SCOPE OF PUBLIC PURPOSE IN LAND ACQUISITION LAW

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[**Abstract:** *In India, land is a scarce natural resource pursuant to its high demand and proportionately low supply. Since individuals, corporations, and the State are all stakeholders in the utilization of this asset, it becomes necessary to pre-determine grounds that merit the use of land by each of them. This article focuses on the circumstances under which the State may acquire land. It argues that even though there may be wide-ranging circumstances where the statutory "public purpose" definition is met, it is not always that these circumstances fulfill public purpose. Accordingly, it critically examines the statutory definitions of "public purpose" in the Land Acquisition Act, 1984 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Subsequently, this Article argues that the present definition is too wide-ranging, and lacks a touchstone to determine whether a particular instance of acquisition, in fact, serves a "public purpose". Addressing this concern, the Article proposes a formula as the touchstone to determine whether something falls within the scope of "public purpose". This formula takes into account the number of persons affected and benefitting from the land acquisition, the extent of how affected and benefited they are, and the cost accruing to them from the resultant displacement*.]

INTRODUCTION

'Land' is a limited natural resource, which offers people both, tangible benefits like housing and intangible benefits like the social status emanating from the possession of such housing. Further, land enables the State to facilitate transportation, infrastructure, national security, and trade. Furthermore, corporations require land to carry out production and manufacturing, etc. Therefore, these three stakeholders—the people, the State and corporations require land. Consequently, this has created a need to utilize land optimally.

For the welfare of people: corporations undertake mass-scale production to provide them with cheaper and better-quality products; and the State constructs roads, railway tracks, and hospitals. However, these functions of the State and corporations are less important than people's need for shelter and livelihood. This is why the importance attached to the use of land must be balanced such that people's shelter and livelihood are not affected. Accordingly, when the State acquires land, it must only do so when acquisition serves some 'public purpose', and if the standard for characterization of land being acquired is a public purpose, then the way 'public purpose' is defined becomes determinant of the value that is being attached to the livelihood and shelter of people. In this regard, it is imperative to note that despite being statutorily defined in India, the definition of 'public purpose' is beset with several fallacies. In fact, there is a dearth of literature that concerns itself with the meaning of 'public purpose'.

Through this article, we critically examine the said definition and analyze its application in theory. For these purposes, we lay down the theoretical foundation for land acquisition by the State; critically analyze the definition of "public purpose" under the Land Acquisition Act, 1984 **["1894 Act"]** and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 **["2013 Act"]** based on whether they follow a top-down or a bottom-up approach; whether they define "public purpose" broadly; and whether there is a touchstone to determine whether a particular instance of acquisition serves a public purpose. Subsequent to analyzing both definitions on the aforementioned criteria, we apply each of them to practical scenarios, and illustratively explain the role

played by each in ascertaining the true meaning of 'public purpose'. We conclude by proposing a formula to determine whether something falls within the scope of public purpose by suggesting that *three* factors must be taken into account by the State in a decision concerning the land acquisition. These factors include accounting for: the number of people being affected due to the land acquisition and the potential number of people benefitting out of the acquisition; the extent to which these people will be affected, and the extent to which the people being benefitted will be benefitted; and the effect and cost of mitigation.

STATE AND THE LAND: THE THEORETICAL BACKGROUND

When natural resources are used as common property, individuals, who are ruled by their self-centeredness, might start appropriating these resources.[1]Subsequent to similar appropriation by other individuals arises a situation where the use of these resources beyond their capacity leads to depletion, to such an extent that the resource itself becomes useless.[2] This is when State intervention becomes necessary to protect the natural resource. However, when the State intervenes in the governance of said natural resource, this intervention must be limited in nature. It must only be for the betterment of the people, and also prevent the State from utilizing the resource at its behest arbitrarily.

Since the broader goal is to utilize the resource for the betterment of everyone, the State holds the resource in a trust where the people are the beneficiaries and the state is the trustee. This arrangement constitutes the 'public trust doctrine'.[3]This doctrine enjoins upon the state the responsibility to utilize resources only for the general public and not for private or commercial purposes.[4] The applicability of this doctrine has in fact been accepted in India through judicial decisions.[5] Even though there is no universally accepted definition of a natural resource, land is one.[6] Thus, the public trust doctrine is directly applicable to the governance of land. Therefore, the jurisprudential basis of limiting the state's power to utilize the acquired land must be that it is being held by the state in trust for its people.

