

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 5

2026

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Representative Democracy: Delhi's Power Tussle

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ABSTRACT

The conflict in the National Capital Territory (NCT) of Delhi presents one of the most complex constitutional challenges to contemporary Indian federalism. At its core lies a fundamental question: does executive authority over the administrative machinery rest with the democratically elected local government, or with the Union acting through its appointed Lieutenant Governor (LG)? Under Article 239AA of the Constitution of India, Delhi's sui generis, hybrid framework grants legislative powers to an elected assembly while preserving overarching parliamentary supremacy and central control over key domains such as public order, police and land. This structural asymmetry has generated a persistent power struggle, particularly when different political parties control the Union and the Delhi government. The Supreme Court of India sought to resolve this institutional friction through two landmark decisions: the 2018 Constitution Bench judgment, which established that the LG must ordinarily act on the aid and advice of the Council of Ministers, and the 2023 judgment, which expressly extended the elected government's control to administrative services. By introducing the triple chain of accountability, linking civil servants to ministers, ministers to the legislature and the legislature to the electorate, the Court attempted to operationalise the principles of representative democracy and cooperative federalism. However, an Ordinance promulgated within days of the judgment, and the Government of National Capital Territory of Delhi (Amendment) Act, 2023 that replaced it, effectively neutralised the judgment, re-establishing central dominance over the civil services through the LG and the National Capital Civil Service Authority. The paper critically examines the Delhi services dispute and argues that, while the Supreme Court articulated compelling normative principles, its intervention ultimately failed to resolve the systemic flaw at the heart of Delhi's governance. The analysis proceeds through four themes: structural failure, adversarial reality, institutional vulnerability and administrative limbo.

Keywords: Power Tussle, Representative Democracy, Governor, Civil Services

I. DELHI'S POWER TUSSLE

Is Delhi governed by the government its people elect, or by the Union? The conflict centres on whether the authority to control civil servants lies with the elected Council of Ministers or with

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the Union acting through the Lieutenant Governor. The issue is not merely administrative. Control over services determines who can implement policy, and therefore who exercises real executive power.¹ The ambiguity arises from Article 239AA of the Constitution of India, which creates a hybrid structure: Delhi has features of a State but remains a Union Territory in which Parliament retains overriding authority.² This design has made conflict almost inevitable, especially when the Union and the Delhi government are politically opposed.³

The first major judicial attempt to address this conflict came in *State (NCT of Delhi) v. Union of India* in 2018.⁴ The Court did not directly resolve the question of services, but it laid down the framework within which such disputes are to be understood. It stressed that the Lieutenant Governor has not been entrusted with any independent decision-making power and must ordinarily act on the aid and advice of the Council of Ministers.⁵ The judgment relied heavily on ideas such as constitutional morality and cooperative federalism, suggesting that governance in Delhi should reflect democratic accountability.⁶ At the same time, the Court acknowledged that Delhi is not a full State and remains subject to the control of Parliament.⁷ The 2018 decision therefore set out guiding principles but left key questions open.⁸

These unresolved questions returned in a more concrete form in *Government of NCT of Delhi v. Union of India* in 2023,⁹ where the Court directly addressed the issue of services. It held that, except for matters relating to public order, police and land, the elected Government of Delhi has control over administrative services.¹⁰ The Court reasoned that without such control the elected government would be unable to function effectively, as civil servants are essential to the execution of policy. In doing so, it developed the idea of a triple chain of accountability, linking civil servants to ministers, ministers to the legislature and the legislature to the electorate.¹¹ The

¹ Gautam Bhatia, *At the Third Time of Asking: Federalism, the Centralising Drift, and the Supreme Court's Judgment in NCT of Delhi vs Union of India* (2023), INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (May 11, 2023), <https://indconlawphil.wordpress.com/2023/05/11/at-the-third-time-of-asking-federalism-the-centralising-drift-and-the-supreme-courts-judgment-in-nct-of-delhi-vs-union-of-india-2023/>.

² INDIA CONST. art. 239AA(3)(a)–(b).

³ Apurva Vishwanath, *BJP Set to Take Power in Delhi: What Is Its Unique Status, That Led to AAP's Long Tussle with L-G*, INDIAN EXPRESS (Feb. 11, 2025), <https://indianexpress.com/article/explained/explained-law/delhis-unique-constitutional-status-struggle-centre-state-9829424/>.

⁴ *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501.

⁵ *State (NCT of Delhi)*, (2018) 8 SCC 501, ¶ 284.17.

