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Litigation over Eminent Domain Compensation



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1. Introduction

In the recent past, use of *Eminent Domain* to acquire land for developmental purposes has become highly controversial. Several parts of India have experienced violent protests against the compulsory acquisition of land. Apart from the direct protests against compulsory acquisition of land, in many cases the acquisition affected people have been approaching judiciary to dispute the amount of compensation provided by the government. Indeed, the litigation over compensation seems to be rampant. Nonetheless, the writings on the use of eminent domain in India have largely focused on the desirability or otherwise of compulsory acquisition *per-se*. These writings have completely ignored an equally important issue related to the use of eminent domain, namely the litigation over compensation. This project aims to address this issue.

It appears that most of acquisition affected parties end up litigating the compensation amount. Given the cost of legal services and the judicial delays in India, for the litigation to emerge as an equilibrium outcome it should make economic sense for the acquisition affected parties. The first objective of the project research is to investigate this issue. Besides, the research investigates the following questions: How do government officials and the judiciary determine the market value of the property/land acquired? This question is worth investigating. Since in India, land market is generally thin, especially in rural areas. Therefore the determination of the market value of property is a challenging issue.

The issue of compensation is crucial for an efficient use of the eminent domain. For instance, under-compensation can lead to inefficiently excessive acquisition of land. Moreover, it can result in disputes and popular protests against land acquisition for developmental purposes. However, even a 'fair' compensation may not be sufficient to rule out litigation, if the government and the judiciary adopt different procedures to determine compensation. Therefore, the next question is: Are court awards generally

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higher than the government awarded compensation? This issue is worth investigating since litigation over compensation imposes significant costs on the society.

If answer to the above question is ‘yes’, then the following question arises: What are the underlying reasons behind the mismatch between the government provided compensation, on the one hand, and the court awards, on the other hand?

Finally, we study whether the benefits from litigation over compensation varies across categories of land; agricultural, residential and commercial land?

To address the above questions, we have collected data on the followings aspects related to litigation over compensation: the government awarded compensation, date of government compensation, the basis used by government officials for determining compensation, the court awarded compensation, date of court award, the basis of determining compensation used by court, the location and the type of the acquired land and the other relevant issues. In view of the time-line set by the IGC, the analysis is restricted to the study of available Punjab and Haryana High Court judgments. The jurisdiction of the court is the states of Haryana and Punjab and the Union Territory of Chandigarh. However, we have tried to supplement the data analysis by the inputs and insights provided by the government officials and the judges on real world functioning of the land acquisition law.

2. Eminent Domain Compensation:

The court judgments analysed under the study are governed by the Land Acquisition Act of 1922.² The Act came into force in March 1894. The expression "land" used in the Act includes benefits arising out of land, and things attached to it such as superstructures, trees, buildings, tube wells, etc. The law authorizes the states and its agencies to acquire land for public purposes and for companies. Further it provides guidelines for determining the amount of compensation to be made to acquisition affected owners.

Whenever land is to be acquired under the LA Act 1894, the government issues notification under Section 4 of the LA Act, 1894. It is required to publish the notification in the Official Gazette as well as in a local newspaper. This notification is followed by another notification under Section 6. This notification is also published in the Official Gazette and is provided at the district or other territorial division levels in which the land is situated. The notification specifies the purpose for which land is needed and its approximate area. The other relevant sections of the Act are produced in Appendix B.

As far as the amount of compensation is concerned, the Act entitles the acquisition affected owners to the “market value” of their property. Section 23 and 24 of the Act provide rules for determining the total compensation. The compensation is to be based on the following considerations: firstly, the market-value of the land at the date of the publication of Section 4 notification; secondly, the damage by the person interested, by taking into account any standing crops, trees and/or superstructures which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any)

²The Land Acquisition Act, 1894

sustained by the person interested by the reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if the person interested is compelled to change his residence or place of business, and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land. In addition, the law provides for additional compensation in consideration of the compulsory nature of the acquisition. This extra compensation called *solatium* is to be equal to 30 percent of the market value of property.

However, the law mandates that the following factors should not be taken into consideration. Firstly, the degree of urgency which has led to the acquisition; secondly, any disinclination of the person interested to part with the land acquired; thirdly, any damage sustained by him, if caused by a private person, would not render such persons liable to a suit; fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put; fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquires will be put; or seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the notification under Section 4.

