

Centre v. State (A dilemma in NCT Amendment Bill, 2021)

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Introduction

India is a quasi-federal nation where there is a central government and the state government. In the constitution of India, there is a clear demarcation between the power of the state government and the central government. 7th schedule of constitution of India clearly mention , List-I as a Union list (for the matters where union government have authority), List-II as a state list (for the matters in which each state have power) , List-III as a Concurrent list (where both central and state can govern). But many a times, we have seen from independence conflict of interest occurs between the centre and state over certain laws and regulations. This article is about the amendment in the **Government of national capital territory of Delhi Act, 1991**. This NCT amendment bill 2021 curtails the power of the chief minister of Delhi and it gives power over the state matters to Lieutenant governor. This article will also focus on the previous judgement of the supreme court **Government of NCT of Delhi vs Union of India**².

Background

In 1990, the (Sixty-ninth Amendment) Bill was introduced in the Parliament by the Indian National Congress. The proposed Amendment had sought to reorganise the administrative setup in the Union Territory of Delhi. The reorganisation was prompted based on the recommendations submitted by the R.S. Sarkaria Committee (later known as the Balakrishnan Committee). The report made recommendations for an elected representative for Delhi while also maintaining the status of a union territory. The Bill became an Act in the following year, adding Article 239 AA and 239 BB in the Indian Constitution which granted Delhi the status of Union Territory with a Legislative Assembly. Additionally, passing the Government of National Capital Territory (NCT) of Delhi Act, 1991. The 1991 Act laid down the contours of governance, defining the rules for the elected Chief Minister, the Assembly and the LG. Part XIII of the constitution of India deals with the Union territory. There is no doubt that in India apart from the states, there is a union territory and it is govern by centre. Delhi is also a union territory but there is a exception that is given to Delhi in the Article 239AA of the constitution of India. This article is regarding the special provisions for Delhi. The main highlights of this article are:-

- After the 69th amendment act, the union territory of Delhi be called as National capital territory of Delhi.
- The lieutenant governor will act as a administrator as enumerated in article 239.
- There will be legislative assembly of Delhi, in which members will be elected directly by the people.
- 239AA(4) says the chief minister and the council of minister will aid and advise the lieutenant governor in relation to matter that Delhi legislative assembly has power to make laws.
- In case of any difference of opinion between the council of ministers and lieutenant governor the decision of president will be binding.

So from the above points it is clear that, Delhi is a special state that is union territory and act like a state. The important thing that constitution of India says president at the centre level and governors at the state level have to act on the aid and advise of the council of ministers. Now the questions arises what will happen if particularly in Delhi lieutenant governor hold the bill for assent. Ultimately it will hamper the time of Delhi legislative assembly regarding the any matter. In Delhi, Delhi legislative assembly can make laws on all the issues enumerated in the state list and concurrent list except Public order, police, and land. *Actually what ruling political party(AAP) says about it that the party in the centre (BJP) always used to undermine the power of the Delhi government and they always act as*

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²Government of NCT of Delhi vs. Union of India (UOI) and Ors. (04.07.2018 - SC) : MANU/SC/0680/2018

a hurdles in between their work. So BJP always tries to used different methods to rule over Delhi and this time also, by amendment they try to overruled the judgement of the SC. The plea given by the centre regarding the bill The said bill will promote harmonious relations between the legislature and the executive, and further define the responsibilities of the elected government and the LG, in line with the constitutional scheme of governance of the National Capital Territory of Delhi. Delhi chief minister Arvind Kejriwal said, After being rejected by the people of Delhi, BJP seeks to drastically curtail the power of the elected government. Bill is Dilution of SC govt.

State(NCT of Delhi) vs Union of India

This was the prominent judgement of the Supreme court in the year 2018, that clearly tells about the roles of lieutenant governor in the administration of Delhi. In this supreme court held that,

- Lieutenant governor must work in harmoniously with his ministers and must not seek to resist them at every step of the way while exercising the power.
- Aid and advice of the council of ministers is binding on the lieutenant governors
- Lieutenant governors has to be kept informed of all proposals, agendas of meetings and decision taken. The purpose of communication is to keep him posted with the administration of Delhi. The purpose of communication is not to obtain his concurrence to decision.

