

LAND, LAWS AND LOSS IN KASHMIR

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On August 5, 2019, the Centre stripped Jammu and Kashmir of autonomy and statehood under Article 370. It also repealed Article 35A, which ensured special protections on land ownership for permanent residents of the former state. In the Muslim-majority Kashmir Valley, these changes were considered to be an attack on Kashmiri identity. This was felt the most in the loss of land rights. In this essay, the author explores how land rights came to define the Kashmiri identity, how they embodied historical memory and propelled political action, and why the dismantling of old structures of land ownership is seen as a threat to Kashmiri polity.

I. INTRODUCTION

The decisions of August 5, 2019, were registered as a body blow to Kashmiri identity.¹ Article 370 of the Indian Constitution, which guarantees autonomy and special status to Jammu and Kashmir ('J&K'), was hollowed out. Article 35A, which had ensured special protections to residents of J&K, was repealed. Statehood was stripped away from the crown-shaped piece of land composed of three regions, Jammu, Kashmir and Ladakh.

Amidst a lockdown and communications blackout in Jammu and Kashmir,² the Centre announced that the state was about to lose autonomy, and that it would no longer be a state but two Union Territories. The state of J&K was divided into the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh. Autonomy, identity, a political voice – all of these were felt to be lost

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¹ Ipsita Chakravarty, 'Existential threat: Kashmiris React to the Scrapping of the State's Special Status', (Scroll.in 6 August 2019) <<https://scroll.in/article/932937/existential-threat-kashmiris-react-to-the-scrapping-of-states-special-status>> accessed 4 January 2021.

² Press Information Bureau, Delhi, 'Government Brings Resolution to Repeal Article 370 of the Constitution', (Press Information Bureau, 5 August, 2019), <<https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1581308>> accessed 4 January 2021.

by Kashmiris. This sense of loss was often articulated in terms of land and land rights.³

In 1949, very little of the autonomy guaranteed by Article 370 was left. The original provision had allowed the state to author its own constitution and exercise sovereignty over all its subjects except in matters of defence, external affairs and communications. It also insulated Jammu and Kashmir from the Central legislation - no laws made by Delhi could apply to it unless ratified by the state legislature. However, state governments had been undermined by decades of political maneuvering by Delhi.⁴ Even if state legislatures did not ratify Central laws, they entered the State through presidential orders. These were executive acts passed by the president on the advice of the Centre, making dubious use of a provision in Article 370.⁵ Between 1954 and 1994, 94 out of the 97 entries in the Union List had been extended to Jammu and Kashmir.⁶

In the Valley, the real dismemberment of a distinct Kashmiri polity was effected through the repeal of Article 35A. The law had enabled governments of the former State of J&K to define “permanent residents” of the State and reserve certain rights for them. These included the right to hold government jobs and own land in J&K. With Article 35A gone, dystopic situations were forecast in Kashmir: local residents would be dispossessed by outside buyers and investors, the fragile environment of the Valley would be ravaged by big industry. The impending loss of land rights was described variously as an “existential threat”, the “comeback of Dogra rule”, a route to “demographic change” in the Muslim-majority Valley, the start of a settler-colonial project that would “turn Kashmir into Palestine.”⁷

All three regions of the former state of J&K – Jammu, Kashmir and Ladakh – have felt varying degrees of anxiety about being stripped of special protections pertaining to land. However, this paper is focused on the Kashmir Valley. When the Centre passed the fifth August laws, it trained its gaze specifically on Kashmir; the sweeping changes were necessary, as explained by the home minister, to stamp out the secessionist movement there.⁸ Besides, land rights in

³ Ipsita Chakravarty and Safwat Zargar, ‘Comeback of Dogra Rule’: With Special Status Gone, Kashmiris Fear Losing Land Rights Once Again’ (Scroll.in 9 September 2019) <<https://scroll.in/article/936652/comeback-of-dogra-rule-with-special-status-gone-kashmiris-fear-losing-land-rights-once-again>> accessed 5 November 2020.

⁴ Ipsita Chakravarty, ‘Is this the End of Kashmiri “Mainstream” Politics as we Know it?’ (Scroll.in 9 August 2019) <<https://scroll.in/article/933220/is-this-the-end-of-kashmiri-mainstream-politics-as-we-know-it>> accessed 5 November 2020.

⁵ AG Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (OUP India, Reprint Edition 2015).

⁶ *ibid.*

⁷ Chakravarty and Zargar (n 3).

⁸ Ajay Vaishnav, ‘Amit Shah Says Article 370 was the Root Cause of Terrorism, Corruption, Separatism in Kashmir’, (CNBC 17 October 2019). <<https://www.cnbcvt18.com/politics/>

Kashmir are freighted with a particular political significance. They are the bearers of historical memory as well as political aspirations for the future.

