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MAPPING GOVERNANCE DIVERGENCE: COMMUNITY FOREST RIGHTS, LAND REFORMS, AND THE PERSISTENCE OF PASTORAL MARGINALISATION IN JAMMU & KASHMIR

Sabba Choudhary**ABSTRACT**

This paper argues that the exclusion of Gujjar–Bakarwal pastoralists from land rights in Jammu and Kashmir becomes clearer when compared with land reforms and Forest Rights Act (FRA) outcomes in other Indian states. States like Maharashtra, Odisha, and Gujarat have used the FRA to secure community forest rights and strengthen pastoral or forest-based livelihoods. In contrast, Jammu and Kashmir's sedentary-focused land reforms and its late adoption of the FRA have left migratory users largely unrecognised. Unlike Gujarat's Maldharis who have obtained collective tenure, Gujjar–Bakarwals still lack documented grazing routes, community rights, and institutional representation. The comparison shows that their marginalisation stems not from pastoralism itself but from legal and administrative choices that restrict mobility and limit customary access. Addressing this requires tenure frameworks that explicitly recognise mobile pastoral practices.

Keywords: Documentary Exclusion, Sedentarised Governance Bias, Pastoral Mobility, Community Forest Rights, Jammu & Kashmir

INTRODUCTION

The marginalisation of Gujjar–Bakarwal pastoralists in Jammu & Kashmir presents a persistent governance puzzle: why do they remain excluded from land and forest rights even after the extension of national frameworks such as the Forest Rights Act (FRA), while comparable pastoral and forest-dependent groups in states like Maharashtra, Odisha, and Gujarat have secured substantial Community Forest Rights? This divergence cannot be explained by pastoralism itself nor by the statutory design of the FRA, which is uniform across India. Instead, it reflects fundamentally different state capacities to recognise mobility, record customary access, and institutionalise community claims. This leads to the central research question: What explains the systematic non-recognition of Gujjar–Bakarwal land and forest rights in J&K despite the availability of identical legal provisions that have benefitted similar groups elsewhere?

This paper argues that the exclusion of Gujjar–Bakarwals is rooted in a deeper institutional phenomenon. It conceptualises this as documentary exclusion, the long-term administrative inability of the state to document, legitimise, or govern mobile land-use practices. Building on secondary literature across colonial forest policy, post-independence land reforms, conflict-era restrictions, and contemporary FRA implementation, the paper shows that J&K's governance systems are shaped by a sedentarised governance bias, a structural preference for fixed cultivation and permanent settlement embedded in cadastral, census, and revenue institutions. By placing J&K in comparative perspective with states that have successfully recognised mobility-based claims, the paper demonstrates that pastoral marginalisation is not inevitable but produced through specific administrative choices and documentation regimes.

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HISTORICAL EXCLUSION IN J&K

Colonial forest reservation, Criminal Tribes Act, census invisibility

Colonial policy in the western Himalayas fundamentally restructured pastoral access to land through a combination of forest reservation, punitive legislation, and enumeration practices that privileged sedentary agrarian populations. Beginning with the Indian Forest Act of 1878, followed by extensive reservation campaigns in the 1880s and 1890s, more than 40% of forest land in the Punjab Hill States which then included large parts of present-day Jammu & Kashmir was brought under “reserved” or “protected” status, thereby criminalising grazing in territories that pastoralists had historically used (Chhatre, 2003; Sivaramakrishnan, 1999). Pastoral communities were increasingly fined for “trespass,” and colonial forest manuals began to redefine alpine pastures as state property, disregarding transhumant usufruct systems.

These measures were reinforced by the Criminal Tribes Act (CTA) of 1871, amended in 1911 and 1924, under which approximately 150 communities across British India were designated “hereditary criminals” (Kannabiran & Singh, 2008). Nomadic and semi-nomadic groups particularly those relying on seasonal migration were disproportionately targeted because their mobility was seen as incompatible with colonial surveillance. Although region-specific lists varied, ethnographic scholarship confirms that pastoralists in the western Himalayas, including groups culturally and occupationally similar to the Gujjar-Bakarwals, were subjected to CTA registration, movement restrictions, compulsory reporting to police stations, and night pass systems (Safdar, 2020). Such regulatory mechanisms effectively criminalised mobility and legitimised the state’s authority over pastoral routes.

