

# **THE ANNUAL SURVEY OF STATE LAWS IN INDIA**

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**NALSAR UNIVERSITY OF LAW**  
Justice City, Shamirpet,  
Hyderabad, Telangana 500101.

2023

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## Suggested Citation: ASSL (2023)

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# JAMMU AND KASHMIR

BURHAN MAJID\*

## Introduction

Jammu and Kashmir (J&K) has held a distinctive position within India's federal architecture. This status was altered on 5 August 2019, when the central government changed its special constitutional status<sup>1</sup> and carved two Union Territories out of the erstwhile State.<sup>2</sup> There have been innumerable instances of Union territories being elevated to full status of a state in the history of independent India;<sup>3</sup> however, this is the first instance of a State being converted into a Union Territory.

The primary distinction that the Indian Constitution makes between a State and a Union Territory is that a State is accorded its independent legislative jurisdiction (with some federal oversight) whereas a Union Territory is under direct governance of the Union. The conversion holds special significance for Jammu and Kashmir as the State had been accorded greater law-making autonomy under Article 370 of the Constitution.<sup>4</sup> This decision of the Union Parliament was challenged in the Supreme Court of India which upheld its validity.<sup>5</sup>

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<sup>1</sup> The Constitution (Application to Jammu and Kashmir) Order, 2019, available at <https://ladakh.gov.in/document/the-constitution-application-to-jammu-and-kashmir-order-2019-c-o-272/> (Last visited on December 21, 2025).

<sup>2</sup> The Jammu and Kashmir Reorganisation Act, 2019, available at <https://igr.jk.gov.in/files/J&K%20Reorganisation%20Act,%202019.pdf> (Last visited on January 30, 2024).

<sup>3</sup> These include Himachal Pradesh (1971); Manipur, Tripura, and Meghalaya (1972); Goa (1987); Mizoram (1987); and Arunachal Pradesh (1987).

<sup>4</sup> Article 370 of the Indian Constitution recognised that the State has the autonomy to make laws on all subjects except defence, external affairs and communication.

<sup>5</sup> In re: Article 370 of the Constitution, 2023 INSC 1058, available at <https://www.scobserver.in/wp-content/uploads/2023/07/Judgement-Abrogation-of-Article-370.pdf> (Last visited on December 22, 2025).

## Legislative History

Jammu and Kashmir was under President's Rule from December 19, 2018 to October 13, 2024 in pursuance of Section 73 of the J&K Reorganisation Act, 2019.<sup>6</sup> This followed a six-month period of Governor's Rule, which was imposed after the Bharatiya Janata Party (BJP) withdrew its support from the coalition government led by the Peoples Democratic Party (PDP). Consequently, during this time, the primary authority for enacting laws and quasi-legal directives, including circulars, orders, bylaws, and notifications remained with the Union Parliament, Union executive or the administration of J&K led by a centrally appointed Lieutenant-Governor.

Despite J&K being designated as a Union Territory with an Assembly in August 2019, there was no elected government in place in 2023. And, the prospect of an elected government taking charge only opened when the Indian Supreme Court mandated in December 2023 that elections be held in Jammu and Kashmir by September 2024. After 2014, these would be the first elections to be held in the newly constituted Union Territory. Since an elected Assembly was not in power in 2023, this report on J&K surveys the legislation enacted by the Union Parliament during the year, along with executive directives issued at both the central and local levels. It is pertinent to note that only a limited number of statutes were passed by Parliament in this period. The bulk of legal and quasi-legal activity occurred through a wide array of executive instruments issued by various central and local authorities. Given their sheer volume - numbering in hundreds and issued across multiple departments - these executive instructions defy precise quantification. Accordingly, this survey, organised under separate subheadings, focuses on those legislative and quasi-legislative measures that evoked public response and that have a bearing on the altered constitutional status of Jammu and Kashmir.

