



**3<sup>RD</sup> NATIONAL (ONLINE)  
CONSTITUTIONAL LAW JUDGMENT  
WRITING COMPETITION, SCLHR**

*The Society For Constitutional Law & Human Rights,*

*School of Law,*

*UPES.*

**(September – October 2023)**

**(RULES AND REGULATIONS ALONG WITH THE PROPOSITION AND OTHER DETAILS)**

**1. ABOUT THE UNIVERSITY OF PETROLEUM AND ENERGY STUDIES (UPES):**

A distinguished paragon of academia established in the year 2003, UPES is an illustrious, multidisciplinary scholastic sanctuary. Situated in the tranquil bosom of the Himalayan foothills, we are a NAAC accredited 'A' grade institution, certified with five-star ratings in the categories of employability, academic development, program strength, and facilities. Our laurels extend to the global pedagogic arena through invaluable alliances with esteemed institutions worldwide, an achievement underscored by our 52<sup>nd</sup> ranking in the 2023 NIRF list of top universities.

The School of Law at UPES is a beacon of legal education in India. We provide a diverse range of programs, thereby nurturing students to become catalysts in shaping the legal domain. Our curriculum is thoughtfully designed, using interactive learning methodologies, and delivered by leading experts in their respective fields. These concerted efforts have contributed to the Law School's prestigious 21st position in the NIRF 2022 rankings for legal education.

**2. ABOUT THE SOCIETY FOR CONSTITUTIONAL LAW & HUMAN RIGHTS:**

The Society for Constitutional Law & Human Rights (SCLHR) was established on the auspicious day of 15th August 2018, under the esteemed aegis of UPES School of Law. It focuses on promoting research and broadening students' legal understanding. In its journey, the society has arranged national events like '*You Amend Your Constitution*,' an *annual National Constitutional Law Quizzes*, and *Judgment Writing Competitions*. It also hosts *panel discussions* and *guest lectures* on dynamic topics, assisting students in strengthening their legal perspectives.

**3. ABOUT THE JUDGEMENT WRITING COMPETITION:**

A judgment writing competition serves as a platform enabling law students to use their knowledge and writing talent to create convincing judgments. It lets students explore complex legal situations, examine evidence, and use legal ideas to make fair decisions. By simulating the process of writing judgments, the competition will ensure to inculcate students' critical thinking abilities, legal research skills, and concise writing proficiency. It fosters a deeper understanding of legal principles, enhances clarity in legal reasoning, and cultivates effective communication skills.

The objective of this competition is for the students to approach a factual matrix from the point of view of a judge, apply the law and render a judgment. The student shall be expected to think like a judge and reach a well-reasoned conclusion. The detailed rules and Regulations of the Competition are produced below:

#### **4. GENERAL RULES FOR THE COMPETITION:**

##### **4.1. ELIGIBILITY:**

- a) The Competition shall be open for the students currently pursuing their Bachelor's Degree in law i.e. a 3-Year LL.B. course or a 5-Year LL.B. course from any recognized university/school in India.
- b) Individual participation as well as participation in a team of two i.e. co-authorship is allowed.
- c) There is no restriction on the number of entries from any college or university.
- d) The participants shall be provided with a factual scenario/proposition and would be required to write a judgment based on the same.
- e) The participants shall write a single opinion. Multiple opinions are not allowed.

##### **4.2. CLARIFICATIONS:**

- a) All requests for clarifications regarding the proposition must be sent via Google Form: <https://forms.gle/hcsMvayiVeFYDuED8>. [The last date for requests for clarifications is 8<sup>th</sup> September 2023]
- b) A list of clarifications shall be issued on the SCLHR Blog, accessible at <https://sclhrblogs.wordpress.com/>.

##### **4.3. DISCRETION TO BE EXERCISED BY THE ORGANISING COMMITTEE (OC):**

- a) The OC shall have the exclusive authority to interpret these rules in the interests of fairness and equality. Any circumstance not covered by these rules shall be decided by the OC. Decisions made by the OC in this regard will be made in the interests of fairness and equality.
- b) All such decisions of the OC shall be final and binding.

