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# EMINENT DOMAIN AND THE STRUGGLE FOR LAND JUSTICE IN GORKHALAND WITH LESSONS FROM BODOLAND, JHARKHAND AND TELANGANA

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## ABSTRACT

The legitimacy of the State in a democracy like India rests upon its ability to protect the natural faculties and property rights of its citizens. Yet, this protective role is inherently conflicted by the State's power of eminent domain, through which private property may be compulsorily acquired for public purposes. This paper examines this tension within the context of **Gorkhaland in North Bengal**, where land acquisition policies intersect with long-standing demands for cultural autonomy, tribal protection, and self-governance. Focusing on the 2025 West Bengal Gazette Notification mandating the diversion of 30% of plantation land for non-plantation uses, the study highlights how development-oriented policies disproportionately affect **indigenous tea garden labourers** and **tribal communities** who lack formal land titles due to leased land arrangements. Despite statutory safeguards under Article 300A of the Constitution, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the West Bengal Land Reforms Act, 1955, affected populations often remain excluded from compensation, rehabilitation, and participatory consent mechanisms.

Through a comparative analysis of land governance models in Bodoland, Jharkhand, and Telangana, the paper demonstrates how varying degrees of statutory protection, constitutional recognition, and political autonomy shape outcomes of land acquisition. While Bodoland illustrates the potential of Sixth Schedule institutions in safeguarding indigenous land rights, Jharkhand underscores the importance of strong tenancy laws rooted in cultural identity. Telangana, conversely, serves as a cautionary example where political autonomy without community consent facilitates arbitrary land use. Drawing from these models, the paper proposes a hybrid framework for Gorkhaland that integrates constitutional recognition, state-specific statutory protections, community consent, and fair compensation. Such a model seeks to reconcile development imperatives with the preservation of indigenous land, identity, and autonomy.

## Introduction

The protection of natural faculties of men is the first object of government.<sup>1</sup> From the protection of different and unequal faculties of acquiring property, the rights of property originate.<sup>2</sup> This idea that the legitimacy of the Government rests upon its ability to protect the rights of its citizens forms the very basis of its constitutional validity. However, the same State that aims to protect such rights (including the right to property), also claims to contain the power to take it away, under the garb of public purposes, through the principle of Eminent Domain. This tension between individual protection and expropriation forms the core of Indian property disputes. Historically, the State's use of Eminent Domains has shown evidence of how cultural autonomy and identity exist through regional land ownership.

The aforementioned tension is prominent in the northern part of West Bengal, specifically the Gorkhaland region. Here, the State's authority to acquire or divert land utilisation for public purposes contradicts the long-standing demand for self-governance and protection of tribal occupation. While this land has historically been used for tea and timber cultivation, the Government has recently made policies that require its use for other purposes. The Bengal Government, on 11<sup>th</sup> February, released a Gazette Notification requiring 30% of plantation land to be used for non-plantation purposes, such as tourism and recreational sites.<sup>3</sup> While intended to promote economic development, this policy has reignited threats to indigenous settlements. The history of the region has provided evidence that unskilled labour and tribal citizens who find livelihood and residence through such plantations have been forced to be displaced, while land acquired has been transferred by the Government to newer private entities for township and infrastructural development.<sup>4</sup>

Such acts or policies are protected under the Doctrine of Eminent Domain as enumerated under Article 300A of the Constitution, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and West Bengal Law Reforms Act, 1955. However, it has produced deep socio-political consequences in the areas of Terai and

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<sup>1</sup> *The federalist papers no. 10 Avalon Project - Documents in Law, History and Diplomacy*. Available at: [https://avalon.law.yale.edu/18th\\_century/fed10.asp](https://avalon.law.yale.edu/18th_century/fed10.asp) (Accessed: 19 December 2025).

<sup>2</sup> Ibid.

<sup>3</sup> Kolkata Gazette Notification, Land & Land Reforms (11 February 2025).

<sup>4</sup> Bista, R. (2025) *Opinion: 30% tea land diversion existential threat to indigenous communities of Darjeeling Hills, terai, dooars, Down To Earth*. Available at: <https://www.downtoearth.org.in/environment/opinion-30-tea-land-diversion-existential-threat-to-indigenous-communities-of-darjeeling-hills-terai-dooars> (Accessed: 19 December 2025).

Dooars, resulting in the displacement of the indigenous population with inappropriate rehabilitation.<sup>5</sup> This problem is exacerbated by the fact that the majority of these plantations and settlement areas are not privately owned but leased by the Government. This therefore, leaves workers and residents without any proper legal title and subsequently any protection during acquisition.

