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Designing A Fair Approach to The Compulsory Acquisition of Private Land for Public Purposes

Evidence from Australia, India, and the United Kingdom

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ABSTRACT

*The value of land has been long acknowledged by economists for its multifaceted utilities, both monetisable and non-monetisable. Considering the import role of land in the welfare of the society and individuals, the process of distribution of rights to use, own, and dispose land has been carefully designed under the guidance of theories of distributive justice. An example of such a complex distribution of rights among conflicting interest groups is the power of the state to compulsorily acquire private property for public projects that are intended to maximize social welfare. Despite its strong theoretical underpinning in the distributive theory of utility that encourages social welfare maximisation, the contemporary process of compulsory acquisition is often disputed for resulting in uneven distribution of burdens and benefits, more specifically for putting an extra burden on the original landowners. This research re-examines the utilitarian approach to valuing land and finds that oversimplified application of the theory has equated 'utility' to 'income' generated from land or its market value, thus excluding two crucial aspects of land value: firstly the economic value of non-monetisable utilities, such as the positive effect of inheritance on the wellbeing of future generations; and secondly the monetary value of those utilities that are monetisable in the future and are yet non-observable in present time, such as the futuristic development potential of the land. Taking motivation from the problem of unfair compensation to the affected landowners whose land is compulsorily acquired, **this research aimed at informing the design of a fair mechanism of compulsory acquisition.***

This objective was achieved in two stages: firstly by designing a fair process, using which all stakeholders can be granted equal power to negotiate and the outcomes are jointly constructed for the affected landowners and the society at large; and secondly, by designing a fair compensation strategy that encompasses the full range of utilities and functions generated by land. To achieve these two objectives, this research took inspiration from the theory of procedural fairness and the theory of distributive justice respectively and analysed the process and compensation strategies in three Commonwealth countries, which are Australia, India, and the United Kingdom.

Research objective 1: Designing a fair process

In 1978, John Thibaut and Laurens Walker proposed the theory of procedural fairness which recommends balanced distribution of control on the process of decision making among multiple stakeholders (or disputants). Thibaut and Walker (1978) proved that for just allocation of resources the process of decision formation must be fair. In 1980, Gerald S. Leventhal proposed six criteria of fair process, which he called 'justice rules.' These are – consistency rule; bias-suppression rule; accuracy rule; correctability rule; representativeness rule; and ethicality rule, which formed the basis for analysing the process of compulsory acquisition in the three countries. Major gaps identified in the process of compulsory acquisition in these countries were the following:

1. Poor involvement of the people (including affected landowners) in project planning and design;
2. Poor accountability of the acquiring agency and its agents –
 - a. to address or provide reasoning for objections and suggestions made by the people;
 - b. for timelines for compulsory acquisition and project completion;
3. Lack of neutrality in the assessment of objections and suggestions invited from the larger public;
4. Imbalance in the negotiation power (arising out of imbalance in financial and information resources) between the affected landowners and the acquiring agency;
5. The legal process of compensation negotiation requires time, effort, and resources;
6. No fair consideration for stress and time lost in the process which is not of landowners' choosing;
7. No penalty for delays in the payment of compensation;
8. Poor transparency and information sharing;
9. Lack of consistency of government's support to the project;
10. The poor mechanism for bias-suppression resulting in 'favouritism' and 'regulatory capture';
11. Poor correctability and inefficient grievance management; and
12. Lack of benevolence and humanitarian approach towards the affected landowners.

Based on the analysis of the process of compulsory acquisition in the three countries and the best practices; suggestions provided by the affected landowners, their agents, and experts in each country; and review of suggestions provided by the Scottish Law Commission, a summary of suggestions for improvements and best practices is presented in the Table 1 below.

Table 1: Suggestions for improvement of the process and best practices of compulsory acquisition from Australia, India, and the United Kingdom

Suggestions for improvement of the process and best practices	Reference
Improving the involvement of the people in project planning and design, through:	Scottish laws;
• holding public consultations and meetings on the project proposal, design, location, and other details;	Localism Act 2011 (England)
• providing opportunities for cross-examination of parties involved in the project;	
• giving decision-making power to the community.	
Demonstration of the public purpose of the project and justifying the use of compulsory acquisition at the lowest tier of government (urban and rural local governance bodies) in the project affected area.	Indian laws
Necessary to have the consent of at least 70-80 percent affected families for acquiring land for public projects where private partners are involved.	Indian laws
Having an independent body for the assessment of social impacts of the project on local communities.	Indian laws
Having an independent body for the assessment of objections raised by the people to the preliminary notification to the acquisition, and for confirming the acquisition notice.	Suggestion by the Scottish Law Commission
Allowing people to challenge the Government's decision of overruling their objections to the preliminary notification and making the Government accountable to the Parliament.	Australian laws
Determination of compensation amount by an independent and neutral agency.	Australian and Scottish laws
Providing full information on the components of compensation and valuation report of the subject property.	Australian laws
Considering non-monetary forms of compensation such as providing help in finding an alternative property, changing school for children.	Practised in Australia
Judicial reviews on compensation to be performed by an independent legal agency having experts from law and property (called the Lands Tribunal).	Scottish laws

Affordable and (relatively) informal opportunities for negotiation and dispute resolution in the shadow of the Tribunal/Court, such as through arbitration, mediation, and Administrative Appeals Tribunal.	Australian laws/ Suggestion by the Scottish Law Commission
Making arrangements for rehabilitation and resettlement of the affected families wherever mass displacement is caused due to the compulsory acquisition of land.	Indian laws
Providing compensation for non-owners of the land who are dependents on land for livelihood.	Indian laws
Providing compensation for the negative impact of the project on the property value (or blight).	Scottish laws
Considering the loss of 'hope value' for the future development potential of land (for which planning permission is not obtained but could have been obtained in the near future).	Scottish laws
Improving the accountability of the acquirer by –	Suggestion provided by the affected landowners; Scottish Law Commission
necessitating written reasoning for overruling objections raised by the people at different stages of the project;	
charging penalty interest rate, over and above base rate, for delays in payment.	
Designing appropriate compensation strategies for satisfactory reinstatement of non-financial functions derived from the land.	Researcher's suggestion.
Improving financial compensation strategies to include the loss of future development potential of the land.	Researcher's suggestion.

Research objective 2: Designing a fair compensation

To achieve the second objective concerning fair compensation, this research took inspiration from Amartya Sen's 'capability approach'. Sen's theory equates the value of land to the economic value of useful functions generated by the land. This should include financial and non-financial functions of land, which contribute to the wellbeing of the landowner. Fair compensation is redefined by this research to mean satisfactory reconstruction or replacement of valuable functions for each affected landowner. To design a fair compensation mechanism, it was, therefore, necessary to identify fundamental functionings of land, and then to understand how these can be operationalised in the compensation mechanism?

Identification of the functionings offered by land has been the most important and challenging part of this research and the most valuable contribution. For understanding the nature of functionings derived from land this research relied on the owners of land who have experienced the compulsory acquisition of their land. Alongside this,

researchers working in the related areas have also informed these findings. There is an ample store of knowledge in the secondary literature on the importance of land ownership. Using the above-mentioned sources of information nine broad functionings of land have been identified in this research. These ‘fundamental functionings’ are considered valuable to landowners across the globe and are summarised in broad categories in Table 2 below. It is acknowledged that although these fundamental functionings have the ability to inform many systems, they do not cover all contexts, for example, all indigenous communities.

Table 2: Fundamental functionings of land

I. Secure means to basic ends	Livelihood security
	Security of physical space and protection against eviction and relocation
	Financial security
II. Self-identity	Self-identity with possessions as memorabilia
	Self-identity in social status
	Self-identity with the personalisation of the place of occupancy
	Self-identity with property in which one has invested labour
	Self-identity as a part of the territorial identity
III. Social capital	Formal and informal relationship building
	Ownership as a socio-cultural requirement
IV. Social equity and empowerment	Empowerment for weaker sections of the society
	Empowerment for the weaker gender
V. Familial wellbeing	Interpersonal relationship building
	Security for future generations (bequest)
	The wealth effect of land and property on households' wellbeing
VI. Power to make decisions on land matters	Control over one's physical environment
	Decision-making power on the use of the property
	Involvement and influence on matters that can cause externalities
	Power to exclude others
	Neighbourhood building and place-making

VII. Political empowerment	To be able to put forward one's opinion without any suppression or fear
VIII. Personal comfort and convenience	Suitability of property and location for oneself
	Acquaintance with physical space and environment developed over time
IX. Psychological wellbeing	Feeling of psychological calmness
	The sense of achievement and proud
	Dignity and self-respect
	Intrinsic, extrinsic and contributory value

Operationalisation of these functionings in the compensation mechanism would require a combination of monetary and non-monetary strategies. As a demonstration of how some objectively measurable functionings can be assessed and operationalised, this research used empirical evidence from India to identify the economic value of a crucial financial functionings, which is the future development potential of the land. In the Indian case-study, improvement in the development potential of the land is interpreted in terms of improvement in land-use, and it is found that agricultural land on the urban fringes of Bengaluru has a very high potential for development. In monetary terms, the development potential of agricultural land is 192 percent if its use improves to residential and is 288 percent if improved to apartment use. The takeaway point is that the development potential of land improves over time and is partially captured in the market value to the extent it is observable in the present time. Whereas a landowners' losses are not confined to only observable potential in the present time and they are deprived of future benefits from the development potentials that are unobservable in the present time.

Using the theoretical framework of functionings of land it has become possible to explain that there is more financial loss than just the market value of the land because the affected landowners lose the unobservable development potential of land when the land is compulsorily acquired.

DECLARATION

I declare that the thesis comprises only my original work towards the Doctor of Philosophy except where indicated in the preface. Due acknowledgement has been made in the text to all other material used. The thesis is fewer than the maximum word limit in length, exclusive of tables, maps, bibliographies and annexures.

- Jyoti Rao

PREFACE

Table below describes the publication status of all chapters and the contributions of all persons involved in any multi-authored publications included in the thesis.

Chapter	Publication Status	Contributions
Chapter 1 - Introduction	Unpublished material not submitted for publication	
Chapter 2 – Literature Review	Published by Palgrave MacMillan in 2018 (refer to publication 2)	Jyoti Rao – 100%
Chapter 3 – Research Design	Unpublished material not submitted for publication	
Chapter 4 - Analysing the process of compulsory acquisition of land through the lens of procedural fairness: Evidence from Scotland	Published in the 'Journal of Property Research' in 2020 (refer to publication 7)	Jyoti Rao – 70% Norman Hutchison – 15% Piyush Tiwari – 15%
Chapter 5 - Analysing the process of compulsory acquisition of land through the lens of procedural fairness: Evidence from India	Submitted for publication to the 'Journal of Property Research'.	Jyoti Rao – 100%
Chapter 6 - Stakeholder interaction analysis of the process of compulsory acquisition of land: Evidence from Australia	Published in the journal of 'Property Management' in 2018 (refer to publication 4)	Jyoti Rao – 70% Piyush Tiwari – 15% Norman Hutchison – 15%
Chapter 7 - Fundamental Functionings of Landowners: Understanding the relationship between land ownership and wellbeing through the lens of 'capability'	Published in the journal of 'Land Use Policy' in 2018 (refer to publication 3)	Jyoti Rao – 100%
Chapter 8 - Contextualising Fundamental Functionings: Evidence of the functionings of land identified by affected landowners in India	Published in the journal of 'Land Use Policy' in 2019 (refer to publication 5)	Jyoti Rao – 100%
Chapter 9 - Contextualising Fundamental Functionings: Evidence of the functionings of land identified by affected landowners in Scotland	Published in the 'Journal of Property Research' in 2017 (refer to publication 1)	Jyoti Rao – 70% Piyush Tiwari – 15% Norman Hutchison – 15%
Chapter 10 - Estimating the Value of Functionings for Landowners Whose Lands are Compulsorily Acquired: Evidence from Bengaluru, India	Published in ADBI Working Paper Series in 2019 (refer to publication 6).	Jyoti Rao – 100%
Chapter 11 - Conclusion	Unpublished material not submitted for publication	

List of publications reused partially or fully in this thesis is as following:

1. Rao, J., Tiwari, P., & Hutchison, N. E. (2017). Capability approach to compulsory purchase compensation: evidence of the functionings of land identified by affected landowners in Scotland. *Journal of Property Research*, 34(3), 305-324.
2. Rao, J. (2018). *Functionings of Land: Analysing Compulsory Acquisition Cases from Scotland*. Singapore: Palgrave MacMillan.
3. Rao, J. (2018). Fundamental Functionings of Landowners: Understanding the relationship between land ownership and wellbeing through the lens of 'capability'. *Land Use Policy*, 72, 74-84.
4. Rao, J., Tiwari, P., & Hutchison, N. (2018). No way to say "no": Stakeholder analysis for compulsory purchase for public infrastructure project in Australia. *Property Management*, 36(1), 37-66.
5. Rao, J. (2019). A 'capability approach' to understanding losses arising out of the compulsory acquisition of land in India. *Land Use Policy*, 82(2019), 70-84.
6. Rao, J. (2019). Designing Fair Compensation for Compulsory Acquisition of Land: Empirical Estimation of Hope Value, Blight, and the Negative Impact of Landowners' Caste on the Value of Land in Bengaluru (India). *ADB Working Paper 1047*. Tokyo: Asian Development Bank Institute. Available: <https://www.adb.org/publications/designing-fair-compensation-compulsory-acquisition-land-india>
7. Rao, J., Hutchison, N., Tiwari, P. (2020), Analysing the process of compulsory acquisition of land through the lens of procedural fairness: evidence from Scotland, *Journal of Property Research*, 37:1, 62-84, DOI: 10.1080/09599916.2020.1713859

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CHAPTER 1. INTRODUCTION

1.1 RESEARCH MOTIVATION, AIMS, AND OBJECTIVES

The sentiment of one of the greatest American writers of the nineteenth century, Mark Twain that “Buy land, they are not making it anymore” (Brennan (Ed.), 2014), is much more than merely a cliché and reflects the centrality of land to an individual’s life. The issue of use, distribution and ownership of land has generated considerable debate across nations for many centuries. By the second half of the nineteenth century, the issue that came to be known as ‘land question’ in the UK was occupying politicians and activists from all parts of beliefs and ideologies and was debated keenly inside and outside the parliament (Cragoe & Readman, 2010). The issue under debate was the ‘land reform’ as the ownership of land, which was largely concentrated in the hands of few landlords had resulted in weakened tenancy rights for the peasantry. The land question has continued to occupy prominent political agenda in almost every part of the world. For instance, India embarked on its land reform agenda soon after independence and initiated major land redistribution program. This, of course, involved the state’s compulsory acquisition of private land from large landowners for distribution among peasants who had no landholding of their own. In recent times, South Africa has been pursuing a major land reforms agenda for redistributing land to those who were dispossessed of their land during colonisation (Ntsebeza, 2010).

It has been argued in the development economics literature that the essence of land reform, which is the redistribution of land and ownership rights to the peasants, helps in achieving social equity, enhances land productivity, and overcomes distortions in the operation of land markets arising from imperfect property rights (Ghatak, 2012; Shaban, 1987). Mainstream economics explains that when private property rights are well established and costlessly enforced then markets are more competitive. A prominent advocate of well-established and fully functioning property rights, Hernando de Soto, in his books, ‘*The Other Path*’, and ‘*The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*’, argues the importance of private property rights in

enhancing owner's prosperity (Soto, 1989; 2003). De Soto in fact, goes a step further and says that to achieve secure property rights, a country must establish a written legal system of property titles (Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, 2003). In summary private property rights stimulate entrepreneurship, capital accumulation and investment, and other market activities which are necessary for economic development (Williamson & Kerekes, 2011).

While secure private property rights have been viewed as necessary for economic development (Williamson & Kerekes, 2011), these 'private' rights come under tension when the state requires land for pursuing 'collective' social, economic and developmental objectives, which market mechanisms are unable to secure. There are many public goods which if left to markets would be underprovided (McDonald & Ruiters, 2005). Market failure in the provision of such goods has been a justification for government intervention in the form of compulsory acquisition (ibid). Also, the state's intervention in land markets can help in achieving a balance between economic, social and cultural benefits and in guiding utilisation of land for more 'socially' desirable purposes (Darin-Drabkin & Darin, 1980; Whitehead, 1983; and Needham, 2006). To achieve the objectives of economic development, social equity, and social justice, which in their pursuance require land, governments have resorted to compulsory acquisition of land (Lichfield, 1980). There is almost an agreement that in countries where private property ownerships have been permitted, the state has the power to compulsorily acquire private property for public purposes (Larbi, 2004). Kaufman (2010) puts it straight by saying that "taking the power (of compulsory land acquisition) away from government is no more possible than doing away with government itself" (p. 77). It is asserted here that public projects are necessary as these have the potential to lift millions out of poverty, and it is recognised that procuring land for such projects whose scale is large through market mechanisms is difficult. In these circumstances' procurement of land through compulsory acquisition powers of the state is inevitable.

Over the years, the negative consequences of compulsory acquisition of land have been so large that countries are seeking to establish alternative ways of land procurement,

such as land readjustment¹. It may, however, be emphasised that land readjustment does not overcome the integral issue of compulsion in land acquisition though it 'arguably' has better mechanisms for negotiation and participation of landowners. Also, such alternative methods of land procurement have limited applicability because these often rely on post-project returns, which may not always be possible, for example in public projects which generate negative externalities with little or no monetary profits, such as the sewage treatment plants. Therefore, it is acknowledged that compulsory acquisition of land shall continue to be a powerful instrument for land procurement in the future. This necessitates improvements to this instrument. Therefore, ***this research aims at informing the design of a fair mechanism of compulsory acquisition for the affected landowners and society at large.***

An unfair mechanism of compulsory acquisition of land may entirely defeat the prime objective of maximisation of social welfare and on the contrary may cause large scale societal damages. In extreme cases, these large-scale damages may even exceed cumulative benefits anticipated from the proposed project for which the land is to be

¹ The principle behind land readjustment is that the land of private owners is 'replotted', which implies it change in location, format and area to leave part of the land for a public purpose (De Souza & Ochi, 2018). This mechanism involves 'land-for-land' swap or property rights exchange usually in the same vicinity (Tiwari P. , 2009). The general expectation is that every private landowner, whose land has been taken for public purpose, will receive better serviced 'replotted' land of higher value than his or her previous land. Value of 'replotted' land will be higher due to the positive externalities that the public amenities for which landowners pooled their land, will generate (De Souza & Ochi, 2018). The tool also involves payment of compensation particularly when the expected value gains for affected landowners are not realised (De Souza & Ochi, 2018). In countries where land readjustment has been successful such as Japan, Israel, Germany, Hong Kong, it is due to better participation of various stakeholders - public, government agency, developer, and political leadership and institutional conditions such as tightening of public purpose definition in Israel or establishing strong rights of private owners in Japan (ibid). Moreover, these countries have used land readjustment as a mechanism to procure land for urban amenities, where it is possible for affected landowners to have a residual stake in the purpose for which land was acquired.

compulsorily acquired. For example, globally about 15 million people are displaced annually due to loss of their land to the state's compulsory acquisition (Walicki & Swain, 2016). The data on displacement is scanty, but where estimates exist, they are daunting. In China, about 80 million people suffered displacement caused by development between 1950-2015. In India, about 65 million people were displaced between 1940-2005 (Walicki & Swain, 2016). On top of these, there are huge numbers of landowners whose land has been partially acquired for which estimates do not exist. Numerous academic studies from around the world have shown that such displacements have impoverished people, marginalised them and they have suffered the loss of many of their basic rights (Cernea, 2008). Another societal problem caused due to lack of public participation in the process of compulsory acquisition is the taking of private land for non-public purposes or private projects like the TATA Nano project in India (Ghatak M. , Mitra, Mookherjee, & Nath, 2013), and private golf courses in the US (Kelly, 2006). There are two prime reasons that have been identified for the above mentioned societal problems concerning the compulsory acquisition of land, firstly that the people (as opposed to the government) have very limited control on the decision-making processes at all stages of the compulsory acquisition mechanism (Vu, 2017); and secondly, there is an imbalance in the distribution of burdens and benefits arising due to the compulsory acquisition due to which the affected landowners often suffer greater losses than the compensation received (Ghatak M. , Mitra, Mookherjee, & Nath, 2013). Literature is fraught with examples of resistance and conflicts that have erupted as the benefits of development for which land is compulsorily acquired are unequally distributed (Ghatak M. , Mitra, Mookherjee, & Nath, 2013). **Thus, the objectives of this research are to construct a theoretical framework which guides the design of (i) fair process of compulsory acquisition; and (ii) fair mechanisms of compensation.**

To design a fair process of compulsory acquisition this research takes guidance from the theory of procedural fairness introduced by Thibaut & Walker (1978). Many societal level problems arising out of compulsory acquisition discussed earlier can be addressed through meaningful involvement of the people in the process of decision-making. Problems concerning compensation for the affected landowners have been addressed using Sen's 'capability approach'. Both these theories are explained in detail in Chapter

2. A short description of these theories is provided here to assist in explaining the research questions.

In 1978, Thibaut & Walker (1978) gave a formal shape to the theory of procedural justice. This theory suggests just distribution of control among disputants/stakeholders to achieve a fair outcome of the problem of allocation of resources (or distributive justice). Leventhal (1980) proposed six criteria of procedural justice, which he called 'justice rules'. These are - consistency rule; bias-suppression rule; accuracy rule; correctability rule; representativeness rule; and ethicality rule (Leventhal, 1980). Procedural fairness in compulsory acquisition should provide solutions to the problem of unfair treatment of the affected landowners, and more importantly, it should result in the co-construction of the definition of 'public purpose' thus ensuring social welfare.

Regarding designing a fair compensation for the affected landowners, this research relies on Sen's 'capability theory', as per which the wellbeing of a person can be improved by enhancing her accessibility to functionings which add to her wellbeing, as opposed to improving income and accessibility to resources. Resources like land are tools to create functionings, and thus the value of land is guided by the value of functionings which a person generates from land, that adds to her wellbeing. Compulsory acquisition of land equates to taking away these functionings, which may be both financial and non-financial. Thus, fair compensation would mean recreating or replacing these functionings for the landowner.

From the above discussions it is concluded that a fair mechanism of compulsory acquisition can be designed by, first designing a fair process of acquisition with a balanced distribution of control between the government and the people; and by designing a fair mechanism of compensation through which all valuable functionings of the affected landowner are reconstructed or replaced. **Fulfilling these objectives requires answers to the following three research questions –**

1. How can the process of compulsory acquisition be made fair for the affected landowners and the society at large?
2. What are the valuable 'functionings' of land which contribute to the wellbeing of the landowner?

3. How can these tangible and intangible losses (of functionings) be assessed and operationalised in the compensation mechanism?

1.2 CROSS-COUNTRY ANALYSIS

The aim of this research, to inform the design of a fair mechanism for compulsory acquisition of land, concerns most countries where private land ownership rights have been established. The policy imperative of a study that examines compulsory acquisition is immense across countries. Cross-country studies are useful in this context as they provide opportunities to test theories across diverse settings and in evaluating the scope and value of certain phenomena (Livingstone, 2003). There are also opportunities to learn from policy initiatives of each other (ibid).

Kohn (1989) identified four approaches to cross-country research, each characterised by their focus. These are explained below:

- The first approach studies the country, as a subject, for its own sake and the comparison only emphasises the distinctiveness of the countries studied. The purpose is to understand which country performs better rather than to draw comparative lessons (Livingstone, 2003). This approach is most useful when informing policies, as is the case with the first research question.
- In the second approach, the country is the context of the study, and the focus of the study is to test the generalisability of a theory across nations to support claims regarding its universality (ibid). The countries included in the study should have diversity along the dimension in question to be able to explore the universality of the phenomenon. This approach is adopted to find answers to the second research question that tries to identify functionings that are generalisable across countries.
- The third approach considers the country as a unit (or data point) in the analysis, and the purpose is to examine cross-nation interrelations across different dimensions or parameters of study (Livingstone, 2003).
- The fourth approach is where a country is considered as a component of a large international, transnational system. Studies which examine phenomena such as globalisation and compare countries so far as they are interrelated, use this approach (Livingstone, 2003).

The choice of countries in this thesis is based on the first and second approach of Kohn (1989) that serve the specific aims and objectives of this research. Because different jurisdictions will have different property rights and laws on the compulsory acquisition, this research chose three similar countries as the context of study (Scotland, India, and

Australia) to find the answer to the first research question. All these countries have roots in the English law, allow freehold ownership of property, exercise compulsory acquisition of land for public purpose projects only. More details on the reason for the selection of countries follow in Chapter 3. More than one country was studied to seek cross-country policy lessons. The second question involved the identification of fundamental functionings of land that are generalisable across landowners and countries. In developing a theory on functionings, a broad assemblage of eleven diverse countries was used (more details on countries are provided in Chapter 7). To test the theory in much more depth Scotland and India have been studied. Scotland and India are different in terms of their economic, social and cultural context. The third research question required contextual answers to the assessment and operationalisation of functionings in the compensation mechanism. Therefore, contextual assessment of functionings was demonstrated for one country, i.e. India (refer to Chapter 10). It is important to mention that there is also a feasibility and practicality aspect, given the scope of a PhD thesis and timeframe of PhD degree, that has guided the choice of countries.

1.3 SCOPE AND LIMITATIONS

The scope of the exercise of designing a fair mechanism of compulsory acquisition is wide, and therefore it is important to acknowledge the limitations of this research. These are mentioned below:

1. This research does not challenge the relevance of compulsory acquisition as a process of land procurement for reasons mentioned earlier in section 1.1. While there are other coercive methods of procurement of land for public projects, such as land pooling and readjustment, this research studies the method of compulsory acquisition of land only.
2. This research would define 'public projects' as those projects for which the legislature of the country allows the government to exercise the power of compulsory purchase. The model for the execution of the project may be a Public-Private Partnership or any other.
3. This research shall limit its scope to the loss of interests of landowners. Loss of interest of other stakeholders (for example dependents on land, leasee or tenants, and mortgagees) are not in the scope of this research.

4. Losses caused to neighbouring landowners due to negative externalities of the project (or blight) shall not be covered in this research.
5. This research provides a theoretical framework for designing a fair mechanism of compensation. Exact method and strategy will be context responsive and is beyond the scope of this research.
6. A comprehensive mechanism of compensation should be a combination of monetary and non-monetary strategies through which all the functionings of the affected landowners can be satisfactorily reconstructed or replaced. However, this research limits the scope to suggesting improvements to monetary compensation strategies.
7. The list of fundamental functionings sets the higher limit of functionings that shall be compensated. Different functionings will be important at different levels to the landowners, and the actual compensation should satisfactorily reinstall subjectively, valuable functionings of the landowner from among the fundamental functionings. This should avoid problems of over and under-compensation.
8. The list of fundamental functionings is derived for landowners who are freeholders of land because freehold ownership allows the largest bundle of property rights, and therefore the widest range of functionings could be identified. This list can be contextualised for other types of property tenures like leasehold, and community ownership.
9. Generalisability of the list of fundamental functionings can be improved further through a more detailed study of country-specific functionings, as done for India and Scotland in this research.

1.4 STRUCTURE OF THE THESIS

Table 1.1 below presents a summary of the discussions in each chapter. Initial chapter 1, 2 and 3 introduce the reader with the objective of this research; the theoretical framework of procedural fairness and distributive justice; and the research methodology. As mentioned earlier under section 1.1, the objective of this research is to inform the design of a fair mechanism of compulsory acquisition in two stages, firstly by overcoming problems of procedural unfairness, and secondly by designing a framework for fair compensation. Accordingly, analytical chapters (4 to 10) can be categorised in two groups which respectively cover discussions on the process of compulsory acquisition across three commonwealth countries (Chapters 4, 5, and 6) and the definition of fair compensation (Chapters 7, 8, 9, and 10). Given the lack of prior understanding of the subject the choice of undertaking a cross-cultural study was considered an effective way of gaining a deep understanding of the topic across a variety of different contexts. Therefore, Chapters 4 to 10 are developed as independent essays

with complete information on research objectives, literature, methods, and findings. Towards the end, the concluding chapter summarises the findings from across geographies and derives cross country lessons wherever possible.

Table 1.1: Structure of the thesis and summary of chapters

INTRODUCTORY CHAPTERS	Chapter 2 – Literature Review This chapter presents detailed discussions on theories of distributive justice and procedure justice based on which a fair mechanism for compulsory acquisition can be designed. Another thoroughly related discussion in this chapter is on how the approach of the polity towards ‘justice’ has influenced private property rights, compulsory acquisition and compensation. Chapter 3 - Research Design The process of the operationalisation of this research is discussed in this chapter. Beginning with the epistemological stance, this chapter explains the plan of action that will be followed to answer each of the research questions. The chapter also provides reasoning for the selection of countries that have been studied at different stages of research.
RESEARCH QUESTION 1 IS ANSWERED IN CHAPTERS 4 TO 6 – HOW CAN THE PROCESS OF COMPULSORY ACQUISITION BE MADE FAIR FOR THE AFFECTED LANDOWNERS AND THE SOCIETY AT LARGE?	Chapter 4 – Process in Scotland This chapter investigates procedural aspects of the problems of compulsory acquisition using the lens of ‘procedural fairness’. In the context of Scotland, using a primary survey of affected landowners and experts, gaps in the current mechanism of the compulsory acquisition have been identified. While the outcome of compulsory acquisition is often ‘unfair’ to those whose land is taken, it is important that the process of transition is fair and grants them the opportunity to recover their losses, both physical and emotional, to the extent possible. Chapter 5 – Process in India This chapter focusses on the compulsory land acquisition process adopted in India. Given that recently a new law has replaced the law that had been used to acquire land, both the old and new laws of the compulsory acquisition have been examined for procedural fairness on six criteria

	(discussed earlier). Also, a survey of forty-seven landowners who have been intensively involved in the process of compulsory acquisition of land for the Bangalore (Bengaluru) Mysore (Mysuru) Infrastructure Corridor project in Bengaluru, has also been analysed to identify procedural (un)fairness. Chapter 6 – Process in Australia (through the lens of interactional fairness) This chapter investigates the extent of involvement of different stakeholders, at various stages in the compulsory purchase process, using stakeholder interaction analysis. The objective of this chapter is to identify the gaps in the process of compulsory purchase of land for public projects in Australia. A survey of ten different stakeholder groups has been conducted to inquire about the level of interaction of different stakeholders at various stages of the compulsory purchase process. A comparative study has then been performed to identify the gaps between the advocated process (suggested in the literature) and the process adopted by stakeholders.
RESEARCH QUESTION 2 IS ANSWERED IN CHAPTERS 7 TO 9 – WHAT ARE THE VALUABLE ‘FUNCTIONINGS’ OF LAND WHICH CONTRIBUTE TO THE WELLBEING OF THE LANDOWNER?	Chapter 7 – Fundamental Functionings of Land The objective of this chapter is to re-examine losses of landowners in terms of the loss of functionings offered by land. This research investigates the relationship between land ownership and well-being when seen through the lens of Sen’s (1979) ‘capability approach’ and identifies fundamental functionings associated with land. It is acknowledged that although these fundamental functionings have the ability to inform many systems, they do not cover all contexts, for example, all indigenous communities. Understanding the functionings of land required an inductive approach and the primary investigation has been performed through focus group discussions with participants from eleven different countries, who are currently pursuing doctoral research at the University of Melbourne. The research resulted in a holistic list of fundamental functionings of land. Chapter 8 – Functionings of Land in India Through in-depth interview of forty-seven landowners in and around Bengaluru city, whose land is currently under notification for compulsory acquisition for the Bangalore

	(Bengaluru) Mysore (Mysuru) Infrastructure Corridor (BMIC) project, this research identifies functionings of land, which are crucial to the well-being of the landowners. Findings from this chapter pave the way towards designing a fairer mechanism of compensation through which all the valuable functionings of each affected landowner can be satisfactorily reconstructed or replaced. Chapter 10 empirically estimates the values of objective functionings. Chapter 9 – Functionings of Land in Scotland In this chapter Sen’s ‘capability approach’ is applied to understand losses suffered by landowners whose land is compulsorily acquired that extend beyond the market value of land. This research aims to identify the valuable functionings (or usefulness) of land from the perspective of the existing landowners. These functionings of financial and non- financial should be appropriately compensated from the distributive justice point of view. Qualitative Content Analysis is applied to analyse nineteen relevant case reports prepared by the Lands Tribunal for Scotland and twelve in-depth interviews with the affected landowners.
RESEARCH QUESTION 3 IS ANSWERED IN CHAPTER 10 – HOW CAN THESE FUNCTIONINGS BE ASSESSED AND OPERATIONALISED IN THE COMPENSATION MECHANISM?	Chapter 10 – Valuing Functionings Using empirical data on property transactions conducted in the Bengaluru Mysore Infrastructure Corridor (BMIC) project area and registered with sub-registrar offices in Bengaluru India during 2007-14, this chapter estimates a hedonic price model to value two important financial functionings of land, i.e. ‘hope value’ and ‘blight’. This chapter, however, limits the scope to valuing only two objectively measurable functionings due to data limitation.
CONCLUDING CHAPTER	Chapter 11: Conclusion The concluding chapter of the thesis sums up the research by summarising key findings and making concrete recommendations to achieve procedural and distributive justice in the compulsory land acquisition process.

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CHAPTER 2. LITERATURE REVIEW

This research concerns with designing a fair mechanism of compulsory acquisition of privately-owned land for a public purpose. This chapter presents the theories of distributive justice and procedural justice based on which a fair mechanism for compulsory acquisition can be designed. Compulsory acquisition mechanism can be disentangled into two parts, firstly the objectives achieved through the exercise of compulsory acquisition, which is to enhance 'social welfare'; and secondly, the procedure adopted to achieve these objectives. The first part concerning the outcomes are the subject of argument under theories of distributive justice and the second part concerning the process is dealt by procedural justice theory. These theories underpin this research and are discussed in detail in this chapter. Another thoroughly related discussion in this chapter is on how the approach of the polity towards 'justice' has influenced private property rights, compulsory acquisition and compensation.

2.1 INTRODUCTION

This research approaches the topic of compulsory acquisition through the lens of 'capability approach'. The mechanism of compulsory acquisition concerns with the question of how land should be used and distributed to maximize welfare for the society. Answers to this question are guided by the theories of distributive justice and procedural justice. Sen's 'capability approach' may not be called a complete theory of distributive justice but it certainly makes significant contributions to that part of 'distributive justice' which concerns with the question of just distribution of scarce resources (Sen, Equality of What?, The Tanner Lecture on Human Values, 1979a). Sen's theory takes the discussion on resource allocation to the next stage and argues for equality of human capabilities (and not simply resources) (Sen, Equality of What?, The Tanner Lecture on Human Values, 1979a). His theory is person-centred approach to social welfare and while criticising summative approach to social welfare it argues for enhancing social welfare through the enhancement of personal welfare of individual

members of the society. Sen's theory informs the approach of this research towards designing fair compensation for the affected landowners, and partly it also informs the process of construction of definition of 'social welfare'.

Subjective approach to welfare, as proposed by Sen (1979), would automatically require people's involvement in the process of welfare enhancement. In their theory of procedural justice Thibaut & Walker (1978) explain how just decisions on resource allocation can be formed through a balanced distribution of control of power among disputants. Even though their theory is more focused on legal dispute resolutions, the principles of dispute resolution are also a good guide for social decision-making processes involving conflicts of interests, of which compulsory acquisition is a good example. Most laws on compulsory acquisition, which govern the process of acquisition, predate the theory of procedural justice (which was formalised in 1978) and therefore it is even more important to re-examine the process on fairness criteria established by these theories.

With this background this chapter takes the discussion forward on what is Sen's capability theory and how does it inform the outcomes of compulsory acquisition for the affected landowners and for the society at large; how has the attitude of the polity been influencing private property rights, compulsory acquisition, and compensation; and what is the theory of procedural justice and how can it guide the process of compulsory acquisition?

2.2 SEN'S ARGUMENT ON EQUALITY, CAPABILITY AND FUNCTIONINGS

"Doing" things which add to one's wellness are defined as 'functionings' by Sen (1979). Also, "being" in the state of wellness is another form of 'functionings' (Sen, *Commodities and Capabilities*, 1999). By taking the example of a simple commodity like a loaf of bread, Sen (1999) explains the meaning of functioning and how is it different from merely possessing the commodity. Bread (as a commodity) can generate many functionings for the possessor, which will be explained here as the states of 'being' and 'doing', for example being well nourished; being able to get together over food; and being able to

meet demands of social conventions and festivities (Sen, *Commodities and Capabilities*, 1999). Basu & Lopez-Calva (2011) define functionings simply as anything that a person manages to be or to do, that adds to her wellness. The ability to convert commodity's characteristics into personal achievements of functionings depends on many personal and social characteristics such as in the above example, the ability to be nourished may depend upon person's body metabolism and the ability to organise social events may depend upon the social position of the person. Having access to a larger set of functionings means having greater freedom of choice and thus greater 'capability'. 'Capability' is the chosen set of functionings from among the many functionings that one has access to (Sen, *Commodities and Capabilities*, 1999). Sen's 'capability theory' argues for social equality in terms of 'capability' or freedom as opposed to resources.

Sen (1979) raises questions on the sufficiency of theories of distributive justice which are focused on 'just' allocation of scarce resources while ignoring inequality in human capability to utilize those resources (detailed discussion under section 2.6). In the context of human development and wellbeing, Sen (1979) broadens the ongoing debate on 'equality' and re-examines this concept to suggest that while just allocation of resource is important, equality of basic human capabilities is a holistic approach to 'equality'. Sen (1979a) argues that possession of resource alone does not ensure its conversion into utility and for that the personal ability of an individual to use the resource to her purpose is crucial. Sen (1999) defines capability as the set of valuable functionings (or in simple terms the usefulness derived from resources) to which an individual has access to. Wider the set of functionings which one can access, greater is the freedom of choice and capability.

An individual has value for the functions generated from using the resource and this translates into value of the resource. For example, bicycle (resource) has no value for a physically disabled person if she cannot do bicycling (functioning). This argument does not undermine the importance of resources and rather adds to the existing idea of equalising resource, the concept of equalising human capability. Having access to resources is a complementary condition to having the ability to convert resources to

usefulness. While theories of distributive justice focus on just allocation of resources and Sen advances the debate to the next level of equalising human capabilities.

To understand Sen's argument better, discussions in this chapter introduce readers to the concept of justice and distributive justice which guide political, social and economic actions of a society. Given that Sen enters into philosophical debate on adequacy of existing theories of distributive justice in terms of adherence to justice and equality, broad understanding of these concepts ('justice', 'distributive justice' and associated theories) is considered important. These discussions are also necessary because most essential elements of Sen's theory are implicitly revealed in his criticism to existing theories of distributive justice. Therefore, to better understand Sen's capability approach, preliminary introduction to theories of distributive justice is a prerequisite. These discussions will also clarify the position of Sen's theory in the broader theoretical paradigm of 'justice'. Also, as explained by Roemer (1996), discussions on theories of 'distributive justice' shall increase the philosophical tool kit available to economists and should also enrich their understanding of justice, "thereby rendering their policy evaluation and more generally their understanding of the fairness of resource allocation mechanism" (pp. 1-2). Each theory of distributive justice is criticised for omitting one or more crucial feature of justice and there is continuous development happening in this field since past two millennia (ibid). Given the long history of development of theories of justice starting from arguments of Aristotle and Plato, the capability argument by Sen (1979a) is relatively new and its operationalisation is gradually taking shape. This chapter does not attempt to review the exhaustive literature available on distributive justice and discussions are focused on Sen's capability approach. Disquisitive readers may refer to Kolm, 1996 and Roemer, 1996 for more details on modern theories of distributive theories. Also, while the chapter attempts to explain Sen's theory and its position in the existing theoretical framework, the scope of this chapter is limited to the application of Sen's theory in the context of land, with particular emphasis on the compensation for compulsory acquisition of private land for public purposes. Philosophical debate on Sen's theory are beyond the scope of this chapter.

