



Nct Of Delhi: Asymmetric Federalism And Its Challenge To India's Federal Unity

Nanda Ray Bhatt

Research Scholar

Department of Political science

Banaras Hindu University

Abstract

Delhi, as India's national capital and a Union Territory with partial statehood, presents a unique case in the country's federal framework. This asymmetric federal arrangement, governed by Article 239AA of the Constitution, creates a complex governance model where the elected government shares power with the centrally appointed Lieutenant Governor (LG). This paper examines how Delhi's asymmetric federalism challenges India's federal unity and cooperative federalism, focusing on administrative conflicts, legislative limitations, judicial interventions, and their broader implications. By analysing constitutional provisions, historical developments, and recent disputes, it argues that the ambiguous division of powers undermines effective governance and federal harmony. Recommendations are proposed to align Delhi's governance with the principles of cooperative federalism while respecting its role as the national capital.

Keywords: Cooperative Federalism, Asymmetric Federalism, Administrative Conflicts, Legislative Constraints, Judicial Interventions

INTRODUCTION

India's federal framework is characterized by cooperative federalism, a principle that promotes collaboration between the central government and states to achieve shared goals. However, the National Capital Territory (NCT) of Delhi, with its unique status as a Union Territory with partial statehood, presents a significant challenge to this model. In fact, Delhi is really a 'semi-state' as some vital subjects like land, police and civil service are vested in the union government.¹ Governed by Article 239AA, Delhi's elected government operates under the oversight of the Lieutenant Governor, leading to persistent tensions that strain federal unity. This paper investigates how Delhi's asymmetric federalism—marked by unequal power distribution between the centre and the Delhi—challenges India's federal unity. It explores administrative, legislative, and judicial dimensions and compares Delhi with other Union Territories.

Finally, it proposes reforms to foster cooperative federalism while addressing Delhi's unique governance needs.

Historical Evolution of Delhi's Status

Delhi's administrative status has evolved through a complex historical process, shaped by its role as India's capital. During British rule, Delhi was a Chief Commissioner's Province, directly administered to serve as the imperial capital after 1911.² Post-independence, the Constitution of India (1950) classified Delhi as a Part C State under Article 239, placing it under central control through a Chief Commissioner (The Constitution of India). The States Reorganisation Act of 1956 reaffirmed Delhi's status as a Union Territory, emphasizing its strategic importance. In response to demands for local representation, the Delhi Administration Act of 1966 introduced a Metropolitan Council with limited advisory powers.³ The pivotal change came with the 69th Constitutional Amendment Act of 1991, which introduced Article 239AA, designating Delhi as the NCT with a Legislative Assembly and Council of Ministers. However, key subjects—public order, police, and land—remained under central control via the LG, creating an asymmetric governance model that balances local self-rule with national oversight.⁴ The 2021 Government of National Capital Territory (Amendment) Act further enhanced the LG's powers, requiring the elected government to seek LG approval for executive actions, intensifying central control and sparking debates about federal asymmetry.⁵ This historical trajectory underscores Delhi's unique position, which complicates cooperative federalism.

Constitutional Framework and Asymmetric Federalism

India's federal structure is built on cooperative federalism, emphasizing collaboration through mechanisms like the GST Council and inter-state councils.⁶ However, Delhi's governance under Article 239AA introduces asymmetry, as the elected government's powers are curtailed compared to full-fledged states. The Legislative Assembly can legislate on most State List subjects, but public order, police, and land remain under central control. The LG, appointed by the central government, holds discretionary powers and can refer matters to the President, creating a hierarchical structure.⁷ This asymmetry contrasts with the autonomy enjoyed by states, where governors act as nominal heads. In Delhi, the LG's authority often overrides the elected government, undermining the equal partnership central to cooperative federalism. This imbalance challenges federal unity by prioritizing central control over local governance, leading to inefficiencies and conflicts.

Administrative Challenges

The division of powers between Delhi's elected government and the LG has led to significant administrative disputes, particularly over bureaucratic control. The Aam Aadmi Party (AAP), governing Delhi since 2015, has clashed with successive LGs over the transfer and posting of Indian Administrative Service (IAS) officials. The central government's control over the IAS cadre allows it to influence administrative decisions, limiting the elected government's ability to implement policies.⁸ For example, in 2015, the AAP government's attempt to reform public services was stalled when the LG invalidated its

orders, citing lack of authority.⁹ Such conflicts highlight a lack of cooperation, as central dominance through the LG disrupts governance, challenging the collaborative spirit of federalism and undermining federal unity.

