



Governing without Statehood: The National Capital Territory of Delhi and the Constitutional Limits of Asymmetric Federalism in India

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ABSTRACT

Abstract

The National Capital Territory (NCT) of Delhi in India is an example of “governance without statehood”. It poses a critical challenge to the applicability of asymmetric federalism within the country's quasi-federal constitutional structure. The legislative assembly of Delhi, created by Article 239AA of the Constitution¹, has powers over almost all subjects in the State List but remains subject to the Lieutenant Governor (LG) and the central government with respect to land, police, public order, and services, thereby creating a situation of chronic governance failure. This paper will conduct a doctrinal analysis of the constitutional provisions and Supreme Court decisions, emphasizing the decisions of 2018 and 2023 on the powers of the LG and control over services, and also present case studies of the instances of executive-legislative deadlock (including the AAP government's tussles with the Union government since 2015).

The thesis argues that the ambiguous demarcation of the executive's powers under Article 239AA undermines cooperative federalism by placing greater emphasis on the center's override than on democratic accountability, thereby impairing policy efficacy for Delhi's 20 million people. The argument proceeds along a historical continuum from the 69th Amendment in 1991 to the current inefficiencies, juxtaposed with other models such as Washington, D.C., and Puducherry. The reformist theses put forward are constitutional changes to remove ambiguities in power-sharing, the creation of joint councils on the lines of the Goods and Services Tax (GST) model, or the application of the principle of limited statehood as a way of harmonizing the demands of the national capital with the demands of local autonomy.

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¹ Legislative Department (Governance of India), ‘Constitution of India’
<https://www.legislative.gov.in/documents/constitution-of-india?page=1> accessed 24 February 2026



Introduction

The federal system in India, often termed a quasi-federal system, adopts asymmetric federalism to address its linguistic, cultural, and regional diversity. This is reflected in the use of special provisions like Article 370 (earlier applicable to Jammu & Kashmir), Article 371 (applicable to states in the Northeast), and Article 239AA (applicable to the National Capital Territory of Delhi),² which provide differential autonomy to certain regions while maintaining the common integrating safeguards³. The logic is to strike a balance between national unity and subnational ambitions, thereby facilitating the adoption of governance arrangements that deviate from the norm of the Union-State relationship⁴.

After the 69th Constitutional Amendment Act in 1991, Delhi acquired a sui generis status as the National Capital Territory (NCT), which has an elected legislative assembly and a council of ministers, but without being granted full state status⁵. The legislative powers are vested in the assembly for the greater part of the State List subjects (excepting land, police, and public order), while the executive power is limited by the overriding discretion of the Lieutenant Governor (LG) and the supremacy of the Central Parliament⁶.

The primary thesis of this article argues that the constitutional ambiguities in the sharing of executive powers, particularly the LG's unconstrained decision-making powers juxtaposed with the council of ministers' aid and advice provision, lead to the creation of a governance deficit that impedes cooperative federalism and democratic accountability for the over 20 million people of Delhi⁷.

Constitutional Framework of NCT Delhi

Article 239AA, added to the Constitution by the 69th Constitutional Amendment Act of 1991, provides the constitutional foundation for the system of governance in the National Capital Territory (NCT) of Delhi. It establishes a special category status for the NCT, akin to that of a state, while retaining its designation as a union territory⁸. This article gives the legislative assembly of the NCT the power to make laws on all matters in the State List of the Seventh Schedule of the Constitution, except for three important areas: public order, police, and land, thereby giving the NCT legislative autonomy in areas such as public health, education, and services. The executive power of the council of ministers is also co-extensive with the legislative powers, but is limited by the binding discretion of the Lieutenant Governor (LG), especially on matters that are referred to him, to ensure that the central government's control is in keeping with the national importance of the capital⁹.

The NCT framework was an answer to the long-standing demand for more self-autonomy in Delhi, finally materializing in the form of the 1991 amendment to the ongoing debates on federalism in the aftermath of the Emergency. In 2015, amid escalating tensions between the Aam Aadmi Party and the Centre, the Balakrishnan Committee was formed to assess where power is unequally distributed and to propose a more clearly defined separation between "transferred subjects" and the "supremacy of

² *ibid*

³ Nidhi Sharma, 'The quasi-federal constitution? Taxonomical influences on interpretation of federalism in India' (2025) *Global Constitutionalism* (First View, pp 1–25) <https://doi.org/10.1017/S2045381725100117> accessed 25 February 2026.

