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A Perennial Quandary on Separation of Power

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The Madras High Court ruled that the Lieutenant-Governor (L-G) of Puducherry could not interfere with the day-to-day administration of the Union Territory when an elected government was in place.

The court said incessant interference from the L-G would amount to running a “parallel government”. Further, the court observed that the Central government as well as L-G should be true to the concept of democratic principle of Separation of Power. Otherwise, the constitutional scheme of the country of being democratic and republic would be defeated.

Court’s observation regarding power of L-G of Puducherry

There are significant differences in the powers conferred on the legislatures of Puducherry and Delhi under Articles 239A and 239AA of the Constitution respectively .

Points of difference between the L-G of Delhi and Puducherry

Both Delhi and Puducherry have elected legislatures and governments. But, the functions and powers of the L-G of Delhi and Puducherry are marked by certain differences.

- The L-G of Delhi enjoys greater powers than the L-G of Puducherry.
- The L-G of Delhi is vested with “Executive Functions” that enable him to exercise powers in matters connected to public order, police and land “in consultation with the Chief Minister, if it is so provided under any order issued by the President under Article 239 of the Constitution”.
- While the L-G of Delhi is guided by the Government of **National Capital Territory of Delhi Act, 1991, and the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993**, the L-G of Puducherry is guided by the **Government of Union Territories Act, 1963**.
- Articles 239 and 239AA of the Constitution, as well as the Government of National Capital Territory of Delhi Act, 1991, clearly underline that the role of Centre is more prominent in the UT of Delhi, where the L-G is the eyes and ears of the Centre. Under

the constitution, the Delhi Assembly has the power to legislate on all subjects except **law & order and land**.

- Whereas, the Puducherry Assembly can legislate on any issue under the Concurrent and State Lists. However, if the law is in conflict with a law passed by Parliament, the law passed by Parliament prevails.
- The manner in which the L-G functions vis-à-vis the elected government (Council of Ministers) is also spelt out in the Rules of Business of the Government of Pondicherry, 1963.

The Supreme Court's decision on power of Delhi L-G

- L-G has no "independent decision-making power" and has to act on the aid and advice of the elected government.
- The Supreme Court said the L-G must work "harmoniously" with the ministers and not seek to "resist them every step of the way"

Though this a welcome judgement in establishing separation of power, the more **significant challenge is to find a way out of the complexities and problems thrown up by the multiple forms of federalism and power-sharing arrangements** through which relations between the Centre and its constituent units are regulated.