2.3 DEFINING 'JUSTICE' AND 'DISTRIBUTIVE JUSTICE'

Guiding principles of legal, political and economic theories are founded on the moral virtues identified by great philosophers like Plato and Aristotle (refer to Houser, 2004 for more details on cardinal virtues). In classical philosophy, 'justice' was one of the four cardinal virtues of social institutions, alongside courage, temperance and prudence (Houser, 2004). Later in modern philosophy, John Rawls emphasised upon 'justice' as the "the first virtue of social institutions" (Rawls, 1972, p. 3) as it occupies the centre stage in moral, legal and political philosophy (Miller, 2017). Topic of 'justice' is essentially a part of 'social ethics' science which is concerned with answers to what should be done in the society, what is social optimum, what is right or good in society at individual level or as a group (Kolm, Modern Theories of Justice, 1996).

Miller (2007) writes that 'justice' takes different meanings in different practical contexts and many at times it is used in a way that makes it parallel or indistinguishable to the virtue of rightness. "The most plausible candidate for a core definition (of justice) comes from the Institutes of Justinian, a codification of Roman Law from the sixth century AD, where justice is defined as 'the constant and perpetual will to render to each his due'" (Miller, 2017). Although this definition is quite abstract, it throws light upon four important aspects of justice: "each" individual's claims; impartial and consistent application of rules; enforceable obligation upon every individual, group or institution to deliver what is due to others; the presence of an agent (individual, group or institution) whose "will" for justice should be harnessed (Miller, 2017). Kolm (1996) explains "justice is the ethical judgement about the situation of social entities, with respect to the value of its situation for each of these social entities (possibly as evaluated by the entity itself but not necessarily so a priori)" (p. 31). Here 'situation' is the object of judgement or the item that serves the preference or purpose of the justiciable, such as goods, rights, freedoms, powers, treatments, or satisfactions (ibid). Justiciable is the social entity which may be an individual, a group or an institution. "Justice is 'respectful' when it values a justiciable's situation because the justiciable values it" (Kolm, Modern Theories of Justice, 1996, p. 31). Both these definitions put significant emphasis on rights and claims of an individual, as a social entity.

The above definitions consider one justiciable at a time and the problem arises when there are more than one justiciable and “more (justice) for a justiciable implies less (justice) for another”, like in the case of distribution of scarce goods (ibid). In this particular case respectful justice arbitrates between the opposed desires of various justiciable and is defined as ‘distributive justice’. Central application of ‘distributive justice’ is in the allocation of scarce resources (including land) which evoke rival desires among social entities, which is ‘economic justice’ (ibid). Kolm (1996) explains that ‘public economics’, which concerns with the functions of the state and politics (refer to Kolm 1964 for more details on ‘public economics’), shares a lot of common ground with ‘normative economics’ and ‘economic justice’. More details on the evolution of approach of polity towards economic justice in the case of compulsory acquisition of private land is discussed under section 2.8.

Being the science of allocation of scarce resources, economics is concerned with both “how this allocation (of scarce resources) is performed and how it ‘should’ be performed” (Kolm, *Modern Theories of Justice*, 1996, p. 1). Second part of this question is ‘normative economics’ founded on principles of ‘economic justice’. While the above discussion clarifies economic justice as a part of distributive justice which in turn is a sub-section of justice, the scope of economic justice is so large that “it can also be seen as all of it (justice) since desires, interests, conditions and rivalries between them can be expressed in economic terms” (Kolm, *Modern Theories of Justice*, 1996, p. 3). For easy understanding, often the two terms (economic justice and distributive justice) are used interchangeably in economic discussions. For example, Roemer (1996) introduces theory of distributive justice as “how a society or group “should” allocate its scarce resources or product among individuals with competing needs or claims” (Roemer, 1996, p. 1).

Modern theory of justice is seen as a product of alliance between economics and philosophy (which includes ethics) (Kolm, *Modern Theories of Justice*, 1996, p. 3). In past few decade, new concepts in the theory of distributive justice have been introduced and despite the challenges in their economic analysis, these theories have made significant contribution in bettering understanding of what justice consists in – primary goods;

functionings and capabilities; responsibility in its various forms; procedural versus outcome justice; and 'midfare' (Roemer, 1996). Roemer (1996) writes that - "I do not, however, believe that the economist way of thinking has produced, or ever produce, important new insights into what distributive justice is" (p. 3) but certainly economic analysis of the theories of distributive justice have firmed up these theories which were otherwise too vague. In summary, it may be said that theories of distributive justice are guide to economic developments towards 'just' allocation of scarce resources, or towards economic justice in general. Given that Sen's theory argues for equalisation of human capabilities and functionings and not only resource allocation, this debate is wider than the scope of 'economic justice' and enters the domain of distributive justice. As mentioned earlier, Sen views 'equality' as a part (and not whole) of justice and does not claim 'capability theory' to be an alternate theory of distributive justice (Sen, Equality of What?, The Tanner Lecture on Human Values, 1979a). Although theoretical discussions on justice and related concepts are important to understand the nature of 'equality' argued by Sen, the scope of this chapter is limited to understanding Sen's theory and functionings of land, and philosophical arguments on the topic shall be limited.

2.4 VARIABLES OF JUSTICE

The question of 'justice' considers several types of variables (or the item, fact etc.) that are ethically relevant (Kolm, Modern Theories of Justice, 1996). When these variables define the problem or the situation of the justiciable, these are called situational variables (ibid). Depending upon whether the ethical judgement of justice is derived directly from these variables or indirectly by considering other variables, it is direct justice or indirect/derived justice respectively (ibid). Different theories of justice consider different sets of variables and depending upon whether the theory considers one or multiple kind(s) of variables, it is either pure or mixed theory of justice (ibid). Given that society is very complex formation, there is obvious criticism to the insufficiency of any theory of justice, particularly pure theory, in being a non-holistic guide to justice (Kolm 1996; Sen 1995). Instead the role of these theories is to provide "a few principles that constitute the general rules, or even merely provide the tone or

the dominant outlook” rather than to provide an exhaustive list of criteria of judgement (Kolm, *Modern Theories of Justice*, 1996, p. 34).

To define what a theory of justice means, Kolm (1996) writes “a theory of justice is a set of considerations whose conclusion is the judgement of justice in a category of problems of justice.” (p. 33). Of many judgements, only one is ‘just’ in that situation and the theory of justice provides the reasons based on which this judgement is reached (ibid). Therefore, to reach at a unique just judgement of all possible alternative judgements, clear reasoning is essential. “A theory of justice is the more successful the less it rests on ‘intuitions’, sentiments, and a priori judgements, and the more it rests on reason proofs, and clear and explicit statements about the underlying conception of man and of society” (Kolm, *Modern Theories of Justice*, 1996, p. 33). These reasons are derived from the theory of justice and the set of variables which this theory considers ethically relevant. Many theories of justice consider ‘equality’ (in some form) as the core of justice. Kolm (1991) explains many reasons why equality is a strong rational variable for justice. The type of equality or the nature of variables under consideration is the crucial difference between these theories of justice (Kolm, 1996).

2.5 EQUALITY OF WHAT?

Primary issue of distributive and economic justice is around allocation of the benefits arising from human resources or individuals’ capacities (Kolm, 1996). Human capacity is an integral part of self and every individual is entitled to the capacities allocated to him by “nature²” (ibid). However, it may be argued that there are certain capacities that are provided naturally (say by genetic abilities) whereas many other capacities are acquired from others, including friends, family, and the social environment, through education, training, and culture (ibid). It is important to note the distinction between natural capacities and acquired capacities because natural inequalities are non-removable

² This argument is “a secularised version of a theological argument” (Kolm, 1996, p. 55)

(except in a limited way with the help of medical science), while inequality of acquired capacities may be addressed. Inequality of human capability is examined in detail by Sen's under his 'capability' theory which argues for establishing equality of basic human capabilities.

Returning to the discussion on just allocation of the benefits arising from human resources or individuals' capacities, it is noticeable that in aiming for just allocation of benefits, the inequality of human capacities is admitted by default. Kolm (1996) explains that human capacities are integral part of self and cannot be transferred but the benefits from these capacities can be transferred and "all capacities can be more or less compensated for by other allocations" (Kolm, 1996, p. 54). Kolm (1996) explains that theories of justice approach equality in two ways, firstly, equality of benefits derived from capacities (equal means-freedom); secondly, equality of liberty to use one's capacities (equal process-freedom, with roots in 'natural rights') (refer to Kolm 1996 for more details). Often these two approaches are presented as antimony between 'equality' and liberty' (ibid). However, Kolm (1996) and Sen (1995) argue that both these approaches are essentially aiming to achieve equality, although in different spaces, which is equal means-freedom and equal process-freedom.

Kolm (1996) introduces three polar simple theories of justice which span the space of individualistic theories of justice based on their stand on endorsing or rejecting natural capacities to produce or consume respectively (for more details refer to Table 3.1, Kolm, 1996, p. 58). Ideals for the three polar theories are (i) Process-freedom endorses natural capacities to produce and consume. This is the basis of liberalism theories which include arguments by John Locke and Nozick (Kolm, 1996); (ii) Equal income or consumptions argument endorses natural capacity to consume and suggests equalisation of productive capacity. This forms the basis of egalitarianism argument of consumption goods by Tobin 1970; primary goods by Rawls, 1971; resources by Dworkin, 1983 (ibid); and (iii) Equal satisfaction argument as per which both productive and consumption capacities are equalised. This is the founding principle of utilitarianism theory of which Jeremy Bentham's theory is most popular (ibid) (refer to section 2.6 for detailed discussion on

Bentham's utilitarianism). However, each of these polar views are criticised for omitting one or more crucial feature of justice and there is general criticism for insufficiency.

On similar lines of classification, Miller (2017) discusses three ways in which 'justice' has been understood by philosophers: utilitarianism, contractarianism (including libertarianism) and egalitarianism. In Miller's (2017) view, utilitarianism may be interpreted as "a normative theory whose aim is to supply a criterion – the greatest happiness for the greatest number principle – that can be used, directly or indirectly, both by individuals and by institutions (such as states) in deciding what to do, rather than simply as a tool for evaluating states of affairs." While discussing the shortcomings of utilitarianism and the challenges in reconciling utility and justice, philosophers returned to social contract theories and revived contractarianism as a better approach to justice (Miller, 2017). Miller (2017) explains that "the idea here is not that people actually have entered a contract to establish justice, or that they should proceed to do so, but that we can understand justice better by asking the question: what principles to govern their institutions, practices and personal behaviour would people choose to adopt if they all had to agree on them in advance? The contract, in other words, is hypothetical; but the search for agreement is meant to ensure that the principles chosen would, when implemented, not lead to outcomes that people could not accept." (Miller, 2017). Among many different models of deriving social contracts the most popular are the ones proposed by John Rawls (1972, 1993, 2001), Gauthier (1986), and Scanlon (1998). Miller (2017) further explains egalitarianism as the approach that identifies justice with equality. In recent decades, many philosophers, for example Cohen (1989), Dworkin (2000), Sen (1979a), have argued for competing answers to the question "what kind of equality does justice require?". Egalitarian theories invite criticism for narrow interpretation of justice as equality (Miller, 2017).

Sen (1995) argues that although normative theories of social arrangement, discussed above, are often interpreted as ideologically different or opposite, these are similar in terms of their demand for equality, though each argue for equality in a different space. And therefore, 'equality' is the common feature across all these theories. It is easy to identify 'equality' component of 'pro-equality' theories of which popular examples are

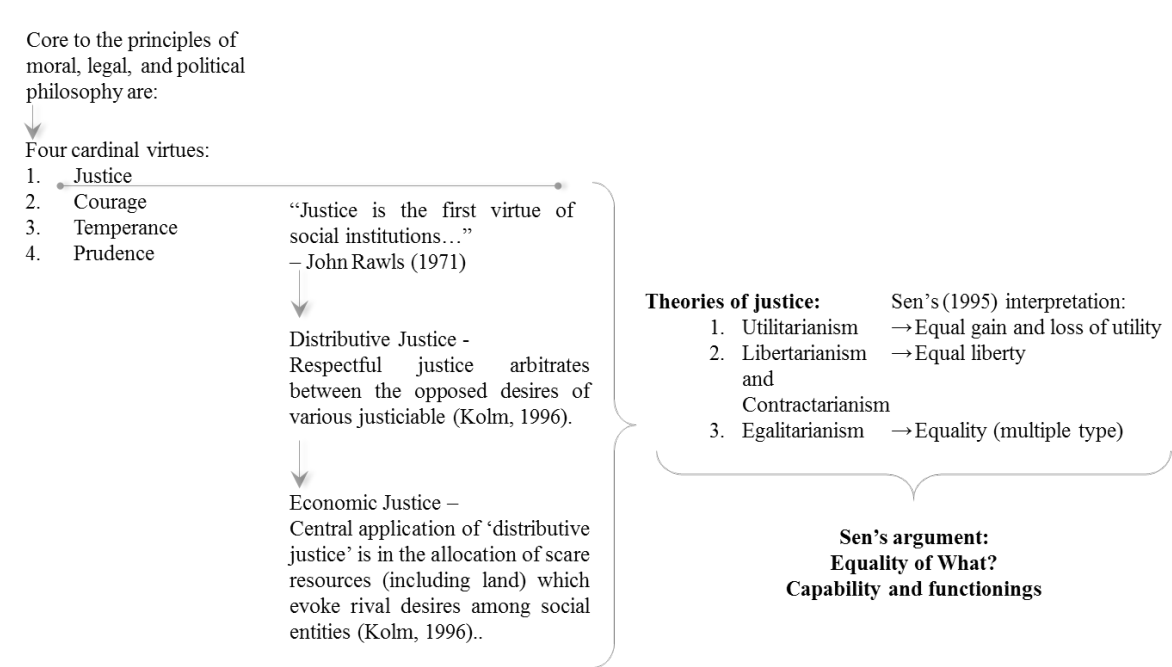
John Rawls's theory of equal liberty and distribution of primary goods; Ronald Dworkin's theory of equality in treatment and resources; Thomas Nagel's theory of economic equality; and Thomas Scanlon's theory of 'equality' (Sen, 1995). In addition to these, Sen (1995) identifies 'equality' in theories that have disputed it, such as the libertarian and the utilitarian theory (as discussed above). In Sen's (1995) view, Robert Nozick libertarian theory demands equality of libertarian rights and James Buchanan indirectly demands for equal legal and political treatment in his theory of good society. Utilitarian theories certainly don't demand equality in very direct sense, but a latent egalitarian component is identified by Sen (1995) in the form of equality of gain or loss of utilities at the individual level (refer to Figure 2.1). He further supports his argument by explaining the fundamental nature of objective function of utility in which same importance is attached to the utilities of each individual and "this coupled with maximisation format guarantees that everyone's utility gains get the same weight in maximisation exercise" (Sen, 1995, p. 14). In summary, Sen (1995) finds egalitarianism to be closely related to the foundational principal of utilitarianism of "giving equal weight to the equal interests of all the parties" (Hare, 1981, p. 26). Although the commonality across multiple theories, as argued by Sen (1995), is in the demand for equality, these theories demand different type of equality. The bigger question raised by Sen (1979a; 1995) thus concerns the unknown space in which equality "should" be demanded - "equality of what?".

While criticising utilitarianism and Rawlism as inadequate measures of equality (details discussed under following sections), Sen (1979a) proposes the concept of 'basic capability equality' as an answer to his question - "equality of what?". Sen (1979a) explains 'basic capability' as a natural extension of Rawls's concern with primary goods (as will be discussed later), although with focus on what good do to people rather than on goods itself (Sen, 1979a, pp. 218-19). Returning to the earlier discussion on human capacities, Sen's theory argues for equalising human capacities.

Probably because of its strong emphasis on 'equality', capability theory, as per Claassen (2015), is classified under egalitarianism. On the contrary, Arneson (2006) links it with liberalism and writes that "the issues of capability versus functioning as the proper

measure of people’s condition for a theory of justice goes to the heart of liberalism, regarded as a philosophy of individual freedom for modern times” (p. 17). Without taking side of any existing theories, Sen (1995) suggests that the answer to the question on “equality of what” shall serve as the basis for classification of different ethical theories of social arrangements. Sen (1979a) admits that the concept of ‘basic capability equality’ cannot be the sole guide to moral good and rather it is a “partial guide to the part of moral goodness that is associated with the idea of equality” (Sen, 1979a, p. 220). Arneson (2006) further clarifies Sen’s position and states that Sen has avoided commitment to a theory of justice and is rather sceptic on the existence of an adequate theory. It is important to mention that capability approach has been further developed into more specific normative theories, such as (partial) theories of social justice or accounts of development ethics (Robeyns, 2016). However, the original theory of capability and functioning, proposed by Sen (1979a), is neither claimed as an alternate theory of justice nor as a subset of any existing theories (refer Figure 2.1).

Figure 2.1: Positioning ‘capability and functionings’ in the theoretical framework



Source: (Rao, Functionings of Land: Analysing Compulsory Acquisition Cases from Scotland, 2018, p. 17)

That said, Sen's theory broadens the discussion on equality to include human capability, which is otherwise a serious omission in the earlier theories. Discussion on whether Sen's theory is an alternate theory of justice or other philosophical discussions on Sen's theory are beyond the scope of this chapter (as mentioned earlier).

2.6 SEN'S CRITICISM TO UTILITARIANISM

Human welfare (or wellbeing), as the objective of just societies, is the essence of philosophical discussions. However, there exists no consensus on the theoretical conceptualisation and empirical measurements of welfare (Kuklys, 2005) (see also Adler, 2011, for different approaches to welfare), and traditional economics adopt utilitarianism theory of justice and identifies welfare with the goods and services the person possesses or consumes and the 'utility' that the person gets from consumption (Basu & Lopez-Calva, 2011; Kuklys, 2005). Pigou (1938) found that welfare could be a "thing of very wide range" (p. 10) and therefore suggested limiting the subject-matter of this discussion to two propositions – "first that the elements of welfare are states of consciousness and, perhaps, their relations; secondly, that welfare can be brought under the category of greater and less" (p. 10). Fulfilling both these propositions, Pigou (1938) justified equating welfare to money and explained this "part" of welfare as "economic" welfare. A societal level, economic welfare refers to the summative welfare of individual members of society (Weston & Townsend, 2009; Ng, 2003). While arguing against this over simplistic measure of social welfare, which has roots in the utilitarian theory, Sen (2003) writes that "the widely prevalent concentration on the expansion of real income and on economic growth as the characteristics of successful development can be precisely an aspect of mistake against which Kant³ had warned" (p. 41).

³ In the *Grundlegung zur Metaphysik der Sitten* (first published in 1785) Kant writes - "*So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only*" (Kant, 1889, p. 47). In this phrase Kant appreciates the existence of human life and regards

Formal theoretical structure to the utilitarian approach is provided by Bentham's utilitarian theory introduced in late eighteenth century (Mulgan, 2014). Although utilitarian ideas existed earlier but it became clearly identified as a distinct philosophical school in the late eighteenth century with the publication of works of three most prominent early utilitarians - William Paley in 1785, Jeremy Bentham in 1789, and William Godwin in 1793 (Mulgan, 2014). Among the three theories, the most popularly accepted principal of utilitarianism is the "greatest happiness principle" (Mulgan, 2014, p. 9) introduced by Jeremy Bentham. By utility, Bentham meant "the property in any object, whereby it tends to produce benefit, advantage, pleasure, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain evil or unhappiness" (Bentham 1789, as cited in Mulgan 2014, pp. 10).

Two basic principles of Bentham's utilitarian theory are described below -

1. Utilitarian theory sees welfare as the occurrence of pleasurable mental state (Mulgan, 2014).

This is contented primarily for the subjectivity of the judgement. For example, a slave may be happy but that does not mean approval of slavery. Benthamite denied this example since slavery is never voluntarily chosen or "preferred" by anyone and therefore slaves are never happy (Mulgan, 2014). It is important to note here that Bentham's interpretation of 'preferences' is associated with voluntary decision making. 'Wilfulness' is therefore considered a prerequisite to happiness.

2. The second principle emphasizes on maximising the total utility. This is best explained by the popular phrase "the greatest happiness for the greatest number" used by Francis Hutcheson in *Concerning Moral Good and Evil* (Barrow, 2015). Mulgan (2014) finds the phrase confusing and writes that this could convey contrastingly different meanings – (i) to sacrifice the unfortunate few to

an individual as a complete entity and "an end in itself" rather than as means to other ends, say income maximisation (Pigou, 1938).

the powerful many; (ii) to protect the interest of powerless many over the interest of powerful few; or (iii) if certain benefit cannot be distributed to all, then it should be distributed to at least a few.

Sen provides vigorous criticism to welfare economics (Konjovic, 2013) and explains his disagreement over the following major pillars of the 'utilitarian' model (Wells, 2016; Sen & Williams, 1982):

- i. *Consequentialism* as opposed to 'procedural fairness'– This is the theory of correct action (Sen & Williams, 1982), according to which, "actions should be assessed only in terms of the goodness or badness of their consequences" (Wells, Sen's Capability Approach, 2016). Sen criticizes this method of achieving equality and instead suggests 'comprehensive consequentialism'. Direct consideration to consequences of an action would mean that the process, by which consequences are brought about, has been ignored. Overlooking the process would also lead to ignorance of the principles of fairness and to the respect towards 'individual agency' (Wells, Sen's Capability Approach, 2016). Even though Sen does not directly provide a solution to procedural fairness, the 'capability' theory necessitates adoption of a process that is person-centred rather than outcome centred. For co-construction of just outcomes for the society at large it is important that every individual has meaningful control in the decision-making process, as discussed in section 2.9.
- ii. *Welfarism* as opposed to 'valuable functionings'– "Welfarism is the view that goodness shall be assessed only in terms of subjective utility" (Wells, Sen's Capability Approach, 2016). Sen argues that since welfarism is concerned about an individual's notion about her life, it neglects people's 'reflective valuation' and 'actual physical condition' (Wells, Sen's Capability Approach, 2016). He explains that self-perception is dependent upon the psychological state of an individual and is therefore vulnerable to adapting preferences. Meaning to say that people gradually adapt to their circumstances of material deprivation or social

injustice and may claim to be entirely satisfied without realising the difference between notional and actual/real satisfaction. Sen gives example of a cancer patient who may claim to be doing 'well', because she gets adapted to the circumstance. Therefore 'adaptive preference' of individuals blurs the distinction between what they get and what they can sensibly expect (Sen, *Commodities and Capabilities*, 1999). Sen (1999) explains how functionings overcome the problem of mental adaptation to deprivation, through a rational valuation exercise. Valuation does not necessarily imply ordinal approach and may be performed through relative comparison of a specific bundle or vector of functionings over other (Sen, *Commodities and Capabilities*, 1999). However, this requires identification of functionings, which Sen (1999) rejects, in which case the question of valuation of functionings becomes important. Though the question of what determines the value of functionings remains open (Sen, *Commodities and Capabilities*, 1999). This invites some criticism to the 'capability approach' (refer to section 2.7).

- iii. *Sum Ranking* as opposed to 'capability building'— Utilitarianism requires "simply *adding up* individual welfares or utilities to assess the consequences" (Sen & Williams, 1982, p. 4) and this property is called *sum-ranking* (Sen & Williams, 1982). This focuses on the maximisation of total welfare without regard to the pattern of distribution (Cohen, 1993; Wells, 2016). Sen (1999) writes that "it (economics) investigates how people arrange to make commodities, how they establish command over commodities, what they do with commodities and what they get out of commodities" (p. 1). The subjective approach to well-being is considered important and Sen argues that the wellbeing of an individual should be treated 'as an end', in completeness, and not merely as a module of social welfare (Basu & Kanbur, 2008). Sen, along with other liberal philosophers argues that sum-ranking approach ignores distinctions between persons and their ability to convert resources into 'welfare' (Sen & Williams, 1982; Wells, 2016). For example, a disabled person would achieve

relatively lesser level of welfare from public transport. Therefore, with the intention of maximisation of 'welfare', resources would get concentrated in the hands of those who are efficient convertors of resources into utility.

The three principles explained above aim at the maximisation of aggregate welfare of the society in totality. In mathematical terms, the Social Welfare Function (SWF) postulates social utility as the aggregate utility of all individual members of the society (Sen, 1979b). Thus, "only the ordinal properties of individual utility function are to be used in social welfare judgements" (Sen, 1979b, p. 538). As explained earlier, the summation approach overlooks the distribution of 'utility' amongst individuals. To explain this further - if 'U' is the total utility of any society constituted by, say, two individuals then the distribution of 'U' between the two are unimportant. However, there seems to be a general opinion that "the social welfare is increased whenever at least one of the individual utilities on which it depends is raised while none is reduced" (Leontief, 1966, p. 27)

John Rawls, considered an important political philosopher of the twentieth century, proposed 'justice as fairness' in his book, 'Theory of Justice' (1971). This broadened the definition of 'good life' and human 'well-being' but a formal structure to the theory could not be provided (Konjovic, 2013). 'Primary goods' were considered essential by Rawls for achievement of good life and these included (i) basic rights and liberties; (ii) freedom of movement and free choice of occupation; (iii) the powers of offices and positions of responsibility; (iv) income and wealth; and above all (v) the social bases of self-respect (Rawls, 1982) (Wenar, 2017). Rawls expressed self-respect to be "the most important primary good" (Rawls, 1972, p. 440), but Sen (1979a) finds it odd that Rawls disregards self-respect while measuring who is the least well-off person in society and rather the focus shifts towards measurable elements of income and wealth. Apart from this, Rawls's theory is constructively criticised by Sen for being ignorant of distinctions in individuals' ability to convert material resources for their usefulness (Wells, 2016; Konjovic, 2013; Basu & Lopez-Calva, 2011; Robeyns, 2008).

While traditional welfare economics associate's well-being with resources (or commodities), the 'capability approach' identifies wellbeing with the freedom of choice or accessing multiple functionings which an individual considers valuable to her life (Sen, *Commodities and Capabilities*, 1999). As per this approach, increasing access of an individual to a wider set of functionings shall enhance the capability of the individual, thus increasing her welfare (ibid). Sen replaces 'commodity' and 'utility' with 'functionings' and 'capability', respectively (Basu & Lopez-Calva, 2011). The crux of disjoints between Sen's approach and traditional welfare economics lies in the difference between "goods" and "functionings" and between "achievements (or utility)" and "freedom" (Basu & Lopez-Calva, 2011).

Sen (1993) explains that "the expression (capability) was picked to represent alternative combinations of things a person is able to do or to be – the various 'functionings' he or she can achieve" (p. 30). The term explains the actual ability of a person to achieve various valuable functionings as a part of living (Sen, 1993). Wells (2016) interprets the meaning of 'capability' and 'functionings' and explains that 'functioning' is the state of 'being or doing' such as *being* well-nourished, *doing* bicycling. 'Capability', on the other hand, is "the set of valuable functionings that a person has effective access to" (Wells, 2016). 'Functioning' should be distinguished from both (i) the good (say a bike) which is in use, and (ii) the happiness resulting from the act of using the good (Sen, *Commodities and Capabilities*, 1999). Put simply, 'capability approach' is "shifting attention from goods to what goods do to human beings" (Sen, 1979a).

The characteristics of any good remain the same for everyone who possesses the good although the ability to access different characteristics may vary given the differences in individual characteristics and circumstances (Sen, *Commodities and Capabilities*, 1999). Specifically talking about land, its characteristics are same for every landowner (operating in same property right regime) although the set of functionings generated from land are specific to each landowner, as demonstrated in the findings of Chapter 7, 8, and 9. In the case of compulsory acquisition of land, functionings lost by the affected landowners' and the value attached to each are subjective matters and fair compensation mechanism should satisfactorily reconstruct each functioning, as argued

in Chapter 7, 8, and 9. In the context of applying capability approach to human development and adoption of subjective approach to the identification of functionings, Sen (1999) warns against individuals' self-bias caused due to adaptation to personal circumstances. Adaptive preferences of individuals may lead to lower self-assessment of valuable functionings. As mentioned earlier, to overcome the problem Sen (1999) suggests identification of 'basic capabilities', that are essential for life. On similar lines, Chapter 7 identifies nine 'fundamental functionings' of land, that are valuable to the landowners across globe (Rao, 2018)).

While arguing for political principles that should underwrite constitutional guarantees, political philosopher Martha Nussbaum (2000) developed the list of ten 'central capabilities', which are life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; control over ones' environment (political and material) (see Nussbaum, 2000 for more details). These capabilities command cross-cultural consensus from across the globe. This is strong evidence that supports development of fundamental functionings of land, that set the lowest threshold of functionings of landowners. Functionings accessible through the ownership of land, as discussed in Chapter 7, shall contribute towards development of many central capabilities of Nussbaum (2000) and basic capabilities of Sen (1999). While discussing about central capabilities, Nussbaum (2000) acknowledges the importance of property as a tool of human functionings and writes that – "Land is frequently a particularly valuable source of self-definition, bargaining power, and economic sustenance ..." (p. 80). This research reinforces the importance of land as an important tool to many basic human functionings.

It may be argued that the bundle of property rights is the initial set of functionings offered by land. In the words of Barzel (1989), "property rights of individuals over assets (including land) consist of the rights, or powers to consume, obtain income from, and alienate these assets" (p. 2). Detailed inquiry of each of these rights is demanded to generate a holistic list of functionings (refer to Chapter 7). As mentioned earlier, these rights are bundled differently to create various types of property titles which grant varying levels of freedom to those who hold them. Given that absolute ownership (often

referred as freehold or fee simple) is the highest achievable form of ownership, it shall generate the 'universal set' of functionings. Any other reduced form of property title shall combine functionings to varying levels from within this universal set. This research looked at the role of absolute ownership of land on the wellbeing of an individual and identified fundamental functionings derived by an individual, through private and/or community ownership of land.

It is considered important to understand the customary meaning of compensation and the losses which are reimbursed which in turn depends upon the treatment given to private property rights by the State, as discussed in the next section.

2.7 CRITICISM TO SEN'S THEORY

"The complex, multidimensional and context-dependent nature of this approach, the lack of specificity on how these dimensions should be selected and assessed, the absence of a rigorous formalisation, a definite matrix, and a specific algorithm or index for measuring, ranking and comparing interpersonal conditions can limit the practical application of this approach" (Chiappero-Martinetti, Egdell, Hollywood, & McQuaid, 2015, p. 116) (refer to Srinivasan, 1994; Sugden, 1993; Roemer, 1996).

However, there is growing body of research that applies Sen's theory to find answer to multifaceted developmental questions (refer to Ananda, et al., 2011; Chiappero-Martinetti, 2000; Kuklys, 2005). Chiappero-Martinetti, et al. (2015) briefly outline the techniques that have been used to operationalise capability approach and these include a range of qualitative and quantitative methods, including regression analysis, multivariate data reduction techniques, scaling techniques, fuzzy-methodologies, partial ranking, super-valuation approaches, and ethnographic research. As the question of valuation remains open, there is good scope for methodological innovations in this area of research. However, this incompleteness invites criticism to Sen's theory who argues that many social and economic relations are inherently partial or incomplete (Sen, *Commodities and Capabilities*, 1999).

2.8 POLITY AND JUSTICE

An important function of the state and the polity is to guarantee 'justice' in all spheres – social, natural, economic, political or any other. Theory of justice is the guideline on which political institutions operate and depending upon the interpretation of 'justice', treatment of the State towards its citizen and private property rights shall vary. Interpretation of 'justice' varies across societies and time and accordingly the approach of political institutions towards its citizens and their property rights has evolved. This section discusses the changing approach of polity towards private property rights in the English society where the laws of compulsory acquisition are rooted (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008).

2.8.1 THE CONCEPT OF PRIVATE PROPERTY

'Compulsory purchase' is the power of the government to acquire private land for public use (Meidinger, 1980). The treatment of private property and the scope of government's power of compulsory purchase is derived from the relationship between the state and its citizens (Miceli & Segerson, 2014). This relationship is under continuous evolution and so is the approach towards compulsory purchase of private land. The following sections shall explain in more detail about the most popular political theories that relate and guide the discussions on private property rights.

Freeden (2004) defines political theory as "a guide, a corrective, and a justification for enlightened and civilised forms of organised social life and political institutions" that focus on "forms of the good life, on what is morally proper, and on the right kind of decisions" (p. 4). The political theory of Sir Robert Filmer (1588-1653, English political theorist) strongly supported the absolute monarchy, which was the most prevalent political system at that time in most parts of the world (Locke, 2003; West, 2001). Filmer's position on private property rights is represented in the 'Patriarcha' (published in 1680) (West, 2001), which states that the relation between the King and his subject is the same as that between a father and a child. This meant that within a kingdom the land belonged to the king and commoners could be granted land on his

discretion (Ashcraft, 2013). Puffendorf (1632-1694, German philosopher) calls it the “exercise of transcendental property” meaning that sovereign resumes possession of what had been previously been granted to the subject on the condition that it might again be taken back to meet the necessities of the sovereign (Mills, 1982).

John Locke (1632 – 1704, English philosopher and physician) strongly contended Filmer’s theory in the ‘Two Treatises of Government’ (published in 1690). He argues that all men have been given the earth in common and everyone has the ‘natural right’ to own land, which is a basic requirement for her survival (West, 2001).

“Though the earth and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This nobody has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then, he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, hath by this labour something annexed to it, that excludes the common right of other men” (Locke as cited in West 2001, pp. 3).

Locke’s theory explains property rights as the “natural right” that existed prior to the government (West, 2001). In contrast to Thomas Hobbes (1651) who viewed that this “state of nature” was not a “state of war”, Locke considered it dangerous to give every man the right to punish the offender and to be the executioner (West, 2001). Locke realised that man lived a vulnerable life in the state of nature where he feared, from his competitors, for his life and property and therefore the formation of societies and governments and the allocation of power to public bodies to regulate subjects is important (Nyamaka, Social contract theory of John Locke (1632-1704) in the contemporary world, 2011).

Locke accepted much of Thomas Hobbes’s social contract theory (Nyamaka, Social contract theory of John Locke (1632-1704) in the contemporary world, 2011) which is explained by (i) ‘Pactum Unionis’ – by this pact, people formed unions or societies and

agreed to respect each other and live in harmony so as to give and receive protection of life and property to and from the members of the society (Barker, 1960; Lessnoff, 1990); and (ii) 'Pactum Subjectionis' – by this pact people agreed to obey an authority and surrendered the whole or part of their freedom and rights so as to avoid conflict of interests (Barker, 1960; Lessnoff, 1990). While Locke agreed to much of Hobbes's social contract theory, he argued that the sovereignty is held by the governed and not by the government (Nyamaka, Social contract theory of John Locke (1932-1704) in the contemporary world, 2011). Therefore, if the 'authority' or 'laws' shall be found inefficient and fail to serve the purpose of general welfare of the society, the members of the society overthrow the authority for new governments and laws (Nyamaka, Social contract theory of John Locke (1932-1704) in the contemporary world, 2011).

In the modern system the term 'ownership' broadly includes three prime types of property arrangements (Waldron, 2016); (i) common property system in which resources are made available for use to all the members of the society, for example, a public park; (ii) collective property system in which the community, as a whole, decides the use of valuable resources on the basis of social interests of the members of the community; (iii) private property system in which "the property rules are organised around the idea that various contested resources are assigned to the decisional authority or particular individuals (or families or firms)" (p. 2) (see Waldron, 2016 for more details on property arrangements). For example, common goods like public parks are governed by common property rule; zoning restrictions are governed by collective property rules; and sale or mortgage decisions are governed by private property rules.

The private property, as an institution, is usually appreciated through the *consequentialists* argument, which says that "people in general are better off when a given class of resources is governed by private property regime than by any alternate system. Under the private property system, it is said that the resources will be more wisely used, or used to satisfy a wider (and perhaps more varied) set of wants than under any alternative system, so that the overall enjoyment that humans derives from a given stock of resources will be increased" (Waldron, 2016). Yet private 'ownership' usually does not imply absolute control over the resource. Honore (1961) explains that the

position of a private owner is not to be understood as a conclusive right to the exclusive use and control of the object but shall rather be seen as a bundle of rights which may vary from case to case. Nevertheless, these theories advocate the supremacy of government's stake on private land which is deemed necessary for efficient delivery of public goods, as will be discussed in the next section.

2.8.2 PUBLIC VS. PRIVATE INTERESTS

John Locke's democratic theory is often considered to be the origin of the contemporary democratic system (Shapiro, 2003). The hold of sovereignty in the hands of the people and the obligation of the government to act for the "common good" are highlighted in the eighteenth-century philosophy of democracy explained by Joseph Schumpeter (1883 – 1950, American economist and political scientist) –

"The democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will" (Schumpeter & Stiglitz, 2010, p. 225).

This definition, therefore, confirms that there exists a "common good" which can be made visible to "every normal person by means of rational argument" (Schumpeter & Stiglitz, 2010, p. 225). Therefore, all people agree in principle that there is a common will "that is exactly coterminous with the common good or interest or welfare or happiness" (Schumpeter & Stiglitz, 2010, p. 225). However, the wilfulness of landowners to compromise upon their private property rights for the purpose of "public good" is often missing. Therefore, with the obligation of the provision of public goods by the public agencies there is also the dependency upon private resources for these inputs (Burrows, Compensation for Compulsory Acquisition, 1991). Hence, the legacy of resting the power of compulsory acquisition with the government is considered important for the provision of common and public goods (Reynolds, 2010).

Benson (2008) examines the evolution of compulsory purchase in England and states that "public interest justifications for the resulting democratic arrangements that now

appear in the literature and rhetoric must be viewed as ex post rationalisations, rather than ex ante explanations of their development” (p.427). The conquest of England by the Duke of Normandy, William in 1066 marked the start of a new Normandy era in England. William (the Conqueror) confiscated virtually all land in England and granted portions of land to a few important officials in the Church and Norman vassals in exchange of monetary payments and other services. During the Normandy period, the landowners were usually dissatisfied with the recurrence of unjust behaviour of the king and their revolts and tussles were usually subdued. A noticeable revolt against King John happened in 1215 when the landlords demanded a written document which stated clearly the laws governing them. On 19th June 1215 the ‘Magna Carta’ was issued to which both the king and the barons agreed to abide by (Benson, The evolution of emonant domain - A remedy for market failure or an effort to limit government power and government failure, 2008). Magna Carta has been the major reference document since then and English land laws evolve from this document (Benson, The evolution of emonant domain - A remedy for market failure or an effort to limit government power and government failure, 2008). As per Chapter 39 of this document, “no freeman shall be taken or (and) imprisoned or disseised⁴ or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgement of his peers or (and) by the law of the land” (McKechnie, 1914, p. 375). Benson (2008) notices that there is no mention about giving compensation for lawful acquisitions of property. However, in Chapter 28 there is clear mention that “no constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.” (McKechnie, 1914, p. 329). These chapters clearly recognise the power of the King to compulsorily acquire land and provisions from common men.

