



DELHI UNDERMINED

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(Mains GS2: Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.)

Context:

- The Centre's Bill seeking to amend the law relating to the running of the National Capital Territory of Delhi claims that it is aimed at giving effect to the interpretation given by the Supreme Court judgments on Delhi's governance structure.
- The Bill propounded to undermine the Court's efforts to strengthen the elected government *vis-à-vis* the appointed Lieutenant Governor.

Proposed changes:

- The Bill through amendments in various sections makes it mandatory for the government to send files to/seek the opinion of the Lieutenant Governor before taking any administrative decisions.
- The Bill seeks to declare that in the context of legislation passed by the Delhi Assembly, all references to the 'government' would mean the "Lieutenant Governor".
- By Amending section 44 of the Government of National Capital Territory of Delhi Act-1991, The Bill says 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...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."

What is the Centre's rationale behind the Bill?

- The Centre says that Section 44 of the Act deals with conduct of business and there is no structural mechanism provided in the Act for effective time bound implementation of said section.
- Further, the Bill adds, there is no clarity as to what proposal or matters are required to be submitted to Lieutenant Governor before issuing order thereon.
- The Bill also talks about judgement by Supreme Court and says that the Constitution Bench of the Supreme Court, in its judgment dated the 4 July, 2018 has interpreted the provisions of article 239AA of the Constitution relating to the structure of governance in National Capital Territory of Delhi.
- The Bill seeks “to clarify the expression “Government” which shall mean the Lieutenant Governor of the National Capital Territory of Delhi, consistent with the status of Delhi as a Union territory to address the ambiguities in the interpretation of the legislative provisions”
- The Bill further seeks to ensure that the L-G is necessarily granted an opportunity to exercise the power entrusted to him under proviso to clause (4) of article 239AA of the Constitution in select category of cases which falls outside the preview of the Legislative Assembly.
- It also seeks to provide for rules made by the Legislative Assembly of Delhi to be consistent with the rules of the House of the People.

What did the Supreme Court rule in the Delhi Govt vs L-G case?

- The Supreme Court ruled that the L-G has not been entrusted with any independent decision-making power in the Union Territory of Delhi.
- So, he has to act on the “aid and advice” of the Council of Ministers.
- “The meaning of ‘aid and advice’ employed in Article 239AA (4) has to be construed to mean that the L-G of the NCT of Delhi is bound by the aid and advice of the Council of Ministers.
- And this position holds true so long as the L-G does not exercise power under the proviso to clause (4) of Article 239 AA.
- The L-G has not been entrusted with any independent decision-making power.
- He has to either act on the ‘aid and advice’ of the Council of Ministers or is bound to implement the decision taken by the President on a reference made by him.
- The SC, however, said that by no stretch of imagination, Delhi can be accorded the status of a State under the present constitutional scheme.
- The court said the L-G was not like a Governor of a state but an administrator, in a limited sense, working with the designation of L-G.
- It further observed that the Constitution was “constructive” and that “there is no room for absolutism. There is no space for anarchy.”

Constitutional trust needed:

- Indeed, Delhi is a Union Territory; but it is somewhat incongruous for a territory with an elected House to be declared the sole domain of the L-G.
- The apex court had rightly concluded that the scheme set out in the Constitution and the Government of National Capital Territory of Delhi Act, 1991, envisages a collaborative structure that can be worked only through constitutional trust.
- The proviso to Article 239AA, which empowers the L-G to refer a difference of opinion with the Council of Ministers to the President, does not mean that the administrator is given an opportunity to come up with a different opinion on every decision made by the Ministry.
- And it is quite incongruous that instead of Parliament identifying the matters on which the L-G's opinion should be sought, the Bill proposes that the L-G himself would specify such matters.

Conclusion:

- The clause that declares void any rule that empowers the Assembly or its Committees to discuss any matter of day-to-day administration or conduct enquiries amounts to a rollback of representative government.
- The 'Union Territory' concept is one of the many ways in which India regulates relations between the Centre and its units.
- Thus, bill should not be used to subvert the basis of electoral democracy.