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The constitutional possibilities for Gorkhaland: A legal perspective

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Abstract

The demand for a separate state of Gorkhaland, carved out of West Bengal, has persisted for over a century, rooted in issues of ethnic identity, cultural distinctiveness, and administrative neglect. While the movement has undergone several phases of political evolution, one of its central and enduring questions remains. Is the formation of Gorkhaland constitutionally viable? This paper critically examines the legal framework under the Indian Constitution particularly Articles 2 and 3 that governs the creation of new states. It analyses key judicial interpretations, precedents from past state formations (such as Telangana, Chhattisgarh, and Jharkhand), and the constitutional roles of the Parliament, state legislatures, and the President. The political difficulties and legal issues that have surfaced in the context of the Gorkhaland movement are also covered in the study. The study provides a detailed view of the constitutional pathway and its constraints for the construction of Gorkhaland by contrasting legal theory with the lived political realities of the region.

Keywords: Gorkhaland, constitution, statehood, article 3, federalism, identity

Introductions

The Gorkhaland movement is one of the longest-running statehood movement in post-independence India. It largely focuses on the demand for a separate state for the Indian Gorkhas, who live predominantly in the Darjeeling Hills and surrounding areas of northern West Bengal. The movement is based on historical grievances, a distinct language and cultural identity, and a perceived lack of political and administrative oversight by West Bengal's government. Although the demand is frequently viewed through the perspective of regional identity and ethnic assertion, it also raises significant constitutional concerns concerning the procedure and viability of establishing a new state within the Indian Union.

The Hillmen's Association initially made the proposal for Gorkhaland in 1907 when they sent a statement to the British government asking for a distinct administrative structure for the hill regions. Several waves of political mobilisation following independence brought this demand back to life, most notably in the 1980s under the Gorkha National Liberation Front (GNLF) and in the 2000s under the Gorkha Janmukti Morcha (GJM). Even with the establishment of several administrative structures, like the Darjeeling Gorkha Hill Council (DGHC) and the Gorkhaland Territorial Administration (GTA), the fundamental need for complete statehood has not been met.

In the context of India's federal structure, the creation of new states is governed by the Indian Constitution, particularly Articles 2 and 3, which deal with the admission, establishment, and alteration of states. Article 3 empowers Parliament to create a new state by separating territory from an existing state. Crucially, this can be carried out without the state legislature's approval, but the president must first consult the relevant state parliament (Jain 147). The flexibility of Indian federalism, in which the central government maintains considerable control over territorial reorganization, is reflected in this clause.

But political complications can result from this flexibility. The West Bengal government has continuously resisted any attempt to split the state in the Gorkhaland matter. This resistance establishes a political barrier even though it lacks a formal veto authority. To take the issue to the floor of Parliament, political will and consistent public support are necessary, as seen in earlier statehood initiatives like Telangana (Reddy 32).

Moreover, the demand for Gorkhaland is a matter of democratic representation and acknowledgement in addition to constitutional issues.

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The movement's foundation is "the denial of identity, development, and dignity to Indian Gorkhas", according to Dr. Mahendra P Lama (Lama 21). In addition to administrative restructuring, it aims to symbolically reaffirm membership in the Indian Union.

This essay aims to investigate, from a legal standpoint, the constitutional viability of the Gorkhaland demand. It will evaluate the political and legal obstacles to achieving such a demand, look at the examples established by previous state formations, and analyse the pertinent parts of the Constitution. The study seeks to offer a fair and fact-based assessment of what is constitutionally feasible in the Gorkhaland environment by concentrating on the nexus of politics and law.

Constitutional framework for state reorganization

The Indian Constitution offers a straightforward, but politically delicate, process for state reorganization. Articles 2 and 3, which grant Parliament the power to establish new states, change state borders, or even rename states, are the main laws governing the process. Assessing the constitutional viability of establishing a distinct Gorkhaland state requires an understanding of these clauses.

Article 2 of the Indian Constitution states that "Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit" (Article 2). This article mostly deals with areas that were not initially a part of India, such as Sikkim, which was granted full state status by the Thirty-sixth Amendment Act of 1975.

However, the more relevant provision for domestic statehood movements like Gorkhaland is Article 3, which explicitly outlines how Parliament may:

- Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- Increase the area of any State;
- Diminish the area of any State;
- Alter the boundaries of any State;
- Alter the name of any State (The Constitution of India, Art. 3).