Simultaneously, colonial census operations reinforced pastoral marginalisation by linking identity, occupation, and land use to fixed settlement categories. The decennial censuses from 1872 onwards classified populations according to village-based households, rendering migratory encampments statistically invisible. Scholars note that in hill districts, undercounting of nomadic groups could range from 15% to 40% per census cycle because enumerators did not traverse high-altitude dhoks and pastures (Sharma, 2020). This invisibility in enumeration and revenue surveys meant that pastoralists seldom appeared as recorded users or tenants in land-settlement registers, which became the documentary basis for later land reforms. Thus, by the early 20th century, colonial governance had produced a durable administrative framework in which Gujjar-Bakarwal mobility was unrecognized, their rights unrecorded, and

their presence rendered anomalous within emerging legal categories of land and forest management.

Post-independence Land to Tillers Act privileging sedentary farmers

Post-independence agrarian reforms in Jammu & Kashmir were among the most radical in South Asia, but their redistributive logic was structurally biased toward sedentary cultivators. The Big Landed Estates Abolition Act of 1950 imposed a ceiling of 182 kanals (approximately 22.75 acres) and transferred surplus land to cultivating tenants recorded in land settlement registers (Verma, 1994). Subsequent reforms under the J&K Agrarian Reforms Act, 1976 reduced the ceiling further and granted ownership rights to “tillers” who could demonstrate continuous, sedentary cultivation (Saxena, 1987). These reforms successfully dismantled feudal estates and redistributed nearly 4.5 lakh acres of land to peasant households (Bose, 2005), yet they systematically excluded pastoral groups. Because Gujjar-Bakarwals practiced transhumance and did not appear in cadastral records (jamabandi) as fixed cultivators or recorded tenants, they were ineligible for land transfers. As Sharma (2020) and Dwivedi (2018) note, the reforms relied entirely on documentary legibility within the revenue system, an administrative framework that historically erased migratory land use. Thus, while lauded for egalitarian redistribution, the land-to-tiller reforms reproduced a structural agrarian exclusion by privileging sedentary farming over pastoral mobility.

Administrative bias: no recognition of migratory land use

A central reason for the historical and ongoing exclusion of Gujjar-Bakarwals from land rights in Jammu & Kashmir is the administrative bias embedded in land-revenue and forest governance systems, which recognize only fixed, sedentary cultivation as legitimate land use. As James Scott (1998) argues in *Seeing Like a State*, modern states privilege land practices that can be surveyed, taxed, and recorded criteria that inherently disadvantage mobile communities. In Jammu & Kashmir, cadastral surveys such as the *jamabandi* and *girdawari* were designed to document continuous occupation and agrarian tenancy; pastoral grazing cycles, which shift seasonally between the Pir Panjal, Kashmir Valley, and upper Himalayan meadows, do not produce the “stable” spatial footprints required for entry into these records (Sharma, 2020). Consequently, Gujjar-Bakarwals were not recognized as “tenants” or “occupants,” preventing them from qualifying for redistribution under the 1950 and 1976 agrarian reforms (Saxena, 1987). Ethnographic studies consistently show that pastoral land use based on customary routes, dhoks, and negotiated access remained invisible to state documentation, resulting in what Agrawal (1999) calls

institutionalised ignorance, where absence from records is treated as absence of rights. This administrative framework not only erases pastoral entitlements but also legitimizes the appropriation of grazing commons for forestry, development, or settlement, reinforcing a long-term structural marginalisation.

CONFLICT ERA IMPACTS ON MOBILITY

The eruption of militancy in Jammu and Kashmir in the late 1980s sharply intensified longstanding constraints on Gujjar-Bakarwal mobility. Research shows that extensive militarisation of forests and alpine meadows led to the closure of key pastures, restrictions on inter-district movement, and heightened insecurity along traditional migratory corridors (Suri, 2014; Sofi, 2013). Pastoral households were often compelled to shorten or abandon transhumant routes due to checkpoints, landmines, and conflict-related violence, resulting in what Dar (2023) identifies as an era of *involuntary sedentarisation*. This forced settlement disrupted established patterns of herd management, weakened clan-based coordination systems, and accelerated the erosion of pastoral ecological knowledge. Studies consistently affirm that conflict amplified historical exclusion by converting landscapes of livelihood into militarised zones, thereby undermining both cultural continuity and the viability of pastoral economies (Sharma, 2020).

