

## CHAPTER-III

# CONSTITUTIONAL MANIFESTATION OF EMINENT DOMAIN IN INDIA

### 3.1 Introduction

The primary owner of land is the king or in modern sense the elected Government in power. As such the right of ownership will always remain with the king or the elected government, notwithstanding the fact that land is transferred to individual citizens for agricultural or other purposes by the king or the government as the case may be.<sup>1</sup> The institution of private property has been a controversial topic with conflicting views, one completely denying the right to own private property and the other supporting the holding of the private property. According to Karl Marx, class struggle is mainly due to the institution of private property. Locke regarded that property as a natural and inherent right of individual. Black stone considered it as so scarce that law should not authorize the least violation of it.

Right to property is the natural and inherent right of an individual. Citizens have every right to own and possess the property. Most of the modern Constitutions except those of communist countries have recognized the right to private property. A person has a right not to be deprived of his property except through due process of law, which is conflicts with the right of State to acquire property under the doctrine of eminent domain. These two rights exist in diametrical opposition and it has to be resolved more in favour of citizens by limiting the power of eminent domain. Eminent domain (United States, the Philippines), compulsory purchase(United kingdom, New Zealand, Ireland), resumption (Hong Kong), resumption/compulsory acquisition (Australia)), or expropriation(South Africa, Canada), is the power to take private property for public use by a State or national government. However, it can be legislatively delegated by the State to municipalities, government subdivisions or even private persons or corporations when they are authorized to exercise functions of public character. The property may be taken either for government use or by delegation to third parties who will also devote it to public or civic use or, in some cases, economic development. The most common uses of property taken by eminent domain are government buildings and other facilities, public utilities, highways, and railroads; however, it may also be taken for reasons of public safety. Some

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<sup>1</sup> Dr. N. Maheshwara Swamy's, '*Land Laws*', (Asia Law House, Hyderabad, 1<sup>st</sup> ed.,2006), p 4.

jurisdictions require that the condemner offer to purchase the property before resorting to the use of eminent domain. Eminent domain is the incidental exercise of sovereign power of the State to acquire private property for 'public purpose' by providing just compensation.<sup>2</sup> The expression "eminent domain seems to have been first used in 1625 by the international jurist Hugo Grotius in his work '*De Jure Belli ac Pacis*', now it is accepted principle of constitutional law in almost all important countries.<sup>3</sup>

The Government 's sovereign authority to seize private property for public use must be subjected to payment of just compensation originated at English common law and appeared in America as early as the seventeenth century. In colonial America, the government officials invoked this power of eminent domain rather frequently for limited number of uses. At that time James Madison, however, who drafted the original language of the Public Use Clause, feared that the government's power to take property, if it left unrestricted, could jeopardize private property rights. As a result, the drafters of the Bill of Rights adopted Madison proposal as part of the Fifth Amendment, which limits the eminent domain power to take private property for public use.

### **3.2 Meaning of Eminent Domain**

Doctrine of 'Eminent domain', in its general connotation means the supreme power of the king or the government under which property of any person can be taken over in the interest of general public. However, over the years such taking over the property by the king or the government has been made possible only after compensating the land owner of such property. Thus eminent domain explained as the power of the king or the government to take over the property of a private person when it is needed for a public purpose. Doctrine of 'eminent domain' is based on two maxims namely *salus populi supreme lex esto* which means that the welfare of the people is the paramount law and *necessita public major est quan*, which means that public necessity is greater than the private necessity.<sup>4</sup>

Eminent Domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent. This power is based on

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<sup>2</sup> G.S. Pande's, '*Constitutional Law of India*', (University Book House (P) Ltd., Jaipur, 10<sup>th</sup> ed., 2007) p 600.

<sup>3</sup> *Chiranjit Lal Choudhary v. Union of India*, AIR 1951 SC 41, 54.

<sup>4</sup> *Supra* note 1, at 4.

sovereignty of the State. Payment of just compensation to the owner of the land which is acquired is part of exercise of this power. Eminent domain power is regarded as an inherent power of the State to take private property for public purpose. This power depends on the superior domain of the State over all the property within its boundaries. An incidental limitation of this power is that the property shall not be taken without just compensation.<sup>5</sup>

The expression “eminent domain” means permanent (eminent) dominion (domain) of the state on the property. The power of the State to take private property for public use and consequent right of the owner to compensate now emerge from the constitution of India. In entry 42 list III of seventh schedule under Indian Constitution, both union and States government are empowered to enact laws relating to acquisition of property.<sup>6</sup> The use of eminent domain power for land acquisition is also justified when the public purpose in question can be served by only a specific piece of land, which has no substitute.<sup>7</sup>

### **3.3 Distinction between Eminent Domain Power & Police Power**

In *Chiranjit Lal v. Union of India*, Supreme Court held that the eminent domain is the inherent right in every sovereign State to take and appropriate the private property belonging to an individual for public purpose.<sup>8</sup> The State under its police power also regulates the use and enjoyment of private property. The police power can, however, be distinguished from eminent domain power. While under police power, State merely regulates the use and enjoyment of property; under the eminent domain, State can take the property from the owner for public use.<sup>9</sup>

Police power forms the part of State government power. It is exercised in maintaining law and order situation of the country. It denotes the dominant role of the police in carrying out day to day activities of the State in its administration in streamlining the societal living. Police power is thus only a means to an end but not an end in itself. Police power is also an inherent power of the sovereign authority to provide protection for health, morals, safety, and welfare of the people.

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<sup>5</sup> *Chiranjit Lal Choudhary v. Union of India*, AIR 1967, SC 41 & 54.

<sup>6</sup> Dr. J.C. Verma's, 'Law of Ownership of Property and Investigation of title', (Bharat Law House, New Delhi, 3<sup>rd</sup> ed., 1995), p 256.

<sup>7</sup> India Infrastructure Report, 2009.

<sup>8</sup> AIR 1967 SC 41, 54.

<sup>9</sup> *Supra* note 2, p 600

Notwithstanding this all pervasive nature of police power is that exercise of police power restricted only to maintenance of law and order situation. In as much as police is only an assisting machinery. This power seems to be synonymous with the power of eminent domain. However there is vital difference between these two powers.<sup>10</sup>

1. Eminent domain is a sovereign power exercised subject to public convenience, with the ultimate object of meeting public welfare and public purposes and where as the police power is exercised to ensure, *interalia* that the law and order is enforced to protect property right, to achieve public purpose etc.,
2. Eminent domain power is unopposed authority subject to payment of compensation to the person interested and whereas the police power is subject to scraping of the executive and judicial wing of the government.
3. Eminent domain power originates out of the constitutional provisions and whereas the police power originates out of legal provisions, which shall not be contrary to constitutional provisions.
4. Exercise of eminent domain power operates sometimes harshly and unequally and requires special sacrifices from the persons interested whereas such a situation does not arise while operating police power.
5. Exercise of the power of eminent domain deprives the right in the property, and whereas exercise of the police power provides security to the person and property.<sup>11</sup>

### **3.4 Distinction Between Power of Taxation vis-à-vis Power of Eminent Domain**

Powers of taxation and right of eminent domain have much in common. Both are inherent powers in any government and sometime both operate on property. Besides this, both are generally asserted for public use and benefit. It is, therefore, not surprising that both cases confused with each other. Nevertheless, there is a clear line of demarcation between these two powers.

In *Laxmanappa Hanumantappa v. Union of India*,<sup>12</sup> it was held that deprivation of property by imposition or collection of tax does not amount to acquisition or

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<sup>10</sup> *Supra* note 1, at 7.

<sup>11</sup> *Supra* note 2, at 600.

<sup>12</sup> AIR 1955 SC 3.

requisition of property under Article 31(2), which has been deleted by the Constitution (forty fourth amendment) Act, 1978. In *Chemili Singh v. State of U.P.*,<sup>13</sup> it has been held that compulsory acquisition of land for providing houses to dalits cannot be challenged on the ground of violation of right to livelihood which is an integral part of right to life under Article 21.<sup>14</sup>

The power of imposing taxes by the State is yet another power exercised by the state which resembles to be similar to the power of eminent domain, but with different objective. Power of taxation has to be exercised by the state with the sole objective of raising income of the state *inter alia* for meeting the public expenses. Through such earnings State undertakes various socio – economic activities including the activities to be achieved by the exercise of the power of eminent domain. The other objective of the power of taxation is to reduce economic disparities between the poor and the rich fraction of the society. In India, this power is exercised by both union as well as the State governments. Taxing power will have direct impact on the earnings of the citizen and on their living conditions. The following are some of the differences between the power of imposing taxes and power of eminent domain.<sup>15</sup>

1. The power of taxation is not exercisable in respect of certain transactions of the society whose income is below the level of imposing taxes, whereas such exclusion is not, while exercising the power of eminent domain.
2. The power of taxation of the State is legal power and whereas the power of eminent domain is an inherent power of the State.
3. Taxation power is exercised to impose and collect taxes and whereas the power of eminent domain is exercised to acquire and hold immovable property of persons for public purposes which is a question of fact in each case.
4. While exercising the power of taxation the State need not pay any compensation to the person connected instead of that citizen has to pay taxes to the State and whereas in case of power of eminent domain, the State is under an obligation to pay compensation to the person interested.
5. The power of taxation can be exercised against any property, movable or immovable, whereas, the power of eminent domain can be exercised generally

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<sup>13</sup> 12(1996)2 SCC 549.

