CHAPTER - III

THE NATURE OF UNION TERRITORIES

In the previous Chapter, a probe has been made as to how it was that the Commission had suggested the creation of territories and to what extent the Central Government had accepted its proposals. The changes made after the reorganization of the States have also been referred to. Incidentally, it may be pointed out that some of the Union territories, which had emerged after 1956, were different in character from the Union territories which came into being in 1956. Since 1956, the foreign possessions of Dadra and Nagar Haveli, Goa, Damán and Diu, and Pondicherry have been liberated and integrated with India, with the status of Union territories. Also, certain areas from the existing States were quite justifiably taken out of them and made into Union territories. Thus the bases for the formation of Union territories came to be enlarged. Alongside the Union territories, which were the product of the reorganization of the States, there emerged Union territories on the basis of acquisition and others that were further carved out of the States of the Indian Union.
The Constitution accordingly made provisions for recognizing Union territories and the bases on which they were to be regarded as component parts of the Indian Union. Article 1, Clause 3(b) mentions the Union territories specified in Part II of the First Schedule and Article 1, Clause 3(a) mentions such other territories as may be acquired. The clause does not purport to confer power on the Union Government to acquire territories but merely provides for and recognizes the fact that territories which are acquired become automatically part of India.\(^1\) This Clause also naturally includes Union territories.

The provisions empowering Parliament to constitute Union territories have also been provided for in the Constitution. Articles 2, 3 and 4, \textit{inter alia}, are meant to indicate the formation of Union territories and the consequential changes therein.

\textbf{Admission or establishment of new Union territories:Article 2} 

Article 2 provides that "Parliament may by law admit into the Union, or establish, new states on such terms and conditions as it thinks fit." At the outset, it appears that this provision empowers Parliament to admit or establish only states and not the Union territories. In fact, it is not so. If the definition of a state as provided for in

\(^1\) See \textit{Re Kerubari Union}, \textit{AIR} 1960 SC 845, p. 856
General Clauses Act, 1897\(^2\) is read along with Article 367(1)\(^3\), then Parliament is competent to establish not only States but also Union territories. However, under this provision, the Union territories cannot be created out of the territories of the States. Article 2 is meant only for those territories which after acquisition become part of India under Clause 3(c) of Article 1. The foreign possessions of Dadra and Nagar Haveli, Coa, Daman and Diu and Pondicherry were constituted into Union territories under this provision.

**Formation of new Union territories and alterations thereof : Article 3**

Union territories can also be formed under Article 3. In respect of this Article it is, however, to be noted that in 1960 in the Re Borubari Union case, the Supreme Court held that it was meant only for States and did not refer to Union territories.\(^4\) Thereafter, in Ram Kishore Sen’s case, the Supreme Court reversed the opinion given in Re Borubari Union case and contended that the assumption made in the opinion that Article 3 in its several Clauses did not include a Union territory can also be corrected. The Court held that the term “State” in Article 3 includes both States and Union territories.

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2 See the General Clauses Act (X of 1897) 1897 as modified till date, Section 3, Clause 38(b). This Clause defines the term 'State', “as respects any period after such commencement shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory.”

3 Article 367(1) provides: "Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India."

4 See Re Borubari Union, AIR 1960 SC 845, p. 859
territory was misconceived and to that extent the incidental reason given in support of the main conclusion was not justified. However, to remove any controversy in respect of the power of Parliament, Article 3 was amended in 1966 and it was provided for that under this Article, Parliament is competent to create both states and Union territories.

This Article in its existing form, besides conferring power on Parliament prescribes the modes for the formation of Union territories. Clause (a) provides that a Union territory

5 See Ram Kishore Sen v Union of India, AIR 1966 SC 664, p. 668

6 Article 3 states, "Parliament may by law:

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I: In this Article in Clauses (a) to (e) "State" includes a Union territory but in the proviso "State" does not include a Union territory.

Explanation II: The power conferred on Parliament by Clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory."

Explanations were inserted by the Constitution (Eighteenth Amendment) Act, 1966, Sec. 2
can be created by separating a territory from a State. In the exercise of this power, Parliament detached Chandigarh from Punjab, M.E.F.A. and the Naga Hills from Assam and constituted them into Union territories. This Clause also empowers Parliament to create a Union territory by uniting two or more existing Union territories or by uniting the parts of two or more Union territories. This provision has not been availed of so far.

