

## DOCTRINE OF EMINENT DOMAIN IN INDIA

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### ABSTRACT

Land being the most significant, is also the most anxious law in India. The primary proprietor of land is the king or in contemporary senses the chosen Government in power. As such the right of proprietorship will always continue with the king or the elected government, notwithstanding the detail that land is transported to separate citizens for agricultural or other drives by the king or the government as the case may be, land acquisition in India denotes to the process by which the union or a state government in India obtains private land for the drive of industrialisation, development of infrastructural amenities or urbanisation of the secluded land, and provides recompense to the affected land owners and their reintegration and relocation.] Land laws in India pressure on various significant ideas among which the concept of eminent domain is measured to be an important one.

Key words: eminent domain, Land Law, India, acquisition, infrastructure

### Introduction:-

The primary proprietor of land is the king or in contemporary senses the chosen Government in power. As such the right of proprietorship will always continue with the king or

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the elected government, notwithstanding the detail that land is transported to separate citizens for agricultural or other drives by the king or the government as the case may be.[1] The organization of private property has been a contentious topic with contradictory views, one completely repudiating the right to own private property and the other secondary the holding of the private property. According to Karl Marx, class brawl is mainly due to the organization of private property. Locke regarded that property as a natural and characteristic right of discrete. Black stone measured it as so fright that law should not approve the least defilement of it. Land acquisition in India denotes to the process by which the union or a state government in India obtains private land for the drive of industrialisation, development of infrastructural amenities or urbanisation of the secluded land, and provides recompense to the affected land own<sup>2</sup>ers and their reintegration and relocation.[2] Union Government of India has also made and informed the Right to Fair Compensation and Transparency in Land Acquisition, Restoration and Relocation (Social Impact Assessment and Consent) Rules, 2014 under the Act to control the procedure.[3] Land laws in India pressure on various significant tideas among which the concept of eminent domain is measured to be an important one.

#### **Objectives of the study:-**

The objectives of the study were to inspect the following,

- Ø To recognize about Land Laws in India
- Ø To do a full research on application of doctrine of eminent domain in India

#### **Hypothesis:-**

Land being the most significant, is also the most anxious law in India. These laws are occasionally subjected to a lot of political effect that people face a very tough time. Further the concept of Eminent Domain is also not greeted among the people of the country as it is prejudiced very often and further exposed to a lot of incongruities. Laws being one of the most significant scope of law for a self-governing country like India. Land laws in spite of

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**Limitations:-**

1. Size of the study is too small that the topic is been allocated with only the applicability of the policy in India
2. The constraint of the research study is also very thin that the sources from which information is been collected are mostly subordinate sources due to time limitations

**CHAPTERISATION:****Chapter 1: Eminent Domain:-**

Eminent domain is the control of a state or a national government to take secluded property for public use. However, it can be legislatively vicarious by the state to municipalities, government subdivisions, or even to private persons or companies, when they are sanctioned to exercise the purposes of public character. The property may be taken both for government use or by allocation to third parties, who will devote it to public or civic use or, in some cases, to economic development. The most mutual uses of property taken by eminent domain are for government structures and other amenities, public utilities, thoroughfares and tracks, or for public safety. Some authorities require that the acquirer make an offer to purchase the subject property, before resorting to the use of eminent domain.

The term "eminent domain" was taken from the legal dissertation *De Jure Belli et Pacis*, written by the Dutch jurist Hugo Grotius in 1625,[4] which used the term *dominium eminens* (Latin for supreme lordship) and described the power as follows:

"... The property of subjects is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in the case of extreme necessity, in which even private persons have a right over the property of others, but for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property."

