CHAPTER IX

UNION TERRITORIES, TRIBAL AREAS AND SPECIAL PROVISIONS CONCERNING SOME STATES

SYNOPSIS

A. UNION TERRITORIES

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.

There are at present the following 7 Union Territories: (1) Delhi, (2) The Andaman and Nicobar Islands, (3) Lakshadweep, (4) Dadra and Nagar Haveli, (5)

Daman and Diu, (6) Pondicherry (known as Puducherry with effect from 1st October 2006) and (7) Chandigarh.[1]

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[2] abolished the Part C States and created the present day Union Territories.

A Union Territory is administered directly by the Central Executive. 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.[3] But this does not mean that the Union Territories become merged with the Central Government. Although they are independent entities, they are centrally administered. Any instruction or directive issued by the Central Government or the President[4] is binding on the administration of the Union Territory.[5]

Parliament may by law provide otherwise [Art. 239(1)]. 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. His position is somewhat different from that of a State Governor.[6] 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.[7] The Administrator thus is not a purely constitutional functionary.

The Supreme Court has ruled that the Central Government is the appropriate Government under s. 10(1) of the Industrial Disputes Act to make a reference of an industrial dispute in a Union Territory to a tribunal for adjudication.[8]

In several cases, the Supreme Court has declared that the Union Territories, though centrally administered, under the provisions of Art. 239, they

---

1. See, The First Schedule to the Constitution.
2. For the Constitution Amendment Act, See, Ch. XLII, *infra.*
3. *Dilip Chowdhary v. Registrar of Co-op. Societies, A&N Islands, Port Blair*, AIR 2000 Cal 228; *Andaman Wood Products India Pvt. Ltd. v. Union of India*, AIR 2001 Cal 61.
4. *S. Pushpa v. Sivachanmugavelu*, (2005) 3 SCC 110 : AIR 2005 SC 1038.
5. See *infra, Chandigarh Administration v. Surinder Kumar*, (2004) 1 SCC 530 : AIR 2004 SC 992.
6. *Devji Vallabhbhai v. Administrator, Goa, Daman, Diu*, AIR 1982 SC 1029 : (1982) 2 SCC 222.
For the position of a State Governor, see, Ch. VII, Sec. A(i), *supra.*
7. *Goa Sampling Employees' Association v. G.S. Co*., AIR 1985 SC 357 : (1985) 1 SCC 206; *Express Newspapers v. Union of India*, AIR 1986 SC 872 : (1986) 1 SCC 133; *Andaman Wood Products India Pvt. Ltd. v. Union of India*, AIR 2001 Cal 61.
8. *Goa Association, op. cit.*

are not part of the Central Government but are distinct constitutional entities.[9]

The President who is the executive head of a Union Territory does not function as the head of the Central Government, but as the head of the Union Territory under powers specially vested in him under Art. 239 thereby occupying a position analogous to the Governor of a State.[10] But the status of the Union Territories is not akin to that of the States. The Supreme Court has observed in this connection.[11] "Though the Union Territories are centrally administered under the provisions of Article 239 they do not become merged with the Central Government…"

(a) 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)].[12] 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)].[13]

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:[14]

(*i*) the Administrator cannot promulgate an ordinance without first seeking instructions from the President in that behalf; and

(*ii*) he cannot promulgate any ordinance when the Legislature is suspended or dissolved.

The ordinance is to be laid before the Legislature of the Union Territory, and it ceases to have effect after six weeks of the reassembly of the Legislature, or earlier if the Legislature disapproves the same [Art. 239B]. The ordinance has the same effect as an Act of the Legislature.

(b) OTHER UNION TERRITORIES

It will thus be seen that out of the seven Union Territories, it is only in respect of Pondicherry and Delhi[15] that some democratic set-up is envisaged by the Constitution itself. The other Union Territories are governed more directly by the Centre under the provisions of Art. 239 mentioned above.

---

9. *Satya Dev Bhushahri v. Padam Dev,* AIR 1954 SC 587 : (1955) 1 SCR 549; *Vindya Pradesh v. Shri Moula Bux*, AIR 1962 SC 145 : (1962) 2 SCR 794; See also *Chandigarh Admn v. Surinder Kumar,* (2004) 1 SCC 530 : AIR 2004 SC 992.

10. *New Delhi Municipal Council v. State of Punjab,* AIR 1997 SC 2847; *Govt. of NCT Delhi v. All India Central Civil Accounts,* (2002) 1 SCC 344 : AIR 2001 SC 3090.

11. *Govt. of NCT Delhi v. A.I.C.C.A., JAO's Ass.*, AIR 2001 SC 3090, 3093 : (2002) 1 SCC 344.

12. See, *Gobalousamy v. Pondicherry,* AIR 1970 Mad. 419.

13. For the process of Amendment of the Constitution, see, *infra,* Ch. XLI.

14. See, *supra*, Ch. VII, Sec. D(ii)(c), for the Governor's ordinance-making power.

15. See below, Sec. (f).

The Union Territories of Andaman and Nicobar, Lakshdweep, Dadar & Nagar Haveli, Daman and Diu and Chandigarh have no legislatures.

(c) LEGISLATION FOR UNION TERRITORIES

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.[16] Parliament can also legislate for Union Territories under its residuary powers, viz., Art. 248 and entry 97, List 1.[17] Parliament thus has plenary 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.[18] The three Lists have no relevance so far as the Union Territory of Delhi is concerned as Parliament can make a law with respect to any entry in any list.[19] The Supreme Court has stated in *Mithan Lal v. Delhi*,[20] in this connection:

> "To legislate for Part C States… the power of Parliament is plenary and absolute subject only to such restrictions as are imposed by the Constitution".

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.

The Regulation-making power of the President is plenary and a Regulation can be made for a Union Territory on all subjects on which Parliament can make

---

16. For distribution of legislative powers between the Centre and the States, see, *infra*, Ch. X.
Also see, *Mithan Lal v. Delhi*, AIR 1958 SC 682 : 1959 SCR 445; *In re Sea Customs* case, AIR 1963 SC 1760 : (1964) 3 SCR 787.

17. *Satpal & Co. v. Lt. Governor of Delhi*, AIR 1979 SC 1550 : (1979) 4 SCC 232.
For discussion on residuary powers of Parliament, see, *infra*, Ch. X and XI.

18. *Ram Kishore Sen v. Union of India*, AIR 1966 SC 644 : (1966) 1 SCR 430; *T.M. Kanniyan v. I.T.O.*, AIR 1968 SC 637 : (1968) 2 SCR 103.

19. *Govt. Servant Co.op. House Building Socy. Ltd. v. Union of India*, AIR 1998 SC 2636, 2638 : (1998) 6 SCC 381.

20. AIR 1958 SC 682, 685 : 1959 SCR 445.
Also, *N.D.M.C. v. State of Punjab*, AIR 1997 SC 2847.

laws. Thus, a Regulation can be made for any matter falling in List I, List II or List III.[21]

As regards Parliamentary legislation for Union Territories, the problem arises that these are small territories and Parliament hardly has sufficient time to hold threadbare discussion before legislating for Union Territories. To require Parliament to specifically legislate for these Territories will put a disproportionate pressure on parliamentary time. Therefore, to meet the situation, the following expedient has been adopted.

