



Supreme Court's Ruling on Chief Secretary's Tenure

This editorial is based on [“Judicial contradiction in Delhi Chief Secretary’s extension”](#) which was published in The Hindu on 18/01/2024. The article explores uncertainties in the administration of the National Capital Territory (NCT) of Delhi due to conflicts between the central government and the Delhi government.

For Prelims: [President](#), [Federalism](#), [Parliament](#), [Supreme Court’s](#), [Basic Feature of the Constitution](#), [National Capital Territory \(NCT\) of Delhi](#), [Article 239AA](#), [Government of National Capital Territory of Delhi \(Amendment\) Act, 2023](#)

For Mains: All India Services (Death-cum-Retirement Benefits) Rules, 1958, Issues in Federal Structure.

[National Capital Territory of Delhi \(NCT of Delhi\)](#) is unique as it is also the seat of the central government along with the government of Delhi. Special provisions are made to ensure cooperation and coordination between the elected government of Delhi and the central government. The [Lieutenant Governor \(LG\)](#) is the constitutional head of the NCT of Delhi and represents the [President of India](#) in the territory.

Certain subjects, such as police, public order, and land, fall under the jurisdiction of the Lieutenant Governor and the central government rather than the elected government of Delhi. The distribution of powers and responsibilities between the elected government and the Lieutenant Governor has been a subject of constitutional and political debate. The present conflict relates to extension of the tenure of Chief Secretary of Delhi.

What is the Ongoing Tussle vis-a-vis the Administration of NCT of Delhi ?

▪ Notification of 2015:

- The 2015 Notification of central government added Entry 41 to the list of exceptions under [Article 239 AA\(3\(a\)\)](#) and granted the LG of Delhi the authority to deal in matters connected with services, public order, police and land in which he can consult the Chief Minister.
 - The notification said that the Government of NCT of Delhi cannot make laws for Entry 41 - "Services" as it is outside the purview of the legislative assembly of NCT of Delhi, which was upheld by the High Court of Delhi in 2016.

▪ Supreme Court’s Invalidation:

- [SC’s](#) constitution bench decided in the case of **Government of NCT of Delhi v. Union of India (2023)** that NCT of Delhi has legislative and executive power over administrative services in the National Capital, excluding matters relating to public order, police and land and the LG shall be bound by the decision of Delhi Government in such matters.
- **Triple Chain of Accountability:**

- In the above judgement, the SC explicitly recognised 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.
- **Central Government’s Response Post Invalidation:**
 - The Central Government henceforth promulgated the Government of NCT of Delhi (Amendment) Ordinance overruling the Apex Court’s verdict.
 - The Delhi Government had approached the SC challenging the Ordinance, who referred the matter to a Constitution Bench for adjudication.
 - While the matter was still pending with the Constitution Bench, Government of **National Capital Territory of Delhi (Amendment) Act, 2023** was enacted by the **Parliament**, granting overriding powers to centre vis-a-vis administration in Delhi.
 - **Extension of tenure of Chief Secretary of Delhi by six months** is one such exercise of the power by the central government.

What is the Government of NCT of Delhi (Amendment) Act, 2023?

- **Establishment of NCCSA:** The Act seeks to establish a permanent authority named "National Capital Civil Service Authority" to take decisions with respect to the postings and control of civil servants.
 - NCCSA shall consist of the Chief Minister of Delhi (as its head), the Chief Secretary and the Principal Secretary (both from the Government of NCT of Delhi).
 - Its role is to make recommendations to the LG regarding transfers and postings of all Group 'A' officers serving in the affairs of the Government of NCT of Delhi barring officers handling matters related to public order, land and police.
- **Section 45D:** Modification of Section 45D of the aforementioned Ordinance gives power to the Centre regarding the appointments to statutory commissions and tribunals in Delhi.
 - Section 45D suggests that any authority, board, commission or any statutory body, or any office bearer or member thereof, constituted or appointed by or under any law for the time being in force, in and for the NCT of Delhi, shall be constituted, appointed or nominated by the President.
 - The act gives the final authority to LG; in case of any difference of opinion, LG's decision will prevail.
- **Bypassing Ministers of NCT of Delhi:** The new Act allows department secretaries to take matters to LG, Chief Minister and Chief Secretary without consulting the concerned minister.
- **In relation to bodies created under the Delhi Assembly Laws:** NCCSA shall recommend a panel of suitable persons for constitution or appointment or nomination by the LG, in accordance with the provisions of section 45H.

