

The Aftermath of Kejriwal's resignation in New Delhi : Constitutional Issues and Electoral Peculiarities.

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Abstract: *The National Capital Territory of Delhi, is one of the two Union Territories in India that have been provided a special status of a quasi-state. Despite being a union territory it still has a legislative assembly of its own. However, due to it being the capital of the country and a union territory, the functioning of the territory is very different. Unlike other union territory, Puducherry for instance it does not have complete autonomy to pass laws on any matters in the state and concurrent list. Further, the constitution of India is silent regarding various situations surrounding Delhi, thereby leading to analogies being drawn from other states to find the answer.*

One such situation is the aftermath when the chief minister of Delhi NCT resigns. Since, there is no specific article in the Constitution dealing with this particular aspect, the analysis and comparisons made, state that if after the resignation, no other political party is ready to form the majority, the Lieutenant Governor may send a report to the President, suggesting President's rule till the next election. If President is satisfied he may proclaim President's rule, however until then, the outgoing ministry continues to act as a caretaker government. Similar outcome happened when Arvind Kejriwal, the then Chief Minister of Delhi NCT resigned. President's rule was invoked in Delhi, after BJP the single largest party refused to form the government.¹

However, the AAP came back to power in the 2015 Delhi Elections and promised in his election manifesto the fulfilment of issues like, passing of Jan Lok Pal Bill, Police being under the state control and the court proceedings being recorded. However, none of them are constitutionally under the sole domain of the Delhi legislature. The passing of the proposed Jan Lok Pal requires amendments to the constitution as it involves matters outside the legislative competency of the legislature. Further, the Supreme Court has in a recent precedent held that there can be no recording of court trials, which again negates another promise of the AAP government. And lastly, Article 239AA (3) categorically bars the legislature from making laws with respect to police, therefore making it a domain outside the scope of the Delhi legislature. Therefore, some of the promises mentioned by the AAP cannot be provided within the constitutional framework unless certain changes to them are made.

Keywords: Kejriwal, Kejriwal's resignation, Constitutional Issues,
Electoral Peculiarities, New Delhi Electoral

Introduction

The Aam Aadmi Party (herein after AAP) in the 2013 Delhi legislative assembly elections won 27 seats and formed the government with the support of Congress. Mr. Arvind Kejriwal was chosen as the Chief Minister.² The party's main agenda was the passing of the Lokpal Bill, which did not receive the support of the legislative assembly. Further, Mr. Kejriwal did not receive the consent of the Lieutenant Governor which was a prerequisite for the tabling of any money bill, Lokpal being one too.³ After the bill was rejected by the assembly, the following night Mr. Kejriwal handed his resignation to the Lieutenant Governor. The aftermath of this resignation was the proclamation of President's rule in the territory. Since the constitution of India stands silent on the aftermath of resignation of a chief minister of a union territory this became a question requiring an analysis.

Further, AAP in the 2015 Delhi legislative assembly elections came back to power with a whooping majority of 67 seats and formed the government. The elections manifesto of the party being, bringing police under the state control, free water and sanitation, opening of school, and further even recording of the proceedings of courts.⁴

¹ *President's rule imposed in Delhi after Arvind Kejriwal resigns*, (Feb. 4, 2015, 8:45:23)

<http://www.ndtv.com/india-news/presidents-rule-imposed-in-delhi-after-arvind-kejriwal-resignation-551077>

² *Kejriwal becomes Delhi's youngest Chief Minister*, (Jan. 20, 2015, 9:30:05 PM),

<http://ibnlive.in.com/news/arvind-kejriwal-becomes-delhis-youngest-chief-minister/442008-80-258.html>.

³ *Arvind Kejriwal resigns as Delhi CM*, (Jan 20, 2015, 9:35:06 PM)

http://zeenews.india.com/news/delhi/arvind-kejriwal-resigns-as-delhi-cm-as-it-happened_911366.html.

⁴ *Aam Aadmi Party Election Manifesto 2015*, (Jan 23, 2015), <http://www.aamaadmi-party.org/AAP-Manifesto-2015.pdf>.

However, Delhi being a union territory, has a quasi-state political administration with its own legislature, high court and an executive council of ministers headed by a Chief Minister. It is jointly administered by the Government of India and the local government of Delhi. Due to this reason it has both electoral and constitutional peculiarities. Further, the legislative assembly requires consent of the centre on various issues and is even prohibited from making laws on various issues.⁵ Such peculiarities posed difficulty in the path of the AAP government's electoral promise and even makes some propagandas mentioned, constitutionally impossible. This paper aims to analyse such conflicts and provide a suitable solution.