For all these Union Territories, except Andamans and Lakshadweep, various Acts of Parliament[22] provide that the Central Government may, by notification in the official Gazette, extend with such restrictions and modifications as it thinks fit, to a Union Territory any enactment which is in force in a State at the date of the notification.

Parliament has thus delegated some of its legislative power in relation to the Union Territories to the Central Government with a view to lighten its own burden and save its time. This means that the Central Government can extend, after adaptation, to a Union Territory any law in force in any other area in the country. Such a provision was held valid in the *Delhi Laws Act case*.[23]

When a law prevalent in a State is extended to a Union Territory under this provision, and if the said law is declared unconstitutional as being beyond the legislative competence of the enacting State under Art. 246, the Act in the Union Territory will not be affected, for there the question is to be judged not with reference to the power of the State Legislature but with reference to that of Parliament. If Parliament can make such a law, it will be valid.[24]

It may be noted that the Regulation-making power of the President with respect to Pondicherry is broader than the power delegated to the Central Government under the Union Territories (Laws) Act in two respects, *viz.* :

(1) The Regulation-making power extends to the whole of the legislative area (Lists I, II and III), while under the Act, delegation is confined only to matters falling within the State sphere, *i.e.*, Lists II and III.

(2) A Regulation can affect an Act of Parliament, but the same cannot be done under the power delegated under the Act in question.

The President can also issue Ordinances for the Union Territories under his general Ordinance-making power discussed earlier.[25] A presidential ordinance authorising the Delhi Administration to levy a special duty on the import of

---

21. *T.M. Kanniyan v. I.T. Officer, Pondicherry*, AIR 1968 SC 637 : (1968) 2 SCR 103.

22. The Union Territories (Laws) Act. 1950, S. 2; The Dadra and Nagar Haveli Act, 1961. S. 10; The Daman and Diu (Administration) Act, 1962, S. 6; The Pondicherry (Administration) Act, 1962, S. 8; The Punjab Re-organisation Act, 1966, S. 87.

23. *Supra*, Ch. II, Sec. N.
Also, *Ramesh Birch v. Union of India*, AIR 1990 SC 560 : (1989) Supp (1) SCC 430.
For clarification of the scope of this power of delegated legislation, **See**, *Smt. Marchi v. Mathu Ram*, AIR 1969 Del 267; *Faqir Chand v. C.P.W.D. Works*, AIR 1972 Del. 135.
For further comments on the *Delhi Laws Act* case, M.P. JAIN, *A TREATISE ON ADM. LAW*, I, 61-64; *CASES & MATERIALS ON INDIAN ADM. LAW*, I, 39-48.

24. *Mithan Lal v. Delhi*, AIR 1958 SC 682 : 1959 SCR 445.

25. *Supra*, Ch. III, Sec. D(ii)(c).

country liquor in Delhi was held valid because the President's ordinance-making power is co-extensive with Parliament's legislative power.[26]

Under Art. 73(1)(a), the executive power of the Union Government is co-extensive with the legislative powers of Parliament.[27] Consequently, the Union Government can validly issue executive directions to the Administrator of a Union Territory. In the absence of conflict between a direction issued by the Union Government, and a Presidential Regulation issued under Art. 240, the Administrator is bound to execute the directions of the Union Government.[28]

(d) HIGH COURT FOR UNION TERRITORIES

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.

(e) THE UNION TERRITORIES ACT, 1963

The Parliament has enacted the Union Territories Act 1963, in pursuance of Art. 239A. The object of the Act is to provide for Legislative Assemblies and Council of Ministers for certain Union Territories. In effect, the Act applies only to Pondicherry as Art. 239A is confined only to Pondicherry and does not apply to any other Union Territory . Thus, some form of democracy and parliamentary government has been introduced by this Act in Pondicherry as has been envisaged by Art. 239-A. The status of the Union Territory has not however been fully assimilated to that of the States as it is even now much more directly controlled by the Centre.

Pondicherry has an Assembly which can make laws with respect to matters enumerated in the State[29] and the Concurrent Lists,[30] 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.

---

26. *Satpal & Co.*, *supra*, footnote 17.
For discussion on this power, see, *supra*, Ch. III, Sec. D(ii)(c).
27. See Ch. VII, *supra.*
For further discussion on the matter, see, Ch. XII, *infra.*
28. *J. Fernandes & Co. v. Dy. Chief Controller*, AIR 1975 SC 1208 : (1975) 1 SCC 716.
29. For State List, see, *infra*, Ch. X, Sec. E.
30. For the Concurrent List, see, Ch. X, Sec. F, *infra.*

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.

(f) 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,[31] 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)].[32] The Assembly can make laws with respect to matters enumerated in the State List or the Concurrent List barring certain entries therein[33] [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 lat-

---

31. For this Amendment, see, Ch. XLII, *infra.*

32. For Election Commission, see, Ch. XIX, *infra.*

33. For these Lists, see, Ch. X. The excepted entries are : 1, 2 and 18 of the State List; entries 64, 65 and 66 of the State List insofar as they relate to entries 1, 2 and 8. These entries relate to public order, police and intoxicating liquors.

ter 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.[34]

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.[35]

The Chief Minister is appointed by the President and the other Ministers are appointed by the President on the Chief Minister's advice.[36] They hold office at the pleasure of the President and are collectively responsible to the Assembly.[37]

The Lt. Governor of Delhi has power to promulgate ordinances similar to the Administrator of Pondicherry.[38]

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.[39] 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.[40] Accordingly, Parliament has enacted the Government of National Capital Territory of Delhi Act, 1991, to effectuate and supplement the above-mentioned constitutional provisions.

S. 52(b) of the Act provides that all suits and proceedings in connection with the administration of the Capital shall be instituted by or against the Government of India.

In a dispute before a Tribunal, the Central Government and the Government of NCT Delhi were separately impleaded as respondents. The Govt. of NCT Delhi sought to file an appeal to the Supreme Court under Art. 136 against the Tribunal order adversely affecting it. The Central Govt. raised a preliminary objection under S. 52(b) of the Govt. of NCT of Delhi Act. The Supreme Court rejected the objection saying that when the Central Govt. and the Delhi Govt. were separately impleaded as parties, and the Tribunal order went against the Delhi Govt., "it is difficult to conceive as to why that party cannot file an appeal invoking the provisions of Art. 136 of the Constitution which is a proceeding against the orders

---

34. Proviso to Art. 239AA(3)(c)].
35. Proviso to Art. 239AA(4)].
36. Art. 239AA(5).
37. Art. 239AA(6).
38. Art. 239 AA(8) read with Art. 239B.
39. Art. 239 AB.
40. Art. 239AA(7b).
For Art. 368, see Ch. XLI, *infra*

made by the courts and tribunals. The Court further maintained that "though the Union Territoires are centrally administered under the provisions of Article 239 of the Constitution, they do not become merged with the Central Government and they form part of no state and yet are territories of the Union... Thus, it must be held that the Union Territory does not entirely lose its existence as an entity though large control is exercised by the Union of India."[41]

B. SPECIAL PROVISIONS REGARDING CERTAIN STATES

(a) GUJARAT AND MAHARASHTRA

With the formation of the States of Maharashtra and Gujarat, the President was authorised [Art. 371(2)] to provide for any special responsibility of the Governor for—

(a) the establishment of separate development boards for (i) Vidarbha, Marathawada and the rest of the Maharashtra; (ii) Saurashtra, Kutch and the rest of the Gujarat, with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;

(b) the equitable allocation of funds for developmental expenditure over the above-mentioned areas subject to the requirements of the State as a whole; and

(c) an equitable arrangement providing adequate facilities for technical education and vocational training and adequate opportunities for employment in services under the control of the State Government, in respect of the said areas, subject to the requirements of the State as a whole.

