

12<sup>th</sup> November, 2021

# ANALYSING THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021

## Introduction

The 28 states in India share federal relationship with the Union of India (the Central Government /UOI). But when it comes to 8 Union Territories (UTs), they do not share federal relationship instead are directly controlled by the UOI. The reason for such a setup is different for different UTs. In case of Delhi, Delhi is a UT because it is a capital of sovereign nation – which is not something unique to India alone.

In 2021, the Parliament amended the Government of National Capital Territory of Delhi Act, 1991. There were criticisms that this amendment is against federalism and if it is federalism in any case then it is a coercive federalism. Because the Act snatches away all the powers of the elected government and gives them to the Lieutenant Governor (LG).

## The road to 1991 Act

Delhi until 1956 had a Legislative Assembly (LA) as well. The State Reorganisation Act in the year 1956 abolished the Legislative Assembly of Delhi. But there was popular demand that we should give statehood to Delhi. A committee headed by Mr. Balakrishnan was set up to look into the re-organisation of Delhi. The Report was submitted in 1987 and observed that *the Delhi belongs to the nation as a whole, but is also inhabited by its own people*. The report didn't recommend statehood to Delhi because to bestow statehood could give it disproportionate presence. However, it noted that *refusing statehood to Delhi would be to deny its people a stake in their own future*.

That's why some sort of compromise was reached. In 1991, the Delhi was given a special status vide the Constitution (Sixty-Ninth Amendment) Act, 1991 [69<sup>th</sup> CA Act]. This special status was that Delhi would have a LA which will have a power to make law on any item mentioned in the State List and as well as mentioned in the Concurrent List except three subjects police, law and order, land.

Constitution further stated that there shall be a Council of Ministers (CoM) with Chief Minister (CM) as its head to

aid and advice the Lieutenant Governor and this LG shall abide by the aid and advice of the CM and CoM except when he/she has to act in his/her discretion. However in case there is a disagreement on any matter between the LG and the Ministers, the LG has to refer the matter to the President for decision and has to act in the same manner as has been communicated to him by the President.

In order to implement this 69<sup>th</sup>CA Act, the Parliament enacted the Government of National Capital Territory of Delhi Act, 1991 – it is this Act which was amended in 2021 which is causing some element of concern amongst the political classes.

## The Battle in Court

Delhi High Court in 2016 held in favour of the LG. The Delhi HC observed that the complete control of all matters regarding NCT of Delhi is with the LG and nothing can happen without the concurrence of the LG.

On appeal, in 2018 5-judge of the SCI presided by the then Chief Justice of India Dipak Misra gave a resounding verdict in favour of the Delhi Government. The judgment said something very unique – it talked about pragmatic and collaborative federalism which will fall on the ground if the Union will exercise overriding powers on those matters in which Delhi LA has powers.

The SCI said *the LG can refer the decisions of the CoM to the President only if he disagrees on substantive issues and that the LG is bound to give reasons for his disagreement*. 'Any matter' cannot be read as 'every matter' otherwise the governance will come to standstill. If every conceivable difference would be referred to President then the elected representative would be reduced to a cipher. Further, if the LG doesn't refer a decision to the President immediately after its communication to him by the CoM, then the government is bound to implement the same as the LG's consent is not required. The LG should not emerge as an adversary having a hostile attitude towards the CoM of Delhi rather should act as a facilitator.



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### **The Amendment Act in a nutshell**

The Minister of State for Home moved the Amendment Bill in the Parliament to define the duties of the LG so as to clear any anomaly and also to implement the SCI judgment. The Amendment Act provides as follows:

- 1 The Act provides that the term ‘Government’ referred to any law made by the LA will imply ‘LG’ and not the Chief Minister or the Council of Minister.
- 2 The Act allows the LA to make rules to regulate the procedure and conduct of business in the Assembly. However the same must be consistent with the rules of procedure and conduct of business in the Lok Sabha.
- 3 The Act prohibits the LA 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 Act provides that all such rules made before its enactment will be void.
- 4 The Act requires the LG to reserve certain Bills passed by the LA for the consideration of the President. These Bills are those:
  - (i) which may diminish the powers of the HC of Delhi.
  - (ii) dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers.
  - (iii) relating to official languages of the Assembly or the NCT of Delhi.
  - (iv) which the President may direct to be reserved.

- 5 The Act 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 LA. Incidentally makes the provision very wide and vague and it might lead to a situation which requires almost every Bill to be reserved for the consideration of the President.
- 6 The Act adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decision of the CoM.

### **Arguments in favour**

- 1 Our national capital hosts the country’s legislature, the seat of the Union Government, the judiciary, diplomatic missions, and other institutions of national importance. It deserves smooth functioning and cannot be subject to misadventure arising from the ambiguities in the roles and responsibilities of its stakeholders. And the law provides that clarity by defining who the government is.
- 2 The drafters posit that the 1991 CA Act lacked clarity in determining what matters were to be proposed or submitted before the LG before issuing an order. The Act again provides that clarity.

### **Way out and Conclusion**

Federalism in India is not mentioned anywhere in the Constitution. Therefore, it is an evolutionary federalism. Some even call it accidental or unintended federalism. Delhi is not a state instead a UT and it has to be under the control of the union government and must be treated like that. Perhaps the UT with Legislature is an oxymoron-like concept and it is time to end the charade. It is better to abolish LA in Delhi and let Delhi continue to remain what it was prior to 1991. Let it be a UT directly under the control of CG because we cannot afford chaos in a national capital.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE (Legislative Department)

*New Delhi, the 28th March, 2021/Chaitra 7, 1943 (Saka)*

The following Act of Parliament received the assent of the President on the 28th March, 2021, and is hereby published for general information:—

### THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021

No. 15 OF 2021

[28th March, 2021.]

An Act further to amend the Government of National Capital Territory of Delhi Act, 1991.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Government of National Capital Territory of Delhi (Amendment) Act, 2021. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

1 of 1992.

2. In section 21 of the Government of National Capital Territory of Delhi Act, 1991 (hereinafter referred to as the principal Act), after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 21.



'(3) The expression "Government" referred to in any law to be made by the Legislative Assembly shall mean the Lieutenant Governor.'

Amendment  
of section 24.

**3.** In section 24 of the principal Act, in the second proviso,—

(i) in clause (c), for the word and figures "section 43.", the words and figures "section 43; or" shall be substituted;

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

"(d) incidentally covers any of the matters which falls outside the purview of the powers conferred on the Legislative Assembly."

Amendment  
of section 33.

**4.** In section 33 of the principal Act, in sub-section (1),—

(a) after the words "conduct of its business", the words "which shall not be inconsistent with the Rules of Procedure and Conduct of Business in House of the People" shall be inserted;

(b) in the proviso, for the words "Provided that", the following shall be substituted, namely:—

"Provided that the Legislative Assembly shall not make any rule to enable itself or its Committees to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to the administrative decisions, and any of the rule made in contravention of this proviso, before the commencement of the Government of National Capital Territory of Delhi (Amendment) Act, 2021, shall be void:

Provided further that".

Amendment  
of section 44.

**5.** In section 44 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that before taking any executive action in pursuance of the decision of the Council of Ministers or a Minister, to exercise powers of Government, State Government, Appropriate Government, Lieutenant Governor, Administrator or Chief Commissioner, as the case may be, under any law in force in the Capital, the opinion of Lieutenant Governor in term of proviso to clause (4) of article 239AA of the Constitution shall be obtained on all such matters as may be specified, by a general or special order, by Lieutenant Governor."

DR. G. NARAYANA RAJU,  
*Secretary to the Govt. of India.*