



Tussle Over Delhi Services Ordinance

This editorial is based on [Manifestly arbitrary, clearly unconstitutional](#) which was published in The Hindu on 29/06/2023. It talks about issues related to the promulgation of Delhi services ordinance.

For Prelims: [President](#), [Federalism](#), [Parliament](#), [Supreme Court's](#), [Basic Feature of the Constitution](#), [National Capital Territory \(NCT\) of Delhi](#), [Article 239AA](#)

For Mains: [Issues with Promulgation of Ordinance](#), [Challenges of Cooperative Federalism](#)

The [Government of National Capital Territory of Delhi \(Amendment\) Ordinance, 2023](#) was promulgated by the [President](#) in May 2023 to provide for a comprehensive scheme of **administration of services** in Delhi.

The ordinance **came after** the **Supreme Court** handed over the control of services in Delhi, excluding **police, public order and land**, to the elected government. The **ordinance seeks to set up a National Capital Civil Service Authority (NCCSA)** for the **transfer of and disciplinary proceedings** against **Group-A officers** from services in the [National Capital Territory \(NCT\) of Delhi](#).

The issuance of the Ordinance **empowers the Lieutenant Governor of Delhi** with control over services, thereby **challenging the elected government's authority** in matters of officials' transfer and posting. This development **raises significant constitutional apprehensions** regarding the delicate balance of power between the elected government and the Lieutenant Governor.

What are the Issues with the Ordinance?

- **Issue of “Triple Chain of Accountability”:**
 - In May 2023, the Supreme Court explicitly recognised this by formulating the concept of the “triple chain of accountability”.
 - The triple chain of accountability is integral to representative democracy and proceeds as follows:
 - Civil servants are accountable to the cabinet.
 - The cabinet is accountable to the legislature, or the Legislative Assembly.
 - The Legislative Assembly is (periodically) accountable to the electorate.
 - Any action that severs this “triple chain of accountability” fundamentally undermines the core constitutional principle of representative government, which is at the bedrock of our democracy.
- **Power Struggle:**
 - The ordinance has **led to a power struggle between the elected government and the Lieutenant Governor**.
 - The elected government claims that the ordinance **undermines their authority and violates** the Constitution.

- The Lieutenant Governor argues that **the ordinance is necessary to ensure proper governance** in Delhi.
- **Issues with Provisions of the Ordinance:**
 - The ordinance gives the Lieutenant Governor the power to make appointments to key bureaucratic positions in Delhi.
 - It also gives the **Lieutenant Governor the power to transfer and post officials, which was previously the sole responsibility of the elected government.**
 - The ordinance also states that in case of any difference of opinion between the Lieutenant Governor and the elected government, the former's opinion will prevail.
- **Constitutional Issues:**
 - The elected government claims that the **ordinance violates the Constitution, which gives them the power to make appointments** and transfer officials.
 - The Lieutenant Governor's increased powers are a violation of the **principle of federalism**, which is enshrined in the Constitution.
- **Governance Issue:**
 - The ordinance has **created confusion and uncertainty among the civil service officers** working in Delhi government departments. The ordinance has also **affected the delivery of public services and welfare** schemes in Delhi.

What are the Possible Consequences of the Ordinance?

- It may **create a constitutional crisis and a power tussle** between the Centre and the Delhi government over the control of civil services in the national capital.
- It may **undermine the autonomy and democracy** of the Delhi government and the will of the people who elected it.
- It may **hamper the effective administration and governance** of Delhi, as the civil service officers may face uncertainty and confusion over their roles and responsibilities.
- It may **invite legal challenges and judicial scrutiny**, as the ordinance seems to violate the Supreme Court's judgment and **Article 239AA** of the Constitution.

What are Various Arguments Related to the Ordinance?

- **Argument in Favour of the Delhi Services Ordinance:**
 - **Balancing of Interests:**
 - The ordinance is **necessary to balance the local and national interests** of the people of Delhi **with the democratic will** of the entire nation reflected through the President of India.
 - The ordinance **ensures that the Centre has a say in the administration of services** in the national capital, which is vital for maintaining public order, security and development.
 - The ordinance **also respects the role of the elected Delhi government by giving it representation in the National Capital Civil Services Authority (NCCSA)** which will decide on service-related matters by majority vote.
 - **Constitutional Validity:**
 - The ordinance is **in line with Article 239AA of the Constitution**, which **gives special status** to Delhi as a Union Territory with a legislative assembly and allows **Parliament to make laws on matters that are normally within the exclusive domain of the States**, such as services.
 - The ordinance **does not violate the Supreme Court's judgment**, which only held that the Delhi government has legislative and executive powers over services but **did not bar Parliament from making laws on the same subject.**
 - The ordinance is **also consistent with Article 239AB of the Constitution**, which **empowers the President to make regulations for peace, progress and good government** of Delhi.
 - **Scope of Review:**
 - The ordinance is **within the scope of review of the Supreme Court's** judgment, which **may have overlooked some aspects of Delhi's unique constitutional position** as the national capital and the role of the Lieutenant Governor as an agent of the Centre.