#### **5. THE FORMAT OF THE JUDGMENT:**

##### **5.1. THE COVER PAGE:**

This page should consist of the following essentials:

- Unique Participation Code (top right corner)
- Name of the Competition
- Name of the Court
- Case Number
- Name of the Parties: (e.g., ABC v. Union of India).
- Advocates appearing on behalf of the Parties

**\*Note that any hypothetical name, for this point, could suffice.**

- Date of Delivery of Judgement

***Such fillers should not reveal the identity of the participants. Such a revelation would lead to immediate disqualification***

#### **5.2. THE BODY:**

- Precise Facts of the Case
- Jurisdiction
- Issues to be determined
- Arguments of the Two Parties
- Relevant Legislations
- Analysis of the Arguments, Evidence, and Conclusion based on the relevant facts

#### **5.3. THE CONCLUSION:**

- The Decision of the Court based on the Analysis of the Law and Circumstances.
- Reasons for the Decision
- Statement of the Court on awarding of the Sentence.
- The date on which the Judgement was written and read in Open Court

#### **6. SUBMISSION GUIDELINES:**

- The language of the Judgment shall be in English only.
- The Judgement shall have a maximum length of 14 Pages.
- The Judgement should be submitted in the Microsoft Word file (doc./docx. format).
- The font used in all parts of the judgment must be in Times New Roman.
- The Font size for the main text must be 12 with 1.5 line spacing and Justified.

- The Font Size for the footnotes must be 10 with 1.0 line spacing and Left Aligned.
- The citation methodology to be followed for the footnotes is Bluebook (20th Ed.).
- The page number must be mentioned at the bottom centre of each page.

**7. ANONYMITY:**

Each team shall be provided with a unique participation code upon registration. The identity of the teams shall not be disclosed at any stage; such disclosure shall invite penalties including disqualification. The final decision for the same shall be at the discretion of the OC.

**8. EVALUATION CRITERIA:**

- a) Each Judgement shall be assessed by experienced faculties of the School of Law, UPES.
- b) Every draft will be marked with a maximum of one hundred (100) marks by each judge based on the criteria mentioned in the Rules.
- c) *The marks distribution for the judgment shall be as follows:*

| S. No. | CRITERION  | MARKS |
|--------|--|-------|
| 1      | Adherence to Rules & Enumeration of Facts and Identification of Issues   | 20    |
| 2      | Statement of Contentions of both parties                                 | 15    |
| 3      | Citing of Relevant Laws viz. case-law, statutes, and opinions of jurists | 20    |
| 4      | Format, Presentation, Style, Clarity, Appearance, and Overall Impression | 20    |
| 5      | Critical analysis, Analytical Reasoning, and Conclusion                  | 25    |
| 6      | Total  | 100   |

- d) *The penalties shall be enforced as hereunder:*

| S. No. | DESCRIPTION   | RANGE                                  |
|--------|---|--|
| 1      | Incorrect line formatting & line spacing in the manuscript or footnotes | 0.5 marks per instance; up to 2 marks. |
| 2      | Absence of Page no. in a footer & Improper submission of Manuscript     | 2 marks each                           |

|   |  |                       |
|---|--|-----------------------|
| 3 | Exceeding Word Limit                         | 1 mark for every page |
| 4 | Plagiarism                                   | 1 mark per instance   |
| 5 | Delay in submission per hour [max. 48 hours] | 0.5 marks per hour    |

**9. PRIZES FOR THE COMPETITION:**

a) The author/s of the **Top 5 Judgements** will receive a *Certificate of Merit*.

b) Additionally, the author/s of the **Top 3 Judgements** will also receive a *cash prize* as per the following scheme:

- The author/s of the **Best Judgement** will receive a cash prize of Rs. **5,000/-**
- The author/s of the **2<sup>nd</sup> Best Judgement** will receive a cash prize of Rs. **3,000/-**
- The author/s of the **3<sup>rd</sup> Best Judgement** will receive a cash prize of Rs. **2000/-**

c) All the participants will receive a *Certificate of Participation*.

**10. REGISTRATION DETAILS:**

a) This is an individual as well as a team event (maximum of 2 members). Each individual/team shall register for the competition by filling out the online registration form along with the payment of fees. The registration shall only be done through the following Google Form <https://forms.gle/yrnBkvozgsynCHzQ6>.

b) Registration fee is as follows:

- **Individual Registration: Rs. 250/-**
- **Team Registration: Rs. 400/-**

c) The *Mode of Payment shall be UPI* only attached with the Google Form for registration.

**Note:** Participants shall upload a screenshot of the payment made and Transaction ID, in the registration form given.

f) A Participation Code shall be assigned to each participant/team by the OC after the completion of the registration process.

g) Each participant/team shall upload the final draft of their Judgement to the submission form only sent to them via email.

