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Edited by Amita Dhanda



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Patron

Prof. Srikrishna Deva Rao
Vice-Chancellor
NALSAR University of Law
Hyderabad

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NCT OF DELHI

PRANAV VERMA*

Introduction

This survey quantitatively and qualitatively analyses the legislative output of the National Capital Territory of Delhi (hereinafter, the “NCTD”) for 2023 . In findings consistent with the survey’s 2020 edition, it notes that while the output of the Legislative Assembly of the NCTD (hereinafter, the “Assembly”) remained amongst its lowest in the past five years, the administration of the NCTD continued to be managed through a large quantity of subordinate legislation, in particular, notifications published by the Government of the NCTD (hereinafter, “GNCTD”) in the Delhi Gazette.

These observations have been situated in the context of the power-sharing arrangements unique to the constitutional scheme of the NCTD, which continue to remain uncertain till date despite two Constitution Bench rulings by the Supreme Court (hereinafter, the “SC”). The most recent instance of the conflict between the Union represented by the Lieutenant Governor (hereinafter, the “LG”) and the GNCTD is of legislative and executive control over ‘services’, i.e. transfers, postings, and conditions of service of civil servants in the NCTD. The SC’s 2023 Constitution Bench verdict declared that the GNCTD and not the LG have control over ‘services’, excluding matters relating to land, police, and public order¹, only to be promptly overturned by an Ordinance.² The Ordinance was later replaced by the Government of National Capital Territory of Delhi (Amendment) Act 2023 (hereinafter, the “GMCTD (Amendment) Act 2023”). A challenge to this new law remains pending before the SC.³ This uncertainty and constant tussle between the GNCTD and the LG on sharing power

* Assistant Professor of Law, National Law School of India University, Bengaluru.

¹ Government of NCT of Delhi v. Union of India, (2023) 9 SCC 1.

² Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 (May 19, 2023).

³ Government of National Capital Territory of Delhi v. Union of India and another, Writ Petition (Civil) No. 678 of 2023 (S.C.) (Pending). The last order of the SC is dated October 30, 2023, available at https://main.sci.gov.in/supremecourt/2023/25700/25700_2023_1_27_47837_Order_30-Oct-2023.pdf (last visited on January 30, 2024) (‘GNCTD 2023 Service Case’).

may explain the continued reliance by the GNCTD on executive law-making to administer the national capital, and its low output of primary legislations.

At the same time, however, the GNCTD also continues to cede ground to the LG in other instances. All twenty-two rules surveyed as part of subordinate legislations were promulgated by the LG under Article 309 of the Constitution despite the provision to that Article giving primacy to the Assembly's enactments.⁴ This may perhaps be explained by the relatively low-stake nature of such rules, which were primarily concerned with service and pay conditions of various subordinate administrative and support staff in Government departments.

The data on the working of the legislature (total hours worked, number of sessions and sittings, Bills introduced, etc.) which forms part of the quantitative survey has been primarily sourced from the official website of the Assembly. The details of Acts passed by the Assembly have been in the first instance sourced from the Assembly's website and cross-verified from online legal databases. The list of subordinate legislations has been sourced from the state-wise repository maintained by online legal databases.

Section 2 of the paper provides context for the uncertain power-sharing arrangement in the NCTD tracing some recent developments. Section 3 quantitatively surveys the legislative activity in the NCTD in the period under study, and section 4 qualitatively analyses the findings of the survey, with concluding remarks in section 5.

The Lawmaking Powers of the NCTD

The NCTD's special status in the constitutional scheme is provided by Article 239AA of the Constitution.⁵ It provides for the NCTD to have an elected legislative assembly and requires the LG to act on the "aid and advise" of the Council of Ministers headed by the Chief Minister. The Assembly can make laws on any of the subjects in the State List apart from 'land', 'police', and 'law and order'. The Article requires that in cases of differences of opinion, the LG must refer the disagreements to the President whose decision is then binding. In rare and exigent situations, the LG is enabled to pass directions without waiting for the President's decision.⁶ The Constitution Bench of the SC in 2018 ruled that the LG cannot act in a "mechanical manner" in making such referrals, but should duly apply their mind, and not refer every decision of the Council of Ministers to the President.⁷ Justice Chandrachud

⁴ The Constitution of India, 1950, Art. 309 ('Article 309').

⁵ The Constitution of India, 1950, Art. 239AA(4).