To understand Kashmiri reactions to the fifth August decisions, it is imperative to understand how land came to shape Kashmiri political identity. The dismantling of a set of hard won land rights struck at the heart of this identity. In the first section, I explore how the extractive Dogra state (1846-1947), which claimed absolute rights over land, left a lasting trace in Kashmir's collective memory and played a part in its self-fashioning. The second section examines how the agitation for greater rights to land swelled into an insurrection against the Dogra state. "Naya Kashmir", the National Conference's manifesto for a Kashmiri society emancipated from Dogra rule was centred on land rights. The third section looks at Naya Kashmir in action; a series of land reforms post 1947 that reconfigured Kashmiri society and redistributed political power. As militancy spread in Kashmir after 1989, giving rise to a wave of militarisation by the state, land rights were endangered once again; but land also became a source of resilience to defy the state, as I discuss in the fourth section. Finally, I look at laws post fifth August 2019, and how they strip away the reforms and safeguards of decades. In the process, I observe that they seek to destroy the meanings ascribed to land in Kashmir.

Apart from secondary and primary sources, this essay draws on my reporting in Kashmir. I travelled across the Valley in the aftermath of August 5, 2019, but also in the years leading up to it. It is no coincidence that anxieties about land – the loss of it to government or security forces, the ecological destruction of it under outside pressure have cropped up again and again in conversations in the Valley.

II. 'ZULMPARAST': SUBJECTS OF THE DOGRA STATE

The unilateral decision taken by a Hindu majoritarian government about India's only Muslim-majority state was likened by many to the actions of the Dogra princely state.⁹ The Dogra kings who ruled Kashmir from 1846 to 1947 were Hindu, and their subjects were mostly Muslim peasants.¹⁰ The trauma of Dogra rule is still within living memory in the Valley. Soon after special status was revoked in 2019, I visited the village of Singhpora in North Kashmir's Baramulla district. Older residents there recalled being forced to work in the fields of the Dogra king. "They would beat us if a single grain fell out of place, they would check our teeth to see if we had eaten any corn," said one 90-year-old.

amit-shah-says-article-370-was-root-cause-of-terrorism-corruption-separatism-in-kashmir-4544631.htm.> accessed 7 January 2021.

⁹ Mridu Rai, *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir* (Permanent Black 2012).

¹⁰ *ibid.*

Younger generations grew up hearing stories of starvation and ritual humiliations from the elderly.¹¹

The Dogra state functioned by extinguishing the land rights of its subjects. When Maharaja Gulab Singh bought the Kashmir Valley from the British for Rs 75 lakh in 1846, he claimed exclusive right on the land and its riches, including people.¹² A few individuals were granted proprietary rights through deeds, or sanads, dispensed by the darbar.¹³ Peasants were tenants-at-will in the eyes of the state. If the peasant did not cultivate the land he occupied, it would be given to someone else.¹⁴ Taxes were crippling -- until 1860 three quarters of the rice, wheat, maize, millets and buckwheat produced were collected as revenue.¹⁵ It was reduced later but corrupt contractors deployed to collect revenue appeared to have made up for the difference.¹⁶

Land and property laws in the Dogra are inscribed with the idea of a State whose agents and beneficiaries were Hindu, drawing sustenance from Muslim subjects without rights. The powerful landlords who had received privileged rights to land from the darbar were usually relatives of the ruling family, courtiers and the top tier of the Dogra bureaucracy, almost all Hindu.¹⁷ Walter Roper Lawrence, the British bureaucrat who published his account of Kashmir in 1895, describes a vast and corrupt revenue collection machinery manned by Kashmiri Pandits -- from the local village headman to the wazirs at the district level.¹⁸

Lawrence had been sent to Kashmir as settlement commissioner in 1889, assigned with reforming land laws.¹⁹ By the 1880s, the British government was taking a closer interest in the Dogra administration, anxious to shore up the stability of a frontier state and secure its own advantages there.²⁰ Lawrence dwells at length on the depredations of the Hindu state on its Muslim subjects, possibly as a contrast to his progressive reforms. As historian Chitralkha Zutshi observes, most primary sources on Kashmir's economy are colonial records, which are not entirely disinterested.²¹ It is important to disentangle colonial rhetoric from these

¹¹ Chakravarty and Zargar (n 3).

¹² Parvez Ahmed, 'Nature of Land Rights in Kashmir Under Dogras 1846-1947' (2003) 64 *Proceedings of the Indian History Congress*, 822.

¹³ *ibid.*

¹⁴ Parvez (n 12).

¹⁵ Walter R Lawrence, *The Valley of Kashmir* 403 (Henry Frowde, Oxford University Press Warehouse 1895).

¹⁶ *ibid.*

¹⁷ MJ Aslam, 'Historical Review of JK Land Reform Laws, From 1887 to 1976' (*Greater Kashmir* 25 January 2019) <<https://www.greaterkashmir.com/news/opinion/historical-review-of-jk-land-reform-laws-from-1887-to-1976/>> accessed 5 November 2020.

¹⁸ Lawrence (n 15) 399-423.

¹⁹ Lawrence (n 15) 2.

²⁰ Rai (n 9).

²¹ Chitralkha Zutshi, *Languages of Belonging: Islam, Regional Identity and the Making of Kashmir* 59 (Hurst and Company, London, 2004)

records when piecing together a picture of Kashmir's socio-economic realities. However, Zutshi adds, "colonial perceptions are significant because they played a considerable role in the formulation of land settlement policies, which in turn had an enormous impact on the political economy of the region".²² I would argue that Lawrence's hugely influential account also had an impact on how local histories were constructed in the Valley.

