

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

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## Introduction

The current Legislative Assembly of the State of Jharkhand was constituted in 2019 as a coalition of the Jharkhand Mukti Morcha (JMM), the Indian National Congress (INC), Rashtriya Janata Dal (RJD), and the Communist Party of India (Marxist–Leninist) Liberation (CPI(ML)-L) and is led by CM Hemant Soren.<sup>1</sup>

For the survey, all the bills enacted, ordinances promulgated, and resolutions passed in 2023 were examined. Information relating to the reportage of legislative proceedings and documents of the Jharkhand legislative assembly was sourced from the Jharkhand Vidhan Sabha website.<sup>2</sup> To retrieve information pertaining to delegated legislation, like those containing circulars and notifications from different government departments, the State's official website was used.<sup>3</sup> Information which could not be sourced from the same was aggregated from other sources. Thus, secondary sources such as newspaper reports were also relied upon wherever primary data was unavailable.

## Previous Developments That Have a Bearing on the Current Year

In 2020, the Sarna Code resolution was unanimously passed in a special session of the Jharkhand Legislative Assembly.<sup>4</sup> The demand was to recognise Sarna religion as a separate religious category for tribal communities in the upcoming census. Though such resolutions

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<sup>1</sup> The Hindu Net Desk, *Jharkhand Assembly election results live | Jharkhand votes for JMM-Congress alliance*, December 23, 2019, available at: <https://www.thehindu.com/elections/jharkhand-assembly/jharkhand-assembly-election-results-2019/article62125584.ece> (Last visited on February 28, 2024).

<sup>2</sup> *Jharkhand Vidhan Sabha*, available at <https://jharkhandvidhansabha.nic.in/>

<sup>3</sup> *Government of Jharkhand*, available at <https://www.jharkhand.gov.in/>

<sup>4</sup> Ishan Kukreti, *Jharkhand Assembly passes resolution for separate identity code for tribals*, November 11<sup>th</sup> 2020, available at: <https://www.downtoearth.org.in/news/governance/jharkhand-assembly-passes-resolution-for-separate-identity-code-for-tribals-74189> (Last visited on February 26, 2024).

do not have the status of a law, resolutions like these can set the tone for a government's policy and legislative measures.<sup>5</sup> It is in the light of this development the assertion of a 'Jharkhandi' identity that assumes importance.

## Performance of the Legislative Assembly: A Quantitative Overview

In 2023, the Assembly met for a total number of 27 days over three sessions.<sup>6</sup> A total of 14 bills were introduced by the legislature.<sup>7</sup> Out of these, three were appropriation bills,<sup>8</sup> four were amendment bills and seven were new bills that were introduced and passed by the State legislative Assembly.<sup>9</sup> In this period only one Bill was sent to a Select Committee.<sup>10</sup> A total of 24 committees have been formed for the year 2023-2024. Whilst the details of the members constituting these committees have been provided on the website, no Committee Reports were found on the website of the legislative Assembly.

## Qualitative Analysis of the Legislative Output of the State

### Education

The maximum legislative activity was seen in the area of higher education. However, it is interesting to note that most of these bills pertaining to the establishment of private educational institutes got passed amidst protests by the opposition, the Bhartiya Janta Party.<sup>11</sup>

Two Acts relating to the area of higher education were notified in the Gazette in 2023. These included the Sona Devi University Act, 2022<sup>12</sup> and Babu Dinesh Singh University Act,

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<sup>5</sup> P.B. Mukherjee, *Resolutions of Parliament and State Legislatures—A study of their Legal and Constitutional Character*, Journal of the Indian Law Institute, July-Sept., 1962, Vol. 4, No. 3 (July-Sept., 1962), pp. 309-330.

<sup>6</sup> The information is based on the data available at Jharkhand Vidhan Sabha Website, available at: <https://jharkhandvidhansabha.nic.in/> (Last visited on February 28th, 2024).

<sup>7</sup> The information is based on the data available on Jharkhand Vidhan Sabha Website, available at: <https://jharkhandvidhansabha.nic.in/> (Last visited on February 28th, 2024).

<sup>8</sup> Jharkhand Appropriation Bill, 2023, Bill No. 1 of 2023, Jharkhand Appropriation Bill, 2023, Bill No. 2 of 2023, Jharkhand Appropriation Bill, 2023, Bill No. 3 of 2023.

<sup>9</sup> The information is based on the data available at Jharkhand Vidhan Sabha Website, available at: <https://jharkhandvidhansabha.nic.in/> (Last visited on February 28th, 2024).

<sup>10</sup> This information is based on the data on 5th Jharkhand Legislative Assembly (2019-Present) prepared by PRS Legislative Research, available at: <https://prsindia.org/legislatures/states/functioning-of-5th-jharkhand-assembly> (Last visited on January 31, 2024).

<sup>11</sup> Jaideep Deogharia, *Govt gets nod for 2 more private varsities*, August 3, 2023, available at: [http://timesofindia.indiatimes.com/articleshow/102370744.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/102370744.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last visited on January 29<sup>th</sup>, 2024).

<sup>12</sup> The Sona Devi University Act, 2022.