In India, land acquisition is based on the doctrine of 'eminent domain', which is similar to the public trust doctrine.[7] The doctrine of eminent domain provides that the State has an overarching control over the land, and in this regard, it is guided by two principles: *salus populi est suprema lex*, meaning that the welfare of the people is the most important; and *necessitas publica est major quam private*, meaning that public necessity is greater than private necessity.[8] Although both these principles governing land acquisition *prima facie* seem comprehensible, their practical application requires their standards to be defined in a much stricter detail that covers all involved nuances.

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1 Garett Hardin, *The Tragedy of the Commons*, 162(3859) SCIENCE 162 (1968).

2 *Id*.

3 Joseph Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68(3) Mich. L. R. (1970).

4 *Id*.

5 *CPIM* v. *Union of India*, 1995 SCC Supp 3 382 (India)

6 *Mahindra Holidays & Resorts India Limited* v. *State of Kerela* (2019) SCC OnLine Ker 1685; *Shirish Barve* v. *Union of India* (2014) SCC OnLine NGT 1462(India).

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

8 *Id*.

In backdrop of this theoretical foundation of land acquisition, the next section unravels the defects in the statutory definition of 'public purpose', which is the ground for land acquisition in India.

PROBLEMS WITH THE STATUTORY DEFINITION OF 'PUBLIC PURPOSE' IN INDIAN LAND ACQUISITION LEGISLATIONS

The 1894 Act became the first piece of legislation in the colonial era, to define the term "public purpose".[9] Inter alia, it covers the acquisition of land for purposes related to rural planning; development of State-owned or controlled corporations, educational and housing facilities; and providing residence to the poor or landless affected by natural calamities or persons displaced due to governmental schemes.[10]Subsequently, the 2013 Act repealed the 1894 Act,[11]and provided a slightly altered definition of "public purpose". However, even though the new definition is comparatively restrictive, it nonetheless includes within its ambit: projects related to defense and national security, roadways, railways, and ports; projects related to residential schemes for the poor and landless; and planned development for the improvement of villages.[12]

In this article, we will analyze both these definitions in order to establish that: *first*, the 1894 Act follows a top-down approach while the 2013 Act follows a bottom-up approach; *second*, both legislations define "public purpose" too broadly; *third*, neither the legislation provides a touchstone to gauge whether a project is, in fact, serving "public purpose".

The top-down and the bottom-up approach

The top-down approach is a mechanism whereby all the decision-making is undertaken by top-level executives, thereby isolating locals and minority stakeholders from the entire process.[13] Since this approach excludes or neglects local consultation, it deprives the decision-making of the specific knowledge that locals possess about regional natural resources, socio-economic and environmental conditions. This approach envisages a scenario wherein the sense of control in and of an organization is vested with the supervisors. While some do argue that the approach culminates in widespread consensus across all members of said organization,[14] the argument identifying this approach as an autocratic means of decision making finds widespread support.[15] They argue that this approach can only be adopted when the solution to the problem is linear, which leaves no solution except for the obvious one.[16]

In this regard, when read closely, it can be understood that the 1894 Act follows the top-down approach. This absence of local consultation makes it evident that the "public purpose" behind any potential land being acquired, will always remain uncertain. This is why it is possible that the land acquired for a public purpose might not end up fulfilling public purpose at all. This means that at the time of determining whether a certain acquisition would in fact yield "public purpose", there is greater information asymmetry about the local socio-

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9 Law Commission of India, *Law of Acquisition and Requisitioning of Land*, 10th Report (1958).

10 The Land Acquisition Act, No. 1 of 1894, S.3(f).

11 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 77-C of 2011, S.114(1).

12 The 2013 Act, S.2(1).

13 'Top-down' as defined in the Oxford English Dictionary, Version 11.7.712 (2020).

14 Jeffrey Rachlinski, *Bottom-up versus Top-down Lawmaking*, 73(3) UNI. CHICAGO L.R. 934 (2006).

15 Brandon Bartels, *Top-Down and Bottom-Up Models of Judicial Reasoning*, in THE PSYCHOLOGY OF JUDICIAL DECISION MAKING (David E. Klein and Gregory Mitchell, (eds.) 2010).

16 *Id*.

economic, environmental, or other local conditions. These local conditions have the potential of rendering what the superior officials may deem to be "public purpose" as otiose. This is why the inclusion of these alienated local stakeholders would make the land acquisition more purposeful, and aligned with the purpose of the legislation itself.

