



- Since 1858, when India was administered by the British Crown, provincial Governors were agents of the Crown, functioning under the supervision of the Governor-General.
- With the 1935 law, the Governor was now to act in accordance with the advice of Ministers of a province's legislature, but retained special responsibilities & discretionary power.
- Upon Independence, when the Provisional Constitution of 1947 was adapted from the 1935 Act, the post of Governor was retained but the phrases 'in his discretion, 'acting in his discretion, and 'exercising his individual judgement', were omitted.
- The post of the Governor was extensively debated in the Constituent Assembly, which too decided to retain it while re-orienting its role from the British era
- Dr. B.R. Ambedkar, referring to the Governor's position as "ornamental", called his powers "limited" and "nominal" — The Governor under the Constitution has no functions — While he has no functions, he has certain duties to perform, & I think the House will do well to bear in mind this distinction...According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters."
- The executive head designated as governor is a constitutional ruler and act according to the advice of the ministers who are responsible to the lower house of the state legislature.
- All executive actions of the state have to be taken in the name of governor
- Governor is appointed by the president and holds his office at the pleasure of the president.
- Any citizen of India who is over 35 years of age is eligible for the office of the governor - debarred from holding any office for profit or being a member of the union parliament or any state legislature.
- Governor can be terminated earlier than the period of 5 years by dismissal by the president or through resignation.
- She is entitled to all the allowances and privileges as enjoyed by a provincial government at the commencement of the constitution
- Parliament has the right to make laws related to emoluments, allowances and privileges of the governor.
- Governor is in a position to exercise what Gandhi called as "all-pervading moral influence"
- Art 143 - there shall be a governor for each state - according to the 7th constitutional amendment act

of 1956, the same person can be appointed for more than one state.

- Art 155 provides that the governor of state shall be appointed by the president by warrant under his hand and seal, but in actual practice he is appointed by the central government.

#### WHY NOT THE ELECTED GOVERNOR?

- It was considered that elected governor might get in to clash with the chief minister and the cabinet
- According to M.V. Pylee, when the governor is elected directly by the people on the basis of adult franchise become the direct representative of the people & may exercise his powers not as a constitutional head of the state but as its real head.
- The direct elections for governor can create a serious problem of leadership at the time of general election
- Biswanath Das, a member from Orissa & future Governor of Uttar Pradesh said, the Governor had been "nothing but a cipher" in provinces when Congressmen came to power in Independent India. Governor nominated by the President and the Central Government would co-operate with the elected State Government — sounds questionable.
- In his defence of a "nominated Governor", Jawaharlal Nehru reasoned that an elected Governor would fuel separatist provincial tendencies. He proposed that the Governor, nominated as such, could be a "detached figure" who could rise above party politics.
- Dr. Ambedkar concurred by asking why, if the Governor's post was a "purely ornamental" one, should money and effort be spent on an election
- It was considered that elected governor might get in to clash with the chief minister and the cabinet
- Multiple members of the Assembly raised concern about the "discretion" clause.
- Dr. Ambedkar contended, in response to the arguments, that vesting the Governor with certain discretionary powers was "in no sense contrary to a responsible government"
- He added that if the Governor's limited duties of advising and warning Ministers was also taken away, then he would be rendered a "completely unnecessary functionary".
- The M.M Punchhi Commission's report on Centre-State relations points out that the exercise of his discretion happens only when following the Council's advice would be unconstitutional or if the Council has lost the confidence of the Assembly.
- Dr B.R. Ambedkar stated that the powers of the governor were so limited, so nominal & his position

so ornamental that probably very few would come forward stand for election”

- Constituent assembly envisaged a versatile role for governor, ‘ maintaining common links between the centre and the state and establishing harmony ,good working & sounder relationship between provincial cabinet and the governor.
- Experiences of 1947 made constitution makers aware about disintegrating influences.
- Preservation of country’s unity, solidarity and security was vital and so governor was made a constitutional Nexus between the union and the states.
- The decision therefore was taken that the governor should be appointed by the union executive & should be removed by the same authority.
- In Canada the Governor-general appoints all the governors who holds office during his pleasure.
- In the Hargovind vs Raghukul case, SC held that the office of the governor of a state is not an employment under the Government of India it is an independent office and is not under the control of or subordinate to the Government of India.

