

**LEGISLATIVE COMMENT ON GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI (AMENDMENT) ACT, 2021**

*Mridula Sarji**

*Ramansh Billawria***

Abstract

The Government of National Capital Territory of Delhi (Amendment) Act, 2021 came into force on April 27, 2021. This amendment substantially affects the powers of the Lieutenant Governor appointed for Delhi and the elected government of Delhi. Although, the latest amendment was enacted on the pretext that it was in line with the Supreme Court judgment, upon scrutiny, it was in violation of the 2018 judgment. The intent of the legislature with which it enacted the Government of National Capital Territory of Delhi Act, 1991 has also been disregarded. This paper examines the amended provisions in detail and further studies the effect it will have on the principal legislation and how it contradicts the landmark judgment of the Supreme Court.

Keywords: GNCTD Act, 2021 amendment, federalism, LG, CM, council of ministers, special status of Delhi, Article 239AA, Supreme Court judgment.

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I. Introduction: Tracing the historical developments

THE STRUGGLE for control over the national capital has been witnessed all over the world. Governments seek authority over the national capital because it is the centre of union governance. The headquarters of various public and private offices, political, economic, and social organizations are established in the national capital, which asserts its importance for the whole

* LL.M. scholar, The Indian Law Institute, New Delhi (2020-21).

**LL.M. scholar, The Indian Law Institute, New Delhi (2020-21).

country. Since the national capital is of geopolitical significance, excellence has to be exhibited in services such as public amenities, law and order, municipal services, amongst others. It is not hard to fathom why the tussle for control over the national capital exists between the central and the local governments. In the case of Delhi, the central government's need for control over the national capital stands at odds with the demand for autonomy by the elected government.

It was in the year 1952 that the first elected legislature of Delhi was formed¹ since India got its independence. The first legislative assembly in Delhi was formed after the enactment of the Government of Part C States Act, 1951². The said Act empowered the erstwhile provinces of Chief Commissioner which became Part C States after independence, to have legislative assemblies which could make laws on all matters, except 'public order, police, constitution and powers of municipal corporations and local authorities, lands, and buildings vested in possession of Union situated in Delhi, or any offences on these subjects'³.

Delhi was accorded the status of 'Union Territory' when the States Reorganization Act, 1956, was passed and the legislative assembly of Delhi was abolished⁴. The States were governed by the Council of Ministers (*hereinafter* referred to as 'CoM') of the elected legislature and for governing the Union Territories, an 'Administrator' was appointed by the President.

Thereafter, the status of the Union Territory of Delhi was reduced to a Municipal Corporation after the Delhi Municipal Corporation Act⁵ was enacted in 1957⁶. The said Act aimed at setting up a Municipal Corporation in Delhi but failed to provide for adequate responsible governance. Exclusively to address the issue of governance and to provide a limited representative government in the national capital, The Delhi Administration Act, 1966⁷ was enacted. In order to fulfill the

¹ Delhi Assembly Election Results 1951, *available at*: <https://www.elections.in/delhi/assembly-constituencies/1951-election-results.html> (last visited on April 15, 2021).

² Dhanyata M Poovaiah, "Revisiting the journey to 29 states", *Deccan Herald*, November 1, 2018, *available at*: <https://www.deccanherald.com/special-features/revisiting-journey-29-states-701021.html> (last visited on April 15, 2021).

³ The Government of Part C States Act, 1951 (Act No. 49 of 1951).

⁴ Government of NCT of Delhi, History and Geography, *available at*: <https://knowindia.gov.in/states-uts/government-of-nct-of-delhi.php> (last visited on April 15, 2021).

⁵ The Delhi Municipal Corporation Act, 1957 (Act No. 66 of 1957).

⁶ Niranjana Sahoo, "Statehood for Delhi: Chasing a Chimera", *Observer Research Foundation*, Occasional Paper 156, *available at*: <https://www.orfonline.org/research/41571-statehood-for-delhi-chasing-a-chimera/> (last visited on April 15, 2021).

