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Eminent Domain Meets Public Trust Doctrine: Judicial Interpretation in India's Land Acquisition Framework

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ABSTRACT

State as a sovereign power can take over land and other private properties under eminent domain. Significantly, the state is also entrusted with managing the natural resources, including public land as a trustee under the Public Trust Doctrine (PTD). This dual role of the state as an enabler of development and trustee of natural resources has created a tension between these two doctrines. This paper seeks to examine the legal framework of land regulations in India to identify how these two doctrines play in the arena of development, where state plays a pivotal role. For this, it investigates the concept of eminent domain and PTD, its constitutional foundation along with the analysis of judicial decisions on land acquisitions. Additionally, it sought to correlate land laws with PTD and explore the influence of doctrine in land acquisition. Further, the study critically examines how these concepts are interconnected and used in the land acquisition cases. The analysis indicates that the judiciary has thoroughly examined the doctrine of eminent domain, whereas the doctrine of public trust has been invoked only superficially, so undermining environmental protection in developmental issues.

Keywords: *Public Trust Doctrine, Eminent Domain, Public Purpose, Land Acquisition, Development.*

I. INTRODUCTION

Land is a valuable resource. Most of the natural resources like minerals are mined from the land. Even land is required for various construction activities undertaken by both the state and private party. The taking away of land by the State as sovereign power is established through eminent domain.² Eminent domain gives the state authority to appropriate property, including land and natural resources. On the other hand, Public Trust Doctrine (hereafter PTD) is primarily recognised as a judicial evolved check on state power over natural resources including land.³

¹ Author is an Assistant Professor at Nagaland University, Nagaland, India

² See Art. 300A of Indian Constitution.

³ See *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388.

For development activities, land acquisition is required and it occasionally conflicts with the state's trustee role environmental protection. This tension between two distinct roles performed by the state as an enabler of development and as a trustee in managing natural resources could be seen more profoundly after India's economic liberalisation. This has caused property conflicts when state governments are progressively buying up land for private investors.⁴ Scholars also argue that, to justify its control over natural resources for the purpose of its use and management, the Indian state has adopted the term 'national interest', thus assuming 'a state monopoly on safeguarding the public good.'⁵ Meanwhile the oversimplification of the 'public good' ignores the complicated interactions and perceptions of development and best interests among India's various communities.⁶ It has also been argued that the land acquisition statutes manifest the acquisition of land from cultivators for creating space for industrialisation.⁷ And the land acquisition law effectively transformed traditional rural landlordism into contemporary private corporate landlordism.⁸

In this context, it is essential to investigate if PTD influences land regulations. The paper is organized thematically. Initially, it examines the notion of PTD and its application by the judiciary in land acquisition cases. Secondly, it examines the concept of eminent domain, its constitutional basis and the broader interpretation of public purpose to rationalize the prevailing economic model. Ultimately, it contrasts these concepts and the roles played each in land acquisition cases.

II. STATE'S RESPONSIBILITIES TO ACT AS A TRUSTEE UNDER PUBLIC TRUST DOCTRINE

PTD postulates that on behalf of the people, it limits and places an obligation on the government agencies. The three restrictions⁹ on authorities of the government are the basis through which PTD is applied. So, what role does PTD play in the governance of land? The doctrine entails

⁴ H.P. Bedi, "Special Economic Zones: National Land Challenges, Localized Protest." 21(1) Contemporary South Asia 38-51(2013); N. Sud, "Governing India's Land." 60 (C) *World Development* 43-56 (2014).

⁴ A. Baviskar, A., S. Sinha, and K. Philip, "Rethinking Indian Environmentalism: Industrial Pollution in Delhi and Fisheries in Kerala." In J. Bauer (ed.) *Forging Environmentalism: Justice, Livelihood, and Contested Environments* 189 (Armonk, NY: M.E. Sharp, 2006).

⁶ *Ibid.*

⁷ Astha Saxena, *Land laws in India*, 151(Routledge, New York, 2020).

⁸ C.P. Bhambhri, "The Indian transition," 41 (1/2) *Social Scientist* 69-85 (February 2013).

⁹ "[F]irst, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses...[i.e. it must be held for traditional] uses such as navigation, recreation, or fishery, or it is said that the uses which are made of property must be in some sense related to the natural uses peculiar to that resources."

See Joseph L. Sax, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention", 68(3) *Michigan Law Review* 477 (Jan., 1970).

that state holds the public lands in trust. It also demands that any selling of public land to private parties be viewed with skepticism. PTD does not completely prohibit the transfer of land. Rather, a burden is placed on the state to justify the transfer of land, without jeopardizing public's rights. Historically, the doctrine is applicable in two situations: when public trust lands are sold to a private party by the state, and when state proposes to develop public trust lands with a public project.¹⁰

Explaining the role of the law, Joseph Sax said that the basic feature of the legal system is to create and protect a stable relationship between entities. Positing the challenges on environmental issues, he said that, the emphasis of environmental question is not the '*fact of change*'¹¹ but the '*rate of change*,'¹² and '[t]he essence of the problem raised by public trust litigation is the imposition of destabilizing forces that prevent effective adaptation.'¹³ Hence, the basic concept of PTD is to avoid 'destabilising disappointment of expectations held in common that lack legal recognition such as title.'¹⁴ Drawing from this argument, one can ascertain that the role of judiciary has been to maintain an equilibrium between sustainable development and environmental conservation and protection.

A. Locating Public Trust Doctrine in Land Acquisition Cases

In this section, the study will locate how PTD has been understood and implemented by the SC on land acquisition cases. It will also explore the efficacy of PTD, (if it exists) in land acquisition cases. It also will determine the rationale behind applying the PTD and its impact in such cases.