2022.<sup>13</sup> Other bills established private universities in Jharkhand. These bills included the Durga Soren University Bill, 2023<sup>14</sup>, the Jain University Bill 2023,<sup>15</sup> CV Raman Global University Bill 2023,<sup>16</sup> and the Aarogyam International University Bill, 2023.<sup>17</sup> The opposition demanded that the Bills be referred to the Assembly Committee that had been constituted to prepare a report on the infrastructure of the 16 private universities already functional in the state. The opposition wanted to await the report of the committee before the government took any further steps to establish new private universities in the state. In this context, Jharkhand Governor C P Radhakrishnan also returned the Jain University Bill, 2023, to the state government, questioning the rationale behind the permission being given to open a new private university in the state even as action was still pending against other private universities that were found violating the rules<sup>18</sup>. Additionally, the Governor had asked the state government to explain what action had been taken over the report prepared by the Special Committee of the higher education department, constituted in June 2022.<sup>19</sup> This report of the Special Committee was not available on the Assembly website.

These Bills also came at a time when the Hemant Soren-led Jharkhand Mukti Morcha government and the Raj Bhawan were at loggerheads over a host of issues, especially in relation to the enactment of bills. Another significant Bill in the area of higher education passed amid the opposition's protests was the Jharkhand Health Science University Bill, 2023.<sup>20</sup> This Bill aimed to streamline health education across different disciplines and institutions and establish a specialised autonomous body. One of the notable features of the Bill was that the Chief Minister of the State would serve as the ex-officio Chancellor of the University.<sup>21</sup> This provision was a major point of contention. The opposition claimed that the

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<sup>13</sup>The Babu Dinesh Singh University Act, 2022.

<sup>14</sup> The Durga Soren University Bill, 2023, Bill No. 2 of 2023.

<sup>15</sup> The Jain University Bill 2023, Bill No. 2 of 2023.

<sup>16</sup> CV Raman Global University Bill, 2023, Bill No. 10 of 2023.

<sup>17</sup> The Aarogyam International University Bill, 2023, Bill No. 11 of 2023.

<sup>18</sup> Satyajeet Kumar, *Setback for Hemant Soren as Jharkhand Governor returns Jain University Bill*, July 20, 2023, available at: <https://www.indiatoday.in/india/story/setback-for-hemant-soren-as-jharkhand-governor-returns-jain-university-bill-2409027-2023-07-20> (Last visited on February 22, 2024).

<sup>19</sup> Vishal Kant, *Jharkhand: Guv returns Jain University bill to govt*, July 19, 2023, available at: <https://www.hindustantimes.com/cities/ranchi-news/jharkhand-governor-returns-jain-university-bill-questions-opening-of-new-private-university-despite-violations-101689785759785.html> (Last visited on February 22, 2024).

<sup>20</sup> Jharkhand Health Science University Bill, 2023, Bill No. 14 of 2023.

<sup>21</sup> Vishal Kant, *Jharkhand assembly clears Health Science University Bill, with CM as Chancellor*, August 4, 2023, available at: <https://www.hindustantimes.com/cities/ranchi-news/jharkhand-government-tables-bill-to-set-up-health-science-university-chief-minister-to-be-chancellor-amidst-protests-101691164554319.html> (Last visited on February 23, 2024).

Bill was against the federal structure of the Constitution as it interfered with the traditional powers of the office of the Governor.<sup>22</sup>

## Employment and Labour

The legislative efforts on employment included the Factories (Jharkhand) Amendment Bill, 2023.<sup>23</sup> The amendment was passed through a voice vote and amended the Factories Act, 1948, in its application to Jharkhand. The 1948 Act imposes certain restrictions on the employment of women in factories. These restrictions include that no woman will be required or allowed to work by a factory or establishment between 7:00 PM and 6:00 AM.<sup>24</sup> The Central Act permits State governments to reduce the restricted hours; however, no state government could authorise women to work between 10:00 PM and 5:00 AM.<sup>25</sup> The Amendment Bill permits women workers to work between 7:00 PM and 6:00 AM in any factory with adequate safety and security measures.<sup>26</sup>

There was also the Jharkhand Advocates' Welfare Fund (Amendment) Bill, 2023.<sup>27</sup> It amended the Jharkhand Advocates' Welfare Fund Act, 2012 to constitute a welfare fund for the advocates enrolled in the state.<sup>28</sup>

The Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act<sup>29</sup> This Act seeks to curb cheating in competitive examinations conducted for recruitment in state government posts<sup>30</sup>. It is to be noted that the Jharkhand Conduct of Examinations Act, 2001<sup>31</sup> was already in force in the state. The 2001 Act provides for minor penalties in cases of paper leaks and cheating in examinations, with a maximum punishment extending up to six months of imprisonment and a fine of up to Rs

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<sup>22</sup> *Id*

<sup>23</sup> The Factories (Jharkhand) (Amendment) Bill, 2023, Bill No. 9 of 2023.

<sup>24</sup> PRS Legislative Research, *Bill Summary-The Factories (Jharkhand Amendment) Bill, 2023*, available at: [https://prsindia.org/files/bills\\_acts/bills\\_states/jharkhand/2023/Bill\\_Summary\\_Factories\\_\(Jharkhand\\_Amendment\)\\_Bill\\_2023.pdf](https://prsindia.org/files/bills_acts/bills_states/jharkhand/2023/Bill_Summary_Factories_(Jharkhand_Amendment)_Bill_2023.pdf) (Last Visited on February 29, 2024).

<sup>25</sup> The Factories Act, 1948, § 66(b).

<sup>26</sup> *Supra* note 24.

<sup>27</sup> The Jharkhand Advocates' Welfare Fund (Amendment) Bill 2023, Bill No. 8 of 2023.

<sup>28</sup> PRS Legislative Research, *Bill Summary-The Jharkhand Advocates' Welfare Fund (Amendment) Bill, 2023* available at: <https://prsindia.org/bills/states/the-jharkhand-advocates-welfare-fund-amendment-bill-2023> (Last visited on February 29, 2023).

<sup>29</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act No. 15 of 2023.

