

Quest for Delhi Statehood in India's Asymmetric Federal Polity

Bijendra Jha

Delhi is a peculiar case, neither being a state, nor a Union Territory... The problem with the Centre is that while it conflates Delhi as a Union Territory to suit its own interest, at other times, it treats it as a state –
Raj Gopal Saikumar, The Hindu, May 23, 2015.

In India, the federal arrangement has remained central to democratic polity to deal with such a diverse, plural and vast size of territorial integrity. Its need was less of a choice than political imperative (Jalal, 1995: 161) to accommodate the dissent voices coming from different regions. As a reluctant federalist state (Saxena, 2012: 71), India has considered the idea of statehood majorly on two grounds. First was on the basis of 'linguistic contiguity, economic efficiency, political unity and regional coherence' (Sarangi and Pai, 2011: 10). The creation of Andhra Pradesh, Maharashtra, Punjab, and Madhya Pradesh, Tamil Nadu, Karnataka, Kerala, Bengal, Assam, Himachal Pradesh, etc. comes under this category. The second ground is 'a sense of internal colonialism' (Akhtar, 2003: 88) in which particular territorial part of the state feels marginalized and discriminated in economic development, and hence voices for new statehood. In this case, political actors cite under-development of the region despite being same linguistic and regional coherence, and socio-political dominance of the opposite regional group in the decision-making regarding public policy results in intra-state developmental disparities. Due to large territorial areas or population, these democratic demands also cite administrative inefficiency of the present state in order to develop the under-developed areas. Hence, they propose effective administrative efficiency for development in order to support the case of new statehood. The philosophy behind granting statehood to Chhattisgarh from Madhya Pradesh, Jharkhand from Bihar, Uttarakhand from Uttar Pradesh and recently to Telangana from Andhra Pradesh was the case of economical backwardness. Each of these four states shared sense of injustice about their regional exploitation by the state of which they were previously a part

(Mawdsley, 2010: 41). The statehood demand for Vidarbha, Marathwada, Gorkhaland, Bundelkhand, Purwanchal, Mithila, etc. can be put into this category.

Interrogating the growing demand for small statehood in asymmetrical federal and democratic polity, B. G. Verghese writes that 'there is no reason to resist the demand for more states subject to their techno-economic and administrative viability. There is no wrong in envisaging India at 2040-2050 with the population around 1,600 million organized in 60 states, with an average population of 25 million each (p.xviii)'. Statehood demand is political one along with socio-economic cohesiveness. The administrative effectiveness and efficiency of the state's nodal agency for governance is a backbone for making the case stronger. This paper is interrogating the quest for statehood for Delhi. For the purpose of explanation, the paper has divided into two sections. The first section traces the current conflict between the Centre and Delhi along with historical trajectory of federal arrangement in India's capital. Second Section explains the S. Balakrishnan Committee's concern and recommendation for the statehood. It also details different political parties stand on the issue. The paper argues that the case for Delhi Statehood reflects peculiar ground viz. local development and administrative efficiency. The multiplicity of authorities leads to overlapping of responsibility results in contestation and conflicts culminate in poor governance.

Section I.

Launching Struggle

On May 18, 2016, Aam Aadmi Party (AAP) government has prepared and released two supportive documents 'Full Statehood for Delhi' and 'The State of Delhi Bill, 2016', for eliciting comments, suggestions, and recommendations. In 2013, in its party manifesto, AAP had promised to wage a struggle for statehood for Delhi to solve the problems of city dwellers.¹ In addition to this it has continued promising the same in 2015 election manifesto where it insisted that 'the Aam Aadmi party will put it ensure strength behind the demand for full Statehood for Delhi.'² Further, the Party has explained that matters relating to 'decision regarding land use, establishing new colonies, regularization of unauthorized colonies'³, among others, would be under the control of elected representatives of the city-dwellers, and not in the hand of officials

of the Central Government. It has argued that the officials of the central government did not have contact and interaction with the people of the city. It further stated that police department and its functions related to appointment and transfer of police personnel along with law and order would be under the control of Delhi State government like in the other state. Following the promise made to the people of Delhi, AAP government has prepared 'Delhi Statehood Bill, 2016' in which the city government seeks its jurisdiction on entire Delhi except New Delhi Municipal Corporation's area leaving for exclusive jurisdiction of the Central Government.