Lawrence describes the rampant practice of begar, flowing from the idea of absolute ownership. Men were forced into labour wherever it was needed by the state and produce was borne away by soldiers. "Briefly speaking," writes Lawrence,

*"the man liable to begar was an 'outlaw' without rights of any description, and begar was looked upon by the officials as an incident of serfdom which entitled them to take all things, either labour or commodities, free of payment, from the villagers."*²³

However, Hindus, Sikhs, Gujjars, Pirzadas (families who were traditional custodians of Sufi shrines) and cultivators working on the lands of privileged landholders were exempt from begar, including the Muslims²⁴ living in towns and cities.

Rural Muslims also suffered the most during the famine of 1877-79. Aggravated by mismanagement, the famine was particularly damning for the Dogra administration. According to some estimates, it reduced the population of the Valley by three fifths. Few Hindus died of starvation.²⁵ "The Musalmans attribute the immunity of the Pandits to the fact that they were a privileged class, whose official power enabled them to seize all available grain," writes Lawrence.²⁶

But Lawrence's "new settlement", which was to deliver Dogra state subjects from these oppressions, is widely regarded as a cosmetic change.²⁷ State reserves of grain were streamlined and cash collection of revenue was encouraged.²⁸ However, the rights of privileged landholders were left largely undisturbed. As for cultivators, hereditary occupancy of land was recognised for those willing to pay the assessment rates on the plot they held, except, this right was not alienable by sale or mortgage, Lawrence having "formed a strong opinion that the Kashmiri cultivators do not yet understand the value of land or rights in land."²⁹

²² *ibid.*

²³ Lawrence (n 15) 415.

²⁴ *ibid.*

²⁵ Lawrence (n 15).

²⁶ *ibid.*

²⁷ Ahmed (n 12); Rai (n 9).

²⁸ Lawrence (n 15) 424-453.

²⁹ *ibid.*

Dogra rule has the afterlife of a traumatic experience in Kashmir, leaving a deep imprint in collective memory, invoked in phrases inherited through generations. Lawrence, writing in 1895, says that Kashmiri Muslims were told that they were “zulm parast” or worshippers of tyranny, and therefore, not fit for rights and better governance. It is a term that still crops up in popular histories circulated in the Valley -- Kashmiris had borne the excesses of the Indian state because centuries of oppressive rule had made them “zulm parast.”³⁰ This historical memory has fuelled years of protest and militancy. Kashmiris must rise up as they can no longer be considered worshippers of tyranny.³¹

III. ‘QUIT KASHMIR’: DEMANDING LAND RIGHTS AND MORE

In 1933, the occupancy rights recognised by Lawrence’s new settlement were finally converted to proprietary rights.³² In the early twentieth century, assertions of Kashmiri Muslim identity had dovetailed into demands for greater land rights. By the 1930s, it had turned into an insurrection that threatened to destabilise the Dogra state.

Anger against the state crystallised on July 13, 1931, when thousands of Kashmiris gathered in Srinagar to protest against the trial of Abdul Qadeer Khan, arrested for an incendiary speech against the king.³³ Dogra forces opened fire on the crowd, killing 22 and triggering riots. As per writer Ahmed, July 13 “inaugurated the Freedom Struggle of Kashmir”.³⁴ Months later, the maharaja was presented with a “Memorial of Demands of the Kashmiri People”, which included proprietary rights for peasants.³⁵

Pressure from alarmed British officers stationed in Kashmir as well as growing public resentment induced Maharaja Hari Singh to set up a commission to look into the grievances of Kashmiri Muslims. It was headed by a British officer called BJ Glancy, who appears to have convinced the Maharaja about the wisdom of land reforms. “From what has been said it will be recognised that the bestowal of proprietary rights, where these rights are now vested in the state, would be in the nature of a pure concession,” he wrote. “In the opinion of the Commission, if

³⁰ Lawrence (n 15) 5.

³¹ Ipsita Chakravarty and Rayan Naqash, ‘Valley of ‘Martyrs’: Burhan Wani, Like Others Before him, Knew he was Going to his Death’ (Scroll.in 9 July 2016), <<https://scroll.in/article/811255/valley-of-martyrs-burhan-wani-like-others-before-him-knew-he-was-going-to-his-death>> accessed 7 January 2021.

³² Ahmed (n 12).

³³ Fida Hasnain, ‘Abdul Qadeer Khan Ghazi, Hero of 1931 Uprising’ (*Greater Kashmir* 14 March 2015) <<https://www.greaterkashmir.com/news/health/abdul-qadeer-khan-ghazi-hero-of-1931-uprising/>> accessed 5 November 2020.

³⁴ Ahmed (n 12).

³⁵ *ibid.*

His Highness is pleased to approve of this policy, the advantages to be expected therefrom are sufficient to outweigh any objection that can be raised.”³⁶

More organised political mobilisations, which grew out of the turbulence of 1931, also urged land reform. The Muslim Conference was formed in 1932, as a party to safeguard the interests of Kashmiri Muslims. The party split later, with the faction led by Sheikh Abdullah renamed the National Conference, as it tried to build a broader social base and make common cause with the larger freedom movement sweeping the subcontinent.³⁷ The National Conference’s 1944 manifesto, “Naya Kashmir”, borrowed heavily from the Soviet constitution and demanded the transfer of “land to the tiller.”³⁸ The manifesto would become the moving spirit of the 1946 agitation asking the maharaja to “Quit Kashmir”.