<sup>30</sup> PRS Legislative Research, *Bill Summary The Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Bill, 2023*, available at: [https://prsindia.org/files/bills\\_acts/bills\\_states/jharkhand/2023/Bill\\_Summary-Jharkhand\\_Competitive\\_Exams\\_Bill\\_2023.pdf](https://prsindia.org/files/bills_acts/bills_states/jharkhand/2023/Bill_Summary-Jharkhand_Competitive_Exams_Bill_2023.pdf) (Last visited on February 15, 2023).

<sup>31</sup> Jharkhand Conduct of Examinations Act, 2001.

3,000.<sup>32</sup> The Jharkhand Public Service Commission (JPSC), responsible for conducting the Combined Civil Service Examination in the state has faced persistent allegations of irregularities, confusion, and corruption in the selection process since the formation of the State in 2000.<sup>33</sup> This statute was enacted in an effort to crack down on use of unfair means and irregularities in examinations and to plug incidents of question paper ‘leaks’ in recruitment exams for public services.

While the Act prohibits the use of ‘unfair means’ in competitive examination, its scope is not limited to just the examinees but also extends to various individuals and entities associated with the examination process<sup>34</sup>. Under this Act, an offender would be punishable with a one-year imprisonment and a fine of at least five lakh rupees. Repeat offenders would be punishable with imprisonment of at least three years and a fine of at least Rs 10 lakh.<sup>35</sup> An examinee prosecuted for any offence under the Act could be debarred from two to five years upon filing of a chargesheet, and for ten years if convicted.<sup>36</sup> A repeat offender, would be barred for life<sup>37</sup>. The Act also empowers the District Magistrate (DM) to confiscate property (movable or immovable) if the DM has reason to believe that any person had acquired such movable or immovable property by committing an offence under this Act. If the accused is convicted of the offence, the property would be transferred to the Jharkhand government.<sup>38</sup>

Notably, even though this is not the first state that has come out with such a legislation to prevent instances of cheating in competitive exams some of the provisions are notably different from other state legislations on this subject.<sup>39</sup> The Act contains a provision which allows for a candidate to be sent to jail without any preliminary investigation and registration of an FIR in case they are caught resorting to unfair means during competitive

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<sup>32</sup> Jharkhand Conduct of Examinations Act, 2001.

<sup>33</sup> Abhishek Angad, *Jharkhand's new anti-cheating Bill: Its purpose, provisions, and criticisms*, August 4, 2023, available at: <https://indianexpress.com/article/explained/jharkhand-anti-cheating-bill-8876224/> (Last visited on February 15, 2024).

<sup>34</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act, § 11.

<sup>35</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act, § 12.

<sup>36</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act, § 13.

<sup>37</sup> Id

<sup>38</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act, § 16.

<sup>39</sup> PRS Legislative Research, *The PRS Blog- Anti-cheating laws for competitive examinations*, available at: <https://prsindia.org/theprsblog/anti-cheating-laws-for-competitive-examinations?page=2&per-page=1> (Last visited on March 1, 2024).

examinations. This provision was strongly opposed by the opposition parties.<sup>40</sup> The provision for debarment upon the filing of a chargesheet, rather than upon conviction was also seen by opposition party members to militate against the presumption of innocence<sup>41</sup> Upon their objections not being accepted by the government, the Opposition members submitted a memorandum to the Governor seeking the issue of guidelines to guard against the misuse of the wide ranging power given to the executive under this Act.<sup>42</sup>

## Health

Assaults on the medical service professionals have been quite common for a long time across various states in India. In 2017, the Union Ministry of Health and Family Welfare circulated a draft Bill provided by the Indian Medical Association to protect medical service persons and institutions from violence in all states.<sup>43</sup> In the letter, the Minister had requested state governments to either strictly enforce existing laws to protect medical service personnel or to enact a law as per the draft as the subject of 'health' falls under the State List.<sup>44</sup> Jharkhand had previously tried to make a law in 2013 and 2017.

The matter of protection of medical service personnel resurfaced during the COVID-19 pandemic. In the backdrop of the pandemic experiences when the state witnessed several cases of attacks by family members of patients on medical professionals in hospitals and on the repeated demands of the medical fraternity<sup>45</sup> the State introduced the Jharkhand Medical Service Personnel, Medical Service Institutions (Prevention of Violence and Property Damage) Bill, 2023<sup>46</sup> sought to protect doctors, healthcare staff and hospitals from attacks by patients and their families by prohibiting violence and attacks on medical personnel and on property of institutions providing medical services Here, 'medical service' was defined to include the provision of medical care, including pre-natal and post-natal care,

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<sup>40</sup> Jharkhand Competitive Examination (Measures for Prevention and Redressal of Unfair Means in Recruitment) Act, § 23(1).

<sup>41</sup> Abhishek Angad, *BJP submits a memorandum against anti-cheating Bill in Jharkhand*, August 4, 2023, available at: <https://indianexpress.com/article/india/bjp-memorandum-against-anti-cheating-bill-jharkhand-government-8876376/> (Last visited on-March 1, 2024).

<sup>42</sup> *Id*

<sup>43</sup> PTI, *Harsh Vardhan wants states to bring in law to protect medical professionals from violence*, June 15, 2019, available at: <https://theprint.in/india/governance/harsh-varadhan-wants-states-to-bring-in-law-to-protect-medical-professionals-from-violence/250526/> (Last visited on January 28, 2024).

<sup>44</sup> The Constitution of India, 1950, Schedule VII, List II, *State List*, Item 6 (Public health and sanitation; hospitals and dispensaries).

