

**LEGISLATIVE ASSEMBLY
NATIONAL CAPITAL TERRITORY OF DELHI**

SESSION REVIEW – FIRST SESSION (Third Part)

First Session – III Part (26 & 27 May 2015): A two-day session was called to transact the following business –

Motion under Rule 107: On 26 May 2015 Sh. Manish Sisodia, Hon'ble Deputy Chief Minister moved the following Motion, "That this House discuss the issues arising out of the notification No. 1080 dated 21st May, 2015 issued by Ministry of Home Affairs, Government of India." 13 Members participated in the debate.

Resolution under Rule 89: Sh. Somnath Bharti moved a Resolution under Rule-89 regarding Notification issued by Ministry of Home Affairs, Govt. of India on the subject of 'Services' and seeking presidential reference. On 27 May 2015 the debate on the Resolution was taken up and 23 members participated. Shri Madan Lal, Shri Kailash Gahlot and Shri Kapil Mishra moved amendments to the Resolution. The amended resolution (Annexure A) was adopted by voice-vote.

Obituary References: The House made the following obituary references:

1. On the passing away of Shri Vinod Kumar Sharma, Ex-MLA, First Delhi Legislative Assembly (1993-1998)
2. On the passing away of Shri Bharat Singh, Ex-MLA, Fourth Delhi Legislative Assembly (2008-2013)
3. On the heavy loss of life and property due to earth-quake in Nepal and North India.

Special Mention: Thirteen matters were raised under Rule 280 (Special Mention) on 25 and 26 May 2016.

Amended Resolution adopted on 27/5/15

1. The Ministry of Home Affairs has issued a Notification No. S.O.1368(E) dated 21st May, 2015, through which it has sought to add entry no.41 of the State List to the list of reserved subjects.
2. All the reserved subjects i.e. subjects which are beyond the legislative competence of the Legislative Assembly of National Capital Territory of Delhi, are explicitly mentioned in Article 239AA (3)(a), (b) & (c) and this article does not give any powers to the Central Government to add any entries to the list of reserved subjects through notification.
3. The Ministry of Home Affairs has attempted to add entry no.41 to the list of reserved subjects without seeking the approval of the Parliament of India.
4. The Ministry of Home Affairs has passed this notification without any jurisdiction to do so. Therefore, it is an illegal and invalid exercise of powers on the part of the Ministry of Home Affairs.
5. The said notification, without any doubt, is contrary to and is violative of the provisions of the Constitution of India.
6. This house finds this act of Ministry of Home Affairs as an attempt on the part of the Central Government, to encroach upon the Legislative Powers of this August House conferred by the Constitution, in a completely unconstitutional and illegal manner, by bypassing the Parliament and thereby even grabbing the powers of the Parliament itself.
7. I would also like to bring to the notice of this August House the opinions received from the Constitutional Experts and Legal Luminaries like

1. Shri Gopal Subramaniam

2. Shri K.K. Veṅṅu Gopal
3. Shri Rajeev Dhawan
4. Ms. Indira Jaising
5. Shri Bishwajit Bhattacharyya
6. Shri Vivek K. Tankha

All of them have very emphatically stated that the said notification is unconstitutional and illegal.

8. This House, therefore, is of strong and unambiguous opinion that this notification is unconstitutional and invalid and expects the Government of NCT of Delhi to take all such necessary action, as it deems fit.
9. In a democracy, the Parliament of India through its Hon'ble Members of Parliament is supreme and the Hon'ble Members of Lok Sabha and Rajya Sabha are the only authorised persons empowered under the Constitution of India to make changes in the Constitution under Article 368 of the Constitution of India. Therefore, the Central Government has sought to encroach upon the powers of Parliament also through this notification.
10. The Hon'ble High Court of Judicature at Delhi in its recent order in the bail matter of Anil Kumar Vs. GNCT of Delhi, pronounced on 25th May 2015, has given a land mark judgement on the relationship between the Hon'ble Lieutenant Governor and his Council of Ministers. The copy of the said judgement is being presented to this August House for information of Hon'ble Members of this Legislative Assembly. In particular, I would like to quote the following from the decision of the Hon'ble High Court:-

"65. Thus, it appears to me, that the Union Government could not have issued the notification dated 23.07.2014 thereby seeking to restrict the executive authority of the GNCTD acting through its ACB to act on complaints under the PC Act only in respect of officers and employees of the GNCTD. By an executive fiat, the Union Government could not have exercised the executive power in respect of a matter falling within the legislative competence of the Legislative Assembly of the NCT, since the law made by Parliament, namely the GNCTD Act read with Article 239 AA put fetters on the executive authority of the President.

66. After the judgement was reserved in the present application, the Ministry of Home Affairs has issued a notification bearing No.SO 1368(E) on 21.05.2015 thereby further amending the notification dated 08.11.1993 and, inter alia, providing that "ACB police station shall not take any cognizance of the offences against officers, employees and functionaries of the Central Government". In my view, since the Union lacks the executive authority to act in respect of matters dealt with in Entries 1 & 2 of List III of the Seventh Schedule, the further executive fiat issued by the Union Government on 21.05.2015 is also suspect."

11. This house strongly condemns such attempt on the part of the Central government and finds it an assault on the federal structure of our country as enshrined in the Constitution of India.
12. The Government of NCT of Delhi has not so far brought any legislation before this House regarding entry 41 of the State List. This house recommends the Government to bring a legislation for creation of a NCT Public Service.
13. Several members of this House have brought to the notice of this August House that the situation in Health, Power, Water and some other essential services have started deteriorating since the

issue of the notification, as this notification has brought confusion in the minds of the officers and employees of the Government. This resulted in indiscipline and complacency amongst the officers and the employees, thereby affecting the essential services.

In view of this, even though this House strongly feels that the Ministry of Home Affairs notification is illegal, however, for the purposes of smooth and quick solution to the issues and problems of people of Delhi, while not conceding that the 'Services' as an entry is with the Central Government, still the 'Services' includes only the conditions of service, and with no stretch of argument includes work allotment to the officers and employees of the Government. Hence, this House directs the Council of Ministers to continue allocating the work to its officers and employees.

The House expects the officers and employees of the Government to follow the orders related to work allotment without any fear. This House assures them that as long as they continue working sincerely in the service of the people of Delhi, this House will not let any officer or employee be victimised by any extraneous element, whatsoever.

14. Further, this house urges his Excellency the President of India to invoke his powers under Article 143 of Constitution of India and to make a reference to the Hon'ble Supreme Court of India to clearly define the powers and responsibilities of the elected Government of National Capital Territory of Delhi, the Hon'ble Lieutenant Governor of the Delhi and Central Government with respect to Legislative and Executive functions of National Capital Territory of Delhi, to prevent recurrence of such incidents in future.

15. I would further urge this house to write to all Hon'ble Members of parliament of Lok Sabha and of Rajya Sabha about the unconstitutional act of Ministry of Home Affairs, Government of India.