⁴ “Disseised means deprived of freehold, as when a freeman was forcefully ousted from the land he possessed” (Benson, The evolution of emonant domain - A remedy for market failure or an effort to limit government power and government failure, 2008, p. 426)

Gradually, as the power of the Parliament started growing, the power of compulsory purchase changed hands moving from the King to the Parliament. In 1610 Lord Edward Coke, the chief-justice of the King's Bench, went to the extent of declaring extravagantly that "the king could not take an estate in land, either with or without compensation, because that power belonged to Parliament alone" (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008, p. 427). This declaration was hinting that even though the king owned all land under the feudal law, the Parliament assumed that the land of the realm now belonged to the Parliament and the landholders, many of whom were also the Parliamentarians, shall be their stewards (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). As early as in 1427, a statute was enacted that granted the power of compulsory acquisition of land to the commissioner of sewers of Lincoln County without the mention of compensation. Later, in the sixteenth and seventeenth century, the Parliament authorised condemnation of land for other purposes such as river improvements, roads, bridges, fortifications and large fen-drainage projects (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). Therefore, the power of condemnation has always been resting in the hands of the king and later with the Parliament but the purpose for which this power should be exercised is under continuous evolution. In the case of England, the justification of "public purpose" for giving the power of compulsory purchase in the hands of the government appears like an afterthought.

Cohen (2006) explains that the most common justification for exercising compulsory purchase is to facilitate the procurement of land in "thin markets" where land is scarce or uniquely suited to the proposed project. The price of procurement increases in this market either due to monopoly pricing by the seller who would otherwise "holdout" the property or due to increase in transaction cost that arises from hard negotiation of scarce land resource (Cohen C. E., Eminent Domain After *Kelo v City of New London*: An Argument for Banning Economic Development Takings, 2006). Alternatively, when the market is 'thick', which means that there are many suitable properties available in the

market and therefore no holdout problems, then the government is likely to purchase land rather than compulsorily acquire it. In addition to this, Miceli & Sirmans (2007) consider the requirement of the government to acquire contiguous parcels of land from multiple landowners who are driven by their opportunistic nature and strategically holdout land, thus increasing the cost of negotiation and the overall cost of the proposed project (Miceli & Sirmans, 2007). More specifically, the power of compulsory acquisition of private land for public purpose is considered necessary for facilitating certain transactions that are necessary for social welfare of the public that would not take place, or that would take place only at an inefficiently high cost (Cohen G. A., 1993).

It is difficult to strike a balance between conflicting interests of the state and the individual and the problem is well recognised by the Scottish Law Commission (2014). In its latest discussion paper on compulsory purchase, the Scottish Law Commission expresses that –

“Any developed society must establish criteria by which the public interest of society as a whole can be tested against – and, if necessary, preferred to – the interest of individual citizens. The modern statutory codes on planning are familiar examples of this. Compulsory purchase of land is another, albeit more extreme, example of the same kind. This preference of the general interest to the private interest has been recognised throughout history – subject always to the proviso that where the property of an individual is expropriated by the state, compensation should be paid, so that the individual’s loss is no more than his or her individual share in the general cost.

On the major point, as to how the balance is to be struck between the public and private interest, much will depend on the circumstances of the individual case, in the light of the applicable legislation.” (Scottish Law Commission, 2014, p. 26)

As a facilitator of economic growth, the government is expected to allocate suitable uses to all developable land so as to optimize utilisation of land which would, in turn, maximize benefits for the society in general, even though it means the restriction on individual landowner’s rights on her property (Miceli, 2011). Durham (as cited in Cohen,

p.536), argues that compulsory purchase, in theory represents “equitable compromise between the needs of the public and the rights of the individual”. This requires deeper investigation into how the meaning of public purpose is constructed in the contemporary governance in democratic societies, and how are the controls of process and outcomes distributed between the government and the governed, as discussed in section 2.9.

2.8.3 COMPENSATION AS THE OUTCOME FOR AFFECTED LANDOWNERS

The treatment given to compensation (for compulsory acquisition of private land) is very reflective of the political and economic arrangements of the time. Benson (2008) finds that the English parliament that evolved from the Curia Regis, assumed the prerogative of the King in delegating the power to seize private land. The statute of 1427 did not require compensation but later in the fifteenth and the sixteenth century, projects often required compensation (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). Stonebuck (1972) explains that the Lands Clauses Act of 1845 was the first permanent, general statute in England, on the topic of compulsory acquisition and earlier to that, the power of acquisition and the obligation to pay compensation were stated by respective acts that directed the project for which the taking would occur. The payment of compensation was more of a customary obligation rather than a constitutional mandate (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). In the case of *Attorney-General v De Keyser's Royal Hotel Ltd, 1920*, Lord Atkinson observed: “The conclusion [from the review of past practice], as I understand it, is this: that it does not appear that the Crown has ever taken for these purposes the land of the subject without paying for it, and that there is no trace of the Crown having, even in the times of the Stuarts, exercised or asserted the power or right to do so by virtue of the Royal Prerogative.” (Scottish Law Commission, 2014, p. 27). Stonebuck (1972) views the practice of paying compensation as a “constitutional principle” but fears that such a principle is only “to the extent such can exist without a constitution.” (p. 554). In ongoing discussions to improve Scottish legislature on compulsory purchase, the Scottish Law

Commission (2014) writes that “although a right to compensation can be readily inferred from the 1845 Act, it is not expressly stated. We therefore propose that the right to compensation as a result of compulsory purchase in Scots law should be expressly provided for in the new statute.” (p. 37). The right to compensation shall be deemed necessary for just treatment towards the loss of property rights of the affected landowner and, for their ‘welfare’.

It is interesting to note that even though the 1845 Act did not explicitly state the requirement of payment of compensation, it was a common practice in England until 1950s to pay ten percent higher than the estimated value of condemned property that shall account for incidental losses. Epstein (1985) explains that extra bonus can be justified on two grounds, “first, as a balm for the infringement upon autonomy brought about by any forced exchange, and second, as an effort to correct the systematic underestimation of value in the market value test.” (p. 184). An interesting justification is presented in an article in the Yale Law Journal (1957) that the need for extensive taking emerged in the first half of the nineteenth century when England was undertaking massive railroad developments. This required assembly of huge land stretches and thus acquisition could not be limited to small parcels of undeveloped private land and rather extended to big parcels that were highly developed industrial and commercial areas, thus causing more severe damages to the condemnee than ever before (The Yale Law Journal, 1957). Moreover, the land was getting acquired for the benefit of profitmaking railroads and therefore the courts were more sympathetic towards the condemnee and were generously paying for incidental losses over and above the payment of the market value (The Yale Law Journal, 1957). A more political justification is presented by Benson (2008) where he finds that until the nineteenth century, voting rights in England were limited to property owners and the parliament was primarily represented by powerful

landed aristocracy, the landholding knights and the merchants who owned homes and businesses in the town. Due to this strong representation of rich landowners in the British Parliament, who were often the original landowner as well as the beneficiary of the project proposed on such acquired lands, the compensation for land was 10 percent higher than the actual market value. As and when the voting franchise expanded to include non-landowners, the practice of awarding solatium discontinued (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). The practice of compulsory purchase was also transplanted into British colonies, including Australia and North America (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008).

Reynolds (2010) investigates the historical evolution of the concept of compulsory acquisition and observes that improvements in the political systems of countries have led to improvements to the treatment given to private property rights. The power to acquire private property is vested into the hands of public servants (trained professionals) and publicly elected representatives who are guided and regulated by an independent legal system (Reynolds, 2010). Compensation mechanism in the modern society are guided by the 'principle of equivalence' as per which 'just and fair' compensation should put back the affected landowner in the same condition as she was before acquisition (Rao, Functionings of Land: Analysing Compulsory Acquisition Cases from Scotland, 2018). The philosophical definition of "equivalence" is firmed up using economics models, which provide different answers to the question of equivalence (of what?). These answers are embedded in the theory of justice which has been under

continuous development since its inception which dates to at least two millennia (Roemer, 1996). One such theory, the utilitarianism, has been the guide to traditional economics and economists' interpretation of 'utility' has helped in the practical application of the theory. However, oversimplification of the utilitarian theory has provided very narrow solutions to the question of equivalence, by considering income or monetary wealth as the index of 'utility' and 'welfare'. If applied in the context of compulsory acquisition, utilitarian theory of justice justifies 'just' compensation as the amount equal to the monetary value of land acquired. Certainly, property value is an important component of individuals 'welfare' but is an inadequate measure of losses borne by the affected landowner. This obviously leads to providing solutions (say payment of market value of acquired land as compensation) which do not satisfy landowners' losses, thus inviting resistance to the mechanism of compulsory purchase. Basing the argument on the utilitarian theory, Blume et al. (1984) found that under certain assumptions, no compensation is also economically efficient. The model is subtler than this conclusion suggests but this result has received most attention for being unfair and unjust.

More recent discussions on compensation have looked beyond payment of market value, to include the benefits of the project in the compensation package. For instance, Niemann and Shapiro (2008) find that in limited circumstances, it is economically efficient and equitable to compensate landowners with the improved value of land post-project rather than at the market value before the project. The reason for extending compensation beyond market value is more often concerned with just redistribution of benefits than 'just compensation' for losses (Knetsch, 1983).

The solution to just compensation must require just assessment of losses in the first place. Sen's capability theory provides reasons for considering current and futuristic financial and non-financial losses (assessed in the form of functionings of land that contribute to the wellbeing of the affected landowner) in the compensation package. More discussions on the nature of functionings of land happen in Chapter 7, 8, and 9.

2.9 PROCEDURAL JUSTICE

Most debates on the matter of distribution have been centered around land. While compulsory acquisition of private land is justified on grounds of social welfare enhancement, it is important that the decision to develop and use land, for social benefit are not performed autocratically, as is the case with compulsory acquisition exercise. Timely completion process of acquisition is the most common justification used for bypassing essential fairness criteria in the process of compulsory acquisition. However, timeliness at the cost of fairness is hardly appreciated and there is ample evidence of disputes over the matters of compulsory acquisition arising due to unfair outcomes or uneven distribution of outcomes achieved at the end (Vu, 2017). Sen's 'capability approach' to welfare argues for equality of capabilities, and a pre-requisite to this will be to give meaningful control to every individual in the decision-making processes concerning social welfare objectives. Thus, the process of compulsory acquisition, as a process concerning social welfare, requires re-examination and modification to ensure that social objectives are jointly constructed and operationalised. With this background discussion on the relevance of theory of procedural justice to this research, this section presents the theory in this section.

The opportunity to put forward one's views and safeguard one's interests is crucial to fairness of process of distribution (Thibaut & Walker, *Procedural justice : a psychological analysis*, 1975). Though the discussions of procedural fairness may be traced to Aristotelian writings, it was not until 1978 that a formal 'theory of procedural justice' was proposed by Thibaut & Walker (1978). Their idea was to develop a general theory

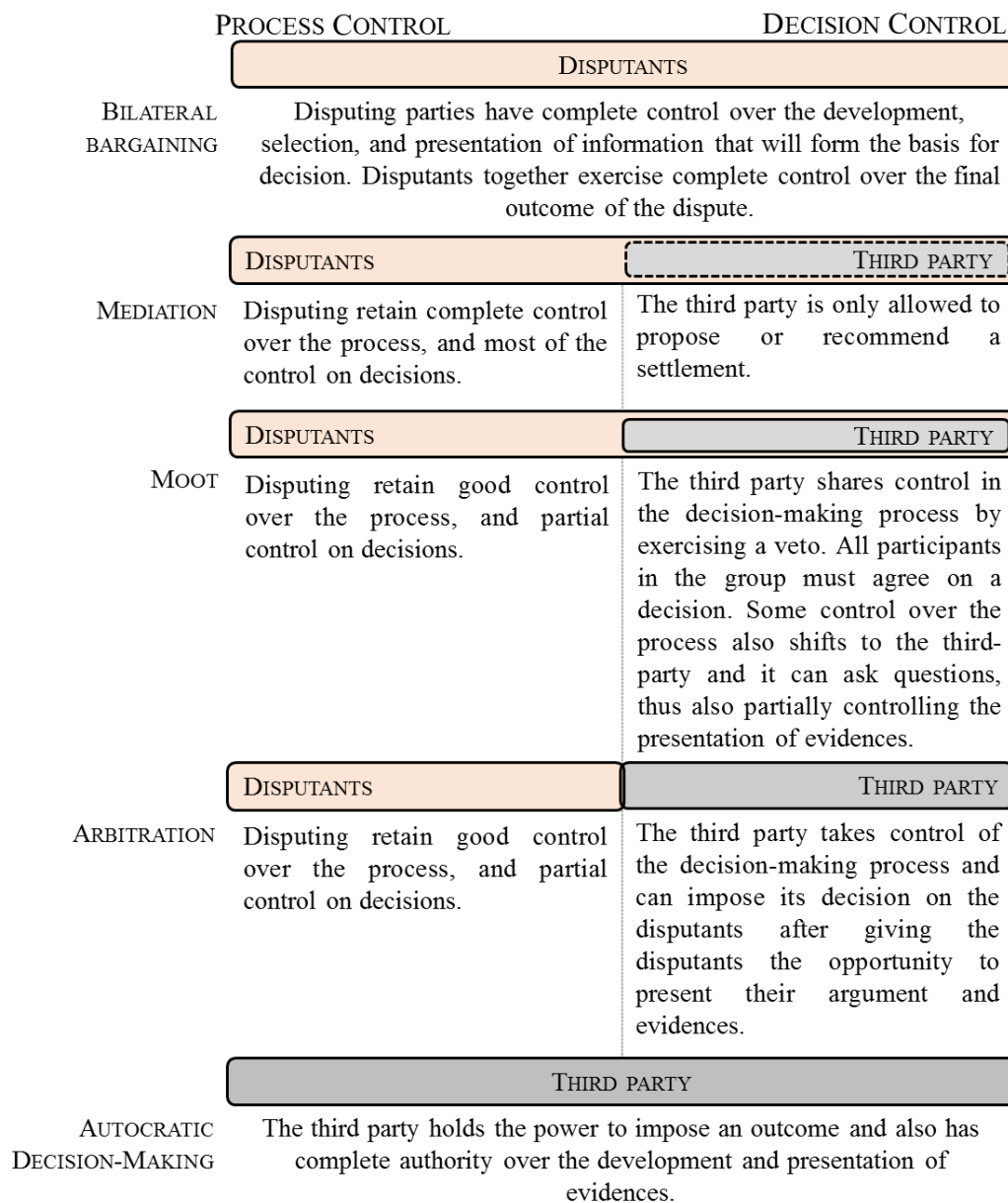
of procedure for resolving conflicts, mostly concerning legal dispute resolution (Thibaut & Walker, *A Theory of Procedure*, 1978). Having worked on procedural issues in conflict resolution on a diverse range of project, Thibaut & Walker had developed a comprehensive body of literature and felt the need to propose a general theory of procedure. Thibaut & Walker (1978) clarified their position on the dichotomies of “truth” finding and “justice”, the two objectives of the exercise of dispute resolution, that their interest lies in the later. They explain that depending upon the type of conflict involved, the objective of the process of dispute resolution may either be to find the “truth” or to do “justice” in terms of distribution of outcomes (Thibaut & Walker, *A Theory of Procedure*, 1978). For instance, “in conflicts about the most accurate view of reality, such as scientific disputes, the objective is to determine the truth according to a standard. We suggest that an autocratic procedure is most likely to attain this objective. Conflicts about the apportionment of outcomes, such as inconsistent claims to the division of assets or losses, are best resolved with the aim of achieving distributive justice” (Thibaut & Walker, *A Theory of Procedure*, 1978, p. 541). Thibaut & Walker (1978) were concerned with the allocation of outcomes or distributive justice.

Between 1975 and 1978, when Thibaut & Walker (1978) were constructing the theory of procedural justice, Sen’s ‘capability approach’ to distributive justice was still taking shape. The most popular approach to ‘distributive justice’ at that time was to allocate outcomes in proportion to the inputs provided by contending parties and this guided Thibaut & Walker (1978) theory of procedure. Thibaut & Walker (1978) postulated that “the procedure most likely to produce justice is that procedure which facilitates the fullest possible report of inputs prior to determination of the distribution.” (p. 542). That said, the procedure theory concerns with ‘conflict resolution’ through equal distribution of control among contenders and is probably applicable to any theory of distributive justice (irrespective of its interpretation of ‘equality’) to the extent it concerns with ‘distributive justice’ as opposed to truth finding.

There are two elements of ‘control’ observed by Thibaut & Walker (1978), these are, the control over process and the control over the decision. “Control over the process refers to control over the development and selection of information that will constitute the

basis for resolving the dispute” and control over decision is the degree to which the contestant may “unilaterally determine the outcome of the dispute” (Thibaut & Walker, A Theory of Procedure, 1978, p. 546). (Thibaut & Walker, A Theory of Procedure, 1978) emphasise that control relationships determine the essential character of procedures of dispute resolution. Depending upon the allocation of controls among participants, there could be four types of procedures described by Thibaut & Walker (1978), described in Figure 2.2.

Figure 2.2: Relationships between process control and decision control as the basis for procedure of decision-making



Source: Author's adaptation from Thibaut & Walker (1978).

In the processes described above in Figure 2.2, the control gradually shifts in the hands of the decision-maker, when moving away from bargaining towards autocratic decision-making. Based on empirical evidence Thibaut & Walker (1978) suggest that under conditions of high conflict (as observed in cases of compulsory acquisition), the best process to adopt for dispute resolution would be arbitration, "which, like bargaining reserves virtually all process control to the disputants, but which, unlike bargaining, assigns decision control to a third party" (p. 551).

In the process of compulsory acquisition, the public and affected landowners have restricted control on the process and outcomes at different stages (refer to Chapters 4, 5, and 6). For instance, even though objections against compulsory acquisition are invited from the affected landowners on preliminary notification to acquisition, and an (independent) assessment is performed by the reporter, the government (who is the acquirer and the disputant) has full control on the decision to confirm the order of acquisition (refer to Chapters 4, 5, and 6). This also demonstrates imbalance in the distribution of power among disputants, i.e. the government and the public at large. Such a process reduces support to the demonstration 'proportionality' envisaged by the European Convention on Human Rights and Property Rights by creating opportunities for misuse of the power of compulsory acquisition by the government (refer to Chapter 4 and 5 for more discussion on 'proportionality'). Lower control of the people in the process of compulsory acquisition reduces their perceived level of fairness. While arbitration is adopted for dispute resolution over compensation matters, there are other stages to the process of compulsory acquisition which involve dispute resolution but are usually biased towards the acquiring agency (refer to Chapter 4, 5, and 6). While arbitration may not always be possible, the idea of 'fair procedure' is to give a fair opportunity to present their viewpoint and to involve neutral bodies in the decision making process (Thibaut & Walker, *A Theory of Procedure*, 1978).

Furthering Thibaut & Walker's (1978) discussions on procedural fairness, Leventhal (1980) provides a comprehensive list of rules which may enhance perceptions of the

fairness of the process. These are the consistency rule; bias-suppression rule; accuracy rule; correctability rule; representativeness rule; and ethicality rule. This research uses these six criteria of fair procedures as a guide when analysing the process of compulsory acquisition (in Scotland and India). More discussions on Leventhal's (1980) rules happen in Chapter 4 and 5.

Bies (2001) claims that procedural justice theory and research does not capture the full breadth of 'fairness' criteria. While people are clearly concerned about the formal procedures and the basic rules of fairness, their perception of fairness is significantly affected by the interpersonal treatment they receive during the process. Bies (2001) defines people's concern towards interpersonal treatments as interactional justice. This adds humanistic dimension to the procedural theory, which was otherwise underappreciated in the theory of procedural justice (Bies R. J., 2001). Bies (2001) explains by writing that "people possess a view of the self as 'sacred', and a violation of that sacred self (caused due to mistreatment by others) arouses the sense of injustice" (p. 90). Vulnerability to mistreatment increases for those who are less powerful than other stakeholders involved in the process. In the light of above discussions on interactional justice, Chapter 6 analyses the level of interaction among different stakeholders involved in the process of compulsory acquisition in Australia and argues for stronger involvement of the affected landowners in the process.

Even though the theory of procedural justice, put forward by Thibaut & Walker (1978), concerns with dispute resolution over matters of distributive fairness, when seen through a bigger lens, the theory suggests ways to improving decision-making processes concerning 'distributive justice' at the societal level. There is acute paucity of literature on procedural fairness of compulsory acquisition process and works of Cheng, 2008; Holtslag-Broekhof, et al. (2016); and Vu (2017) are important mentions.

2.10 CONCLUSION

Compulsory acquisition concerns with the distribution and use of land so that social welfare can be maximised. A large part of the theories of distributive justice is concerned

with the distribution of scarce resources among which land is probably the most valuable resource. Traditional economic theories could only explain the ordinal (or monetary) value of land and therefore this research rests upon Sen's theory to explain the extended meaning of land to its owners. As mentioned earlier, this research does not challenge the use of instrument of compulsory acquisition and rather proposes a new person-centred approach to maximising 'social welfare'. As per Sen's theory, 'social welfare' may be redefined as an action through which subjective capabilities of individual members of the society is bettered in a way that the society heads towards equalisation of capabilities. For compulsory acquisition mechanism to achieve this kind of 'social welfare', it will be important that the benefits of the project are distributed in a way that inequality in subjective capability is reduced. Put simply, Sen's capability approach requires re-examination of distribution of burdens and benefits generated by public projects in terms of functionings and capabilities at personal level, and consequentially at the societal level. In doing so, it will be important to give a fair opportunity to every member of the society to participate in the process of constructing the meaning of 'social welfare', for which compulsory acquisition instrument is used often. Fair process of decision-making, advocated by the theory of procedural justice, is even more crucial when property rights of people are to be compromised to give way to social interests.

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CHAPTER 3. RESEARCH DESIGN

This chapter explains the operationalisation of this research. It begins by describing the epistemological stance and progresses to explain the plan of action adopted for findings the answers to each one of the research questions. In doing so, the chapter also provides reasons for the selection of countries to be studied at different stages of research. At the onset of this chapter, it is useful to state that Chapters 4 to 10 have been developed as independent essays with complete information on the research method used for achieving objectives set under each chapter and the purpose of this chapter is to provide an overarching research design. The first research question is answered in Chapter 4, 5 and 6. These chapters analyse procedural aspects of compulsory acquisition in Australia, India, and Scotland respectively. The second research question is addressed in Chapters 7, 8, and 9. Chapter 7 identifies ‘fundamental functionings’, the complete set of functionings of land generalisable across the globe. Chapter 8 and 9 contextualise ‘fundamental functionings’ for India and Scotland. Lastly, Chapter 10 addresses research question 3 and assesses the economic value of objective functionings, which can be a useful guide to designing monetary strategies for compensation.

3.1 ONTOLOGY AND EPISTEMOLOGY

Crotty (1998, p.3) defines epistemology as a “way of understanding and explaining how we know what we know?” and ontology as the study of being that concerns with the nature and structure of reality. Often ontological and epistemological issues emerge together (Crotty, 1998), as in this research. The ontology of ‘realism’ ascertains that the real world exists regardless of whether human beings are aware of it Macquarrie (1973) explains, if there were no human beings to acknowledge the existence of the galaxies, trees, rocks, and so on, these would have still existed as real things. The ontology of realism is often taken to imply the epistemology of objectivism which asserts that “meaning and therefore meaningful reality, exists as such apart from the operation of any consciousness” (Crotty, 1998, p. 8). For example, the recognition of a tree as a real object is merely the discovery of a meaningful reality that already existed.

On the contrary, many scholars such as Heidegger (1962) and Merleau-Ponty (1962), are far from being objectivists even though they endorse realism. Similarly, Guba and Lincoln (1989) argue that the engagement of the human mind is necessary to derive meaning from any object. Therefore, while the world and its objects are real, and exist independent of the human mind, their meaning is constructed through interaction of the human mind with the object. Such an argument brings realism (in the ontology) closer to constructionism epistemology which rejects the idea of objective truth to be found and holds that “truth or meaning comes into existence in and out of our (mindful) engagement with the realities in our world” (Crotty, 1998, p. 8). Thus, the same object or phenomena may have different meanings for different people. For example, in the context of this research, the land (as an object) has a different meaning for each person who interacts with it. The characteristics of a piece of land is a reality that exists independent of the person who owns or uses it (objectivistic ontology). However, people may construct different meanings of land, depending upon its usefulness derived from combining their ability with the characteristics of land (constructionism epistemology).

Sen (1999) broadly defines economics as the study of complicated relationships between people and commodities such as land. Such studies bring together subjectivity and objectivity (using constructionism approach) and therefore pluralism has been advocated at all levels of economics discourses, starting from the ontological and epistemological position, to the selection of methods (Dow, 1997). At an ontological level, pluralism would mean that “the ultimate reality of the universe consists of a plurality of entities” (Dow, 1997, p. 89). For a detailed account of pluralism in economics, an avid reader may refer to literary works brought together under the title of ‘Pluralism in Economics: New Perspectives in History and Methodology’. It is beyond the scope of this research to comment on a singular or plural reality of land as an object of ownership. For simplicity, it is assumed that measurable characteristics of a land parcel are knowable and thus real (‘realism’ in the ontology) while the use of land and its value may have a different meaning for each user or owner (‘constructionism’ epistemology).

3.2 THEORETICAL PERSPECTIVE (MIXED) → METHODOLOGY (MIXED)

The epistemological perspective of constructionism is the philosophical basis for the chosen mixed methodology, as detailed out in this section (Crotty, 1998). As per the traditional divide of research paradigms, a constructivist epistemology is understood to directly imply an interpretivist approach, the same way as objectivist research would imply a positivist approach to inquiry (Crotty, 1998). As Crotty (1998, p.67) explains, “a positivist approach would follow the (quantitative) methods of natural sciences ... that offer explanation and hence control and predictability. The interpretivist approach, on the contrary, looks for culturally derived and historically situated (qualitative) interpretations of the social life-world”.

While this research is dominantly guided by constructionist approach and uses qualitative strategies for first two research questions, it leans on a mixed-method approach for finding the answer to the third research question concerning the value of land (in terms of ‘functionings’ that are identified using a qualitative methodology). Later, sections 3.4 to 3.6 discuss in detail the methodology for each research question.

The dichotomy of ‘value’ of commodities in economics, particularly Sen’s theory, ranges between ‘subjective’ and ‘objective’ definitions of value (of commodities and functionings created from their use) thus requiring a mixed-method approach (refer to Putnam, 2002 for a detailed account of value dichotomy). The two common terms ‘subjective’ and ‘objective’ have been used throughout this research to mean ‘individual-specific’ (thus different across individuals) and ‘object-specific’ (existing outside a person and thus generalisable across people).

Mixed-method is at times referred to as the “third methodological movement”, the first two being qualitative and quantitative research methodologies (Tashakkori & Teddlie., 2003, p. 5). Johnson et al., (2007) analysed nineteen definitions of mixed-method proposed by twenty-one highly published mixed-methods researchers and got to the extent of calling it a third research “paradigm”, along with qualitative and quantitative. When presenting the stages of evolution of mixed methods, Cresswell & Clark (2011) summarise discussions on paradigm debates and conclude that the issue of reconciling

paradigms is still apparent. Biesta (2016) reviews the claim that Dewey's 'pragmatism' can provide the philosophical framework for the mixed methods research and concludes that it is certainly helpful in overcoming some problems of dualism, but not all. This research appreciates Greene's (2007) idea of using different paradigms in mixed methods research and being explicit about when each is used. More clarity on the theoretical perspective and methodology is provided by dealing with each research question distinctly in the following sections. Figure 3.1 presents a summary of the methods, methodology, and paradigm of this research.

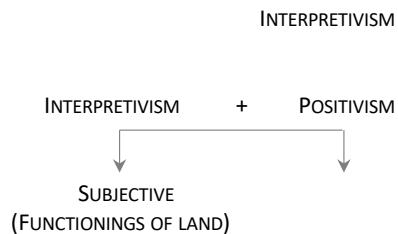
Figure 3.1: Research design

AIM - TO DESIGN A FAIR MECHANISM FOR COMPULSORY ACQUISITION OF LAND

ONTOLOGY (REALISM) - CHARACTERISTICS OF A LAND PARCEL ARE KNOWABLE AND THUS REAL.

EPISTEMOLOGY (CONSTRUCTIONISM) - THE USE OF LAND AND ITS VALUE MAY HAVE A DIFFERENT MEANING FOR EACH USER OR OWNER. THEREFORE, A FAIR MECHANISM OF COMPULSORY ACQUISITION (INCLUDING COMPENSATION FAIRNESS AND PROCEDURAL FAIRNESS) NEEDS TO BE 'CONSTRUCTED' TOGETHER WITH THE PEOPLE AFFECTED BY THE COMPULSORY ACQUISITION.

THEORETICAL PERSPECTIVE & METHODOLOGY - MIXED-METHOD



RESEARCH QUESTIONS -

1. HOW CAN THE PROCESS OF COMPULSORY ACQUISITION BE MADE FAIR FOR THE AFFECTED LANDOWNERS?
2. WHAT ARE THE VALUABLE 'FUNCTIONINGS' OF LAND WHICH CONTRIBUTE TO THE WELLBEING OF THE LANDOWNER?
3. HOW CAN THESE TANGIBLE AND INTANGIBLE LOSSES (OF FUNCTIONINGS) BE ASSESSED AND OPERATIONALISED IN THE COMPENSATION MECHANISM?

RQ1 – PROCESS OF CA

GUIDED BY THE THEORY OF 'PROCEDURAL FAIRNESS' AND 'INTERACTIONAL FAIRNESS'

METHOD: QUALITATIVE CONTENT ANALYSIS

CHAPTER 4 - ANALYSING THE PROCESS OF COMPULSORY ACQUISITION IN THE UK (SCOTLAND) THROUGH THE LENS OF 'PROCEDURAL FAIRNESS'
CHAPTER 5 - EXPANDING FINDINGS ON PROCEDURAL UNFAIRNESS FROM THE UK BY ANALYSING THE PROCESS OF COMPULSORY ACQUISITION IN INDIA
CHAPTER 6 - ANALYSING THE PROCESS OF COMPULSORY ACQUISITION IN AUSTRALIA THROUGH THE LENS OF 'INTERACTIONAL FAIRNESS'

RQ2 – IDENTIFYING FUNCTIONINGS

GUIDED BY THE THEORY OF DISTRIBUTIVE JUSTICE (CAPABILITY APPROACH)

METHOD: QUALITATIVE CONTENT ANALYSIS

CHAPTER 7 - IDENTIFYING FUNDAMENTAL FUNCTIONINGS OF LAND, GENERALIZABLE ACROSS THE GLOBE
CHAPTER 8 - UNDERSTANDING CONTEXTUAL NATURE OF FUNDAMENTAL FUNCTIONINGS IN INDIA
CHAPTER 9 - UNDERSTANDING CONTEXTUAL NATURE OF FUNDAMENTAL FUNCTIONINGS IN INDIA

RQ3 – VALUING FUNCTIONINGS

GUIDED BY THE THEORY OF 'HEDONIC PRICE'

METHOD: ECONOMETRIC ANALYSIS

CHAPTER 10 - ESTIMATING THE ECONOMIC VALUE OF OBJECTIVELY MEASURABLE FUNCTIONINGS

VALIDATING RESEARCH FINDINGS

- INVITING FEEDBACK FROM THE AFFECTED LANDOWNERS WHO ARE ORIGINAL RESPONDENTS (CHAPTER 4, 9)
- INVITING FEEDBACK FROM SENIOR PRACTITIONERS WHO HAVE EXTENSIVE EXPERIENCE AND KNOWLEDGE IN THE AREA OF COMPULSORY ACQUISITION (CHAPTER 4, 6)
- INVITING FEEDBACK FROM EXPERTS REVIEWERS THROUGH JOURNAL PUBLICATIONS (CHAPTER 6, 7, 8, 9)
- PRESENTING FINDINGS IN AN INTERNATIONAL CONFERENCE (CHAPTER 6, 7)
- PUBLIC PRESENTATION (CHAPTER 6)

3.3 SELECTION OF COUNTRIES TO STUDY

Given the lack of prior understanding of the subject the choice of undertaking a cross cultural study is an effective way of gaining a deep understanding of the topic across a variety of different contexts and geographies. This research selected three Commonwealth countries to study – Australia, India, and the United Kingdom. The history of use of comparative law in Commonwealth countries can be traced back to the

colonial era when the Privy Council of the United Kingdom held a single law across commonwealth jurisdictions. Even though property rights and laws on compulsory acquisition have developed differently over time across Commonwealth countries, they have common roots in the English law (Benson, 2008). Allen (2000) writes that the “framing and interpretation of these rights to property raise a number of common issues across the Commonwealth” that have been dealt in different ways by the framers and judges.

Given that the concept of compulsory acquisition is rooted in the English law it was considered necessary to study the process of compulsory acquisition in the United Kingdom (UK). Of all the four countries in the UK, Scotland is currently in the process of reforming laws on the compulsory acquisition and with intentions to make a meaningful contribution and thus was chosen for this study. For a comprehensive understanding of gaps in the process, and for learning from best practices across countries, it was considered necessary to study more than one country. Among Commonwealth countries which practice common law; have founded laws of the compulsory acquisition on English laws; and are at different stages of development, India and Australia were chosen for the study. Like Scotland, India is in the process of reforming laws, and there is an opportunity for research contribution. On the other hand, Australia is at a mature stage of development and it was interesting to observe the approaches that India and Australia have adopted when moving forward from the original English law. Chapter 4, 5, and 6 discuss the process of compulsory acquisition in Australia, India, and Scotland respectively.

3.4 METHODOLOGY FOR THE FIRST RESEARCH QUESTION - HOW CAN THE PROCESS OF COMPULSORY ACQUISITION BE MADE FAIR FOR THE AFFECTED LANDOWNERS?

To find the answer to this question it is first necessary to understand the existing process of compulsory acquisition and then identify the challenges in the process using qualitative methods. Even though the involvement of the affected landowners was necessary for the identification of gaps in the process, but alongside that, a standard framework of analysis was crucial for bias-suppressions and standardisation of analysis across countries. Therefore, when analysing qualitative content, the parameters of

procedural fairness were used as a theoretical guide. To add details of interactional fairness to procedural analysis and thus make the research more robust, the process in Australia was analysed through the lens of 'interactional justice' (refer to Chapter 2 for more details) and the concept of stakeholder interaction (details in Chapter 6). This also avoided repetition of methodology with Scotland, which is at a similar stage of development as Australia. Together these countries revealed a wide range of procedural issues and informed each other with probable solutions which may also be useful for countries.

Information on gaps in the process and suggestions for improvement were sought from those who have experienced the process of compulsory acquisition as affected landowners; property surveyors; lawyers; and government officials involved in the process in these countries. Sources and methods of data collection are explained under each country's Chapter. Knowing that legal process is complex and difficult to interpret, findings of the research were discussed with some key representatives from legal institutions and government officials in these countries, who have extensive experience in the area. More details on the methods of data collection and sample selection are provided under respective Chapters 4 to 6. Section 3.4.1 discusses the scientific method of Qualitative Content Analysis which was used for analysing the process.

3.4.1 QUALITATIVE CONTENT ANALYSIS

As mentioned earlier, this research relies on qualitative data to find answers to the first two research questions (dealt in Chapter 4 to 9). A detailed description of the sources of data, its nature, and collection methods are provided in respective chapters. All forms of qualitative data in this research is analysed using the scientific method of Qualitative Content Analysis (QCA) as described in this section.

Content analysis is a systematic analysis, not necessary from an author's or user's perspective, of a body of texts, images, and symbolic matter, or any other form of information that is humanly significant (Krippendorff, 2004; 2012). The history of the process of systematic analysis of text is traced back to the seventeenth century although the term 'content analysis' was first used in English in the work of Waples, et al., (1940)

where they were trying to identify the most effective means of communication for public information dissemination. Ever since its inception the technique has been most commonly used in the field of communication to understand social, political, economic, and psychological impacts of communication (Krippendorff, Content Analysis, 2012). Over the years, content analysis has emerged as an efficient scientific instrument of qualitative analysis in many other social sciences (Krippendorff, Content Analysis: An Introduction to Its Methodology, 2004).

Content analysis may be qualitative or quantitative, and both require creation/identification of categories or codes or themes into which the text can be reassembled (Mathison, 2005, pp. 82-83). “A code in qualitative inquiry is most often a word or short phrase that symbiotically assigns a summative, salient, essence-capturing and evocative attribute for a portion of language-based or visual data” (Saldana, 2009, p. 3). The methods are flexible on how these codes are designed. While quantitative analysis measures patterns of frequency of codes and other quantifiable aspects of the text, the qualitative analysis “examines significant aspects of texts that are not amenable to quantitative techniques” (Pickering, 2004). The method for this research involves qualitative content analysis while putting necessary measures for reliability and validity of results.

Content analysis has been used for all kinds of written texts to examine manifest (meaning that is visible) and latent/inferred (meaning that lies behind) content of texts (Rose, Spinks, & Canhoto, 2015). Even though content analysis may suffer from the weakness of “unstructured meanings”, it offers the opportunity to the researcher to develop an in-depth understanding of the content and to observe meanings that are beyond manifestations (Krippendorff, Content Analysis, 2012). The freedom to infer meanings from stated responses was crucial to this research. This is because during in-depth interviews, respondents were narrating their personal stories of how they were using land and on the experiences of undertaking the process of compulsory acquisition, and the nature of functioning or the gaps in the process of compulsory acquisition was not always explicitly stated in the narrative. Rather, meanings were constructed by the researcher by analysing respondent’s narratives on multiple topics, such as the use of

land before and after acquisition; dependency on land; role of ownership in building social capital; familial bonds due to joint ownership of land; difficulty in obtaining information on acquisition; expenses and time consumed in being involved in the process of compulsory acquisition; and stress caused due to the process.

Another unique characteristic of QCA is that it permits inductive, deductive and a joint approach to data analysis (Cho & Lee, 2014). This research benefits from the joint use of inductive and deductive techniques of data analysis in QCA. To explain more, subjective functionings were identified based on the information provided by landowners who have extensive experience of using the land. On the other hand, 'fundamental functionings' were founded on the theoretical knowledge of researchers working in related areas, who understand the importance of land and whose opinions were guided by the theories of landownership and wellbeing. Findings from both the methods complimented each other thus also improving reliability in the results. QCA was found equally suitable for analysing the process of compulsory acquisition. Firstly, the theory of procedural fairness was used as a guide to creating the list of parameters, suggested by Leventhal (1980), on which the process of compulsory acquisition should be analysed. The next step was to identify challenges in meeting these parameters, and this information was obtained through in-depth interviews and other primary sources. Conclusions from this analysis were drawn by relating the gaps identified from primary information, with the parameters of fairness proposed by Leventhal (1980).

Given the flexibilities offered by QCA, it is necessary that a scientific process is designed to ensure the reliability and validity of results (Krippendorff, Content Analysis, 2012). Replicability is the key to reliability and validity, and it requires research procedures to be "explicit and communicable so that researchers, working at different times and perhaps under different circumstances, can apply them and come to the same conclusions about the same phenomena" (Krippendorff, Content Analysis, 2012). In simple terms replicability of results ensure that research findings are unbiased, neutral, reliable, and valid. Rose, et al., (2015) suggest the following procedure for QCA (Rose, Spinks, & Canhoto, 2015):

- (i) Formulation of research questions that will guide the selection of textual material to be analysed.
- (ii) Development of coding scheme, which involves identifying aspects of data that are relevant for the research question.
- (iii) Determining rules for when and how to code them in the material being analysed.
- (iv) The coding scheme would normally include codes developed directly from a subset of data.
- (v) The application involves a two-step process: segmenting the data into appropriate units of coding and coding based on the coding scheme.
- (vi) Once coding is done, reliability needs to be checked before drawing conclusions.

