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### COMPARISON OF POWERS BETWEEN THE GOVERNOR OF A STATE AND LIETUENANT GOVERNOR OF PUDUCHERRY

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Exercise of Powers by Governors under the Constitution and that of Lt. Governor has sparked a debate.

In this article, I would therefore like to compare the powers of Lt. Governor of Puducherry with those of the Governor of Tamil Nadu to give the readers a better understanding of the relationship between the Lt. Governor and the Council of Ministers headed by the Chief Minister at Puducherry, in law.

The Constitution of India provides for a Federal set up by dividing Executive and Legislative powers between the 'Union' and the 'States'. However, the Constitution has also listed down certain political units as

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'Union Territories' in Schedule I, which are directly administered by the President of India through an Administrator appointed by him under Article 239. Therefore, there is no legislature and Council of Ministers in Union Territories. Since the President of India is bound to act by the aid and advice of Council of Ministers headed by the Prime Minister under Article 74 of the Constitution, the powers of the Union Government extend fully to these Union Territories without any intervention from 'Regional Governments'. Understandably, unlike Part VI of the Constitution which has 38 Articles elaborately laying down the powers and functions of the Governor, Council of Ministers, Legislature, etc. of 'The States'; Chapter VIII titled 'The Union Territories' originally had only 3 provisions since the Executive and Legislative Powers of Officers and Authorities under 'The Union' directly extend to the Union Territories through the administrator in the absence of legislature or Council of Ministers at Union Territories.

However, with an intention to grant 'Statehood' gradually to certain unique political units, Article 239-A was inserted by an amendment in 1962 empowering Parliament to establish legislature and Council of Ministers to certain Union Territories subsequently added to Schedule- I. One reason for this is to gradually grant 'State autonomy' to non-British colonies which were annexed by India subsequent to coming into force of the Constitution, the provisions of which such new territories were not acquainted with. This includes Goa and Puducherry which were non-British colonies merged with Indian Republic only in 1960s by which time the Constitution of India was more than a decade old. Out of the 7 Union Territories originally placed under Article 239-A, except Puducherry, all other territories have now been granted Statehood.

Since Article 239-A empowers Parliament to lay down the powers and functions of the Legislature and Council of Ministers of Union Territories placed under the provision, the Government of Union Territories Act, 1962 (hereinafter referred to as 'the Act of 1962') has to be resorted to, to understand their powers, functions and their relationship with their 'administrator' also known as the Lt. Governor. Since, Article 239 does not contemplate legislature or Council of Ministers in Union Territories, the powers of Administrator under the Article should necessarily be curtailed in Union Territories where legislature and Council of Ministers are established under Article 239-A to such extent as the Act of 1962 provides. In any case, the special, or rather subsequent provision Article 239-A prevails over the original provision Article 239 in consonance with the principle 'where there is a general provision and a special provision dealing with the same subject matter, the special provision must be read as a Proviso (Exception) to the general provision. In so far as it is inconsistent with the special provision, must be deemed not to apply'. This is also a part of the legal maxim '*Generalia specialibus non-derogant*' [Special (provision of) law prevails over General (provision

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of) law]. It is therefore legally impermissible to conclude that Lt. Governor prevails over the elected Government at Puducherry in all circumstances.

Having said that the Act of 1962 govern the powers, functions and relationship of the legislature and Council of Ministers with the

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administrator at Puducherry, it is important to note that the Act extensively adopts the provisions of Part VI of the Constitution which lay down the powers and functions of the Governor, Council of Ministers, Legislature, etc., of 'The States'. It is hence quite safe to *prima-facie* state that powers of the territorial legislature and the elected Government of Puducherry are identical with those of the State Legislature and elected Government of Tamil Nadu subject to such exceptions as provided under Article 239-A, the Act of 1962 and Rules of Business of Government of Puducherry.

