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## The Concept of Eminent Domain under the Indian Constitution

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*India is the largest democratic country in the world. In a democratic system of administration equality forms an essential factor. India is declared to be a Sovereign, Socialist, Democratic, Republic. The philosophy of socialism in the Constitution aims at the elimination of inequality in income and status and standards of life. The Indian Constitution aims at the establishment of a social order, in which social justice is ensured and where there is no concentration of wealth. The Directive Principles impose an obligation on the State to take positive action for creating a socio-economic condition in which there will be an egalitarian social order with social and economic justice to all. The State is under an obligation to ensure fair distribution of material resources of the country. Through the Directive Principles of State Policy, the framers of the Indian Constitution visualized the establishment of India as a Welfare State.*

Keywords: Eminent Domain, Case Laws, Concept and Constitution of India.

### Introduction

A government in a Welfare State has so many functions to perform to meet the various needs of its subjects. So, it is the duty of the government to mitigate the obstacles on the way which act as restrictions in the achievement of various ends to materialize the object of Welfare State. In the pre-independence and also in the initial stages of post-independence period, there existed Zamindari system. Under this system the ownership of the whole land was vested with the landlords. So, the farmers were remained, as landless people. till the Constitutional Amendment Act 1978,

The motto of the Government was land to the tillers. So, in order to materialize this object various types of land laws were enacted by the Parliament as well as the State Legislatures. But right to property was a fundamental right. However reasonable restriction was there under Article 19(5). Article 31 dealt with compensation for acquisition of land. Under such a circumstance the Government has faced many problems in the face of the enactment of land laws. So, in order to overcome this, several amendments were made to the Constitution.

In a modern State, Government has to introduce many developmental activities to promote the economic and social welfare of the State. Land forms an important factor for the implementation of developmental activities. It was for this purpose the doctrine of Eminent Domain was

introduced. The doctrine was strengthened after the deletion of Articles 19(1) (f) and 31 and the introduction of the former. The individual is enabled to desire the common interest in addition to his own interest. Law is a means to secure the good of the society not of the individual. ix

Property exists not solely for the owners but also for society Law must try to reconcile the interest of the owner with that of the society. In this way, it justifies expropriation or legal restriction imposed upon the exercise of individual property rights. Expropriation solves the problem of harmonizing the interests of society with those of the owner. There must be a balance of purposes or interests.

#### Eminent Domain and Decided Case Law

Eminent Domain is the inherent right of the State to take private property for public use. It is for public benefit irrespective of the wishes of the owner. But the condition is that it shall not be taken for public use without just compensation. It was so held in *State of Bihar V. Kameshwar Singh*. Xi In *Bhimsingh v. Union of India* xii, Krishna Iyer J remarked “.... peripheral inequality is inevitable when large scale equalization processes are put into action....”. He again said that when property was taken by the State, then ceiling on maximum amount payable would be reasonable. The concept of eminent domain is good but at the same time, it should not result on discrimination while taking the private property for public purpose. Individual interest should be protected while taking into account of the social interest. He should be given equivalent to what he has lost.

In *Bihar Land Reform Case*, xiii Mahajan J said that agrarian laws enacted by the legislature and protected by Article 31(3) & (4) provided compensation which might appear to the court unjust and inequitable. In *S. P. Gupta & Others v. Union of India & others*, xiv Bhagavath. J said that judiciary to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of common man. In *Lachman Dass v. Jagat Ram* xv the court held that to hold property is a human right and the right cannot be taken away except in accordance with the provisions of a statute.

The power of eminent domain is so often necessary for the proper performance of governmental function to take property for public use. It is the offspring of political necessity. Thus, property may be needed and acquired under this power for government offices, libraries, slum clearance projects, railways, parks, water system and many other projects of public interest, convenience and welfare. xvi This power of the State is causing mass displacement and also raising the problem of rehabilitation. The compulsory acquisition may lead to many social problems. It may sometimes affect the livelihood of the people whose property is taken. Where the authority fails to implement proper measures for rehabilitation and compensation, it would cause injustice to the affected people.