Based on the guidelines suggested by Mayring (2000) and Rose, et al., (2015), the QCA method for this research is as follows:

Step 1 - Setting the context

Clear research questions (question 1 and 2) were formulated, which guide the selection of qualitative material to be analysed. In each chapter (chapter 4 to 9) a related research question is addressed, and together these findings build answers to the two main research questions. To mention again, Chapter 4, 5, and 6 address the first research question on procedural gaps; and Chapter 7, 8, and 9 discuss functionings of land.

Step 2 – Identification of the ‘unit’ (or object) of analysis

Multiple objects of analysis were identified to improve the reliability of findings. In-depth interviews with the affected landowners are the main source of information to find the answer to research questions 1 and 2. To improve validity, reliability, and generalisability of findings, primary data is collected from many other sources, as discussed under each chapter. The unit of analysis includes all sort of recorded communications such as transcripts of interviews with the affected landowners, their agents, lawyers, acquirers, private developer; transcripts of ‘focused group discussions’ with experts in the field; and researchers notes. Units of analysis also include primary text material such as legal case-reports and formal letters of communication between the acquirer and acquiree. Specific details on the unit of analysis are provided under each chapter (4 to 9).

Step 3 - Understanding the structure of the content

To be able to apply the same method of analysis on each unit it is important that the information is documented in the same format. This sort of clarity of documentation is crucial for replicability of findings. Structured documentation was ensured at the onset of data collection and transcription. Since the questions asked to respondents and the topic of discussion in the FGDs were the same, there is consistency on the issues discussed. All other primary text data were collected from official sources and was created into a formal/official format. Even though the structure was not the same for primary text materials, which were collected from multiple sources, each document was well-structured and relevant information could be extracted easily.

Step 4 - Analysing the content

The first stage of coding – “Codes” in this research mean the gaps in the process of compulsory acquisition (in reference to the first research question); and functionings of land (in reference to the second research question). Rose, et al., (2015) warn that while doing QCA, conclusions should not be drawn, beyond what the data should support. Therefore, the first set of codes were derived from the ‘manifest’ part of the text. Which means that codes were created using words and phrases from the dataset. Since NVivo11 was used to do this process, codes were created simultaneously while putting in the content under relevant codes.

The second stage of coding (or inferring the theme) – Preliminary exercise of data analysis (stage 1) resulted in many overlapping codes. Therefore, the next step was to merge similar themes and create distinct categories of codes. At this stage, common or overlapping ‘codes’ from the first stage of analysis were grouped together and descriptive phrases were used as ‘codes’ to define the overarching theme. Again, NVivo11 allowed the operation of merging, without duplication of content. After cleaning and merger, a distinct set of themes emerged to give a list of functionings of land; and challenges in the process of compulsory acquisition.

At both the stages findings were discussed with the supervisors, and appropriate improvements were made to avoid overlaps and identify all relevant themes. This reduced the chances of researcher bias and the likelihood of misinterpretation when checking the findings against various data sources and perspectives. It was possible to undertake a cyclical process using NVivo11 and multiple rounds of modifications were made to the codes created at preliminary stages. The use of software also reduced the chances of errors and increased the reliability of findings.

As mentioned earlier, the theoretical framework of ‘fundamental functionings’ and ‘procedural fairness’ guided this research at each stage. Therefore, conclusions are drawn in each chapter by grouping these codes under broadly defined ‘fundamental functionings’ and parameters of procedural fairness respectively. In addition to discussing with supervisors, findings from each chapter are triangulated using different techniques, permissible within the constraints of time and resources available during a PhD research:

- Inviting written feedback from the affected landowners who are original respondents (Chapter 4, 9)
- Inviting written feedback from senior practitioners who have extensive experience and knowledge in the area of compulsory acquisition (Chapter 4, 6)
- Inviting written feedback from experts in the field who are external reviewers to published chapters (Chapter 6, 7, 8, 9)
- Presenting findings in an international conference for verbal and written feedback (Chapter 6, 7)
- Public presentation for verbal feedback (Chapter 6)

3.5 METHODOLOGY FOR THE SECOND RESEARCH QUESTION - WHAT ARE THE VALUABLE ‘FUNCTIONINGS’ OF LAND WHICH CONTRIBUTE TO THE WELLBEING OF THE LANDOWNER?

Sen’s capability approach requires a subjective (or people-centric) understanding of functionings offered by land, which required direct interaction with those who have experienced the loss of land (because of compulsory acquisition). However, due to respondents’ adaptation to their adverse circumstances (if any) they may identify only a limited set of functionings to which they have access to and not the full range of functionings offered by their land. To ensure that this problem of adaptive preferences is overcome, this research used multiple methods for the identification of functionings,

all of which were people-centred and required primary data collection (more details on methods are provided in Chapter 7, 8, and 9). Also, it was important to prepare a comprehensive list of functionings which is generalisable across countries. Table 3.1 below describes stage wise process adopted to meet the above objectives.

Table 3.1: Stage wise process adopted for the identification of fundamental functionings of land

Stage 1	A detailed literature review was undertaken to understand the importance of ownership of land and prepare a broad, suggestive list of ‘functionings’. A vast variety of literature on the role of land ownership in the wellbeing of the owner was referred from a wide range of disciplines, such as economics, social psychology, philosophy, sociology, political economy, public policy and planning, and other social sciences.
Stage 2	Researchers from eleven different countries were invited for Focus Group Discussions on how the wellbeing of the owner will be affected if the land is compulsorily acquired. The list of functionings prepared from reviewing secondary literature was useful for the researcher in guiding the FGDs. The list of functionings created at this stage is referred to as ‘fundamental functionings’ of land meaning that these are those broad functionings that are generalisable across countries.
Stage 3	As a method of triangulation, a journal article discussing fundamental functionings was submitted. These findings are validated by a double-blind peer review process. Improvements were made to the list and to the article to accommodate suggestions received from the reviewers. By creating this list of ‘fundamental functionings’, it could be ensured that the range of functionings of land is not compromised due to limited exposure and adaptive preferences of the landowners, in the next stage. At this stage completeness of the list of functionings could not be assured given that the views of the affected landowners were not informing the list. Refer to Chapter 7 for a detailed discussion on ‘fundamental functionings’ and methods adopted for data collection. Data were analysed using QCA discussed under section 3.4.1.
Stage 4	To expand upon the list of fundamental functionings, and to understand the contextual nature of fundamental functionings, this research undertook in-depth interviews with the affected landowners. To improve the representativeness and generalisability of the findings, a developed and a developing country was chosen for the study. Again, Scotland and India were chosen for reasons mentioned earlier. During this research (September 2015 to February 2019), the two countries were in the process of acquiring land for a road project of national importance, which were suitable cases of study for this research. These include the ‘Aberdeen-Western Peripheral Route/ Balmedie to Tippetty’ in Scotland and ‘Bangalore-Mysore Infrastructure Corridor Project’ in India. They have comparable ongoing projects which add to the reasons for selecting these countries. Refer to Chapter 8 and 9 for detailed discussions on functionings of land in India and Scotland, and

	the method of data collection. Data were analysed using Qualitative Content Analysis (QCA) discussed under section 3.4.1.

Functionings of land in India and Scotland were in sync with the ‘fundamental functionings’. This adds confidence to the completeness and generalizability of the list of ‘fundamental functionings’ across the globe, wherever freehold ownership of land is permitted. Under any other type of tenure of property ownership, the bundle of property rights is smaller, and therefore functionings derived from land may be lesser than ‘fundamental functionings’ identified in the case of freehold ownership. Thus ‘fundamental functionings’ are the universal set of functionings of land (in terms of completeness) that are generalisable across countries which allow freehold ownership rights.

At this stage of the research, fundamental functionings of land have been identified, and these explain the nature of losses of affected landowners. Findings at this stage serve as the theoretical framework for the next research questions (discussed in section 3.6).

3.6 METHODOLOGY FOR THE THIRD RESEARCH QUESTION - HOW CAN THESE TANGIBLE AND INTANGIBLE LOSSES (OF FUNCTIONINGS) BE ASSESSED AND OPERATIONALISED IN THE COMPENSATION MECHANISM?

This research defines fair compensation as the mechanism through which all valuable functionings of each affected landowner are satisfactorily reconstructed or replaced. Each landowner may have a different set of functionings (from within the set of fundamental functionings), and a different level of importance attached to each functioning. Accordingly, the value of losses, which is the sum of the value of each functionings in his set, will be different for each landowner. In the worst case, a person will lose all fundamental functionings, and this sets the upper limit for compensation.

As mentioned in Chapter 10, land as a commodity creates a set of valuable functionings for the user and owner (or subjective value) and is, therefore, a valuable commodity that is traded in the market at a price (or objective value). For the purpose of this research, subjective functionings are those which contribute to the wellbeing of the owner and may not be valuable to others. For example, the value of ancestral property

is specific to the owners and is therefore subjective in nature. On the other hand, an objective functioning is valuable to others, outside the owner, and thus would be demanded and traded in the market and contribute to the price of land (an objective measure of value of land). The price of land is the cumulative value of 'objective' functionings for the buyer and the seller.

It is understandable that fair compensation would require a combination of monetary and non-monetary strategies using which both subjective and objective functionings of land can be compensated. However, it is beyond the scope of this research to state the *modus operandi* for monetary and non-monetary compensations, which should be designed in consultation with the people to improve efficiency, responsiveness, and contextuality of the proposed solutions. This research limits the scope to the identification of the value of objectively important functionings, assuming that the value of these objective functionings constitutes the market value (or price) of land (further explained in section 10.3 and 10.4). Put another way, the land is assumed to be a differentiated product which is completely described by a vector of objectively measurable functionings. Thus, the value of each land parcel equates the cumulative value of objectively measurable functionings derivable from that land.

Identification of the economic value of objective functionings does not imply that compensation for the loss of these functionings must be in the form of money. *Modus operandi* for compensation may vary from monetary to non-monetary ways, depending upon the nature of functioning. Knowing the economic value of objective functionings is particularly useful in designing the appropriate strategy for monetary compensation. On another note, non-monetary forms of compensation may be more suitable for compensation of subjectively important functionings. For valuation of objective functionings this research uses the approach to value differentiated goods.

Functionings associated with land are not traded individually in the market, and hence the price of individual functionings are not observed. Literature, particularly from the field of environmental economics, has developed methods by which valuation of the market and non-market good can be performed (see Pearce, 2002 for review). These

methods fall under two categories: revealed preference and stated preference methods.

The revealed preference approach assumes that observed behaviour is an outcome of inherent utility maximisation process. The market price at which land transacts is an indicator of revealed preference of buyers and sellers. The hedonic hypothesis states “goods are valued for their utility bearing attributes or characteristics” (Rosen, 1974, p. 34). The price of a good and attributes associated with each good define a set of implicit prices called hedonic prices. A hedonic price method has been developed to estimate the implicit price of attributes of a good. The basis of the hedonic price method is that the preference for attributes of a good is revealed in the market prices (e.g. land prices). Hedonic price model assumes that a continuous hedonic price function relates the price of a differentiated good such as house or land to its attributes and that people select this good by equating the marginal utility of each attribute of differentiated good to its marginal price (Rosen, 1974). The method focuses on price response and is useful in estimating the consumptive value of goods. Use of Hedonic Price method requires data, and it implicitly assumes that people respond to the attributes of the good. The impact of those attributes that do not vary across people, however, cannot be assessed through hedonic price models.

Stated preference approach induces individual valuations through surveys. The method used is the contingent valuation method and is applied to value non-consumptive values of goods that cannot be estimated through observed consumption. The contingent valuation studies elicit an individual’s willingness to pay (WTP) or willingness to accept (WTA) response for a given good. For a utility maximising individual willingness to pay (WTP) is the maximum monetary amount that she would be willing to offer for a good. The willingness to accept compensation (WTA) is the minimum monetary amount required for an individual to forgo some good (Martín-Fernández, et al., 2010). Economic theory suggests that if individuals are rational, the two sets of values (WTP and WTA) should not diverge much. However, evidence shows that WTAs are usually higher than WTPs (see for example Knetsch & Sinden, 1984; Brookshire & Coursey, 1987). Kjær (2005) reviews multiple literature to find that this discrepancy is attributed

to substitution effect (Hanemann, 1991); endowment effects linked to loss aversion (Tversky & Kahneman, 1991); uncertainty, irreversibility, and learning effect (Zhao & Kling, 2001). Stated preference methods suffer from criticisms related to hypothetical nature of the questions through which responses are elicited and respondents' choices (Mitchell & Carson, 1989), which can unduly influence respondents (Sugden R. , 2005). Irrelevant cues include start-point bias (Herriges & Shogren, 1996), anchoring effects (Ariely, Loewenstein, & Prelec, 2003), embedding effects (Mitchell & Carson, 1989), range bias (Whynes & Sach, 2007) and elicitation effects (List, 2003). Due to the dependency of the contingent valuation method on survey-based data, the method may at times result in protest responses. Revealed preference methods are based on observed behaviour, which is their strength. However, the revealed preference method of hedonic analysis, which requires econometric estimation of hedonic price function, has some weaknesses such as omitted variable bias, collinearity among explanatory variables, inability to capture preferences effectively for uncommon attributes (Freeman A. M., 1993), and in determining the exact functional form of the hedonic price equation (Epplé, 1987). The method that is most appropriate for valuing functionings is the hedonic price method as it allows the objective valuation of functionings.

3.6.1 HEDONIC PRICE APPROACH

The land is a “differentiated product” which is completely describable by a vector of objectively measured functionings. Individuals value each land parcel based on these functionings and make choices based on their income, preferences, non-market constraints on choice, or differences in the effective values of functionings that each land is associated with. A precursor to formal hedonic approach, Waugh (1929) analyses the impact of quality on the price of a commodity. This study describes quality through observable attributes and estimates the implicit prices of these attributes. Almost a decade later, Court (1939) conducted studies which linked price to attributes (with examples from the automobile industry) and applied the term ‘hedonic’. Griliches (1961) formalised the discussion on hedonic price within economics literature. In his seminal paper, Rosen (1974) defines hedonic prices “as the implicit prices of attributes and are revealed to economic agents from observed prices of differentiated products and the

specific amounts of characteristics associated with them". The idea behind the hedonic approach is that heterogeneous goods, even though they trade in a single market, are not characterised by a single price, but rather by a range of prices depending on the attributes that are bundled in the good (Sheppard, 1999). Even though these heterogeneous goods have different prices, they are composed of homogenous parts, which have a common price structure. The analysis of demand can be pursued using these prices and various attributes as goods. Buyers can choose any bundle of attributes that they want from a variety of bundles that are available on the market by maximising their utility subject to their income constraint (ibid).

Hedonic price functions are estimated as an input in the analysis of buyer's demand for attributes of heterogeneous goods. The hedonic approach begins with specifying a utility function comprising a commodity which is expressed as a vector of $z = (z_1, z_2, \dots, z_n)$ attributes and a composite good, x . Consumers have a fixed income, y , and face a price function $p(z)$, price of heterogeneous good as a function of attributes that it includes. In a departure from earlier studies, this research argues that these attributes are the functionings that the land is associated with, as each physical characteristic is valued for the functioning that it creates. The price that the buyer will pay for the land parcel is the observed market price of the functionings that the land generates the, $p(z) = p(z_1, z_2, \dots, z_n)$. The $p(z)$ will be defined at each point on the plane and shall guide the choice of location of the buyer and the seller with reference to the set of functionings bought and sold. If the buyer is willing to pay to the seller an amount (or bid) θ for the bundle of functionings z then the bid function for the bundle of functionings z is:

$$\theta = \theta(z_1, z_2, \dots, z_n; y, u) \text{ where:}$$

y is the buyer's budget (constraint); and

utility index $u = U(y - \theta, z_1, z_2, \dots, z_n)$. The concave utility function of the buyer is defined as $U(x, z_1, z_2, \dots, z_n)$ where x is all other goods.

Utility is maximised when, $\theta(z^*; y, u^*) = p(z^*)$ and $\theta_{zi}(z^*; y, u^*) = p_i(z^*)$, $i = 1, 2, \dots, n$, and z^* and u^* are the optimum quantities. This is the optimum location on z -plane where the buyer will locate.

In a similar fashion location decision of sellers could be determined. Sellers combine different functionings of land based on their ability to create capability. The ability of seller β guides the set of functionings of land accessible to her to generate capability, which she has reasons to value.

Let $M(z)$ denote the capability produced with z bundle of functionings associated with land. Let the value of the capability for the landowner be $C(M, z, \beta)$. If the seller wants to sell the land in the market, she would expect value at least equal to the value or capability that the land generates for her. The profit function of the seller can be explained as:

$$\pi = Mp(z) - C(M, z_1, z_2, \dots, z_n),$$

The seller maximises profit by choosing M and z optimally. The optimum choice of M and z requires:

$$p(z) = C_M(M, z_1, z_2, \dots, z_n)$$

$$p_i(z) = C_{zi}(M, z_1, z_2, \dots, z_n)/M \text{ for } i=1, \dots, n$$

At the optimum, the marginal revenue from the additional functionings equals their marginal cost.

The *offer function* is $\phi(z_1, z_2, \dots, z_n; \pi, \beta)$ indicating the unit value of land that the landowner is willing to accept, keeping her profit constant and when functionings are optimally chosen. Then $\phi(z_1, z_2, \dots, z_n; \pi, \beta)$ is found by eliminating M from the profit function:

$$\pi = M\phi - C(M, z_1, z_2, \dots, z_n)$$

and

$$\phi = C_M(M, z_1, z_2, \dots, z_n)$$

While ϕ is the price the seller is willing to accept for a bundle of z functionings at π profit, $p(z)$ is the maximum price obtainable (in the market) for the land of the landowner. Profit is maximised by an equivalent maximisation of the offer price subject to the constraint $p = \phi$. Thus, maximum profit and optimum bundle of functionings satisfy $p_i(z^*) = \phi_{z_i}(z_1^*, z_2^*, \dots, z_n^*; \pi^*, \beta)$ for $i = 1, \dots, n$ and $p(z^*) = \phi(z_1^*, z_2^*, \dots, z_n^*; \pi^*, \beta)$. The seller will locate where her functionings' indifference surface is tangential to the market implicit price surface for functionings.

A market equilibrium will be a location on a plane where the bid function of the buyer matches perfectly with the offer function of the seller. Hedonic price function, $p(z)$, is a joint envelope of a family of bid functions and another family of offer functions. These prices are the equilibrium prices for characteristics but do not reveal much about underlying supply and demand functions. Rosen (1974) suggests a two-step estimation procedure to estimate these functions. He demonstrates that if the exogenous demand and supply shift parameters for buyers and sellers are known, parameters of underlying demand and supply functions could be estimated. However, for estimating the implicit price of functionings at the market equilibrium, the estimation of hedonic price function would suffice.

Estimation of Hedonic Price Equation

Literature has used regression techniques in econometrics to estimate hedonic price functions (see for review, Sheppard, 1999). The choice of estimation methodology must overcome several difficulties arising from the choice of functional form (linear or non-linear) and the variables that need to be included, possible collinearity, potential heteroscedasticity problems, regression techniques such as ordinary least square or maximum likelihood estimation. It may, however, be emphasised here that the choice of estimation methodology is not independent of the nature of data that is available and the objectives of the study.

On the functional form, earlier research on estimation of hedonic price function has relied on linear or logarithmic forms (see, for example, Kain & Quigley, 1970; Goodman, 1978; Linneman, 1981; and Tiwari, et al., 1999). Ordinary least square method has been used to estimate these functional forms. Logarithmic form performs reasonably well in these studies, and the estimated models served the objective of determining implicit prices. Later studies on estimating hedonic price function (see, for example, Chattopadhyay, 1999; Halvorsen & Pollakowski, 1981; Linneman, 1980; and Tiwari & Hasegawa, 2004) have applied Box-Cox transformation to either the dependent price variable or continuous explanatory variables or both. The functional form is presented in Chapter 10. An interesting feature of Box-Cox form is that the transformation coefficients allow modelling of a range of non-linear relationships. Depending on the values of transformation coefficients, the Box-Cox model could generate linear, log-linear, log-log and generalised functional forms. Researchers do not have to specify these forms *a priori*. Box-Cox model is estimated using the maximum likelihood estimation method. The advantage of Box-Cox estimation is that, since variables are transformed, it overcomes the problem of heteroscedasticity as well (Chapter 10). The other problem of collinearity arises if there are intrinsic limits on the variance of attributes which are observed (Sheppard, 1999). This causes loss of precision with which parameters are estimated, and the only way to improve this is to have a large data sample (Greene, 2007).

While the Box-Cox model has theoretical appeal, Cropper, et al., (1988) investigate their potential in investigating true equilibrium price functions, which can be used to estimate hedonic price functions and implicit prices of attributes. Authors compare the estimates from different functional forms (namely linear, log-linear, quadratic, linear Box-Cox and quadratic Box-Cox) with true values. Their results indicate that linear Box-Cox performs better, and quadratic Box-Cox functional form performed the worst. This is something to be kept in mind while interpreting the results from different functional forms so that researcher does not lose sight of the core objective of the research. This research does not hypothesise the functional form and estimates multiple forms of functional relationships between the value of land and its functionings. However, the one that fits the objective well, will be chosen to calculate implicit price of functionings. Detailed

discussions on the nature of data and the method of quantitative analysis happen in Chapter 10.

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CHAPTER 4. ANALYSING THE PROCESS OF COMPULSORY ACQUISITION OF LAND THROUGH THE LENS OF PROCEDURAL FAIRNESS: EVIDENCE FROM SCOTLAND

The process of compulsory acquisition of land for public projects is marred with many challenges. Most debates on the topic are focused on the issues of 'fair' compensation for the affected landowners. This research shifts the focus on procedural aspects of the problems of compulsory acquisition when analysed through the lens of 'procedural fairness'. While fair compensation is a must, it is important that the process which affected landowners go through, offers them fair opportunities to be heard and to negotiate their losses. With the objective of informing the design of a fair mechanism of compulsory acquisition, this research analyses the process of compulsory acquisition in Scotland. Through primary investigation, eleven major gaps are identified in the current mechanism of compulsory acquisition in Scotland, which are: (i) imbalance in the decision making power and poor involvement of the people in the decision-making process; (ii) lack of neutrality in the assessment of objections and suggestions received from the people; (iii) poor accountability of the acquiring authority; (iv) unequal time limitations on the acquirer and acquire; (v) imbalance in the negotiation power (arising out of imbalance in financial and information resources) between the affected landowners and the acquiring agency; (vi) Legal process of compensation negotiation requires time, effort, and resources; (vii) unequal distribution of burdens and benefits (betterment value) arising out of the project; (viii) no compensation or assistance in recovering from unwanted burdens of non-recoverable financial losses; (ix) poor correctability and inefficient grievance management; (x) lack of benevolence and humanitarian approach towards the affected landowners; (xi) no consideration for stress and time lost in dealing with the process. While the outcome of compulsory acquisition is often 'unfair' to those whose land is taken, it is important that the process of transition is fair and grants them the opportunity to recover their losses, both physical and emotional, to the extent possible. The above findings can be a useful guide to

policymakers, lawmakers and researchers interested in working on procedural aspects of compulsory acquisition.

4.1 INTRODUCTION

The process of compulsory acquisition is designed to facilitate easy and timely procurement of land by a public agency. Poor involvement of the affected landowners and the public at large in the process may result in adverse outcomes for the society and defeat the objective of social welfare maximisation that underpins the concept of ‘compulsory acquisition’. The objective of this research is to design a fairer process of compulsory acquisition of land which offers a fair chance to the affected landowners to put forward their views; safeguard their interests; and recover all the losses. This research feeds into the larger debate on the fair mechanism of land acquisition, which has two components; firstly improving the process through which the land is taken from the original owner and compensation is determined (refer to Rao, et al., 2018; Holtslag-Broekhof, et al., 2016); and secondly to design fair compensation which can put the affected landowner back to their original position (refer to Rao, 2018a; Rao, 2018b). There is ample research which focuses on designing fair compensation strategies while procedural issues are less well attended. Given that the outcome of compulsory acquisition is unfair to the landowners, there seems to be an implicit acceptance of ‘unfairness’ in the process itself. This research argues that there is a good scope for improvement in the process without compromising on the speed or cost of the process of acquisition. Making the process of acquisition fair may not necessarily reduce the pain of losing land for the affected landowners, but it certainly offers them respectful treatment and gives them a fair opportunity to safeguard their interest and recover losses, without compromising on the overall benefits for the society at large.

Those members of the public, who receive lower rewards and greater burdens than others are more likely to doubt the fairness of the allocative process and search for faults in the system to justify claims for bigger rewards (Patchen, 1961). Also, the decision-maker wants to protect their position and emphasise on the fairness of the existing procedures (Leventhal, 1980). There is ample literature suggesting that the outcome of

the decision of compulsory acquisition of land is usually unfavourable to those who lose land (Rao 2018a, 2018b) and therefore it is important that the process of compulsory acquisition is fair and justifiable. From time to time the laws of the compulsory acquisition have been revised although with limited attention to the process itself. Cheng (2008) writes that procedural injustice is the key to the misuse of the power of compulsory acquisition. However, there is a paucity of research and literature⁵ on the procedural aspects of the compulsory acquisition process.

As observed by Vidmar (1990) when examining the process of compulsory acquisition of land, if participants do not see the procedure as fair, they do not accord them legitimacy, avoid them if possible, and do not readily accept the outcomes. Having land compulsorily acquired is a psychologically intense experience for the affected landowner, and it is important to design a fair process through which they get the opportunities to express their opinion; fair opportunity to protect their personal, familial, and financial interests and recover losses to the best possible extent. This would not only help to achieve a fair outcome (which may not be the most desired outcome) but would also induce compliance among the affected landowners who otherwise view the process and the outcome as ‘unfair’ and ‘unjust’. Also, fair compensation⁶ is the outcome of ‘fair’ negotiations over multiple aspects of the process, and this is derivable when the process of acquisition is fair at each stage.

Given that the laws on compulsory acquisition of land⁷ precede the development of the field of procedural justice (incepted in the 1970s), and that many countries like Scotland and India are in the process of creating a new statute for compulsory acquisition, it is important that the process of compulsory acquisition is re-examined and improved through the adoption of the principles of procedural fairness. This research analyses the process of compulsory acquisition through the lens of procedural justice and suggests

⁵ An avid reader may refer to Cheng (2008).

⁶ Rao (2018b) defines ‘fair’ compensation as a combination of monetary and non-monetary strategies through which all functionings of each affected landowner are satisfactorily reconstructed or replaced

⁷Current process of compulsory acquisition in Scotland is guided by the Acquisition of Land (Authorisation Procedure) (Scotland) Act of 1947.

improvements to the process to make it fair towards the affected landowners. This is achieved by analysing existing laws of CPO and compensation, using the case of Scotland, and identifying gaps in the process as perceived by the affected landowners, and other key stakeholders involved in the process.

More discussions on the principles of procedural fairness follow in section 4.2. This section also touches upon the founding principles of the Scottish laws on the compulsory acquisition, which endorse the European Convention on Human Rights on property rights. Section 4.3 explains the method used in this research, which is a Qualitative Content Analysis of primary interviews and textual material from the Scottish Law Commission (SLC). Annexure 4.A describes the process of compulsory acquisition, particularly those stages where people are directly involved in the process, that is, the process of authorisation of compulsory acquisition notification and compensation determination. Section 4.4 presents the analysis in the form of gaps in the existing mechanism of compulsory acquisition in Scotland. Suggestions received from the affected landowners, their agents, and the SLC, on improving the process are also discussed in this section. Finally, section 4.5 concludes this research and suggests the way forward for future works in this area.

4.2 LITERATURE

Ever since Aristotle introduced two types of justice, distributive and rectificatory (or retributive) justice, discussion on these topics have dominated philosophical literature, and procedural aspects of justice have attained limited attention (Bayles, *Procedural Justice: Allocating to individuals*, 1990). However, over the past four decades, social psychologists have developed evidence-based research in this area to identify criteria for ‘fair’ decision-making process which consequentially produces a fair outcome and induce compliance towards unfavourable outcomes (Boggild & Peterson, 2016). In the early 1970s, John Thibaut, Laurens Walker, and their colleagues began the systematic study of the psychology of social decision-making procedure (Lind & Tyler, 1988). This was the time when the study of justice was expanding to include the fairness of process used in arriving at outcomes (i.e. distributive justice) (Tyler, *Procedural Justice Research*,

1987). The emergence of procedural justice as a separate field of study is closely associated with the publication of a monograph by Thibaut and Walker in 1975 called 'Procedural Justice: A psychological study' (Tyler, Procedural Justice Research, 1987). This was one of the earliest works⁸ in this area that aimed at defining and clarifying the nature of procedural justice through the application of social-psychological methods. This was performed through a comparative empirical analysis of the American and European procedures used in conflict resolutions at the court. Findings of their research revealed that people are concerned as much with the fairness of the process adopted in the decision-making as in the decision itself (Thibaut & Walker, Procedural justice : a psychological analysis, 1975). From this research, Thibaut & Walker (1975) identified process control and decision control as two key dimensions of procedures that would influence people's judgments of procedural justice.

In the decade following the publication of the book by Thibaut & Walker (1975), researchers working in this area have essentially been working on demonstrating the importance of procedural justice to both the affected person and neutral observers. Further development in the field has been around identifying the criteria for procedural fairness. Based on empirical evidence from their research, Thibaut & Walker (1975) found that "participants apparently viewed a just verdict as one that was an accurate reflection of the evidence, uninfluenced by the judge's predilections and biases" (p. 94). Also, participants satisfaction with the process increases with the perceived level of fairness and the opportunity to present evidence (ibid).

Until 1980, there were fewer studies of procedural fairness, and the criteria for fairness were not known clearly. Based on some early studies and own observations, Leventhal (1980) used an inductive method to derive six criteria (or justice rules) that must be satisfied for the process to be perceived as fair, which are: (i) consistency; (ii) bias-suppression; (iii) accuracy; (iv) correctability; (v) representativeness; and (vi) ethicality.

⁸ Early works in the field of procedural justice include Deutsch (1975), Leventhal (1976), and Leventhal (1980).

A summary of Leventhal's (1980) definition of these key criteria of fairness is presented in Table 4.1 below.

Table 4.1: Six criteria of procedural fairness or 'justice rules' suggested by Leventhal's (1980)

Consistency rule	Leventhal's (1980) hypothesis that the level of consistency of rules and procedures across person and time is an important determinant of procedural fairness. When applied across persons, the consistency rule implies that the same set of procedures and rules should be applied to all potential recipients of reward and "to give special advantage to none" (Leventhal, 1980, p. 40). Consistency rule encapsulates equality of opportunity across individuals (ibid). When applied over time, the consistency rule implies that the set of procedures and rules should be stable, at least over the short term (ibid). Frequent changes to the procedure that are easy to perform will reduce the perceived level of fairness in the process (ibid).
Bias-suppression rule	The process should ensure that there is no scope for bias, prejudice, and favouritism in the decision making at any stage. In practice, this will involve selection of neutral agents in the decision-making process, who do not have any conflict of interest with the parties involved in the process and no personal inclination towards any one outcome.
Accuracy rule	a. The accuracy of information collection and dissemination: The accuracy rule implies that the decision should be formed on an ample amount of good information and opinions, that are gathered and processed with a minimum of error (Leventhal, 1980). Thus, the accuracy rule encompasses parameters on the quality and quantity of information required for 'fair' decision-making. Sharing accurate information and transparency is crucial to procedural fairness. b. The accuracy of implementation of the process, compliance, and accountability: The accuracy rule also refers to the accuracy with which procedures and rules are implemented. This involves safeguard mechanism through which the agents involved in delivering the process are made accountable for lack of compliance and errors. The integrity of processes is protected when violations and errors are detected, modified or reversed at various stages.
Correctability rule	The correctability rule dictates that there must be opportunities to modify and reverse decisions at various stages of the process. People who are negatively affected by the process of its outcome often tend to identify errors in the process/agents and are the bearers of information. Proper grievance management process does not only improve the perceived level of fairness in the individual but also help in

	error detection and modification in the process. Appeal procedures should be easy and accessible to the people. Involvement of large expenditure of time and cost reduces the perceived level of fairness in the process. It is important that the appeal process is unbiased and does not rely “on the channel of communication that is dominated by the decision maker whose decision is under challenge.” (Leventhal, 1980, p. 43).
Representativeness	Proportionate representation of all stakeholders involved in the process should be guaranteed at all stages of decision-making. Representativeness will ensure that the basic concerns, values, and outlook of all individuals affected by the process are taken into consideration. The representativeness rule implies that all individuals or subgroups, who are affected by the process and the decision, are offered equal and adequate opportunity to present their views (Thibaut & Walker, <i>Procedural justice : a psychological analysis</i> , 1975). Perceived level of fairness of the process reduces if, in the haste of reaching a conclusion, the viewpoints of weaker members are suppressed, and the full range of alternatives are not taken into consideration.
Ethicality rule	An individual’s perception of the fairness of the process also depends upon the level of compatibility of the process (and its agents) with the fundamental moral and ethical values accepted by that person. People expect ethical behaviour from all involved the process, failing which, their perception of fairness of the process itself reduces. In assessing the fairness level of the process, people think about whether the officials involved in the process were motivated to be just and fair to them (Tyler, <i>What is Procedural Justice: Criteria Used by Citizens to Assess the Fairness of Legal Procedures</i> , 1988). People also consider the benevolence of the authority and the level of respect given to civil rights (ibid). Efforts by the authority to be fair, respectful, and benevolent induces a sense of trust among people in their actions and decisions (ibid). For example, procedures which involve bribery or spying are viewed as unfair.

Leventhal (1980) acknowledges that individuals may allocate different weights to these criteria, and the weight may vary at each stage of the process.

In the mid-1980s, Bies & Moag (1986) coined a new concept of justice: ‘interactional justice’ which revealed the importance of interpersonal interactions in influencing the individual’s perception of fairness of the process of resource allocation. Bies & Moag (1986) were concerned about “quality of interpersonal treatment exhibited by leaders during the enactment or implementation of decision procedures” (p. 44). Bobocel & Gosse (2015) summarize Bies’s concept of interactional justice to be deriving from - (i)

“clear and adequate explanations of, or justifications for, allocation decisions, and (ii) treatment of recipients with dignity and respect during the implementation of procedures” (see Bies & Moag, 1986; Tyler & Bies, 1990; Bies, 2005).

Issues of procedural fairness are most commonly discussed in the context of legal procedures, but the topic is gaining importance in other areas as well, such as education, managerial decision making, and politics. For example, in experiment-based research, De Cremer & Knippenberg (2002) found that people’s contribution to public goods improves if they are involved in the decision-making process. An avid reader may also look at works of Tyler and Caine (1981), Lavelle et al. (2009), and Boggild & Peterson (2016) who use evidence from the field of education, management, and politics, to identify criteria of procedural fairness in these fields. Holtslag-Broekhof, et al. (2016) and Vu (2017) have looked at procedural fairness issues in the context of compulsory acquisition and find that the acquiring agency generally maltreats the affected landowners. This research expands the knowledge in the area and identifies the gaps in the Scottish process of compulsory acquisition which are the causes of dissatisfaction among the affected landowners.

4.2.1 FOUNDDING PRINCIPLES OF THE PROCESS OF COMPULSORY ACQUISITION AND COMPENSATION IN SCOTLAND

To supervise the appropriateness of circumstances under which the state can compulsorily acquire private property rights, the European Convention on Human Rights (ECHR) uses the ‘concept of proportionality’. As per this, it is important to strike a fair balance between “the demands of general interests of the community and the requirements of the protection of the individual’s fundamental rights (which include property rights)” (ECHR, 1998). This implies that the aims of legislation should be consistent with the means employed to achieve (ibid). Put another way, the concept of proportionality implies that the use of compulsory acquisition should be exercised only when there is relatively no better means to achieve the proposed objectives; and the purpose for which an individual’s property is acquired achieves social welfare, proportionately larger than the welfare compromised by the individual landowner. The

fair process of implementation of the ‘concept of proportionality’ requires public consultation and debate on public projects requiring the compulsory acquisition of private land. With the introduction of the new Community Empowerment (Scotland) Act 2015, aiming at creating a “fairer” Scotland, it is even more important to involve people in the decision-making process, especially in matters concerning land and buildings.

The Scottish legislature endorses the principles of compensation advocated by ECHR. By virtue of Article 1 of Protocol no. 1 of the ECHR, payment of compensation for compulsory acquisition of land is a requirement of the Convention (SLC, 2014). The ECHR (1998) proposes two forms of reparation for interference with private property:

- (1) Compensation: Legal foundation to ‘compensation’ is found in Article 1 (Protection of Property) of Protocol 1 which states – “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” (ECHR, 1998). Therefore, compensation is a necessary condition to the deprivation of property.
- (2) Damage: This is a form of compensation awarded to the affected owners when the conditions for interference with the property have not been respected (ECHR, 1998). The principle of “just satisfaction” under Article 50 of the Convention provides the legal basis for ‘damages’. “Just satisfaction” implies that “reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would probably have existed if that act (of acquisition) had not been committed”. Therefore, the principle of ‘just satisfaction’ does not only imply the restitution of the affected person to the original position, but also any betterment in situation had acquisition not happened.

The two forms of reparation mentioned above rest on distinct legal foundations, as mentioned above, although both aim at repairing losses and satisfactorily reinstating the affected person, with the reasonable balancing of public interests. In financial terms the principle of putting the original landowner in the same position is equated to the payment of value of the property; value of related effects, if any (known as severance, injurious affection, disturbance, and blight); and solatium for non-financial losses (known as home loss payment, and farm loss payment).

The Scottish laws on the compulsory acquisition of land aim to incorporate the above mentioned principles promoted by the ECHR. Accordingly, the process of compulsory acquisition and compensation determination in Scotland involves various stages of discussions and negotiations with the affected parties. The most critical stages of the process are when the affected landowners are directly involved in discussions and negotiations, that is (i) the pre-acquisition stage, when the draft order for compulsory acquisition is prepared and confirmed, after inviting objections from the affected landowners; and (ii) the stage of compensation determination and negotiation. This research, therefore, focuses on these two stages in the process of compulsory acquisition which involve the affected landowners directly in the process and have a huge impact on their perception of the fairness of the process of compulsory acquisition. A summary of the process of authorisation of a compulsory purchase order (pre-acquisition stage) and the process of compensation determination is discussed in Annexure 4.A.

4.3 RESEARCH METHOD

This research undertakes the case study of Scotland and adopts qualitative methods of data collection and analysis to identify the gaps in the current mechanism of compulsory acquisition, from the perspective of procedural fairness.

Multiple sources of data were used first to understand the process, then to inquire about the perceived level of fairness and the gaps. Procedural understanding involved a thorough review of secondary textual materials which contained information on the process of compulsory acquisition and compensation mechanism. Primary sources of information included the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; Land Compensation (Scotland) Act 1963; report on the European Convention on Human Rights and Property Rights; and the Discussion Paper no. 159 on Compulsory Purchase by the Scottish Law Commission. As mentioned earlier, the most crucial stages in the process of compulsory acquisition are when the affected landowners are directly involved in the process, that is, the pre-acquisition stage or during the authorisation

process of the CPO and later during the negotiation of compensation amount between the affected landowners and the acquiring authority.