Special status of Delhi-

The legislative assembly of Delhi was first constituted on 17 March 1952 under the Government of Part C States Act, 1951, but was later abolished on 1 October 1956. The 69th Amendment Act 1991 re-established the legislative assembly of Delhi and declared the Union Territory of Delhi to be formally known as National Capital Territory of Delhi.⁶ The amendment provided the legislative assembly the power to legislate in relation to all matters in the state and concurrent lists of the 7th Schedule of the Constitution except entries 1, 2, 18, 64, 65, 66 of the State List i.e. with respect to law and order, police, land and stamp duty as these were reserved for the Centre. This curtailment however was exclusive for the Union territory of Delhi, as the Union Territory of Puducherry had the competency to make laws with respect to any matter enumerated in the State or Concurrent List.⁷ Further, laws made by Delhi legislature were to remain subordinate to laws of Parliament by virtue of Article 239AA (3) (b).⁸

As compared to the Governor of a State, the Lieutenant Governor of Delhi NCT is more powerful, and not just a nominal head. Both Article 239AA⁹ of the Constitution and Section 44 of the Union Territory Act, confer enormous powers on him. Article 239AA (4) says that, in case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President. Pending such decision, however the Lieutenant Governor shall be competent to take any action or give direction in a matter which he considers is so urgent that it is necessary for him to take immediate action. Thus, the Lieutenant Governor can differ with the Chief Minister or Minister and have his way as he deems necessary.¹⁰ However, the state governor acts on the aid and advice of the Council of Ministers unless in certain situations, unlike the Lieutenant Governor who enjoys more powers to act in derogation of the advice of the Council of Ministers.¹¹

Further, Article 239AA (3)(c) mentions that the Union Government can exercise executive and legislative power for Delhi on all subjects mentioned in the List II of 7th Schedule. However, Article 246(3),¹² specifically states that the legislature of states have exclusive power to make laws for it, thereby the Union Government cannot exercise the same power with the states in India.

Hence, despite being a quasi-state the administration of Delhi is very different from that of any other state in India. Further, the Union has the upper hand with respect to law making as compared to the Delhi legislature. Therefore, Delhi is a one of its kind example of federalism in India, and there exists a unitary bias in the provisions of the enabling act of the Delhi NCT i.e. the 69th Amendment Act 1991.

Aftermath of Resignation of the Chief Minister of Delhi

On 14th February 2014, Arvind Kejriwal and his council of ministers resigned from the Delhi assembly due to the non-passing of the Jan Lokpal Bill.¹³ The aftermath of such resignation was the President's proclamation in Delhi. However, since there existed no specific provision in the constitution regarding the aftermath of what happens when a chief minister of a union territory resigns, this becomes a matter requiring a comparison with the procedure in other states of India. National Capital Territory of Delhi has a legislative assembly of its own and has a chief minister like other states in India, thereby making it a quasi-state. Therefore, in case of absence of specific provisions with regards to elections a reference from the other states can be drawn.

Article 239AB talks about a situation wherein if the President on receipt of a report from the Lieutenant Governor is satisfied that a situation has arisen wherein the administration of the NCT cannot be carried out in

⁵ INDIA CONST. art. 239AA, cl. (3)(a).

⁶ Art.239AA, *Supra* 4.

⁷ Mahe Beach Trading Co. v. Union Territory Pondicherry, (1996) 3 S.C.C. 741 (India).

⁸ DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, 8556, (8th ed. 2011).

⁹ Article 239AA, *Supra* 4.

¹⁰ Union Territory Act, 1963, section 66, (India).

¹¹ Devji Vallabhbai Tandel Ors. v. Administrator of Goa, Daman and Diu and Anr. (1982) 2 S.C.C. 222 (India).

¹² INDIA CONST. art. 246, cl. 3.

