
INALIENABILITY TO ALIENATION: MINING AND THE LEGAL PARADOX OF TRIBAL LAND TRANSFERS IN JHARKHAND

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Definition and Scope

The resource-rich Chhotanagpur Plateau is home to Jharkhand, a region with substantial coal, iron ore, bauxite, and other mineral deposits. In 1993, after the National Mineral Policy liberalized the mining industry, Jharkhand became the center for industrial growth and extraction of minerals.¹ This development led to frictions in the domain of property law, especially when it came to the land rights of Adivasi groups like the Mundas, Santhals, Hos, and Gonds. Chotanagpur Tenancy Act of 1908 and the Santhals Parganas Tenancy Act of 1949 prohibit non-tribals from alienating tribal territory provided as a legal safeguard to protect their connection with land.²

While tenancy laws recognize the inalienability of tribal land, state acquisition under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 operates as a legal loophole, extinguishing customary title and converting land into a transferable commodity for commercial purposes. This not only raises the issue of transfer of property in Scheduled Areas but also raises concerns under Article 300A, the fifth schedule, and PESA, 1996.

The central argument focuses on the fact that the compulsory and mandatory acquisition represents a structural contradiction; it simultaneously acknowledges Adivasi land as inalienable under tenancy regimes while enabling its alienation through sovereign power. The expression “tribe” falls short of a precise legal definition; its theoretical framework has been shaped through anthropological perspective and constitutional recognition. The Indian

¹Mathew Areeparampil, Displacement Due to Mining in Jharkhand, 31 *Econ. & Pol. Wkly.* 1524 (1996), <https://www.jstor.org/stable/4404276>.

²Ajitha Susan George, Laws Related to Mining in Jharkhand, 40 *Econ. & Pol. Wkly.* 4455 (2005), <https://www.jstor.org/stable/4417265>.

Constitution acknowledges the existence of Scheduled Tribes under Article 366(25) and the Fifth Schedule. The tribal status within the Indian legal framework is indicated by certain socio-cultural and geographical characteristics such as isolation, distinct dialect, kinship-based social organization, and adherence to traditional belief systems.³

The tribal communities of Jharkhand have repeatedly asserted that their collective identity is connected to the natural resources that act as the foundation for their economic system, cultural practices, and social governance structures. These communities have also taken the initiative to engage with their environment through modes of resource utilization, ensuring renewability and intergenerational equity. Such practices reflect a normative framework which forms an essential component of their broader claim to autonomy and recognition within the constitutional and human rights discourse.⁴ The colonial Land Acquisition Act, 1894 allowed the state to acquire private land for “public purpose”, which recognized individual ownership and simultaneously empowered the state to control the land. This law was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) which tries to ensure fairer process and compensation.⁵ Although the Constitutional protection under Schedule V prohibits the transfer of tribal land to non-tribals, it still allows such transfers due to the dilution of this provision because of legal loopholes and administrative corruption.⁶ There has been a limited exploration of how the concept of eminent domain and ownership transfer has enabled the alienation of Adivasi land, and this paper will seek to examine how property law is interlinked to acquisition regimes arguing alienation of tribal land is a structural flaw of the law.

Current Legal Dynamics

PESA is a significant constitutional measure which explicitly prohibits the state legislature from enacting any law which is inconsistent with customary law, social, and religious practices. Furthermore, it empowers the Gram Sabha as the primary institution of self-governance and authority to safeguard the cultural and social identity of the Scheduled Tribes. This Act makes the prior approval and consultation of the Gram Sabha mandatory for any land acquisition or

³ K. Sanjana, Forest Dwellers as Deemed Homeless, 4(1) *JILS* 130 (2012–13).

⁴ Shubhra Shilee & Shubhra Shailee, Indigenous Identity of Tribals in Jharkhand, 32 *Indian Anthropologist* 75 (2002), <https://www.jstor.org/stable/41919910>.

⁵ Subhram Rajkhowa & Dristirupa Patgiri, Development-Induced Displacement and Its Impact on the Tribal Population of Assam, 14 *RMLNLU J.* 87 (2022).