#### APPOINTMENT ISSUES

- Governor is the nominee of the central government but Central Government ordinarily consults the state concerned before announcing the appointment.
- This is a sound practice though it has not been adhered in few cases.
- Before the general elections of 1967 no importance was given to this convention due to a uniform rule of single party.
- It got recognised when coalition governments came into being.
- There arose a controversy between the centre & the non Congress government in various states.
- In this connection state governments misunderstood the meaning of consultation.
- If it is simply consultation & not the consent of the CM and state cabinet, there is no logic in it.
- Art 153 - 158 are associated with governor.
- The convention of of the incumbent office - comes from outside the state concerned.
- In the past many defeated candidates ruling party appointed to serve as governor.
- People notorious for their partisanship & high-handedness have been chosen as governors with the apparent minded to disturb allies governments run by opposition parties.
- A survey made by sarkaria commission shown that from 1947 to 1984 more than 60% of the governors had taken active parts in politics.
- Even in current times most of the governors appointed in States, have been active politicians
- According to Nath Pai, the office of the governor was degraded by the centre by making it a patronage & reward.

- Besides retired politicians another category of governors is that of civil servants who are considered as favourite boys of central government
- According to Granville Austin, appointment of governors during the Nehru years had been less controversial due to,
  - higher calibre of individual selected,
  - harmonious conditions of centre-state relations and
  - the stature of chief ministers.
- The administrative reforms commission recommended that, a person who can be trusted to rise above party prejudices and predilections should be considered for this post.
- According to Nath Pai, the appointment of governor should be subject to the approval of parliament.
- The Setalvad study team is of the view that the Chief minister should be consulted.
- According to Atal Bihari Vajpayee the panel names should be placed before the CM to select one of them. It is also a vague suggestion, as it is not certain that one of the names would surely be acceptable to the CM.
- When a politician is appointed as a governor she obviously belongs to the ruling party therefore Shriram Maheshwari rightly pleads for a bureaucratic governor.
- According to Maheshwari bureaucracy is extraordinarily powerful so a bureaucrat governor has acted as an efficient fund gatherer for his state.
- According to administrative reforms commission
  - the parliamentary approval should be necessary in the appointment of governor,
  - the opposition leader in the lok Sabha should be consulted before the appointment of governor,
  - president should be given the right to select a governor in his discretion.
- The the Rajamannar committee appointed by the DMK govt in September 1969 suggested that a body of eminent jurists, lawyers & experienced administrators should be setup to select a governor
- Sarkaria commission observe, that criticism against the governors could have been avoided if there selection had been on correct principles to ensure appointment of right types of person as governors.
- The dignity of the office suffered when persons defeated in elections were appointed.
- According to sarkaria commission : –
  - governor should be eminent in some walks of life,
  - should be person from outside the state,
  - should not be active in politics of the state.

#### FUNCTIONS

- The powers a Governor has in the state they administer is equivalent to that of the President.
- They can appoint Chief Ministers, the State Election Commissioner, judges of the District Courts.
- They also serve as Chancellors of all the universities in the state.

- Another power the Governor holds is to rule the state in case the ruling party loses its majority in the Assembly
- The Governor can also dissolve the state Assembly if they see the need, and if the Assembly is not in session, they can promulgate ordinances.
- Based on the recommendation of the Election Commission, the Governor can also disqualify a legislator.

#### LIEUTENANT GOVERNOR

- A Lieutenant Governor also has the same powers.
- Andaman & Nicobar, Delhi & Puducherry, J&K , Ladakh — have Lt. Governors
- These powers are in place to ensure checks and balances for the state government and its functioning.
- Governor can use his discretion to select a chief ministerial candidate
- Governor can report to the President about the failure of constitutional machinery in the state.
- The Governor can also reserve or refuse to sign a Bill that has been passed by the Assembly.
- For the role of the Lieutenant Governor, Article 239, introduced through 7th amendment in 1956 – that each Union Territory will be administered by the President through an administrator appointed by him and given a designation he specifies.
- The administrators in some UTs are designated as Lieutenant Governors, with a special provision (Article 239AA) for the National Capital Territory of Delhi, which was inserted in 1991 by 69th amendment
- The Lt. Governor of Delhi also acts on the advice of the Council of Ministers except on the subjects of police, public order, and land.
- The Lt. Governor can exercise his discretion when required by any law.
- In case of a difference of opinion with the Ministers, he would have to consult the President.
- In an observation made in November 2017, the Supreme Court said that the Lt. Governor of Delhi has more powers than the Governor of a State , he does not have to listen to the advice of the Council of Ministers.
- In the case of Delhi, since portfolios like land, police and public order fall under the domain of the Centre, of which the Lt. Governor is a representative, he holds more powers than a Governor.
- The five-judge bench of the Supreme Court in its judgment in Government of Delhi vs Union of India stated that the elected representative was the real executive & that the L.G. must act as per the “aid and advice” of the elected government except in matters of land, police and public order.
- The judgment clarified the Constitutional status of the L.G. as an administrator in the limited sense,

