

# Legislative Comment: Delhi Municipal Corporation (Amendment) Bill 2022

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**Abstract:** The Union Government changed the political landscape by introducing the Delhi Municipal Corporation (Amendment) Bill, 2022 which will eventually seek to amend the Delhi Municipal Corporation Act, 1957. This looks like a mere amendment of the Act of 1957 but in reality, this is power tussles between the Delhi Government and the Central government. This paper is an effort to analyze the Delhi Municipal Corporation (Amendment) Bill, 2022, in light of the constitutional provisions.

**Keywords:** *Municipal Corporation, Amendment, Pith and Substance.*

## 1. Introduction

Within two weeks of the finishing of the five-yearly democratic festivals in five major states of India, the Union Government is in a mood to bring about a drastic change in the political landscape of Delhi. It is too early to comment on the political gain of participant parties, but yes, it has posed a challenge for those who have swept Punjab with a huge majority and are running the Delhi Government since 2015. If dragged to court once passed, there are several legal nuances that might be interpreted, but that's up to the court to decide. Let us have a look and understand what provisions and basic features are in discussion to oppose or defend the Bill, introduced in the Lok Sabha on 25<sup>th</sup> March 2022 by Minister of State for Home, Shri Nityanand Rai. The Delhi Municipal Corporation (Amendment) Bill, 2022<sup>1</sup>, as the name suggests, seeks to amend The Delhi Municipal Corporation Act, 1957<sup>2</sup>. The said Act of 1957 was amended in the year 2011 which trifurcated the Municipal Corporation of Delhi (MCD) into three namely East Delhi Municipal Corporation, North Delhi Municipal Corporation, and South Delhi Municipal Corporation. The Bill seeks to effectively undo the 2011 Amendment. The myth is that this bill would return the MCD exactly to its pre-2011 situation. It's not so. Such

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<sup>1</sup> The Delhi Municipal Corporation (Amendment) Bill 2022

<sup>2</sup> The Delhi Municipal Corporation Act 1957

amendments are sought to be done which will make it very different from the older one, as will be explained now.

## **2. Proposed Changes**

The Bill seeks to replace the three municipal corporations under the Act with one, named the Municipal Corporation of Delhi. The amendments made in the year 2011 gave enormous powers to the Delhi Government pertaining to the matters which were to be decided under the name of this act. The 2022 Bill has proposed to cap the total number of seats in the MCD to be at 250. The power to decide this total number of seats and the number of seats reserved for the Scheduled Castes was entrusted with the Delhi Government by virtue of the 2011 Act. The 2022 Bill along with the cap of 250, 22 less than the 272 wards presently existing as per Schedule 14 of the 2011 Act, gives the power to Central Government to decide the final number at the time of the establishment of the Corporation. The scenario prior to 2011 too had 250 as the number. The division of areas into different zones and wards was the Delhi Government's work after the 2011 Act but the change in the number of seats and shift of power to the Central Government as per the new bill, tell us that there must be a delimitation exercise conducted which needs extensive ground report and a good number of months' time or maybe a year to be done. This exercise will undoubtedly delay the elections of the municipal corporations which were scheduled to be held in the month of April this year, but now only seems feasible by the end of this year.

One of the major changes which will be witnessed by both ends is because of the Special Officer who would run the Corporation for some time. The Bill allows the Central Government to appoint a Special Officer to run the Corporation until the first meeting of the unified Municipal Corporation of Delhi takes place. This will attract criticism from the Delhi Government, for the Special Officer being partial to the Centre and acting as someone who is paralyzing the Delhi Government in the matters of MCD. The Bill has tried to promote transparency and accountability by adding a provision for E-Governance System. It will be the obligation of the new corporation to establish an E-Governance System for citizen service on an anytime-anywhere basis. The most visible and significant change is the replacement of the word "government". The new word would be "Central Government" taking the Delhi Government completely out of the scene and process of

decision-making pertaining to the new and unified corporation proposed. The role of the Director of Local Bodies to monitor Cooperation has been done away with.