Acquisition of property is done through the authority of law. That law must contain the measures for rehabilitation and compensation. Justice must be viewed as a creative process, which seeks to realize what is right for a particular time and place. xvii Justice changes in accordance to the dynamic processes in any society which take place in time, it is dominated by forces struggling within the general framework of political order. Justice means fair and equal treatment of all xviii So here it is a necessary to do justice to those who are affected by the acquisition of property.

The Land Acquisition Act 1894 did not contain sufficient measures for rehabilitation. The Land Acquisition, Rehabilitation and Resettlement Act 2013 contain provisions for rehabilitation. Thus, the Act has institutionalized the problem of rehabilitation. But it is not known how far it could be possible, because the thing is that everything remains only in the statute book. In many situations the judiciary has given directions to the government to implement rehabilitation measures properly x.

The doctrine of eminent domain empowers the government to take over the private property for public purpose for compensation. In 1984 ‘public purpose’ was redefined to include the acquisition of land for residential purposes “.... to persons displaced or affected by reason of the implementation of any scheme undertaken by the government....” x So this increases the power of the State to acquire private property in an easy manner under the pretension of public purpose. Where the acquisition is not for public purpose then the concerned person can challenge the acquisition x. Nevertheless, the concept of eminent domain confers the State an unbridled power to take over the private property for public purpose.

The power of eminent domain is an essential attribute of sovereignty. By using this power, the government acquires the private land for public use. The process of acquisition leads to the mass displacement of people who were evicted from the land so acquired. Since the era of independence this process is going on and the millions of people in India are becoming landless and homeless. This is a serious problem to the security of the country. The government has to make an effective planning for providing rehabilitation facilities before the acquisition is affected. ‘Rehabilitation’ was not explained in the 1894 Land Acquisition Act. But in the 2013 Act the word is included. But it is not known how far it would be effective. Government should take effective measures for the effective implementation of the provisions relating to rehabilitation in order to protect the displaced people.

## Conclusion

The discussion reveals that the power of eminent domain is an essential requisite of State’s Sovereignty. In a welfare State the government has many functions to perform for the purpose of promoting socio-economic justice, a noble aim envisaged under the Indian Constitution. For almost all the developmental projects land is an essential requirement. So, it is necessary with regard to the State, having a power to take the land without any opposition. Till 1978 right to property was a fundamental right under Articles 19(1)(f) and 31. This has created many problems to the Government for the implementation of laws and projects.

The attitude of Judiciary of that time was also intended to promote the interests of the land owners. As a result, during that period the power of eminent domain has only a limited application. According to this concept the whole land belongs to the sovereign. So, it is possible to take over the private property by the State for public purpose. It is to be done only with the authority of law. State is obliged to promote the social interest at the expense of the individual interest. Legislation is based on the promotion of greatest happiness to the greatest number of members on the society.

## Reference

Equality embodied in the concept of Rule of Law: *Prof: Diecy, Article 14 of the Indian Constitution* – equality before law and equal protection of laws Preamble to the Indian Constitution.

The term socialism is incorporated *into the Preamble under the 42<sup>nd</sup> Amendment 1976*.

Part IV of the Constitution Directive Principles of State policy, *which are in the form of instructions to the State* Articles 36-51.

Zamindari abolition laws, Ceiling Acts, Land Reforms Acts etc.

44th Amendment –*Articles 19(1)(f) and 31 were deleted changes were made in Article 31. First Constitutional Amendment Act 1951, fourth Constitutional Amendment Act 1955, Seventh Constitutional Amendment Act 1964, twenty-fifth Constitutional Amendment Act 1971, Twenty-ninth Constitutional Amendment Act-1972, Thirty-Ninth Constitutional Amendment act-1975, Forty-Second Constitutional Amendment Act-1976, etc.*

Land Acquisition Act 1894, Article 300A.

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Dr. V. D. Mahajan, Jurisprudence & Legal Theory, 5th ed., (1981), P.621.

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Rehabilitation is not only about providing first food, *clothes or shelter, it is also about extending support to rebuild livelihood by ensuring necessary amenities of life. The ousters should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations* – N. D. Jayal v. Union of India, AIR 2004 SC 867.

Narmada Bachavo Andolan .V. Union of India, AIR 2000 SC 3751.