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

Prepared by Shri Vinod Kumar, Joint Director and Shri S. Holkhopao Baite, Additional Director under the supervision of Smt. Neelam Sethi, Director (23035004) and Smt. Kalpana Sharma, Additional Secretary (23034845) of Lok Sabha Secretariat.

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

Introduction

The Government of National Capital Territory of Delhi (Amendment) Bill, 2021¹ was introduced in Lok Sabha on 15 March 2021. The Bill intends to amend certain provisions of the Government of National Capital Territory of Delhi (GNCTD) Act, 1991. The Principal Act provides a framework for the functioning of the Legislative Assembly and the government of the National Capital Territory (NCT) of Delhi.

The Government of National Capital Territory of Delhi Act, 1991

Current status of Delhi as a Union Territory with Legislative Assembly is an outcome of the Constitution 69th Amendment Act through which Articles 239AA and 239BB were introduced in the Constitution. The GNCTD Act was passed simultaneously to supplement the constitutional provisions relating to the Assembly and the Council of Ministers in the National Capital. For all practical purposes, the GNCTD Act outlines the powers of the Assembly, the discretionary powers enjoyed by the Lieutenant Governor (L-G), and the duties of the Chief Minister with respect to the need to furnish information to the L-G.

Need for Amendment Bill

As per the “Statement of Objects and Reasons” (see **Annexure**) of the Bill, this bill has been introduced to give effect to the interpretation of the provisions of article 239AA of the Constitution relating to the structure of governance in National Capital Territory of Delhi made by the Constitution Bench of the Hon'ble Supreme Court in its judgment dated 04th July, 2018, and Division Bench of the Hon'ble Supreme Court, in its judgment dated the 14th February

¹ The Government of National Capital Territory of Delhi (Amendment) Bill, 2021 was introduced by Shri G. Kishan Reddy, The Minister of State in the Ministry of Home Affairs in Lok Sabha on March 15, 2021.

2019. Among the major proposed amendments, one makes it explicitly clear that the term “government” in any law made by the Legislative Assembly shall mean the L-G. The Bill adds that the L-G’s opinion shall be obtained before the government takes any executive action based on decisions taken by the Cabinet or any individual minister.

Main Provisions of the Amendment Bill

1. The Bill provides that the expression “Government” referred to in any law made by the Legislative Assembly shall mean Lieutenant Governor (L-G).
2. The Principal Act 1991 requires the L-G to reserve certain Bills passed by the Legislative Assembly for the consideration of the President. These Bills are those- (a) which may diminish the powers of the High Court of Delhi, (b) which the President may direct to be reserved, (c) dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or (d) relating to official languages of the Assembly or the NCT of Delhi. The Amendment Bill 2021 requires the L-G to also reserve those Bills for the President which incidentally cover any of the matters outside the purview of the powers of the Legislative Assembly.
3. The Principal Act 1991 allows the Legislative Assembly to make Rules to regulate the procedure and conduct of business in the Assembly. The Amendment Bill 2021 provides that such Rules must be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha.
4. The Amendment Bill 2021 prohibits the Legislative Assembly from making any rule to enable itself or its Committees to- (a) consider the matters of day-to-day administration of the NCT of Delhi and (b) conduct any inquiry in relation to administrative decisions. Further, the Bill provides that all such rules made before its enactment will be void.
5. The Principal Act 1991 specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the L-G. The Amendment Bill 2021 adds that on certain matters, as

specified by the L-G, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.

Benefits of the Bill

1. The Bill, will promote harmonious relations between the legislature and the executive, and further define the responsibilities of the elected Government and the Lieutenant Governor, in line with the constitutional scheme of governance of National Capital Territory of Delhi.

