



Jurisdictional conflict in the running of Delhi

Context:

- There has been clash of opinion over the appointment of prosecutors for conducting the Delhi riot cases.
- The Lt. Governor of Delhi appointed all the public prosecutors in Delhi riots cases whose names were submitted by the Delhi Police and rejected the State government's list.

What is Constitutional status of Delhi?

- The 69th Amendment Act, 1992 has added two new Articles 239AA and 239AB under which the **Union Territory of Delhi has been given a special status.**
- Art. 239AA creates a legislative assembly for Delhi which can make laws on subjects under the State List and Concurrent List except on these matters: public order, land, and police.
- It also provides for a Council of Ministers for Delhi consisting of not more than 10% of the total number of members in the assembly.

What has been the tussle?

- Delhi Government had accused Lieutenant Governor (LG) of referring the decisions of an elected government to President and thus causing hurdles in governance.
- The Centre, which appoints the L-G, contends that "for any Centrally administered territory and especially Delhi responsibility is on the Union Government".
- Also, Delhi, being a Union territory, does not have a cadre of officers of its own and is part of a common cadre shared with other UTs. Thus, elected government of Delhi has less control over its officers.
- It is basically about two power centres which created confusion.

Constitution Bench of the Supreme Court in Government of NCT of Delhi vs. Union of India (2018) Case:

- The Supreme Court said the Delhi Lieutenant Governor **cannot act independently** and must take the aid and advise of the Council of Ministers.
- All decisions by Delhi's council of ministers must be communicated to the L-G but that does **not mean his concurrence** is required.



- **Except for issues of public order, police and land**, the Lieutenant Governor is bound by the aid and advice of the Council of Ministers.
- The **LG has no independent authority** to take decisions except in matters under Article 239 or matters outside the purview of the government.
- The court said, L-G cannot act as an obstructionist and **can refer issues to the President** when there is difference of opinion on **any matter (Article 239AA(4))**. This should happen only in exceptional matters and not as a general rule.
- The government need not obtain LG concurrence in every issue of day-to-day governance.
- The national capital enjoys special status and is **not a full state**
- The basic message is that an elected government cannot be undermined by an unelected administrator.

Does that mean the power tussle in Delhi is completely resolved?

- Not Actually. SC did not very clearly delineate the issues in respect of which the Lt. Governor can refer a decision taken by the Council of Ministers to the President in the event of a difference of opinion on any matter (Article 239AA(4)).
- Instead, SC has given a generic guideline that in case of differences of opinion, the LG and the NCT government should act with **constitutional morality and trust for each other**.
- The recent appointment of prosecutors for conducting the Delhi riot cases in the High Court is a case in point.

What is the controversy about appointments of prosecutors?

- When the government decided to appoint prosecutors for Delhi riots case, the Lt. Governor referred it under proviso to Article 239AA (4) to the President stating that there is a difference of opinion between him and the government
- In the meantime, the Lt. Governor appointed all the prosecutors whose names were submitted by the Delhi Police (under Central Government) and thus the State government's list was rejected.
- As a result, the decision of elected Delhi government was undermined
- Referring normal administrative matters (like appointment of Prosecutors) to the President would disturb the **concept of Constitutional**

20.08.2020

Thursday



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governance, principles of collaborative federalism, objectivity and the standards of Constitutional morality.

Way Ahead

- Lt. Governor should not emerge as an adversary having a hostile attitude towards the Council of Ministers of Delhi; rather, he should act as a facilitator.
- The words 'any matter' employed in the proviso to Article 239AA (4) cannot be inferred to mean 'every matter'.
- 239AA(4) represents the exception and not the general rule which has to be exercised in exceptional circumstances by the Lt. Governor. This has been clearly highlighted in the Supreme Court judgement.
- The President is the highest Constitutional authority and his decision should be sought only on constitutionally important issues.

Conclusion:

- The Delhi Government and the Centre must embrace a collaborative federalism and interdependence so as to avoid any disputes which will impact the welfare of common man.