



Union vs. Delhi Government

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This article is based on “**Delhi Bill will sow the seeds of absolutism**” which was published in The Indian Express on 22/03/2021. It talks about the issues related to the recently introduced **Government of National Capital Territory of Delhi (Amendment) Bill, 2021**.

Recently, the Centre government proposed a **Government of National Capital Territory of Delhi (Amendment) Bill, 2021** in the parliament. According to the central government, the bill seeks to amend the law relating to the running of the National Capital Territory of Delhi and give effect to the interpretation given by the Supreme Court judgments on Delhi’s governance structure.

However, many constitutional experts are of the view that the proposed bill is the very antithesis of what the Court has said. They held that the Bill, if it becomes law, will wholly undermine the Court’s efforts to strengthen the elected government vis-à-vis the appointed Lieutenant Governor.

Major Amendments Proposed

- **Change in Definition of Government:** It defines the term “government” in the context of laws made by the legislative assembly to be the Lieutenant-Governor (L-G) of Delhi, not the elected government.
- **Expanding Powers of L-G:** It expands L-G’s powers by requiring the elected government to seek L-G’s opinion on specific matters. Further, it is left to L-G to define these “matters” through a general or specific order.
- **Weakens Legislative Assembly:** It weakens the powers of the assembly by prohibiting it from making rules for its committees on day-to-day administration.

Supreme Court on Delhi Governance Structure

Background: The 69th amendment to the Constitution of India inserted **Article 239AA**, which declared the Union Territory of Delhi to be administered by a L-G who works on ‘aid and advice of elected legislative assembly.

- However, the ‘aid and advice’ clause pertains only to matters on which the elected Assembly has powers under the State and Concurrent Lists, but with the exception of **public order, police, and land**.
- Further, the Article 239AA also notes that L-G has to either act on the aid and advice of the Council of Ministers, or he is bound to implement the decision taken by the President on a reference being made by him.
- Also, Article 239AA, empowers the L-G to refer a difference of opinion on ‘any matter’ with the Council of Ministers to the President.
- Thus, this dual control between L-G and the elected government leads to power tussle, which was referred to the Supreme Court in 2018.

Supreme Court Judgement: The Constitution Bench verdict of July 4, 2018, held that the L-G has not been entrusted with any independent decision-making power.

- The Court clarified that the power to refer “any matter” to the President did not mean that “every matter” .
- In other words, the LG cannot refer any matter to the President; he has to employ “constitutional objectivity” and exercise this power in the rarest of rare situations for sound and valid reasons.
- Thus, his concurrence is not needed in every matter, and he can refer matters to the President only in exceptional situations and not in a “routine or mechanical manner”.

Note

- Justice Chandrachud in NCT vs UOI case, 2018 mentioned the term “**constitutional objectivity**” as the key to checks and balances between the legislature and executive.
- Constitutional objectivity ensures that the two operate within their allotted spheres since “legitimate constitutional trust” is based on distribution and separation of powers with denial of absolute power to anyone functionary being the ultimate goal.

Arguments Against the Bill

- **Against the Spirit of Supreme Court Judgement:** The Bill seeks to declare that in the context of legislation passed by the Delhi Assembly, all references to the ‘government’ would mean the “Lieutenant Governor”.
 - The guiding principle behind the judgment was that the elected government should not be undermined by the unelected administrator. The Bill takes away almost all the powers of elected representatives.
 - Thereby, the bill contradicts the 2018 judgment, which unambiguously clarifies that the council of ministers with the chief minister at its helm is the executive head of the government of Delhi.

- **Rollback of Representative Government:** By conflating the government of Delhi with L-G, the bill blurs the distinction between the elected government and L-G.
 - Further, by requiring L-G's opinion before the elected government can take executive action, it effectively renders the elected government powerless.
 - Moreover, the clause that declares void any rule that empowers the Assembly or its Committees to discuss any matter of day-to-day administration or conduct enquiries amounts to a rollback of representative government.
- **Centralising India's Federal Polity:** Recently, the central government has taken several steps that undermines the spirit of federalism (Three Farmers' laws, Revocation of Article 370, etc.). The bill represents yet another step toward centralizing India's federal polity.

A recent report held that such bills could strengthen the international perception of **India becoming an electoral autocracy.**

Way Forward

- **Working Through Constitutional Trust:** The apex court had rightly concluded that the scheme set out in the Constitution and the Government of National Capital Territory of Delhi Act, 1991 envisages a collaborative structure that can be worked only through constitutional trust.
 - Thus, the Bill should be referred to a select committee and not passed in haste like the Farm Bills.
 - Evolving consensus in such matters would be consistent both with federalism as well as the high principles laid down by the Supreme Court.
- **Ensuring Principle of Subsidiarity:** Subsidiarity — the foundational principle of fiscal federalism — necessitates empowered sub-national governments.
 - Thereby, the central government should move towards allocating greater powers to city governments.
 - In this context, India should emulate several large megapolis around the globe, from Jakarta and Seoul to London and Paris, which have had strong sub-national governments.

Conclusion

The fundamental principles of constitutionalism embodies the concept of limited powers as its central idea. To sustain these ethos the highest importance should be given to people who are the real sovereigns and who speak through their elected representatives.

Drishti Mains Question

“Lieutenant-Governor must reign and not rule is the core principle of the cabinet system of governance”. Analyse the statement in the context of the recently introduced Government of National Capital Territory of Delhi (Amendment) Bill, 2021.