⁶ *Id.*

⁷ *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501, ¶ 248.18 (per Misra CJ)

(as he then was) in his concurring opinion indicated that such referrals could be made in cases of “substantial issues of finance and policy which impact upon the status of the national capital or implicate vital interests of the Union”⁸, as opposed to “every trivial difference” of opinion.⁹ The Court had also clarified that the LG has “not been entrusted with any independent decision-making power”.¹⁰

This 2018 Constitution Bench ruling, however, far from settled the contentious power-sharing disputes between the LG and the GNCTD. In 2019 a two-Judge Bench of the Court was called upon to interpret its past year ruling and it further clarified that the Union shall have authority over the Anti-Corruption Bureau and setting up inquiries under the Commissions of Inquiry Act, 1952. The GNCTD was declared to have control over matters under the Electricity Act, Stamp Act, and the appointment of special public prosecutors. The two-Judge Bench, however, disagreed over control of ‘services’.¹¹

This led to a second Constitution Bench ruling in 2023 by the SC, which gave the GNCTD legislative and executive control over ‘services’. This, however, did not settle the dispute. The President promptly promulgated an ordinance to overturn the Court’s verdict and soon thereafter the GNCTD (Amendment) Act 2023 was enacted to give primacy to the LG on ‘services’. Under this new law, decisions regarding the transfer, posting, and disciplinary proceedings of civil servants in Delhi are to be taken by the LG on the recommendations of the newly constituted ‘National Capital Civil Service Authority’, which in turn is to comprise of the Chief Minister, Chief Secretary of GNCTD, and the Home Secretary of GNCTD. The LG has been given the final say in case of any differences of opinions. A challenge to the vires of this Act is currently pending before the SC.¹²

Quantitative Survey

Legislations Notified in 2023

In the period surveyed, the GNCTD notified ten legislations in the official gazette as having come into force.

⁸ *Id.*, ¶ 464 (per Chandrachud J).

⁹ *Id.*, ¶ 475.21 (per Chandrachud J).

¹⁰ *Id.*, ¶ 248.17 (per Misra CJ)

¹¹ Government (NCT of Delhi) v Union of India, (2020) 12 SCC 259.

¹² GNCTD 2023 Service Case, *supra* note 3. During the pendency of the petition, the SC upheld on November 29, 2023 the decision of the Union Government to extend the tenure of the then incumbent Chief Secretary by six months on the basis of the new law without prejudice to the pending petition challenging the law’s validity. See Government of NCT of Delhi v. Union of India and others, 2023 SCC OnLine SC 1621.

These were:

1. The Delhi Goods and Services Tax (Amendment) Act, 2023¹³
2. The Leader of Opposition in the Legislative Assembly of the National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023¹⁴
3. The Members of the Legislative Assembly of the National Capital Territory of Delhi (Salaries, Allowances, Pension, Etc.) (Amendment) Act, 2023¹⁵
4. The Ministers of the Government of National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023¹⁶
5. The Salary and Allowances of the Chief Whip in the Legislative Assembly of the National Capital Territory of Delhi (Amendment) Act, 2023¹⁷
6. The Speaker and Deputy Speaker of the Legislative Assembly, National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023¹⁸
7. The Delhi Appropriation (No. 1) Act, 2023¹⁹
8. The Delhi Appropriation (No. 2) Act, 2023²⁰
9. The Delhi Appropriation (No. 3) Act, 2023²¹
10. The Delhi Appropriation (No. 4) Act, 2023²²

Only five of the above ten Acts notified in 2023, however, were introduced in the Assembly in 2023. These were: (i) The Delhi Goods and Services Tax (Amendment) Act, 2023; (ii) The Delhi Appropriation (No. 1) Act, 2023; (iii) The Delhi Appropriation (No. 02) Act, 2023; (iv) The Delhi Appropriation (No. 03) Act, 2023; and (v) The Delhi Appropriation (No. 04) Act, 2023. The other five legislations had been introduced in the year 2022 but received assent of the LG or the President, in the year 2023.²³

¹³ The Delhi Goods and Services Tax (Amendment) Act, 2023 [Act No. 02 of 2023].

¹⁴ The Leader of Opposition in the Legislative Assembly of the National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023 [Act No. 07 of 2023].

¹⁵ The Members of the Legislative Assembly of the National Capital Territory of Delhi (Salaries, Allowances, Pension, Etc.) (Amendment) Act, 2023 [Act No. 04 of 2023].

¹⁶ The Ministers of the Government of National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023 [Act No. 03 of 2023].