⁶ Kailash Sarap, Erosion of Access to Resource, Poverty and Public Action in the Tribal Belt of Central India, 66 *Sociological Bull.* 22 (2017), <https://www.jstor.org/stable/26625662>.

implementation of rehabilitation measures undertaken by the government for mining purposes. Additionally, it confers power on the local governing bodies to prevent alienation of land in a scheduled area and to take appropriate measures to restore the land alienated unlawfully. Similarly, the Forest Rights Act also functions analogously with PESA, vesting rights on the Gram Sabha with powers to determine the individual and community forest rights. It also stipulates the prior consent of the Gram Sabha and provides penalty provisions for any resettlement of forest dwellers.⁷

The LARR Act is the principal legislation which governs land acquisition and provides safeguards for Adivasi communities by embedding the procedural doctrine of Free, Prior, and Informed Consent (FPIC) for affected communities. The prior consent of the local population and the Gram Sabha is a mandatory obligation for land acquisition for public-private partnerships as well as private projects. Furthermore, it introduces the requirement of Social Impact Assessment (SIA) in consultation with the affected community to evaluate the economic, social, and cultural impacts of the land acquisition proposed. However, this advanced framework is undermined by the Coal Bearing Areas Act, 1957, which remains exempt from the safeguards provided by the LARR Act, allowing the state and the private corporations to overlook the compensatory mechanisms mandated.⁸ This reveals that the power of the eminent domain contradicts the spirit of the body of the legislation affecting significant local governance and decentralization of power.⁹

Legal Subversion

The CNT Act and the SPT Act were initially enacted as a protective measure against alienation and expropriation of tribal land by non-tribals.¹⁰ In 2016, both the Acts were amended, resulting in significantly undermining the protection provided by the same. The CNT Act post-amendment authorized the use of tribal land for development projects and restricted the mechanism of compensation in cases of alienation. Similarly, the tribals under the amended SPT Act were permitted to change the land-use pattern without affecting the ownership status.

⁷ Preeti Sampat, Limits to Absolute Power: Eminent Domain and the Right to Land in India, 48 *Econ. & Pol. Wkly.* 40 (2013), <https://www.jstor.org/stable/23527343>.

⁸ Rudresh Mandal & Sathvik Chandrasekhar, Examining Violation of Adivasi Land Rights by the Mining Industry: A Case for Crossing the Fence from Anthropocentric to Ecocentric Paradigms, 6(2) *NLIU L. Rev.* 66 (2017).

⁹ Preeti Sampat, Limits to Absolute Power: Eminent Domain and the Right to Land in India, 48 *Econ. & Pol. Wkly.* 40 (2013), <https://www.jstor.org/stable/23527343>.

¹⁰ Ajitha Susan George, Laws Related to Mining in Jharkhand, 40 *Econ. & Pol. Wkly.* 4455 (2005), <https://www.jstor.org/stable/4417265>.

These amendments are a regressive transformation and undermine the core purpose of the tenancy laws, permitting the state to achieve alienation without explicit acquisition and formally transferring ownership.¹¹ This exposes a concerning pattern when the tenancy laws are read alongside the LARR since while the latter propagates the principle of FPIC, the former makes a calculative move by undermining the same. The state, through this reasserts its eminent domain by establishing a circuitous cycle of land acquisition under the pretext of developmental necessity.

A study conducted by the Centre for Policy Research, New Delhi, examined the Supreme Court decisions on land acquisition cases since independence and observed a pattern that in most of the cases under LARR Act, the Court prioritized development over displacement concerns, thereby undermining the very objective of this Act which was implemented to ensure transparency and protect the proprietary interests of the owners, specifically the Adivasi communities.¹² The coherence in the Court's reasoning in *Samatha* and *Orissa Mining Corporation* sharply contrasts with the cases discussing state acquisition. In the case of *Orissa Mining*, the Court restrained a corporation that violated rights under the V Schedule and PESA. Similarly, *Samatha* held that the land was the core of the identity of the tribals and not a mere economic resource. Despite judicial recognition, constitutional protections are illusory in reality. Since the right to property is no longer a fundamental right, it strengthens the state's power to acquire land while weakening the control of the Adivasi communities over their land.¹³

Paradox of Protection

The frameworks of PESA Act, 1996 and the FRA, 2006, empower the Gram Sabhas to safeguard the community's resources and especially land. However, their power and authority are quite illusory in practice. Most of the Memorandum of Understanding (MoUs) that the government agencies enter into with the Multinational corporations for mining and other development projects lack the absence of prior consultation or informing the affected tribal communities. This violates the very basic purpose of this act. The Vedanta Mining Project

¹¹ Prabhat Kumar, *The Issue of Adivasi Rights: Amendments in the CNT and SPT Acts of Jharkhand*, 77 *Proc. Indian Hist. Cong.* 1001 (2016), <https://www.jstor.org/stable/26552735>.

¹² Centre for Policy Research, *Land Acquisition in India: A Review of Supreme Court Cases (1950–2016)* (2017).

