

# An Empirical Study on The Rights of Easement Holder and Their Challenges with Special References to Chennai

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## **ABSTRACT:**

"Easement holder" or "beneficiary" refers to a person who, without really possessing or owning the property, has the legal right to use or get access to another person's property for a certain reason. The easement holder is awarded a limited and non-exclusive interest in the land, which gives them some management rights without complete ownership. The primary objective of the study is to determine the key challenges that an easement holder encounters. The researcher used a convenient random sample method to conduct empirical research. This study's sample size is 200. The bus stop has been selected as the sample location for this research study. The findings of the study suggest that The study's results underscored the notable challenges that emerge when easement areas face encroachments, and the validity of these rights can be influenced by shifts in land use and urban expansion. Anticipating the expanded scope of easement holders' rights and the complexities they entail, advancements in legal technology and digital solutions offer the potential to streamline documentation and registration procedures. To ensure the robust protection of easement holders' rights, a multifaceted approach is being adopted. This approach involves bolstering legal frameworks, enhancing public awareness, and exploring alternative conflict resolution mechanisms. In summary, the legal rights and challenges faced by easement holders constitute vital aspects of property law, demanding significant attention and resolution. Promoting equitable and harmonious coexistence between easement holders and fellow property owners hinges on the pillars of transparency, education, and the establishment of robust legal mechanisms. By prioritising these aspects, a more equitable and collected relationship among stakeholders can be fostered, ensuring a balanced and well-structured property construction.

**KEYWORDS:** Easements, Rights, Challenges, Reasons, Property.

## **INTRODUCTION:**

The rights of easement holders in India have a lengthy history and are influenced by customary law. Statutory laws and court decisions in modern India recognise these rights. They face several challenges, including disagreements over the extent, enforcement, and registration that affect how well these rights are protected and utilised by easement holders. The government initiatives are the Transfer of property act of 1882, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, The Real Estate (Regulation and Development) Act, 2016, The Land Acquisition Act, of 1894 (amended in 2015), The Environment (Protection) Act, 1986, The Indian Easements Act,

1882, The Right to Information Act, 2005 and so on. The factors affecting this are Lack of Awareness, Ambiguous Documentation, Encroachments, Changing Land Use, Government Projects, Non-Registered Easements, Erosion of Easements etc. Enhanced awareness of and significance of easement holders' rights has resulted from India's expanding urbanisation and infrastructure development. With the increase in residential and commercial construction projects, the need to protect and enforce easement rights has become more and more important. Making sure that documentation is clear, registering easements, and resolving disputes through alternative means like mediation and arbitration are now priorities. Furthermore, technical advancements and the digitization of data are boosting ease of information access and easement rights administration. Problems still exist with encroachments, ambiguous legal constraints, and easement holders' misunderstanding of these matters. In America, an easement is a non-possessory interest in someone else's land that confers certain rights on the easement holder. Without technically owning the land, easement holders are granted special rights, such as access to or use of a particular area of the land for particular purposes. An official document outlining these rights will often include details about the easement's size, location, and duration. Owners of easements must exercise their rights in accordance with the guidelines laid out in the contract. Additionally, they must be careful not to violate any laws or the owner's rights. The American legal system preserves and protects the rights of easement holders to preserve the balance between private property rights and public utility.

The **Aim** of the research study is to assess the rights that the easement holder enjoys and to identify the difficulties they encounter.

#### **OBJECTIVES:**

- To analyse the rights enjoyed by the easement holder.
- To identify the challenges faced by an easement holder.
- To determine the major impacts caused to an easement holder.
- To learn about the government initiatives taken in order to prevent easement holders.

#### **REVIEW OF LITERATURE:**

(Sheraton, Springfield. 2023) Easements, rights of way, and access rights continue to cause challenges and conflicts between developers and their neighbours, as well as with planning boards and boards of appeals examining subdivision and special permit applications, as more and more property that is not already served by public ways gets developed. Issues with frontage and access to public ways and concerns about the existence, breadth, and scope of private ways and easements pose an increasing obstacle to the development of suitable property. (Usanti, Trisadini & Aryatie, Indira & Moehtar, Oemar. 2023) The initial claim is absolute; anyone can be subject to the right holder's enforcement of their material rights. The holder's position of material guarantee appears to be unrivalled in the event of a dispute with fellow creditors and creditors having privileges. Law, however, has the power to undermine its absolute essence. The position of the creditor having the material guarantee must be ceded to the creditor with the privilege in specific situations, such as when it comes to the right to recover the cost of saving the collateral item. (Gutierrez, Ana & Tanger, Shaun & Penn, Jerrod & Blazier, Michael. 2022) This study identifies landowners who are reluctant to thin due to management concerns, goal interference, and other factors, and it specifically investigates the factors that impact easement landowners' voluntary adoption of thinning. The study's findings also showed that landowners who prioritised

recreation in their ownership are less likely to use thinning, which has significant long-term effects on how the forest is managed in the easements. The results of this study may help to better plan and carry out educational interventions that support wildlife habitat requirements in the LMAV easements and forest health. **(Lytvynenko, Iryna. 2022)** The establishing of such a land easement benefits the community as a whole and can be utilised as a public easement, a concept that is currently yet to be adopted in Ukraine but is present in many other nations. According to the procedure, the land is set aside for this purpose for a period of six months if the local council decides to establish an easement during the time it takes to prepare the technical documentation for the easement land plot and register the rights to it.

**(George, Martin & Layard, Antonia. 2022)** A sort of third-party privilege known as an easement enables someone to profit from land ownership. These rights include, for instance, the freedom to use a neighbour's restroom, the right to use their washing line, the right of way, the right of light, and the freedom to park a car on their property. This chapter addresses legal and equitable easements, the establishment of easements, and suggestions for easement law reform. It also examines the nature of easements and related ideas like natural rights, public rights, restrictive covenants, and licences. **(Clarke, Sandra & Greer, Sarah. 2022)** This chapter discusses easements and profits, two of the most important rights that can be held by one person over land belonging to another person. Easements are important property rights owned by one landowner (the dominant owner) over the land of another (the servient owner). An easement can only be asserted if it serves the interests of the land as a whole, not just the dominant tenement owner.