## Executive Law Making

Following constitutional changes of 2019, J&K witnessed a surge in the proliferation of new laws, regulations, policies, and executive decrees aimed at expanding the central executive's

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<sup>6</sup> The Jammu and Kashmir Reorganisation Act, 2019, §73: If the President, on receipt of a report from the Lieutenant Governor of Union territory of Jammu and Kashmir, or otherwise, is satisfied,—  
(a) that a situation has arisen in which the administration of the Union territory of Jammu and Kashmir cannot be carried on in accordance with the provisions of this Act, or  
(b) that for the proper administration of Union territory of Jammu and Kashmir it is necessary or expedient so to do, the President may, by order, suspend the operation of all or any of the provisions of this Act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory of Jammu and Kashmir in accordance with the provisions of this Act.

authority over legal and quasi-legal matters within the Union Territory. The year 2023 saw the issuance of several executive directives by the Jammu and Kashmir administration, including a circular dated 9 January 2023 on the demolition of “encroachments on state land,” which directed deputy commissioners to remove all encroachments on state land by 31 January 2023.<sup>7</sup> This sparked widespread protests, leading to legal challenges questioning the circular's constitutionality and subsequent suspension. Moreover, the government expanded its surveillance and regulatory measures affecting government employees, media institutions, and the general public, citing the need to maintain administrative control and public order.<sup>8</sup> During the same period, the central government introduced the Jammu and Kashmir Reorganisation (Amendment) Bill, 2023<sup>9</sup> and the Jammu and Kashmir Reservation (Amendment) Bill, 2023,<sup>10</sup> which altered the framework governing reservations in the legislative assembly and public employment. These legislative interventions have been understood as having significant political consequences, particularly in the Jammu region, where changes to reservation policies have the potential to reshape electoral alignments and influence patterns of political support. Significantly, these changes were not introduced by an elected Assembly but were promulgated by executive authorities responsible for governance.

## Delimitation

The recent delimitation exercise has further complicated the political landscape in Jammu and Kashmir by recalibrating its electoral architecture in a manner that increases the relative significance of the Jammu region within the Union Territory's representative framework. Pursuant to the Delimitation Commission's final order notified in 2022,<sup>11</sup> the strength of the Jammu and Kashmir Legislative Assembly was increased from 83 to 90 seats. Of the seven additional constituencies created through this process, six were allocated to the Jammu region - raising its representation from 37 to 43 seats - while only one additional seat was assigned to the Kashmir region, increasing its total from 46 to 47. This redistribution has

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<sup>7</sup> Revenue Department, Government of Jammu and Kashmir, Circular No. 02-JK(Rev) of 2023 (Issued on January 09, 2024), available at <https://thedispatch.blob.core.windows.net/thedispatchimages/2023/01/Circular-2-of-2023.pdf> (Last visited on January 28, 2024).

<sup>8</sup> General Administration Department, Government of Jammu and Kashmir, Circular No.09-JK(GAD) of 2023 (Issued on March 24, 2023), available at <https://jkgad.nic.in/common/showOrder.aspx?actCode=C42387> (Last visited on January 30, 2024).

<sup>9</sup> The Jammu and Kashmir Reorganisation (Amendment) Bill, 2023,

<sup>10</sup> The Jammu and Kashmir Reservation (Amendment) Bill, 2023.

<sup>11</sup> Delimitation of Constituencies in Union Territory of Jammu & Kashmir Publication of Commission's Final Notification & Order-regarding., available at <https://udhampur.nic.in/notice/notifications-and-order-by-delimitation-commission-notification-no-282-jk-2022/> (Last visited on December 21, 2025).

had the effect of narrowing the representational gap between the two regions and thereby altered the pre-existing pattern of political power within the Assembly. Situated within this broader context of the reorganisation of Jammu and Kashmir, this report aims to survey the region's legislative landscape in 2023.

## Land and Domicile

### Legislative History

Prior to 5 August 2019, Article 370 continued to signify Jammu and Kashmir's constitutional autonomy, most visibly through Article 35A,<sup>12</sup> which entrenched protective measures relating to land ownership, public employment, and other residency-based rights. Article 35A, which owes its origins to pre-independence definitions of permanent residency, restricted access to state government jobs, property acquisition, settlement rights, and educational assistance exclusively to permanent residents of Jammu and Kashmir. However, with the abrogation of Article 370 through the Constitution (Application to Jammu and Kashmir) Order, 2019,<sup>13</sup> the protections embodied in Article 35A also ceased to operate. Article 35A derived its constitutional force from the Constitution (Application to Jammu and Kashmir) Order, 1954 (also called the Basic Order), which had been issued under Article 370 and was superseded by the 2019 Order.