IV. ‘NAYA KASHMIR’: A NEW POLITY

The princely state of J&K was dismantled in 1947. A new system of autonomy and protections mediated Jammu and Kashmir’s uneasy relationship with the Indian Union. Article 370 gave the state political autonomy. Article 35A, introduced through a presidential order in 1954, ensured the continuity of a Dogra-era law which guaranteed special protections for hereditary state subjects. Another set of rights flowed from land reforms introduced by Sheikh Abdullah’s new government. “Naya Kashmir” was put into action, albeit intermittently, as Abdullah’s political fortunes waxed and waned.

The large feudal estates were abolished and reforms over the next couple of decades redistributed land to the tiller.³⁹ The Big Landed Estates (Abolition) Act of 1950 fixed land ceiling at 22.75 acres.⁴⁰ Excess land was parcelled out among cultivators. Another round of redistribution took place in the 1970s, as the Jammu and Kashmir Agrarian Reforms Act reduced the ceiling to 12.5 standard acres.⁴¹ Both acts made exceptions for orchards. Land that was not redistributed went back to the state. Public rights to commons were established under the Jammu and Kashmir (Common Lands) Regulation Act of 1956.⁴² The law also gave local landowners a say in how village commons, or shamilat lands, would be used.

³⁶ Ahmed (n 12).

³⁷ Andrew Whitehead, ‘The Rise and Fall of New Kashmir’ in *Kashmir: History, Politics, Representation* 70-88 (Cambridge University Press 2018).

³⁸ Andrew Whitehead, ‘The Making of the New Kashmir Manifesto’ in *India at 70: Multidisciplinary Approaches* 15-32 (Routledge, London and New York 2020).

³⁹ Chakravarty and Zargar (n 3).

⁴⁰ Big Landed Estates Abolition Act, SVT. 2007 (1950 AD), No 526, Acts of Parliament 1950 (India).

⁴¹ The Jammu and Kashmir Agrarian Reforms Act 1976, No 17, Acts of Parliament 1976 (India).

⁴² The Jammu and Kashmir Common Lands (Regulation) Act 1956, No 24, Acts of Parliament 1956 (India).

The reforms were imperfect. Historian Chitralekha Zutshi points out that it mainly worked to the advantage of those who were already influential in the villages; that they alienated Hindu landlords, cementing the impression that Abdullah's government worked mainly for Kashmiri Muslims; and that they were conducted by the old corrupt revenue machinery, so loopholes in the laws were exploited.⁴³ Substantial sections of the population got nothing out of them -- the Valley's Shia minority, for instance, did not participate in the reforms.⁴⁴

Some question the economic wisdom of the new acts, which fragmented landholdings.⁴⁵ However, in the Valley today, most remember them as transformative. Residents of Singhpora, that I spoke to, view the decades post 1947 as a time when their fortunes changed. Some moved from poverty to relative prosperity, others from starvation to subsistence. The village takes its name from the Sikhs who ruled Kashmir before the Dogras. Before the reforms, residents say, only a handful of people, those who were descended from Sikhs, were landowners. Now, almost everybody owns land. The village is more or less evenly divided into small holdings, about an acre each.⁴⁶

This seems to be a pattern across the Valley. In 1953, 42% of holdings were below one hectare, covering just 14% of land area.⁴⁷ By 1986, 73% of holdings were 0-1 hectare, covering 32% of land area.⁴⁸ Large holdings over 41 hectares had constituted 6% of holdings and covered 22% of land in 1956.⁴⁹ Four decades later, they accounted for 2% of holdings and 16% of total land area.⁵⁰

Structural changes in the rural economy underpinned vast social and political changes. Economic emancipation brought education and social mobility to Kashmiri Muslims, according to Tassaduq Hussain, a Srinagar-based author and advocate. The cities swelled with migration from the countryside and a new middle class was created. It also spurred rural participation in politics, with villages sending legislators to the state assembly, and helped the National Conference strike roots in the countryside. Land rights, says Hussain, became the "backbone of Kashmiri identity."⁵¹

⁴³ Chitralekha Zutshi, *Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir* 317-318 (Hurst and Company London 2004).

⁴⁴ Suhail Masoodi, *Pieces of Earth: The Politics of Land-Grabbing in Kashmir* (Oxford University Press 2018).

⁴⁵ Siddhartha Prakash, The political economy of Kashmir since 1947, 9 *Contemporary South Asia* (2000).

⁴⁶ Chakravarty and Zargar (n 3).

⁴⁷ Prakash (n 45).

⁴⁸ *ibid.*

⁴⁹ Prakash (n 45).

⁵⁰ *ibid.*

⁵¹ Chakravarty and Zargar (n 9).