**(Sheng, Too & Kasim, Rozilah. 2022)** When construction activities require access to roads from other lands, a short-term construction easement is required. There aren't many prior studies on temporary easements, and the ones that do exist offer individuals minimal in the way of direction or resources for the valuation process. The legal statutes and rulings from courts offer some guidance, but it is insufficient to assess temporary easement. The purpose of this study is to define the temporary easement valuation process and to determine the factors that influence the temporary easement. The single case design and embedded qualitative research methodology were used in this study. **(Ślusarek, Tomasz. 2022)** The study incorporates legal allusions to other civil code provisions to investigate the prospects of obtaining a transmission easement under Polish law. It summarises three requirements that must be met in order to acquire a power-of-way easement: the easement's ownership, the facility's use, and the passage of time. In order to minimise the duration of the transmission of easement prescription, the study also recommends including the possession period prior to August 3, 2008. In light of numerous legal factors and the lack of a specific civil law provision protecting transmission easements, the paper emphasises the significance of this topic. **(Bevan, Chris. 2022)** In lieu of rights of possession, this chapter examines two distinct kinds of land rights: profits and easements. By exercising these smaller, non-possessory rights, one can reveal even more land's value. The right of one property owner to have restricted use of another's neighbouring land is known as an easement. It includes the right to appropriate a portion of the natural resources on that land, rather than just a restricted right over their land.

**(Yilmaz, Mustafa & Alkan, Reha. 2021)** When a transmission line for energy crosses a piece of property, easement rights are established. In this instance, there is a usage restriction but no ownership loss. Because of this, the owner receives payment for the easement rights' decreased value, which is calculated. Studies on the factors influencing the sum of the loss and the manner in which the loss should be calculated have been conducted for this contribution. **(Ilkiv, Oleh. 2020)** The article examines the concept, content, and features of the easement as a means of utilising property rights under Ukrainian civil law. It also makes

recommendations for strengthening the easement regulation found in Ukrainian civil law. The examination of both theoretical and practical problems is prioritised. Investigated are the distinctive indications of servitude rights and the basis of both public and private interests. **(Volkov, G.A. 2019)** There has been discussion about making public easements a legal institution. The causes of the similarities between "private" and public-use easements have been examined. The issue of protecting land rights in relation to the creation of land easements for the placement (construction) and the reconstruction of various kinds of objects has received particular attention. There has been discussion of the particulars of land easement establishment in Russia and other nations, which are mainly related to the growth of private property rights. **(Owley, Jessica & Cheever, Federico & Rissman, Adena & Shaw, M.R. & Jr, Thompson, & Weeks, W. 2018)** The holder is invariably a government agency or a nonprofit conservation organisation, and the beneficiary is typically the general public rather than just a nearby landowner. Consequently, there is justification for adaptive protection. Applying too much emphasis on everlasting property rights might in fact render it more difficult to address the long-term requirements for adaptation. We demand that conservation goals in dynamic landscapes be given due consideration over an extended period of time. **(Panić, Milica. 2017)** The current research looks at foreigners' rights to own real estate in the Republic of Serbia and its neighbouring nations, especially the former Yugoslav republics. Because the Civil Code is still being adopted and attention is being paid to an appropriate solution, the study is particularly relevant in Serbia. The paper assesses Serbia's goals to join the EU, specifically its harmonisation with laws and its resolve to open the real estate market to EU nationals by September 2017. **(Omer, Saman. 2017)** The easement right to stop others from raising their structures in the shadow of urban developments is the main topic of the research. It addresses about the way owners in residential projects can be shielded from unforeseen modifications by using the easement right. This right is recognised by Iraqi Civil Law when it is agreed upon explicitly or implicitly. But there is an issue that needs to be fixed with regard to the lack of registration with the Real Estate registration process Office.

**(Wilson, Donald. 2013).** An easement exists within the land of another. A person cannot have an easement in their own land, nor would they need one, having already all the rights and benefits of land ownership. The holder of an easement is restricted in what they can do on the land because the easement is for a specific or unique purpose. **(Eagle, Josh. 2010)** An explanation for the reason easement donors seem more giving than those who donate other kinds of property is provided in the article. The fact that numerous easement donors decide to give away items that may be valuable to someone else but have little value for them implies that easement values are high. A legally enforceable agreement that limits development and future uses of the land to accomplish specific conservation goals is between the person who holds of the easement and the legal owner of the real estate subject to the agreement. **(Popov, Danica. 2015)** An easement is a right that one landowner enjoys over the property of another. Examples of these rights include the right of way, the right of light, the right of support, and the right to the flow of water or air. The land over which the right is enjoyed is known as the servient tenement, and the tenement with greater ownership is the land possessed by the possessor of the easement. It may be merely a licence if there is no easement for the accommodations and more effectively enjoyment of the property to which can be adopted. **(Brown, Carol. 2006)** A public good is produced by these easements. By shielding property subject to easements from individual growth or use, they expand the area under protection while giving grantors the latitude to bargain for retention of rights to development customised to their requirements. According to my thesis, individuals should have a sufficient common law property ownership interest in