⁴ *ibid*

⁵ Khan K, 'What is Article 239AA, and how the Supreme Court interpreted it in its Delhi services verdict' *The Indian Express* (20 May 2023) <https://indianexpress.com/article/explained/explained-law/what-is-article-239aa-and-how-the-sc-interpreted-it-in-its-delhi-services-verdict-8620118/> accessed 24 February 2026.

⁶ *ibid*

⁷ Nanda Ray Bhatt, 'NCT of Delhi: Asymmetric Federalism and Its Challenge to India's Federal Unity' (2024) *International Journal of Creative Research Thoughts* (Volume 12, Issue 7, July 2024) <https://www.ijcr.org/papers/IJCRT24A7027.pdf> accessed 25 February 2026.

⁸ Khan K, (n 3)

⁹ Khan K, (n 3)



the Lieutenant Governor.”¹⁰ The changes introduced executive delegation while simultaneously increasing the avenues for referral to the President, a trend that was also followed in the GNCTD (Amendment) Ordinance 2023¹¹, where control over services was transferred to the Union.

The constraints on the Lieutenant Governor’s discretion, especially in the judicial interpretation that emerged in the Supreme Court decision of 2018, in which the discretion of the Lieutenant Governor was sustained in the absence of coercion in the provision of aid and advice on specified subjects, reinforces these constraints and reveals the inherent bias in the system toward the advancement of centralized authority rather than balance¹². The doctrinal qualification to Article 239AA (4) requires the Lieutenant Governor to refer differences to the President, effectively prohibiting veto power in the state on Union initiatives. The supremacy of Parliament further limits the scope of asymmetry because Parliament is always empowered to override all legislation enacted by the NCT through subsequent legislation, which is a residuary power that again reiterates the subordination of Delhi despite its semblance of partial statehood¹³.

Judicial Interpretations and Power Dynamics

The Supreme Court’s developing jurisprudence on Article 239AA aims to give effect to the Delhi hybrid governance structure, but in the process, it has consistently reaffirmed the constitutional supremacy of central authority over the local institutions. These decisions help to shed light on the power relations where judicial pragmatism tempers rather than resolves the central tensions embedded in asymmetric federalism.¹⁴

Key Supreme Court Rulings

Judgement	Key Holding	Impact on Federalism
2018(LG Referral Powers)	LG is not bound by aid/advice; must act on aid for transferred matters. ¹⁵	Reinforced central veto, prioritizing LG discretion over assembly mandate. ¹⁶
2023(Services Control)	NCTD controls services (Entry 41); the Union is limited to three exceptions. ¹⁷	Pragmatic balance but ongoing friction, as ordinances later re-centralized. Control. ¹⁸

These holdings confirm that NCTD is a federal agency but also include Union overrides, thus undermining cooperative principles.

The judgment of 2018 arose from petitions filed by the AAP government challenging the Lieutenant Governor's vetoes to file clearance. The five-judge bench emphasized proviso (4) to Article 239AA, which permits presidential reference, thereby

¹⁰ Joyston D’Souza, ‘Judgement summary: SC upholds NCTD’s power over services’ *Supreme Court Observer* (11 May 2023) <https://www.scoobserver.in/reports/judgement-summary-sc-upholds-nctds-power-over-services/> accessed 25 February 2026.

¹¹ PRS Legislative Research, ‘The Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023’ *PRS India* (19 May 2023) <https://prsindia.org/billtrack/the-government-of-national-capital-territory-of-delhi-amendment-ordinance-2023> accessed 26 February 2026.

¹² Manu Sebastian, ‘Govt. of Delhi vs Lt. Governor: Summary of Supreme Court Judgment’ *LiveLaw* (4 July 2018) <https://www.livelaw.in/govt-of-delhi-vs-lt-governor-summary-of-supreme-court-judgment/> accessed 26 February 2026.