For instance, the provisions relating to qualification for membership of the State legislature, right of Governor to address and send messages to the House, disqualification of MLAs, Powers, Privileges and Immunities of State Legislatures and their Members as laid down under Part VI of the Constitution are verbatim reproduced in the Act of 1962 with respect to Puducherry. Interestingly while Article 163(1) of the Constitution titled 'Council of Ministers' states that 'there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion', Section 44(1) of the Act states that 'there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Administrator in the exercise of his functions...in so far as he is required by or under this Act to act in his discretion...'It is quite clear that except where the Lt. Governor is empowered under the Act to act in his own discretion, he shall only be the nominal head of Puducherry like the Governor of a State.

Section 44 further clarifies this position by adding a Proviso that 'in case of difference of opinion on any matter, the Administrator shall refer it to the President for decision and act according to the decision given thereon by the President, and pending such decision it shall be competent for the Administrator is in his opinion so urgent that it is necessary for him to take immediate action..'Hence, if the Lt. Governor of has any difference of opinion with the Council of Ministers, the least he can do is only to refer the matter to the President. The power of the Lt. Governor to act independent even in such matters is further qualified that his independence is only temporary pending decision of the President and only if it is 'urgently' called for. In any case, there should first be an advice from the Council of Ministers in such matters and subsequent reference to the President even before the Lt. Governor contemplates any such temporary action.

Apart from this, the only significant provision under the Act that empowers the Lt. Governor to override the Council of Ministers is Section 50 which states that 'the Administrator and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President.'But even this provision puts Administrator and the Council of Ministers on the same footing and does not give the former any 'independent power' to override the latter.

Moreover, similar provisions only empower the President or the Parliament to curtail the powers of the Council of Ministers but do not give a

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free hand to Lt. Governor. For instance, provision of 'State Emergency' as provided under Article 356 of the Constitution is identical to Sections 51 & 52 of the Act. They empower the President and the Parliament to assume for themselves the executive and legislative powers of the State and Puducherry UT upon receipt of report of 'failure of Constitutional machinery' from the Governor or the Lt. Governor, as the case may be. The Act does not empower the Lt. Governor to act independently even in such circumstances. Similarly, Section 55 of the Act provides that 'all Suits and proceedings in connection with the administration of the Union Territory shall be instituted by or against the Government of India' and does not give such powers to the Lt. Governor.

It is also pertinent to state that the Rules of Government of Pondicherry, 1963 made by the President further clarifies under Rule 6(2) that the 'Minister in-charge of the Department shall be primarily responsible for the disposal of business pertaining to that department.' It is totally illogical to assume that the Lt. Governor is more powerful than the Minister as the responsibility is vested with the latter and not the former. The Minister can be 'responsible' only for things he is 'empowered' to do. Even these Rules of 1963 do not empower Lt. Governor to override the Council except when the Union Government provides particular directions. The least that the Lt. Governor is empowered to do independently under these Rules is to refer matters to the President. In any case, the territorial Legislature is empowered to enact laws on any subject listed down under the 'State List' and 'Concurrent List' in Chapter VII of the Constitution subject to the only exception that 'such laws are invalid to the extent that they are inconsistent with the laws of the Parliament.'

At this juncture, it is also relevant to discuss the clarification provided by the Ministry of Home Affairs in June 2017 with respect to the administration of Puducherry as sought for by the Chief Minister. By highlighting certain points in the clarification, the office of the L.G. jubilantly interpreted that the Council is Subordinate to her. Some such points are: (A) Under Rule 21(5) of Business rules, the L.G. can call for papers relating to any case; (B) L.G. would have the power to call for the file of any particular case; (C) L.G. could, as a measure of courtesy, request the CM and any cabinet colleague to update him on any doubt or query which the L.G. may have. However, it is absolutely ridiculous to interpret these clarifications to mean that the L.G. can override the powers of the Council independently. Calling for papers or reviewing a case file or requesting the CM and his colleague to update him on any doubt do not mean 'overriding' the Council's powers. In fact, Article 167 of the Constitution gives such powers even to the Governor of State. The provision casts a duty upon the Chief Minister to communicate all decisions of his Council to the Governor and to furnish all information as the Governor may call for. If the power of Governor under Article 167 does not mean overriding the decisions of the Chief Minister and his colleague, then identical power of the L.G. at Puducherry also does not mean such overriding power.

Therefore, in my view, the debate on role of Governor and LT. Governor should be on the basis of Law as stated above.