

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 3

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Doctrine of Eminent Domain in Light of Tortious Liability in State of India

---

CHIRAG SINGHAL<sup>1</sup> AND DR. RAMKANT TRIPATHI<sup>2</sup>

## ABSTRACT

*As within the context of India's legal system, this research study investigates the complex link that exists between the doctrine of eminent domain and tortious liability. It examines how these two legal principles intersect and impact each other in the context of property rights, compensation, and actions taken by the government. In order to provide a thorough knowledge of the dynamics between eminent domain and tortious liability in the Indian state, the purpose of this article is to conduct an examination of pertinent legislation, court precedents, and scholarly literature.*

**Keywords:** *Tortious liability, tort law, zamindari abolition and land reform act.*

## I. INTRODUCTION

The sovereign, or in a more contemporary sense the elected government that is currently in power is the key owner of property. Since this is the case, the king or the elected government will always have the right of ownership, regardless of whether the king or the government transfers land to individual citizens for agricultural or other purposes, depending on the circumstances.

Private property has long been a difficult issue, with opposing opinions<sup>3</sup>.

One viewpoint contends that the right to own private property is entirely denied, while the other viewpoint advocates for the ownership of private property.<sup>4</sup>

In its broadest sense, the term "eminent domain" refers to the highest authority that the king or the government possesses, which allows for the acquisition of any individual's property for the purpose of serving the wide-ranging public. The taking of property by the king or the government, on the other hand, has only been made permissible over the course of the years when the landowner of the property in question has been compensated.

---

<sup>1</sup> Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>3</sup> Robert Kratovil & Frank J. Harrison, "Eminent Domain: Policy & Concept", Vol. 42, No. 4, published October 1954, pp 596-652, <https://www.jstor.org/stable/3478255> last accessed April 2024

<sup>4</sup> Debjani Bhattacharya, JSTOR, "History of eminent domain in colonial thought and legal Practice" Vol. 50, No. 50, pp. 45-53, <https://www.jstor.org/stable/44002962> published December 12, 2015, last accessed April 2024

One of the incidental restrictions that applies to this ability is that the property cannot be taken without providing adequate recompense . It is the superior sphere of the state over all of the property that is contained inside its borders that gives this authority its foundation. One of the incidental restrictions that applies to this ability is that the property cannot be taken without providing adequate recompense<sup>5</sup>.

## **II. THE DOCTRINE AND ITS CONSTITUTIONAL SIGNIFICANCE**

When referring to a property, the term "eminent domain" refers to the state's permanent dominion (domain) over the property. Now, the constitution of India gives the state the authority to seize private property for the purpose of putting it to public use, and it also gives the owner the right to receive compensation for the loss. Under addition, the power of eminent domain is given recognition under the Constitution of India. Under addition, the power of eminent domain is given recognition under the Constitution of India. This power of the state has been brought to the forefront, mostly because to the mischief that is purportedly attributed to it in order to bring about it. Not long after the nation gained its independence, the Supreme Court was given the responsibility of determining whether or not certain laws were constitutional. These laws were designed to do away with the feudal zamindari (land-owning) system<sup>6</sup>.

It is stated in entry 42 list III of the seventh schedule of the Indian Constitution<sup>7</sup> that both the federal and state governments have the authority to enact property acquisition legislation. The usage of doctrine of eminent domain for land acquisition is also justified in cases where the public purpose can only be met by a specific piece of land that cannot be replaced by another piece of land.