¹³ Rudresh Mandal & Sathvik Chandrasekhar, *Examining Violation of Adivasi Land Rights by the Mining Industry: A Case for Crossing the Fence from Anthropocentric to Ecocentric Paradigms*, 6(2) *NLIU L. Rev.* 66 (2017).

where Gram Sabha's decisions were disregarded outright is a classic example of the failure of the statutory frameworks.¹⁴ Even the judicial precedents such as the Tehri Dam and Narmada Bachao Andolan exhibit the judiciary's approach towards the proprietary rights of the Adivasis. A significant proportion of people displaced by these large-scale developmental initiatives concentrated in tribal hinterlands or in the mineral rich regions like Jharkhand which constitute Adivasi homelands.¹⁵

The power of eminent domain at a fundamental level has evolved into a weapon that disproportionately affects vulnerable communities rather than achieving redistributive justice which originally it was intended to. Although the LARR Act provides for Social Impact Assessments which is tool to ensure the extent of public purpose of the project as well as the award of compensation, it fails to establish informed consent of the affected stakeholders.¹⁶

Judicial precedents have highlighted this imbalance. In *Sooram Pratap Reddy*, the Court dealt with the issue of conflation of public purpose with private commercial interest, which they eventually legitimized it through the principle of eminent domain.¹⁷ Similarly, in the *Mahanadi Coalfields* where delay in compensation was challenged, the Court highlighted the necessity of mass displacement as a direct consequence of large-scale developmental projects exposing the reveal the primacy of state sovereignty over individual property rights.¹⁸

Thus, within India's current property law framework, developmental jurisprudence is given much more importance than property jurisprudence, extending the right to property as an entitlement rather than a concrete protection.

Prescriptive Approach

The reform of mineral governance demands a re-evaluation of the state's claim of ownership over the mineral resources, which is embedded in colonial jurisprudence. Modifications or legal reforms of mining are not sufficient to rectify the foundational imbalance. A

¹⁴ K. Sanjana, *Forest Dwellers as Deemed Homeless*, 4(1) *JILS* 130 (2012–13).

¹⁵ Armin Rosencranz, *The Forest Rights Act 2006: High Aspirations, Low Realization*, 50 *J. Indian L. Inst.* 656 (2008).

¹⁶ Preeti Sampat, *Limits to Absolute Power: Eminent Domain and the Right to Land in India*, 48(19) *Econ. & Pol. Wkly.* 40 (2013), <https://www.jstor.org/stable/23527343>.

¹⁷ (2008) 9 SCC 552.

¹⁸ *Mahanadi Coalfields Ltd. v. Mathias Oram*, (2010) 11 SCC 269.

transformational shift is required that ensures that mineral ownership is seen through the lens of constitutional morality and which perceives property as a social institution rather than a tool of state dominion.¹⁹

The RFCTLARR Act functions independently of the CNT Act and the SPT Act, which creates a legal loophole, and the same is used for the alienation of the tribal land under the former act which otherwise would be difficult under tenancy laws. This gives the rise to bring a harmonizing amendment which makes the compliance of the RFCTLARR Act mandatory with tenancy laws before the acquisition of land in scheduled areas. The precondition of Gram Sabha's consent under PESA and RFCTLARR should not be a mere procedural step which must be substantiated by the judiciary.

Eminent Domain, which is central to the concept of alienation of land has been interpreted by the judiciary quite inconsistently and vaguely. Judicial interpretation of the same should clarify the extent and range of eminent domain in Scheduled Areas simultaneously ensuring it aligns with constitutional morality and social justice. Furthermore, since the tenancy statutes are protected by the Constitution, the Courts should ensure that interpretation of the former should be like the way the fundamental rights are by the Courts. This transformative approach would ensure that it aligns with Article 300A and the objectives of the Directive Principles of State Policy (DPSP's).²⁰

Conclusion

The contradictions of the Indian property law are exposed because of the paradox of tribal land in Jharkhand. While the tenancy laws help to provide a framework which upholds inalienability and preserves community identity, the acquisition laws act as an enabler for alienation to serve the purpose of economic development. This reveals a structural flaw in the way the legal framework views ownership and sovereignty. The doctrine of eminent domain must be reinterpreted to respect the consent and the collective ownership of Adivasis over their land otherwise property law will be used as a tool to legitimize what it was designed to prevent. Property must be seen as collective rights and not as absolute dominion. Acquisition statutes should be aligned with tenancy laws, institutionalizing community consent aiming at a

¹⁹Kuntala Lahiri-Dutt et al., Land Acquisition and Dispossession: Private Coal Companies in Jharkhand, 47(6) *Econ. & Pol. Wkly.* 39 (2012), <https://www.jstor.org/stable/41419821>.

²⁰ Sudha Vasan, In the Name of Law: Legality, Illegality and Practice in Jharkhand Forests, 40(41) *Econ. & Pol. Wkly.* 4447 (2005), <https://www.jstor.org/stable/4417263>.

constitutional purpose. This will help in recognizing the rightful claim of Adivasis over their land in Jharkhand.