The object of Art. 371(2) is to enable the President to lay special responsibility on the Governors of Maharashtra and Gujarat for the development of certain areas.

(b) NAGALAND

Article 371A makes a few special provisions for the State of Nagaland, partly because of the disturbed law and order condition there, and partly because of the prevalence of strong feelings regarding their customs etc. among the people of the State, known as the Nagas. For long, the territory comprised in the State, Naga Hills—Tuensang Area, had been administered as a Scheduled Area under the provisions of Schedule VI to the Constitution.

According to Art. 371A, notwithstanding anything in the Constitution, no Act of Parliament concerning any of the following matters would apply to Nagaland unless the State Legislative Assembly so decides by a resolution: (*i*) religious or special practices of the Nagas; (*ii*) Naga Customary law and procedure; (*iii*) Administration of civil and criminal justice involving decisions according to Naga customary law; (*iv*) ownership and transfer of land and its resources [Art. 371A(1)].

So long as there occur internal disturbances in the State, the Governor of Nagaland shall have special responsibility with respect to law and order, and in the

---

41. *Govt. of NCT Delhi v. All India Central Civil Accounts,* (2002) 1 SCC 344, 348 : AIR 2001 SC 3090.

discharge of his functions, the Governor, after consulting the Council of Ministers, exercises his individual judgment as to the action to be taken.

In case a question arises whether any matter falls within the Governor's individual judgment or not, the Governor's decision in his discretion is final. The validity of anything done by the Governor is not to be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment. The Governor's special responsibility shall cease when the President makes an order to the effect, on being satisfied, that it is no longer necessary for the Governor to have special responsibility for law and order in the State [Art. 371A(2)].

The Governor is also to see that the money provided by the Central Government for any specific service or purpose is included in the demand for a grant relating to that service or purpose and not in any other demand moved in the State Legislature [Art. 371A(2)(c)].

A regional council is to be established for the Tuensang district of the State. The Governor is to make rules for the composition of the council, manner of choosing its members, their terms of office, salaries etc.; the procedure of the council; appointment of officers of the council and their condition of service; any other matter for the proper functioning of the council.

For a period of ten years, or for such further period as the Governor may specify on the recommendation of the regional council, the following provisions are to operate for this district;

(*a*) The administration of the Tuensang district is to be carried on by the Governor;

(*b*) The Governor shall in his discretion arrange for equitable distribution between Tuensang district and the rest of the State of money provided by the Government of India to meet the requirements of the State;

(*c*) No Act of Nagaland Legislature is to apply to Tuensang district unless the Governor so directs on the recommendations of the regional council; the Governor may also introduce such modifications in the Act as the regional council may recommend;

(*d*) The Governor may make Regulations for the Tuensang district and any such Regulation may repeal or amend any law (whether an Act of Parliament or any other law) prevailing there;

(*e*) There shall be a Minister for Tuensang affairs in the Council of Ministers; he is to be appointed by the Governor on the advice of the Chief Minister from amongst the members representing Tuensang in the Legislature.

The Minister for Tuensang Affairs is to deal with all matters relating to the district and have direct access to the Governor for the purpose; but he shall keep the Chief Minister informed about the same. The final decision on all matters relating to Tuensang is to be made by the Governor in his discretion [Arts. 371A(1)(d) and (2)].

Members in the Nagaland Legislative Assembly from Tuensang are not elected directly by the people as in other States but by the regional council;

members from the districts of Kohima and Mokokechung (*i.e.*, the rest of the Nagaland) are elected in territorial constituencies.

(c) ASSAM

Article 371B provides for the constitution of a committee of the members of the Assam Legislative Assembly elected from the Tribal Areas mentioned in Part I of the table appended to the Sixth Schedule. The intention is that this committee should consider bills introduced in the Assembly from the point of view of the people in these Areas.[42]

According to Art. 371C, the President may provide for the creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill areas of the State.

The State Governor has been placed under an obligation to make an annual report to the President regarding the administration of the Hill Areas. The Central Government may give directions to the State Government regarding administration of these Areas.

(d) MANIPUR

Arts 371C makes provision for setting up a committee in the Legislative Assembly of Manipur to look after the interests of the Hill Areas in the State. The committee is to consist of the members of the Assembly elected from the Hill Areas of that State.

(e) ANDHRA PRADESH

Arts. 371D and 371E make some special provisions for the State of Andhra Pradesh.[43]

Article 371D is peculiar to Andhra Pradesh due to historical background. It was enacted to give effect to certain safeguards in the matter of employment opportunities for the residents of the Telengana region of Andhra Pradesh.

The primary purpose of Art. 371D appears to be two fold:

(1) to promote speedy development of the backward areas of the State of Andhra Pradesh with a view to secure balance in the development of the State as a whole; and

(2) to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service.

Under Art. 371D(10), the provisions of Art. 371D, and of any order made by the President thereunder, "shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."[44]

The genesis of these Articles is that, for quite some time, the people of Telengana region in Andhra Pradesh were carrying on an agitation for the creation of a separate Telengana State. These provisions were therefore enacted to meet some of the aspirations of the Telengana people so that they may give up their demand for a separate State.

---

42. See also, Art. 244 A, *infra*.

43. Added by the Constitution (Thirty-Second Amendment) Act, 1973.
For this Amendment, see, Ch. XLII, *infra.*

44. See, *V. Jagannadha Rao v. State of Andhra Pradesh,* AIR 2002 SC 77 : (2001) 10 SCC 401.

According to Art. 371D(1), the President may by order provide, having regard to the requirements of the State as a whole, for equitable opportunities for the people belonging to different parts of the State in the matter of public employment and education and different provisions may be made for different parts of the State. In this regard, the President may require the State Government to organise civil posts in local cadres for different parts of the State and provide for direct recruitment to posts in any local cadre.

According to the Andhra Pradesh High Court, the special provisions under Art. 371D(1) could be made only by a Presidential order and not by any other instrument. "There is no provision that the Presidential powers can be exercised by the State Legislature or any other authority of the State."[45]

Provision has also been made for establishing an Administrative Tribunal in the State for redressing grievances of the people *inter alia* in such matters as appointment, allotment or promotion to civil posts in the State [Art. 371-D(3)].[46]

According to Art. 371-D(5), the order of the Tribunal finally disposing of any case becomes effective upon its confirmation by the State Government, or, on the expiry of three months from the date on which the order is made whichever is earlier. The State Government is authorised to modify or annul the Tribunal's order before it becomes effective for reasons to be specified. [Proviso to Art. 371D(5)].

The High Court is not to have any powers of superintendence over the Administrative Tribunal. No Court (other than the Supreme Court) is to exercise any jurisdiction, power or authority in respect of any matter subject to the jurisdiction of the Tribunal. [Art. 371D(7)] The officers and servants of the High Court and members of the judicial service including district judges remain outside the purview of Art. 371D.[47]

The Supreme Court has declared Art. 371D(5) invalid in *P. Sambhamurthy v. State of Andhra Pradesh*[48] on the ground that it violates the basic feature of the Constitution. Executive interference with the order of a tribunal has been held to be against Rule of Law. "The rule of law would cease to have any meaning because then it would be open to the State Government to defy the law and get away with it:". Rule of law is a "basic and essential feature of the Constitution".[49] The Court upheld the validity of the rest of Art. 371D.[50]

Article 371D(3) authorizing setting up of the tribunal has been upheld in that very case.