V. 'HARTAL': LAND AND PROTEST

In 1989, assertions of this identity grew into an armed rebellion. Decades of distrust between Delhi and Srinagar had come to a head with the assembly elections of 1987. They were widely believed to have been rigged in favour of the National Conference-Congress combine and against the Muslim United Front (MUF), a newly formed conglomeration of Islamic Kashmiri political parties. Incensed, many members of the MUF left electoral politics, never to return to the fold. They would go on to head separatist outfits and form militant groups.⁵² By the early 1990s, hundreds in Kashmir were taking up arms, demanding "azadi", or freedom, from the Indian state. With the spread of militancy, security forces - the army as well as central paramilitary forces - moved into the Valley. Over three decades of militancy and militarisation, land became a site of resistance against the Indian state as well as loss.

Memories of hunger, perhaps, spurred a habit in Kashmiri households of storing grain to last for months. It was to last them through the long winters. From the 1990s, they also stored food to see them through months of curfew and "hartal", shutdown.⁵³ The Valley's history of hartal goes back to Dogra times.⁵⁴ After the formation of the Hurriyat Conference, which provided a political platform for various separatist parties, hartal became the favoured form of civil protest against the state, an expression of the popular will for "azadi".⁵⁵ For years, the Hurriyat issued a "calendar" of protest, dictating when shops and establishments had to stay shut and the hours of "dheel", or relaxation.

In 1991, Kashmir remained shut for 207 days. The last two decades of mass uprising also saw the hartal stretching for months -- 33 days in 2008, 132 days in 2010, and over 150 days in 2016.⁵⁶ In 2019, the government-imposed lockdown faded into months of "civil shutdown" -- with almost all separatist leaders incarcerated, there was no formal call for a hartal but Kashmiris observed what they described as a "spontaneous" strike against government actions.⁵⁷ However, not everyone joined voluntarily; shops that did not follow the strike were set alight.⁵⁸

⁵² Ipsita Chakravarty, 'They are Fighting Our Battle': In Angry North Kashmir, the Return of the Foreign Militant' (Scroll.in 19 October 2016) <<https://scroll.in/article/819251/they-are-fighting-our-battle-in-angry-north-kashmir-the-return-of-the-foreign-militant>> accessed 11 November 2020.

⁵³ Chakravarty and Zargar (n 9).

⁵⁴ Ipsita Chakravarty and Rayan Naqash, 'Are Shops Being Burnt Down in Kashmir Towns to Enforce the Hartal?', (Scroll.in 15 December 2016) <<https://scroll.in/article/824085/shops-burnt-in-kupwara-five-months-on-kashmir-is-still-in-the-grip-of-hartal>> accessed 5 November 2020.

⁵⁵ *ibid.*

⁵⁶ Chakravarty (n 54).

⁵⁷ Ipsita Chakravarty and Safwat Zargar, 'Shutters Down: How Kashmir has Kept up a Slow-burning Protest Since Article 370 was Revoked' (Scroll.in, 29 November 2019) <<https://scroll.in/article/945208/shutters-down-how-kashmir-has-kept-up-a-slow-burning-protest-since-article-370-was-revoked>> accessed 5 November 2020.

⁵⁸ *ibid.*

The economic costs of hartal were crippling. Jammu and Kashmir lost Rs 16,000 crore in 2016. The Kashmir Chamber of Commerce estimated that the Valley lost close to Rs 18,000 crores over four months in 2019. But even if all economic activity is stilled, Valley residents say proudly, “no one sleeps hungry”.⁵⁹ The stores of grain provided the resilience for protest and religious customs of charity ensured food would be provided for those who needed it in the community. Going by popular accounts, government forces have often targeted these stores during raids. From downtown Srinagar in the 1990s to rural South Kashmir in 2019, the same stories are repeated -- sacks of rice overturned, rice and chilli, rice and oil mixed together by uniformed personnel who barged into homes.⁶⁰

The militarisation of the Valley has often been experienced by its residents as a loss of land and its resources. As more troops were flushed into Kashmir, camps spread across the Valley, taking over pastures in the countryside and hills around major towns. In the north, Baramulla became a garrison town and residents of Sopore claim there are more camps than homes in their town.⁶¹ In South Kashmir, a vast army camp sprawled across 250 acres in Anantnag’s “high-ground”, a hill overlooking the town.⁶² Land for camps are meant to be leased from the local government and residents, but that is not always the case. The original landowners of Anantnag’s highground, numbering over 1,000, say they were forced to give up their land.⁶³ Many did not receive compensation. Some lost orchards and were forced to become street vendors or labourers at a nearby stone quarry, earning much less than they had from the land. In 2018, then Chief Minister Mehbooba Mufti said over 4.30 lakh kanals, or 53,750 acres, of land was under “unauthorised occupation” by security forces in what was then the state of Jammu and Kashmir.⁶⁴ Grievances about the proliferation of camps ran so deep that Mehbooba Mufti’s government ordered the army to vacate land in some areas, including the Anantnag highground, in order to win public support.

⁵⁹ Chakravarty and Zargar (n 9).

⁶⁰ Ipsita Chakravarty and Safwat Zargar, ‘Raids at Night, Handbills by Day: Army Siege in South Kashmir Intensifies After Special Status Revoked’ (Scroll.in, 27 August, 2019) <<https://scroll.in/article/935245/raids-at-night-handbills-by-day-army-siege-in-south-kashmir-escalates-after-special-status-revoked>> accessed 11 November 2020.

