

Comprehending Doctrine of Eminent Domain with 7 Important Questions

QUESTION 1 : GENERAL MEANING & DEFINITION OF EMINENT DOMAIN :

1. Eminent Domain means that (a) power of the state to take, (b) without the owner's consent, and (c) for the public use.
2. "Eminent domain" is thus inherent power of a governmental entity to take privately owned property, especially land and convert it to public use, subject to reasonable compensation for the taking.
3. Nichols in his classic book Eminent Domain defines it (eminent domain) as "the power of sovereign to take property for public use without the owner's consent".
4. According to Black's Law Dictionary Eighth Edition the inherent power of the government to take over privately owned property amounts to exercise of power of "eminent domain".

QUESTION 2 : EMINENT DOMAIN IN INDIA : Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.*, AIR (1954) SC 119, *Chiranjit Lal Chowdhuri v. Union of India* AIR (1951) SC 41 and *Jilubhai Nanbhai Khachar v. State of Gujarat* (1995) Supp. (1) SCC 596.

QUESTION 3 : 3 ELEMENTS OF EMINENT DOMAIN : First, the taking should be under a valid law. Second, the land owner must be paid just compensation. Third, the acquisition of the property should only be for public purposes.

ELEMENT 1 : This valid law in India is generally land acquisition act 1894 or The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [RFCTLARR].

The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana* (2003) 5 SCC 622; *State of Maharashtra v. B.E. Billimoria* (2003) 7 SCC 336 and *Dev Sharan v. State of U.P.*, Civil Appeal No.2334 of 2011 decided on 7.3.2011. [Case laws]

ELEMENT 2 : An incidental limitation of power of Eminent domain is that the property shall not be taken without just compensation. The compensation requirement is aimed at restoring the equality which has thus been upset. In *Stroud's Judicial Dictionary at page 524 of 4th Edn., Vol. I*, it is stated that the **compensation must be reasonable and proportionate to the injury caused**. It is necessary to note at this stage that the Parliament is aware of the distinction between the words "Market value of the land" and "Compensation". In the Act, the Legislature has chosen to use the word "Compensation" instead of Market value of the land".

Compensation is of three kinds - legal or by operation of law, compensation by exception and by reconvention."

Additional payment is made which is known as *solatium*. In Stroud's Judicial Dictionary 4th Edn., Vol. 5, at page 2570, the word "**Solatium**" has been defined as "*Solatium is an expression apt to describe an award of some amount to cover inconvenience and, in a proper case, distress caused by compulsory taking. It is quite inapt to describe an amount awarded for probable loss to which the claimant is entitled.*"

Section 105 of the RFCTLARR Act, 2013 makes the provisions of the determination of the compensation, rehabilitation and resettlement in this Act applicable to cases of land acquisition under the enactments specified in the Fourth Schedule of the Act.

Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

ELEMENT 3 : MEANING OF PUBLIC PURPOSE :

In *Scindia Employees' Union v. State of Maharashtra (1996) 10 SCC 150* Supreme Court observed: (SCC p. 152, para 4) "4. ... The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned...."

- **OPPORTUNITY OF BEING HEARD** : A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.
- **NOT STATIC** : In *Arnold Rodricks v. State of Maharashtra AIR 1966 SC 1788* this Court held that the phrase "public purpose" has no static connotation...it may change from time to time. It, however, involves in it an element of general interest of the community which should be regarded as a public purpose.
- **DEPENDS ON FACTS AND CIRCUMSTANCES OF THE CASE** : *State of Bombay v. Bhanji Munji AIR 1955 SC 41*, the Constitution Bench stated that the expression "public purpose" must be decided in each case examining closely all the facts and circumstances of the case.
- *Kedar Nath Yadav v. State of West Bengal 2016 SCC OnLine SC 885* : The government's acquisition of land in singur for the purported use by Tata Motors Limited to construct a car factory, they held, was in violation of the procedural mandates of the Land Acquisition Act, 1894. It was held that there is no public purpose in construction of private car factory.

