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Research Report

Roshni Act: Understanding the Contours of the Land Development Scheme of J&K

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BACKGROUND

The [Jammu and Kashmir State Lands \(Vesting of Ownership to the Occupants\) Act, 2001](#) was enacted to vest the ownership rights to the occupants of the **State Land** with an ambitious objective of **meeting the chronic power crisis** of Jammu and Kashmir. Since the object of the Act was to use the proceeds of the transaction to fund the **hydroelectric projects in J&K**, it popularly came to be known as the **Roshni (Light) Act**. The author, in this report, seeks to analyze and elucidate all the provisions that are relevant for understanding the Roshni Act along with the various amendments.

The Act was passed by Farooq Abdullah led **National Conference Government** in **2001** to grant ownership to people who are in possession of the State Land with **1990** as the cutoff date, against a fee determined by the government. The government had also set a speculative target of raising INR 25,000 crore by regularizing 20 lakh kanals (one kanal = 505.85 square meters) of the State Land.



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TIMELINE OF THE ROSHNI ACT

2001	Enactment of the Jammu and Kashmir State Lands (vesting of ownership to the occupants) Act with a Cutoff Date of 1990
2005	The Act was amended for the first time by Mufti Muhammad Sayeed of the PDP-Congress government that pushed the Cutoff Date to 2004
2007	The Cutoff Date for the Act was again relaxed to 2007 under Chief Minister, Ghulam Nabi Azad and a premium of 25% at the market rate was set
2011	First PIL was filed by S.K. Bhalla, a Jammu-based activist who alleged that the bureaucrats, politicians, and revenue officers had joined hands while committing fraud under the Act
	a. The CAG report was tabled in the state legislature of J&K which highlighted the irregularities



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<p>2014</p>	<p>pertaining to the transfers between 2007 and 2013</p> <p>b. In the same year, Ankur Sharma, a local advocate and chairman of Ikkjutt Jammu filed a PIL wherein he challenged the entire legislation and made an appeal to conduct a court-monitored investigation into the transfers that took place under the Act</p>
<p>2015</p>	<p>State Vigilance Organization of Jammu filed FIRs against those people who had amassed large quantities of state land under the Roshni Act but failed to meet the eligibility criteria of the Act</p>
<p>2018</p>	<p>The then J&K Governor, Satya Pal Malik repealed the Act prospectively as it failed to meet its desired objectives, thereby canceling all the pending allotments, and those who were already granted allotment were allowed to retain them</p>
	<p>Mr. Malik ordered a probe by the State Anti Corruption Bureau into all the dealings</p>



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<p>2019</p>	<p>under the Act. Subsequent to this order, a petition seeking transfer of the probe to CBI was filed with the Jammu and Kashmir High Court</p>
<p>2020</p>	<p>a. On October 9, Jammu and Kashmir High Court declared the Act to be unconstitutional and held all allotments made under the Act to be <i>void ab initio</i>. Soon after the High Court verdict on 31st October, the J&K administration annulled all the activities under the Act and set up a committee to retrieve all the land that was regularised under the Roshni Act within a period of six months from the Court's order</p> <p>b. On December 4, the J&K administration filed a review petition with the J&K High Court concerning its October 9 Judgement in the Roshni Act Case, asking for the verdict to be amended</p>



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DECODING THE ROSHNI ACT, 2001

While the intent behind the Roshni Act which was passed in 2001 was virtuous, i.e., **to ensure that the natives of the valley had equal opportunity to hold property**, the **Act failed to achieve its desired objectives**. Initially, the Act restricted the ownership of the total State Land to **10 kanals** under **Section 8(b)** but the limit was increased to **100 kanals** under the **2004 Amendment** to benefit the occupants.

Although the Act was passed in the year 2001 the legislature affixed the reserve price of the land based on the area-specific and the rates which were prevailing in the year 1990, which seems quite strange. The 2001 Act mandated that any occupant seeking transfer of the State Land should be in **actual physical possession of the land during 1990**. The Original Act of 2001- even though it perpetuated and recognized illegalities, restricted the benefit thereunder to **long-term occupation only**, which was later amended in 2004 **to enable all those occupants who were in actual possession of the land in 2004** and this cutoff date was **further extended to 2007**. The delays in the processing worked in favor of the occupants as the cut-off dates were time and again pushed further by way of these amendments, thereby benefiting the pending applications.

