

THIRD AND FINAL ROUND: ON THE TUSSLE OVER DELHI'S STATUS

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

The complexities of the law governing the National Capital Territory (NCT) of Delhi will [once again be under elaborate judicial focus](#). In what will be the third round of litigation in the dispute between the Union government and the Government of the NCT of Delhi, a Constitution Bench will embark on interpreting a couple of phrases in [Article 239AA](#), which confers a unique status for Delhi. It would indeed seem unnecessary for another Constitution Bench after five judges had rendered an authoritative pronouncement in 2018 on various questions that arose from Article 239AA. However, the Chief Justice of India, Justice N.V. Ramana, has made it clear that the reference to a five-member Bench will be strictly limited to the interpretation of a couple of phrases that were not examined by the earlier Bench, and no other point will be reopened. Broadly, the 2018 verdict, through three concurring opinions, had ruled that Delhi was indeed a Union Territory, but the Lieutenant Governor, as the Administrator appointed by the President, should act as per the aid and advice of the Council of Ministers, in areas in which legislative power was conferred on Delhi's Legislative Assembly. Under Article 239AA, except for police, public order and land, the Delhi Assembly can make law on all other matters in the State and Concurrent Lists 'insofar as such matter is applicable to Union Territories'. The mandate of the hearing is to declare what this phrase means, and whether it is one more limitation on Delhi's legislative, and by extension, executive powers.

The 2018 ruling limited the Lieutenant Governor's domain by making it clear that not every decision required his concurrence. It had cautioned against the notion of representative democracy being negated, if legitimate decisions of the Council of Ministers were blocked merely because the Lieutenant Governor had a different view. The Lieutenant Governor's power to refer "any matter" on which he disagreed with the elected regime did not mean he could raise a dispute on "every matter". It is perhaps because of the underlying message that an unelected administrator should not undermine an elected administration that the Centre badly wanted a fresh reference to another Constitution Bench. It is indeed true that a split verdict by a two-judge Bench on the question whether 'services' fell under the Union government's domain or the NCT government has flagged the absence of a determination in the Constitution Bench verdict on the question whether Entry 41 of the State List (services) is within the NCT's executive and legislative domain. Entry 41 is not one of the excluded areas of legislation by the Delhi Assembly, but it has been argued that there are no services under the Delhi government and, therefore, it was not a matter applicable to the NCT at all. Settling this remaining question should give a quietus to the endless wrangling between the Modi government at the Centre and the Kejriwal regime in Delhi.

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