CHAPTER-IV
CONCEPT OF PUBLIC PURPOSE: ITS IMPORTANCE AND USEFULNESS IN THE PRESENT SCENARIO

4.1 Introduction

It has always been recognized that the power of eminent domain is an essential attribute of sovereignty. This power connotes the legal capacity of the state to take the private property of individuals for public purposes.\(^1\) The importance of the power of eminent domain to the life of the state need hardly be emphasis. It is so often necessary for the performance of governmental functions to take private property for public use. The power is inalienable it is based on the two maxims that (1) saluspopuliest supreme lex i.e., the interest and claim of the whole community is always superior (2) Necessitapublic major est quam private i.e., public necessity is greater than private interest and claim of an individual.

The power of eminent domain has three essential attribute of sovereignty. First, the power of the state to take over private land; second, this power is to be exercised for public ground; and third, it is obligation on the State to compensate those whose lands are taken over. Essentially it deals with power of the state to expropriate lands of individuals who, are not willing sellers, it is based on the principle that interests of the whole community is greater than individual interest. Thus property may be needed and acquired under this power for government offices, libraries, slum clearance projects, public schools, college and universities, public highways, public parks, railways, telephone and telegraph lines, dams, drainage, severs and water systems and many other projects of public interest convenience and welfare.\(^2\)

Widening the scope of public purpose was advocated citing globalisation that in the absence of land acquisition, India will be remain a step back compared to other countries. The other argument was that new industrial units established by the acquisition of land would generate a large number of employment. Thus logic seems to be that industrial development leads to economic development and economic

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development is national development. Thus industrial purpose is public purpose. Hence the Land Acquisition Bill 2007 seeks to amend the definition of public purpose to accommodate industrial purpose. Thus it is clear indication that the legislative intent is to give wide interpretation to public purpose. Recently in SooramPratap Reddy and others v. District Collector, Ranga Reddy Dist and others, the Supreme Court stated that “public purpose” includes any purpose wherein even a fraction of the community may be interested or by which it may be benefited. As such Special Economic Zones (SEZs), mines, shopping malls, factories, dams, and other large scale projects have been facilitated by expropriation of land under the Land Acquisition Act.

Extending land acquisition for public purpose to industrial development involves the denial of the right to property, life and livelihood. It affects the marginal classes extensively and may be construed as favouring the dominant class. Many states include Tamil Nadu, Karnataka and Maharashtra have enacted specific legislations for facilitating land acquisition exclusively for industrial development. Some commentators on the Land Acquisition Act, 1894 had cautioned about this practice. They had suggested that to stop the misuse in view of number of SEZs and number of people already displaced in the process of development. Therefore, in settling the question of acquisition one must consider the nature of the right and its significance. Since the power of eminent domain is an inseparable incidence of sovereignty, there is no need to confer this authority expressly by the Constitution. This power exists without any declaration to that effect, while the existence of the power is recognized, constitutional provisions provide safeguards subject to which the right may be exercised. For instance, in America three limitations exists:

1. There must be a law authorizing the taking of property;
2. The property must be taken for some public use; and
3. Just compensation should be paid.

The phrase power of ‘eminent domain’ in USA , is known as ‘sovereign power’ in India and it is embedded in the articles 31-A and 300-A of the Indian Constitution.

2A (2008)9 SCC 552
3 Supra note 2, at 298 & 299.
4 Supra note 2, at 908.
4.2 Interpretation of Article 300 A

Article 31 of the Indian Constitution deals with the eminent domain power and clauses (1) and (2) of the article 31 lay down three limitations subjected to which state may exercise its eminent power. Article 31 guarantees that a person cannot be deprived of his property by an executive order (property right can be deprived only through legislation). Secondly, such deprivation can only be for public purpose and thirdly, compensation for deprived property must be equivalent to the market value of the property acquired.\(^5\)

The word compensation used in the Article 31(2) created a lot of problem; it has been discussed in the previous chapter. Even though government has sovereign power to acquire land, the word compensation used in the Article 31 created lot of obstruction to the government. When Government sought to acquire land for public purpose, immediately land owner were initiating and filing a writ petition either before the Supreme Court under Article 32 or before High Court under article 226, it was great hurdle for the government. Hence, to overcome the hurdles, there were series of amendments brought to the Constitution and finally in 1974 by forty-fourth amendment Articles 19(1)(f) and 31 were repealed and Article 300-A was inserted.

Reason for the deletion of Articles 19(1)(f) and 31 and insertion of 300A is that to reduce the property right from the status of fundamental right and make it as a legal right (property right will be available against executive interference, but not against the legislative interference).\(^6\) After 44th amendment Supreme Court has very clearly stated that the executive cannot deprive a person from his property without the authority of law and ‘law’ in this context “an Act of parliament or state legislature rule, or statutory order, having force of law, that is positive or State made law,”\(^7\) in the view of interpretation given to the word ‘Law’ under Article 21 in *Maneka Gandhi v. Union of India*\(^8\) case.

Bombay High Court invalidated some provisions of the Maharashtra Housing and Area Development Act, 1976 under Article 300A, accordingly the law was not just and fair in so far as it provided less compensation for the acquisition of property.

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\(^5\) *Supra* note 2, at 300 &301.

\(^6\) *See* paragraphs 3 & 5 of the statement of Objects & Reasons of the 44th amendment.

\(^7\) *Supra* note 2, at 908.

\(^8\) (1978)1 SCC 248; AIR 1978 SC 597.
than provided under the Land Acquisition Act 1894. According to the Bombay High Court, adequate compensation was an essential ingredient of ‘Law’ in article 300A and the law relating to the acquisition of property must satisfy Article 21 of Indian Constitution. The decision of the High Court was reversed by the Supreme Court and also been held that the state’s power of eminent domain or to acquire property is subject to common law requirement (Doctrine eminent domain) of ‘public purpose’ and ‘adequate compensation’ but not subject to the right to livelihood under Article 21. Hence, state may acquire property notwithstanding the impact of acquisition on the owners livelihood.

In *GilubhaiNanbhaiKhachar v. State of Gujarat*, the Supreme Court has however held that because of controversial aspects of Article 31, it was deleted from the Constitution and it should not be brought back by judicial interpretation. The court admitted the exercise of power of eminent domain recognized under Article 300A requires existence of public purpose and payment of money for the property acquired, amount need not be just equivalent to the property acquired but at the same time it must not be illusory if, in any case law fails to satisfy the requirements of ‘public purpose’ and ‘adequate payment’ it may held to be invalid under Article 300A. In this regard legislative decision shall be final, however, requisition and acquisition of property may still be challenged on the ground whether a piece of property acquired for public purpose or whether compensation paid is adequate or not.

4.3 Philosophy of Public Purpose

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 land. This has been going on and still goes on at a slow pace. In the name of industrialization, larger portion of land has being acquired from people for ‘public purpose’ and ‘development’ and was later handed over to private companies. Currently, if the state acquires land on the ground of ‘public interest’ in a function of its eminent domain power, aggrieved parties have little judicial recourse.

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10 *Supra* note 2, at 908-909.
12 *Supra* note 2, at 910.
Indeed, several such challenges have already been dismissed by the Courts, including acquisitions for sewage treatment plant,\textsuperscript{13 A} planned development for housing scheme\textsuperscript{13 B} and for a co-operative society.\textsuperscript{13 C}

Enormous power available to the government under the doctrine eminent Domain (Land Acquisition Act) state has led to many blatant abuses. For example, the West Bengal Government acquired fertile agricultural lands in West Medinapur for Tata Mataliks in 1992, dispossessing small and marginal farmers, in preference to undulating waste land, that available nearly. 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, company later decided that Pig Iron production was no longer profitable and refused to pay the compensation. Singur in West Bengal is another recent example wherein government sought to acquire prime agricultural land for private capitalist parties, i.e., for Tata Motors. State governments have not hesitated to take over the land even by employing draconian emergency powers available under this Act.\textsuperscript{14} The main philosophy behind the Act (Land Acquisition Act 1894) is eminent domain power or sovereign power of the state. The state may directly own lands through acquisition, purchase etc. or by default. That means all lands which are not privately owned by the individuals are owned by the state but in respect of privately owned lands the state has eminent domain power.

