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GNCTD (Amendment) Act, 2021 and Its Effect on AAP Governance

Tanmay Garg^a

^aDr. BR Ambedkar National Law University, Sonipat, India

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Through this paper, I will talk about the ongoing tussle between the democratically elected ‘real’ head of the National Capital Territory of Delhi, the Chief Minister’s office, and the ‘nominal’ head appointed by the President, the Lieutenant Governor’s office. To start with, we’ll look into the history of political changes in Delhi since the independence of India. We will talk about the office of Lt. Governors and/or Administrators of Union Territories and what are the similarities or differences between them and Governors of state. Moving forward we’ll try to develop an understanding of the amendment act and how it changes the political scenario of the NCT. Also, we’ll look at how the amendment act of 2021 varies from the original act of 1991. Then, we will observe the hearings and responses by the Supreme Court of India in the concerned matter. Continuing our scheme of study, we’ll critically analyze the amendment act’s possible repercussions and the outgrowing opposition anger on the same. In the end, we’ll talk as to how the current Aam Aadmi Party government will look forward to this decision of the central government and the effects it will lead on the governance of the Union Territory by the AAP Party.

Keywords: NCT, amendment, governance.

INTRODUCTION

The current scenario in Delhi can be collated with the Soviet Union of 1991 when the elected President of Russia, Boris Yeltsin, confronted Mikhail Gorbachev's right to govern Moscow as the President of the Soviet Union in its freshly moulded democracy. As of now, there are two power holding authorities in the National Capital Territory of Delhi – The Council of Ministers with the Chief Minister as its head which is the directly elected government by the people of Delhi, and the Lieutenant Governor appointed by the President of the country.

In the case of the *State of Karnataka vs Union of India*,¹ the Supreme Court called India to be a quasi-federal country, i.e., it has features of both a federal as well unitary state. Schedule 7 of the Indian Constitution distributes 218 subjects of different backgrounds into 3 lists – Union List, State List, and Concurrent List. Therefore, Indian federalism provides for governing the nation by the central government on subjects in the union list and for governing separate states by the state governments on subjects in the state list. Both entities can make laws on the subjects mentioned in the concurrent list. Every now and then, this basic feature of the Indian Constitution has been tested and this time it's nothing different. The current power struggle can simply be called a federalism crisis whereby both the parties are accusing each other of crossing the authority vested in them and interfering with one another's capacity to function.

*“The current matter revolves around the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 which was introduced in Lok Sabha on March 15, 2021. The President gave its assent to the Amendment Bill on 28th March thereby enacting it. The act amends the Government of National Capital Territory of Delhi Act, 1991. The Amendment Act aims to resolve the conflict between the two heads of Delhi i.e., the Chief Minister and the Lieutenant Governor, by redefining their powers and functions provided in the government of the National Capital Territory (NCT) of Delhi, 1991. Yet, it has given rise to criticism from the media as well as the experts as the act effectively **reduces the elected government to a mere vestigial organ** and elevates the centrally appointed LG, to the **position of a Viceroy with plenipotentiary powers.**”*

¹ *State of Karnataka v Union of India* 1978 AIR 68

HISTORY OF DELHI'S GOVERNANCE DYNAMICS

When the constitution came into effect, there were 4 categories of states – A, B, C, and D. The last two categories were governed by the centrally appointed administrators with no other governmental authority. Delhi was not deemed fit to become a state for a number of reasons. Like, if Delhi becomes part of any state it would acquire a seemingly dominant position in national politics in the coming ages. Another explanation was that because it is the capital of the country it would be beneficial to let it remain under central government for reasons of national security. So, Delhi was a C category state in the beginning.