### New Land Regulations

Post 2019, the central government introduced new land regulations, effectively opening up property acquisition to individuals from across India, aiming to attract investments from beyond Jammu and Kashmir.<sup>14</sup> These regulations were implemented through the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Third Order, 2020,<sup>15</sup> and the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fifth Order, 2020,<sup>16</sup> resulting in the repeal of 12 laws and revisions to 14 others,<sup>17</sup> including significant amendments to key legislations like the Jammu and Kashmir

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<sup>12</sup> Burhan Majid, *Why Article 35A Matters*, The Wire, August 05, 2019, available at <https://thewire.in/law/why-article-35a-matters> (Last visited on January 21, 2024).

<sup>13</sup> *Supra* note 2.

<sup>14</sup> Mudasir Ahmad, *Anyone From Anywhere Across India Can Now Buy Land in J&K*, The Wire, October 27, 2020, available at <https://thewire.in/rights/jammu-kashmir-ladakh-land-rights-leh-polls> (Last visited on January 21, 2024).

<sup>15</sup> Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020.

<sup>16</sup> Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Fifth Order, 2020.

<sup>17</sup> Bhadra Sinha, *12 laws repealed, 14 amended — what exactly changes under new land orders in J&K*, The Print, October 29, 2020, available at <https://theprint.in/judiciary/12-laws-repealed-14-amended-what-exactly-changes-under-new-land-orders-in-jk/533038/> (Last visited on January 21, 2024).

Development Act, 1970, The Jammu and Kashmir Land Revenue Act, 1996, The Agrarian Reforms Act, 1976, and The Jammu and Kashmir Land Grants Act, 1960.

### ***Ramifications of New Land Regulations***

The ramifications of these new land regulations became evident in January 2023 when a circular issued by the Jammu and Kashmir administration on 9 January directed deputy commissioners to clear all "encroachments" on the state land by January 31, 2023.<sup>18</sup> Bulldozers were deployed across Jammu and Kashmir to demolish properties deemed to be on "encroached" land, including residential structures.<sup>19</sup> Following public protests and the filing of legal challenges, the administration suspended the circular,<sup>20</sup> pending further review.

In one such case, a petitioner approached the J&K and Ladakh High Court with a plea that he was willing to offer his 2,000 square feet of proprietary land in lieu of the *Kachharie* (grazing) land that he was alleged to be encroaching over.<sup>21</sup> Such an exchange was possible according to the laws before 2019. However, the prayer was declined by the court as Section 133(2) of the Jammu and Kashmir Land Revenue Act, 1996 which allowed such conversion no longer existed in its earlier form, thereby limiting available remedies for regularisation. That same month, a petition challenging the circular directing removal of encroachments on state land including Roshni land and *Kachharie* land was also dismissed by the Supreme Court with an oral instruction to the government "not to demolish any houses."<sup>22</sup> Notably, on 9 October 2020, the J&K and Ladakh High Court had declared the J&K State Land (Vesting of Occupants Ownership) Act, 2001 (Roshni Act) *void ab initio* and ordered a CBI investigation into irregularities in the transfer of state land to private individuals.<sup>23</sup> Subsequently, the J&K administration declared all actions taken under the Roshni Act null

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<sup>18</sup> *Supra* note 8.

<sup>19</sup> Safwat Zargar, *Why a demolition drive has sparked panic and anxiety in Jammu and Kashmir*, Scroll.in, February 09, 2023, available at <https://scroll.in/article/1043516/why-a-demolition-drive-has-sparked-panic-and-anxiety-in-jammu-and-kashmir> (Last visited on January 31, 2024).

<sup>20</sup> Shakir Mir, *2023: A Year of Ironies and Paradoxes in J&K*, The Wire, December 31, 2023, available at <https://thewire.in/rights/2023-a-year-of-ironies-and-paradoxes-in-jk> (Last visited on February 05, 2024).

<sup>21</sup> *Id.*, 21.

<sup>22</sup> Express News Service, *Roshni land: SC declines to stay J&K order on clearing encroachments*, Indian Express, January 21, 2023, available at <https://indianexpress.com/article/india/roshni-land-sc-declines-to-stay-jk-order-on-clearing-encroachments-8394848/> (Last visited on February 03, 2024).

