



## UNDER LAND ACQUISITION, CONCEPTUAL AND DOCTRINAL ASPECTS IN INDIA, COMPARISON WITH OTHER USA & UNITED KINGDOM

**Prof: Dr Y.F.Jayakumar**

Professor at the Department of Law at  
Osmania University's University College  
of Law in Hyderabad, Telangana State.

**K.R.Vijay**

Ph.D. Scholar, University College of Law,  
Osmania University, Hyderabad,  
Telangana, Law Department.

### Abstract

*This article aims to understand the conceptual note and doctrinal aspects of the study relevant to displacement under land acquisition. The concept of Eminent Domain can be understood from the general perceptions of legal principles, particularly the precedents and the law declared by the Indian Judiciary in different situations and contents. A further dichotomy between the doctrine of eminent domain and the concept of public purpose is also explained in support of case laws. The Law of Land Acquisition is intended to legalise the taking up, for public purposes or for a company (now a days for corporate sectors), of land that is private to individuals, the owners and occupiers, and to pay equitable compensation, therefore calculated at the market value of the land acquired, plus an additional sum on account of compulsory.*

*The word conceptual means:- It means related to ideas and concepts are formed in the mind and with those ideas while applying the latest trends try to replace the old laws with new laws within the same conceptual frame work and Doctrinal study means, the word means technique utilized by those endeavor research in regulation and specialist enquiry, what is the law in a specific case. It is worried about the examination of the lawful precept and the way things were created and applied.*

### Introduction:

**Doctrine of Eminent domain: Eminent domain** is the legal theory that underpins the authority to seize private property or any land. According to the principle of eminent domain doctrine, every sovereign in the world can take any action as long as it serves the public good. According to this concept, even state is having discretion of power, for paying just compensation policy the sovereigns may purchase private lands as long as it can be proven beyond a reasonable doubt that the land would be used for public purposes. This theory has been contested twice (roughly speaking) in the history of contemporary India: first, when land reform was introduced, and again, when banks were nationalized.

**Doctrine of Eminent Domain and Art 19, 31 and Art 300-A of Indian Constitution:** Under Articles 19 and 31 of the Indian Constitution initially stipulated that the right to property, which includes land, is a legal right under government alone. Every citizen has the right to own, possess, and dispose of property, as guaranteed by Article 19. According to Article 31, *no person shall be deprived of his property save by authority of law*. Additionally, it said that anyone whose property was taken for public needs would receive compensation (sometimes subject to wide range of meaning). Removing the right to property from the list of fundamental rights and adding Article 300-A—which states that *no person shall be deprived of his property save by authority of law*—to the Constitution marked the 44th Amendments effective date as of 10.6.1979. The amendment made sure that the right to property is now a constitutional/legal right and a statutory one, rather than a fundamental one.



If this right is abused, the distressed party might look for review in the High court under Article 226 of the Indian Constitution, as opposed to in the High Court under Article 32 of the Constitution. The Constitution, Seventeenth Amendment Act, 1964 commands that the State give market esteem pay to any land, building, or design that is gained. This necessity is steady with past decisions that laid out the principal idea of property freedoms, for example, AIR 1954 SC 170 and AIR 1954 SCR 558, which laid out that the term Pay utilized in Article 31(2) suggested full remuneration, which is the property's market esteem at the hour of procurement. The council needs to guarantee that not entirely set in stone as payable should be pay, or at least, an only likeness what the proprietor has been denied of. The principal right to property has been nullified on the grounds that it is contradictory with the targets of equity, social, financial, and political, as well as balance of status and of chance and the foundation of a communist popularity based republic, as mulled over by the Constitution, according to a ruling made by Justice O Chinnappa Reddy in the *State of Maharashtra v. Chandrabhan Tale, 1983 AIR 803 and 1983 SCR ( 3 ) 327* case on July 7, 1983. It makes no sense to replace the old understanding of property with a new one that would preserve the semblance of the Laissez Faire theory and establish a new oligarchy in the name of efficiency. There are numerous dimensions to efficiency, and there is yet no perfect test to meet the diverse requirements of a developing society like ours. Justice O Chinnappa Reddy developed the notion of efficiency along with the requirement of infallibility.

As long as landowners receive just compensation, the government is permitted to purchase private property or land in the public interest under the eminent domain principle. With respect to the same, the government may purchase land for the construction of infrastructure such as roads, railroads, schools, hospitals, and highways; on the other hand, it is the government's responsibility to guarantee an open and equitable process when interacting with impacted families and communities. The ultimate goal is to strike a balance between the rights and goals that the welfare state must accomplish; in the event that the landowners are not fairly rewarded, this might be referred to as inverse condemnation.