Critical views on the process of compulsory acquisition and compensation in Scotland, were sought through in-depth interviews and focused group discussions, between February and June 2017, with expert surveyors in Aberdeen, who had extensive experience in compulsory acquisition and compensation process for multiple projects. For more detailed information on the perceived level of fairness of pre-acquisition or authorisation process and negotiation process, in-depth interviews were conducted during the same time, with 12 landowners whose land was compulsorily acquired for an ongoing road project in Scotland, called the Aberdeen Western Peripheral Route (AWPR). AWPR is a typical road project that involved construction of 58 km of dual carriageway under a Public Private Partnership (PPP) with Aberdeen Roads Limited (ARL) using the Scottish Governments Non-Profit Distributing model of procurement. Respondents' interaction with ARL as a private stakeholder adds to the wide range of problems in the process of compulsory acquisition. The respondents were identified with the help of their agents who, as experts on compensation valuation, were preparing their report for claims. Respondents represented diverse types of landowners including residential property owners, agriculturists, agriculturist businesses, entrepreneurs, and those whose property had not been acquired but were negatively impacted by the externalities caused due to the road project. A short code⁹ is developed to describe the characteristics of the respondent and the subject land. Of these, some landowners were members of an organised group of objectors which had been actively involved in intense

⁹ The code is built of four alphabets followed by a number indicating nth respondent out of total twelve. The first alphabet indicates respondent's country, Scotland 'S'; the second alphabet stands for gender, male 'M', female 'F'; the third alphabet indicates sole ownership 'I' or joint ownership 'J'; and the fourth alphabet states the use of subject property as agricultural 'A' or residential 'R'. For example, SMJA stands for a Scottish landowner; male; owning property jointly with wife or children and is using it for agricultural purposes.

discussions at all stages of the process. Written responses received between 2014 and 2015 by the Scottish Law Commission (SLC) on reforming compulsory acquisition laws were analysed as primary textual sources of information. Of the total forty-seven responses received by the SLC, eight were from landowners who have been affected by compulsory acquisition under different projects, including the AWPR project. These eight responses are used as primary text material for this research and have been analysed in the same way, as in-depth interviews with other landowners.

The method of Qualitative Content Analysis (QCA) is used to analyse the data, after converting all data in a textual format (refer to Mayring, 2000 for more details on QCA). A systematic coding technique was used to identify original themes, in the form of gaps or problems in the current process, and a series of processes were adopted to finalise results (refer to David & Sutton, 2004 for details on systematic coding technique). While reading the text, each type of problem reported in the process was tagged as a separate theme or code. New themes, in the form of gaps in the process, were identified every time the respondents revealed a new type of problem. After this first stage of analysis, a comprehensive list of problems was obtained. Following this, a thorough analysis of these themes was undertaken to reduce overlapping themes into a single, distinguishable category. Having obtained a comprehensive list of problems, findings at this stage were triangulated in three ways. Firstly, by cross-review of research findings and suggestions on reforms to the compulsory acquisition process received by the SLC from important public organisations such as the Lands Tribunal for Scotland; secondly, through discussions with co-researchers; and thirdly, by inviting views from senior legal representatives in Scotland, experienced surveyors, and affected landowners (who were the respondents). These triangulations reduced bias in research findings and improved the overall reliability. Findings from this research are in the form of the gaps in the process of compulsory acquisition and compensation mechanism when viewed through the lens of ‘procedural fairness’.

4.4 ANALYSIS OF THE PROCESS OF COMPULSORY PURCHASE

This section discusses major gaps in the process of compulsory acquisition, identified through the analysis of primary data, using the lens of procedural fairness. Suggestions received from the respondents and SLC are also mentioned briefly. Section 4.4.1 to 4.4.4 discuss issues with the authorisation process starting with public consultation on the project, providing justification for the use of CPO and demonstrating the ‘proportionality principle’; releasing draft CPO and inviting objections, assessment of objections and suggestions, responding to public objections, timeliness of the process. Issues with the compensation process are discussed in sections 4.4.5 to 4.4.9. The last two sections discuss broader issues with correctability and grievance management; and ethicality and benevolence of public authority in the existing process.

4.4.1 IMBALANCE IN DECISION-MAKING POWER AND POOR INVOLVEMENT OF THE PEOPLE IN THE DECISION-MAKING PROCESS

Respondents strongly suggested that the public agency should engage with the communities and give due consideration to their recommendations. This is in sync with the objectives envisaged in the new Community Empowerment (Scotland) Act 2015 which aims at making Scotland prosperous and fairer by empowering communities through ownership or control of land and buildings and by sharing the power to take a decision on public service.

4.4.1.1 *Public consultation for the selection of location/route of the project*

Many respondents were discontent over the fact that the Transport Minister changed the route for AWPR road project without public consultation. Lack of the public’s involvement made everyone doubtful of ulterior motives – such as safeguarding the land of influential people from getting acquired. Most dissatisfied were those whose land was coming under the influence of the project after the change of route.

An opposition group was formed by the people to challenge the new route and the matter debated at the highest level of the judiciary, the Supreme Court. The request of

the opposition group was turned down and the project went ahead, although this delayed the project. For successful execution of public projects, it is important to understand the stake the public have in the project and to involve everyone in the process, especially the land losers.

Regarding the involvement of the public at early stages of design, respondents from one of the communities, Community A, expressed concern over the physical and natural environment damages that could have been avoided by consulting the community and benefiting from their knowledge on the local environment. Being concerned about the natural environment, respondents emphasised the importance of community participation and co-designing, as envisaged in the Community Empowerment (Scotland) Act, 2015. In the light of the Act, it is important that the local knowledge of the community is considered early on, during project design and site selection stage. This should result in site responsive design which is socially acceptable to the people.

The Localism Act 2011 in England may be a useful reference, as per which the local people will be able to vote on neighbourhood planning in a referendum, and if a majority of residents approves the plan, then the local authority will bring it into force (Ministry of Housing, Communities & Local Government, 2011). Under the 'right to build', the Act gives the power to the groups of local people to deliver the development that their local community want (ibid). Above all, the Act requires developers to consult local communities before submitting planning applications for certain developments (ibid). Reference may also be drawn from India where the new laws¹⁰ on compulsory acquisition require the acquiring agency to take consent of at least 80 per cent of the total affected families if the land is to be acquired for a private company, and 70 per cent affected families in case of public-private partnership projects.

¹⁰ Refer to Section 2(2), Chapter I, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 of India.

4.4.1.2 *Justifying 'proportionality principle' and the use of CPO*

Significant emphasis was put by the landowners in their response to SLC on bringing Scottish law closer to the English law in terms of public empowerment and justification, by the public authority, on the use of compulsory acquisition power (Edwards, 2015). Given the coercive nature of the process and unfavourable outcome for a few members of the society, it is important that the need for such an act is explained to the public. Demonstration of the 'proportionality' argument would require sharing information on the scope of the project, the benefits generated by the project, the distribution of benefits between private and public stakeholders, and the extent of land acquisition. In response to the SLC's draft report, the Lands Tribunal for Scotland suggests allowing cross-examination sessions, where people can ask questions from the acquiring agency and private partners involved in the project, such as the Aberdeen Roads Limited in case of the AWPR project. Addressing public inquiries and sharing this information early on in the process should help to build trust among members of the public and acquiring agency and improve compliance of the affected landowners. Most importantly, demonstration of the proportionality principle should make public agencies accountable to the people for the use of compulsory purchase power, thus reducing its misuse for private gains of private partners involved in the project. As per the newly formed laws on compulsory acquisition in India, a pre-condition to compulsory acquisition is that the government should consult the concerned rural and urban local bodies at the village or ward (smallest administrative unit of a local government) level and carry out a Social Impact Assessment study (SIA). Through the SIA, the LARR 2013 requires the Government to demonstrate the following (Section 4(4), LARR 2013):

- a) assessment as to whether the proposed acquisition serves a public purpose;
- b) estimation of affected families and the number of families among them likely to be displaced;
- c) the extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- d) whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project;
- e) whether land acquisition at an alternate place has been considered and found not feasible;

- f) study of the social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project

To include the condition of demonstration of ‘proportionality’ to the people in the law is a good step to ensuring the use of power of compulsory acquisition for public purpose. As mentioned earlier, another major improvement in the Indian law, which may be a motivation for Scotland, is to take consent of the affected families in case of public-private partnership projects (LARR, 2013). This certainly adds to the decision-making power of the community and helps co-building the meaning of ‘public purpose’ with the people.

4.4.1.3 Providing a fair opportunity to the people express views, suggestion and objections on the CPO

The pressure for timely completion of the project is often used as justification for providing limited opportunities for the affected landowners to raise objections or to share their views. In response to SLC’s suggestions to speed up the process by restricting circumstances in which a statutory objector can insist upon a public inquiry or hearing, Milne (2015) argues that “the legislation must continue to reflect the need for a balance between the interests of the acquiring authorities seeking to deliver a public scheme and the interference with landowners’ ECHR rights. Therefore, while simplicity and streamlining procedure may be attractive, this should not be delivered at the cost of removing landowners’ rights to be consulted and to object.” (p. 1).

Leventhal (1980) argues that for procedural fairness it is important that people can raise their voice and share opinion easily, through an inexpensive process. Contrary to this, the cost of representing personal views in a public inquiry is very high. Empirical evidence suggests that the opportunity to be heard is most crucial to procedural fairness (Thibaut & Walker, Procedural justice : a psychological analysis, 1975). In the process of compulsory acquisition, a public inquiry is the only formal opportunity for the affected landowner to be heard. Therefore, it is important to conduct the process in a way that is easy and inexpensive for people to ask questions, raise objections, share views and provide suggestions on the project. To improve the efficiency of the public hearing

process, the Lands Tribunal for Scotland suggests that people should be allowed to cross-examine the promoters of the project. The Lands Tribunal emphasises that “If the procedures for determining CPO objections are not robust then legal and HR challenge is more likely and, from the perspective of the LTS, there risks a greater sense of grievance by the time an objector has become a claimant for compensation.” (Lands Tribunal for Scotland, 2015, p. 2).

4.4.1.4 Expanding the list of statutory objectors

Landowners in close vicinity to the project “should be entitled to insist upon a hearing or inquiry and should also be entitled to progress a legal challenge on the point of law or flaw in process” (Milne, 2015, p. 4). Accordingly, the list of statutory objectors should be expanded to include homeowners within a certain distance from the land to be acquired (Milne, 2015). On the contrary, the approach of the acquiring authority is to restrict the number of objectors as well as the criteria for objections. As mentioned earlier, the opportunity to be heard is crucial to procedural fairness, more so when the process involves interference with private property rights.

4.4.1.5 The process of claiming compensation is much more stressful for those whose land is not acquired

There is a higher level of uncertainty involved in seeking compensation for the negative externalities of the project, such as increased noise and traffic, on properties that are not acquired. The onus lies on the affected landowner to prove the negative impact, which is difficult to demonstrate unless the project is complete. This may compel landowners to hold the property until project completion. Being unable to sell the property at the time of need may negatively affect the financial wellbeing of those who were preparing to sell their property at the time when CPO was released. For example, respondent SMJR_2 had plans to sell the house and relocate to Edinburgh, where their children are living. The value of their property had reduced to two-third over a period of ten years, and the couple were desperately waiting for the project to get completed so that their claim for injurious affection can be settled.

4.4.2 LACK OF NEUTRALITY IN THE ASSESSMENT OF OBJECTIONS AND SUGGESTIONS RECEIVED FROM STATUTORY OBJECTORS

In the current process, the affected landowners have very limited opportunity for raising objections and therefore it is important that proper consideration is given to their objections. Often the affected landowners spend a significant amount of time and money in preparing their objection and alternate design solution to the project. Unbiased assessment of landowners' objections and their suggestions or alternate proposals is crucial to designing projects which respond to the local environment and are socially acceptable. Therefore, the landowners suggested that the confirming authority should be an independent body with no vested interest or stake in the proposed project. This is in sync with suggestions made by other landowners, to the Scottish Law Commission. Also, landowners placed a huge emphasis on improving the accountability of public agencies towards people. As per landowners' suggestions, the confirming authority should be made accountable to providing final decisions along with proper reasonings for each objection. Steel (2015) writes that accountability and transparency are particularly important when the confirming authority is an arm of the promoting body of the project for which acquisition is proposed.

4.4.3 POOR ACCOUNTABILITY OF PUBLIC AUTHORITIES AT DIFFERENT STAGES OF THE PROCESS

4.4.3.1 Lack of accountability towards public suggestions on project design

Residents of Community A have actively participated in the decision-making process to the extent of proposing alternate proposals for Accommodation Works at the Public Local Inquiry. However, they were disappointed with the lack of response from the concerned public authority. The public authority did not take their proposal on board, and therefore it turned out to be a wasteful exercise regarding time and cost spent on the proposal. However, the bigger disappointment was caused when the public authority did not provide them with the reason for rejecting the proposal. In a follow-up letter to the Transport Minister, Respondent SMJA_2 writes, "Following on from the AWPR Public Local Inquiry, Transport Scotland and its design consultants/agents have appeared not to have listened (or perhaps more accurately completely ignored) the

views and intimate local knowledge of affected land-owners in my immediate locale. This includes sensible and realistic alternative proposals for Accommodation Works which were submitted by Community A and the subsequent recommendations of the Reporters who recognised the overwhelming merits of these alternative proposals.” “... being not listened to is the biggest concern”. In words of respondent SMJA_4, “someone has got to get it (road) in their backyard, but the public authority should at least speak to the people; let them see what the problems it may cause to them; let them share views on if there is a better way to put the road”. As per the respondents, the fair process would mean taking people’s suggestions on-board; improving upon it in discussion with the community; and in the case of dismissing their suggestions, providing satisfactory explanations or reaching to a mutually agreeable compromised solution.

Respondents emphasised that the public agency has been overlooking suggestions made by the community thus violating the principles of the Community Empowerment (Scotland) Act 2015. It is in the benefit of the project to take heed of the experience and expertise of land possessed by the local community and original owners. The Act also acknowledges the valuable knowledge bank with the local communities and the important role which the community may play in infrastructure planning. Participatory planning lies at the heart of democratic and inclusive societies and is acknowledged in statutory documents but is not necessarily practised.

Respondents had a good realisation of the challenges which public authority faced in engaging with the community because “there will always be someone who will exploit the system and try to extract the most out of everything” (Respondent SMJA_6). However, this cannot be the justification for disengagement with the community. The gap between the expectations of the people and deliverables by the public agency is widened if the former is not engaged.

Over the years, public-private partnership has emerged as a popular format for the development of roads. Public agencies have evolved in their role from being the acquirer and the developer to merely being the acquirer while development work is undertaken

by the private partner, as was the case with the AWPR project. With the emergence of PPP and other futuristic formats of project delivery, it is even more important that public participation is guaranteed at all crucial decision-making stages of the project (Lands Tribunal for Scotland, 2015). Taking reference from new Indian law¹¹ on compulsory acquisition, a major improvement has been made as per which it is mandatory to take consent of at least 70-80 per cent of the total affected families if the land is to be acquired for a public project where private partners are involved (LARR, 2013). This certainly adds to the decision-making power of the community and helps co-building the meaning of 'public purpose' with the people.

4.4.3.2 Lack of accountability of the acquiring agency towards verbal commitments granted during the public hearing and personal meetings

Many respondents reported that they were let down by the acquirers who made fake promises during public hearings and never fulfilled them. Respondent SMJA_4 shared his experience of the public inquiry meeting where he presented the proposal to build a private road to access the other part of his farm, and even though his proposal was verbally agreed during the meeting, the offer was withdrawn immediately after the minutes of the meeting were published. The respondent viewed this as a strategic behaviour by the officials who managed the meeting process by giving fake commitments.

To improve accountability, respondents recommend that formal record of the minutes of important meetings between key stakeholders (i.e. general members of the public, affected landowners, public and private agencies) should be prepared and made accessible to the public. Leventhal (1980) suggests that record keeping is an efficient method of monitoring and together with proper sanctions in place, it should be possible

¹¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

to improve the accountability of public officials towards their verbal commitments and promises.

4.4.4 UNEQUAL TIME LIMITATIONS ON THE ACQUIRER AND ACQUIREE

There is notable inconsistency in the process in terms of inequality of time limitations on the acquirer and the acquiree. Put simply, the time within which the acquiree can raise objections is usually strictly defined, but the acquiring authority is given the flexibility of time when dealing with objections. For example, when the Minister forwards public objections (received at stage 4, Annexure 4.A) to the acquiring authority for negotiation with objectors, the timeline for such negotiations is not specified in the statute, and prolonged negotiations may delay the process, as observed in the case of the AWPR project (SLC, 2014). Also, the time between holding a hearing or public inquiry and submission of the final report to the confirming authority is not fixed and varies greatly depending upon the complexity of the project (SLC, 2014). Delays in dealing with objections are frustrating for the objectors and may skew the timeline for project delivery, which can be frustrating for the developer as well as the public.

On the contrary, the original owners are given a short time of approximately twenty-eight days (in the case of AWPR project) to raise objections to the CPO and to make decisions on leaving or staying back at the location. Much information is required before making such important decisions and the time seemed inadequate to many respondents, such as SMJA_8 and SMJA_9 whose entire family has been living in the area for more than sixty years.

Thus, a closer analysis of the process reveals that conducting a public inquiry and allowing people to raise objections does not delay the process by itself. Delay is caused due to complexities involved in the decision making, more so on the part of acquiring agency and the judiciary. To speed up the process of compulsory acquisition, Milne (2015) and many other respondents suggest defining the timeline for the Scottish Minister within which objections should be referred to the DPEA. Similarly, other stages in the process can be streamlined to make the acquiring agency more accountable for time consumption.

4.4.5 IMBALANCE IN NEGOTIATION POWER (ARISING OUT OF IMBALANCE IN FINANCIAL AND INFORMATION RESOURCES) BETWEEN THE AFFECTED LANDOWNERS AND THE ACQUIRING AGENCY

Respondent SMJA_6 felt that the government has been given too much power in the process of compulsory acquisition - “the government has the first say, and the last say and whatever is said in between by anyone else does not matter”. That said, the landowners approved of giving the power of compulsory acquisition to the government because they understood the importance of public projects for which land is required. However, there is acute dissatisfaction over the imbalance of financial resources and information available to the government when it comes to negotiation and dispute resolution. Landowners were generally of the opinion that they are less resourced than the acquiring agency, in terms of financial capacity, technical and legal assistance, and information accessibility. Therefore, the landowners are apprehensive that due this imbalance in negotiation power, the outcome received at the end of a negotiation/dispute is more likely to be in favour of the acquiring agency.

4.4.5.1 Information asymmetry caused due to poor transparency and information sharing

To reduce the imbalance in information availability, landowners suggested making available as much information in the public domain on technical details of the proposed project, components of compensation, a method of assessment, and impacts of the project. Knowledgeable respondents seek full information on the project, including technical details of the project, tender document and other relevant documents through which they can better understand the project and responsibility of each stakeholder. However, many such documents are not available in the public domain, thus reducing the opportunity for people to participate effectively in the project, as envisaged in the legislature. For example –

- (i) There was no information in the public domain as to why the route of the road was changed from what was agreed during public consultations. This has reduced trust, and people suspect the government to have ulterior motives and biases.

- (ii) Being concerned with the problem of poor visibility at a road junction proposed near his residence, respondent SMJA_2 performed a rigorous technical analysis of the junction and proposed an alternate solution. During the Public Local Inquiry, he clearly explained that the junction design did not meet the absolute minimum standards. Ever since then the respondent has made repeated unsuccessful attempts to seek information on the final junction design and if it has been rectified to comply with Visibility Splays¹² standards prescribed by the Transport Scotland.

Procedures that are opaque with lower accountability towards people are perceived as less fair (Leventhal, 1980). Transparency and information sharing should induce trust and better their understanding of the project, thus allowing them to participate more effectively.

4.4.5.2 Imbalance in financial power

Imbalance in financial power was brought forward by many affected landowners and was acknowledged by the SLC (2014). Respondent SMJA_4 argued that the acquiring authority utilises public money in dealing with objections and legal disputes whereas the affected landowners deplete their personal financial resources, and therefore there is an imbalance of power to safeguard their interests. On similar lines, (Milne, 2015) writes in her response to SLC, “there is a genuine issue with the imbalance between the promoter and an ordinary member of the public. Of course, this is a much wider issue about litigation generally, but perhaps where a member of the public is facing so great an interference with his ECHR rights, consideration could be given to the availability of public funding for objections”. To overcome the imbalance in financial power, SLC proposes to award some protective expenses order (PEO) in certain cases. This may reduce the sense of injustice arising due to “having to take part in a legal dispute that was not of their choosing” (SLC, 2014, p. 287). Milne (2015) argues that when private partners are involved in the project to make a profit from the project, there is scope for

¹² Visibility Splay is defined as “the distance a driver needs to be able to see left and right along the trunk road when waiting to turn out of a junction or access onto the trunk road” (Transport Scotland, 2016, p. 5).

taking away a share of the private benefits of the developer against the cost of legal advice for the affected landowners. However, care needs to be taken not to encourage frivolous claims.

4.4.6 LEGAL PROCESS OF COMPENSATION NEGOTIATION REQUIRES TIME, EFFORT, AND RESOURCES

“Procedures that involve long delays, or a great expenditure of time, effort, and resources are perceived as less fair” (Leventhal, 1980, p. 43). The process of compensation determination is far too arbitrary in the opinion of the affected landowners. While there are many negotiable components in the compensation package, the process of negotiation is legally complex, expensive and time-consuming. To explain more, the process of compensation determination gives ample opportunity for compensation negotiation to each affected landowner, but the onus lies on the claimant to justify their losses and convince the acquirers. This adds to the landowner's cost of negotiation/arbitration. As compared to the acquiring agency, landowners feel less powerful or resourceful to enter arbitration/negotiation. Expenses involved in negotiation/arbitration discourages landowners from negotiating over the amount of compensation, and they rather chose to accept the offered amount. Therefore, it is important on fairness grounds that some of the obvious losses are paid upfront without arbitration, as suggested by respondent SMJA_4. Respondent SMJA_4 suggested that arbitrariness in compensation determination can be reduced if, at the start of the project, acquirers prepare a detailed list of components of compensation in discussion with each affected landowner and pay the rough estimated amount of compensation in advance or as per an agreed timeline while final settlement (or “compromised agreement”) may then happen towards the end of the project when actual expenses are known. Although there is provision for advance payment of compensation, the problem is that the landowners and their agents lack information on the components of compensation and the timeline of the remaining payment. The acquiring agency refused to give any information to respondent SMJA_9 and his agent on compensation components and valuation method. Referring to the Australian process of compulsory acquisition it is suggested that the details on the components of the compensation and valuation report should be shared with the affected landowners, along with the CPO

notice. This would reduce ambiguities over uncovered/under-compensated losses and make the process more transparent. Also, upfront agreement over the list of items of compensation and providing lumpsum upfront compensation for an obvious set of additional losses, should reduce arbitrariness in the compensation process and lower the negotiation cost. For instance, in new Act of compulsory acquisition in India, there is provision for payment of a lumpsum solatium (one to two times the market value) to each affected landowner, without arbitration (LARR, 2013).

The Scottish Law Commission (2014) acknowledges that existing laws of compensation are complicated and inadequate, and the compensation system is “still to some extent governed by principles developed on a case by case basis by the courts”. Court decisions are rooted in the principle of equivalence on which basis the affected landowner will be paid “neither less nor more than her loss” and should be satisfactorily reinstated in the position where she was before acquisition (SLC, 2014, p. 155). Given that the principle of equivalence is broad to interpret, and the statute has inadequately specified the components of compensation, there is arbitrariness in the process which at times causes divergence between the statute and the decisions of courts (SLC, 2014). The SLC emphasises the need of designing a new statute that should clearly and coherently set out the components of compensation and the rules for determining the value of each.

To reduce legal complexities involved in compensation determination and to allow for flexibility and creativity in dispute resolution, the SLC (2014) suggests that alternative dispute resolution (ADR) methods should be allowed without compromising upon the right of the affected landowner to apply to the Lands Tribunal for Scotland (which is a necessity under Article 613 of ECHR). Even though the cost of arbitration and mediation is not known explicitly, the usual understanding is that ADRs are cheaper and quicker

¹³ Article 6 gives the right to fair trial. It states that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...” (ECHR, 1998, p. 9).

methods of negotiation/dispute resolution as opposed to the Lands Tribunal (SLC, 2014). Parallel solutions may be drawn from Australia where, to make the process of dispute resolution “accessible, fair, just, economic, informal, and quick”, the Administrative Appeals Tribunal adopts many methods of alternative dispute resolution which include conferences, conciliation, case appraisal, and neutral evaluation (AAT, 2019). Of this, conference is usually the first step where informal meetings are conducted by a conference registrar and the parties are given a chance to put forward their views and derive mutually agreeable solutions (AAT, 2019). All ADR meetings are informal confidential meetings and many cases are resolved without the need for a hearing (AAT, 2019).

4.4.7 UNEQUAL DISTRIBUTION OF BURDENS AND BENEFITS (BETTERMENT VALUE) ARISING OUT OF THE PROJECT

It is the usual practice in Scotland to offset compensation by the increase in value, caused due to the proposed project, to other adjacent land owned by the claimant. This was the experience of respondent SMIA_1. On the other hand, un-acquired landowners retain the full benefits of betterment to their property. Respondent SMIA_1 compared the situation of acquired landowners with others who are not acquired and finds that the process of re-distribution of the benefits is unfair to him (and other land losers). A former Chief Valuer Scotland acknowledged the problem of unequal distribution of real-estate benefits arising from the project between the land losers and other members of the society.

Often due to the project, the development potential of land adjacent to the project increases in value. This makes it difficult for the original owner to buy alternate land in the vicinity because the compensation calculated is on the original value of land in a no-scheme scenario, which is inadequate to buy an equal amount of land under the scheme scenario. For example, agriculturists SMIA_1, and SMJA_4 and SFJA_4 were planning to buy an equal amount of agricultural land in the vicinity to be able to maintain their original income, but betterment brought by the project is making it much more challenging for them to replace land as it reduces their compensation amount.

4.4.8 NO COMPENSATION OR ASSISTANCE IN RECOVERING FROM UNWANTED BURDENS OF NON-RECOVERABLE FINANCIAL LOSSES

At times certain losses are non-claimable and this add to the frustration of the original owner. For example, respondent SMJA_4 and SFJA_4 had been using old, yet functional vehicles on the private road across their farmlands, which are otherwise illegal (being too old) to be driven on public roads. With the new AWPR road dividing their farm, they are unable to use these vehicles and the additional expense of buying new vehicles was non-claimable. Another interesting example of non-claimable expense, as shared by respondents SMJA_4 and SFJA_4, is the cost of maintaining two horses for the time when they cannot use the horses for recreation, as intended, due to waterlogging in their fields and shifting of drains due to the AWPR road project.

Prolonged exposure to noise and disturbances from the construction site adds to the stress of the landowners and everyone else living close to the construction site. However, the disturbance caused due to traffic, dust, noise, and vibrations from the construction site are usually ignored as a temporary inconvenience and are not compensated. Disturbances from a construction site may become quite intolerable for a few, particularly those in their old-age (SMJA_8; SMJA_9 and SFJA_9) or those working at night (respondent SMJA_4). Often, they take-up the additional expense of sound-proofing the house or bedroom, which is non-recoverable.

Being involved in the compulsory acquisition process is time-consuming and demands physical presence. Due to this, respondent SMJA_9 lost the opportunity to go out and earn from seasonal employment in the oil industry, which has been his usual pattern of earning over the past thirty years. However, this loss cannot be claimed although it affects the financial situation of the family.

4.4.9 POOR CORRECTABILITY AND INEFFICIENT GRIEVANCE MANAGEMENT

4.4.9.1 *Poor compliance with prescribed procedures and mitigation measures*

As respondent SMJA_4 mentioned, written documents and reports published by the acquiring authority is a contract between the people and acquirer and are the terms and

conditions based on which people agree to give their land. However, there was poor accountability of the acquiring authority towards prescribed procedures mentioned in published documents such as on the AWPR Environmental Statement. For example, section 7.5 of the report prescribes “provision of access for land interests to their holdings at all times during construction and operation; pre-construction drainage works where required and reinstatement/provision of new drainage as required to maintain agricultural land capability and avoid flooding issues” (AWPR Environmental Statement, 2007), but the same was not performed, as reported by respondent SMJA_2 and SMJA_4. Regarding unattended drainage issues in his community, respondent SMJA_2 mentions (in his letter to Transport Minister) that “Transport Scotland has not lived up to the fine words made in that (Environmental) Statement and spoken to at the Public Local Inquiry.”

Proper fencing and drainage are crucial for efficient utilisation of farmland, and any damage to basic farm infrastructure requires quick repair, as mentioned by many agriculturist respondents. Landowners affected by the AWPR project struggled to get attention from the acquiring authority on these day to day matters which caused huge inconvenience to them. Many agriculturists such as respondent SMJA_4 and SFJA_4 were compelled to make multiple adjustments to their farmland, in response to the division of their farm by the new road. As reported by respondents, these expenses include installation of new water pumps and troughs for the animals on either side of the divided farmland; creating new fencing; creating alternate roads to access the farms and other related expenses. They found it challenging to recover the amount invested in readjustments.

Also, landowners expected to have a single point of contact for compensation related discussions and record keeping. This is even more important when many components of compensation are determined through personal negotiation with each claimant. Respondent SMJA_4 struggled to recover the cost of repair to the drains in his farm, which were dug out for the construction of the road. However, there seemed to be a confusion between the government agency and the private developer, as to whose cost this was, while the landowner is burdened with the task and costs involved.

4.4.9.2 Compliance issues and day to day problems related to the construction of the project

Residents cannot approach the contractor directly to raise issues concerning construction works (such as littering, violation of work hours; poor compliance with standard construction practice) and must go through the community liaison officer whose usefulness was questioned by landowners. Respondents suspected that issues on the construction site were totally out of sight of the public agency and expect that the public authority should keep a check on the compliance issues during the phase of construction.

4.4.9.3 Delays in the payment of advance compensation

Even though most claims were unsettled in the case of the AWPR project, claimants were keenly looking forward to receiving advances and for the project to be completed so that their claims can be settled. There is no effective mechanism in place that can enforce payment of advance compensation by the acquiring authority. The only option for the affected landowner is to raise judicial review, which in turn is time-consuming. Put another way; there is no incentive for the acquiring agency to make advance payments within a reasonable time. As per the regulations prescribed under section 40 of the Land Compensation (Scotland) Act 1963, statutory interest is payable on all outstanding compensation monies that have not been paid on the vesting date. However, the rate of judicial interest is calculated at 0.5 percent below the Bank of England base rate, on simple rather than compound interest basis (SLC, 2014). Such an interest rate might compensate for the loss of 'time value' of money but is not an incentive for the acquiring agency to timely deliver the compensation amount (SLC, 2014). RICS (Scotland) suggested to the SLC to impose high statutory interest rate of approximately 3 percent above base rate on unpaid amounts (SLC, 2014).

4.4.9.4 Seeking feedback from the affected parties at the end of a project

It is important that the process of compulsory acquisition and project implementation is continuously improved. Respondent SMJA_2 suggested that public authorities should

take feedback from the people, particularly those who are directly affected by the project, with intentions to learning lessons and improving future services.

4.4.10 LACK OF BENEVOLENCE AND HUMANITARIAN APPROACH TOWARDS THE AFFECTED LANDOWNERS

While it is argued that the outcome of compulsory acquisition is pre-decided and unfair to the affected landowners, it is important that the way they are taken through the process of reduction from being a landowner to the recipient of compensation is respectful. The usual response of interviewees suggests strong dissatisfaction from the way they were treated by the acquiring agencies and their partner agencies, both public and private. In the words of respondent SMJA_4, “the affected parties are treated more like an inconvenience (to the acquirers) than as stakeholders”. On approaching the Aberdeen Roads Limited for more information on the change of route which had affected her land, landowner SFJA_4 felt that she was dismissed for having a NIMBY (not in my backyard) attitude. She reported that the officer-in-charge lacked concern towards the affected landowners and how they were getting on with the news of acquisition which was received around Christmas in 2005. Many respondents expressed that dismissive behaviour of public agents reduces landowners trust in the agency and furthers their apprehensions that their interests are not safeguarded.

Respondent SMJA_6 expressed that there was much stress caused due to being dismissed and suggested that if the public authority is more responsible and accountable towards suggestions and queries raised by the people, it may relieve them from stress caused due to powerlessness and helplessness. Compulsory acquisition accompanied with a dismissive attitude of public officials reduces perceived level of fairness in the process and furthers reluctance among the affected landowners.

As discussed earlier in section 4.2, interactional justice lies at the heart of procedural fairness, and it is essential that the sense of loss of self-respect and dignity associated with the compulsory acquisition of land is not heightened further due to disrespectful treatment received from the acquiring agency during the process.

4.4.11 NO CONSIDERATION FOR STRESS AND TIME LOST IN DEALING WITH THE PROCESS

It is understandable that much stress is caused to the affected landowners due to procedural imperfections discussed in this section, the important ones being: (i) time and cost consumed in the process of preparing alternate proposal/suggestions to the project; in attending public meetings and seeking information on the project and its impact on properties; and in preparing their case for compensation; (ii) disturbance in day to day operation of farmland due to temporary damages caused during the construction of road; (iii) negative changes to the local environment (views, sound level, traffic and congestion) and its impact on their day to day life (iv) depreciation in property value; (v) disturbance (noise, vibrations, and dust) caused due to construction works; (vi) dismissive attitude of public agencies and poor grievance management; (vii) uncertainty and time delays to project completion and payment of compensation.

It is important to acknowledge that despite being very highly dissatisfied with the process of compulsory acquisition, most landowners did approve of giving the power of acquisition to the government. Many landowners confessed that they would not have sold their land even if it was for the public project and that it will be impossible for the government to execute any infrastructure project without the power of land acquisition. “I am a supporter of the project but not the way they have done it”, said respondent SMJA_4, and a similar response was received from the majority affected landowners.

“Whilst I have received some payments to account in terms of financial compensation and further compensation will hopefully be due in due course, I consider it will be most unlikely these monies will come anywhere close to fully compensating me for all the pressures I have had to endure over the past eleven years.” said respondent SMJA_2. In addition to the loss of land and associated challenges, the landowners faced ongoing issues with the construction of the project. Together these things make the process very stressful for the landowners.

Some house owners were stressed about the depreciation in property values (by almost three times) and the inability to sell it at any better value. Their wish was to be compensated at the price which corresponded to the market value of the house/land

prior to the AWPR. In the views of the owners, there should be compensation for going through much stress during the process. One claimant acknowledged that it would be difficult to put a value on stress-related compensation and, in their view, being able to receive the fair market value of the property, as it would have been under the no-scheme scenario, would be good enough compensation for the stress they were going through.

It is evident from the responses received from the affected landowners that many adopted the strategy of objecting to the project to safeguard their property from getting acquired. Some landowners confessed that they would have supported the project if their property was not to be acquired for the new road. Given that the compulsory acquisition process allows the affected landowners, and other members of the society, to raise objections about the proposed project, the strategic behaviour adopted by the affected landowners, mentioned above, increases the risks of public litigations and project failure. Therefore, a fairer mechanism of compulsory acquisition would improve the level of cooperation from the affected landowners by reducing strategic objections, thus improving the chances of success of developmental projects and the consequential welfare of the society at large.

Respondent SMJA_4 described the process to be very complex and time-consuming to the extent that he was thinking of applying for a law course at the Open University to be able to argue his case better.

The process of compulsory acquisition is legally complex and requires much input from the affected parties to be able to recover their losses satisfactorily. Affected landowners invest a great deal of time and cost in dealing with compulsory acquisition issues which may go on for a few years until the project is complete and final settlement of compensation is made. It is unfair on the affected landowners to have taken on the stressful process that was not of their choosing. In the views of a senior legal representative from Scotland, personal time lost by claimants in protecting their interest may be a proper item of a claim. A closer look at the process of compensation determination in England may reveal some information on how personal time taken in

dealing with legal processes may be compensated. Most respondents expressed that the stress caused due to the project was immense and deserved appropriate compensation that may not necessarily be in monetary terms. Suggestions for compensation of stress may include payment for the modes of de-stress such as consultation with a psychiatrist, and relaxation therapy. That said, it is first important to reduce complexities in the process and make it simple and fair enough for the affected landowner to understand the issues without any legal or professional dependencies.

4.5 CONCLUSION

This research argues for reforms in the process of compulsory acquisition of land to make it fair to the affected landowners, and the society at large. Given that the outcome of the compulsory acquisition process is unfair to the landowners whose land is acquired, it is necessary that the process allows them fair opportunities to express their views at different stages of decision-making, and to negotiate and recover their losses, to the best possible extent. This should not only help the affected landowners come to terms with the unfavourable outcome of losing land but should also reduce the resistance to the compulsory acquisition process, which is often misunderstood as the resistance to the project.

Using the case of Scotland, this research highlights the gaps in the existing process of compulsory acquisition and argues for incorporation of basic principles of procedural fairness, which are: (i) consistency of procedure and rules across people and time; (ii) neutrality and suppression of bias; (iii) accuracy of information collection and dissemination; (iv) accuracy of implementation of the process, compliance and accountability; (v) correctability and grievance management; (vi) representativeness and the opportunity to be heard; (vii) ethicality and benevolence.

Research findings suggest that the existing process of compulsory acquisition seriously lacks incorporation of some of the most important principles of procedural fairness, such as neutrality and representativeness. A clear majority of problems in the process are due to lack of respectfulness and accountability towards the affected landowners.

These problems can be overcome through procedural reforms and without making any compromise on the public interest and benefits desired from the project. This research also summarises suggestions on procedural improvements, received from affected landowners and experienced surveyors in Table 4.3.

Table 4.2: Suggestions for improvements in the process of compulsory acquisition in Scotland

1) Improving public participation at the pre-acquisition stage	i. inviting public suggestions and objections from all the members of the public, before finalising the project and the CPO;
	ii. consulting the public for the route/location of the project;
	iii. co-designing the project with the community to benefit from local knowledge of the community, particularly in environmentally sensitive regions;
	iv. convincing people on 'proportionality' argument and justifying the use of CPO
2) Improving overall transparency and information sharing	i. providing detailed project designs and other relevant information in the public domain;
	ii. sharing a written report on the components of compensation and valuation method with each affected landowner, before project commencement;
3) Improving the accountability of public authorities towards public inquiries and grievances by necessitating response within a fixed period.	
4) Easy correctability of the process wherever required	i. providing reasons, within a fixed period, for not considering suggestions and alternate proposals received from the people;
	ii. responding to public grievances and taking quick corrective actions wherever required, such as on matters concerning compliance issues on construction sites during the project construction phase
5) Removing biases in the decision-making by establishing a neutral body or committee for consideration of objections and suggestions received from the people and for a final decision on confirming the CPO (refer to stage 4 and 5, Annexure 4.A);	
6) Easy mechanism for negotiation and dispute resolution: Providing an opportunity to the affected landowner to discuss the losses and settle expenses without indulging in complex and expensive legal procedures, through the introduction of alternative settlement procedures such as arbitration and mediation.	

Findings from this research could be a useful guide to policymakers and lawmakers. It is important to design a fair process of land procurement that can better respond to the growing demand for public projects. While the compulsory acquisition is just one of the many options for land procurement, other models like land leasing and land trust, may be analysed on procedural fairness grounds in the future research. Reducing coerciveness and increasing wilful participation of the landowners is the key to designing fair process for land procurement for public infrastructure projects.