This paper aims to examine how Eminent Domain affects land and autonomy in Gorkhaland, comparing it with Bodoland, Jharkhand and Telangana land disputes. It seeks to propose a hybrid model combining approaches from the three cases to provide a cohesive and stringent approach that allows for statutory protection, community consent and fair compensation.

### **Legal Framework for Eminent Domain in India**

The right to hold property was originally a fundamental right under Article 19(1)(f) and Article 31 of the Indian Constitution.<sup>6</sup> However, the 44<sup>th</sup> amendment<sup>7</sup> repealed these provisions, reinstating this right as constitutional and not a part of the basic structure.<sup>8</sup>

Article 300A of the Constitution protects individual property; however, it is subject to the authority of the law.<sup>9</sup> Article 31A further limits this right, allowing the State to acquire the property, its possession or any other related right for public purposes.<sup>10</sup>

The Doctrine of Eminent Domain empowers the State to compulsorily acquire private property for public purposes, using its sovereign power over the territories under its jurisdiction.<sup>11</sup> This entails that the State is the ultimate owner of all property within its territory, and it can acquire rights of such property to serve the general public, however remotely. Additionally, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 further codifies the State's power to acquire land owned by private individuals for

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<sup>5</sup> SNS, "Darjeeling MP Raises Bengal's Tea Land Policy in Parliament" *thestatesman* (March 12, 2025) <<https://www.thestatesman.com/bengal/darjeeling-mp-raises-bengals-tea-land-policy-in-parliament-1503407125.html>> accessed October 27, 2025.

<sup>6</sup> The Constitution of India, art. 19 (1)(f) & art 31, repealed 44<sup>th</sup> Amendment, 1978.

<sup>7</sup> The Constitution (44<sup>th</sup> Amendment) Act, 1978.

<sup>8</sup> *Bishambar v State of Uttar Pradesh*, [1982] AIR SC 33.

<sup>9</sup> The Constitution of India, art. 300A.

<sup>10</sup> The Constitution of India, art. 31A.

<sup>11</sup> "Definition of Eminent Domain" <<https://www.merriam-webster.com/dictionary/eminant%20domain>> accessed October 27, 2025.

purposes enabling public good.<sup>12</sup> The Act also enlists procedures to make good losses suffered by individuals through such acquisition, which include compensation, rehabilitation and resettlement.

The West Bengal Land Reforms Act, 1955, provides the West Bengal Government the power to reclaim possession and control of land that has been leased to private individuals.<sup>13</sup> Under this provision, the Government released the 2025 Gazette Notification requiring such leaseholders to give up 30% of the plantation land held.<sup>14</sup> These lands have thus been given to freeholders to be used for townships and tourism, proposed to promote regional developments.

### **The Current Scenario in Gorkhaland, and the Threat it Poses**

There have been instances of riots caused by the displacement of “adivasis”, “Gorkhas” and other tribal groups in North Bengal when tea plantations have been acquired by the Government for infrastructural development purposes. The Chandmani incident of 2003 epitomises the effects of such policies. Around 1500 tribals lost their livelihood when the tea estate was acquired by the State, and further transferred to a private entity for creation of a township.<sup>15</sup> While leaseholders were compensated, the resident labourers who found livelihood in the area for generations were displaced without any compensation or alternate employment. Their protests were met with police brutality, which led to casualties and subsequently forced displacement.<sup>16</sup>

According to the Tea Board of India, there are currently 449 operational tea gardens West Bengal. These gardens employ roughly 2.39 lakh labourers, 80% of whom are women.<sup>17</sup> The notification issued in February 2025, while designed to aid the State’s financial recovery, threatens to displace these communities. While the labourers were given housing in the territory, they do not possess any land rights, therefore falling outside the scope of rehabilitation

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<sup>12</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s2.

<sup>13</sup> The West Bengal Land Reforms Act, s55.

<sup>14</sup> Kolkata Gazette Notification, Land & Land Reforms, 11 February 2025.

<sup>15</sup> Bureau O, “Chandmoni Tea Uprooted for Siliguri’s First Township” *Business Standard* (January 4, 2004) <[https://www.business-standard.com/article/companies/chandmoni-tea-uprooted-for-siliguri-s-first-township-104010501098\\_1.html](https://www.business-standard.com/article/companies/chandmoni-tea-uprooted-for-siliguri-s-first-township-104010501098_1.html)> accessed October 27, 2025.