Further interpretation of this Article reveals that Parliament is competent to increase the area of any Union territory. When the Punjab State was reorganized, in the exercise of this power, Parliament added some pockets of Punjab to the former Union territory of Himachal Pradesh and enlarged the boundaries of the latter. The area of the Union territory can also be diminished, although this provision has not been resorted to till now. There is also no bar on the power of Parliament to alter the boundary and even the name of any Union territory. Consequently in 1973, the name of the Union territory of the Laccadive, Minicoy and Adangive Islands was altered to Lakshadweep.

It has also been provided that although any Bill affecting the area or the name of the State has to be referred to by the President to the legislature of that State

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7 Vide The Punjab Reorganization Act (31 of 1966) 1966, Sec. 5

8 See The Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act (36 of 1973) 1973, Sec. 5
for expressing its views thereon, no such requirement is needed in relation to Union territories.\(^9\) As to why in the case of the alteration of the boundaries of the Union territories, the President is not required to consult the legislatures of the Union territories is that there is a vital distinction between the legislature of the Union territory and the legislature of the State. The State legislature is the direct creation of the Constitution. It is as supreme in its sphere as Parliament itself, while the legislature of the Union territory is a creature of an Act of Parliament. It is open to Parliament to repeal the Act which created the legislature of a Union territory. The legislature of the State and the Union territory legislature hold quite different positions. Moreover, all the Union territories do not have legislatures and those which have are not autonomous like the legislatures of the States. In relation to Union territories, Parliament alone is sovereign.\(^10\) A Bill introduced by Parliament, therefore, in itself contains the views of the Union territories.

Thus, from the interpretation of Articles 2 and 3, it emerges that the scope of the latter is wider than the former. It is also evident that our Constitution does not guarantee the continued existence of the boundaries of the States and

\(^9\) See Proviso and Explanation I to Proviso of Article 3

\(^10\) For detailed discussions of the legislative power of Parliament see pp. 87-88
the Union territories. Nevertheless, since the boundaries of the Union territories can be altered without obtaining their views, their position is much weaker than that of the States.

**Power of Parliament in respect of consequential matters**

In connection with the power of Parliament it may, however, be mentioned that while creating Union territories or altering the boundary or the name of a Union territory, it is competent to make any supplemental incidental and consequential changes in the Constitution, including provisions as to the representation of such territories in Parliament without going through the special procedure of amendment of the Constitution. In other words, an ordinary majority of Parliament in the usual course of legislation is sufficient for the passing of a Bill brought under Articles 2 and 3.

**Administration of Union territories**

(a) **Executive**

When a Union territory is created, its administration is not left in the air. Part VIII of the Constitution provides for

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11 See Article 4. It provides "(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of Article 368"
the administration of the Union territories. Under Article 239, the executive power is vested in the President. While exercising this power, he acts not by virtue of the fact that he is the head of the Central Government, but as the head of the Union territories. The Union territory is a separate entity and under Article 239, the position of the President is similar to that of a Governor in a state. In consequence, a person who has entered into a contract with the Government of a Union territory cannot be deemed to have entered into a contract with the Central Government. Similarly, a suit against a Union territory should be brought not against the Central Government but against the administration of the Union territory which consists of the President acting through the administrator.

(1) Appointment of Administrator

The President does not exercise his executive functions

12 Article 239 provides, "(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State, as the Administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers."


15 See Tripura Administration v. Tripura State Bank, AIR 1959 Trip. 41, p. 43
directly but through the Administrator who is appointed by him. Although an Administrator is normally appointed from outside, it lies within the powers of the President to appoint the Governor of a State as an Administrator of the adjoining Union territory. When the Governor is appointed as the Administrator, although he acts in a dual capacity, the condition that he will exercise his functions with "the aid and advise of his Council of Ministers" have no application. In other words, he could discharge his functions as Administrator of the territory independently of his Council of Ministers which is attached to him under Article 163(a).

