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**THE EVOLUTION OF EMINENT DOMAIN IN INDIA: RECONCILING PUBLIC PURPOSE WITH PRIVATE PROPERTY RIGHTS IN THE ERA OF LAND ACQUISITION**- Ida Patricia<sup>1</sup>**ABSTRACT:**

This research paper aims at analysing the historical development of the eminent domain law in India and how it has developed from colonial laws to the modern laws. The study looks at how India has sought to manage state authority and private property rights as forces of development and urbanization have accelerated. From the evaluation of legislative changes, judicial decisions, and policy enactments, the paper establishes the paradigm shifts in land acquisition practices especially in the aftermath of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The study focuses on key policy themes of public purpose doctrine and private property rights, with the analysis of recent changes designed to rectify past failures in compensation and rehabilitation. The paper also examines the implications of technological advancement in the acquisition of land and the dynamics in the emerging urban development scenarios. The results indicate that despite considerable advancements in the sphere of property rights and the provision of adequate compensation, there are considerable obstacles to the effective application of these concepts. This paper concludes by suggesting possible reforms for future that would be useful in ensuring that other reforms do not distort public goals with private property rights in the new socio-economic context in India.

**KEYWORDS:**

*Eminent Domain, Land Acquisition, Public Purpose, Property Rights, Fair Compensation, Rehabilitation and Resettlement, Urban Development, Social Justice, Land Reforms, Indian Constitution*

**INTRODUCTION:**

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Eminent domain doctrine in India is a subject that is closely connected to the conflicts between state power and private interest as well as the state's obligation to promote development. In the process of India's steady march toward further modernization of its economy and infrastructure, there has been a growing conflict over public projects in the context of private property rights. This basic struggle originated from the colonial Land Acquisition Act of 1894 and has been forwarded by several constitutional changes, legal enactments and judicial decisions. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 symbolizes a major shift in this evolution process as it does away with all structures of earlier inadequate legislation while walking towards a new age of better rights for land acquisition.<sup>2</sup> This paper explores the development of the legal and policy regime in India that seeks to mediate between these competing interests: What has been the experience in contemporary India in addressing this tension between public purpose and private property rights?

### **HISTORICAL DEVELOPMENT OF EMINENT DOMAIN IN INDIA:**

Eminent domain therefore can be traced back in India to the Land Acquisition Act of 1894 which came to India with the British. This legislation laid the basic structure for the government acquisition of private land this time for the first time the concept of 'public purpose' was provided as a condition for the acquisition of private property for public use. The Act gave the colonial administration the authority to take over land for public utilities, barracks, settler activities and other colonial needs, mostly without paying much compensation and total disregard to the native's rights to land.<sup>3</sup> After independence most of this legal structure was maintained in India but with considerable changes to suit a new democratic and socialist country. The constitutional protection was given to the land Acquisition laws by the Constitution of India through articles 31-A, 31-B and 31-C and at the same time certain safety measures were taken for property owners.<sup>4</sup> This dual approach intended to strike a balance between the developmental requirements of the state and property owners interests.

### **THE PUBLIC PURPOSE DOCTRINE:**

Public purpose has been the key that was used to justify the government's power to acquire land in India. For its early years it was defined widely to cover a range of state developmental projects. These included

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<sup>2</sup> Content Team, 'Doctrine of Eminent Domain' (*De Facto Law* 11 September 2019) <https://www.defactolaw.in/post/doctrine-of-eminent-domain-for-upsc-law-optional> accessed 4 November 2024.

<sup>3</sup> Pulkit Taneja, 'Evolution of Eminent Domain in India' [2021] ResearchGate [https://www.researchgate.net/publication/352765461\\_Evolution\\_of\\_Eminent\\_Domain\\_in\\_India](https://www.researchgate.net/publication/352765461_Evolution_of_Eminent_Domain_in_India) accessed 4 November 2024.