2. The Bill will promote harmonious relations between the legislature and the executive.

Comparison of provisions of the Amendment Bill 2021 with provisions of the Principal Act of 1991

Principal Act 1991	Amendment Bill 2021
	In section 21, after sub-section (2), a new sub-section (3) shall be inserted, namely the expression "Government" referred to in any law to be made by the Legislative Assembly shall mean the "Lieutenant Governor"
Section 24 Provides that the Lieutenant Governor shall not give assent to, but shall reserve for the consideration of the President, any Bill which,— (a) in the opinion of the Lieutenant Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill; or (b) the President may, by order, direct to be reserved for his consideration; or (c) relates to matters referred to in sub-section (5) of section 7 or section 19 or section 34 or sub-section (3) of section 43, <i>i.e.</i> dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or relating to official languages of the Assembly or the NCT of Delhi.	In Section 24 in clause (c), for the word and figures "section 43", shall be substituted by words and figures "section 43; or" and after clause (c), another clause (d) shall be inserted, which requires the LG to also reserve those Bills for the President which incidentally cover any of the matters outside the purview of the powers conferred on the Legislative Assembly.
Section 33 of the principal Act provides that the Legislative Assembly may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business; Provided that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules- (a) for securing the timely completion of financial	In section 33 of the principal Act, in sub-section (1), (a) after the words "conduct of its business", the words "which shall not be inconsistent with the Rules of Procedure and Conduct of Business in House of People" shall be inserted; (b) in the proviso, for the words "Provided that", shall be substituted, by "Provided that the Legislative Assembly shall not make any rule to

<p>business;</p> <p>(b) for regulating the procedure of, and the conduct of business in, the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Capital;</p> <p>(c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Lieutenant Governor in so far as he is required by or under this Act or any law to act in his discretion.</p> <p>(2) Until rules are made under sub-section (1), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of Uttar Pradesh in force immediately before the commencement of this Act shall have effect in relation to the Legislative Assembly subject to such modifications and adaptations as may be made therein by the Lieutenant Governor.</p>	<p>enable itself or its Committees to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to the administrative decisions, and any of the rule made in contravention of this proviso, before the commencement of this amendment Act, shall be void.</p>
<p>Sub-section (2) of the Section 44 of the principal Act provides that "Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor".</p>	<p>In sub-section (2) of Section 44 of the Principal Act, the following proviso shall be inserted, "Provided that before taking any executive action in pursuance of the decision of the Council of Ministers or a Minister, to exercise powers of Government, State Government, Appropriate Government, Lieutenant Governor, Administrator or Chief Commissioner, as the case may be, under any law in force in the Capital, the opinion of Lieutenant Governor in term of proviso to clause (4) of article 239AA of the Constitution shall be obtained on all such matters as may be specified, by a general or special order, by Lieutenant Governor."</p>

References:

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Annexure**STATEMENT OF OBJECTS AND REASONS**

The Government of National Capital Territory of Delhi Act, 1991 (1of 1992) was enacted to supplement the provisions of the Constitution relating to the Legislative Assembly and a Council of Ministers for the National Capital Territory of Delhi and for matters connected therewith or incidental thereto. Section 44 of the Act deals with conduct of business and there is no structural mechanism provided in the Act for effective time bound implementation of said section. Further, there is no clarity as to what proposal or matters are required to be submitted to Lieutenant Governor before issuing order thereon.

2. The Constitution Bench of the Hon'ble Supreme Court, in its judgment dated the 04th July, 2018, and Division Bench of the Hon'ble Supreme Court, in its judgment dated the 14th February, 2019, has interpreted the provisions of article 239AA of the Constitution relating to the structure of governance in National Capital Territory of Delhi.

3. In order to give effect to the interpretation made by Hon'ble Supreme Court in the aforesaid judgments, a Bill, namely, the Government of National Capital Territory of Delhi (Amendment) Bill, 2021 seeks, inter alia, to clarify the expression "Government", which in the context of legislations to be passed by the Legislative Assembly of Delhi, shall mean the Lieutenant Governor of the National Capital Territory of Delhi, consistent with the status of Delhi as a Union territory to address the ambiguities in the interpretation of the legislative provisions. It further seeks to ensure that the Lieutenant Governor is necessarily granted an opportunity to exercise the power entrusted to him under proviso to clause (4) of article 239AA of the Constitution, in select category of cases and also to make rules in matters which incidentally encroach upon matters falling outside the preview of the Legislative Assembly. It also seeks to provide for rules made by the Legislative Assembly of Delhi to be consistent with the rules of the House of the People.

4. The said Bill will promote harmonious relations between the legislature and the executive, and further define the responsibilities of the elected Government and the Lieutenant Governor, in line with the constitutional scheme of governance of National Capital Territory of Delhi, as interpreted by the Hon'ble Supreme Court.

5. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

The 5th March, 2021.

AMIT SHAH