

**DE JURE NEXUS LAW JOURNAL**

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1<sup>st</sup> Year, BBA LL.B.**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
(AMENDMENT) ACT, 2021: AN ANALYSIS**

# De Jure Nexus

**Abstract**

*The Central Government had introduced the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 in the Parliament which had passed from both the houses. This bill has become an act now and has come into force. The Government of National Capital Territory of Delhi (Amendment) Act, 2021 seeks to make certain amendments in the Government of National Capital Territory of Delhi Act, 1991. Recently, the act has been subject to plenty of controversies and is widely criticised. Most of the criticism is due to some provisions giving powers to the lieutenant governor. The major criticism of the act is that it undermines the powers of the elected government of Delhi and gives some discretionary powers to the lieutenant governor, who is an unelected administrator.*

*Keywords – Government of National Capital Territory of Delhi (Amendment) Act, 2021; lieutenant governor; elected government; criticism; provisions*

**Introduction**

The Central Government of India had introduced the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 in the Parliament, which was passed by the Lok Sabha and the Rajya Sabha and which later on received the assent of the President.<sup>1</sup> The bill has come into force and this amendment gave rise to many controversies. The central government, through this bill, aims to make certain amendments in the law that deals with the administration of the National Capital Territory of Delhi. The Central Government also argues that the act aims to implement the previous rulings and interpretations of the Supreme Court, relating to the structure of governance of Delhi. The people against the act argue that the provisions of the act are in contradiction to the Supreme Court's interpretation regarding the powers of the lieutenant governor and elected government.

### **Provisions of the Act**

It amends Sections 21, 24, 33, and 44 of the 1991 Act. There are many controversies around the act and most of them have arisen due to some of the provisions of the act. The provisions of the act are:<sup>2</sup>

- 1) The term 'government' would mean 'lieutenant governor'. The act states that the expression 'government' referred to in any of the laws made by the Legislative Assembly shall mean as the Lieutenant Governor.
- 2) The act aims to increase the powers of the Lieutenant Governor (LG) and provides the LG with discretionary powers. This act provides powers to the Lieutenant Governor even in subjects where the Delhi Legislative Assembly has the authority to make laws.
- 3) This act reduces the powers of the Legislative Assembly. It states that the Legislative Assembly shall not make rules for its committees on day-to-day administration. It further states that "*Legislative Assembly shall not make any rule to enable itself to consider the matters of the day-to-day administration of the capital or conduct inquiries in relation to the administrative decisions*".

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<sup>1</sup> Amendments to GNCTD Act, 1991 Do not Alter Constitutional and Legal Responsibilities of Elected Government in Respect of Transferred Subjects in State & Concurrent Lists, *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=1714828> (last visited on February 22, 2022)

<sup>2</sup> Government of NCT of Delhi (Amendment) Bill, 2021, *available at*: <https://www.drishtias.com/daily-updates/daily-news-analysis/government-of-nct-of-delhi-amendment-bill-2021> (last visited on February 22, 2022)

- 4) The act necessarily provides an opportunity to the Lieutenant Governor. It states that the LG has the opportunity to provide his/her opinions, before any decisions are taken by the Council of Ministers, is implemented.

### **Central Government's Stand**

The Centre had introduced the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 in the Parliament. The Centre states that these changes in the act are in line with the 2018 ruling of the Supreme Court regarding the powers to be given to the Lieutenant Governor and the Delhi government. The Central government also states that the Act aims to increase the scope of public accountability. Also, the Act aims to reduce the technical ambiguities regarding the daily governance and administration of Delhi.

<sup>3</sup>The Centre is of the view that there is a lack of clarity about which matters shall be submitted to the Lieutenant Governor of Delhi before issuing the order. Section 44 of the 1991 Act states that all the executive actions of the Lieutenant Governor, whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the LG. The Centre argues that there is no structural mechanism in place to ensure that the section is implemented in a timely manner.

The Centre also argues that this Act would help in increasing the effectiveness of daily governance and administration of Delhi.

### **Criticism of the Act**

The major criticism of the Act is that it diminishes the powers of the representative government of the National Capital Territory of Delhi. It is argued that the act of combining the Lieutenant Governor with the Government of Delhi reduces the line of demarcation between the Lieutenant Governor and the elected government of Delhi. The people criticising the Act argue that the increase in administrative powers of the Lieutenant Governor leads to reduction of powers in hands of government of Delhi and robs the elected government of its powers. The provision that says that the taking of the opinion of the Lieutenant Governor before the elected government of Delhi can reduce the powers of the government and also creates some ambiguities regarding the powers of the LG and the elected government.