Article 371E empowers Parliament to establish a university in the State of Andhra Pradesh.

---

45. *Govt. of A.P. v. Medwin Educational Society*, AIR 2001 AP 148.
46. The Tribunal has been set up by the Andhra Pradesh Administrative Tribunal Order, 1975.
47. *Chief Justice, A.P. v. L.V.A. Dikshitulu*, AIR 1979 SC 193 : (1979) 2 SCC 34.
48. AIR 1987 SC 663 : (1987) 1 SCC 362. Also see, *Cases & Materials on Indian Administrative Law, II*, 1382-1385.
49. For discussion on the doctrine of Basic Features of the Constitution, see, *infra*, Ch. XLI.
50. Also see, *C. Surekha v. Union of India*, AIR 1989 SC 44 : (1988) 4 SCC 526; *S. Prakash Rao v. Commr. of Commercial Taxes*, AIR 1990 SC 997 : (1990) 2 SCC 259.

C. SCHEDULED AND TRIBAL AREAS

Provisions for the administration of the Scheduled Areas and Scheduled Tribes in any State, other than the States of Assam and Meghalaya, Tripura and Mizoram, are contained in Art. 244(1) and the Fifth Schedule to the Constitution.

The Fifth Schedule to the Constitution can be amended by Parliament. Para 7 of the Schedule empowers Parliament to amend it by way of addition, variation or repeal of any provision thereof.

These areas are treated differently from the other areas in the country because they are inhabited by aboriginals who are socially and economically rather backward, and special efforts need to be made to improve their condition. Therefore, the whole of the normal administrative machinery operating in a State is not extended to the Scheduled Areas, and the Central Government has somewhat greater responsibility for these Areas.

The executive power of a State extends to the Scheduled Areas therein. The Governor annually, or whenever required by the President, makes a report to the President regarding the administration of the Scheduled Areas. The Central Government can give directions to the State regarding the administration of such Areas.

The President may by order declare an area to be a Scheduled Area.[51] Such Areas lie in the States of Bihar, Gujarat, Madhya Pradesh and Tamil Nadu.

Each State having Scheduled Areas has a Tribes Advisory Council consisting of not more than twenty members, three-fourths of whom are to be the representatives of the Scheduled Tribes in the State Legislative Assembly. A similar Council may be created in the State which has Scheduled Tribes, but not Scheduled Areas, if the President so directs.

It will be noted that in the case of Scheduled Areas there is an obligation to create an Advisory Council, but there is no such obligation to create an Advisory Council, in case of Scheduled Tribes and the matter had been left to the discretion of the Central Government.

The Tribes Advisory Council advises on such matters pertaining to the welfare and advancement of the Scheduled Tribes as the Governor may refer to it. The Governor may direct by public notification that a law made by Parliament or the State Legislature shall not apply to a Scheduled Area, or shall apply subject to specified exceptions and modifications. [Cl. 1 of Para 5].

The Governor has power to make Regulations for the peace and good government of a Scheduled Area after consulting the Tribes Advisory Council [Cls. 2 and 5 of Para 5]. A Regulation may amend or repeal an Act of Parliament or of the State Legislature applicable to the area in question [Cl. 3 of Para 5]. A Regulation comes into force only when it is assented to by the President [Cl. 4 of Para 5]. This provision confers the "widest" power to legislate on the Governor.[52]

---

51. Cl. 6 of the V Schedule to the Constitution.
Also See, The Scheduled Areas (Part A States) Order, 1950, and The Scheduled Areas (Part B States) Order, 1950.

52. *Ram Kirpal v. State of Bihar*, AIR 1970 SC 951 : (1969) 3 SCC 471. For comments on the Fifth Schedule, see, *Samatha v. State of Andhra Pradesh*, AIR 1997 SC 3297 : (1997) 8 SCC 191.

TRIBAL AREAS IN ASSAM AND MEGHALAYA

The conditions in the Tribal Areas of Assam, Meghalaya, Tripura and Mizoram, are very different from those in the other Tribal Areas. These Tribal Areas are divided into fairly large districts inhabited by single tribes or fairly homogeneous groups of tribes with highly democratic and mutually exclusive tribal organisation. The tribes in Assam have not assimilated much the life and ways of the other people in the State.

These areas have hitherto been anthropological specimens. The tribal people in other parts of India have more or less adopted the culture of the majority of the people in whose midst they live. The Assam tribes, on the other hand, have still their roots in their own culture, customs and civilization. These areas are therefore treated differently by the Constitution, and sizeable amount of autonomy has been given to these people for self-governance. The provisions of the Sixth Schedule apply to the administration of these tribal areas.

These areas have been constituted into autonomous districts. If a district has different Scheduled Tribes, autonomous regions may be created therein by the Governor except with regard to the Bodo Land Territorial Areas Districts.[53] Each district has a District Council most of whose members are elected on adult suffrage. Some are nominated by the Governor. Nominated members hold office at the pleasure of the Governor, and are removable at his discretion. The Governor can exercise the discretionary power only according to the advice of the Council of Ministers.[54] An autonomous region has a Regional Council. A separate provision has been made for the Bodo Land Territorial Council.[55] Administration is vested in these bodies for the areas under their jurisdiction. They can make laws for certain matters of proximate interest to the tribal people, *e.g.*, marriage, social customs, inheritance of property, village administration, shifting cultivation, forests, land, use of canal or water-course for agriculture, etc. These laws come into force after being assented to by the Governor.[56] The Autonomous Hill Councils of the Tribal Areas listed in Part I of the Table appended to clause 20 of Schedule VI as well as the Bodo Land Territorial Council have been given additional powers to make laws which are subject to the assent of the President.[57]

Power under para 2 of Schedule VI *i.e.* the power of the Governor to divide areas occupied by scheduled tribes is to be exercised as envisaged under various provisions of Constitution, especially Art. 163 that is on the aid and advice of the Council of Ministers. Schedule VI is a part of the Constitution.[58]

Administration of justice is carried on by village courts, the District Council or the Regional Council. The Gauhati High Court has such jurisdiction over these areas as the Governor may specify.

There is a District Fund or a Regional Fund to which all moneys received by the District Council or the Regional Council are credited. The District and Regional Councils have powers of taxation.

---

53. *Vide* Act 44 of 2003 dt. 7-9-2003.
54. *Pu Myllai Hlychho v. State of Mizoram*. (2005) 2 SCC 92 : AIR 2005 SC 1537.
55. *Vide* Act 44 of 2003 dt. 7-9-2003.
56. The terms "Governor" and "State Legislature", in this section mean, in case of the Union Territory of Mizoram, the "Administrator" and the Assembly of Mizoram.
57. *Vide* Act 44 of 2003 dt. 7-9-2003.
58. *Pu Myllai Hlychho v. State of Mizoram* (2005) 2 SCC 92 : AIR 2005 SC 1537.

An act or resolution of a District or Regional Council may be suspended or annul-led by the Governor if he is satisfied that it is likely to endanger the safety of India. Such an order of the Governor is to be laid before the State Legislature and it remains in force for 12 months unless revoked by the Legislature. The Legislature can pass a resolution to extend the duration of the order further by 12 months at one time.