Though, in some cases, the state of Punjab has acquired land under the Punjab Town Improvement Trust Act (1922).³ The essential features of this Act are very similar to the LA Act. Like the LA Act, the land under the Punjab Town Improvement Trust Act (1922) is acquired vide notification issued under Section 36. ⁴The same is followed by notification under Section 42.⁵

As mentioned above, the Land Acquisition Act of 1984 entitles the affected owners to the “market value” of their property, on the date of Section 4 notification. In its various judgments, the Supreme Court has directed that the market value of the acquired property should be determined on the basis of what are called “circle rates” or “sale deeds” of a similar property, whichever is higher. However, in practice, the Land Acquisition Collectors (LACs) award compensation on the basis of the circle rates, which vary from locality to locality. The circle rate of an area is popularly known by different names such as the registry rate or the stamp duty rate. It is the minimum rate decided by the

³The Town Improvement Act, 1922; (Punjab Act IV of 1922)

⁴The Section states that “the fact that the scheme has been framed, the boundaries of the locality comprised in the scheme, and the place at which details of the scheme including statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.”

⁵Under this section, the provincial government shall notify sanction of every scheme under this Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of Section 27 have been fulfilled.

government authorities for valuation of land for the purpose of determination of duty/tax imposed at the time of registration of sale-deed of a property. When a sale deed of a property is registered, the stamp duty is imposed on the value of the property as mentioned in the deed or its value on the basis of the circle rate, whichever is higher. Generally, the sale-deed rates are above or equal to the circle rate of the property. In practice, the state governments revise the circle rates once in several years. As a result, these rates are generally well below the market value of the property in the area in question.

If a land owner is dissatisfied with the compensation provided by the government, she/he can seek reference to the lower court under Section 18 under the LA Act. Section 18 of the Act allows the owner to approach the court on issues related to the determination of the compensation, the measurement of the land, the persons to whom it is payable, or the appropriation of the compensation among the persons interested.⁶

Under the LAA, while determining compensation, both the Land Acquisition Collector (LAC) as well as the courts are required to follow same set of guidelines. These guiding rules are provided in Section 23 and Section 24 as discussed above. However, the analysis undertaken has shown that there is a consistent difference between LAC provided compensation and the court awards. Moreover for any given property, the High Court (HC) award is different from the award of the Additional District Judge (ADJ). Given that the same set of guidelines is to be followed by the LAC, ADJ as well as the HC, the observed difference in awards is intriguing. This issue is analysed in greater detail in the next section.

3. Data and Summary Statistics

As mentioned in the project proposal, the focus of the project study is on the judgments delivered by the Punjab and Haryana High Court during 2010 and 2011. During this period, the court has delivered judgments on Civil Writ Petitions challenging the use of Eminent Domain, per-se. However, the exclusive focus of the project study is on the dispute over compensation for the acquired land. These judgements are recorded and maintained by the Punjab and Haryana High Court. Most of the disputes over compensation pertain to the amount of compensation granted by the government officer, namely the LAC. Besides, there are cases related to dispute over compensation for the other properties; such as, the superstructures, trees, wells, etc. Also, there were few cases related to dispute over ownership of the land acquired, condonation in filing the application, grant of compensation on account of severance, apportionment of compensation and disputes wherein there was a disagreement on the land type.

However, we have focused only on the dispute over compensation for the land, and not on the attached assets or other issues mentioned above. We have covered *all* of the 1660 judgments delivered by the court on the subject during 2010 and 2011 – 531 judgments were delivered during the year 2011 and 1129 were delivered during 2010. Whenever

⁶The application shall however state the ground on which objection to the government provided compensation is taken.

there was more than one dispute belonging to the same Section 4 notification, the HC has combined all the cases and delivered one common judgment. In such cases, the compensation awarded is generally uniform for all of the petitioners. We have noted one judgment as one observation. However, it should be noted that the actual number of disputes is significantly greater than the observations/judgments mentioned here.

As far as the period of acquisition is concerned, these cases cover a long period. For instance, the notifications under Section 4 in these cases range from year 1969 to the most recent year 2011. This shows long judicial delays at least in some cases. The judgments record many of the relevant issues which might be of interest to the parties to the dispute. However, in many cases the court orders mention just the important information pertaining to the case: such as, the date of notifications of Sections 4 and 6, the total area acquired, the compensation rate provided by the LAC, ADJ and HC. In several cases the court orders are more detailed and provide additional details on the sales deed being presented by the parties. For the judgments covered here, we have collected data on the followings aspects: the government awarded compensation, the date of government award, the amount of lower court awarded compensation, the amount of HC awarded compensation, the dates of court awards, the basis of determining compensation used by courts, types of land covered by LAC during issuance of notification, whether the acquired land is agricultural or residential and commercial, purpose of acquiring land, evidence produced by the plaintiff, total area acquired and number of cases combined.

