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Examining the Role of Power Dynamics Between the Union and Delhi Government

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ABSTRACT

Legislation is an organ of Government and an important source of law to formulate the procedure commenced by a competent authority. The necessity of understanding the legislative intent behind these acts provides an insight that fulfils the political interests of the national public at large. The in-depth analysis of the Government of national capital territory (Amendment) Act 2021 pictures the role of power dynamics in the country, examining the factors that infringe the fundamental, political and constitutional rights of the people. Political science plays a significant role in classifying the various agendas raised by the legislative act by uplifting the power administration of the country through exclusive jurisdiction. The rigorous discipline to interpret the legal system that notifies to promote “harmonious relations between the legislature and the executive.” fails to consider the situation of NCT of Delhi by occasioning the union government that nullifies the decision of state government by overpowering the lieutenant governor of Delhi. The imbalance of power distribution in Delhi between the Lt. governor and CM challenges the basic governance structure of the country. The principle of collective responsibility also got differed by the cabinet decision over the controversial judgement of the GNCTD act. The paper focuses on affirmations that frustrate the efforts of state government by establishing the potential for LG by necessarily granting him an opportunity to exercise the powers in the state. The paper explores the various avenues leading to the power crisis between Delhi and Union government.

I. INTRODUCTION

The GNCTD act helps us to explore the role of power dynamics between the Union and state governments of Delhi. It is important to discuss the theme because the role of politics over the issue challenges the system of cooperation and also presents the evidence which is capable enough to establish the part of the Lt. governor of Delhi by elaborating further chapters that significantly discusses the decline in powers of CM of NCT of Delhi. The paper also tries to show up that democracy and federalism are essential features of the Constitution and a part of

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basic structure, states may have an independent existence, but at the same time, they are binding to the people's decision and to abide by the Union.

II. EVOLUTION OF DELHI AND ITS CONFERRED STATUS

In 1911, Delhi became the capital of India. Delhi Tehsil and Mehrauli Thana were separated from Punjab and annexed to Delhi headed by the commissioner. The Delhi Laws Act 1915 empowered the chief commissioner Delhi to determine the application of laws by issuing the appropriate notification in the Gazette of India.

As Subramaniam S (2014) mentions, the Government of India Act 1919 and the Government of India Act 1935 retained Delhi as a centrally administered territory (Subramaniam S, 2014). The issue of the statehood of Delhi was raised for the first time by Pattabhi Sitarmayya in 1947 in the constituent assembly.

Analysing the history of the Reorganisation commission, aka Fazal Ali Commission, led to the commencement of the Constitution of India to declare India 'Union of States'. In 1950, Delhi became a Part C state which empowered the legislative assembly to make laws on all the matters of list 2 of the seventh schedule of the Constitution (state list) except public order, Police, power of local municipal authorities and land. Further, in 1956, the Constitution of India (Seventh Amendment) Act, 1956 implemented the state Reorganisation Act 1956, and further Delhi became a Union Territory (A Sikri, 2019)

The Government of Union Territories Act 1963 was enacted to provide for legislative assemblies and councils but were not made applicable. In the year 1987, the Balakrishnan committee was set up and mentioned, '**the Status of Delhi is not of a full-fledged state**'. Subsequently, Delhi legislative assembly was re-established in 1993 under *govt. Of NCT of Delhi v. Union of India*.

The approach of the union government towards the Delhi state is multidisciplinary, from comprehending the nature of Indian Politics without focusing on 'social churning' leads to the critical articulation of governance of India and also leads to socio-political issues.

The fundamental principle underlying the parliamentary system of government is the principle of collective responsibility with the constitutional intent that the parliament has the power to make laws for Delhi under the state list and concurrent list.

According to Anand from The Hindu mentions, 'The fundamental principles of constitutionalism embodies the concept of limited powers as its central idea. To sustain this ethos, the highest importance should be given to people who are the real sovereigns and who

speak through their elected representatives, but the political arena of power distribution in Delhi creates a confrontation between the Delhi Lieutenant governor and the AAP, leads to deprivation of people's right.

III. IS THE GNCTD AMENDMENT ACT 2021 AN ACT OF ABSOLUTISM?

This act points to the fault lines, which still exist in the power equations in the capital's administrative structure. The role of power dynamics is a key question that whether the LG can refer to routine administrative matters?. As an Author from Indian Express said, 'The act gives more power to the Union and waters the power of the chief minister of Delhi 'the elected Government's articulating tussle between Lt. governor and CM of NCT of Delhi(Mustafa, 2021).

