the Boards to make some minor adjustments, on two conditions, viz. (1) that it was essential for achieving operational efficiency of the PSU; and (2) that it was mutually acceptable to the body corporate of both the PSUs.

By and large, most of the managements of the PSUs completed the distribution of the employees smoothly, following the 'verbal guidance' given by the Expert Committee. However, MDs of 11 PSUs informed the Expert Committee that their Boards would be taking the final decision on the distribution of their employees in terms of Section 82. MDs of five other

PSUs and of the Power Utilities informed that they could not finalise their proposals due to pending Court cases.

Administrative Issues

What were the commitments made in the Act to the two successor States and what were the administrative problems in implementing them?

The Thirteenth Schedule provided details of the infrastructure that would be provided by the Government of India. Educational institutes like IIT, NIT, MIT, IISER, etc. were to be sanctioned to Andhra, and a Tribal University and a Horticulture University were to be sanctioned to Telangana. The Government of India sanctioned most of these institutions but releases of funds to set them up were badly delayed. The infrastructure that was included in this Schedule was highly capital-intensive and entailed long gestation periods: for example, a new port at Dugarajapatnam, an integrated steel plant in Rayalaseema, a greenfield crude oil refinery and petrochemical complex at Vijayawada, the Vizag–Chennai industrial corridor, a new railways zone, rapid rail and metro connectivity, the Telangana integrated steel plant, a rail coach factory, and a thermal power project. Neither were outlays indicated nor the time-frame to implement these commitments. The Act merely said that feasibility studies would be taken up.

A controversy arose over the issue of Special Category Status to Andhra Pradesh. On 1 March 2014, the Union Cabinet approved the proposal of Special Category Status. However, no formal notification was issued by the UPA Government. In May 2014, after the national elections, the National Progressive Alliance led by the BJP came to power. The new Government released a press release which stated the following:

‘Thus, following the recommendations of the 14th Finance Commission, the class of special category states ceases to exist. However, the Central Government has agreed to give a special assistance measure to the Government of Andhra Pradesh for five years, which would make up for the additional central share the State might have received during these years, that is 2015–16 to 2019–20, as envisaged in the then Prime Minister’s statement of 20 February 2014. This will be in the form of central government funding for externally aided projects for the state of Andhra Pradesh, signed and dispersed during these years.’

However, M. Govind Rao, who was a Member of the 14th Finance Commission, immediately gave a rejoinder, stating that ‘the 14th Finance Commission did not make any recommendation regarding any criteria for admission of any state to special category.’

Chief Minister Chandrababu Naidu, who was supporting the NDA Government in Delhi, accepted this special package. However, when he was accused by Jagan Mohan Reddy of betraying Andhra Pradesh, he retracted and once again demanded Special Category Status for Andhra Pradesh. He finally left the NDA Government in March 2018.

The question arises as to why the UPA Government did not honour the PM’s assurance. Was it because some other states like Bihar, West Bengal and Orissa demanded special category status as well? Or was it that the Government was contemplating some other formula like a Composite Development Index as suggested by the Raghuram Rajan Committee? Or were there other reasons for non-sanction of the Special Category Status to Andhra Pradesh? The subject is wide open for discussion.

Concluding Remarks: Are There any Lessons to be Learned from the Andhra Pradesh Bifurcation Case?

The bifurcation of Andhra Pradesh was indeed a unique case, not only because of the unprecedented acrimony and bitterness that it generated, but also because several important issues of public policy have emerged which cover grey areas. These need to be debated and a broad consensus reached since, no doubt, these issues will appear again and again in the public domain as the nation faces new demands for State bifurcations. What lessons can policy makers, in particular, learn from this experience?

What should be the criteria for States' Reorganisation? First of all, a consensus needs to be arrived at on the criteria for the creation of new States. The proposal for the division of Uttar Pradesh into four States is still pending with the Government of India. There are demands for the creation of new States such as Vidarbha, Bodoland, Gorkhaland, Maru Pradesh and Coorg. An issue of critical importance will be whether the new States should be formed on a linguistic basis, or on the basis of administrative convenience, or on the basis of socio-economic backwardness. If, henceforth, socio-economic backwardness is to be considered, what would be the yardstick to measure the 'backwardness' of an area? How can this be done in a professional and impartial manner based on facts and figures, rather than on mere perceptions? Should this exercise be entrusted to an independent professional body?

How will financial and economic viability of smaller States be ensured?

If socio-economic backwardness is accepted as a criterion, this will lead to several new questions. For instance, if we create small States which

are backward, will they be financially and economically viable? Will the Government of India be willing to invest huge resources by way of special funds to develop such small, financially unviable States?

Socio-economic backwardness often linked with certain emotive non-economic issues: Perceptions of socio-economic backwardness of a region are often closely entwined with, and indistinguishable from, the desire of local communities for self-determination on grounds of caste, tribe, race, religion and ethnicity of the group in question, sentiments which are often fanned by local leaders with strong political ambitions of their own. There are demands for the formation of separate States in sensitive border areas as well. Policy makers need to tread carefully in such matters and avoid, at all cost, allowing fissiparous tendencies in the country to get out of hand.

Lop-sided development strategies at the root of regional discontent: The bifurcation of Andhra Pradesh revealed that the economic development in the State was in no way 'balanced'. All the Secretariat offices and the offices of the Heads of Departments were located in Hyderabad, the capital city. A majority of the institutions of higher learning, training and research, both government and private, were set up in Hyderabad. The headquarters of most of the State PSUs and of Central Government defence establishments were located in Hyderabad. Development of industries and the IT-led services sector was predominantly concentrated in and around Hyderabad. More than 47 per cent of the State's own revenues came from the Greater Hyderabad Region.