Legislative Limitations

Delhi's Legislative Assembly faces significant constraints compared to state legislatures. While it can legislate on State List subjects, its laws require LG approval, and the central government can override them through parliamentary legislation. For example, in 2010, the Delhi government's efforts to reform education and healthcare were delayed due to LG objections, requiring central approval.¹⁰ The 2021 GNCT Amendment Act further eroded Delhi's autonomy by mandating LG approval for executive actions, effectively centralizing power.¹¹ This has delayed key AAP initiatives, such as education and healthcare reforms, creating governance bottlenecks.¹² This legislative asymmetry undermines cooperative federalism by denying Delhi the autonomy enjoyed by states. The central government's ability to override local decisions fosters distrust, weakening federal unity and hindering collaborative governance.

Judicial Interventions

The judiciary has been instrumental in addressing Delhi's governance disputes. In 2004, the Delhi High Court addressed disputes over bureaucratic control, often upholding the LG's authority due to Article 239AA's provisions.¹³ In the 2018 Supreme Court case, Government of NCT of Delhi v. Union of India, the court ruled that the LG must act on the aid and advice of the Council of Ministers in areas where the Legislative Assembly has competence. However, it upheld the LG's authority over reserved subjects, leaving room for ambiguity.¹⁴ Subsequent disputes, such as those over anti-corruption agencies and bureaucratic control, have required judicial intervention, indicating a lack of cooperative mechanisms to resolve centre- Delhi tensions.¹⁵ This reliance on courts reflects a failure of cooperative federalism, as it suggests an inability to address disputes through dialogue, further straining federal unity.

Impact on Federal Unity

Delhi's asymmetric federalism exposes a structural flaw in India's federal framework. Cooperative federalism relies on mutual trust and shared governance, but Delhi's limited autonomy fosters distrust between the centre and the elected government. The central government's dominance through the LG and parliamentary legislation creates an imbalance, undermining federal equality.¹⁶ This dynamic also affects other Union Territories with legislative assemblies, such as Puducherry, where similar conflicts arise. The centralization of power in Delhi risks weakening India's federal unity by prioritizing national control over regional autonomy, contrary to the collaborative ethos of cooperative federalism.¹⁷

Comparative Analysis

Delhi's governance model can be compared to Puducherry, another Union Territory with a Legislative Assembly, which faces similar central oversight and conflicts.¹⁷ In contrast, Union Territories like Chandigarh, directly administered by the centre, avoid such disputes due to the absence of an elected

government. Delhi's unique challenge lies in balancing local self-governance with its role as the national capital, a tension that exacerbates asymmetric federalism and undermines cooperative federalism.¹⁸

Global Comparisons of Capital Governance

Globally, capital cities often have unique governance models. Washington, D.C., in the United States, operates under federal oversight with limited autonomy, similar to Delhi, leading to tensions with local governance.¹⁹ In contrast, Canberra, Australia, balances local and national interests through clearer power delineation.²⁰ These comparisons suggest that Delhi's asymmetric model could benefit from reforms that enhance local autonomy while respecting its national role, fostering cooperative federalism.

Recommendations

To address the challenges of Delhi's asymmetric federalism and strengthen federal unity, the following reforms are proposed:

- i. Clarify Power Distribution: There is a need to amend Article 239AA to clearly delineate the powers of the elected government and the LG, reducing discretionary authority and enhancing local autonomy.
- ii. Establish Cooperative Mechanisms: it is pertinent to create a joint council with representatives from the NCT to resolve disputes, minimizing judicial interventions.
- iii. Enhance Legislative Autonomy: for smooth functioning of legislative work, it is necessary to grant Delhi's Legislative Assembly powers comparable to those of states, with central oversight limited to national security and foreign affairs.
- iv. Decentralize Administrative Control: Time has come to allow the elected government to control bureaucratic appointments to align with its policy objectives.

By clarifying powers, fostering cooperation, and enhancing autonomy, India can create a model of federalism that accommodates asymmetry while promoting collaborative governance, drawing lessons from global capitals like Canberra, where clear power delineation supports federal harmony.

Conclusion

The NCT of Delhi's asymmetric federalism, characterized by a complex division of powers between the elected government and the LG, poses significant challenges to India's federal unity and cooperative federalism. Administrative conflicts, legislative constraints, and judicial interventions highlight the inefficiencies of this model, while political and socioeconomic factors exacerbate tensions. By comparing Delhi with other Union Territories and global capital cities, it becomes clear that clearer power delineation and cooperative mechanisms are needed. The proposed reforms aim to align Delhi's governance with cooperative federalism, ensuring effective governance while respecting its role as the national capital.

Addressing these challenges is crucial for strengthening India's federal unity and fostering a collaborative federal framework.

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