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## Decode Politics: As J&K Rajya Sabha polls hang fire, why EC pitched for a presidential order for its seats

*The Law Ministry rejected EC's request, citing no provision in law; any presidential order to stagger the terms of Rajya Sabha seats would require an amendment to the R P Act*



While the J&K Assembly elections took place in September-October 2024, the EC has yet to hold the elections for the Rajya Sabha seats from the UT, leading to Chief Minister Omar Abdullah questioning the delay. (Express Photo)

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Last month, the Union Law and Justice Ministry turned down the Election Commission (EC)'s request for a presidential order to stagger the terms of Jammu and Kashmir's four Rajya Sabha seats, which run concurrently.

The EC asked for the presidential order to ensure that the four seats do not become vacant at the same time and the Union Territory remains continuously represented in the Upper House. The Law and Justice Ministry, however, said there was no provision in law for such an order.

The four [Rajya Sabha](#) seats of J&K have been vacant since 2021 as the terms of the MPs at the time ended while the UT was under President's rule. While the J&K Assembly elections took place in September-October 2024, the EC has yet to hold the elections for the Rajya Sabha seats from the UT, leading to Chief Minister Omar Abdullah questioning the delay. The electoral college for the Rajya Sabha elections is made up of the MLAs of the State or UT.

### **\*What did the EC propose?**

The Commission first wrote to the Legislative Department of the Law Ministry earlier this year, asking for a presidential order to curtail the terms of some of the Rajya Sabha seats of J&K so that they do not end at the same time.

A similar presidential order was issued after the first-ever Rajya Sabha election in 1952 to stagger the terms of the seats so that all of them did not end after the stipulated six-year term.

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Under Article 83 of the Constitution, one-third of Rajya Sabha members retire every second year. It is a permanent House as opposed to the Lok Sabha that has a fixed five-year term.

While all Rajya Sabha seats began with such a staggered approach, the terms of some seats in certain states have become concurrent due to the imposition of Emergency and President's Rule over the years. In the case of J&K, the cycle has been disturbed since the 1990s.

According to sources aware of the latest development, the EC had only sought an order for J&K, though [Delhi](#) and Punjab too have the same situation.

In the case of Delhi, the cycle of the Rajya Sabha terms was disturbed due to the creation of a new Assembly when the Government of the National Capital Territory of Delhi Act, 1991 was passed.

### **\*What was the Law Ministry's response?**

After the EC's initial request, the Ministry was learnt to have asked it for additional details, including the status of all such states where all Rajya Sabha seats have concurrent terms, the reasons for the cycle being disturbed, and other background material.

The EC replied with some details to the Ministry in August. Sources said the Ministry informed the Commission on August 22 that a presidential order could not be issued as there was no provision in the law for the same.

The only two times that such orders have been issued were in 1952 and 1956 as per the Constitution and the Representation of the People Act, 1951.

### **\*What does the law say?**

Section 154 of the R P Act, 1951 says that the term of office of the member of the Council of States would be of six years. But, in order to make it a continuous House, presidential orders were issued twice.

It adds in sub-section 2: “Upon the first constitution of the Council of States the President shall, after consultation with the Election Commission, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.”

Further, it says that “one-third of the members may retire on the second day of April, 1958”. On the expiration of every second year thereafter, the President shall, “as soon as may be after the commencement of the Constitution (Seventh Amendment) Act, 1956, after consultation with the Election Commission, make by order such provisions as he thinks fit in regard to the terms of office of the members elected...”

This means that the R P Act only allowed for a presidential order after the constitution of the first Rajya Sabha in 1952 and then again as per a Constitutional amendment in 1956.

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Any presidential order to curtail the term of some Rajya Sabha seats now would require an amendment to the R P Act and would have to be for all such states and UTs affected, not just J&K.

### **\*What is the status now?**

While the EC and the Law Ministry were considering this issue, J&K has remained without any representation in the Upper House for four years now. The UT did not have any Rajya Sabha MPs when the elections for President and Vice-President were held in 2022.

J&K will also not have any Rajya Sabha MPs for the Vice-President election scheduled on September 9 as well. With the EC expected to announce the Bihar Assembly elections soon, it remains to be seen if the poll body will schedule the Rajya Sabha elections for J&K at the same time.

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