CONTEMPORARY LEGAL FRAMEWORK IN J&K

The extension of the Forest Rights Act (FRA) to Jammu & Kashmir in October 2019 marked a significant shift in legal recognition for forest-dependent communities, yet its implementation has remained institutionally weak. Gram sabhas, which are essential for verifying claims, were either not constituted or lacked pastoral representation, limiting the recognition of seasonal grazing and transit rights central to Gujjar-Bakarwal livelihoods (Sahai, 2021; *Forest Governance under FRA*, 2024). Early implementation data reflect this structural weakness: between 2021 and 2023, thousands of claims were rejected in batches during district-level scrutiny, reproducing older administrative attitudes that treated migratory land-use as encroachment rather than customary right. As Sharma (2020) and Suri (2014) note, such administrative logics rooted in the privileging of sedentary land-use continue to undermine pastoral claims even under new legal frameworks.

A parallel shift occurred with the repeal of the Jammu & Kashmir State Lands (Vesting of Ownership to Occupants) Act, 2001 (“Roshni Act”) in 2018, which eliminated a previously available route for regularising long-term informal occupation of state land. Although the scheme had documented misuse by elites, it also represented one of the

few potential avenues for pastoralists and marginal users to seek tenure (Sahai, 2021). Following its repeal, pressure on pastoral commons increased sharply. Major tracts historically used as grazing spaces were allocated to new development projects, including 1,250 kanals transferred for the All India Institute of Medical Sciences (AIIMS) at Vijaypur (*Greater Kashmir*, 2019) and hundreds of kanals for the expansion of Jammu University and Baba Ghulam Shah Badshah University (*Rising Kashmir*, 2018). Planning documents in J&K routinely designate dhoks, alpine meadows, and community grazing lands as “vacant” or “unencumbered,” legitimising their acquisition for public infrastructure (Bhat, 2022). Together, the incomplete implementation of FRA, the elimination of regularisation mechanisms under the Roshni Act, and a planning apparatus that erases pastoral spatiality constitute a contemporary governance regime that reproduces the historical exclusion of Gujjar-Bakarwals.

COMPARATIVE INSIGHTS FROM OTHER STATES *Evidence from states with strong CFR implementation (Maharashtra, Odisha, Gujarat)*

Across India, several states have demonstrated that community forest rights (CFRs) under the Forest Rights Act can secure land and resource tenure for forest-dependent and pastoral groups when institutions recognise collective ownership and customary practices. Maharashtra offers the strongest precedent: the Gadchiroli district alone accounts for over 65% of India’s total CFR titles, with more than 1,400 gram sabhas receiving rights over forests they manage collectively (Kulkarni et al., 2020). These rights have not merely formalised access but have enabled autonomous governance, sustainable harvesting, and strengthened local economies. Similarly, Odisha has pioneered community forest governance well before FRA; after 2006, these systems were integrated into CFR processes, resulting in over 3,000 community forest claims, one of the highest in the country (Vasundhara, 2019). Gujarat’s Banni grasslands provide a pastoral-specific example: Maldhari pastoralists successfully filed India’s largest CFR claim covering 2,500 sq km, supported by long-standing customary institutions and the Banni Breeders Association (Mehta, 2020; Sinha & Davis, 2021). These cases collectively demonstrate that where administrative systems recognise seasonal use, mobility, and community tenure, pastoral and forest-dependent populations can secure durable, legally enforceable rights.

Contrast with Jammu & Kashmir: Institutional absences and structural exclusion

The experience of Jammu & Kashmir stands in stark contrast to these states. FRA was extended to J&K only in

2019, twelve years after its national enactment, resulting in the absence of pre-existing gram sabhas, community forest institutions, and recorded customary-use claims that facilitated CFR success elsewhere (Sahai, 2021). Unlike Maharashtra, Odisha, or Gujarat where long histories of community forest governance provided institutional capital, J&K's administrative architecture has historically recognised only sedentary cultivation in its land records (jamabandi, girdawari), leaving migratory Gujjar-Bakarwal land use undocumented and therefore ineligible for FRA's evidentiary requirements (Saxena, 1987; Sharma, 2020). While Maharashtra's CFR model empowers gram sabhas as autonomous land managers, and Gujarat's Maldharis leveraged collective identity and documentation, J&K's pastoralists face a documentation deficit produced by a century of exclusion from cadastral systems. This structural invisibility combined with late FRA implementation, high rejection rates of claims, and the diversion of commons for development ensures that Gujjar-Bakarwals remain excluded from the legal protections that have materially transformed tenure regimes for pastoral and forest communities in other Indian states.