<sup>4</sup> Diganth Raj Sehgal, 'Articles 31A to 31C of Indian Constitution - IPleaders' (*iPleaders* 7 January 2020) <https://blog.ipleaders.in/articles-31a-31c-indian-constitution/accessed> 4 November 2024.

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infrastructure projects like construction of roads and railway, airports and seaports, housing and other urban development projects, mining and irrigation, power projects, etc and social overheads which includes schools, hospitals, government buildings, etc.<sup>5</sup> But as the concept of 'public purpose' was liberalised to include industrial projects of private companies and setting up of Special Economic Zones (SEZs), debate has been carried forward regarding what exactly defines public interest and what is mere commercial profit. Judicial decisions have not provided satisfactory criteria for the definition of public purpose, which has been determined more as a case-by-case analysis of direct and incidental benefits.<sup>6</sup>

### **THE RIGHT TO FAIR COMPENSATION:**

Compensation development forms a significant part of India's eminent domain law developments. The starting point for compensation was provided by the Land Acquisition Act of 1894, but the intents of which were often found to be wanting due to their inability to consider market appreciation, loss of income, resettlement and sentimental value of ancestral land. To overcome regarding these weak points LARR Act in 2013<sup>7</sup> could be regarded as a new model. These changes included provision for compensation up to four times the market value in rural areas, broad based rehabilitation as well as adequate resettlement, social impact assessment as mandatory requirements, and increase in the social awareness of land acquisition. These provisions have been made with an intention to avoid the previous imbalances and more just approach towards land acquisition in India.<sup>8</sup>

#### **A. Social Justice and Land Acquisition:**

The question of the poor losing their land possession has remained the core of the discussions about the eminent domain in India. The indigenous people, small farmers and other rural dwellers have suffered most from development induced displacement. Over the years, in India, the law of land acquisition has begun to reflect a sense of understanding these social justice aspects. This is well illustrated by protection of Scheduled Tribes and other susceptible groups, enforcement of mandatory consent provisions for specific categories of acquisitions, and recognition of indigenous peoples' rights to ancestral domain.

<sup>5</sup> 'Special Economic Zones an Operational Review of Their Impacts in Partnership With' <https://documents1.worldbank.org/curated/en/316931512640011812/pdf/P154708-12-07-2017-1512640006382.pdf>.

<sup>6</sup>cbga, 'Land Acquisition for "Public Purpose": Time to Amend the Legal Framework - CBGA India' (CBGA India 24 January 2019) <https://www.cbgaindia.org/blog/land-acquisition-public-purpose-time-amend-legal-framework/> accessed 4 November 2024.

<sup>7</sup> Bajaj Finserv, 'LARR Act 2013' ([www.bajajfinserv.in](http://www.bajajfinserv.in) 24 February 2024) <https://www.bajajfinserv.in/land-acquisition-act-2013> accessed 4 November 2024.

<sup>8</sup> 'India Code: Section Details' (Indiacode.nic.in 2024) [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_18\\_43\\_00003\\_201330\\_1517807327433&sectionId=37815&sectionno=4&orderno=4](https://www.indiacode.nic.in/show-data?actid=AC_CEN_18_43_00003_201330_1517807327433&sectionId=37815&sectionno=4&orderno=4) accessed 4 November 2024.

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Also, in the rehabilitation there are efforts in gender sensitive procedures in order women in these societies to face challenges.<sup>9</sup>

### **B. Contemporary Challenges and Reform Initiatives:**

Contemporary India continues to experience how the government can exercise the right of eminent domain and ownership of the land over the property rights of the property owners with regard to land acquisition for development projects. Lack of large piece of land is a problem that affects large scale developments since it results to negotiations and market risks which increase costs and slow down implementation. These challenges are further compounded by urban development pressures due to fast growing urbanization. As people migrate to urban centres to seek living space and other amenities the demand increases, and land becomes expensive and scarce for developers and the government to acquire. Also, there are ecological factors that restrain acquisition policies by the need to strike a balance between nature conservation and urbanization.<sup>10</sup>

