

How to rule Delhi: on the Supreme Court verdict on Delhi power tussle

In [ruling that the Lieutenant Governor of Delhi has no independent decision-making power](#), and has to act mainly on the aid and advice of the Council of Ministers, the Supreme Court has restored the primary role played by the “representative government” in the National Capital Territory. Though seen as a Union Territory, Delhi was created as a separate category, with an elected Assembly with powers to enact laws in all matters falling under the State and Concurrent lists, with the exception of public order, police and land. This gave it a status higher than other UTs. The demand for full statehood has been around for many years now, but after the Aam Aadmi Party came to power the constitutional tussle between the two tiers of government has become an acrimonious battle between AAP and the BJP at the Centre. Until now, the situation was tilted in favour of the Centre because of the Lt. Governor’s claim that he had the authority to refer any matter to the President. The proviso that allowed him to make such a reference was used to block major decisions of the AAP regime. The Delhi High Court agreed with this two years ago, giving the impression that administrative decisions needed the Lt. Governor’s concurrence.

Should Delhi be given statehood?

In a judgment that essentially reaffirms the constitutional position, the Supreme Court has ruled that the Lt. Governor has to ordinarily act on the aid and advice of the Council of Ministers. At the same time, it has retained the Lt. Governor’s powers to refer matters to the President for a decision. However — and this is the nub of the judgment — it has significantly circumscribed this power. The power to refer “any matter” to the President no longer means “every matter”. Further, there is no requirement of the Lt. Governor’s concurrence for any proposal. The ‘reference’ clause may give rise to conflict even now. However, the court has significantly limited its potential for mischief. It has not given an exhaustive list of matters that can be referred, but Justice D.Y. Chandrachud, in a separate but concurring opinion, has indicated that it could “encompass substantial issues of finance and policy which impact upon the status of the national capital or implicate vital interests of the Union.” Every trivial difference of opinion will not fall under the proviso. Overall, the verdict is an appeal to a sense of constitutional morality and constitutional trust among high functionaries. It has ruled out Mr. Kejriwal’s demand of full statehood, and the critical powers — over police, land and public order — still remain vested with the Centre. However, the court having stressed that the elected government is the main authority in Delhi’s administration, the controversies over the arbitrary withholding of Cabinet decisions may end, or at least diminish. The basic message is that an elected government cannot be undermined by an unelected administrator. The larger one is that the Union and its units should embrace a collaborative federal architecture for co-existence and inter-dependence.

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