In accordance with the provisions of clause (2) of Article 31 of the Indian Constitution<sup>8</sup>, Any acquisition or seizure of private property must be done with the intention of helping the public. A third restriction is that no property can be appropriated unless the statute authorising the appropriation includes a provision for compensation in the manner described in the mentioned clause. The Court was looking into the power of eminent domain because it was under investigation. Eminent domain was defined by the Supreme Court as "the power of the sovereign to take property for public use without the consent of the owner." This was the explanation that the Court provided for the power. The significance of this is that the power, in its irreducible form are-

---

<sup>5</sup> Zamindari Abolition & Land Reforms Act, 1950

<sup>6</sup> Schedule 7, List III (Concurrent), Indian Constitution, 1950

<sup>7</sup> Article 31 clause (2), Indian Constitution, 1950

<sup>8</sup> Defacto law, Admin, "Doctrine of eminent domain", published Feb, 2024

- absent the permission of the proprietor, and
- on behalf of the general public.
- authority to seize,

Thereby, one of the concerns is that it has hampered the existence and use of the domain authority, that is, the relationship between the state and its citizens. The term "sovereign" foreshadowed this dilemma. The power to seize and the unqualified nature of 'public usage' have resulted in dispossession and extensive movement of people.

The below mentioned grounds for review of this power have been established by the Supreme Court in the case of *Sooraram Reddy v. Collector, Ranga Reddy*<sup>9</sup> Supreme Court which are as follows<sup>10</sup>:

- abuse of authority in a dishonest manner;
- an apparent public aim that is, in actuality, a private purpose or a collateral goal; a public purpose that is only apparent to be public;
- a purchase that was made without according to the procedure outlined in legislation;
- if the acquisition could be considered unreasonable or irrational or where there is no public purpose behind the purchase, and it is obvious that there has been fraud committed against the legislation

Despite the fact that the government is largely responsible for determining what characteristics form a public purpose, the courts have the authority to examine decisions of this nature. In actual fact, the courts have imposed limitations on themselves like payment in exchange for the property that was acquired. It is always the case that the interests of the community are more important than the interests of the individual.

### **III. THE DOCTRINE OF EMINENT DOMAIN IN CONGRUENCE WITH ARTICLE 300-A OF THE CONSTITUTION**

Given the context of Article 300-A of the Constitution<sup>11</sup>, The Indian Constitution's article 300 a leaves the idea of eminent domain which gives the government the right to take private land and reduce it for various public purposes The theory of eminent domain basically say that, as long as the owner of the property receives fare recompensations, the government can

---

<sup>9</sup> AIR (2008) 9 SCC 552

<sup>10</sup> Article 300-A, The Constitution of India, 1950

<sup>11</sup> AIR 1986 SCR (1) 707

appropriate private property for public use

It is an essential component of governance in terms of eminent domain Which permits the government to undertake public benefiting initiatives like constructing roads, school or infrastructure or obtaining land from private parties.

Article 300 a test that government shall pay owners of private property a sufficient amount of compensation which must match the market value worth of the property being acquired under Article 300A

Doctrine of eminent domain is a harmony between the public's need and private properties owner rights. It ensures that if the government has the authority to take private property for public use it should be done in a way that agrees the owner desires and pay for their losses.

It has to pass each of the following three tests in order for it to be considered as real: (i). The jurisdiction that is responsible for enacting the law must possess the legislative competence to do so properly;

(ii). The second requirement is that it must not violate any other essential right that is guaranteed by part III of the Constitution; and

(iii). It shall not contravene any other provision of the Constitution.

The Supreme Court of India, in the case of *Basanti bai v. State of Maharashtra*<sup>12</sup>, attempted to provide a favourable interpretation of Article 300-A to the property owners by ensuring that the conditions of "public purpose" and "compensation" were read into the constitutional provision. According to Article 300-A, the legislature is not permitted to authorise the confiscation of property for the purpose of serving the public. On the other hand, the Parliament did not intend to grant the legislature the absolute authority to deprive a citizen of his property solely by the enactment of a law that is written in black and white.

#### **IV. TORTIOUS LIABILITY AND ITS ESSENCE IN CONGRUENCE WITH DOCTRINE OF EMINENT DOMAIN**

A fundamental component of property law is the doctrine of eminent domain, which gives the government has the right to acquire private land or property for the public uses. But in place of providing just compensation into the affected property owners the tortures liability means civil wrong, for which the offender is legally liable and which causeway suffering or injury to others. These two theories are used in Indian legal system, especially if domain activities by the

---

<sup>12</sup> E. Donald Elliott, "The Evolutionary Tradition in Jurisprudence", Vol.85, No. 1, published (Jan 1985), published by Columbia Law Review Association, Inc, <https://www.jstor.org/stable/1122404> last accessed April 2024

government causeway harm or loss to individual or groups<sup>13</sup>.