⁶ Nehmat Kaur, *Collaborative Federalism, Constitutional Morality, Special Status: Supreme Court's Delhi Judgment Explained*, THE LEAFLET (July 6, 2018), <https://theleaflet.in/collaborative-federalism-constitutional-morality-special-status-supreme-courts-delhi-judgment-explained>.

⁷ *State (NCT of Delhi)*, (2018) 8 SCC 501.

⁸ See GAUTAM BHATIA, *THE INDIAN CONSTITUTION: A CONVERSATION WITH POWER* (HarperCollins India 2025).

⁹ *Gov't of NCT of Delhi v. Union of India*, (2023) 9 SCC 1.

¹⁰ *Id.* ¶¶ 162, 164(i).

¹¹ *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶ 106; see also M.R. Madhavan, *Two Judgments and the Principle of Accountability*, THE HINDU (May 18, 2023), <https://www.thehindu.com/opinion/lead/two-judgments-and-the-principle-of-accountability/article66862820.ece>.

judgment attempted to give practical meaning to the principles articulated in 2018. However, the significance of the 2023 decision¹² lies not only in what it held but also in what followed. Eight days after the judgment, an Ordinance reconfigured control of services and restored a central role for the Lieutenant Governor, and in August 2023 Parliament replaced it with the Government of National Capital Territory of Delhi (Amendment) Act, 2023.¹³ This paper examines the Delhi services case through four related themes. First, it argues that the judgment restored an inherent structural flaw without resolving it. Second, it shows that the Court's reasoning rests on assumptions of cooperation that do not reflect the adversarial reality between the Union and the Delhi government. Third, it demonstrates how easily the judgment was overridden by ordinary legislation, exposing its institutional fragility. Lastly, it considers how Delhi is left in a state of '*Trishanku*'.¹⁴

II. RESTORING AN INHERENT STRUCTURAL FLAW WITHOUT FIXING IT

The structural flaw in Delhi's governance model arises directly from the constitutional design of Article 239AA, which creates a system of overlapping and ultimately unequal authority between the Delhi government and the Union.¹⁵ Unlike a full-fledged State, Delhi is a Union Territory with a Legislative Assembly; it combines elements of self-governance with continued central control.¹⁶ This hybrid structure produces an inherent contradiction. Under Article 239AA(3)(a), the Legislative Assembly may make laws on matters in the State List and the Concurrent List, in so far as they apply to Union Territories, except public order, police and land. On paper, this gives the elected government substantial authority. However, Article 239AA(3)(b) simultaneously empowers Parliament to make laws on any matter for Delhi,

¹² *Gov't of NCT of Delhi*, (2023) 9 SCC 1.

¹³ The Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 (promulgated May 19, 2023); The Government of National Capital Territory of Delhi (Amendment) Act, No. 19 of 2023, INDIA CODE (2023) (assented to Aug. 11, 2023, and deemed to have come into force on May 19, 2023), <https://egazette.gov.in/WriteReadData/2023/248046.pdf>. The Delhi government's challenge to the Ordinance was referred to a Constitution Bench in *Gov't of NCT of Delhi v. Union of India*, Writ Petition (C) No. 678 of 2023, 2023 INSC 635 (July 20, 2023), but the petition, which by then also challenged the Act, was withdrawn on May 23, 2025. See Anmol Kaur Bawa, *Supreme Court Allows Delhi Govt to Withdraw Petitions Filed by AAP-Govt Against Centre & LG, Including Challenge to Services Act*, LIVE LAW (May 24, 2025), <https://www.livelaw.in/top-stories/supreme-court-allows-delhi-govt-to-withdraw-petitions-filed-by-aap-govt-against-centre-lg-including-challenge-to-services-act-293248>.

¹⁴ Alok Prasanna Kumar, *Statehood for Delhi: A Legitimate Demand*, 53 ECON. & POL. WKLY., no. 28, July 14, 2018, at 12, <https://www.epw.in/journal/2018/28/commentary/statehood-delhi.html>; see also Alok Prasanna Kumar, *From 'Trishanku' to a Puppet: The Saga of the Undermining of the Delhi Government*, VIDHI CENTRE FOR LEGAL POLICY (Mar. 26, 2021), <https://vidhilegalpolicy.in/blog/from-trishanku-to-a-puppet-the-saga-of-the-the-undermining-of-the-delhi-government/>.