**11. A LIST OF IMPORTANT DATES:**

- Release of Problem: 14<sup>th</sup> August 2023.
- Last date of Registration: 5<sup>th</sup> September 2023.
- Allotment of ID – 6<sup>th</sup> September 2023
- Last date for the Submission of Clarifications: 8<sup>th</sup> September 2023.
- Release of Clarifications: 12<sup>th</sup> September 2023.
- Last date for Judgement Submission: 2<sup>nd</sup> October 2023.
- Declaration of the Results: 25<sup>th</sup> October 2023.

## 12. CONTACT DETAILS:

For any queries or questions, you may email us at: [SCLHR@ddn.upes.ac.in](mailto:SCLHR@ddn.upes.ac.in).

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## 13. THE PROPOSITION:

1. Salaria, situated in the Southern part of Asia is a nation known for its cultural diversity, agricultural, and raw materials like spices, tea rice, wheat, etc. Around the 17th century, Salaria was conquered by the Western Invaders. Gradually, one of those western invaders established their supremacy in the territory of Salaria. By the mid-18th century, the invader was able to rule over the entirety of the territory of Salaria excluding some minor portions.

2. Before the western invader established their control over Salaria, the entire territory was compartmentalized into discrete empires which were governed by different rulers (monarchs), who used to govern their part of the conquered empire. One such empire was of the Middle Eastern invaders, who had come to the Salaria long before the invader had come and established their centuries of governance over Salaria.

3. The Middle Eastern rule in Salaria became so pervasive that there was a dire requirement to have a place situated around the centre of Salaria to look after the administration of the entire empire. So, they established Dynalis, a place located in the centre of their empire in Salaria as their capital for administrative purposes. The location of Dynalis was considered apposite for the middle eastern invaders to control their occupied territories conveniently.

4. However, when the western invader came, they entered into the boundaries of Salaria from its eastern extremity. They erected their structures in the eastern part of Salaria and thereby, whilst their nascent ruling period, they chose to make Corvalon, a place located in the eastern part of Salaria as their capital city for administrative purposes.

5. Unfortunately, Corvalon as the capital city, did not augur well for the western invader. There was persistent agitation by the public, mass revolts, political unrest, and protests against their governance in Corvalon, which ultimately compelled the invaders to shift their capital city from Corvalon and bring it back to Dynalis, which was the capital city under the Middle Eastern Invaders' rule.

6. Consequentially, on 12th December 1911, Dynalis became the capital of the western invader-governed Salaria. The position of Dynalis as the capital city remained constant throughout their rule in Salaria. Moreover, Dynalis's status as the capital under the rule transformed its infrastructure in toto. All the major institutions, pertaining to the Legislature, Executive and Judiciary, Embassies, and Central administrative departments were established in Dynalis.

7. During the western invader's rule, Dynalis was known as the Chief Commissioner's Province as it was headed by and put under the control of a commissioner. In 1915, the Dynalis Laws Act, 1915 got fructified. By the virtue of the mentioned legislation, the Chief Commissioner of Dynalis was empowered to determine the applicability of laws in Dynalis by just issuing appropriate notification in the Gazette of Salaria. The Chief Commissioner was an executive position and the person who used to hold the post was appointed by the Viceroy of Salaria. This evinces that Dynalis was administered "directly" by the Viceroy, acting through a Chief Commissioner. Furthermore, the major laws passed during the invader Raj, namely the Government of Salaria Act of 1919 and the Government of Salaria Act of 1935 retained Dynalis as the "centrally administered territory".

8. The mid-20th century was backed by the debilitation of the Western Invader's Raj from Salaria due to a plethora of reasons. The long-standing public resentment among other factors, aided in bringing an end to their governance. Legally, it happened by the virtue of Salarian Independence Act of 1947. This was also followed by the enforcement of the most revered document of the land i.e., the Constitution which came into effect in 1950.

9. On coming into force of the Constitution of Salaria on 26th January 1950, Salaria became a federal democracy. The principles of federalism were recognized by the Constitution itself.



10. The Constitution also included Schedule VII which recognizes three discrete subject-matter lists. Depending upon who has the prerogative to enact a law for which list, the lists are classified into: List-I (includes subjects on which the Centre has the power to enact the laws); List-II (includes the subjects on which States have the power to enact the laws) and List-III (includes the subjects on which both the Centre and States have the power to enact laws).

