National Capital Territory of Delhi (Amendment) Ordinance, 2023

Why in news?

The National Capital Territory of Delhi (Amendment) Ordinance, 2023 which aims to affect the powers of the elected State government of Delhi and restore certain powers to the Lieutenant Governor (LG).

What is article 239AA?

- Article 239AA was inserted in the Constitution by the 69th Amendment Act 1991.
- The Article provides for a special status to the National Capital Territory of Delhi (NCT).
- The article states that the NCT shall have a Legislative Assembly and a Council of Ministers headed by a Chief Minister.
- The Legislative Assembly shall have the power to make laws on all matters in the State List and the Concurrent List, except for those matters that are specifically excluded by the Constitution.
- The Council of Ministers shall be responsible to the Legislative Assembly.

Control over services in Delhi click here

What are interpretations of Article 239AA by the Supreme Court?

- Supreme Court held that the Delhi government has the power to make laws and administer civil services in the national capital.
- The court limited the role of the Lieutenant Governor (LG) over bureaucrats in the capital to three specific areas such as public order, police and land.
- **Role of Lieutenant Governor** - The LG's role is to either act on the aid and advice of the Council of Ministers or implement their decisions.
- The court clarified that the Lieutenant Governor should not act in a mechanical manner and refer every decision of the Council of Ministers to the President.
- **Executive Power** - Lies under the exclusive executive power of the Delhi government expect for police, land and public order.
- The court held that LG does not possess independent decision making power and must act on the aid and advice of the Council of Ministers, subject to sound rationale.
- **Legislative Powers** - The court clarified that the Legislative Assembly of Delhi has the power to make laws on subjects in the Concurrent List and all but three excluded subjects in the State List.
- **Concept of Federalism** - The court recognized that the concept of federalism applies to Delhi, despite it not being accorded the status of a state.
- It emphasized the importance of federal cooperation and acknowledged the special

status of Delhi as reflected in Article 239AA and other articles.

What is Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 about?

- **More power to Lieutenant Governor (LG)** - The Ordinance seeks to amend the Government of National Capital Territory of Delhi Act 1991.
- The ordinance aims to give the Lieutenant Governor (LG) of Delhi more power ***over the administration of services*** in the national capital.
- **Nullify the Supreme Court's verdict** - The ordinance aims to nullify the Supreme Court's verdict and strengthen the role of the Lieutenant Governor (LG) in the administration of Delhi.
- **National Capital Civil Service Authority (NCCSA)** - A new ***statutory body*** responsible for making recommendations to the LG regarding transfer postings, vigilance, and other related matters.
- **Violates the principle of federalism** - It gives the LG more power than the elected government of Delhi.
- **Un-democratic** - As it gives the LG more power than the elected representatives of the people of Delhi.
- The ordinance tends to undermine the powers of the elected government of Delhi.

What are the provisions of National Capital Civil Service Authority (NCCSA)?

- NCCSA consists of Chief Minister of Delhi, the Chief Secretary and the Principal Secretary of the Home department.
- Decisions made by the NCCSA will be based on a ***majority vote***, which means that the elected ***Chief Minister can be overruled*** by the two senior bureaucrats.
- If the LG disagrees with the recommendations made by the NCCSA, NCCSA have the power to return the recommendations for reconsideration.
- If a difference of opinion persists, the final decision will be made by the LG, effectively reversing the Supreme Court's verdict.

Does the Ordinance go against the Supreme Court judgment?

- The Ordinance is based on the argument that the Supreme Court has itself acknowledged the superior authority of Parliament to make laws for the national capital.
- The Parliament is Delhi’s true legislature, the Centre has argued.
- However, the May 11 judgment addresses this contention by acknowledging that though Delhi is not a full-fledged State, its Legislative Assembly is constitutionally entrusted with the power to legislate upon the subjects in the State List and Concurrent List.
- Under the constitutional scheme envisaged in Article 239AA (3), NCTD was given legislative power which though limited, in many aspects is similar to States.
- In that sense, with the addition of Article 239AA, the Constitution created an asymmetric federal model with the Union of India at the centre, and the NCTD at the regional level.

What lies ahead?

- An Ordinance is not beyond judicial review of the apex court.
- If the 2023 Ordinance is challenged separately, the Union would have to prove the extraordinary or emergent situation, which necessitated it to promulgate an Ordinance merely days after a Constitution Bench settled the law.

References

1. The Hindu | Article 239AA
2. The Indian Express | Features About NCCSA
3. The Indian Express | About Article 239AA