The Government of the national capital territory of Delhi (Amendment) Act 2021 modified the act of 1991, which gives primacy to the Union over an elected Government came into force on April 27 2021. The significance of the sixty-ninth constitutional Amendment is very surprising and drastic, exclusively with the purview of the union government.

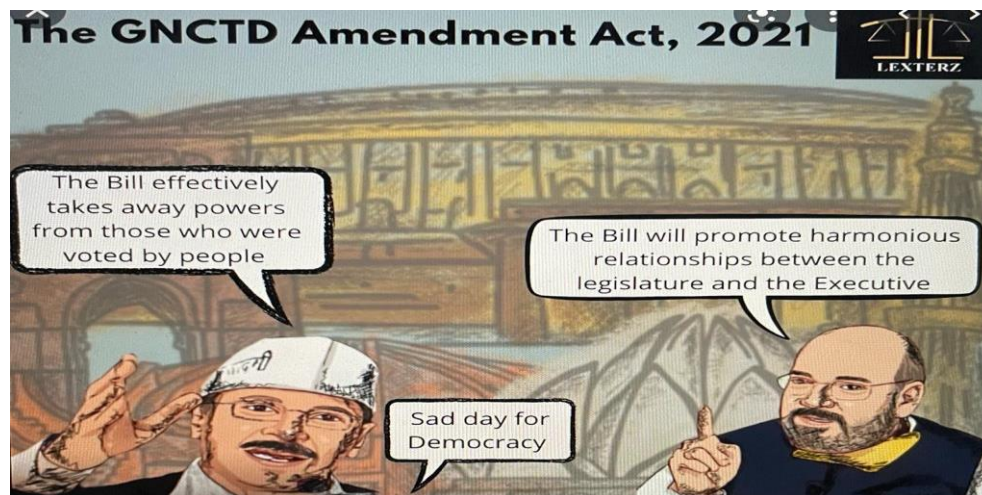
(A) The provisions of GNCTD amendment act 2021

- It amended sections 21,24,33, and 44 of the NCT of Delhi Act 1991.
- If there is a conflict between the council of ministers and Lt. Governor 'on any matter' shall refer to the President for decision and act according to that decision.
- The Lt. governor to act on 'aid and advice of the council of ministers and act as an administrator of the state.
- NCT of Delhi is governed by Article 239AA of the Constitution, which imposes restrictions on the law-making power of the legislature of Delhi.
- The Lt.Governor of Delhi appointed by the President, according to art 239AA, the elected legislature of NCT of Delhi cannot enact laws relating to entries 1,2 and 18 of the state list, i.e. public order, Police and land.
- Under the Article 239AB, ' The President, on receipt from the lieutenant governor or otherwise, is satisfied that a situation has arisen in which the administration of the national capital territory cannot be carried on accordance with the provisions of Art 239AA of any law made in pursuance of that article; the President may by order suspend the operation of any provision of Art 239AA.
- NCT legislature, on the other hand, itself, gives Delhi a special status under art 239AA.

The provisions of this act in nature are discriminatory towards the power stake of the elected Government of NCT of Delhi.

As the author from the editorial column: THE HINDU writes, “ The ‘Union Territory’ concept is one of the many ways in which India regulates relations between the Centre and its units. This act should not be used to subvert the basis of electoral democracy.”

Figure: GNCTD Amendment Act 2021 ‘Centre-State dichotomy’ Picture courtesy: LEXTERZ



IV. GNCTD ACT UNDERCUTS THE FEDERALISM OF INDIA

India has a hybrid system of Government. As a hybrid political system, Ambedkar had articulated, ‘Unitary in extraordinary circumstances such as war and other calamities and Federal under normal circumstances’(constituent assembly 1948:34-35). The condition of NCT of Delhi covers various peculiarities, heavily influenced by principles of centralised federalism over cooperative federalism. The act upholds the supremacy of the Union, establishing radically altered Centre-state relations by ‘the federal compact of a new institutional force’(Sezhiyan 2006). GNCTD acts as a means for the Union to misuse their powers to construct the whole BJP ideology towards the citizens of NCT of Delhi by asserting autonomy over the state.