<sup>14</sup> *Supra* note 2, at 600.

<sup>15</sup> *Supra* note 1, at 6.

against the immovable property, *i.e.*, land, including anything permanently fixed to the earth.<sup>16</sup>

### **3.5 The Eminent Domain Dogma**

The power of compulsory acquisition, as described by the term 'eminent domain', can be exercised only in the interest of welfare of people and prosperity of community or public at large. The concept of eminent domain is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.<sup>17</sup> The doctrine of eminent domain indisputably finds its roots in the natural law movements it asserts the rights of state over the land and its related resources within the territory. It is perceived as a necessary right to be invoked to further public good. In consequence, the right of any person or community to refuse to permit the intervention of the State, or to dissent from the states perceptions of public good is considerably eroded.<sup>18</sup>

Although the power to determine what constitutes public purpose is primarily with government, Courts have powers to review such decisions. In practice, however, the Courts have generally placed limitation on themselves.<sup>19</sup>

1. Compensation for the property acquired.
2. The interest of the community is always superior to the interest of the individual.

#### **3.5.1 Doctrine of Eminent Domain in USA**

In United States of America, meaning and importance of the term 'Eminent Domain' is similar to the general understanding in India. It is determined fact that the right of eminent domain is one of the element of government. It is a fundamental principle of the government upon which governments find their foundations; without which any system would be imperfect, and necessarily inoperative. In *Long Island water Supply co. v. Brookly*,<sup>19 A</sup> "just compensation" in USA is required to be paid

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<sup>16</sup> Supra note 1, at 7.

<sup>17</sup> Indian Infrastructure Report, 2009.

<sup>18</sup> Usha Ramanathan, 'Displacement & Law', 31 EPW 1488 (June 15 1996).

<sup>19</sup> Indian Infrastructure Report 2009.

<sup>19 A</sup> 1897.166 US S.Ct.718, 41 L.Ed 1165

when property is acquired by exercising the power, for “public use”. Acquisition of property for public purpose has to be established, as envisaged in the fifth amendment to the Constitution of USA. Over the years definition of "public use" has been expended so as to include scheme meant for economic development of the country. As such eminent domain power exercised to displace private homes and businesses in order to transfer the same to private developments that are more profitable. For instance in *Poletown Neighborhood Council v. City of Detroit*,<sup>19 B</sup> judgment of Supreme Court of Michigan, rendered in 1981 based on the precedent set in *Berman v. Parker*<sup>19 C</sup>, the Court permitted the neighbourhood of pole town to be taken in order to build a General Motors’ plant. The U.S. Courts in other states also relied on this decision, inspite of it being overturned as a precedent in 2004. The expansion of the doctrine has also gained importance before the Supreme Court of the United States during in fall of 2004. That time power of eminent domain has also been used by communities to take control of planning and developmental activities. For example, the deadly street initiate a community group in Boston attained the right of eminent domain used it to reclaim vacant properties for the purpose of community.<sup>20</sup> U.S. Supreme Court in *Kelo v. New London*,<sup>20 A</sup> ruled in favor of allowing New London by the reason of eminent domain to take over private property for “public purpose.” Much has been made recently of *Kelo* and the negative impact of eminent domain in its use of State and municipal powers to transfer property rights from individual homeowners in poorer, marginal neighborhoods and transferring those rights to larger private property enterprises that will achieve simply larger tax revenues. Since the end of 2005, forty-seven states legislature have introduced and approved by one or other State legislative houses, and had governors sign into law. It measures restricting the usages of eminent domain based on the protection of small property owners against the designs of wealthier economic interests. The new restrictions on the application of eminent domain have usually limited the transfer of private property from one owner to another for commercial development. At the outset it is important to notice that the 5<sup>th</sup> amendment of the Federal Constitution provides that “nor shall private property be taken for public use without just

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<sup>19 B</sup> 304 N.W. 2d 455(Mich. 1981)

<sup>19 C</sup> 348 US. 26 (1954)

<sup>20</sup> *Supra* note 1, at 7.

<sup>20 A</sup> 545 U S 469 (2005)

compensation”. Similarly 14<sup>th</sup> amendment to the Constitution provides that no State shall deprive any person of his property without due process of law.

It is for the legislature to determine, in its discretion, that in which are the cases private property may be taken for public use subject to the supervision of the Courts. However, final power to decide whether or not the use in such public sense and private property may be condemned for that purpose is with Court. The legislature must also provide some method of ascertaining the just compensation required by the usual Constitutional provision.

### **3.5.2 Doctrine of Eminent Domain in European Nations**

In its applications to the European nations, the European Convention on Human Rights provides protection from appropriation of private property by the State. Article 8 of the convention contemplates, “everyone has the right to respect for his private and family life, his home and his correspondence”, and prohibits the interference with this right by the State, unless the interference is in accordance with the law and is necessary for the national security, public safety, economic wellbeing of the country; prevention of disorder or crime; protection of health or morals, or the rights and freedom of others”. This right is expanded by Article 1 of the first protocol of the convention, which envisages, "every natural person or legal person is entitled to the peaceful enjoyment of his possession". However, one exception to this right is that where the State deprives private possession in public interest, it should be in accordance with the law, and in particular, to secure payment of taxes.

In France, the "Declaration of the rights of Man and the Citizen" contains the mandatory provision for payment of just and preliminary compensation before expropriation.<sup>21</sup>

### **3.5.3 Doctrine of Eminent Domain in England and Wales**

Chapter 28 of Magna Carta required that immediate cash payment be made for expropriations. As the king's power was broken down in the ensuing centuries, tenants were regarded as holding ownership rights rather than merely possessory rights over their land. In 1427, a statute was passed granting commissioners of sewers in Lincolnshire the power to take land without compensation. After the early 16th

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<sup>21</sup> *Supra* note 1, at 8.

century, however, parliamentary takings of land for roads, bridges, etc. generally did require compensation. In spite of contrary statements found in some American law and in the United Kingdom, compulsory purchase valuation cases were tried to juries well into the 19th century.

In England, Wales and other jurisdictions that follow the principles of English law, the related term compulsory purchase is used. The landowner is compensated with a price agreed or stipulated by an appropriate person. Where agreement on price cannot be achieved, the value of the taken land is determined by the Lands Tribunals, a Court consisting of one barrister and two chartered surveyors. The operative law is a patchwork of statutes and case law. The principal Acts are the Lands Clauses Consolidation Act 1845, the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Land Compensation Act 1973, the Acquisition of Land Act 1981, part IX of the Town and Country Planning Act 1990, the Planning and Compensation Act 1991, and the Planning and Compulsory and Compulsory Purchase Act 2004.

**Compulsory Purchase:** Is the power to acquire rights over an estate in land, or to buy that estate outright, regardless of the willingness or otherwise of its current owner, in return for recompense. In England and Wales Parliament has granted several different kinds of compulsory purchase power, which are exercisable by various bodies in various situations. Such powers are "for the public benefit", but this expression is interpreted very broadly. Perhaps the most general power originally appeared in the Leasehold Reform Act 1967, under this Act, Leasehold Reform, Housing and Urban Development Act 1992, private individuals who are leaseholders have the power in certain circumstances to compel their landlord to extend a lease or to sell the freehold at a valuation. Utility companies have statutory powers to, for example, erect electrical substations or lay sewers or water pipes on or through someone else's land. These powers are counterbalanced by corresponding rights for landowners to compel utility companies to remove cables pipes or sewers in other circumstances. compensate, under compulsory purchase, is not necessarily a monetary payment of open market value but in most cases a sum equivalent to a valuation made as if between a willing seller and a willing purchaser will fall due to the previous owner. Compulsory purchase only applies to the extent that it is necessary for the purchaser's purposes. Thus, for example, a water authority does not need to buy the freehold in land in order to run a sewer through it. An easement will

normally suffice, so in such cases the water authority may only acquire an easement through the use of compulsory purchase.

**Procedure:** In most cases a Compulsory Purchase Order (CPO) is made by the purchasing authority or the Secretary of State. The CPO must unambiguously identify the land affected and set out the owners, where these are known. The order is then served on all owners and tenants with a tenancy with more than a month to run, or affixed to the land if some owners or tenants cannot be traced. A period of at least 21 days is allowed for objections. If there is a valid objection that is not withdrawn, an inquiry chaired by an inspector will take place. The inspector reports to the secretary of state. If the secretary of state confirms the CPO, then it becomes very difficult to challenge.

Once the CPO is confirmed, the purchasing authority must serve a notice to treat within three years, and a notice of entry within a further three years. It may take possession of the land not less than 14 days after serving the notice of entry. The notice to treat requires the land's owner to respond, and is usually the trigger for the land's owner to submit a claim for its value. If no claim is submitted within 21 days of the notice to treat, the acquirer can refer the matter to the Lands Tribunal. If the land's owner cannot be traced and does not respond to a notice to treat affixed to the land, then the purchasing authority must pay the compensation figure to the Court.