Section 2 clause (h) of the Act defines State Land to mean the land which has been recorded in the State's Revenue Records and also includes any land which is escheated in favor of the government under the provisions of any law but does not include any State Land mentioned under **Section 3** of this Act. It further provides that for the purpose of **Section 3-A** of the Act, the State Land should include Kahcharai and Forest land.

According to **Section 4(1-A)**, any occupant who has been in possession of the State Land before the commencement of this Act may be considered for the conversion of status from occupancy of the State Land to freehold rights in a manner so prescribed. **Section 8** vests all



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the rights, title, and interest of any State Land in the occupant which would be subject to the conditions provided under the Act.

Section 8(1)(c) postulates that the occupant must pay the prescribed price for occupancy over the State Land in a prescribed manner to the government. **Section 8(3)** reiterates that the occupant must deposit the price as determined and notified within a prescribed period. It must be understood that even though the Act was passed in 2001, **the reserve price of the land was fixed by the legislature based on the specific area as per the rates which were prevailing in the year 1990.**

About the vesting of the agricultural land, the legislation prohibits the occupants from changing the usage of such land after its ownership rights are vested in the occupant (**Section 8(A)**), however, this restriction can be uplifted by taking prior permission from the committee or any other authority by payment of a prescribed fee (**Section 8A (2)**) which is contradictory in itself. As per the **notification of the Revenue Department dated May 5, 2007**, the government in exercise of its power conferred under the Act passed the [J&K State Land \(Vesting of Ownership to the Occupants\) Rules, 2007](#) but these Rules were published unauthorizably in the official gazette of the government, without taking any approval from the legislature and these rules were in excess of the powers which were conferred by the Statute and were, thus in contradiction to the prohibition contained therein.

A Statutory Committee in accordance with **Section 12** of the Roshni Act was responsible for determining the price for vesting of freehold rights over the State Land. Further **subsection 2 of Section 12** elucidated the factors that were to be considered while fixing the price of land, including its potential value, irrigation and the availability of transport facility, and also the proximity to the urban areas or road and the market value of the land as determined for stamp duty purposes under the [Stamp Duty Act](#). But as against these statutory provisions, the **Rules 2007** provided for a differential price mechanism that was dependent on the size of the plot, final use of the land, category of the occupants, etc. and laid down various rebates on the land



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prices that were statutorily determined, thereby causing arbitrariness of process and encouraging nepotism. Further, **Rule 13(IV) of the 2007 Rules** as against the statutory prohibition under the Roshni Act provides that any land used by the occupant for agricultural purposes shall be vested in them free of cost, however a nominal fee of INR 100 would be charged per kanal for maintaining proper revenue records. The Roshni Act does not provide for any rebate, incentive, or penalty but as against that, **Rule 14 of the 2007 Rules** provides for a time and scale schedule which was incorporated for realizing the price of the land against the ownership rights bestowed upon the occupants by providing them incentives, as well as penalties wherein the **rebates ranging from 5% to 35%** were provided, thus again enabling arbitrariness and indiscretion with respect to the Act.

The **Roshni Rules 2007** provide that agricultural land can be transferred in favor of the applicant only if the said land has been in cultivation for a period not less than 3 years but fails to prescribe such period of occupation for other landholdings. The [Rules, 2007](#) are *ultra vires* to the parent Act, i.e., the [Jammu and Kashmir State Lands \(Vesting of Ownership to the Occupants\) Act, 2001](#) as they go beyond the provisions of the Parent Act.

Furthermore, the legislation impliedly provides that the valuable State Land can be held in **Public Trust** by the State and can be vested in any person who has (seemingly) trespassed thereon. The Supreme Court has held in the cases of [Sachidananda Pandey vs State of West Bengal & Ors](#) and [M. C. Mehta v. Kamal Nath and Others](#) that public interest must be given paramount consideration and further mentioned that **the State is duty-bound to protect the natural resources meant for public use** while making clear that such land cannot be converted into private ownership, but while distributing the land under the Roshni Act, **the State has bypassed the constitutional provisions of equality and the greater public good.** It must be noted that the Roshni Act, as well as the Rules [postulate an arbitrary mechanism](#) for dispossessing the public property and are completely against the directions of the Hon'ble Supreme Court. The Act and the Rules have worked **unfairly and arbitrarily** and are in **absolute violation of the primary mandate of [Article 14 of the Indian Constitution](#).** The Roshni Act, by granting private ownership over a large chunk of the State's land, has left no



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land available with the State for implementing various public projects and infrastructure such as schools, hospitals, parks, etc. Moreover, this has resulted in taking away the fundamental rights to health, education, good environment, etc. of the residents of Jammu and Kashmir, thereby **violating the right to life guaranteed under [Article 21 of the Indian Constitution](#)**.