The government of National capital territory of Delhi(Amendment) Bill, 2021

The Government of National Capital Territory of Delhi (Amendment) Bill, 2021 was introduced in Lok Sabha on March 15, 2021. The Bill amends the Government of National Capital Territory of Delhi Act, 1991. The Act provides a framework for the functioning of the Legislative Assembly and the government of the National Capital Territory (NCT) of Delhi. The Bill amends certain powers and responsibilities of the Legislative Assembly and the Lieutenant Governor.

- **Restriction on laws passed by the Assembly:** The Bill provides that the term “government” referred to in any law made by the Legislative Assembly will imply Lieutenant Governor (LG).
- **Rules of Procedure of the Assembly:** The Act allows the Legislative Assembly to make Rules to regulate the procedure and conduct of business in the Assembly. The Bill provides that such Rules must be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha.
- **Inquiry by the Assembly into administrative decisions:** The Bill prohibits the Legislative Assembly from making any rule to enable itself or its Committees to: (i) consider the matters of day-to-day administration of the NCT of Delhi and (ii) conduct any inquiry in relation to administrative decisions. Further, the Bill provides that all such rules made before its enactment will be void.
- **Assent to Bills:** The Act requires the LG to reserve certain Bills passed by the Legislative Assembly for the consideration of the President. These Bills are those: (i) which may diminish the powers of the High Court of Delhi, (ii) which the President may direct to be reserved, (iii) dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or (iv) relating to official languages of the Assembly or the NCT of Delhi. The Bill requires the LG to also reserve those Bills for the President which incidentally cover any of the matters outside the purview of the powers of the Legislative Assembly.
- **LG’s opinion for executive actions:** The Act specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG. The Bill adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.

Need for Amendment

For Structural Clarity: The Ministry of Home Affairs' statement on "objects and reasons" of the Bill stated that Section 44 of the 1991 Act deals with conduct of business and there is no structural mechanism for effective time-bound implementation of the said section. Also, there is no clarity as to what proposal or matters are required to be submitted to Lieutenant Governor before issuing order thereon. Section 44 of the 1991 Act says that all executive actions of the LG, whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the LG.

Observation

- When we compare the judgement passed by the supreme court, that binds the lieutenant governor and gave final verdict in the favour of Delhi government and the bill that is amended, it clearly shows that is against the precedent that is set by the supreme court.
- The bill takes away the power of the chief minister and put all power in the hands of the lieutenant governor that is opposite of the said judgement.
- Due to this bill, the council of minister and Delhi government can't do anything own for the state.
- One most important observation is that, president will act on the aid and advice of the prime minister along with council of minister and lieutenant governor is appointed by the president. So technically centre will rule the Delhi in all aspect irrespective of the mandate given to them by constitution that is Land, public order and police.
- Due to this, Delhi assembly and ministers will be accountable to public but they don't have power to govern the state.

Conclusion

I would like to conclude this by the quote "*All democracies are based on the proposition that power is very dangerous and that it is extremely important not to let any one person or small group have too much power for too long a time*" ~ Aldous Huxley. Although central government have a right to amend the laws according to the provision of the constitution but sometimes these amendments is to take revenge from the political opponents. There is a misuse of power and they twist the interpretation of the constitution. In this particular case, if there is a elected government with full mandate of the people then, the power of the assembly shouldn't be curtail reason being very obvious, if any problem occurs in the state where will citizen come? Obviously they will come in chief minister office rather than lieutenant governor. And in this case, it is clearly visible that after the judgement of the supreme court where SC gives verdict on the favour of NCT of Delhi, the central government tries to neglect the decision and comes forward in another way of amendment.