Providing only the compensation for affected property owners is an important issue in the relationship of eminent domain and taught liability. This part looks at the challenges and disagreements surrounding value examination and legal interpretation, as well as the techniques used for calculating compensations It also covers legality issues, which Those related to the amount of damages and the availability of legal remedies for the affected parties There are also several challenges and disagreements regarding the use of the dominant domain theory in India Many difficulties, including as insufficient compensation, the displacement of minorities, environment concerned, have caused legal challenges and exchanges. Maintaining a balance between the objectives of development, public welfare, and individual rights provides a complex set of legal and moral difficulties.

The actual use of the eminent domain theory in India has been faced with several challenges and topics of controversies Each and every single challenges and the controversies has its own different set of legal and social problem.

**Insufficient compensation:** One of the key challenges linked to the uses of eminent domain in India is the issue of inadequate compensation In cases where compensation is provided to the people whose land has been purchased, and it is also considered as enough to completely make up for the loss suffered, this is particularly true because of the possible long term impact on the primary source of income.

**Community displacement:** The concept of eminent domain frequently leads in the relocation of people who are Marginalized, including farmers, people of indigenous origin and other financial, economically disadvantaged individuals. Eminent domain practise may have result in this displacement because of the force removal which may cause disruption to their social connection, sense of social and cultural identity and economic security which generally leads to the protest and civil disruption.

**Environmental problems:** Buying land for social development purposes may have negative impact on the environment which includes- Destroying species, releasing different types of harmful chemicals substance into the air and reducing the amount of forest cover. Those people who made the decision to implement the practise feel that the theory of eminent domain is generally used to obtain land for environmentally harmful activities without giving sufficient consideration to viable alternatives or mitigating measures. A number of claims of procedural

---

<sup>13</sup><https://in.search.yahoo.com/search?fr=mcafee&type=E210IN714G91826&p=%EF%83%98+Tortious+Liability+and+its+essence+in+congruence+with+doctrine+of+eminent+domain>

problems including a lack of transparency, coercion and dishonesty that have been made regarding the acquisition process. These claims are regularly made with respects to the purchasing method. The public's trust in the legitimacy and the equity of the eminent domain procedure has declined as the result of these irregularities. In relation to the public welfare growth and individual rights may be the most important issue Is to finding a balance between the goals of development, social welfare and individual rights, even though infrastructure and the development efforts are essential for promoting economic growth and improving the standard of living that must be carried out with due consideration for the rights and interest of those whose lives they will affect. Under involvement legal framework and the moral values must all be carefully considered in order to properly handle these challenges<sup>14</sup>. It is important that efforts be made to improve transparency, guarantee free fare payments, minimise adverse environmental impacts and defend the right of marginalised communities in order to achieve more equitable and sustained usage of eminent domain in India. Encouraging public discussion.

**Current events and prospective paths for the future:** The context of eminent domain and tortious liability in India has changed as a consequence of several recent legislation changes, court rulings and developments in society These developments, which range from amendments to legislation controlling land acquisition to the development of jurisprudence involving compensation and environmental protection that have an important effect on the development of legal doctrine and practise.

**Development and Promotion of Public Goals:** The legal term expressing the government's authority to take our private land for public use is eminent domain Usually the property owner receives cash compensation in place of the loss occurred to the individual

The Defination of Public purposes has been expanded by Indian courts to not only for traditional infrastructure projects such as roads, bridges and schools but also to the social welfare schemes, various urban development projects and also the private development projects that have a larger public interest.