Table 1: State Wise Distribution of Court Orders

S. No	Name of the State	Number of Cases belonging to the State		
		2010	2011	Total Cases
1	Haryana	771 (68.3)	394 (74.2)	1165 (70.18)
2	Punjab	353 (31.26)	119 (22.41)	472 (28.43)
3	UT of Chandigarh	5 (0.44)	18 (3.38)	23 (1.4)
4	Total	1129	531	1660

Several problems were faced while extracting data and making it comparable. Data on issues such as, basis for determining compensation whether on the basis of Circle rates or Sale-deeds, property type treated by LAC such as agricultural, residential and commercial and basis of declaring property as residential/ commercial by LAC were not provided. Also different courts used different units of measurement. While LACs have awarded the compensation using acre as unit, the High court and Additional District Judge have used several units such as per-sq yards, per-sq meter, per bighas, per kanal, etc. These have been converted into a common unit, *per-acre*, based on appropriate conversion scales pertaining to both Punjab and Haryana. The compensation scales used by us to convert all the compensation into acres are provided in appendix (Table A.1). Also, there was difference in the types of land such as residential, commercial, Nehri, Chahi, Chahi-Nehri, Gair-Mumkin, Barani, BanjarKadim / Qudim, etc. treated by courts.

Table 1 shows the distribution of the court orders across States. As has already been mentioned, the present study limits itself to land acquisitions in the States of Punjab and Haryana only. Most of the court orders that were studied pertained to land acquisitions in Haryana (around 70 per cent for 2010 and 2011 combined). Of the total cases covered close to about 28 per cent of the cases pertained to the State of Punjab. This suggests that land acquisitions were more frequent in Haryana than in Punjab.

Table 2, 3 and 4 present the summary statistics for the difference in compensation rate between the LAC determined compensation and the ADJ court award, the ADJ and HC award and the LAC determined compensation and the HC award. An important point to be noted here is that there were many cases where data on the compensation rate provided by the LAC or either of the court awards are not provided. Hence, the total number of cases as presented in the second row of tables 2, 3 and 4 is less than the total number of court orders provided in table 1.

Table 2:Percentage increase in the compensation by ADJ over LAC

Cases adjudicated in 2010		Cases adjudicated in 2011	
Number of Cases = 881		Number of Cases = 523	
Mean	184.46	Mean	205.10
Standard Deviation	399.58	Standard Deviation	279.66
Min	0.00	Min	0.00
Max	8370.00	Max	2493.09

Table 3:Percentage increase in the compensation by HC over ADJ

Cases adjudicated in 2010		Cases adjudicated in 2011	
Number of Cases = 1085		Number of Cases = 523	
Mean	32.54577	Mean	48.25835
Standard Deviation	98.82402	Standard Deviation	278.4299
Min	-40	Min	-48.1618
Max	1188.75	Max	5205.85

Table 4: Percentage increase in the compensation by HC over LAC

Cases adjudicated in 2010		Cases adjudicated in 2011	
Number of Cases = 862		Number of Cases = 517	
Mean	265.6047	Mean	363.0225
Standard Deviation	442.4263	Standard Deviation	1657.334
Min	0	Min	0
Max	8370	Max	36810.26

Here it is important to emphasise that the LAC, ADJ and the HC awards are declared at very different points in time. Moreover, the ADJ and the HC require the government to pay an interest for the time gap between the date of acquisition and the date of court award. However, the above data does not include the interest payments. That is, we have considered only differences in the assessment of the market value of the property on the date of Section 4 notification, by the different entities – LAC, ADJ and HC.

4. Major Findings

Table 2, 3 and 4 prove that the average compensation provided by the courts is significantly higher than the government awarded compensation. For the year 2010, the mismatch between the LAC awarded compensation and the ADJ award was on average higher by about 184.46 percentage points. Similarly, for the year 2011 the average ADJ provided compensation is higher by 205.10 percentage points. The standard deviation, showing the degree of variation between the compensation rate provided by the LAC and the ADJ court award is very high about 399.58 for the year 2010 whereas the figure for 2011 is somewhat lower and is 279.66. The high standard deviations indicate that there is also a huge variation in the LAC determined compensation rates and the ADJ court awards. This is confirmed by the variation in minimum and maximum value of the percentage change in ADJ and LAC award. The range is very large.