<sup>23</sup> Livelaw News Network, *Have Not Come Across Any Such Legislative State Action Legitimizing Criminal Activity: J&K HC Holds 'Roshni Act' Unconstitutional*, LiveLaw, October 11, 2020, available at <https://www.livelaw.in/news-updates/jammu-kashmir-hc-holds-roshni-act-unconstitutional-164285> (Last visited on February 04, 2024).

and void.<sup>24</sup> The Roshni Act had conferred ownership rights on unauthorised occupants of state land against payment of a premium. Since the money raised was to be used for power generation in the erstwhile State, the scheme earned the moniker of Roshni (electricity).

## Land Redistribution

Prior to these changes, land reform legislation such as the Big Landed Estates Act, 1950, had imposed ceilings on landholdings and transferred surplus land to tillers without compensation. Consequently, over 9,000 proprietors lost excess land. By the end of 1952, approximately 790,000 landless peasants, including about 250,000 lower-caste Hindus in Jammu, received proprietary titles.<sup>25</sup> These reforms were supplemented by the Agrarian Reforms Act, 1976. By 1970, of the 9.5 lakh acres redistributed nationally, approximately 4.5 lakh acres were located in Jammu and Kashmir.<sup>26</sup>

The earlier land reform framework had contributed to equitable land redistribution outcomes across religious and caste groups. Under the post-2019 framework, land acquisition is not restricted by domicile status, and the government may designate areas as "strategic" for specified purposes.<sup>27</sup> In a significant departure from the protections afforded by the scrapped Article 35A, the 2020 domicile rules liberalise eligibility criteria for jobs in Jammu and Kashmir, including migrants, central government employees, and armed forces personnel and their children, with implications for the demographic composition of the region.<sup>28</sup>

## Free Speech and Media

On 24 March 2023, the Jammu and Kashmir administration reiterated a 2017 social media policy applicable to government employees.<sup>29</sup> The policy restricts online expression by employees and extends to dependents under their care. Violations may attract penalties

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<sup>24</sup> Suni Bhat, *J&K administration declares Roshni Act as 'null and void'*, India Today, November 04, 2020, available at <https://www.indiatoday.in/india/story/j-k-administration-declares-roshni-act-as-null-and-void-1737452-2020-11-03> (Last visited on February 07, 2024).

<sup>25</sup> Shakir Mir, *Modi Govt's New Land Policy for J&K Overturns 7 Decades of Land Reform*, The Wire, October 28, 2020, available at <https://thewire.in/government/jammu-and-kashmir-land-policy-reform> (Last visited on February 01, 2024).

<sup>26</sup> Anirudh Kumar Prasad, *Sheikh Abdullah and Land Reforms in Jammu and Kashmir*, Economic and Political Weekly, Vol. 49, Issue No. 31, August 02, 2014, available at <https://www.epw.in/journal/2014/31/special-articles/sheikh-abdullah-and-land-reformsin-jammu-and-kashmir.html> (Last visited on February 04, 2024).

<sup>27</sup> Supra note 26.

<sup>28</sup> Azaan Javaid, *What new J&K domicile rule is and how it impacts residents of the union territory*, The Print, April 03, 2020, available at <https://theprint.in/theprint-essential/what-new-jk-domicile-rule-is-and-how-it-impacts-residents-of-the-union-territory/394038/> (Last visited on February 06, 2024).

<sup>29</sup> Supra Note 9.

under the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, including dismissal. A Task Force constituted in 2021 to examine employee conduct has led to termination of services of 56 government employees under Article 311(2)(c) of the Constitution.<sup>30</sup>

This reiteration forms part of a broader post-2019 regulatory framework governing speech and media in Jammu and Kashmir. In 2020, the administration notified a media policy authorising government departments to assess news content for misinformation.<sup>31</sup> The policy, framed as a measure to regulate misinformation, vests government officials with discretionary authority to determine what constitutes “fake news” or “anti-national” content, with implications for the regulation of speech and press freedoms. Since 2019, multiple instances further indicate an expansion of surveillance and regulatory oversight, particularly affecting journalists and media organisations.<sup>32</sup>