<sup>45</sup> Gayathri Kuppuswamy and Uma Warriar, *COVID-19 and Violence against doctors—Why a law is needed?*, *Journal of family medicine and primary care*, 10(1), p.35.

<sup>46</sup> The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023.

and care for any illness, injury, and disability.<sup>47</sup> The Bill also defined ‘violent acts’ to include acts causing harm, injury, endangering of life or causing obstruction to any medicare service person in discharge of their duty along with any damage caused to a medicare service institution.<sup>48</sup> The proposed legislation made any person who committed an act of violence as defined in the Bill, punishable with imprisonment up to two years and a fine of up to Rupees Fifty Thousand and additionally, they may also be liable to pay compensation for any damage caused to a medical establishment.<sup>49</sup> The offences had been made cognizable and would be investigated only by a police officer of the rank of deputy superintendent.<sup>50</sup>

The Bill was introduced to meet the repeated demands of the medical fraternity in the state. However, MLAs cutting across party lines opposed the Bill for not providing any security to patients.<sup>51</sup> Thus, the Bill was sent to a Select Committee to see how the demands of the Opposition could be incorporated in the bill.<sup>52</sup>

## Agriculture

Legislative efforts in the area of agriculture saw the enactment of the Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022,<sup>53</sup> which sought to allow farmers wider market options to sell their produce. The Act contained provisions on issuance of licenses to establish private markets ‘*mandis*’ which can be used by farmers to sell their produce directly.<sup>54</sup> It also contained a provision which levied a two percent tax on all transactions at the ‘*mandis*’ operated in the state by the Jharkhand State Agricultural Marketing Board.<sup>55</sup> Though the Act was passed by the Jharkhand Assembly on

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<sup>47</sup> The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023, § 2(a).

<sup>48</sup> The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023, § 2(d).

<sup>49</sup> The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023, § 5.

<sup>50</sup> The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023, § 4.

<sup>51</sup> PRS Legislative Research, *Bill Summary-Jharkhand Medical Service Personnel, Medical Service Institutions (Prevention of Violence and Property Damage) Bill, 2023*, available at: [https://prsindia.org/files/bills\\_acts/bills\\_states/jharkhand/2023/Bill\\_Summary\\_Jharkhand\\_prohibition\\_of\\_violence\\_against\\_medical\\_personnel.pdf](https://prsindia.org/files/bills_acts/bills_states/jharkhand/2023/Bill_Summary_Jharkhand_prohibition_of_violence_against_medical_personnel.pdf) (Last visited on January 29, 2024).

<sup>52</sup> Jaideep Deogharia, Bill for protection of doctors referred to select panel again in Jharkhand, March 23, 2023, available at: <https://timesofindia.indiatimes.com/city/ranchi/bill-for-protection-of-doctors-referred-to-select-panel-again-in-jharkhand/articleshow/98933489.cms> (Last visited on- January 28, 2024).

<sup>53</sup> Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022.

<sup>54</sup> Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022, § 10.

<sup>55</sup> Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022, § 65.

March 24, 2022, it only came into force in February, 2023 after receiving assent from the Governor.<sup>56</sup>

It is to be noted that Agriculture falls under the State List of the Constitution.<sup>57</sup> Agriculture marketing in most states is regulated by APMCs established by state governments under the respective APMC Acts.<sup>58</sup> The APMCs provide infrastructure for marketing of agricultural produce, regulate sale of such produce and collect market fees from such sale, and regulate competition in agricultural marketing. In 2017, the central government released the model Agricultural Produce and Livestock Marketing (Promotion and Facilitation) Act, 2017<sup>59</sup> to provide states with a template to enact new legislation and bring comprehensive market reforms in the agriculture sector. The 2017 model Act aimed to allow free competition, promote transparency, unify fragmented markets and facilitate flow of commodities, and encourage operation of multiple marketing channels.<sup>60</sup> The Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022 aimed to rehaul the existing market structures to create a more competitive market environment.<sup>61</sup> As mentioned earlier, the Act proposed to levy a two per cent tax on the total price of the agricultural produce when purchased from the market committees which would be utilised by the market committees in the form of taxes would be used for acquisition, establishment, or improvement of market yards or for any other purposes connected with marketing of agricultural produce.<sup>62</sup>

Before the Bill got the Governor's assent last year, Jharkhand also witnessed state-wide protests from wholesale and retail traders and organisations such as the Federation of Jharkhand Chambers of Commerce and Industries, which is an umbrella body of traders and

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<sup>56</sup> TNN, *Foodgrain traders call bandh on Feb 8 to protest against agri bill*, February 7, 2023, available at: [http://timesofindia.indiatimes.com/articleshow/97673861.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/97673861.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last visited on- February 25, 2024).

<sup>57</sup> The Constitution of India, 1950, Schedule VII, List II, *State List*, Item 46 (Taxes on agricultural income).

<sup>58</sup> Prachi Kaur, *The PRS Blog- Changes in Agricultural Marketing laws across states*, PRS Legislative Research available at- <https://prsindia.org/theprsblog/changes-in-agricultural-marketing-laws-across-states#:~:text=Agriculture%20marketing%20in%20most%20states,regulate%20competition%20in%20agricultural%20marketing>. (Last visited on February 25, 2024).

<sup>59</sup> Press Release, Ministry of Agriculture & Farmers Welfare, February 4, 2023, Available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1601897> (Last visited on February 24, 2024); MINISTRY OF AGRICULTURE & FARMERS WELFARE, GOVERNMENT OF INDIA, *Model Agricultural Produce and Livestock Marketing (Promotion and Facilitation) (APLM) Act, 2017*, available at [https://dmi.gov.in/Documents/APLM\\_Act.pdf](https://dmi.gov.in/Documents/APLM_Act.pdf).