In some cases covered, the difference between the LAC awards on the one hand, and the judiciary awarded compensation on the other, is startling. Here are a few illustrative examples:

In *Ravinder Singh vs Union Territory Chandigarh*, 2010,⁷ the High Court increased the compensation to about 271.03% from Rs. 3,57,300 per acre (award by LAC) to Rs. 13,25,700 per acre.

In *Smt. Vineeta Kapoor and others vs State of Haryana and others*, 2010,⁸ the judiciary increased the rate of compensation substantially. The LAC awarded compensation at an average rate of Rs. 40,000 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs. 2,17,800 per acre. This is about 444.50% increase from the LAC compensation.

In *Ramavtar and another vs State of Haryana and others*, 2010,⁹ the LAC awarded compensation at an average rate of Rs. 2,09,000 per acre for different land categories. In contrast, the HC awarded compensation at the rate of Rs. 13,63,966 per acre for different land categories which accounts for around 552.62% higher than the LAC compensation.

⁷R. F. A No. 2417 of 2001, decided on 7th January 2010

⁸R. F. A No. 2987 of 1993, decided on 21st January 2010

⁹R. F. A No. 699 of 2009, decided on 1st February 2010

In *Bhagwant Singh vs Union Territory, Chandigarh*, 2010,¹⁰ the HC increased the rate of compensation by 271.16%, from Rs. 3,38,100 per acre to Rs. 12,54,880 per acre.

In *Dial Singh and others vs Union Territory, Chandigarh*, 2010,¹¹ the rate of compensation awarded by the LAC was Rs. 1,90,000 per acre. Whereas, the HC awarded the compensation at the rate of Rs. 9,85,000 per acre. This accounts for about 418.42% increase from the compensation provided by the LAC.

In *Brij Mohan and others vs State of Haryana and another*, 2010,¹² the LAC awarded compensation at an average rate of Rs. 25,000 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs. 3,04,920 per acre which is a striking 1119.68% increase compared to the LAC compensation.

In *Surjit Singh vs State of Punjab*, 2010,¹³ the compensation for land acquired was increased from Rs. 1,75,000 per acre to Rs. 8,00,000 per acre by the HC.

In *Sukhdev Singh vs Punjab State*, 2010,¹⁴ the HC increased the rate of compensation from 1,75,000 per acre to Rs. 8,42,400 per acre.

In *State of Haryana vs Gulzar Singh*, 2010,¹⁵ the LAC awarded compensation at an average rate of Rs. 17,000 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs. 1,72,000 per acre which is about 911.76% more than LAC awarded compensation.

In *Union Territory, Chandigarh vs Behal Singh Gill & another*, 2010,¹⁶ the HC increased the compensation from Rs.4,53,900 per acre (awarded by LAC) to Rs.19,97,581 per acre.

In *Murti and others vs Haryana State and another*, 2011,¹⁷ the HC increased the rate of compensation from an average of Rs.

¹⁰R. F. A No. 679 of 2001, decided on 4th March 2010

¹¹R. F. A. No. 614 of 1999, decided on 25th February 2010

¹²R. F. A No. 2465 of 1990, decided on 16th February 2010

¹³R.F.A. No. 836 of 2001, decided on 9th April 2010

¹⁴R. F. A No. 955 of 2002, decided on 3rd August 2010

¹⁵ R. F. A No. 3788 of 1992, decided on 6th August 2010

¹⁶ RFA No. 2989 of 2006, decided on 18th May 2010

¹⁷ RFA No. 247 of 2011, decided on 27th May 2011

41,15,000 per acre for different land types to Rs. 73,56,800 per acre.

In *JaiBhagwan Malik and others vs State of Haryana and another*, 2011,¹⁸ the compensation for land acquired was increased by 359.43%, i.e. from Rs. 3,50,000 per acre to Rs 16,08,000 per acre by the HC.

In *Smt. Jagwati and others vs Land Acquisition Collector and another*, 2011,¹⁹ the LAC awarded compensation at an average rate of Rs. 3,80,000 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs. 58,85,440 per acre.

In *Chanchal Rani vs Union Territory, Chandigarh*, 2011,²⁰ the LAC awarded compensation at an average rate of Rs. 4,74,013.5 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs 2,25,16,000 per acre which is 4650% more than the LAC compensation.

