

Delhi dilemma: Centre vs State

**This article is related
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Supreme Court's split decision flags the need to address complexities in Centre-UT ties.

The Supreme Court's split decision on the question of whether the government of the National Capital Territory of Delhi (NCTD) has executive control over those in its service points to the inherent complexity of the relations between the Delhi government and the Centre.

The disadvantages of not having full statehood status has been felt by many elected regimes in Delhi. But under Arvind Kejriwal's Aam Aadmi Party government, and with the Narendra Modi government at the Centre, the extent of acrimony has been severe. Battles have been fought in the political and judicial spheres over whether some subject or the other falls under the Delhi government or is the exclusive preserve of the Centre. A Constitution Bench ruling last year provided a framework to resolve such issues.

It held that the Lt. Governor has to act either on the aid and advice of the Council of Ministers, or abide by the decision of the President on a reference made by him. The power to refer "any matter" to the President did not mean "every matter" should go that way. Specific issues were left to a Bench of Justices A.K. Sikri and Ashok Bhushan, which has resolved most issues. It has upheld the Delhi government's power to appoint prosecutors, levy and revise stamp duty on property transactions and issue notifications under the Delhi Electricity Reform Act.

Both judges agree that there is no 'service' in the Delhi government, as all its employees come under the 'Central services'. Its civil servants are drawn from the DANICS cadre, a service common to various Union Territories. Justice Sikri believes that going by a Constitution Bench decision last year, the NCTD would indeed have the power to deploy officials within its own departments. However, the absence of a public service in Delhi means Entry 41 in the State List (services; service commissions) would imply that it is a matter inapplicable to 'Union Territories', and therefore, the LG need not act on the Delhi government's aid and advice.

Therefore, he favours a solution under which transfers and postings of officers in the rank of Joint Secretary and above could be directly submitted to the LG, and those of others be processed by the Council of Ministers and sent to the LG. In case of any dispute, the LG's view will prevail. Justice Bhushan, on the other hand, has ruled that once it is accepted that there is no 'service' under the NCTD, there is no scope for its government to exercise any executive power in this regard. A larger Bench will now decide on the question relating to control over the services.

The more significant challenge is to find a way out of the complexities and problems thrown up by the multiple forms of federalism and power-sharing arrangements through which relations between the Centre and its constituent units are regulated.

Delhi Government and Lieutenant

Why in the discussion?

- Recently, the Supreme Court has given its verdict on the ongoing debate over the rights of the Delhi Government and the Deputy Governor.
- In this case, different opinion of two judges of supreme court have come out.
- Justice Sikri has said that the right to posting and transfer of IAS officers should be given to the Lieutenant Governor while the powers of Danics (Delhi Andaman and Nicobar Iceland, Civil Service) remain with the Delhi Government. If there is a difference, then the case should be sent to the President.
- At the same time, the second judge Ashok Bhushan said that the central government has the right regarding entire service issue.
- The Supreme Court has ruled over six issues. Four out of these have gone in the favour of the center.
- Posting and transfer of Anti Corruption Branch (ACB), Grade 1 and Grade 2 officers will be subject to the Commission of Inquiry Center.

Dispute?

- The Central Government also issued a notification on July 23, 2014, under which the executive powers of the Delhi government were limited and the jurisdiction of Delhi Government Anti Corruption Branch was limited to the officers of the Delhi Government.
- Central government officials were excluded from its investigative scope. This notification was challenged by the Delhi government's in the High Court which was rejected.
- After this, raising the matter by the Delhi Government in the Supreme Court, it was said that there is a standoff in cases like services and Anti Corruption Branch and these issues need to be heard.

Central government' aspect

- The central government had argued that the Lieutenant Governor got the rights from the Center.
- The matter of civil services is in the hands of the Lieutenant Governor, because the President has given this power to the Lieutenant Governor. Therefore, the appointment of Chief Secretary will be decided by the Lieutenant Governor.
- The power of the Lieutenant Governor of Delhi is different from the power of the Governor of other states.
- Under the Constitution, the Lieutenant Governor of Delhi has got the privilege.

- Being an assembly does not mean that Delhi is a state and it enjoys the rights of other states.
- Delhi is completely ruled by the centre and the President has the last through the center.

Delhi government aspect

- The elected government must have rights.
- The Lt Governor should work on cabinet advice.
- Under Article 239AA of the Constitution, there is an elected government, which is accountable to the public.
- Apart from the land, public order and police, in the matter listed in the state list and concurrent list. Delhi Assembly has the right to make laws.
- As soon as the posting of a joint cadre officer is in Delhi, he comes under the Delhi Administration.
- An Anti Corruption Branch should also be in the purview of the Delhi Government because there is such a provision in the Criminal Penal Code.

Article-239A

- In the Article-233AA and AB of the Constitution, the Lt Governor of Delhi has given more constitutional powers than the governors of other states.
- In Delhi, the Lieutenant Governor will work with the advice of the Council of Ministers of Delhi Government. If there is any exception, then he can refer the case to the President and implement the decision which the President will take.
- If there are differences in the Lt Governor and Council of Ministers, then the matter should be referred to the President.
- Unless the matter is pending before the President, then the Lt. Governor has the right to take immediate action with his discretion in any prompt matter.

1991 constitution amendment

- Delhi is a partial state, it is not a complete state. In 1991, amendments to the Constitution provided Delhi with a special constitutional status and assembly.
- According to the constitution, the chiefe of Delhi is It governer. are the chief lieutenants of Delhi. None of the government formed in Delhi since 1993 has challenged the powers of the governor.
- The elected government of Delhi has to share its powers with the Lieutenant Governor.
- Contrary to a partial state like Delhi, there are governors in the other states who work on the advice of the Council of Ministers of the state. and the Chief Minister. But the situation in Delhi is different.

Expected Questions (Prelims Exams)

Expected Questions (Mains Exams)

1. Consider the following statements-

1. Delhi was given special constitutional status and Legislative Assembly through the 69th Constitutional Amendment Act, 1991.
2. Under the Article 239 (AA) and (AB) the Lieutenant Governor of Delhi has been provided with more power than the Governors of other states.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

- Q. Which points needs to be focused for the resolution of the debates originated regarding the services and executive control between the center and the Union Territories (specially Delhi) Discuss.**

(250 Words)

Note: Answer of Prelims Expected Question given on 16 Feb. is 1(b)