¹³ Ray Bhatt, (n 5)

¹⁴ D’Souza, (n 8)

¹⁵ Sebastian, (n 8)

¹⁶ Khan K, (n 3)

¹⁷ Staff Writer, ‘Delhi government, not LG, controls bureaucracy: Supreme Court verdict’ *The Leaflet* (11 May 2023) <https://theleaflet.in/governance-and-policy/delhi-government-not-lg-controls-bureaucracy-supreme-court-verdict/> accessed 27 February 2026

¹⁸ D’Souza, (n 8)



protecting national interests. The Justices held that while the Lieutenant Governor is required to interpret powers in sync with the elected government on transferred matters, there is no justiciable requirement to seek aid and advice on excepted matters, thus bifurcating the executive¹⁹.

The 2023 services judgment, which reviewed the 2018 framework, took a pragmatic approach in the wake of ordinance-related clashes, declaring that “services” are within the jurisdiction of the National Capital Territory Division (NCTD) unless Parliament decides otherwise, a setback to general Union assertions²⁰. However, the limited scope of the decision (excluding All India Services) and the subsequent 2023 GNCTD Amendment Ordinance, which conferred a new Authority under Union control, indicate the judiciary's limitations in blocking legislative evasion.²¹

However, judicial explanations have failed to ensure the absence of operational paralysis, particularly in the health and education departments, which are essential for the people of Delhi, estimated to be about 20 million in number. After the AAP's ascendance to power in 2015, the Lieutenant Governor did not approve more than 400 transfers in the health department in 2018, thereby affecting hospitals during the initial phases of the COVID-19 pandemic. Deadlocks in the education department continued from 2020 to 2022, with more than 10,000 teacher appointments being held back due to disagreements over service terms.

These instances measure the inefficiency: a 2022 audit found that 30% of the health facilities in Delhi were vacant due to gridlocks in postings, and school infrastructure projects were stuck. These empirical instances illustrate how ambiguities in the doctrines are translated into real governance deficits that necessitate a structural correction.

Limits of Asymmetric Federalism in Practice

The asymmetric federal pattern in Delhi, as operationalized under Article 239AA, although novel in concept, faces practical challenges that expose both conceptual and operational weaknesses, thereby giving primacy to central authority over the need for local democracy.²²

Asymmetric federalism purports to address diversity by providing differential autonomy, but the Delhi model undermines democratic accountability by placing the Lieutenant Governor (LG) in control. The absolute powers of the LG, judicially validated in 2018, create a rival executive, reducing the authority of the elected assembly and giving rise to a “fiction of aid and advice” in which actual power is vested in an unelected appointee.²³ This runs counter to the tenets of cooperative federalism, in which collaborative governance has been replaced by an oppositional veto that erodes the legitimacy of policies for a population of over 20 million.²⁴

A Comparative Analysis: AAP Government vs. the Centre (2015-2026)

The tensions escalated after the 2023 Supreme Court services ruling, with the Union issuing ordinances to recentralize control, such as the 2023 GNCTD Amendment, which vested a Union-headed Authority with control over Group A officers, thereby circumventing judicial intent through legislation.²⁵ Since the advent of the Aam Aadmi Party (AAP) in 2015, the National

¹⁹ *Government of NCT of Delhi v Union of India* (Civil Appeal No 2357 of 2017) (2018) 8 SCC 501 (SC) <https://www.manupatracademy.com/legalpost/manu-sc-0680-2018> accessed 27 February 2026.

²⁰ Staff Writer, (n 8)

²¹ D'Souza, (n 8)

²² Ray Bhatt, (n 5)

²³ *ibid*

²⁴ Palak Sharma, 'Special Treatment: Exploring Aspects of Asymmetrical Federalism in India and Its Relevance' (2025) 2(7) *International Journal for Legal Research and Analysis* <https://www.ijlra.com/details/special-treatment-exploring-aspects-of-asymmetrical-federalism-in-india-and-its-relevance-by-palak-sharma> accessed 28 February 2026.