11. After Salaria garnered independence, the former discrete territories under the invader Raj were reorganized and categorized into Part-A, Part-B, and Part-C states. Dynalis became a Part-C State.

12. Afterward, in the year 1951, the Government of Part-C States Act, 1951 was fructified, providing, inter alia, for a Legislative Assembly in Dynalis. Section 21(1) of the 1951 Act, empowered the Legislative Assembly of Dynalis to make laws on all the matters of List-II of the Seventh Schedule of the Constitution except (i) public order; (ii) police (including railway police); (iii) constitution and powers of municipal corporations and local authorities; (iv) lands and buildings vested in/in possession of the Union situated in Dynalis or New Dynalis; (v) offences against laws about subjects mentioned from (i) to (iv); and (vi) jurisdiction of courts with respect to the above matters and court fee thereon.

13. Thereafter, with the Constitutional Seventh Amendment Act, 1956, to implement the provisions of the State Reorganization Act, 1956, the categorization of States into Part-A, B, and C was done away with. Due to this, only two categories, namely States and Union Territories remained. By virtue of this Amendment, Dynalis became a Union Territory and was put under the direct administration of the President. This evinces that the Legislative Assembly and Council for Dynalis stood abolished post the Seventh Amendment of the Constitution.

14. Historically, there has always been a dilemma if Dynalis deserves to be governed via an elected government or directly by the Centre. The primary reason for this vacillating approach was Dynalis's status, position, and nature. Being the capital city, there was a dire need for it to be put under Central Administration. However, there was also public demand, staunchly supporting for Dynalis to have an elected government.

15. Subsequently, in 1963, the Government of Union Territories Act, 1963 was enacted to provide for Legislative Assemblies and Council of Ministers for various Union Territories, however, the provisions of the mentioned Act were not made applicable to Dynalis.

16. Thereafter, the Dynalis Administration Act of 1966 was enacted to provide for a “limited representative Government” for Dynalis through a Metropolitan Council, comprising 56 elected members and five nominated members.

17. Post this legislation, on 20th August 1966, the Ministry of Home Affairs of Salaria issued an S.O. that provided, inter alia that Dynalis shall be subservient to the governance of Lieutenant Governor/ Administrator/ Chief Commissioner who shall be subject to the control of the President of Salaria. Pursuant to the S.O., the powers and dischargement of functions of the State Government were to be exercised under the Commission of Inquiry Act, 1952 by the administrator within the Union Territories.

18. Given the roller coaster journey of Dynalis’s administrative paradigm, there was a need to ascertain its status. In light of this, the Ministry of Home Affairs, Union of Salaris vide order dated 24th December 1987 formulated a committee under the leadership of Deenshaw Kutchar (Kutchar Committee). The main task of the Committee was to decide upon the status to be conferred on Dynalis.

19. In 1987, the Kutchar Committee recommended inter alia that the status of Dynalis ought to remain as a “Union Territory”. The report further entailed that despite the status of a Union Territory, Dynalis should also have a Legislative Assembly and Council of Ministers collectively responsible to the said Assembly.

20. In order to fructify the Committee’s recommendations, the Parliament, in the exercise of its constituent power, brought the 69th Amendment to the Constitution of Salaria in 1991. The said amendment inserted Article 239AA and Article 239AB into the Constitution of Salaria, which gave Dynalis a sui generis status. This means, Dynalis, pursuant to the provisions of Article 239AA, though Dynalis was recognized as a Union Territory, it would still have an elected Legislative Assembly of its own with Lieutenant Governor as the executive head.

21. All the subjects mentioned in the List-II of the Schedule VII of the Constitution were put under the legislative competence of the Dynalis’s Legislative Assembly except land, public order, and police. On these matters, the Legislative Assembly of Dynalis was given neither legislative power nor executive power.

22. This power division paradigm edified by the Union Government for the Union Territory of Dynalis was regarded as a welcoming step given the public discourse to make Dynalis “people’s

Dynalis” and the Centre’s constant urge to have direct control over the capital city in the light of national interest.

23. Since Dynalis is the capital of Salaria and all the major institutions, be it Supreme Court, Parliament, and embassies are located in Dynalis, it has always created a unique nexus between the Centre and the Government of Dynalis. There were times when the elected government of Dynalis was different from the one at the Centre. However, there had always been camaraderie between the elected government of Dynalis and the Union. There was also a sense of realization that if there would be a political tussle, it would not only not augur well for the administration of the capital but also would not be in public weal.

