

# Who decides nominations to UT Assemblies? | Explained

How should members be recommended to the Jammu & Kashmir Legislative Assembly? What does the Government of Union Territories Act, 1963 state with respect to nominations to the Puducherry Assembly? What was the ‘triple chain of command’ opined by the Supreme Court in 2023?

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Jammu and Kashmir Chief Minister Omar Abdullah during the Budget session of the J&K Assembly, in Jammu on March 7. | Photo Credit: ANI

## The story so far:

The Union Home Ministry, in its affidavit before the Jammu & Kashmir and Ladakh High Court, has submitted that the power of the Lieutenant Governor (LG) of Jammu & Kashmir (J&K) to nominate five members to the Legislative Assembly of J&K can be exercised by him without the aid and advice of its Council of Ministers.

## What does the Constitution state?

The Indian Constitution provides for nominated members in the houses of Parliament and State legislature. The provision for nominating two Anglo-Indian members to the Lok Sabha and one Anglo-Indian member to State Legislative Assemblies was discontinued in 2020. The Rajya Sabha has 12 nominated members. These members are nominated by the President on the aid and advice of the Union Council of Ministers. In the six States with Legislative Councils, nearly one-sixth of the members are nominated. These members are nominated by the Governors on the advice of the States' Council of Ministers.

## What about Union Territories?

The composition of the Legislative Assemblies of three Union Territories (UT) are governed by acts of Parliament. Section 3 of the Government of National Capital Territory of Delhi Act, 1991 provides for 70 elected members in the Delhi Assembly. There are no nominated MLAs in the Delhi Assembly. Section 3 of the Government of Union Territories Act, 1963 provides for 30 elected members in the Legislative Assembly of Puducherry. It also provides that the Union government may nominate up to three members to the Puducherry Assembly.

Section 14 of the J&K Reorganisation Act, 2019 (as amended in 2023) provides for a total of 90 elected seats in the Legislative Assembly of J&K.

In addition, Sections 15, 15A and 15B provide that the LG may nominate a total of up to five members — two women, two Kashmiri migrants and one displaced person from Pakistan occupied Kashmir — to the J&K Assembly.

## What have courts ruled?

The procedure for nomination of members to the Puducherry Assembly came up before the Madras High Court in the *K. Lakshminarayanan versus Union of India* (2018) case. The court upheld the power of the Union government to nominate three members to the Assembly and that it need not be based on the advice of the UT's Council of Ministers. Nevertheless, considering the importance of the matter as well as larger principles involved, the court provided certain recommendations for consideration of Parliament. It suggested statutory amendments to lay down a clear and unambiguous procedure for nomination of MLAs. It should provide clarity about where such nomination should emanate from and who/which office will exercise the powers of

**nomination.** However, the Supreme Court on appeal had set aside the recommendations in this judgment of the Madras High Court.

In the *Government of NCT of Delhi versus Union of India* (2023) case, the Supreme Court had delved into the concept of 'triple chain of command' that ensures democratic accountability. In this 'triple chain of command' opined by the court, civil servants are accountable to ministers; ministers are accountable to the legislature; and the legislature is accountable to the electorate. It therefore held that the LG is bound by the aid and advice of the Council of Ministers in all matters except where the Delhi Assembly does not have legislative powers. While this case was related to the appointment of officers to services in the Delhi government, the rationale in this judgment may hold good for nomination of members to the Assembly as well.

## What should be done?

A UT does not enjoy the same status of a full-fledged State in our federal set up. However, UTs with Assemblies have their own elected governments that is accountable to its population. The nomination of MLAs does not create any issue when the same party is in power at the Centre and the Union Territory. However, political differences between the Union government and a UT government should not derail the democratic process in the UTs. In smaller assemblies like that of J&K and Puducherry, these nominated MLAs can have the potential of converting a majority government into a minority one and vice versa, thereby rupturing popular mandates.

J&K is a case *sui generis* for it was a State till 2019 with even more autonomy than other States. While the conversion of J&K into a UT has been upheld by the Supreme Court, the Union government has informed the court that it would restore statehood to J&K at the earliest. Considering these factors, it is appropriate that the nomination of five members to the J&K Assembly is made by the LG based on the advice of its Council of Ministers. This would uphold the democratic principle.

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