### **3.5.4 Doctrine of Eminent Domain in Australia**

In Australia, the power of eminent domain is recognized under the Australia constitution. Under section XXXI of the Australian constitution of 1900, the Commonwealth Parliament is empowered to make law to acquire property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws. The Constitution of Australia also aspires that the terms of acquisition of private property should be just and not merely which the Parliament may consider to be just.<sup>22</sup> This has been construed as meaning that just compensation may not always include monetary or proprietary recompense, rather it is for the Court to determine what is just. It may be necessary to imply a need for compensation in the interests of justice, lest the law be invalidated.

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<sup>22</sup> India Infrastructure Report 2009.

For the purposes of section 51(xxxi), money is not property which may be compulsorily acquired. A statutory right to sue has been considered "property" under this section. The Commonwealth must also derive some benefit from the property acquired, that is, the Commonwealth can "only legislate for the acquisition of property for particular purposes". Accordingly, the power does not extend to allow legislation designed merely to seek to extinguish the previous owner's title. The states and territories' powers of resumption on the other hand are not so limited. The section 43(1) of the Lands Acquisition Act 1998 (NT) grants the Minister the power to acquire land 'for any purpose whatever'. The High Court of Australia interpreted this provision literally, relieving the territory government of any public purpose limitation on the power, this finding permitted the territory government to acquire land subject to native title, effectively extinguishing the native title interest in the land. As noted by Kirby J in dissent and a number of commentators, this represents a missed opportunity to comment on the exceptional nature of powers of resumption exercised in the absence of a public purpose limitation. The term *resumption* is a reflection of the fact that, as a matter of Australian law, all land was originally owned by the crown before it was sold, leased or granted and that, through the act of compulsory acquisition, the Crown is "resuming" possession.

### **3.5.5 Power of Eminent Domain in India**

The application of eminent domain power of the state in the early constitutional years of independent India was assisted by the jurisprudence that had developed around the colonial Land Acquisition Act of 1894. The impugned legislation and the case law that grew around it, made the power of eminent domain, and the nature of 'public purpose', a matter solely for executive determination, and, therefore, non-justiciable. The Supreme Court in *Sooraram Reddy v. Collector, Ranga Reddy District*,<sup>23</sup> 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. However, even today, eminent domain is among the doctrines that have not been attempted to be curtailed by constitutionalism.

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<sup>23</sup> (2008)9 SCC 552.

This doctrine is contested; as it raises the classic debate of power of state versus individual rights.<sup>24</sup> Moreover, the doctrine has assumed much significance that it does not reflect the altered notions of the relationship between citizens and the State.

Prof. Hugo Grotious an International jurist defined eminent domain in 1626 thus<sup>25</sup> the property of subject 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 cases of extreme necessity but for ends of public utility. Since the power of eminent domain is an inseparable incidence of sovereignty, there is no need to confer this authority expressly by the Constitution.<sup>26</sup> It exists without any declaration to effect. While the exercise of the power is recognized, constitutional provisions provide safeguards subject to which the right may be exercised.<sup>27</sup> For instance in America three limitations, as noted by Cooley<sup>28</sup> exists: (i) there must be a law authorizing the taking of the property; (ii) the property must be taken for some public use; and (iii) just compensation must be paid.

The importance of the power of eminent domain to the life of the State need hardly be emphasized. It is so often necessary for the proper performance of governmental functions to take private property for public use. The power is inalienable for it is founded upon the common necessity and interest and appropriate the property of the individual members of the community to the greater interests of the whole community.<sup>29</sup> However in doing so the State should reconcile the corresponding rights of individual to claim their property.

The Constitution of India also recognizes the power of eminent domain.<sup>30</sup> However, this power of the state has been in limelight, more for the mischief that it is allegedly imputed to bring about. Soon after Independence, the Supreme Court was charged with judging the constitutionality of certain laws, which were intended to abolish the feudal zamindari (landowning) system. Supreme Court in *Chiranjit Lal v. Union of India*<sup>31</sup> held that eminent domain is a right inherent in every sovereign to

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<sup>24</sup> David A. Dana, 'Reframing Eminent Domain: Unsupported Advocacy', 32 Pvt. L. Rev. 129 (1989).

<sup>25</sup> Hugo Grotious, *De Jure Belli ac Pacis*, 73 (1631)

<sup>26</sup> *United States v. Jones*, (1883)27 L ED 1015, 1017.

<sup>27</sup> *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252.

<sup>28</sup> Thomas M. Codey, 'Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union', 165 (1999).

<sup>29</sup> Russell Weaver, 'Constitutional Law : Case Materials and Problems', 541 (1946)

<sup>30</sup> Art. 31A of the Indian Constitution.

<sup>31</sup> AIR 1951 SC 41; 1950 SCR 869.

take and appropriate private property belonging to individual citizens. Acquisition or taking possession of private property which is implied in clause (2) of Article 31 of Indian Constitution, such taking must be for public purpose. The other condition is that no property can be taken, unless the law authorizes such appropriation contains a provision for payment of compensation in the manner as laid down in the clause. The power of eminent domain was under the scrutiny of the Court. In explaining the power, the Court held that eminent domain was “the power of the sovereign to take property for public use without the owner’s consent”. Meaning is that the power in its irreducible terms i.e., (a) power to take, (b) without the owner's consent, and (c) for the public use.<sup>32</sup>

The reference to the 'sovereign ' was a portent of one of the problem is that it has dogged the existence and uses of the eminent domain power, that is, the relationship between the state and the people. The power to take and the unqualified nature of 'public use', has made dispossession and mass displacement of people.<sup>33</sup>

### **Eminent Domain and the Land Acquisition Act**

One of the most significant statute concerned with the exercise of the right of eminent domain in India was the Land Acquisition Act, 1894. The jurisprudence that has developed around this Act has placed severe constraints on the possibility to challenge the power of the State to compulsorily acquire. It sets out what constitutes 'public purpose' and it hands over land, 'without encumbrances', to the State, to do whatever it wants with it at will. Although it provides for payment of just compensation, but computing the compensation is circumscribed by a set of pre-determined factors which are 'to be considered in determining compensation'<sup>34</sup> and is restricted to the market value of land, further the “replacement value is not the norm prescribed by law”. There are also 'matters to be neglected in determining compensation'<sup>35</sup> which excludes any disinclination of the person interested to part with the land acquired, in consideration of compulsory nature of acquisition.<sup>36</sup> It further provides that thirty per cent of the computed market value is to be paid, in the nature of solatium. That, in sum and substance, is the right of the person against compulsory acquisition of land.

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<sup>32</sup> *Chiranjit Lal Choudhary v. Union of India*, AIR 1967 SC 41 & 54.

<sup>33</sup> *Daulat Singh Surana v. First Land Acquisition officer*, (2007)I SCC 641.

<sup>34</sup> Section 23 of Land Acquisition Act, 1894.

<sup>35</sup> *Ibid* Sec 24

<sup>36</sup> *Ibid* Explanation (2) of S.25

In 1984, the definition of 'public purpose' was revised to include 'the provision of land for residential purposes to persons displaced or affected by reason of implementation of any scheme undertaken by government, any local authority or a corporation owned or controlled by the State'.<sup>37</sup> This made displacement for a project one more reason for compulsory acquisition under the Act, with no concomitant right to land on which to resettle.

### **3.6 The Constitutional Manifestation of Eminent Domain**

The Constitution in its original un-amended form guaranteed the right to property as a fundamental right. Article 19(1)(f) existed in the Constitution of India which gave a modicum of protection to private property.<sup>38</sup> Article 31 makes the property right more stronger by putting constitutional restraint against State i.e., State shall not deprive the property right of individual unless saved by authority of law. These Articles were repealed by the forty fourth constitutional amendment and Article 300A inserted. This move has to a great extent diluted the Constitutional protection to the institution of private property in India.

One of the reason for deletion of Articles 19(1)(f) and 31 is to reduce the property right from the status of fundamental right make it as a legal right, i.e., the right will be available against the executive interference but legislature has the power to make laws interfering with the individual's property right.<sup>39</sup> Supreme Court has very clearly stated that the executive authority cannot deprive a person of his property without the authority of law and law in this context means "an Act of Parliament or of a State legislature, a rule, or a statutory order, having force of law, that is positive or State made law".<sup>40</sup>

Both under the Articles 31A and 31(2) of Indian Constitution the Government can exercise the power of eminent domain for acquiring the estate and land for common good. Framework of the Article 31A is that state acquired estate for agrarian reform through legislations could not be challenged on the ground of violation of Articles 14, 19, 31 to that extent those legislations are immune from judicial review. but not immune from judicial review if laws are discriminatory in

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<sup>37</sup> Sec. 3(f)(2) of Land Acquisition Act, 1894.

<sup>38</sup> The Broader American view has off late found favour in India, specifically in the special economic zone model of development adopted by the state.

