

# ISAS Insights

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## The Delhi Government - A Hybrid Structure

*The ongoing stalemate in the governance of India's National Capital Territory of Delhi is traceable not only to a political tussle between two democratically elected governments – one at the Centre and the other in Delhi itself – but also the Union Home Ministry's contested position on a sensitive issue.*

Vinod Rai<sup>1</sup>

The Constitution of India, adopted in 1950, divided the country into four administrative divisions, viz. Parts A, B, C and D. The erstwhile provinces of colonial British India became the Part A states. The former Maharajas' kingdoms (better known as the princely states that had accepted the British paramountcy) became the Part B states. Part C states were the centrally-administered areas. Part D comprised one territory. (Andaman and Nicobar Islands). Parts C states and part D territory were to be administered by the President through Chief Commissioners. In the Part D territory, unlike the Part C states, there was no provision for a legislative body. Delhi, Himachal Pradesh, Manipur, Tripura and the erstwhile princely states of Ajmer, Coorg, Bhopal, etc. constituted the Part C states.

Soon, however, the demand for redrawing state boundaries on the basis of linguistic identities emerged. As a consequence of this demand, the government set up the State Reorganisation Commission in 1953. Based on the recommendation of this Commission, 14 States and 6

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union territories were created. In this reorganisation, Delhi ceased to exist as a Part C state and was converted into a union territory from 1 November 1956. The legislative assembly was abolished, and the territory came under the direct administration of the President in 1957. The Fourteenth Amendment Act of 1962, inserted as Article 239A, which provided for the creation of legislative assemblies and council of ministers for some of the union territories such as Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, Mizoram and Arunachal Pradesh. Delhi, along with Chandigarh and Lakshadweep were excluded from this provision. The public of Delhi continued to demand an elected government. Following such a demand, the Delhi Administrative Act was passed in 1966, setting up the Metropolitan Council. This was a deliberative body of 56 elected- and 5 nominated-members. It was headed by a Lieutenant Governor (LG), with an Executive Council comprising one chief executive councillor and three executive councillors. This Council was a kind of hybrid body which was set up, as a compromise formula, with no legislative powers. It was mandated with only advisory powers in the governance of the city.

The demand for a full-fledged legislature for Delhi, therefore, continued. In 1987, the government set up the Balakrishnan Committee to review the administrative issues pertaining to the city's governance. In its report submitted in 1989, this committee recommended that whilst Delhi might continue to be a union territory, there should be a legislative assembly and a council of ministers with appropriate powers to deal with ordinary issues of administration.

This recommendation led to the passing of the Government of the National Territory Act of 1991, which came into effect in 1992. This Act inserted special provisions in the Constitution for administering the national capital territory. Article 239 AA was inserted, stating that the legislative assembly shall have powers to make laws for the whole or part of the NCT, except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List if they are linked to Entries 1, 2 and 18. This in effect meant that the Legislative Assembly of Delhi would have no powers over such matters and personnel as public order, police, officers and high court servants and over the land of NCT. In effect, the Legislative Assembly of Delhi has considerably limited authority, compared to the legislative assemblies of full-fledged states.

The reality, therefore, is that Delhi is a full union territory. By definition, a union territory is centrally administered. The President administers it through the Lieutenant Governor (LG), the administrator, who is centrally appointed. The legislature and the council of ministers,

conceded to Delhi in response to popular demand, are in place merely to aid and advise the LG. Obviously, such aid and advice are not binding on the LG. The Delhi Government can pass laws on various areas barring police, public order and land. Separately Article 73 of the Constitution mandates that executive power is co-extensive with legislative power. So the elected government of Delhi does not have executive powers in these three areas which are reserved for the central government, implying the LG. Even in respect of the State list, the LG has to give his assent to bills passed by the legislature. The LG enjoys the powers to withhold assent, keep bills for as long as he likes or send them to the union government or the President for his or her consideration.

The constitutional reality is that the legislature of Delhi does not have full legislative powers, unlike in other states. So, any party that comes to power and forms the government in this union territory, must be conscious of this harsh reality, irrespective of whether they win 70 out of the total 70 seats in the Assembly, or a mere 36 giving them a thin majority. Delhi's present Chief Minister Arvind Kejriwal has come to power, riding a massive wave of popular support and winning 67 of the 70 seats. Yet the constitutional reality is particularly relevant to the current situation in Delhi.

Constitutions, whether written or unwritten, do not always lay down every little detail in the administration of a state or a country. It is expected that those who operationalise the constitution will be politically mature people and do so in good faith, free of any political underpinning. The hybrid nature of the set-up in Delhi has come up for controversy in the past too. The very first Chief Minister of Delhi, Chowdhury Brahm Perkash, had to resign after a rather bitter tussle for power with Chief Commissioner Anand Datthaya Pandit in 1955. The then Chief Minister had termed that as actually a fight with the then Union Home Minister Govind Ballabh Pant. In fact, it is widely believed that it was that fight which led to the abolition of the then Assembly. That was the time when Delhi was still one of the Part C states.