Doctrine of 'Eminent domain', in its general meaning means the supreme power of the king or the government under which property of any individual can be taken over in the concern of general public. However, over the years such taking over the property by the king or the government has been made conceivable only after recompensing the land proprietor of such property. Thus eminent domain clarified as the power of the king or the government to take over the property of a secluded person when it is wanted for a public purpose. Policy of 'eminent domain' is founded on two maxims namely "salus populi

supreme lexesto” which means that the well-being of the people is the supreme law and “necessita public major estquan”, which means that public need is greater than the private need.[5]

## **Chapter 2: Application of Eminent Domain in India:-**

The power to take property from the separate is entrenched in the idea of eminent domain. The doctrine of eminent domain states, the independent can do anything, if the act of sovereign includes public interest. The doctrine authorizes the sovereign to obtain private land for a public use, providing the public nature of the practice can be established beyond hesitation. The doctrine is based on the following two Latin maxims, (1) Saluspopulisupremalex (Welfare of the People Is the Paramount Law) and (2) Necessitaspublica major est quam (Public Necessity Is Greater Than Private Necessity).[6] In the history of current India, this doctrine was tested twice (broadly speaking) once when land reform was started and another time when Banks were state-owned.[7]

The Constitution of India first provided the right to property (which includes land) under Articles 19 and 31. Article 19 certain that all citizens have the right to obtain, hold and dispose of property. Article 31 stated that "no person shall be disadvantaged of his property save by authority of law." It also designated that recompense would be remunerated to a person whose property has been taken for public drives. The Forty-Fourth Amendment of 1978 erased the right to property from the list of important rights with an introduction of a new provision, Article 300-A, which provided that "no person shall be deprived of his property save by authority of law"[8]. The amendment safeguarded that the right to property" is no more a fundamental right but somewhat a constitutional/legal right/as a statutory right and in the event of violation, the remedy obtainable to an affected person is through the High Court under Article 226 of the Indian Constitution and not the Supreme Court under Article 32 of the Constitution. State must pay compensation at the marketplace value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment) Act, 1964, the same can be found in the earlier decisions when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which submitted that the word "Compensation" deployed in Article 31(2) indirect full compensation, that is the market value of the property at the time of the purchase.

The Legislature must "guarantee that what is resolute as payable must be compensation, that is, a just corresponding of what the proprietor has been deprived of"). In another place, Justice, Reddy, O Chinnappa ruled (*State Of Maharashtra v. Chandrabhan Tale on 7 July 1983*) that the fundamental right to property has been eliminated because of its unsuitability with the goals of "justice" communal, financial and party-political and "fairness of position and of opportunity" and with the founding of "a

socialist democratic republic, as anticipated by the Constitution. There is no reason why a novel idea of property should be presented in the place of the old so as to bring in its wake the leftovers of the doctrine of Laissez Faire and create, in the name of competence, a new oligarchy. Competence has many surfaces and one is yet to discover a reliable test of efficiency to suit the widely differing needs of an emerging society such as ours" (1983 AIR 803, 1983 SCR (3) 327). The idea of efficiency has been introduced by Justice Reddy, O Chinnappa, very fascinatingly joined with the condition of dependability (Dey Biswas 2014, 14-15 footnote).

In India, with this outline of 'social' rudiments to the property rights, a new phase had begun. K. K. Mathew, justice of *Kesavananda Bharati vs State of Kerala* [9] stated this exactly: "Property in consumable goods or means of production worked by their owners (use aspects of property) were justified as necessary condition of a free and purposeful life; but when property gave power not only over things but through things over persons (power aspect of property) also, it was not justified as it was an instrument of servitude rather than freedom" [10]

### **Chapter 3: Eminent Domain and the Land Acquisition Act:-**

One of the most important statute anxious with the exercise of the right of eminent domain in India was the Land Acquisition Act, 1894. The jurisprudence that has advanced around this Act has placed simple restrictions on the option to test the power of the State to forcibly obtain. It sets out what establishes 'public purpose' and it hands over land, 'without burdens', to the State, to do whatever it wants with it at determination. Though it provides for sum of just recompense, but calculating the compensation is restricted by a set of arranged factors which are 'to be considered in decisive compensation' [11] and is limited to the marketplace value of land, further the "spare value is not the standard set by law". There are also 'matters to be deserted in determining recompense' [12] which excludes any reluctance of the person interested to part with the land acquired, in consideration of compulsory nature of acquisition. [13] It further provides that thirty per cent of the calculated market value is to be paid, in the nature of solatium. That, in sum and material, is the right of the person against compulsory acquisition of land.