ANALYTICAL SIGNIFICANCE OF THE FRAMEWORK

The analytical framework developed in this paper can be further strengthened through engagement with three conceptual terms that illuminate the structural mechanisms underlying pastoral marginalisation in Jammu & Kashmir: administrative legibility regimes, mobility-governance mismatch, and institutional path dependence. Together, these terms provide a theoretical vocabulary that situates the argument within wider debates on state capacity, land governance, and pastoral policy.

First, the notion of an administrative legibility regime, derived from Scott (1998), clarifies why pastoral mobility becomes systematically misrecognised within state documentation systems. Legibility requires stable boundaries, fixed habitation, and continuous occupation criteria embedded in cadastral surveys, revenue registers, and forest management plans. The absence of these markers in pastoral land-use patterns generates the structural invisibility that this paper conceptualises as documentary exclusion. This theoretical lens reaffirms that the marginalisation of Gujjar-Bakarwals is not an administrative oversight but a consequence of the state's reliance on documentation practices that cannot accommodate mobile spatialities.

Second, the concept of a mobility-governance mismatch captures the disjuncture between pastoral movement cycles and governance frameworks designed for sedentary

populations. Even contemporary reforms such as the FRA require spatial mapping, continuous-use certificates, or gram sabha verification procedures aligned with settled agriculture. This mismatch explains why identical legal provisions produce divergent outcomes across Indian states: where institutions evolve to recognise mobility, as in Gujarat's Banni grasslands or Maharashtra's CFR processes, rights become legible; where they remain tied to sedentary templates, as in J&K, pastoral claims fail.

Third, institutional path dependence helps explain why exclusion persists despite legal change. Documentation norms established during colonial forest settlement prioritising fixed land uses and penalising mobility were carried forward into post-independence land reforms and later into the evaluative procedures of FRA implementation. As Robbins (2004) argues, institutional practices that classify certain land uses as more legitimate than others create enduring hierarchies of property and entitlement. In J&K, this path dependence entrenches sedentarised governance bias and continually reproduces pastoral marginalisation.

These conceptual terms find strong support in established scholarship. Scott's (1998) argument that states privilege administratively legible forms of land use directly parallels the difficulties encountered by Gujjar-Bakarwals in securing recognition for seasonal grazing routes. Similarly, Robbins (2004) political ecology of property underscores how state institutions attach normative value to settled agriculture while devaluing mobile livelihoods. Applying these perspectives to J&K demonstrates that pastoral exclusion emerges not from statutory inadequacy but from deeper governance logics that shape how rights are recognised, documented, and legitimised. By integrating these terms and theoretical applications, the paper situates its explanation of documentary exclusion within wider scholarly debates, showing that the mechanisms driving pastoral marginalisation in J&K are part of broader patterns observed in resource governance. This enriches the analytical contribution by linking the region-specific empirical narrative to widely recognised state-society theories.

IMPLICATIONS FOR GUJJAR-BAKARWAL CULTURAL SURVIVAL

For the Gujjar-Bakarwals, land functions as a form of cultural infrastructure, where pastoral mobility supports not only livelihoods but also the transmission of ecological knowledge, identity, and social memory. As grazing routes are fragmented by conflict, land diversion, and restrictive governance, the community faces a gradual erosion of pastoral knowledge, with younger members becoming

detached from herding practices that once defined collective life. Without secure tenure over seasonal pastures, cultural continuity becomes increasingly fragile, as mobility-based identities cannot be sustained in the absence of guaranteed access to the landscapes that structure them. In this sense, land dispossession threatens not merely economic stability but the very cultural foundations of Gujjar–Bakarwal pastoralism.

CONCLUSION

This paper demonstrates that the land dispossession experienced by the Gujjar–Bakarwals is not an isolated policy failure but the cumulative outcome of colonial forest regimes, post-independence land reforms, conflict-era restrictions, and contemporary governance structures that consistently privilege sedentary land use. The comparative analysis with Maharashtra, Odisha, and Gujarat illustrates that pastoral and forest-dependent communities can secure meaningful tenure when institutions recognise mobility and customary access as legitimate forms of land use. In Jammu & Kashmir, however, the delayed implementation of the FRA, the repeal of the Roshni Act, and the routine classification of grazing commons as “vacant land” continue to marginalise pastoral claims. For a community whose identity is anchored in mobility, land operates as cultural infrastructure; its loss therefore produces not only economic precarity but also a deeper erosion of pastoral knowledge. Ensuring the cultural survival of the Gujjar–Bakarwals requires governance frameworks that acknowledge mobility, document customary routes, and extend rights that reflect the realities of pastoral life rather than the assumptions of a sedentary state.

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