Origin of land acquisition goes back to 1824 wherein the British colonial government codified this undisguised forcible seizure of law. The Bengal regulation 1 of 1824, based on the principle of ‘eminent domain’, which empower the state to take any private property for public use. This was extended to cover land acquisition for the railways in 1850 by the British regime. This draconian law unfortunately never defined the meaning of ‘public purpose’ and it was enough for the state to declare it so. After the Constitution came into force Article 372 of the Constitution allows all colonial laws continue to force unless repealed otherwise.\textsuperscript{15} There was an enormous increase in infrastructure building and industrial activities by the state during the period immediately after independence as compared to the colonial period. Number...
of dams, power plants, mines, steel and heavy engineering plants came up for which land is acquired by using the 1894 law.\textsuperscript{16}

With the enactment of the Special Economic Zone Act, 2005 the political parties irrespective of their colour or ideology, industrialists, irrespective of their size and global agents of privatization and liberalization have come together to acquire land and use all their power and money to take the process of globalization to the next level and alienate the people from their own natural resources. But it has never been that easy for the state to acquire land. The country has witnessed the worst kind of battles between people and state for last few years. The gory pictures of Nandi gram battle for months show clearly the division that exists between the state and the people. While there was an outright rejection of cut idea of SEZ.\textsuperscript{17}

Public sector and government projects were not only purposes for which land was forcibly acquired by the state even in the fifties and sixties, land had been acquired for private industry through state governments. However, a landmark judgments in \textsl{R L Aurora v. State of Uttar Pradesh}\textsuperscript{17 A} case wherein Supreme Court held that the government could not justify acquiring land for a textile machinery manufacturer as a ‘public purpose’. It further declared that ‘Land Acquisition Act’ did not contemplate that the government should be made a general agent for companies to acquire lands for them for their private profit’. After this case government brought an amendment to the Land Acquisition Act in 1962 i.e., Land Acquisition (Amendment) Act, 1962 it allowed to acquire land for a Company which is engaged in or taking steps for engaging in any industry or work for a public purpose.

Further this amendment was applied with retrospective effect(earlier to Supreme Court judgment in this case). Thus the state succeeded in preserving its authority to acquiring land for private industry.\textsuperscript{18} Concept of public purpose was further diluted during the time of Indira Gandhi’s regime by the Land Acquisition (Amendment) Act 1984, which included the acquisition of land for ‘planned

\textsuperscript{16}\textit{Supra} note 14, at 267.
\textsuperscript{17}\textit{Supra} note 13, at 274 & 275.
\textsuperscript{17 A}AIR 1964 SC 1230.
\textsuperscript{18}\textit{Supra} note 14, at 266.
development’ and subsequently sale to private enterprise. Hence, it came as a biggest blow to the ordinary farmers and land owners.\(^{19}\)

Subsequently the decision of the Supreme Court in \textit{R L Aurora} case, a variety of projects by private entrepreneurs for divers purposes like houses for members of a co-operative society, manufacture of alumina bricks, construction of a students home, an electro chemical factory, a sugar factory, etc. were all held to promote the ‘public purpose’ and land acquisition by the state for these enterprises upheld. With this, the fatal blow for original possessors of land was completed and once the government set eyes on someone’s land intended to acquire it, it mattered very little what the purpose was. However, the main question of clearly defining ‘public purpose’ was not addressed.\(^{20}\)

\subsection*{4.4 Definition of Public Purpose}

The concept of ‘public purpose’ is one of the most entrenched issues in the legal field, what constitutes public purpose is an open question subject to interpretation and use.\(^{21}\) ‘Public purpose’ is a condition for the exercise of state’s power of compulsory acquisition of private property but no definition of the phrase ‘public purpose’ is given either under repealed Article 31(2), or under Article 300A or under repealed Land Acquisition Act 1894, nor any limitation prescribed. There are number of cases which have considered the word “public purpose” but none of them have proposed to lay down the definition or the extent of the expression.\(^{22}\) Black’s law dictionary defines the word ‘public purpose’ as synonymous with governmental purpose. “A public purpose or public business” has for its objective to promote public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division.\(^{23}\)

Section 3(f) of Land Acquisition (Amendment), Act 1984, gives an inclusive definition of the phrase public purpose.\(^{24}\) Public purpose thus includes provision for village sites, town planning, planned development of land from public funds and for further development of land for a corporation owned and controlled by the state

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\(^{19}\text{Supra} \text{ note 13, at 274.}\)
\(^{20}\text{Supra} \text{ note 14, at 267 & 268.}\)
\(^{21}\text{Supra} \text{ note 13, at 275L.}\)
\(^{22}\text{Supra} \text{ note 2, at 312.}\)
\(^{23}\text{Black’s Law Dictionary 1247(7th ed.,1999).}\)
\(^{24}\text{Official Assignee of Bombay v. From of ChandulalChimanlal, 761C, 657.}\)
carrying out certain schemes of government like education, health, housing, slum clearance any other scheme of development sponsored by government or for locating any public office.\textsuperscript{25} Land for companies would not come under the purview of public purpose in section 3(f) of the Act.\textsuperscript{26}

A close scrutiny of this clause would reveal that except the provision for land for corporations owned or controlled by state all the remaining broad classifications are welfare functions of the state. Under section 3(f) of the Act after the 1984 Amendment the expression "public purpose" includes –

i. the provision of village-sites, or the extension, planned development or improvement of existing village sites;

ii. the provision of land for town or rural planning;

iii. the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;

iv. the provision of land for a corporation owned or controlled by the state;

v. the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;

vi. the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by government, or by any authority established by government for carrying out any such scheme, or, with the prior approval of the appropriate government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to cooperative societies for the time being in force in any state;

\textsuperscript{25}Section of 3(8) of the Land Acquisition Act, 1984.
\textsuperscript{26}Inserted by Land Acquisition Amendment Act, 1984.
vii. the provision of land for any other scheme of development sponsored by
government or, with the prior approval of the appropriate government by a
local authority;

viii. the provision of any premises or building for locating a public office.

Thus, the Act did not define the expression ‘public purpose’, but it gives an
inclusive definition of the word ‘public purpose’. This has left the question wide open
and subject to interpretation and use. Further, once the publication of declaration
under section 6 of the Act is deemed to be adequate proof that the land is needed for
public purpose and is final, no civil court can sit as an appellate forum on the question
of ‘public purpose’, therefore, it could not be challenged in a Civil Court. Executive
is the final arbiter on the question of public purpose however, it is not the sole judge
the Courts have the jurisdiction to determine whether the acquisition is or is not for a
public purpose. Court could question the justiciability of the grounds for arriving the
decision of public purpose by Courts in proceedings under Article 226 of the
Constitution.

Courts Self-imposed Restraints on Review Power

Although the power to determine what constitute public purpose is primarily
with the government ultimately Court has the power to review such
decisions. However, in practice the Courts have generally placed limitations on
themselves in *Sooram Pratap Reddy and others v. District Collector, Ranga Reddy
Dist and others*,28 and the Supreme Court articulated the grounds of review as follows:

a. Malaise exercise of power

b. A public purpose that is only apparently public purpose but it is in reality
private purpose or other collateral purpose.

c. An acquisition without following the procedure established under the Act
d. When the acquisition is unreasonable or irrational
e. When acquisition is not a public purpose at all and the fraud on the state is
apparent.