Instead, policy reforms bring in concepts such as land pooling; this involves assembling many small tracts of land to create large ones for development of infrastructure. Purchase agreements differ with the policy intent of avoiding hostile take on the landowners while public sector partnerships enhance the use of policy goals by pooling resources. New compensation frameworks are thus developed, which better fit the market standards and fairly address the consequences for the stakeholders. These strategies when used together make a complete policy framework to address the complex issues of land acquisition in India within the required need for development, policy interventions with justice and growth.<sup>11</sup>

### **C. Future Directions and Recommendations: A Detailed Analysis**

#### **i) Legal Framework Enhancement**

The eminent domain law of India requires an overhaul that will ensure it meets the needs of the current world. It requires changes in compensation norms: quarterly re-estimation of land, taking into account, not only direct but also indirect, values. This should be done under committees that will address issues to

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<sup>9</sup> 'UN Women India' (*UN Women – Asia-Pacific*2024) <https://asiapacific.unwomen.org/en/countries/india> accessed 4 November 2024.

<sup>10</sup> 'Understanding Delhi's Land Pooling Policy: What Homebuyers Need to Know' (*Godrejproperties.com*2024) <https://www.godrejproperties.com/blog/delhi-land-pooling-policy> accessed 4 November 2024.

<sup>11</sup>PropertyPistol Insight Team, 'Land Pooling Schemes: A Viable Alternative to Land Acquisition!' (*Real Estate Sector Latest News, Updates & Insights - PropertyPistol Blog*24 July 2024) <https://www.propertypistol.com/blog/land-pooling-schemes-a-viable-alternative-to-land-acquisition/> accessed 4 November 2024.

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do with regional economics and future development.<sup>12</sup> The second is also crucial: conflict resolution should be made less complicated; specialized land acquisition tribunals, limited by time and including pre-trial mediation, help ease case pile up<sup>13</sup>

## ii) Administrative Reforms

Enhance administrative skills for land acquisition reform via training, certifications, evaluations, and digital communication to boost inter-agency cooperation, using clear frameworks and conflict resolution procedures.<sup>14</sup> Improvement needs multisegmented consultation, online feedback, local committees in decision-making, enhanced documentation, digital monitoring tools, audits, public reporting, and feedback loops for accountability and engagement.<sup>15</sup>

## SOCIAL PROTECTION MEASURES:

For a displaced population to have a comprehensive response to all their needs, a strong rehabilitation architecture is required with a focus on Livelihood Rehabilitation and Skill Development. This entails constant assessment to check on and guarantee favourable rehabilitation outcomes; there is also a provision of services to specific groups of people. Sustainable livelihoods provide economic security to displaced people with regard to their means of income.<sup>16</sup> Adopting CB-DBM guarantees fairly the distribution of the development gains through profit-sharing measures and other supporting infrastructure projects for the community's stakeholders. The development projects should include employment for the community or community development funds to support a local economy.<sup>17</sup> In land acquisition, carefully

<sup>12</sup> Tvisha Shroff, 'the Demand Side of the Rule of Law: India's Experience with Eminent Domain Law Reform' (2020) 16 *Socio-Legal Review* <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1087&context=slr> accessed 4 November 2024.

<sup>13</sup> Namita Wahi, 'Indian Courts Clogged with Land Disputes Because Laws Keep Conflicting Each Other' (*ThePrint* 26 June 2019) <https://theprint.in/opinion/indian-courts-clogged-with-land-disputes-because-laws-keep-conflicting-each-other/254033/> accessed 4 November 2024.

<sup>14</sup> 'ENHANCING STAKEHOLDER ENGAGEMENT in MULTILATERAL DEVELOPMENT BANK ASIAN PROJECTS in the CONTEXT of LAND ACQUISITION and RESETTLEMENT an EVENT REPORT' [https://www.themcdf.org/en/news-activities/publications/2024/\\_common/pdf/SE-Event-Report-FINAL.pdf](https://www.themcdf.org/en/news-activities/publications/2024/_common/pdf/SE-Event-Report-FINAL.pdf) accessed 4 November 2024.