<sup>39</sup> KalpanaYada, '*Eminent Domain; An interrogation*', 16 AIHCC (33-40) (2010).

<sup>40</sup> Paras 3 and 5 of the Statement of Objects and Reasons for the forty forth amendment.

payment of compensation and if they are beyond the competency of the legislature. The objective of the law is to assign lands to the landless poor or needy persons out of the land available for disposal in the hands of State. This law also aimed at abolishing all the types of intermediates to establish egalitarian society. The erstwhile of Jamindars, Jagirdars, Inamdars, Deshmakhs, etc., are popularly known as intermediates, they were not cultivating lands personally.

Eminent domain power exercised by the Government under Article 31(2) for acquiring property for public purpose can be questioned on the ground of<sup>41</sup> (i) Malafide exercise of power (ii) acquisition of land is apparently for public purpose but in reality for 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 acquisition is not for a public purpose at all and the fraud on the statute is apparent.

### **3.6.1 Compensation and Public Purpose**

Original Article 31(2) had put two limitations on State power of acquisition of land viz., the compulsory acquisition or requisitioning of land should be for public purpose; and secondly, the law enacted in that behalf should provide for compensation or specify the principles on which a manner in which the compensation is to be determined and given.<sup>42</sup> However, Article 31(2) has given rise lot of litigation because of the word ‘compensation’. The word compensation in the Article 31(2) followed several constitutional amendments. As originally enacted Article 31(2) provided for payment of compensation but two important departures were made from American and Australian Constitution, firstly, number of exceptions to Article 31(2) were mentioned in clauses (4), (5) and (6) of Article 31 and secondly, the framers not to use the qualifying word like ‘just or fair’ before the word “compensation” because those words created a lot of complications under American and Australian Constitutions. However, in *Kameshwar Singh v. State of Bihar*,<sup>43</sup> Patna High Court held that the word compensation itself meant something which could fairly be stand to be equivalent to the property taken by the State. The same

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<sup>41</sup> *Sooraram Reddy v. Collector, Ranga Reddy District* (2008)9 SCC 552.

<sup>42</sup> *Supra* note 6, at 257.

<sup>43</sup> AIR 1952 SC 458.

view was taken by the Allahabad High Court in *Surya Pal Singh v. State of U.P.*<sup>44</sup> and *Vishweswar v. State of Madhya Pradesh*,<sup>44 A</sup> while these cases were pending before the Supreme Court in order to avoid wasteful litigation and to save zamindari abolition laws, in different States, Parliament passed the Constitution (First Amendment) Act, 1951 which added Articles 31-A, 31-B and IX schedule to the Constitution. However, no amendment was made to the Article 31(2), problem in the matter of acquisition yet remained; as the above amendment of 1951 was not adequate to deal with the question relating to payment of compensation to an owner of the property which is compulsorily acquired.

In case of *State of West Bengal v. Bella Benerjee*,<sup>45</sup> in 1954 the amount of compensation was directly an issue. The issue was whether the compensation provided under the West Bengal Land Development and Planning Act, 1948, was in compliance with the provision in Article 31(2). Lands could be acquired many years after the West Bengal Land Development and Planning Act came into force but nevertheless it fixed the market value as it prevailed on December 31, 1946, as ceiling on compensation without reference to the value of the land at the time of the acquisition. The Calcutta High Court's decision that section 8 of the Act was *ultra vires* was confirmed by the Supreme Court which also held that Entry 42 of List III of the Seventh Schedule conferred on the legislature the discretionary power of laying down the principles which govern the determination of the amount to be given to the owner of the property acquired under Article 31(2). What is determined as payable is *compensation, that is a just equivalent of what the owner has been deprived thereof*. As a result of this pronouncement judiciary has jurisdiction to review the acquisition cases on the ground that whether compensation for acquisition of property is equivalent to the property acquired thereof or not. Therefore, to exclude the judicial review, the Constitution (Fourth Amendment) Act, 1955 was passed as a result of which acquisition cannot be questioned on the ground of inadequacy of compensation or compensation not equivalent to value of the property acquired. This was the position after the fourth constitutional amendment. Besides making other changes, the amendment introduced the following words in Article 31(2):

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<sup>44</sup> AIR 1975 SC1083

<sup>44 A</sup> (1952) SCR 1020

<sup>45</sup> 1954 SCR 550; AIR 1954 SC 170.

“And no such law shall be called in question in any Court on the ground that the compensation provided by the law is not adequate.” Intention of the fourth amendment is to exclude the judicial review on adequacy of the compensation. However the amendment failed to achieve this result, judiciary exercising its jurisdiction on adequacy of compensation because the word ‘compensation’ was retained in the Article 31(2) even after the fourth amendment and it implies the meaning of compensation just equivalent to the property acquired, this again created a lot of complications. The amended Article 31(2) came to be interpreted in *Vajravelumadaliar v. Dy. Collector*,<sup>46</sup> Court held that fourth amendment excluded the question of adequacy of compensation from the jurisdiction of Court but the Court still retained jurisdiction to determine whether what was part of compensation or not.

The idea of equivalent compensation was carried to its logical extremity in *Union of India v. Metal Corporation*<sup>47</sup> where the Supreme Court held that the law to justify itself must provide for payment of just equivalent to the property acquired or lay down the principles which are relevant to determine the compensation. This case was, however, overruled by *State of Gujarat v. Shanti Lal Mangal Das*.<sup>48</sup> Wherein Bombay Town Planning Act was challenged, Supreme Court held that compensation fixed by the legislature could not be challenged, except when it is illusory or if the principles laid down for determining compensation, are not relevant to determine the compensation.

*R.C.Cooper v. Union of India*<sup>49</sup> popularly known as the *Bank Nationalization* case. The Supreme Court, in its judgement held that the Constitution guarantees the right to compensation, that is, the equivalent money of the property compulsorily acquired. The Court also held that a law which seeks to acquire or requisition of property for public purposes must satisfy the requirement of Article 19(1)(f). The decision of the Court invoked a lot of criticism, as a result of this 25<sup>th</sup> amendment was introduced in 1971. The Twenty-fifth amendment curtailed the right to property, and permitted the acquisition of private property by the government for public use, on payment of compensation which would be determined by Parliament and not by Courts. The amendment also exempted any law giving effect

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<sup>46</sup> AIR 1965 SC 1017; (1905) I SCR 614.

<sup>47</sup> AIR 1964 SC 637.

<sup>48</sup> AIR 1969 SC 634; (1969)1 SCC 509.

<sup>49</sup> AIR 1970 SC 564.

to the Directive Principles of State Policy from judicial review even if it violated the fundamental rights.

This time the word ‘compensation’ was dropped and substituted by the word ‘amount’. The twenty-fifth amendment also added the clause (2-B) which provided that nothing in Article 19(1)(f) shall affect the law under Article 31(2), as a result of this reasonability of compensation could also not be challenged under Article 19(1)(f), that extent eminent domain power free from constitutional restraint. The majority of the Court agreed that after substitution of the word ‘amount’ in place of ‘compensation’, a law could not be held unconstitutional on the ground that it could not provide for just or equivalent compensation. Though legislature was not free to fix the amount in its whimsical manner. In their view, the law still was open to challenge on the following grounds:

1. If the amount was fixed in an arbitrary manner in violation of Article 14;
2. If the principles laid down for amount fixed were not relevant and had no reasonable relationship with the value of the property in question;
3. If the amount fixed was illusory or amounted to fraud on exercise of power of eminent domain.

Clauses (4), (5) and (6) of Article 31, Articles 31A, 31B and 31C constituted certain exceptions to the requirements of ‘public purpose’ and ‘compensation’ under Article 31(2). Thus the Indian position is similar, though not identical to the American Constitution in which power of eminent domain was subject to all the three limitations, viz., authority of law, public purpose and compensation. In India it was realized from the above discussion that, soon after the Constitution come into force, these limitations proved to be a great hurdle in exercising eminent domain power in implementation of social reforms particularly because the word ‘compensation’ was interpreted by the Supreme Court to mean equivalent to the property taken. Several amendments were brought to overcome the hurdles, finally, Articles 19(f) and 31 were repealed by forty fourth amendment. Only clause (1) of Article 31 have been reappeared in Article 300A. Now power of eminent domain is subject to constitutional limitation only, property may be taken by the government through law made by the Parliament or the State legislature. Of course, the law should be valid it, should not violate any provision of the Constitution including fundamental rights and

could not be unreasonable or arbitrary.<sup>50</sup> However, it would be now worthwhile to analyse the Article 31A and Article 300A in order to effectively gauge the manifestation of the concept of private property and eminent domain in the present context in India.

### **3.6.2 Scope and Validity of Articles 31A and 300A**

Article 31-A reads as under:

Saving of laws providing for acquisition of estates, etc.<sup>51</sup>

(1) Notwithstanding anything contained in Article 13, no law providing for

- a. the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- b. the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property..... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19.

Where such law is made by the legislature of a State, the provisions of this Article shall not apply thereto unless such law having been reserved for the consideration of the president, and it has received his assent.

