Structural flaws in UTs

What is the issue?

- Recently in Puducherry, resignation of ruling party MLAs has lead to fall of the government.
- This highlights the structural issues present in creation of Union Territories (UTs) in Indian federation.

What are the structural issues in UTs' constitutional setup?

- The issues pertain to legislature composition, nomination of member to the assembly and administrators power.
- In order to fulfil the democratic aspirations of the people in UTs, Constitution-makers provided legislature and Council of Ministers (CoM's) to some of the UTs.
- In 1962, **Article 239A** was brought in which enabled the Parliament to create legislatures for the UTs.
- But detailed analysis of this provision reveals that it goes against the policy of the state to promote democracy.
- In UTs, legislatures can be a body that is elected or partly elected or partly nominated.
- There can also be CoM's without legislature or there can be a legislature as well as a CoM's.
- Legislature without a CoM's or a CoM's without legislature is absurd because in our constitutional scheme the government is responsible to the legislature.
- Similarly, a legislature that is partly elected and partly nominated is another absurdity.
- This is because simple amendment in the Government of Union Territories Act, 1963 can create a legislature with more than 50% nominated members which cannot be a representative democracy.

What is the issue with nomination in UTs?

- The purpose of nomination is to enrich the debate in the House by their expertise.
- In Puducherry, **Government of Union Territories Act** provides for 33-

member House where in three are nominated by Centre.
- When the centre nominated its members to the Assembly without consulting the state, it was challenged in the Supreme Court.
- In **K. Lakshminarayanan v. Union of India case**, Court held that centre is not required to consult for nominating & nominated members have the same right to vote as the elected members.
- **Article 80** also has the provision for nomination of members to the Rajya Sabha but it clearly specifies the fields from which they can be nominated.
- But in case of Puducherry Assembly, no such qualification is laid down.
- This creates arbitrariness where centre can nominate anyone irrespective of whether he or she is suitable.

What is the issue in Administrator's power?

- **Article 239 AA** states that administrator or Lieutenant Governor can disagree with the decisions of COMs and refer it to the President for final decision.
- Then it is the President who decides based on the advice given by the Union government.
- So it is the Union government which finally determines the disputed issue.
- The administrator of UTs can in fact disagree with all crucial decisions taken by the State when the territory is ruled by a different political party.
- In **NCT of Delhi v. Union of India case**, Court said that the administrator should not misuse the power provided in Article 239 AA & use it if all other methods fail to reconcile the differences.
- But the reality is very much different from the court's verdict.

What can we infer from this?

- No Union government will like the idea of a free and autonomous government in the UTs and it tries to control UTs with an administrator.
- But experience shows that the UTs having legislatures with ultimate control vested in the central administrator is not workable.
- Hence the legal and constitutional provisions which enable the administrator to stand over the elected government needs to be removed.

Source: The Hindu



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