- *Laxmikant vs The State Of Maharashtra 2022 LiveLaw (SC) 314*: The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose. If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State to invoke its rights of eminent domain.

QUESTION 4 : TWO SCHOOLS OF THOUGHT ON EMINENT DOMAIN :

Willis in his well-known work Constitutional Law discusses two viewpoints as to exercise of power of eminent domain.

1. The older and stricter view was that unless the property was dedicated for user by the public at large or a considerable section thereof, it would not be for public use or for public purpose.

2. **The modern and more liberal view**, however, is that it is not an essential condition of public use that the property should be transferred to public ownership or for public user and it is sufficient that the public derives advantage from the scheme.

State's sovereign power to appropriate private land for public purpose rests upon famous maxims:

salus populi est suprema lex (the welfare of the people is supreme) and necessitas publica major est quam private (public necessity is greater than private).

QUESTION 5 : LAND ACQUISITION LAWS :

Land Acquisition Act of 1894 : made the power of eminent domain, and the nature of 'public purpose', a matter solely for executive determination, and, therefore, non-justiciable.

1. Under the 1894 statute there were broadly two forms of recognised expropriation:

- One, acquisition for public purpose for governmental use, and
- Two, forced transfer of land from private individuals to corporations for the latter's commercial use. In the case of acquisitions intended to benefit companies, a special procedure was prescribed in Part VII of the Land Acquisition Act, which incorporated additional safeguards to ensure that governments don't abuse their avowed power of eminent domain.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This Act came into force on 01.01.2014 by repealing the Land Acquisition Act, 1894. The Act inter-alia provided for compensation upto four times the market value in rural areas and twice the market value of land in urban areas; rehabilitation and resettlement benefits not only for land losers but also for livelihood losers.

The Act also lays down procedure and manner of rehabilitation and resettlement (R&R) wherein R&R is an integral part of the land acquisition plan itself. Chapter-V and VI of the said Act contain detailed provisions for R&R awards and their implementation.

QUESTION 6 : RIGHT TO PROPERTY UNDER CONSTITUTION OF INDIA V. DOCTRINE OF EMINENT DOMAIN :

- Earlier Right to Property is a Fundamental Right under the list of freedoms = Article 19(1)(f) + Article 31, which provided that state can acquire properties of individual for the public purpose by paying compensation to the landowner, provided such acquisition was backed by suitable legislation.
- In 1978, Parliament enacted the 44th amendment to the Constitution = deleted Article 19(1)(f) and Article 31, and made the right to property to a mere non-fundamental status. Why ? Government need to carry upon land reforms to set right the inequalities among the farmers.
- With respect Constitutional right under Article 300-A, Supreme Court of India held in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai* (2005) 7 SCC 627, that: " 6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."
- The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right (*Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.* (2013) 1 SCC 353) in a welfare State, and a Constitutional right under Article 300A of the Constitution.
- Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300A, can be inferred in that Article (*K T Plantation Pvt. Ltd. v. State of Karnataka* (2011) 9 SCC 1).
- To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. (*D.B. Basnett (D) Thr. Lrs. vs The Collector SC March 2020*)

QUESTION 7: JUDICIAL REVIEW OF EMINENT DOMAIN : The Supreme Court in *Sooraram Reddy v. Collector, Ranga Reddy District* , has articulated the following grounds for review of this power: (i) malafide exercise of power; (ii) a public purpose that is only apparently a public purpose but in reality a private purpose or collateral purpose; (iii) an acquisition without following the procedure under the Act; (iv) when the acquisition is unreasonable or irrational; (v) when the acquisition is not a public purpose at all and the fraud on the statute is apparent.

MISC : PREVIOUS YEAR UPSC LAW OPTIONAL QUESTION ON EMINENT DOMAIN :
UPSC 2021 & 2022 : Not Asked. **UPSC 2020 :** Analyse the relevance of doctrine of eminent domain under Constitution of India. Explain the limitations of this doctrine with help of case laws.

UPSC 2016 : What do you understand by the term "Eminent Domain"? Discuss its relevance in the present day context.