On the other hand, the bottom-up approach is a mechanism wherein decision-making originates from and involves lower levels as it proceeds upwards.[17] With a bottom-up approach, persons who have an enhanced knowledge of local resources are included in the consultation process, which results in an inclusive management system. Herein, the involvement of local and smaller stakeholders helps to tap into a pool of 'collective expertise' which helps shape a strong foundation for problem-solving. Additionally, this incentivizes the local stakeholders, much more than the top-down approach, by including them in the process of problem identification. Resultantly, this generates higher commitment, and eventually, solutions that are much more effective. Therefore, as evidenced by the breakdown of both the approaches above, the bottom-up approach would make public legislation such as one concerning land acquisition, much more meaningful.

The 2013 Act follows a bottom-up approach, more so, because the requirement of the 'social impact assessment' ["**SIA**"] study has been added.[18]The SIA study is to be done in consultancy with the most decentralized government of the region which may include but is not limited to municipal corporations and Panchayats.[19] It collates information pertaining to the number of affected families, the extent to which they will be affected, and other criteria to gauge the negative and positive impact that the probable land acquisition might have over the entire local community.[20] More importantly, the outcome of the study is aimed at ascertaining whether the land acquisition serves a public purpose. However, the 2013 Act does not provide how the study can determine whether something falls under the ambit of "public purpose". Nonetheless, since the study does consult local stakeholders, it is enough to test whether the land being acquired is practical for serving the purpose it is being acquired for. Therefore, one criticism of the 1894 Act has been deflected by the introduction of the SIA study in the 2013 Act.

Analyzing the definition of "Public Purpose"

The definition of 'public purpose' in both, the 1894 Act and the 2013 Act is quite expansive. The number of instances that it lays down are so broad that any purpose for which the State would seek to acquire land, can be brought under one of the many criterions available. For instance, the definition in the 1984 Act, provides that "any scheme of development sponsored by the government" would fall within the definition of public purpose.[21]In comparison, the definition provided for in the 2013 Act, is slightly restrictive.[22] However, it is not restrictive enough to exclude purposes other than those concerning public purpose. Consequently, the problem with such a broad scope being given to the definition of public purpose is that it obfuscates the difference between a public purpose and any other purpose. Since it obfuscates this difference, the foundational theory behind land acquisition gets lost. This is because the concept of eminent domain lays that it must be for the betterment of the public at large which

17 'Bottoms-up' as defined in the Oxford English Dictionary, Version 11.7.712 (2020).
18 The 2013 Act, S.4.
19 The 2013 Act, S.4(2).
20 The 2013 Act, S.4(4)(b).
21 The 1894 Act, S.3(f).
22 G. Raghuram and Simi Sunny, Right *to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective*, IIMA WORKING PAPER NO. 2015-07-03 (2015).

envisions a public purpose and not any other purpose. So, when land is acquired for any purpose other than a public purpose, livelihood and shelter of the people are being put in jeopardy without justification.

In this regard, it is pertinent to mention that when grammatical interpretation leads to absurdity, the *golden rule of interpretation* applies.[23]A pre-requisite of the golden rule is the application of the literal rule, and only if such application leads to absurdity, the golden rule gets applied.[24] It is an absurdity when the meaning culled out using the literal interpretation is such that it can, in no circumstance, be the intention of the legislature.[25]Herein, the definition of 'public purpose' as present in the 2013 Act, if not made more restrictive, must certainly be interpreted restrictively in light of the golden rule. Such interpretation will help curtail the state expenditure on land acquisition for purposes other than public purposes. Alternatively, in *S.P. Gupta v Union of India*, the Apex Court observed that the interpretation of every statutory provision must be done keeping pace with changing concepts and values and "it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirement of the fast-changing society which is undergoing a rapid social and economic transformation."[26]Understandably, the drafters of the provision in 1984, envisaged India, as a developing country in dire need of necessary infrastructure that would be harnessed best via a liberal power being granted to the State to develop the abundantly available land resources. However, the circumstances ever since, have changed substantially.[27] In present day India, while infrastructural problems undeniably do persist, the land shortage has emerged as an equally daunting problem.[28] In light of the same, it is pertinent to curtail the definition of 'public purpose' to prevent the unnecessary utilization of land for purposes other than those serving a public purpose.