¹⁷ The Salary and Allowances of the Chief Whip in the Legislative Assembly of the National Capital Territory of Delhi (Amendment) Act, 2023 [Act No. 05 of 2023].

¹⁸ The Speaker and Deputy Speaker of the Legislative Assembly, National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023 [Act No. 6 of 2023].

¹⁹ The Delhi Appropriation (No. 1) Act, 2023 [Act No. 1 of 2023].

²⁰ The Delhi Appropriation (No. 2) Act, 2023 [Act No. 8 of 2023].

²¹ The Delhi Appropriation (No. 3) Act, 2023 [Act No. 9 of 2023].

²² The Delhi Appropriation (No. 4) Act, 2023 [Act No. 10 of 2023].

²³ The Ministers of the Government of National Capital Territory of Delhi (Salaries and Allowances) (Amendment) Act, 2023 was introduced in the Assembly in 2022; received the President's assent in 2022; but was notified in 2023. The Bills concerning the salaries and allowances of MLAs, Ministers, Leader of Opposition, Chief Whip had been sent by the LG to the President who gave the assent. Legislative Assembly,

The legislations mentioned in (ii) – (v) may be excluded from analysis as these Appropriation Acts are routinely passed in every Budget Session of the Assembly. The Delhi Goods and Services Tax (Amendment) Act, 2023 (hereinafter, the “Delhi GST Amendment Act 2023”),²⁴ therefore, emerges as the only substantive legislation, introduced in and passed by the Assembly, in the year 2023, and which was notified in the same year. The Delhi GST Amendment Act 2023 further amended the Delhi Goods and Services Tax Act 2017 and brought some of the provisions such as on payment of interest on wrongly availed and utilized input tax credit, into effect retrospectively.

Further, the Delhi Goods and Services Tax (Second Amendment) Bill 2023 (hereinafter, the “Delhi GST Second Amendment Bill”)²⁵ was introduced and adopted by the Assembly on December 15, 2023, and it received the assent of the LG on January 10, 2024.²⁶ While it has not been notified within the period surveyed, such notification is expected to follow in the official gazette as a matter of formality, since the assent of the LG has already been obtained. The GST Second Amendment Bill was introduced to bring the Delhi Goods and Services Tax Act, 2017 in uniformity with the Central Goods and Services Tax Act, 2017, following the amendments recommended to the latter by the GST Council in its 47th, 48th and 49th meetings.²⁷

The Delhi GST Amendment Act 2023 and the Delhi GST Second Amendment Bill 2023, therefore, constitute the only two substantive legislations passed by the Assembly in 2023, with the only the former being notified within the period under study. This can be seen in the backdrop of the fact that in the year 2023, the Assembly convened for only eighteen sittings.²⁸ Two substantive legislations being passed in eighteen sittings amounts to a low legislative output of about 11 per cent. This was even lower than the Assembly’s output of 12.5 per cent during the pandemic year 2020, as found in this survey’s 2020 edition.²⁹ The

National Capital Territory of Delhi, *Bills in Delhi Legislative Assembly*, available at <https://delhiassembly.delhi.gov.in/dlas-govt-bills> (last visited on January 30, 2024).

²⁴ The Delhi Goods and Services Tax (Amendment) Act 2023 [Act No. 02 of 2023].

²⁵ The Delhi Goods and Services Tax (Second Amendment) Bill 2023 [Bill No. 05 of 2023].

²⁶ SNS, *LG gives assent to ‘The Delhi Goods and Services Tax (Second Amendment) Bill, 2023*, *The Statesman*, January 10, 2024, available at <https://www.thestatesman.com/cities/lg-gives-assent-to-the-delhi-goods-and-services-tax-second-amendment-bill-2023-1503258334.html> (last visited on January 30, 2024).

²⁷ *Delhi LG VK Saxena gives assent to The Delhi Goods and Services Tax (Second Amendment) Bill, 2023*, ANI, January 10, 2024, available at <https://www.aninews.in/news/national/general-news/delhi-lg-vk-saxena-gives-assent-to-the-delhi-goods-and-services-tax-second-amendment-bill-202320240110175515/> (last visited on January 30, 2024).

²⁸ Legislative Assembly, National Capital Territory of Delhi, *Session Reviews*, available at <https://delhiassembly.delhi.gov.in/dlas-session-reviews> (last visited on January 30, 2024) (‘Session Reviews’).