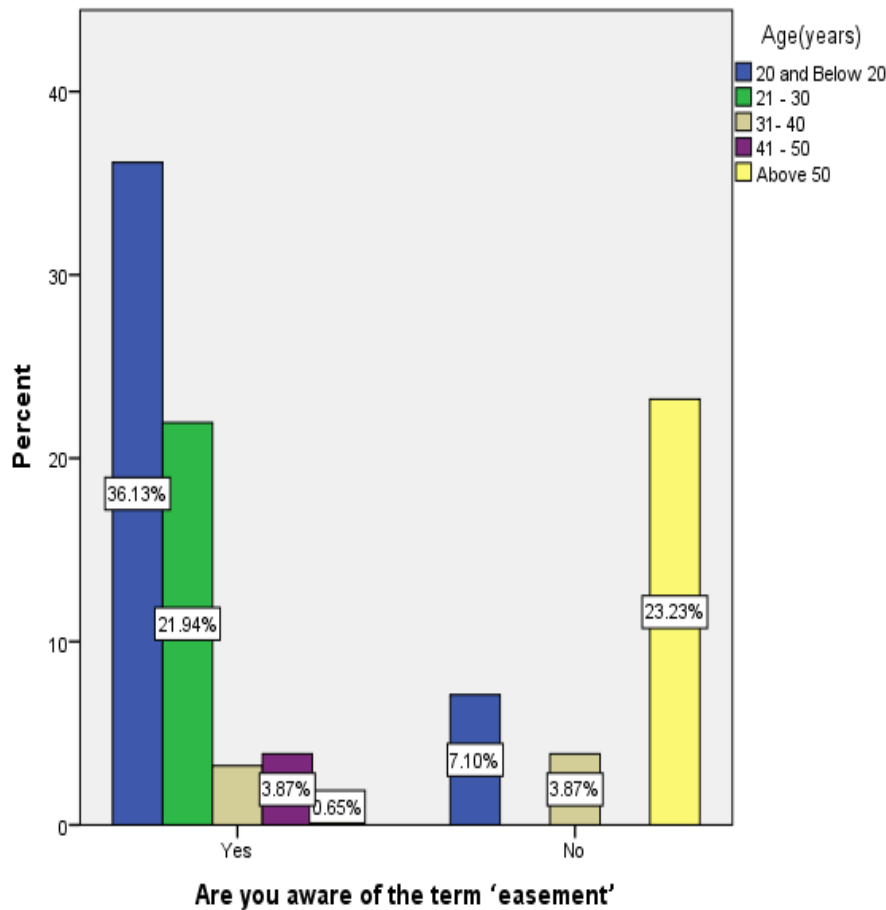
easements for conservation to give them the legal right to file a lawsuit for damages when the easements are violated and to request an injunction to enforce the easements. (Mitchell, Paul. 2006) In order to accomplish a qualified purpose, a landowner may choose to transfer specific land use rights to a qualified easement holder, typically an agency of the government or non-profit. This legal arrangement is known as a conservation easement. These development rights may be donated or sold by the landowner. Federal income tax, estate tax, state income tax, and property tax deductions may be available to the landowner if an easement is made in perpetuity and is either donated or transferred in a "bargain sale."

**RESEARCH METHODOLOGY:**

The author has adopted an empirical method with a convenient sample method to do this non-doctrinal study. This research employs primary sources, including questionnaires and surveys, for data collection. Additionally, secondary sources such as books, articles, and journals were consulted to support the study. The Independent variable taken here is age, gender, education qualification, occupation and residence. The dependent variables are awareness about the easement, major challenges faced, impacts, the reasons and government initiatives. The researcher utilised graphical representation as the statistical methods for handling the data. The sample size is 200 and the sampling method is a convenient sampling method.

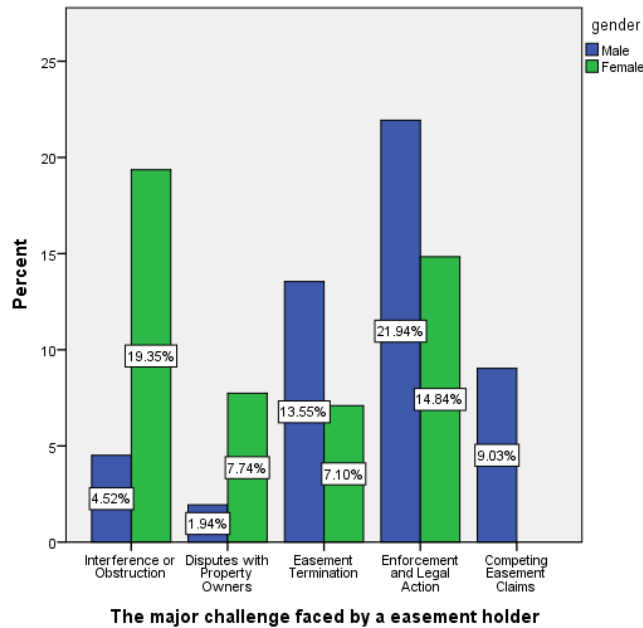
**DATA ANALYSIS:**

**FIGURE 1:**



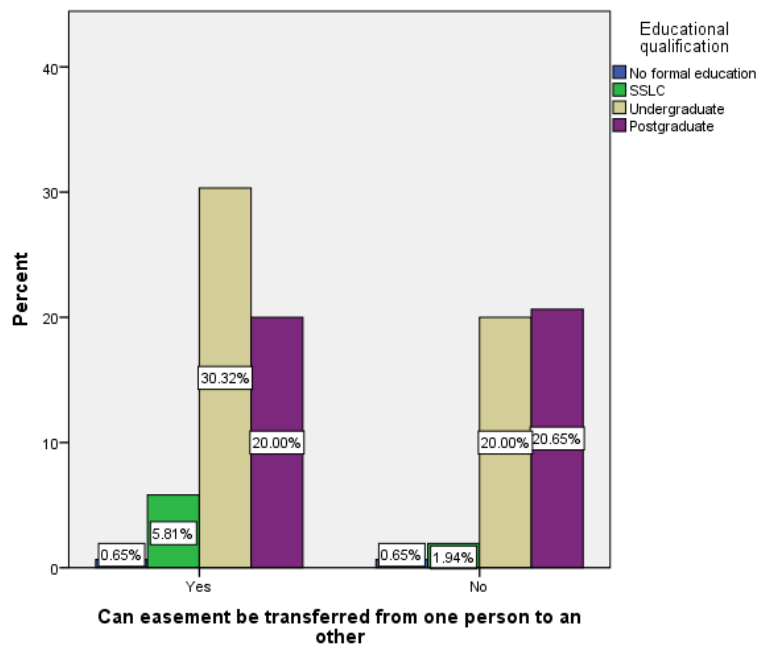
**LEGEND:** Figure 1 shows the percentage analysis on views of the sample population on whether people are aware of the term 'easement' based on age.