Absence of Touchstone

While it can be argued that this definition of public purpose is elaborate and inclusive and that the events falling within its ambit could potentially serve a public purpose, this article argues that there, however, is no touchstone to ensure whether "public purpose" is actually being served at all. Section 3(f) of the1894 Act reads as, "the expression "public purpose" includes…", thereby implying that the definition envisions each of these instances to fulfil a public purpose. Had it been the case that not each of the included instances were to fall within the definition of "public purpose", then the provision would have been drafted as "the expression "public purpose"*may* include…". This criticism is common to both, the 1894 Act, as well as the 2013 Act. Section 2 of the 2013 Act reads, "public purpose …*shall* include the

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23 (1940) AC 1014: (1940) 3 AU ER 549 (HL) *as cited in* A.B.Kafaltiya, INTERPRETATION OF STATUTES 43 (2008).

24 PETER BENSON MAXWELL, INTERPRETATION OF STATUTES, 43-45 (10th ed. 1985). Maxwell explains, "Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where in construing general words, the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction".

25 *Brazier* v. *Skipton Rock Co. Ltd.*, (1962) 1 WLR 1839 (United Kingdom).

26 *S.P. Gupta* v. *President of India*, AIR 1982 SC 149 (India).

27 Yoginder K Alagh, *Land Scarcity Will Perhaps be the Single Greatest Constraint to India's Development*, THE FINANCIAL EXPRESS (Feb. 14, 2018) *available at* – https://www.financialexpress.com/opinion/land-scarcity-will-perhaps-be-the-single-greatest-constraint-to-indias-development/1065135/.

28 G Seetharaman, *Five Years on, has the Land Acquisition Act Fulfilled its Aim?*, THE ECONOMIC TIMES (Sep. 1, 2018), *available at* – https://economictimes.indiatimes.com/news/economy/policy/five-years-on-has-land-acquisition-act-fulfilled-its-aim/articleshow/65639336.cms?from=mdr.

following purposes".[29] The drafting of this provision also implies that all instances providedin this provision will in *every* case servethe public purpose. However, we argue that this may not necessarily be true. To elaborate on this point, weprovide two illustrations.

First, one of the direct grounds for a public purpose as identified by both, the 1894 and 2013 Act, is the rehabilitation of homeless persons.[30]As per the definition of public purpose provided in both the Acts, *each* case of rehabilitation of homeless persons falls within the ambit of public purpose. [Refer to Figure I]

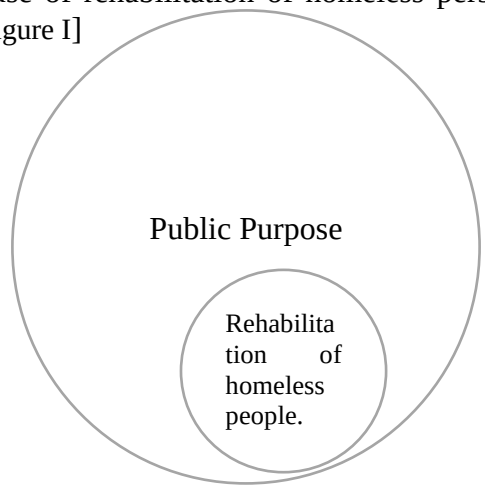
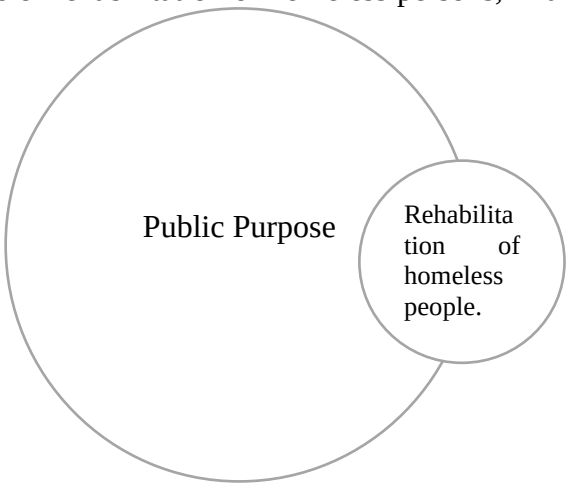


Figure I: This means that- *All* projects related to the rehabilitation of homeless people are for a public purpose.

