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SC interpretation of Article 239AA

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Why in News: The Centre recently promulgated an ordinance extending powers to the Delhi Lieutenant Governor over services in the administration of the national capital, which essentially involves the power to transfer and appoint bureaucrats posted to Delhi.

Article 239AA

Inserted into the Constitution by the 69th Amendment Act, 1991, Article 239AA conferred special status on Delhi following the recommendations of the S Balakrishnan Committee that was set up in 1987 to look into Delhi's demands for statehood.

According to this provision, the NCT of Delhi will have an administrator and a Legislative Assembly. Subject to the provisions of the Constitution, the Legislative Assembly, "shall have the power to make laws for the whole or any part of the NCT with respect to any of the matters in the State List or Concurrent List in so far as any such matter is applicable to Union territories," except on the subjects of police, public order, and land.

Two Constitution Benches of the Supreme Court, in July 2018 and May 2023, have dealt with the issue of the powers of the Delhi government.

Both of these judgments involve the interpretation of Article 239AA of the Constitution, which deals with the governance structure of the national capital.

In 1991, when Article 239 AA was inserted, the Parliament also passed the Government of National Capital Territory of Delhi Act, 1991, to provide a framework for the functioning of the Assembly and the government of Delhi.

SC Interpretation of 239AA

In the majority ruling in 2018, the Constitution bench held that although Delhi could not be accorded the status of a state, the concept of federalism would still apply to it.

"We have dealt with the conceptual essentiality of federal cooperation as that has an affirmative role on the sustenance of constitutional philosophy. We may further add that though the authorities referred to hereinabove pertain to the Union of India and the state government in the constitutional sense of the term "state", yet the concept has applicability to the NCT of Delhi regard being had to its special status and language employed in article 239AA and other Articles," then Chief Justice of India Dipak Mishra had held

The 2018 ruling said that with the introduction of Article 239AA in the Constitution, Parliament envisaged a "representative form of Government" for Delhi while seeking to provide a directly elected Legislative Assembly with legislative powers over matters within the State List and the Concurrent List, barring those exempted.

It also sought to mandate the Lieutenant Governor to act on the aid and advice of the Council of Ministers, except when he decides to refer the matter to the President for a final decision.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

Taking a closer look at Article 239AA(3), the court said that it revealed Parliament's power to make laws for Delhi, for matters given in the State and Concurrent List.

“At the same time, the Legislative Assembly of Delhi also has the power to make laws over all those subjects which figure in the Concurrent List and all, but three excluded subjects, in the State List,” the court said.

Adding that the Centre has exclusive executive power with respect to Delhi over its police, land, and public order, the court clarified that “in respect of other matters, the executive power is to be exercised by the Government of NCT of Delhi”. This, however, is subject to the proviso to Article 239AA(4) of the Constitution, the court said.

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The Bench held that NCTD (Delhi), just like other states, “represents the representative form of government”. However, it outlined that “the involvement of the Union of India in the administration of NCTD is limited by constitutional provisions, and any further expansion would be contrary to the constitutional scheme of governance.