In *Uddar Gagan Properties Ltd. v. Sant Singh*,¹⁵ the SC had to determine whether the government can acquire land and facilitate the transfer of land to private parties. In this case, the appellant builder-cum developer, after issuance of the section 6 notification under the LAA, 1894, signed an agreement with farmers/owners of land. These lands were acquired by the state for developing a colony under Haryana Development and Regulation of Urban Areas Act, 1975. After the acquisition of land by the state, a licence was granted to a builder for developing a colony. Later, the acquired land was released by the state from acquisition and through sale deeds it was transferred to the builder. The question before the court was whether the state can

¹⁰ Donald W Large, "This land is whose land-changing concept of land concept of property rights in land," 4 *Wis L. Rev.* 1067 (1973).

¹¹ According to Prof. Sax, regarding environmental problems, the issue is not that changes are expected, but how quick the changes are expected. The changes in environment is expected

¹² The *rate of change* implies that environmental problems should rather deal with the question of how quickly the changes will destabilise the environment, and provoking a social, biological and economic crises.

¹³ Joseph L. Sax, "Liberating the Public Trust Doctrine from Its Historical Shackles" 14(2) *UC Davis Law Review* 188 (1980).

¹⁴ *Ibid.*

¹⁵ (2016) 11 SCC 378.

facilitate transfer of land to a private builder for advancing private business, after it was acquired for a public purpose by the state.

The Court found it a blatant abuse of law since the authorities colluded with the builder. It was held that the State could take the land for a compelling public purpose or return it to the landowners, not the builder.¹⁶ It was clarified that land acquired for public purpose or for regulated development of colonies is not an issue. But allowing the transfer of land for private purpose after the acquisition notification in favour of a builder is objectionable. The court considered such action as ‘transfer of resources of poor for the benefit of the rich...[and] permitting profiteering at the cost of livelihood and existence of a farmer.’¹⁷ It was considered as violative of the fundamental rights of equality and right to property and life. The Court further held the ‘fraudulent and clandestine exercise of power by the State is not permitted by law’¹⁸ and should be considered as a violation of PTD.

In this case, drawing from the principle of PTD, it was declared that the transfer of the land to benefit the private party beyond the mandated legal provision is illegal. And any clandestine way of transferring the land should be set aside. This ruling of the Court is in line with one of the three PTD requirements that trust property must be used for public purposes and be available for general use. Significantly, the argument of the Court that there was a violation of PTD was drawn by acknowledging that the transfer of land violates the statutory provision. It thus indicates that the presence of a statute and reading the PTD along with the statute helps to address the case clearly.¹⁹

In *Karnataka Industrial Areas Development v. C. Kenchappa*,²⁰ the question was whether the state could convert the land acquired for industrial or other purposes from its original purpose, i.e., land used for grazing cattle. A writ petition was filed by the agriculturalists whose land were affected by land acquisition. They pleaded that Karnataka Industrial Areas Development Board (KIADB) must desist from converting the lands and grazing of their cattle must be permitted on the land. The land was to be converted for industrial purposes, which they contend will adversely impact the environment of the villagers. The respondents went on to claim that denial of their land is a violation of fundamental rights under Articles 14 and 21, and the allotment done to a GEE India Technology in hurry without following the regular procedure,

¹⁶ *Id.* at Para 17.

¹⁷ *Id.* at Para 18.

¹⁸ *Id.* at Para 19.

¹⁹ There exist no statutes in India concerning environment where public trust doctrine has been explicitly relied on, unlike Precautionary Principle and Polluter Pays Principle.

²⁰ (2006) 6 SCC 371.

was illegal and arbitrary.

Earlier, the HC had allowed the acquisition of land asking the authorities to maintain one km area from the village to maintain ecological equilibrium. In the appeal to the SC, the appellant KIADB had argued that the HC's judgment was contradictory to the statutory provisions (particularly section 3(1) and section 47)²¹ of the KIADB Act. Relying on Article 21, 48-A and 51A(g), sustainable development, precautionary principle, polluter pays principle and PTD, the SC emphasised the importance of environmental jurisprudence.

The SC stressed the increasingly growing importance of environmental and ecological awareness and insisted to follow sustainable development. However, the apex court declared that the directions²² given in the impugned judgment will lead to the appellant not being able to acquire any land for development. Thus, the apex court set aside the HC's directions.

While upholding the acquisition of the land, the SC in its reasoning agreed with *Kamal Nath*, where it said that 'the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration.'²³ It also acknowledged the expert opinions on which the HC had relied. The expert opinions state that 'large scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology.'²⁴

Despite agreeing to the foundational principles of PTD; the SC however failed to engage and address the principle of PTD which demands that 'property must be maintained for particular types of uses.'²⁵ But by agreeing that the acquisition of the land was necessary for development, it could be understood that such acquisition was meant for 'public purpose.' Precisely because of the reason, the SC was concerned that the direction given by the HC will make the acquisition of land for development impossible. Thus, the SC allowed the appeal and set aside the HC's judgment. The reasoning of the SC in setting aside the direction of the HC is not clear. It merely maintained:

[I]f the directions given in the impugned judgment are properly implemented then perhaps, the appellant cannot acquire any land for development. This may not have been the underlying idea behind the judgment but it seems to be the

²¹ Section 3(1) of KIADB Act. - at the time of issuance of the notice under this section, no notice was required to be given to the landowners at that stage. According to section 47, the appellant could acquire "any land".

²² The High Court directed the concerned authority "to leave one km as a buffer zone from the outer periphery of the village in order to maintain a "green area" towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into a green belt." See *Id.* at 372.

²³ *Id.* at Para 95.

²⁴ *Ibid.*

²⁵ Third restrictions under the public trust doctrine as mentioned by J. Sax.

obvious consequence of a direction given by the Division Bench in this case. In this view of the matter the said directions given in the impugned judgment are set aside.²⁶

This case depicts the lack of detailed analysis and its implementation of the PTD in land acquisition case. The case represents the lacunae in the PTD, which is the lack of clarity in the objective of the PTD.²⁷ Because of this, the Court simply settle the issue by agreeing with the PTD but did not engage properly with the doctrine to address the case.