²⁹ Pranav Verma, *The National Capital Territory of Delhi*, *The Annual Survey of State Laws in India*, 1 ASSL 2022, 208 (‘ASSL 2022’).

year 2023 for the Assembly surpassed 2020 as the second-most unproductive year for the Assembly when compared with the past five years.³⁰ The Assembly worked for just about 3 full days when the working hours across all its sessions are taken cumulatively.³¹

Subordinate Legislations

The subordinate legislative activity of the GNCTD can be categorized into (i) Notifications/Circulars, (ii) Rules, (iii) Regulations, (iv) Schemes, and (v) Statutes of universities.³²

Notifications/Circulars

This category of subordinate legislation was the most utilized to run the routine day-to-day administration of the GNCTD. A total of 104 Notifications were issued across thirty-two departments of the GNCTD. About 28 per cent of all the Notifications pertained to the public purse with the Department of Finance alone issuing twenty-three Notifications; the Department of Trade and Taxes issuing following with five Notifications; and the Department of Revenue issuing one Notification.

Rules

There were a total of twenty-two rules promulgated – all by the LG under Article 309 of the Constitution.³³ In most of these Rules, the LG exercised their rule-making power to regulate the number of posts, classification and pay matrix levels, method of recruitment, age limit and other qualifications, disqualifications etc. for several service cadres. These mostly concerned subordinate administrative and support staff such as storekeepers, canteen attendants, prisons deputy superintendents, prison head matrons, prison head warders, prison staff car drivers, archaeology department recruitments, Delhi Archives recruitments, accounts service etc. Some of these rules were framed by the LG after prior consultations with the Union Public Service Commission, and with the High Court of Delhi for the rules pertaining to the higher judicial service.

³⁰ *Id.*, 208, footnote 30.

³¹The Assembly worked for 13 hours and 54 minutes in the Fourth Part of the third session (16.01.2023 to 19.01.2023); 22 hours and 40 minutes in the Fourth Session (Budget Session) (17.03.2023 to 29.03.2023); 4 hours and 13 minutes in the Second Part of Fourth Session (17.04.2023); 13 hours and 56 minutes in the Third Part of Fourth Session (16.08.2023 to 18.08.2023); and 08 hours and 46 minutes in the Fourth Part of Fourth Session (15.12.2023 to 18.12.2023). Session Reviews, *supra* note 28.

³²There is an overlap between these categories to the extent that almost all categories would be published as 'Notifications' in the Delhi Gazette, apart from stand-alone notifications not falling part of the other categories.

³³ Article 309, *supra* note 4.

Regulations

There were three primary regulations promulgated in 2023 – all under the Electricity Act, 2003. First, the Delhi Electricity Regulatory Commission (Business Plan) Regulations, 2023, *inter alia*, provided for “Business Plan for Generating Entity”, “Business Plan for Transmission Licensee”, and Business Plan for Distribution Licensee”. *Second*, the Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) (First Amendment) Regulations, 2023, provided for, *inter alia*, the mandatory purchase of electricity from renewable energy resources for a defined minimum percentage of the total annual consumption. Finally, the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (First Amendment) Regulations, 2023 provided detailed criteria for tariff determination.

Schemes

Two Schemes were formulated by LG, each under the Motor Vehicles Act, 1998. These were: (i) the Delhi Motor Vehicle Aggregator and Delivery Service Provider Scheme 2023 and (ii) the Delhi Motor Vehicles Licensing Aggregator (Premium Buses) Scheme, 2023. These sought to regulate app-based cab aggregators (such as the likes of Ola and Uber) and premium bus aggregators, respectively, extending to them several existing mandates for regulating road transport under the Motor Vehicles Act, 1998. These mandates included licensing of such aggregators, declaration of fleet, establishing full time command centres within the NCTD, fare regulation, and mandatory targets to shift to electronic vehicles.

Statutes of Universities

These ‘Statutes’ refer to the internal working regulations of universities formulated as subordinate legislation notified in the official gazette. There were two statutes notified in 2023. *First*, The Delhi Teachers University, Delhi (First) Statutes, 2023 was promulgated by the LG under the Delhi Teachers University Act, 2022 containing provisions on the powers and responsibilities of the Visitor, Chancellor, Vice Chancellor, and other employees and office bearers of the Delhi Teachers University which was established through an Act of the Assembly in 2022.

Second, the Indira Gandhi Delhi Technical University for Women (Amendment) Statute, 2023 was promulgated under the Indira Gandhi Delhi Technical University for Women Act, 2012 (Delhi Act No. 9 of 2012) by the Board of Management of Indira Gandhi Delhi Technical University for Women providing for the appointment of a Controller of Finance and their service conditions.