<sup>60</sup> Model APLM Act, *Id.*, *Statement of Objects and Reasons*.

<sup>61</sup> Statement of Object & Reasons of Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022.

<sup>62</sup> Jharkhand State Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2022, § 83.

industrialists in the State.<sup>63</sup> These traders have put forth their concerns stating that while other states have done away with taxation schemes of these kind, the imposition of such an additional tax would levy an additional cost on farmers who would be tempted to sell their produce outside of Jharkhand, for instance in neighbouring states that did not impose such a tax, which would lead to corruption.<sup>64</sup> The trader associations asserted that the Bill was drafted without proper consultation with all concerned stakeholders and the imposition of an additional tax on traders/buyers would ultimately hike the price of consumables.

## Taxation

In this sector, the Jharkhand legislative assembly enacted the Settlement of Arrears of Jharkhand Taxation Act, 2022<sup>65</sup> in order to generate revenue for the State, to grant relief to arrear holders by providing for the settlement of old arrears and disputes arising from proceedings under various legislations.<sup>66</sup> To this end, the Commercial Taxes Department of the State issued the Settlement of Arrears of Jharkhand Taxation Rules, 2023.<sup>67</sup> The Jharkhand government pitched this legislation as an amnesty scheme, as it is reported that there were nearly 5000 cases pending in Jharkhand and the total tax due including interest and penalties in these cases was roughly Rs. 3,690 Crores. The State Government aimed to collect Rs 500 Crores in three months through this scheme.<sup>68</sup>

## Social Justice

Some of the most interesting legislative developments in the survey year were seen in this sector. Even as the legislative activity of the Jharkhand legislative assembly in the previous years had a significant bearing on what happened in 2023. In 2022, the Jharkhand Assembly ratified the Jharkhand Definition of Local Persons and for Extending the Consequential,

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<sup>63</sup> B. Sridhar, *Kolhan foodgrain traders threaten to stop buying from other states to protest agri Act*, February 8, 2023, available at: <https://timesofindia.indiatimes.com/city/ranchi/kolhan-foodgrain-traders-threaten-to-stop-buying-from-other-states-to-protest-agri-act/articleshow/97713293.cms> (Last visited on February 25, 2024).

<sup>64</sup> *Supra* note 56.

<sup>65</sup> The Settlement of Arrears of Jharkhand Taxation Acts Act, 2022.

<sup>66</sup> Prabhat Khabar, *90% of interest and penalty on outstanding tax will be waived, Taxation Act Bill passed in Jharkhand Assembly*, August 4, 2022, available at: <https://www.prabhatkhabar.com/state/jharkhand/ranchi/jharkhand-assembly-news-taxation-act-bill-passed-90-of-interest-and-penalty-on-outstanding-tax-will-be-waived-srn> (Last visited on February 24, 2024).

<sup>67</sup> The Jharkhand Karadhan Adhiniyamon Ki Bakaya Rashi Ka Samadhan Rules, 2023, March 6, 2023.

<sup>68</sup> Udit Vani, *Kar Samadhan Yojna- Here's all you need to know about settling your pending tax-related disputes*, February 24, 2023, available at: <https://uditvani.in/jharkhand/kar-samadhan-yojna-heres-all-you-need-to-know-about-settling-your-pending-tax-related-disputes/> (Last visited on February 24, 2024).

Social, Cultural and other Benefits to such Local Persons Bill, 2022.<sup>69</sup> This Bill was returned by the Governor after a period of one year to reconsider certain provisions based on the constitutional law advice provided by the Attorney General.<sup>70</sup> The governor had made some suggestions while returning the Bill.<sup>71</sup> The Bill was tabled again and the objections of the Attorney General were read out in the assembly. However, the state government did not accept the governor's suggestions,<sup>72</sup> the bill was passed in the assembly without any amendments in 2023.<sup>73</sup>

One of the most contested features of this Bill was the definition of the term 'local person' of Jharkhand. Section 2(a) of the Bill stated that it would keep 1932 as the cut-off year for 'proof of land records' in order to define a local person.<sup>74</sup> The section further clarified that in the case of landless persons, a 'local person' shall be identified by the Gram Sabhas based on their culture, local customs, and tradition, among others. This Bill thus used land records from before 1932 as a criteria to recognise and verify an individual's 'Jharkhandi' identity to develop the State's domicile and employment policy.<sup>75</sup> The rationale behind keeping the 1932 land survey records as the cut-off date was that the land settlement records after 1932 did not provide an elaborate account of community and forestland.<sup>76</sup> The 'moolavasis' of the state considered the 1932 land survey records to be more authentic because it provided extensive title not only to the individual but also to the community as well as to forestlands.<sup>77</sup> Moreover, the land alienation faced by the 'moolavasis' increased manifold in the 1970s and 1980s due to the industrialisation spree wherein land was acquired for

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<sup>69</sup> The Jharkhand Local People and the resulting Social, Cultural and other Benefits Bill, 2022, Bill No. 14 of 2022.

<sup>70</sup> Jaideep Deogharia, *Raj Bhavan returns '1932 khatiyani based locals' bill to Jharkhand*, December 16, 2023, available at: <https://timesofindia.indiatimes.com/city/ranchi/raj-bhavan-returns-1932-khatiyani-based-locals-bill-to-jkhand-assembly-after-1-yr/articleshow/106037060.cms> (Last visited on-February 24, 2024).