Acts of the State Legislature dealing with a matter within the purview of the District or Regional Council applies to a district only when the District Council so directs by public notification. The Council can also make amendments in the Act. As regards other Acts of the State Legislature, the Governor is authorised to notify that they do not apply to an autonomous district or region, or that they apply subject to such modifications as the Governor may specify in the notification. In case of the State of Meghalaya, the Acts of the Legislatures prevail over those made by the District or Regional Council. As regards the Acts of Parliament, the power vests in the President to extend them, subject to such modifications as he may specify, to the autonomous districts or regions.

The Governor may appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. The report of the commission, the Governor's recommendations thereon and an explanatory memorandum regarding the action proposed to be taken by the Government are placed before the State Legislature. A District or Regional Council may be dissolved by the Governor on the recommendation of the commission.

It is clear that Governor shall consult the Council of Ministers and consultation with District/Regional Council is optional. On facts, merely because Governor consulted the Council of Ministers for nominating the four members, and the file for nominating the new members was initiated by the Council of Ministers it cannot be assumed that Governor failed to exercise his discretionary powers.[59]

The State Government pays to a District Council an agreed share of the royalties arising each year from licences and leases for prospecting and extraction of minerals from any areas in the district. In case of a dispute regarding the share of royalties, the Governor decides the matter 'in his discretion'. This clause indicates that in all other matters pertaining to the Tribal Areas in the Schedule, the Governor acts on the advice of the Ministers.[60]

The provisions of the Sixth Schedule may be amended from time to time by Parliament by making a law for the purpose. Any changes introduced by Parliamentary legislation in the Sixth Schedule are not to be deemed to amount to an amendment of the Constitution for the purposes of Art. 368.[61]

Provisions have been made under Art. 244A for creation, by a law of Parliament, of an autonomous State within the State of Assam consisting of the Tribal Areas mentioned in Part I of clause 20 of the VI Schedule.[62] Details have

---

59. *Pu Myllai Hlychho v. State of Mizoram* (2005) 2 SCC 92 : AIR 2005 SC 1537.

60. Cf. See, comments of Hidayatullah, J., in *Edwingson v. State of Assam*, AIR 1966 SC 1220, 1240 : (1966) 2 SCR 770.

The learned Judge holds that the Governor has special responsibilities in relation to the administration of the Tribal Areas in Assam. Also see (1967) *JILI*, 237.

61. For Art. 368, see, Ch. XLI, *infra*.

62. These Areas are: The North Cachar Hills District and The Mikir Hills District.

not been worked out in the constitutional provisions but have been left to Parliament.

The autonomous State may have an elected Legislature and a Council of Ministers. The Act of Parliament will specify the matters enumerated in List II or III with respect to which the Autonomous State Legislature will have power to make laws.

The idea underlying Art. 244A is that "consistent with the need to provide adequate scope for the political aspirations of the hill people, and the well-being of the people inhabiting the other parts of the State of Assam, the over-all unity should be preserved."[63]

The autonomous state of *Meghalaya* was constituted in exercise of the power under Art. 244A. With effect from January 21, 1972, *Meghalaya* has been upgraded as a full-fledged State. Later, another State of Mizoram was created in 1987.

A North-Eastern Council has been set up, to provide for a unified and coordinated approach to the development of the entire region. This region comprises the States of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram. The Council consists of the Governors and Chief Ministers of the States, and a Union Minister to be nominated by the President. The Council is an advisory body. It may discuss any matter in which some States may be interested and may advise the Central Government and the State Governments as to the action to be taken.[64]

D. SIKKIM

By the Constitution (Thirty-Fifth Amendment) Act, 1974,[65] Sikkim was associated with the Union of India as an "Associated State". This did not satisfy the aspirations of the people of Sikkim as they wanted to be an integral part of India as a full-fledged state. To give effect to the wishes of the people, Parliament passed the Constitution (Thirty-Sixth Amendment) Act, 1975,[66] which on being ratified by eleven State Legislatures became effective on May 16, 1975. Sikkim thus became a State of the Indian Union. The Amendment introduced Art. 371F laying down some special provisions applicable to Sikkim to provide for certain peculiar circumstances prevailing there.

The State of Sikkim has one seat each in the Lok Sabha and the Rajya Sabha. Under a newly added Article [Art. 371F], Parliament has been given power to provide for the number of seats in the Sikkim Legislative Assembly (which cannot be less than thirty) which may be filled by candidates belonging to different sections of the people of the State. This has been done to protect the rights and interests of the different sections of the State population.

Another provision in this Article confers special responsibility on the Governor of Sikkim for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the State population. In dis-

---

63. The proposal was announced in Parliament on September, 11, 1968.
64. For details, see, The North-Eastern Council Act, 1971.
65. See, Ch XLII, *infra*, for the Constitution Amendment.
66. See, Ch. XLII, *infra*, for the Amendment.

charge of this responsibility, the Governor is subject to such directions as may be issued by the President from time to time.

Sikkim has a High Court of its own. Clause (k) of Art. 371F guarantees continued operation to earlier Sikkim laws even though they may be inconsistent with the Constitution until these laws are amended or repealed by a competent legislature or any other authority.[67]

Article 371F(f) authorises Parliament to reserve seats in the Sikkim Legislative Assembly for different sections of the population of Sikkim for the purpose of protecting their rights and interests. Accordingly, Parliament has reserved certain seats for ethnic and religious groups. In terms of Art. 371F, Parliament has reserved 12 out of 32 seats for the Sikkimese of "Bhutia-Lepcha" origin and one seat for the "Sangha", the Budhist Lamaic Monastries.

This provision was challenged as unconstitutional. Two questions were brought before the Supreme Court for decision, *viz.*: (1) whether a seat can be earmarked in the State Legislative for a representative of a group of religious institutions to be elected by them; (2) whether seats can be reserved in favour of a particular tribe far in excess of its population.

It was argued that Art. 371F(f) itself violated the basic features of the Constitution. It was also argued that the statutory provisions for reserving seats, were also unconstitutional as violative of a basic feature of the Constitution, such as, the democratic principle.[68] However, in *R.C. Poudyal v. Union of India*,[69] the Supreme Court rejected the argument. The reservation in favour of certain groups was held necessary because of the state of development of the newly admitted State of Sikkim. The Court by majority ruled that the principle of "'one person one vote' is in its very nature considerably tolerant of imbalances and departures from a very strict application and enforcement". The court went on to observe : "The provision in the Constitution indicating proportionality of representation is necessarily a broad, general and logical principle but not intended to be expressed with arithmetical precision". Adjustments are possible having regard to the political maturity, awareness and degree of political development in different parts of India.

The inequalities in the case of Sikkim in representation "are an inheritance and compulsion from the past. Historical considerations have justified a differential treatment". The reservation of one seat in favour of Sangha was justified on the ground that though it was a religious institution yet it was closely interwoven with the political and social life of Sikkim.

E. MIZORAM

Article 371G makes some special provisions with regard to the State of Mizoram. It provides, that "notwithstanding anything in the Constitution", no parliamentary law in respect of religious or social practices of the Mizos, Mizo customary law and procedure, administration of civil and criminal justice involving decisions according to Mizo customary law, ownership and transfer of land, shall apply to the State of Mizoram unless the State Legislative Assembly by a resolution so decides.