¹⁵ Khadija Khan, *What Is Article 239AA, and How the Supreme Court Interpreted It in Its Delhi Services Verdict*, INDIAN EXPRESS (May 20, 2023), <https://indianexpress.com/article/explained/explained-law/what-is-article-239aa-and-how-the-sc-interpreted-it-in-its-delhi-services-verdict-8620118/>.

¹⁶ Bhatia, *At the Third Time of Asking*, *supra* note 1.

including matters within the Assembly's domain.¹⁷ The powers granted to the elected government are therefore not final but always subject to override. Further, Article 239AA(4) provides a Council of Ministers to aid and advise the Lieutenant Governor, who acts as the representative of the Union, but its proviso allows the Lieutenant Governor to refer any difference of opinion with his Ministers to the President and, where he considers a matter urgent, to act on his own pending the President's decision. This can effectively suspend the elected government's decision-making authority. Executive power is thus shared, but not equally controlled.¹⁸

The services judgment of the Supreme Court of India can be seen as a reaffirmation of democratic governance within the National Capital Territory. By holding that the elected Government of Delhi has control over services, except in areas explicitly reserved for the Union, the Court appeared to correct an imbalance that had long undermined representative governance. However, the judgment implicitly reveals that the decision ultimately restored an inherent structural flaw in Delhi's constitutional design without resolving it. While it articulated constitutional principles in favour of the elected government, it failed to secure those principles against institutional and legislative override, and so left the core problem intact.

Essentially, the dispute lies in the unique constitutional status of Delhi under Article 239AA, which is neither a full-fledged State nor a typical Union Territory. This hybrid structure creates an inherent ambiguity in the distribution of powers between the Union and the elected government.¹⁹ The Court, in this judgment, sought to resolve the ambiguity by emphasising the principles of representative democracy, accountability and federal balance.²⁰ It held that the executive power of the government must extend to control over services, as administrative machinery is essential for governance. Without such control, the Court reasoned, the democratic mandate of the elected government would be rendered meaningless.²¹ While this reasoning is normatively sound, it does not address the deeper structural flaw embedded in the framework. The Constitution continues to vest significant powers in the Union, including the authority of Parliament to legislate on matters concerning the National Capital Territory. Judicial interpretation can therefore clarify the distribution of powers but cannot insulate it from

¹⁷ INDIA CONST. art. 239AA(3)(a)–(b); Bhatia, *At the Third Time of Asking*, *supra* note 1.

¹⁸ INDIA CONST. art. 239AA(4) & proviso; see HARIHAR BHATTACHARYYA, *ASYMMETRIC FEDERALISM IN INDIA: ETHNICITY, DEVELOPMENT AND GOVERNANCE* (Palgrave Macmillan 2023), <https://doi.org/10.1007/978-3-031-23727-0>.

¹⁹ Khan, *supra* note 15.

²⁰ *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 109–111.

²¹ *Id.* ¶¶ 110–111.

subsequent legislative intervention. The flaw is not merely interpretative but structural, rooted in the asymmetrical design of Delhi's governance model.²²

The judgment restored the balance in theory but failed to secure it in practice. This became evident almost immediately after the decision, when the Ordinance and then the Government of National Capital Territory of Delhi (Amendment) Act, 2023 effectively reclaimed control over services for the Union.²³ This legislative response did not merely challenge the Court's reasoning but exposed its limitations.²⁴ The judgment could not be enforced against coordinated executive and legislative action, which demonstrates that constitutional principles articulated by the Court can be overridden within the existing framework.²⁵

The Court treated the dispute as one of constitutional interpretation, whereas the problem was equally one of institutional design.²⁶ By resolving the issue through interpretation alone, the Court assumed a level of institutional compliance that did not materialise. The judgment did not anticipate or address the possibility that its reasoning could be neutralised through ordinary legislation.²⁷ As a result, it restored the appearance of constitutional balance without altering the underlying power dynamics.²⁸

III. IGNORED GOVERNMENTAL REALITIES WHEN THE CENTRE AND DELHI GOVERNMENTS ARE ADVERSARIES

Tensions between the Union and the Delhi government are not recent; they have recurred whenever different political parties were in power at the two levels. Conflicts intensified after 2015, when the Aam Aadmi Party formed the government in Delhi, leading to frequent clashes over services, transfers and the role of the Lieutenant Governor.²⁹ The situation culminated in litigation before the Supreme Court of India, including the 2018 Constitution Bench judgment³⁰

²² Bhattacharyya, *supra* note 18.