In *HirdeRam and others vs The State of Haryana*, 2011,²¹ the LAC awarded compensation at an average rate of Rs. 21,500 per acre for different land categories. In contrast, the HC awarded compensation at a uniform rate of Rs 1,54,880 per acre.

The above cases show a startling difference in compensation awarded by the HC and LAC. However, it must be mentioned that this huge difference is largely on account of increase in compensation by the ADJ courts. The difference in the HC and ADJ award, by comparison, is small and shows less variation.

The first factor which leads to the mismatch between LAC determined compensation and the ADJ award is the law itself. Once an appeal is made before the ADJ, according to Section 25 of the LA Act, the amount awarded by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.²² Hence the ADJ award necessarily has to be greater or at the very least equal to the compensation rate provided by the LAC.

However, the much of the observed difference in compensation rates can be attributed to the different valuation of the market value of the land by the two set of government agencies. Here, it is relevant to discuss on the concept of “market value”. Most eminent domain laws require the compensation to be equal to the “market value” of the property,

¹⁸ RFA No. 390 of 2005, decided on 11th May 2011

¹⁹R.F.A. No. 52 of 2011, decided on 2nd February 2011

²⁰RFA No. 453 of 2009, decided on 23rd December 2011

²¹RFA No. 1712 of 1987, decided on 7th December 2011

²²The Land Acquisition Act, 1894

plus some solatium. However, determination of market price is a genuinely difficult task, and highly vulnerable to errors. This value is determined by considering the prices of similar properties that have been traded in the market. But many attributes of a property affect its value and no two properties are identical. So, the officially determined compensation is bound to differ from the true market value of the property. This fact has been confirmed by several empirical studies.

Despite judicial advice that the compensation should be based on sales deed or the circle rates, whichever is higher, it is a common practice by the LAC to use the circle rates as the basis for determining the market value of the acquired land so as to avoid the cumbersome process of determining the sale deed which best represents the true value of the land in question. The circle rates fixed by the state government are significantly below the market value of the land. Moreover, in a given area the circle rates tend to be uniform, even though the market value generally differs from plot to plot and acre to acre. The ADJs, on the other hand, generally award compensation based on the relatively high valued sales deed. This leads to a discrepancy between the compensation rate provided by the LAC and the court award. As discussed earlier, the sale-deed rates are higher than the circle rates. As a result, the compensation rates provided by the ADJ are generally higher than the compensation provided by the LAC. Hence, the process through which the government agencies determine compensation is in itself flawed. Moreover, it encourages litigation by the acquisition affected parties.

It is worth noting that in the cases studied for the purpose of this study, it was found that even though the ADJ compensation was higher than the LAC award, the same did not hold in the case of the compensation rate provided by the HC, with the HC granted compensation being higher, equal and also less than the ADJ award. Table 3 provides summary statistics for the increase in the awards granted by the ADJ and HC. It is seen that for the year 2010 the average increase in compensation between the ADJ and HC court awards is around 32.55 percentage points. Similar figure for the year 2011 is about 48.25 percentage points. It is worth mentioning that the observed differences in the awards of the ADJ and HC are lower compared to the difference in the LAC and ADJ court award. In fact, the minimum value of the percentage increase in the compensation by HC over ADJ's award is -48 percent

In most of the cases the HC determined compensation is based either on sales-deeds or one of its earlier judgement pertaining to the same-period or same Section 4 notification. In an overwhelming majority of the cases, the landowners had submitted sale-deeds as evidence to claim higher compensation for their land. However, in many cases, the submitted sale-deeds were not accepted as evidence as the landowners failed to present any site plan to prove that the acquired land was adjoining or close to the land mentioned in the sales deed. Despite the fact that the HC generally rejects a great majority of sales deeds in the absence of site plans, it is still true that sales deeds were the basis for determining compensation in most of the HC judgments.

As has already been mentioned, the LAC and ADJ use different basis for determining the market value of the acquired land. However, the HC determines the award for the land

after considering all the relevant documents being presented before the court by the landowners as well as the State. The award of the ADJ and HC are hence generally not very different from each other. There are only certain cases where the HC award is higher than the ADJ award. In such cases the difference is mostly on account of the different sales deed being used as the basis for determining the compensation by the ADJ and LAC. Also, in certain cases the HC determined compensation is higher since the ADJ failed to consider all the evidence being presented by the owners.

Do LACs undervalue the land?

