

NOMINATION OF MEMBERS TO UT: POLITY

The Union Home Ministry has affirmed that J&K's Lieutenant Governor can nominate five MLAs without consulting the local elected government, a practice legally upheld for UTs. This raises concerns over democratic principles, as these nominees can significantly influence the legislative majority, unlike in full-fledged states.

The Core Issue: Nominations in Jammu & Kashmir

Recent Development

The Union Home Ministry has submitted an affidavit to the Jammu & Kashmir and Ladakh High Court regarding the nomination of members to the J&K Legislative Assembly.

Official Stance

The affidavit clarifies that the Lieutenant Governor (LG) of Jammu & Kashmir has the authority to nominate five members to the Legislative Assembly without requiring the aid and advice of the UT's Council of Ministers. This establishes the Union government's direct role in the nomination process.

Constitutional and Statutory Framework

General Concept of Nomination

Nomination to UT Assemblies is a constitutional and statutory process that allows for the appointment of certain members to the legislature, who, unlike other members, are not directly elected by the people.

Provisions in Other Legislatures

Rajya Sabha

The President of India nominates 12 members based on their expertise in fields like art, literature, science, and social service. This is done on the advice of the Union Council of Ministers.

State Legislative Councils

Governors can nominate up to one-sixth of the total members of the council, acting on the advice of the State Council of Ministers.

Discontinued Provision

The practice of nominating members from the Anglo-Indian community to the Lok Sabha and State Legislative Assemblies was discontinued in 2020.

Framework for Union Territory (UT) Assemblies

The composition and functioning of UT Assemblies are governed not directly by the Constitution but by Acts passed by the Parliament.

Delhi

The assembly has 70 elected members with no provision for nominated members.

Puducherry

Governed by the Government of Union Territories Act, 1963, the assembly has 30 elected members, and the Union government can nominate up to 3 members.

Jammu & Kashmir

The assembly consists of 90 elected members. The LG is empowered to nominate up to five members under Sections 15, 15A, and 15B of the J&K Reorganisation Act. The five nominations are specifically designated to represent underrepresented communities:

1. Two women.
2. Two members from the Kashmiri migrants' community.
3. One displaced person from Pakistan-occupied Kashmir (PoK).

Key Judicial Precedents

The Puducherry Case (K. Lakshminarayanan v. Union of India, 2018)

Ruling

The court upheld the Union government's power to nominate MLAs to the Puducherry Assembly without the aid and advice of the UT's elected Council of Ministers.

Subsequent Action

While the High Court had recommended that the law be amended for greater clarity, the Supreme Court later set aside these recommendations, solidifying the Union government's authority.

The Delhi Case (Govt. of NCT of Delhi v. Union of India, 2023)

Key Principle

In this landmark case, the Supreme Court emphasized a 'triple chain of command' as the bedrock of democratic accountability in governance.

The Triple Chain Explained

1. Civil servants are accountable to their Ministers.
2. Ministers are collectively accountable to the Legislature.
3. The Legislature is ultimately accountable to the Electorate.

Potential Implication

This principle, while specific to the Delhi governance model, underscores the importance of the elected government's role and could be cited in arguments for greater democratic consultation in other UTs, including in the nomination of members.

Significance and Implications of Nominated Members

Influence on Legislative Majority

In smaller assemblies like those of J&K (90+5) and Puducherry (30+3), a handful of nominated members can be numerically significant. They have the potential to sway the majority during the formation of a government or during crucial votes, which can be seen as an alteration of the direct democratic mandate of the people.

Question of Democratic Consultation

While Union Territories are not full-fledged states and are administered by the Union government, democratic norms suggest that the elected local government should have a say in legislative matters. Ideally, nominations should be made after consulting with or on the advice of the UT Council of Ministers to respect the spirit of representative democracy.

Impact on Public Confidence

Consulting the elected UT administration in the nomination process helps maintain public trust in democratic institutions. This is especially crucial in situations where the political party governing at the Union level is different from the party in power in the UT, as unilateral nominations can be perceived as an attempt to undermine the local leadership.

Source: <https://www.thehindu.com/news/national/who-decides-nominations-to-ut-assemblies-explained/article69948834.ece>