who should act in the spirit of the constitutional trust and morality.

- The most controversial of these are
  - the power to appoint the Chief Minister under Art 164;
  - the right to summon, prorogue and dissolve the Legislative Assembly as per Art 174; and
  - the recommendation of President’s rule under Art 356 in case of breakdown of the Constitutional machinery.
- The Supreme Court verdict in S.R. Bommai vs Union of India in 1994 was a landmark judgment that limited the constitutional power of the Central government to dismiss State governments.
- The nine-judge bench asserted that the only way to assess the strength of the State govt was the floor test & it was not a matter of private opinion either of the Governor or the President.
- Moreover, the bench declared that the imposition of Emergency under Art 356 was justified only in the event of breakdown of the constitutional (& not administrative) machinery and the event that the proclamation was not immune to judicial review.
- The rise of regional parties and the emergence of influential State leaders triggered the necessity for a responsible federalism sensitive to the needs of the constituent States.
- 1967 onwards , marked the beginning of the phase of confrontational federalism.
- Governors during this phase began to vigorously play their roles as agents of the Centre with a complete disregard for constitutional morality.
- To address the issue of removal of Governors appointed by the previous regime, the Rajamannar Committee suggested that the Governor should not be removed except under proven misbehaviour or incapacity on an inquiry by the Supreme Court.

#### RECOMMENDATION OF SARKARIA COMMISSION

- Sarkaria Commission on Centre-State relations warned that the Emergency provision under Article 356 should be used “very sparingly, in extreme cases” as the last resort when all available alternatives failed.
- The Legislative Assembly should not be dissolved until the Emergency proclamation under Article 356 has been laid before and considered by Parliament.
- Of the several constitutional provisions around which the federal structure has been built, including division of powers under the Seventh Schedule, Finance Commission, institutions of local self-government, administrative structure of the all-India services, river water tribunals and Planning Commission/NITI Aayog, the office of the Governor has been the Achilles heel in the Centre-State relationship
- In the era of globalisation, several States compete with one another as well as the Centre in order to

attract investors by organising “business summits” to generate their own revenue.

- The federalisation of the party system & the emergence of coalition politics make cooperative federalism a political necessity.
- The office of the Governor to undermine popularly elected governments in the States is detrimental to the smooth functioning of federal-democratic polity.
- The Constitutional mandate is in favour of the Centre to secure national unity & political stability.

#### GOVERNOR'S JURISDICTION ON LEGISLATURE

- Governors in some states repeatedly turned down the advice of the Council of Ministers to convene a session of the state Assembly. One of the governor insisted that a 21-day notice is essential for a session, demanded to know the purpose of calling it.
- In 2016, a five-judge constitution Bench of the Supreme Court dealt with the powers of the Governor, particularly with reference to summoning an Assembly session, it reiterated that “the functions, duties and powers of the Governor by or under the Constitution are ‘cabined, cribbed, confined”.
- The Supreme Court held that the Governor’s power “under Article 174 to summon, prorogue and dissolve the house(s) must be exercised in consonance with the aid and advice of the chief minister and his council of ministers.
- It has upheld his power to summon or prorogue the Assembly under Article 174(1) and his power to send messages, even fixing a specific item on the agenda of the legislature, under Article 175(2).
- The “discretion given to the Governor in respect of his relations with the Legislative Assembly is not only limited & circumscribed by the Constitution but also by the Rules framed by the Legislative Assembly under Article 208 of the Constitution”.
- The proceedings of the legislature are guided by rules made by it, and the Governor cannot have any say in it, points out P.D.T. Achary, former Secretary General of the Lok Sabha
- The rule of 21-day notice for the session was first set by the Lok Sabha & adapted by State legislatures.
- The Lok Sabha has since reduced it to 15 days.
- But the Speaker has the powers to call a session with a shorter notice.
- Governor’s assent has, of late, become a controversial issue in at least two States — Kerala and Tamil Nadu.
- In Tamil Nadu, the Governor forwarded the Bill for exemption from the National Eligibility cum Entrance Test (NEET) to the President after considerable delay.
- In Kerala the situation has become a bit curious with the Governor publicly announcing that he