Here persons holding the property has no protection against land reforms legislation on the ground of violation of Articles 14 and 19. However Second proviso of Article 31A(1) having one constitutional limitation against acquisition if, a person holds land within ceiling limit and which is under his personal cultivation it shall not be acquired without payment of compensation at a rate which shall not be less than the market value thereof.<sup>52</sup>

### **Article 300-A and the Doctrine of 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 curtailed, abridged or modified by the State only by exercising its legislative power. An executive order depriving a person of his property without being backed by a law is

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<sup>50</sup> G.S. Pande's, *Constitutional Law of India*, (University Book House (p) Ltd, Jaipur, 10<sup>th</sup> ed., 2007), p 601.

<sup>51</sup> It came into existence by the operation of the Constitution (4th amendment) Act 1956.

<sup>52</sup> Dr. J.C. Verma's, *Law of Ownership of Property & Investigation of Title*, (Bharat Law House, New Delhi, 3<sup>rd</sup> ed.,1995), p 257.

not constitutionally valid.<sup>53</sup> In addition to that, to say valid it must satisfy the following three tests:

- (i) The authority which has enacted the law must have the legislative competency to do so;
- (ii) It must not infringe upon any other fundamental right guaranteed by part III of the Constitution; and
- (iii) It must not violate any other provision of the Constitution.<sup>54</sup>

In *Basantibai v. State of Maharashtra*<sup>55</sup> 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.<sup>56</sup>

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,<sup>57</sup> the expression “authority of

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<sup>53</sup> *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.

<sup>54</sup> *S.M. Transport (P) Ltd., v. Shankar Swamigal Mutt*, AIR 1963 SC 664; *Jalan Trading Co. Ltd. v. Mill Mazdoor Sabha*, AIR 1967 SC 691.

<sup>55</sup> AIR 1984 Bom. 366.

<sup>56</sup> *Manoel Franciso v. Collector of Doman*, AIR 1984 BOM 461.

<sup>57</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

law” must necessarily mean “just, fair and reasonable” law in keeping with the touchstones of Articles 14, 19 and 21 of the Indian Constitution.

### **3.7 Critical Appraisal of the Doctrine of Eminent Domain**

Owner occupied homes and small business are the typical victims of eminent domain with no legal recourse. It is argued that government should safeguard the common benefit, protection and security of the whole community while exercising its power. The power of eminent domain need to be exercised carefully for the purpose of acquiring private property for public purpose. Social analysts question the arbitrary seizure of private properties by the State for the purpose of conveying it to a private person or entity for commercial purpose. The line of demarcation between the public purpose and commercial purpose for public goal is very thin and the State can cross the line in various circumstances.

An enquiry into Eminent domain demonstrates that this power has been interpreted as being close to the absolute power of the State. Public purpose, the supposed justification of acquisition, has a wide and contrary reach. The problem is further compounded by the fact that the power to determine what constitutes public purpose, essentially rests with the State. The phrase ‘purpose useful to the general public’ has sufficient elasticity to encompass almost any land use. Such unbridled power of the State, both to unilaterally determine what constitutes the ‘public good’ and to compulsorily appropriate private land for such alleged good has been always challenged, as furthering the colonial legacy.<sup>58</sup>

A noticeable development has been the policies of the State, supported by legislation, to reintroduce the power of the ‘sovereign’ to use its discretion in facilitating the concentration of land in corporations. Under the garb of its power of eminent domain the State is acquiring land for road, mining, housing, hospitals and other infrastructure developmental projects, without realizing the impact of such acquisition. In this scheme poor people are pitted against corporations and the State acts as a mute spectator.<sup>59</sup> The doctrine of eminent domain gives to the State an

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<sup>58</sup> Hemadri, HarshMandir and Vijay Mayaraj ‘*Displacement Policy and the Law in India*’ available at <http://www.dams.org/docs/kbase/contrib/soc213.pdf>. (accessed on 11<sup>th</sup> March 2011, 10:10PM)

<sup>59</sup> RoopamVerma, ‘*Land Acquisition*’ for *SEL: Questioning the Validity of Government to Acquire Land*’, SCC 161 (2007).

enormity over land and related resources and also over the lives of people, one of the scholar has put forward following due of contest in the theory of eminent domain.<sup>60</sup>

- (i) The idea that the State is the owner of land, and can deal with it as its will, is not rooted in eminent domain. Eminent domain only deals with the taking over of land from a person who has legally recognised rights over the land. In transfer of land, which is under the control of the State, to project authority including revenue land and forest land on the notions of state as owner, possessing powers beyond that which usually inheres in any person as owner, prevails. In law, there is a procedure for 'change of user' of land, which a state must necessarily follow when diverting the land to a purpose other than that for which the land was intended.

The power to acquire by State the land owned by its subjects hails from the right of eminent domain vesting in the State, which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire land of its subjects without regard to wishes of the owner or person interested in the land cannot be questioned.<sup>61</sup>

### **3.7.1 Position in U.S.A.**

Eminent domain power exercised not only to favour enterprises, public or private but also to advance in raising tax revenue. Even in the United State, which champions the cause of private property rights the abuse of eminent domain powers is not uncommon.<sup>62</sup> *Kelo v. City of New London*<sup>62 A</sup> case constitutes a milestone regarding eminent domain power in United State. This case involved the acquisition of a private building, the owners sued the city arguing that the city has misused its eminent domain power as economic development did not qualify as a public use. The conceptions of public use can be generally divided into two categories: the 'narrow' view and the 'broad' view under the narrow view the term 'public use' means 'use by the public' under this approach, the property is owned by the government, after it is taken. Under the broader view, property is taken for 'public use' and such taking

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<sup>60</sup> Usha Ramanathan, 'Displacement and the Law', 31 EPW 1486 (1996).

<sup>61</sup> *Sharda Devi v. State of Bihar* (2003)1 Scale 85 at 98, p 31.

<sup>62</sup> Nirmal Mohany, 'Eminent Domain power Rationale Abuse & Way forward,' (unpublished manuscript file with an author)

<sup>62 A</sup> 545 U.S. 469 (2005)

results in something that enhances public welfare constitutes a 'public use'. The broad view is almost universally accepted; indeed, throughout most of American history, it has been dominant view.

In this case presented a plan for economic development in New London, Connecticut, as "distressed municipality" facing "severe economic distress rising unemployment and statement tax revenue". In response to these circumstance, the New Landon Development Corporation crafted a comprehensive development plan. This plan would cover approximately ninety acres and create new housing. The city acquire several proportion of land by eminent domain including fifteen properties belonging to suzette Kelo and other eight plaintiffs. Advocates of the use of eminent domain for economic development projects contend that the indirect benefits occurring to the public from this project like job creation, an increased tax base and economic revitalization constitute public uses because they produce public benefits.<sup>63</sup> Opponents contend that such projects, primarily benefit the private development provided uncertain public benefits and of considered public use, could lead to unfettered use of the eminent domain power.<sup>64</sup> Finally Supreme Court upheld the taking of private homes to benefit private corporations so as to increase employment which is held to be public use.

But the decision was criticized using eminent domain power to hand over the acquired property to private corporations for the purpose of employment, recreation and to enhance the property tax is not a proper justification of public use. Here, so many prudent persons suggested that it is an obligation on the Courts to end the era of pole town. Which could justify public use rather than private interest this case focuses on the abuse of eminent domain power in acquiring lands for sports stadium which is profit making business enterprise. The main question is the acquiring of lands for privately owned sports stadium does not fulfil 'public purpose'.<sup>65</sup>

In *Hinge v. Chevron USA.*, and *San Roma Hotel v. City & Country of Francisco*[United States Supreme Court (2005)] Courts curtailed the constitutionally protected property rights of owners and ruled against fifth amendment clause and held that economic development constituted a valid public use both under Federal and

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<sup>63</sup> Nichols on *Eminent domain* Sec 16.04 (Julius L. Jackman ed., 3<sup>rd</sup> ed. 2006)

<sup>64</sup> *Kelo v. City of New London*, 843 A. 2d 500, 540 (Conn. 2004)

<sup>65</sup> Philip Weenberg, 'Eminent Domain for Private Sports Stadium: Fair Ball or Four?' ( M.N. Bhavani ed., 'Eminent Domain use or abuse?', The Icfai University Press, Hyderabad, 2008), pp 7-10.

Connecticut Constitution. The right of government to acquire land under the guise of eminent domain was upheld in the above cases. This has abandoned the dreams of the framers of Bill of Rights which prohibits the rights of owners, restricted the abuse of power by introducing 'public use' and 'just compensation'. The use of eminent domain for private development has become a national wide program and the Supreme Court decision in *Kelo* case is at ready encouraging further abuse.<sup>66</sup>

### **3.7.1.1 Interpretation of the word 'public purpose'**

Historically, with a few very limited exceptions, the power of eminent domain was used for things which the public actually owned and used like schools, Court houses, post office and the over the past 50 years, however, the meaning of public use has expanded to include ordinary private uses. The expansion of the public use domain began with the urban renewal movement of 1950. In order to remove the so called "slum" neighbourhoods, and development of urban areas, cities were authorized to use the power government domain. This "solution" which has been a dismal failure, was given ultimate approval by the Court. In *Berman v. Parker* in 1954 the Court ruled that the removal of blight was a 'public purpose' despite the fact that the word "purpose" appears now here in the text of the fifth amendment and government already possessed the power to remove blighted properties through public insurance law. By effectively changing the wording of the Fifth Amendment the Court opened a Pandora's box and new properties are routinely taken pursuant to redevelopment. Statutes when there is absolutely nothing wrong with them except that some with heeled development increase its tax revenue. Since 1984, States and municipalities (USA) had extended their use of eminent domain frequently to include economic development purposes.