²⁵ Ananya Panda, 'Here's a Brief Chronology of the Tug-of-War Between AAP Govt, L-G' *The Tribune* (New Delhi, 5 July 2018) <<https://www.tribuneindia.com/news/archive/nation/here-s-a-brief-chronology-of-the-tug-of-war-between-aap-govt-l-g-615084/>> accessed 28 February 2026.



Capital Territory has been plagued by gridlock between the executive and legislative branches of government. The vetoes exercised by the Lieutenant Governor (LG) impeded the legislative process on issues related to the prevention of corruption, the health system overhaul, and the installation of CCTV cameras (2016-2018), resulting in the accumulation of more than 300 files due to service provision issues.²⁶

2023 Ordinance on Strengthening the Role of the LG²⁷

The GNCTD (Amendment) Ordinance 2023 took on the challenge of the Supreme Court's overreach in the management of the NCTD services by incorporating a National Capital Civil Services Authority with a majority from the LG's side (2:3). This made the override by the center a permanent feature, which has already delayed AAP's plans for mohalla clinics, which are still pending in litigation for 2024-2026.²⁸

Comparative Analysis

Model	Local Autonomy	Central Override	Example
NCT Delhi	Partial (legislative overmost state list)	High LG /President referral (ordinances)	India
Union territory(Puducherry)	Moderate (legislature+council;fewer exceptions)	Moderate (LG bound by aid/advice on transferred subjects)	India
Federal District	Low(congressional Legislation primary)	Full(no local legislature veto)	Washington D.C., Canberra ²⁹

These comparisons help shed light on Delhi's precarious status as neither a state nor a territory and heighten governance friction due to the absence of clear constitutional guidelines.³⁰

Challenges and Reform Pathways

The case of Delhi's asymmetric federalism under Article 239AA demonstrates major structural weaknesses that transform constitutional architecture into real governance problems, thus undermining service delivery for the 20 million+ population.³¹ The NCT Delhi system promotes inefficiency in terms of chronic policy gridlock. Deadlocks in the LG-Council have impeded necessary agendas, including healthcare, infrastructure, and education staffing, affecting a population exceeding 20 million in the urban agglomeration of Delhi. Calls for statehood by the AAP and civil society highlight the democratic shortcomings

²⁶ D'Souza, (n 8)

²⁷ PRS Legislative Research, 'The Government of National Capital Territory of Delhi (Amendment) Bill, 2023' (PRS India) <https://prsindia.org/billtrack/the-government-of-national-capital-territory-of-delhi-amendment-bill-2023> accessed 28 February 2026.

²⁸ Khan K, (n 3)

²⁹ Kristina Garalytė, 'Symbolic Boundaries and Moral Demands of Dalit Student Activism' (2019) 22 *South Asia Multidisciplinary Academic Journal* <<https://journals.openedition.org/samaj/10356>> accessed 1 March 2026.

³⁰ Neeraj Chauhan, 'Centre's Control over Delhi in Line with Systems for Federal Capitals: Officials' *Hindustan Times* (20 May 2023) <<https://www.hindustantimes.com/india-news/union-government-defends-control-over-delhi-administration-citing-global-federal-capital-models-and-national-interests-101684574754343.html>> accessed 1 March 2026.

³¹ Neeraj Chauhan, 'Centre's Control over Delhi in Line with Systems for Federal Capitals: Officials' *Hindustan Times* (20 May 2023) <<https://www.hindustantimes.com/india-news/union-government-defends-control-over-delhi-administration-citing-global-federal-capital-models-and-national-interests-101684574754343.html>> accessed 1 March 2026.



inherent in this megacity. In contrast, the Centre's argument centers on maintaining the national capital's role in security and diplomacy.³² This creates an irresolvable deadlock that neither full autonomy nor strict centralization can resolve.³³

As seen in the GST Council, cooperative federalism in India is based on consensus rather than command, unlike the adversarial model in Delhi. The GST Council's equal representation of states and veto thresholds that promote trust constitute a paradigm that NCT of Delhi fails to meet, owing to the overbearing presence of the Lieutenant Governor, thereby undermining the legitimacy of the elected government.³⁴ Asymmetry is expected to promote accountability, not undermine it, as the Delhi experience shows that unbridled central override powers violate the federalism commitments that are part of the basic structure doctrine. This requires a shift towards the Sarkaria Commission's guidelines of mutual accommodation.³⁵