**FIGURE 2:**



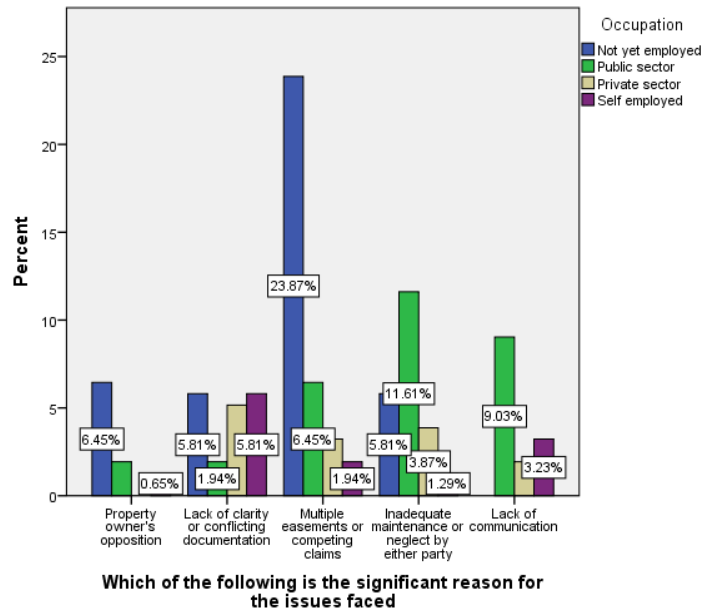
**LEGEND:** Figure 2 shows the percentage analysis on views of sample population on the major challenge faced by an easement holder on gender.

**FIGURE 3:**



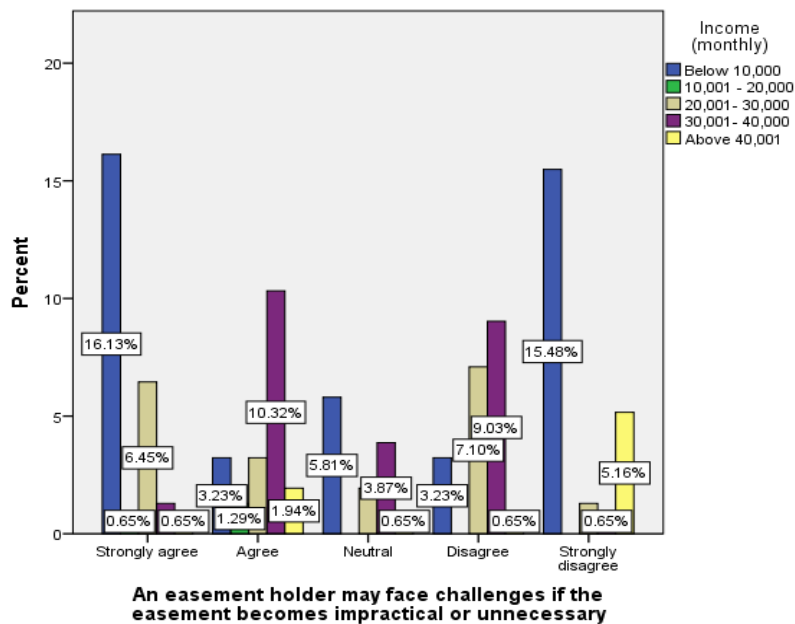
**LEGEND:** Figure 3 shows the percentage analysis on views of sample population on the whether easement can be transferred based on educational qualification.

**FIGURE 4:**



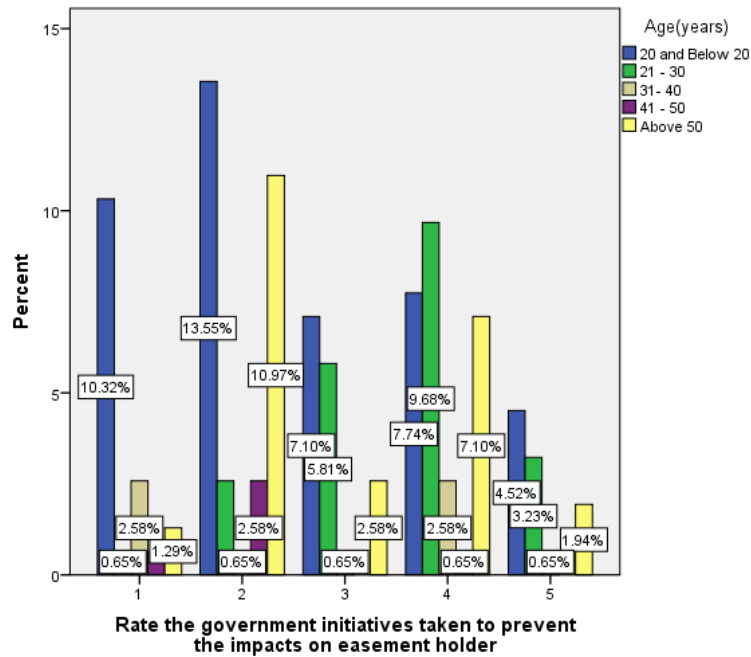
**LEGEND:** Figure 4 shows the percentage analysis on views of sample population on the significant reason for the issues faced based on occupation.