U S Constitution did not prevent the State and local governments from seizing homes and small businesses and transferring them to private developers to build luxury condominiums and big box stores. The Court also found that government delegation of eminent domain power to a private entity was constitutional. *Kelo* became the focus of vigorous discussion and attracted numerous supporters on both sides. On 23<sup>rd</sup> June 2005, the Supreme Court, in 5:4 decision ruled in favour of the city of New Landon, allowing the acquisition for the private entity. While the decision was controversial, it was not first time 'public use' had been interpreted by

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<sup>66</sup> *Supra* note 65, at 16 & 17.

the Supreme Court as ‘public purpose’. Dissenting people feared that after this ruling acquisitions which takes among resources from the poor and give it to the rich would become a norm rather than an exception. Every home, every church and every small business is now open up for grabs to the highest bidder. Today the mere possibility that private property might make more money when put to another use is reason enough for the government to take over the private property. The well paid lobbyists of developers and municipalities will claim that the decision doesn’t affect taxes. The *Kelo* decision signifies a fundamental shift in the sanctify of all our property rights it erases the public use requirement for eminent domain, purely hypothetical economic development is the only justification necessary to condemn property.<sup>67</sup>

### **Latter Developments in America after the Kelo case**

After the *Kelo* case some of the legislature restricting the Governments from taking private property and giving it to private entitles. South Carolina, Florida, Georgia, Michigan, New Hampshire North Dakota and Louisiana approved the constitutional amendments restricting eminent domain.<sup>68</sup> Texas was the first State which passed legislation to reform the eminent domain abuse. Texas passed the Senate Bill 7(SB 7) which included exception on the ban of eminent domain for the purpose of economic development.<sup>69</sup>

SB7 prohibits the use of eminent domain when taking confers benefit to a particular private party and generalization of economic development purpose. This was the starting point in the legislative effort to reform eminent domain abuse.<sup>70</sup>

SB7 included several key provisions, including the following:

1. Prohibited the use of eminent domain when the taking “confers a private benefit on a particular private party through the use of the property”.
2. Prohibited the use of eminent domain when it is for economic development purposes.

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<sup>67</sup> Bill Peacock, ‘*Private Property Rights & Public use Restoring Constitutional Distinction*’, (M.N. Bharani ed., ‘*Eminent Domain use or abuse?*’ Amicus Books publication’, The Icfai University Press Hyderabad,2008), pp 128-129.

<sup>68</sup> *Ibid* at 165.

<sup>69</sup> *Ibid* at 153.

<sup>70</sup> *Ibid* at 124.

3. Under the limited circumstances, removed the deference given to an entity exercising eminent domain when it makes a determination of the legality of its taking.
4. Subjected to the information pertaining to the exercise of eminent domain by a private entity to the state's open record law.<sup>71</sup>

While all of these provisions bring a greater degree of protection to property rights in Texas. Perhaps the most important provision of SB7 was that which created a joint interim committee to study the use of the power of eminent domain. By doing this, the legislature sought to keep the reform of eminent domain laws a legislative priority.<sup>72</sup>

### **Michigan**

Michigan passed a restriction on the use of eminent domain in November 2006. The amendment would prohibit the Government from taking private property for transfer to another private individual or business for purposes of economic development or increasing tax revenue; and require the government that takes a private property the demonstrate that the taking is for a public use; if taken to eliminate blight, require a higher standard of proof to demonstrated that the taking of that property is for a public use.

### **New Hampshire**

Text of the amendment enacted in New Hampshire is as follows:  
'No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other, private use of the property.

### **Florida**

Florida passed a 2006 ballot measure amending the Florida Constitution to restrict use of eminent domain. The amendment says in part that private property taken by eminent domain may not be conveyed to a natural person or private entity except as provided by general law.<sup>73</sup>

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<sup>71</sup> *Supra* note 67, at 127-128.

<sup>72</sup> *Supra* note 67, at 130.

<sup>73</sup> *Supra* note 67, at 131

## Unique Constitutional Provision in Washington

Washington has an opportunity to join the dozens of other states working to protect the rights of its citizens by truly reforming eminent domain law. Presently, the citizens of Washington are under a false sense of security and they do not seem to have real protection from losing their property through eminent domain. The Constitution of Washington contains provisions for the protection private property however, the government permits the eminent domain abuse. Washington Community Renewal Law permits the Government to condemn “blighted” property and transfer it to private developers. Washington law allows the government to take more land is needed for legitimate public use and sell anything not used for a public use and transfer the remainder property to private entities. Now Washington citizens have a false sense of security and not a real protection from losing their property through eminent domain. Here legislation needs to protect the rights of its citizens by reforming eminent domain law.<sup>74</sup> In the Manorial decision the Washington Supreme Court held that the settle Monorail, or any other governmental entity in Washington, could take more property, than is necessary for an identified public use and transfer any remainder property to private entities so long as the project contains some aspect of public use in it.<sup>75</sup>

Problem created by the Monorail decision the legislature would need to address the treatment of “necessity” in Washington law. For a condemn to be valid under Washington law, the government must prove that; (i) the use is pubic (2) the public interest requires it; and (3) property appropriated is necessary for that purpose. Courts will not overturn a determination of necessity unless the property owner can demonstrate fraud or constructive fraud in the necessity determination. This gives municipalities free rein to condemn more land than is necessary.<sup>76</sup> The necessity doctrine is a fundamentally simple idea an entity may only take property when it is necessity to further a proposed public use. The burden of proof for establishing the necessity of the taking rests on the condemning authority means what property taken over by the state must be of necessary for public use.

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<sup>74</sup> William R.Maurer, 'A False Sense of Security: The potential for Eminent Domain Abuse in Washington' (M N Bhavani ed., 'Eminent Domain used or Abuse?' The Icfai University Press, Hyderabad, 2008), p 153.

<sup>75</sup> *Ibid* at 162.

<sup>76</sup> *Ibid* at 163.

### 3.7.2 Position in India

Since independence land has been acquired from people, particularly from farmers for the purpose of expanding towns/cities by converting agricultural land into non agricultural purpose. This has been going on at a slow pace. In the name of industrialization a larger portion of land was being acquired from the people for public purpose and development and was later handed over to private companies.<sup>77</sup> The legal view on public purpose in India is quite liberal it has been seen in the Land Acquisition Act 1894. Government enjoys enormous power in defining what constitute 'public purpose'. Since it is (public purpose) the basis for exercising the power of eminent domain, the legal provision currently providing in India on public purpose has been given rise to scope for abuse of eminent domain power.<sup>78</sup>

The efficacy and ethics of the government using the eminent domain powers to acquire lands for mega private projects are progressively under challenge. Two recent examples of large tracts of land being transferred to the private sector are the Bangalore Mysore Infrastructure corridor (BMIC) project in Karnataka and the Special Economic Zone (SEZ) in Haryana for Reliance industries. Though in most of the cases the sale of private lands is affected at near market rates, the phenomenal increase in land prices in these areas mostly because of the projects. Often dissatisfied land owners feeling that they are forced to sell their land because, the government exercising its eminent domain powers. The BMIC project illustrates the limits of this problem where the land owners accused the government of being collude with the project company. Nandi Infrastructure Corridor Enterprises (NICE) turning over excess land to them. They complained that the excess land given were near Bangalore where prices were sky rocketing. The company did not require that much land, they believed, near Bangalore as they had to build only the road, and the townships were to be built near bidadi, which was quite far from where the land was acquired.<sup>79</sup>

However, it appears that the Courts did not look at the substantive issues behind all allegations of whether the land given was excess or more specifically if unnecessary lands near Bangalore had indeed been turned over to the company. The

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<sup>77</sup> Xavier Jeyaraj, 'An SEZ with a Difference', 58 Social Action 274 (July-Sept. 2008).

<sup>78</sup> V. Ranganathan, 'Eminent Domain or Eminent Thievery?', 2697 EPW (June 10, 2006).

<sup>79</sup> *Ibid* at 2698.

Courts seem to have gone by the (earlier) assurance of the government that only “minimum” amount of land NICE project. The writ petition was dismissed by a division bench of the high Court, with all questions being answered in favour of the respondents, viz. Government of Karnataka and NICE. It was held that the FWA (Framework of Agreement it was approved by the cabinet in March 1997) was not arbitrarily entered into by the State government and NICE project and was not opposed to public policy; The judgment was challenged in the Supreme Court<sup>79 A</sup> finally it was dismissed *inlimine* on March 26, 1999.

