

Union territories in India

Handout for foundation batch

Faculty: Jatin Gupta

Introduction

There exist a few centrally administered units which do not form part of any State but have been kept as separate and distinct entities because of several historical, cultural or political reasons. These administrative units are designated as Union Territories.

Before 1956, the present-day Union Territories were characterised as Part C States. The States' Reorganisation Commission in its report submitted in 1955 suggested that the Part C States be converted into centrally administered territories as these States were neither financially viable nor functionally efficient. The States' Reorganisation Act, and the Seventh Constitution Amendment Act abolished the Part C States and created the present day Union Territories.

A Union Territory is to be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. But this does not mean that the Union Territories become merged with the Central Government. Although they are independent entities, they are centrally administered. In several cases, the Supreme Court has declared that the Union Territories, though centrally administered, under the provisions of Art. 239, they are not part of the Central Government but are distinct constitutional entities.

Role of Administrator

Any instruction or directive issued by the Central Government or the President is binding on the administration of the Union Territory. A Governor of a State may also be appointed as the Administrator of a Union Territory adjoining to that State. In that capacity, the Governor is to act independently of his Council of Ministers [Art. 239(2)].

It has been held by the Supreme Court that the Administrator of a Union Territory is not a purely constitutional functionary. The Administrator is a delegate of the President. His position is wholly different from that of a State Governor. He cannot thus be equated with a State Governor. After differing with his Council of Ministers, the Administrator may act under orders of the President, which means the Central Government.

Specific UT's

PONDICHERRY

The Constitution makes some special provisions for administration of the Union Territory of Puducherry.

Parliament is empowered to create by law for Puducherry, a Legislature (elected, or partly elected and partly nominated) and/or a Council of Ministers with such constitution, powers and functions, in each case, as may be specified in the law [Art. 239A(1)].

Such a law is not to be regarded as an amendment of the Constitution under Art. 368 even though the law in question contains provisions amending the Constitution [Art. 239A(2)].

The **Administrator** of the Union Territory of Pondicherry can promulgate an ordinance when the Legislature is not in session if he is satisfied that circumstances exist which render it necessary for him to take immediate action.

The ordinance-making power of the Administrator is similar to that of a State Governor, except that:

1. the Administrator cannot promulgate an ordinance **without first seeking instructions from the President** in that behalf; and
2. he cannot promulgate any ordinance when the Legislature is **suspended or dissolved.**

Pondicherry has an Assembly which can make laws with respect to matters enumerated in the **State and the Concurrent Lists, but Parliament's overall power to pass laws for a Union Territory on any subject is preserved. In case of inconsistency between a law of Parliament and that of the Assembly, the law of Parliament prevails. However, in the area of Concurrent List or the State List, a law made by the Assembly prevails against a parliamentary law if** it has received the assent of the President.

The position of the Administrator is similar to that of the Governor in the matter of assent to the bills passed by the legislature. The Territory has a Council of Ministers with the Chief Minister at its head to aid and advise the Administrator in exercise of his functions in relation to the matters with respect to which the Assembly of the Union Territory has power to make laws except in so far as he is required by or under the Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions.

The Administrator and his Council of Ministers function under the general control of the President. They must comply with the directions issued by the President. **The Administrator is not bound by the aid and advice of his Ministers when he is acting in his discretion.** In case of difference of opinion between the Administrator and the Council of Ministers, the

matter is to be referred to the President for decision. It is needless to say that when President decides the point, it is in effect the Central Government which decides the point. And that decision is binding on the Administrator and also the Ministers. **The Chief Minister of the Union Territory is appointed by the President** who also makes rules for the conduct of business. In case of an emergency, when the administration of a Union Territory cannot be carried on in accordance with the Act, or for the proper administration of the Union Territory, the President can suspend the operation of all or any provisions of the Act. In such a case, the Administrator administers the Territory as the agent of the President under the provisions of Art. 239 of the Constitution.

Delhi

As Delhi is the national capital of India, it is maintained as a Union Territory and has not been given the status of a full-fledged State, because it is felt that Delhi must remain under the effective control of the Union Government. At the same time, it is felt that the people of Delhi ought to enjoy some semblance of democracy.

By virtue of the Constitution **(Sixty Ninth Amendment)** Act, 1991, Delhi has been given a special status.

Under **Art. 239AA**, introduced by the Constitutional Amendment in 1991, Delhi is now called the **National Capital Territory of Delhi [Art. 239-AA(1)]**. The Administrator thereof (appointed under Art. 239) is designated as the **Lt. Governor**. Delhi has a Legislative Assembly elected directly by the people under the supervision of the Election Commission [Art. 239-AA(2)(a)(b)(c)].

The Assembly can make laws with respect to matters enumerated in the State List or the Concurrent List barring certain entries therein [Art. 239AA(3)(a)].

Parliament retains power to make laws with respect to any matter for the Union Territory [Art. 239AA(3)(b)]. In case of repugnancy between a law made by Parliament and a law made by the Legislative Assembly of Delhi, the former prevails over the latter to the extent of the repugnancy [Art. 239AA(3)(c)]. But the law made by the Assembly can prevail over the Central Law if it is assented to by the President. But Parliament can legislate thereafter with respect to the same subject-matter contrary to the Delhi law.

Relationship between the Council of Ministers and LG of Delhi

Provision has been made for a Council of Ministers with the Chief Minister at the head to aid and advise the Lt. Governor except when he is required

to act in his discretion by law. [Art. 239AA(4)]. In case of difference of opinion between the Lt. Governor and his Ministers, the matter is to be referred to the President and his decision shall be binding. Pending the decision of the President, if in the opinion of the Lt. Governor the matter is urgent and needs immediate action; he can take such action as he deems necessary.