## Reservations and Representation

During the 2023 winter session of Parliament, three legislative measures relating to Jammu and Kashmir were enacted. The Jammu and Kashmir Reorganisation (Amendment) Bill, 2023, provides for the reservation of two assembly seats for Kashmiri migrants and one for displaced persons from Pakistan-administered Kashmir.<sup>33</sup> The nominations, which are to be made by the Lieutenant Governor, have been criticised by opposition parties for conferring discretionary power on the executive.<sup>34</sup>

### Jammu & Kashmir Reorganisation (Second Amendment) Bill, 2023

Similarly consequential was the passing of the Jammu & Kashmir Reorganisation (Second Amendment) Bill, 2023, which mandated 33% reservation of seats for women in the Legislative Assembly,<sup>35</sup> subject to a delimitation exercise, a process slated to commence

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<sup>30</sup> Hakeem Irfan Rasheed, *Administration terminates four employees including a doctor and police constable for ‘anti-national’ activities in Kashmir*, The Economic Times, November 22, 2023, available at <https://economictimes.indiatimes.com/news/india/doctor-policeman-among-4-govt-employees-sacked-for-terror-links-in-jk/articleshow/105404070.cms?from=mdr> (Last visited on January 31, 2024).

<sup>31</sup> Media Policy, 2020, available at <https://jkgad.nic.in/common/showOrder.aspx?actCode=O35760> (Last visited on February 01, 2024).

<sup>32</sup> Amnesty International, *India: Government must immediately stop intimidation of journalists in Jammu and Kashmir*, April 22, 2020, available at <https://www.amnesty.org/en/latest/news/2020/04/journalists-in-jammu-and-kashmir/> (Last visited on February 02, 2024).

<sup>33</sup> The Jammu and Kashmir Reorganisation (Amendment) Bill, 2023.

<sup>34</sup> Umer Maqbool, *Reservation of J&K Assembly Seats for Kashmiri Migrants, Refugees Sparks Nomination Debate*, The Wire, July 24, 2023, available at <https://thewire.in/government/reservation-of-jk-assembly-seats-for-kashmiri-migrants-refugees-sparks-nomination-debate> (Last visited on February 01, 2024).

<sup>35</sup> The Jammu and Kashmir Reorganisation (Second Amendment) Bill, 2023.

after the publication of the next census report, thereby deferring its impact until at least 2029. The Parent Act of 2019 also authorises the Lieutenant Governor to nominate two women MLAs if representation is deemed inadequate. In addition to this, the Union Parliament passed the Jammu & Kashmir Reservation (Amendment) Bill, 2023, which sought to reclassify “weak and underprivileged classes (social castes)” as Other Backward Classes, following recommendations of the Socially and Educationally Backward Classes Commission.<sup>36</sup> Seen in the context of the 2022 delimitation exercise that altered the distribution of electoral constituencies within Jammu and Kashmir and increased the relative representation of the Jammu region,<sup>37</sup> these amendments were the subject of political debate, with some commentators characterising them as measures the ruling party aims at courting favour from Kashmiri Pandits and the Pahari-speaking community in the elections.<sup>38</sup>

## Conclusion

The legislative developments of 2023 reflect significant restructuring of land governance, media regulation, and political representation in Jammu and Kashmir following the abrogation of its special constitutional status, and the concomitant reorganisation. Following the Supreme Court’s judgment upholding the constitutional changes, the legal developments of 2023 assume particular significance as they operationalise the reorganisation through concrete changes to everyday governance. Taken together, these measures illustrate how the post-abrogation legal order is being implemented through incremental legislative and executive action, shaping the relationship between the Union and the administration of Jammu and Kashmir.

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<sup>36</sup> The Jammu and Kashmir Reservation (Amendment) Bill, 2023.

<sup>37</sup> *Supra* note 12.

<sup>38</sup> Muzamil Jaleel, *Proposed ST and OBC Reservations for New Groups in J&K: How the BJP Could Benefit Electorally*, *The Indian Express*, August 9, 2023, available at <https://indianexpress.com/article/explained/explained-politics/reservations-jk-bjp-benefit-electorally-8882715/> (Last visited on December 22, 2025).