The proviso to article 3 adds that a bill affecting the area, name, or boundaries of any state cannot be introduced in parliament unless:

- It is introduced on the recommendation of the President, and
- The President refers it to the Legislature of the concerned state for its views, allowing a specified time for response.

It is crucial to remember that merely the state's opinion is sought; its consent is not legally enforceable. As MP Jain explains, "The consultation is procedural, not substantive; the Parliament is not bound by the views of the state legislature" (Jain 149). When it comes to territorial adjustments, the Indian federal structure is distinct and more unitary in character because of this distinction between recommendation and consent.

In the past, this clause has been applied successfully. For example, the Andhra Pradesh Legislative Assembly strongly opposed the creation of Telangana in 2014. Similar to this, after protracted political and public activism and subsequent legislative action, Jharkhand, Chhattisgarh, and Uttarakhand were established in 2000. These instances demonstrate that

Parliament still has the final say and that persistent efforts backed by political dialogue can result in the creation of new states in accordance with the Constitution.

Theoretically, a bill to create a new state by dividing the Darjeeling hills and its environs from West Bengal may be presented in Parliament in the case of Gorkhaland. The West Bengal administration, however, has continuously rejected such a move. The state's opposition creates a political barrier but does not have the legal veto power. "The creation of Gorkhaland is a constitutional possibility but requires political maturity and national consensus," as Dr. Mahendra P. Lama noted (Lama 37).

The fact that any law passed in accordance with Article 3 is not regarded as a constitutional amendment under Article 368 is another significant feature of Article 3. The First Schedule (state names and borders) and the Fourth Schedule (representation in the Rajya Sabha) must be amended instead, together with incidental clauses like modifications to state legislatures and parliamentary seats (The Constitution of India, Art. 4).

Therefore, the constitutional foundation for state reorganization is both politically complex and legally permissive. Though political agreement, large-scale protests, and strategic discussions have frequently been pivotal, the Indian Parliament retains final say. Despite being legally possible, the Gorkhaland case remains unresolved, as it is both a constitutional and a political question.

Gorkhaland within the Legal and Political Context

Although the creation of new states is permitted by Articles 2 and 3 of the constitution, the Gorkhaland case illustrates the intricate connection between political reality and legal possibility. Due to their distinct linguistic, cultural, and historical identity, the Indian Gorkhas, who make up the majority of the people in the Kalimpong, Dooars, and Darjeeling hills, have long called for their own state. However, because of enduring political resistance and unclear reactions from the federal and state governments, the demand has not been met despite numerous waves of agitation and administrative improvements.

The opposition of the West Bengal state government is the biggest political obstacle to Gorkhaland's creation. In practice, political resistance might delay or hinder the submission and passing of a reorganization law, even if the constitution does not require the state's assent, as discussed in Section II. This is especially true in politically delicate areas like West Bengal, where Bengali identity and territorial integrity are major electoral issues. According to Prabhat Datta, "Vote banks, identity politics, and regional pride are deeply tied to the politics of statehood in India" (Datta 82).

Over time, the Indian government has implemented administrative systems that provide some autonomy in order to handle these issues. The most prominent of them is the Gorkhaland Territorial Administration (GTA), which was established in 2011 by a tripartite agreement between the Gorkha Janmukti Morcha (GJM), the West Bengal government, and the central government. The Darjeeling Gorkha Hill Council (DGHC) was superseded by the GTA, which was supposed to provide more local governance and administrative authority.

However, the GTA has received a lot of flak for being politically reliant on the state government and having poor

administrative capabilities. According to Mahendra P. Lama, "The GTA is an ineffective substitute for genuine statehood because it lacks legislative authority and financial independence" (Lama 44). It is run by the West Bengal state government, and because of its limited authority, elected officials have frequently resigned or experienced problems, particularly during times of heightened unrest.

The GTA has also become a weak organization due to the lack of direct financial control, constitutional status, and legal ambiguity surrounding its authority. Although the Gorkha leadership rejected the Sixth Schedule of the Constitution as insufficient and culturally irrelevant, it was originally thought to be a model for the Gorkhaland territory, as it provided for autonomous councils in tribal territories of the North-East (Subba 121).

Regardless of these governmental systems, desire for Gorkhaland remains high. It is more than just a political movement; it is a fight for recognition and inclusion within the Indian federal system. The Indian Gorkhas have frequently highlighted concerns about identity erasure, exclusion from mainstream narratives, and underrepresentation. These fears are exacerbated by recurrent unrest, police crackdowns, and slow political responses.