²³ The Government of National Capital Territory of Delhi (Amendment) Act, *supra* note 13, § 4 (inserting Part IV-A, §§ 45A–45K, into the 1991 Act).

²⁴ See Gautam Bhatia, *The Unconstitutionality of the 2023 Delhi Services Ordinance – II*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (June 27, 2023), <https://indconlawphil.wordpress.com/2023/06/27/the-unconstitutionality-of-the-2023-delhi-services-ordinance-ii/>.

²⁵ Cf. Gautam Bhatia, *Judicial Evasion, Judicial Vagueness, and Judicial Revisionism: A Study of the NCT of Delhi vs Union of India Judgment(s)* (June 27, 2020) (unpublished manuscript), <https://ssrn.com/abstract=3637009> (tracing how the vagueness of the 2018 judgment left the dispute unsettled).

²⁶ Cf. Elisabetta Tati, *Who Shall Administer the National Capital Territory of Delhi? The Indian Supreme Court Affirms a Principle of Collaboration Between the Federal and the “Local” Government for the City Management*, ROMA TRE L. REV., no. 1, 2019, at 244, <https://doi.org/10.13134/2704-9043/1-2019/18> (reading the 2018 judgment as resting on a principle of collaboration between the two governments).

²⁷ See Bhatia, *Ordinance – II*, *supra* note 24.

²⁸ Cf. Kumar, *Statehood for Delhi*, *supra* note 14 (arguing that the 2018 judgment “only restored an unhappy status quo as far as Delhi is concerned”).

²⁹ Tati, *supra* note 26, at 244.

³⁰ *State (NCT of Delhi)*, (2018) 8 SCC 501.

and the later 2023 ruling. Repeated confrontations demonstrate that adversarial governance between the Centre and Delhi is a structural pattern rather than an isolated occurrence.³¹

The 2023 decision represents a significant reaffirmation of democratic governance within the National Capital Territory. Its reasoning builds directly on the 2018 Constitution Bench judgment, which articulated foundational principles such as constitutional morality, representative democracy and cooperative federalism.³² However, despite its doctrinal coherence, the 2023 judgment reveals a fundamental limitation: it ignores the persistent governmental reality that the Union and the Delhi government often function not as cooperative partners but as political adversaries.³³ The 2018 judgment marked an important moment in the constitutional interpretation of Article 239AA. The Court emphasised that the Lieutenant Governor is bound by the aid and advice of the Council of Ministers, save where he invokes the proviso to Article 239AA(4), a power to be exercised only in exceptional circumstances, and that governance in Delhi must reflect democratic accountability.³⁴ It rejected the view of the Lieutenant Governor as an independent decision-making authority and envisioned a system in which constitutional actors operate in harmony.³⁵ The underlying assumption was that institutional actors would adhere to constitutional conventions and act in good faith, thereby ensuring smooth governance.³⁶

The 2023 judgment extended these principles into the specific and contentious domain of services. Recognising that control over the bureaucracy is essential for effective governance, the Court held that denying such control to the elected government would render its constitutional authority hollow.³⁷ This was a logical progression from the 2018 framework. If democratic accountability is to have substantive meaning, the government must have authority over the officials who implement its policies.³⁸

This doctrinal continuity also exposes the central flaw in the Court's reasoning. Both judgments are grounded in an idealised vision of governance that assumes cooperation, mutual respect and adherence to constitutional morality. This vision, while appealing, does not align with the

³¹ See Niranjan Sahoo, *On Delhi, the Centre's Move Goes Against the Spirit of Federalism*, OBSERVER RESEARCH FOUNDATION (Mar. 18, 2021), <https://www.orfonline.org/research/on-delhi-the-centres-move-goes-against-the-spirit-of-federalism>.

³² Kumar, *Statehood for Delhi*, *supra* note 14.

³³ Cf. Bhatia, *Judicial Evasion*, *supra* note 25.

³⁴ *State (NCT of Delhi)*, (2018) 8 SCC 501, ¶¶ 284.17–284.18; *see also* Bhatia, *Judicial Evasion*, *supra* note 25.

³⁵ *State (NCT of Delhi)*, (2018) 8 SCC 501, ¶ 284.17.

³⁶ Bhatia, *Judicial Evasion*, *supra* note 25.

³⁷ *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 110–111.