However, there might be cases where the rehabilitation of homeless persons does not actually serve a public purpose. In this regard, attention must be drawn to the judgment of the Gujarat High Court in *Nabipur Gram Panchayat* v. *State of Gujarat*.[31]Herein, the land on the outskirts of a village inhabited by about 4,000 people, dependant on agriculture, was being used since time immemorial for grazing more than 1100 cattle heads. The village Panchayat was instructed to mutate the aforesaid grazing land into a shelter with a view to plot the same for landless persons. This was met with widespread opposition on account of the already existing problem of shortage of land for grazing, which would be further aggravated upon the construction of the shelter. Irrespective of these objections, the order for construction was passed, which was then appealed against. While the Respondents claimed that the land was acquired for the "public purpose" of rehabilitating homeless persons, the acquisition was held by the Court, as one not serving a public purpose. Thus, while both the statutory definitions of public purpose include *each* case of rehabilitation of homeless persons, in this case, it was held otherwise. [Refer to Figure II]



29 The 2013 Act, §2.
30 The 1894 Act, §3(f); The 2013 Act, §2.
31 *Nabipur Gram Panchayat* v. *State of Gujarat*, AIR 1995 Guj 52.

Figure II: This means that- *Some* projects related to the rehabilitation of homeless people are for a public purpose.

Second, another direct ground for a public purpose, as identified by both, the 1894 and 2013 Act, is healthcare.[32]The text of either of these provisions provides that *every* case of healthcare would fall under the ambit of "public purpose". [Refer to Figure III]

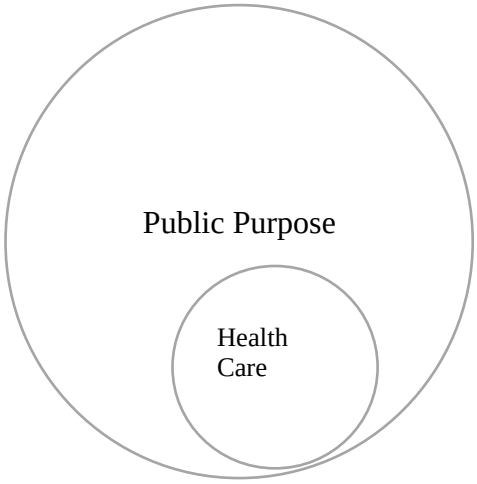


Figure III: This means that- *All* projects related to healthcare are for a public purpose.

However, there might be cases where healthcare does not actually serve a public purpose. In this regard, it is pertinent to discuss the decision of the Supreme Court of India in *M.I. Builders Pvt. Ltd* v. *Radhey Shyam Sahu*.[33] Herein, a public park of historical importance was located in a crowded market area. The local administration sought to ease the congestion in the area by constructing an underground shopping complex, in place of the said park. When this was appealed against, the Court observed that such construction "would only complicate the situation and that the present scheme would further congest the area". Thus, the public purpose allegedly being served by such acquisition was deemed "illusory" by the Court. In doing so the Court also upheld the decision of the High Court of Judicature at Allahabad which termed such acquisition as "illegal, arbitrary and unconstitutional".[34]Thus, while under the statutory definition, all cases of healthcare fall under the ambit of "public purpose", in this case, it was held to be not for a public purpose. [Refer to Figure II]

These two illustrations help establish that the instances that have been provided forwithin the definition of "public purpose" in the 1894 and the 2013 Act, are not precise enough to serve a public purpose. While Indian Courts have previously acknowledged that a perfect and accurate definition of "public purpose" is impossible to come up with,[35] the current method of ascertaining it, by defining it on a case to case basis, is also flawed. At the minimum, a definite standard has to be put in place in order to decide whether, in actuality, a particular instance fulfils a public purpose. Thus, the touchstone against which it is possible to find out whether an instance fulfills public purpose is missing.

32 The 1894 Act, §3(f); The 2013 Act, §2.
33 *M.I. Builders Pvt. Ltd.* v. *Radhey Shyam Sahu*, AIR 1999 SC 2468, ¶52 (India).
34 *Id*.
35 *State of Bombay* v. *R.S. Nanji*, [1956] S.C.R. 18, ¶ (India).

THE WAY FORWARD

Though it has been vehemently argued that there is a need to further restrict the scope of "public purpose",[36] we argue that such restriction may not be the *best* strategy to ensure that the included instances actually serve public purpose. This is primarily because it may not be possible to pre-empt all instances which might serve a public purpose. When it is difficult, or in this case not possible to pre-empt all situations where the law must apply, the law must be laid down in form of a 'standard', and left to be determined post-facto at the time of adjudication.[37] which is why the scope of public purpose was kept broad by the legislature.

