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THE STRUCTURAL FRAGILITY OF UNION TERRITORIES

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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 led by V. Narayanasamy. This was done in 2019 with devastating effect in Karnataka. In both cases, the governments lost majority and went out of office. 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.

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. 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. Even the most seasoned Chief Ministers who have weathered many storms look flummoxed in the face of this blow. Resignations are done with such precision that the exact number of MLAs required to reduce the majority resign, not more. This mode of toppling a government has an odd attractiveness about it because of its sheer novelty. 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.

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The Puducherry development has tremendous political significance. But the purpose of this article is to unravel the structural fragility of Union Territories (UTs) as units of the Indian federation which perhaps makes it easier for powerful operators in the political system to destabilise them.

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. 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. 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.

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. 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. 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. In our constitutional scheme, a legislature is the law-making body and a legislative proposal is initiated by the government, which is responsible to the legislature. 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. 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?

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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. So, when the Union government nominated three BJP members to the Assembly without consulting the government, it was challenged in the court. 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 as such is not new to the Indian legislature. There is provision for 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. 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. 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. 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 nomination of members. 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.

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As a matter of fact, the UTs were never given a fully democratic set-up with necessary autonomy. The power vested in the administrator, who is known as the Lieutenant Governor in the UTs having a legislature, bear this out. 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 which finally determines the disputed issue. 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. 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. 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. 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.

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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. 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 weaponisation 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 are 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.

So far as the conspiratorial resignation by legislators to bring down their own government is concerned, the political class will have to rack its brains on how to get the better of the predatory instincts of political parties through constitutional or other means.

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