³⁸ *See generally* Madhav Khosla, *Framing Indian Federalism* (Colum. Pub. L. Rsch. Paper, Mar. 17, 2026), <https://doi.org/10.2139/ssrn.6432019> (published in 2 COMPAR. CONST. STUD. 218 (2024), <https://doi.org/10.4337/ccs.2024.0035>).

political reality of Delhi.³⁹ For most of the decade after 2015, the relationship between the Union and the Delhi government was marked by sustained conflict: disagreement over administrative control, frequent interventions by the Lieutenant Governor and repeated recourse to litigation. In such a context, the assumption of cooperative federalism appears more aspirational than descriptive.⁴⁰

By failing to engage with this adversarial reality, the Court's reasoning becomes structurally vulnerable. The judgment treats the dispute as a matter of constitutional interpretation, capable of resolution through principled reasoning alone. It does not sufficiently account for the possibility that political actors may resist, reinterpret or even circumvent judicial pronouncements. This omission is not merely theoretical; it is borne out by the events that followed the judgment.

The Court's reliance on constitutional morality and good faith, articulated in 2018 and presupposed in 2023, assumes that political actors will internalise and respect judicial guidance.⁴¹ In a politically contested environment, however, such assumptions may not hold. The absence of enforceable safeguards or structural protections allows the Union to respond strategically, using Parliament's legislative authority under Article 239AA(3)(b) to override the practical effect of the judgment. As a result, the Court's decision, while symbolically significant, becomes fragile in its operation.⁴²

IV. EASILY OVERRIDDEN BY PARLIAMENT'S LEGISLATION

The judgment was taken as a strong reaffirmation of democratic governance in the National Capital Territory. By holding that the elected government must have control over 'services', the Court emphasised that real power must lie with those who are accountable to the people.⁴³ It grounded its reasoning in ideas such as the 'triple chain of accountability' and 'representative democracy', and in the need to ensure that the elected government is not excluded from controlling the civil servants who implement its decisions.⁴⁴ However, the immediate legislative response, first by Ordinance and then through the Government of National Capital Territory of

³⁹ Vishwanath, *supra* note 3.

⁴⁰ Sahoo, *supra* note 31.

⁴¹ Bhatia, *Judicial Evasion*, *supra* note 25.

⁴² *Cf. id.*

⁴³ *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶ 110; *see also* Bhatia, *CONVERSATION WITH POWER*, *supra* note 8.

⁴⁴ *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 106, 111; *see also* Bhatia, *Ordinance – II*, *supra* note 24.

Delhi (Amendment) Act, 2023,⁴⁵ reveals a critical weakness in the judgment: its vulnerability to being overridden by ordinary legislation.⁴⁶

The central idea of the judgment was that governance in Delhi must reflect the democratic will. The Court stressed that civil servants are central to the administration and that denying the elected government control over ‘services’ would break the ‘triple chain of accountability’, which links civil servants to ministers, ministers to the legislature, and the legislature to the electorate.⁴⁷ This formulation was intended to ensure that executive power remains politically accountable. The Court further observed that if a democratically elected government is not given the power to control the officers posted within its domain, “the principle underlying the triple-chain of collective responsibility would become redundant”.⁴⁸

Despite this strong articulation, the judgment did not adequately secure those principles against legislative intervention, and critics have argued that the Court’s approach to Delhi leaves the separation of powers in its governance exposed.⁴⁹ Article 239AA(3)(b) expressly allows Parliament to legislate on any matter for Delhi, even matters within the legislative competence of the Delhi Assembly. This provision creates a constitutional hierarchy in which parliamentary legislation prevails over local autonomy.⁵⁰ The Court acknowledged this framework but did not sufficiently grapple with its implications.⁵¹ As a result, the principles it articulated were left exposed to subsequent override, and to what critics describe as legislative and executive overreach that threatens the federal principle.⁵²

This vulnerability became immediately apparent when the Ordinance was promulgated and Parliament then enacted the Amendment Act.⁵³ The Act established the National Capital Civil Service Authority, comprising the Chief Minister as its Chairperson, the Chief Secretary and the Principal Home Secretary, which decides by a majority of the members present and voting and recommends transfers and postings to the Lieutenant Governor, whose decision is final in

⁴⁵ The Government of National Capital Territory of Delhi (Amendment) Act, *supra* note 13.

⁴⁶ Editorial, *Gutting the Powers of an Elected Government*, 58 ECON. & POL. WKLY., no. 23, June 10, 2023, <https://www.epw.in/journal/2023/23/editorials/gutting-powers-elected-government.html>.