- The ordinance **seeks to clarify and streamline the scheme of administration** of services in Delhi, which has been a source of conflict and confusion for a long time.
- The ordinance **also provides an opportunity for the Supreme Court to reconsider its judgment and address any errors** or anomalies that may have crept in.
- **Argument Against the Delhi Services Ordinance:**
 - **Undermining of Democracy:**
 - The ordinance **undermines the principles of representative democracy** and responsible governance, which are the pillars of India's constitutional order.
 - The ordinance **takes away the control of services** from the elected Delhi government, **which has a clear mandate from the people** of Delhi to legislate and administer on their behalf.
 - The ordinance **also reduces the role of the Chief Minister and the council of ministers** to a rubber stamp, as **they can be overruled** by two bureaucrats in the NCCSA, who are ultimately accountable to the Lieutenant Governor and the Centre.
 - **Constitutional Violation:**
 - The ordinance **violates and nullifies the Supreme Court's judgment**, which held that the Delhi government has legislative and executive **powers over services** in the national capital, except matters relating to public order, police and land.
 - The ordinance **also violates Article 239AA** of the Constitution, which gives special status to Delhi as a Union Territory with a legislative assembly and **envisages a harmonious relationship** between the Centre and the Delhi government.
 - The ordinance **also violates the principle of federalism**, which is a **basic feature of the Constitution**, and encroaches upon the domain of the States.

What is the Issue with the Current Governance Model of Delhi?

- **Erosion of Democratic Mandate:**
 - The Lieutenant Governor (LG), who has the **final say in governance**, does not have to respect the laws or directions of the assembly, which represents the will of the people of Delhi.
- **Violation of Executive Responsibility:**
 - The LG, who is the chief executive, **does not have to answer to the assembly**, which goes against the principle of executive responsibility.
- **Infringement of Legislative Privilege:**
 - The **assembly has the right to make its own rules** for its functioning, which is a part of its legislative privilege.
- **Obstruction of Decision-Making:**
 - The need for LG's consent for many decisions has **caused delays in decision-making**, which has affected the development and governance of the city.
- **Ambiguity of Accountability:**
 - The split of duties between the elected government and the Lieutenant Governor has created problems in **assigning responsibility for actions and decisions**.
- **Contradiction of Cooperative Federalism:**
 - The Act not only **opposes cooperative federalism** but also **reverses the fundamental principles** laid down by the Supreme Court in Government of NCT Delhi vs Union of India case (2018).

What are the Important Judgments Regarding the Ordinance?

- **R.C. Cooper v. Union of India (1970):**
 - The Supreme Court held that the **President's satisfaction regarding the necessity of an ordinance is not immune** from **judicial review** and can be challenged.
 - The Court also held that an **ordinance is subject to the same constitutional limitations as an Act of Parliament** and **cannot violate any fundamental rights** or other provisions of the Constitution.

- **A.K. Roy v. Union of India (1982):**
 - This case challenged an ordinance that allowed preventive detention of people for up to one year without trial.
 - The Supreme Court **upheld the ordinance but gave some rules for its use**, such as regular review by a board, telling the reasons for detention to the person, and giving a chance to oppose detention.
 - The Court also **observed that an ordinance should not be used as a substitute for parliamentary legislation** and should be resorted to only in cases of extreme urgency or unforeseen emergency.
- **D.C. Wadhwa v. State of Bihar (1987):**
 - This case challenged many ordinances issued by the **Governor** of Bihar from 1967 to 1981 on different topics, some of which were made again and again without being shown to the state legislature.
 - The Supreme Court **struck down all the ordinances as unconstitutional and held that re-promulgation of ordinances is a fraud on the Constitution and a subversion of the democratic legislative process.**
 - The Court also held that an **ordinance lapses automatically if it is not approved by the legislature within six weeks** of its reassembly and cannot be continued by repromulgation.

What Should be the Way Forward?

- **Expert Committee Formation:**
 - An expert committee **comprising legal, constitutional, and administrative experts can be formed** to provide recommendations on resolving the issue.
 - This committee should **thoroughly analyze the legal and administrative aspects, review precedents**, and propose **practical solutions** that uphold democratic principles and maintain the delicate balance of power between the central government and the elected government of Delhi.
- **Dialogue and Negotiation:**
 - Engaging in **meaningful dialogue and negotiation** between the central government and the Delhi government is **crucial** for resolving the issue.
 - Both **parties should come together to discuss their respective concerns** and interests, seeking a **mutually agreeable solution** that respects the democratic principles and the unique status of Delhi as the national capital.
- **Respect for Constitutional Principles:**
 - Throughout the resolution process, it is vital for all stakeholders to demonstrate a commitment for upholding constitutional principles, including **democratic governance, separation of powers**, and the rights of elected representatives.
 - Respecting the constitutional framework will **provide a solid foundation for resolving the issue** in a fair and transparent manner.

Drishti Mains Question:

The Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 has been a subject of controversy and litigation. Critically examine the constitutional and administrative implications of the ordinance for the governance of Delhi.

UPSC Civil Services Examination Previous Year's Question (PYQs)

Mains:

Q. Resorting to ordinances has always raised concern on violation of the spirit of separation of powers

doctrine. While noting the rationales justifying the power to promulgate ordinances, analyze whether the decision of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate the ordinances be repealed? **(2015)**

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