Despite acknowledging PTD in land acquisition case, the SC has failed to engage deeply on the question of how PTD impacts land acquisition cases. The failure is for the reason that the SC did not examine to clarify the specifics whether there is a difference between land and natural resources. Still, the Court has held that land is a scarce natural resource, and any transfer of land to benefit private party beyond the mandated legal provision is illegal. The analysis posits that the understanding of the judiciary on PTD within the context is hugely determined by how a specific statute addresses the question of land acquisition and is contingent on the use of ‘public purpose.’ As public purpose is already determined by the economic policy of the government,²⁸ it is likely that the judiciary will restrain from deciding against the government’s policy.

III. EMINENT DOMAIN AS SOVEREIGN POWER OF THE STATE

As a sovereign power of the state, the doctrine of eminent domain empowers the state to seize property without the owner’s consent for public welfare.²⁹ This power exists inherently to the state. Eminent domain is considered as a fundamental extension of sovereignty. Because of this, it doesn’t require an express authority through constitution. Though the power to exercise eminent domain has been recognised, but the exercise of this power is checked by two limitations of public purpose and just compensation. And it was meant to be a protection for individuals against the state.³⁰ The modern governance of land primarily relies on the concept of eminent domain and it provides the state a ‘legal right to acquire property by force rather than by voluntary exchange.’³¹ In other words, eminent domain is ‘effectively a reassignment

²⁶ *Supra* note 19 at Para 97.

²⁷ See Shibani Ghosh, “Public Trust Doctrine in India” in Shibani Ghosh (ed.) *Indian Environmental Law: Key Concepts and Principles* 252-57 (Orient Blackswan, Noida, 2019).

²⁹ *State of Bombay v. Nanji*, 1956 SCR 18, Para 12; *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, (1952) 1 SCC 528; See Colin Gonsalves, “Judicial failure on land acquisition for corporations”, XLV(32) *EPW* 37-42 (7 August 2010).

²⁹ Julius L. Sackman, *Nichols’ Law of Eminent Domain*. Sec.1.11 (revised 3rd edn., Matthew Bender and Co 1983), cited from William McNulty, “Eminent Domain in Continental Europe” 21(7) *Yale Law Journal* 555 (1912).

³⁰ Malabika Pal, “Land Acquisition and ‘Fair Compensation’ of the “Project Affected: Scrutiny of the land and its Interpretation” in Anthony P. D’Costa and Achin Chakraborty (eds.), *The Land Question in India: State, Dispossession, and Capitalist Transition* 155 (Oxford University Press, 2017).

³¹ Patricia Munch, “An Economic Analysis of Eminent Domain”, 84 (3) *Journal of Political Economy* 473(June

of property rights: the seller is deprived of his right to refuse sell and constrained in his right to bargain over price.’³² One can also say that ‘the doctrine of eminent domain invests power in the state to acquire private land for public purpose on payment of compensation.’³³ Eminent domain has three essential ingredients:

[F]irst, the power of the State to take over private land; second, this power has to be exercised for public good [public purpose]; and third, the obligation of the State to compensate those whose lands are so taken over.³⁴

There are four elements of eminent domain action that a court can review. First, whether the public entity has eminent domain authority? Second, whether the condemnation is for a public purpose or for a public use and this element is usually litigated in cases where public entities are seeking to assemble property which will ultimately be used by private entities. In other words, whether eminent domain is used to foster economic development. Third, whether it is a public necessity element. Fourth element is the just compensation. Being an essential attribute of sovereignty, eminent domain implies the legal capacity of the state to annex the private property of individuals. This taking of property could be done only for public purposes. As a result of having this authority, the state is able to legally seize individual’s private property for public purpose.³⁵ This inalienable power of the state is based on the maxims *saluspopuliestsupreme lex*³⁶ and *necessitapublicmajor est quam private*.³⁷

In India, the legislative framework of land laws broadly touches upon a wide variety of issues.³⁸ For land acquisition, it is the authority of eminent domain. It is enforced through Land Acquisition Act, 1894 (hereafter LAA) and the most recent Land Acquisition Rehabilitation and Resettlement Act, (hereafter LARR) which came into effect in 2013. India’s laws on land acquisition are based on the principle that governments have the authority to acquire private property for public use. These powers arise from the doctrine of eminent domain, which allows governments to take such action in exchange of due compensation to the property owner.

A. Inspecting eminent domain within the constitutional framework

Theoretically the power of eminent domain authorizes the taking away of property even without

1976).

³² *Id.* at 474.

³³ Usha Ramanathan, “Land Acquisition, Eminent Domain and the 2011 Bill”, 444/45 *EPW* 10(Nov. 5, 2011).

³⁴ Mihir Desai, “Land Acquisition Law and the Proposed Changes”, XLVI(26&27) *EPW* 95(June 25, 2011).

³⁵ *United States v. Jones*, (1883) 27 Ed 105, 107.

³⁶ The interest and claim of the whole community is always superior.

³⁷ Public necessity is greater than private interest and claim of an individual.

³⁸ Land laws can be classified into land reform laws, like the Alteration of the land tenure system; Land revenue; and land acquisition.

the approval of the owner by the state. This power was in fact a bone of contention in the post independent India. Before the 44th Constitutional Amendment Act, 1978; the Constitution prescribed the fundamental right to property under Article 19(1)(f).³⁹ Strengthening this right to property, Article 31 prescribes that ‘any State acquisition of property must only be upon enactment of valid law, for a public purpose, and upon payment of compensation.’⁴⁰ The reading of Article 31 manifests the power of eminent domain. For those matters, it guarantees that a deprivation of private property could be approved only through legislations. It also provides that such deprivation must be for public purpose, and for any deprivation, the person must be compensated. Thus, the repealed Article 31 provides that the acquisition of property can be executed for public purpose and only ‘by authority of law.’