⁷ The Delhi Administration Act, 1966 (Act No. 19 of 1966).

objective of having a limited representation, this Act provided for a ‘Metropolitan Council’⁸ consisting of fifty six elected representatives and five were appointed by nomination. The Metropolitan Council was not vested with legislative powers and could only make recommendations.

The status of Delhi remained special even as a Union Territory, when the Government of Union Territories Act, 1963⁹, that provided for elected legislatures in the Union Territories, was not enacted in Delhi.

Further, committees were set up to improve the administration of Delhi. Notable among these were Prabhu committee and Balakrishnan committee. In 1975, the Prabhu committee recommended setting up ‘Delhi Metropolitan Development Authority’ for strengthening the financial and administrative authority of the elected representatives. By the year 1987, heavy inundation of people in the capital city gave rise to the demand for a representative, responsible government. The growing concerns of safeguarding the rights of people led to the setting up of the Reorganisation of Delhi Set-Up committee¹⁰ popularly known as the Balakrishnan committee. This committee comprehensively studied the set-up of the national capital, highlighted the issues of the residents related to the lack of an accountable government, which were challenging the ethos of democracy. Though the committee recognized the need for an accountable government, it also maintained that the central government’s stronghold in the national capital should be retained. This committee recommended giving the national capital a special status of a union territory with an elected legislative assembly and council of ministers. The elected government could make laws in the national capital on all matters in the state List, with an exception to legislate on the matters relating to land, police and public order. The recommendations of the Balakrishnan committee were finally given effect after the enactment of the 69th Constitutional Amendment in 1991¹¹, with the insertion of article 239AA and 239AB.

⁸ *Id.*, s. 3.

⁹ The Government of Union Territories Act, 1963 (Act No. 20 of 1963).

¹⁰ Government of India, “Report of Committee on Reorganisation of Delhi Set-Up”, (1989).

¹¹ The Constitution (Sixty ninth Amendment) Act, 1991, *available at*: <http://delhiassembly.nic.in/constitution.htm> (last visited on March 17, 2021).

II. Key provisions of GNCTD Act, 1991

Delhi's current status as a Union Territory with a Legislative Assembly is an outcome of the 69th Amendment Act, 1991¹². The Government of National Capital Territory of Delhi Act, 1991¹³ (hereinafter referred to as the 'GNCTD Act') was passed simultaneously to supplement article 239AA of the Constitution of India in matters relating to the Legislative Assembly and Council of Ministers.

The GNCTD Act primarily seeks to define the general provisions associated with the establishment of a Legislative Assembly in the National Capital Territory of Delhi. The Act is divided into five parts, which lays down rules for carrying out the legislative functions of Delhi. Part I contains the preliminary provisions. Part II (section 3 to section 37) enlists provisions related to the composition, membership, duration and disqualifications for membership of the Legislative Assembly. It also covers all the incidental matters thereto, including voting in assembly, powers and privileges of the members, procedure for lapsing of Bills, prorogation and dissolution of sessions amongst others.

On a close examination of this part, it is found that the Lieutenant Governor (*hereinafter* referred to as 'LG') has some overriding powers in case of financial bills as specified in section 22 and a financial bill cannot be introduced in the assembly without the recommendation of the LG. Further, as per section 24, after a Bill has been passed by the Legislative Assembly, it has to be presented to the LG after which, he may or may not give his assent to the Bill or reserve it for the consideration of the President. In a proviso thereafter, it is stated that some matters have to be mandatorily reserved for the consideration of the President¹⁴. This particular proviso has been

¹² The Constitution (Sixty-ninth Amendment) Act, 1991, National Portal of India, *available at*: india.gov.in/my-government/constitution-india/amendments/constitution-india-sixty-ninth-amendment-act-1991 (last visited on March 17, 2021).

¹³ The Government of NCT of Delhi Act, 1991, Legislative Department, Ministry of Law and Justice, *available at*: <https://legislative.gov.in/sites/default/files/A1992-1.pdf> (last visited on March 16, 2021).