(ii) Specification of the designation of the Administrator

The designation of the Administrators is also specified by the President. In this matter, the President exercises absolute discretion relating to Union territories which do not have legislatures. With respect to Union territories with legislatures, the Central Government accepted the suggestion.

16 See Constitution of India as modified till date, Article 239(2)

17 Ibid.

18 Article 163(1) provides: "There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his function...".

19 See Farns 281-282, pp. 77-78; Report of the Study Team of A.H.G. on the Administration of Union Territories and D.F.A. (1968)
of the Study Team of the A.R.C. that to bring about uniformity in respect of the specification of designation, the Administrators of Union territories having legislatures should be designated as Lt.-Governors. Consequently, the status of Administrators of the Union territories with legislatures was raised to Lt.-Governors, and the President has no discretion concerning the determination of the designation of their Administrators. The Administrators of the remaining Union territories have not been uniformly designated. The Andaman and Nicobar Islands and Chandigarh have a Chief Commissioner each. The designation of the Administrator of the Union territory of Lakshadweep has been specified as Administrator. In the case of Dadra and Nagar Haveli, the Lt.-Governor of Goa, Daman and Diu acts as an Administrator.

20 In the case of the Union Territory of Arunachal Pradesh, see Notification No. U-14020/27/75-UTS(H.H.), dated 12 August 1975; in the case of Delhi see Notification No. U-14020/18/77-UTS(H.H.), dated 12 April 1977; in the case of Pondicherry, see Notification No. U-14020/36/76-UTS(H.H.), dated 21 August 1976; in the case of Mizoram, see Notification No. U-14020/37/77-UTS(H.H.), dated 24 September 1977; and in the case of Goa, Daman and Diu, see Notification No. U-14020/40/77-UTS(H.H.), dated 5 November 1977


22 See Notification No. U-14020/35/77-UTS(H.H.), dated 5 August 1978

23 See Notification No. U-14020/40/77-UTS(H.H.), dated 5 November 1977
Administrators in the discharge of their functions. Article 239A empowers Parliament to create a Council of Ministers for the Union territories of Goa, Daman and Diu, Pondicherry, Mizoram, Arunachal Pradesh and Delhi. By virtue of this power, Parliament enacted the Government of Union Territories Act, 1963. This Act has been amended from time to time. Currently, it provides for the constitution of Council of Ministers for the Union territories specified in Article 239A.

24 Inserted by the Constitution (Fourteenth Amendment) Act, 1962, Sec. 4

25 At the time of the Constitution (Fourteenth Amendment) Act, 1962, the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry were inserted in Article 239A. Consequent on the conferment of Statehood on Himachal Pradesh, Manipur and Tripura the words Himachal Pradesh were omitted by the State of Himachal Pradesh Act (53 of 1970) 1970, Sec. 46 and Manipur and Tripura by the North-Eastern Areas (Reorganization) Act (51 of 1971) 1971, Sec. 71. When the Union territory of Mizoram was created, it was included within the scope of this Article, see Constitution (Twenty-seventh Amendment) Act, 1971, Sec. 2. In 1975, this provision was made applicable to the Union territory of Arunachal Pradesh, see Constitution (Thirty-seventh Amendment) Act, 1975, Sec. 2. In the case of Delhi, the Bill (124 of 1978) on the subject has been introduced in the Lok Sabha by the Minister of State in the Ministry of Home Affairs, Shri S.D. Patil on 11 August 1978, see Col. 228, L.S.D., Vol. XVII. Owing to some special circumstances it has not been passed so far. The observations in regard to Delhi, therefore, are made in the hope that the Bill would be passed soon.

26 Initially Council of Ministers were provided for the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry, see the Government of Union territories Act (20 of 1963) 1963, Sec. 2. As a result of elevating the Union territories of Himachal Pradesh, Manipur and Tripura to States, the words “Himachal Pradesh” were deleted from the Principal Act by the State of Himachal Pradesh Act (53 of 1970) 1970, Sec. 48 and “Manipur and Tripura” by the North-Eastern Areas (Reorganization) Act (51 of 1971) 1971, Sec. 75. Thereafter, the scope of the Act was extended to the Union territory of Mizoram, see the Government of Union territories (Amendment) Act (83 of 1971) 1971, Sec. 3. In 1975, the Union

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The Council of Ministers with the Chief Minister at the head are to aid and advise the Administrator in the exercise of his functions, except those that the Administrator is to exercise in his discretion or any of judicial or quasi judicial nature. Whether any matter is, or is not, a matter of discretion or judicial or quasi judicial, the decision of the Administrator would be final. The Chief Minister is to be appointed by the President, and other Ministers are appointed by the President in consultation with the Chief Minister. In the case of a difference of opinion between the Administrator and his Council of Ministers, the Act provides that the matter would be referred to the President for final decision.