---

67. *Purna Bahadur Subba v. Sabitri Devi Chhetrini*, AIR 1982 NOC. 311.
68. For further discussion on this aspect, see, Ch. XLI, *infra.*
69. AIR 1993 SC 1804 : 1984 Supp (1) SCC 324; see, *supra*, Ch. V.

F. ARUNACHAL PRADESH

According to Art. 371HF, the Governor of Arunachal Pradesh has been entrusted with special responsibility with respect to law and order in the State. In discharging this function, the Governor after consulting his Council of Ministers, exercise his individual judgment as to the action to be taken.

The President can by an order put an end to this special responsibility of the Governor, if after receiving a report from the Governor or otherwise, the President is satisfied that it is no longer necessary for the Governor to have any such responsibility.

G. TRIPURA

According to Art. 332(3B) added by the 72nd Constitution Amendment, in the Tripura Legislative Assembly, the number of seats reserved for the Scheduled Tribes "shall be such numbers of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-Second Amendment) Act, 1992,[70] of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly."

The provision means that the proportion of seats reserved for S/Ts to the total number of seats in the Assembly will continue to be the same as it existed on the date of enforcement of the 72nd Amendment of the Constitution.

On the relevant date, the S/Ts had 20 seats in the Assembly having a membership of 60. On the basis of the proportion of their population to the total state population, they would be entitled to 17 seats. Thus, the formula contained in the 72nd Amendment gave the S/Ts a few more seats than they would be entitled on a population basis.

This provision was challenged on the ground of being against the 'basic feature' of the Constitution contained in Art. 332(3),[71] viz. that the S/Ts would be entitled to the seats in the State Legislature in proportion to their population. The Supreme Court however rejected the challenge on several grounds,[72] viz., the provision was of a transient nature; referring to *Poudyal*,[73] the court said that the concept of "one person one vote" could not be enforced with mathematical precision; the provision was justifiable in the context of the factual situation prevailing on the ground in Tripura; the provision promoted the constitutional value—"social, economic and political justice to the people of India".

H. VILLAGE PANCHAYATS

The Constitution (Seventy-Third Amendment) Act, 1992,[74] has been enacted to strengthen the *panchayat* system in villages in a bid to strengthen democratic institutions at the grass root level. The underlying idea is to make *panchayats* as vibrant units of self government and local administration in the rural areas so that they can subserve the teeming millions living there. The Amendment is of his-

---

70. For the specific Amendment, see, Ch. XLII, *infra.*
71. For this constitutional provision, see, Ch. XXXV, *infra.*
72. *Subrata Acharjee v. Union of India*, (2002) 2 SCC 725 : AIR 2002 SC 843.
73. *Poudyal*, see, footnote 69, *supra.*
74. For the Amendment, see, Ch. XLII, *infra.*

toric value as it is designed to establish strong, effective and democratic local administration. It is hoped that this will lead to rapid implementation of rural development programmes.

Until the enactment of the 73rd Amendment of the Constitution, the *panchayat* system was based purely on State laws and the functioning of the system was very sporadic. The Constitutional Amendment seeks to strengthen the system by giving it constitutional protection. A new Part, Part IX, has been added to the Constitution consisting of Arts. 243 to 243-O. A new Schedule, *viz.*, Eleventh Schedule, has also been added to the Constitution.[75]

Following its earlier decision[76] it has been held that Part IX of the Constitution or Article 243 makes no change in the essential feature of the Panchayat Organization. It was pointed out that what was sought to be done by the Seventy-third Amendments which inserted Part IX was to confer Constitutional status on District Panchayat, Taluka Panchayat and Village Panchayats as instruments of local self government.[77]

The notable feature of these constitutional provisions is that these are in the nature of basic provisions which need to be supplemented by law made by the respective State Legislature. The reason is that local government including the self-governing institutions for the rural areas, is exclusively a State subject under entry 5, List II.[78] Parliament does not have legislative power to enact any law relating to village panchayats. However, it is open to the Centre, if statutorily authorised, to extend the provisions of State legislation on panchayats to Union Territories.[79]

Under these Constitutional provisions, *panchayats* are to be established in every State at the village, intermediate and district levels [Art. 243B]. Art. 243(d) defines "panchayat" as an institution of self-government constituted under Art. 243-B, for the rural areas. There will be direct elections to all these bodies by the electorate from territorial constituencies in the respective *panchayat* area [Art. 243C(2)]. The detailed provisions are to be made by the State Governments by passing laws subject to the Constitutional provisions contained in Part IX of the Constitution now introduced by the 73rd Constitutional Amendment. [Art. 243C(1)].[80] Where the appropriate Government had failed to create the posts necessary for discharge of duties under the relevant statute, the Court directed the Government to create such posts.[81] According to Art. 243A, a gram sabha exer-

---

75. For comments on these constitutional provisions, see, *Velpur Gram Panchayat v. Asstt. Director of Marketing, Guntur*, AIR 1998 AP 142.

76. *Kishan Singh Tomar v. Municipal Corporation*, (2006) 8 SCC 352 : AIR 2007 SC 269.

77. *Gujarat Pradesh Panchayat Parishadn v. State of Gujarat*, (2007) 7 SCC 718 : (2007) 9 JT 503.

78. For these entries and lists, see, *infra*, Ch. X.

79. In exercise of powers conferred under section 87 of the Punjab Reorganisation Act, 1966, the Central Government notified that the provisions of the Punjab Panchayati Raj Act, 1994 would be applicable to the Union Territory of Chandigarh. See in this connection *UT Chandigarh v. Avtar Singh*, (2002) 10 SCC 432.

80. For discussion on Art. 243C, see, *Jagdish Prasad Bhunjwa v. State of Madhya Pradesh*, AIR 1997 MP 184; *State of Uttar Pradesh v. Pradhan, Sangh Kshettra Samiti*, AIR 1995 SC 1512 : 1995 Supp (2) SCC 305. See also *Lalit Mohan Pandey v. Pooran Singh*, (2004) 6 SCC 626 : AIR 2004 SC 2303.

81. *UT Chandigarh v. Avtar Singh*, (2002) 10 SCC 432.

cises such powers and performs such functions at the village level as the State Legislature may by law provide.

Article 243-D(1) mandates that seats be reserved for the Scheduled Castes and the Scheduled Tribes in every *panchayat*. Art. 243-D(4) also directs that the offices of the chairpersons in the *panchayats* at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the State Legislature may, by law, provide.[82]

Under 243D(6), a State Legislature may make any provision for reservation of seats in any panchayat or offices of chairpersons in the panchayats at any level in favour of "backward class of citizens". The expression "Backward class" has not been defined. The Patna High Court has ruled that "it is well within the domain of the legislative to determine as to who is the Backward class and the caste can be one of the factors for such determination."[83]

According to Art 243C(5), the chairperson at the intermediate or district level *panchayat* is to be elected by the elected members thereof. The chairperson of the village *panchayat* is to be elected in such manner as the State Legislature may provide by law.

Article 243F lays down the disqualifications for membership. Under Art. 243E, the normal tenure of a *panchayat* is five years unless sooner dissolved under the law made by the State.