To ensure efficient and effective land use and allocation for its people and their welfare, the party has made an argument for the Statehood. It has to resolve the issue of land, and housing which is under Delhi Development Authority (afterward DDA).⁴ It wants to fix the accountability and responsibility of the city police to the people of Delhi; as a consequence, it seeks to control on the city police along with 'law and order' situation. Further, it wishes to bring Municipal Corporation of Delhi (MCD), which has been trifurcated in 2011, and has jurisdiction on ninety-four per cent of the city, under its control. In the draft of 'Full Statehood for Delhi', the party has cited eighteen instances when the two major national parties the Congress and the Bhartiya Janta Party have pitched for full-fledged Statehood for Delhi.

Historical Background

Since the shifting of new imperial capital in 1911, Delhi has been governed under the Chief Commissioner of Delhi in colonial India. On July 31, 1947, a Committee has formed under the chairmanship of B. PattabhiSitaramayya to study and report on the possible constitutional changes required in the administrative structure in Delhi to give the people of the city a due place in the framework of democratic government in free India. N Gopaldaswami had sent a memorandum to Sitaramayya that Delhi should be divided into New Delhi and old Delhi. New Delhi should be declared as the Capital of India and rest part should dissolve into the state of Punjab and United Province.⁵ Sitaramayya had rejected Gopaldaswami suggestion and recommended that Delhi would have a state with certain limitations. Significantly it had noted that 'the people of the province which contain the metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their countrymen living in the smallest of villages.'⁶ It had recommended that province of Delhi should have an elected Legislative

Assembly along with a Council of Minister with a Chief Minister to aid and advise the Lt. Governor in the exercise of his function.

Delhi became a State under the Part C-State Act, 1951 under Article 240 of the Indian Constitution. But under State Reorganization Act, 1956, the Legislative Assembly of Delhi has been dissolved and the capital of largest working democracy came under the category of union territory (UTs). Although Delhi Municipal Corporation, as a local government, has been established in 1957 but demand for representative government at the state level was growing to resolve the local problems. In partial response to this demand, the Delhi Administration Act, 1966 was enacted 'to provide for a type of representative government for Delhi.'⁷ The act provided for a deliberative body called Metropolitan Council (MC) having recommendatory power. At the top, there was an 'Administrator appointed by the President of India under Article 239 of the constitution.'⁸ As MC was a recommendatory institution, it lacked legislative power. It had an inherent deficiency in creating the framework for a responsible and responsive government. Statehood demand was raised by parties⁹ on different occasions especially during the MC election. For instance, the Jan Sangh has demanded statehood for Delhi, as early as, in 1970¹⁰ and its new form the Bhartiya Janta Party has been raising this issue in the Parliament. In 1984, the Congress leader, representing the East Delhi Parliamentary constituency and a member of the central campaigning committee of the All India Congress Committee (AICC), H. K. L. Bhagat has raised the same issue.¹¹ To counter the growing demands pitched by leaders and parties, the Centre has instituted S. Balakrishnan Committee¹² to consider the Statehood question for Delhi.

Section II.

S. Balakrishnan Committee and Limited-statehood for Delhi

Committee on Reorganization of Delhi Set-up (1989) chaired by S. Balakrishnan has faced difficulties in the task of designing proper structure of governance for the national capital particularly in Indian federal-set up due to two conflicting requirements. First was to satisfy the democratic aspiration of the citizens of Delhi in consonance with the spirit of the constitution. In fact, this was much a long-standing demand of the city dwellers to set up a democratic

institution. Second, important point, for the committee, was to make such an arrangement in which the Central government should have sufficient control over the capital of the largest working democracy to foster national and international responsibilities and commitments.¹³

The committee has gone into the matter in great detail and considered the various issues in all their aspects after examining the memoranda received by it from various persons. The Committee had held discussions with individuals, representatives of institutions and political parties, administrator, academics, eminent citizens, the expert and knowledgeable person with long experience in administration and public affairs. Further, the committee examined the details of the arrangement made in the national capitals of other countries¹⁴ with a federal set up and took note of the views expressed in the debate in the Constitution Assembly and Houses of Parliament on various occasions regarding the arrangements for the capital.

Recognizing the importance of the national capital for the Centre, the Balakrishnan Committee has opined that if Delhi is made a full-fledged State of the Union, there would be a constitutional division of power. In such circumstances, it would be constitutionally impossible for the Central Government to intervene in the matter of subject of State List, for instance, law and order, health, essential supplies, police and land (p.48). This complete Constitutional prohibition would make it impossible for the Central Government to discharge its national and international responsibilities in relation to the Capital. At the same time, the Committee has also acknowledged the need for representation and democratic set-up through the instrumentality of State Legislative Assembly and a Council of Minister. However, the Committee was 'fully convinced with most of the arguments against making Delhi a State of the Union' (p.49).