27 Arun Kumar Barthakar, ‘Civil Court’s Jurisdiction in Land Acquisition’ 7 SCC 33(2001); See also:
*Ezra v. Secretary of State for Indian Council*, 7 CWR 249; ILR 32 Cal. 605.


This implies that power to determine public purpose is primarily with the appropriate government. Appropriate government, at least in theory retains the power to question the determination of justiciability of ‘public purpose’. In practice, justiciability of public purpose is determined by Courts not merely on breach of procedural fairness but also on substantive grounds. Though the Supreme Court has been a remarkable constituent in upholding the primary determination of the appropriate government. Nonetheless the door remains open for future litigants to invite the Courts to review the question on the aforementioned grounds.

4.5 Evolution of Public Purpose in India

The Bengal Regulation 1 of 1824 was the first piece of legislation regarding the acquisition of immovable property for public works and public purposes in British India. The Act was to ensure that the officers of the government are enabled to obtain land or other immovable property at a fair valuation for construction of roads, canals and other public purposes. It was Act 1 of 1850 (1850 Act) which extended the provisions of the Regulation of 1824 to the then city of Calcutta. The objects of the Act were self-explanatory through the provision which states that any declaration made by the Governor of Bengal as to the purpose of the acquisition would be the conclusive evidence for establishing the declared purpose as public purpose.” There were no guidelines on the basis of which the Governor had to decide whether it is for public purpose or not. It meant that, the Governor of Bengal had immense power to declare any purpose as public purpose. The objective of the Act I of 1850 was mainly to confirm the title of the lands acquired. The presumption that the purpose is public purpose upon such declaration by the Governor General-in-Council was once again emphasized in the Acts XX of 1852 and I of 1854 which were facilitated, the acquisition of land for public works and purposes in the then Presidency of Fort

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29Evolution of public purpose in India. This portion of the chapter has been extensively borrowed from the law commission of India, 10th report on the Law of Acquisition& Requisition of Land, (1958); Repealed by Act VI of 1868.Repealed by Act VI of 1868
30See Sections 2 to 8 of the Regulation 1 of 1824 of the Bengal Code.
31See Statement of objects & reasons of the Act 1 of 1850, quoted in V.G. Ramachandran, Law of Land Acquisition & Compensation 4(1972). It inter alia states: the powers & provisions of first seven sections of Regulation 1 of 1824 of the Bengal Code shall be applicable to all lands within the town of Calcutta which shall have been declared by the Governor of Bengal to be needed for any public purpose and such declaration shall be conclusive evidence that the purpose for which lands are needed is a public purpose (emphasis supplied).
St. George. The Building Act XXVIII of 1859 which extended the 1850 Act to the then Bombay and Colaba, enabled the authorities to acquire land for construction or widening of roads, streets, or drain ways and/or other thoroughfare. The Act XXII of 1863 authorised the Governor General-in-Council to declare projects dealing with irrigation, navigation, and improvement of docks and harbours as work of public utilities.\(^{33}\) The preamble of the Land Acquisition Act, 1870 maintained that the acquisition of land would be for public purposes and for companies.

However due to widespread criticism of the 1870 Act, need was felt to modify the legislation. The main objective behind framing the 1894 Act was that acquisition of land needed for public purpose and for companies and compensation determined on account of such acquisition.\(^{34}\) Another interesting aspect was that in the year 1930 where the Joint Committee on Indian Constitutional Reforms, recommended that for the expropriation of private property to be lawful, it must be for public purpose. It may be noted that, the Committee while recommending for certain safeguards against the expropriation of private property, was not ready to guarantee any right to property to individuals.\(^{35}\) It may be recalled here that in the British Indian Dominion, there were no guaranteed constitutional rights to the subjects.\(^{36}\) Whichever rights that were mentioned in the 1895 Home Rule Bill were limited only to citizens (read British as the British Indians were considered as subjects). In 1925, a statement of Rights in the Commonwealth of India Bill visualised certain rights for the subjects in the form that was almost identical to the corresponding provisions of the Irish Constitution. However, it was the Government of India Act, 1935, which gave some breathing space to the subjects with respect to expropriation of private property.\(^{37}\) But the provisions of 1894 Act were not affected by the 1935 Act. The acquisition of land for companies was also done and it was quite prevalent in the then Madras, Bengal and


\(^{34}\) Supra note 32, at 22.


\(^{36}\) Supra note 32, at 23

\(^{37}\) Section 299 compulsory acquisition of land etc. of the Government of India Act, 1935; (1) No person shall be deprived of his property in British India save by authority of law. (2) Neither the Federal nor a provincial legislature shall have power to make any law authorizing the compulsory of acquisitions for public purposes of any land, or any commercial or industrial undertaking or interest in or in any company owning any commercial or industrial undertaking.
Bombay presidencies as they had their statutes as early as in 1857. Those acquisitions were restricted only to what was known as works of public utility. Works of public utility means, works of the civil facilities, mostly to the employees and servants of the East India Company. In order to suit the local need of community of India Land Acquisition Act, 1894 came into force. Section 3(f) of the Act defined the word public purpose in a inclusive manner, in various circumstances hence government abused its eminent domain power. The word “Public purpose” is the base (means) for exercising the eminent domain power or sovereign power. So it is right time transitorily define the word ‘public purpose’ without leaving any scope for abusing the power. To address solutions to all these problems colonial Land Acquisition Act, 1894 repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013 came into force. Therefore, the word ‘public purpose’ defined under this 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.

4.6 What is Public Purpose?

The concept of “public purpose” connotes public welfare. With the onward march of the concept of socio economic welfare of people, notions as to the scope of general interest of the community are fast changing and expanding. The emphasis is unmistakably shifting from the individual to the community. The concept of ‘public interest’ is thus elastic and not static, and varies with time and needs of the society. Whatever furthers the general interest of the community, as opposed to particular interest of the individuals, may be regarded as ‘public purpose’ certain general considerations or guidelines relating to the meaning of the expression deducible from these cases may be stated.

General Interest of the Community

In *Hamabai Framjee Petit v. Secretary of State*\(^{40}\) Privy council decision that government had given certain land in Bombay on lease. Under the terms of the lease the government had the right to resume the possession, subject to paying compensation, it is desired to use it for a public purpose. The government gave notice of their intention to resume possession with the object of using the land for providing residential accommodation to government servants at reasonable rates. Privy council held that the resumption of land was for a public purpose and therefore valid. J. Bachelor approved the following observation in this judgment. The Phase ‘public purpose’ means general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned. In *Somavathi v. State of Punjab*,\(^{40}\) Supreme Court said: “Broadly speaking, the expression ‘public purpose’ would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals, is directly and vitally concerned”.

In *Kamshwar Singh v. State of Bihar*,\(^{40}\) Mahajan, J. observed that the phrase ‘public purpose’ has to be construed according to the spirit of the times in which the particular legislation is enacted. ‘Public Purpose’ is bound to vary with the times and the prevailing conditions in a given locality. That the meaning is elastic and a change with time is nowhere better illustrated than in the interpretation of the phrase ‘public use’ in America.\(^{41}\) The power of the state to acquire private property for public purpose is referred in America as eminent domain. The requirements of eminent domain are (1) authority of law (2) public use, and (iii) just compensation in lieu thereof.

