



drishti

## Structural Issues of Union Territories

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This article is based on **“The structural fragility of Union Territories”** which was published in The Hindu on 25/02/2021. It talks about the legal and constitutional provision that leads to the undermining of the elected governments in the union territories.

Recently, some MLAs from the Puducherry legislative assembly resigned. These resignations reflect a familiar pattern to the resignations of Members of the Legislative Assembly. Such resignations reduce the party’s majority in the House abruptly, which invariably leads to the fall of the government.

The intent behind this pattern is that no MLA has to defect and face disqualification under the anti-defection law. In general, these resignations take place only from the ruling parties in the States which are opposed to the ruling party at the Centre.

However, this is not the only way where the elected governments in Union territories are undermined. There are many constitutional and legal provisions that reflect the structural fragility of Union Territories (UTs) as units of the Indian federation.

### Structural Fragility Of Union Territories

- **Composition of the Legislature:** Article 239A was originally brought in, by the 14<sup>th</sup> Constitutional amendment act, 1962, to enable Parliament to create legislatures for the UTs. Under this article, the parliament enacted the Government of Union Territories Act, 1963.
  - The aftermath of this law is that a simple amendment in the Government of Union Territories Act, 1963 can create a legislature with more than 50% nominated members.
  - However, the question remains, how can a predominantly nominated House promote representative democracy.

- **Issue of Nomination:** The Government of Union Territories Act provides for a 33-member House for Puducherry of whom three are to be nominated by the Central government.
  - So, when the Union government nominated three members to the Assembly without consulting the government, it was challenged in the court.
  - The Supreme Court in *K. Lakshminarayanan v. Union of India, 2019* case held that the Union government is not required to consult the State government for nominating members to the Assembly and the nominated members have the same right to vote as the elected members.
- **Arbitrariness in Nomination:** There is provision for the nomination of members to the Rajya Sabha (under Article 80). The Article specifies the fields from which they will be nominated.
  - The purpose of this nomination is to enable the House to draw on the expertise of those eminent members who are nominated and thus enrich the debate in the House.
  - However, in the case of nomination to the Puducherry Assembly, no such qualification is laid down either in Article 239A or the Government of Union Territories Act.
  - Due to this, the law invites arbitrariness in dealing with the nomination of members to the UT legislature.
- **Administrator's Power:** The UTs were never given a fully democratic set-up with the necessary autonomy. The power vested in the administrator (Lieutenant Governor) conflicts with the powers of the elected government of UTs having a legislature.
  - Section 44 of the Government of Union Territories Act and Article 239 AA(4) (proviso) of the Constitution vests the power in the administrator to express his or her disagreement and refer the matter to the President
  - The President decides on the advice of the Union government. So, in effect, it is the Union government that finally determines the disputed issue.
  - This can be reflected in the Chief Minister of Puducherry asking removal of the Lt. Governor.
  - Similarly, in the National Capital Territory of Delhi, one often hears of complaints against the Lt. Governor from the ministers about the non-cooperative federalism being practiced by him.
- **Overlapping Areas:** Under Article 239A and 239AA the Lieutenant Governor is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'.
  - However, Public Order is a very wide connotation, which subsequently leads to overlapping executive powers.

## Way Forward

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- **Practicing Cooperative Federalism:** The Constitution Bench of the Supreme Court in *NCT of Delhi v. Union of India* (2019), had said that the administrator should not misuse this power to frustrate the functioning of the elected government in the territory and use it after all methods have failed to reconcile the differences between him/her and the Council of Ministers.

However, this judgment has not been observed in the letter and spirit. Thus, both the government and UTs need to imbibe the ethos of cooperative federalism.

- **Exploring the Washington DC Model:** Indian Government can emulate the model of administrative sharing of power between the Union government and the Governments of UTs.
  - Under that scheme, only the strategic areas and buildings are under the effective control of the federal government and the rest of the areas are under the jurisdiction of Washington state.
  - Given this, the institution of strategic importance like political institutions, defense establishments, etc. can remain under the jurisdiction of the Union Government, and areas other than these can effectively be handed over to UTs governments.
- **Necessary Reforms:** For effective autonomy to the governments of union territories, there is a need for amendment in the legal and constitutional provisions.

## Conclusion

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The Union government should respect the reason why these UTs were thought fit to provide a legislature and Council of Ministers to some of the UTs. The ostensible reason is to fulfill the democratic aspirations of the people of these territories.

In this context, the Union government should take note of the Supreme court's observation that the administration of Union Territories is by the Central government but that does not mean the Union Territories become merged with the Central government. They are centrally administered but retain their independent entity.

### ***Drishti Mains Question***

Union Territories having legislatures with ultimate control vested in the central administrator are not workable. Comment.



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This editorial is based on “**After the coup: On political crisis in Myanmar**” published in The Hindu on February 24<sup>th</sup>, 2020. Now watch this on our Youtube channel.

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