It is our proposal that the *only* way to ensure that included instances actually serve a public purpose, is by laying down a standard to determine whether each project will serve a public purpose. If all projects have to pass through the first level of check which determines the potential of the project in terms of serving a public purpose, then the criticism regarding the scope being too broad will not apply. Therefore, we submit that there is a dire need for a standard.

Derivation of the Standard

The standard must take into account *three* factors. *First*, the number of people being affected due to acquisition and the potential number of people benefitting from the acquisition.

Second, the extent to which the affected people will be affected, and the extent to which the people who'll be benefitted will be benefitted. To practically boil it down, a ten-point scale can be formed with an increasing extent of both affect and benefit. These two components are important because these factors capture the overall effect of the acquisition. The total extent of the effect of the acquisition on the total population must be considered vis-à-vis the total extent of benefit accruing to the total population. The former must be lesser than the latter because if a project is taken up for "public purpose", it can only serve a public purpose if there is more overall gain than loss. Therefore, the burden on the government is to show that the extent of affect is less than the extent of benefit.

Third, the effect and cost of mitigation must be considered. The effect and cost of mitigation would be relevant when the effect of mitigation to the cost of mitigation ratio would be more than one. This is because in any other scenario when the productivity of mitigation will not be much greater than its cost, the government will not choose to take up mitigation projects. If mitigation would lead to a productive outcome in terms of its effect-to-cost ratio, it would

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[36] Raghuram and Sunny, *supra* note 23.

[37] This kind of rulemaking is known as enacting "standards" as against "rules". In his seminal paper, Kaplow explains the difference between these two approaches to law-making. *See* Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L. J. 557 (1991). Laws are enacted as 'rules' or 'standards. "While rules entail ex-ante determination of the law's content, standards entail an ex-post-facto determination of the law's content. The costs of determining the law's content may arise at three stages—first, at the time of promulgation; second, at the time when individuals decide to engage in some conduct; third, at the time of adjudication to determine how the law applies to the said conduct. Intuitively, since rules ought to be given content at the stage of promulgation, rules are more costly to promulgate as compared with standards. Similarly, standards have to be determined by individuals, and adjudicators, and therefore, standards cost more at these stages. Therefore, ceteris paribus, if the costs of promulgating the law are greater than the costs of determination by individuals and subsequently, by adjudicators, the law must be laid down in the form of standard and not rules. In India, where the adjudication of standards is enforceable in subsequent judgments, the law's content becomes clearer with increasing precedents, in case of standards. Such a rule making is inherently effective when it may not be possible to enumerate all possible instances. This is especially true in case of appeals where the grounds of appeal may be innumerable."

reduce the burden on the government. Therefore, it should reduce the extent to which the people are affected. To practically boil this down as well, this should also be taken on the ten-point scale which should represent the ratio of the extent of mitigation and cost of such mitigation.

Thus, based on the above three factors, the following formula can be derived:

(Number of people getting affected due to acquisition) *product of* (the number on the ten-point scale of the extent to which the people are affected *minus* the number on the ten-point scale representing the ratio of the effect of mitigation to cost of mitigation) should be less than (Number of people who'll be benefitted due to acquisition) *product of* (the number on the ten-point scale of the extent to which the people would be benefitted) -

Therefore, the formula may be summarised as (NA)*(EA-EM) < (NB)*(EB) wherein:

NA= Number of people affected; EA= the number on ten-point scale measuring affect; EM= Number on the ten-point scale representing the ratio of effect of mitigation and cost of mitigation; NA= Number of people benefitted; EB= the number on ten-point scale measuring benefit.

We take three examples to show how this formula can practically help determine whether a project serves a public purpose or not. *First*, let us consider that there is a project to construct roads on a suburban land. The aim here is to find out whether such an acquisition will serve a public purpose. In this project, the number of affected people is 20,000 (the people who were residents/workers or dependent upon any natural resource in on that land, etc.); their extent of affect lies at point 4 on the 10-point scale based on the extent to which people will lose their homes and livelihood; the prospective number of people benefitting out of the acquisition is 100,000 (the number of people who will be able to make use of this roadways); their extent of benefit lies at point 1 on the 10-point scale based on the extent to which people will be benefitted. To simplify, in this example, we will not be taking any effect of mitigation into account. On the application of the formula that we derived, we get the following results:

(NA= 20,000) * ([EA=4]-[EM=0]) compared to (NB=100,000) * (EB=1)

= (20,000) * (4) compared to (100,000) * (1)

= 80.000 compared to 100,000

The above calculations clearly show that the benefit of such acquisition is greater than the effect of it. Therefore, we can conclude that this acquisition willfulfilla public purpose. Thus, the acquisition can be said to be valid.