Through legislations, agrarian and land reforms were undertaken by the government of India which caused multiple challenges in the court citing violation of fundamental rights. Amongst other cases, it was in *Kameshwar Singh v. State of Bihar*,⁴¹ wherein the Patna High Court invalidate the Bihar Land Reforms Act, 1950 for violating the right to equality. To negate the effect of *Kameshwar Singh* judgment, the Parliament enacted Article 31A⁴² and 31B⁴³ and introduced the Ninth Schedule in the Constitution. Before it was repealed, the SC ascribed *eminent domain* with Article 31 of the Constitution. In fact, in *Charanjit Lal Chowdhury v. Union of India*,⁴⁴ the SC held that the eminent domain is the inherent right in every sovereign State to take and appropriate the private property belonging to an individual for public purpose.⁴⁵ In *Dwarkadas Shrinivas v. Sholapur Spinning. & Weaving. Co. Ltd.*⁴⁶ the SC held that Article 31, ‘read as a whole comprehensively defines the State’s power of eminent domain as distinguished from all its other powers the exercise of which may amount to the taking of private property.’⁴⁷ Thus, the SC has interpreted and held that eminent domain mandates the taking of private property by the state. This taking of private property should be for public purpose only. Despite considered as a sovereign power, the Court has clarified that the utilisation of this power is limited by the public purpose and just compensation.

³⁹ It guaranteed the citizens to acquire, hold and dispose of property.

⁴⁰ Namita Wahi, “Property” in Sujit Choudhry, Madhav Khosla *et al.*, (eds.), *The Oxford Handbook of The Indian Constitution* 943 (OUP, Delhi, 2016).

⁴¹ 1951 SCC OnLine Pat 56.

⁴² “Article 31A enacts that a law which comes under any of the sub-clauses of 31(1) shall not be open to challenge on the ground of contravention of Article 14 or 19.” Cited in Mahendra Pal Singh, *Constitution of India* 325 (EBC, Lucknow, 2013).

⁴³ “It place[s] the specified statutes beyond any attack on the ground that they infringe part III of the Constitution.” Cited in Mahendra Pal Singh, *Constitution of India* 331 (EBC, Lucknow, 2013).

⁴⁴ 1950 SCC 833.

⁴⁵ *Ibid.*

⁴⁶ (1953) 2 SCC 791.

⁴⁷ *Id.* at Para 19.

B. Interpretation of Article 300A of the Constitution

In 1978, Article 19(1)(f) and 31 were repealed by the 44th Constitutional Amendment Act, and Article 300-A⁴⁸ was inserted. It was done to change the status of property right as fundamental right to legal right. Despite the reduction of its status to legal right, it was clarified that the legal right to property will be available against the executive action and the right can only be deprived in accordance with the law.⁴⁹ In other words, the executive cannot take away the property from a person without the authority of law. Regarding its reduction of status to legal right, P.K.Tripathi argues that with the repeal of Article 31, which prescribes many exceptions on acquisition and requisition of property; Article 300-A has instead strengthened right to property. It is because, laws relating to acquisition and requisition of property will now have to satisfy the common law requirement of eminent domain of public purpose and adequate compensation.⁵⁰

In *Basantibai Fakirchand Khetan v. State of Maharashtra*,⁵¹ the Bombay HC held that ‘in spite of deletion of Article 31, the constitutional obligation to pay adequate amount to the expropriated owner is not taken away.’⁵² Thus, the indispensable ingredient of a ‘law’ under Article 300-A is that it must provide an adequate compensation. Here the law relates to the acquisition of property and must satisfy Article 21 of the constitution. However, the decision was reversed by the SC. It held that ‘state’s power to eminent domain is not subject to the right to livelihood under Article 21.’⁵³

In *Jilubhai Nanbhai Khachar v. State of Gujarat*,⁵⁴ the SC observed, ‘the word ‘property’ in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated.’⁵⁵ The Court further explained that taking away property for every public purpose is not deprivation of the property under Article 300-A. It held that without the sanction of law, there will be no deprivation.

In *K.T. Plantation (P) Ltd. v. State of Karnataka*,⁵⁶ the SC further clarified the scope of property mention in Article 300-A. The Court declared:

⁴⁸ Article 300A states “No person shall be deprived of his property save by authority of law.”

⁴⁹ See paragraphs 3 & 5 of the statement of Objects & Reasons of the Constitution (Forty-fourth Amendment) Act, 1978.

⁵⁰ See P.K. Tripathi, “Right to Property After Forty-fourth Amendment-Better Protected Than Ever Before”, AIR 1980 (J) 49.

⁵¹ *Basantibai Fakirchand Khetan v. State of Maharashtra*, 1983 SCC OnLine Bom 256.

⁵² *Id.* at Para 19.

⁵³ See *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

⁵⁴ 1995 Supp (1) SCC 596.

⁵⁵ *Id.* at Para 48.

⁵⁶ (2011) 9 SCC 1.

Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.⁵⁷

Thus, eminent domain is a sovereign concept which provides the state to acquire property without the consent of the owner. As discussed, it is a sovereign power, but the exercise of this power has been limited by the condition that any action undertaken by the government must fulfil the criteria. First, the action undertaken i.e., the acquisition or requisition of the property must be done for public purpose. Second, it also lays down that for acquiring such property, just compensation has to be given to the owner. Consequently, public purpose and adequate compensation become the requirement for challenging any requisition and acquisition of property.

C. Defining public purpose

What constitute public purpose and how it is defined has been a continuing source of numerous litigations in India. The challenge of defining public purpose was aptly recognised by the SC by acknowledging that the term ‘public purpose’ was incapable of having a precise definition.⁵⁸ The concept is considered elastic and must be understood within the context of the statute, and varies with time, society and the requirements of the society.⁵⁹ In *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*,⁶⁰ the SC opined:

The expression ‘public purpose’ is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the acquisition is in general interest of the community as distinguished from the private interest of an individual.⁶¹

Thus, the public purpose must be read according to the ‘spirit of the times’ and if any action which facilitates the ‘general interest of the community’ will be regarded as a public purpose.

⁵⁷ *Id.* at Para 221.