¹⁴ Provided further that the Lieutenant Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which, —

(a) in the opinion of the Lieutenant Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill; or

(b) the President may, by order, direct to be reserved for his consideration; or

(c) relates to matters referred to in sub-section (5) of section 7 or section 19 or section 34 or sub-section (3) of section 43.

amended in 2021 and a new category has been added to the existing list (which shall be covered later in the paper).

Section 33 provides the rules of procedure. It states that the Legislative Assembly may make rules for regulating its procedure and the conduct of its business. In furtherance of this provision, the Rules of Procedure and Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi, 1997¹⁵ were enacted. There is a proviso to this clause, which says that the LG shall make rules in some matters but it requires the consultation of the Speaker and the approval of the President. Such rules are to be made for the timely completion or for regulating the procedure in the assembly regarding financial business and for prohibiting discussions on matters which affect the carrying out of his duties as an LG under this Act. As we can see, primarily the powers lie with the Legislative Assembly which is the elected government of Delhi and not with the LG who has very restricted powers in this regard. This is one of the sections which has been amended in 2021 (which shall be elaborated later in the paper).

Part III (sections 38 to 40) deals with the elections to the Legislative Assembly and delimitation of constituencies. Part IV (sections 41 to 45) provides for provisions related to the LG and the Council of Ministers. This is the part wherein the powers and discretion of LG and CoM have been demarcated.

Section 41 is the most important provision which provides for wide discretionary powers that have been granted to the LG. This includes matters that fall outside the ambit of powers allocated to the Legislative Assembly but this discretion can only be exercised if powers with regard to such a matter have been specifically delegated to him by the President. He may also exercise his discretion to carry out judicial or quasi-judicial functions and if there is a question regarding what these matters may include, the decision of the LG shall be final. This section also lays down that if there is a question regarding his exercise of discretion under any law, the LG's decision would be final in that regard. As we can see, while discretionary powers have been provided to the LG, they are bound within specific areas.

¹⁵ Legislative Assembly of National Capital Territory of Delhi Rules of Procedure and Conduct of Business (Second Edition, 2002).

Section 44 provides that the President shall allocate the business to the CoM and also delineate the business wherein the LG has to act upon the aid and advice of the CoM. Further, the President shall also make rules for smooth transaction of business with the Ministers which would also include the difference of opinion between the LG and the CoM. Thereafter, clause (2) provides that all the executive decisions shall be taken in the name of the LG. Here the executive actions are inclusive of all actions, irrespective of seeking advice of the Council of Ministers. After the amendment, a proviso has been added to this clause which changes the original nature of power that was granted here (it shall be discussed later).

Part V (sections 46 to 56) contains miscellaneous and transitional provisions dealing with Consolidated Fund, Public Account, Contingency Fund amongst others. Section 49 provides that the LG and the CoM are under the general control of the President and are required to comply with the directions issued by him. Section 54 is a safeguard which provides that every rule made by the LG under this Act shall be laid before the Legislative Assembly.

III. Judicial discourse in the matter of governance structure of Delhi

There has been a disaccord between the Aam Aadmi Party (AAP) government and the LG mostly because of the ambiguities that exist in article 239AA. From 2015 to 2018, the AAP government was in continuous conflict with the Centre over policy decisions and the powers of the LG *vis-à-vis* the elected government. The issue revolved around the administrative powers of the LG of Delhi in light of the special status of Delhi as a Union Territory under article 239AA of the Constitution of India.

This dispute was taken to the Delhi High Court and then to the Supreme Court, to determine the ambit of powers of the LG and the elected government of Delhi. For a comment on the latest amendment, we need to trace the developments of these cases as the amendment goes against the Supreme Court's decision.

Delhi High Court judgment¹⁶

A notification was issued by the Union government in 2015, which overruled a notification of 1998, which mandated that the LG has to consult the Chief Minister on matters of public order, police and services. Instead, the 2015 notification allowed the LG to take all such decisions entirely by himself¹⁷.