Besides of complexity of the Constitutional division of legislative and executive power of the state, the Committee insisted that statehood for Delhi would be not viable financially. Working as a Union Territory, its 'deficit in the entire expenditure for its administration'¹⁵ is met by the Union Government. In addition to this, it noted that Delhi as a capital must be able to maintain an adequate standard of services and amenities essential for the city. If it becomes a State the fiscal federalism norm, as in present Indian context¹⁶ is, will be applicable to the city-state of the National Capital resulting in depletion of resources and making it difficult to meet the needs of Delhi adequately (p.49). It observes that fiscal flow from the 'Centre to the State like under

Gadgil formula for plan resources and the Finance Commission formula for non-plan resources do not at present strictly apply to the Union Territory of Delhi' (p.50). And due to this privilege of being national capital, Delhi has maintained a reasonably good standard of services and amenities.

Therefore, the Committee tried to balance the potential conflict between the Statehood of Delhi and the national capital of the largest democracy constitutionally, and hence a process of creating a weak institution of Delhi Legislative Assembly had started. However, it has recognized a 'responsive and representative government at the local level with adequate powers to deal with matters of day-to-day concern to the people of Delhi'¹⁷ which should be accountable to them. It recommended a legislative assembly with power in respect of matters concern to Delhi in the State List and Concurrent List. For the committee, the anomaly would remove once the people of Delhi would have the benefit of themselves deciding on the law made for them through their own elected representatives. Citing the multiple executive central authorities in the city, it has noted that the present system is frustrating the common man because they know that the elected representatives could deliver effective relief to them (p.51).

In the area of planning and development, which is considerable interest and concern to the people of Delhi, the Committee had accepted that there is over-centralization of power. Due to this over-centralization of power, the significant development 'schemes such as setting up hospitals, industrial estate, constructing major roads and bridges, opening up higher educational institutions, etc. get postponed from plan to plan for want of expeditious clearance by the several Ministries of the Central Government.'¹⁸ The Council of Minister answerable to people's representatives in the Legislative Assembly would have the power of planning and schemes, development of the city would not be hampered. Further, it has noted that such development would have meaning and content with the involvement of the people's representative in the process.

The people of Delhi, observed by the Committee, have the major problem arising from the inadequate and unsatisfactory municipal services. Lack of civic amenities, rampant corruption and generally about the disappointing response by the Municipal Corporation to the issue of common man has made the situation worse. It does not come under Delhi Administration as in

other metropolitan cities like Bombay or Madras. If Delhi is provided with a Legislative Assembly and a Council of Minister with appropriate power, it will provide a ventilating grievance and a forum for discussion of the working of such authority (p.52). Further, it would be coordinating institution among various authorities. Citing the Constituent Assembly Debate on the right to self-government enjoyed by the rest of their fellow living in the countryside, it has insisted that people of Delhi should not be deprived of the democratic and representative form of government as long as it is available to the people in the rest of India (p.52). On a consideration of all the aspects dealt with the democratic and representative set-up in the capital, the Committee has recommended that the Union Territory of Delhi renamed as the National Capital Territory which will have an elected Legislative Assembly with a Council of Minister and its administrator constitutionally recognized as the Lt. Governor.

Thus, the Committee recommended that the Legislative Assembly should have full legislative power included in the State List and Concurrent List except public order, police, and land. It has noted the special responsibility of the Union in respect of the national capital and cited the special provision made for Delhi in section 21 of the Government of the Part C State Act, 1951 where the certain subject was excluded from the purview of the legislative power of the State Assembly for Delhi. The rationale for exclusion was, as cited by the Committee, and debated in the Parliament that:

The main reason for exclusion of certain subject in respect to Delhi was that Delhi occupies a very peculiar position. It is the capital city of a large federation and it is, as in almost all federal countries necessary that in the area over which the Federal Government has to function daily, practically in all details, that Government should have unfettered power, power which is not contested by another and subordinate legislature...it is possible that we can control the State Legislature even without such exclusion but once the State Legislature has power to legislate in regard of these matters, it would be source of perpetual friction as to how much of the field the State Legislature should occupy and how much should be entered upon by the Central Legislature...it would be advisable therefore that, if we are to maintain the capital as it should be, the responsibility for maintaining it according to proper standards must be in the hands of the Centre.¹⁹

For the Committee, the Parliament's rationale and reason to keep important state subjects of the Seventh Schedule like public order, police including railway police, lands and its

developmental use out of the preview of the State Legislative Assembly was 'sound and unexceptionable'. These subjects appeared, for the Committee, valid even in 1988 as they were in 1951. It has noted that the maintenance of public order cannot be achieved in vacuum and it needs the cooperation of the people and elected representatives. However, it recommended that the Center should delegate adequate power to Lt. Governor who should adopt a convention of consulting with Chief Minister whenever possible (p.55).

