

# **Limits of Authority in the National Capital Territory of India**

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Part VIII of the Constitution, Articles 329 to 341 provide for the administration of Union Territories and the extent to which a Union Territory which has been given a Legislative Assembly may function autonomously. There are two Union Territories, Delhi and Pondicherry in which the Administrator is designated as Lieutenant Governor. Pondicherry is governed by the Government of Union Territories Act 1963 and Delhi by the Government of National Capital Territory of Delhi Act 1991 read with the 1963 Act. The two Acts are significantly different. For example under section 3(3) of the 1963 Act the Central Government has the authority to nominate three persons to the Pondicherry Legislative Assembly. There is no such a provision in the NCT of Delhi Act. Under section 18 of the Pondicherry Act the State Legislature is competent to make laws with respect to any of the matters enumerated in the State List or Concurrent List in the Seventh Schedule of the Constitution. There is no such a provision in the NCT of Delhi Act. In fact under section 41 of the Act the Lieutenant Governor is required to act in his own discretion in any matter which falls outside the purview of the powers conferred on the Legislative Assembly and in which the President has entrusted or delegated powers to the Lieutenant Governor. Under section 44 of the Act the President is empowered to make rules for the allocation of business to the ministers and such business with respect to which the Lieutenant Government is required to act with the aid and advice of the Council of Ministers. Three subjects, land, police and law and order and the Services, whether they be the All India Services, the Delhi, Andaman and Nicobar Islands Civil Service and the Delhi and Andaman Nicobar Islands Police Services are within the exclusive jurisdiction of the Central Government, which exercises these powers through the Lieutenant Governor.

One major difference between Pondicherry and Delhi is that whereas the Legislative Assembly of Pondicherry, under section 18 of the GUT Act, 1963 is empowered to make laws on all matters enumerated in the State and Concurrent List of the Seventh Schedule, under section 41 (1) (ii) of the NCT Act the President may exclude from the powers conferred on the Legislative Assembly such subjects as he deems fit. The services, land and the police are subjects on which the Legislative Assembly of Delhi has no power to legislate.

Mr. Arvind Kejriwal, the Chief Minister of Delhi, has arrogated unto himself powers and functions of the Chief Minister of a State. Delhi is not a State of the Union and is not covered by Article 1 (1) of the Constitution. It falls within the purview of Article 1 (3) in that it is one of the territories of which India comprises, but it is not a member of the Union of States which together constitute India. As a Union Territory its administration is directly under the Central Government and the fact of its having a Legislative Assembly and a Council of Ministers is only a matter of administrative convenience. Parliament and the Government of India can change this position whenever they like, which they cannot do in the case of a State because without the States there can be no Union. A Union Territory can be unbundled but a State cannot be unbundled because if that happens the Union will break. More than any other Article in the Constitution Article 1 is the very core which defines India and which, therefore, cannot be amended without scrapping the Constitution. Arvind Kejriwal should realise that he and his government are a part of administrative convenience and not of a constitutional mandate.

Delhi has passed through many changes over the years. At one time it was a part C State, which is how the Union Territories were defined. The Constitution (Seventh Amendment) Act 1956 abolished Part B States and Part C States. The Part B States became fullfledged States of the Union or were amalgamated with other States and the part C States became Union Territories, of which Delhi and Pondicherry are examples. There was a time when Delhi had a Legislative Assembly with limited powers, which was then abolished and the powers were vested in the Chief Commissioner as the Administrator was then known. Subsequently a Metropolitan Council was constituted and limited legislative powers and an Executive Council was created with a Chief Executive Councillor and Executive Councillors to assist the Administrator (redesignated as Lieutenant

Governor). This was replaced by the NCT of Delhi Act in which the Metropolitan Council was reconstituted as the Legislative Assembly with full legislative authority except on subjects kept outside its purview and the Executive Council was replaced by a Council of Ministers. However, it still continued to be an Union Territory and under section 49 of the NCT of Delhi Act the Lieutenant Governor and his Council of Ministers are at all time under the general control of the President and are required to comply with such directions as he deems fit. Notwithstanding Arvind Kejriwal's tantrums he is bound by law to obey the directions of the President and to restrict his own functioning to the powers conferred on the Legislative Assembly of Delhi, minus the powers withheld under the Business Allocation Rules and the subjects which are under the exclusive purview of the Central Government and the Lieutenant Governor. This is the reality of the situation and he has had to be reminded by the Lieutenant Governor and the Government of India, now officially through a notification published in the Gazette of India that he has no say whatsoever in the matter of law and order, land and the services. This is almost similar to the diarchy which prevailed in the Provinces of India under the Government of India Act 1919 and continued to do so till the passage of the Government of India Act 1935.

Arvind Kejriwal has behaved like an autocrat who is also a spoilt child who feels deprived of a lollipop when reminded of the limits of his authority. He has launched an attack on the Lieutenant Governor calling him a Viceroy and on the Government of India, in particular the Prime Minister's office, of acting like His Majesty's Government issuing directives to the Viceroy from London. His incontinent statements and his tantrums all indicate the scant respect he has for the Constitution and for the laws governing the National Capital Territory. He accuses the Government of India of nullifying the mandate given to him by the electorate. The electorate of Delhi chose a government in the context of the NCT of Delhi Act 1991 because it had no other option. Whatever promises Kejriwal and his party make to the electorate had to be within the four corners of the laws governing Delhi and his accusing everyone else of noncooperation does not behove the Chief Minister of Delhi. It is one thing for him to petition the Government of India to enlarge the powers and functions of the NCT government, or even to seek statehood, but till that happens he has to function according to the law and the rules as they stand today. As it is, under section 51 of the Government of Union Territories Act 1963 the President may, if the government of the territory is not being carried out in accordance with the law, order that the operation of any of the provisions of the Act may be suspended and he will then proceed to decide on how the Union Territory is to be administered as per the provisions of the Article 329 of the Constitution. In the case of a Union Territory Article 356 does not apply and the President can, at his discretion, dissolve the Legislative Assembly of a Union Territory, dismiss the Council of Ministers and direct the Lieutenant Governor to administer the territory as per directions given to him from time to time by the President. Under Article 356 the period of President's rule in a State is limited to six months, subject to a further extension of another six months. There is no such limitation in the case of a Union Territory, which may be kept under direct administration as long as the situation requires.