### **Chapter 4: Article 300-A and Eminent Domain:-**

Article 300-A which merely says, "No person shall be deprived of his property save by authority of law". Hence, the rights in property can be shortened, abridged or altered by the State only by exercising its legislative power and decision-making order stingy a person of his

property without being sponsored by a law is not constitutionally valid.[14] In addition to that, to say valid it must please the following three tests:

- (i) The authority which has passed the law must have the legislative capability to do so;
- (ii) It must not invade upon any other fundamental right certain by part III of the Constitution; and
- (iii) It must not violate any other provision of the Constitution.[15]

In *Basantibai v. State of Maharashtra*[16] the Court did seek to interpret the Article 300-A favourably to the property owners by reading therein the twin requirements of 'public purpose' and 'compensation'. Under Article 300-A the legislature cannot sanction the deprivation of property for a public purpose. However, the Parliament not intended to confer an absolute right on the legislature to deprive a citizen of his property merely by the passing of a black-letter law. The ostensible purpose of repealing Article 31, especially Article 31(2), is to make free the legislature from the constitutional restraint of paying compensation for the property acquired. But doubts have been raised whether this purpose could be achieved by reaping Article 31. It has been argued that the two requirements of 'public purpose' and 'compensation' in case of acquisition of property are inherent and essential elements or ingredients or inseparable concomitants of the power of eminent domain therefore, of entry 42, list III as well.[17] The doctrine of eminent domain really recognizes the natural right of a person to hold property, and if that right may be taken away by the legislation without satisfying the two requirements, then the entire concept of rule of law would be redundant. The introduction of Article 300-A in the Constitution while deleting Article 31 clearly indicates that the Parliament intended to confer right on the citizen to hold property which could not be deprived without authority of law. In spite of this, the constitutional obligation to pay adequate amount to the expropriated owner is not taken away. Moreover, after the Maneka judgment,[18] the expression "authority of law" must necessarily mean "just, fair and reasonable" law in keeping with the touchstones of Article 14, 19 and 21 of the Indian Constitution.

#### **Chapter 5: Misuse of Eminent Domain Power in India:-**

Relevant to the situation, if the State obtains land on the ground of public purpose in a function of its eminent domain power, affected parties have little judicial recourse. Really,

several such challenges have already been discharged by the Courts counting acquisition for sewage treatment plant[19], Planned Development for Housing Scheme and for Co-operative Society[20] this huge power available to governments under the Act has ran to many obvious abuses. For example, the West Bengal Government learned lush agricultural lands in West Madinipur for Tata Metaliks in 1992, depriving small and fringe farmers, in favourite to rolling wasteland that was available nearby. Likewise, in the case of the Century Textiles, the State government assimilated about 525 acres of land for a pig iron plant in 1996. However, the company well along decided that Pig Iron production was no longer lucrative and hence, refused to recompense and bogus over the land. Singur in West Bengal is the another new example of the State government sought to acquire prime agricultural land for private capitalist parties, i.e., for Tata Motors. (State governments have not hesitated to take over land even by employing draconian emergency powers available under this Act).[21] The government had offered the Tata's non arable land in West Madinipur for setting up the manufacturing unit, but the latter preferred the sugar agricultural land. The supposedly Pro-people Left Front Government in order to oblige the influential Multinational Company surrendered weekly to its compulsion. Besides this, the acquisition of such a huge land area signifies that Tata's may turn these lands into a real estate venture in the near future as other Indian companies have done. Fortunately Tata Project was shifted to Gujarat. Then opposition party leader or present Chief Minister Mamatha Banerjee opposed the Tata Motor Project because it was intended to acquire wet and multi-cropped land.[22] After all these knowledge of abuse of eminent domain power some advanced measures have been put forward by the government too. Recognizing that the legal definition of 'public purpose' has been given rise to possibility for misuse of eminent domain, government had proposed to amend the land acquisition Act, 1894 through the Land Acquisition (Amendment) Bill, 2007 to provide for definition of 'public purpose'.