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<sup>3</sup> Government of NCT of Delhi (Amendment) Bill, 2021, available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/government-of-nct-of-delhi-amendment-bill-2021> (last visited on February 22, 2022)

Another provision that attracted plenty of criticism was the one that restricts the Legislative Assembly from making committees on matters regarding the daily administration. It also restricts the assembly from carrying out inquiries regarding daily administrative matters. The criticsers of the act argue that this provision is limiting the administrative powers of the elected government to an extent.

Another significant argument of the people against the act is that the provisions of the said act are against the 2018 ruling of the Supreme Court. The act states that the term 'government' used in any law would mean the 'lieutenant governor'. The Central government says that the amendment is made in line with the 2018 ruling of the Supreme Court. But, the criticsers state that the Supreme Court judgment states that the unelected administrator (LG) should not undermine the elected government.<sup>4</sup> And thus, the provisions of the act are not completely in line with the Supreme Court's interpretation of the powers of lieutenant governor and the elected government of Delhi.

Hence, one of the significant criticisms of this act is that it is in contradiction with the interpretations of the Supreme Court and thus creating ambiguity.

## **The Controversy**

### **Supreme Court's Judgement<sup>5</sup>**

The Supreme Court in 2018 held that there is no power entrusted with the Lieutenant Governor for any independent decision-making. The Supreme Court also stated that the Lieutenant Governor shall use constitutional objectivity and shall refer the matter to the President only in some rare and exceptional scenarios.

### **Background<sup>6</sup>**

The 69<sup>th</sup> amendment to the Constitution had inserted Article 239AA. It says that the Union Territory of Delhi shall be administered by a Lieutenant Governor. And the LG shall work on the aid and advice of the elected legislative assembly. Article 239AA states that public order, police, and land fall within the control of the Central government.

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<sup>4</sup> Union vs. Delhi Government, available at: <https://www.drishtiiias.com/daily-news-editorials/union-vs-delhi-government> (last visited on February 22, 2022)

<sup>5</sup> Union vs. Delhi Government, available at: <https://www.drishtiiias.com/daily-news-editorials/union-vs-delhi-government> (last visited on February 22, 2022)

<sup>6</sup> Union vs. Delhi Government, available at: <https://www.drishtiiias.com/daily-news-editorials/union-vs-delhi-government> (last visited on February 22, 2022)

The criticsers of the act argue that the provisions, providing powers to the Lieutenant Governor are in contradiction of ruling of the Supreme Court. It is also argued that making it necessary to take the opinion of the Lieutenant Governor and providing him/her with other discretionary powers can hinder the process of daily governance to some extent. Because there lies a possibility that the Lieutenant Governor can misuse his powers for some political gains.

Also, providing the unelected administrator with such powers creates ambiguities and confusion regarding the sharing of power between the LG and the elected government. Thus, providing powers like necessarily taking the opinion of the Lieutenant Governor and depriving the Legislative Assembly from the power to form committees for daily administrative matters and conducting inquiries, could lead to the disbalance of power. Also, there is a possibility that this could create a tussle between the government of Delhi and the Lieutenant Governor.

### **Conclusion**

The Government of National Capital Territory of Delhi (Amendment) Act, 2021 has attracted plenty of criticism towards it. There are apprehensions that the act would lead to the creation of a tussle between the Central government and the elected government of Delhi. There are some provisions of the Act which have led to the creation of controversies. These provisions seek to provide the Lieutenant Governor with some discretionary powers like necessarily taking opinion of LG, the meaning of term ‘government’ in any law as ‘lieutenant governor’, etc.

The major point of criticism in the controversy around the bill, which had passed by both the houses and had come into force, is that the Lieutenant governor of Delhi would get discretionary powers and this could undermine the powers in hands of the government of Delhi. The fears of the act giving increased administrative powers to the Lieutenant Governor had led to its increased criticism.

These powers would play a very significant role in daily governance and other administrative matters. Also, the previous rulings of the Supreme Court shall be taken into consideration and the provisions shall be made accordingly so that it does not contradict the Supreme Court’s interpretation.