Footnote 26 continued from pre-page

Territory of Arunachal Pradesh was also included within the ambit of this Act, see Government of Union Territories (Amendment) Act (29 of 1975) 1975, Sec. 3

In the case of the Union territory of Delhi, an Executive Council has been attached to assist the Administrator, see Delhi Administration Act (19 of 1966) 1966, Sec. 27. Currently, the Government of Union Territories (Amendment) Bill (125 of 1978) is before Parliament for consideration. It provides the repealing of Delhi Administration Act and the creation of a Council of Ministers.

27 See Government of Union Territories Act (20 of 1963) 1963 as modified till date, Sec. 44 (For provision, see Appendix-J).

28 Ibid.

29 Ibid., Sec. 45

30 Ibid., Sec. 44
(iv) Advisory Councils/Varishta Panchayat

In the case of Union territories where provision has not been made for a Council of Ministers, alternative arrangements exist. In the Union territories of the Andaman and Nicobar Islands, Lakshadweep and Chandigarh, the functions of the Council of Ministers are secured through the formation of Advisory Councils.31 In Dadra and Nagar Haveli, the Varishta Panchayat, an indirectly elected body, performs this function.32

(b) Legislature

(i) Parliament

The Legislative power is vested in Parliament. This power is exercised by Parliament under Clause 4 of Article 246. It provides that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List." Normally, Parliament cannot make laws with respect to matters enumerated in the State List, but in relation to Union territories it has been exempted from this limitation. It is competent to legislate with respect to subjects included in the State List and have

31 See respectively Notification No. 25/12/72-AML(M.H.), dated 4 October 1972 with subsequent amendments, Sec. 3; Notification No. 71/36(2)/1/57(M.H.) dated 29 June 1957, Sec. 3; and Notification No. 3247-UTPI(2)-77/873, Chandigarh Administration (Finance Dept.), dated 31 May 1977, Sec. 1.

32 See The Dadra and Nagar Haveli Act (35 of 1961) 1961, Sec. 4.
application to Union territories. In the exercise of this power, it is also not fettered by anything in the entries in the State List or anything following therefrom.

The word 'State' in this Clause is indeed significant. To recall, under the meaning of Section 3(58)(b) of the General Clauses Act, 1897, 'State' includes Union territory. This definition, should not be resorted to for Clause 4 of Article 246, because if that definition is applied to this Clause, Parliament would have no power to make a law on a subject which is embodied in the State List.

(ii) Legislative Assemblies

Besides itself legislating for the Union territories, for Goa, Daman and Diu, Pondicherry, Mizoram, Arunachal Pradesh and Delhi which are politically and administratively at a more advanced stage, Parliament could create territorial legislatures. A law passed by Parliament in this connection

33 See Mithan Lal v State of Delhi, AIR 1958 SC 682, p. 685
34 Ibid.
35 See Article 239A(1). Clause(1) provides: "Parliament may by law create for any of the Union territories of Goa, Daman and Diu, Pondicherry, Mizoram, Arunachal Pradesh and Delhi.

"(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law."
is not to be regarded as an amendment of the Constitution under Article 368, even though the law in question contains provisions amending the Constitution.36

In the exercise of this power, Parliament enacted a law and provided for the establishment of Legislative Assemblies for the Union territories of Goa, Daman and Diu, Pondicherry, Mizoram, Arunachal Pradesh and Delhi.37 The Legislative Assembly other than Delhi consists of thirty members and, in addition to this, the Central Government has the power to nominate three persons.38 In the case of the Union territory of Delhi, the composition is fifty-six.39 The legislative power of the territorial legislature is extended to all matters enumerated in the State List or the Concurrent List.40 Nevertheless, it does not derogate from the powers conferred on Parliament to make laws with respect

36 See Article 239A(2). This Clause provides: "Any such law as is referred to in Clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of Article 368, notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."