<sup>16</sup> “How Are You Chandmani, after the ‘Change’? At Sanhati” <<https://sanhati.com/excerpted/377/>> accessed October 27, 2025.

<sup>17</sup> “Area” <<https://www.teaboard.gov.in/TEABOARDCSM/MzMxMg==>> accessed October 27, 2025.

under the LARR Act.<sup>18</sup> Moreover, since consent is not a requirement in land acquisition cases of leased Government land, affected communities have no procedural discourse. The Gorkhaland Territorial Administration, which was formed to manage the territory of Dooars and Terai, lack constitutional backing in the sixth schedule, thus having no say in such acquisitions.<sup>19</sup> It is, therefore, crucial to draw insights from comparable large-scale acquisitions from various territories of the country to enable fair compensation and rehabilitation of dwellers of Gorkhaland while fostering overall industrial and infrastructural development in the North Bengal Region.

### Drawing Inspiration from Comparable Indian Regions

The Bodoland Territorial Region, administered by the Sixth Schedule of the Constitution through the Bodoland Territorial Council, enables land rights and self-governance.<sup>20</sup> The 2003 Bodoland Memorandum explicitly states that the object of formation of the council was to protect the socio-cultural and ethnic identities of the indigenous residents and rehabilitate individuals affected by ethnic riots.<sup>21</sup> The BTC possessed legislative competence to regulate settlement rights, transfer and property inheritance rights, in the territory of Bodoland, as opposed to the nationwide acquisition and inheritance legislation.<sup>22</sup> There have also been recent policies formulated in such areas that promote land governance reform. Recent initiatives, such as Mission Bwiswmuthi 2.0, aim to promote settlement rights of the inhabitants of the region. This particular policy, with the aid of the mentioned council, works to provide land rights to 47,000 indigenous residents, many of whom are small tea growers.<sup>23</sup>

However, concerns, as claimed by the Bodoland Students Association, remain regarding illegal transfer of property in contravention of the constitutional provisions.<sup>24</sup> Nonetheless, it provides

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<sup>18</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

<sup>19</sup> The Constitution of India, Sixth Schedule.

<sup>20</sup> The Constitution of India, Sixth Schedule.

<sup>21</sup> “Memorandum of Settlement on Bodoland Territorial Council” (PA-X) <<https://www.peaceagreements.org/agreements/652/>> accessed October 27, 2025.

<sup>22</sup> “Welcome to Bodoland Territorial Council” (Portal) <<https://bodoland.gov.in/aboutbtc>> accessed October 27, 2025.

<sup>23</sup> Mazumdar P, “Mission Bwiswmuthi 2.0 Extends Land Rights to over 47,000 Indigenous Families in Bodoland” *The New Indian Express* (June 15, 2025) <<https://www.newindianexpress.com/nation/2025/Jun/15/mission-bwiswmuthi-20-extends-land-rights-to-over-47000-indigenous-families-in-bodoland>> accessed October 27, 2025.

<sup>24</sup> Boro KC, “AATSU Condemns Land Transfers in Assam; Alleges Violation of Tribal Rights, Constitutional Safeguards” *India Today NE* (June 9, 2025) <<https://www.indiatodayne.in/assam/story/aatsu-protests-illegal-tribal-land-transfers-assam-government-councils-1226517-2025-06-09>> accessed October 27, 2025.

a framework that could be adopted to enable land rights to individuals that resided in tea gardens for generations but possess no land rights due to pre- and post-constitutional acts of the State. This legal framework provided for a unique model for a council to be formed, which could be identified in the sixth schedule of the Constitution, thus possessing autonomous control over tribal land in Gorkhaland, coupled with provisional protection of tribal land-acquisition.

In Jharkhand, the link between land and cultural identity is protected through two statutes, the Chota Nagpur Tenancy Act, 1908 and the Santhal Parganas Tenancy Act, 1949. These laws work together to prohibit the transfer of Adivasi-owned lands to non-Adivasis and recognise tribal holdings such as *khunkatti*.<sup>25</sup> These statutes work to protect indigenous rights against arbitrary acquisition and form the backbone of Jharkhand's claim to land justice. These have also been strengthened through judicial interpretation. For instance, the Jharkhand High Court recently held that Section 23 of the CNT Act does not automatically transfer the land of *raiyat* or tenant to the ex-landlord on the former's death.<sup>26</sup> This helped establish the principle that land rights cannot be transferred in the state without due process. However, a complete imitation of this approach may not be reliable, since there have been claims of illegal transfers and encroachment of such land.<sup>27</sup> Additionally, there is a plea in the Supreme Court by a Jharkhand resident claiming these statutes have caused hindrances in the overall development of the State.<sup>28</sup> Although implementation remains uneven, this approach helps establish the relevance of statutory protections in fostering community consent and recognising collective occupancy.