<sup>71</sup> Vishal Kant, *Jharkhand assembly passes 1932 Khatiyani bill again*, December 20, 2023, available at: <https://www.hindustantimes.com/cities/ranchi-news/jharkhand-assembly-passes-1932-khatiyani-bill-again-101703090342559.html> (Last visited on-February 24, 2024).

<sup>72</sup> *Id.*

<sup>73</sup> Abhishek Angad, *Who is a local? Bill ratified in Jharkhand assembly seeks to settle debate*, INDIAN EXPRESS, December 20, 2023, available at: <https://indianexpress.com/article/india/jharkhand-assembly-bill-1932-cut-off-year-domicile-9076315/> (Last visited on- February 25, 2024).

<sup>74</sup> The Jharkhand Local People and the resulting Social, Cultural and other Benefits Bill, 2022, Bill No. 14 of 2022, § 2(a).

<sup>75</sup> *Jharkhand Assembly Passes Bill to Use 1932 Land Records to Determine Domicile Status*, THE WIRE, November 11, 2022, available at: <https://thewire.in/government/jharkhand-1932-tribal-land-records-local-domicile-hemant-soren> (Last visited on- February 25, 2024).

<sup>76</sup> Sujit Kumar, *Bringing 'Identity' Back in Reviving Nativism in Contemporary Jharkhand*, ECONOMIC AND POLITICAL WEEKLY, Vol 58, No. 40 (2023).

<sup>77</sup> Dayamani Barla, V Bhagat Ganguly, *Jharkhand's New Sthaniyata (Local Resident) Policy: The 1932 Khatiyani, Sociocultural Fabric, and Land Rights*, ECONOMIC & POLITICAL WEEKLY, Vol 58, No 18 (2023).

various projects. Therefore, the logic of keeping the land survey records from 1932 as a determinant of who gets to be termed a 'local person' was based upon the fact that living conditions, customs, and the traditions and social development of the 'moolavasis' and people from the tribal community had been negatively impacted due to migration of people from other states to Jharkhand.<sup>78</sup>

As the Bill intended to give opportunities to local persons from Jharkhand, it contained provisions to reserve grade 3 and grade 4 government jobs for 'locals'.<sup>79</sup> The Bill had been sent to the Governor of the State with a request for it to be sent to the President of India for seeking approval and be placed in the Ninth Schedule of the Constitution to avoid any judicial review.<sup>80</sup> What is all the more interesting is that in 2002, the then Chief Minister of the State, Babulal Marandi too, brought a similar domicile policy for the State which set 1932 land survey records as the basis for domicile but it was severely criticised by 'non-Jharkhandi' residents of the State.<sup>81</sup> This policy was challenged before the High Court of Jharkhand through a PIL.<sup>82</sup> The Jharkhand High Court agreed with the plan of the State government to make a domicile policy for its residents, but advised the government to set a more recent cut-off date to determine domiciliary status.<sup>83</sup> This view point of the Jharkhand High Court explains the present State government's insistence on placing this Bill in the Ninth Schedule which would help them to sidestep the legal hurdle it expected to face through judicial review.

Interestingly, the Assembly was of one view on the cut-off date with even the leader of the Opposition in the Jharkhand Legislative Assembly lending support to the proposal and asking the ruling government to issue it as an executive order passed by the cabinet.<sup>84</sup> The opposition's rationale was that if the purpose of the domicile policy is to ensure job opportunities for the local persons of the State then why bring it as a law and send it to the

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<sup>78</sup> *Supra* note 76.

<sup>79</sup> The Jharkhand Local People and the resulting Social, Cultural and other Benefits Bill, 2022, Bill No. 14 of 2022, § 6.

<sup>80</sup> Vishal Kant, *Jharkhand assembly passes 1932 Khatiyani bill again*, HINDUSTAN TIMES, 20 December 2023, available <https://www.hindustantimes.com/cities/ranchi-news/jharkhand-assembly-passes-1932-khatiyani-bill-again-101703090342559.html>.

<sup>81</sup> *Supra* note 73.

<sup>82</sup> Sonali Das, *Jharkhand domicile order set aside*, TIMES OF INDIA, November 28, 2002, available at: <https://timesofindia.indiatimes.com/city/patna/jharkhand-domicile-order-set-aside/articleshow/29610427.cms> (Last visited on February 25, 2024).

<sup>83</sup> Prashant Vidyarthi & Anr. vs State of Jharkhand & Ors., (2005) 1 JLR 210 (HC).

<sup>84</sup> Amit Bhelari, *Jharkhand Assembly once again passes 1932 Khatiyani Bill*, December 20, 2023, available at: <https://www.thehindu.com/news/national/other-states/jharkhand-assembly-once-again-passes-1932-khatiyani-bill/article67658409.ece> (Last visited on February 25, 2024).

Ninth Schedule as it will only get into legal tangles and will not secure jobs.<sup>85</sup> The ruling government on the other hand was of the view that bringing it as a law instead of a policy (executive order) and placing it in the Ninth Schedule would ensure that it would not be later challenged and overturned by the courts.<sup>86</sup>

The state legislative assembly also passed the 'Jharkhand Reservation of Vacancies in Posts and Services (Amendment) Bill, 2022,' (herein after referred to as the OBC Reservation Bill)<sup>87</sup> in 2022. The OBC Reservation Bill increases the cumulative reservations in public employment and vacant posts in the state from 60 per cent to 77 per cent.<sup>88</sup> The Bill increased the percentage of reservations for OBCs from 14 to 27 per cent, for SCs from 10 to 12 per cent and for STs from 26 to 28 per cent in addition to the 10 per cent reservation introduced for the Economically Weaker Sections (EWS).<sup>89</sup> It is to be noted that OBCs and STs constitute more than 65 per cent of the state population.<sup>90</sup>

