



## Jurisdictional Conflict in Delhi

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This article is based on **Jurisdictional conflict in the running of Delhi** which was published in The Hindu on 19/08/2020. It talks about the never-ending power tussle between the Lieutenant Governor and state government of Delhi

Recently, the Delhi government has appointed the public prosecutors for conducting the Delhi riot cases in the High Court. However, the Lieutenant Governor (LG) has stalled this decision, by referring it to the President under proviso to Article 239AA(4).

Delhi Government has held that the appointment of prosecutors to the Supreme Court and High Court, is exclusively within the purview of the State government. On the other hand, LG appointed all the prosecutors whose names were submitted by the Delhi Police (under the control of Ministry of Home Affairs) and thus the State government's list was rejected.

This development has reignited the LG vs Delhi Government's jurisdiction debate that the Supreme Court sought to address in **NCT of Delhi vs. Union of India (2018)**.

### Legal Controversy Between LG & Delhi Government

- Due to the co-existence of Article 239 and 239AA, there is a jurisdictional conflict between the government of NCT and the Union Government and its representative, the Lieutenant Governor.
- According to the Union government, New Delhi being a Union Territory Article 239 empowers the Lieutenant Governor to act independently of his Council of Ministers.
- However, the state government of Delhi held that the Article 239AA of the Constitution bestows special status to Delhi of having its own legislatively elected government.
- This creates a tussle around the administrative powers of the LG and state government of NCT of Delhi.

### Highlights of the 2018 Judgement

## **Status of Delhi under the Constitution**

- Administration of Union Territory under Article 239(1) is different from Article 239AA which provides for an elected Legislature.
- The court held that Parliament can legislate for Delhi on any matter in the State List and the Concurrent List but the executive power in relation to Delhi except the 'Police', 'Land' and 'Public Orders' vests only in the state government headed by the Chief Minister.
- It also held that the executive power of the Union does not extend to any of the matters which come within the jurisdiction of the Delhi Assembly.

## **LG to act on 'aid and advice' of the Council of Ministers**

- The court held that for establishing a democratic and representative form of government for NCT of Delhi, Government of Delhi that enjoys the confidence of the people of Delhi should have the functional autonomy to legislate for the NCT of Delhi.
- Hence, through the judgement, the Supreme Court has settled the law in regard to the 'aid and advice' of the Council of Ministers by affirming that the LG is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'.

## **LG cannot refer 'every' matter to the President**

- Article 239AA (4) says that in the case of a difference of opinion between the LG and his Ministers on **any matter**, the LG shall refer it to the President for final decision and act according to it.
- However, the court inferred that the words 'any matter' employed in the proviso to Article 239AA (4) cannot be inferred to mean 'every matter'.
- The power of the Lieutenant Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by the LG.

## **Limited References to be made to the President**

- LG does not to refer to the President normal administrative matters as that would disturb the concept of Constitutional governance, principles of collaborative federalism and the standards of Constitutional morality.
- The Court also held that the President is the highest Constitutional authority and his decision should be sought only on constitutionally important issues.

## **Unresolved Areas in the Judgement**

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- **Overlapping Areas:** Though the court has settled that LG is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'. However, Public Order is a very wide connotation, which subsequently leads to overlapping executive powers.
- **Still No Clarity on Article 239AA (4):** The court did not very clearly delineate the issues in respect of which the LG can refer a decision taken by the Council of Ministers to the President in the event of a difference of opinion between the LG and the State government.
- **Open-Ended Terminologies:** In the event of referring any matter to the President, the Court enunciated that LG must adhere to the constitutional principles of **collaborative federalism, constitutional balance and the concept of constitutional governance.**

However, these terms are very wide and open-ended and subject to different interpretations.

## Way Forward

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- **Harmonious Functioning:** Constitutional scheme adopted for the NCT of Delhi conceives of the Council of Ministers as the representatives of the people on the one hand and the LG as the nominee of the President on the other.  
For the sake of adhering to the principle of representative democracy and cooperative federalism, it is required that both the constitutional offices should function in harmony within the Constitutional parameters.
- **Incorporating the Washington DC Model:** Indian Government can emulate the model of administrative sharing of power between the Federal Government of US and state of Washington.
  - Under that scheme, only the strategic areas and buildings are under the effective control of the federal government and the rest of the areas are under jurisdiction of Washington state.
  - Given this, the institution of strategic importance like Parliament, Supreme Court etc. can remain under the jurisdiction of Union Government and areas other than these can be given statehood.

## Conclusion

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The Supreme Court in NCT of Delhi vs. Union of India (2018) case did well in resolving the legal controversy between the LG and Delhi Government. However, the present controversy shows there are still many areas to be resolved. Thus, the Supreme court must leverage the present controversy to resolve this jurisdictional conflict for good.

### ***Drishti Mains Question***

The tussle between the LG and Delhi government can only be solved by showing true statesmanship by both the offices. Comment.



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This editorial is based on **“Historic ratification: On universal ratification of a labour standard”** which was published in The Hindu on August 14<sup>th</sup>, 2020. Now watch this on our Youtube channel.