According to the earlier view any purpose relating to functions of government would be a public use provided public have the direct benefit from the property acquired thereof. According to the newer viewpoint there is a public use if the thing taken is useful to the public. In case of acquisition of land for manufacture of salt has been held to be an acquisition for a public purpose.\(^{42}\) The acquisition of land

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\(^{40}\)(1914) L.R. 42 I.A. 44.  
\(^{40}\) AIR 1963 SC 151; 1963 SCR (3) 774.  
\(^{40}\) AIR 1953 Pat 167; 1953(1) BLJR 261.  
\(^{41}\) The power of the state to acquire private property for public purpose is referred in America as eminent domain. The requirements of eminent domain are (1) authority of law (2) public use, and (iii) just compensation in lieu thereof.  
for housing of a minister is a public purpose as he cannot give his best to the state.\footnote{Sudhendra v. Shailendra, (1950) 87 CLJ 140.} Rehabilitation and Resettlement of refugees is a public purpose.\footnote{Lachman Das v. Municipal Committee, (1969) SCC 653.} In \textit{State of Bombay v. Ali Gulshan},\footnote{AIR 1955 SC 810.} the Supreme Court held that the requisition was for the purpose of housing a member of the staff of a foreign consulate was for a public purpose. In \textit{State of Bombay v. BhanjiMunji},\footnote{AIR 1955 SC 41.} the requisition for housing a person having no housing accommodation was upheld as being for public purpose. But compulsory acquisition for the benefit of a private person is ultravires.\footnote{Bhanji v. State of Bombay, AIR 195.} Likewise, the property of an individual cannot be appropriated by the state under the power of compulsory acquisition for the mere purpose of adding to the revenues of the state.\footnote{State of Bihar v. Kameshwar Singh, AIR 1952 SC 252, 275} There is no public purpose where the land is acquired for an industrial concern working purely for its own gain, even though the goods produced by the concern may be of use to the general public.\footnote{SatrughnaSahu v. State of Orissa, AIR 1958 Ori187.}

In \textit{BabuBarkya Thakur v. State of Bombay},\footnote{AIR 1960 SC 1203.} where the requisition of accommodation was for the workers engaged by an industrial company, the Court held that the requisition was for a public purpose because in an industrial concern engaging a large number of workmen away from their homes, it is a social necessity that there should be proper accommodation available for such workmen. In \textit{Thambiran v. State}\footnote{AIR 1952 Mad 756.} Court held that acquisition of land for a cooperative society for construction of houses under special schemes is a public purpose. Since the public is generally benefited by such scheme even though the direct and immediate beneficiaries may be individuals. Again, the condition of public purpose was held to be satisfied where lands were acquired for development into industrial areas.\footnote{Sadruddin v. J. H. Patwardhan, AIR 1965 BOM 224.}

In \textit{Arnold Radericks v. State of Maharashtra},\footnote{AIR 1966 SC 1788, 99.} the petitioner contended that the validity of law as being beyond the concept of public purpose. It was no purpose since the state would be acquiring the land from one set of individuals and disposing
it off to another set of individuals after development. The Court refused the contention of the petitioners. Sikri, J., speaking for the majority, said:

“Public purpose varies with the time and the prevailing conditions in localities” and in some towns like Bombay the conditions are such that it is imperative for the state should do all it can to increase the availability of residential and industrial sites. The main idea in issuing the impugned notification for acquisitions of land was not to think of the private comfort or advantage of the members of the public but the general public good. In other view, the welfare of large proposition of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community is public purpose.\(^{54}\)

In \textit{Venkatamma v. City Improvement of Trust Board, Mysore},\(^{55}\) an improvement scheme was drawn on the basis of several merchants to deposit the costs of acquisition for shopping sites. It was held that even if the scheme was that the shopping sites would be let out to provide individuals who would erect shops thereon, it cannot be contended that the land for shopping sites was not being acquired for a public purpose. Any purpose, which directly benefits the public or a section of the people is a public purpose, moreover, development dealing with the improvement of cities in this country. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the state should not be permitted to see that further development of the land takes place in the directions for which the land is acquired even though it may be through private agencies. The judicial trend discernible from these cases has been that even a purpose which benefits individuals does not lose the character of public purpose, if such individuals are benefited not as individuals but in furtherance of some scheme or plan aiming at welfare or utility.\(^{56}\)

Since the existence of ‘public purpose’ was essential condition for acquiring or requisitioning property under eminent domain power, a law enacted for the purpose, but having no ‘public purpose’ to support it, was constitutional, whether a

\(^{54}\)\textit{Supra} note 2, at 312.
\(^{55}\)\textit{(1973)}1 SCC 188; \textit{AIR} 1972 SC 2683.
\(^{56}\)\textit{Supra} note 2, at 315.
public purpose existed or not was a justiciable matter.\textsuperscript{57} As stated by the Supreme Court in \textit{State of Bombay v. Nanji},\textsuperscript{58} prime facie the Government is the best judge as to whether ‘public purpose’ is served by issuing a requisition order, but it is not the sole judge. The Courts have jurisdiction and it is their duty to determine the matter whenever question is raised whether a requisition order is or not for a ‘public purpose’. The Courts, however, adopted a very liberal attitude on the question of public purpose, and it was rare indeed for a Court to hold that an acquisition of land was not for public purpose.

4.7 Justiciability of Public Purpose

The right of the government to acquire land for public purpose under the power of eminent domain is undisputed. The government is said to have sole and absolute -discretion with respect to the question of justiciability of the public purpose. In \textit{Ezra v. Secretary of State for India-in-Council},\textsuperscript{59} the Privy Council held that it is only the government which would be the sole judge as to the question of public purpose. The necessary qualification in this respect is that existence of a paramount reason and such reason must be shown before acquisition. The general interest of the community is said to be the touchstone of public purpose. According to the Privacy Council, public purpose means, the interest of the community as a whole or part as opposed to particular interest of the individual who is directly and vitally concerned.\textsuperscript{60} In \textit{Ram Kumar v. State of West Bengal},\textsuperscript{61} the Supreme Court held that public purpose in section 3 (f) would include a purpose in which the general welfare of the community as opposed to the particular interest of the individuals is directly and vitally involved. In \textit{Ratilal Shankarabai v. State of Gujarat},\textsuperscript{62} the Supreme Court held that, as per section 6(3) of the Land Acquisition Act, 1894, the declaration under section 6 by the appropriate government shall be the conclusive proof as to the purpose of the proposed acquisition of any land. In the absence of the restrictive definition, the government is required to be satisfied in its best judgment about the purpose of acquisition.

\textsuperscript{57} Supra note 32, at 1491.
\textsuperscript{58} AIR 1956 SC 294; 1956 SCR 18.
\textsuperscript{59} (1905)23 IA 93(Pc); 1 CLJ 227; 9CWN 454(PC).
\textsuperscript{60} HemabaiFramzi v. Secretary of State, AIR 1914 PC 20.
\textsuperscript{61} AIR 1963 Cal. 534; 67 CAL. W.N. 387; See alsoSomawanti v. State of Punjab, (1963) 2 SCR 774.
\textsuperscript{62} AIR 1970 SC 984.
In *State of Bombay v. R.S. Nanji*, the Supreme Court held that, though the government is generally considered to be the sole judge of justiciability of public purpose, jurisdiction still vest with the Courts and under Article 226 of the Constitution Courts is duly determined whether or not there exists any public purpose in an acquisition. The circumstances in which the Courts can interfere is disputed even though statute gives the power to the executive to declare and determine the purpose of the acquisition, the jurisdiction of Courts are not barred. But this has not been applied uniformly. In certain cases it has been held that the Court has to accept the legislative decisions as ‘public purpose’. The question whether there can be a compulsory acquisition for private purpose will have to be answered in the negative. If the public benefit resulting from an action of a person or of a company is not direct but is incidental to personal gain of an individual or of a company, then it is not considered as public purpose.

Justiciability as to the purpose of acquisition may be challenged before the Courts, if prima-facie evidence is available on the grounds inter alia, that:

1. Acquisition is mala-fide, since the purpose as disclosed in the section 4 of Land Acquisition Act, 1894 notification is not really a public purpose.
2. The power exercised by the Government in acquisition of a land is colourable in nature.
3. The intended acquisition is to benefit a particular individual, firm or a company.
4. The notification is vague and does not either disclose the purpose or is not clear about the purpose of acquisition
5. Provisions of part VII are not complied with as per the Act.
6. The activities of the agency on whose behalf the acquisition is sought are not really related to public purpose.