What are the Issues with respect to Government of NCT of Delhi Act, 2023?

- **Undermining of Democracy:**
 - The Act undermines the principles of **representative democracy** and responsible governance, which are the pillars of India’s constitutional order.
 - It 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.
 - It 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:**
 - This Act violates and nullifies the SC’s judgement, 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.

- It also runs counter to the provisions of 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 Act also violates the principle of federalism, which is a [basic feature of the Constitution](#), and encroaches upon the domain of the States.

What are the Different Concerns in Recent Supreme Court Judgement?

- **Loss of Constitutional Logic and Past Wisdom:**
 - The Court's decision to allow the unilateral extension of the Chief Secretary's tenure not only deviates from constitutional logic but also contradicts its past wisdom, eroding the value attributed to constitutional interpretation.
 - This departure raises concerns about the Court's evolving stance on constitutional matters.
- **Selective Application of Rules for Chief Secretary:**
 - The Court, in its order, exempted the Chief Secretary from rules requiring the government's recommendation for tenure extension.
 - This departure from established norms raises questions about the Court's consistency and adherence to constitutional logic.
- **Conflict of Interest Allegations and Tenure Extension Criteria:**
 - The Chief Secretary, facing conflict of interest allegations, challenges the criteria for tenure extension: "full justification" and "public interest."
 - With the government losing confidence in him, the Court's failure to address these concerns raises doubts about the extension's legitimacy.
- **Role of Chief Secretary and Evading Precedents:**
 - The Court's recent order contradicts its earlier stance on the Chief Secretary's role, as outlined in the **Royappa case, 1974**.
 - In Royappa, the Court had held that the post of the Chief Secretary is a post of great confidence, as he is the "lynchpin in the administration", necessitating a rapport between him and the Chief Minister.
 - While the Court initially evades applying its own stance as given in the Royappa case, it later selectively incorporates its observations, resulting in a flawed interpretation of the law.
- **Misinterpretation of Delhi Government's Position on Appointment:**
 - The Court presumes that the Delhi government desires a total withdrawal of the Union Government's authority in appointing the Chief Secretary.
 - However, in actuality, the government advocates for a joint appointment procedure, contesting the Court's interpretation.
- **Breakage of Accountability Chain in Governance:**
 - The Court's failure to recognize the breakdown in accountability when the Chief Secretary loses the government's confidence perpetuates distrust in governance matters.
 - This oversight contradicts the Court's earlier emphasis on accountability in the Services judgement.
- **Neglecting Multiple Subjects under Delhi Government's Competence:**
 - The Court overlooks the Chief Secretary's involvement in over 100 subjects under the Delhi government's jurisdiction.
 - While emphasising his connection to Union Government matters, the Court neglects the broader scope of his responsibilities.

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 analyse 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.

Conclusion

The SC, which previously emphasised the importance of the elected government's control over services, appears to have reversed its stance by allowing the unilateral extension of the Chief Secretary's tenure. The Court's selective application of legal principles, such as disregarding the Royappa case and cherry-picking observations, raises questions about the consistency and integrity of its judgments. This decision not only undermines constitutional logic but also jeopardises the delicate balance between the elected government and bureaucracy in matters of governance.

Drishti Mains Question:

Discuss the constitutional intricacies surrounding the Government of National Capital Territory of Delhi (Amendment) Act, 2023, and its implications on the relationship between the elected government of Delhi and the central government.

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

Mains:

Q1. 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)**

Q2. Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. **(2018)**