⁶¹ Chakravarty (n 52).

⁶² *ibid.*

⁶³ Rayan Naqash, ‘The Army may Vacate Illegally Occupied Land in Anantnag, but Original Owners May not Get it Back’ (Scroll.in 24 June 2016) <<https://scroll.in/article/810454/the-army-may-vacate-land-in-anantnag-but-its-original-owners-may-not-get-it-back>> accessed 11 November 2020.

⁶⁴ Safwat Zargar and Ipsita Chakravarty, ‘A Year of Government Policies that Eroded Hard-won Land Rights in Jammu and Kashmir’ (Scroll.in 4 August 2020) <<https://scroll.in/article/969275/a-year-of-government-policies-that-eroded-hard-won-land-rights-in-jammu-and-kashmir>> accessed 11 November 2020.

One of the ways in which the Indian Army established control over the Valley was by asserting its sheer physical presence through check posts and patrols. In military parlance, which has grown familiar to residents of the Valley, this is known as “area domination”.⁶⁵ Militarisation seemed to cast other forms of activity as area domination as well. Religious yatras, traversing the Valley under heavy security cover, came to be seen as emissaries of a Hindu majoritarian state asserting its writ on disputed land. The most famous example is the Amarnath Yatra, which suddenly expanded in scale and duration from the mid-1990s, the peak of militancy.⁶⁶ The state institutionalised control of the yatra through the creation of the Shri Amarnathji Shrine Board in 2000. Under the auspices of the board, infrastructure for the yatra was expanded, leaving a permanent imprint in the Valley. Since 2000, there have been at least five militant attacks on the yatra. But in the wider public discourse — as my conversations with residents of the Valley revealed — there is a careful distinction between the yatris, who were to be treated as guests, and the state, which promoted these pilgrimages for sinister motives of its own. It revolved, instead, around anxieties about land and environmental loss. In 2008, the yatra sparked off a season of mass protests as the government transferred land to the shrine board in violation of state laws. Agitations against the land transfer eventually turned into anti-government protests demanding azadi.

Similar anxieties attended infrastructure projects and industrialisation. Railways, highways and other infrastructure projects branded as development by the government left a trail of discontent among local residents who lost agricultural land. “What will we do with railways if we don’t have enough to eat?” asked one resident of Pampore in South Kashmir’s Pulwama district in August 2019.⁶⁷ Sheikh Abdullah, once lauded as the architect of the reforms, came to be denounced as the man who “sold” Kashmir. This could presumably be a reference to the Indira-Sheikh Accord of 1975, under which the National Conference leader gave up the demand for self-determination, or it could refer to the Land Grants Act of 1978, which allowed outside investors to lease land for 99 years.⁶⁸ The act was seen as a means to transform the self-sufficient agrarian economy, which had become a metaphor for political autonomy, into a dependent consumer economy.⁶⁹

⁶⁵ Syed Ata Hasnain, ‘The Repeated Ambushes on Convoys of Security Forces in Pampore Need to be Urgently Contested’ (Scroll.in, 23 December, 2016) <<https://scroll.in/article/824728/why-repeated-ambushes-on-convoys-of-security-forces-in-pampore-need-to-urgently-contested>> accessed 23 December 2020.

⁶⁶ Jammu Kashmir Coalition for Civil Society, *Amarnath Yatra: A Militarized Pilgrimage* (11 November 2020), <<https://jkccs.files.wordpress.com/2017/05/amarnath-report-2017.pdf>> accessed 23 December 2020.

⁶⁷ Chakravarty and Zargar (n 9).

⁶⁸ Aditi Saraf, ‘The Lie of the Land’ (*The Caravan*, 1 October 2019) <<https://caravanmagazine.in/commentary/losing-territorial-sovereignty-poses-existential-threat-to-kashmiris>> accessed 23 December 2021.

⁶⁹ *ibid.*

Opening up land to capital investment from outside the Valley meant eroding this autonomy.

VI. TERRITORY OF THE UNION

Yet the fifth August decision did precisely that -- recast land as capital. In the weeks after the Centre announced the sweeping changes, we saw the army distributing handbills in the villages of South Kashmir, listing the benefits of shedding special status.⁷⁰ Land prices would soar, said one of the items on the list. Hotels and factories would open, bringing development to the Valley. Local residents dealing with a military crackdown, mass arrests and a communications blackout were not impressed, instead, they mourned their lost sovereignty.⁷¹ With statehood and special status gone, they no longer had the power to influence decisions on land.

The residents of Singhpora, for instance, had given permission to use 20 acres of village commons for a degree college and an architectural college. "The government started building a degree college, but with our permission," said one resident.⁷² "We might have wanted to build a graveyard there instead; it is the people's decision." Permission had been given, moreover, to a state government that could be held accountable to its people. Now, they worried, all decisions would be taken by a distant Centre that would not care for their consent -- Jammu and Kashmir has no elected assembly at present and participation in Lok Sabha elections is negligible. The will of the government is done by bureaucrats, mostly from outside the Valley.⁷³ According to popular opinion in the Valley, the slew of executive orders issued since August 5, 2019, have accelerated the incremental losses of the past few decades.