The court held the notification to be valid in law and further upheld the administrative powers of the LG in matters of “services” which did not fall under the bracket of matters reserved for the Centre (public order, land, and police).

This judgment is particularly important because “services” include a wide range of cadres in the Delhi administration, the All-India services, the central Services, DANICS (Delhi, Andaman and Nicobar Island services), Indian Post and Telecommunication Finance Service and other services. If we go by this judgment, it would mean that the Delhi government cannot issue any orders with regard to these employees without the concurrence of the LG¹⁸.

It is important to note here that article 239AA was inserted in addition to article 239 and it provided for an elected government. As per article 239, the administrator can exercise his functions independent of the CoM which is evidently different from the wording of article 239AA. This clearly shows the intention of the legislature to provide for representative democracy in the union territory of Delhi. This is precisely what makes the National Capital Territory of Delhi different from the other union territories like Andaman and Nicobar Islands and Ladakh which do not have the privilege of an elected government. The LG is supposed to play different roles in these two distinct categories of union territories as clearly specified under Part VIII of the Constitution. This judgment, however, blurred the lines between a union territory under the administration of an LG

¹⁶ *Government of National Capital Territory of Delhi v. Union of India* 232 (2016) DLT 196.

¹⁷ Satya Prakash, “Centre's notification effectively makes Delhi govt powerless”, *Hindustan Times*, May 24, 2015, available at: <https://www.hindustantimes.com/delhi/centre-s-notification-effectively-makes-delhi-govt-powerless/story-UxLh3gwnAtvSWc9dOnIjJL.html> (last visited on April 26, 2021).

¹⁸ Lt Governor Najeeb Jung summarily overruled the suspension of two DANICS officers who refused to obey an order from the cabinet on the grounds that they had been asked to obey instructions only from the L-G's office. This judgement has, in a way, tried to override the order of the Chief Minister.

and a union territory which has its own elected representatives in the government and the LG has limited powers.

The larger question raised before the Delhi High Court was whether Delhi is a Union Territory with the Lieutenant Governor as its sole administrator or is it a Special State with the LG bound by the 'aid and advice' of the elected government's CoM ?

The court in its decision in 2016, held that the LG is not bound by the aid and advice of the CoM because even though Delhi has a legislative assembly, it is not a State and "it continues to be a Union Territory".

Supreme Court decision

The decision of the Delhi High Court didn't seem to go well with the elected government of Delhi as it subverted the authority of the elected representatives and thus the decision of the Delhi High Court was further challenged before the Supreme Court of India. A five-judge Constitution Bench of the Supreme Court of India delivered a landmark judgment in the case of *State (NCT of Delhi) v. Union of India*¹⁹, wherein the judges unanimously upheld the authority of the elected legislators, declaring the Chief minister as the executive head of the government.

The supreme court in this judgment overruled the decision of the Delhi high court which stated that the LG is the executive head of the Government of National Capital Territory of Delhi. The five-judge Constitution bench of the Supreme Court comprised of the then Chief Justice Dipak Mishra, Justice A.K Sikri, Justice A.M Khanwilkar, Justice Ashok Bhushan and Justice D.Y Chandrachud. Justice Dipak Mishra gave the majority judgment whereas, Justice Bhushan and Justice Chandrachud gave separate concurring judgments. The judgment addressed a few pertinent questions which elucidated the relationship between the LG and the elected legislature/ CoM of Delhi in light of the federal structure of the Constitution of India.

On the question of the status of Delhi, whether it is a state or does it fall in some other category, the bench had concurring opinions. The judgment made it clear that Delhi cannot be considered a

¹⁹ (2018) 8 SCC 501.

State. The apex court referred to the five-judge bench decision in *NDMC v. State of Punjab*²⁰, as a binding precedent which stated that:

[In] the year 1991, the Constitution did provide for a legislature for the Union Territory of Delhi (National Capital Territory of Delhi) by the Sixty-Ninth (Amendment) Act (Article 239-AA) but even here the legislature so created was not a full-fledged legislature nor did it have the effect of – assuming that it could – lift the National Capital Territory of Delhi from Union Territory category to the category of States within the meaning of Chapter I of Part XI of the Constitution.