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RECENT DEVELOPMENTS

The Hon'ble Chief Justice of the J&K High Court gave a [historic judgment](#) on **9th October 2020** which can be seen as a **major milestone in putting an end to the unbridled episode of loot of the State property by its custodians**. The High Court while declaring the Act *null and void*, has ordered a time-bound and Court-monitored CBI investigation, going by the petitioners claim that the Roshni Act worked towards facilitating the illegal transfer of State Land. The Court has further ordered to disclose the complete identities of all the beneficiaries including the police officers, bureaucrats, government officials, businessmen, and so forth, and also their relatives or any person holding [Benami](#) for them, who have inferred any advantage under the Act. In furtherance of the Court Order, [the government has released](#) the list of beneficiaries under the Act which included the names of those Kashmiri politicians who had obtained the land before the recent local election under the Act, and a few amongst those local politicians were found making hubbub about the land jihad when it was first opposed. Subsequently, the government had announced in furtherance of the judgment that it would retrieve all the land which was distributed under the Act within **six months** but has again gone back on its words by filing a **review petition with the High Court on December 6 for modification of the Judgement**.

The review petition filed with the High Court by the J&K administration is based on **two grounds- firstly**, that the Court should have demarcated a distinction between the landless cultivators and those residing in dwelling houses and the rich and influential land encroachers. **Secondly**, the CBI inquiry should be prevented into the transfer of land cases as it would cause results that are contrary to those sought by the J&K High Court. The government wants the **CBI to be more result-oriented and to focus on the powerful & wealthy individuals who defrauded the State**. The government in the review petition has also asked that the cases that are already registered with the Anti-Corruption Bureau should not be transferred to the CBI as the transfer of cases that are already at an advanced stage to the CBI would amount to unnecessary delay in booking the guilty.



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Moreover, at the time this part is being written, numerous special leave petitions (SLPs) have been filed with the Supreme Court challenging the October 9 verdict of J&K High Court by those affected by the said Order and the Apex Court has scheduled the hearing of these appeals in the last week of January. The Supreme Court has even asked the J&K High Court to review its October 2020 Judgment and has further [stated](#) that the pendency of the appeal would not hinder the matter from being reviewed by the High Court.



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CONCLUSION

The enactment of the J&K State Land (Vesting of Ownership to the Occupants) Act, 2001 along with its amendments and the J&K State Land (Vesting of Ownership to the Occupants) Rules, 2007 are [entirely illegal](#), unconstitutional, and unjustifiable, and thus *void ab initio*.

According to the Constitution of J&K (which was applicable at the time when this legislation was passed in 2001), any legislation concerning the permanent residents of the State needs to be passed by a 2/3rd majority in both houses, but the repugnant law was passed by a 'voice vote', thereby giving the right to sell the encroached government land holdings to the encroachers themselves which makes it an act that is void from the very beginning or its inception (*void ab initio*).

The Act is in clear violation of the [Public Trust Doctrine](#) as it seeks to permit the use of State land for commercial purposes and provides for private ownership instead of protecting the valuable State Land resource by the government for enjoyment by the public at large.

The Roshni Act has worked towards facilitating the illegal vesting of State Land in the hands of the powerful despite the mandate about the distribution of largess by the State. Also, the prospected aim of supporting the hydel project from the sale proceeds was merely to give semblance and propriety to the objective of the Act as it has completely failed from serving any such purpose. **It can be ascertained that the legislation was enacted without any proper analysis or evaluation of the cost benefits and even without conducting any impact assessment test but has worked quite well in achieving its *mala fide* intent.**

The grand finale is still awaited as the appeals to the Apex Court are yet to be heard and the review petition also lies pending with the J&K High Court which would help decide the fate of the Act vis-a-vis the alleged beneficiaries under it (at the time this part is being written). It would be interesting to see how CBI handles the probe and can bring out the names of the powerful and influential people involved in this sordid ploy.



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