On the issue of land, land use and its development, the Committee has recommended that the Entry No.18 of the State List i.e. 'land tenures including the relation of landlord and tenant, and collection of rents; transfer and alienation of agricultural land; and improvement and agricultural loans; colonization'²⁰ should continue with the Centre. However, it had recognized the importance of the land from the view of the people and noted that the association of the people's representatives in the local administration is desirable in respect of certain aspects of land management, which require the cooperation and active participation of the people (p.57).

Regarding the composition of the Legislative Assembly, the Committee recommended that it should be broadly on the same lines as for the other States. The number of seats should be filled by election in the Assembly and it should be fixed by the law of Parliament on the basis of population as in the other states. For being a truly representative institution, it has said that seats should be reserved for the Scheduled Castes as per with provision of article 332 of the Indian Constitution.

Introducing the Bill, the Minister of Home Affairs S. B. Chavan has said that 'there has been a persistent demand for a representative form of government.'²¹ For democratic representation and responsible government to the city-dwellers, a State Legislative Assembly had been introduced in Delhi to resolve day-to-day problems faced by the resident of the city such as the multiplicity of authorities with overlapping functions. However, the Balakrishnan Committee has not recommended full-fledged state for Delhi. Citing the report, the Minister of Home Affairs S. B. Chavan has stated that 'the Balakrishnan Committee has gone into the matter in depth and has given several reasons why Delhi cannot be made a full-fledge State. It has categorically stated that it will be against the national interest to make Delhi a full-fledged State.'²² As a

consequence, a limited statehood has been given to the people of Delhi to reflect upon their democratic aspiration and representative government.

Limited-Statehood and Struggle for full-fledged Statehood in Delhi

With the implementation of 69th Constitutional Amendment Act also known as National Capital Territory Act, 1991, which had incorporated articles 239AA and 239AB, Delhi had become a semi-state with certain limitations. In against of grating limited-statehood, BJP protested against the Congress-led central government. Since then BJP has staged several agitations for the full-fledged statehood and kept promising to the people particularly in the time of the election. It ruled the city from 1993-1998, and drafted Delhi Reorganization Bill, proposing full statehood to all parts of Delhi except for the area under the New Delhi Municipal Corporation.²³ In 1998, the Union Home Ministry had proposed that New Delhi might be retained as a Union Territory in the reorganized set-up while rest of Delhi would be given statehood.²⁴ In 1999, Delhi unit of BJP planned to launch an aggressive campaigning to grant statehood for Delhi. The party's local unit has assured before the Lok Sabha poll that if voted to power their party would grant full statehood to Delhi.²⁵ Further, the veteran leader of National Democratic Alliance (NDA) and former deputy Prime Minister and Minister of Home L. K. Advani introduced Delhi Statehood Bill, 2003 in the Parliament. The Bill sought to amend article 54, the omission of 239AA and 239AB, and insertion of Article 371J in the Constitution for the formation of full-fledged Delhi State.²⁶ The BJP chief proposer of the concept of statehood for Delhi²⁷, Madan Lala Khurana, also the former Chief Minister, congratulated Advani in the Parliament on the behalf of the people of Delhi.²⁸ He said that Delhi would be the first capital which is being given full statehood. The people had been demanding it for the last 50 years.²⁹ But the dream of full statehood did not come true.

From 2003 to 2013, the city has been ruled by the Congress. At the Centre, Congress-led United Progressive Alliance (UPA) came to power in 2004 and ruled till April 2014. Both the level state as well as the Centre, Congress never took an interest in the issue of statehood for Delhi. However, On November 21, 2013, the ex-Chief Minister Sheila Dikshit said that 'the city would have witnessed better development had my government not been shackled by the present governance structure of Delhi characterized by a multiplicity of agency and authorities. I

reiterate my demand to grant full statehood for Delhi.’³⁰ In the run-up to Delhi Legislative election in November 2013, AAP has declared that it is mischievous to keep 1.75 billion people far from the democratically elected government. It should be the rights of the Delhi government like the other state governments to solve the problems of Delhi. In the first place, as its manifesto says, that the dual and triple government must go away. The entire jurisdictional area of MCD should come under the control of Delhi government. Meanwhile BJP election Manifesto also promised of statehood to solve the local problems of the people. It reiterated the same at the time of 16th General Election 2014 while campaigning in Delhi. Although it orally promised to the people that full statehood would be the first demand from new Prime Minister to overcome from the multiplicity of authority³¹ but it did not include in the ‘vision document’³² released before Legislative election February 2015.