The above cited statistics show that the court awards are significantly higher than the LAC awarded compensations. The difference between the court awards and the LAC provided compensations raises the following question. Is the difference between the court and the LAC awards due to undervaluation of land by the LACs, or there are some other underlying factors present? This question is of immense importance, as undervaluation of property can lead to not only litigation over compensation but also protests against land acquisition itself. Therefore, the next question is: Do the above cited statistics fairly represent the extent of undervaluation of land by the LACs? The answer is not straightforward, as there are several possibilities. There could be selection bias leading to over-estimation of the undervaluation of property by the LACs. This can be the case if only a small fraction of land owners litigate the LAC award. Presumably, these would be the owners whose properties were significantly undervalued by the LAC and therefore these people can expect better litigation outcome – in contrast the rest of the owners might have received fairly representative compensation and cannot expect a better deal from courts. In such a scenario, *ceteris-paribus*, the difference between the court and the LAC awards will over-estimate the undervaluation of land by the LACs.

It is also possible that the majority of owners choose to accept the LAC provided compensation not because it equals the market value but due to unaffordable litigation costs. In the absence of litigation costs these owners would have gone to court and perhaps received higher compensation. The risk associated with the judicial outcome can further deter potential litigants from pursuing a legal course. If this is the case, then the other factors held fixed, the above cited figures will under-represent the undervaluation of properties by the LACs. In a typical real world scenario all of the above affects can be at work. Therefore, one needs to be careful while using the above figures as proxy for under-valuation of market value by the LACs.

However, in the context of land acquisition under the Land Acquisition (Amendment) Act 1984, it seems plausible to surmise that the above cited data under-represent the extent of undervaluation of land by the LACs. This is especially the case if we restrict our attention to the difference between the ADJ awards and the LAC awards. To see why, recall that while the LACs determine the market value of the land based on the circle rates, the courts do so based on sale-deeds of similar properties. Sale-deed rates are greater than the circle rates. Therefore, in expected terms court awards are strictly higher than the LAC awarded compensation. Besides, Section 25 of the Act mandates that Court awards cannot be less than the amount awarded by the LAC. This means that there is no down-side to the choice of litigation by an acquisition affected owner – even

if s/he put in no serious effort during litigation there is nothing to lose, except the cost of *court fee* which happen to be small.²³ In this scenario, at least some, if not all, of the affected owners can be expected to exercise the option of litigation. Moreover, it is important to note that the litigation is rewarding not only for the litigant owners but even those who chose not to litigate. Since, under Section 25 A of the Act, even those owners who did not approach ADJ court are entitled to the court-determined compensation.

Now to the extent that the sale-deeds are a better measure of market value than the lower circle-rates, court awards are expected to be closer to the market value than the LAC awards. This means that the difference between the court awards and the LAC provided compensation represents the undervaluation of land by the LACs. However, this difference under-estimates the extent of under-valuation by the LACs. Since, due to the above discussed reasons, the sale-deed rates themselves are below the market value.

Table 5: Compensation according to Land Category

NON-AGRICULTURAL LAND			
Total Cases=337	Total observations = 304	Total observations = 322	Total observations = 297
Statistics	% increase in compensation by ADJ over LAC	% increase in compensation by HC over ADJ	% increase in compensation by HC over LAC
Mean	251.59	43.10	349.67
Std. Deviation	435.63	108.02	489.42
Min	0.00	-89.08	0.00
Max	5069.60	1189.58	4650.08
AGRICULTURAL LAND			
Total cases=1323	Total observations = 1099	Total observations = 1285	Total observations = 1081
Statistics	% increase in compensation by ADJ over LAC	% increase in compensation by HC over ADJ	% increase in compensation by HC over LAC
Mean	175.72	36.29	289.84
Std. Deviation	334.04	192.03	1186.88
Min	0.00	-100.00	0.00
Max	8370.00	5205.85	36810.26

Note: Total cases covered under the category of Non-Agriculture were 337 and total cases covered under the category of Agriculture were 1323. But due to data unavailability we have only considered aforementioned observations.

²³Court fee is the fixed payment the plaintiff has to pay at the time of filing his case. This fee is generally a nominal sum.

