Government of National Capital Territory of Delhi (Amendment) Bill, 2021

What is the issue?

- The Centre introduced the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 in Lok Sabha.
- This has revived the dispute on the distribution of powers between the elected government and the Lieutenant Governor (L-G).

What does the Bill say?

- The Bill makes it explicitly clear that the term "government" in any law made by the Legislative Assembly shall mean the L-G.
- Also, the L-G's opinion should be obtained before the government takes any executive action based on decisions by the Cabinet or any individual minister.
- The Centre claims that the amendment Bill seeks to give effect to the Supreme Court's 2018 verdict.
- It is said to further define the responsibilities of the elected government and the Lt Governor in line with the Constitutional scheme.

What was the 1991 Act in this regard?

- Delhi's current status as a Union Territory with a Legislative Assembly is an outcome of the 69th Amendment Act, 1991.
- It was through this that Articles 239AA and 239BB were introduced in the Constitution.
- The GNCTD (Government of National Capital Territory of Delhi) Act was passed simultaneously.
- This supplemented the constitutional provisions relating to the Assembly and the Council of Ministers in the national capital.
- For all practical purposes, the GNCTD Act outlines -
    i. the powers of the Assembly
    ii. the discretionary powers enjoyed by the L-G
    iii. the duties of the CM with respect to the need to furnish information to the L-G

What was the 2018 verdict of the Constitution Bench?

- In a 2018 verdict, a five-judge Constitution Bench of the SC had held that the L-G's concurrence is not required.
- This applies to issues other than police, public order and land.
- It had added that decisions of the Council of Ministers would, however, have to be communicated to the L-G.
- The Court observed the following:
    - Requiring prior concurrence of the L-G would absolutely negate the ideals of representative governance and democracy conceived for the NCT of Delhi in the Constitution.
    - The L-G was bound by the aid and advice of the council of ministers.
    - The status of the LG of Delhi is not that of a Governor of a State, rather s/he remains an Administrator, in a limited sense.
    - The elected government must keep in mind that Delhi is not a state.

What power does the L-G enjoy under the current arrangement?

- The L-G does have the power to refer any matter, over which there is a disagreement with the elected government, to the President under Article 239AA(4).
- The SC had, in this regard, pointed out that the L-G "should not act in a mechanical manner without due application of mind so as to refer every decision of the Council of Ministers to the President".

What changes will the Bill create if cleared?

- The government in Delhi has been functioning on the lines of the Constitution and the ideas spelt out in the 2018 verdict.
- The elected government had thus stopped sending files on executive matters to the L-G before the implementation of any decision.
    - It has been keeping the L-G informed of all administrative developments.
    - But this is done not necessarily before implementing or executing any decision.
- The amendment, if cleared, will force the elected government to take the L-G's advice before taking any action on any cabinet decision.
- The Bill also seeks to add a provision in the original GNCTD Act, 1991.
- This would bar the Assembly or its committees from making rules -
    i. to take up matters concerning day-to-day administration
    ii. to conduct inquiries in relation to administrative decisions
- This assumes significance as the 70-member Assembly in Delhi has multiple committees examining various matters.

What are the implications?

- From 2015 to 2018, the AAP (Aam Aadmi Party) government in Delhi was engaged in a constant battle with the Centre.
- There had been disagreements over policy decisions and the powers of the L-G vis-à-vis the elected government.
- The 2018 Supreme Court judgment gave the elected government a freer hand in terms of policy decisions.
- Seen in this context, the amendments, if implemented, will have far-reaching implications.
- It will essentially take away the elected government's autonomy.
- It would also dilute the dream for full statehood for Delhi, which each political party - BJP, Congress, and AAP - have promised the electorate at various times.

Source: The Indian Express