37 See Government of Union Territories Act (20 of 1963) 1963, with subsequent amendments, Sec. 3

38 Ibid.

39 See Government of Union Territories (Amendment) Bill (123 of 1978) 1978, Sec. 4

40 See Government of Union Territories Act (20 of 1963) 1963, with subsequent amendments, Sec. 18(1). It provides: "Subject to the provisions of this Act, the Legislative Assembly of a Union Territory may make laws for the whole or any part of the Union territory with respect to any of the matters enumerated in the State List of Concurrent List in the Seventh Schedule to the Constitution in so far as any such matter is applicable in relation to Union territories."
to any matter for Union territories. Provision is also made that in the case of conflict between a law of Parliament and Legislative Assembly, the law passed by the former would prevail. Besides, Parliament has the power of adding to, repealing, amending and varying the law made by the Legislative Assembly. Consequently, in the matter of legislation, the power of the territorial assembly is neither exclusive, nor co-ordinate and nor invulnerable.

(iii) Institutional arrangements

In the Union territories, where Legislative Assemblies cannot be created under Article 239A, institutional arrangements have been made to associate the people with the task of legislation. In the Andaman and Nicobar Islands, Lakshadweep and Chandigarh, the functions of the legislature are secured through the formation of Advisory Councils. In Dadra and Nagar Haveli, the task of making legislative proposals has been entrusted to a body known as Varisha Fanchayat.

Ibid., Clause 2
Ibid., Sec. 21 (The provision has been reproduced in Appendix-K).
Ibid.
See respectively Notification No. 26/12/72-AHL(Ministry of Home Affairs), dated 4 October, 1972 with subsequent amendments, Sec. 5; Notification No. 71/36(2)/1/57 (Ministry of Home Affairs), dated 29 June 1997, Sec. 3; and Notification No. 3247-UTPI(2)-77/8793, Chandigarh Administration(Finance Dept.), dated 31 May 1977, Sec. 1
Vide The Dadra and Nagar Haveli Act (35 of 1961) 1961, Sec. 4
(c) **Promulgation of Ordinances: Extent and Scope**

During the time when the scheme of reorganising the North-Eastern areas was being implemented, the Government of India accepted the proposal of the Study Team of the Administrative Reforms Commission that the Administrators of the Union territories with legislatures should be empowered to promulgate ordinances. To give effect to this proposal, Article 239B was incorporated into the Constitution. Under this provision the Administrator is allowed to promulgate ordinances if he is satisfied that circumstances exist and render it necessary for him to take immediate action, provided, of course, when the legislature of the Union territory is not in session. Whether circumstances exist, or do not exist, the satisfaction of the administrator is not justiciable. While exercising this power, he is entitled

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48 See Constitution (Twenty-seventh Amendment) Act, 1971, Sec. 3.
49 See Article 239B, Clause(1). It provides that, "If at any time, except when the Legislature of a Union territory referred to in Clause (1) of Article 239-A is in session, the Administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require."
50 Ibid., Clause(4). It states: "Notwithstanding anything in this Constitution, the satisfaction of the Administrator mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any court on any ground." This Clause was inserted by the Constitution (Thirty-eighth Amendment) Act, 1975, Sec. 4.
to promulgate Ordinances on any matter which is within the competence of the legislature of the Union territory. Any Ordinance promulgated on a subject which is beyond the jurisdiction of the territorial legislature would be void.\footnote{Ibid., Clause (3). It provides that, "If and so far as an Ordinance under this Article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in Clause (1) of Article 239-A, shall be void!"

51 Ibid., Clause (3). It provides that, "If and so far as an Ordinance under this Article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in Clause (1) of Article 239-A, shall be void!"