It is interesting to note here that around 80% of cases pertain to the agricultural land which mainly lies in villages. The mean increase in compensation over all categories is lower, standard deviation is higher, Minimum value is also lower. In all, litigation outcomes is more profitable for the owners of non-agricultural land. Often, agricultural land is deemed to be lesser valuable than the commercial or residential type of land. However, these values in part can also reflect lower bargaining power of agricultural land owners due to lack of awareness about their rights under this act or due to general trend of undervaluing of agricultural land or lower ability to bear litigation fees involved. As the following table 5 shows, compared to agricultural land the difference in court awarded compensation and the LAC awards is larger for non-agricultural land.

5. Policy Implications

The above findings can be used to make policy recommendations, especially for the Land Acquisition and Rehabilitation & Resettlement Bill 2011 and its amended version entitled as the Right to Fair Compensation, Resettlement and Rehabilitation and Transparency in Land Acquisition (RCRRTLA) Bill 2012. While the Bill is laudable on several counts, there is nothing substantial in it to address the vicious cycle of inadequate compensation, litigation and the resulting wastage of private and public resources. If anything, under the provisions of the Bill, litigation is likely to intensify further. To see why, note that the existing law provides for compensation including solatium, equal to 1.3 times the market value of the property. The proposed law increases it to *four* times for the rural areas; and *two* times the market value for urban areas. Now, consider an agriculture land measuring just 100 sq-meters. Suppose, a LAC uses a circle-rate of say Rs 1000 per-sq-meter for determining compensation, and the court uses a sale-deed rate of say Rs 1400. Under the extant law, since the multiplier is 1.3, the total compensation will go up by Rs 42,000. By comparison, under the proposed law since the multiplier is four, the compensation will increase by Rs. 1,60,000! That is, gains from litigation will be much greater under the proposed law - given the proclivity of the LACs and courts to use a different basis. The gains and therefore the incentive to litigate increases further, as the land size and/or the difference between sale-deeds and circle rates goes up.

The bill does not address the fundamental causes behind litigation. As explained earlier, the excessive litigation over compensation under the existing law is due to the fact that the land acquisition collectors (LACs) and courts use a different basis for determining compensation – generally, LACs use low value circle-rates but courts tend to use relatively high-value sale-deeds. All that the bill does is replace the ADJ court with a ‘Land Acquisition Rehabilitation and Resettlement Authority,’ (LARRA) to adjudicate compensation related disputes. This replacement cannot reduce litigation. Moreover, for the litigant owners, the bill provides no safeguards similar to Section 25 of the existing LAA, which mandates that the court awarded compensation cannot be less than the LAC awarded compensation.

The report of the Parliamentary Standing Committee on the Bill has also missed several issues. For instance, on the issue of compensation, all it does is argue on the use of highest value sale-deeds as the basis for determining compensation. These measures

cannot reduce litigation, unless the LACs are made to base their awards on high valued sale-deeds.

In order to mitigate the problem of excessive litigation, it is important that the initial compensation itself is determined in view of all of the relevant information, such as records of the sale-deeds, land-type, its future value, etc. All this information should be required to be shared with the affected parties before compensation awards are made. Here, it will help if the compensation is determined by an independent and representative agency set up for the purpose. This agency should be required to use all of the above mentioned data relevant for determining compensation. Moreover, the scope of compulsory acquisition needs to be minimized.

6. Agenda for Future Research

In the final draft, we have attempted to analyse the nature of formal relationship between the increases in compensation received by the owner with various land characteristics; such as, the land types. Table 5 shows the relative increases in compensation for an agricultural land, viz-a-viz residential and commercial lands.

In real world, several other variables are likely to affect the judicial outcome and therefore the difference in the compensation provided by the LACs and the judiciary. We have identified several variables that can possible serve as explanatory variables for the observed patterns of court awards; such as, the land use regulations for agricultural land, location of the land, size of the land, market value of the land, etc. The above analysis suggests that gains from litigation are larger for commercial land, and also for the high market value properties. Apart from the land characteristics, several aspects of the owner can have bearing on the litigation outcome; for example, the education level, wealth level of the owners. It would be of interest to study how the gains from litigation vary with the location and the size of the land acquired, wealth level of the owners. Given the time line fixed by the IGC as well as the budget, it was not possible to carry out more rigorous analysis. In future, if IGC provides funding, I would like to supplement the current study with the empirical research along the lines discussed here.