⁴⁷ *Gov’t of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 106–107.

⁴⁸ *Id.* ¶ 110.

⁴⁹ Eklavya Vasudev, *Delhi’s Disempowerment: Why Separation of Powers in India Is Under Threat*, VERFASSUNGSBLOG (May 20, 2021), <https://verfassungsblog.de/delhis-disempowerment/>, <https://doi.org/10.17176/20210520-155129-0>.

⁵⁰ Vinod Rai, *The Delhi Government – A Hybrid Structure* (Inst. of S. Asian Stud., Nat’l Univ. of Sing., ISAS Insights No. 285, July 11, 2015), https://www.files.ethz.ch/isn/192494/ISAS_Insights_No._285_-_The_Delhi_Government_11072015232107.pdf.

⁵¹ *Gov’t of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 79, 164(c).

⁵² Burhan Majid, *Delhi Ordinance and Executive Overreach: On the Supreme Court’s Deference*, THE QUINT (June 2, 2023), <https://www.thequint.com/opinion/delhi-ordinance-on-the-supreme-courts-deference-and-the-executive-overreach>.

⁵³ The Government of National Capital Territory of Delhi (Amendment) Act, *supra* note 13.

case of difference of opinion.⁵⁴ In effect, this arrangement diluted the control of the elected government over services, reintroducing a structure in which the Union, through the Lieutenant Governor, retains decisive influence.⁵⁵

The legislative override is significant not merely because it altered the outcome of the case, but because it exposed a deeper limitation in the Court's approach. The judgment, and the 2018 decision on which it built, relied heavily on interpretive principles such as constitutional morality, cooperative federalism and democratic accountability.⁵⁶ These principles, while normatively compelling, do not have the force to withstand contrary legislation enacted under a valid constitutional provision.⁵⁷ The Court did not convert its reasoning into enforceable constraints on parliamentary power.⁵⁸ Consequently, what was presented as a constitutional necessity became a contingent arrangement, subject to political will.⁵⁹

The phrase 'representative democracy', repeatedly invoked in the judgment, illustrates the tension. The judgment asserts that governance must be carried out by those who are elected and accountable. However, the constitutional structure of Delhi allows Parliament, a body representing the entire nation, to legislate in a manner that may override the choices of the local electorate. This creates a conflict between two forms of democratic legitimacy, one local and one national. The Court's reasoning prioritised the former, but the constitutional text permits the latter to prevail.⁶⁰

Similarly, the emphasis on the 'triple chain of accountability' is undermined by the legislative framework introduced by the Amendment Act. If civil servants are effectively controlled by an authority in which the Lieutenant Governor has the final say, the triple chain of accountability is disrupted.⁶¹ Civil servants may no longer be fully answerable to elected ministers, weakening the link between the administration and electoral responsibility. The Court's concern that, without control over its officers, the elected government's responsibility to the legislature and the public would be diluted becomes particularly salient here, as the legislative scheme risks producing precisely that outcome.⁶²

⁵⁴ *Id.* § 4 (inserting §§ 45E(2)–(3), 45H(1), (3)).

⁵⁵ Editorial, *supra* note 46.

⁵⁶ See *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶¶ 106–111; *State (NCT of Delhi)*, (2018) 8 SCC 501.

⁵⁷ Rekha Saxena, *Delhi's Conundrum and the Need for Collaborative Federalism*, 58 ECON. & POL. WKLY., no. 30, July 29, 2023, at 10, <https://www.epw.in/journal/commentary/delhis-conundrum-and-need-collaborative-federalism.html>.

⁵⁸ *Cf.* Bhatia, *Ordinance – II*, *supra* note 24 (arguing that the judgment's principles impose implied limitations on Parliament).

⁵⁹ See Khan, *supra* note 15.

⁶⁰ Kumar, *Statehood for Delhi*, *supra* note 14.

⁶¹ Madhavan, *supra* note 11.

⁶² *Gov't of NCT of Delhi*, (2023) 9 SCC 1, ¶ 110; Bhatia, *Ordinance – II*, *supra* note 24.

