



## Centre Vs Delhi Govt on Control Over Services

**For Prelims:** 69<sup>th</sup> 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 **27<sup>th</sup> 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 **69<sup>th</sup> 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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