Political autonomy, as manifested in the case of Telangana, lacking safeguards, procedures and a nuance of community consent, produces only a pretence of self-rule. A Supreme Court Case holding that allocating Telangana land to MPs and MLAs of the region at discounted prices was "arbitrary, irrational and discriminatory", thus being violative of Article 14 of the Constitution.<sup>29</sup> Simultaneously, the Telangana Government also proposed to use land allocated for industrial purposes for commercial and residential operations with a motive to raise funds

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<sup>25</sup> Jaya Kumari, "Owning the Land: Significance of Tenancy Laws in Jharkhand", (2025) 24, No. 1.

<sup>26</sup> Kunti Devi & Ors. vs. State of Jharkhand, (2023), INJHHC.

<sup>27</sup> IANS, "Luring Investors, Battling Land Acquisition Go Together in Jharkhand" *Business Standard* (August 5, 2016) <[https://www.business-standard.com/article/news-ians/luring-investors-battling-land-acquisition-go-together-in-jharkhand-116080500459\\_1.html](https://www.business-standard.com/article/news-ians/luring-investors-battling-land-acquisition-go-together-in-jharkhand-116080500459_1.html)> accessed October 27, 2025.

<sup>28</sup> ANI, "Plea in SC Seeks Abolition of Acts Which Restrict Sale of Tribal Land to Non-Tribes in Jharkhand" *Lokmat Times* (June 1, 2022) <<https://www.lokmatimes.com/national/plea-in-sc-seeks-abolition-of-acts-which-restrict-sale-of-tribal-land-to-non-tribes-in-jharkhand/>> accessed October 27, 2025.

<sup>29</sup> State of Andhra Pradesh v Dr. Rao, V.B.J. Chelikani, 2024 SCC OnLine SC 3432.

of approximately 10,000 crores for State operations.<sup>30</sup> This gives evidence as to how, while a new state may give political autonomy, it lacks aspects of community consent and respect for indigenous land owners. For Gorkhaland, Telangana serves as a cautionary precedent, where inspiration can be drawn to enable checks and balances through the community, or its representatives, to disable any scope of arbitrary policy implementation in the garb of land autonomy.

## **Solution and Conclusion**

The case of Gorkhaland highlights a major paradox in India's federal structure. Regions with strong ethnic and cultural identities are vulnerable to loss of identity through acts of state expropriation when property rights of such regions are not constitutionally identified or do not come under the ambit of relevant statutes. While Article 300A of the Constitution protects individuals against deprivation except by authority of law, its implementation fails if land tenure systems themselves do not confer the required rights. This may entail denying ownership to occupants, which is the case of dwellers in the Gorkhaland region. The experiences of Bodoland, Jharkhand and Telangana, as enumerated, give evidence as to how statutory and institutional autonomy must work in collaboration to resolve this conflict between eminent domain and regional identity.

Drawing from Bodoland, Gorkhaland would benefit from the inclusion of a council in relevant schedules or entries in the Constitution, or passing of a statutory authority enabling autonomy, protecting settlers' rights while balancing them with public interest. From Jharkhand, it may draw inspiration to instil state-specific statutes that protect the land from being exploited and misused by non-ethnic individuals, or if any such acquisition is made, fair compensation and due process is ensured to previous dwellers and labourers. This may be further backed by acts of community consent, recognising occupational rights. Telangana's record, however, provides a warning, showing how statutory provisions without procedural checks may merely create a state benefiting the elite while ignoring the distressed.

The region, therefore, needs a framework that includes a constitutionally recognised council, state-specific statutes, community consent and a consultation mechanism. This could help

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<sup>30</sup> Vadlapatla S, "Telangana Govt Mulls Land Conversion Use to Gather Resources" *Times Of India* (July 6, 2024) <<https://timesofindia.indiatimes.com/city/hyderabad/telangana-government-considers-land-conversion-for-resource-generation/articleshow/111525015.cms>> accessed October 27, 2025.

reconcile eminent domain or the greater good with the principle of individual autonomy and cultural protection. Only by embedding such a procedure before the acquisition of land for public purposes can Gorkhaland achieve self-determination while allowing overall development and growth in the region.