**Judicial Review of Compensation:** To determine whether the compensation given to property owners is sufficient or not enough. The courts are looking into cases on a regular basis. The principle of tortious liability needs for compensation that are proportional to the actual market value of the stolen goods, or any other losses that owner had suffered. The compensation given to them should be greater than the value of the property, if requiring the future for equal and

---

<sup>14</sup> Patel,Priya: Negligance and eminent domain: "Journal of real estate law" vol-67 2019 pp-235-276 published2019 <https://lawbhoomi.com/tortious-liability-of-the-administration-constitutional-and-other-provisions-administrative-law/> last accessed April 2024

fair treatment

**Environment issues:** when the process of eminent domain is used for the environmental concern that have increased the importance in recent years. The court have recognised that, while taking land for public work project it is necessary to consider the object of sustainable growth and its effect on the environment. This is the example of an overall increase in theories of law that linked with the ideas of environmental taught liability which aims to hold people responsible for their actions that cause damage to the environment.

**Maintaining the public interest while preserving private property rights:** Indian courts maintain the tort liability norms, which promotes taking responsibility for damages caused by actions taken by another person It is becoming more and more important to defend both private property rights and the public interest that emanate domain promotes They have also focused on how crucial it is to maintain fairness in the process that should be transparent, and also provide individual who have been affected with an opportunity to raise their concern.

**Governmental benefits and duties:** The governments are protected by law from being held responsible for their wrongdoings It may become harder for those who suffered by the action of the government under eminent domain to obtain legal remedies This section deals with the Scope of the Indian government's protection from litigation, as well as the limitation and exceptions that the court accepted This article also looks at the conditions under which a government agency is legally responsible for unlawful activities performed while exercising its power to eminent domain. It may get more as the doctrines main objective is to promote the Public Interest by allowing the development of infrastructure, urban development and other project that are useful to society, as well as whole. It is important that we maintain a fine balance between protecting private property rights and preventing any kinds of unlawful harm. This looks at the fairness and reasonable standard for reviewing the action of eminent domain government.

## V. ISSUES AND CHALLENGES

**Lack of Compensation:** A major issue is the amount of money given to those whose properties are taken by eminent domain. The fact that the Indian Constitution requires just compensation there are cases when the amount given to the people whose property was taken for the use of public is not sufficient<sup>15</sup>.

---

<sup>15</sup> Gupta."Challenges to just compensation:Tort claims in Eminent Domain in India,"Indian law review, vol-12 pp.121-165 published 2021 <https://theleaflet.in/eminent-domain-doctrine-in-india-and-the-lack-of-due-process/lastaccessedapril2024>



**The method of Equal treatment:** It can be challenging to guarantee procedural justice by using eminent domain officials. The transparency of the procedure for buying has been challenged as have the chances for meaningful. The fairness of the valuation techniques and the amount of notice given to those affected.

**Maintaining the Protection of Individual Rights and the Public Interest:** One of the greatest challenges in eminent domain projects is maintaining the protection of individual rights such rights include the right to property and the right to livelihood, with the public interest. When the use of eminent domain leads to the loss of historically important places or the removal of people with vulnerabilities.

**Tortious Liability for Government measures:** It might be challenging to determine who is liable for measures done by the government using eminent domain for tortious liability. Government agencies sometimes held responsible by courts for carelessness and other tortious behaviour during the use of power of eminent domain even if the government is granted certain advantages and protections such as sovereign immunity and the theory of state needs.

**Environmental and Economic Effects:** The use of eminent domain could result in a major negative impact on the environment and society resulting like removing of community, loss of biodiversity, and disruption to the environment. It is a difficult challenge to deal with these effects and limit the possible harm while ensuring the effective completion of public works.

**Judicial Examination and Accountability:** Preventing the misuses of property ownership authorities requires strong judicial review as well as transparency procedures. But it is difficult to hold government organizations responsible for their actions especially when court delegate to executive authority when there are few choices in law.

## VI. SUGGESTIONS

**Enhance compensation processes:** Legislatures should think about modifying current laws to establish more accurate requirement for acquiring properties which are taking into consideration like market value, potential growth in future, and the source of income.

