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## THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021: A CRITICAL ANALYSIS

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**Abstract:** - The Government of National Capital Territory of Delhi (Amendment) Act was enacted by the Government of India on 28th March, 2021. It mends the Government of National Capital Territory of Delhi Act, 1991 to give primacy to the centrally appointed Lieutenant Government of Delhi and make the elected Government of Delhi subsidiary. The elected government will now have to seek the opinion of the LG for any executive action. Union Government’s step to amend the Government of NCT of Delhi (GNCTD) Act to arm the LG with greater powers to control the Delhi council of minister. It stokes a needles inter-government confirmation.

### INTRODUCTION

Parliamentary democracy, with a cabinet form of government, is part of basic structure of the Indian constitution. Article 1 reads, “India that is Bharat shall be a union of states. When the constitution came in to force, there were four kinds of states parts A, B,C and D states. C and D states being administered by centrally appointed chief commissioners and Lieutenant Governors, with no locally effected Assemblies to aid and advise them.

Delhi as the National Capital belongs to the nation as a whole. It is felt that if Delhi becomes a part of any constituent state of the union, that state would sooner or later acquire a pre-dominant position in relation to other states and the need for keeping the National capital under the control of the Union Government is deemed to be vital in the national interest. It is felt that if Delhi becomes a full state, the administration of the national capital would be divided into rigid compartments of the state field and the union field. Conflict would likely arise in vital matters, particularly if the two governments are run by different politically parties. Hence Delhi enjoys the status of part ‘C’ state its population was initially 14 lakh people. In fact, in 1951, for the first time, a legislative Assembly was created with an elected Chief Minister Chaudhary Brahm Prakash in 1952. However, a prolonged standoff with the Chief Commissioner, and later the Union Home Minister, Govind Ballabh Pant over issues of jurisdictions and functional autonomy eventually led to his resignation, in 1955. The constitution of India was amended in 1956 to implement the provisions of states Reorganization Act with only two categories namely states and union Territories remained in the Indian Union Delhi then was given status of

Union Territory to be administered by an administrator appointed by the president and the Legislative Assembly of Delhi along with council was abolished despite could protests in parliament. In 1966, the Delhi Administration Act, provided a limited representative Government in Delhi through a metropolitan council comprising 56 elected members and five nominated members. This structure continued for many years with repeated political demands for full statehood to be granted to Delhi. In 1987, the Bal Krishnan committee was set up to submit recommendation in respect of status to be conferred on Delhi. The committed submitted its recommendations in 1989 mentioning in it that Delhi should continue to be a Union Territory but there must be legislative Assembly and council of minister responsible to it with appropriate powers, and to ensure stability, appropriate constitutional measures should be taken to confer national capital a special status. Based on this report, the constitution (69<sup>th</sup>) Amendment Act and the Government of National Capital Territory of Delhi (GNCT) Act, 1991 were passed. These Acts, by and large, resorted the kind of governance system which was offered to Delhi in 1952, a Union Territory with a legislative Assembly a council of minister. This limited reincarnation has continued to hold the field to date, despite several efforts to progress to full or near statement.

Between 1991 to date Delhi has been ruled by different political parties other than the ruling party at the center and both layer of governments have differed from each other in respect of mode of governance in Delhi. The worst form is seen since Lok Sabha elections of 2014 and 2019 and Assembly election of Delhi in 2015 and 2020 respectively resulting in moral combat with each other. The ensuring fights lead to constitutional questions on Delhi’s peculiar government structure being litigated up to the Supreme

Court in 2017. A bench in 2018 ruled that NCT of Delhi enjoys a representative form of Government as envisaged by parliament, with a directly elected legislative Assembly having legislative powers over matters falling within the state list and the concurrent list, barring those expected, and a mandate upon the Lieutenant Governor to act on the aid and advice of the council of Minister except when he decides to refer the matter to the president for final decision. Thus the verdict of Supreme Court clearly mandates a federal balance wherein independence of certain required degree is assured to the state Governments and the Union is not to usurp all powers. The states are to enjoy freedom without any unsolicited interference from the central Government with regard to matters that exclusively fall within their domain. The remaining issues of governance especially in the matter of control over Delhi government servants was remitted to two judges of the court for further adjudication and was finally decided in 2019 having difference of opinions in their separate judgements and the matter now awaits hearing before a larger Bench.

#### **The Consequences:**

In view of the above mentioned historical and legal background, the move of the central Government to give effect to the interpretation of Hon'ble Supreme Court in the above said Judgements, the Government of National Capital Territory of Delhi (Amendment) Act has been passed to clarify the expression 'Government' and to address the ambiguities in the interpretation of the legislative provisions. The Act effectively reduces the elected government to a mere vestigial organ and elevates the LG to the position of a viceroy with plenipotentiary powers.

- (1) The Act clarifies the expression "Government" referred to in any law to be made by legislative Assembly in Delhi shall mean the "Lieutenant Governor".
- (2) It vests in the LG, the power to refuse assent and reserve a Bill passed by the Legislative Assembly for the consideration of the president, if, in his opinion, the Bill incidentally covers any of the matters which fall outside the purview of the Assembly's Power.
- (3) It says that before taking any executive action the opinion of the LG shall be obtained in such matters as may be specified.

Hence, the legislative attempt through GNCTD (Armd) Act, 2021 is to legislatively over rule the judgment of the Supreme Court pronounced in 2018 in exercise of judicial power which parliament does not possess. Actually, the central Government has tried to keep Delhi, where it was in 1952. Now the elected government of Delhi can do nothing, if the LG does not permit them to do. It will be a case of the unelected fail wagging the elected dog. Delhi which is having highest population among all the Capital Cities of the world will have an unrepresentative

administration rule by an appointed LG, who can only be charge to the whims and fancies of the central Government. There can be no recourse to the ballot box to hold to account an unelected, centrally appointed government functionary. This Act, it is hoped, may be challenged in the Supreme Court which has already cautioned "Interpretation can not ignore the cons science of the constitution. Hence, the Government of National Capital Territory of Delhi (Amendment) Act, 2021 may be called an extra ordinary legislative misadventure.

#### **REFERENCE**

- (1) K.V. Viswanathan, 'The Hindu', March, 24, 2021.
- (2) Sanjay Hegde, 'The Hindu' March 23, 2021.
- (3) Article 239 AA, 'The Constitution of India', 1950.
- (4) 'Samsher Singh V. State of Punjab' (1974).
- (5) Govt. of NCT of Delhi V. Union of India (2018).