⁵⁸ *State of Bombay v. Nanji*, 1956 SCR 18, Para 12.

⁵⁹ *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, (1952) 1 SCC 528.

⁶⁰ *Ibid.*

⁶¹ *Id.* at Para 272.

Further, it was held by the SC that the interpretation of ‘public purpose’ should be left to the judiciary which needs to interpret accordingly with the change in times and with the objective of the relevant statute.⁶²

Though public purpose is a condition for the execution of acquisition of private property by the state, yet the definition of ‘public purpose’ could not be found in either of the (repealed) Article 31(2) or Article 300A. In a legal dictionary, public purpose has been defined as ‘an action by or at the direction of a government for the benefit of the community as a whole.’⁶³ Thus, it could be interpreted as governmental purpose which should benefit the whole community.

The Land Acquisition Act, 1984 (hereafter LAA) has defined ‘public purpose’ in an illustrative manner.⁶⁴ Under Sec 3(f) of LAA, without defining what ‘public purpose’ means, the Act list down the provisions which will be included under this phrase.⁶⁵ The list mostly classifies the welfare functions undertaken by the government, except the provision for land for corporation owned or controlled by the government. The sole discretion of what constitute public purpose is also entrusted to the government. In addition to providing a discretionary power to the government in deciding what public purpose is, the court has been accorded a limited power to determine what constitute public purpose. Moreover, the court declares what constitutes public purpose has to be primarily determined by the State. It was observed by the SC in *Daulat Singh Surana v. First Land Acquisition Collector*,⁶⁶ (hereafter *Daulat Singh Surana*). It reads:

Public purpose is bound to vary with times and prevailing conditions in the community or locality and, therefore, the legislature has left it to the State (Government) to decide what is public purpose and also to declare the need of a given land for the purpose. The legislature has left the discretion to the government regarding public purpose. The government has sole and absolute discretion in the matter.⁶⁷

As numerous cases were fought on the issue of what constitute public purpose, the Law Commission of India also looked into the demands to have exhaustive definition of ‘public purpose.’ However, in its 10th report on ‘Law of Acquisition and Requisition of Land’, it reported the impossibility of having an exhaustive definition of ‘public purpose.’ It declared:

⁶² *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, (1952) 1 SCC 528.

⁶³ Bryan A Garner (ed.), *Black’s Law Dictionary* 1351 (West, 9th Edn. 2009).

⁶⁴ See Sec 3(f) of LAA.

⁶⁵ See Sec 3(f) for complete lists.

⁶⁶ (2007) 1 SCC 641.

⁶⁷ *Id.* at Para 44.

[It is] neither possible nor expedient to attempt an exhaustive definition of public purposes. The only guiding rule for the determination of its meaning is that the proposed acquisition or requisition should tend to promote the welfare of the community as distinct from the benefit conferred upon an individual. The mere fact that the immediate use is to benefit a particular individual would not prevent the purpose being a public one, if in the result it is conducive to the welfare of the community.⁶⁸

This generic interpretation of ‘public purpose’ by the court has caused grievances to the people. For instance, in *Babu Barkya Bakur v. The State of Bombay*,⁶⁹ the SC held:

[T]he expression ‘public purpose’ has been used in its generic sense including any purpose in which even a fraction of the community may be interested or by which it may be benefited.⁷⁰

In *State of Karnataka v. Shri Ranganatha Reddy*,⁷¹ the SC tried to recalibrate the scope of ‘public purpose’ and its interpretation under the LAA. The seven judges bench clarified the nexus between public purpose and taking of property. It said:

[I]f the purpose is for servicing the public, then everything desiderated for serving such a public purpose fall under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that die hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose.⁷²

It is stressed that any government’s action could be challenged and nullified if it goes beyond the ambit of LAA. Apropos, for defining ‘public purpose,’ LAA provides an inclusive definition which has been left wide open of interpretation. Further, declaration that land is needed for public purpose by the government, is considered to be sufficient under section 6 of LAA. And this cannot be questioned in a civil court.⁷³ But the court holds the power to determine the

⁶⁸ Law Commission of India, 10th Report on Law of Acquisition and Requisition of Land, 18 (September,1958).

⁶⁹ (1961) 1 SCR 128. In this case, it was notified that the land was to be acquired for a company, without mentioning that it was for public purpose. The petitioner had challenged that the company do not require the land for public purpose. The court held that it was not necessary to state that the acquisition was for a public purpose and the government can notify it later under section 6.

⁷⁰ *Id.* at Para 7.

⁷¹ (1977) 4 SCC 471.

⁷² *Id.* at Para 57.

⁷³ Arun Kumar Barthakar, “Civil Court’s Jurisdiction in Land Acquisition” (2001)7 SCC J-33; See also: *Ezra v. Secretary of State for Indian Council*, 7 CWR 249; ILR 32 Cal. 605.

grounds for arriving the decision of what constitute public purpose. In *State of Bombay v. R.S. Nanji*,⁷⁴ the SC said:

Prima 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 the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a ‘public purpose’.⁷⁵

Despite the SC’s effort to streamline what public purpose means, the decision of the court at best, has been erratic. The argument exist that the law is ‘prepared with the underlying ideology of rapid, massive industrialisation at the hands of the private sector.’⁷⁶ As a matter of fact, the judiciary has from time to time has interpreted ‘public purpose’ which aligns with the policy of the government in land acquisition.⁷⁷ In many cases, the SC has also authorised acquisition which were used for promoting private profit. The Court has interpreted public purpose to include those projects which they considered important for economic development.