Even though eminent domains might be beneficial for expansion, they also have some limitations and disadvantages. These consist of infringements on private property, unfair pay, and potential abuse. The theory aims to preserve individual community property rights while also addressing society's needs as a whole.

People's lives and means of subsistence can be significantly impacted by the eminent domain doctrine. Consequently, it is critical that governments maintain impartiality and openness in their interactions with impacted families and communities. They also need to take action to mitigate the eminent domain's detrimental effects. Because it can benefit a large number of people and create possibilities for them, an eminent domain can be beneficial and productive. On the other hand, opinions differ on whether this is a good thing or not.



Eminent domain refers to the authority that the state has over any land that is located within its borders. The fact that governments have more legal authority than private owners over areas under their dominion lends credence to eminent domain. The meaning of public purpose, however, is rather ambiguous. Development claims and the mass relocation that comes with massive infrastructure projects have put tremendous strain on the legitimacy of the use of eminent domains. The theory that has not been sought to be subdued by constitutionalism is the law of eminent domain. Furthermore, it hasn't been restrained by fresh viewpoints on the dynamic between people and the government. The government's policy may be challenged on the grounds of rationality, and the Supreme Court has not yet provided a definitive ruling regarding this matter. Inquiring about the applicable laws in India, such as the Land Acquisition Act 1894 (now abolished) or The Right to Fair Compensation and Transparency in Land, is crucial to understanding the concept of eminent domain. The application of the doctrine of eminent domain involves a nuanced interplay of several key elements:

#### A. Elements of Eminent Domain.

**Public Use:** The acquired property must be utilized for a purpose that benefits the public. The definition of public use may vary and includes infrastructure projects, public amenities, or socio-economic initiatives.

**Just Compensation:** The property owner must be compensated fairly. This is typically based on the market value of the property at the time of acquisition.

**Due Process:** The process of eminent domain must comply with established legal procedures, ensuring fairness and justice.

**Possession:** Post acquisition, the state assumes full control and ownership of the property. However, in certain jurisdictions, the original owners may retain certain rights, such as easements or mineral rights.

#### 1. Doctrine of Eminent Domain - In India:

The doctrine of eminent domain and its intersection with Article 300-A of the Indian Constitution is a topic of immense legal significance. Article 300-A of the Constitution of India provides that no person shall be deprived of his property except by authority of law. The state cannot seize a resident of his property besides as per the technique laid out by regulation. The right to property is a basic liberty as well as a protected right. Yet, it is anything but a major right. Every single case involving property wouldn't be property right; it was noticed and held in *Painstaking Work Retail Store Versus Association of India*, AIR 2003 SC 3240. The right to own property is only a constitutional right under the 44th Amendment. It is not included in the fundamental framework. The 66th Amendment claims that the fundamental framework of the Indian Constitution is not destroyed.



The term eminent domain is the force of the sovereign to take property for public use without the proprietors assent. The importance of power in its final terms. (a) ability to take; (b) without the proprietors consent; (c) for public use. Article 300-A of the Constitution of India says that no individual will be denied his property except by power of regulation. The state can't confiscate a resident's property besides, as per the strategy laid out by regulation.

The doctrine of eminent domain and its intersection with Article 300-A of the Indian Constitution is a topic of immense legal significance. Article 300-A of the Constitution of India provides that no person shall be deprived of his property except by authority of law. The state cannot seize a resident of his property besides as per the technique laid out by regulation. The right to property is a basic liberty as well as a protected right. Yet, its anything but a major right. Every single case involving property wouldn't be property right; it was noticed and held in *Painstaking Work Retail Store Versus Association of India*, AIR 2003 SC 3240. The right to own property is only a constitutional right under the 44th Amendment. It is not included in the fundamental framework. The 66th Amendment claims that the fundamental framework of the Indian Constitution is not destroyed.

The term eminent domain is the force of the sovereign to take property for public use without the proprietors assent. The importance of power in its final terms. (a) ability to take; (b) without the proprietor's consent; (c) for public use. Article 300-A of the Constitution of India says that no individual will be denied his property except by power of regulation. Besides, the state can't confiscate a resident's property, as per the strategy laid out by regulation.

Legal Maxims on Eminent Domain.

***Salus Populi Supreme Les Esto:*** It means welfare of the people is the paramount of Law. This maxim articulates the concept of law and states that the well being of the people is the highest law.

A deeper understating of the Eminent Domain can be achieved by examining the various case laws. Numerous cases in both United States of America and India have set significant precedents and shaped the interpretation and application of the doctrine.