Second, take the same example as above. Now, assume that the number of people benefiting from this project is no more than 100,000 but is 60,000. This may be due to a number of reasons such as the overall population of the region, the distance of the suburb from such facilities, etc. The rest of the factors in the aforementioned scenarios remain the same. On the application of the formula that we derived; we get the following results:

(NA= 20,000) * ([EA=4]-[EM=0]) compared to (NB=60,000) * (EB=1)

= (20,000) * (4) compared to (60,000) * (1)

= 80.000 compared to 60,000

The above calculations clearly show that the benefit of such acquisition is less than the effect of it. Therefore, we can conclude that this acquisition will*not*fulfill public purpose. Thus, the acquisition can be said to be *invalid*.

Third, there is a project to construct a public hospital on a forest land amongst a range of villages where there is no healthcare facility. The aim here is to find out whether it would serve public purpose. In this project, the number of affected people is 5000, which is the population of all the surrounding villages; their extent of affect lies at point 2 on the 10-point scale based on the extent to which people will lose their homes and livelihood because the only thing that people will lose herein is the gathering that they did from the surrounding forest where they will be living now; the prospective number of people benefitting out of the acquisition is 5100, which essentially is the same set of people around the village who will be benefitted out of the acquisition, and an additional 100 people who will get jobs due to the healthcare facility in the near future; their extent of benefit lies at point 2 on the 10-point scale based on the extent to which people will be benefitted, because 5100 people will not be benefitted instantaneously and earlier also they could have travelledto a certain distance to avail healthcare services; the effect of mitigation here is at point 1 on the 10-point scale, which is because the villagerscan diverge to another forest land near to the village, which will not cost the State anything. On the application of the formula that we derived, we get the following results:

(NA= 5,000) * ([EA=2]-[EM=1]) compared to (NB=5,100) * (EB=2)

= (5,000) * (1) compared to (5,100) * (2)

= 5,000 compared to 10,200

Thus, it can clearly be seen that on the addition of effect of mitigation, there is little affected population and it leads to mostly benefit. Therefore, it would definitely server a public purpose.

Feasibility of the Standard

The information required for such a test is largely already present in the SIA study under the 2013 Act. Consequently, if the information already available is put in the above-mentioned formula, it gives a comprehensive result comparing whether the project would have the potential to serve a public purpose. There is a three-fold benefit of using such a test.

First, the petitioner who would want to challenge such an acquisition by the State would have complete information to challenge said project; *second*, even though it might seem like an additional burden on the State, in actuality, it will reduce frivolous litigation to a great extent as it will help put the onus on the petitioner to prove that such acquisition doesnot serve public purpose; *third*, it will also help in comparing the benefit of acquiring an alternate land.

If such a benchmark is fulfilled, even if the definition is kept broad, the instances already present under the broad definition are likely to serve a public purpose. Thus, fulfilling this benchmark must be a necessary condition for all instances, in orderfor them to fall within the scope of public purpose. To go back to the two examples enumerated above, concerning the construction of roads and the hospital, that did not fulfilla public purpose, despite being an instance under the definition. In this regard, if both instances are first required to pass the standard which has been laid down, they would fail.[**Refer to Figure V**]

