

Legislative Brief

The Government of NCT of Delhi (Amendment) Bill, 2023

The Government of NCT of Delhi (Amendment) Bill, 2023 was introduced in Lok Sabha on August 1, 2023. It amends the GNCTD Act, 1991. It replaces the GNCTD (Amendment) Ordinance, 2023 promulgated on May 19, 2023.

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August 1, 2023

Highlights of the Bill

- ◆ The Bill establishes the National Capital Civil Services Authority, which consists of the Chief Minister, Chief Secretary of Delhi, Principal Home Secretary of Delhi. The Authority will make recommendations to the Lieutenant Governor (LG) regarding transfers and postings of officials and disciplinary matters.
- ◆ The Bill empowers the LG to exercise his sole discretion on several matters including those recommended by the National Capital Civil Services Authority, and the summoning, prorogation and dissolution of the Delhi Legislative Assembly.
- ◆ It authorises department secretaries to bring to the notice of the LG, the Chief Minister and the Chief Secretary any matter that may bring Delhi Government into controversy with the Central Government.

Key Issues and Analysis

- ◆ Conferring powers over the transfer and posting of officers to the Authority may break the triple chain of accountability that links the civil services, ministers, the legislature and citizens. This may violate the principle of parliamentary democracy, which is a part of the basic structure doctrine.
- ◆ The LG has been granted sole discretion in several matters including when the Legislative Assembly will convene. This implies that the Chief Minister may be unable to convene a session needed for essential government business.
- ◆ Department secretaries will bring certain matters directly to the LG, Chief Minister and the Chief Secretary, without consulting the concerned minister. This may go against the collective responsibility of the Cabinet, as the concerned ministers cannot provide his inputs.

PART A: HIGHLIGHTS OF THE BILL

Context

Union Territories (UTs) are directly governed by the President or an administrator appointed by the President.¹ However, Delhi and Puducherry are UTs with a legislature, and a council of ministers.^{2,3} The Delhi Legislative Assembly has the power to legislate over subjects in the State List and Concurrent List, except for police, public order and land.⁴ The Delhi government has executive powers over the same subjects. Further, Parliament has the power to legislate over all matters in the State and Concurrent Lists related to Delhi. The Lieutenant Governor (LG) is designated as the administrator of Delhi, operating with the aid and advice of the council of ministers of Delhi.⁵ The Government of National Capital Territory of Delhi (GNCTD) Act, 1991 lays down the framework for the functioning of the Delhi Assembly and the Delhi government.⁶ It outlines the powers of the Assembly, the discretionary powers of the LG, and the Chief Minister's duty to provide information to the LG.

The question of power-sharing between the Delhi government and central government has been raised before the Supreme Court on several occasions.^{7,8,9} On May 11, 2023, the Supreme Court gave its verdict on the control of services between the central government and the Delhi government.¹⁰ The question before the Court was whether the Delhi government (headed by the elected Chief Minister) or the Lieutenant Governor (appointed by the President) would have control over services and civil servants in Delhi. The Court ruled that the Delhi government will have control over services in Delhi. Such control will not extend to subjects of police, public order, and land, over which the central government has exclusive powers. The 2023 judgement also reaffirmed a 2018 judgement where the Supreme Court had ruled that the LG did not have independent decision-making powers and was bound to follow the aid and advice of the Council of Ministers.⁸ Please see Table 2 (on page 4) for more details.

After the Supreme Court's judgment on control over services in Delhi, the GNCTD (Amendment) Ordinance, 2023 was promulgated on May 19, 2023.¹¹ The Ordinance has been challenged in the Supreme Court, which has started hearing the petition.¹² The GNCTD (Amendment) Bill, 2023 was introduced in Lok Sabha on August 1, 2023. The Bill repeals the Ordinance and will retrospectively apply from May 19, 2023 (See Table 1 on page 4 for changes made in the Bill).

Key Features

- **National Capital Civil Services Authority:** The Bill establishes the National Capital Civil Services Authority to make recommendations to the Lieutenant Governor of Delhi (LG) on certain matters related to services. These include: (i) transfers and postings, (ii) matters related to vigilance, (iii) disciplinary proceedings, and (iv) prosecution sanctions of Group A of All India Services (except Indian Police Service), and DANICS.
- The Authority will consist of the: (i) Chief Minister of Delhi as Chairperson, (ii) Principal Home Secretary of the Delhi government as Member Secretary, and (iii) Chief Secretary of the Delhi government as member. The central government will appoint both the Principal Home Secretary and Chief Secretary. All decisions of the Authority will be based on a majority vote of the members present and voting. The quorum for a meeting is two people.
- **Powers of the Lieutenant Governor:** Under the Act, matters where the LG may act on his discretion are: (i) matters outside the legislative competence of the Delhi Legislative Assembly but which have been delegated to the LG, or (ii) matters where he is required by a law to act in his discretion or exercise any judicial or quasi-judicial functions. The Bill specifies that in these matters, the LG will act in his sole discretion. It expands the discretionary role of the LG by giving him powers to approve the recommendations of the Authority, or return them for reconsideration. In the case of a difference of opinion between the LG and the Authority, the former's decision will be final.
- **Disposal of matters by Ministers:** A Minister of the Delhi government may issue standing orders for the disposal of matters brought to his attention. The order should be issued in consultation with the concerned Department Secretary. Certain matters must be submitted to the LG, through the Chief Minister and the Chief Secretary, for his opinion prior to the issue of any order. These include proposals affecting: (i) the peace and tranquillity of Delhi, (ii) relations between the Delhi government and the central government, Supreme Court, or other state governments, (iii) summoning, prorogation, and dissolution of the Legislative Assembly, and (iv) matters on which LG is to give an order in his sole discretion.
- **Duties of Secretaries:** Additionally, the concerned Department Secretary must bring certain matters to the notice of the LG, the Chief Minister, and the Chief Secretary. These include matters which may bring the Delhi Government into controversy with the central or any state government, the Supreme Court, or High Court of Delhi.

