



C.A Dated On 05<sup>th</sup> July 2018

**General Studies-2**

**SC judgement on LG vs Delhi Govt. issue**

A five-judge Bench of the Supreme Court on Wednesday unanimously held that the Lieutenant Governor (LG) of [Delhi](#) is bound by the "*aid and advice*" of the popularly-elected Arvind Kejriwal-led Aam Aadmi Party (AAP) government and both have to work harmoniously with each other.

**Salient Points Of Judgement:**

It noted that there is no room for anarchy or absolutism in a democracy.

Chief Justice of India (CJI) held that except for issues of public order, police and land, the Lieutenant Governor is bound by the "aid and advice of the Kejriwal government, which has the public mandate."

Real authority to take decisions lie in the elected government. This is the meaning of 'aid and advice.

Every "trivial difference of opinion" between the LG and the NCT government cannot be referred to the President for a decision.

The issues referred should be of substantive or national importance.

In this regard, the CJI interpreted the phrase "any matter" in the proviso to Article 239AA(4) as not "every matter."

The CJI wrote that a reference to the President was only an exception and not the general rule.

The LG cannot act without applying his mind and refer everything to the President."

**LG's concurrence not needed**



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The NCT government need only to inform the LG of its “well-deliberated” decisions.

The government need not obtain his “concurrence” in every issue of day-to-day governance.

A freeze on government decisions by the LG negates the very concept of “collective responsibility.”

The governance of the National Capital demands a “meaningful orchestration of democracy” and a “collaborative federal architecture.”

Collective responsibility means government speaking in one voice to the people whose aspirations the government reflects, Justice Chandrachud observed.

#### **Not a 'State'**

The CJI, however, adhered to the nine-judge Bench judgment of the [Supreme Court](#) in the NDMC versus State of Punjab to conclude that Delhi is not a 'State.'

The judgment also held that the LG is not a Governor but only an “administrator in a limited sense.”

“Real and substantive power lies with the elected representatives in a democracy. They owe responsibility to the legislature,” Justice Chandrachud observed, agreeing with the CJI that a “mixed balance” has to be struck considering the special status of the Delhi and “fundamental concerns” as Delhi is the National Capital.

#### **Earlier Decision:**

The judgment came on appeals filed by the NCT government against an [August 4, 2016 judgment](#) of the Delhi High Court that declared that the LG had “complete control of all matters regarding National Capital Territory of Delhi, and nothing will happen without the concurrence of the LG.”

#### **What does Article 239 AA says about the powers and functions of Delhi government and Lieutenant Governor:**



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– There shall be a Council of Ministers consisting of not more than ten percent, of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise to his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

– Provided that in the 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 and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

### **DNA Technology (Use and Application) Regulation Bill**

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has approved The DNA Technology (Use and Application) Regulation Bill 2018.

#### **Details:**

- The primary intended purpose for enactment of "The DNA Technology (Use and Application) Regulation Bill" is for expanding the application of DNA-based forensic technologies to support and strengthen the justice delivery system of the country.
- The utility of DNA based technologies for solving crimes, and to identify missing persons, is well recognized across the world.
- By providing for the mandatory accreditation and regulation of DNA laboratories, the Bill seeks to ensure that with the proposed expanded use of this technology in the country, there is also the assurance that the DNA



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test results are reliable and the data remain protected from misuse or abuse in terms of the privacy rights of our citizens.

- Speedier justice delivery.
- Increased conviction rate.
- Bill's provisions will enable the cross-matching between persons who have been reported missing on the one hand and unidentified dead bodies found in various parts of the country on the other, and also for establishing the identity of victims in mass disasters.

### **Background:**

Forensic DNA profiling is of proven value in solving cases involving offences that are categorized as affecting the human body (such as murder, rape, human trafficking, or grievous hurt), and those against property (including theft, burglary, and dacoity).

The aggregate incidence of such crimes in the country, as per the statistics of the National Crime Records Bureau (NCRB) for 2016, is in excess of 3 lakhs per year.

Of these, only a very small proportion is being subjected to DNA testing at present.

It is expected that the expanded use of this technology in these categories of cases would result not only in speedier justice delivery but also in increased conviction rates, which at present is only around 30% (NCRB Statistics for 2016).

### **Boost to Higher Education**

The Cabinet Committee on Economic Affairs chaired by Prime Minister Shri Narendra Modi has approved the proposal for expanding the scope of Higher Education Financing Agency (HEFA) by enhancing its capital base to Rs. 10,000



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crore and tasking it to mobilise Rs. 1,00,000 crore for Revitalizing Infrastructure and Systems in Education (RISE) by 2022.

#### **Details:**

1. In order to expand this facility to all institutions, especially to the institutions set up after 2014, Central Universities which have very little internal resources, and the school education/health education infrastructure like AIIMSs, Kendriya Vidyalayas, the CCEA has approved windows for financing under HEFA and the modalities of repaying the Principal portion of the fund.

The Cabinet has also permitted the HEFA to mobilise Rs 1,00,000 crore over the next 4 years till 2022 to meet the infrastructure needs of these institutions.

The CCEA has also approved increasing the authorized share capital of HEFA to Rs. 10,000 crore, and approved infusing additional Government equity of Rs. 5,000 crore (in addition to Rs. 1,000 crore already provided) in HEFA.

The CCEA has also approved that the modalities for raising money from the market through Government guaranteed bonds and commercial borrowings would be decided in consultation with the Department of Economic Affairs so that the funds are mobilized at the least cost.