In *Jage Ram v. State of Haryana*,⁷⁸ the apex court declares that setting up a china-ware and porcelain-ware industry falls under public purpose. It was held that the ‘industrialisation of an area is in public interest.’⁷⁹ In *State of Karnataka v. All India Manufacturers*,⁸⁰ the SC allowed the acquisition of land which was far away from the highway project. The Court in its expansive interpretation held that the project was an integrated project and thus falls under the requirement of public purpose. Similarly, in *Soorraram Pratap Reddy v. District Collector, Ranga Reddy Distt*,⁸¹ the SC held that any integrated project must be read holistically, and if the project brings foreign exchange and generate employment, then such integrated project which set up the infrastructure for business cum-leisure tourism will be considered as public purpose. In *Nand Kishore Gupta v. State of U.P.*⁸², the SC took the view that for an integrated project, the acquisition of land even if it very far away from the main project, it will still be justified and considered as a part of public purpose. In this case, additional lands were acquired for residence and amusement park, beyond the land required for expressway.

In a significant series of developments in land acquisition cases, there were many misreading

⁷⁴ 1956 SCR 18.

⁷⁵ *Id.* at Para 12.

⁷⁶ Mihir Desai, “Land Acquisition Law and the Proposed Changes”, XLVI(26&27) *EPW* 100 (June 25, 2011).

⁷⁷ See Colin Gonsalves, “Judicial failure on land acquisition for corporations”, XLV(32) *EPW* 37-42 (7 August 2010).

⁷⁸ (1971) 1 SCC 671.

⁷⁹ *Id.* at Para 8.

⁸⁰ (2006) 4 SCC 683.

⁸¹ (2008) 9 SCC 552.

⁸² (2010) 10 SCC 282.

of the LAA by the judiciary which generated complex problems. When the LAA was first enacted in 1894, land acquisition for state and its instrumentalities, and land acquisition for companies were separately provided in the LAA. Part II and Part VII of the LAA was meant for the acquisition of land for state and companies respectively. It was misreading by the SC in various cases which extinguished these differences.

In *Pandit Jhandu Lal v. State of Punjab*,⁸³ agricultural land was taken for the construction of building to house the workers of a company which was sponsored by a government-scheme. Despite the acquisition was for a company, the government did not follow any compliance needed under part VII of the LAA. The SC held that since large part of the compensation was borne by the public funds, the acquisition is not for a 'company simpliciter'. Thus, the court's interpretation extinguished the difference between part II and VII of the LAA. The Court mentioned:

[I]n the case of an acquisition for company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But that does not necessarily mean that under the provision for acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of part VII.⁸⁴

Similar decisions were made in *RL Arora v. The State of Uttar Pradesh*,⁸⁵ and in *Smt. Somawati v. State of Gujarat*.⁸⁶ The extinguishing of this differentiation of the acquisition by the judiciary for state purpose and for that of companies allowed numerous acquisitions of land by

⁸³ (1961) 2 SCR 459.

⁸⁴ *Id.* at Para 8.

⁸⁵ 1962 Supp (2) SCR 149. In this case, the SC held that if the company was producing goods which are useful for public then the acquisition would fall under part II. And therefore, the acquisition will be considered for a public purpose.

⁸⁶ (1963) 2 SCR 774. In this case, for setting up a compressor factory, the government sanctioned a token amount of Rs 100 and no requirements of part VII was followed. The SC disagreed to the contention that the token amount shows that it was not for a public purpose. The court upheld the acquisition by stating that "On the basis of the correctness of that view the state governments have been acquiring private properties all over the country contributing only token amounts towards the cost of acquisition (para 51)."

companies. And it has been rightly observed by the Standing Committee of Parliament:

[They] extinguished any differentiation between acquisition for a state purpose and acquisition for a private enterprise or State enterprise by amending section 4 of the original Act to insert the words ‘or for a Company’ after any public purpose. The Courts have interpreted this amendment to mean that any notification of acquisition issued under section 4 need not specify whether the acquisition is for a public purpose or for a company. This opened the floodgates to acquisition of land by the State for Companies. And this in turn has unleashed the tribal and rural backlash that has caused the current decision of the Government to replace the 1894 Act with an altogether new Act.⁸⁷

In 1984, the LAA was amended so that ‘promotion of public purpose has to be balanced with the rights of the individual, whose land is required.’⁸⁸ This amendment introduced relevant sections⁸⁹ to separate companies from government entities. It also makes it clear that land acquisition for companies do not fall under the expression public purpose.⁹⁰ Despite the changes in the LAA, the SC continued to make wrong decisions in various cases by misinterpreting the cases.⁹¹

IV. LAND ACQUISITION, PUBLIC PURPOSE AND THE PUBLIC TRUST DOCTRINE

The intermittent deficiency of the judiciary in distinguishing the requirements for land acquisition for state and for companies finally led the government to repeal the LAA and enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter LARR). The LARR is ‘founded upon five pillars-fairer compensation, consensual acquisition for a clear public purpose, rehabilitation and resettlement for displaced families, a marked reduction in the powers of the Collector and an effective appellate mechanism.’⁹²

The LARR defines public purpose in a comprehensive list.⁹³ However, the LARR also defined

⁸⁷ See Recommendation in para 3.5, Report of the Parliamentary Standing Committee on Rural Development, dated 17 May 2012.

⁸⁸ See Statement of Objects and Reasons of Bill No.63 of 1984 presented on 6 August 1984. Cited in *Supra* note 76 at 39.

⁸⁹ See section 3(cc) and 3(e).

⁹⁰ See section 3(f).

⁹¹ See *Supra* note 76.

⁹² Jairam Ramesh and Muhammad Ali Khan, *Legislating for Justice: The making of the 2013 Land Acquisition Law* 11 (OUP, New Delhi, 2015).