PART B: KEY ISSUES AND ANALYSIS

The Bill may be violating the constitution

Delhi government not having control over services may violate the basic structure

The Bill establishes an Authority to make recommendations to the LG on certain matters. These include: (i) transfers and postings, (ii) matters related to vigilance, and (iii) disciplinary proceedings of officers in Delhi. The Authority has three members, two of whom (Chief Secretary and Principal Home Secretary) are appointees of the Central Government. These members can in effect outvote the Chief Minister of Delhi. Further, the Bill grants the LG the power to override the recommendations of the Authority. Therefore, the Bill effectively gives the central government powers over services in Delhi. If the Delhi government does not have control over civil servants, it cannot execute any programmes across any sector in its jurisdiction. This may violate the triple chain of accountability, which is an essential feature of parliamentary democracy.

The Supreme Court explained this principle in the recent 2023 judgement.¹⁰ It stated that democratic government rests on a triple chain of accountability: (i) civil servants are accountable to ministers, (ii) ministers are accountable to legislatures, and (iii) legislatures are accountable to the electorate.¹⁰ A democratically elected government must be able to have control over and hold accountable public officers posted in the service of his government.¹⁰ By severing the first link of the triple chain of accountability, the Bill may be contradicting the principles of parliamentary democracy.

The 2023 judgement re-iterates the principle spelt out by the 2018 judgement that ministers bear the responsibility before the legislature for every action undertaken by public officials in his respective department.⁸ However, under the Bill, a minister of Delhi will not be able to hold his public officials accountable for bureaucratic delays.

The LG may not be bound to act on the aid and advice of the Council of Ministers

As per Article 239AA, the LG has to act on the aid and advice of the Council of Ministers, except when exercising his functions in his discretion.^{5,8} The Transaction of Business Rules of the GNCTD, 1993 provides that certain matters must be submitted to the LG, through the Chief Minister and Chief Secretary, for his opinion prior to the issue of any order.¹³ These matters include: (i) the peace and tranquillity of Delhi, (ii) relations of the Delhi government with any state government, the Supreme Court, and the High Court of Delhi, and (iii) summoning, proroguing, and dissolving of the Legislative Assembly. The Bill expands the mentioned matters to include the relations of the Delhi government with the central government. Additionally, it expands the powers of the LG's opinion to have sole discretionary power on these matters. If there is a difference of opinion between the LG and the Chief Minister, the LG's opinion will take precedence.

These provisions may violate the principle of the LG acting on the aid and advice of the Council of Ministers on matters within the executive competence of the latter. They also contradict the 2018 judgement of the Supreme Court which stated that the decision-making power lies with the elected government.⁸

For example, under the 1991 Act, the LG has the power to summon, prorogue, and dissolve the legislative assembly.⁶ However, he is bound to act on the aid and advice of the Council of Ministers. The Bill allows the LG to override the decision of the Council of Ministers and exercise sole discretionary powers on these matters. This implies that the Chief Minister may not be able to convene a session of the Assembly for any essential government business.

Certain terms in the Bill are unclear

Sole discretionary power of the LG

Under the Act, matters where the LG may act on his *discretion* are: (i) matters outside the legislative competence of the Delhi Legislative Assembly but which have been delegated to the LG, or (ii) matters where he is required by a law to act in his discretion or exercise any judicial or quasi-judicial functions. The Bill specifies that in these matters, the LG will act in his *sole discretion*. It is unclear how 'sole discretion' of the LG is different from 'discretion'.

The criteria for certain matters brought to the notice of the LG may be overbroad

Under the Bill, the concerned department secretary must bring certain matters to the notice of the LG, the Chief Minister, and the Chief Secretary. These include matters which may bring the Delhi Government into controversy with the central or any state government, the Supreme Court, or High Court of Delhi. It is not clear what matters would be considered controversial.

Moreover, this provision enables department secretaries to bring certain matters directly to the LG, Chief Minister and Chief Secretary, without consulting the concerned minister. This would break the usual chain of command as issues related to the ministry would have no inputs from the concerned minister. This also may go against the principle of collective responsibility of the cabinet.

