

THE UNION TERRITORIES AND TRIBAL AREAS

PART VIII and **X** of the Constitution contain the provisions regarding the Union Territories and the Scheduled and Tribal Areas respectively.

There are seven Union Territories- Andaman and Nicobar Islands, Chandigarh, Daman and Diu, Lakshdweep, Pudducherry, Dadra and Nagar Havelli and Delhi. The status of a Union Territory under the Constiution is not the same as that of a State. The Union territories are under the direct administration of the centre. They do not participate in the distribution of power with the Centre. In other words, they do not enjoy Constitutional relationship with the centre.

FOCUS ON

Why India has so many centrally administered territories?

Lakshdweep and Andaman & Nicobar Islands because of their strategic importance i.e, the defence of Bay of Bengal and Arabian Sea.

Chandigarh because of political reason as both Punjab and Haryana claim it.

Puducherry for legal reasons i.e., because of an agreement with France that so long as the people of Puducherry wish to maintain special identity their wishes should be respected.

Daman & Diu and Dadra & Nagar Haveli because of cultural reasons. They have different cultural footings due to Portuguese rule.

Delhi because it is the national capital.

Administration of Union Territories

According to Article 239, the President is the administrative head and administers the Union Territories through officers designated as Lieutenant governors and administrator in case of Chandigarh.

The President can also appoint an advisory Committee to assets him in the administration of

the Union Territories. The president consults the advisory committee on three issues

- (i) General questions of policy relating to the administration of subjects under the state list.
- (ii) All legal proposals pertaining to the Union Territories
- (iii) Matters relating to the annual financial statement for the Union Territories.

According to Article 239 (2) the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Union Territories	Administrative Head
Andaman and Nicobar Islands	<i>Lieutenant Governor</i>
Chandigarh	Administrator*
Dadra and Nagar Haveli	Administrator
Daman and Diu	Administrator**
Delhi	Lieutenant Governor
Lakshadweep	Administrator
Puducherry	<i>Lieutenant Governor</i>

* From 1952 to 1966 (the year Haryana was carved out of Punjab) Chandigarh was the capital of Punjab. When Punjab was divided, both Punjab and Haryana claimed the new city for its capital. Pending resolution of the issue, the Central Government made Chandigarh a Union Territory (under Section 4 of the Punjab Re-Organisation Act, 1966, with effect from November 1, 1966) with its administration functioning directly under the Central Government. Under the provisions of this Act, the laws in force in the erstwhile State of Punjab prior to November 1, 1966, continue to be applicable to the Union Territory of Chandigarh.



The practice of appointing an Administrator of the UT designated as "Chief Commissioner" continued up to May 31, 1984. There after, on June 1, 1984, the Governor of Punjab took over the direct administration of the Union Territory as the Administrator. "Chief Commissioner" was redesignated as "Adviser to the Administrator". Ever since June 1984, the Governor of Punjab has been functioning as the Administrator of Union Territory of Chandigarh.

The Adviser to the Administrator is an officer belonging to the Indian Administrative Services (IAS) and is appointed by Ministry of Home Affairs. He advises the Administrator on policy matters and oversees the actual day-to-day administration of the Union Territory. All financial powers of the Administrator stand delegated to him. Under the various laws, the Adviser acts as appellate authority for all matters.

**** The Administrator of Daman and Diu is also the Administrator of Dadra and Nagar Haveli**

Article 239A provides for the creation of Legislature and Council of Ministers for Puducherry. This article was added by the **Constitution (Fourteenth Amendment) Act, 1962**.

Special provisions with respect to Delhi

The Constitution (Sixty- Ninth Amendment) act, 1991 gave a democratic legislative structure to Delhi. It added Articles 239AA and 239 AB in the Constitution.

According to Article 239AA (1) as from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union Territory of Delhi shall be called the National Capital Territory of Delhi and the administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor.

Clause(2)(a) of Article 239AA holds that There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

Clause 2(b) of Article 239AA holds that the total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for

such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

According to **Article 239AA (4)**, There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

According to Article 239AA (5), the Chief Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of Article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and



any reference in that Article to "clause (1) of Article 239A" shall be deemed to be a reference to this Article or Article 239AB, as the case may be.

Article 239AB deals with the provision in case of failure of constitutional machinery in the National Capital Territory

Article 239 AB holds that If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

- (a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of Article 239AA or of any law made in pursuance of that Article; or
- (b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of Article 239AA or of all or any of the provisions of any law made in pursuance of that Article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of Article 239 and Article 239AA.

Power of Administrator to promulgate Ordinances

Article 239B deals with the power of administrator to promulgate Ordinances during recess of Legislature

Clause (1) of Article 239B that If at any time, except when the Legislature of the Union territory of Puducherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Note: No such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf: Further, whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is

referred to in clause (1) of Article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension.

According to Clause (2) of Article 239B, an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of Article 239A, but every such Ordinance—

- (a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and
- (b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf.

Power of President to Make Regulations for Certain Union Territories

Article 240 deals with the Power of President to make regulations for certain Union territories.