To clarify the status of Delhi as a State or a Union territory, it was imperative to ascertain the extent of the powers of the LG. If Delhi was to be accorded the status of a state, then the authority would lie with the elected State Legislature in regard to the matters listed in the State List, which would in turn provide reasonable autonomy to the elected government. If Delhi was to be accorded the status of a Union Territory like any other, then it's the Union government that would become all powerful, and the extent of powers of the Lieutenant Governor would significantly increase. The apex court in its judgment established that Delhi has a '*sui generis*' status and 'it is a class by itself', thus, not falling under the category of a State or an ordinary Union Territory.

Another important question that the court addressed in this judgment was whether the LG who was the administrative head of Delhi, was obligated to adhere to the advice of the CoM. J. Dipak Mishra writing the majority judgment stated that the Governor has no 'independent decision-making power' when it comes to matters listed in the state list and he is bound to act on the advice of the CoM.

On the question of what kind of matters can be referred by the LG to the President, the apex court said that 'any matter employed in the proviso to clause (4) of article 239AA cannot be inferred to mean every matter'. The court further clarified that the power of LG to refer a matter to the President shall be used in exceptional circumstances only. Further emphasizing upon the values of constitutional trust, collaborative federalism, and constitutional balance, the court said that a

²⁰ (1997) 7 SCC 339.

disagreement between the LG and CoM on a certain matter shall be backed by sound reasoning and not merely to create hurdles in the working of the state assembly.

The apex court in its judgment also put to rest all speculation about if the LG just needs to be informed of the decisions of the CoM or if his concurrence is necessary. The court said that though it is of utmost importance to inform the LG so as to keep the Central government apprised of the developments in the national capital, it was not necessary to receive consent or concurrence of the LG.

IV. Government of National Capital Territory of Delhi (Amendment) Act, 2021

If we look at the provisions of the GNCTD Act, 1991, there is a significant interface between the President and the LG in matters of administration of Delhi. The LG has to seek the prior recommendation of the President before introducing a financial bill. The LG can also withhold his assent to a Bill that has been passed by the state legislative assembly and then reserve such Bill for the consideration of the President.

If there are matters which fall outside the ambit and power of the legislative assembly, the LG is allowed to exercise his discretion or act in exercise of his judicial or quasi-judicial functions if that matter is delegated to him by the President. The President frames the rules for Conduct of Business in the NCT of Delhi. Section 49 is a non-obstante clause that subjects the LG and the CoM to the general control of the President.

The Supreme Court had analysed the Transaction of Business Rules and held that the LG is to be kept informed of government business. The CoM has no discretion in this regard and they are obligated to keep the LG informed of the affairs and the administration of NCT of Delhi at every step and this forms a necessary element of the constitutional authority that has been provided to the LG.

President Ram Nath Kovind gave his assent²¹ to the Government of National Capital Territory of Delhi (Amendment) Bill, 2021²², (hereinafter “GNCTD Bill”) on March 28, 2021 and the Government of National Capital Territory of Delhi (Amendment) Act, 2021²³ came into force on April 27, 2021.

The Bill was introduced on March 15, 2021 in the Lok Sabha²⁴ to amend the provisions of the Government of NCT of Delhi (“GNCTD”) Act, 1991 which was enacted to “supplement provisions of the Constitution relating to the Legislative Assembly and a CoM for the National Capital Territory of Delhi.”

The amendment Act vests more power in the hands of Delhi’s LG. It accords primacy to the national capital’s LG over the elected government. The Act amends certain powers and responsibilities of the Legislative Assembly and the Lieutenant Governor.