Under Article 35A, the state legislature had been empowered to define "permanent residents" of Jammu and Kashmir. The term had encompassed subjects of the princely state of Jammu and Kashmir and their descendants as well as those who had lived in the state for 10 years before Article 35A was enacted in 1954 and their descendants.⁷⁴ Land ownership in Jammu and Kashmir was among the array of rights reserved for permanent residents of the state. Justifying the provision to the Lok Sabha in 1952, Nehru had said that restrictions were put in place during Dogra rule to prevent the British from acquiring land and settling

⁷⁰ Chakravarty and Zargar (n 4).

⁷¹ *ibid.*

⁷² Chakravarty and Zargar (n 3).

⁷³ Safwat Zargar, 'One Year After Special Status Ended, Kashmiris have Disappeared from Government in J&K' (Scroll.in, 31 July, 2020), <<https://scroll.in/article/968571/one-year-after-special-status-ended-kashmiris-have-disappeared-from-government-in-j-k>> accessed 23 December 2021.

⁷⁴ Constitution (Application to Jammu and Kashmir) Order 1954, No 48, Ministry of Law 1954 (India). <http://www.jklaw.nic.in/constitution_jk.pdf> accessed 12 February, 2021

in Kashmir.⁷⁵ The government of Kashmir now feared land would be lost through transactions within the Indian Union; the “delectable” climate and landscapes of the Valley had always excited the appetites of outside buyers.⁷⁶ In the early years after 1947, therefore, the idea that capital investment would be an onslaught on regional identity and demography seems to have informed legislative provisions. Moreover, the Centre had acted in consonance with Kashmiri lawmakers to set up protections. Since then, Centre and state had diverged. For years, Kashmiri leaders asked for votes promising to preserve special protections.⁷⁷ Even separatist parties who wanted out of the Indian Union saw these as basic safeguards to Kashmiri identity.⁷⁸ However, the Bharatiya Janata Party, which came to power at the Centre in 2014, thought Article 35A a “constitutional mistake” and a roadblock to what it defined as a project of “national integration”.⁷⁹ The changes of fifth August, 2019, overturned political wisdom governing the earlier laws. Kashmir would be integrated precisely by enmeshing it further with the national consumer economy.⁸⁰

Most state laws were repealed and over a hundred Central laws were imposed through the Jammu and Kashmir (Reorganisation) Act of 2019. “Permanent residents” were replaced by “domiciles”, a much more loosely defined category of individuals. It included anyone who had lived in Jammu and Kashmir for 15 years or studied there for seven years.⁸¹ The new domicile rules, introduced in the midst of the pandemic, also contained exemptions for children of Central government employees and bureaucrats. In the Valley, it was seen as a means to “slow demographic change”. A Home Ministry order on October 27, 2020, was the final blow to protections on land. The term “permanent residents” was struck off all existing statutes. The laws which enacted the reforms, setting land ceilings, establishing public rights to commons and preventing land alienation, have been

⁷⁵ AG Noorani, ‘Article 35A is beyond challenge’ (*Greater Kashmir*, 14 August 2015), <<https://www.greaterkashmir.com/news/opinion/article-35a-is-beyond-challenge/>> accessed December 23, 2021.

⁷⁶ *Id.*

⁷⁷ Ipsita Chakravarty, ‘We will Never Vote’: Why South Kashmir’s Anantnag Seat Needs Three-phase Polls’ (Scroll.in 23 April 2019), <<https://scroll.in/article/920974/we-will-never-vote-why-south-kashmirs-anantnag-seat-needs-three-phase-polls>> accessed December 23, 2021.

⁷⁸ Shujaat Bukhari, ‘Article 35A row: BJP has Shifted Focus From Azadi to Special Status. But For How Long?’ (Scroll.in 20 August 2017), <<https://scroll.in/article/847435/article-35a-row-bjp-has-shifted-focus-from-azadi-to-special-status-in-kashmir-but-for-how-long>> accessed December 23, 2021.

⁷⁹ Akhilesh Singh, ‘BJP to Alter Article 35A on Permanent Residents in J&K?’ *The Times of India* (6 August 2017), <<https://timesofindia.indiatimes.com/india/bjp-to-alter-article-35a-on-permanent-residents-in-jk/articleshow/59936774.cms>> accessed December 23, 2021.

⁸⁰ Ipsita Chakravarty, ‘The Daily Fix: Modi’s Speech Ignores Vital Rights Deleted by the Scrapping of Special Status’, (Scroll.in 9 August 2019), <<https://scroll.in/article/933278/the-daily-fix-modis-speech-ignores-vital-rights-deleted-by-the-scrapping-of-j-ks-special-status>> accessed December 23, 2021.