Conclusion

In this asymmetrical division of power between Centre and State, Government of National Capital Territory has insufficient power to decide about the basic of governance like land use and law and order. It is not that fact that political parties have not played role in envisioning Delhi as a separate state to resolve the issue of multiplicity and overlapping of power. But whenever they come to power, they opposed their own earlier position. As a consequence, governance of the India’s capital city oscillates between wither no governance or bad governance.

¹ Aam Adami Party Manifesto, 2013

² Aam Adami Party manifesto, 2015

³ Ibid.

⁴ 'Full Statehood for Delhi' Document retrieved from www.delhi.gov.in/wps/wcm/connect/doi/Delhi+Govt/Delhi+Home

⁵ Cited in Committee on Reorganization of Delhi Set-up Report, Part-I, December 1989. P-9

⁶ Committee on Reorganization of Delhi Set-up Report, Part-I, December 1989. P-9

⁷ Ibid.

⁸ Delhi Administrative Act, 1966. Acts of Parliament, 1966, Government of India, Ministry of Law, Government of India Press, New Delhi and Published by the Manager of Publications, 1967. p-143.

⁹ Delhi had two party systems till 2012. The BJP and the Congress. Jan Sangh and its new avatar BJP have raised the issue on different occasions. In 1977, on the behalf of Janta Party's demand on full statehood, the Metropolitan Council had passed non-official resolution tabled by Lachman Singh. The Metropolitan Council refused to accept second class citizen for the people of Delhi. For Details see Times of India September 10, 1977.

¹⁰ Times of India, November 27, 1970.

¹¹ Times of India, December 6, 1984.

¹² He was a member of the Srakaria Commission.

¹³ Committee on Reorganization of Delhi Set-up Report, Part-I, December 1989, p-i

¹⁴ The Committee (1989) has studied the administrative and political set-up in the capital of the major federal countries like Washington D.C. (United State of America), Ottawa (Canada), Tokyo (Japan), and London (United Kingdom). Committee has observed that 'there can be no easy solution to the problems relating to the governance of national capitals. A basic conflict of interests arises between the national government's need to develop the national capital for the nation as a whole and the local population's desire to have greater autonomy in the conduct of their affairs. The national government needs to maintain high standards with regard to municipal services and civic amenities as also exercise sufficient control over the maintenance of peace, land use, etc., in the national capital. The National government should have ultimate control and authority over the affairs of the national capital. At the same time, there is a noticeable trend to accept the principle of associating the people in the capital with a sector of administration affecting them by means of representative body. (Pp.38-39).

¹⁵ Committee on Reorganization of Delhi Set-up Report, Part-I, December 1989. P-50

¹⁶ See the tax division between Centre and state recommended by Finance Commission.

¹⁷ Committee on Reorganization of Delhi Set-up Report, Part-I, December 1989. P-51

¹⁸ Ibid.

¹⁹ Lok Sabha Debate. This debate was cited by the S. Balakrishnan Committee to make argument substantial to keep important state subject like public order, police including railway police, land, and building outside from the preview of the Legislative Assembly of Delhi.

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- ²⁰ Fiscal division between Centre and the State.
- ²¹ Lok Sabha Debate, Wednesday, December, 18, 1991, second session, vol. VII, Lok Sabha Secretariat, New Delhi
- ²² Ibid.
- ²³ The Hindu, May 23, 2016.
- ²⁴ Frontline, Vol.20, Issue 20, September 27-October 10, 2003
- ²⁵ Times of India, Oct, 11, 1999
- ²⁶ Lok Sabha Debate, Thirteen Session, Vol.XXXVI, No. 18, Monday, August 18, 2003, p-282
- ²⁷ Frontline, Vol.20, Issue 20, September 27-October 10, 2003.
- ²⁸ Ibid.
- ²⁹ Ibid.
- ³⁰ The Hindu, November 21, 2013.
- ³¹ Times of India, May 25, 2014
- ³² In February 2015 Delhi Legislative Assembly election BJP has released party programmes list called 'vision document' instead of the manifesto.

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The Hindu

Frontline