Detailed analysis of the GNCTD (Amendment Act), 2021

While floating the Bill in the House, it was stated by Union Minister of States for Home Affairs G. Kishan Reddy that the Bill would remove the technical barriers associated with the day-to-day administration of Delhi²⁵. He said, “This will increase administrative efficiency of Delhi and will ensure better relationship between executive and the legislature.”²⁶

The Bill amends four sections of the principal GNCTD Act, 1991:

²¹ “President Kovind clears NCT bill; Delhi L-G gets sweeping powers over city govt.”, *Business Today*, March 29, 2021, available at: <https://www.businesstoday.in/current/economy-politics/president-kovind-clears-nct-bill-delhi-l-g-gets-sweeping-powers-over-city-govt/story/435147.html> (last visited on March 30, 2021).

²² The Government of National Capital Territory of Delhi (Amendment) Bill, 2021, PRS Legislative Research, available at: <https://prsindia.org/billtrack/the-government-of-national-capital-territory-of-delhi-amendment-bill-2021> (last visited on March 30, 2021).

²³ The Government of National Capital Territory of Delhi (Amendment) Act, 2021 (No. 15 of 2021).

²⁴ Neeraj Chauhan, “Parliament session: Centre introduces Bill to give more powers to Delhi L-G”, *Hindustan Times*, March 15, 2021, available at: <https://www.hindustantimes.com/india-news/parliament-session-centre-introduces-bill-to-give-more-powers-to-delhi-lg-101615807370435.html> (last visited on March 30, 2021).

²⁵ Special Correspondent, “Lok Sabha passes Bill that seeks to clarify that ‘Govt.’ in Delhi means ‘L-G’”, March 22, 2021, available at: <https://www.thehindu.com/news/national/parliament-proceedings-lok-sabha-passes-bill-that-seeks-to-clarify-that-govt-in-delhi-means-l-g/article34133064.ece> (last visited on March 23, 2021).

²⁶ G Kishan Reddy, “Amendments to NCT Act clarify LG’s role in Delhi, will lead to greater cooperation between Centre and UT”, *Indian Express*, March 31, 2021, available at: <https://indianexpress.com/article/opinion/columns/national-capital-territory-act-arvind-kejriwal-delhi-lieutenant-governor-powers-7251917/> (last visited on April 1, 2021).

1) Section 21

[In] section 21 of the Government of National Capital Territory of Delhi Act, 1991 (hereinafter referred to as the principal Act), after sub-section (2), the following sub-section shall be inserted, namely: —

(3) The expression “Government” referred to in any law to be made by the Legislative Assembly shall mean the Lieutenant Governor.

It has been claimed in the Statement of Objects and Reasons that the Bill, seeks to clarify the expression “Government”, which in the context of legislations to be passed by the Legislative Assembly of Delhi, 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.

This essentially gives effect to former LG Najeeb Jung’s assertion in 2015 that “Government means the Lieutenant Governor of the NCT of Delhi appointed by the President under article 239 and designated as such under article 239AA of the Constitution of India”²⁷.

2) Section 24

[In] section 24 of the principal Act, in the second proviso, —

i) in clause (c), for the word and figures “section 43.”, the words and figures “section 43; or” shall be substituted;

ii) after clause (c), the following clause shall be inserted, namely: —

(d) incidentally covers any of the matters which falls outside the purview of the powers conferred on the Legislative Assembly.

This is a proviso which says that the LG shall not assent to Bills falling under the following categories, but shall mandatorily reserve for the consideration of the President. In these categories,

²⁷ Sourav Roy Barman, Mallica Joshi “Explained: Centre versus state in Delhi – what is the latest issue?”, *Indian Express*, March 17, 2021, available at: <https://indianexpress.com/article/explained/national-capital-territory-of-delhi-bill-2021-lieutenant-governor-arvind-kejriwal-7229925/> (last visited on March 18, 2021).

they have added another category- any Bill which “incidentally falls outside the purview of the Legislative Assembly”.