Act: Sections
6, 41

Bill: Clauses:
3B, 45I (4)

Act: Section
41

Bill: Clause
3A

Bill: Clause
45J (4)

Table 1: Comparison of key changed provisions between the 2023 Ordinance and the 2023 Bill

The GNCTD (Amendment) Ordinance, 2023	Changes in the 2023 Bill
<ul style="list-style-type: none"> Delhi's legislative competence over services removed. 	<ul style="list-style-type: none"> Not mentioned.
<ul style="list-style-type: none"> Power to appoint authorities, boards, commissions, statutory bodies, or office bearers will lie with the President under any law. 	<ul style="list-style-type: none"> Power to appoint authorities, boards, commissions, statutory bodies, or office bearers will lie with: (i) the President for any law of Parliament, and (ii) LG for any law of Delhi legislature.
<ul style="list-style-type: none"> The Civil Services Authority to submit an annual report to the central government and Delhi government, which will be tabled in Parliament and the Delhi Legislative Assembly. 	<ul style="list-style-type: none"> Not mentioned.
<ul style="list-style-type: none"> Any matter of administrative importance which the President or the Delhi Chief Minister may consider necessary will be submitted to the LG prior to the issue of any order. 	<ul style="list-style-type: none"> Any matter of administrative importance which the Delhi Chief Minister may consider necessary will be submitted to the LG prior to the issue of any order.

Sources: The GNCTD (Amendment) Ordinance, 2023, The GNCTD (Amendment) Bill, 2023; PRS.

Table 2: Timeline on Key Legislations and Judgements on Delhi

Year	Development
1956	<ul style="list-style-type: none"> States Reorganization Act is passed. Delhi classified as a Union Territory
1991-92	<ul style="list-style-type: none"> The 69th Constitutional Amendment (Article 239AA) is passed to make Delhi a UT with legislature. The Government of National Capital Territory of Delhi (GNCTD) Act, 1991 is passed. The 70th Constitutional Amendment is passed which provides for certain laws of Parliament (amending Article 239AA) to not be deemed as an amendment to the Constitution.
2015	<ul style="list-style-type: none"> Ministry of Home Affairs issues a notification taking away the control over services from the Delhi legislature, and empowering the LG to discharge functions of the Central Government in relation to the same.
2016	<ul style="list-style-type: none"> Delhi High Court holds that services lie outside the purview of the Delhi legislative assembly and executive.⁷
2018	<ul style="list-style-type: none"> The Supreme Court rules that the LG must act on the "aid and advice" of the council of ministers of Delhi.⁸
2019	<ul style="list-style-type: none"> A two-judge bench of the Supreme Court delivers a split verdict while ruling over the issue of services.⁹
2021	<ul style="list-style-type: none"> Union government amends the GNCTD Act, 1991, expanding the list of matters where the LG's opinion was mandatory and the nature of Bills that LG could refer to the President.
2023	<ul style="list-style-type: none"> Supreme Court rules that Delhi government has control over services in Delhi.¹⁰ Central government promulgates an Ordinance to amend the GNCTD Act, 1991 to exclude "services" from the purview of Delhi legislature. The GNCTD (Amendment) Bill, 2023 was introduced in Lok Sabha on August 1, 2023 to replace the Ordinance.

Sources: States Reorganization Act, 1956, The Constitution (Sixty-ninth Amendment) Act, 1991, The Government of National Capital Territory of Delhi Act, 1991, The Constitution (Seventieth Amendment) Act, 1992, S.O. 1368(E), Notification, MHA, May 26, 2015, W.P.(C) No.5888/2015 Government of National Capital Territory of Delhi vs. Union of India, 2016, The Government of National Capital Territory of Delhi Act (Amendment) Act, 2021, The Government of National Capital Territory of Delhi Act (Amendment) Ordinance, 2023, Government of NCT of Delhi vs Union of India (2018), Government of NCT of Delhi vs Union of India (2023); PRS.

- [Article 239](#), The Constitution of India.
- Clause 2(a), [Article 239AA](#), The Constitution of India.
- [Article 239 A](#), The Constitution of India.
- Clause 3(a), [Article 239AA](#), The Constitution of India.
- Clause 4, [Article 239AA](#), The Constitution of India
- [The Government of National Capital Territory of Delhi Act, 1991](#).
- Writ Petition (civil), No. 7887 of 2015, [Rajendra Prasad vs Govt of NCTD](#), Delhi High Court, August 4, 2016.
- Civil Appeal No 2357 of 2017, [Government of NCT of Delhi vs Union of India](#), Supreme Court, July 04, 2018.
- Civil Appeal No 2357 of 2017, [Government of NCT of Delhi vs Union of India](#), Supreme Court, February 14, 2019.
- Civil Appeal No 2357 of 2017, [Government of NCT of Delhi vs Union of India](#), Supreme Court, May 11, 2023.
- [The Government of National Capital Territory of Delhi \(Amendment\) Ordinance, 2023](#).
- Order, Writ Petition (c) No. 678 of 2023, [Government of NCT of Delhi vs Union of India](#), Supreme Court, July 20, 2023.
- Rule 23, [The Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993](#).

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