Qualitative Analysis

Low Legislative Output, Increase in Subordinate Legislation

It may be recalled that the 2020 edition of this Survey had found that the Assembly remained at one of its lowest legislative outputs, even as the routine administration of the GNCTD continued to run apace through subordinate legislations.³⁴ Notifications/Circulars across several GNCTD departments formed the bulk of these subordinate legislations through which the routine administration of the GNCTD was managed. This was true even for the years 2021 and 2022. The Assembly passed only three substantive legislations in the year 2021³⁵, and only one in the year 2022.³⁶ Yet, the administration of NCTD was run through several subordinate legislations – 102 Notifications in 2021 and 40 Notifications in 2022; and 61 Rules, Regulations, and Policy in 2021 and 2022 each. The 2023 edition of the survey confirms similar trends for the period under study. This leads to a consistent finding that the GNCTD relies upon subordinate legislation – Notifications in particular – to run its routine administration, as opposed to primary legislations.

It was felt in the 2020 survey that the low legislative output and increase in subordinate legislations could be attributed to the public health emergency of the time, as also the uncertain power sharing arrangement between the Union and GNCTD, influencing the latter's choice to govern more through delegated lawmaking.³⁷ While the effects of the pandemic have largely abated, the continued low levels of primary legislative output and increased delegated law-making suggest that the GNCTD nonetheless continues to prefer to rely more heavily on subordinate legislations than primary enactments. This can again be explained by the uncertain power sharing arrangement in the national capital as suggested in the Survey's 2020 edition – only more pronounced now by the GNCTD (Amendment) Act 2023 overturning the earlier SC ruling on 'services' in favour of the GNCTD. The GNCTD's choice to avail itself of the legislative instruments already at its disposal in the form of subordinate legislations is, thus, better understood in the context of its history of tussles

³⁴ ASSL 2022, *supra* note 29, 208.

³⁵ The Delhi Goods and Services Tax (Amendment) Act, 2021; The National Capital Territory of Delhi (Incredible India) Bed and Breakfast Establishments (Registration and Regulation) (Amendment) Act, 2021; and the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2021.

³⁶ The Delhi Teachers University Act, 2022.

³⁷ ASSL 2022, *supra* note 29, 213.

with the LG on lawmaking in the national capital, and its past experiences with the LG withholding assent even on routine matters of administration.³⁸

Rule-making under Article 309

As far as rules are concerned, the entirety of the rule-making activity of the GNCTD was centered around Article 309 of the Constitution, the proviso of which enables state governments to exercise legislative control over recruitment and conditions of service over persons serving the union or the state, and specifically grants state legislatures primacy and an overriding power over the rules made by Governors. It is only in the absence of such rules made by the State Governments that the rule-making power of the Governors or LGs operates.³⁹ The 2020 edition of this Survey had found that notwithstanding this primacy given to the legislature, the GNCTD had ceded ground to the union on at least four instances.⁴⁰ This stands true at a larger scale for this edition of the survey – all twenty-two rules promulgated in the year 2023 for the GNCTD and its various Departments were issued by the LG acting under Article 309. This might be explained by the fact that all such rules pertained to relatively low stake matters – mostly concerned with recruitment, service and pay conditions of subordinate administrative and support staff across several GNCTD departments.

Conclusion

The uncertain power sharing arrangement between the Union represented by the LG and the GNCTD continues to define the context in which the output of the Assembly has remained among its lowest, while its subordinate legislative activity has continued to thrive. It is through subordinate legislation that the administration of the NCTD continues to be run. Notifications continue to be the most used mechanism with 104 notifications having been published in the Delhi Gazette in the period under study, with a large number pertaining to the public purse.

Even as the unique constitutional arrangements pertaining to the NCTD under Article 239AA have been the source of long drawn legal battles and bitter public disputes between the LG and the GNCTD, the latter continues to cede ground to the LG on rulemaking on a series of subject matters, which are otherwise low stakes and without political significance.

³⁸ Pranav Verma, *Delhi Power Tussle: LG Is Flirting Dangerously Close to Contempt of Court*, The Wire, August 21, 2018, available at <https://thewire.in/law/delhi-power-tussle-lg-is-flirting-dangerously-close-to-contempt-of-court> (last visited on January 30, 2024).

³⁹ Article 309, *supra* note 4.

⁴⁰ ASSL 2022, *supra* note 29, 214.