The ease with which the judgment was overridden also raises questions about the role of judicial review in such contexts.⁶³ The Court interpreted the Constitution to arrive at a particular allocation of power, but it did so within a framework that allows Parliament to legislate differently. Judicial interpretation thus does not conclusively settle the issue but merely sets the stage for further institutional contestation.⁶⁴ The boundary between constitutional law and ordinary legislation becomes blurred, as the fundamental question of governance is effectively decided through statutory intervention.⁶⁵

Moreover, the legislative response highlights the asymmetry inherent in Delhi's constitutional design. Unlike States, which enjoy a greater degree of constitutional protection, Delhi's autonomy is inherently limited.⁶⁶ The ability of Parliament to override Delhi's governance through ordinary legislation reinforces this asymmetry and underscores the fragility of the Court's intervention.⁶⁷ The judgment may articulate principles of federal balance, but it operates within a structure that privileges central authority. This dynamic also reflects a broader pattern in Indian constitutional practice, in which judicial decisions in politically sensitive areas are often followed by legislative or executive responses that alter their practical impact. In the Delhi services case the pattern is particularly stark, because the legislative override came so quickly and directly that it suggests the Court's reasoning did not sufficiently anticipate or address the realities of political power.⁶⁸

V. DELHI IN A LIMBO STATE

The constitutional position of Delhi, as interpreted in the judgment, reveals a governance framework that is neither fully autonomous nor entirely controlled by the Union. The judgment of the Supreme Court of India attempts to clarify this position by affirming the power of the elected government over services. Yet in doing so it discloses a deeper and more obstinate reality: Delhi exists in a constitutional limbo, where authority is shared, fragmented and ultimately uncertain.⁶⁹ The judgment, while coherent, does not resolve the ambiguity but instead highlights its structural roots.⁷⁰

⁶³ Cf. Vasudev, *supra* note 49 (on the 2021 amendment as a response to the 2018 judgment).

⁶⁴ Cf. *id.*

⁶⁵ See Bhatia, CONVERSATION WITH POWER, *supra* note 8.

⁶⁶ Rai, *supra* note 50.

⁶⁷ See *id.*

⁶⁸ See The Government of National Capital Territory of Delhi (Amendment) Ordinance, *supra* note 13 (promulgated eight days after the judgment); cf. Kumar, *From 'Trishanku' to a Puppet*, *supra* note 14 (arguing that the 2021 amendment negated the 2018 judgment).

⁶⁹ Kumar, *From 'Trishanku' to a Puppet*, *supra* note 14.

⁷⁰ But see Bhatia, *At the Third Time of Asking*, *supra* note 1 (reading the 2023 judgment as having finally settled the question of services).

Article 239AA of the Constitution creates a hybrid constitutional arrangement. Delhi is granted an elected Legislative Assembly and a Council of Ministers, suggesting a move towards representative governance. At the same time, it remains a Union Territory, with significant powers retained by the Union Government.⁷¹ This dual structure produces an inherent tension. The Court itself acknowledged this uniqueness by describing Delhi as accorded a ‘*sui generis*’ status within the constitutional framework.⁷² This status, however, is not merely distinctive; it is structurally unstable, as it attempts to combine two models of governance that operate on fundamentally different principles.⁷³

The judgment places strong emphasis on democratic values. It observed that:

“In a democratic form of Government, the real power of administration must reside in the elected arm of the State, subject to the confines of the Constitution.”⁷⁴

This assertion is central to the Court’s reasoning, as it seeks to ensure that governance in Delhi reflects the will of the people. The Court further recognised that without control over administrative services, the elected government would be unable to implement its policies effectively.⁷⁵ In this sense, the decision to vest control of services in the elected government appears to be a necessary step towards meaningful democratic governance.⁷⁶

However, this affirmation is immediately qualified by the constitutional framework itself. The Court held that:

“In addition to the Entries in List I, Parliament has legislative competence over all matters in List II and List III in relation to NCTD, including the entries which have been kept out of the legislative domain of NCTD by virtue of Article 239AA(3) (a).”⁷⁷

This acknowledgement shows the contradiction. While the elected government is granted authority, that authority is neither final nor sovereign.⁷⁸ It exists within a hierarchy in which Parliament retains overriding power. The same constitutional scheme both empowers and limits the elected government, leaving it in a position of partial and contingent authority.⁷⁹

⁷¹ Kumar, *Statehood for Delhi*, *supra* note 14.

⁷² *Gov’t of NCT of Delhi*, (2023) 9 SCC 1, ¶ 164(b).

⁷³ Ritwika Sharma & Mayuri Gupta, *When Labels Matter: Federalism, Basic Structure Doctrine, and the Indian Supreme Court*, 34 S. ASIA MULTIDISCIPLINARY ACAD. J. (2025), <https://doi.org/10.4000/15afm>.