The Chief Minister is appointed by the President and the other Ministers are appointed by the President on the Chief Minister's advice. They hold office at the pleasure of the President and are collectively responsible to the Assembly.

The Lt. Governor of Delhi has power to promulgate ordinances similar to the Administrator of Pondicherry. The President has power under Art. 239 AB to take over the administration in case there is breakdown of the constitutional machinery therein, or for the proper administration of the National Capital Territory. The operation of Art. 239 AA may be suspended. The President can make by order such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the NCT in accordance with the provisions of Arts. 239 and 239AA. Parliament has been given power to make law to give effect to these provisions or supplement these provisions [Art. 230AA(7a)]. Such a law is not to be deemed as an amendment of the Constitution for purposes of Art. 368. Accordingly, Parliament has enacted the Government of National Capital Territory of Delhi Act, 1991, to effectuate and supplement the constitutional provisions.

2018 SC judgement

The Supreme Court in Government of NCT of Delhi vs. Union of India (2018) decided on the conflicts between the government of NCT and the Union Government and its representative, the Lieutenant Governor.

- It reminded the Lt. Governor what his real functions are
- It told the State government that it should remember that Delhi is a special category Union Territory.
- The Supreme Court affirmed that the Lt. Governor is bound to act on the aid and advice of council of ministers except in respect of 'Land', 'Public Order' and the 'Police'.
- The Court has also made it clear that there is no requirement of the concurrence of the Lt. Governor and that he has no power to overrule the decisions of the State government.
- However, Article 239AA (4) (proviso) which says that in the case of a difference of opinion between the Lt. Governor and his Ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to that decision. Lt. Governor can frustrate the efforts of the government, by declaring that there is a difference of opinion on any issue and refer it to the President. Referring matter to the President in reality means the Union Home

Ministry. The Lt. Governor being its representative, it is easier for him to secure a decision in his favour. The State government will be totally helpless in such a situation. The recent appointment of prosecutors for conducting the Delhi riot cases in the High Court is a case in point. When the government decided to appoint them, the Lt. Governor referred it under *proviso* to Article 239AA (4) to the President stating that there is a difference of opinion. This episode clearly points to the fault lines which still exist in the power equations in the capital's administrative structure.

The court also did not very clearly delineate the issues in respect of which the Lt. Governor can refer a decision taken by the Council of Ministers to the President in the event of a difference of opinion between the Lt. Governor and the State government.

But, can Lt. Governor refer routine administrative matter to the President?

A close reading of the Supreme Court judgment in the NCT Delhi case would reveal that he cannot. The Supreme Court says "The words '**any matter**' employed in the *proviso* to Article 239AA (4) **cannot be inferred to mean 'every matter'**".

Court also says that "The power of the Lieutenant Governor under the said *proviso* represents the exception and not the general rule". The President is the highest Constitutional authority and his decision should be sought only on constitutionally important issues.

Legislative powers of Parliament w.r.t UT

Under **Art. 246(4)**, Parliament can make a law for a Union Territory with respect to any matter, even if it is one which is enumerated in the State List.

Parliament can also legislate for Union Territories under its residuary powers, viz., Art. 248 and entry 97, List 1. Parliament thus has power to legislate for the Union Territories with regard to any subject. With regard to the Union Territories, there is no distribution of legislative power.

Parliament is however a busy body and is always pressed for time and it is not, therefore, possible for it to enact all the legislation in relation to matters falling in Lists II and III, which may be essential and desirable for the governance of a Union Territory. To relieve pressure on Parliament, therefore, certain other provisions have been made.

The President may make Regulations for the peace, progress and good government of the Union Territories of the Andaman and Nicobar Islands, Lakshdweep, Dadar and Nagar Haveli, Daman and Diu and Pondicherry [Art. 240(1)]. The President has no regulation-making power *vis-à-vis* Chandigarh.

The President shall not make Regulations for Pondicherry if a Legislature, as stated above, is established there. But the President can make

Regulations for Pondicherry as well if the legislature there is dissolved or suspended. [Proviso to Art. 240(1)].

A Regulation made by the President has the same force and effect as an Act of Parliament. A Regulation may even repeal or amend an Act of Parliament, or any other law, applicable to the Union Territory concerned [Art.240(2)].

The Home Minister has however given an assurance in Parliament that the President's Regulations would be placed on the tables of the Houses and the Houses would have full authority to make any modifications therein.

High courts and UTs

Parliament may by law constitute a High Court for a Union Territory or declare any court in any Territory to be a High Court [Art. 241(1)]. The constitutional provisions applicable to the High Courts in the States would apply to the High Courts of the Union Territories as well with such modifications or exceptions as Parliament may by law provide [Art.241(2)].

Parliament may extend or exclude the jurisdiction of any High Court to, or from any Union Territory [Art.241(4)]. Thus, Chandigarh falls under the jurisdiction of the Punjab and Haryana High Court and Delhi has a separate High Court of its own. Pondicherry falls under the jurisdiction of the Madras High Court. The Kerala High Court exercises jurisdiction over Lakshadweep, and the Calcutta High Court over the Andamans. By the High Court at Bombay (Extension of Jurisdiction Act), 1981, the High Court of Bombay has been made a common High Court for the States of Maharashtra and Goa and the Union Territory of Daman and Diu.

Only for nagendraipuri15@gmail.com