#### **Benefits:**

This would enable addressing the needs of all educational institutions with differing financial capacity in an inclusive manner.

This would enable HEFA to leverage additional resources from the market to supplement equity, to be deployed to fund the requirements of institutions.

Government guarantee would eliminate the risk factor in Bonds issue and attract investment in to this important national activity.

#### **About HEFA:**



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HEFA has been set up on 31<sup>st</sup> May 2017 by the Central Government as a Non Profit, Non Banking Financing Company (NBFC) for mobilising extra-budgetary resources for building crucial infrastructure in the higher educational institutions under Central Govt.

Higher Education Financing Agency (HEFA) is a joint venture of MHRD Government of India and Canara Bank for financing creation of capital assets in higher education institutions in India.

### **VISION**

To enable India's premier educational institutions to excel and reach the top in global rankings by financing building world class infrastructure particularly R&D Infra.

### **MISSION**

To provide timely finance at low interest rates for capital assets creation in India's higher education institutions and supplement it with grants by channelizing CSR funds from the corporate and donations from others.

In the existing arrangement, the entire principle portion is repaid by the institution over ten years, and the interest portion is serviced by the Government by providing additional grants to the institution.

So far, funding proposals worth Rs. 2,016 crore have been approved by the HEFA.

### **General Studies-3**

#### **Coal Mine Surveillance & Management System (CMSMS) and 'Khan Prahari'**

Union Minister of Coal, Railways, Finance & Corporate Affairs, Shri Piyush Goyal launched the Coal Mine Surveillance & Management System (CMSMS) and Mobile Application 'Khan Prahari' developed by CMPDI, Ranchi a Subsidiary of



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CIL and Bhaskarcharya Institute of Space Application and Geo-informatics (BISAG) at a ceremony at, New Delhi.

#### **About CMSMS:**

The basic objective of CMSMS is reporting, monitoring and taking suitable action on unauthorised coal mining activities.

The CMSMS is a web based GIS application through which location of sites for unauthorised mining can be detected.

The basic platform used in the system is of Ministry of Electronics & Information Technology's (MeiTY) map which provides village level information.

The leasehold boundary of all the coal mines are displayed on this map.

The system will use satellite data to detect changes by which unauthorised mining activity extending beyond the allotted lease area can be detected and suitable action can be taken on it.

It is the working of the concept of 'cooperative federalism' in action.

The system also uses information provided by responsible citizens using smartphones using the mobile application "Khan Prahari".

#### **About Khan Prahari**

Khan Prahari is a tool for reporting any activity taking place related to illegal coal mining like rat hole mining, pilferage etc.

One can upload geo-tagged photographs of the incident along with textual information directly to the system.

Hence, both satellite data and human information will be used to capture information on the unauthorised mining activities.

Once reported, the information will be automatically directed to the nodal officers to take suitable action on those activities. The complainant can also track his complaint through the system. The identity of the complainant shall not be revealed. This app can easily be downloaded in Android and IOS.



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**Cabinet approves accession to WIPO Copyright Treaty, 1996 and WIPO Performance and Phonograms Treaty, 1996**

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has approved the proposal submitted by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry regarding accession to the WIPO Copyright Treaty and WIPO Performers and Phonograms Treaty which extends coverage of copyright to the internet and digital environment.

The approval is a step towards the objective laid in the National Intellectual Property Rights (IPR) Policy adopted by the Government on 12<sup>th</sup> May 2016 which aims to get value for IPRs through commercialization by providing guidance and support to IPR owners about commercial opportunities of e-commerce through Internet and mobile platforms.

**Benefits:**

Meeting the demand of the copyright industries, these treaties will help India:

- To enable creative right-holders enjoy the fruit of their labour, through international copyright system that can be used to secure a return on the investment made in producing and distributing creative works;
- To facilitate international protection of domestic rights holder by providing them level-playing field in other countries as India already extends protection to foreign works through the International Copyright order and these treaties will enable Indian right holders to get reciprocal protection abroad;
- To instil confidence and distribute creative works in digital environment with return on investment; and
- To spur business growth and contribute to the development of a vibrant creative economy and cultural landscape.

**Background:**

**Copyright Act, 1957:**

After the administration of Copyright Act 1957 was transferred to DIPP in March 2016, a study was initiated to examine compatibility of Copyright Act 1957 with WCT and WPPT. Also a joint study was undertaken with WIPO.



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The Copyright Act, 1957 was amended in 2012 to bring it in conformity, with WCT and WPPT, includes amendment in definition of "Communication to the public" to make it applicable to digital environment.

**WIPO Copyright Treaty** came in force on March 6, 2002 and has been adopted by 96 contracting parties till date and is A Special agreement under Berne Convention (for protection of literary and artistic works).

It has provisions to extend the protection of copyrights contained therein to the digital environment.

Further it recognises the rights specific to digital environment, of making work available, to address "on-demand" and other interactive modes of access,

**WIPO Performances and Phonograms Treaty** came in force on May 20, 2002 and has 96 contracting parties as its members. WPPT deals with rights of two kinds of beneficiaries, particularly in digital environment -

- (i) Performers (actors, singers, musicians etc.)
- (ii) Producers of Phonograms (Sound recordings).

The treaty empowers right owners in their negotiations with new digital platforms and distributors. It recognizes moral rights of the performers for the first time & provides exclusive economic rights to them.

Both the treaties provide framework for creators and right owners to use technical tools to protect their works and safeguard information about their use i.e. Protection of Technological Protection Measures (TPMs) and Rights Management Information (RMI).