

# THE DELHI MCA ACT DENUDES THE SPIRIT OF FEDERALISM

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

When the State Election Commission of Delhi had called a press conference at 5 p.m. on March 9, 2022, it was widely reported that the schedule for the elections to the three Municipal Corporations of Delhi would be declared. However, the State Election Commissioner (SEC), S.K. Srivastava, informed the media that it would be deferring the announcement [following a letter from the Centre](#) just earlier proposing the unification of the three municipal corporations.

In less than a month, both Houses of Parliament passed the [Delhi Municipal Corporation \(Amendment\) Act, 2022](#). In a move that appears to simply unify the trifurcated Delhi Municipal Corporations, the [Central government has conferred upon itself various crucial powers](#) to assume control over the Municipal Corporation of Delhi from the State government. The casualty of these changes introduced by the Central government is federalism.

The Central government's line is that the amendment has been passed as in Article 239AA of the Constitution, which is a provision that provides for special status to Delhi. The Union Home Minister, Amit Shah, stated in Parliament that the law is based on the power of Parliament under Article 239AA(3)(b) to make laws for the State of Delhi "on any matter". The law provides that the power to determine the number of wards, extent of each ward, reservation of seats, number of seats of the Corporation, etc. will now be vested in the Central government. The number of seats of councillors in the Municipal Corporations of Delhi is also to be decided now by the Central government. By exercising that very power, the number of councillors to the Municipal Corporations of Delhi has been reduced from 272 to 250.

The Central government has also taken over powers from the State to decide on matters such as 'salary and allowances, leave of absence of the Commissioner, the sanctioning of consolidation of loans by a corporation, and sanctioning suits for compensation against the Commissioner for the loss or waste or misapplication of municipal fund or property'. The large-scale usurpation of powers by the Central government has been done without any consultation with the Delhi government, and all the major stakeholders kept in the dark during the process.

The Central government has consciously chosen to overlook Part IXA of the Constitution that specifically states that it will be the Legislature of the State that will be empowered to make laws concerning representation to the municipalities. The argument of the Centre that Article 239AA can be applied over and above Part IXA of the Constitution does not hold good as the latter is a specific law that will override the general law relating to Article 239AA. Further, Part IXA of the Constitution concerning municipalities was inserted into the Constitution through the Seventy-Fourth Constitutional Amendment Act of 1992 and it succeeded the Sixty-Ninth Amendment Act of 1991 that brought in Article 239AA. Therefore, it can be meaningfully concluded that if the intention of Parliament was to exclude Delhi from the purport of Part IXA, it would have specifically spelt so.

The Delhi Municipal Corporation was split into three regions, i.e., east, south and north, in 2011 after much deliberation and discussion at various levels. The split-up was first proposed in the 1987 Balakrishnan Committee Report which was bolstered in the 2001 Virendra Prakash Committee Report. A seven-member Delhi Legislative Assembly Panel was set up in 2001 to study the recommendations and suggest modalities.

Since the recommendations had to be processed by the Central government, another committee was constituted under the chairmanship of Ashok Pradhan to study the issue. The proposal finally took shape in 2011 and the law to trifurcate was enacted. Although the plan to split up the Delhi Municipal Corporation was well thought-out and studied, the decision to reunify has been done at the behest of the Central government without any study or consultation.

Also read | [Bill to reunify municipalities an 'interference' by Parliament, against constitution: Delhi Assembly Speaker](#)

Article 239AA has, from its very enactment, been subject to numerous litigations and its scope finally determined by the Supreme Court of India in the famous *State of NCT of Delhi vs Union of India* judgment pronounced in 2018.

The Court held, "The Constitution has mandated a federal balance wherein independence of a certain required degree is assured to the State Governments. As opposed to centralism, a balanced federal structure mandates that the Union does not usurp all powers and the States enjoy freedom without any unsolicited interference from the Central Government with respect to matters which exclusively fall within their domain." It was made clear in no uncertain terms that the aid and the advice of the State government of Delhi would bind the decision of the Lieutenant General in matters where the State government has the power to legislate. No doubt, the amendment to the Delhi Municipal Corporation Act, 1957 will lead to further litigation on the aspect of a sharing of powers between the State of NCT of Delhi and the Central government. The interference of the Centre in matters such as municipal issues strikes a blow against federalism and the celebrated Indian model of decentralisation.

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