Thus petitioner Somashekhar Reddy last the case, because he lost credibility before the Court as a politically interested busybody, who mixed good points, like excess land, with bad points like malafides of the contract of FWA. However, the far greater damage done by him, though inadvertently, is that his case formed the basis for the judgment on the next set of PILS that challenged the project again, this time much more specifically, and were yet thrown out because of ‘res judicata’. In reality, bad governments need not act in public interest and may indeed abuse their eminent domain” powers and aid and abet “eminent thievery.” Under those circumstances, the Courts can rescue the public interest, but in this case unfortunately they seem to have not taken that position. The case also raises the suspicion that the Courts have blindfolded themselves to the facts on the ground, under the argument of res judicata.<sup>80</sup>

### 3.7.2.1 Special Economic Zone

Land acquisition for the special economic zones (SEZs) has brought to force the acquisition of citizens rights over land vis-à-vis the governments power to acquire it for development (eminent domain power).<sup>81</sup> Land for SEZ has been a contentious issue in most states it is in a sense, a subset of larger conflict over land for industry.<sup>82</sup> Since India is a democratic country, acquiring land for infrastructure projects and industrial development has often been problematic<sup>83</sup> because a common perception is that SEZs projects are mere land grabbing exercise with real estate being acquired at

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<sup>79 A</sup> SLP (Civil) CC.1423/99

<sup>80</sup> *Ibid* at 2698.

<sup>81</sup> Rafi Ahmed, ‘Land Rights & Eminent Domain’ 58 Social Action 264 (July-Sept. 2008).

<sup>82</sup> *Supra note* 74, at 153.

<sup>83</sup> J. Felix, ‘SEZ: Broken Promises in West Bengal’, 50 Social Action 285 (July-Sept.2008).

unfairly low costs.<sup>84</sup> SEZs are proposed to be strong magnets for foreign investments, generate million of jobs, develop human capital resources and have catalytic effect on the country's entrepreneurial efforts.

Land for SEZ has been acquired using the Land Acquisition Act 1894. This law permits the government (Central or State) to acquire land for a 'public purpose' or a 'company'. Over the years State industrial corporation have also used the provision of the LAA to acquire land for industrial estates, industrial townships and even single company projects.<sup>85</sup>

SEZs and Land Acquisition are interconnected for in the setting up of SEZ huge amounts of land are required. The Government of India is encouraging the setting up of SEZs in the country to help in the economic and industrial growth of the nation. The Land Acquisition Act 1894 confers upon the Central and State governments power to acquire land (since this Act finds a place in the concurrent list of the Constitution) for public purpose and for companies. Therefore question naturally arises as to why was a need felt for a separate specified legislation on SEZs when the land for the same could have been acquired under the Land Acquisition Act. Concept behind land acquisition for SEZ has emerged from Land Acquisition Act is apparent from the similar procedure followed under both the Acts at the same time SEZ incorporates certain distinguishing features.<sup>86</sup>

Under the land Acquisition Act, 1894 appropriate government can acquire land only for public purpose or for the purpose of a company under the SEZ Act, the only purpose for which land can be acquired is for the establishment development and management of SEZs. Land acquired for SEZ mainly based on five reasons (1) generation of additional economic activity, (2) promotion of export of goods and services, (3) promotion of investment from domestic and foreign sources, (4) creation of employment opportunities and (5) development of infrastructure facilities. However, the underlying object seems to have been established to have a nexus with the 'public purpose'.

Under the Land Acquisition Act, 1894 the same procedure have been followed for acquisition of land for 'public purpose' and for 'companies' provided for

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<sup>84</sup> *Supra* note 83, at 286.

<sup>85</sup> Anjali Mody, '*Special Economic Zones: A briefing note*', (Unpublished manuscript filed with on, author)

<sup>86</sup> Walter Mody, '*Rehabilitation Policy for the Displacement*', 39:12 EPW 1191-93(March 20-26 2004).

companies, previous consent of the appropriate government must be obtained. Once land acquired under the Land Acquisition Act, it becomes the property of the government and the government can use it in any manner as it likes for some reasons, the government can still use it for a different purpose altogether as long as there is no mala fide intention on its part. But land notified for SEZ cannot be used for any other purpose. Secondly, though there are specific provisions under the Land Acquisition Act for compensation to the interested persons, but under SEZ generally compensation determined on the basis of the policy of the government.

There is no legislative provision for rehabilitation & resettlement of displaced persons both under Land Acquisition Act, 1894 and SEZ Act, 2005. The government promises 'humane' displacement followed by relief and rehabilitation.<sup>87</sup> However record does not offer any room for hope on this count, an estimated 40 million people (of which nearly 40% are Adivasis and 25% are Dalits) has lost their land since 1950 on account of displacement due to large development projects. At least 75% of them still await for rehabilitation.<sup>88</sup> This is one of the major reason to repeal the colonial Land Acquisition Act, 1894. The current government overdriven on SEZs has highlighted the question of where the line is to be drawn between public good and private profit. Whereas in the principle the law allows central and State governments, as well as private developers to set up SEZs, in practice, it is the latter group that is actually involved in the majority of them. This means that real estate companies who have no truth record in manufacturing or exports have become SEZ promoters overnight.<sup>89</sup>

### **3.8 Abuse of Eminent Domain Power in India**

Pertinent to the situation, if the State acquires land on the ground of public purpose in a function of its eminent domain power, aggrieved parties have little judicial recourse. Indeed, several such challenges have already been dismissed by the Courts including acquisition for sewage treatment plant<sup>89 A</sup>, Planned Development for Housing Scheme and for Co-operative Society<sup>89 B</sup> this enormous power available

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<sup>87</sup> *Supra* note 86, at 94 & 95.

<sup>88</sup> Avani Bansal, 'A Comparative Study of SEZs and Land Acquisition: Marginal Similarities or mere Eyewash?' 4(2)Company Law Journal 49-50 (2010).

<sup>89</sup> Rafi Ahmed, 'Land Rights and Eminent Domain', 58 Social Action 265 (Jul-Sep 2008).

<sup>89 A</sup> AIR 1996 SC 697

<sup>89 B</sup> AIR 1997 SC503

to governments under the Act has led to many blatant abuses. For example, the West Bengal Government acquired fertile agricultural lands in West Madinipur for Tata Metaliks in 1992, dispossessing small and marginal farmers, in preference to undulating wasteland that was available nearby. Likewise, in the case of the Century Textiles, the State government acquired about 525 acres of land for a pig iron plant in 1996. However, the company later decided that Pig Iron production was no longer profitable and hence, refused to pay the compensation and fake over the land. Singur in West Bengal is the another recent 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).<sup>90</sup> 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.<sup>91</sup>

SEZ Virod March (SVM) obtained the information through RTI Act from Goa Industrial Development Corporation several fraudulent allocations of land to different companies. In the case of Peninsula Research Centre Pvt. Ltd., at Sancoale, the company was not even registered at the time of application. Secondly, the company applied for 2 lakhs sq. m. while the Goa Industrial Development Corporation( GIDC) granted it 2.04 lakhs sq.m. Planet view Mercantile Company Pvt. Ltd., at Verma, the company was not registered at the time of application interestingly, at page 5 of the application says Gems and Jewellery SEZ but at page 7 describes it as a Biotech Park. In case of Cipla's Meditab Specialties Pvt. Ltd., at Keri, the proforma Goa Industrial Development Corporation (GIDC) application form was not submitted and so there are no details about the products to be manufactured daily water and power requirements, etc. in the application submitted on April 3<sup>rd</sup> 2006. The land of 12.32

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<sup>90</sup> *Supra* note 89, at 260.

<sup>91</sup> Indian Infrastructure Report, 2009.

lakhs sq.m. was allotted at the Board meeting held on March 28<sup>th</sup> 2006, even before receiving the application.<sup>92</sup> In the case of K. Raheja Corporation Pvt. Ltd., at Verna, the application was dated April 12, 2006 while the allotment was made on April 19 without proper time to study the project and without the required 7 days notice to the Board of Directors for the meeting. While several companies in the Verna Industrial Estate are new, companies not having any experience at all, K. Raheja is purely a real estate developer.<sup>93</sup>

From the above cases probably the following issues could be raised. The first is that the allocation of land was done in a hurry and without following proper rules and regulations. The companies mentioned above have been specifically floated for the purpose of grabbing huge tracts of land under the guide of SEZ. The main issue concerning SEZs in Goa is that they appear like nothing but only land scams. The application against SEZ projects in Goa and anti SEZ movement forced the congress government to set up a SEZ review committee wherein all the concerned parties / stakeholders would be allowed to make a detailed presentation of their positions.<sup>94</sup> Finally, on December 31<sup>st</sup> 2007, the Goa government denoted to scrap all the SEZ, in their present form. December 31<sup>st</sup> 2007 will go down as a special day in the history of people's movement in Goa since people's power dared the political establishment and succeeded in ensuring that development is for the benefit of the people and not for a few elites.<sup>95</sup> The decision of the Goa government on December 31, 2007 to scrap all the 15 SEZs did not mean that the anti SEZ struggle is over. A very important follow up is bringing the guilty to book.<sup>96</sup>

After all these experience of abuse of eminent domain power some innovative measures have been put forward by the government too. Recognizing that the legal definition of 'public purpose' has been given rise to scope for abuse of eminent domain, government had proposed to amend the land acquisition Act, 1894 through the Land Acquisition (Amendment) Bill, 2007 to provide for abstracter definition of 'public purpose'.