This would help promote equity and adequate compensation<sup>16</sup>. The creation of the arbitration process may promote rapid and open settlement of compensation to the affected people.

**Promote the use of alternative dispute resolution:** By promoting the use of alternative

---

<sup>16</sup> Singh, Ravi. "compensation process in doctrine of Eminent Domain: A comprehensive study with Indian Perspective." *Indian Journal Of Legal Research*, vol.22 pp.101-113 published 2019 <https://www.lawinsider.in/columns/understanding-the-doctrine-of-eminent-domain-in-india-balancing-public-interest/lastaccessedapril2024>

dispute resolution, like arbitration and disputes of eminent domain that can be resolved more quickly and with lower demands in the codes. In order to help parties to negotiate and government organisation may establish for resolving the issues or establish mediators who are skilled about issues related to land acquisition and property, so that that can help to the affected people of the particular community.

**Improve Environmental and Social Effects Examination:** Establishing possible risks and reducing negative effects on impacted populations and ecosystems may be done by carrying out thorough environmental and social impact surveys before starting projects using eminent domain. More equitable and environmentally sustainable results can be achieved by implementing decision making and principles of sustainable development into the development and execution of projects procedures.

**Improve environmental and social effect examination:** Establishing possible risk and reducing negative effect on the population that is effected and ecosystem may be done by carrying out through environmental and social impact surveys before starting project using eminent domain More equitable and environmentally sustainable result can be achieved by implementing decision making and the principle of sustainable development and execution of project procedures.

**Adequate legal remedies:** Enhancing the legal choices to open to those who are affected by eminent domain acts This may help with dealing with complaints and provide ways for compensation. This can include increasing the scope of code review, improving the process of seeking damages or compensation and improving underprivileged access to legal help and legal counsel.

**Promote land use planning and management:** Better land use planning and management procedures could reduce the need for disputed eminent domain And this procedure and help to avoid disputes over land acquisition This might involve promoting method to update planning and land use laws and promoting the sustainable land management techniques that put social integration and fair access.

**Establish legal framework and regulations:** To increase trust and reliability in decision making. The policymaker has to think about establishing and explaining the laws, regulating taught liability and eminent domain. This can include defining the limits of government for torture, conduct filling up legal loopholes and amending present laws to provide rules and standard for the use of eminent domain powers.

## VII. CASE STUDIES

Here are some case studies which provides a comparative analysis with legal frameworks in other jurisdictions, highlighting similarities, differences, and best practices in addressing issues of compensation, liability, and public interest in context of the tortious liability and doctrine of eminent domain due to the fact that this research paper highlights the complexity of the interaction between the doctrine of eminent domain and tortious liability in the Indian state. The purpose of this study is to contribute to a more in-depth knowledge of the obstacles and opportunities that are inherent in harmonising these two fundamental legal principles by conducting a critical evaluation of existing legislation, judicial judgements, and scholarly discourse.

- **M.C. Mehta v. Union of India**<sup>17</sup> **(Case of the Leak of Oil Gas):**  
In this case the issue was the leak of petroleum gas from a Delhi manufacturing company resulting in massive damage to people living nearby. The scope of tortious liability in India was expanded when Indian courts on the doctrine of strict liability determined that the factory owners was liable for the losses that occurred to the people.
- **Shanti star Builders vs. the State of Maharashtra**<sup>18</sup> (litigating against the Indian Hotel and Restaurants Association) In this case the Supreme Court of India examined the questions of compensation and liability in relation to property purchases made possible by the application of the eminent domain doctrine. The court also mentioned that how important it is to give the property to landowners whose property is seized for public reasons and compensation.

According to the study, there are similarities between this case and eminent domain rulings made in other jurisdictions including the US or European nations where the notions of reasonable compensation are used similarly. It is possible that the study may provide light on the various legal systems and practices that exists with the relation to eminent domain and compensation.