As per article 239AA (3)(a), the legislative assembly of Delhi has the power to make laws for the National Capital Territory with regard to the matters enlisted in the State List or the Concurrent List except public order, police and land²⁸. After this amendment, now, even if a matter ‘incidentally’ touches upon public order, police or land, such a Bill will have to be reserved for the consideration of the President. This has considerably increased the ambit of the matters which can be reserved for the President’s approval.

3) Section 33

[In] section 33 of the principal Act, in sub-section (1), —

(a) after the words “conduct of its business”, the words “which shall not be inconsistent with the Rules of Procedure and Conduct of Business in House of People” shall be inserted;

(b) in the proviso, for the words “Provided that”, the following shall be substituted, namely: —

Provided that the Legislative Assembly shall not make any rule to enable itself or its Committees to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to the administrative decisions, and any of the rule made in contravention of this proviso, before the commencement of the Government of National Capital Territory of Delhi (Amendment) Act, 2021, shall be void.

This third amendment bars the Assembly or its committees from making rules to take up matters concerning day-to-day administration. This provision has been inserted with the claim that it will remove technical ambiguities in the daily functioning of administration and will promote harmonious relations between the legislature and the executive²⁹. But in essence, it takes away the

²⁸ Entries 1, 2 and 18 of the State List and entries 64, 65 and 66 of the list as far as they relate to the said entries.

²⁹ As stated in the Objects and Reasons.

autonomy of the elected Delhi government³⁰. Not only that, due to its retrospective application, it makes all such inquiries and rules framed, thereunder, void.

This is of particular significance because Delhi's Legislative Assembly has 70 members out of which 62 belong to AAP. They have multiple committees examining matters from Delhi riots to the environment which have been established in compliance with the provisions of Rules of Procedure and Conduct of Business which were drafted to give effect to section 33 of the GNCTD Act, 1991 (as mentioned in the previous section). This amendment has made the application of the new law retrospective, bringing into question the status of the ongoing inquiries and the rules framed by these committees.

4) Section 44

[In] section 44 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely: —

Provided 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, as the case may be, under any law in force in the Capital, 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.

Section 44 of the Act deals with the conduct of business (as mentioned in the previous section) and clause (2) only provides that the executive decisions have to be carried under the name of the LG. The amendment substantially affects the intent with which this section was drafted. Clause (2) was only supposed to authorize an executive action and was not meant to act as a screening procedure before the executive action is carried out, which the amendment now seeks to do. Also, there is no structural mechanism provided in the Act for effective time-bound implementation of the said section.

³⁰ Apoorva Mandhani, "It's Centre vs AAP govt in Delhi again and this new bill is at the crux of it" *The Print*, March 20, 2021, available at: <https://theprint.in/judiciary/its-centre-vs-aap-govt-in-delhi-again-and-this-new-bill-is-at-the-crux-of-it/624856/> (last visited on March 23, 2021).

With this amendment, any executive action can be specified by the LG (by a general or special order) to be subject to the LG's opinion and the LG can refer such matter for the President's decision. There is no clarity as to what proposal or matters are required to be submitted to LG before issuing an order thereon. And meanwhile, the LG shall be competent to take immediate action where the matter in his opinion seems urgent and he deems the action necessary. Basically, the LG's opinion shall be obtained before the government takes any executive action based on the decisions taken by the Cabinet or any individual Minister³¹.

The amendment of this provision is problematic because it entails that any executive action can now be subject to the opinion of the LG. It gives unbridled powers to the LG to decide the matters on which he would want to give his opinion.

However, this was not the intent of the 2018 judgment which clearly stated that the elected government of Delhi shall have supremacy over the executive decisions. The 2018 judgment had emphasized on the principles of collaborative federalism and constitutional morality which form the basis of the special status of Delhi. As per the federal structure of our country, the legislative powers are co-extensive with the executive powers and hence the elected representatives of Delhi are entitled to execute policies on matters in which they have powers to legislate. It was also laid down that with regard to the difference of opinion of the LG, 'any matter' does not mean every matter and the difference has to be substantial. The LG can only differ in matters of public order, police and land and in all other matters, the aid and advice of the Council of Ministers are binding on the LG.