For instance *in the land mark case of Pritam Pal v. Supreme court of Madhya Pradesh, 1992 it was observed as:* This can only be accomplished when the justice is carried out in a legal, judicial manner, without fear or reward of hindrance and it cannot be successful unless respect for it is encouraged and upheld.

The idea of law is sufficiently articulated by the adage **salus populi suprema lex** which states that the welfare of the people is the supreme law. This can only be accomplished when



justice is carried out in a legal, judicial manner, free from fear or favour and unhindered or impeded. However this cannot take place effectively until respect is shown for it.

***Necessita Public Major Est Quan*** : It means the public necessity is greater than the private necessity. According to this maxim, the needs of the public are greater than those of the private. In comparison to the private good, the good has more requirements. All subjects are required by law to give priority, to the urgent needs of the nation over their own needs. When this is applied to criminal law, the states need to maintain law and order will take procedure over a mans need to protect his or her own life.

The Hon'ble Supreme Court has decided this case in **M/s. Tirupati Developers vs The Union Territory of Dadra and Nagar Havelli & Ors. SLP(Civil) No.13402 of 2022**)held in Para No 5 as It appears to us that the actual object of giving notification under Segment 21 of the 2013 Demonstration is to offer a fair and sensible chance to the intrigued people to present their case as for the pay for the gained land. Such pay can be guaranteed based on different variables that might be significant with regards to procurement. The intrigued people are additionally qualified for say something before the Gatherer regarding Segment 22 of the 2013 Demonstration, whereupon the Authority is committed to hold a request on the protests presented by the intrigued people and pass an honor as for: (a) the specific region of the obtained land; (b) the pay as still up in the air under Area 27 of the Demonstration; and (c) the division of the expressed pay among every one of the people known or accepted to be keen on the land.

The Hon'ble Court further observes in Para No.8 observes as: For a fair and only assurance of pay inside the legal plan of the 2013 Demonstration, it is basic that a fair chance of hearing is given to the people whose freedoms are impacted. This expects that the intrigued individual is offered a powerful chance to advance their case. Any deviation to the recommended methodology, particularly when it has apparently impacted the intrigued individual, would militate with the actual object of regulative order.

## **2. Doctrine of Eminent Domain In United States Of America:**

**Doctrine of Eminent Domain in USA:** The constitution plays a significant role in determining the extent and application of the doctrine of eminent domain. In the context of the USA, the Fifth Amendment explicitly mentions the power of eminent domain.

It implies the force of the state to take the confidential property from the land proprietors. As per the USA, Fifth Revision integrated this standard. In the US, prominent space is the power of a state or the focal government to take private property for public use while requiring just compensation to be given to the principal owner. In general, it will be legitimately doled out by the state to districts, government improvements, or even to private individuals or organisations when they are endorsed to rehearse the components of a public individual. The property taken through a conspicuous region may be for government use or



by task to pariahs, who will commit it to public or local area use or, once in a while, to monetary development. The most broadly perceived uses are for government structures and various workplaces, public utilities, highways, and rail lines. Regardless, it could similarly be taken due to reasons of public prosperity, as in Central Pennsylvania, where land was taken as a result of an underground mine fire. A couple of districts require that the condemner make a proposition to purchase the subject property before going to the usage of conspicuous space.

Regardless, until the fourteenth Amendment was authorised in 1868, the requirements not entirely set in stone in the Fifth Amendment applied solely to the public assemblies and not to the states. That view was taken in 1896. The word has not been described by the courts for clarification that to frame anything outrageous, in spite of the way that it was possible, would, in an affecting world, if not in vain. The law of each age is finally that ages point of view should be the law.

It is pertinent to the mentioned Land Mark case of the United States of America: The U.S. High Court has dependably yielded aside the right of states to make their own decisions about public use and examined the public explanation in Clark versus Nash (1905). The High Court perceived that different bits of the country have momentous circumstances and the importance of public use as it needs to be moved with the current real factors of the case. It dealt with a farmer who could expand his water framework ditch across one additional farmer's property (with pay), since that farmer was equipped for the movement of the waters of the said Post Gorge Spring. Additionally, the reason for the said waters is for public use. Here, in seeing the dry climate and geography of Utah, the Court showed the farmer not adjacent to the stream had whatever amount of right as the farmer who appeared to be to get to the waters. The High Court of USA has also found in Chicago, Burlington and Quincy Railroad Co versus City of Chicago an address mixed to take a gander at that public utilise The court held that the popular space plans of the Fifth Update were solidified in the fair treatment stipulation of the Fourteenth Amendment and thusly were presently limiting on the states, or with everything taken into account, when the states take private property, they are supposed to give it to a public use and compensate the land proprietor for his hardship. This was the beginning of what is now known as the particular union education.