This Bill also comes with the caveat that it should come into force only after the Centre moves to include it in the Ninth Schedule of the Constitution.<sup>91</sup> The 77 per cent reservation proposed in the Reservation Bill breaches the 50 per cent ceiling set by the Supreme Court in the landmark judgment of *Indra Sawhney v. Union of India*.<sup>92</sup> However, placing a legislation in the Ninth Schedule shields it from judicial scrutiny. There have been instances where the 50 per cent ceiling had been breached. For example, Tamil Nadu<sup>93</sup> reserved 69 per cent of the total seats in colleges and jobs in the state government for Backward Classes, Scheduled Castes and Scheduled Tribes.<sup>94</sup> In order to deal with the fallout of the

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<sup>85</sup> *Id*

<sup>86</sup> *Supra* note 80.

<sup>87</sup> Jharkhand Reservation of Vacancies in Posts and Services (Amendment) Bill, 2022, Bill No. 13 of 2022.

<sup>88</sup> PTI, *Jharkhand assembly passes bill to raise reservations for categories to 77%*, November 11, 2022, available at: [https://www.business-standard.com/article/current-affairs/jharkhand-assembly-passes-bill-to-raise-reservations-for-categories-to-77-122111100739\\_1.html](https://www.business-standard.com/article/current-affairs/jharkhand-assembly-passes-bill-to-raise-reservations-for-categories-to-77-122111100739_1.html) (Last visited on February 29, 2024).

<sup>89</sup> *Id*

<sup>90</sup> Abhishek Angad, *Jharkhand Assembly raises quota to 77%, 1932 land records to fix domicile status*, November 12, 2022, available at: <https://indianexpress.com/article/india/jharkhand-assembly-bill-raising-reservation-8262459/> (Last visited on February 29, 2024).

<sup>91</sup> *Id*.

<sup>92</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 477, Also see- The Indian Express, *Jharkhand wants new quota Bill placed in Ninth Schedule: What this section of Constitution is*, November 12, 2022, available at: <https://indianexpress.com/article/explained/jharkhand-new-quota-bill-what-is-ninth-schedule-of-constitution-8265015/> (Last visited on February 29, 2024).

<sup>93</sup> Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993, Act No. 45 of 1994.

<sup>94</sup> Sanyukta Dharmadhikari, *How Tamil Nadu's reservation stands at 69% despite the 50% quota cap*, March 29, 2021, available at: <https://www.thenewsminute.com/tamil-nadu/how-tamil-nadu-s-reservation-stands-69-despite-50-quota-cap-146116> (Last visited on February 29, 2024).

*Indira Sawhney judgement*, the legislation was included in the Ninth Schedule on the representation of the state's leadership.<sup>95</sup>

## Executive Lawmaking

The Department of Panchayati Raj under the Jharkhand government also published the draft rules for initiating public consultation for the implementation of the provisions within the Panchayats (Extension to Scheduled Areas) Act of 1996 or PESA in the state.<sup>96</sup> The principal Act recognises the right of the people living in Scheduled Areas to use forest lands, minor water bodies, minor minerals, intoxicants and natural resources. The procedures for realising the rights are provided in the draft rules.<sup>97</sup> In Jharkhand, 13 out of 24 districts are governed by the 5th Schedule.<sup>98</sup> The draft rules state that all residents living in these Scheduled Areas shall have equal rights to fish and collect resources like fox nuts in natural water resources like ponds.<sup>99</sup> The draft PESA Rules envisage that the people living in Scheduled Areas in Jharkhand will be able to self-govern through the Gram Sabhas. This gives the Gram Sabhas significant powers to plan for the available minor minerals in these areas. Prior Gram Sabha permission is required for mining activity in these areas.<sup>100</sup>

The draft Rules also empowered the Gram Sabha to conduct hearings at the local level to resolve traditional and family disputes, to hear certain cases under the Indian Penal Code and to discharge the responsibility of maintaining peace and order in view of the principles of the Constitution.<sup>101</sup> While the Gram Sabhas were not conferred with the power to order imprisonment, they were empowered by the Draft Rules to impose fines up to Rs 5,000.<sup>102</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> Department of Panchayati Raj, Jharkhand Panchayat (Extension to Scheduled Areas) (PESA) Rules, Notification No. 1784 (Notified on July 26, 2023).

<sup>97</sup> Raj Kumar, Soren government finalises much-awaited PESA rules in Jharkhand, September 26, 2023, available at: <https://www.hindustantimes.com/cities/ranchi-news/soren-government-finalises-much-awaited-pesa-rules-in-jharkhand-101695744131708.html> (Last visited on February 29, 2024).

<sup>98</sup> Abhishek Angad, Jharkhand issues PESA draft rules for consultations, July 27, 2023, available at: <https://indianexpress.com/article/india/jharkhand-issues-pesa-draft-rules-for-consultations-8862282/> (Last visited on February 29, 2024).

<sup>99</sup> Department of Panchayati Raj, Jharkhand Panchayat (Extension to Scheduled Areas) (PESA) Rules, Notification No. 1784 (Notified on July 26, 2023), Rule 14.

<sup>100</sup> *Id.*

<sup>101</sup> Department of Panchayati Raj, Jharkhand Panchayat (Extension to Scheduled Areas) (PESA) Rules, Notification No. 1784 (Notified on July 26, 2023), Rule 8 (d).

<sup>102</sup> Department of Panchayati Raj, Jharkhand Panchayat (Extension to Scheduled Areas) (PESA) Rules, Notification No. 1784 (Notified on July 26, 2023), Rule 8 (f).