¹³ *Arvind Kejriwal resigns after 48 days entering office*, (Feb. 5, 2015, 8:30:45 PM),

<http://www.ibtimes.com/arvind-kejriwal-resigns-post-chief-minister-new-delhi-friday-after-48-days-entering-office-1555773>.

accordance with Article 239AA, the President may suspend the operation of any provision of Article 239AA.¹⁴ Further, the term 'failure of the constitutional machinery' has been interpreted to have indefinite connotations.¹⁵ It also includes a situation wherein the existing ministry resigns and no viable ministry is ready to form the government. A similar situation occurred in Gujarat in 1974, when due to the state wide Navnirman movement, the Gujarat assembly dissolved following the resignation of the ministry.¹⁶ Similar instances have happened in the states of Punjab in 1966 and in Uttar Pradesh in 1975. However, Article 163(1) of the Constitution of India,¹⁷ says that "there shall be a Council of Ministers to advise the Governor" hence, there must always be a Council of Ministers to advise the Governor who is a constitutional head of the Executive. Therefore, even if the council of ministers resign, they have to carry on as the care taker government until their successors take office under the Constitution.¹⁸

The Delhi legislature was faced with the same problem after Mr. Kejriwal's resignation, as Bhartiya Janta Party the single largest party was not ready to form a government.¹⁹ The Lieutenant Governor sent a report to the President recommending President's rule in Delhi, the same was recommended by the Union cabinet and approved by the President then. Hence, Delhi came under President's rule. Therefore, the situation that emerges on the aftermath of the resignation of a chief minister of union territory is,

- (a) If any other political party can form the government, the Lieutenant Governor invites it to do so,
- (b) If not so then the L.G sends a report to the President recommending the President's rule.
- (c) If President is satisfied then he may Dissolve assembly and impose President's rule or keep assembly in suspended animation, as another party may come forward and stake claim to form government.

However, the general practice which is prevalent is of a recommendation of the Union cabinet also being considered.²⁰ Further, till the time the proclamation of the President rule is in process, the outgoing Council of Ministers still remain as a care taker government till the proclamation is approved.

After, such a Proclamation is made the Lieutenant Governor being the representative of the Union must become directly responsible for all areas previously governed by the state government. He shall be performing the roles of the chief minister in the New Delhi Municipal Council²¹, Delhi Jal Board²² and even the private distribution companies where the Delhi government has 51% stake. Further, all Delhi government departments i.e. health, transport, social welfare, education, public works, food and supplies etc. should be under Lieutenant Governor's direct control. The heads of other government corporations and agencies like, the urban shelter board (DUSIB), the industrial development corporation (DSIIDC), the transport corporation (DTC), tourism corporation (DTTDC), finance corporation (DFC) etc. should report to the Lieutenant Governor too.

Aam Aadmi Party's Election Manifesto- A constitutional Analysis

The AAP came out with its elections manifesto for the 2015 Delhi Assembly elections on 15th February 2015. The manifesto mentioned issues like recording of court proceedings, police being brought under the control of the states, full statehood for Delhi and the passing of the Lokpal Bill.²³ However, none of the above seems to be under the control of the Delhi government.

Recording of Court Proceedings and Appointment of more Judges-

The AAP in its manifesto promised that it will initiate the recording of every court proceedings and make it available to the general public. However, generous and beneficial the idea may seem, a 3 judge bench headed by Chief Justice HL Dattu of the Hon'ble Supreme Court held that there can be no recording of the proceedings of

¹⁴ INDIA CONST. art. 239, cl.AB.

¹⁵ MP JAIN, INDIAN CONSTITUTIONAL LAW, 755 (6th Ed. 2012).

¹⁶ *Navnirman Movement*, (Feb. 10, 2015)

<http://www.narendramodi.in/navnirman-movement-1974-when-student-power-rattled-the-unhealthy-status-quo/>

¹⁷ INDIA CONST. art. 163, cl. 1.

¹⁸ Cf. Rao, U.N.R. v. Indira Gandhi, Smt. A.I.R. 1971 S.C. 1002, ¶8,10 (India).

¹⁹ *BJP won't resort to horse trading*, (Feb.6, 2015, 9:30:45 PM)

<http://www.thehindu.com/news/cities/Delhi/bjp-wont-resort-to-horsetrading-to-form-government-in-delhi-rajnath/article6386411.ece>.

²⁰ *President's Rule imposed in Delhi*, (Feb. 8, 2015, 7:45:30 PM)

<http://www.tehelka.com/presidents-rule-imposed-in-delhi/>

²¹ New Delhi Municipal Council Act, 1994, Section 1, available at

<https://www.ndmc.gov.in/NDMCAct/section4.htm> (India).

