



Centre Vs Delhi Govt on Control Over Services

For Prelims: 69th amendment to the Constitution of India, Article 239AA of the Constitution, collective responsibility

For Mains: New Delhi Government vs Union Government, Government of NCT of Delhi (Amendment) Act, 2021, Co-operative Federalism, Constitutional Amendments

Why in News?

A **five-judge Constitution Bench of the Supreme Court (SC)** is hearing a dispute between the Delhi government and the Centre over the control of administrative services.

- Almost five years ago, **another Constitution Bench had ruled in favour of the State government in a similar tussle.**

What is the Timeline of the Dispute?

- **2017 Judgement:**
 - The Delhi High Court had, in its judgment 2017 **held that for administration purposes of the National Capital Territory (NCT), the Lieutenant Governor (L-G) is not bound by the aid and advice of the Council of Ministers in every matter.**
 - On appeal, the SC in 2017, referred the matter to decide the interpretation of **Article 239AA of the Constitution.**
- **2018 Judgement:**
 - A **five-judge Constitution bench had unanimously held that the L-G of Delhi is bound by the aid and advice of the elected government, and both needed to work harmoniously with each other.**
- **2019 Judgement:**
 - A two-judge Bench of the SC **delivered a split verdict on the question of powers of the Government of NCT of Delhi and Union government** over services and referred the matter to a three-judge Bench.
 - While one judge had ruled the Delhi government has no power at all over administrative services.
 - Another judge, **however, had said the transfer or posting of officers in top echelons of the bureaucracy (joint director and above) can only be done by the Central government** and the view of the L-G would prevail in case of a difference of opinion for matters relating to other bureaucrats.
- **2022 Case:**
 - The Centre on **27th April 2022 sought a reference to a larger Bench**, arguing that it **needed the power to make transfers and postings of officers in Delhi** on account of it being the national capital and the “face of nation”.
 - The court agreed that the **limited question relating to the scope of the legislative and executive powers of the Centre and NCT of Delhi**, with respect to the term “services”, would need an authoritative pronouncement by a Constitution Bench in terms

of [Article 145\(3\) of the Constitution](#).

What are the Arguments and Counterarguments in the Issue?

▪ Arguments For:

- The Centre has **consistently maintained that because Delhi is the national capital and the face of the country, it must have control over administrative services**, which include appointments and transfers.

▪ Counter-Arguments:

- The Delhi government has **argued that in the interest of federalism, the elected representatives must have power over transfers and postings**.
- The Delhi government had also contended that the recent amendments to the [Government of National Capital Territory of Delhi \(Amendment\) Act, 2021](#), **violate the doctrine of basic structure of the Constitution**.

What is the Governance Model of New Delhi?

- The **status of Delhi being a Union Territory under Schedule 1 of the Constitution** but christened the 'National Capital Territory' under Article 239AA.
- The **69th amendment to the Constitution of India** inserted Article 239AA, which declared the Union Territory of Delhi to be administered by a L-G who works on aid and advice of the elected legislative assembly.
 - However, the 'aid and advice' clause pertains only to matters on which the elected Assembly has powers under the **State and Concurrent Lists** with the exception of public order, police, and land.
- Further, the **Article 239AA also notes that L-G has to either act on the aid and advice** of the Council of Ministers, or he is bound to implement the decision taken by the President on a reference being made by him.
- Also, **Article 239AA, empowers the L-G to refer a difference of opinion on 'any matter'** with the Council of Ministers to the President.
- Thus, this dual control between L-G and the elected government leads to a power tussle.

Way Forward

- The **federal nature of the Constitution is its basic feature** and cannot be altered, thus, the stakeholders wielding power intend to protect the federal feature of our Constitution.
- A **diverse and large country like India requires a proper balance between the pillars of federalism**, i.e., autonomy of states, national integration, centralisation, decentralisation, nationalisation, and regionalisation.
 - Extreme political centralisation or chaotic political decentralisation can both lead to the weakening of Indian federalism.
- The satisfactory and lasting solution of the vexed problem is to be found not in the statute-book but in the conscience of men in power.
- With [collective responsibility](#), aid, and advice as the pillars of democracy, **it is critical to find a balance and decide whether the center or Delhi government should have control over services in Delhi**.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

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

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