<sup>15</sup> 'Management of Land Acquisition, Resettlement and Rehabilitation – Administrative Staff College of India | ASCI' (*Asci.org.in* 2024) <https://asci.org.in/management-of-land-acquisition-resettlement-and-rehabilitation/> accessed 4 November 2024.

<sup>16</sup> 'Displaced Women Open New Doors to Greater Participation And' (*IOM Regional Office for Middle East and North Africa* 2021) <https://mena.iom.int/stories/displaced-women-open-new-doors-greater-participation-and-empowerment> accessed 4 November 2024.

<sup>17</sup> Eddie Smyth and Frank Vanclay, 'Social Impacts of Land Acquisition, Resettlement and Restrictions on Land Use' [2024] Edward Elgar Publishing eBooks 355 <https://www.elgaronline.com/edcollchap-oa/book/9781802208870/book-part-9781802208870-33.xml> accessed 4 November 2024.

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conduct cultural appraisals, establish heritage protection zones, document cultures, address women's issues, and involve women in decision-making.<sup>18</sup>

### **IMPLEMENTATION STRATEGY:**

These recommendations can only be implemented successfully through a phased approach. The first two year goals must aim at short term changes in compensation and the systems of solving disputes. Intermediate objectives are oriented towards the period of 2 to 5 years and include administrative changes and capacity development measures. Strategic goals of lasting more than 5 years include establishing the overall conceptual frameworks for social protection and the long-term monitoring systems. Any monitoring and evaluation system must monitor implementation through assessments, stakeholder feedback, and impact evaluation research. Net impacts of reforms are optimized with efficient use of resources, as measured by cost-benefit analyses.<sup>19</sup> Essential areas for resource allocation include technology, human resource development and social security. Such wide ranging changes seek to establish a rational, just, and sustainable framework for land acquisition that serves the twin purposes of development as well as social and environmental justice. Implementation success depends on political commitment for continuity, sufficient financing for the programme, and involvement of all the stakeholders in the entire implementation process.

### **CONCLUSION:**

The history of eminent domain in India suggests that there has been a gradual attempt to strike a delicate balance between the interests of the state and those of the affected private parties when acquiring land. Although good headway has been made in the area of private property and compensation for such property, there are problems in the practical application of these concepts. It is quite clear that the evolution of eminent domain law over the coming years will have to capture the emerging social needs as well as recognize the Constitution and human rights. This, of course, means that the tension between public interest and private ownership continues to be a work in progress, dependent on economic development needs, social equity and environmental protection. To achieve success in this endeavour it is imperative for stakeholders to continue the dialogue, policy innovation and a keen focus on the population of India. The solution therefore is to establish better efficient and transparent land acquisition

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<sup>18</sup> 'Gender-Disaggregated Data, Crucial to Ensuring Gender-Sensitive Response and Recovery for Displaced Women and Girls in Disaster Contexts' (*Preventionweb.net* 7 March 2022) <https://www.preventionweb.net/news/gender-disaggregated-data-crucial-ensuring-gender-sensitive-response-and-recovery-displaced> accessed 4 November 2024.

<sup>19</sup> Morris Sebastian and Pandey Ajay, 'Towards Reform of Land Acquisition Framework in India' (2007) 42 *Economic and Political Weekly* [https://www.researchgate.net/publication/46437223\\_Towards\\_Reform\\_of\\_Land\\_Acquisition\\_Framework\\_in\\_India](https://www.researchgate.net/publication/46437223_Towards_Reform_of_Land_Acquisition_Framework_in_India) accessed 4 November 2024.

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processes to meet public interest, while respecting rights of individuals and enhancing sustainable development. They include not only legal and policy changes but also the improvement of institutional setting and the building of people's confidence in the land acquisition system.

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