Policy makers in the country could take lessons from this flawed regional development in Andhra Pradesh while recognising that, generally, most of the

demands for the creation of new States are made by those who perceive that they have been left out of the mainstream development process in the State.

Should Parliament have unfettered powers to create new States? When the provisions relating to the reorganisation of States was discussed in the Constituent Assembly, Members were fully aware that the elected Government of free India would have to urgently consider reorganisation of States in order to bring administration closer to the people and to integrate the Princely States with the Indian Union. Therefore, Parliament was given complete powers to determine the reorganisation of States.

However, from the experience of the bifurcation of Andhra Pradesh, a question arises whether the powers of Parliament regarding States' reorganisation should be ring-fenced to the extent possible from partisan politics of the majority party in Parliament, and an institutional mechanism put in place so that such decisions are based on widely accepted rational and scientific principles. For instance, it could be debated whether it should be mandatory for any proposal for a reorganisation of a State to be referred to an expert independent body like a States' Reorganisation Commission. It could also be debated whether the reorganisation of States ought to require an amendment to the Constitution of India. This would require that the Bill be passed in each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting. This requirement of support for the Bill would be far more stringent than the present requirement of a simple majority in both the Houses of Parliament.

Should the views of the local people of the concerned State matter at all and, if so, how should they be ascertained? When the Home Minister, Mr. Chidambaram, announced on 9 December 2013 that steps would be taken to form Telangana, there was uproar in the Andhra region of the State against such a proposal. Political analysts, with hindsight, now say that at that time the major political parties were completely divided on the issue of bifurcation. Therefore, in the meeting convened by Chief Minister Rosaiah on 7 December 2013, all the parties, except CPI (M), agreed to support the proposal on Telangana, merely as a tactical measure, to avoid a vertical split in their parties. Therefore, issues that need to be widely debated in the country are firstly, whether, in a democratic, federal polity, the views of the local people of the concerned State should matter at all and, secondly, if so, in what manner should these views be ascertained.

In India, there is no provision in the Constitution for a process of conducting referendum. Such issues of great public significance are resolved generally through the political process of elections at the National and State levels.

Hazards faced by administrative agencies in implementing imperfect laws: The Expert Committee had to necessarily use its discretion and best judgement to interpret certain clauses of the Andhra Pradesh Reorganisation Act, 2014 which it found were vague and ambiguous. In a scenario of high voltage political discord, strong opposition of employees' unions, intense media gaze and the possibility of judicial scrutiny, the Expert Committee had to tread carefully in trying to resolve conflicts. It decided to provide detailed justification for the recommendations that it was making to convince both the sides that it was being just, reasonable and equitable. The Expert Committee, having been constituted by an Executive Order, was aware

that it had no judicial powers whatsoever. It did not have powers to issue summons to the officers of the PSUs in case they failed to appear before it or refused to cooperate in anyway. Therefore, the Expert Committee had to make every effort to gain the confidence of both sides by being as transparent, fair and impartial as possible.

Importance of ensuring fair, transparent, well-documented procedures:

During the hearings of the Coal Allocation Cases and the 2G Licensing Cases, the Supreme Court had raised several questions relating to the propriety of the procedures followed in the bidding process and examined whether they were fair and transparent. The Expert Committee tried to take a cue from these observations of the Supreme Court. In the first instance, it drew up certain general guiding principles to be observed in the case of the bifurcation of assets and liabilities of the PSUs and communicated these to all the PSUs. Secondly, the Expert Committee gave equal opportunity to the representatives of both Andhra and Telangana Regions in each PSU to place their views before the Expert Committee. In case a Dissent Note was given by any Member of the Expert Committee, it was made an integral part of the recommendations. Effort was made to properly maintain all the records of the Expert Committee and to digitise them subsequently.

Significant role of strong, charismatic political leadership and of policies of balanced regional development in controlling separatist tendencies:

It is observed in the case of Andhra Pradesh that whenever there was strong and charismatic political leadership at the Central level (as during the tenure of Prime Minister Indira Gandhi) and at the State Government level (as during the tenures of Chief Ministers N.T. Rama Rao, Chandrababu Naidu and Rajasekhara Reddy), the demand for a separate State of Telangana

remained subdued. However, it is also seen that strong political leadership by itself was not enough to suppress such a demand permanently. It was equally essential that these strong political leaders made conscious efforts to ensure that the benefits of economic development were extended to all the regions of the State. When the strong political leaders failed to ensure this balanced regional development, for instance from the mid-1990s onwards, the undercurrents of separatist tendencies continued to simmer and came to the fore once again when the time was opportune.

In retrospect, one may be justified in saying that had the successive State Governments in Andhra Pradesh honoured the safeguards extended to the Telangana Region under the Six Point Formula, implemented them effectively, and also ensured that the people of Telangana benefited equally from the industrial services and construction boom sweeping through the State from the mid-1990s onwards, the discontent amongst the people of Telangana, perhaps, may not have festered for as long as it did, and the bifurcation of the State could have, possibly, been prevented.

About the Author

Dr. Sheela Bhide is a retired Civil Servant belonging to the Indian Administrative Service, Andhra Pradesh Cadre of 1973 Batch. She has served the Government of Andhra Pradesh and the Government of India in various assignments over a period of 36 years. In 2008, she was awarded the Prime Minister's Award for Excellence in Public Administration. Dr. Sheela Bhide has a doctorate in International Trade from the Graduate Institute for International Studies and Development, Geneva, Switzerland. She holds a Masters degree in Economics from the George Mason University, Virginia, USA and a Masters Degree in Public Administration from the John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts, USA. At Harvard University, she was awarded the Josephine and Raymond Vernon Awards for Academic Excellence and Leadership.



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