52 Ibid., Clause (2). It provides that, "An Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in Clause (1) of Article 239-A . . ."}

53 Ibid., proviso first to Clause (1). It provides that, "Provided that no such Ordinance shall be promulgated by the Administrator except after obtaining instructions from the President in that behalf."
The reason for restraining the Administrator from promulgating Ordinances during the period of dissolution or suspension of a legislature is that except in the case of the Union Territory of Delhi, the President himself exercises the regulation-making power as per Article 240. The position of the Administrator in this respect differs from that of the Governor. The latter can promulgate Ordinances even if the legislature of a State is dissolved, prorogued or suspended. In other words, the Governor in this regard exercises more powers than the Administrator.

(3) The Ordinance promulgated by him should be laid before the Legislative Assembly after it reassembles. All the same, he is not bound to comply with this condition. The only consequence of non-conformity with this requirement is that the Ordinance would automatically cease to operate after the expiry of six weeks from the reassembly of the legislature. It would cease to operate even before the expiry of six weeks from the reassembly of the legislature (a) if the latter passes a resolution disapproving the Ordinance or (b) the Administrator withdraws the Ordinance.

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54 Ibid., proviso second to Clause (1). It provides that, "Provided further that whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is referred to in Clause (1) of Article 239-A, the Administrator shall not promulgate any Ordinance during the period of such dissolution or suspension."

55 See Article 213
after obtaining instructions from the President.56

(d) **Formulation of Regulations: Extent and Scope**

To ensure peace, progress and good government in the Union territories of the Andaman and Nicobar Islands; Lakshadweep; Dadra and Nagar Haveli; Goa, Daman and Diu; Pondicherry; Arunachal Pradesh and Mizoram, the President is competent to make Regulations.57 For this purpose, the Union territories are grouped into two categories. The first three Union territories are placed in one category. In respect of this category, the President exercises unrestricted power to make regulations. The remaining Union territories, which have legislatures, are included in the second category. In relation to these territories, this power can be exercised

56 See Article 239B, Clause (2) subclauses(a) and (b). They provide that every such Ordinance, "(a) shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the Administrator after obtaining instructions from the President in that behalf."

57 See Article 240, Clause (1).

At the time of the creation of Union territories, the scope of the President's regulation-making power was limited only to the Union territories of the Andaman and Nicobar Islands and Lakshadweep, see Constitution(Seventh Amendment) Act, 1956, Sec. 17. In 1961, the scope of this power was extended to the Union territory of Dadra and Nagar Haveli, see Constitution(Tenth Amendment) Act, 1961, Sec. 3. When the Union territories of Goa, Daman and Diu and Pondicherry were created, they were also included in this category, see Constitution(Twelfth Amendment) Act, 1962, Sec. 31 and Constitution(Fourteenth Amendment) Act, 1962, Sec. 5. Subsequently, at the time of the reorganization of the North-Eastern Areas, the Union territories of Mizoram and Arunachal Pradesh were included within the purview of Article 240, see Constitution(Twenty-seventh Amendment) Act, 1971, Sec. 4.
by him only during the period when the legislature is
dissolved or suspended.\(^{58}\)

While exercising power under Article 240, the President
can promulgate regulations on any matter which is within the
competence of Parliament. This power is not confined to law
and order only, but it is a general power.\(^{59}\) Clause (2) of
Article 245 provides that, "No law made by Parliament shall
be deemed to be invalid on the ground that it would have
extra-territorial operation." Since the regulation promulgat-
ed by the President has the same effect as an Act of
Parliament, it cannot, therefore, be invalid on the ground
that it has extra-territorial operation.\(^{60}\)

In relation to Union territories specified in Article
240 the President is not merely entitled to make regulations,
but in the exercise of this power, he can override the
legislative power of Parliament in as much as a regulation
made by the President can repeal or amend any Act of

58 See proviso second to Clause (1). It provides that,
"Provided further that whenever the body functioning as a
Legislature for the Union territory of Goa, Daman and Diu,
Pondicherry, Mizoram or Arunachal Pradesh is dissolved, or
the functioning of that body as such, Legislature remains
suspended on account of any action taken under any such
law as is referred to in Clause (1) of Article 239-A, the
President may, during the period of such dissolution or
suspension, make regulations for the peace, progress and
good government of that Union territory." In the proviso
for the words "Pondicherry and Mizoram", the words
"Pondicherry, Mizoram or Arunachal Pradesh" were substitut-
ed by the Constitution(Thirty-seventh Amendment) Act, 1975,
Sec. 3