would not give assent to the Lokayukta Amendment Bill & the Kerala University Amendment Bill.

- Article 200 of the Constitution provides certain options for the Governor to exercise when a Bill reaches him from the Assembly.
  - He may give assent or
  - He can send it back to the Assembly requesting it to reconsider some provisions of the Bill, or the Bill itself.
- In this case, if the Assembly passes the Bill without making any change and sends it back to the Governor, he will have to give assent to it.
- This provision contained in Article 200 (proviso) unambiguously affirms the primacy of the legislature in the legislative exercise.
- The third option is to reserve the Bill for the consideration of the President – only if the Governor forms an opinion that the Bill would endanger the position of the High Court by whittling away its powers.
- The Constitution does not mention any other type of Bill which is required to be reserved for the consideration of the President. Nevertheless, the courts have conceded a certain discretion to the Governors in the matter of sending Bills to the President.
- The fourth option, is to withhold the assent. But it is not normally done by any Governor because it would be an extremely unpopular action.
- The Constitution does not mention the grounds on which a Governor may withhold assent to a Bill shows that this power should be exercised by the Governor extremely sparingly and after very careful consideration of the consequences of such action.
- In the United Kingdom royal assent is necessary for a Bill to be passed by Parliament to become law and the crown has the power to withhold assent. But it is a dead letter.
- By practice and usage there is no power of veto exercised by the crown in England now – royal veto is treated as unconstitutional

#### CURIOUS CASE OF UNITED STATES

- In the United States, the President is empowered by the Constitution to refuse assent and return a Bill to the House but if the Houses again pass it with two thirds of each House the Bill becomes law.
- The lesson to be drawn from these practices is that refusal of assent is a practice which is not followed in other democratic countries.
- The Constitution itself provides a remedy so that the Bill passed by the legislature could become law even after the refusal of assent.
- The Indian Constitution, however, does not provide any such remedy.
- The courts too have more or less accepted that if the Governor withholds assent, the Bill will go. Thus, the whole legislative exercise will become fruitless

- Article 361 of the Constitution prohibits the court from initiating proceedings against a Governor or the President for any act done in exercise of their powers.
- They enjoy complete immunity from court proceedings
- Governor while declaring that he withholds assent will have to disclose the reason for such refusal.
- Being a high constitutional authority, the Governor cannot act in an arbitrary manner and, therefore, will have to give reasons for refusing to give assent.
- If the grounds for refusal disclose mala fide or extraneous considerations or ultra vires, the Governor's action of refusal could be struck down as unconstitutional.
- A Constitution bench of the Supreme Court in Rameshwar Prasad & Ors. vs Union Of India held that, "the immunity granted by Article 361(1) does not, take away the power of the Court to examine the validity of the action including on the ground of malafides".
- The court will not be able to direct the Governor to act in a particular way.
- Since the Constitution does not fix any timeline for the Governor to decide the question of assent, he can wait for any length of time without doing anything.
- This is illogical & militates against the constitutional scheme in respect of law making by the legislatures.
- Not fixing any time line does not & cannot mean that the Governor can indefinitely sit on the Bill that has been passed by an Assembly.