**FIGURE 5:**



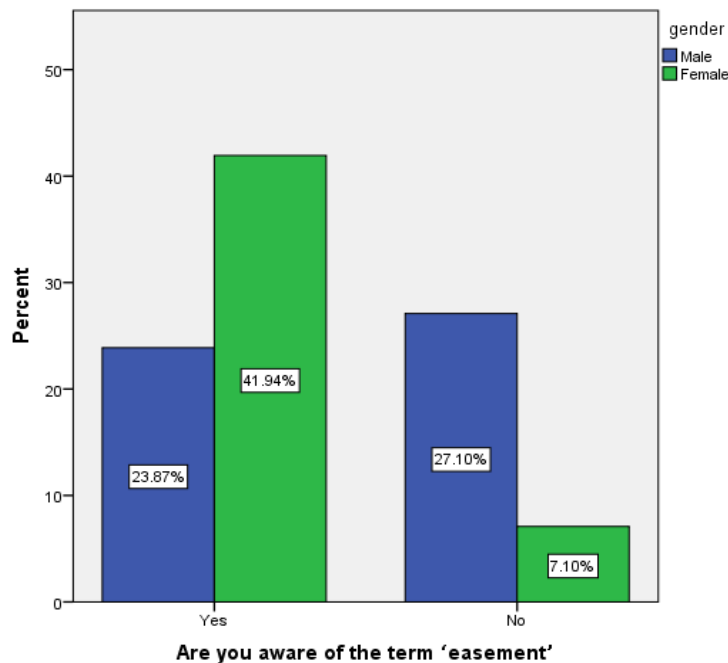
**LEGEND:** Figure 5 shows the percentage analysis on views of sample population on whether an easement holder's faces challenges in case such easement becomes impractical or unnecessary based on residence.

**FIGURE 6:**



**LEGEND:** Figure 6 shows the percentage analysis on views of sample population on the government initiatives taken to prevent impacts easement holders based on age.

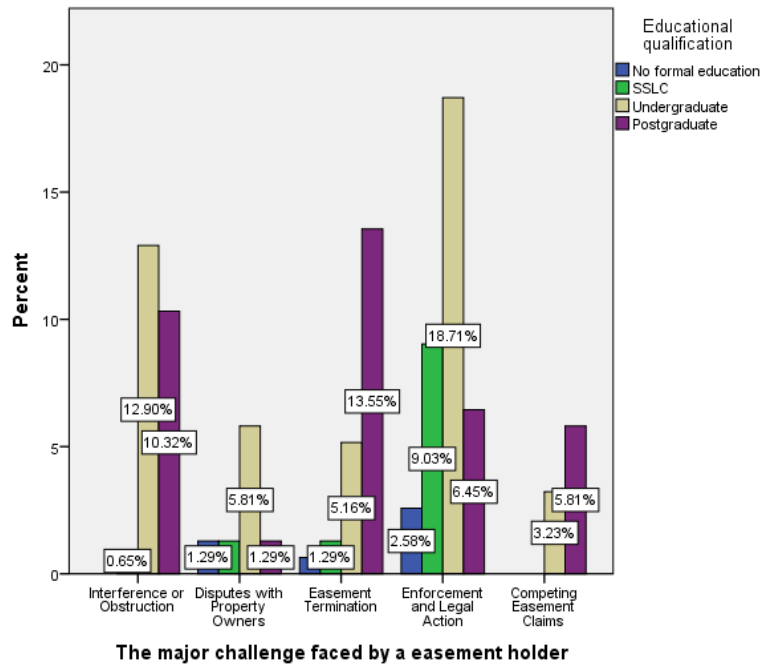
**FIGURE 7:**



**LEGEND:** Figure 7 shows the percentage analysis on views of sample population on whether people are aware of the term 'easement' based on gender.