What we now witness as a rather ugly spat between the present Delhi government and the LG (read Central government) is a natural corollary to how the hybrid nature of Delhi's constitutional position can lend itself to anomalous interpretations. An appointed LG will most certainly have a mind-set which is very different from an elected government or chief minister. Nevertheless, if the goals of both are good governance, development and improvement of societal welfare, ordinarily there would be no friction in governance. It is

only when populist claims, playing to the gallery and the lack of an administrative model/roadmap are coupled with certain degrees of political machinations and inept handling of sensitive issues, does the cordiality in official dealings and the spirit of give-and-take become a casualty. The result: unproductive wrangling, negative output of human- and time-resources. The loser in the process is the public at large – their felt needs get a low priority, projects get delayed and the declared goals are not achieved. The net result in the entire imbroglio is an erosion of trust between the people and their elected government – maybe at the central, maybe at the state level. The ongoing tussle that the people of Delhi are so haplessly witnessing is a consequence of inadequate application of a robust, apolitical and objective mind-set single-mindedly dedicated to the welfare of the people and to providing the state with an ethical governance-model.

In the present case, the routine appointment of a purely temporary 'caretaker' chief secretary acted like a spark that lit the tinder box which was waiting to be ignited. If wise and more mature counsel had prevailed, the Chief Minister could have gone along with Lieutenant Governor Najeeb Jung's recommendation of having a 'stand-in' temporary chief secretary appointed on the basis of the time-tested golden principle of seniority – a cardinal principle in governance. On the other hand, if the elected government had indeed very strong reasons for not accepting the most-senior officer, maybe a more flexible approach based on meticulous consultation and negotiation could have settled the matter to the satisfaction of both authorities. This obviously did not take place; or the situation did not develop to the satisfaction of one or more parties. All these led to the rather rigid interpretation of the constitutional provisions, thereby forcing decisions which in the long-run tend to become irritants that could finally lead to a conflagration.

The proverbial last straw was the notification issued by the Union Ministry of Home Affairs on 21 May 2015, ostensibly clarifying that "Services" in the Delhi government fall within the purview of the LG, thus, the central government. The constitutional legality of this notification is being contested, and it will be adjudicated upon by the courts. Its timing certainly was ill-advised and 'suspect', as observed by the High Court of Delhi.

The proverbial bone of contention is simply this: whether the Delhi government has unfettered authority over its bureaucracy or does it have only recommendatory jurisdiction which it should exercise in a power-sharing arrangement with the LG. This is an issue requiring an interplay of the spirit of cooperative federalism. Much can be said or is being

said on both sides. Who was recalcitrant or rigid is an issue on which we need to pass judgment now. The notification sought to clarify that the democratically elected Delhi government does not have authority over its own public services which, therefore, fall within the purview of the Centre-appointed LG. The operative part of the notification reads: "The President hereby directs that - (i) subject to his control and further orders, the Lieutenant Governor of the National Capital Territory of Delhi shall, in matters connected with ' Public Order', ' Land, 'Police', and ' Services' as stated hereinabove, exercise the powers and discharge the functions of the central govt. to the extent delegated to him, from time to time, by the President.

Provided, the Lieutenant Governor of the National Capital Territory of Delhi may in his discretion, obtain the views of the Chief Minister of the National Capital Territory of Delhi in regard to the matter of 'Services' wherever he deems it appropriate”.

This notification appears to have been hastily issued by the Central government to establish its power over the public services in the state of Delhi. Control over the civil services was an issue which, in its own manner, was chugging along. The confidential reports of all IAS (Indian Administrative Service) officers, for example, are written by the chief secretary. The chief minister does review these reports but the final authority accepting them is the LG. Thus the chief minister has his say, since the All India Service officers of the AGMUT cadre (as the common cadre for these states is popularly known) can be posted to any of the states such as Arunachal Pradesh, Goa, Mizoram or Delhi. This ensures that the officers are not subject to the political vicissitudes of any single elected authority. The issue in Delhi could certainly have been resolved without a hastily-drafted executive order, the intent and legality of which are being challenged. This notification has added fuel to the fire, leading to a total breakdown of the possibility of rapprochement between Delhi’s elected government and nominated LG. The essence of the present debate is whether a notification can add a fourth subject to the existing three enumerated in the constitution. The eagle-eyed legal professionals will argue this fact. The courts will decide.

It is not that the constitutional position of the Delhi government over some administrative matters has not created complications earlier. Nevertheless, the veneer of cordiality and mutual respect between the two centres of authority was not allowed to degenerate. Even during the tenure of Sheila Dikshit, the previous chief minister, who incessantly demanded full statehood for Delhi, the relations with the then LG used to come under stress – though

both were Congress party appointees. But a certain element of maturity and respect for each other's positions did help to contain the differences. The phenomenon of a chief minister vilifying one of his own officers before a public gathering of auto rickshaw drivers was certainly a hitherto unseen low in such behaviour.

The National Territory of Delhi houses foreign embassies, the President's estate, the Parliament, the Supreme Court and such other important national and international agencies. While, it may make for good politics for any political party in power in the Territory to demand statehood, there does not appear to be any possibility of such a demand being acceded to. The Congress Party, as represented by Sheila Dikshit, and the Bharatiya Janata Party (now ruling at the Centre), as represented by Sahib Singh Verma and Madan Lal Khurana, had made these demands when their parties were in power in Delhi. But these parties promptly forget the issue when they come to power at the Centre. Hence, it is not an issue which will lend itself to an easy and permanent solution anytime in the near-future. It will be in the interest of the parties who come to power to live with this hybrid structure and attempt to operate with maturity, sagacity and with the interest of the people of Delhi at heart. The Territory needs urgent attention on infrastructure, law and order situation and issues such as cleanliness, power, water and solid waste disposal. It is the responsibility of any elected government to address these issues in right earnest within the available constitutional provisions.

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