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Annexure 4.A: Making of a Compulsory Purchase Order as per the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947 and the process of compensation determination

Pre-acquisition stage - Making of a Compulsory Purchase Order as per the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947

Step 1. Survey of land before preparing the CPO: Before preparing the CPO, the acquiring authority may wish or be required to survey the land to ascertain that it is fit for the intended purpose. Section 83 of the 1845 Act requires the authority to give notice of three to fourteen days to the landowner. Also, the Act requires the acquiring authority to compensate for any damages caused to the land due to the survey process.

Step 2. Preparing the draft order for compulsory acquisition: The acquiring authority prepares the (draft) compulsory purchase order which clearly describes the land, to which it applies, in reference to a map.

Step 3. Notification to the public and each affected landowner: The acquiring authority circulates a notice with the following information –

- a. The purpose for which the land is required;
- b. Description of the land to which it applies;
- c. Locality, where a copy of the CPO and the map referred to therein, may be inspected;
- d. The time duration and the way objections to the order can be made. The Act specifies the minimum duration to be twenty-one days (from the date of notice);

The notice is populated in two ways- firstly, it is published in two successive weeks in one or more local newspapers to inform the public at large; secondly, individual notice is served on every affected person which includes owner; lessee; occupier (except tenants occupying the property for less than or equal to a month); “on the holder of any personal real burden affecting the land; on the owner of any land which is a benefitted property; and on any owners association of the development in question” (SLC, 2014, p. 66). All above persons who are directly affected by the acquisition are called ‘statutory objectors’ (ibid).

Step 4. Inviting objections invited from statutory objectors: Statutory objectors can object to matters other than that of compensation, or any other matters which can be dealt with by the tribunal by whom the compensation is to be assessed.

Dealing with objections: When there are objections made by statutory objectors, the confirming authority (or the Scottish Minister) is required to either hold a ‘public local inquiry’ or afford an opportunity to the objector to be heard. The Scottish Minister forwards the objections to the Directorate of Planning and Environmental Appeals (DPEA) which then appoints a person (or reporter) who holds the inquiry or hearing. In practice, on initial receipt of objections, the

Minister forwards these to the acquiring authority which tries to negotiate an agreement with the statutory objectors (SLC, 2014). Before fixing a hearing or public inquiry, the DPEA may grant another opportunity to the acquiring authority to negotiate and reach a compromised agreement with the objectors (ibid). If the acquiring authority fails to reach an agreement, the DPEA proceeds to appoint a reporter and hold an inquiry or hearing (ibid).

During a public inquiry, the reporter discusses the matter with the objectors. The confirming authority may afford the opportunity to the acquiring authority to be heard at the same time. After the inquiry, the reporter submits a detailed report to the confirming authority on the CPO and recommendations on whether to confirm the CPO or not. However, the reporter's recommendations are not an imposition on the confirming authority which may or may not confirm the order, with or without modification, after considering the objection and the report submitted by the reporter.

Regarding any expenses involved in being represented at the 'public local inquiry' and arguing for removing the property from the proposed CPO, the costs incurred by people in attending or being represented at the PLI are generally incurred by themselves unless their argument is successful and the property is removed or partly removed from the CPO.

- Step 5. Decision and appeal: Based on the reporter's recommendations the Minister may decide not to proceed with the compulsory purchase and the matter may end here. Alternatively, the Minister may confirm the compulsory purchase order, with or without modifications, irrespective of the recommendations made by the reporter. If there is no objection made or all objections are withdrawn, then the confirming authority may finalise the CPO, with or without modifications. A legal challenge can be made to the making of the CPO by way of formal Court action, within six weeks from the date of publication of the CPO.
- Step 6. Confirming the CPO: On confirmation of the order, the acquiring authority shall publish a notice in the same way as the draft CPO. The notice includes explanatory literature on the effects of the CPO and a form for claiming compensation.

The process of compensation determination

- Step 1. Determination of compensation offer: Compensation offered to the affected landowners is based on the valuation of land by an independent valuer, which is

often the district valuer¹⁴ (SLC, 2014). If the landowner is unsatisfied with the offered amount, they can dispute the matter at the Lands Tribunal for Scotland.

Step 2. Dispute resolution: Under the current laws on compensation, any question of disputed compensation shall be referred to the Lands Tribunal for Scotland (Section 8, Part II, Land Compensation (Scotland) Act 1963). However, until 1970, multiple methods of dispute resolution were adopted as proposed under the Lands Clauses Consolidation (Scotland) Act 1845. These included arbitrations if agreed by the parties, and dispute resolution by the sheriff (for claims within £50) and jury (for claims exceeding £50) (SLC, 2014). In 1971, the Lands Tribunal for Scotland was formed with intentions to involve both legal and valuation experts¹⁵ in the decision-making process. This also resolved the perceived problem of overcompensation in the earlier system when compensation matters were dealt with by legal experts (SLC, 2014).

Step 3. Under the current rules (Lands Tribunal for Scotland Rules 2003), the process of disputed resolution can be instituted by any party by sending a written application to the Tribunal. The Tribunal has the flexibility to set the procedure for dispute resolution, as it may think fit (Section 14, Part V, Lands Tribunal for Scotland Rules 2003). However, in practice, a clear majority of cases of disputed compensation are resolved by agreement by parties without reference to the Lands Tribunal for Scotland (SLC, 2014). Usually, the landowner appoints a surveyor to discuss the matter on their behalf, and the district valuer negotiates on behalf on the acquiring authority (ibid). These agreements are not completely outside “the shadow” of the Lands Tribunal, which then decides on the remaining cases that cannot be resolved by agreement (ibid). Scottish Law Commission (2014) writes that “settling is a desirable outcome, even if the case is compromised in some way, as it avoids the parties incurring the expense of a contested hearing, particularly if the settlement is achieved before they incur the expense of a contested hearing” (p. 282).

Step 4. Expenses: In the case of unsuccessful claims where compensation determined by the Lands Tribunals does not exceed the compensation offered by the acquiring authority, the Tribunal may order the claimant “to bear his own expenses and to pay the expenses of the acquiring authority” (Section 11, Part II, Land Compensation (Scotland) Act 1963). On the contrary, if the compensation determined by the Lands Tribunal is greater than or equal to the original offer of

¹⁴ “The district valuer is from the District Valuer Services (DVS), the property arm of the Valuation Office Agency, an executive agency of HM Revenue & Customs.” (SLC, 2014, p. 280)

¹⁵ “The Lands Tribunal for Scotland currently consists of a legally qualified President and another legally qualified member, along with two further members who are surveyors experienced in valuation matters, who all bring their particular expertise to cases before the Tribunal” (SLC, 2014, p. 281)

compensation made by the acquiring authority, then the Tribunal may order the acquiring authority to pay for the expenses borne by the claimant (ibid).

Step 5. Decision and appeal: The Tribunal's decision, with reasons, is given in writing. The aim is to issue decisions within eight weeks. An appeal on the point of law against a Tribunal decision may be made to the Court of Session within 42 days after intimation of the decision.

CHAPTER 5. ANALYSING THE PROCESS OF COMPULSORY ACQUISITION OF LAND THROUGH THE LENS OF PROCEDURAL FAIRNESS: EVIDENCE FROM INDIA

The mechanism of compulsory acquisition of land has two main components, i.e. the outcomes and procedure adopted to create such outcomes. The outcome for the public is in the form of many benefits generated by the project and the outcome for the affected landowner concerns mainly with the compensation paid against the acquisition of land. For designing a fair mechanism of compulsory acquisition of land, it is necessary that equal attention is paid to improving compensation strategies and the process of acquisition. There has been a continuum of research in the area of 'fair' compensation while procedural aspects of the compulsory acquisition mechanism are less attended by researchers. This research concentrates on the process adopted in India and finds that the old and the new laws of compulsory acquisition advocate a process which inadequately meets the six criteria of procedural fairness identified by Leventhal in 1980, which are consistency, bias-suppression, accuracy, correctability, representativeness, and ethicality. Major gaps identified in the Indian process are (i) poor transparency and information sharing; (ii) poor accountability of the acquirers at all stages of the process; (iii) lack of involvement of the people in project planning and design; (iv) lack of consistency of government's support to the project; (v) poor bias-suppression at multiple stages of the process; (vi) lack of neutrality in the assessment of compensation and objections; (vii) no penalty for delays in the payment of compensation; (viii) no provision for advance payment of compensation; and (ix) issues with unethical behaviour and corruption by the acquirers. Suggestions for improvement in the process are also provided by this research, based on the feedback received from forty-seven landowners who have been intensively involved in the process of compulsory acquisition of land for the BMIC project in Bengaluru; and author's analysis of international laws of compulsory acquisition. This research extends the knowledge on the fair process of compulsory acquisition and shall be useful to lawmakers, policymakers and academic working in related areas.

5.1 INTRODUCTION

Literature has argued that besides the compulsory nature of acquisition in a compulsory acquisition of land by the state for developmental and public purposes, landowners have been left dissatisfied with the process of land acquisition and the compensation mechanism (Rao, 2018b). Much of the land that has been acquired compulsorily in India have used the Land Acquisition Act (LAA) 1894. There are other Acts for compulsory acquisition of land that have been used by central and state agencies in India which are for specific purposes (such as Karnataka Industrial Area Development Act, Special Economic Zone Act). However, these Acts generally take LAA as the basis with some deviations. Discontent with land acquisition process and compensation has led to numerous protests (see the discussion in Ghatak, et al., 2013; Saha, 2017), which at times have been violent. Rao (2018b) argues that in the compulsory acquisition, landowners lose many of their functionings that are associated with land and compensation does not adequately compensate for these losses, thus causing dissatisfaction.

This research extends previous research and examines dissatisfaction that are caused by the process of compulsory land acquisition, which amplifies the feeling of loss. There are three broad stages in the process of land acquisition (i) pre-acquisition (ii) acquisition and (iii) post -acquisition stage. The post-acquisition stage in India may also involve relocation and rehabilitation (R&R) in projects that require large-scale displacement (such as the construction of a dam, power projects or large industrial estates). There is ample research that examines the R&R process and its challenges in India (see for example Chowdhary, 2009) and this research focusses on the examination of the process involved during the pre-acquisition and acquisition stages. The process of determining compensation is discussed in Annexure 5.A. It may be highlighted here that in this research, the focus is not on components of compensation or the value of compensation but on the process by which these components are determined. This research identifies causes of dissatisfaction in process of compulsory acquisition through a review of the literature and a primary survey of landowners whose land has been notified for acquisition for the Bangalore (Bengaluru) – Mysore Infrastructure Corridor.

Specific questions that this research asks are as follows:

- (i) What are the constitutional basis for private property and its acquisition in India?
- (ii) What does land acquisition law stipulate as for the process for land acquisition?
- (iii) What are the gaps in the process that lead to dissatisfaction of landowners with the process?
- (iv) How do recent reforms in land acquisition laws fare regarding the process compared to LAA 1894?
- (v) What are key recommendations for improvement in a process that could ameliorate dissatisfaction with the process among those whose lands are acquired compulsorily?

The structure of this research is as follows: Section 5.2 presents a brief methodology adopted in this research. Section 5.3 briefly discusses the constitutional basis of private property and its acquisition. In doing so, this section also looks at the historical evolution of private property rights as a fundamental right, its centrality within the Constitution during the early phase of development after India became a republic in 1950 and later removal of private property as one of the fundamental rights. Annexure 5.A describes the LAA 1894 and LARR 2013 and the process that these acts stipulates that the executive should follow during the pre-acquisition and acquisition stages. Section 5.4 discusses the causes of dissatisfaction with the process identified through a primary survey of landowners whose lands have been notified for acquisition for the BMIC project. Having identified gaps in the LAA 1894, Section 5.5 also reviews the recent reforms in the land acquisition and identifies gaps that have not been overcome in the LARR 2013 and suggests improvements. Section 5.5 concludes this research and suggests future research in this area.

5.2 LITERATURE

5.2.1 THE CONSTITUTIONAL BASIS OF PRIVATE PROPERTY IN INDIA

The treatment of private property and the scope of the government's power of compulsory purchase is derived from the relationship between the state and its citizens (Miceli & Segerson, 2014). This section explains how the legislature in India has influenced the legal position of private property rights in the Constitution, which in turn has weakened the position of the

affected landowners in the process of compulsory acquisition. It may be argued that a weak constitutional foundation of property rights of the affected landowners has resulted in unfair outcomes and maltreatment by the acquiring agencies and their agents, as discussed later in section 5.4.

The dilemma between persuasion of development and social objectives of newly formed state and protection of the right to property as fundamental right emerged soon after the Constituent Assembly took charge in 1947 when India became an independent country. Land-based social and economic reforms during that time required the abolition of the ‘*zamindari*’ system¹⁶ and redistribution of land among peasants and planned industrial expansion. Socio-economic development objectives required the establishment of strong private property rights and setting up of ‘reasonable restrictions’ on these rights to give way to land reforms and public projects (Wahi, 2013). These conflicting objectives went into the Constitution that was formally adopted by the Constituent Assembly on 26th November 1949. The Constitution included Articles 19(1)(f), 19(6) and 31 which related to “fundamental” rights to property and restrictions of these rights. Through Article 19(1)(f), Constitution guaranteed to all citizens the “fundamental right to acquire, hold and dispose of property”. Article 19(6) imposed “reasonable restrictions” to the right to property “in public interest” and Article 31 states that acquisition of property shall occur only by enactment of a valid law, in public interest and on payment of compensation (Wahi, 2013). The conflict between the fundamental right to property and the power of the state to acquire private property caused numerous conflicts between the judiciary and the legislature. While the judiciary concerned itself with upholding the fundamental rights of citizens, the Parliament was

¹⁶ The literal meaning of the word ‘zamindar’ is an owner of land, though it is usually applied to larger landowners and has an institutional history. “The zamindars were the intermediaries of the Mughal period, between the cultivators and the government who assumed ownership rights to the land under the British. They were incentivised to rent out their newly “owned” land to “occupancy tenants” for cultivation. The zamindars took advantage of the freedom to charge tax without check and used the threat of eviction liberally. In return they remitted to their colonial masters, a substantial and fixed amount of tax collection revenue.” (Ramanathan, 2007, p. 16).

committed to creating much-needed physical infrastructure using the power of compulsory acquisition to acquire land that was necessary for such development activities. Consequently, several amendments were made to the Constitution where it referred to private property rights to allow for the compulsory acquisition of private property, by the State. In exercise of its sovereignty, the State could have acquired private property but only for the public purpose and on the payment of just compensation (Wahi, 2013).

The situation after independence was such that land was concentrated in the hands of a few wealthy *zamindars*, and the financial situation of the newly formed Indian government was weak to buy land from *zamindars* through market mechanisms to be redistributed among the tillers (Tiwari & Rao, Delhi's Changing Built Environment, 2018). The society was highly unequal regarding wealth and land distribution, and land reforms were crucial to derive socio-economic equality. Developmental objectives of the newly formed democratic state compelled a tough approach towards landowners, who were mostly wealthy '*zamindars*'. Consequently, the government was reluctant to pay compensation to '*zamindars*' for the land that was compulsorily acquired from them to meet land reform objectives. In an extensive analysis of Article 31 of the Constitution, Basu (1990) explains that the obligation to pay compensation for acquisition of property as was required by the Constitution underwent serious changes through the Fourth, the Seventeenth, the Twenty-fifth and the Forty-second Amendment Acts. These amendments implied the following: The Fourth Amendment Act was important in the assertion of the sovereign on private property as it stated that even though Legislature was under constitutional obligation to pay compensation for compulsorily acquired property, the adequacy of compensation, however, could not be questioned in a court of law. Due to the constraint of resources immediately after independence, the legislature insisted on payment of some compensation which may not necessarily equate to the market value of acquired land. However, the Supreme Court held the view that the word 'compensation' implied full market value compensation. To justify its position in judicial reviews, the State made the 25th Amendment to the Constitution in 1971, and the word 'compensation' was replaced by 'amount'. However, a bench of Supreme Court reserved this an area for judicial intervention as in their opinion the 'amount' fixed by Legislature cannot be "illusory" and must be determined by a principle

relevant to the acquisition of property (Basu, 1990). The then government headed by Prime Minister Indira Gandhi reacted by inserting several exceptions to Article 31, which were aimed at undermining the principle of fair compensation against compulsory acquisition of private property by the State. These exceptions excluded the obligation to pay any compensation against acquisitions by the state, including acquisition for the nationalisation of private property¹⁷ (Basu, 1990). The final restriction to private property came with the 44th Amendment Act of 1978 and with that “fundamental” right to private property (Article 19(1)(f)) ceased to become a “fundamental” right. More specifically, fundamental right to property under Article 31(1) was converted to a legal right under a new Article 300A, which states “No person shall be deprived of his property save by authority of law” (Constitution of India, 2007). The result of 44th Amendment, as interpreted by Basu (1990), is that the individual cannot approach Supreme Court directly for a speedy remedy using Article 32 of the Constitution but would have to go to the High Court or get remedy through an ordinary suit on matters concerning the compulsory acquisition of land. In summary, the Constitutional amendments that were carried out have overtly or covertly been with the intention of reducing appeals and objections by affected landowners. Landowners rights to property and compensation were eventually weakened by these amendments.

That said, the right to compensation is established in the Land Acquisition Act 1894 (LAA 1894), which has been in use since independence until 2014 when the new Act¹⁸ (LARR 2013) came into force. However, due to the weak position of property rights in the Constitution, the affected landowners have been vulnerable to under-compensation and the mistreatment by the acquiring authority.

¹⁷ Nationalisation of private banks was an ongoing process at the time. An avid reader may refer to Basu (1990) for more details on the topic.

¹⁸ Land Acquisition Act 1894 has been repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force on 1st January 2014.

It is acknowledged that during the early years after independence, it was important to keep the process of compulsory acquisition (stated in LAA 1894) easy for the government to undertake land-based social reforms. However, it is ironical how the original objectives of socio-economic development have at times been contradicted by irresponsible use of the power of compulsory acquisition in the contemporary Indian society, where majority landowners are small and medium farmers¹⁹. On many occasions, the land has been acquired from erstwhile landless tillers who became the original recipients of land distributed by the government under land reform projects that aimed at reducing poverty and providing security of food and livelihood. Thus, interference with property rights has interfered with food security and livelihoods of many affected landowners, as observed in the case of Singur (refer to Ghatak, et al., 2013) and BMIC project (refer to Rao, 2019). The weak constitutional position of property rights has resulted in continuing mistreatment towards affected landowners by the acquiring agency and their agents.

Wahi (2013) points to four major problems with the working of LAA 1894. First, the law recognises the rights of only those who own title to the land being acquired. Those, who do not own the title to land but may have interests and dependency on the acquired land, are not considered in determining compensation. Second, the definition of 'public purpose' is inclusive and courts have relied on legislative determination of what constitutes a public purpose. Consequently, lands have been acquired for private industries using LAA 1894 by the state and this has been interpreted as a valid public purpose by the courts. The third problem with the Act concerns compensation. While courts have taken a keen interest in ensuring fair compensation is paid to the affected landowners, Parliament has attempted to overrule courts by introducing amendments to the constitution that made judicial review untenable. The fourth problem is with the procedure for land acquisition specified in the LAA 1894. The affected landowners have

¹⁹ As per the Agriculture Census 2010, farmers are classified under following groups based on the area of land under operational holding: marginal farmers - less than 1 hectare; small farmers - between 1 to 2 hectares; semi-medium farmers - between 2 to 4 hectares; medium farmers - between 4 to 10 hectares; and large farmers - greater than 10 hectares (Ministry of Agriculture, 2014).

criticised the procedure for lack of requirement for their participation and delays in determination and payment of compensation. In his analysis of the LAA 1894, Choudhary (2009) highlights process related deficiencies in the Act. He argues that there are significant discretionary powers of the government, the scope for delays in the completion of the acquisition process at various stages, and the absence of level playing field between government and non-government companies.

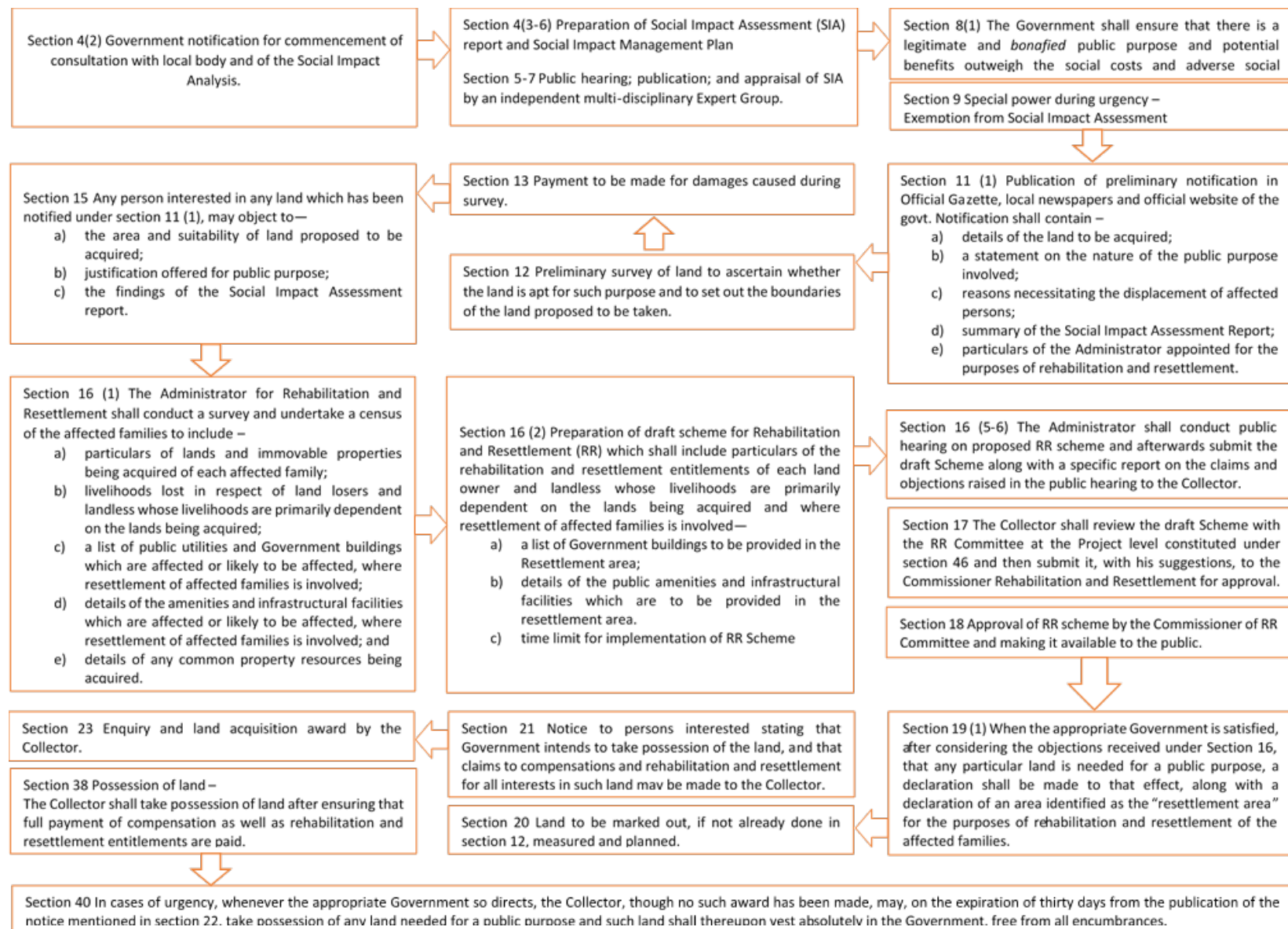
Examining land acquisition experiences of 20 large successful and unsuccessful (abandoned) projects of private businesses (that did not involve government's compulsory land acquisition powers) Kakani et al. (2009) conclude that the process that was followed had a significant impact on the outcome. Successful projects involved open direct communication channels with local stakeholders. The other factor that led to success was equitable benefit sharing which meant appropriate compensation package preferably including a share in future profits. Projects, where promoters have aligned with political parties, have faced opposition. Another key characteristic of failed projects has been that communication was often giving wrong or confusing information. In summary, meaningful involvement of people, sharing benefits with the affected landowners, transparency and information are crucial aspects of the process, which if compromised may result in prolonged legal debates and project failure.

Given the criticisms that governments have faced in the acquisition of land in their pursuit to implement their development agendas using LAA 1894 by the Apex Court (Supreme Court of India, 2011), experts (Singh, 2012) and landowners, a process to comprehensively reform to LAA 1894 were initiated in 2011. The new Act, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, was enacted in 2013 (LARR 2013). The LARR 2013 is under review by a Joint Parliamentary Committee (JPC) until then the 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance of 2015' is in force. Figure 5.1 below provides a brief overview of the land acquisition process followed in India as proposed in the LARR 2013 (without amendments).

One of the biggest lacunae in the land acquisition process of the LAA 1894 was that the resettlement of project-affected people was guided by a separate policy (National Policy on Rehabilitation and Resettlement), which States were not obliged to implement. LARR 2013 addresses this by incorporating two new steps to be followed before the commencement of actual acquisition, Firstly, undertaking a Social Impact Assessment (SIA) to ensure that potential benefits outweigh the social costs and adverse social impacts of acquisition. Secondly, the necessary provision for 'Resettlement and Rehabilitation (R&R)'. However, the R&R applies to private undertakings, and public agencies are exempted from this clause. Bose (2013) argues that *"those displaced by large projects suffer similar adverse consequences, whether the project is in the public or private sector"*. Amendments are proposed to the LARR 2013, which if approved by the Parliament would compromise some key aspects of the Act, such as SIA and food security clause (discussed later).

Alongside this, the LARR 2013 retains the drawback of not offering any alternative to 'compulsory purchase' under any circumstances involving projects for 'public purpose', which may be taken up by any sector – public, private or public-private partnership. The consent of the landowner is not required for acquisition by public authority for 'public purpose' where the definition is broadened further to include Atomic Energy Act, Railway Act, National Highways Act, Special Economic Zone (SEZ) Act. In case of acquisition for private entities and public-private partnership (PPP) projects, prior informed consent of 70-80 per cent landowners is made mandatory. Land acquisition for all other purposes does not involve the will of the landowner. The Social Impact Assessment is a good demonstration of public nature of the project and greater benefits than costs at a societal level but is taken away with the amendment made to the LARR 2013 in 2015. Section 10 (A) (RFCTLARR (Amendment), 2015) gives discretionary power to the Government to exempt many projects from undertaking the Social Impact Assessment. Even though the LARR 2013 became an Act in 2014, there are significant gaps remaining, as discussed in section 5.4.

Figure 5.1: Process of ‘Compulsory Purchase’ in India advocated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR), 2013



Three aspects of LAA 1894 and LARR 2013 that have been discussed below are (i) 'purposes' for which land may be acquired (ii) 'procedure' for acquisition and (iii) process of determination of 'compensation' for compulsorily acquired land. The discussion on 'purposes' and 'payment of compensation' informs the procedure (aka process) that is followed.

5.2.2 THE EVOLUTION OF THE PROCESS OF COMPULSORY ACQUISITION IN INDIA

Ever since the right to own property was excluded from the list of Fundamental Rights to become a legal right, compulsory acquisition continued by old rules stated under the Land Acquisition Act 1894 (LAA 1894), though the Act was amended frequently by the Parliament and the state legislatures. Besides the laws that directly dealt with compulsory acquisition of land (such as LAA 1894), several other laws contained provisions for land acquisition. This is in line with the Article 300A of the Constitution. Some of these laws were enacted during the colonial periods such as the Telegraph Act 1885, the Railways Act 1890, the Electricity Act 1910, and the Forest Act 1927. Others, which incorporated powers to acquire lands compulsorily, were enacted by the central and state government constituent assemblies such as the Damodar Valley Corporation Act 1948, the Slum Areas (Improvement and Clearance) Act, 1956, the Coal Bearing Area (Acquisition and Development) Act, 1957, Karnataka Industrial Area Development Act, 1966, and The Metro Railways (Construction of Works) Act 1978. While most of the land acquisition in India has been by LAA 1894, some (such as The Metro Railways (Construction of Works) Act 1978) have bypassed the LAA 1894 by incorporating in the law that nothing contained in LAA 1894 will apply. A major shift in the process of land acquisition occurred with the enactment of the Special Economic Zone Act, 2005 (SEZ, 2005) through which the government acquired the land for the private sector. While in the past, the government acquired land for the private sector in a covert manner, it became overt with the SEZ Act of 2005 (Wahi, 2013). In 2013, through The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR 2013), an attempt to address shortcomings of LAA 1894 was undertaken. However, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Second Ordinance 2015 (RFCTLARR

(Amendment), 2015) proposes amendments to the LARR 2013 and many improvements of LARR 2013 may be compromised, as discussed in the next sections. Broad Summary of the process of compulsory acquisition under the two acts is presented in Annexure 5.A.

5.2.3 A BRIEF OVERVIEW OF THE CASE OF THE BANGALORE-MYSORE INFRASTRUCTURE CORRIDOR PROJECT

This research studies the process of compulsory acquisition using the case of the Bangalore-Mysore Infrastructure Corridor Project (BMIC), in Karnataka India. The project involved the compulsory acquisition of land under the Karnataka Industrial Areas Development Act, 1966 (KIAD Act). While there may be differences in the KIAD Act and LAA 1894 regarding detailing of the procedure, the two acts are founded on similar principles, and the broad outline of the process of acquisition is comparable. This research carefully avoids discussions on procedural gaps which are exclusive to the KIAD Act and rather focuses on those aspects that are common to KIAD Act and LAA 1894.

This section provides a summary of the events surrounding the BMIC project, which will help in understanding the gaps in the process of compulsory acquisition. Bangalore Mysore Infrastructure Corridor (BMIC) project (spread over approximately 20,000 acres of land) is a typical Public Private Partnership (PPP) project, comprising road construction and township development, between the Government of Karnataka (GoK) and Nandi Infrastructure Corridor Enterprise (NICE) Limited that uses land-based financing²⁰ through acquisition of private land (measuring approximately 14000 acres).

²⁰ Land is emerging as a popular instrument for infrastructure finance in the developing countries (refer Peterson, 2009 for more details). This is best executed through public-private partnerships (PPP) (ibid). Peterson (2009) explains three types of funding arrangements that are usually observed in a PPP: (a) donation of public land (including land acquired by a public authority from private owners) to private firm in return for investment in proposed infrastructure, as in case of BMIC project; (b) sale of publicly owned land to private firm and utilising financial proceeds in creating public infrastructure, for example Bandra-

Typical of any land-based infrastructure financing project, NICE is to recover the cost of road construction through road toll, and the sale and development of land acquired in addition to the land necessary for the road. The project was conceived in 1995 with intentions to improve transport connectivity between two important cities in South India, i.e. Bengaluru and Mysuru. Ever since its inception, the project is marred with controversies that led to significant delays to the extent that it could not be completed till date.

Many allegations of ‘favouritism’ and ‘regulatory capture’ have been raised on the government over non-benevolent use of the power of compulsory acquisition in favour of private partner (Raghuram & Sundaram, 2009). Public trust was also weakened by the active involvement of the private partner in the process of compensation negotiation that is otherwise the role of the public agency.

While resistance from affected landowners was expected, the project faced an unusual change of circumstances when GoK withdrew support to the project for political reasons. The GoK initiated many litigations, and its cronies and NICE successfully overcame those challenges (Raghuram & Sundaram, 2009). Judiciary ruled that the government misused legislative procedure with intentions to terminate the project which was in the interest of the public at large. In its final judgement the Supreme Court of India, which is the highest level of the judiciary in the country, ordered the government to deliver its responsibilities towards the successful completion of the project. However, for political reasons, GoK continues to impede the project because not all land is in possession of the developer and the government holds power to de-notify the land for which possession has not been taken. Table 5.1 below presents the timeline of events concerning the BMIC project.

Kurla Complex in Mumbai (Maharashtra, India); (c) undertaking joint venture development and sharing gains in land value created by public infrastructure.

Table 5.1: Timeline of events concerning Bangalore-Mysore Infrastructure Corridor project

1988	→ The state government of Karnataka proposed to build a new road between two important cities of South India, Bangalore (renamed as Bengaluru) and Mysore (renamed as Mysuru). However, there were not enough financial means available to the government to undertake the task. On invitation of tender for the road project, only one bid was received, and its conditions were unacceptable to the government. Later, the government approached the Asian Development Bank to request for funds for the project. However, the deal did not materialise.
1995 - 97	→ The government successfully entered a negotiation with a private consortium of three companies namely SAB, VHB and Kalyani (the consortium later formed NICE Ltd.). A Framework Agreement was signed between the Government and the consortium to execute the project as a public-private partnership project. All financial responsibilities were taken up by the consortium in return of excess land acquisition for real estate development alongside the road. The government took regulatory and facilitation responsibilities, including obtaining permissions and clearances for the project, and passing notification for compulsory acquisition of land.
1997	→ First PIL was filed to raise objections over the legality of the Framework Agreement as per which the government has agreed to facilitate private firm in meeting its business objectives, through the development of real estate alongside the proposed road, on private land that has been compulsorily acquired for public purpose.
1998	→ Court, however, confirmed the validity of the Framework Agreement and believed the project in the interest of the public. Following which the acquisition process began.
2004	→ Work for the first phase of the project commenced on 4 th February 2004, soon after which the government changed its stand towards the project. For political reasons, the government withdrew support to the project (Raghuram & Sundaram, 2009). GoK alleged NICE for misrepresentation and fraud and excess land acquisition. Both, the consortium and government, received help from influential cronies who filed cases against each other, to safeguard the interests of the consortium and the government respectively.
2005	→ Following the legal debate over the matter, it was confirmed by the Supreme Court of India that the project is in the interest of the public and should be executed without delay.
2005 onward	→ The state government continues to hinder the project, to the extent of inviting fresh tenders (in 2007), thus furthering litigations between the government and private firm. The project progresses sluggishly amidst controversies.

Sources: H. T. Somashekar Reddy v. GoK & NICE Ltd. (1998); All India Manufactures Organisation and Others v. GoK and Others (2005); S M Mohan Rao Nadgir v. State of Karnataka and Others (2005); K P Sachidananda & Vasantha S v. State of Karnataka & Others (2003); State of Karnataka & Another v. All India Manufactures Organisation & Others (2006)

To reach a workable solution agreeable to all interested parties, the project is undergoing multiple renegotiations in the Court of Law.

5.2.4 DEFINING THE PARAMETERS OF PROCEDURAL FAIRNESS

This section discusses the theoretical framework of procedural fairness that has been used to analyse gaps in the process of compulsory acquisition and compensation determination.

The concept of compulsory acquisition of private land for a public purpose is justified on the grounds of distributive justice, as per which land, as a scarce resource, should be distributed evenly for public and private purposes. While distributive justice argues for the fairness of outcome, in terms of just allocation of resources, procedural fairness looks at the process through which such outcomes are derived. Thibaut & Walker (1975) initiated the discussions on 'procedural justice' and argued that the process of forming decisions on 'just' distribution of resources should be fair and participatory. The idea of procedural fairness was further developed by Leventhal (1980) who argues that "the manner" in which social systems deal with the issues of distribution of rewards, punishments, and resources among different members of the society has a great impact on the effectiveness and the satisfaction of its members. In saying so, Leventhal (1980) emphasises "the manner" or the process of allocation as much as on the outcome. Leventhal (1980) derived six parameters or 'justice rules' which are taken into consideration by individuals when creating the perception of the level of fairness of the procedure. These six criteria or 'justice rules' by Leventhal (1980) which procedures must satisfy to be perceived as 'fair' are the following:

- (i) The consistency rule: Individual's perception of procedural fairness is influenced by the level of consistency in the procedure applicable across people and time (Leventhal, 1980). Leventhal (1980) explains that when applied across people, the consistency rule implies that people expect equality of treatment and

opportunity and therefore the application of similar rules on all. When applied over time, consistency rule implies that the procedures and rules are stable for at least over the short term (Leventhal, 1980). “If changes are made too frequently or too easily, the perceived fairness of the allocative process will be reduced” (Leventhal, 1980, p. 40). In the process of compulsory acquisition of land, it is important that the government’s support to the project and laws governing the project are consistent through the course of the project, as discussed in section 5.4.5 and 5.4.6.

- (ii) The bias-suppression rule: The bias-suppression rule implies that the process should avoid bias, both positive and negative, by the decision maker. In practice, this requires the selection of neutral and independent agents as decision-makers. In the case of dispute resolution, it is essential to separate the judicial and adversary roles to suppress bias (Leventhal, 1980). For example, in the case of compulsory acquisition, the Collector is the acquirer on behalf of the government, who also takes decisions on objections invited from the people. Collector’s involvement reduces the chances of a fair assessment of objections raised by the people.
- (iii) The accuracy rule: It is important to base the decision of allocation on as much good information and informed opinion as possible. This is even more important when the quality of information influences the decision of allocation. For instance, in the case of compulsory acquisition of land, the LARR 2013 requires consultation with the affected landowners and local communities when collecting information on the social and environmental impact of the project. People’s involvement at this early stage improves public participation in the process and informs the process of impact assessment with reliable first-hand information, thus improving procedural fairness. Accuracy also requires some safeguard mechanisms which deter agents from violating fair procedures. Leventhal (1980) suggests improving accountability of the decision-makers towards affected people, by the introduction of an efficient mechanism for monitoring and sanctions. Unfortunately, compulsory acquisition process protects the agents from accountability towards people, thus resulting in misuse of the power, as alleged in the case of BMIC project (refer to the case of H. T. Somashekar Reddy v. GoK & NICE Ltd., 1998).
- (iv) The correctability rule: The correctability implies that there should be fair opportunities for modification and reversal of decisions made at various stages of the allocation process (Leventhal, 1980). Leventhal (1980) suggests the introduction of formal and informal appeal procedures at several stages of the allocative procedure to allow review and modifications of decisions at each stage. On the contrary, the process of compulsory acquisition gives very limited opportunities for correctability, thus aggravating grievances by the time the affected landowners reach the stage of compensation negotiation. For example, at the pre-acquisition stage, there is no opportunity for the people to inform or suggest improvements to the project design, choice of location, and other

project details. Financial details on project costs and benefits are difficult to obtain, thus reducing opportunities for correctability of imbalanced allocation of financial burdens and benefits. In case of a dispute over compensation, the affected landowners undergo a complex legal process which consumes much time and cost. Legal debates over compensation often prolong for many years, thus discouraging corrective actions from the side of landowners. Procedures which are cumbersome, expensive and involve long delays are perceived as less fair (Leventhal, 1980).

- (v) The representativeness rule: Representativeness rule implies that “all phases of the allocative process must reflect the basic concerns, values, and outlook of important subgroups in the population of individuals affected by the allocative process” (Leventhal, 1980, p. 43). One of the most important factors of procedural fairness is to have proportionate representation of all the stakeholders in the decision-making process. In practice, this is guaranteed by giving the opportunity to everyone put forward their views, at an individual level or as a group, at a different stage of the decision-making process. Meaningful representativeness requires a balanced sharing of the power of decision-making among the stakeholders (Leventhal, 1980). As observed in the case of the compulsory acquisition process, the pressure for quick decisions often prevents consideration of the full range of opinions and alternatives, thus resulting in under-representation of opinions of the affected landowners, and the public at large. Suppression of important viewpoints reduces the perceived level of fairness in the system (Leventhal, 1980).
- (vi) The ethicality rule: “Allocative procedures must be compatible with the fundamental moral and ethical values accepted by an individual” (Leventhal, 1980). For example, procedures that involve incompliance with rules, breach of contracts, bribery, favouritism, are perceived as unfair. Poor accountability of the agents for unethical conduct together with inefficient grievance management reduces the perceived level of fairness, as observed in the case of the BMIC project (refer to section 5.4.3 and 5.4.9).