The amended provision is crafted in a way that goes against the 2018 judgment of the Supreme Court which had clearly defined the boundaries of the role of the LG as a titular head only. It rather seems like an attempt to surpass the decision of the SC which had particularly emphasized the importance of Delhi's elected government in carrying out executive decisions, without any external influence.

³¹ Outlook Web Bureau, "Rajya Sabha Passes Delhi Bill Empowering Lt Governor Amid Walkout" *Outlook*, March 24, 2021, available at: <https://www.outlookindia.com/website/story/india-news-rajya-sabha-passes-new-bill-on-delhi-lg-amid-opposition-leaders-staging-a-walkout/378197> (last visited on March 26, 2021).

The amendment of section 44 in particular, goes against the federal scheme of our country. It also goes against the letter and spirit of article 239AA and the provisions created under the GNCTD Act, 1991. Moreover, it is detrimental to the federal framework of our country.

V. Conclusion

The Constitution Bench of the Hon'ble Supreme Court, in its 2018 judgment³², and Division Bench of the Hon'ble Supreme Court, in its 2019 judgment³³, has interpreted the provisions of article 239AA of the Constitution relating to the structure of governance in National Capital Territory of Delhi and defined the specific role that the LG has to play.

The Supreme Court verdict of 2018 enabled the elected government to not seek approval of the LG on all executive matters or before the implementation of any decision. The AAP government had more liberty to take policy decisions like providing free electricity to those using less than 200 units, free bus rides for women and doorstep delivery of ration. The LG was to be kept in the loop regarding all administrative decisions but not necessarily before implementing or executing any decision. This amendment will now force the elected government to take the LG's advice before taking any action on any cabinet decision. The Supreme Court had categorically pointed out that the LG "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". The clear message of the court was that Delhi's LG is just an administrator and is bound by the aid and advice of the Council of Ministers.

The essence of Indian federalism lies in the idea that an autonomous, decentralized, elected government can understand the needs of the people at the ground level better. Thus, providing them with better representation would pave the way for efficient governance. The union government by bringing in an amendment like this is trying to steer clear of the established federal structure wherein the powers of the elected government are being snatched away and reposed in the union government. It will be severely detrimental to the citizens' yearning for having a democratic government and the faith that they place in the democratic system of our country.

³² *Supra* note 19.

³³ *State (NCT of Delhi) v. Union of India* (2020) 12 SCC 259.

The GNCTD Bill, 2021 should have been referred to a Select Committee and consensus should have been developed as that would have been in line with the ideals of federalism and the principles of constitutional objectivity. No such procedure was followed and the bill was passed in a hasty manner within a span of two weeks despite heavy opposition from the Aam Aadmi Party.

As highlighted in the previous sections of the paper, the amendment fundamentally alters the intention of the legislature with which the GNCTD Act, 1991 was enacted. This amendment substantially takes away the autonomy of the elected government of Delhi and negates the ideals of cooperative federalism. Petitions have been filed to declare the amendment unconstitutional in the Delhi High Court³⁴ and the court has issued notices to the Law Ministry and the Delhi government seeking their stand on the same³⁵. Perhaps, the courts should examine the constitutional validity of amendment act and weigh its amended provisions in the light of the 2018 judgment of the Supreme Court.

³⁴ Sofi Ahsan, “Delhi HC issues notice to Centre on Act giving primacy to L-G in Delhi”, *Indian Express*, May 4, 2021, available at: <https://indianexpress.com/article/cities/delhi/delhi-hc-notice-centre-gnctd-act-l-g-delhi-7301562/> (last visited on May 28, 2021).

³⁵ PTI, “Plea against GNCTD Act: High Court seeks stand of Centre, Delhi government”, *Indian Express*, May 24, 2021, available at: <https://indianexpress.com/article/cities/delhi/plea-against-gnctd-act-delhi-high-court-7327803/> (last visited on May 28, 2021).