**Conclusion:-**

Constitution of India originates its basis from the Government of India Act, 1935 and the Universal Declaration of Human Rights (1948). Section 299 of the Government of India Act 1935 protected the property right against expropriation without recompense and also against procurement of land for a non public purpose. Article 17 of the Universal Declaration of Human Rights (1948) knows the Right to private property, India being a participant to the declaration

documented the property right in Articles 19(1)(f) and 31 under part III of the Constitution as a fundamental right. Article 31(1) was a kind of consequence with Article 17 of United Nation Declaration of Human Rights i.e., 'no one shall be arbitrarily deprived of his property'. Similarly Article 19(1)(f) is effect with Article 17(1) of United Nations Declaration of Human Rights i.e., "Everyone has the right to own property alone as well as in association with other".

Conceptually, the origin of the State's power to obtain land going to an individual lies in the right of eminent domain. Therefore, Right to property is not an absolute right; it allows the state meddling with it for genuine purposes. However to defend the State's interference with private property many Constitution and Human Rights leaflets require it to be the public interest. Government meddling may occur in the form of expropriation of existing property of subjects when public interest warrants. The word "Public purpose" is the ignoble (means) for exercising the eminent domain power or sovereign power. So it is right time transitively define the word 'public purpose' without giving any possibility for ill-treating the power. Therefore, the word 'public purpose' defined under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is moderately less unclear, it will still not stop the judiciary from looking into questions of misuse in actual gaining or use of land but moderately less chances of abuse of eminent domain power.

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[4]Nowak, John E.; Rotunda, Ronald D. (2004). Constitutional Law (Seventh ed.). St. Paul, MN: Thomson West. p. 263. ISBN 0-314-14452-8.

[5]Dr. N. MaheshwaraSwamy's, 'Land Laws', (Asia Law House, Hyderabad, 1st ed., 2006), p 4.

[6]Chandrachur, Y. V. 2009. Concise Law Dictionary. New Delhi: LexisNexis ButterworthsWadhwa Nagpur.

[7]Tripathi, P.K. 1980. "Right of Property After 44th Amendment Better Prosecuted Than Ever Before." Air Journal (51).

[8]Refer constitutional law by m.p.jain



- [9]Bhat, P. I. (2004) *Fundamental Rights: A Study of their interrelationships*. Kolkata: Eastern Law House.
- [10]Pellissery, S. 2014. Land rights as social rights. The case of India. FLOOR Working Paper No. 23. Paper prepared for the workshop "Understanding Southern Welfare – the B(R)ICS countries", 24–26 November 2014, Center for Interdisciplinary Research (ZiF), University of Bielefeld, Germany.
- [11] Section 23 of Land Acquisition Act, 1894
- [12] Section 24 of Land Acquisition Act, 1894
- [13] Section 25 of Land Acquisition Act, 1894
- [14]State of Mysore v. K.C. Adiga, AIR 1976 SC 853; (1976)2 SCC 495; Elizabeth Samuel Aaron v. State of Kerala, AIR 1991 Ker 162.
- [15] S.M. Transport (P) Ltd., v. Shankar Swamigal Mutt, AIR 1963 SC 664; Jalan Trading Co. Ltd. v. Mill MazdoorSabha, AIR 1967 SC 691.
- [16] AIR 1984 Bom. 366.
- [17]ManoelFranciso v. Collector of Doman, AIR 1984 BOM 461
- [18]Maneka Gandhi v. Union of India, AIR 1978 SC 597
- [19] AIR 1996 SC 697
- [20] AIR 1997 SC503
- [21] AIR 1996 SC 697
- [22]Indian Infrastructure Report, 2009.
- [23] Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
- [24] Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018