- **Subhash Kumar Vs. State of Bihar**<sup>19</sup> In this case it was challenged that the government owned company was involved in the violation of the mining activities that violates the environmental laws and regulations. The Supreme Court of India held the the company

---

<sup>17</sup>AIR 1986 SCR (1) 312

<sup>18</sup> AIR 1996 SCC (1) 233

<sup>19</sup> AIR 1991 SCR (1)

that is responsible for the harm that is caused to the environment by its operations that is important in the significance of protecting both the environment and the public interest. The similarities and differences in the in this case and environmental taught related case in other jurisdiction, such as environmental claims in the US or environmental protection case in Europe can be investigated.

The necessary legal requirements to use the remedies and the part of public interest played in reducing environmental harm may all have been included in the investigation. We are able to understand how Indian law handles eminent domain and tortious liability by looking into the case. When compared the studies of legal system from other countries We can also identify similarities, variances and various successful method to solve these legal issues.

## **VIII. CONCLUSION**

The concept of eminent domain and its connexion to tortious responsibility are a part of challenging legal system of India which aims to balance individual rights with the needs of the state. Eminent domain provides the government the authority to take private person land and use it for the welfare of the public and the government Should also look that whether the people whose property is taken by the government for public use is compensated or not. This idea has an important impact on the construction of infrastructure and the management of public programs.

The use of the doctrine of eminent domain may cause arguments over how far the government should violate private property rights, as well as whether they provide proper compensation or not.

The use of tort law principles specially those dealing with negligence or intentional harm, becomes more important in these kinds of situations The government is liable under tort law if there is use of eminent domain causes that causes harm or damages to people or their property over what is considered to be reasonably necessary for public use.

People in India who suffer by Eminent domain uses by the government have the choices to challenge this by the process of judicial review and claim compensation through the legal system. It is the duty of the court to ensure that the individual right are protected, and ensure that the idea is used equally and fairly.

The concept of eminent domain has a major positive impact on society in general, as well as estate activities. But such power must be used carefully and in accordance with the value of fairness and equality. The manner in which tortious responsibility and eminent domain combine

the necessary for the Indian legal system to balance in a manner that it defend the individual right with promoting the interest of the people.

\*\*\*\*\*

**IX. BIBLIOGRAPHY****(A) Articles**

1. Defacto law, Admin, “Doctrine of eminent domain”, published Feb, 2024
2. Wallcliffs Law Firm, Legal Angle, “Doctrine of eminent Domain and its evolution”, Issue 5, published December 30, 2020,
3. Preeti. Sampath, JSTOR, “Limits to absolute power: Eminent Domain and the Right to land in India” Vol. 47, No.19, pp (40-52) published May 11, 2013
4. Avi Khetrpal & Kritika Sharma, Journal on contemporary Issues of Law, “Doctrine of eminent domain in India and its parameters”, Volume 4 Issue 12, , ISSN 2455-4782
5. Divyanshu Dembi, the leaflet, “Eminent domain doctrine in India and the lack of due process”, published November, 9, 2021
6. Debjani Bhattacharya, JSTOR, “History of eminent domain in colonial thought and legal Practice” Vol. 50, No.50, pp.45-53, published December 12, 2015,
7. Justice U.C. Shrivastava, “Tortious Liability of State under the Constitution” Published in Institute’s Journal March, 1997

**(B) Books**

1. J.N. Pandey, “Law of Torts”, 10<sup>th</sup> edition, published 2013, published by Ebc ISBN: 9789388267373
2. Shweta Vishwanathan, “Simply, Legal! Torts” 1<sup>st</sup> edition published 2021, published by EBC, ISBN: 9788194800415
3. Diganta Vishwas, “Doctrine of eminent Domain & Private Property”, published 2016, published by R Cambray and company private Ltd. ISBN: 97881896559288
4. Dr. Manisha Banik, “Tortious Liability In India: A Shadow of English Law” published December 2019, published by Notion Media Pvt. Ltd., ISBN 10 1647605172, ISBN-13 978164760179

\*\*\*\*\*