

Centre State Relations in India

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Week 02: Administrative Relations: Distribution of the Subjects; Obligation of the Centre and the States

Lecture 05: Administrative Relations between Centre and Union Territories

Welcome learners. So, in today's module we are going to discuss central state relation and we are giving focus on how the relationship governs between the Centre and the Union Territories. So, these are the areas which we are going to cover, we are going to cover that how Union Territories are generally being governed and then we will be discussing with regard to Union Territory of Puducherry, National Capital Territory of Delhi and Supreme Court views on the governance of Union Territory and the how the Centre State relation should get governed. Now, generally when you look at the governance structure of Union Territories you would find that Union Territories are centrally administered and they do not become the power of the State. So, when the Constitution came into existence till 1956, they were classified as Part C States and then after that they were when reorganization of a States took place Part C States became Union Territory that is how the Reorganization Commission recommended for naming them as Union Territories. So, 7th Constitutional Amendment of 1956 abolished this idea of Part C State which was during the British rule was the territories which were directly ruled by the British States as Commissionerate that is what was given a status of Part C States and that was abolished and Union Territories were created.

Schedule I of the Constitution list out the Union Territories and which are directly administered by the Central government. We have Part VIII of the Constitution which talks about Union Territories. Article 239 to Article 242 deals with Union Territories where you would find that Article 239(1) categorically says that Union Territory is administered by the President who will be acting through an Administrator appointed by him except otherwise provided by law. So, why

except provided by law because of the scenario where there is a possibility of having Legislative Assembly and certain Union Territory that is why it provides for the same. Now, when it says administered by the President acting through an Administrator appointed by him appointed by him should be understood as aid and advised by the government it is not that President appoints the Administrator in his personal capacity he is bound by the aid and advise given by the Cabinet given by the government and whomsoever the Cabinet recommends that person gets appointed as the Administrator.

Article 239(2) provides for appointment of the Governor as an administrator of a Union Territory. So, that is what also it provides that either it could be an Administrator or Governor. Now, in this case of Government of NCT of Delhi v. Union of India which is a case on getting necessary approval from the Government of India, Ministry of Home Affairs on certain matters related to postings transfers arisen out of Delhi government. Without getting into the detail of the case on that subject matter which will be certainly discussing later on. In this case the Supreme Court has described Union Territories as it is prevalent in India under three different categories. One category is the territories which do not have any Legislature at all. For example, Daman Diu does not have any Legislature, Chandigarh does not have any Legislature, then you do have such Union Territories where there are Legislatures which is enacted by Parliament through Government of Union Territories Act of 1963 and then a special law with regard to Delhi which is there under Article 239AA.

So, Union Territory of Puducherry is there which has come into existence through constitutional amendment 1962 whereby a new provision was inserted in the Constitution Article 239A which provides for creation of Legislatures or Council of Minister or both by law for Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Puducherry that is what was the scenario in 1962. By virtue of this power Parliament enacted the Government of Union Territories Act 1963 which has given a Legislative Assembly as well as Council of Minister to advise the Administrator in these states and obviously, we know very well that later on there was a development which took place and Himachal Pradesh became a State in 1970 and 1971 Manipur, Tripura they became a State and Goa, Daman, Diu through Reorganization Act of 1956 they became a separate territory and Goa became a separate State in 1987 through this Reorganization Act of 1956. So, currently it is only the Union Territory of Puducherry which is administered in

terms of this Government of Union Territories Act 1963 they have got a Legislative Assembly and they have got a Chief Minister who advises the Administrator there who advises the Lieutenant Governor there. Article 239B which is inserted in 1971 which empowers the Administrator of the Union Territory of Puducherry to promulgate an Ordinance when the Assembly is not in session. So, you can very well visualize that the development has taken place where on the matter of power to the government, on the matter of power to the executive somewhere it has been brought nearer to the full-fledged State when you look at the Ordinance making power of the Administrator.

So, the Ordinance making power of the administrator of the Union Territory of Puducherry is similar to that of Governor of the State, where it says that Administrator cannot promulgate an Ordinance without the instructions of from the President. So, there is a direct control of the Central government here and the Administrator cannot promulgate the Ordinance when the Legislative Assembly is suspended or dissolved that is what is also a kind of limitations on the power of the Administrator with regard to the excise of Ordinance making power promulgating Ordinance. National Capital Territory of Delhi has been in news these days and also a kind of intense debate going on that how shall we read the relationship between the Centre and the National Capital Territory. On this let us look at some historical facts Government of Part C States Act 1951 used to regulate Delhi when India became independent when Constitution came into force this this 1951 Act regulated Delhi and then this provisions of the Constitution relating to Part A Part B Part C states were abrogated with the adoption of 7th Constitutional Amendment Act of 1956 and Delhi became Union Territory to be governed by the Union government through an Administrator who was supposed to be appointed by the President. Delhi Administration Act of 1966 was enacted to provide for the administration of Union Territory of Delhi through Metropolitan Council and Executive Council.

The idea was to give a better governance structure to Delhi in order to ensure better amenities in order to ensure that amenities to the people are being provided on a very regular basis on a very smooth way and that is why this structuring was done. Further, this idea has got graduated in the form of having a Legislative Assembly for Delhi exclusively and that is how we find that Constitution has been amended in the year 1991 and through these two provisions were added Article 239AA and Article 239AB which changed the governing structure from the Council which is more of kind of executive body. Legislative Body was envisaged for governing Delhi, for taking

care of the subject matters which are closer to the people's concern and amenities to the public at large. So, Parliament has enacted the Government of National Capital Territory of Delhi Act 1991 by virtue of this 239AA (7) (a) wherein a special provision is being provided for Delhi. So, Delhi has got a Legislative Assembly and it has got a Council of Ministers to aid and advise the Lieutenant Governor.