24. In 2013, the political party, People’s Welfare Party (referred to as the "PWP" for brevity) won the elections in Dynalis with a thumping majority. PWP, the biggest political rival of the ruling party, the Salarian Welfare Party (referred to as the "SWP" for brevity) had never been on good terms with it. The leaders have outrightly been heard of making personal attacks against each other in their public speeches. Moreover, the victory of PWP, winning the majority of seats in the Legislative Assembly of the capital, added more sourness to the rivalry between the two parties.

25. Since the time PWP came to power, it started facing a lot of difficulties in carrying forward its administration smoothly. As soon as the Legislative Assembly of Dynalis used to enact any law, the Lieutenant Governor, being the executive head of Union Territory, has to sign the law. However, since PWP’s coming into power, majorly on all the legislations either the Lieutenant Governor withheld his assent or gave his assent after inordinate delay.

26. PWP agitated against it. The leader of PWP even tried having a meeting with the Prime Minister so that disputes could be resolved amicably, but it was of no use. Still the bills could not get passed in due course of time.

27. PWP, as a part of its political agitation against SWP, started condemning and criticizing the party openly in the media. It ridiculed the SWP and its actions in all party meetings, rallies, summits, etc. One of the renowned members of PWP, Mr. Shaintan was invited to the most trending Podcast channel on YouTube and, while participating in the discussion, during the course of the podcast, he blatantly started criticizing the SWP and the Lieutenant Governor appointed by the SWP. On being asked a direct question regarding SWP’s enmity towards his party, he replied, “SWP’s title has been reduced to a joke since the day they lost the elections to our party in Dynalis. This has seriously hurt their ego. To take revenge for their loss, they

keep on refraining from passing any of our laws. It is just a deliberate way for them to be able to satiate their small ego. The politics, in my opinion, is much beyond this. They should know how to fight.” These statements gained massive traction on social media and SWP started facing huge backlash from the people of Dynalis. This aggravated the tension even more between the two parties.

28. As a part of its post-poll promise, the PWP government announced that it would construct public parks in every colony. The conviction was due to the prevailing health consciousness among the people of Dynalis. It also promised to build open gym areas in those parks for the public. In order to fructify its promise, PWP Government allocated a separate budget. However, since the plan of action falls broadly under the ambit of Entry no. 18 i.e., land, therefore, it required the sanction from the Lieutenant Governor. Despite repeated reminders by the Dynalis government, the Lieutenant Governor did not give his assent to the Budget. During media debates, on being asked about the status of the sanction, he used to say that the budget is exorbitant and unpragmatic. The Dynalis government, on the other hand, claims it to be one of the other SWP’s moves to bog down the efforts taken by the PWP government.

29. Aggrieved by the persistent hurdles put forth by the SWP, the PWP government approached the Dynalis High Court via a writ petition.

30. Likewise, even the Union Government also had its own concerns with respect to the manner in which the governance of Dynalis was being carried out. Their major concern was that the laws and policies were passed without the “concurrence” of the Lieutenant Governor. Some of the orders about which there was no intimation to the Lieutenant Governor, the Dynalis government had already started working on them. This, according to the Union was sheerly ultra vires to the Constitution. As per the Union Government, the Dynalis administration is the matter which affects the “national interest”. Therefore, without the concurrence of the Lieutenant Governor, policy action should not be taken.

31. Apart from this, there were other public interest litigations filed in the High Court. The High Court combined all the writs and listed the matter for hearing.

32. Finally, the High Court had to decide on the legislative and executive powers of the elected government of Dynalis viz-a-viz the Lieutenant Governor.

33. After hearing both the sides’ arguments, the Dynalis High Court pronounced its judgement on 4th August 2016. In its judgement, the High Court, after scrutinizing the provisions of the

Constitution with respect to Dynalis, Union Territories, and the Special Act for the governance of Dynalis enacted in 1991, concluded that despite the 69th Amendment to the Constitution, Dynalis still remains a Union Territory. This is to say that the insertion of a special provision i.e., Article 239AA does not dilute the existence of Article 239, and therefore, the Dynalis government is subservient to the centre. Therefore, Dynalis's elected government has to wait for the consent of the Lieutenant Governor and the concurrence of the Lieutenant Governor shall be mandatory for all purposes.