²² The Delhi Water Board Act 1998, No. 4, Acts of Delhi Legislative Assembly, 1998 available at

http://delhijalboard.nic.in/djbdocs/about_us/chapters/chapter2.htm (India).

²³ Aam Aadmi Party, *Supra* 3/

any court.²⁴ Therefore, the Delhi government cannot go against the set precedent, unless an amendment to the constitution is made providing the government the competency to enact such a law.

Police being under State Government-

The AAP further in its manifesto promised that it will bring in its ambit the Delhi police which is currently under the control of Union Home Ministry. Clause 3(a) of the 69th Constitutional Amendment Act 1991, mentions that the Delhi legislature cannot make laws for Entry 1, 2 and 18 of the State List.²⁵ The subject matter of Entry 2, List II is police. Therefore, the enabling act of the Delhi legislature by itself bars it from making laws with respect to police. The electoral promise of Mr. Kejriwal henceforth can only be fulfilled by the parliament, by passing a constitutional amendment bill. Therefore, the promise mentioned in the manifesto is not within the competency of the Delhi legislative assembly.

Tabling of the Jan Lokpal Bill-

One of the major contentions of the AAP before coming to the power was the passing of the Jan Lokpal Bill. However, mere coming to power does not make it possible for Mr. Arvind Kejriwal to get the bill tabled. The Jan Lokpal Bill proposed by the Arvind Kejriwal's government aims towards deterring corruption, and involves issues of land and order. However, Article 239AA (3) specifically bars the Delhi government to make laws with respect to public order, police and land. Therefore, passing of the Bill requires massive amendments, as land, law and order is a central subject.²⁶ Even if the Bill is passed by the Delhi Assembly, it won't receive the assent of the President due to it being repugnant with the Central laws, as it will be beyond the competency of the Delhi legislature to enact it. A similar instance happened in Gujarat when the Gujarat Control of Terrorism and Organised Crime (GUJCOC) Bill did not receive the assent of the President.²⁷

Therefore, unless Mr. Kejriwal amends his proposed Jan Lokpal Bill, even the passing of the Bill in the Delhi assembly will not fulfil his electoral promise.

Suggestions

i. Police under Delhi Government-

The Delhi Government instead of pleading for complete control of the Delhi Police can plead for a partial control of the same. Wherein the security and policing of areas which are not sensitive with regard to national or international issues can be placed under the Delhi government. And the ministry can keep the sensitive areas under its control.

Further, the Government of Delhi can request the Central Government to establish separate forces, one under the Union and the other under the control of the Delhi Government. In Washington, the capital of United States of America, Section 11, of the Washington State Constitution²⁸ allows for the existence of a separate police force for the purposes of patrolling, wherein separate forces like the Secret Service, Park Police, Capitol Police, Diplomatic Security and FBI are controlled by the Senate at the Centre.²⁹ Similar is the situation London, the capital of England wherein the British Transport Police is a national police agency and City of London Corporation administers local police in London.

ii. Introduction of Lokpal Bill-

The Jan Lokpal Bill proposed by Arvind Kejriwal mentions arrest and prosecution by the Lokpal. However, the Delhi legislature is barred from making laws with respect to law, order and police by its enabling act. Therefore, Mr. Kejriwal should take into consideration the constitutional provisions and status of Delhi, amend his proposed Bill. The other way for getting the Bill passed is by a constitutional amendment which enables the Delhi legislature to make laws with respect to law, order and police. The latter seems rather far-fetched, therefore the former route should be opted by the Government.

²⁴ *SC Panel rejects audio-video recording of trials*, (Feb. 9, 2015, 6:30:25 PM)

<http://timesofindia.indiatimes.com/india/SC-panel-rejects-audio-video-recording-of-trials/articleshow/45185944.cms>

²⁵ *Supra*, see footnote 4

²⁶ *Ibid*.

²⁷ *Gujarat anti-terror law not passed again*, (Feb. 10, 2015, 7:30:30 PM)

<http://timesofindia.indiatimes.com/india/President-stonewalls-Gujarats-anti-terror-law-again/articleshow/12433976.cms>

²⁸ Wash. Const. art. 11, Washington State Constitution, accessible at

<http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx>

²⁹ *Delhi Police must be accountable to the Chief Minister*, (Jan. 28, 2015, 6:30:45 PM)

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