Under Art. 243G, the State Legislature may, by law, endow the *panchayats* with such powers and authority as may be necessary to enable them to function as institutions of self government. Such a law may contain provisions for the devolution of powers and responsibilities upon panchayats with respect to—(a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the XI Schedule to the Constitution.[84] A provision making a person having more than two living children ineligible to contest for the post of Panch or Sarpanch has been held to be Constitutional and in keeping with the objective of popularising socio-economic welfare and healthcare of the masses. [85]

Under Art. 243H, the State Legislature may confer power on panchayats to levy and collect specified taxes, duties, tolls and fees. Under Art. 243I, the State Government has to constitute a Finance Commission after every five years to review the financial position of *panchayats* and suggest ways and means to strengthen their financial position.

Under Art. 243K, elections to *panchayats* are to be conducted under the supervision of the State Election Commission. This provision ensures that all elections to panchayats are completely free from fear and political interference. Art. 243-O imposes restrictions on calling into question any election to a *panchayat*

---

82. *Vinayakrao Gangaramji Deshmukh v. P.C. Agarwal*, AIR 1999 Bom. 142; *Jagdish Prasad Bhunjwa v. State of Madhya Pradesh*, AIR 1997 MP 184.

83. *Kirshna Kumar Mishra v. State of Bihar*, AIR 1996 Pat 112.
Also see in this connection, discussion under Art. 15(4), *infra*, Ch. XXII; *Indra Sawhney v. Union of India*, AIR 1993 SC 477 : 1992 Supp (3) SCC 217, *infra*, Ch. XXIII.

84. See, *Mukesh Kumar Ajmera v. State of Rajasthan*, AIR 1997 Raj 250.

85. *Javed v State of Haryana*, (2003) 8 SCC 369 : AIR 2003 SC 3057.

except through an election petition before a prescribed authority. Art. 243-O also bars challenge in a court of law to the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies made under Art. 243-K. As Art. 243-O is *pari passu* with Art. 243ZG relating to municipalities the effect of Art. 243-O is discussed later along with Art. 243ZG.[86]

Under Art. 243-I, within one year of the 73rd Constitutional Amendment coming into force, and thereafter every 5 years, the State Government is required to appoint a finance commission to review the financial position of the *panchayats*.

Arts. 243 to 243-O provide for the constitution of panchayats, the terms of the members of panchayats, reservations to be made in the panchayats. Any law made by a State Legislature which runs counter to the said constitutional provisions, requires to be declared as unconstitutional.[87]

I. MUNICIPAL BODIES

Municipal bodies are units of local administration in urban areas. For legislative purposes, they fall within the domain of State Legislatures under entries 5 and 6, List II.

Although municipal bodies have been in existence in India for long, their functioning, on the whole, has not been satisfactory. As a means of decentralisation of power, Parliament has enacted the Constitution (Seventy-fourth Amendment) Act, 1992 inserting Arts. 243P to 243ZG in the Constitution.[88]

The 74th Amendment seeks to strengthen the institution of municipal bodies so as to make them effective democratic institutions at the grass root level in urban areas. The Amendment seeks to promote greater participation by the people in self-rule. The underlying ideas is to place local self-government in urban areas on a sound effective footing. The Amendment lays down the framework to which the State Legislation concerning municipalities has to conform with.

A *Nagar Panchayat* is to be established in a place in transition from rural to urban area. [Art. 243Q(1)(a)]. A Municipal Council is to be established for a smaller urban area [Art. 243Q(1)(b)] and a Municipal Corporation for a larger urban area [Art. 243Q(1)(c)]. All these bodies are to be directly elected.[89]

The State Government is to specify "a transitional area", "a smaller urban area", or "a larger urban area", keeping the following factors in view: the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance, such other factors as may be deemed fit [Art. 243-Q(2)].

According to Art. 243P (e), "Municipality" means an institution of self-government constituted under Art. 243(Q). Art. 243T provides for reservation of seats in every municipality for the Scheduled Castes and the Scheduled Tribes and also for women. Under Art. 243R, all seats in a Municipality are to be filled

---

86. See, *infra*, Sec. H.
87. *Lakshmappa Kallappa v. State of Karnataka*, AIR 2000 Knt. 61.
88. For the Amendment, see, Ch. XLII, *infra.*
89. *Saij Gram Panchayat v. State of Gujarat*, AIR 1999 SC 826 : (1999) 2 SCC 366; *S. Shekhar v. Commissioner/Returning Officer, Bangalore City Corporation*, AIR 1999 Kant 174.

by persons chosen by direct election from the territorial constituencies in the Municipal area. For this purpose, each Municipal area is to be divided into territorial constituencies known as wards.

Article 243-T provides for reservation of seats for Scheduled Castes and Scheduled Tribes on the basis of their population and the total population in the municipal area. Of these seats, seats are to be reserved for women belonging to Scheduled Castes and Scheduled Tribes. Of the total number of seats to be filled in a municipality by direct election, seats are to be reserved for women including the seats reserved for women of Scheduled Castes and Scheduled Tribes.

Under Art. 243U, the normal tenure of a municipality is five years unless sooner dissolved under the relevant law. But before its dissolution, the Municipality is to be given a reasonable opportunity of being heard.[90] The requirement to hold an election before the expiry of 5 years is mandatory and may not be deviated from except under very exceptional circumstance such as an Act of God.[91] However in *State of Maharashtra v. Jalgaon Municipal Council*,[92] more latitude was granted in the case of conversion of a Municipal Council to a Corporation.

Article 243-W authorises the State Legislature to confer such powers and authority as may be necessary to enable the municipalities to function as institutions of self government.[93] The municipalities may be authorised to prepare plans for economic development and social justice. Under 243-X, the State Legislature may by law authorise a Municipality "to levy, collect and appropriate such taxes, duties, tolls and fees" as may be specified in law. This provision makes it clear that even under the new scheme, the municipalities have not been assigned any independent powers of taxation. The concerned State Legislature has to pass a law to confer taxing powers on the municipalities.

Under Art. 243Y, the State Government is to appoint a Finance Commission to review the financial position of the Municipalities and make suitable recommendations to strengthen municipal finances. The commission may recommend distribution of taxing powers between the State and the Municipalities, giving of grants-in-aid by the State to the Municipalities, and other measures needed to improve the financial position of the Municipalities.

Elections to Municipalities are to be supervised by the State Election Commission [Art. 243ZA]. Under Art. 243ZG, no election to a Municipality is to be called in question except through an election petition presented to such authority as may be provided for by law. Art. 243ZG also says that the validity of a law relating to the delimitation of wards or constituencies for a municipality, or the allotment of seats to such constituencies made under Art. 243ZA "shall not be questioned in any court".

---

90. In *K. Pramila Patnaik v. State of Orissa*, AIR 2001 Ori 190, a government order dissolving a municipality was quashed by the High Court because no hearing had been given to the municipality as required by Art. 243-O.
The High Court has rightly ruled that the provisions of the relevant State Act "should be read in consonance with the provision contained in the Constitution."
Ibid., at 192.

91. PER PASAYAT, J: In re Special Reference 1 of 2002 : (2002) 8 SCC 237 : AIR 2003 SC 87 affirmed in *Shanti G. Patel v. State of Maharashtra,* (2006) 2 SCC 505 : AIR 2006 SC 1104.

92. (2003) 9 SCC 731 : AIR 2003 SC 1659.

93. *Municipal Board, Hapur v. Jassa Singh,* AIR 1997 SC 2689 : (1996) 10 SCC 377.