34. Aggrieved by the Judgement of the High Court, the Dynalis Government approached the Supreme Court of Salaria under the Civil Appellate Jurisdiction of the Court. The Constitutional Bench of the Supreme Court was formulated to decide upon the issue.

35. After a prolonged hearing, the Supreme Court, in its decision, partially overturned the Dynalis High Court's verdict. It concluded that by virtue of the 69th Amendment Act, Dynalis has garnered a sui generis status vis-à-vis other Union Territories, which are under the direct control of the centre.

36. The Court also observed that apart from the three subjects on which the Legislative Assembly of Dynalis is precluded from enacting any law, all the other subjects mentioned in both List-II as well as List-III, the Dynalis Government has the prerogative to enact and formulate laws.

37. Even though the verdict of the Supreme Court favoured the Dynalis Government, the Court did not directly engage upon any of the issues as were contended by both the parties. This led to even more ambiguities.

38. The Supreme Court gave its ruling in 2018. This verdict again heralded a course of deep ups and downs between the two parties.

39. To get rid of it, in the year 2021, Parliament brought an amendment to the Special Act enacted for the National Capital Territory, using its powers under Article 239(7)(a) of the Constitution which sheerly obliterated the special status conferred on Dynalis.

40. Among other things, the Amendment encapsulates that the Government in the National Capital Territory of Dynalis would mean "Lieutenant Governor". Now, not only is Dynalis Government barred from enacting laws on the three explicitly prohibited subject matters of List-II, but also any matter which is "incidental to those subjects". It curtails the Legislative

Assembly or any of its committees to make rules concerning the “day-to-day” administration of Dynalis.

41. This was the biggest hurdle for the PWP Government. At the media debates and political rallies, they blatantly condemned the mentioned Amendment. The Chief Minister remarked in a political gathering saying that he and his party members were deeply hurt by the Amendment. He uttered, “Why to even have an elected government for Dynalis in the first place if you were not even going to give them the bare minimum power? We shall not tolerate this! This is a sheer violation of the Constitutional mandate. We will approach the Court again and again till the time grievances are redressed. We will not sit quietly now. We have had enough!”

42. Subsequently, the PWP Government filed a writ petition in the Supreme Court. The matter with respect to the Amendment is still pending to be heard by the Court.

43. Another dispute regarding the transfer and posting of Civil Servants and public officers for the Dynalis has also been a long-standing conflict between the two governments, each claiming it as a domain under their department.

44. The matter arises on account of the notification dated 21st May 2015, issued by the Ministry of Home Affairs, Government of Salaria. The relevant portion of the aforementioned notification reads as follows:

“Now, therefore, in accordance with the provisions contained in article 239 and sub-clause (a) of clause (3) of 239AA, the President hereby directs that –

- (i) subject to his control and further orders, the Lieutenant Governor of the National Capital Territory of Dynalis, shall in respect of matters connected with ‘Public Order’, ‘Police’, ‘Land’ and ‘Services’ as stated hereinabove, exercise the powers and discharge the functions of the Central Government, to the extent delegated to him from time to time by the President.

Provided that the Lieutenant Governor of the National Capital Territory of Dynalis may, in his discretion, obtain the views of the Chief Minister of the National Capital Territory of Dynalis in regard to the matter of ‘Services’ wherever he deems it appropriate.”

45. Due to the issuance of the aforementioned notification, the PWP Government could neither transfer nor post any of the public servants for Dynalis as per their desire. The net effect of the above notification was two-fold. Firstly, it took away the legislative/executive power of the

Dynalis Assembly/Government, i.e., the power to create new services or posts in the NCT of Dynalis either through legislation or through the exercise of executive power. Secondly, it delivered the powers in respect of All Salaria-Services or Central Government Services to the Lieutenant Governor.

46. The Dynalis Government challenged these notifications in the Supreme Court. They claimed it to be violative of the Court's 2018 judgement. On May 11, 2023, the Supreme Court pronounced its judgement with regard to the issue pertaining to the transfer and posting of public officers and as to who has the competence to deal with the subject "services".

47. The Government justified its position by laying emphasis on Article 239AA of the Constitution, which, under clause 3, sub-clause (a) mentions:

"...the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in State List or in the Concurrent List in so far as any such matter is applicable to Union territories...."

48. As per the Centre, considering that the subject-matter "services" is not applicable to Union Territories since the list mentions "State services", therefore, the Union Territory does not have legislative competency to deal with "services". Also, considering that legislative competence goes hand-in-hand with executive competence, hence, Dynalis also does not have executive competence pertaining to the mentioned field.

