



The structural fragility of Union Territories

Bottom Line: Union Territories having legislatures with ultimate control vested in the central administrator are not workable. The sudden and inexplicable resignations of Congress MLAs from the Puducherry Assembly have turned out to be an ingenious move to topple the Congress government

Resigning members

Resigning from the membership of the House is every member's right. But according to Article 190 of the Constitution, the resignation should be voluntary or genuine. If the Speaker has information to the contrary, he or she is not obliged to accept the resignation.

An innovative method

1. But there is by now a familiar pattern to the resignations of Members of the Legislative Assembly. Such resignations invariably lead to the fall of the government and resignations take place only from the ruling parties in the States which are opposed to the ruling party at the Centre.
2. These parties are, in fact, in a precarious condition because in most cases, the resignations are quite unanticipated and reduce the party's majority in the House abruptly.
3. The beauty of this scheme is that no MLA has to defect and face disqualification and get a bad name. It is a wonderful way to end defection and save the honour of the legislators.

Fragility Of Union Territories (Uts)

The structural fragility of Union Territories (UTs) as units of the Indian federation perhaps makes it easier for powerful operators in the political system to destabilise them.

Composition of the legislature

1. The first question that arises in the context of these UTs is why the Constitution-makers/ Parliament thought it fit to provide a legislature and Council of Ministers to some of the UTs.
2. The ostensible reason is to fulfil the democratic aspirations of the people of these territories. In other words, there was a realisation that the administration of these territories directly by the President through the administrators under Article 239 does not meet the democratic aspirations of the people.
3. Therefore, the creation of a legislature and a Council of Ministers is logical and in consonance with the policy of the state to promote democracy.



Problems:

1. But a closer look at the relevant provisions in the Constitution reveals that this professed aim has often been sought to be defeated by the Union. Article 239A was originally brought in, in 1962, to enable Parliament to create legislatures for the UTs.
2. Look at the composition of the legislature as provided in the Constitution. It is a body that is elected or partly elected and partly nominated.
3. There can be a Council of Ministers without a legislature, or there can be a legislature as well as a Council of Ministers. A legislature without a Council of Ministers or a Council of Ministers without a legislature is a conceptual absurdity.
4. In our constitutional scheme, a legislature is a law-making body and a legislative proposal is initiated by the government, which is responsible to the legislature.
5. Neither can the legislature exist without a Council of Ministers nor can the Council of Ministers exist without a legislature. Similarly, a legislature that is partly elected and partly nominated is another absurdity.
6. In fact, a simple amendment in the Government of Union Territories Act, 1963 can create a legislature with more than 50% nominated members. How can a predominantly nominated House promote representative democracy?

Issue of nomination

1. The issue of nomination of members to the Puducherry Assembly had raised a huge controversy. 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.
2. So, when the Union government nominated three BJP members to the Assembly without consulting the government, it was challenged in the court.
3. Finally, the Supreme Court (K. Lakshminarayanan v. Union of India, 2019) 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.

Nomination Rationale:

1. Nomination as such is not new to the Indian legislature. There is a provision for the nomination of members to the Rajya Sabha [Article 80 (i)(a)]. But clause (3) of the Article specifies the fields from which they will be nominated.



2. 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.
3. But 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. This leaves the field open for the Union government to nominate anyone irrespective of whether he or she is suitable.
4. The Supreme Court took too technical a view on the matter of nomination and did not go into the need to specify the fields from which those persons could be nominated and also lay down a fair procedure to be followed for the nomination of members.
5. As things stand, the law invites arbitrariness in dealing with the nomination of members to the UT legislature. If a different party runs the government in the UT, this provision will be used by the Union government with a vengeance, which is what happened in Puducherry.

Administrator's power

1. As a matter of fact, the UTs were never given a fully democratic set-up with the necessary autonomy. The power vested in the administrator, who is known as the Lieutenant Governor in the UTs having a legislature, bear this out.
2. The administrator has the right to disagree with the decisions of the Council of Ministers and then refer them to the President for a final decision. The President decides on the advice of the Union government. So, in effect, it is the Union government that finally determines the disputed issue.
3. The administrator can, in fact, disagree with all crucial decisions taken by the State government when the territory is ruled by a different political party.
4. 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 and then take all actions he or she deems fit in the matter in total disregard of the elected government.
5. Although in *NCT of Delhi v. Union of India (2019)*, the Constitution Bench of the Supreme Court 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, experience tells us a different story.



6. In Puducherry, the conflicts between the Lt. Governor and the Chief Minister were perennial. A frustrated Chief Minister, at last, had to knock on the door of Rashtrapati Bhavan seeking the removal of the Lt. Governor.
7. 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 practised by him.
8. As a matter of fact, such conflicts between the administrator, who is the nominee of the President, and the elected government is inherent in the constitutional arrangement created for the UTs.

No Union government really likes the idea of a free and autonomous government in the UTs and therefore tries to control it through the administrator. The weaponization of the constitutional provision is done in full measure when the UT is ruled by a different political party.

Experience shows that the UTs having legislatures with ultimate control vested in the central administrator is not workable. The redemption for the harried governments of these territories lies in the removal of the legal and constitutional provisions which enable the administrator to breathe down the neck of the elected government.

Federalism and India's human capital

Bottom Line: A decentralised approach and strong local governments can enhance developmental outcomes

Dismal Level of Human Capital

1. Investing in human capital through interventions in nutrition, health, and education is critical for sustainable growth. But India's human capital indicators remain low.
2. In the World Bank's Human Capital Index, the country ranked 116th. The National Family Health Survey-5 for 2019-20 shows that malnutrition indicators stagnated or declined in most States.
3. The National Achievement Survey 2017 and the Annual Status of Education Report 2018 show poor learning outcomes.
4. In addition, there is little convergence across States. This is a cause of concern as these statistics could worsen due to the COVID-19 pandemic.