Appendix A

TABLE A1: Data aspects and their Description

S. No.	Data-aspect/Item	Description
1.	Date of Notification under Section 4 of LAA	This covers the dates on which notifications under Section 4 was issued by the government to acquire land. The process of acquisition begins with the issuance of preliminary notification under Section 4 of the LA Act.
2.	Date of Notification under Section 6 of LAA	This covers the dates on which the notification under Section 6 was issued by the government to proceed with the acquisition. Section 6 provides that the final declaration shall be issued by the authority within a period of one year from the date of issuance of preliminary notification under section 4 of the Act.
3.	Date of LAC award	It is the date on which the Land Acquisition Collector gave the award for the acquired land.
4.	Area of acquisition under LAC notification	This covers the total area acquired under the notification under Section 4 including both total area acquired and area owned by the plaintiff.
5.	Types of land acquired	This gives information on the types of land acquired and for which LAC awarded the compensation.
6.	Name of the village, town, city where land was acquired	This covers the name of the village, town or city under which the land was acquired.
7.	Tehsil and District in which the place of acquisition is located	It is the name of the Tehsil and District in which the land was acquired.
8.	Name of the state of land acquisition	This gives the name of the state in which the land was acquired. We only dealt with cases pertaining to Punjab, Haryana and U.T of Chandigarh.
9.	Compensation awarded by collector	This provides information on the award given by the Land Acquisition Collector.
10.	Compensation rate awarded by ADJ	This gives information the compensation awarded by the Additional District Judge for the land acquired.

Table 2A: Conversion Scale

Unit	Conversion Factor
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1 acre	= 4840 square yards
	= 8 kanals
	= 4.8 bighas
1 kanal	= 20 marlas
1 bigha	= 20 biswas

Source: Indian Agricultural Statistics Research Institute, Agri Databank.

<http://www.iasri.res.in/agridata/08data/foreword08/conversionF.pdf>

Table A3. Land Types covered by the Study

S. No.	Type of Land	Description
1.	Nehri	Agricultural land type which is irrigated only through canals.
2.	Chahi	Chahi is a land type which is irrigated areas which are watered from wells and tube wells.
3.	GairMumkin	Gair-Mumkin is the barren and un-cultivable land such as mountains, deserts, etc. which cannot be brought under cultivation unless for a high cost.
4.	Barani	Baraniland type is the unirrigated areas which are solely dependent on rain.
5.	BanjarKadim/Qudim	BanjarKadim/Qudim is cultivable waste which denotes all lands available for cultivation whether not taken up for the cultivation or abandoned for more than five years for one reason or the other. Such lands may be either fallow or covered with shrubs and jungles which are not put to any use. They may be assessed or unassessed and may lie in isolated blocks or within cultivated for five years in succession shall also be included in this category, at the end of the five years.

Appendix B

Main Features of the Land Acquisition Act

the Land Acquisition Act, 1894, allows acquisition of land needed for public purposes and for Companies. For the purpose of the Act, the expression "land" includes land, and things attached to it such as Superstructures, Trees, Buildings, Tube wells, etc. Below we produce and discuss the relevant clauses of the Act.

Section 4: Whenever it appears to the appropriate Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Section 6: The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been of the land, the place where such plan may be inspected. Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Legal entitlement to compensation: The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured.

On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land {Ins. by Act 38 of 1923, s.5} [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land ; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him,

The Collector shall at the time of taking possession offer compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession.

In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Section 23: Matters to be considered in determining compensation:-(1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration---

First, the market-value of the land at the date of the publication of the {Subs, by Act 38 of 1923, s.7, for "declaration relating thereto under s.6."} [Notification under section 4, sub-section (1)];

Secondly, the damage by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by the reason of severing such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

Fifthly, if in the consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Clarification: "It is settled law that the burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon, Proper tests and principles laid down by this Court must be applied to determine compensation."
Hookiyar Singh v. Special Land Acquisition Officer, Moradabad AIR 1996 SUPREME

Section 24: Matters to be neglected in determining compensation:-But the Court shall not take into consideration---

First, the degree of urgency which has led to the acquisition;

Secondly, any disinclination of the person interested to part with the land acquired;

Thirdly, any damage sustained by him, if caused by a private person, would not render such persons liable to a suit;

Fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquires will be put; or

Seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the {Subs, by Act 38 of 1923, s.8, for "declaration under s.6."} [Notification under section4, sub-section (1)].

Section 18: Reference to Court:-(1) Any person interested who has not accepted the award may, be written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appropriate of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Section 25: Rules as to amount of compensation:-(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

ABBREVIATIONS

LA Act: Land Acquisition Act

LAC: Land Acquisition Collector

ADJ: Additional District Judge

HC: High Court

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