49. The Supreme Court, after extensively hearing both parties, pronounced its judgement reaffirming its 2018 verdict. It held that the Legislative competence of the elected government of Dynalis lies over all the subjects mentioned under List II and III of Schedule VII except for the three entries barred by virtue of Article 239AA. Since legislative and executive powers go hand-in-hand, therefore, it is the Dynalis government, which has the executive competency to deal with the subject-matter pertaining to "services". It reiterated its stance regarding the sui generis status given to Dynalis by virtue of the Constitution and held that anything contradictory to it would be tantamount to going against the Constitutional mandate.

50. This verdict also went in favour of the Dynalis government just as the 2018 one. To obliterate the effect of the said judgement, the President, subject to its powers mentioned under Article 111, via an ordinance dated 19th May 2023, amended the Government of National Capital Territory of Dynalis Act.

51. The prima facie perusal of the ordinance clearly reveals that it has been enacted to obfuscate the May 2023 verdict of the Supreme Court.

Some of the relevant portions of the ordinance read as follows: -

3. After section 3, the following section shall be inserted, namely:—

"3A. Notwithstanding anything contained in any judgement, order, or decree of any Court, the Legislative Assembly shall have the power to make laws as per Article 239AA except with respect to any matter enumerated in Entry 41 of List II of the Seventh Schedule of the Constitution of Salaris or any matter connected therewith or incidental thereto."

4. In section 41 of the Principal Act,—

(A) in the marginal heading for the words "act in his discretion", the words "act in his sole discretion" shall be substituted;

(B) in sub-section (1),—

(a) in the opening paragraph, for the words "act in his discretion", the words "act in his sole discretion" shall be substituted;

(b) in clause (ii), the word "; or" shall be inserted at the end;

(c) after clause (ii), the following clause shall be inserted, namely:—

"(iii) in discharge of his functions under Part IV-A of this Act."

The Amendment, among other things also envisages the creation of a National Capital Civil Services Authority. The composition of the Authority is elucidated as follows: -

- The Chief Minister of Government of National Capital Territory of Dynalis, serving as the Chairperson of the Authority, ex officio;
- The Chief Secretary of Government of National Capital Territory of Dynalis, serving as the Member, ex officio;
- The Principal Home Secretary, Government of National Capital Territory of Dynalis, serving as the Member Secretary to the Authority, ex officio.

52. It further entails that all the matters to be decided by the Authority shall be decided by the majority of votes of members present and voting.



53. The duties of the Authority include among other things: to make recommendations for transfers and postings of all officers and other employees serving in the affairs of the Government of National Capital Territory of Dynalis.

54. The PWP Government has labelled the ordinance as a mass assault on democracy. It alleges that two of the three members of the Authority are representatives of the Centre. They would have no say in matters dealing with the roles and responsibilities of the Authority.

55. Recently, the Chief Minister of PWP Government conducted a meeting with the National Capital Civil Services Authority at his residence. During the course of the meeting, he alleged that all directions given by him regarding proposals for transferring and posting public officials were overruled by the Centre. He asserted, "Bureaucrats unilaterally dictate their own will and overturn decisions made by Chairperson (i.e., the Chief Minister) ... Chief Minister issued several crucial directives pertaining to pending transfer-posting proposals... These included objections to the removal of competent officers from the Education Department and the approval of transfers for women officers from their current positions. A total of 11 women officers had requested transfers on sympathetic grounds... both the bureaucrats did not oppose the CM's stand during the actual meeting. However, regrettably, when finalising the minutes of the meeting, the Chief Secretary and Principal Secretary (Home) callously overturned all of the Chief Minister's decisions, proceeding with their own agenda instead."

56. The government of Dynalis has finally approached the Supreme Court under its writ jurisdiction challenging the ordinance. The Supreme Court has combined this writ with another writ challenging the 2021 Amendment to the Government of National Capital Territory of Dynalis Act, 1991. The matter has been placed before a Constitutional Bench for hearing.

**Note:**

- All laws of Salaria (including subordinate legislation) are pari-materia with the laws of India. The Supreme Court of Salaria is known for its qualified approach to issues of Constitutional Law.
- All the facts in the instant case/situation are frozen till **1<sup>st</sup> August, 2023**. Nothing which has happened beyond 1<sup>st</sup> August, 2023, is relevant to the case.