⁹³ See Section 2(1) (a)-(f) of the LARR. The list includes national defence and security, infrastructure projects, industry, water sanitation, educational purposes, sports, tourism and transportation, and any infrastructure facility notified by the government, relief housing, planned housing, planned development, housing for displaced persons.

public purpose ‘to include a large number of non-public spirited activities.’⁹⁴ It has been argued that the LARR has listed everything in the definition so that ‘only those items that were listed would...be considered in furtherance of public purpose.’⁹⁵ The LARR also brought new changes by requiring the prior consent of the affected families for any land acquisition. For acquisition of land concerning private companies, it requires prior consent of eighty percent of the affected families.⁹⁶ For public-private partnership projects, prior consent of seventy percent of the project affected families are needed.⁹⁷ It also mandates to conduct social impact assessment (hereafter SIA) by the appropriate government before land is acquired to determine whether it serves public purpose.⁹⁸ The project will be abandoned, if the assessment of the SIA by an expert group finds that the social impacts outweighs the benefits. But this requirement was later diluted through ordinance by excluding ‘the applicability of SIA over a wide range of public interests i.e., projects vital to national security or defence of India, rural infrastructure including electrification, affordable housing and housing for the poor people, industrial corridors, infrastructure projects including projects under public private partnership.’⁹⁹

Along with the recognition of providing extensive rehabilitation¹⁰⁰ to the displaced families,¹⁰¹ it also seeks to extenuate the effect of multiple displacements. It provides that there will be ‘additional compensation in case of multiple displacements.’¹⁰² A deep study of the LARR however shows that the safeguards provided under this Act seems little weaker as the Fourth Schedule of the LARR provides exemption from the purview of this Act on those projects which have cause large displacement of tribal populations.¹⁰³

It has been argued that the constitution of public purpose under the LARR is still based on the dominant notion of development which focuses on industrialisation and infrastructure.¹⁰⁴

⁹⁴ *Supra* note 91 at 27.

⁹⁵ *Id.* at 27.

⁹⁶ Sec 2(2) (i) of LARR.

⁹⁷ Sec 2(2) (ii) of LARR.

⁹⁸ Sec 4 of LARR.

⁹⁹ Amita Punj, “Development and Participation under the new Land acquisition legislation: A paradigm shift or a safety valve” 9 *RMLNLUJ* 50-51 (2017).

¹⁰⁰ “The rehabilitation scheme includes landowners, agricultural laborers, tenants, sharecroppers, and artisans working in the affected area for three years prior to the acquisition and whose primary sources of livelihood stand to be affected.” Cited in Kenneth Bo Nielsen and Alf Gunvald Nilsen, “Law struggles, lawmaking, and the Politics of Hegemony in Neoliberal India” in Anthony P. D’Costa and Achin Chakraborty (eds.) *The Land Question in India: State, Dispossession, and capitalist Transition* 141-142 (Oxford University Press, New Delhi 2017).

¹⁰¹ Sec 2 of LARR.

¹⁰² Sec 39 of LARR.

¹⁰³ Read sec 105 with the Fourth Schedule. The fourth schedule exempts the application of the LARR in thirteen legislations under which land is acquired. The legislations deal with mines, coal, petroleum, railways etc.

¹⁰⁵ See Kenneth Bo Nielsen and Alf Gunvald Nilsen, “Law struggles, lawmaking, and the Politics of Hegemony in Neoliberal India” in Anthony P. D’Costa and Achin Chakraborty (eds.) *The Land Question in India: State, Dispossession, and capitalist Transition* 141-142 (Oxford University Press, New Delhi 2017).

Critics held that the utilitarian purpose of the LARR is heavily influenced by market logic. Since the concept of public is understood in the 'given context of economic change and related developmentalism,'¹⁰⁵ the law sees the challenge to land acquisition as a problem of individual will i.e., taking consent. Even this protection granted by mandating the state to take consent from the individual could be easily manipulated by the state by creating political condition to receive the consent of the individual families.¹⁰⁶ Further, 'public purpose' under this law has widely included all projects for land acquisition. Commenting on the draft bill of the LARR, Sanjoy Chakraborty writes:

The definition of 'public purpose' in the Bill begins with state projects: Two clauses on defence, transportation, irrigation, power, etc., and three clauses on project-affected people, weaker sections, displaced persons, and persons affected by natural calamities. Clause (vi) brings in 'Public Private partnership projects.' And finally in clause (vii) comes this: 'The provision of land in the public interest for private companies for the production of goods for public or provision of public services.' This could mean almost anything. Certainly, the entire manufacturing sector can be included in this, possibly much of the service sector too. This is business as usual.¹⁰⁷

In fact, this dilution of the notion of public purpose is considered to make the acquisition of land easier and expedite the transfer of resources to the private sector.¹⁰⁸ Thus, public purpose and just compensation exist as a limitation against state's power of eminent domain, and it acts as a protection for individuals against such action.¹⁰⁹ Having discussed what public purpose means, it is evident that the notion of public purpose is heavily defined by what the law expresses and interpreted by the judiciary. It has been interpreted as having a generic meaning and influenced by benefits accrued to a community even if it benefits a fraction of the community. But what is missing in the discourse is understanding the diversity of the term *public* in public purpose itself. Apropos, the context of land distribution in India, 'the notion of a preferred public' exist for whom the law can made land available for them. But this action can be challenged by any public whose interest are not met or in conflict. For this, it has been argued that there exists a fundamental problem of the legal construction of a generic or general phrase

¹⁰⁵ Swagato Sarkar, "The impossibility of just land acquisition" XLVI (41) *EPW* 37 (October 8, 2011).

¹⁰⁶ *Ibid.*

¹⁰⁷ Sanjoy Chakraborty, "A lot of skepticism and some hope" 46(41) *EPW* 29-31 (2013).

¹⁰⁸ Mihir Desai, "Land Acquisition Law and the Proposed Changes" XLVI (26&27) *EPW* 95-100 (June 25, 2011).

¹⁰⁹ Malabika Pal, "Land Acquisition and "Fair Compensation" of the "Project Affected": Scrutiny of the land and its Interpretation" in Anthony P. D'Costa and Achin Chakraborty (eds.) *The Land Question in India: State, Dispossession, and Capitalist Transition* 155 (Oxford University Press, New Delhi 2017).

of public purpose.¹¹⁰

V. CONCLUSION

In a liberalized economy, the resource allocation has created a division in economic classes and the assumption that the distribution of benefits reaches to all is not true.¹¹¹ Similarly, the activities for which the acquisition of land is done, is based on the principle of ‘private profitable interests.’¹¹² Further, the ‘law does not make any attempts of making any inclusive provisions or at least, defining phrase in a manner that makes some space for them to fit in.’¹¹³ Thus, the law in this process produces two categories of public.