Though there has been considerable work undertaken on issues of procedural fairness in the law literature (see Thibaut & Walker, 1975; Tyler, 1988; Tyler, 1990), there is very limited application of these principles to compulsory acquisition of land (refer to Cheng, 2008; Holtslag-Broekhof, et al., 2016; Vu, 2017). This research expands that knowledge by applying the theory of procedural fairness to understand how the process of compulsory acquisition of land can be improved and made fair towards the affected landowners.

5.3 RESEARCH DESIGN

This research performs procedural analysis by using primary information from landowners who are affected by the compulsory acquisition of land under the BMIC project²¹ (refer to section 5.2.3 for a summary of the project). Data were collected between January and February in 2017 and involved in-depth interviews with forty-seven affected people, identified through snowball sampling, who are either landowners or depend on the land. The formal division of land is uncommon in rural India, and therefore respondents included owners of land who have the formal title as well as those who acknowledge themselves as joint-owner and heirs to ancestral property located in urban, peri-urban, and rural areas in and around Bengaluru.

The semi-structured interview was conducted to get in-depth information on the nature of losses experienced by the affected families and their experience of the procedures undertaken so far. Earlier research by Rao (2019) analyses this information to identify the nature of ‘functionings’ of land which landowners’ value and deserve compensation for. This research follows that work by examining procedural issues reported by the respondents.

Rao (2019) provides details of respondents’ profile (refer to Annexure 8.A in Chapter 8); In summary, the data is representative of landowners and dependents on land from the perspective of caste, gender, and age group. While the majority are male agriculturists, some women and Dalit²² landowners were also included in the sample. The literacy level of rural respondents was usually only up to the primary level. However, all urban respondents had a post-graduate qualification. Some respondents have been village leaders or members of objector groups formed against the BMIC project. They could

²¹ More details on the project can be found at the official website of Bangalore Mysore Infrastructure Corridor Area Planning Authority, <http://www.bmicapa.org>.

²² Dalits are members of lowest caste (scheduled caste) in the traditional Indian caste system (Deshpande, 2011).

provide deeper insights into the process based on their extensive involvement in the process at multiple stages up to the stage of judicial review at the Supreme court.

To gain deeper insights into procedural issues concerning the compulsory acquisition of land and to overcome probabilistic biases in the primary data, this research consults case reports from the High Court and the Supreme Court of India that is related to BMIC project. Of total ten case reports accessible publically on BMIC project, five cases (that include more than hundred connected cases) are found relevant for this research because these contain a detailed textual description of arguments presented by each party involved in the litigation. This includes the case of All India Manufactures Organisation and Others v. GoK and Others, 2005 at the High Court that was followed up at the Supreme Court (referred as State of Karnataka & Another v. All India Manufactures Organisation & Others, 2006). Other cases at the High Court include H. T. Somashekar Reddy v. GoK & NICE Ltd., 1998; K P Sachidananda & Vasantha S v. State of Karnataka & Others, 2003; M Nagabhushan v. State of Karnataka and Others, 2003; S M Mohan Rao Nadgir v. the State of Karnataka and Others, 2005.

Each stage of the process is analysed across parameters of procedural fairness proposed by Leventhal (1980) (discussed under section 5.2.4) using Qualitative Content Analysis (QCA) ²³ (refer to Chapter 2 and Drisko & Maschi, 2015 for more details on QCA).

5.4 IDENTIFYING GAPS AND SUGGESTING IMPROVEMENTS TO THE EXISTING PROCESS

This section takes forward the discussion on justice rules and identifies the gaps in the process of compulsory acquisition at different stages, based on the perception of landowners affected by the BMIC project in Bengaluru, India. Each stage of the process is analysed along the parameters mentioned above on fairness (section 5.2.4). Based on the author's analysis of the procedure of compulsory acquisition in some other

²³ Earlier Rao 2018a, 2018b, 2019 have successfully applied the method of QCA in analysing 'functionings' of land. The sequential procedure of QCA is described in Chapter 1, Rao, 2018a.

Commonwealth countries like Australia and Scotland, suggestions are provided for improvement in the process.

5.4.1 LACK OF JUSTIFICATION FOR THE 'PROPORTIONALITY' PRINCIPLE

To strike a balance between social welfare and private interests of the affected landowners, the European Convention of Human Rights (ECHR) urges the 'proportionality' principle which implies that the level "interferences with (property) rights must be proportionate to the legitimate aim pursued". The European Court of Human Rights (ECtHR) insists that whenever there is an interference with private property rights, "the supervision must be strict, because of the importance of the rights in question" (Autronic judgment of 22 May 1990, A 178, paragraph 61). The proportionality principle requires the State to provide adequate justification for interference with private property rights. The ECtHR refers to multiple case laws to infer the meaning of 'justification' as following:

- the acquiring authority must provide "relevant and sufficient" reasons for using the power of compulsory acquisition (Observer and Guardian judgment, op. cit., paragraph 72)
- the necessity for restrictions on (private property) rights must be "convincingly established" by the acquiring authority (Autronic judgment of 22 May 1990, A 178, paragraph 61)

On similar lines, this research argues that 'public purpose' must outweigh social costs and the acquiring authority should be required to justify the use of powers of compulsory acquisition, as envisaged under Chapter II of LARR 2013, before the amendment made under RFCTLARR (Amendment), 2015.

Landowners affected by the BMIC project believed that the government has been given too much discretionary power on matters of compulsory acquisition which is resulting in acquisition of private land for projects which are not so much in the public interest and are rather designed to generate real-estate development benefits for private firms such as the NICE group of companies. Much of legal debate on the BMIC project alleged lack of public interest in the project (H. T. Somashekar Reddy v. GoK & NICE Ltd., 1998), misuse of power of compulsory acquisition for maximisation of private benefits (H. T.

Somashekar Reddy v. GoK & NICE Ltd., 1998; All India Manufactures Organisation and Others v. GoK and Others, 2005). Given the increasing role of private firms in the provision of public services and formal acknowledgement of private partners in the LARR 2013, it is important that the process of compulsory acquisition strictly avoids ‘regulatory capture’ by the private firm and restricts the misuse. Though it is appreciated that the definition of public purpose is too broad to be spelt out in the law and therefore the discretionary power to the government is much needed. At the same time, it is important to ensure that power is not misused or captured for personal benefits.

Even though the LARR 2013 required the Government, as acquiring authority, to demonstrate the public nature of the project and determine the social impact (refer to Chapter II of LARR 2013), there is poor accountability of the Government if it chooses to go ahead with the project by overlooking its social impacts. With recent amendment made to the LARR 2013, the Government may even exempt projects, without having to give any reason, from provisions made under Chapter II and III which are concerned with the determination of social impact, providing justification for the public nature of the proposed project, and safeguarding food security.

Improvements could be made to the LARR 2013 through balancing the decision-making power of the government and the people so that the outcomes are in the public interest. This can be achieved by making the Government accountable for overruling the recommendations made by the independent multi-disciplinary Expert Group that appraises the SIA report (refer to stage 3 to 5, Annexure 5.A). Based on the analysis of the process of compulsory acquisition in Australia, Rao et al. (2018) suggest that the recommendations made by the Expert Group should be a legal binding on the Government which can be overruled only after a successful debate in the Court of law, and later at the Parliament²⁴. Increasing the accountability of the government towards

²⁴ Motivation is drawn from the Australian law which allows the affected landowners to place a request to the Minister for reconsideration or review of the pre-acquisition declaration (Rao, Tiwari, & Hutchison, No way to say “no”: Stakeholder analysis for compulsory purchase for public infrastructure project in Australia, 2018). “However, the Minister has the choice to ignore their requests in which case unsatisfied

people through proper demonstration of public purpose is even more important when the role of private partners in the provision of public services is increasing, and there is a risk of ‘regulatory capture’ and misuse of powers of compulsory acquisition for private benefits.

5.4.2 POOR TRANSPARENCY AND INFORMATION SHARING

BMIC project involves the full acquisition of many villages and consequential displacement of many land-based communities. Affected families were uncertain of relocation plans even after twenty years of the project launch. Many affected landowners reported problems in accessing information on the proposed project and the location of the proposed townships. After the introduction of the ‘Right to Information’ Act in 2005 in India, the landowners could receive minimal information on the layout of the road for which their land was acquired. Much information was denied to them on the grounds of ‘confidentiality’. Lack of information on the project does not only reduce the trust of the people on the project but also their power to negotiation as observed in the case of *H. T. Somashekar Reddy v. GoK & NICE Ltd.*, 1998. Like the LAA 1894, the new LARR 2013 is generally silent on sharing information in the public domain. Due to the lack of information availability the affected landowners may find it difficult to use their rights to raise objections at different stages of the project. For example:

- (i) During pre-acquisition stage, when the first contact is made by the Government with the people at the time of holding public hearing for the Social Impact Assessment (refer to stage 3 and 4, Annexure 5.A) the role of affected people is limited to providing information on matters concerning the perceived impact of the project on their livelihood, assets, and other factors mentioned under Section 4(4) and 4(5) of the LARR 2013. There is no responsibility on the private partner and the acquiring agency to provide information on the project,

persons may approach the Administrative Appeals Tribunal. The Minister can further reject the tribunal’s recommendations, but she is then obliged to explain the reasons before each House of the Parliament whose decision would be an imposition on the Minister. The Parliament holds all powers to make laws in relation to public purposes and is the final decision-making body for review and reconsideration of the acquisition proposal.” (Rao, Tiwari, & Hutchison, No way to say “no”: Stakeholder analysis for compulsory purchase for public infrastructure project in Australia, 2018, p. 48).

compensation strategies, mitigation measures, rehabilitation and resettlement plans, and other necessary information required at this stage by the affected families to form an opinion.

- (ii) Even though the LARR 2013 requires taking consent of 70-80 per cent of affected families, it is silent on the mechanism that shall be adopted and the information that should be provided to the affected families before receiving consent. Clarity on the nature, extent, design, financial details of the proposed project, its impact on the affected families, benefits and burdens to the community, mitigations measures including R&R, and sharing other necessary information with the landowners should ensure informed decision making by the people who are likely to be affected.
- (iii) Information on the Rehabilitation and Resettlement plan should be shared upfront, at the time of inviting consent from the affected families. This is crucial to forming an informed decision.
- (iv) While the LAA 1894 and LARR 2013 allow the affected landowner to raise objections to the preliminary acquisition notice on the grounds of unsuitability of land for the proposed project or if the area notified for acquisition is more than what is required for the project, the opportunity is underutilised by the landowners due to lack of information on the project.
- (v) When the notice for acquisition is made to the persons interested, there is no onus on the acquiring agency to provide valuation report for the subject land, unlike the process in Australia and Scotland, and other developed countries.

Easily accessible, reliable, good quality information should reduce the occurrences of uninformed decision-making. Negotiation power derived from information is crucial to fair procedure. It is important that information asymmetries between the acquirer and the acquiree are overcome to make the procedure fair to the affected landowners.

5.4.3 POOR ACCOUNTABILITY OF THE GOVERNMENT AND PRIVATE PARTNERS INVOLVED IN THE PROJECT

The trust level of the affected landowners has reduced over time because the NICE company and KIAD Board (acquiring agency) had made many promises that have not been fulfilled. Respondents expect strict accountability of the private partner and the acquiring agency to comply with verbal promises made by the agents of the acquiring agency and private partners. Landowners were generally aggrieved over poor accountability of the private firm and the acquiring agency towards public queries, objections, grievances and the promises that were made to them.

The problem of poor accountability persists in the new LARR 2013 at several stages of the process, as discusses in Table 5.2 below.

Table 5.2: Poor accountability of the acquiring agency at different stages of the process of compulsory acquisition

Social Impact Assessment	RFCTLARR (Amendment), 2015 allows exemption from SIA to cover a wide range of projects without the Government having to give any reason for such an exemption. This reduces the accountability of the Government and private partners to undertake SIA.
Overruling decisions of neutral assessor	Even though the Government is required to provide written explanation for not adhering to the recommendations made by the Expert Group on SIA, the decision of the Government is not subject to legal scrutiny. This reduces the accountability of the Government to demonstrate the public nature of the project.
Overruling objections to preliminary notification	The Government is not required to provide any explanation for not addressing objections raised by the affected landowners on preliminary notice for acquisition. This induces a sense of dismissal and unfair treatment among the affected landowners, as reported by many affected landowners.
No accountability to share information in the public domain	The LARR 2013 does not require the Government or private partners to share information on the project, its extent, benefits and cost, and other information as may be necessary for the affected landowners. Poor accountability of the acquirers towards information dissemination is heavily criticised by the people who then seek information through legal procedures. Information unavailability reduces the power of the affected landowners to build inform opinion on the project or to raise objections. Poor accountability towards information dissemination may be misused by the private firm to influence consent of the affected landowner at pre-acquisition stage 2 (refer to Annexure 5.A). To explain more, making the acquirers accountable towards affected families should reduce occurrences of false-promises by the private firm and protect the landowners from falling for non-realisable futuristic incentives that can be easily withdrawn by the private partner.

Improving the accountability of the Government and private agencies involved in the process should improve the perceived level of fairness among the landowners, thus helping them come to terms with the outcomes of processes. Also, greater accountability of the acquirer towards people at all stages of the process should reduce opportunities for corruption and regulatory capture, as discussed later in section 5.4.9.

5.4.4 POOR INVOLVEMENT OF PEOPLE IN PROJECT PLANNING AND DESIGN

Affected landowners have been conspicuously absent during the planning stage of a 'public purpose' project that requires their lands to be acquired compulsorily. There is no provision or process for involvement of these affected parties during pre-acquisition periods of the project (such as design, planning and approval stages). Reduced involvement of people in early stages makes them suspicious of intentions of the government, more so when private partners are involved. Once a 'public purpose' project has been finalised about its design and viability, implementing government or its agency approaches Collector for the acquisition of land who then publishes pre-acquisition notification. This is the first opportunity when information about the project and the intention to procure land compulsorily is conveyed to the affected landowners.

While there is considerable emphasis put on public participation in the planning and design of projects, the same is not reflected in the new LARR 2013. Even though the LARR 2013 requires a demonstration that the proposed project has no better alternate location (refer to Section 4(4), LARR 2013), there is no involvement of people and local communities in constructing this decision. Members of the public do not have the opportunity to propose alternative options, provide suggestions, raise objections over project design or location, clarify doubts and cross-examine acquiring authority and private partners. There is a scope for improvement in the participation of people and for informing the project using the local community's knowledge and suggestions. For instance, the Localism Act 2011 in England and Community Empowerment (Scotland) Act 2015 in Scotland aim at empowering people and local communities and gives them new rights. As per the Localism Act 2011, local people will be able to vote on neighbourhood planning in a referendum, and if a majority of residents approves the plan, then the local authority will bring it into force (Ministry of Housing, Communities & Local Government, 2011). Under the 'right to build', the Act gives the power to the groups of local people to deliver the development that their local community want (ibid). Above all, the Act requires developers to consult local communities before submitting planning applications for certain developments (ibid).

5.4.5 LACK OF CONSISTENCY IN THE LAWS OF COMPULSORY ACQUISITION OVER TIME

To justify the acquisition of private land for the BMIC project, which involved the development of private townships by NICE, the KIAD Act 1966 was amended through the KIAD (Amendment) Act 1997. This amendment widened the purpose of acquisition of land to include development of “industrial infrastructure facilities” , which mean “facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, Marketing, Technology Parks and Townships for the purpose of establishing trade and tourism centres; and any other facility as the State Government may by notification specify to be an industrial, infrastructural facility for this (KIAD) Act”. People did not receive it very well and raised doubts of ‘regulatory capture’ by the NICE company (H. T. Somashekar Reddy v. GoK & NICE Ltd., 1998). While it is essential to allow modifications to the law, easily amendable laws may encourage ‘regulatory capture’ by private partners (refer to Estache & Martimort, 1999 and Boehm, 2007 for more discussion on regulatory capture). More discussions on regulatory capture are in section 5.4.9.

5.4.6 LACK OF CONSISTENCY OF GOVERNMENT’S SUPPORT TO THE PROJECT OVER TIME

Once the project is conceived, there is no accountability of the government (and the ruling party) to take the project to completion. Often, project life extends beyond the government’s tenure and change of government risks project’s suspension and termination. In the case of BMIC project, the government changed stand after eight years and alleged NICE for fraud, misrepresentation and excess land acquisition (All India Manufactures Organisation and Others v. GoK and Others, 2005). Legal disputes stalled the project for a while until the matter was concluded in favour of NICE by the Supreme Court of India in the year 2006 (State of Karnataka & Another v. All India Manufactures Organisation & Others, 2006). While holding up the BMIC project, the Supreme Court ordered the GoK and its instrumentalities to pay a sum of Rupees Five Hundred Thousand to NICE as a penalty for “frivolous arguments and the mala fides” (page 19, State of Karnataka & Anr. v. All India Manufacturers Organisation & Others, 2006). Irrespective, the government continues to hinder the project to the extent of inviting

fresh proposals, and the action is legally challenged by NICE. Such disputes consume ample public resource and cause project delays.

In conclusion, the government's change of stand on the project has caused significant delays, depletion of public resources, and has significantly reduced landowners' trust in the project. As per the LAA 1894, the Government was not required to demonstrate the relevance of the project in the public interest or to justify the use of the power of compulsory acquisition. Lack of accountability of the government for exercising the use of compulsory acquisition powers in the first place makes it easy for the government to justify backing out of the project at a later stage. This problem is partially overcome by the new Act (LARR 2013) which requires the Government to demonstrate the relevance of the project through SIA study (refer to stage 3, Annexure 5.A). In addition to this, it is suggested that there should be the stricter imposition of the recommendations made by the Expert Group on SIA. Further to that, the Government should be more accountable to the people when withdrawing support from the project, as discussed earlier in section 5.4.1.

5.4.7 POOR BIAS-SUPPRESSION AT MULTIPLE STAGES OF THE PROCESS

5.4.7.1 Lack of bias-suppression in the selection of the project

SIA is crucial to ensure that the project benefits outweigh costs (including social costs). To avoid biases, the LARR 2013 requires that the assessment of the SIA report is performed by an independent group of experts (refer to stage 5, Annexure 5.A). However, recommendations made by the Expert Group can be easily overruled by the Government, thus defeating the original objective of ensuring the public nature of the project. Giving the power to the Government to take a final call on SIA may induce biases in favour of the proposed project and private partners.

5.4.7.2 Lack of bias-suppression in the process of selection of a private partner for the proposed project

Public-private partnership (PPP) is a commonly adopted model of public project delivery. Consistency in the criteria of selection of a private partner is crucial to

procedural fairness. In the case of the BMIC project, the Karnataka State government invited tenders for designing, constructing, maintaining, and operating the proposed express highway but only one tender was received and rejected for having stringent conditions which were unacceptable to the government for not being “in the best interest of the State” (H. T. Somashekar Reddy v. GoK & NICE Ltd., 1998). Following the failure of the tendering mechanism for selection of a private partner, the government entered a negotiation with the NICE consortium and finalised them as the private partners. However, the conditions proposed by NICE, as perceived by the members of the public, were not very different from those proposed by earlier other potential partners, thus demonstrating lack of consistency in the assessment procedure. Immediately after the release of the Framework Agreement in 1997, which is the first time when public received information about the project, the project was challenged in the Court of law by the members of the public, on the grounds of it not being in the interest of the public interest. The underlying issue was the discretionary power of the government to select partners, which raised doubts of ‘regulatory capture’ and favouritism.

Lossa & Martimort (2013) explain that selection of private partners through negotiation, as opposed to competitive auction, opens opportunities for abuse of power, thus making this method of selection more attractive for corrupt public officials. Furthermore, firms may bribe the officials for them to get selected as contractors on public projects, and affected landowners suspected this in case of the BMIC project. Government’s use of discretionary power in selecting NICE without competition reduced the perceived level of fairness in the selection procedure.

On another note, an informed respondent reported another issue of biases and said that “he (CEO of the NICE company) was also a member of planning authority (Bangalore-Mysore Infrastructure Corridor Area Planning Authority, BMICAPA). He was an interested member, and he should not be a member of the BMICAPA. However, he was Member – BMICAPA till 2006. The chairman of the BMICAPA should have some qualification for that post. Now as well, the person who is Chairman of BMICAPA does

not have any qualification for that post and is the 'chela' (local term for 'pupil' or 'crony') of the CEO."

5.4.7.3 Lack of bias-suppression in the process of assessment of objections raised over preliminary notice

Some respondents expressed a strong feeling of distrust in the process of reviews undertaken by the Collector. The fact that the CEO of the NICE company was involved in some public meetings with the Collector made the affected landowner even more apprehensive that the Collector and the Government will subdue their interests. Both the Collector and the Government are interested parties in the proposed project. Thus, their role as assessors of objections at the preliminary notification stage induces opportunities for biases in the assessment process.

It is appreciated that the process in the new LARR 2013 gives an opportunity to the affected landowner to raise objections at an early stage when the SIA report is prepared, and later when preliminary notification is received (refer to Annexure 5.A). However, the problem of biased assessment persists given that the Government is the acquirer and the assessor of objections (refer to stage 7, Annexure 5.A). Leventhal (1980) writes that to suppress biased decision making "one should not serve as a judge in one's case" (p. 41).

In some European jurisdiction, objections over preliminary notification are assessed by an independent body which then takes a final decision on whether to approve or dismiss the acquisition of land. For example, in Denmark, the Expropriation Board is the confirming authority whose decision is final. The Board is independent and has no answerability to the state administration. The Board also has the responsibility to calculate compensation payable to the affected landowners (SLC, 2014). In another case, Australia and Scotland have an independent valuation agency which is trusted with the task of compensation assessment (refer to Chapter 4).

On similar lines, it is suggested that an independent, neutral authority should be involved in the assessment of objections and suggestions received from the people.

Based on the feedback received from people and its own expert opinion, the neutral agency may approve the project with or without modifications or reject the project after giving reasons for doing so. This also requires preparing a response to each objection and suggestion received from the people. The recommendation made by the authority should be legally binding on the acquiring agency and its partners. The Government and partner agencies may make necessary modifications and receive confirmation from the neutral authority before finalising the project. Alternatively, it may be thought of combining the tasks of assessment of SIA and objections to the preliminary notification, and compensation calculation, by an independent group constituted by experts from the field of law, public administration, planning, valuation, and social science. Given that the Expert Group would have good insights into the SIA, impact on property, and the value of land, it would take informed unbiased decisions which will also be trusted by the people.

5.4.8 ISSUES WITH THE PROCESS OF COMPENSATION DETERMINATION

The BMIC project has been marred in controversies for over 20 years. Many affected landowners are small farmers who depend heavily on land for income generation. Over the years, since acquisition notification, the landowners have been constrained from improving, selling and mortgaging land. These restrictions on financial functionings of land have seriously affected their personal and familial wellbeing of the affected landowners, as discussed by Rao (2019). Inadequate compensation has been a major reason for discontent among the landowners who are even otherwise reluctant to part with land, given their high dependencies. This section highlights some issues with the compensation mechanism, as reported by respondents, and suggests improvements based on the author's analysis of the process of compensation in other Commonwealth countries such as Scotland and Australia.

5.4.8.1 Inaccurate and biased assessment of compensation by the Collector

Landowners lacked trust in judgements on the valuation of their property by the Collector because the CEO of NICE company has been a part of such discussions, during public meetings hosted by the Collector. Given that the Collector is an arm of the

acquiring agency, her interest in getting the land acquired at low cost may induce biases in the assessment of compensation, as doubted by the people. Also, the Collector is neither an expert on land valuation nor on social costs, and therefore her competency is doubted by the affected landowner who often seeks legal assistance on the matter. This further increases their cost.

The acquirer (Collector and the Government) is not required to provide a complete valuation report or written details of components of compensation to the affected landowners until the matter is to be debated in the Court of law. Compensation is verbally discussed by the Collector who then awards the compensation based on the discussions. Under the new Act, LARR 2013, compensation is much fairer as it includes compensation for the compulsory acquisition of land and rehabilitation and resettlement for the affected families, including those who do not own title to the land but are dependents on land. This makes it much more complex for a non-expert to determine the compensation amount accurately.

Unlike in India, compensation is determined by an independent valuation body in Scotland, Australia, Denmark and many other countries. For instance, in Scotland, compensation is assessed by the District Valuer, who is from the “District Valuer Services (DVS), the property arm of the Valuation Office Agency, an executive agency of HM Revenue & Customs.” (SLC, 2014, p. 280). In Australia, the office of Valuer-General is the state's independent authority on property valuations and oversees all significant government property valuations, including compensation for compulsory acquisition. In Denmark, the Expropriation Board is an independent body responsible for the authorisation of compulsory acquisition as well as compensation assessment (SLC, 2014).

As suggested earlier under section 5.4.7, the role of the Expert Group on SIA could be extended to include assessment of compensation. Accordingly, the constitution of Expert Group could be improved to include experts on valuation and social scientists who can together inform decisions on compensation and rehabilitation and

resettlement. Assessment of compensation by and Expert Group should make compensation more accurate and unbiased.

5.4.8.2 Judicial reviews are long, stressful, expensive, and are doubted for biases

The affected landowners are stressed for having to take long, complex legal processes for no choice of their own. Given the dispute on BMIC project that has prolonged for over twenty years, a respondent mentioned having inherited the case after the death of his father and wished for it to end soon so that his children do not have to undergo the same stress. The respondent emphasised upon the stress caused due to prolonged legal debates that might have caused the untimely death of his father. Over the years the respondent has depleted financial resources and was doubtful if he would be able to fight the case till the end. Another respondent expressed the desire to be interviewed on behalf of his father (who is the owner of land and business) given that his father has become very sensitive to discussions concerning the acquisition of land and has been suffering from ill-health over these years.

In the case of *K P Sachidananda & Vasantha S v. State of Karnataka & Others*, 2003, the single judge concluded that land in excess of the road project should be returned to the original owners but the decision was overturned by a jury (*S M Mohan Rao Nadgir v. State of Karnataka and Others*, 2005). Doubts over the fairness of the judicial system and regulatory capture arose as the decisions were not in favour of respondents. As argued by Patchen (1961), people who receive lower rewards and greater burdens than others are more likely to doubt the fairness of the allocative process and search for faults in the system. That said, it is essential to ensure accuracy and suppress bias in the assessment of objections and disputes at all stages of the process, particularly in judicial reviews.

Given that the process of compulsory acquisition is complex and stressful, affected families expect a fair opportunity to negotiate and settle the matter outside court. Also, they seek preliminary legal support to understand the process of acquisition, their rights, claims for compensation, and other important matters related to the compulsory

acquisition process. Landowners were keen to have a fair opportunity for negotiation and settle the matter outside the court.

It is expected that disputes over compensation will be resolved quickly with the establishment of the special judicial body or the LARR Authority (refer to stage 15, Annexure 5.A). However, the competency and independence of the LARR Authority are doubtful due to its weak structure (stated under sections 51-59, LARR 2013). For instance, the LARR Authority is constituted of one legal practitioner having more than seven years of experience (called the Presiding Officer). The Presiding Officer is to be appointed by the Government and can be removed from his office on orders made by the Government if found guilty on the grounds of 'misbehaviour' and 'incapacity'. Such controls by the Government on Presiding Officer may pose a risk to the independence of the judiciary and creates an opportunity for the Government to influence judicial reviews.

To avoid issues over the accuracy of judgements on matters concerning property valuation and compensation a legal body, like the LARR Authority, was instituted in the United Kingdom in 1950, called the Lands Tribunal. The Lands Tribunal has equal judicial powers as the Civil Court and is constituted by a legally qualified President and another legal expert, along with two surveyors experienced in valuation matters. Often more than one member is involved in the assessment, particularly if the matter is complex. Independent assessment by legal and valuation experts at the Lands Tribunal ensures unbiased, informed decision making. On similar lines, it is suggested that the LARR Authority is constituted by two or more experts on law and at least one expert on land and property valuation who can inform legal decisions on compensation matters. Given that LARR 2013 concerns with compensation for rehabilitation and resettlement, it may be worth including social scientists in the LARR Authority who can properly assess social costs and benefits involved in the process and guide rehabilitation and resettlement process.

Mediation and arbitration between the landowners and acquiring agency should reduce the loss of time and money lost in formal legal procedures. More importantly, it should

reduce the stress caused due to long periods of uncertainty before the judgement is formed.

5.4.8.3 No penalty for delay in payment

Even though the landowners are paid 12 per cent interest rate on the market value of land, it only offsets the loss of value of money due to time lost between the day of final notification (as per LAA 1894) or the date of publication of Social Impact Assessment study (as per LARR 2013) and the date of the award of the Collector or the date of possession. It is to be noted that the permissible time gap between notification and possession was two years under LAA 1894 and has been reduced to twelve months under the LARR 2013. However, it is at the discretion of the Government to increase the time limit. Therefore, the affected landowners may get stuck with notified lands for a long period, as observed in the case of the BMIC project. Thus, landowners demand payment of penalty interest rate, in addition to 12%, for any delay beyond the period of one year. Penalty clause should protect the affected landowners from land market inflation and should incentivise the Government for timely payment of compensation.

5.4.8.4 No provision for advance payment

There is no provision for advance payment of compensation unlike in Scotland and some other countries where the acquiring authority is liable to pay 90 per cent of the market value in advance if the landowner desires so. Having advance payment should reduce financial hardships for the landowners who are constrained from using land as collateral during the period of notification, which can prolong for many years, as is the case with the BMIC project (refer to Rao 2019). Advance payment of compensation should also improve the commitment of the Government and the private partner to complete the project given that the cost of land is already paid for.

5.4.9 ISSUES WITH UNETHICAL BEHAVIOUR AND CORRUPTION

5.4.9.1 Landbank accumulation by the Government and politicians

Poor accountability of the government towards people induces misuse of the power of compulsory acquisition. As observed in the case of the BMIC project, the government changed its stand and withdrew support after having notified 20,000 acres for acquisition. In their argument for withdrawal of support, the Government said that the NICE Company had demanded land more than that required for the project. The power to revoke acquisition is often misused to accumulate a personal land bank.

Advance payment of 90 per cent (or similar) of the market value should also lock the acquiring authority with the project.

5.4.9.2 Regulatory capture by private firms

Influence of private developer in acquisition matters has been visible to the landowners to the extent that a respondent mentioned during the interview that “the presence of the government has been deliberately reduced in the project. The company is itself running a parallel government.”

Referring to the incompleteness of structural reforms corresponding to the participation of private partners in providing public services, Boehm (2007) writes that: “Such (unclear) settings clearly open the risk for opportunistic behaviour: regulated firms may capture the reform for their narrow interests (‘regulatory capture’), or politicians may abuse regulatory powers for own purposes (‘regulatory opportunism’, or captured by the political sphere).” (p. 3). Estache and Martimort (1999) emphasise that corruption, regulatory capture and regulatory opportunism are transaction costs of regulation and undermine the stated aims of ‘social welfare’ of these reforms.

While the new Act (LARR 2013) is an improvement over LAA 1894 in that it seeks introduction of SIA and food security in part of the process for land acquisition, it is easy to bypass the mechanism. To ensure that objectives of social welfare are achieved, it is important that the power of compulsory acquisition is restricted from misuse. This can

be achieved by establishing accountability of the acquirers toward the people, suppressing biases through neutral evaluation of at various stages, and through removing gaps identified in this research. Suggestions provided in this research should improve the process advocated under the LARR 2013 through the adoption of good practices adopted in other parts of the world.

5.4.10 SUMMARY OF FINDINGS AND SUGGESTIONS

Table 5.3 below states the suggestions for improvement to the process advocated under the LARR 2013. These suggestions are based on the advice received from the people affected by the BMIC project, and the author's analysis of the process of compulsory acquisition in developed countries like Australia and Scotland.

Table 5.3: Suggestions for improvement in the process of compulsory acquisition advocated in LARR 2013

Pre-acquisition stage - Improving involvement of people and accountability of the acquiring authority	1. Public consultation for the proposed project – design, planning, layout and other related activities.
	2. Demonstration of public purpose and sharing preliminary information - Demonstration of the public purpose of the project and sharing details on burdens and benefits arising out the project, and the distribution of benefits among stakeholders, probable impact on the local community, mitigation measures, R&R strategies.
	3. Invite objections and suggestions from the people and provide an opportunity for the people to negotiate and draw the contract for pre-acquisition and post-acquisition obligations of the acquirers. Independent Expert Group to be involved at this stage. Providing preliminary support to the people in understanding the project, their rights and other relevant information.
Independent assessment of objections at the pre-acquisition stage	4. Independent Expert Group to assess discussions, debates, and objections received at the previous stage. The recommendation made by the Expert Group should be a legal imposition on the people and the Government, that can be challenged at the Court of Law.
The process of compensation determination – Suppression of bias in compensation	5. The institution of an independent valuation office that can provide a detailed valuation report containing information on the market value of subject land parcels.
	6. Independent assessment of package and R&R for each affected landowner by a group of experts on law, property valuation, social sciences.

determination; ensuring timeliness	7. Provision for payment of advance compensation
	8. Provision for payment of penalty interest rate, above base rate, for the delay in payment of advance compensation and final compensation.
A fair opportunity for negotiation on compensation that is inexpensive, fast, and unbiased	9. Provision for inexpensive alternative methods of compensation negotiation outside the Court through mediation and arbitration under the shadow of the Tribunal.
Accurate and fast judicial reviews:	10. The institution of an independent Tribunal for fast judicial reviews. Experts from the field of law and property valuation and social science to be members of the Tribunal.
Ensuring project completion	11. The government should provide a detailed explanation to the Parliament and take approval if choosing to suspend or terminate an ongoing public project.

5.5 CONCLUSION

The compulsory nature of acquisition by the government has been a cause of dissatisfaction among landowners across the globe. Much of the literature has examined dissatisfaction that is caused by inadequate compensation and falls short of the losses borne by the affected landowners. There is acknowledgement in the literature that the process followed by the acquiring authorities in the compulsory acquisition of land causes dissatisfaction and extenuates the feeling of loss among landowners (Rao, Tiwari, & Hutchison, 2018). However, gaps in the process of land acquisition that causes dissatisfaction have not been analysed. This research examines the causes of dissatisfaction with the land acquisition process in India and answers the following questions:

- (i) What are the constitutional basis for private property and its acquisition in India?
- (ii) What does land acquisition law stipulate as for the process for land acquisition?
- (iii) What are the gaps in the process that lead to dissatisfaction of landowners with the process?
- (iv) How do recent reforms in land acquisition laws fare regarding the process compared to LAA 1894?
- (v) What are key recommendations for improvement in a process that could ameliorate dissatisfaction with the process among those whose lands are acquired compulsorily?

The Constitution that was adopted by independent India in 1949 included a private property right as a fundamental right despite which the state could acquire private property for public purposes on payment of compensation through a duly fair process. In the next twenty-five years, the Constitution underwent Amendments as the property as a fundamental right obstructed the government's development ambitions. Finally, the fundamental right for the property was repealed, and it was reduced to be a legal right. Acquisition of private land for public purposes was to be conducted according to an established law, which the States' and its agencies were to formulate. Most of the States' and the Union relied on the colonial law of Land Acquisition Act (LAA) 1894 to acquire land. Some land acquisition acts for specific purposes were formulated, but these generally took LAA 1894 as the basis with minor modifications. A new Act LARR 2013 was enacted in 2014. Both these Acts have been analysed to understand gaps in the process that leads to dissatisfaction. Theoretical criteria for procedural fairness proposed by Leventhal (1980) have been applied to land acquisition processes stipulated in LAA 1894 and LARR 2013 to identify gaps. A primary survey of 47 affected landowners in the BMIC project and case reports of court cases on the BMIC project provide the data based on which the land acquisition process has been analysed. Though the land for the BMIC project has been notified for acquisition under the KIAD Act, only those aspects of the land acquisition process have been analysed that are similar to the LAA 1894.

Leventhal (1980) proposes six criteria of procedural fairness. These include rules for consistency, bias suppression, accuracy, correctability, representativeness and ethicality. This research identifies some problems with the land acquisition process using LAA 1894 in India. Many of these problems persist in new LARR 2013. These are summarised below:

1. In the decisions to acquire land compulsorily, a balance between social welfare and private interests of affected landowners needs to be achieved. ECHR argues for the fulfilment of the 'proportionality principle' which implies that "interferences with (property) rights must be proportionate to the legitimate aim pursued". In case of land acquisitions in India, landowners whose lands were notified for the BMIC project believed that government was given too much

discretionary powers and the power to compulsorily acquire land conferred by the Act was misused.

2. Transparency and information sharing are key components of Leventhal's model for a fair procedure, which have been absent in the land acquisition process for the BMIC project at all stages. Both the LAA 1894 and LARR 2013 are silent on the extent of information that needs to be shared with the affected landowners and the public. Even though there is a requirement of social impact assessment report to be prepared in consultation with people at the village or ward level in the LARR 2013, there is no responsibility of the acquiring agency to provide information on the project, compensation strategies, mitigation measures, rehabilitation and resettlement plans, and other necessary information required during pre-acquisition stage by the affected families to form an informed opinion about the project.
3. Survey of the affected landowners in the BMIC project revealed that there is poor accountability of the government, as the acquiring agency. The acquiring authority is not obligated to provide responses to the affected landowners who raise objections. LAA 1894 and LARR 2013 do not explicitly require project details to be shared with the affected landowners.
4. People have not been involved in the planning and design stages of the project. Once the project is approved as a public project, the implementing agencies approach the Collector to acquire land as per the process suggested in the Act. Landowners who are to be affected by the project are informed about the project in the pre-acquisition notice. This severely limits opportunities for people to be involved in the project.
5. Affected landowners in the BMIC project opined that the law was modified to suit the purpose of the government and the project-implementing agency. The definition of public purpose was widened to include components of the project that were strictly not public. Though the law allows public purpose to be determined by the legislature, there is a danger of regulatory capture by the private sector, as suspected by the affected landowners in the BMIC project case.
6. The consistency rule of procedural fairness (Leventhal 1980) requires that the procedure is applied consistently across people and over time. In the case of the BMIC project, the government and its agencies changed their stand towards the project many times and this affected the public's trust in the project. There has been a feeling of vindication among the landowners. LAA 1894 is silent on the implications of what should be done of land that has been acquired if the project does not go ahead within a stipulated timeframe.
7. Leventhal (1980) suggests that a fair procedure should include a mechanism for bias suppression. However, land acquisition acts in India have minimal or no such mechanisms. Interviewees and court cases indicate that in the BMIC project there were biases in project selection, selection of a private developer and in dealing with the objection raised by the landowners against acquisition notice. Fairness also arises from how affected landowners are treated. Delays in settling compensation and no mechanism for advance payment till the compensation is settled have been some of the most unfair practices that landowners face during compulsory acquisition.

8. Leventhal's (1980) criteria of procedural fairness include accuracy and correctability. However, in the case of land acquisition, LAA1894 and LARR 2013 empower Collector to calculate compensation determination and to establish a process for determination of compensation. The Collector is under no obligation to provide a detailed valuation report to the landowner or inform her of the components of compensation. The mechanisms for modifying and reversing these decisions are only through appeal in the civil court, which is arduous and time-consuming. This weakens landowners' opportunities to negotiate. Procedural fairness requires a fair appeal procedure and redress mechanism. Objections against compensation are raised to the Collector, who is also an arm of the acquiring authority and thus not a neutral assessor. Also, long and cumbersome judicial reviews raise doubts on procedural fairness.
9. The ethicality rule of procedural fairness requires that allocative procedures must be compatible with the fundamental moral and ethical values accepted by an individual (Leventhal, 1980). Affected landowners in the BMIC project stated that the political leaders created land banks around the project for their personal gains. The appearance of private sector and government together to the meetings with the public to listen to their objections was viewed as a 'regulatory capture' by the affected landowners, which weakened their trust in the land acquisition process.