Clause(1) of Article 240 holds that the President may make regulations for the peace, progress and good government of the Union territory of—

- (a) the Andaman and Nicobar Islands;
- (b) Lakshadweep;
- (c) Dadra and Nagar Haveli;
- (d) Daman and Diu;
- (e) Puducherry;

Clause (2) of Article 240 holds that any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

Judicial Structure

Article 241 contains the provisions regarding High Courts for Union territories:

Clause (1) of Article 241 holds that Parliament may



by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution.

FOCUS ON

Delhi High Court

The High Court of Delhi was established on 31st October 1966. Initially, the High Court of Delhi exercised jurisdiction not only over the Union Territory of Delhi, but also Himachal Pradesh. It had a Himachal Pradesh Bench at Shimla in a building called Ravenswood. The High Court of Delhi continued to exercise jurisdiction over Himachal Pradesh until the State of Himachal Pradesh Act, 1970 was enforced on 25th January 1971.

The High Court of Delhi was established with four Judges. They were Chief Justice K. S. Hegde, Justice I. D. Dua, Justice H. R. Khanna and Justice S. K. Kapur. The sanctioned strength of Judges of this High Court increased from time to time. Presently, the sanctioned strength of Judges of the High Court of Delhi is 29 permanent Judges and 19 Additional Judges.

THE SCHEDULED AND TRIBAL AREAS

Scheduled Tribes and Scheduled Areas

The expression *Scheduled Tribes* means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are specified in the *Scheduled Tribes Order* issued by the President under Article 342. The expression "*Scheduled Areas*" means such areas as the President may by Order declare to be Schedule Areas. The *Scheduled Areas Order* issued by the President under Paragraph 6 of the Fifth Schedule, contains provisions relating to the Schedule Areas.

Administration of Scheduled and Tribal Areas

Article 244(1) provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

The Fifth Schedule provides that the executive power of the State extends to the Scheduled Areas therein. The Governor of such a State is required to make a report to the President, annually or whenever required by the President, regarding the administration of these Areas. The executive power of the Union extends to the giving of directions to the State regarding the administration of the said Areas.

There is a Tribal Advisory Council in each State having Schedule Areas therein, consisting of not more than 20 members, of whom, as nearly as, three fourths are representatives of the Scheduled Tribes in the Legislative assembly of the State. The duty of the Council is to advise, on matters pertaining to the welfare and advancement of the Scheduled tribes in the State, as may be referred to them by the Governor.

The Governor may by public notification direct that any particular Act of the Parliament or of the State Legislature shall not apply to a Schedule Area or any part thereof or shall apply subject to such exceptions and modifications as he may specify in the notification.

The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Such regulations are laws, and the Governor can apply specified laws to a Scheduled Area.

Formation of Autonomous State Comprising Assam Tribal Areas

Article 244A was added by the Constitution (Twenty-second Amendment) Act, 1969, in order to meet the demands of the hill tribes in Assam for a separate State.

Clause (1) of Article 244A empowers parliament to form, by law, an autonomous state comprising certain Tribal Areas in Assam and create local legislature and the Council of Ministers.

Such a law as is referred to in Article 244A shall not be deemed to be an amendment of the Constitution for the purposes of Article 368, though it may contain provisions amending or having effect of amending the Constitution.

Administration of Tribal Areas in Assam

Clause (2) of Article 244 provides that the administration of the Tribal Areas in the State of



Assam shall be carried on according to the provisions of the Sixth schedule.

The *Sixth Schedule* provides for autonomous districts and autonomous regions. It provides for the constitution of District Councils and Regional Councils for each autonomous district consisting of not more than 30 members of whom not more than 4 to be nominated by the Governor and the rest to be elected on the basis of adult franchise.

The Sixth Schedule provides for the Constitution and powers of the District and Regional Councils. It contains provision regarding administration of justice in autonomous districts and regions. For this purpose, it provides for the Constitution of Village Councils or Courts, District Council or Regional Council. The Council may constitute Courts for the trial of suits and cases between parties belonging to Scheduled Tribes.

The Schedule provides for the constitution of a District Fund for each autonomous District and a Regional Fund for each autonomous region to which all money received by the District and

Regional Council shall be respectively credited. The Governor may make rules for the management of these Funds.

The District and Regional Councils have been vested with powers to assess and collect land revenue and to impose taxes.

The Governor may by public notification direct that the provisions of any Act of Parliament or of the Legislature of Assam shall apply or shall not apply to the autonomous District or Region or shall apply with such modifications or exceptions as he may specify in the notification.

The Governor may annul or suspend an act or resolution of a District or a Regional Council if he is satisfied that it is likely to endanger the safety of India or is likely to be prejudicial to public order and take such steps as he may consider necessary to prevent the commission or continuance of such act or the giving of effect of effect to such resolution.

Parliament from time to time, by law, amend any of the provisions of the Sixth Schedule and such law shall not be deemed to be an amendment of the Constitution for the purpose of Article 368.