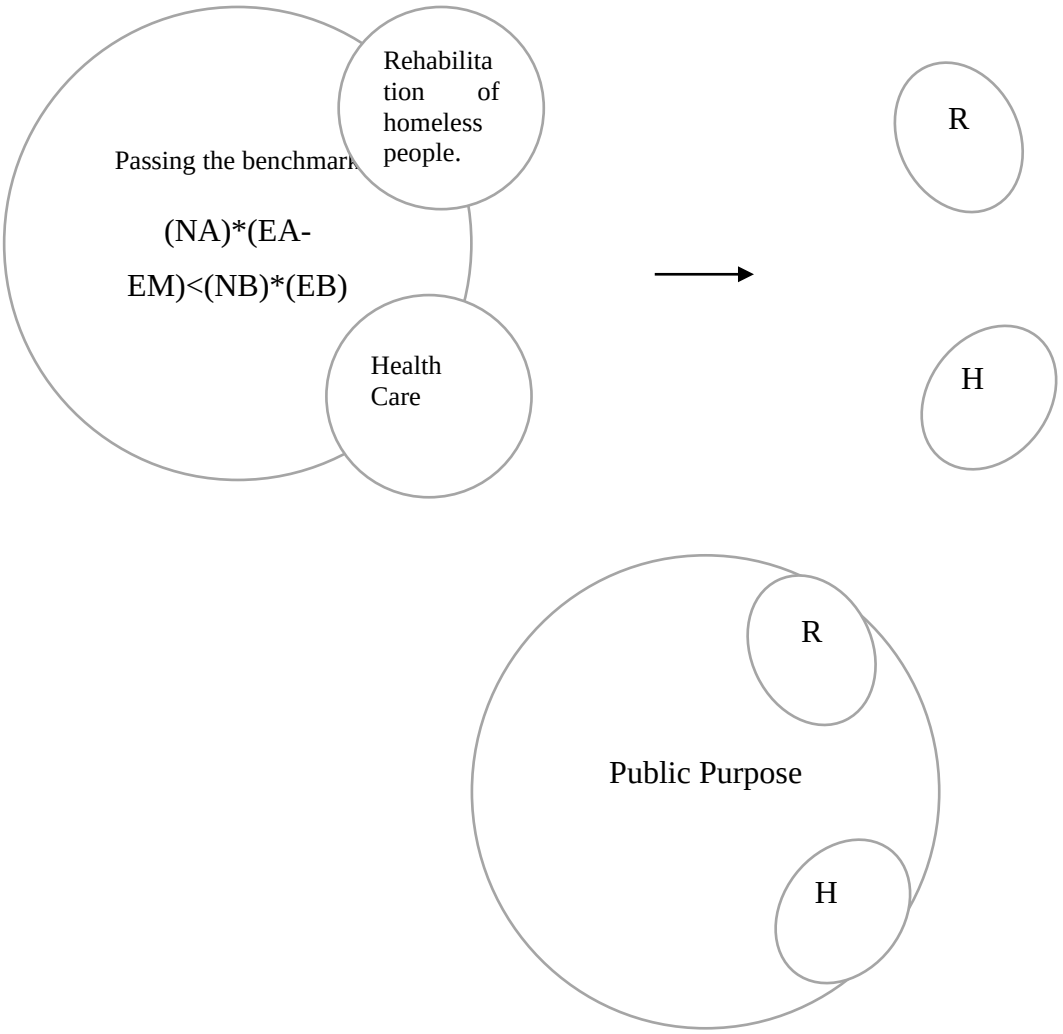

Figure V- When the projects pass the test of laid down that is (NA)*(EA-EM)<(NB)*(EB), they necessarily serve the public purpose. Therefore, the definition of Public Purpose would hold good, if the projects are to be made to pass through this bench mark.

CONCLUSION

Defining the scope of "public purpose" is extremely imperative due to the importance of land as a resource for all the involved stakeholders. This is why a skewed definition of the same, can cost a particular stakeholder heavily in terms of livelihood, shelter, or even in terms of the overall development of the country. It is this understanding, which has given rise to the need for a well-defined understanding of what connotes "public purpose" for the purposes of land acquisition. My co-author and I, through this article have aimed to cull out a restrictive definition of the same, while simultaneously comparatively analyzing and critiquing the definitions forwarded by both, the 1984 Act and the 2013 Act.

Through our analysis above, we note that the definition of 'public purpose' under both the Statutes, suffers from two expansive problems. *First*, the scope at present is so broad that the definition practically obfuscates the difference between public purpose and any other purpose. It does so, by not specifying what exactly constitutes public purpose, and also by leaving the scope quite open-ended with the phrasing of the provision. *Second*, and more important is that the definition is insufficient to actually *determine* the projects which serve a public purpose, because the instances laid down under both the Acts may not necessarily serve a public purpose. When land is being acquired, it results in the taking away of livelihood and shelter from a large number of people, which is why such acquisition must necessarily serve a public purpose.

Thus, we propose that in order to ensure that land acquisition projects serve a valid public purpose, they must inevitably pass a benchmark. With the help of this article, we lay down a benchmark that can be practically used to determine whether a project serves a public purpose. The practical application of this benchmark is easily possible with the help of the SIA study envisaged under the 2013 Act. Thus, with the curtailment of the scope of "public purpose" in the 2013 Act, and the implementation of the proposed benchmark in consonance with the SIA study, a fundamental change can be brought about in the law governing land acquisition in India.