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Q11

Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. (15).

UPSC Civil Services Mains 2018 · GS II · 15 marks · Executive and Judiciary

Structure, organization and functioning of the Executive and the Judiciary - Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.

Core demand of the question

- Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine

Revision summary

Article 239AA gives Delhi an elected government inside a Union Territory.

The July 2018 Supreme Court judgment held that the Council of Ministers, not the LG, holds executive power except on land, police and public order.

The LG must follow aid and advice and may refer only real differences to the President.

Control of services was not clearly settled in 2018, so the political tussle continued.

Later statutes in 2019 and 2023, and the 2023 services judgment, show that one ruling cannot freeze the capital's federal bargain.

Introduction

The Constitution (Sixty-ninth Amendment) Act, 1991 inserted Article 239AA and gave the National Capital Territory of Delhi an elected Assembly and a Council of Ministers, while keeping Delhi a Union Territory. The political tussle is about who really governs: the Lieutenant Governor as the Union's agent, or the Ministry that has a popular majority. The Constitution Bench judgment in *Government of NCT of Delhi v. Union of India* (4 July 2018) reduced the space for a parallel LG administration, but it did not close every file, especially services.

Body

What the July 2018 judgment held

- A five-judge Bench held that NCT Delhi is not a State, yet Article 239AA is a special federal experiment for a capital with an elected government.
- Except for public order, police and land (the State List entries kept with the Union), executive power for other State List and Concurrent List subjects vests in the Council of Ministers, which must aid and advise the LG.
- The LG is not a Governor of a full State and is not a second political executive. He must work with the elected government and cannot sit on every file as a general blocking power.

- Where the Constitution allows a difference of opinion, the LG may refer a matter to the President, but that reference is for real constitutional conflict, not for day-to-day obstruction.
- Collective responsibility to the Assembly, and the idea of constitutional morality and a cabinet system, were used to read 239AA in favour of representative government.

Why a judgment of this kind could ease the tussle

- **It gave a legal map:** elected government decides policy on transferred subjects; the Union keeps the three reserved fields that protect the national capital.
- It told both sides that Delhi is neither a full State nor a **Chief Commissioner's** province. That middle reading can lower slogans of "Statehood now" versus "LG is the government".
- Binding both the Ministry and the Raj Niwas to aid-and-advice is a settlement of principle, which is what a Constitution Bench can do.

Why it could not fully settle the tussle

- The **2018** Bench left "services" and some control of the bureaucracy unclear. Who posts, transfers and disciplines officers is the real lever of government; without that, a Ministry can have policy without a machine.
- The Government of National Capital Territory of Delhi (Amendment) Act, 2019 required the LG's opinion before a Bill and enlarged his role on administration, which reopened the political fight in statute.
- In May 2023 another Constitution Bench held that the Delhi government has legislative and executive power over services, except land, police, public order and officers of All-India Services serving the Union. That itself shows **2018** had not closed the dispute.
- Parliament then passed the Government of National Capital Territory of Delhi (Amendment) Act, 2023, creating a National Capital Civil Service Authority and restoring a Union-heavy hold on services. Court and statute are still answering each other.
- A capital city will always mix local democracy with Union security, diplomacy and land. No single judgment can erase that structural tension.

Examine, do not cheer

- Judicial settlement works when both sides treat the ratio as a working rule. In Delhi, each side read the **2018** text as a win and returned to notifications, circulars and later amendments.
- The judgment settled the philosophy of 239AA more than the personnel file. Philosophy without control of officers is an incomplete peace.

Flow diagram

Article 239AA NCT Delhi -> July 2018 Constitution Bench
 July 2018 Constitution Bench -> Aid and advice except land police public order
 July 2018 Constitution Bench -> Services left unclear
 Services left unclear -> 2019 and 2023 GNCTD amendments
 Aid and advice except land police public order -> Tussle reduced not ended
 2019 and 2023 GNCTD amendments -> Tussle reduced not ended

Conclusion

The July 2018 judgment can settle the tussle only on the principle that, except land, police and public order, Delhi's elected government governs and the LG is not a parallel ministry. It cannot settle the tussle by itself because services, later Union statutes, and the unique status of the national capital keep the conflict alive. Settlement here is a process of judgment, amendment and political convention, not one Bench order.

Facts & figures

Government of NCT of Delhi v. Union of India (2018)

Five-judge Bench, 4 July 2018: elected government has executive power under Article 239AA except land, police and public order.

Article 239AA

Inserted by the 69th Amendment (1991); creates the Legislative Assembly and Council of Ministers of NCT Delhi.

Reserved subjects

Public order, police and land remain with the Union even after the 2018 reading of aid and advice.

GNCTD (Amendment) Act, 2019

Required the LG's opinion on Bills and enlarged his administrative role after the 2018 judgment.

Services litigation 2023

A later Constitution Bench favoured Delhi's control of services; Parliament answered with the GNCTD (Amendment) Act, 2023.

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