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66AIR 1959 Punj 544, 549; See also AIR 1965 All 344 (It was held that where the land to be acquired is necessary for public purpose, the government is the sole judge. It is not for the court to submit its view on basis of the availability of land); 1978 (1) Mad. L.J. 223 (The government need only to act on its subjective satisfaction).
67VeeraRaghavachariar v. Secretary of State, 86 IndCas 485.
68*Supra* note 32, at 312.
7. Delegates excessive and improper powers on collector.

8. Deprives the petitioner means of livelihood.

Many of the above mentioned grounds are based on the procedural irregularities and only few grounds like deprivation of livelihood or the stated purpose not being public purpose are substantial in nature. In respect of the deprivation of livelihood of the petitioner, the cases decided by the judiciary more often rely on compensation, citing the developmental concerns. On the ground that the stated purpose not being a public purpose, in case of acquisition for companies, the Courts have expressed different opinions and at times in conflict with one another.

In this regard, the judicial interpretation of the Supreme Court in *Jandu Lai v. Union of India*,\(^6\) may throw some light. In this case proviso to the sub-section (1) of section 6 of the Land Acquisition Act, 1894 has been interpreted in regard to acquisition of land for companies. The Court held that if part of the compensation or cost of acquisition comes from public revenue, acquisition of land for company is under public purpose as per the said proviso. It is submitted that this provision, which was originally leant for a specific situation, was extended wrongly to serve private interests. It is further submitted that the plain reading of the section would make it clear that such an interpretation would run counter to the intention of the legislators. Moreover, the question part of compensation or cost of acquisition coming from public revenue is totally relevant in the light of the facts of the *Jandu Lai case*\(^7\).

From the public revenue usage perspective\(^7\) it must be a limitation to identify the ambit of public purpose but unfortunately it is being used to make every other purpose as public purpose. The legislators seemingly have placed a trust on the executive that it will respect and respond to the rights of the underprivileged too. The following legal provisions give enough scope for the executive to act judiciously. Section 39 of Land Acquisition Act, 1894 requires previous consent of the government for an agreement to be executed between the government and the company. Section 40 of the Act elaborates previous consent while, agreement in question is being dealt with in the section 41. As per section 41, firstly, the appropriate government must satisfy itself regarding the purpose for which the

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\(^6\)AIR 1961 SC 343.

\(^7\)Ibid. (7)

acquisition is made, and secondly, the company has to enter into an agreement for the matters including,

1. the payment to the appropriate government of the cost of the acquisition
2. the transfer, on such payment, of the land to the company and
3. the terms on which the land shall be held by the company.

According to section 42 of the Act, the agreement so entered must be published as soon as possible after its execution. In case of acquisition for companies, it is necessary to follow the special procedure enunciated in part VII as explained above. However, the provisions of this part were never followed in letter and spirit thus necessitating judicial interventions. In the first R. L. Arora's case\textsuperscript{72}, sections 40 and 41 came before the Supreme Court for interpretation. The Court held that the work must be useful or likely to prove useful to the public directly and an agreement between the appropriate government and the company is must for a valid acquisition under part VII of the Act.\textsuperscript{73} Under section 40 (1) (b) two conditions must be fulfilled. The work must be useful for public. Secondly, the term(s) on which the public is entitled to use it as a right also has to clearly find a place in the said agreement.

In the absence of fulfilment of these two conditions, the acquisition is not legally valid.\textsuperscript{74} In Somavanti v. State of Punjab,\textsuperscript{75} the Court concluded that the construction of factory for manufacturing the refrigerator machine parts to be a public purpose on the ground that a part of compensation has come from public revenue.\textsuperscript{76} In PratibhaNema and others v. State of Madhya Pradesh and others,\textsuperscript{77} the Supreme Court held that the establishment of Diamond Park as public purpose, since part of the compensation is paid from the public revenue and the contention of mala-fide intention on the part of government was rejected by the Court.

Since part VII provisions are not followed in their true spirit, the accusation of mala-fides intention of government becomes relevant. For example, it was observed

\textsuperscript{72}R. L. Arora and others v. State of Uttar Pradesh and others, AIR 1962 SC 764.
\textsuperscript{73}AIR 1965 SC 995, 1002.
\textsuperscript{74}ILR(1967) Guj. 145 (450).
\textsuperscript{75}(1963) 2 SCR 774; See also Raja Anand v. State of Uttar Pradesh, (1967) 1 SCR 373, 377.
\textsuperscript{76}(1963) 2 SCR 774, 804-805.
\textsuperscript{77}(2003) 10 SCC 626.
in *Somavanti v. State of Punjab*\(^{78}\), that the mala-fide intention on the part of the government is an important test on which the purpose of acquisition has to be tested for its validity. This is one amongst the very few exceptions to the general rule that the declaration by the government as to the acquisition of land for public purpose is conclusive and final.

Further, in *State of Andhra Pradesh and others v. GovardhanlalPitti*\(^{79}\), the question of malice in law and malice in fact was differentiated by the Supreme Court. The Court explained the concept of legal mala-fide, by referring words and phrases legally defined.\(^{80}\) The Court stated thus:

“The legal meaning of malice is ill-will or spite towards a party and any indirect or improper motive in taking an action. This is sometimes described as malice in fact. Legal malice or malice in law means ‘something done without lawful excuse’. In other words, it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others”.

It was observed that, where malice was attributed to the state, it could not be a case of malice in fact, or personal ill will or spite on the part of the state. It could only be malice in law, i.e. legal mala-fide.\(^{81}\) The state, if it wishes to acquire land could exercise its power bona-fide for statutory purpose and for none other. It was observed that the proceedings for acquisition were necessary only because of the decree and hence notification was issued. Such an action could not be held as mala-fide? The definition of public purpose as it is explained above gives a perception that if the state wants to acquire land it could do only for bona-fide statutory purposes and for none other. But given the history of our legislative process, a blind belief in the bona-fide intention of the executive government and a formalist approach could be ideal than a reality.

### 4.8 Public Purpose Requirement in USA

Like India there has been a persistent controversy in USA regarding the interpretation of the term ‘public purpose’. It would be worthwhile to analyse as to

\(^{78}\)(1963)2 SCR 774, 804-5; See also *Raja Anand v. State of Uttar Pradesh*, (1967)1 SCR 373, 377.

\(^{79}\)(2003) 4 SCC 739.


\(^{81}\)(2003) 4 SCC 739.
how this term over a period of time has been interpreted in broad sense which now encompasses within its ambit even the acquisition for economic development. The Fifth Amendment to the US Constitution employs the term “public purpose” moreover it is well established question as to what is public purpose in a judicial one. Throughout the term’s history, this term has been subjected to varied interpretations by Court. Sometimes the Courts have interpreted the term broadly thereby interpreting acquisition for economic development to be in public purpose. And sometimes the Courts have accorded narrow interpretation and thereby disallowed acquisition which brings forth mere economic development.

The earlier interpretation of the clause ‘public purpose’ was very restrictive. In Calder v. Bull, the Supreme Court held that “a law that takes property from A and gives it to B is against all reasons of justice.” In Wilkinson v. Leland, Justice Story said that:

“we know of no cases in which legislative act to transfer of the property from A to B without his consent has been held a constitutional exercise of legislative power in any state or in Union”

In Kohl et al v. United States the Court observed that, the proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another. Beyond that, there exists no necessity; which alone is the foundation of the right. Thus, Kohl’s decision allowed condemnation of land but the Court had interpreted the term ‘public use’ in narrow and limited sense. Moreover, the purpose for which the property was to be acquired should have close nexus with the object which is sought to be served. However later on the Court’s approach towards interpreting ‘public purpose’ became liberal and Courts started giving greater deference to the legislative decisions and reduced the scrutiny which the Courts traditionally used to conduct to inquire public purpose in the act of the legislature.