It becomes evident that political action is not guaranteed by constitutional viability. Telangana, which became a state in 2014 in spite of the Andhra Pradesh Assembly's resistance, serves as an example of how effective grassroots activism, dependable leadership, and political backing at the federal level are essential for success. Currently, Gorkhaland does not have this combo. Political stagnation has been caused by a number of factors, including shifting central interest, leadership dispersion, and conflicts within regional parties like the GJM, BGPM, and Indian Gorkha Janashakti Front ((IGJF). As a result, even though the Gorkhaland demand is legitimate legally, it faces formidable political obstacles. Clarity in the constitution, political agreement, and a sincere dedication to democratic federalism are all necessary for any progress. In the absence of this, the GTA and other administrative solutions will not be able to meet the goals of the residents of the hills.

Conclusion and Way Forward

The Indian Gorkha community's steadfast desires for political recognition, administrative independence, and cultural dignity within the Indian federal system are reflected in the demand for Gorkhaland. As was seen in the preceding sections, Articles 2, 3, and 4 of the Indian Constitution indeed offer a clear legal framework for the creation of additional states. These clauses give Parliament the ultimate power, with the relevant state legislature providing only consultative, not legally binding, input. Thus, from a purely legal perspective, Gorkhaland's creation is permitted by the constitution. Gorkha Janmukti Morcha (GJM) president Bimal Gurung said their demand for Gorkhaland is within the framework of the Indian Constitution. To him "Our demands are within framework of constitution, and we have nothing against West Bengal but our culture and traditions are different", (The Demand for Gorkhaland, Business Standar, 11/01/2018) Gurung further said that they have always trusted and respected the law.

However, political activity is not always a direct result of legal permissibility. Political factors at the state and national

levels have a significant impact on constitutional systems, as the Gorkhaland case demonstrates. A persistent political obstacle is the West Bengal government's adamant opposition, which sees any geographical partition as a danger to Bengali identity and integrity. However, the central government has stayed vague or uncommitted, frequently providing short-term administrative system instead of long-term fundamental adjustments.

The fundamental needs of the populace have not been met by these administrative system, most notably the Gorkhaland Territorial Administration (GTA). They are ineffectual as tools of self-rule because of their restricted authority, lack of financial independence, and reliance on government supervision. "Such halfway houses dilute the essence of the statehood demand and breed further distrust in institutions", as Dr. Mahendra P Lama observes (Lama 45). As a result, democratic trust and regional stability are weakened by a recurring cycle of agitation, compromise, and disappointment.

Moreover, the Gorkhaland case exemplifies the conflict between constitutional flexibility and political conservatism. While the Indian Constitution is more accommodating than many federal systems, allowing new states to be formed without altering the Constitution, its practical application is dependent on the political will of the ruling coalition. Statehood claims, such as Gorkhaland, frequently stall in the absence of persistent national-level political backing and able local leadership, even when they are legal and historical in nature.

What is required is a more comprehensive approach that incorporates legal knowledge, political discourse, and democratic engagement. The Indian Gorkhas' issues must be addressed not only legally, but also culturally, fairly, and economically. A future solution could include a full-fledged state or a constitutionally protected autonomous territory with legislative and budgetary authority. Certain tribal regions in the North-east are protected under the Sixth Schedule, albeit their relevance to Darjeeling is debatable (Subba 123). In a recent meeting held in New Delhi, The Centre discussed options like Gorkhaland state or Union Territory with Gorkha leaders in Delhi. Leaders also demanded ST status for 11 Gorkha groups and criticized Bengal's absence (Bhattacharya). The Gorkhaland movement stems from a deep-rooted quest for identity, cultural recognition, and political autonomy among the Gorkha people. Despite repeated agitations, the demand reflects unresolved issues of belonging and exclusion within the Indian federal structure (Darjeeling Unrest). Darjeeling M.P. Raju Bista emphasized in Parliament that the Gorkhaland demand is a constitutional aspiration based on Article 3, reflecting the region's distinct identity and long-standing grievances. (Bista) Sushma Swaraj stated that Gorkhaland is a legitimate demand that should be resolved through constitutional means and mutual trust (Swaraj).

In conclusion, the creation of Gorkhaland is not barred by the Constitution, but achieving it requires a convergence of law, politics, and public consensus. The Indian state must take a principled stand: either make constitutional provisions meaningful through responsive governance or risk long-term alienation of communities seeking justice through legitimate democratic means. The Gorkhaland movement, grounded in over a century of history, deserves a resolution that reflects both the letter and the spirit of the Constitution of India.

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