[F]irst is the preferred one, the beneficiaries who gain the acquired land along with those who would be benefitted from the proposed activity and the second is the displaced (and thereby landless) category of persons who have been borne the burdens of the process.¹¹⁴

In the name of ‘larger public good’, displacements are justified by the law and its morals. And this is executed in the legal language of public purpose.¹¹⁵ It has been stated that the public in ‘public purpose’ is designated to those categories of persons whose interest constitute a priority in the acquisition of land. In fact, it has been argued that the law of land acquisition can be called a private corporate landlordism.¹¹⁶

The trend in the judiciary has generally geared towards shadowing the government’s policy in land acquisition cases. The SC has virtually adopted a ‘hands-off-attitude’ whenever the case concerns with acquisition of land for huge infrastructures, including for private companies.¹¹⁷ Moreover, the wide interpretation of public purpose has invigorated the notion of public purpose which is manifested by the principles of neoliberal policies of the state. Historically, the PTD is applicable in two situations: ‘when the state proposed to sell public trust lands to a private party, and when the state proposes to develop public trust lands with a public project.’¹¹⁸ In order to make the PTD applicable in law, the doctrine should consist of the concept of a legal

¹¹⁰ *Supra* note 6 at 161-62.

¹¹¹ See Vamsi Vakulabharanam, “Does Class Matter? Class Structure and Worsening Inequality in India,” *EPW* 67-76 (2010).

¹¹² *Supra* note 6 at 163.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ Usha Ramanathan, “Displacement and the law”, *EPW* 1487 (1996).

¹¹⁶ The transition of the Indian society from traditional agrarian practices to the modern corporate dominance has been explained from a sociological standpoint by C.P. Bhambhri- C.P. Bhambhri, “The Indian Transition,” *Social Scientist* 41, no. ½ (February 2013): 69-85.

¹¹⁷ M. Desai, “Land Acquisition law and the proposed changes, 46(26-7) *EPW* 96-97 (2011).

¹¹⁸ Donald W Large, “This land is whose land-changing concept of land concept of property rights in land”, 4 *Wis L. Rev.* 1067 (1973).

right which is enforceable against the government. Further, Prof. Sax said that the basic feature of the legal system is to create and protection of a stable relationship i.e., '[t]he essence of the problem raised by public trust litigation is the imposition of destabilizing forces that prevent effective adaptation.'¹¹⁹

Juxtaposing the concept of public purpose and PTD under the land acquisition laws, one finds that there is an absence of clear objective of the doctrine.¹²⁰ Also, the principles of PTD have been inconsistently applied by the SC either because of insufficient understanding of the principles of PTD or has neglected it. For instance, the SC has implemented the principles of PTD¹²¹ while deciding various cases which were contradictory to each other. Because of this, the PTD seems like a doctrine which is applied in an ad-hoc manner and even used as a secondary tool. Most of the cases in which PTD is considered and mentioned are instead relied on the statute for effective adjudication.

Further, the court has interpreted 'public purpose' as per the economic policy of the government. And whenever the government exercises the power of eminent domain, it will be limited by the conditions of having to do for a public purpose; and should provide just compensation. The said public purpose should be sanctioned by law. While exercising its power of eminent domain by the state, the court must check whether such action is for a public purpose. Thus, public purpose could be considered as a manifestation of the government's economic policy. And it is also reflected in the land laws.

Significantly, it is laid down that the definition of 'public purpose' is incapable of having a precise definition¹²² and will reflect the 'spirit of the times.'¹²³ The phrase 'public purpose' is itself dependent on what government considers, which will be reflected in the legislations.¹²⁴ It also states that if any action which facilitates the 'general interest of the community' will be regarded as public purpose. Further, land acquisition cases posit that despite having different procedure under the LAA for state and for private companies, acquisition of lands was done in the same process. This manifest that the law is used to implement the dominant notion of development which focuses on industrialisation and infrastructure creation. This proposition is further enforced by the reading of Article 300-A, which specifies that no property can be

¹¹⁹ Joseph L. Sax, "Liberating the Public Trust Doctrine from Its Historical Shackles" 188 14(2) *UC Davis Law Review* (1980).

¹²⁰ It is still unclear whether the public trust doctrine is used for conservation, or for maintaining continued public access, or retaining public spaces or is it for preventing over exploitation of a resource for private use.

¹²¹ It refrains the alienation of the property even for a fair price and second the rights of management are restricted such that the state as a trustee cannot take any action which will jeopardise the rights of the public.

¹²² *State of Bombay v. Nanji*, 1956 SCR 18, Para 12.

¹²³ *State of Bihar v. Maharajadhiraja Sir Kameshwar Singh*, (1977) 4 SCC 471.

¹²⁴ *State of Karnataka v. Shri Ranganatha Reddy*, (1977) 4 SCC 471.

deprived without the sanction of the law.¹²⁵ And such action must subscribe to the scheme of the law, the legislative policy and the objective of the legislation.¹²⁶

A broad study of PTD and public purpose in the context of land acquisition points that the Court has relied on to justify the use of PTD by reading it along a statute or in many cases uses the doctrine superficially. As a common law concept, PTD has been extensively used by the judiciary, but it has not been expressly mentioned in any legislations. On the other hand, the phrase 'public purpose' has been deeply analysed by the judiciary because of its status as a part of the statute (LAA and LARR) and being also having read in Article 300-A of the Constitution. Though there is a short coming in the analysis, as it is understood in a generic term, but it nevertheless has a clearer position in law.

Without a clear objective and without the statutory basis, PTD occupies only as a part of common law tradition. As land regulation is already maintained by LARR, the use of the doctrine will create more confusions on the backdrop of the conceptual ambiguity and objective of the doctrine.

¹²⁵ See *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596.

¹²⁶ *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

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