The national capital of most democratic federations is kept within the exclusive jurisdiction of the federal government. This is true of the United States whose capital is Washington DC, Australia, whose capital is Canberra, Canada, whose capital is Ottawa, Brasil, whose capital is Brasilia and even Pakistan, whose capital is Islamabad. Under Article 1, section 8 of the Constitution of the United States of America Congress exercises exclusive legislative powers over such district as becomes the seat of government of the United States and over all places in which the federal government purchases land for the erection of forts, magazines, arsenals, dockyards and other needful buildings. That is why the District of Columbia is under the exclusive jurisdiction of the Federal Government and whereas Municipal Government has been delegated to an elected Mayor, Washington DC has no separate government or legislature. No government in its senses can permit the national capital to become a cockpit for infighting between the Central Government and the local administration and, therefore, it is a major mistake to have given a Legislative Assembly to Delhi. This must now be undone.

Even if Delhi were to be a State it would be a single city State. Singapore is a nation which is also a city State and there all functions, including municipal functions, are performed by government. There is no separate

elected Municipal Corporation of Singapore and it is government agencies which perform all local body functions. There are a few local councils in those parts of Singapore which are still rural, but they have very limited authority. In the case of Delhi obviously law and order cannot be transferred to an elected NCT Government for the very simple reason that the security of the capital, the VIPs in the capital, visiting foreign dignitaries, etc., cannot be left to the whims of a Chief Minister or a Home Minister who may be hostile to the Central Government. Some years ago when the President of Iran visited Lucknow, when Mulayam Singh Yadav was Chief Minister of U.P. the Shias of Lucknow said that they would protest against his visit because the Ayatullah had criticised the Indian custom of mourning for the martyrs, Hassan and Hussain, by carrying Tazias in procession. In the eyes of the leaders of Shia Iran this was akin to idolatry. India was wooing Iran both economically and politically and, therefore, the Government of India directed the U.P. Government to suppress any protest. Mulayam Singh Yadav hesitated because he needed Shia votes, but the Government of India told him in no uncertain terms that it would not tolerate any insult to the visiting President of Iran and if the U.P. Government did not act the Centre would intervene. Luckily the U.P. Government took appropriate measures and the visit passed peacefully. Delhi is continuously visited by foreign dignitaries and if the police were under a person such as Arvind Kejriwal who is more interested in rabble rousing than in government a Lucknow type situation would be created every few days.

Delhi does not have a separate cadre of All India Service officers. Officially the cadre is called the Arunachal, Goa, Mizoram and Union Territories Cadre, whether it be the IAS, IPS or IFS. So far as the provincial services are concerned, Deputy Collectors and Deputy Superintendents of Police and above are liable for service in Delhi or Andaman and Nicobar Islands. That is why the cadre controlling authority for AGMUT, DANICS and DANIPS is the Central Government. Therefore, the NCT Government cannot have any control over these services. This control has been vested by the President in the Lieutenant Governor. Similarly, land is needed very largely for the Central Government and for purposes determined by the Central Government. The land management authority as also the urban planning authority in Delhi is the Delhi Development Authority, which is a central organisation. Imagine a situation in which land is transferred to the NCT Government and that government, in constant conflict with the Centre, refuses to give any land to the Centre. That is why land is a subject reserved for the Lieutenant Governor. All this makes eminent good sense in Delhi. Delhi really has no State Government functions, which means that whereas direct government has to be through the Lieutenant Governor, local government functions, especially after the 43<sup>rd</sup> and 44<sup>th</sup> Amendment of the Constitution, must stand transferred and devolved on the municipal authority. The intermediate level of the State Legislature and the Council of Ministers should be abolished.

It is suggested that as per the original Virendra Prakash Committee Report Delhi should be divided into five Municipal Corporations of approximately equal status in terms of revenue, territory etc. There would also be the New Delhi Municipal Committee and the Delhi Cantonment Board. There could be a Coordination Council for the management of city wide services such as water supply, sewerage, drainage, power supply and transport and communication networks. This may consist of a Mayor-in-Chief to be indirectly elected by the five Municipal Corporations, NDMC and the Cantonment Board. The Mayor-in-Chief may be assisted by Councillors at the rate of two per Corporation nominated by each Corporation, one each nominated by the NDMC and the Cantonment Board and subject matters specialists nominated by the Lieutenant Governor at the rate of one each from the disciplines of urban planning, transportation, power, public health engineering, public health and financial management. The maximum powers should be delegated to the local bodies and the Coordination Council under the 11<sup>th</sup> and 12<sup>th</sup> Schedules of the Constitution, the urban planning functions of DDA should be transferred to the Coordination Council and there should be the maximum devolution of financial resources to local government. Most city functions which affect the citizen directly would then become the responsibility of the Coordination Council, the five Municipal Corporations, NDMC and the Cantonment Board, which would function through the elected Mayors and their Corporation Councils. This would provide the maximum democratic government in Delhi at local level and enable citizens to participate in

their own development at local level. Government would then restrict itself to policy framing and to managing areas of government reserved for it. This would eliminate conflict between the Centre and the NCT Government and while meeting the aspirations of the people through a democratic process, would also give Delhi a form of government which is logically best for the national capital.

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