#### IS GOVERNOR BOUND BY PEOPLE'S REPRESENTATIVE?

- 2016 Supreme Court judgment that a Governor "cannot have an overriding authority, over the representatives of the people, who constitute... the state legislature... and/or even the executive government functioning under the council of ministers with the Chief Minister as the head".
- "The Governor can summon, prorogue and dissolve the House only on the aid and advice of the Council of Ministers with the Chief Minister as the head. And not at his own," the unanimous judgment by the Bench led by then Chief Justice J.S. Khehar held.
- It is an accepted principle that in a parliamentary democracy with a responsible form of government, the powers of the Governor as Constitutional head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers," SC said
- The court said the Governor's discretionary powers are limited to specified areas like giving assent or withholding/referring a Bill to the President or appointment of a Chief Minister or dismissal of a government which has lost of confidence but refuses to quit, etc.
- Even in this limited area, her choice of action should not be arbitrary or fanciful.

- It must be a choice dictated by reason, actuated by good faith and tempered by caution," the court said.

#### PARDONING POWER OF PRESIDENT & THE GOVERNOR

- The scope of the pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161
- The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial but Article 161 does not provide any such power to the Governor.
- The President can grant pardon in all cases where the sentence given is sentence of death but pardoning power of Governor does not extend to death sentence cases.
- In the view of the Supreme Court, speaking through a five-judge Bench in Nabam Rebia and Bamang Felix v. Deputy Speaker (2016), the discretionary power of the Governor is extremely limited and entirely amenable to judicial review.
- The courts have spoken out against the Governor acting in the capacity of an "all-pervading super-constitutional authority".
- Supreme Court in the B. P. Singhal Case (2010) declared that a change in power at the Centre cannot be grounds to recall governor and hence such actions are judicially reviewable.
- While Sarkaria Commission recommended that Governor's tenure of five years shall only be sparingly cut short, Punchhi Commission recommended that Governor shall have fixed tenure so that they wouldn't hold office under the intangible pleasure of the Central government.
- It proposed an amendment to Article 156 so that there would be a procedure to remove the Governor from office.
- It also recommend that Governors shall not be overburdened with the task of running universities by virtue of them being made Chancellors under the State University Acts.

#### THE OTHER VIEW

- Governor merely possessed the formal authority of state and could act as a safety valve in case there was a breakdown of constitutional machinery
- In fact, Article 163 specifically provides that in determining which matters fall within the discretion of the Governor, the Governor's decision will be final.
- A literal interpretation of this clause would mean that were there any doubts in the constitutional scheme as to whether a Governor could act on his own accord in relation to a matter or not, such decision would rest with the Governor as the highest constitutional authority in a State. It would not be the domain of the courts.
- For the Supreme Court, an appeal to the scheme of the Constitution and the basic structure doctrine was sufficient to deny the Governor such discretion

- This view is founded on the baseline assumption that judicial review is all-pervasive, irrespective of what the Constitution actually says.
- There is little doubt that such creativity in interpretation was crucial in this case to strike down the actions of the Governor as unconstitutional, which was unquestionably the right result.

#### TO DEAL WITH THE HUNG RESULTS

- The Governor may invite the leader of the largest single party first. However, if it is clear that the largest single party has no potential ally to ensure a majority, he may also invite the leader of the largest pre-poll alliance.
- If there is no alliance, he may invite leaders one by one in the order of their size in the new Assembly.
- During this process, a post-poll combination may emerge, if any one of them agrees to form a government
- The Governor may insist on letters of support from those outside the leader's party who are willing to join or extend support to him.
- The Sarkaria Commission on inter-State relations has dealt with this question. The Commission's report suggests the following orders for Governors to follow: 1. An alliance formed prior to the election; 2. The largest single party staking claim with the support of others, including independents; 3. A post-electoral coalition, with all partners joining the government; 4. A post-poll coalition, with some joining the government, and others extending support from outside
- As general principles, the Sarkaria Commission says the Governor should look for a party or combination that commands the widest support in the Assembly, and that "his task is to see that a government is formed, and not to try to form a government which will pursue policies which he approves".
- The Sarkaria Commission recommends that a person, who has been appointed Chief Minister without a clear majority, should seek a vote of confidence in the Assembly within 30 days. "This practice should be strictly adhered to with the sanctity of a rule of law," it says.
- In Rameshwar Prasad (2005), the court ruled that there was nothing wrong in installing a post-poll combination, and that the Governor could not decline the formation of a government on the ground that it was being done through unethical means.
- The court has so far justified its intervention by way of ordering floor tests, reasoning that such orders were necessary to preserve constitutional and democratic values.
- In its recent order in the Maharashtra case, the court observed: "In a situation wherein, if the floor test is delayed, there is a possibility of horse-

trading, it becomes incumbent upon the court to act to protect democratic values."