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<sup>92</sup> *Supra* note 89, at 262.

<sup>93</sup> *Supra* note 89, at 268.

<sup>94</sup> *Supra* note 89, at 295.

<sup>95</sup> *Supra* note 89, at 299.

<sup>96</sup> *Supra* note 89, at 300.

According to the Land Acquisition (Amendment) Bill, 2007 the scope of 'public purpose' has been restricted to provision of land for:

1. Strategic purposes relating to novel, military, and air force works or any other work which is vital to the State;
2. Governments own infrastructure projects which provide benefits to the general public;
3. Acquisition of land for a 'person' (which includes any company or association or body of individuals), if the person requires land for a purpose for which is useful to the public and has already lawfully acquired upto a minimum of 70 percent of the total land required for the project.

**The Bills also defines "Infrastructure Project" as any projects relating to:**

- (i) Generation, transmission or supply of electricity;
- (ii) Construction of roads, highways, bridges, airports, ports, rail systems or mining activities;
- (iii) Water supply, irrigation, sanitation, and sewerage system; or
- (iv) Any other public facility that may be notified by the central government in the official gazette.

Analysis of the proposed reforms relating to public purpose shows that in addition to restricting the scope of public purpose, they clearly put a great deal of emphasis on infrastructure, which has been very clearly defined. Second, the strategic military purposes have been explicitly recognized. The most distinctive feature of the proposed amendment is that only after 70 percent or more of the required land acquired through market negotiation, a company be eligible to access eminent domain. The point to note is that the proposed amendment requires that the market route is exhausted by companies is a legally prescribed way before eminent domain can be used, this is clearly a reflection of the new government thinking that market failure due to hold outs (hold out problems arise when some people refuse to sell their land, without which a project cannot be materialize) should call for the use of eminent domain. Currently, in the absence of any such provision, many companies have been encouraged to use eminent domain even when the market can offer more efficient solutions to the party because 'public purpose' is loosely defined and the acquisition though the eminent domain route is less expensive. The compulsion for every company to acquire at least 70% of the required land though the market route would

not only incentive for companies to reduce their demand for land, but also helps in better discovery market price of land. 70:30 rule, which can be easily tested, then can keep out several companies from abusing the system. But Land Acquisition (Amendment) Bill 2007 failed to come into force.

The proposed amendments did not require the Government, for its infrastructure projects to first try and acquire land using the market negotiation route, before invoking land Acquisition Act 1894. This is not be justifiable when the project in question is in competition with private projects (such as in the case of electricity generation). In India, the law requires that the eminent domain power can be used only if the aim of the project is to serves a public purpose. Definition of ‘public purpose’ can potentially create problems, for example, including the provision of land for a corporation owned or controlled by the ‘State’ in the definition of ‘public propose’ implies the all activities of a Public Sector Unit (PSU) serves ‘public purpose’. However this may not always be true.

Supreme Court in K T Plantation case recently held that the provisions of Land Acquisition Act of 1894 do not adequately protect the interests of owners/persons interested in the land.... To say the least, the Act has become out dated and needs to be repealed at the earliest with fair, reasonable and rational enactment in tune with the constitutional provision, particularly Article 300A. And the definition of the expression ‘public purpose’ as in the Act is very wide, it has, therefore, become necessary to redefine it, therefore to avoid the multiple amendment to the Land Acquisition Act, 1894 not only by the Central Government even by the State Governments, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013 replaced the colonial Land Acquisition Act. In the present Act the word “public purpose” has been comprehensively defined, so that government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent. of project affected families is to be obtained through a prior informed process this is additional protection against acquisition of land by the State.

### **3.9 Conclusion**

Constitution of India derives its foundation from the Government of India Act, 1935 and the Universal Declaration of Human Rights (1948). Section 299 of the

Government of India Act 1935 secured the property right against expropriation without compensation and also against acquisition of land for a non public purpose. Article 17 of the Universal Declaration of Human Rights (1948) recognizes the Right to private property, India being a signatory to the declaration recognized 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 sort of corollary 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 corollary 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". Fifth amendment to the US Constitution recognises the right of eminent domain is expressly circumscribed by providing "nor shall private property be taken for public use without just compensation" Article 31(2) is similar to the 5th amendment of the US Constitution 'nor shall private property taken for public purpose without just compensation'.

Conceptually, the genesis of the State's power to acquire land belonging to an individual lies in the right of eminent domain. Therefore, Right to property is not an absolute right; it allows the state interference with it for legitimate purposes. However to justify the State's interference with private property many Constitution and Human Rights documents require it to be the public interest. Government interference may occur in the form of expropriation of existing property of individuals when public interest warrants.

After repealing Articles 19(1)(f) and 31, the word 'property' used in Article 300A must be understood in the context of sovereign power of eminent domain is exercised by the State and expropriated the property. The phrase deprivation of property connotes different concepts under Article 300A, No person shall be deprived of his property save by authority of law. Law means a law made by Parliament or State legislature. Deprivation by any other mode is not acquisition or if there is no law, there is no deprivation. Article 300A also gets attracted to an acquisition or taking possession of private property for public purpose, by necessary implication, in accordance with the law made by the Parliament or the State legislature. It is inherent in every sovereign State without owner's consent state can acquire property for public use, subjected to just compensation thereof. Constitution gives power to take private property for public purpose and prohibits the exercise of same is commonly referred to as 'condemnation or expropriation'. The first question raised here is why

the government should compensate when public interest prevails over individual interest (right)?. Second, when and how generously the government should compensate?. These two extreme positions are unacceptable. A rule offering total compensation is simply applicable.

The basic principle requiring compensation is the equal sharing of public burdens. The unfairness in taking is the state's seizing the wealth of someone for the benefit of all. The Court has assessed the compensation requirement in the context of fair balance test and it considers it is necessary to pay compensation only in cases of acquisition of private property for public purposes. If the aim of the state action is to prevent harmful use of property, it is a police power regulation and does not require payment of compensation. But if the aim of the State action is to public use, it constitutes taking and requires payment of compensation. The Court considers the amount of compensation also within the fair balance test. It requires payment of a 'reasonable compensation'. Since there is no clear criterion to decide what is 'reasonable' it is for the judge to decide.

In *Chiranjit Lal* case Supreme Court held that the eminent domain is the right of the sovereign to take and appropriate the private the property belonging to an individual for public use. The limitation in clause (2) of Article 31 is that such taking must be for 'public purpose' and no property can be taken, unless the law authorizes such appropriation contains a provision for payment of compensation. The eminent domain power can be defined as the state's prerogative to seize private property, dispose of its ownership and assume full legal right and title to it in the name of some ostensible public good. If the eminent domain power is not recognized the government has to get such lands through purchasing from the free market. However, free market transactions are not always suitable and efficient to realize large projects such as building highways, railways and other developmental projects. Therefore, eminent domain power has long been recognized as a legitimate authority of the State even by natural law doctrines. The power of eminent domain has been restrained by the requirements of 'public interest' and 'compensation'. The 'public interest' requirements serve to prevent arbitrary government and arbitrary confiscation of private property. The compensation requirement serves to equalize the sharing of public burdens. A State can interfere with property right only for a public good. This requirement also aims to prevent abuse of sovereign power by way of interferences.

Another major reason for abuse of power of eminent domain is that definition of the word 'public purpose' is very wide. Legal view on 'public purpose' and legal status prevailing in India over 'public purpose' has been given scope for abuse of eminent domain power. Eminent domain power abused not only to favours, public or private enterprises but also to advance the objectives of the government. Now a day's Supreme Court has interpreted the word 'public purpose' in broader manner i.e., property is taken for 'public use' if, the taking results in some public advantage or benefit is sufficient. Under this view, anything that enhances public welfare constitutes a 'public use'.

After a long period of relative dormancy in the field of eminent domain, much recent attention has surrounded so called "public private" takings for economic development. Such public private takings occur when the government uses its eminent domain power to transfer non blighted property from a private individual or entity to another private individual or entity for example SEZ Act, Urban Development Authority Act and Industrial Development Act, under these Acts government acquired the property of individuals by exercising eminent domain power and acquisition under the broader definition of public purpose which ultimately creates new jobs, increase tax or other city revenues, it does qualify as a public purpose.

There is a living example that, what happened in Goa and what is going on in Bangalore Mysore Infrastructure Corridor Project and various de-notification scandals under KIDB Act in Karnataka. The word "Public purpose" is the base (means) for exercising the eminent domain power or sovereign power. So it is right time transitively define the word 'public purpose' without giving any scope for abusing the power. Therefore, the word 'public purpose' defined under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is comparatively less vague, it will still not stop the judiciary from looking into questions of abuse in actual acquisition or use of land but comparatively less chances of abuse of eminent domain power hence, we will wait to see the pros and cons of implementation of this Act.