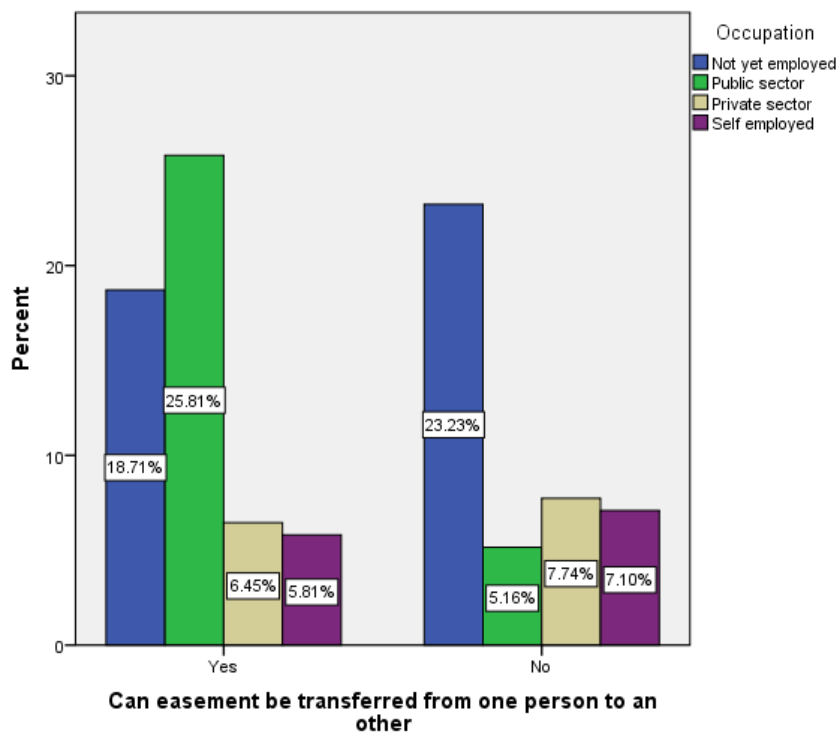


**FIGURE 8:**



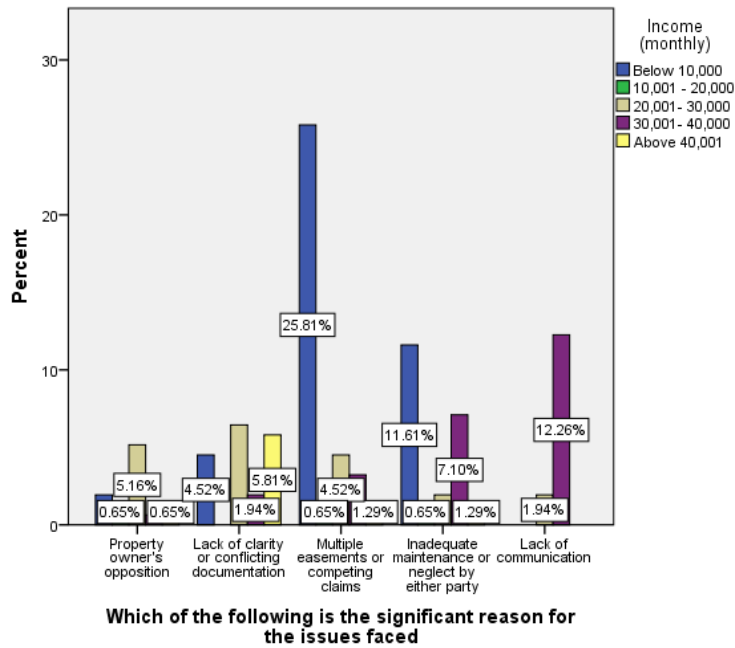
**LEGEND:** Figure 8 shows the percentage analysis on views of sample population on the major challenge faced by an easement holder on educational qualification.

**FIGURE 9:**



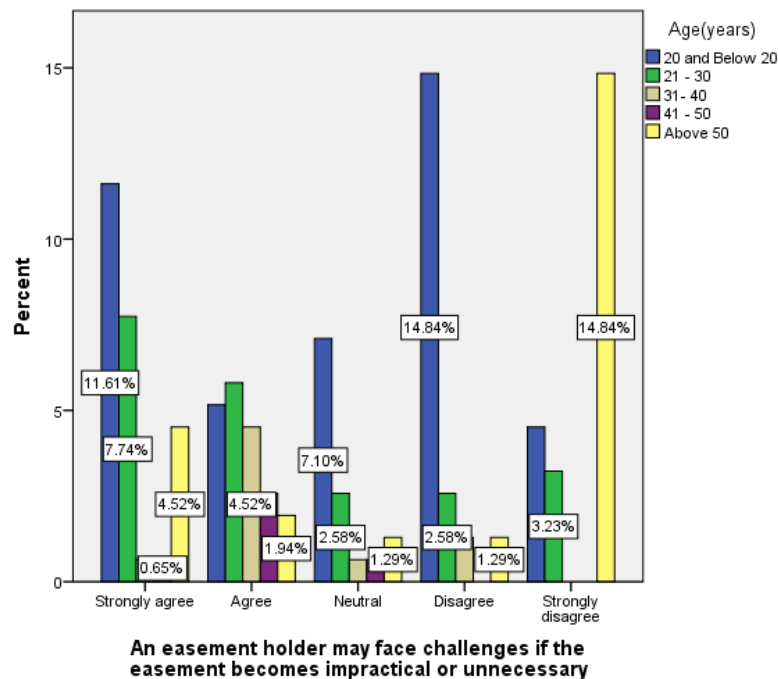
**LEGEND:** Figure 9 shows the percentage analysis on views of sample population on whether easement can be transferred based on occupation.

**FIGURE 10:**



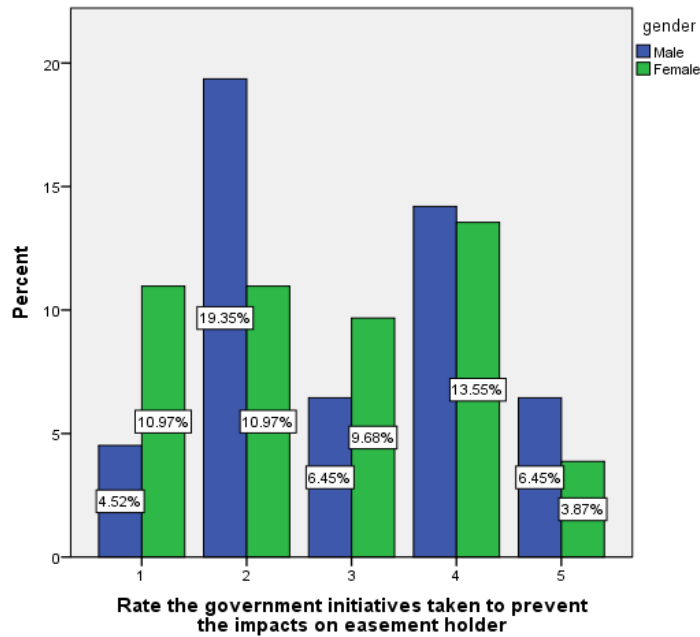
**LEGEND:** Figure 10 shows the percentage analysis on views of sample population on the significant reason for the issues faced based on monthly income.

**FIGURE 11:**



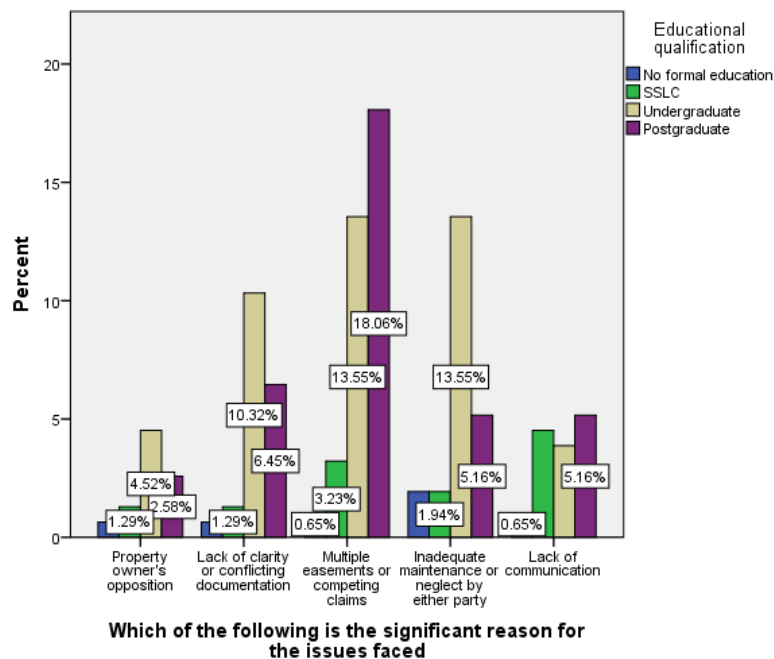
**LEGEND:** Figure 11 shows the percentage analysis on views of sample population on whether an easement holder's faces challenges in case such easement becomes impractical or unnecessary based on age.

