



KAMARAJ IAS ACADEMY
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Delimitation in Jammu and Kashmir

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Why is in news? The Supreme Court recently dismissed a plea challenging the Centre's decision to constitute a Delimitation Commission for the Union Territory of [Jammu](#) and Kashmir under provisions of the Delimitation Act, 2002

About Delimitation

Delimitation is the act of redrawing boundaries of an Assembly or Lok Sabha seat to represent changes in population over time.

Under Article 82, Parliament is to enact a Delimitation Act after every Census. Once the Act is in force, the Union government sets up the Delimitation Commission.

The objective is to redraw boundaries (based on the data of the last Census) in a way so that the population of all seats, as far as practicable, be the same throughout the State.

Aside from changing the limits of a constituency, the process may result in change in the number of seats in a state.

About Delimitation Commission

Delimitation is carried out by an independent Delimitation Commission, appointed by the Government of India under provisions of the Delimitation Commission Act.

The Delimitation Commission is appointed by the President of India and works in collaboration with the Election Commission of India.

It is composed of the following: a retired Supreme Court judge, the Chief Election Commissioner of India and respective State Election Commissioners.

The Delimitation Commission is to work without any executive influence. The Constitution mandates that the Commission's orders are final and cannot be questioned before any court as it would hold up an election indefinitely.

Powers of Delimitation Commission

The Commission is supposed to determine the number and boundaries of constituencies in a way that the population of all seats, so far as practicable, is the same.

The Commission is also tasked with identifying seats reserved for Scheduled Castes and Scheduled Tribes.

The draft proposals of the Delimitation Commission are published for public feedback. The Commission also holds public sittings.

After hearing the public, it considers objections and suggestions, and carries out changes, if any, in the draft proposal. The final order is published in the Gazette of India and the State Gazette concerned and comes into force

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on a date specified by the President.

History of delimitation Exercise

In the history of the Indian republic, Delimitation Commissions have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002. There was no delimitation after the 1981, 1991 and 2001 Censuses.

However, the 2002 Act did not make any changes in total Lok Sabha seats or their apportionment between various states. It also left out a few states including Assam, Arunachal Pradesh, Nagaland and Manipur from the exercise due to “security risks.”

The central government reconstituted the Delimitation Commission for these four states as well as the union territory of Jammu and Kashmir on 6 March 2020.

Delimitation Commission for Jammu and Kashmir

Delimitation exercises in J&K in the past have been slightly different from those in the rest of the country because of the region’s special status — which was scrapped by the Centre in August 2019

Delimitation became necessary when the [Jammu](#) and Kashmir Reorganisation Act, 2019 increased the number of seats in the Assembly.

The erstwhile J&K state had 111 seats — 46 in Kashmir, 37 in Jammu, and four in Ladakh — plus 24 seats reserved for Pakistan-occupied Kashmir.

When Ladakh was carved out as a Union Territory, J&K was left with 107 seats, including the 24 for PoK. The Reorganisation Act increased the seats to 114 — 90 for Jammu & Kashmir, besides the 24 reserved for PoK.

In the erstwhile state, delimitation of parliamentary constituencies was governed by the Constitution of India and that of Assembly seats was carried out by the then state government under the Jammu and Kashmir Representation of the People Act, 1957.

After abrogation of J&K’s special status in 2019, the delimitation of both Assembly and parliamentary seats is governed by the Constitution.

The Delimitation Commission was set up on March 6, 2020 . Headed by retired Supreme Court Justice Ranjana Prakash Desai, it has the Chief Election Commissioner and J&K’s Chief Electoral Officer as members, and J&K’s five MPs as associate members.

The time given to the panel, initially one year, was extended several times as the National Conference’s three MPs initially boycotted its proceedings

The first draft recommendations on January 2022 suggested an increase of six Assembly seats for Jammu and one for Kashmir; on February 2022, it submitted its second draft report.

Recent Supreme Court verdict

The petitioners had argued that delimitation cannot happen on the basis of the 2011 Census but must be carried out as per the 2001 Census or await “the first census after the year 2026”.

They cited the Delimitation Act, 2002, which says the “Commission shall readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year [2001]”.

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Rejecting the contention, the bench noted that “what is important to note is that by virtue of the J&K Reorganisation Act, the year 2001 stands substituted by the year 2011 in relation to the Legislative Assembly of the Union Territory of J&K”.

The court ruled that the Delimitation Commission established under the Order dated 6th March 2020 had to undertake the exercise of delimitation or readjustment on the basis of the census figures of 2011 as the earlier exercise of delimitation of the constituencies of the erstwhile State was not made on the basis of the census figures of 2011

On the legality of the Centre setting up a Delimitation Commission by notification dated March 6, 2020, the bench said “the J&K Reorganisation Act, which created the two new Union territories, assigns the role of readjustment of constituencies to the Delimitation Commission under the Delimitation Act, 2002

Article 4 of the Constitution permits the Parliament to incorporate such provisions in the law made in accordance with Article 3 for the formation of new States and Union territories, which may be necessary to give effect to the provisions of the law. Such a law may also contain provisions as to representations in Parliament and in the Legislature of the State or States affected by such law

Therefore, such law which is made under Article 3 can always provide for readjustment of the Constituencies in the newly constituted States or Union territories through the Delimitation Commission.

Hence the court rejected the petition by saying that there is no illegality associated with the establishment of the Delimitation Commission under the impugned Order dated 6th March 2022