The shift of power from the Delhi Government to the Central Government becomes more lucid when it is found that the former will just have general superintendence and direction over the Commissioner when a such person exercises the power to formulate regulations, whereas the latter will decide all the matters pertaining to wards, salary, allowances, reserved seats, etc.

### 3. Constitutional Scrutiny

Part IXA<sup>3</sup>, containing Articles 243P to 243Z was inserted by the Constitution (Seventy Fourth Amendment) Act, 1992 which talks about - The Municipalities. The definition clause defining “Committee” says that the Committee has to be constituted under Article 243S<sup>4</sup>. The bare reading of Article 243S under its clause 2 says that the Legislature of a State may, by law, make provision with respect to the composition of the Ward Committee. Moreover, Article 243R<sup>5</sup> which talks about the composition of municipalities says that the Legislature of a State may, by law, provide for the representation in a Municipality, of persons having special knowledge or experience in Municipal Administration, of all MLAs, MLCs, Parliamentarians who represent a such municipal area in their constituency or registered as electors within the Municipal Area, as the case may be. Article 246<sup>6</sup> of the Constitution tells us about the subject matter of laws made by the Parliament and by the State Legislature. This Article read along with Entry 5 of the State List under Schedule 7<sup>7</sup> of the Constitution clearly tells us that the state legislature has the power to deal with the issues of Local Government, *i.e.*, the Constitution and Power of Municipal Corporations.

The doctrine of Pith and Substance says that if any law falls within the ambit of a list, any incidental encroachment of the law on the matter of another list will not make the law invalid. Hence applying this doctrine to the present case, it can be said that if the Central Government raises the issue of Delhi being the national capital, a Union Territory with a Lieutenant Governor who is appointed by the President on the advice of the Central

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<sup>3</sup> The Constitution of India 1950, part IX A

<sup>4</sup> The Constitution of India 1950, art 243S

<sup>5</sup> The Constitution of India 1950, art 243R

<sup>6</sup> The Constitution of India, 1950, art 246

<sup>7</sup> The Constitution of India 1950, schedule 7

Government, this argument can be tackled with the essence of the doctrine of Pith and Substance. The simple explanation for this is that when in 1991, by virtue of the 69<sup>th</sup> Constitutional Amendment Act, the Advisory Council in Delhi was replaced by a full-fledged Legislative Assembly and became a Special Union Territory, it should be lawfully presumed that the state assembly had got the power to legislate on the subjects of State List (Local Government in this case). The Central Government by this understanding should not intervene in the matter at hand. This has been upheld in the landmark cases of *Prafulla Kumar Mukherjee v. The Bank of Commerce Limited*<sup>8</sup> and *Amar Singh v. State of Rajasthan*<sup>9</sup>.

Cooperative Federalism is the horizontal relationship between Union and States and shows that neither is above the other. Our Constitution makers have tried their best to incorporate the Principles of Cooperative Federalism to ensure the proper growth of the country. Under Schedule Seven of the Constitution, demarcation is very well done between the subjects which have to fall within the ambit of the Union, the State, and the Concurrent list. Article 249<sup>10</sup> of the Constitution, discussing the residuary powers of the Constitution says that the Parliament has the power to legislate on state list subjects only if a resolution passes in the State Council with a two-thirds majority. Understanding such constitutional provisions tells us that the Power to constitute Municipal Corporation lies with the State only.

#### **4. Conclusion**

The new law proposed will give complete hold to the Central Government even before the elections are held because the Special Officer will take charge once the law comes into force. The opposition in the Parliament is raising concerns over the issues discussed above, it lacks the numerical strength in the house to not let the Bill pass. It is quite informative to see the debate being held on core constitutional issues and not some personal vendetta. It would not be too far from thing to see this being challenged in a court of law. What is important here is that be it the parliamentary debate, be it arguments in the court, be it the essence of this article, it all must rest on the logical and legal point of view which gives constructive interpretation to the provisions and ratio of landmark cases.

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<sup>8</sup> *Prafulla Kumar Mukherjee v The Bank of Commerce Limited* AIR 1947 PC 60

<sup>9</sup> *Amar Singh v State of Rajasthan* (1955) 2 SCR 803

<sup>10</sup> The Constitution of India 1950, art 249