Article 239AA(4) confers executive power on the Council of Ministers over all the subjects for which Delhi Legislative Assembly has got a legislative power. So a conjoint reading of Article 239AA(3) (a) and Article 239AA(4) clearly reveals that as far as legislative power and executive power of the Delhi government is concerned it is concurrent, it is on the similar line what you find is there for the Centre and the State in ordinary situation. So, executive power of the NCT of Delhi extends over all the Entries of List II except public order, police and land and because it is a capital city the exclusion is very justifiable because there is certain subject matter which should be under the control of the Central government which are very critical and which are of a national significance. When the matter came before the Supreme Court that how this relationship needs to be structured how do we try to understand the control of the Centre on the functioning of Delhi government on a different subject matter. The Court gave a kind of philosophical understanding, philosophical points that there is a need to bring in the idea of federalism to balance the relationship between Centre and NCT of Delhi.

So, when you look at this observation of the Court, here the Court has been very particular that when it comes to understanding the power and function of NCT Delhi on the on the aspect of federal relation it must be accorded same status or similar status as of the State government that is what is the idea which the Supreme Court has underlined in this case of 2018. So only this three Entries where you would find the Union government has got an exclusive power and then rest everything belongs to the Legislative Assembly of Delhi. If the Parliament makes a law in relation to any subject in List II and List III, the executive power of NCT of Delhi shall then be limited by such law. So, similar situation is there what we have studied in the last module that if Parliament makes a law so whichever way the Parliament decides to give a structuring on administrative relation whether it wants to retain to itself, retain to the Union government, or it want to pass it on to the State government as the law provides for accordingly situation would be governed. Article 239AB provides that in case of failure of constitutional machinery or proper administration of

Delhi then after receiving the report from the Lieutenant Governor or otherwise it may order suspension of any provision of Article 239AA or any law made in persons of the said Act.

So, this is something which you can very well relate it with the exercise of emergency power by the President when President opines that the governance of NCT Delhi is not being run in accordance with the constitutional principle or it is in defiance with the instruction with the Parliament is been issuing or the Central government has been issuing. So, Article 239AB is a clear indication of conferring necessary authority, necessary control upon the Union for controlling the governance, administrative governance of NCT of Delhi in the emergency situation. The Supreme Court has been giving its views on the Centre Union Territory relationship in number of cases. Some important cases are highlighted here, for example in Chandigarh Administration v. Surinder Kumar it has been categorically said that Union Territories are distinct constitutional entities although they are administered by the Central government under the provisions of Article 239. So, they are not to be understood as akin to Central government they have got a separate constitutional status so there should not be any mistake done by reading Central government and Union Territory as one and same or there should not be reading of the power and function of the Central government and Union Territory in an interchangeable way. Supreme Court in Devji Vallabhbai v. Administrator, Goa, Daman and Diu again said that position of Administrator is not purely of a constitutional functionary it is more of a kind of agent of the Centre because Union Territory is directly ruled by the Centre and therefore administrator is to be seen as someone who is been appointed by the Central government to look after the territory and to follow the instructions of the Central government.

Then you have this Goa Sampling Employees Association Case which is of 1985 where the Supreme Court clarified the position Administrator has been different from Governor. Administrator after differing with the Council of Ministers may act on the orders of the President because Governor has got a very defined constitutional role and responsibility. In 1985 judgment the Court makes a distinction that how we need to understand the positioning of Administrator and from Governor and how Administrator is under an obligation to take the direction directly from the President, if there is any difference of opinion with the Council of Ministers. This two cases have been in news, have been in discussion in constitutional fora where in one 2018 judgment where it has been held that the Chief Minister is the real executive head to govern National Capital

Territory of Delhi this is something where the Supreme Court has acknowledged that the elected government should have the real power, should be allowed to function, should be allowed to exercise the power freely and should not be understood to be subordinate to the Lieutenant Governor. So, it has been categorically indicated that Lieutenant Governor is bound by aid and advice of the Council of Ministers on all such subject matters on which power has been entrusted upon Delhi Assembly to make laws. So, this 2018 judgment clarifies a clear position that in the parliamentary democracy it is the elected government which is accountable to the people and the voice of elected government must be given preference and Lieutenant Governor shall be bound by the advice given by the Chief Minister of Delhi. Now, 2023 judgment on the matter of services that how do we read the authority on the services that under whom it shall lie, five judges bench of the Supreme Court while resolving this issue on the matter of control of services it says that NCT Delhi has got a legislative and executive power over services that is an Entry 41 of List II and this what it says that it is something wherein the Court clarifies that when it comes to services it is the government of Delhi we shall make the necessary changes but then the Court said this also that this is the position in the absence of any law which the Parliament has not made on the subject matter. If the Parliament makes a law, then it is the parliamentary legislation, we shall govern to the extent that law has been made and that is how we know very well that recently Parliament has enacted a law to control the services on the matter of the bureaucracy of NCT Delhi that law has been passed by the Parliament. These are the references for this module. Thank you very much.