**FIGURE 12:**



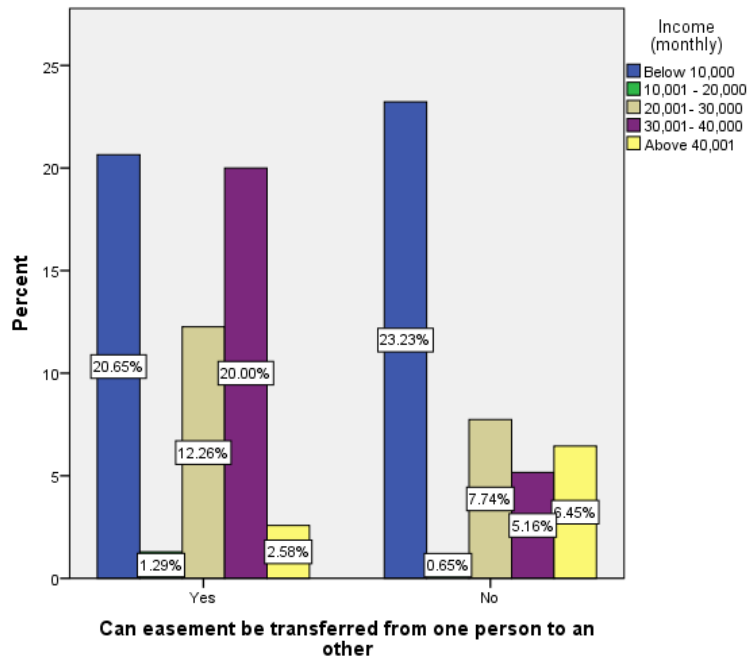
**LEGEND:** Figure 12 shows the percentage analysis on views of sample population on the government initiatives taken to prevent impacts easement holder’s based on gender.

**FIGURE 13:**



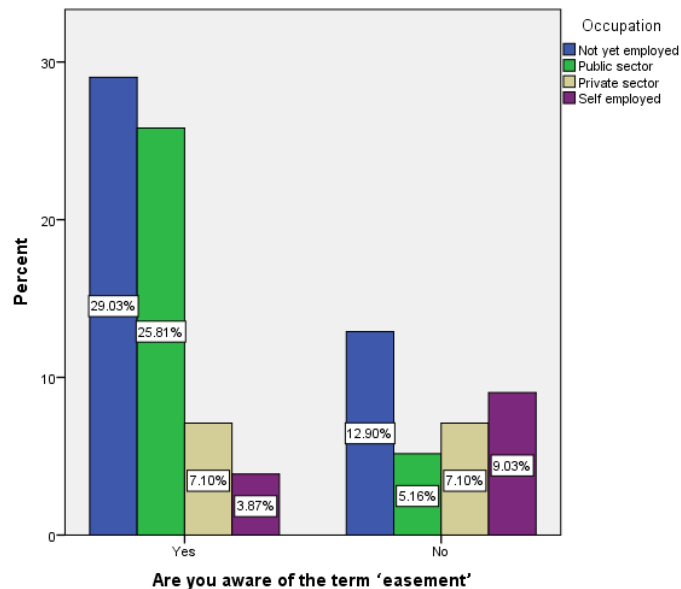
**LEGEND:** Figure 13 shows the percentage analysis on views of sample population on the significant reason for the issues faced based on educational qualification.

**FIGURE 14:**



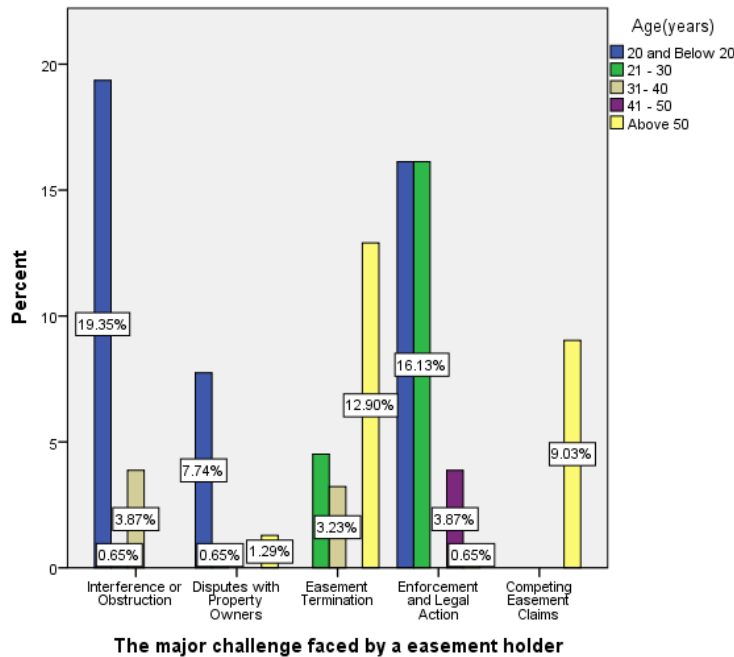
**LEGEND:** Figure 14 shows the percentage analysis on views of sample population on whether easement can be transferred based on monthly income.