- Article 180 (1) of the Constitution gives the Governor the power to appoint a pro-tem Speaker. The Article says that if the chair of the Speaker falls vacant and there is no Deputy Speaker to fill the position, the duties of the office shall be performed "by such member of the Assembly as the Governor may appoint for the purpose".
- Article 180 (1) is silent about the extent to which the Governor can use his discretion.
- In his speech on the constitutional role of Governors, Dr. B.R. Ambedkar described how a Governor should use his discretion not as "representative of a party" but as "the representative of the people as a whole of the State".
- A Constitution Bench judgement in 2006 in the Rameshwar Prasad case has held that the "immunity granted to the Governor under Article 361 (1) does not affect the power of the Court to judicially scrutinise the attack made to the proclamation issued under Article 361(1) of the Constitution on the ground of mala fides or it being ultra vires".

#### GOVT OF NCT OF DELHI Vs. UNION OF INDIA (2018)

- The exercise of establishing a democratic and representative form of government for NCT of Delhi by insertion of Articles 239AA & 239AB would turn futile if the Government of Delhi that enjoys the confidence of the people of Delhi is not able to usher in policies and laws over which the Delhi Legislative Assembly has powers to legislate for the NCT of Delhi.
- It reminds the Lt. Governor what his real functions are.
- It tells the State government that it should remember that Delhi is a special category Union Territory and lays down the parameters to enabling the harmonious functioning of the government and the Lt. Governor.
- It did not very clearly delineate the issues in respect of which the Lt. Governor can refer a decision taken by the Council of Ministers to the President in the event of a difference of opinion between the Lt. Governor & the State government.
- The Court has also made it clear that there is no requirement of the concurrence of the Lt. Governor & that he has no power to overrule the decisions of the State government
- Article 239AA (4) says that in the case of a difference of opinion between the Lt. Governor and his Ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to that decision.
- If the Lt. Governor thinks that the matter is urgent he can take immediate action on his own. So, ultimately things are back to square one.

- If a Lt. Governor, declare that there is a difference of opinion on any issue decided by the elected government and refer it to the President which in reality means the Union Home Ministry.
- The Lt. Governor being its representative, it is easier for him to secure a decision in his favour. The State government will be totally helpless in such a situation.
- The words 'any matter' employed in the *proviso* to Article 239AA (4) cannot be inferred to mean 'every matter'.
- The power of the Lieutenant Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by the Lt. Governor.
- The Court further says, "the Lieutenant Governor should not act in a mechanical manner without due application of mind so as to refer every decision of the Council of Ministers to the President.
- Court directs the Lt. Governor not to refer to the President normal administrative matters as that would disturb the concept of Constitutional governance, principles of collaborative federalism and the standards of Constitutional morality.
- The executive power of the Union does not extend to any of the matters which come within the jurisdiction of the Delhi Assembly.
- Parliament can legislate for Delhi on any matter in the State List and the Concurrent List but the executive power in relation to Delhi except the 'Police', 'Land' and 'Public Orders' vests only in the State government .
- The Supreme Court says, "Article 239AA (3)(a) reserves the Parliament's legislative power on all matters in the State List and Concurrent List but clause (4) explicitly grants to the Government of Delhi executive powers in relation to matters for which the Legislative Assembly has powers to legislate.
- The only occasion when the Union Government can overrule the decision of the State government is when the Lt. Governor refers a matter to the President under the proviso to clause (4).
- But this proviso cannot totally override the executive decisions of the State government under clause (4).
- Although the Court did not specify the matters which can be referred by the Lt. Governor to the President, the high principles described above broadly indicate what can be referred and what cannot.
- it is unambiguously clear that the executive decisions of the State government cannot be referred to the President merely because the Lt. Governor has a different personal opinion about some of them.
- The top court wants the Lt. Governor & the Council of Ministers to use in full the mechanism provided

in the Government of NCT of Delhi Act and the Transaction of Business Rules to thrash out differences.

- The President is the highest Constitutional authority and his decision should be sought only on constitutionally important issues.

