

Government of National Capital Territory of Delhi (Amendment) Bill 2021

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The Government of National Capital Territory of Delhi (Amendment) Bill, 2021 has revived the dispute on the distribution of powers between the elected government and the Lieutenant Governor (L-G). The issue, which was at the heart of the ruling AAP's frequent run-ins with the BJP-led Centre during much of its first term, was taken up by a Constitution Bench of the Supreme Court, which tilted the scales in favour of the elected government through its July 4, 2018 verdict.

In news: Parliament clears contentious bill to expand Delhi LG's power

Placing it in syllabus: Law & Policy

Dimensions

- Provisions of the Bill
- How does it affect provisions of the 69th Constitutional Amendment Act?
- Criticisms

Content:

Provisions of the GNCTD (Amendment) Bill:

- The Government of National Capital Territory of Delhi (Amendment) Bill, 2021 amends the Government of National Capital Territory of Delhi Act, 1991.
- The 1991 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.

- The Bill states clarification of the expression “Government” and addressing “ambiguities” in legislative provisions as its core objectives.

Major provisions include:

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 1991 Act allowed the Legislative Assembly to make Rules to regulate the procedure and conduct of business in the Assembly.
- The Bill amends this and 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 1991 Act specified 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.
- However, the 2021 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.

How does it affect provisions of the 69th Constitutional Amendment Act?

- The Constitution (Sixty-ninth Amendment) Act, 1991 inserted new articles 239AA and 239AB related to special provisions with respect to Delhi.
- Delhi's current status as a Union Territory with a Legislative Assembly is an outcome of the 69th Amendment Act through which Articles 239AA and 239AB were introduced in the Constitution.
- The GNCTD Act 1991 was passed simultaneously to supplement the constitutional provisions relating to the Assembly and the Council of Ministers in the national capital.
- GNCTD (amendment) Bill 2021 makes it clear that the term

“government” in any law made by the Legislative Assembly shall mean the L-G.

- This, essentially, gives effect to former L-G Najeeb Jung’s 2015 assertion that “Government means the Lieutenant Governor of the NCT of Delhi appointed by the President under Article 239 and designated as such under Article 239 AA of the Constitution”.
- The amendments of GNCTD Bill 2021 seek to ensure that the Lieutenant Governor is “necessarily granted an opportunity” to exercise powers entrusted to him under proviso to Clause (4) of Article 239AA of the Constitution.
- The clause provides for a Council of Ministers headed by a Chief Minister for the NCT to “aid and advise the Lieutenant Governor” in the exercise of his functions for matters in which the Legislative Assembly has the power to make laws.
- The Bill adds that the L-G’s opinion shall be obtained before the government takes any executive action based on decisions taken by the Cabinet or any individual minister.
- The L-G does have the power to refer any matter, over which there is a disagreement with the elected government, to the President under Article 239AA(4).
- The Delhi Law Secretary had in 2019 written in an internal memo that the elected government cannot use the Supreme Court verdict to keep the L-G in the dark about its decisions as that would prevent him from taking informed decisions on whether to invoke Article 239AA(4) or not.
- But the SC had also categorically pointed out that the L-G “should not act in a mechanical manner without due application of mind so as to refer every decision of the Council of Ministers to the President”.

Criticisms:

- The Bill has, in fact, planted several curbs on the functioning of the legislative assembly of Delhi as well as its council of ministers.
- The amendment contradicts the inherent right of the legislature to frame rules for the conduct of its own proceedings.
- It also requires the government to obtain the LG's opinion on decisions before executive action is taken, which runs counter to the constitutional bench's specific interpretation on the need to inform but not to have to wait for a return of the LG's opinion
- The amendment will force the elected government to take the L-G's advice before taking any action on any cabinet decision.
- The amendments will essentially take away the government's autonomy and the dream for full statehood for the state, which each political party has promised the electorate at various times

Mould your thought: What does the Government of National Capital Territory of Delhi (Amendment) Bill 2021 propose to change? How will it impact the administration of NCT?

Approach to the answer:

- Introduction
- Discuss the provisions of the bill
- Discuss the effects of working of 69th Amendment
- Discuss the criticism of the bill
- Conclusion