But a delimitation order can be challenged as it does not have the force of law.[1]

Article 243ZE requires constitution of a Metropolitan Planning Committee in every Metropolitan Area. A Metropolitan Area means an area having a population of 10 lakhs or more. The purpose of the Committee is to prepare a development plan for the Metropolitan area as a whole.

It may be noted that Arts. 243 to 243ZG dealing with *Panchayats* and Municipalities are in the nature of basic provisions which only lay down the outlines of the envisaged system of panchayats and municipalities. These provisions need to be supplemented by legislation in each State defining the details.

The interpretation of Arts. 243-O and 243ZG has caused some dichotomy in judicial opinion. The question for the consideration of the courts has been : how far do these constitutional provision which contain privative clauses and bar judicial review, restrict or limit the jurisdiction of the High Courts under Art. 226.

By and large two different judicial views seem to have emerged on this question. One view arises from a purely literal reading to these provisions. The other view is based on a constitutional fundamental, viz., judicial review is a basic feature of the Constitution[2] which can be limited neither by a statutory provision nor even by a constitutional amendment.

In *State of Uttar Pradesh v. Pradhan Sangh Kshettra Samiti*,[3] the Supreme Court ruled that neither delimitation of the panchayat area nor of the constituencies in the said areas and the allotment of seats to the constituencies, could be challenged nor could the court entertain such a challenge except on the ground that before the delimitation no objections were invited andno hearing was given. Even such a challenge could not be entertained after the notification for holding elections was issued.

In *Jaspal Singh Arora v. State of Madhya Pradesh*,[4] the Supreme Court has ruled that in view of the statutory mode provided by the State Act, and also Art. 243-ZG, the election of the President of the municipal council could not be challenged through a writ petition.

In *Anugrah Narain Singh v. State of Uttar Pradesh*,[5] the Supreme Court has ruled that once a notification for municipal election has been issued, there arises a "complete and absolute bar" in terms of Art. 243ZG in considering "any matter relating to municipal elections on any ground whatever. No election to a municipality can be quashed except by an election petition".

When election is imminent or well under way, the court should not intervene to stop the election process. "If this is allowed to be done, no election will ever take place, because someone or the other will always find some-excuse to move the Court and stall the elections".[6] The Court did accept the proposition that an order of delimitation of municipal areas could be challenged as it is not law and

---

1. *Anugrah Narain Singh v. State of U.P., infra,* footnote 5.
2. On this question, see, *infra,* Ch. XLI.
3. AIR 1995 SC 1512 : 1995 Supp (2) SCC 305.
4. (1998) 9 SCC 594.
5. (1996) 6 SCC 303 : (1996) 8 JT 733.
6. Also see, *G.K. Durga v. State Election Commissioner,* AIR 2001 AP 519.

is, thus, not beyond challenge under Art. 243ZG. It can be challenged on the ground of colourable exercise of power or of any other ground of arbitrariness.

In *Shiv Shankar Dubey v. State Election Commission*,[7] the High Court has ruled that in view of Art. 243-O(b), the High Court cannot interfere under Art. 226 with an order passed by the State Election Commission recounting of ballots.

In *Lal Chand v. State of Haryana*,[8] a full Bench of the Punjab and Haryana High Court entertained writ petitions challenging election of members to a gram panchayat and a municipal committee. The High Court argued, and rightly so, that judicial review is a fundamental and basic feature of the Constitution which cannot be taken away even by a constitutional amendment. Therefore, argued the court, Arts. 243-O and 243-ZG would have to be read subject to Arts. 226 and 227 of the Constitution. This means that the High Court would have power to entertain a writ petition with regard to challenge to election to any panchayat or municipality in spite of the bar imposed by the two constitutional provisions in question. The High Court may, however, keeping in view the facts and circumstances of the case, relegate the petitioner to the remedy available before the election tribunal.

In *Prem Nath Bhatia v. State of Punjab*,[9] the High Court has ruled that an order dealing with delimitation of wards is not 'law' and so it is not beyond challenge through a writ petition because of Art. 243ZG. But such a challenge ought to be made before the process of election is put into motion and soon after the final order is passed.

In *S. Fakruddin v. Govt. of A.P.*,[10] after reviewing several Supreme Court cases declaring judicial review as a basic feature of the Constitution, the High Court has come to the conclusion that the bar contained in Art. 243-O is to "the ordinary jurisdiction of the courts and not to extraordinary jurisdiction under Art. 226 of the Constitution and Art. 136 thereof." Art. 243-O does not take away the power of the High Court under Art. 226 to examine the validity of any law relating to elections. However, in the facts and circumstances of a case, the court may refrain to interfere except on grounds of jurisdictional error if there is available an alternative, effective and independent mechanism.

In *V. Kunhabdulla v. State of Kerala*,[11] the High Court has asserted that it can interfere under Art. 226, in spite of the privative clauses, with the decision of the State Election Commission delimiting constituencies on the ground of misuse of power and when the election process has not yet started. In such a situation, "absence of judicial review will create a constitutional despot beyond the pale of accountability." Art. 243-O cannot apply in a case where the action of the Election Commission affects the very purity and probity of the election cutting at the very root of the democratic process. "The power of judicial review being a basic structure of the Constitution is very much available to see that the election commission has acted within the contours of the Constitution and the law" inspite of Arts. 243-O and Art. 243ZG.

---

7. AIR 2000 All 336.
8. AIR 1999 P&H 1 (FB).
9. AIR 1997 P&H 309.
10. AIR 1996 AP 33.
11. AIR 2000 Ker 376 at 382.

There are very good reasons for taking the view that the privative clauses contained in Arts. 243-O and 243ZG should not be allowed to curtail judicial review under Arts. 226 and 32. This is because of the constitutional fundamental, accepted by the Supreme Court in a large number of cases,[12] that judicial review is a basic feature of the Constitution which cannot be diluted by any constitutional amendment. In some pronouncements, the analogy of Art. 329 has been brought in to interpret Arts. 243-O and 243ZG. But, on a deeper consideration, this analogy is not correct even though the phraseology of all these provisions is similar. There is a fundamental difference between Art. 329 and the other constitutional provisions.[13]

Article 329 is part and parcel of the original Constitution, and its interpretation became established before the doctrine of 'basic features of the Constitution' emerged. On the other hand, Arts. 243-O and 243ZG were added to the Constitution through constitutional amendments very much after the doctrine of judicial review being a basic feature of the Constitution had become very well established. Further, there are two more crucial reasons for the High Courts to exercise writ jurisdiction under Art. 226 in relation to the electoral process for panchayats and municipalities, *viz.*:

(1) Unlike the Election Commission established under Art. 324 which is an independent body,[14] the State Election Commissions are established by State laws and these bodies cannot claim the same objectivity and independence as the Election Commission which is a constitutional body. There is always a possibility of the State Commissions misusing their powers as is borne out by *Kunhabdulla*, cited above;

(2) The election tribunals under the Representation of the People Act are the High Courts. The election tribunals under the State laws are constituted by retired civil servants and/or subordinate courts. Needless to say that these bodies ought to be subject to judicial superintendence of the High Courts under Arts. 226 and 227 of the Constitution.[15]

12. See, *infra*, Ch. XLI.
13. For Art. 329, see, Ch. XIX, *infra.*
14. *Ibid.*
15. See, Ch. VIII, *supra*, for these Articles of the Constitution.