Despite the publication of the draft Rules by the ruling government, there have been doubts expressed on whether PESA would be implemented in the State of Jharkhand.<sup>103</sup>

PESA was enacted at the Central level in 1996. Jharkhand came into being 23 years ago — but to date, PESA has not been brought into force in Jharkhand. One of the biggest hurdles with regards to the implementation of PESA in the state has to do with a section of the tribal population who vehemently oppose Panchayat elections or Panchayati Raj in the Fifth Schedule areas.<sup>104</sup> There are concerns about how the elected Gram Panchayat and the traditional Gram Sabha would come together to work for the development of these marginalised regions.<sup>105</sup> One solution was to allocate the role of the legislature to the Gram Sabha which meant that the Gram Sabha would decide on where to implement a government scheme, who should be the beneficiaries. The responsibility of implementing the schemes was to be performed by the Gram Panchayat. However, experts fear that tussles may occur between the village heads and the panchayat heads.<sup>106</sup>

In addition to this, there was some executive action in the realm of taxation. In 2023, Jharkhand Commercial Taxes Department, through a notification dated 12th December, 2023, introduced amendments to the Jharkhand Goods and Services Tax Rules, 2017.<sup>107</sup> The objective of these amendments was to streamline processes, enhance compliance, and provide clarity on various aspects related to the Goods and Services Tax Act, 2017. The rules were made effective from 4th August, 2023.

Lastly some amendments were made to the Central Goods and Services Tax (CGST) Act, 2017 and Integrated Goods and Services Tax (IGST) Act, 2017 on the basis of recommendations made by the GST Council to bring in clarity in the area of taxation of supplies in casinos, horse racing and online gaming.<sup>108</sup> As per these amendments, the Centre was empowered to impose 28 per cent tax on the face value of all bets made in casinos,

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<sup>103</sup> Anand Dutt, Implementing PESA Act in Jharkhand is not an easy task, August 2, 2023, available at: <https://www.downtoearth.org.in/news/governance/implementing-pesa-act-in-jharkhand-is-not-an-easy-task-90666> (Last visited on February 29, 2024).

<sup>104</sup> *Id.*

<sup>105</sup> Citizens for Justice and Peace, *PESA Act: Origins, Workings and Challenges*, August 24, 2022, available at: <https://cjp.org.in/pesa-act-origins-workings-and-challenges/> (Last visited on March 1, 2024).

<sup>106</sup> *Supra* note 96.

<sup>107</sup> Department of Commercial Taxes, Notification No.- 38/2023 - State Tax, S.O. No. 49, (Notified on 12th December, 2023).

<sup>108</sup> The Economic Times, Centre notifies amendments in CGST and IGST rules for online gaming cos; 28% GST rule to come into force on Oct 1, September 29, 2023, available at: <https://economictimes.indiatimes.com/news/economy/policy/centre-notifies-amendments-in-cgst-and-igst-rules-for-online-gaming-cos-to-come-into-force-on-oct-1/articleshow/104051141.cms?from=mdr> (Last visited on March 1, 2024).

horse-racing and online gaming.<sup>109</sup> However, even with the amendments brought to the CGST Act, 2017 and the IGST Act, 2017, State governments were still required to make legislative changes to their respective GST Acts for the 28 per cent levy to kick in.<sup>110</sup> Since the Legislative Assembly was not in session the changes in the CGST Act and the IGST Act, were effected through an ordinance by promulgating the Jharkhand Goods and Services Tax (Amendment) Ordinance, 2023.<sup>111</sup>

## Conclusion

In 2023, the Jharkhand Legislative Assembly met for a total of 27 days.<sup>112</sup> In this period, a total of 14 bills were introduced and passed. However, only one Bill was sent to the Select Committee<sup>113</sup> while the majority was passed through a voice vote. Charges are traded between the Opposition and the ruling party on laws being passed without deliberation only on the strength of voice votes.<sup>114</sup> The rise in voice votes is something to be noted as a matter of concern as it reduces transparency and accountability in the process through which Bills are passed.

Another observed trend was that it took longer to receive the Governor's assent on bills passed by the Jharkhand Legislative Assembly than in other states. The Constitution does not provide any timeframe within which the Governor should give assent. It was found that the bills concerned with the assertion of the nativist '*Jharkhandi*' identity met with the slowest response from the Governor. The unnecessary delay in the legislative process, especially when relating to legislation concerned with social justice issues, due to the ideological differences between the state government and the Governor appointed by the Centre, is a cause of concern. It also raises important questions on the need to find ways to cooperate between the constitutional offices of the Chief Minister and the Governor. The ninth schedule request of the state government has also not received a positive response from the Union government. Such an absence of respectful deliberation marks the interaction between the State and the Centre.

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<sup>109</sup> *Id.*

<sup>110</sup> Parliament paves way for 28% GST on online gaming, THE HINDU, August 11, 2023, available at: <https://www.thehindu.com/news/national/bill-to-levy-28-gst-on-online-gaming-casinos-introduced-in-lok-sabha/article67183494.ece> (Last visited on March 1, 2024).

<sup>111</sup> Jharkhand Goods and Services Tax (Amendment) Ordinance, 2023, Ordinance No. 1 of 2023.

<sup>112</sup> *Supra* note 6.

<sup>113</sup> *Supra* note 10.

<sup>114</sup> PTI, Jharkhand assembly passes bill to prevent cheating in competitive exams, August 4, 2023, available at: <https://indianexpress.com/article/jobs/jharkhand-assembly-passes-bill-to-prevent-cheating-in-competitive-exams-8875871/> (Last visited on March 1, 2024).