The centre has also asserted that the amended GNCTD Act was necessary for the proper functioning of elected govt and specifically upheld the supreme court 2018 judgement, which is co-extensive with the legislative powers of the Delhi Legislative assembly. Indian federalism is illustrative; the solid foundation of federalism and democracy on which our country has thrived will begin to crumble if there is strife between the centre and the state, who have embraced the ‘doctrine of cooperative federalism as the guiding spirit of the Indian federal system’(Austin 1999:186-87).

Nonetheless, the Constitution endorsed the federal principle in ‘ recognition’ to the multi-dimensional socio-political and geographical Indian reality by clearly demarcating the constitutional domain(Chakraborty & Pandey 2008:39) of the centre-state relation, significantly curtailing the collaborative federal principles by implementing the functions of GNCTD (amendment) ACT 2021 in NCT of Delhi by sowing the seeds of centralism towards the parliamentary system of Government.

The centralisation of the Union created an impact on regional and state policies towards protecting the paramount national interest. The paradox of centralised federalism challenged the Indian federation and disenfranchised Delhiites, subsequently diminishing the constitutionally guaranteed powers and function of the elected legislative assembly, the council of ministers and the Delhi government(Deccan Herald, DH). Federalism is the key between the centre and states to share a horizontal relationship for effective coordination, which lacks in the conflicting interests of the Lt. governor and the CM of NCT of Delhi. The provisions of the act undermine federalism in Delhi, encroaching on the power dynamics in the political run.

According to ‘ S. R. Bommai vs Union Of India (1994)’, in this case, the court ruled that federalism is a part of the basic structure of the Constitution. Therefore, the arbitrary use of article 356 by the centre to topple an opposition-ruled state government cannot be allowed. The court further laid down a detailed guideline to prevent further misuse of the provision regarding the president rule in the states.

The GNCTD act undermines the *S.R Bommai v. UOI* and enacts the law which hostile the powers of CM of Delhi at the same point of time, empowering Lt. governor to act as a ‘facilitator’.



Figure: Aam Aadmi Party (AAP) activists stage a protest against the Government of NCT Delhi (Amendment) ACTI 2021, at Jantar Mantar in New Delhi, Photo: PTI/Kamal Singh

V. THE LEGAL CONTROVERSY BETWEEN LG AND DELHI GOVERNMENT OVER THE GNCTD ACT

According to the Union Government, New Delhi is 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 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 (Union) and state government of NCT of Delhi.

The five-judge bench under *Government of NCT of Delhi v. Union of India & others*, 'Chief Justice Dipak Mishra, Justices DY Chandrachud, A.M. Khanwilkar, Ashok Bhushan and AK Sikri upheld that the LG is bound by the 'aid and advice of the councils of ministers and held 'cabinet form of government' to be a basic feature of the Constitution, and cited the principle of 'collective responsibility to support the stance. 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.

The provision of Article 239AA (4) allows LG to reserve 'any matter' about only 'vital national interest' in genuine and exceptional circumstances, but the judgement did not very clearly delineate the issues in respect of which the Lt. governor can refer a decision taken the Council of Ministers to the President in the event of a difference of the opinion between LG and the state government.

The legal provision of the GNCTD act restricts Delhi from creating laws on subjects such as Police, public order and land. It lays out the scope and limits of the power of the Legislative assembly of Delhi. The judgement of the supreme court revolves around the apparent contradiction by enjoining the concept of constitutional morality.

VI. CONCLUSION

So, when we analyse the reference by the Lt. Governor to the President on the issue of the appointment of prosecutor within the parameters laid down by the supreme court, I find that it does not agree with these principles enunciated by the court. The structure of Lt. Governor and the council of Ministers is the scheme adopted for the National capital Territory of Delhi because of its special significance, and both are equally important to maintain constitutional harmony.

However, the present controversy shows there are still many areas that need to be resolved. The supreme court must leverage the dispute based on the GNCTD amendment act 2021 to even

resolve the jurisdictional conflict for a better future. The paper explores the various affirmations that restrict Delhi from creating laws in subjects such as Police, public order and land. In respect of Delhi, thus, the designation bestowed is that of lieutenant governor of NCT of Delhi. The research also highlights the case in hand boil down to LG vs Delhi government's jurisdiction debate that the supreme court sought to address in NCT of Delhi vs UOI (2018). Therefore, the paper establishes the Lt. governor being the state representative; it is easier for him to secure a decision in his favour. The state government will be helpless in a situation, so they are stressing upon cooperative federalism, but ultimately things are back to square one in Delhi.

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