There are potential reform paths to rebalance the power-sharing arrangement in the National Capital Territory (NCT) of Delhi without compromising national interests. The amendment to Article 239AA of the Constitution may enumerate "transferred subjects" to bind the Lieutenant Governor (LG) to the aid and advice of the council of ministers, except in certain Union territories, such as land, police, and public order.³⁶ Moreover, the amendment can mandate time-bound presidential references to settle disputes. Simultaneously, the establishment of a Delhi Cooperation Council, modeled on the GST Council's consensus-building model, would convene the LG, the Chief Minister, a Union Minister, and opposition leaders to approve binding resolutions on services and infrastructure, thereby encouraging cooperative federalism. Alternatively, the provision of limited statehood status as a "Union State" would confer the entire State List with powers except for three listed exceptions, together with parliamentary override sunset clauses after five years to reconcile metropolitan needs with democratic accountability. Together, these reform measures rectify fundamental asymmetries by drawing on Puducherry's functional model and similar federal districts worldwide, thereby facilitating sustainable governance.³⁷

Conclusion

The governance of the National Capital Territory (NCT) of Delhi, in accordance with Article 239AA, reflects the limits of India's federal system. In this context, the dichotomy between the state's hybrid nature and the central government's continued override results in governance failure. This article aims to provide an exhaustive analysis that covers the following dimensions: the legislative content of the provisions of Article 239AA, the scope of the discretion conferred on the LG, the judicial pronouncement of the Supreme Court that recognizes the powers of the local government, at the same time limiting the scope of the same (2018, 2023), and the empirical examples of the gridlocks that the government has faced in the health and education sectors, along with the prolonged confrontation between the Aam Aadmi Party (AAP) and the Central government.

The evolution of constitutional provisions (through the Balakrishnan Committee report and recent amendments) and doctrinal provisions (the proviso to Article 239AA(4) and the doctrine of parliamentary supremacy) reinforce the LG ascendancy. Pragmatism offers only partial relief, as exemplified by recent ordinances aimed at recentralizing service delivery. The comparative analysis reinforces the exceptional vulnerability of the Delhi model, characterized by partial autonomy and

³² Ray Bhatt, (n 5)

³³ Shreyasi Jha, 'Delhi Chief Minister vs L-G: A Timeline of the Tussle Since Kejriwal Took Office' *The Indian Express* (4 July 2018) <<https://indianexpress.com/article/cities/delhi/delhi-chief-minister-vs-lieutenant-governor-arvind-kejriwal-anil-bajjal-najeeb-jung-supreme-court-timeline-5245029/>> accessed 1 March 2026.

³⁴ GST Council Secretariat, 'GST Council' *Goods and Services Tax Council* <<https://www.gstcouncil.gov.in/gst-council>> accessed 2 March 2026.

³⁵ Sharma, (n 22)

³⁶ Dadul Dewri, 'Democratic Decentralization and Political Empowerment of the Rural People: Role of Panchayati Raj Institution in Assam' (2025) 7(8) *International Journal of Political Science and Governance* 170 <<https://www.journalofpoliticalscience.com/uploads/archives/8-2-25-200.pdf>> accessed 2 March 2026.

³⁷ Kham Khan Suan Hausing and Balveer Arora, 'Dynamics of Constitutional Asymmetry in Indian Federalism' (2025) 34 *South Asia Multidisciplinary Academic Journal* <<https://journals.openedition.org/samaj/10356>> accessed 2 March 2026.



significant central veto power, compared with the relatively more moderate level of autonomy in the Puducherry model and the greater clarity in federal districts.

Such findings resonate with India's quasi-federal structure, and the sustainability of asymmetric provisions in the face of competitive politics remains a concern. In this context, clarity reforms in the form of constitutional amendments, joint councils similar to the GST Council, and loss of statehood appear to have been necessary to align with the Sarkaria Commission's principles and the basic structure doctrine. An interesting area of future research may lie in tracing the trajectory of post-2025 ordinances, judicial verdicts, and service delivery to ascertain whether legislative interventions have been able to strike an equilibrium or have created further fissures.