82 Cincinnati v. Vaster, 281 US 439, 446. The court observed, it is well established that, in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question what is a public use is a judicial one. In deciding such a question, the Court has appropriate regard to the diversity of local conditions, and considers with great respect legislative declarations, and, in particular, the judgments of state courts as to the uses considered to be public in the light of local exigencies. But the question remains a judicial one which this Court must decide in performing its duty of enforcing the provisions of the federal Constitution.

83 3 US 386.
84 27 US 627.
85 91 US 367.
The case of *Berman v. Parker*,\(^86\) signalled a decline in the significance of the public use doctrine. In this case the Constitutionality of the ‘District of Columbia Re
development Act of 1945’ came in question, it permitted compulsory acquisition of
the private commercial property under an urban renewal program located in a
depressed area and its transfer to another private interest. Moreover, by virtue of this
Act any acquisition of property necessary to eliminate these housing conditions was
deemed to be public purpose. Justice Douglas, who gave the majority judgment, held
that takings to economic developments for a valid public purpose and expanded the
domain of public purpose. Thus, he included economic development as a reason for
valid public purpose by usage of word monetary.

The trend thus set by *Berman v. Parker* continued in *Hawaii Housing
Authority v. Midkiff*,\(^87\) the question which arose in this case was whether compulsory
acquisition of property by Hawaii to reduce the concentration of ownership of
property in few hands can be said public purpose. The Supreme Court interpreted the
term ‘public purpose’ broadly thus reducing the scope of judicial review and gave
greater deference to the legislature to decide as to what constitutes public use. The
Court went on to the extent of putting the public use requirement coterminous with
the scope of a sovereign’s police powers.\(^88\)

The next landmark case decided by the nine judge bench was the *Kelo v. City
of New London*.\(^89\) The case, argued and decided in 2005, constituted a milestone in
eminent domain case heard in the United States. Since 1984, states and municipalities
had extended their use of eminent domain frequently to include economic
development purposes. In the *Kelo* case, which involved the acquisition of a private
building, the owners sued the city, arguing that the city had misused its eminent
domain power as economic development did not qualify as a public use. The
additional twist in the *Kelo* case was that the development corporation was ostensibly
a private entity; thus the plaintiffs argued that it was not constitutional for the
government to take private property from one individual or corporation and give it to
another. They also argued that the use would generate higher tax revenue. The

\(^86\)348 US 26.
\(^87\)467 US 229-240; 545 US 469.
\(^88\)Ibid at 240.
\(^89\)545 US 469.
Supreme Court of Connecticut found that the use of eminent domain for economic development did not violate the public use clauses of the state and federal constitutions. The Connecticut Court found that if an economic project creates new jobs, increases tax and other city revenues, and revitalizes a depressed (even if not blighted) urban area, it does qualify as a public use. The Court also found that government delegation of eminent domain power to a private entity was constitutional.

This case became the focus of vigorous discussion and attracted numerous supporters on both sides. On 23 June 2005, the Supreme Court, in a 5-4 decision ruled in favour of the City of New London, allowing the acquisition for the private entity. While the decision was controversial, it was not the first time ‘public use’ had been interpreted by the Supreme Court as ‘public purpose’. Dissenting judges feared that after this ruling, acquisitions which take away 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 up for grabs to the highest bidder. Today the mere possibility that private property might mooches more money when put to another use is reason enough for the government to take it away. The well pass lobbyists of developers and municipalities will chain that the decision doesn’t affect Texas. Subsequent to the Court decision in the _Kelo case_, there was wide spread out rage across the USA and multitude of states introduced laws destructing the use of eminent domain.

Texas was the first state to pass legislation in response to the US Supreme Court decision in _Kelo’s case_. Texas should ban the taking of private property that conveys ownership or control of the property from one private person to another except in very limited circumstances. Secondly, a condemnor should have to prove by clear and convincing evidence that the contemplated use of taken property is truly public and necessary. Finally, property that is not used for the purpose for which it was condemned should be offered back to the original owner at the price at which it was taken.

Texas legislation (S B 7) included several key provisions including the following:

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90_Kelo v. City of New London_, Justice Sandra Day O’Connor wrote the principal dissent, joined by Chief Justice William Rehnquist, Justice Antonin Scalia and Justice Clarence Thomas.
• Prohibited the use of eminent domain when the taking confers a private benefit on a particular private party through the use of the property.

• Prohibited the use of eminent of domain when it is for economic development purposes.

Since the *Kelo's* decision 30 other states have also passed similar type of legislation relating to eminent domain reform. Thus, the traditional interpretation of the term ‘public purpose’ has been very narrow but in the Kelocase decision, the Court signalled broader interpretation to public purpose. The verdict in the Kelo case only fortified the later assumptions of the Supreme Court.

4.9 Definition of Public Purpose in Post-independence Period

Since independence, the Land Acquisition Act, 1894 continued to be in force by virtue of Article 372 of the Constitution with necessary modifications according to the provisions of the Constitution. The original Article 31(2) of the Constitution was clear in that context it stipulated that when and how private property could be acquired. Though Article 31 of the Constitution of India has been repealed, the public purpose limitation has been read in by the Supreme Court as part of the right to property under Article 300A. Around this period, at least in three instances, the state enactments have introduced new meaning to the term public purpose. In 1949, Central Provinces and Berar was the first province to substitute a new clause for public purpose, namely:

Section 3(f) the expression public purpose includes the provision of land for agriculture or for residential, business or industrial purpose or for any purpose

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91 (2003) 4 SCC 739.
92 Subsequent to the Court decision on the Kelocase, there was widespread outrage across the USA and a multitude of states introduced laws restricting the use of eminent domain.
93 Article 372: Continuance in force of existing laws and their adaptation.
(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent authority.
94 Article 31(2) provided that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which the manner in which the compensation is to be determined and given; 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.
95 Supra note 38, at 664.
96 Supra note 32, at 489 & 495.
incidental to any of these with a view to resettlement and rehabilitation of displacement of persons.\footnote{Sec. 3 read with para 1 to the schedule of the Central provinces and Berar Act XX or 1949.}

In 1953, the state of Bombay added a new sub-clause after renumbering the original clause (f) of section 3 as sub-clause (1). It read thus: “the acquisition of land for purposes of development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part of lease, assignment or sale, with the object of securing further development” \footnote{Sec. 2(2) of the Bombay Act XXXV of 1953.}

Uttar Pradesh joined this foray by the introduction of section 2(f) and Schedule; Paragraph 1 of the Uttar Pradesh Act XXII of 1954, read: The expression public purpose’ includes provision for or in connection with-

a. sanitary improvements of any kind, including reclamation;

b. the layout of village sites, townships or the extension, planned development or improvement of existing village sites or townships;

c. the settlements of land for agriculture with the other sections of the people. \footnote{Sec. 2 with para 1 of the Schedule of the Uttar Pradesh Act XXII of 1954.}

Bihar substituted the public purpose clause with a new clause in 1959. It was identical to the first two sub-clauses of the above mentioned U.P. definition. \footnote{Sec. 2(ii) of the Bihar Act XXXIV of 1959. It reads thus: (f) the expression public purpose includes provision for or in connection with – i) sanitary improvements of any kind, including reclamation. ii) the laying out of village sites, ownerships or the extension planned development or improvement of existing village sites or townships.}

4.9.1 Definition of Public Purpose under Land Acquisition (Amendment) Act, 1984

In the pre independence period government limited itself to government functions, town planning and infrastructure. In the post-independence period since the government entered many areas including commercial activities such as trade and manufacturing etc, therefore the scope of compulsory acquisitions increased greatly. Furthermore the greater pace of growth and the deep diversification of the economy that took place under planning greatly increased compulsory acquisition.