In 1952, a directly elected unicameral legislature was brought into existence in Delhi. Section 21 of the Government of Part C States Act, 1951 had some limitations to which the policymaking was subjected. This unicameral legislature in Delhi continued for 4 years till 1956. The Government of Part C States Act, 1951 was revoked using Section 130 of the States Reorganization Act, 1956² because now there were only two types of categories – States and Union Territories. The unicameral legislature of Delhi ended due to the absenteeism of a saving provision. During this period, Delhi was governed by the Delhi Administration Act of 1966³ whereby the Delhi government was made up of a Municipal Council and a Governor. In 1978, by the virtue of the 47th Constitutional Amendment, 1978 Bill, and the Government of UTs Act, 1978, a revolutionary step was taken towards providing a Council of Ministers and a Legislative Assembly for the governance of Delhi. Unfortunately, due to the dissolution of the 6th Lok Sabha in 1979, both these bills lapsed. In 1987, the Government of India constituted a committee named Balakrishnan Committee headed by S. Balakrishnan. The committee was set up to study and give some recommendations regarding the reorganization of the administration in the UT of Delhi and also for the issues concerned with the administrative setup in Delhi. Consequently, to give effect to the recommendations of the Balakrishnan Committee, the 69th Amendment Act was passed and enacted in the form of the Government of National Capital Territory of Delhi Act, 1991.

² 'India Code: Home' (*Indiacode.nic.in*) <<https://www.indiacode.nic.in/>> accessed 10 July 2021

³ 'Delhi Administration Act 1966 | Lawsisto Cental Acts' (*Lawsisto.com*) <<https://lawsisto.com/Read-Central-Act/612/DELHI-ADMINISTRATION-ACT-1966>> accessed 10 July 2021

The 69th Amendment Act of 1991 introduced Articles 239AA and 239BB to the Indian Constitution which gave Delhi its current status as a Union Territory with a Legislative Assembly and a Council of Ministers to run Delhi who will be responsible to the Assembly. The act also specified for a Lt. Governor under article 239⁴ of the constitution who will be aided and advised by the aforementioned council of ministers. After 30 years, even now this pattern of governance is being followed in India without creating any ruckus other than the few frequent clashes between the governments of the NCT and the union government but that is absolutely normal in a democracy because views vary from person to person and government to government. But showcasing superiority or dominating through your primacy isn't going to solve the issue rather fuel it, making it burn for a long time.

WHO IS A LIEUTENANT GOVERNOR

When we talk of states, we know there is a council of ministers headed by the chief minister who comes into power by democratically held elections, also called the real head of the government and the other entity is appointed by the President of India who is the representative of the central government, the Governor, also called the nominal head of the government. But in the case, of Union Territories, it is considerably different. India, at present, has 8 Union Territories after the separation of Jammu & Kashmir and Ladakh, and the amalgamation of Daman and Diu and Dadra and Nagar Haveli. All the Union Territories have an administrator which is directly appointed by the President on the advice of the PM and his/her Council of Ministers. In Delhi and Puducherry, though they are Union Territories, they have separate Legislative Assemblies along with an administrator who is called a Lt. Governor. Likewise, after the abrogation of article 370 of the Indian Constitution, Jammu & Kashmir have also been granted a Legislative Assembly along with a Lt. Governor. As compared to a Governor of a state, the Lt. Governor of a Union Territory is the constitutional head of the UT and has a greater scope of power. Both the executives are appointed by the First Man of India and enjoy the office as long as the President wishes. A notable point of difference between the Administrator and a Lt. Governor of a UT is that the latter can be from

⁴ Constitution of India, art 239

any field or profession but the former necessarily needs to be a part of the bureaucracy of the Indian Government like an IAS officer.

KEY PROVISIONS OF THE ACT

The GNCTD Amendment Act, 2021 amends some of the provisions of the GNCTD Act of 1991. The Ministry of Home Affairs said that the Amendment act has been enacted in conformity with the "the objective of the Amendment Act is to make it more relevant to the needs of the Capital; further, define the responsibilities of the elected Government and the Lt. Governor (LG); and, create a harmonious relationship between the Legislature and the Executive". Following are the changes which the latest amendment brought in.