⁸¹ Safwat Zargar, ‘Slow Demographic Change: New J&K Domicile Rules Draw Chorus of Protests’ (Scroll.in 2 April 2020) <<https://scroll.in/article/957948/slow-demographic-change-new-j-k-domicile-rules-draw-chorus-of-protests>> accessed December 23, 2021.

stripped away.⁸² The choice of date -- the 73rd anniversary of Indian troops landing in Srinagar to claim Kashmir -- was also seen as a gesture of state assertion by residents of the Valley.⁸³

The Home Ministry order prepares to reconfigure the Valley as real estate and defence land. It does this by first, creating enclaves that are generously exempt from regulation.⁸⁴ There are “development zones” notified by the government and not required to follow land use laws. Second, there is an industrial development corporation to administer vast industrial estates created over the past year as the government consolidated “land banks” for investors.⁸⁵ The corporation is empowered to buy, sell or lease any property, and set the terms for such transactions.⁸⁶ Third, at the request of a senior army officer, the government may notify “strategic areas”, where the military may build permanent infrastructure without going through the tedious route of bureaucratic permissions. This institutionalised orders already issued by the Union Territory administration, paving the way for the notification of strategic areas by “special dispensation”. Local civilian authorities would be replaced by an authority “on the pattern of the cantonment boards” here.⁸⁷ The administration also withdrew a 1971 circular which stipulated that requisition or acquisition of land for the army and other paramilitary forces needed a no-objection certificate from the home department of the former state.⁸⁸ Mufti’s initiative to return land under “unauthorised occupation” has been reversed. Instead, the armed forces recently accused government departments of “encroaching” on defence land.⁸⁹

While the local administration insists that agricultural land will not go to outside buyers, the home ministry order suggests that it is an imminent

⁸² Safwat Zargar, ‘Explainer: What exactly are the Changes to Land Laws in Jammu and Kashmir?’ (Scroll.in 29 October 2020) <<https://scroll.in/article/977057/explainer-what-exactly-are-the-changes-to-land-laws-in-jammu-and-kashmir>> accessed December 23, 2021.

⁸³ Rifat Fareed, ‘Kashmiris Decry “Land Grab” as India Enacts New Laws’ (Al Jazeera 28 October 2020) <<https://www.aljazeera.com/news/2020/10/28/india-enacts-new-laws-in-kashmir-allowing-outsiders-to-buy-land>> accessed December 23, 2021.

⁸⁴ Zargar (n 82).

⁸⁵ *ibid.*

⁸⁶ Zargar (n 82).

⁸⁷ Basharat Masood, ‘J&K Admin Paves Way to Notify “Strategic Areas” for Armed Forces’ (*The Indian Express*, 18 July 2020) <<https://indianexpress.com/article/india/j-k-admin-paves-way-to-notify-strategic-areas-for-armed-forces-6511300/>> accessed December 23, 2021.

⁸⁸ Shuja-ul-Haq, ‘Army, CRPF, BSF Will no Longer Require NOC For Land Acquisition in Jammu and Kashmir’ (*India Today*, 28 July 2020) <<https://www.indiatoday.in/india/story/army-crpf-bsf-will-no-longer-require-noc-for-land-acquisition-in-jammu-and-kashmir-1705159-2020-07-28>> accessed December 23, 2021.

⁸⁹ Safwat Zargar and Ipsita Chakravarty, ‘A Year of Government Policies that Eroded Hard Won Land Rights in Jammu and Kashmir’ (Scroll.in 4 August 2020) <<https://scroll.in/article/969275/a-year-of-government-policies-that-eroded-hard-won-land-rights-in-jammu-and-kashmir>> accessed December 23, 2021.

possibility.⁹⁰ Regulations on the transfer of agricultural land to non-agriculturists have been eased -- permissions for such transfer were earlier given by the revenue minister, now they lie within the power of local bureaucrats. Previously, people who had gained ownership of land under the Agrarian Reforms Act of 1976 could only transfer land to the government and for mortgages. Now, they may transfer it to "Government, or its agencies and instrumentalities", and for mortgages, leases and contract farming. The revenue administration has also been overhauled to align it with government-defined prerogatives of development. A newly constituted revenue board will administer agricultural land according to regional plans. Among other functions, it is tasked with making land available for "developmental purposes" such as creating residential properties.⁹¹

The primary loss for residents of the Valley is perhaps the loss of meaning ascribed to land. The new laws promise to dismantle land ownership structures that stood for so many political ideas -- autonomy, identity, self-reliance, defiance. Despite the government trying to push the post-August 5 changes as "people-friendly" policies, it has been unable to shake the conviction that they are meant to marshal the resources of the Muslim-majority Valley for the use of a Hindu-majoritarian state. It is a mark of how deep the political reverberations were that a faction of the Hurriyat leadership, largely silent for a year, shook itself into action to issue the first formal hartal call since fifth August, 2019. Once again separatist and pro-India parties spoke in the same language, raising fears of demographic change and land grab.⁹²

Land rights had stood for an identity that was considered irreducibly Kashmiri, no matter where you fell on the political spectrum. Significantly, the perceived attack on Kashmiri identity was also cast as an assault on history. Sajad Lone, a former separatist leader who had later formed the pro-India People's Conference, invoked the struggles against Dogra rule as he condemned the new land laws. The repeal of the Big Landed Estates Act, he said, was an "insult to the sacrifices of thousands of freedom fighters and farmers who fought against autocratic and oppressive rule". Erasing the law was an "attempt to rewrite history."⁹³

Old wounds have opened up again in Kashmir.

⁹⁰ Zargar (n 82).

⁹¹ Zargar (n 82).

⁹² *ibid.*

⁹³ Zargar (n 82).