Unlike in other countries, practice of compulsory takings in India the fair value is typically decided by the taker (government) this is like, I cut the cake and
chock the piece too, which is clearly unfair to the person whose land is being taken. In many countries, the valuations of acquired land determined by independent licensed valuators and in some other countries the valuation can be determined by both parties as a result of convergence. The ‘public purpose’ in compulsory takings in India today is in effect any purpose the government of the day choose to use the land. Since the act of acquisition cannot be normally challenged (only the compensation can be debate) there is no recourse from the government today choosing to interpret public purposes in an all-encompassing manner that including every possible ‘economic and non-economic activity.’

The Statement of Objects and Reasons of the 1984, Act clearly acknowledges that the acquisition of land often deprives the holder of the property of his or her livelihood and that the promotion of public purposes needs to be balanced with the rights of the individuals whose land are acquired. While acknowledging the sacrifices of the individuals, whose land is acquired, it places on record that acquisition of lands for private enterprises ought not to be placed on the same footing as acquisitions for state or for enterprises under it. One of the main proposals in the amendment was to ensure that the acquisition of land for non-government companies is made under part VII of the Act. Acquisitions through part VII of the Act are subject to the condition prescribed under sections 40 and 41 of the Act. There is no scope for any acquisition if the same is not for public purpose. By the exclusion of acquisition of land for companies from the definition of public purpose, through the exclusionary rider placed at the end of section 3 (f) of the Act, this amendment made a significant progress in defining the public purpose. Though the definition is not exhaustive, the negative exclusion of certain items as not public purpose was very much accepted as a right move.

Since the amendment to the Land Acquisition Act (LAA) in 1984, the discretionary power of the government has increased in several ways. Most importantly the government can now acquire the land for companies that even if the land is to be owned and used by private companies or any party for that matter. Since the public purpose is not defined in any case this has opened the door wide for the government to acquire land for all kinds of reasons. Thus land has been acquired for housing colonies, ashrams, manufacturing enterprises, entertainment establishments, service industries etc. Indeed, the working framework is one where all large investors
bank upon the government to acquire land for them irrespective of the purpose for which they require the land.

Some innovative measures have been put forwarded by the government too. Recognised the legal definition of public purpose has given rise to scope for abuse of eminent domain. The government has proposed to amend the Land Acquisition Act 1894 i.e., the Land Acquisition (Amendment) Bill 2007 is one such attempt which provide for stricter definition of word public purpose. According to the Land Acquisition (Amendment) Bill 2007, the scope of public purpose has been restricted.

4.9.2 Definition of Public Purpose under the Draft of Land Acquisition (Amendment) Bill, 2007

The Land Acquisition (Amendment) Bill, 2007 has once again tried to redefine the limits of the expression of public purpose. It proposes to insert a new clause for the erstwhile section 3(f), which defined the public purpose-

The Statements of Objects and Reasons of the draft Bill, inter alia states:

Although the Land Acquisition Act provides for acquisition of land for public purpose, the expression “public purpose” has not been defined. Hence, necessity of defining the word “public purpose”, to restrict the scope of acquisition of land. Provision of the bill provides for acquisition of land for strategic purposes vital to the state, and for infrastructure projects where the benefits accrue to the general public is essential.

It also states the acquisition of land for companies not to be done by using the provisions of the Land Acquisition Act, 1894. It reasons that the land for companies could be arranged by the companies themselves on a willing seller and a willing buyer basis. It proposes to omit the provisions for the acquisition of land for companies under the Act but not to omit the acquisition, as the Objects and Reasons of the Bill holds that in certain circumstances it is necessary to acquire land through state mechanism, in cases where only a limited portion of land is needed as the person has already bought the rest. The new Bill proposes to abolish acquisition of land for companies by the government. To facilitate the same, the Bill proposes to repeal part
VII of the Land Acquisition Act, 1894\textsuperscript{101} while at the same time the government reserves its right to acquire certain lands for public purpose.

The relevant portion, Sub-clause (v) of clause 5 of the Bill reads:

(f) the expression public purpose includes,—

a. the provision of land for strategic purposes relating to naval, military and air force works or any other work vital to the State;

b. the provision of land for infrastructure projects of the appropriate Government, where the benefits accrue to the general public; and

c. the provision of land for any other purpose useful to the general public, for which land has been purchased by a person under lawful contract to the extent of seventy per cent but the remaining thirty per cent of the total area of land required for the project is yet to be required.

In the proposed new definition, “public purpose” would now include strategic purposes vital to the state, or infrastructure projects where benefits accrue to the general public.

Explanation: The word person shall include any company or association or body of individuals, whether incorporated or not.\textsuperscript{102} According to the explanation the word person includes any company or association or body of individuals, whether incorporated or not. This would include a family business, a partnership, a private company, a public company or a government company. In case of public company both listed and non-listed companies would come within the purview of this section. So the phrase ‘any other purpose’ together with the explanation of person means that a government can go for acquisition for almost any and every purpose.\textsuperscript{103} In India scope of the power of acquisition is widened to all possible extent. The glaring omission in the Bill is the failure on the part of the legislature to make public purpose a justiciable issue. This assumes significance in the light of the fact that post-independence Acquisition Acts of some states has already done so.\textsuperscript{104} Finally, the proposed amendments do not require the government for its infrastructure project first try and acquire land using market negotiation route, before invoking eminent domain power under Land Acquisition legislation this may not be justifiable when the

\textsuperscript{102} See Clause 5(v) of the Draft Land Acquisition (Amendment) Bill 2008.
\textsuperscript{104} Karnataka Industrial Area Development Act.
project in question is in competition with private projects. The proposed changes to public purpose in the Land Acquisition Amendment Bill 2007 is a step in the right direction although, some more thinking is necessary to make the proposed reforms easier to implement.

Analysis of the proposed reforms relating to public purpose shows that in addition to restricting the scope of public purpose, the most distinctive feature of the proposed amendment is that only after 70 per cent. or more of the required land is acquired through market negotiation then only company be eligible to access the state eminent domain power. The point to note that the proposed amendment required that market route is exhausted by companies is a legally prescribed way before make use of eminent domain power. This is clearly a reflection of the new government thinking that market route failure due to hold out (hold out problem arise which some persons are refuse to sell their land, without which a project cannot be materialized in such cases market solutions are not possible and coercive powers of the government become necessary) then it should call for the use of eminent domain. 70 per cent. of the required land for private company obtained through the market route rule would create not only incentive for companies to reduce their demand for land, but also help in better discovery of market price of land. The 70:30 rule was significant improvement over the system recognised under the colonial Land acquisition Act, 1894. The attempt by the government to pass the Land Acquisition (Amendment) Bill 2007 aimed at introducing reforms in this area one seeking to amend the LAA is failed in February 2009.

4.10 Definition of Public Purpose under the Present Act

Even after the Constitution came into force the Land Acquisition Act, 1894 continued to be in force till December 31st 2013, now it is repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and people looking forward to see the pros and cons of implementation. The spate of recent divisions by the Supreme Court and widely felt need for ‘balance’ among diversity of voices are thereasons for repealing 1894 Act. Article 300 A of the Constitution states that “No person shall be deprived of his

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105 NirmalMohnty, ‘Eminent Domain Powers Rationale, Abuse and Way Forward (unpublished manuscript filed with on author)
property save by authority law”. There has been some jurisprudential debate as to whether the phrase ‘authority of law’ in article 300A must be fair, just and reasonable or whether it simply means law narrowly circumscribed as enactment. Interpretation given to the word “law” under Article 21 in Maneka Gandhi v Union of India\textsuperscript{105} and some subsequent cases that ‘law’ must be fair, reasonable and just. In the recent case of K T Plantation v State of Karnataka\textsuperscript{106}, the Supreme Court held that ‘public purpose’ and ‘compensation’ as within the purview of Article 300-A. In other words, both ‘public purpose’ and ‘compensation’ have been ‘read into’ the language of Article 300A or doctrine of eminent domain.