#### NATIONAL CAPITAL TERRITORY (AMENDMENT) BILL 2021

- Delhi was given a fully elected legislative assembly and a responsible government through 69th Amendment Act, 1991.
- Article 239AA was added to Part VIII of the constitution – contains provisions relating to the administration of Union territories.
- It conferred on the assembly the power to legislate on all matters in the state list as well as the concurrent list except land, police and public order.
- The Bill states clarification of the expression "Government" & addressing "ambiguities" in legislative provisions as its core objectives.
- The amendments, according to the Bill, seek to promote "harmonious relations between the legislature and the executive" and provide for rules made by the Legislative Assembly of Delhi to be "consistent with the rules of the Lok Sabha.
- The Bill also seeks to define the responsibilities of the elected government and the Lieutenant Governor along the constitutional scheme of governance of the NCT interpreted by the Supreme Court in recent judgements regarding the division of powers between the two entities
- The amendments also seek to ensure that the Lieutenant Governor is "necessarily granted an opportunity" to exercise powers entrusted to him under proviso to Clause (4) of Article 239AA of the Constitution.
- The clause provides for a Council of Ministers headed by a Chief Minister for the NCT to "aid and advise the Lieutenant Governor" in the exercise of his functions for matters in which the Legislative Assembly has the power to make laws.
- The genesis of the Bill lies in the administrative tug of war between the Delhi government and then Delhi Lieutenant Governor immediately after the former came to power for a second stint in 2015
- The new Bill states that there was no structural mechanism provided in the 1991 Act for effective and time-bound implementation of Section 44, which deals with the Conduct of Business, which the Bill will provide.
- It will also aim to provide clarity about what proposal are required to be submitted to the L-G before issuing orders on them and give effect to the interpretation of the structure of governance in the NCT by the Supreme Court by clarifying the expression "Government" in the context of legislation to be passed by the Legislative Assembly of Delhi to "mean the Lieutenant Governor" as

consistent with the status of Delhi as a Union Territory.

- The amendment, will force the elected government to take the L-G's advice before taking any action on any cabinet decision.
- The Bill seeks to bar the Assembly or its committees from making rules to take up matters concerning day-to-day administration, or to conduct inquiries in relation to administrative decisions.
- The Delhi Law Secretary had in 2019 written in an internal memo that the elected government cannot use the Supreme Court verdict to keep the L-G in the dark about its decisions as that would prevent him from taking informed decisions on whether to invoke Article 239AA(4) or not.
- The Act requires the LG to reserve certain Bills passed by the Legislative Assembly for the consideration of the President. These Bills are those:
  - (i) which may diminish the powers of the High Court of Delhi,
  - (ii) which the President may direct to be reserved,
  - (iii) dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or
  - (iv) relating to official languages of the Assembly or the NCT of Delhi.

#### CRITICISM ON GNCTD AMENDMENT ACT

- Each legislative house is independent of the other. So, the Delhi assembly is an independent legislative house and the Lok Sabha has no control over it
- Parliament has no power to legislate and take away the inherent right of a legislature to frame rules for conducting its proceedings. Parliament, for example, cannot make a law saying that the Rajya

Sabha's rules will not be inconsistent with the Lok Sabha rules.

- It says that the Delhi assembly shall not make rules to enable itself or its committees to consider matters of day-to-day administration.
- It further says that no rule shall be made by the assembly to conduct inquiries in relation to administrative decisions and if such a rule exists now, it will become void after this amendment comes into force.
- Every democratic legislature has the inherent right to scrutinise the decisions taken by the executive, which flows from the executive being responsible to the legislature
- Parliament has no power to nullify the Supreme Court's decision without changing the basis of it as it is the judicial function of the state (P.D.T. Achary)
- The Government of National Capital Territory of Delhi Act, 1991 was enacted by parliament as a legislative measure to give effect to the provisions contained in Article 239AA.
- It is a supplemental law (subordinate law) & is intended to deal with incidental matters.
- As a supplemental legislation, it cannot penetrate beyond the provisions contained in Article 239AA.
- The LG is not a part of the assembly and is not responsible to the assembly.
- If the LG is the government and not the elected government, he is not bound to act in accordance with the decisions of the assembly.
- It will be a negation of the content of clause (4) of Article 239AA.
- Article 239AB provides for president's rule in Delhi when the administration of the territory cannot be carried on in accordance with the provisions of Article 239AA.

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