Modifying Section 21 of the earlier act, the act of 2021 provides that the term "government" referred to in any law made by the Legislative Assembly will imply Lt. Governor (LG). This takes us back to the former LG of Delhi Naseeb Jung's assertion that "Government (of Delhi) 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 2021 bill also allows the LG to give its recommendations on specific issues by modifying section 44 of the main legislation. Before taking any executive action on the Minister's/Council of Ministers' decisions, he must be consulted. The amending legislation also allows the LG to use his rights under Article 239AA (4), which states that if the L-G and the Council of Ministers disagree, the L-G must submit the matter to the President. Furthermore, until the President makes a decision, the L-G may exercise his discretion to take urgent action if the situation demands it.

Also, the legislation modifies section 33 of the original act, which requires the Legislative Assembly to adopt rules that are consistent with those of the Lok Sabha to govern the process and conduct of business in the Assembly. By denying the Legislative Assembly the ability to govern itself as it sees fit, directly attacks the idea of cooperative federalism. Furthermore, it has transferred all day-to-day powers of the chief minister and his council to the LG by prohibiting the Legislative Assembly from making any rule to enable itself or its Committees

to consider matters of the day-to-day administration of the NCT of Delhi and conduct any inquiry in relation to administrative decisions, and all such rules made prior to its enactment will be null and void.

By adding to the provision stated in section 24 of the 1991 act, the recent act has encouraged the L-G to reserve bills for the President that incidentally cover any of the matters outside the purview of the powers of the Legislative Assembly. These matters include bills those: -

- I. “which may diminish the powers of the High Court of Delhi in any sense,
- II. which the President may direct to be reserved and look into,
- III. dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, and
- IV. which are related to the official languages of the Delhi Assembly.”

JUDICIAL STANCE

The Aam Admi Party (AAP) was elected by the people of Delhi as their administrative choice with a full majority in 2015. It was at that time, that we started to witness frequent clashes between the Government of NCT and the LG regarding the administrative capacities of both the entities. In 2016 the AAP government approached the High Court of Delhi to look into the matter and elucidate the topic. This came after a series of events where the NDA appointed LG - Naseeb Jung stalled the files of many serious projects stating his power under the article 239AA (4). The High Court ruled in the favor of the office of LG saying that LG is the constitutional administrative head of the NCT and he is not bound to work on the aid and advice of the Council of Ministers. The court also told that the Council of Ministers in the national capital cannot take any decision without referring it to L-G first. The furious AAP government moved to the Supreme Court and fought for two long years when in 2018 the SC finally came out with the verdict. “The apex court in *GNCTD v/s Union of India*, 2019⁵ delineated the boundaries of power between the Lieutenant-Governor and Delhi Government

⁵ *State (NCT of Delhi) v Union of India* (2020) 12 SCC 259 (India)

by stating that the LG cannot interfere in each and every decision of the Delhi Government and that the LG is bound by the aid and advise of the council of ministers of Delhi Government, except in matters of land, police and public order.” The SC overturned the HC’s judgment clarifying that executive decisions do not need concurrence with the LG in each and every matter (other than the 3 specified above) and merely notifying the LG over whatever developmental project is being carried on or is going to take place is enough. The SC was rigid in upholding the constitutional provisions of the administrative setup enshrined in the world’s longest constitution by declaring that a fully elected Legislative Assembly should have all the right in the world to make laws for the residents of Delhi on subjects in both the state and concurrent list, except of course excluding the three subjects pertaining to law & order, police, and land. The 5-judge bench also ensured that the LG does not misuse his power mentioned in article 239 of the constitution by telling him not to act ‘mechanically’ and refer each and every legislative decision to the President. The Supreme Court further stated that the LG must make all the possible solutions to settle the differences within the law and the Transaction of Business Rules. Thus, the SC acted favourably for the government of Delhi as it is essential of democracy to represent the people who elected you, make welfare schemes, etc. And giving extra authority to the LG who is not even an elected official and rather a nominated one who enjoys the office till the time the President wishes so is definitely unconstitutional.