It is applicable to indicate that the land mark case goes before Suprme Court of USA: Kelo versus City of New London , 545 U.S. 469 (2005) exceeded all expectations and guaranteed the force of New London, Connecticut, to take non-scourged private property by noticeable space, and a short time later move it for a dollar a year to a secret specialist solely to increase common livelihoods. This 5-4 decision got significant press consideration and pushed a public racket censuring noticeable space powers as unnecessarily wide. In light of



Kelo, a couple of states laid out or considered state guideline that would moreover describe and bind the power of well known space.

The High Court of USA picked this case Berman versus Parker ( 1954) (Ber), in which the US of American High Court assessed a work by the District of Columbia to take and even out scourged designs to discard ghettos in the Southwest Washington locale. After the taking, held the court, the taken and smoothed land could be moved to private redevelopers who could foster condominiums, classified business environments and a retail outlet. The High Court opposed the owners of a non-scourged property inside the district considering the way that the endeavor should be settled on its game plans by and large, not on a bundle by pack premise.

The High Court of USA has closed this case Hawaii Housing Authority versus Midkiff (1984), the High Court upheld the use of unmistakable space to move a land lessors title to inhabitants had and involved homes in view of the leased land. The courts legitimization was to isolate a housing oligopoly, and thus lower or settle home expenses, but genuinely, following the Midkiff decision, home costs on Oahu elevated earnestly, decisively expanding inside several years.

The High Court of US of America it is perfectly clear that it has given central significance to the public use and teaching of prominent area. In the previously mentioned cases because of the guideline laid by Honble court, convention of famous space was consolidated in US constitution with fifth alteration.

### 3. Comparison With England

In the existing legislation in India, the mechanism has been provided for the benefit of those who need land, and the practice in England is different. Whoever needs land for the establishment of development or for private or corporate purposes should approach the government and seek permission, and then the government will move the motion of the existing law. This is because Indian law speaks more about due process of law, which is essential for every action taken by the executives or other authorities. The government intends to acquire the property while paying compensation to the affected people.

In English law, there is a broad distinction between the statutory provisions mentioned in Indian law and English law. In fact, the Land Acquisition Act of 1894 was enacted by colonial rulers. In England, the power to acquire the land is conferred by a special statute, which specifies what land should be acquired. In India, the lands are acquired for the purpose of developing infrastructure and for irrigation purposes; this purpose is not included in the legislation, but in accordance with the concept of public purpose, it will acquire the lands. The procedures followed by the English authorities are very complicated when



compared with the Indian procedures. There would be considerable delays in sanction and acquisition.

### Conclusion:

This author has covered the eminent domain theory and its applicability, particularly in India, and compared it with the United States and England. These notions have undergone judicial interpretation, doctrinal analysis, and legal analysis in order to understand the legal implications of the doctrinal and conceptual components. An analysis of numerous court rulings involving internally displaced people, as well as how the courts took into account the rights and concerns of the displaced population, was done in order to comprehend the significance of the doctrine of eminent domain and the idea of public purpose. Landmark judgements that have established precedents in land acquisition were also examined. Every country has put a high priority on the viewpoint of human rights, the right to a means of subsistence, and the right of internally displaced people to decent housing.

### REERENCES:

1. *Pritam Pal Vs High court of Madhya Pradesh, 1992. It was observed Legal Maxims-“Salus Populi supreme Les Esto, it means welfare of the people is the paramount of law and said maximum.*
2. *Art 19 and Art 31 read with Art 300-A of Indian Constitution.*
3. *Mr Alfred D Jahr, Discussed in his paper about 'eminent domain' and same published in Vol., 2, pp. 434.*
4. *BIKelo vs City of New London-2005, Examined that private development involved public purpose.*
5. *Aurl Vikram, M.Murali K ( 2015), A Critical review o Land Acquisition and Valuation process across the world, IQSR Journal of Mechanical and Civil Engineering, vol 12:9-14.*
6. *Land Acquisition, Rehabilitation and Resettlement Bill, Government of India, 77-2011.*
7. *Government of India ( 1985). “The Land Acquisition Act, 1894”, Ministry of Law and Justice, Government of India.*
8. *Goswami, 2018 – Goswami, S. ( 2018) Land Acquisition in India: Problems and prospects , International Journal of Pedagogy Invoation and New Technologies, Vol.5 ( 2 ):57-67.*