59 Source: S. M. Karimian v J. T. O. Pondicherry, AIR 1968
SC 637, p. 642

60 Source: Agnolo v Custodian B. M. U. Goa, AIR 1970 Goa 11,
p. 18
Parliament which is for the time being applicable to the Union territory. While exercising this power, the power of the Central Government to issue executive directives, which under Article 73(1) is extended to all matters on which Parliament can make laws, is also subject to modifications. The Administrator of the Union territory is bound to carry out the directives given by the Central Government so long as they are not in conflict with the Regulation of the President. In case of any inconsistency between the Regulation and the executive directive, the former by virtue of its supremacy will prevail.

(a) Judiciary: Extent and Scope

The Constitution also contains provisions to raise the judiciary of a Union territory to the same level as that of the States. Three Articles of the Constitution relate to the High Courts of Union territories, namely Articles 230, 231 and 241. Article 230 is related to the extension of the jurisdiction of High Courts of States over Union territories. Clause (1) of Article 231 relates to a common...

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61 See Article 240, Clause (2). It provides: "Any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and, when promulgated by the President shall have the same force and effect as an Act of Parliament which applies to that territory."


63 For provision see Appendix-I(I).

64 For provision see Ibid.
High Court for two or more States and Union territories.
Article 244 deals with the creation of High Courts for Union territories or declaration of any court in any Union territory to be a High Court.65

In pursuance of Article 230, Parliament extended the jurisdiction of the Calcutta High Court over the Andaman and Nicobar Islands; 66 of that of Kerala to Lakshadweep; 67 of Bombay to Dadra and Nagar Haveli; 68 of Tamil Nadu (previously called Madras) to Pondicherry; 69 and of Assam to Arunachal Pradesh and Mizoram. 70 At this juncture, it is necessary to point out that although the jurisdiction of the High Court of a State or Union territory can be extended to the adjoining Union territory, the jurisdiction of the High Court of a Union territory cannot be extended over any of the States, because under the Constitution States enjoy a higher status

65 See Article 244, Clause(1) which provides, "Parliament may by law constitute a High Court for a Union territory or declare any Court in any such territory to be High Court for all or any of the purposes of this Constitution."

66 See the Calcutta High Court (Extension of Jurisdiction) Act (41 of 1953) 1953, Sec. 2

67 See the States Reorganisation Act (37 of 1956) 1956, Sec. 60

68 See the Dadra and Nagar Haveli (Administration) Act (35 of 1961), 1961, Sec. 11

69 See the Pondicherry (Administration) Act (49 of 1962), 1962, Sec. 9

70 See the North-Eastern Areas (Reorganisation) Act (81 of 1971) 1971, Sec. 32
than the Union territories.

Under Article 231, a Common High Court has been established for the States of Haryana, Punjab and the Union territory of Chandigarh.71

Article 241 has been resorted to for the creation of a High Court for Delhi72 and recognizing the existing Judicial Commissioner’s Court of Goa, Daman and Diu as High Court.73 However, while taking action under Article 241, Parliament is not restrained from modifying any provision contained in the Constitution of High Courts.74

Thus from the nature of Union territories it is established beyond doubt that the Union Government and Parliament in relation to Union territories are vested with such unlimited and overawing powers that it will not be an exaggeration to enlist Union territories as the 96th Entry of the Union List of the Seventh Schedule of the Constitution.

71 See the Punjab Reorganisation Act (31 of 1966) 1966, Sec.29
72 See the Delhi High Court Act (26 of 1966) 1966, Sec. 3
73 During the time of its formation as a Union Territory, the jurisdiction of the Bombay High Court was extended to it. See the Goa, Daman and Diu(Administration) Act(1 of 1962) 1962, Sec. 7. In 1964, the jurisdiction of the Bombay High Court was excluded from the Union territory, and the existing Judicial Commissioner’s Court was declared to be a High Court, see the Goa, Daman and Diu Judicial Commissioner's Court(Declaration as High Court) Act(16 of 1964) 1964, Sec. 3
74 See Article 241, Clause(2). It provides : “The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in Clause(1) as they apply in relation to a High Court referred to in Article 214 subject to such modifications or exceptions as Parliament may by law provide.”