Steps taken in recent years



1. Several government initiatives have been launched to address these issues. The National Health Policy of 2017 highlighted the need for interventions to address malnutrition.
2. On the basis of NITI Aayog's National Nutrition Strategy, the Poshan Abhiyaan was launched, as part of the Umbrella Integrated Child Development Scheme.
3. The latest Union Budget has announced a 'Mission Poshan 2.0' and the Samagra Shiksha Abhiyan has been the Centre's flagship education scheme since 2018.
4. However, India spends just 4% of its GDP as public expenditure on human capital (around 1% and 3% on health and education respectively) — one of the lowest among its peers.

Positive Correlation Between Decentralisation And Human Capital

1. International experience suggests that one reason why these interventions are not leading to better outcomes may be India's record with decentralisation.
2. Globally, there has been a gradual shift in the distribution of expenditures and revenue towards sub-national governments.
3. These trends are backed by studies demonstrating a positive correlation between decentralisation and human capital.
4. In recent years, India has taken some steps towards decentralisation. The Fourteenth Finance Commission increased the States' share in tax devolution from 32% to 42%, which was effectively retained by the Fifteenth Finance Commission.

Constitutional design for Human Development

1. In India, three tiers of government are envisaged, with the Constitution dividing powers between the first two tiers — the Centre and the States, as per the three lists under the Seventh Schedule.
2. While public health is in the State List, the broader subject of economic and social planning is in the Concurrent List. In 1976, education was shifted from the State List to the Concurrent List through the 42nd Amendment.
3. The placement of a subject in the Concurrent List, in effect, indicates the presence of overarching considerations that warrant the Centre's involvement.
4. Fiscally, while the Constitution assigns the bulk of expenditure responsibilities to States, the Centre has major revenue sources.



5. To address this vertical imbalance, the Constitution provides for fiscal transfers through tax devolution and grants-in-aid. In addition, the Centre can make 'grants for any public purpose' under Article 282 of the Constitution.
6. While fiscal transfers that are part of tax devolution are unconditional, transfers under grants-in-aid or Centrally Sponsored Schemes (CSSs) can be conditional.
7. Therefore, the increase in the States' share of tax devolution represents more meaningful decentralisation.

Several imbalances

1. Despite some shifts towards greater State autonomy in many spheres, the centralised nature of India's fiscal architecture has persisted.
2. Centrally Sponsored Schemes have formed a sizable chunk of intergovernmental fiscal transfers over the years, comprising almost 23% of transfers to States in 2021-22. But its outsized role strays from the intentions of the Constitution.
3. Article 282 of the Constitution is listed as a 'Miscellaneous Financial Provision', unlike Articles 270 and 275, which fall under 'Distribution of Revenues between the Union and the States'.
4. Constitutional experts had characterised it as more of a residuary power, opining that grants-in-aid under Article 275 as per Finance Commission recommendations are the more appropriate, regular route.
5. The Supreme Court in *Bhim Singh vs Union of India* had observed that "Article 282 is normally meant for special, temporary or ad hoc schemes".

Centrally Sponsored Schemes

1. There are issues in the design of CSSs as well, with the conditions being overly prescriptive and, typically, input-based. Against this, international experience reveals that schemes with output-based conditions are more effective.
2. Moreover, CSSs typically have a cost-sharing model, thereby pre-empting the States' fiscal space. This is incongruous, given that many CSSs cover subjects in the State and Concurrent Lists, such as health and education.

The third tier

1. The 73rd and 74th Amendments bolstered decentralisation by constitutionally recognising panchayats and municipalities as the third tier and listing their functions in the Eleventh and Twelfth schedules, respectively.



2. These include education, health and sanitation, and social welfare for panchayats, and public health and socio-economic development planning for municipalities.
3. However, the Constitution lets States determine how they are empowered, resulting in vast disparities in the roles played by third-tier governments.
4. A functionally and fiscally empowered third tier would not only be more in keeping with the constitutional spirit but also lead to better outcomes. But ironically, States, too, have been responsible for centralisation. The many States do not clearly demarcate or devolve functions for panchayats and municipalities.
5. Further, third-tier governments are not fiscally empowered either. The collection of property tax, a major source of revenue for third-tier governments, is very low in India (under 0.2% of GDP, compared to 3% of GDP in some other nations).
6. The Constitution envisages State Finance Commissions (SFCs) to make recommendations for matters such as tax devolution and grants-in-aid to the third tier.
7. However, many States have not constituted or completed these commissions on time, and hence, the Fifteenth Finance Commission has recommended no grants after March 2024 to any State that does not comply with the constitutional provisions pertaining to SFCs.

Towards a solution

1. To begin with, the Centre needs to rethink the nature of its actions. It should play an enabling role, for instance, encouraging knowledge-sharing between States.
2. For States to play a bigger role in human capital interventions, they need adequate fiscal resources. To this end, States should rationalise their priorities to focus on human capital development.
3. The Centre should refrain from offsetting tax devolution by altering cost-sharing ratios of CSSs and increasing cesses. The unconditional nature of these vertical transfers should be effectuated in spirit.
4. Concomitantly, the heavy reliance on CSSs should be reduced, and tax devolution and grants-in-aid should be the primary sources of vertical fiscal transfers.
5. Panchayats and municipalities need to be vested with the functions listed in the Eleventh and Twelfth Schedules.

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