⁷⁴ *Gov’t of NCT of Delhi*, (2023) 9 SCC 1, ¶ 110.

⁷⁵ *Id.* ¶ 111.

⁷⁶ See Kumar, *From ‘Trishanku’ to a Puppet*, *supra* note 14.

⁷⁷ *Gov’t of NCT of Delhi*, (2023) 9 SCC 1, ¶ 164(c).

⁷⁸ Sharma & Gupta, *supra* note 73.

⁷⁹ Editorial, *supra* note 46.

The Court's concern that the elected government should not be excluded from controlling the officers who implement its decisions further clarifies the limbo in which Delhi operates. The judgment seeks to prevent such an outcome by affirming the government's control over services, yet the structural design of Delhi's governance keeps the risk ever-present. The presence of the Lieutenant Governor, a Union-appointed authority, shows that executive power is never fully consolidated in the hands of the elected government.⁸⁰ Under the proviso to Article 239AA(4), the Lieutenant Governor can differ with the Council of Ministers and refer the matter to the President, thereby delaying or effectively overriding its decisions.⁸¹ This institutional arrangement prolongs a style of governance in which authority is shared but not equally exercised, unless the Court clarifies the position, either through a definitive interpretation of Article 239AA or by laying down guidelines on the scope of the powers of both governments.⁸²

The concept of the 'triple chain of accountability' articulated by the Court provides further insight into Delhi's limbo. The Court explained that civil servants are accountable to ministers, ministers to the legislature and the legislature to the electorate. This chain is intended to ensure that administrative action remains subject to democratic control. In Delhi's context, however, the chain is fundamentally fragile.⁸³ The Court's own articulation of this principle displays the gap between the ideal of accountability and the reality of divided control.

This constant shifting of authority reinforces the sense of limbo. Delhi's governance is defined not by stable constitutional boundaries but by ongoing negotiation and contestation between the Union and the elected government.⁸⁴ The reliance of both judgments on cooperative federalism, and of the 2018 judgment on constitutional morality, reflects an attempt to guide this relationship. In 2018 the Court had described what it expected of the two constitutional functionaries in these terms:

“The difference of opinion between the Lieutenant Governor and the Council of Ministers should have a sound rationale and there should not be exposition of the phenomenon of an obstructionist but reflection of the philosophy of affirmative constructionism and profound sagacity and judiciousness.”⁸⁵

⁸⁰ Kumar, *From 'Trishanku' to a Puppet*, *supra* note 14.

⁸¹ INDIA CONST. art. 239AA(4), proviso; Khan, *supra* note 15.

⁸² See Bhatia, *Ordinance – II*, *supra* note 24.

⁸³ Bhatia, *Ordinance – II*, *supra* note 24.

⁸⁴ Kumar, *From 'Trishanku' to a Puppet*, *supra* note 14.

⁸⁵ *State (NCT of Delhi)*, (2018) 8 SCC 501, ¶ 284.19.

Such principles, however, assume a level of institutional cooperation that may not exist in practice. In a politically adversarial environment, appeals to trust and morality may have limited impact.

This limbo has practical consequences for governance. It leads to delays in policy, administrative uncertainty and recurring institutional conflict. The elected government may formulate policies, but their implementation can be hindered by competing authorities.⁸⁶ Civil servants may face conflicting lines of accountability, leading to inefficiency and a lack of clarity. For citizens, this translates into a system of governance in which responsibility is diffused and accountability is weakened.

VI. CONCLUSION

This paper has examined the Supreme Court's decision in the Delhi services dispute, focusing on its implications for democratic governance and federal balance. The Court adopted a purposive approach, emphasising representative democracy and the need for the elected government to control its administrative machinery. Through the concept of the "triple chain of accountability", it linked administrative authority to electoral legitimacy. This reasoning strengthened the position of the elected government within the unique framework of the National Capital Territory and reflected a commitment to ensuring that governance remains accountable to the people. However, the subsequent legislative intervention by Parliament significantly limited the impact of this interpretation. The ease with which the judgment was overridden highlights the constraints of judicial authority in shaping institutional outcomes. While the Court articulated important constitutional principles, it could not secure them against legislative action. The decision reinforces democratic norms at a conceptual level but reveals their fragility in practice. The balance of power remains contingent on political and institutional dynamics, demonstrating that judicial interpretation alone cannot determine the distribution of authority within the federal system.

⁸⁶ Kumar, *Statehood for Delhi*, *supra* note 14.