The Supreme Court has already stated that the provisions of the Land Acquisition Act of 1894 not adequately protect the interest of owners/persons interested in the land. The difficulties that come in the process of land acquisition in India are immense, given the population density and type of land use in the country. This is evident from the fact that fundamental issues in various case like Narmada BachaoAndolan or in the recent Nandigram issue or in the Bangalore-Mysore Corridor Project etc. The evaluation of Land Acquisition Act, 1894 was existed in various forms in different states in India has undergone an evolution in the last decade. Originally, wishes of owners of property were totally irrelevant and it fails to balance interest of project affected persons and societal interest. The 1894 Act has become outdated and needs to be replaced in tune with the constitutional provisions, particularly Article 300A requirements like fair, reasonable and rational enactment. From the Supreme Court’s point of view, the legislature will be expected to frame a law that does not detract from the Court’s recent interpretation of Article 300A and probably, do more on compensation and rehabilitation and resettlement. Significantly, what is not public purpose is difficult concept more than what is purpose though, one that evades clarify.

The term ‘public purpose’, used to justify, land acquisition Supreme Court divisions point to renewed judicial activism, making departure from the traditional difference. Justice Singhvi in RadheyShyam v. The State of Uttar Pradesh,\textsuperscript{107} held that ‘it must be accepted that in constructing public purpose, a broad and overall view has

\textsuperscript{105} A 1978 1 SCC 248; AIR 1978 SC 597
\textsuperscript{106} (2011)9 SCC 1.
\textsuperscript{107} AIR 1989 SC 682: JT 1989(1) SC 58
to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the state to acquire land by promoting a public purpose to benefit a particular interest at the cost of the interest of a large section of people especially of the common people defeats the very concept of public purpose. Concept of public purpose introduced by the pro-constitutional legislation, its application must be consistent with the constitutional ethics. Justice Singh also remarked that “in recent years, the country has witnessed new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi storied complexes, commercial centres and for setting up industrial units. In the light of such phenomena, Justice Singhvi seems to be entering a new thicket of judicial executive relations: In still more recent case, in *M/S. Royal Orchid Hotels Ltd &Anr v G. Jayarama Reddy &Ors*108, Justice Singhvi and Justice Mukhopadhyaya categorically affirmed that no state having acquired land for public purpose (in this case for golf cum hotel resort) could subsequently transfer the land to private entities for private use; that this amounted to ‘diversification’ of public purpose; and that public purpose cannot be over stretched to legitimize a patently illegal and fraudulent exercise undertaken.

Does the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, make ‘public purpose’ any clearance for the judiciary to interpret or does it defer to the judicially accepted notion that the term by nature is compendious and never static, even to the point of vagueness? The Act retains the legally large uncontested and undisputed public purpose i.e., only for strategic interests, national security, infrastructure projects, and so on. Means government intervention in acquisition is limited to defence, certain development projects only. It has also being ensured that consent of 80 percent of the project affected families (through a prior informed process). Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and rehabilitation and resettlement needs in the event of emergencies or natural calamities only.

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108 AIR 2011 SC 188
The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act provides for acquiring land for strategic purposes including land acquisition for private companies or public private projects wherein benefits generally accrue to the public. Provided land acquired for private companies 80 per cent. of the project families consent obtained and land acquired for public-private partnership projects 70 per cent. of the project affected families obtained through prior informed process then only government eminent domain power come into picture. However, government declares public purpose and shall control the land directly. Consent of the land owner shall not be required. Moreover, more than 50 acres in urban area and 100 acres in rural area land acquired must be provide for rehabilitation and resettlement entitlements to the project affected persons irrespective of governmental strategic purpose or infrastructure development projects mentioned under section 2(1)(b)(i) to (vii) carried by private company or private-public partnership projects.

Section 2(1)(a-f) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act define the following as public purpose for land acquisition within India:

1. Acquisition of land for purposes relating to the armed forces of India, national security or defence, police, safety of the people;
2. Acquisition of land for railways, highways, ports, power and irrigation purposes for use by government or by government controlled corporations (also known as public sector companies);
3. Acquisition of land for planned development or improvement of village or urban sites for residential purpose to weaker sections of society in rural or urban areas;
4. Acquisition of land for government administered educational, agricultural, health and research schemes or institutions;
5. Acquisition of land for persons residing in areas affected by natural calamities;
6. Acquisition of land for resettlement of affected people for any of the above government projects;
7. Acquisition of land by the government for public-private-partnership projects for the production of public goods or the provision of public services;
8. Acquisition of land for private companies for the production of public goods or provision of public services.
Aurora’s case\textsuperscript{109} itself, the Supreme Court held that ‘state is empowered to compulsorily acquire land for companies which specify the definition of being engaged in an industry which is essential to the life of a community whether or not the purpose for which the company acquires land is a public purpose. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is using particular phrase such as ‘accruing general benefits to the public’, ‘public interest’. This interpretations will satisfy private industry provided general benefits accruing to public.

4.11 Conclusion

Article 31(2) categorically states that a land can be acquired by the state only for public purpose. Broadly speaking, public purpose would include a purpose, in which the general interest of the community, as opposed to a particular interest of the individual, is generally and vitally concerned. In a generic sense the expression public purpose would include a purpose in which where even a fraction of the community would derive benefit or be benefited. Anything which is useful to the public in the sense that it confers some public benefits or conduces to some public advantage is a public purpose. With the march of civilisation, the notions as to the scope of the general interest of community changes and widens with result that old and narrower notions as to sanctity of private interest or individual interest no longer steam the forward flowing tide of time and give way to broader notions of general interest of the community.

It is the requirement of public purpose and it is determining factor on question of whether or not a particular land should be acquired and the considerations of hardships to the individuals cannot outweigh the question of public demand. Section 3(f) of the Land Acquisition Act defines “public purpose” as the expression was not strictly construed and it is an inclusive definition therefore, from time to time the Courts have held different purposes to be public purpose. It is not possible to give an exact and all-embracing definition of public purpose. The law of Land Acquisition jeopardises the private interest for public purpose. Hence, it denies an individual right to property. It overrides the right of a person to own a property, so the law in general should be strictly construed. The strict construction of the law of Land Acquisition

has been emphasised by the Court for the last 64 years as it did not hold the person whose property has been taken. The owner of the property has no bargaining power with the state in such circumstances nor does he have say in compensation; so it is inevitable in the interest of equity that the law should be strictly improved to provide for various checks and balances. Compulsory acquisition will be effective only if it is humane, participative, informed and transparent process followed. Hence, Acquisition Act, 1894 is an inroad into citizens’ right to property. On this matter the established law is that if for the purpose for which land is acquired, it is apparent on the face of acquisition, it is not for a public purpose and there can be no two arguments to construe it otherwise, means the act of the government is ultra vires. Hence, public purpose is justifiable, Courts can be look into the matter. The Recognised legal definition of public purpose has given rise to scope for abuse of eminent domain. Public purpose clause needs substantial clarity therefore government proposed to amend Land Acquisition Act, 1894 even, the pure private property deal can be treated as public purpose provide for a stricter definition of public purpose. Therefore the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013 came into force. Under this Act word public purpose has been comprehensively defined, so that government intervention in acquisition is limited to defence certain development projects only. Except acquisition of land for government including public sector undertaking, an additional security shall require consent of 80 per cent of the project affected families in acquisition of land for private companies or for private-public partnership projects.