**FIGURE 15:**



**LEGEND:** Figure 15 shows the percentage analysis on views of sample population on whether people are aware of the term 'easement' based on occupation.

FIGURE 16 :



**LEGEND:** Figure 16 shows the percentage analysis on views of sample population on the major challenge faced by an easement holder on age.

**RESULTS:**

From **figure 1**, It is found that 36 % of the respondents from the age group of 20 and below 20 have stated yes and 23% of people from the age group above 50 have stated No. From **figure 2**, it is found that 21% of the sample population that are male have stated enforcement and legal action and 14% of the respondents that are female have stated interference or obstruction with the statement. From **figure 3**, It is found that 30 % of the respondents who are undergraduates have stated yes and 20% of people that are undergraduates. From **figure 4**, it is found that 23% of the sample population who are not yet employed chose multiple easements or competing claims and 11% of respondents that are working in the public sector chose inadequate maintenance or neglect by either party with the statement. From **figure 5**, it is found that 16% of the sample population whose income is below 10,000 have strongly agreed with the statement. From **figure 6**, It is found that 13 % of the respondents from the age group of 20 and below 20 have given rating of 2 with the statement. From **figure 7**, It is found that 36 % of the respondents who are female have stated yes with the statement. From **figure 8**, it is found that 18% of the sample population that are undergraduates have stated enforcement and legal action with the statement. From **figure 9**, It is found that 36 % of the respondents who are not yet employed stated yes the statement. From **figure 10**, it is found that 25% of the sample population whose income is below 10,000 have chosen multiple easements or competing claims. From **figure 11**, it is found that 14% of the respondents from urban areas and 17 % of the respondents from the age group of 20 and below 20 strongly disagreed and disagreed with the statement. From **figure 12**, It is found that 19 % of the respondents who are male given a rating of 2 with the statement. From **figure 13**, it is found that 18% of the sample population who are postgraduates have stated enforcement and legal action with the statement. From **figure 14**, it is found that 23% of the sample population whose income is below 10,000 have stated no with the statement. From **figure 15**, it is found that 36 % of the respondents that are not yet employed have stated yes.

**DISCUSSIONS:**

Based on the analysis conducted, it is evident that generational disparities play a role, with younger individuals often more receptive to progressive ideas. Enforcement and legal action hold a crucial role in safeguarding easement holders' rights, offering a structured mechanism to maintain their access and use of designated property. Legal interventions empower easement holders to defend their rights in the face of conflicts, ensuring respect and protection for their established entitlements. This not only upholds the integrity of the easement but also emphasises the importance of adhering to legal agreements, fostering a balanced coexistence between easement holders and property owners. When an easement is transferred to another party, it can impact the original holder's rights by potentially altering usage dynamics. The new easement holder assumes associated rights and responsibilities, potentially leading to changes in usage frequency, manner, or purpose. During the transfer, clear communication and legal documentation are vital to ensure the original holder's rights are either adequately safeguarded or appropriately negotiated to adapt to changing circumstances. Multiple easements or competing claims can significantly affect an easement holder's rights by introducing complexities and potential conflicts. Such situations can result in disputes over access, usage, and maintenance responsibilities, potentially hindering the holder's seamless enjoyment of their granted rights. Resolving these conflicts often necessitates negotiation, legal intervention, or collaborative agreements, which can consume considerable time and resources. Therefore, addressing and reconciling these competing claims becomes pivotal to preserve and upholding the original rights of the easement holder. When an easement becomes impractical or unnecessary, challenges can emerge that impact the holder's rights. The cessation of the original need for the easement may lead to conflicts between the holder and the property owner. Balancing the evolving needs of both parties is crucial, as changing circumstances can disrupt the holder's established usage rights. Careful consideration and resolution are essential to ensure equitable treatment and a harmonious resolution. These measures contribute to enhanced transparency, accountability, and legal avenues, ultimately bolstering the security and recognition of easement rights for individuals and communities nationwide. This highlights the need for continuous monitoring, implementation, review, and effective recommendations to establish further legal provisions or statutes.

**LIMITATION:**

The Major limitation of the study is the sample frame. The sample frame was collected through bus stands, malls, etc. where the respondents weren't devoted enough to answer the questions. The limitation pertaining to sample size represents another drawback of the research. The foremost downside whilst presenting the research topic is that not many people are wise enough to distinguish easement holder 's rights from the idea of hating men which shows a clear lack of awareness.

**SUGGESTION:**

Several measures can be taken to prevent challenges to easement holders' rights. First, make sure that easement agreements are fully documented, clearly stating the rights and obligations of all parties. Promote public awareness campaigns to inform easement holders of their legal rights and safeguards. Third, create a quick and effective procedure for filing easements with the appropriate authorities. Encourage the use of alternative dispute resolution processes to settle disputes quickly and affordably, lessening the load on the judicial system and safeguarding the rights of easement holders.

**CONCLUSION:**

Easement means the right to use or access someone else's property for a specific purpose, without owning it, such as crossing their land to reach your property or using their driveway to access your home. The objective of the research study is to determine the major impacts caused to an easement holder. The researcher has followed empirical research with a convenient random sampling method. The sample frame of this study is 200. The sample frame selected for this research study is a bus stand and collected. According to the analysis of easement holders' legal rights and difficulties, easement holders in different jurisdictions issue ambiguous paperwork and a lack of knowledge about their legal rights. Unregistered easements can occasionally complicate legal proceedings. Through educational campaigns and internet tools, there is a chance to raise public awareness and inform easement holders of their rights. To resolve disputes more quickly and affordably, alternative dispute resolution techniques like online mediation platforms may become more popular. In conclusion, easement holders' legal rights and difficulties are important parts of property law that need serious consideration and resolution. The coexistence of easement holders and other property owners will be more equal and peaceful if there is transparency, education, and effective legal systems.

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