CRITICAL ANALYSIS OF THE ACT

Let’s look at the current political/federal crisis through an example. Consider you are a resident of Delhi and it was heavily raining since the past week and therefore roads are filled with water, sewers are clogged and there are frequent electricity cuts. Your locality is suffering through all these problems and you being a responsible member of the society reach out to your MLA whom you chose to represent yourselves in the Legislative Assembly but he is of no help. In fact, he cannot help you even if he wants to because all the power now is vested in the hands of one LG. His assent is required for any and every piece of work. This is situation can be called a constitutional failure as the principles of federalism are nowhere to be seen because

a post filled by nomination is given more weightage as compared to a constitutionally elected government leaving the population of Delhi with an unrepresentative administration. “This shifts the power of administration to the Central Government which goes against the essence of GNCTD Act, the verdict of the Supreme Court and the Constitution of India.”

Ignoring the essential principles of cooperative federalism one of the changes has made it void for the Legislative Assembly to conduct its own business and affairs. It states that the rules of the legislative assembly of Delhi shall not be incompatible with the rules and regulations of the lower house of the Parliament. Every assembly should and do have a right to make rules and regulations for the smooth conduct of its proceedings as it is a part of the division created between the Union and state governments. Rather, this act defines them to be in concurrence with the Lok Sabha.

The apex court in the case of *People’s Union for Civil Liberties (2002)*⁶ held that no legislature has the authority to nullify the judgment of the Supreme Court as it is against the basic doctrine structure of the constitution. Yet, we can see the amendment act invalidating the SC judgment of 2019 by making it compulsory for the Council of Ministers to take permission of the LG before taking any action. Hence, it is being called unconstitutional.

Another important amendment that needs to be scrutinized is one that calls the government a Lieutenant Governor. The elected government brings the legislative proposals before the fully elected legislative assembly. When the legislature passes the proposal, it becomes the duty of the government to ensure its enforcement as it is responsible and accountable to the legislature. The LG is neither part of the assembly nor responsible and accountable to the legislative assembly. If the elected government is not the government and the Lieutenant Governor is the government, then he or she is not obligated to perform in concurrence with the decisions taken by the legislative assembly.

“When the SC of Indian decided in the favour the Government of NCT of Delhi in 2019, it resulted in an increase in the pace of the administrative work and thus swifter decisions were

⁶ *People’s Union for Civil Liberties v Union of India & Anr* AIR 2003 SC 1207 (India)

observed like the free bus rides for women, doorstep delivery of rations to the city's residents, free electricity to households that are using less than 200 units of power, mechanization of sewage cleaning operations, etc." Thus, it would be a direct effect of the amendment act on the efficient system of governance realized by the capital of the nation as the action seems to be a legislative sword that has chopped off the executive arm of the government.

The act has received harsh criticism and dissent from not just opposition parties and the Delhi government, but from scholars, legal luminaries, experts on Indian politics, etc. for the undemocratic approach of the central government to use its undefeated majority in both the houses of the Parliament to pass and enact any legislation of its choice. "In addition, seventy-six former civil servants of the All India Services and Central Services have released a statement condemning the Centre's action of subordinating the executive power of the elected government."

CONCLUSION

There are far-reaching implications of the GNCTD Amendment Act, 1991 as this might turn into a landmark judgment because the AAP party led Delhi government won't rest for long before it again knocks on the doors of the highest judicial institution of the country. The power struggle between the Delhi government and the central government is not new. The union government needs to reconsider the amendment act keeping in mind the number of issues it has raised. The government should also ensure before passing any legislation that it should nullify any SC judgment as in this case as it might lead to people losing faith in the national governing authority which will further create a crisis. Instead of vesting in the nationally appointed representative of the government unlimited powers, it should revamp the position of the LG as a facilitator and protector of the law of the land.

As Justice DY Chandrachud said, "In a democratic form of government, the real power must subsist in the elected arms of the state", the legislative assembly should not be ripped off its powers. It would be unfair for the nearly 2 crore population that they are left off without any

local representative. Both the governments need to make sure that the reach of the office of LG is demarcated in a just and constitutional manner so that he does not become a hindrance to the growth of the Union Territory.