

**Bill No. LIV of 2018**

THE CONSTITUTION (AMENDMENT) BILL, 2018

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BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2018.

Short title and  
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazettee, appoint.

5 2. In article 239AA of the Constitution of India for clause (4), the following shall be substituted, namely:—

Amendment of  
article 239AA.

“(4). There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor who shall in the exercise of his functions act in accordance with such advice 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:

10 Provided that the Lieutenant Governor may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the Lieutenant Governor shall act in accordance with the advice tendered after such reconsideration:

15 Provided further that the question whether any, and if so what, advice was tendered by Ministers to the Lieutenant Governor shall not be inquired into in any court.”

## STATEMENT OF OBJECTS AND REASONS

An elected government is the repository of the will of the people. The power to take key administrative decision is important to realise this will. In Delhi, however, administrative powers of the Lieutenant Governor *vis-a-vis* such powers of the elected government, the overall quality of governance and affect the implementation of welfare schemes for the people. Decisions taken by the Lieutenant Governor directly impact the lives of the people of Delhi. Therefore the advice of the elected government is important to ensure accountability to the demands of the people.

Article 239 AA (4) the Constitution provides for a Council of Ministers from the elected government to aid and advice the Lieutenant Governor. However there needs to be a provision for the Lieutenant Governor to act in accordance with such advice. This would be in line with article 74 of the Constitution which provides that the President shall act in accordance with the advice of the council of Ministers in the case of the Union government. Union Territories are administered by the President acting through an administrator, according to article 239 of the constitution. In the case of Delhi, however, the administrator is, as per article 239 AA, referred to as the Lieutenant Governor. Therefore the powers drawn by the Lieutenant Governor *vis-a-vis* administration must be in the line with the powers exercised by the President in the case of the Union Government, as enshrined in the Constitution.

Further, article 74 allows the President to require the Council of Ministers to reconsider its advice. The President would however then have to act upon the advice given by the ministers after the reconsideration. This provision would also be meaningful in the case of Delhi. The Lieutenant Governor would be able to scrutinise the advice of the elected government and would, if the need arises, require reconsideration of the advice provided. Such scrutiny would ensure a mechanism of checks and balances for the elected government.

The above mentioned provisions would, therefore, retain effective checks and balances for the elected government, while being fair to its collective responsibility towards the welfare and aspirations of the people. Accountability can be safeguarded with a more active role for the elected government in the governance of the Union Territory of Delhi.

Hence, this Bill.

TIRUCHI SIVA

# ANNEXURE

## EXTRACT FROM THE CONSTITUTION OF INDIA

	*	*	*	*	*	*
Special provisions with respect to Delhi.	239AA. (1)	*	*	*	*	*
	(2)	*	*	*	*	*
	(3)	*	*	*	*	*

(4) There shall be a council of Ministers consisting of not more than ten per cent. 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 of 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.

(5)	*	*	*	*	*
(6)	*	*	*	*	*
(7)	*	*	*	*	*
(8)	*	*	*	*	*
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*(Shri Tiruchi Siva, M.P.)*