When analysed on the basis of procedural fairness criteria of Leventhal (1980), it is found that the LAA 1894 and LARR 2013 do not have adequate mechanisms to ensure that these criteria are met. This research recommends mechanisms that can improve procedural fairness during pre-acquisition, compensation determination and completion stages. Involving people at the pre-acquisition stage, instituting expert group, an independent valuation office and an independent tribunal to examine objections impartially, determine compensation and adjudicate on matters that cause a dispute between acquiring authority and the affected landowner would make the process fair.

The process of compulsory acquisition of land requires re-examination so that the original objective of social welfare maximisation is reinstalled in a meaningful way. It is important that development targeted through projects requiring the compulsory acquisition of land is tied together with socio-economic development policies for the affected landowners. This discussion also opens opportunities for future research on designing inclusive development projects which can meet developmental objectives (physical and social) together, particularly when the compulsory acquisition of land is involved.

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Annexure 5.A: Process of compulsory acquisition and compensation determination in India, LAA 1894 and LARR 2013

Stage 1. Determination of the public purpose

LAA 1894 states that the government may compulsorily acquire land for ‘public’ purposes. The scope of public purposes includes “provision of village-sites, or the extension, planned development or improvement of existing village-sites; the provision of land for town or rural planning; the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; the provision of land for a corporation owned or controlled by the State; the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State; the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority; the provision of any premises or building for locating a public office, but does not include acquisition of land for companies” (Section 3(f), LAA, 1894). The problem with the definition of public purpose in LAA 1894 is that it is more about the kind of activities that the government undertakes rather than the purpose behind those activities. An activity undertaken by the government may not necessarily be for the purpose that justifies land acquisition (for example manufacturing activities, which was common for the state to get involved in as it pursued its development-oriented economic policies after independence) through compulsory mechanisms. According to LAA 1894 and the Constitution, the “public purpose” determined by the legislature could

not be scrutinised by the courts. In addition to the above, Section 39 in 1894 Act states that the land may be acquired for private companies if they undertake above purposes or their work is likely to be of some use to the public (Wahi, 2013).

Compared to the LAA 1894, the new LARR 2013 defines public purpose better, however, it allows acquisition of land for a very wide range of projects, including infrastructure projects such as industrial corridors “for which land shall be acquired up to one kilometre on both sides of designated railway line or roads” (RFCTLARR (Amendment), 2015). In addition to providing a detailed list of ‘public purpose’ projects, LARR 2013 allows ample discretion to the government to design projects for which land can be acquired. For example, under Section 2(e) in LARR 2013, like LAA 1894, public purpose also includes “projects for planned development or for the improvement of village sites or any site in the urban area”, which can include almost all types of physical developments in rural and urban areas. Also, ‘public project’ includes any infrastructure facility as may be notified by the Central government after tabling in the Parliament (LARR, 2013).

The LAA 1894 gave unrestricted discretionary power to the Government to choose the project requiring compulsory acquisition without having to demonstrate the public purpose or taking consent from the people, unlike the LARR 2013.

Stage 2. Inviting consent of the affected families

The LAA 1894 allowed acquisition of land for a private company for a public purpose and the new act broadens the scope of acquisition to include all private entities, including private companies. However, the LARR 2013 involves taking consent of at least 80 per cent of the total affected families if the land is to be acquired for a private company, and 70 per cent affected families in case of public-private partnership projects. As opposed to the old Act, the consent clause of the LARR 2013 gives much control over the decision of acquisition to the affected families and the community, when private partners are involved.

Stage 3. Undertaking social impact assessment

Under Chapter II of the LARR 2013, the Government is required to consult the concerned rural and urban local bodies at the village or ward (smallest administrative unit of a local government) level and carry out a Social Impact Assessment study (SIA). Through the SIA, the LARR 2013 requires the Government to demonstrate the following (Section 4(4), LARR 2013):

- a) assessment as to whether the proposed acquisition serves a public purpose;
- b) estimation of affected families and the number of families among them likely to be displaced;
- c) the extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- d) whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project;
- e) whether land acquisition at an alternate place has been considered and found not feasible;
- f) study of the social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project *vis-a-vis* the benefits of the project

LARR 2013 states that “While undertaking a Social Impact Assessment (SIA) study, the government has to consider the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure, particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, ‘anganwadis’ (child care centres), children parks, places of worship, land for traditional tribal institutions and burial and cremation ground”.

Section 9 in LARR 2013 provides that where the land is proposed to be acquired invoking the urgency clause (as per Section 40, LARR 2013), the government may exempt the undertaking of the SIA. Section 6 in LARR 2013 requires that for irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law, the provisions relating to SIA shall not apply.

Stage 4. Public hearing for Social Impact Assessment

Section 5 in LARR 2013 requires that a public hearing is held at the affected area to invite views of the affected families. Written records of the public hearing form a part of the SIA report.

Stage 5. Appraisal of Social Impact Assessment report by an independent Expert Group

Section 7 in LARR 2013 requires that an independent multi-disciplinary Expert Group evaluates the SIA report and provide a recommendation to the government on whether to go ahead with the project or to abandon.

Stage 6. Special provision to safeguard food security

In addition to the SIA, the LARR 2013 requires that irrigated multi-cropped land is not acquired for development purposes so that the production of food is not compromised. In case when such a land is acquired, as the last resort, then “an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security” (Section 10(3), LARR 2013). The concerned Government makes final decisions.

Stage 7. Examination of the proposals for land acquisition and Social Impact Assessment Report by the appropriate Government

After considering the report of the Expert Group, the Government takes the final call on the next steps. Recommendations made by the Expert Group are not binding on the Government, and it may choose to undertake the project irrespective, though after providing a written explanation for doing so. At this stage, it is the responsibility of the Government to ascertain whether prior consent of affected families has been obtained. The final decision of the Government is to be made available in the public domain.

Stage 8. Exemptions from pre-acquisition processes

There are no pre-acquisition stages involved in the old act of 1894. It is important to mention that recent amendments proposed to the LARR 2013 allow the Government to avoid undertaking the SIA and food security checks as described earlier under pre-

acquisition stages 3 to 6 (refer to Section 10A, RFCTLARR (Amendment), 2015). This brings the new Act (LARR, 2013) closer to the old one (LAA 1894), except that the consent of affected families is still required under the new Act. Also, SIA is exempted if the land is acquired invoking the urgency provisions (under Section 40, LARR 2013).

Stage 9. Publishing preliminary notification for acquisition and inviting objection

The procedure for land acquisition as specified in LAA 1894 involves publication of preliminary notification (Section 4, LARR 2013) in the official gazette, two daily newspapers, and through public notice. In addition to these, the LARR 2013 also requires uploading the notice on the Government website for efficient information sharing. It also requires sharing the contents of the notice through holding a meeting with concerned rural and urban local bodies (Section 11(1), LARR, 2013). The LARR 2013 specifies that the notice should “contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report” (Section 11(3), LARR 2013).

Both the acts invite objections from the affected people after the release of the preliminary notification for acquisition (Section 5A, LAA 1894; Section 15, LARR 2013). The LARR 2013 mentions the grounds of objections to be the area and suitability of land proposed to be acquired; or justification offered for a public purpose; or the findings of the Social Impact Assessment report (Section 15(1), LARR 2013).

Stage 10. Assessment of objections

Objections are made to the Collector in writing. After giving the objector the opportunity to be heard the Collector makes a report on the proceedings of hearings, containing her recommendations to the Government. The Government takes the final decision on the objections, without having to provide any explanation to the objectors.

Stage 11. Publication of final notification

The final declaration of acquisition is made when the Government is satisfied after considering the report of the Collector on public objections. Under the LARR 2013, the final declaration also includes acquisition notice for “resettlement area” for

rehabilitation and resettlement of the affected families. Also, when acquiring land for resettlement and rehabilitation purposes, the acquirer is not required to undertake the Social Impact Assessment. Final notification under Section 6, LAA 1894 included information on the particulars of land required for the project. Under the LARR 2013, information on land required for resettlement area and Rehabilitation and Resettlement Scheme also form a part of the final notification (Section 19, LARR 2013).

Stage 12. Notification to persons interested

Both the Acts require the Collector to make a public notice to inform the interested person of the intention of the Government to take possession of the land (Section 9, LAA 1894; Section 21, LARR 2013). The notice contains information on the particulars of the land to be acquired and requires the interested person to meet the Collector in person or through their agent or advocate and to state the nature of their interests in land; the amount and particulars of their claims to compensation; claims to rehabilitation and resettlement.

Stage 13. Enquiry and award for compensation by the Collector

When the Collector is satisfied that all interested persons are agreeable over compensation matters, she will make the award of the amount of compensation (as per Section 23 & 24, LAA 1894; Section 27, LARR 2013) and for rehabilitation and resettlement (as per Section 31, LARR 2013), and shall allocate the compensation among interested parties (Section 11, LAA 1894; Section 23, LARR 2013).

Stage 14. Timeline of payment of compensation

The LAA 1894 allowed two years to the Collector to make an award. However, under the LARR 2013, the Collector is required to make the award within 12 months from the date of publication of final notification, failing which the entire notification for acquisition shall lapse. However, under the new Act, the appropriate Government has the power to extend this period if the need is (Section 25, LARR 2013).

All landowners are compensated for the loss of value of money due to time lost between the day of final notification (as per LAA 1894) or the date of publication of SIA study (as

per LARR 2013) and the date of the award of the Collector or the date of possession. This is calculated at the interest rate of 12 per cent on the market value (Section 23, LAA 1894; Section 30(3), LARR 2013). However, there is no incentive for the Government to pay the compensation in time.

Stage 15. Dispute resolution

Under Section 18, Part III of the LAA 1894 the affected landowners can raise a legal objection in any Civil court on matters concerning compensation for land. Unlike the LAA 1894, the new LARR 2013 completely prohibits the jurisdiction of Civil courts (other than the High Court and the Supreme Court) for dispute resolution and instead grants the power of judicial review to a Presiding Officer to be appointed by the concerned Government. Section 51 in LARR 2013 requires the establishment of 'Land Acquisition, Rehabilitation and Resettlement Authority' (LARR Authority) "for speedy dispute resolution" on acquisition and rehabilitation matters. Under Section 60 in LARR 2013, the LARR Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

CHAPTER 6. STAKEHOLDER INTERACTION ANALYSIS OF THE PROCESS OF COMPULSORY ACQUISITION OF LAND: EVIDENCE FROM AUSTRALIA

Property often forms the biggest component of a household's wealth and assets. Irrespective of landowners' willingness, the act of compulsory acquisition abruptly ceases the security that this ownership carries. This often induces dissatisfaction among affected landowners over the (i) loss of 'property rights'; (ii) loss of commodity, or property; and (iii) loss of future opportunities associated with the property. Though there have been attempts in various land acquisition laws and practice to compensate acquirees for their loss, the dissatisfaction of acquirees has persisted. Full compensation for all tangible and intangible losses is practically unachievable, and therefore the dissatisfaction of landowners may never be eliminated. However, the literature suggests that the existing compensation mechanism is narrowly focusing upon monetary losses of which the (market) value of land forms the largest component (Wyman, 2007). Present compensation agreements are based on the loss of (physical) 'commodity' while ignoring the loss of 'rights' and 'opportunities' associated with land and property (refer to Table 6.1). Dissatisfied landowners disapprove of this mechanism of land procurement (Mangioni, 2014). The persisting resistance of landowners compels deeper insight into the process of compulsory purchase and the compensation mechanism to understand underlying causes for resistance.

This research investigates the extent of the involvement of different stakeholders, at various stages in the compulsory purchase process, using stakeholder interaction analysis. Results obtained from this research will help identify the gaps in the process of compulsory purchase of land for public projects in Australia. A survey of ten different stakeholder groups has been conducted, and the results illustrate that (i) affected landowners seek involvement at the initial stage when the project plan is under preparation, and compulsory purchase declaration are not finalised; (ii) objectors (from the public) seek opportunities to convey, to the public agency, their views even though the accountability of public agencies towards this stakeholder is nil; (iii) strong

interactions are established during negotiation over the compensation amount, thus signifying the urge of acquirer and acquirees to avoid monetary losses and time delays.

6.1 INTRODUCTION

There is a paucity of literature that examines the land acquisition process to understand dissatisfaction among acquirees, although the general argument is that the settlement of compensation takes a long time due to prolong disputes between acquirer and acquirees over the amount of compensation. As will be argued in this chapter, the dissatisfaction of acquirees has a much larger dimension than compensation inadequacy and delays and rather involves the entire process of compulsory purchase. It is therefore considered important to review the process of compulsory purchase which has resistance from affected landowners with consequences such as delays in project delivery and cost overruns.

The case of the Aberdeen Western Peripheral Road (AWPR) in Scotland (UK) is a recent example of a public road project which was delayed due to problems in acquiring the private land. The project faced strong resistance from affected landowners together with objectors from the public. This delayed the project by six years with completion expected in late 2017 (Transport Scotland, 2016), whereas originally the road was planned to be in use by 2012 (Transport Scotland, 2007). The situation in India is even worse where an official review of delayed projects indicates that 70% of the delays were due to the land acquisition problems (Sarkar, 2009). In Australia, the legal system restricts the opportunities for the public to raise objections and the plans and proposals of the public agencies are considered sacrosanct. This, however, has not prevented resistance. The dissatisfaction of aggrieved landowners over the process and inadequacy of compensation has taken a toll on the entire development process. Considering physical development as a key necessity for the development of the economy (Nguyen, Skitmore, & Wong, 2009), it is necessary to derive a balance between benefits and losses of public projects and affected landowners, respectively.

Aggravation of affected landowners over the loss of property, rights and opportunities may increase if they are not given a fair chance to participate in the decision-making process. Bayles (1990) argues that “people should be able to participate meaningfully in burden/benefit decisions affecting them. One reasonably desire’s to be at least heard, to have one’s say before decisions affecting one are made.” (p. 130). In addition to this, permission to participate also perhaps demonstrates that a person’s view is considered seriously (Bayles, Procedural Justice: Allocating to individuals, 1990). People who can participate in the decision-making procedure are more likely to comply with decisions, although they might not agree to it (ibid). On the contrary, if people have not had the opportunity to have their say, they might fail to cooperate in implementing the decision (ibid).

The aim of this chapter is three-fold – to identify key stakeholders in the compulsory purchase process in Australia and understand their interests towards public projects; to summarize the sequence of steps in the compulsory purchase of land for a public project as per the legal system, in a simplified way; to analyse the perception of the process through a survey of experts expressing views on level of participation of various stakeholders at different stages of the compulsory purchase process.

The study will help in identifying gaps between advocated (as per the legal system) and the perceived level of participation of different stakeholders in the process of compulsory purchase. This chapter will also discuss the interests of key stakeholders involved in the process of compulsory purchase in Australia which could help in the development of a wider zone of possible agreements amongst stakeholders.

The structure of the chapter is divided into four sections. Section 6.2 starts by discussing the concept of land ownership and the evolution of the attitude of the government towards private property rights. It proceeds to a discussion on stakeholder theory and possible techniques for resolving the conflict of interests, as explained in the management literature. Following this, section 6.3 attempts to derive a logical method to scrutinise the current mechanism of compulsory purchase in Australia through assessment of the level of involvement of different stakeholders in the process of

compulsory purchase at three different stages of (i) project planning (ii) objection and (iii) the negotiation. Under section 6.4, gaps in the existing system are identified and discussed in detail. The research concludes as a continuum of discussions encouraging fairer process for any unjust outcomes of ‘compulsory purchase’.

6.2 LITERATURE REVIEW

The literature review has been organised to include a short discussion on the evolution of political theories and the attitude, of the government, towards private property rights. This is followed by discussions on the research that has critiqued the compulsory purchase process. For example, Benson (2005) states that government entities (in the US) face significant holdout problem during compulsory purchase which is often more severe than when private entities purchase land from the market. In the case of Australia, Mangioni (2014) found that the majority of landowners do not approve of giving the power of compulsory purchase to the government despite being satisfied with the amount of compensation. Efficient compensation is important but not the only parameter for an efficient process of acquisition. Miceli and Segerson (2014) discuss the limitations of economic theories in the evaluation of compulsory purchase mechanism and state that “a broader perspective, therefore, requires the allowance for other values besides (economic) efficiency, like fairness or justice” (p. 694).

Different theories have emerged to explain the rationale and process of compulsory purchase. Thomas Jefferson, one of the founding fathers of the U.S. constitution strongly advocated ‘allodial’ ownership of land wherein a landowner would have absolute dominion over their property without any feudal obligations to the state (Benson, 2008). This would mean the establishment of true property rights and the abolishment of a government’s stake over private land (Benson, 2008). However, the uncontrolled exercise of absolute property rights by one owner may disrupt the enjoyment of property by another owner. To avoid conflict of interests, Nyamaka (2011) explains the social contract theory of John Locke (1632 – 1704) which encourages the formation of societies and governments and allocation of power to public bodies to regulate subjects. As per the Lockean theory, man entered into two contracts, firstly the

contract of ‘Pactum Unionis’ as per which people formed unions or societies and agreed to respect each other and live in harmony so as to give and receive protection of life and property to and from the members of the society; and secondly the contract of ‘Pactum Subjectionis’ where people agreed to obey an authority and surrendered the whole or part of their freedom and rights so as to avoid conflict of interests (Nyamaka, Social contract theory of John Locke (1632-1704) in the contemporary world, 2011). This theory explains the origin and legitimacy of governments and the establishment of laws and legal institutions. Social contract theory justifies restrictions on the use of private property. Although this contrasts with Jefferson’s views, it is more popularly accepted among philosophers and economists, across the world. It is expected that the government, as a public body, would act impartially and would distribute economic benefits to all members of society equitably. Under this obligation, public agencies acquire private property, with the expectation that private rights should give way on occasion to the wider public interest. The benevolence is not very well received by landowners whose lands are at risk of acquisition because of the intensity and nature of personal losses associated with property ownership, which includes, but is not limited to a range of losses (see Table 6.1).

Table 6.1: Losses associated with the compulsory acquisition of property

I.	Loss of commodity	The physical asset and its market value
		Improvements on land
		Produce from land
II.	Loss of rights	Right to take decisions related to land (use, exclude and dispose of)
		Right to choose the time of disposal and the condition of the land/property market
		Right to negotiate with the buyer
		Right to decline the sale
		The right to hold and retain the property (specifically in case of ancestral property)
		The right to bequest
		Loss of community linkages and social networks
		Loss of belongingness
		The loss in (property) profiles and social status
III.	Loss of opportunity	Loss of opportunity to participate in the property market and opportunity to benefit from appreciating the value of land or property
		Loss of locational advantages
		Loss of future development potential of land, with and without the proposed project
		Loss of opportunity to leverage from the property as financial security

Source: Authors.

Benefits associated with the appreciation of the value of land is conditional to land market performance, and therefore it may be argued here that due to the volatile nature of the property market, the sale of the property may not always prove beneficial for the seller. However, on comparing voluntary sale opportunities with compulsory purchase, it may be counter-argued that voluntary sale shall always prove beneficial to the seller for the following reasons – (i) landowner would commence sale to serve her purpose and therefore voluntary sale shall always be considered beneficial (or fruitful) for the seller, irrespective of monetary losses, if at all, due to poor market conditions at the time of sale (ii) rational behaviour of landowner would suggest that she will not sell her property when property value is below her expectations, and she would rather wait for the market conditions to improve; (iii) it is usual that demand for land will continue to increase, and therefore the value of land will always increase over time.

In the words of Carmichael (1975) “property” is a “constellation of highly complex adjustments of entitlements and expectations” (pp. 749). While ‘entitlements’ could be defined as legally achievable limits of landowners’ rights, her ‘expectations’ would be subjectively defined by each landowner. Donnelly (2012) states that “the concept of extent of ownership has changed significantly in interpretation from the nineteenth to

the twenty-first century” (p. 4) and it is observed that statutory law is placing increasing restrictions on the rights and benefits of individual landowners (Donnelly, 1986 referred in Donnelly, 2012). This transition could well be related to Carmichael’s findings that the approach of legal institutions towards individual’s property rights is dependent upon contrasting economic approaches between laissez-faire that enabled maximum individual freedom of transaction as the “summum bonum²⁵” of the Nineteenth Century property system and the increasing degree of governmental intervention and control that have characterised the Twentieth Century (Carmichael, 1975, p. 751). Barzel (1997) interprets property rights to be an amalgamation of economic rights and legal rights. Economic property rights would mean “the individual’s ability, in expected terms, to consume the good (or the services of the asset) directly or to consume it indirectly through an exchange” (Barzel, *Economic Analysis of Property Rights*, 1997, p. 3). Legal property rights would essentially be assigned by the state to the landowner, under set legal norms (ibid). Economic rights are the end objective (or what landowners would ultimately seek) whereas legal rights are the means to achieve the end (ibid). In the recent economic context of Amartya Sen’s (1979) ‘capability approach’, this could be interpreted to mean that land, as a commodity, possesses various economic functioning for the landowner and the legal system would facilitate few functions while restricting others, thus defining the capability (or accessible set of functioning) of landowners. The exercise of the power of compulsory purchase is a special case under which legal access to all economic functioning is ceased. The discussion above is important to understand the nature of losses associated with the property. However, the existing compensation mechanism focuses narrowly upon loss of monetary (market) value of land and ignores bigger losses of landowners’ expectations; economic rights and legal rights; and her capabilities associated with the property.

The process of the land acquisition involving various stakeholders becomes important because the rights of a few landowners are curtailed while benefitting others through

²⁵ ‘Summum bonum’ is a Latin expression that means ‘the highest good’ or the most valuable good. Philosophers interpret this differently and as per Bentham’s utilitarian theory, the highest good is “utility”.

project development. Improvements to the process of compulsory purchase would not change the outcome for the landowner but could add to her “satisfaction derived from the process itself” (Frankel 1980, as cited in Bayles 1990, p. 128). One procedure could be preferred over another even if both achieve the same outcome (Bayles, *Procedural Justice: Allocating to individuals*, 1990). The objective of refining the process of compulsory acquisition appears more convincing when viewed from the lens of Sen’s ‘goal-rights system’ according to which the value of consequences (state of affairs) should also take into account “the value of protecting rights and the disvalue of having them violated” (Scanlon T. M., 2001, p. 43). This challenges existing systems (political, legal and economic) which advocate ‘consequentialism’ and justifies the act of compulsory acquisition for producing beneficial consequences for the majority. Theory of ‘consequentialism’ suggests that “actions should be assessed only in terms of the goodness or badness of their consequences” (Wells, n.d.). Amartya Sen criticises consequentialism for being ignorant towards ‘fairness’ of the process (Scanlon T. M., 2001). With this inspiration, this research will dissect the process of compulsory purchase through the application of stakeholder theory which has been a popular technique of understanding the involvement of various stakeholders in a process.

Stakeholder theory has its origin in management literature (Bailur, 2006; Donaldson & Preston, 1995). The classical definition of stakeholder, by Freeman (1984, as cited in Friedman & Miles, 2006), states that “a stakeholder in an organisation is any group or individual who can affect or is affected by the achievement of the organisation’s objectives” (p. 1). This is the broadest definition in stakeholder literature (Mitchell, Agle, & Wood, 1997). Later Freeman (1994) redefined stakeholders as ‘participants in the human process of joint value creation’ (p. 415). This definition rationalises the purpose of formation of organisations, which is to synchronise the actions of all stakeholders to maximise economic value created jointly by stakeholders. Clarkson (1994) offers a narrower definition of stakeholder as voluntary and involuntary risk-bearers (Mitchell, Agle, & Wood, 1997). “Voluntary stakeholders bear some form of risk as a result of having invested some form of capital, human or financial, something of value, in a firm. Involuntary stakeholders are places at risk as a result of a firm’s activities. However,

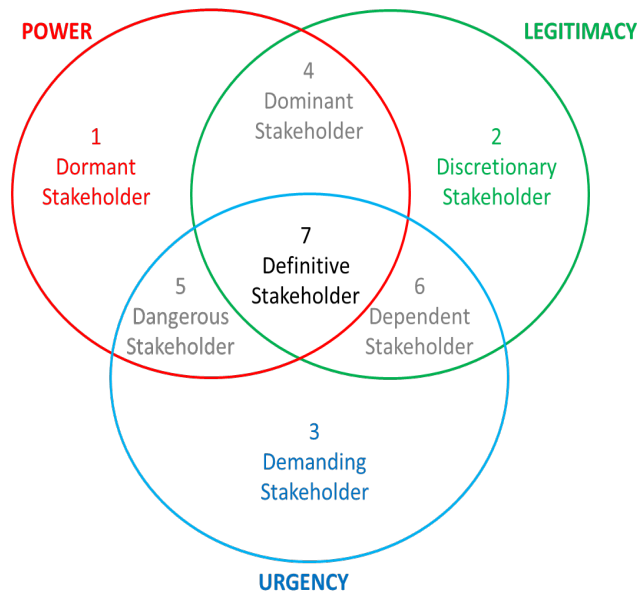
without the element of risk, there is no stake” (Clarkson, 1994 cited in Mitchell, Agle, & Wood, 1997, pp. 856-7).

Mitchell, Agle and Wood (1997) analysed twenty-eight definitions of stakeholder covering a period from 1963 to 1995 and noticed that most of these definitions are narrowing stakeholders to those having legitimate claims. They then suggested that legitimacy should be an important, but not the only attribute of stakeholder’s salience to managers and that stakeholders should be identified based on their possession of one or all the following attributes (i) stakeholder’s power to influence the firm; (ii) the legitimacy of the stakeholder’s relationship with the firm; and (iii) the urgency of stakeholder’s claims on the firm (ibid).

Dahl (1957) defines power as “a relationship among social actors” (p. 201) in which one social actor, A, can get another social actor, B, to do something that B would not have otherwise done. Suchman (1995) analysed various definitions of legitimacy and derives his own definition that ‘legitimacy’ is a generalised perception that actions of an entity are desirable, proper, or appropriate within some socially constructed norms. Mitchell et al. (1997) define ‘urgency’ as “the degree to which stakeholders claim to call for immediate attention” (p. 869).

The main objective of Mitchell, Agle, and Wood’s study was to suggest theoretical solutions to two important questions – who are stakeholders to the firm? To whom do managers pay attention? With this intention, stakeholders were classified in seven categories depending upon possession of various combinations of these attributes (refer to Figure 6.1 and Table 6.2).

Figure 6.1: Stakeholder typology based on the attributes of ‘power’, ‘legitimacy’ and ‘urgency’ (Source: Mitchell et al., 1997, p. 874)



Source: Authors.

Table 6.2: Stakeholder typology based on the attributes of ‘power’, ‘legitimacy’ and ‘urgency’ (Source: Mitchell et al., 1997)

Stakeholder typology	Description
i. Dormant	Dormant stakeholders possess the power to impose their decisions but lack legitimacy and urgency. Therefore, their power remains unused. Examples of dormant stakeholders will include those who can command media attention; or those who have monetary capacity to contribute towards the organisation.
ii. Discretionary	Discretionary stakeholders are legitimate claimants, but they do not have the power to influence the firm and lack urgency on claims. This disables them to create pressure on managers to establish an active relationship with such stakeholders.
iii. Demanding	These stakeholders have urgent claims but do not have power and legitimacy. Mitchell, Agle and Wood (1997) explain the situation of these stakeholders similar to that of "mosquitoes buzzing in the ears of managers: irksome but not dangerous, bothersome but not warranting more than passing management attention if any at all" (p. 875).
iv. Dominant	Dominant stakeholders form the "dominant coalition" (Cyert & March, 1963) by possessing power along with legitimacy. These stakeholders have a major influence on the firm and its decisions.
v. Dangerous	When stakeholders lack legitimacy but have urgent claims and the power to impose their decision, then they are considered 'dangerous' to the firm. This stakeholder can be coercive and violent, for example, labour unions.

vi. Dependent	These stakeholders have legitimate urgent claims but lack the power necessary to carry out their interests.
vii. Definitive	Definitive stakeholders possess power, legitimacy, and urgency. A powerful and legitimate stakeholder has 'dominant coalition' and is most likely to move from 'dominant' to 'definitive' category.

Source: Authors.

Kaler (2002) found that most definitions of stakeholders enlisted by Mitchell, Agle, and Wood (1997) are either claim based, or influence based or are a combination of both. 'Claimant definitions' require some sort of claim on the organisation, 'influencer definitions' require the capacity to influence the organisation, and 'combinatory definitions' allow for either or both claims and influences. However, Kaler (2002) found the 'claimant definition' of stakeholder to be most suitable for business ethics. He emphasised that "stakeholders in business have to be defined as those with a claim on its services: more particularly, a strong or weak, role-specific, morally legitimate claim to have their interests served by that business" (Kaler, 2002, p. 97). While Kaler's (2002) discussions focus on defining stakeholders, Mitchell, Agle, and Wood's (1997) concept also talk about prioritising stakeholders, at least in theory, by consideration of three attributes of 'power', 'legitimacy' and 'urgency'.

McElory and Mills (2000) (referred in Nguyen, Skitmore, & Wong, 2009) apply stakeholder theory into construction project management and assess the impact of various stakeholders by mapping their knowledge and attitude, as main determinants. The method suggests that the knowledge of a stakeholder may range from full awareness to total ignorance about the project and processes. In the former case, the stakeholder is very dependent upon other sources of information about the project, processes, claims, and rights. In attempting to gain information she is trying to gain more influence on the project to achieve their objectives (Nguyen, Skitmore, & Wong, 2009). Without sufficient knowledge, even a 'powerful' and 'legitimate' stakeholder may also lose influence on the project (Nguyen, Skitmore, & Wong, 2009). The second attribute is stakeholders' attitude which primarily separates supporters (positive attitude) from objectors (negative attitude) of the project (as explained earlier). Later Bourne (2005) introduced another important attribute of 'proximity' which he uses in the prioritisation

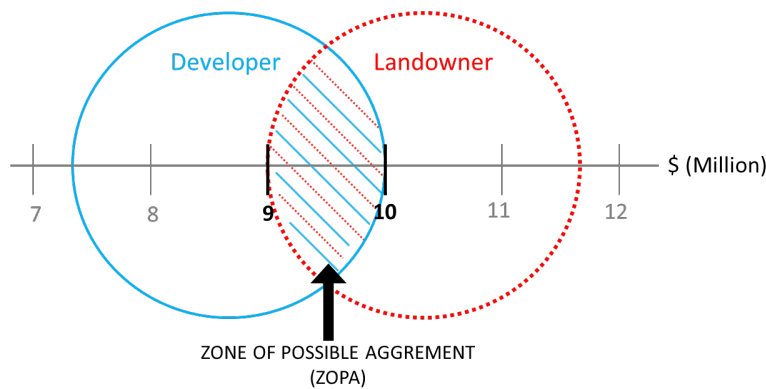
of stakeholders' interests in construction project management. Proximity is described as the level of involvement (direct, routine/part-time, detached but in regular contact, relatively remote) in the project processes (Bourne, 2005).

Stakeholder Management

Stakeholder management means “simultaneous attention to the legitimate interests of all appropriate stakeholders, both in the establishment of organisational structures and general policies and in case-by-case decision making” (Donaldson & Preston, 1995, p. 175). Stakeholder theory explains and guides the structure of the organisation (Donaldson & Preston, 1995) but is limited in its practical application and does not provide solutions to problems of balancing various interests and considerations in decision making (Orts & Strudler, 2009).

In order to derive acceptable solutions which would satisfy all stakeholders, it is important to identify common interests and overlaps. This could be better understood through the concept of ‘negotiation’. Caputo (2013) defines ‘negotiation’ as “a joint decision-making process between two or more interdependent parties... which have different preferences and interests partially in conflict and are driven by opportunistic nature” (p.67). The concept of negotiation is explained further by taking the example of negotiation of land between a private developer and the landowner. If the developer is assuming the value of land to be less than \$10 million (say), then she would not pay more than that. Similarly, the seller is estimating the value to be more than \$9 million (say). Negotiation would conclude when both the parties mutually agree to the amount of transaction which should necessarily fall between \$9 and \$10 million as shown in the Venn diagram below (Figure 6.2). This range is the ‘Zone of Possible Agreements’ (ZOPA) in this case and is defined as “the intersection of the sets representing the different configurations of interests of the involved parties” (Caputo, 2013, p. 68)

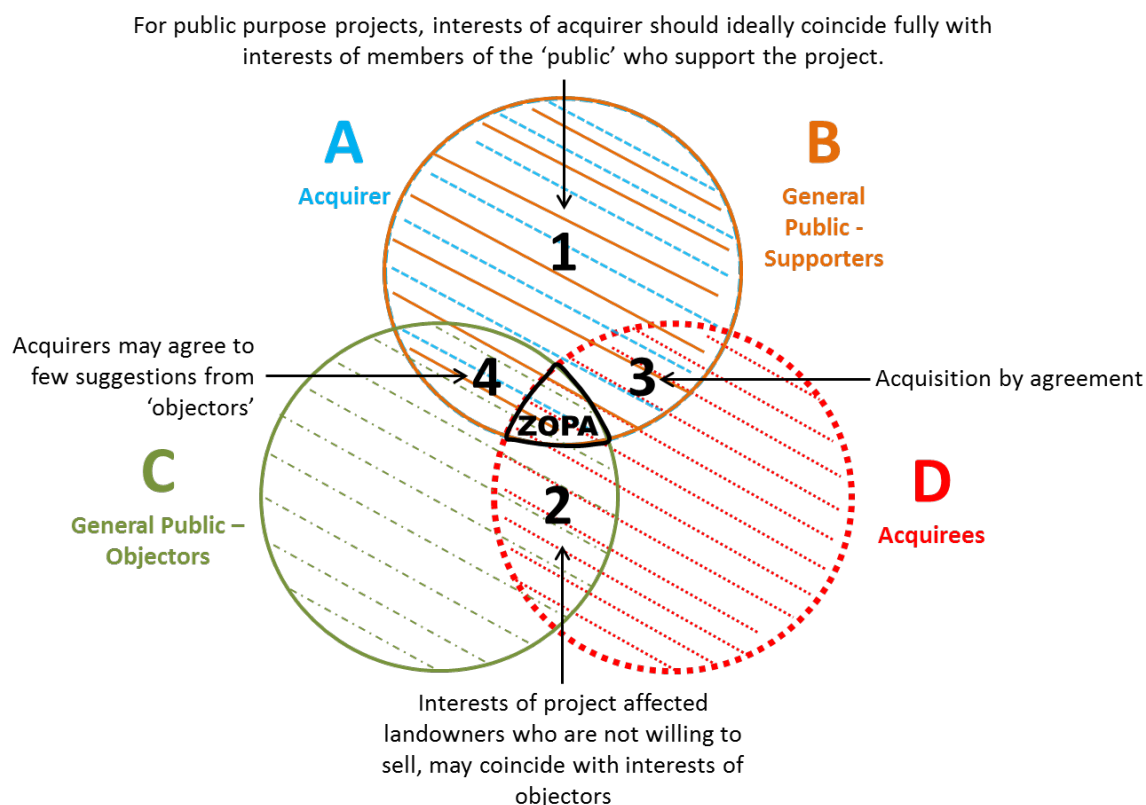
Figure 6.2: Graphic representation (Venn diagram) of Zone of Possible Agreements (ZOPA)



Source: Authors.

Stakeholder theory will be useful in understanding the process of compulsory purchase by assuming the “public project” as an ‘organisation’. Stakeholders who are affecting and are getting affected by this organisation, could be hypothetically comprising of four groups of stakeholders - (A) the acquirer, including public and the private agencies involved in planning and execution of the project; (B) the members of the society who are the taxpayers and therefore the cost bearers, as well as the beneficiaries who support the project (C) members of society who oppose the project for various reasons, for example, environmental damage, social damage; and (D) landowners whose land is acquired for the purpose of the proposed project. Conflict of interest and possible zones of agreements between these four groups of stakeholders may be represented by the Venn diagram (Figure 6.3).

Figure 6.3: Graphic representation (Venn diagram) of possible zones agreements between stakeholders involved in the compulsory purchase process



Source: Authors.

The challenge lies in managing the interests of various stakeholders to optimise 'joint value' created by the actions of all stakeholders accumulated together.

To summarise the above discussions, it is emphasised in the literature that the original landowner is a powerful stakeholder and therefore her participation in the compulsory purchase process needs to be reviewed, so as to minimise the dissatisfactions of the landowner and to harmonise the process. The existing compensation strategy focuses narrowly on the market value of land and the discontent caused due to the non-participatory process of acquisition is overlooked. There is continuous debate over the issue of appropriate compensation. However, these discussions are not sufficient to understand the reasons for dissatisfaction holistically, and there is a need to capture the 'pain points' in the process as well. The discussions under the stakeholder theory suggest that for the successful execution of projects (in this case the project will be the compulsory acquisition of private land parcels) action should be taken to – (i) widen the Zone of Possible Agreements and thus increasing the probability of decisions falling in

an agreeable range (refer to Figure 6.3) (Caputo, 2013); (ii) to maximize support of those stakeholders who possess a positive attitude towards the project (Lester, 2006); and (iii) to minimize disruption which might be created by objectors of the project (Lester, 2006). By the application of stakeholder theory into the compulsory acquisition exercise, this research aims at identifying the gaps in the existing mechanism that can be filled by appropriate redistribution of the stake of the landowners, the public and the government.

6.3 RESEARCH DESIGN

This section explains the qualitative research techniques employed in this research and the appropriateness and relevance of these methods. This research is performed in three stages, and the detailed method used at each stage is explained under Part 1, 2, and three respectively. Methods adopted for this research amalgamate the representative style of stakeholder network analysis with the textual style of literature review, to create a new style that makes the analysis easier. In the first part, the textual information available in the legislature is summarised into a matrix (with textual information). In the second part, the perception of stakeholders is recorded with the help of the primary survey. The five-point ranking system was used to seek answers on the intensity of interaction amongst stakeholders. The information received at the first two stages is translated into a visual format, by allocating different symbolic codes to the textual data. At the third and final stage, the two matrices prepared under Part 1 and two are superimposed, and the gaps are identified easily. The following sections will describe the method under each part in detail.

Part 1 – Study the (legislative) process of compulsory purchase in Australia

The first step is to identify the existing source of textual information on the legislative process of compulsory purchase. Compulsory purchase powers of the federal government (or Commonwealth Government) in Australia are guided by the Land Acquisition Act, 1989 (LAA). Similar legislation is in place in most Australian States for acquisitions by state and territory governments. For this research, the legislature

adopted by the Federal government, that is LAA 1989, will be used as the main reference and the process adopted by the Commonwealth government shall be discussed. There is an opportunity for doing a similar review of processes stated under various state legislatures. However, the supremacy of federal legislature over the state is clearly recognised in the Australian Constitution²⁶ (Parliament of Australia, 2017) and therefore the LAA, 1989 is the conclusive act for all the states.

The textual information in the LAA, 1989 is summarised to facilitate easier and quicker understanding of the procedure. Miles & Huberman (1984) suggest two methods of representing qualitative data, which are – matrix representation and network display. While network display is a popular style of representing social network analysis, the matrix representation is considered more appropriate for preparing a textual summary of the process as well for the identification of gaps in the theoretical and practical process. Appendix A presents the summary compulsory purchase process in Australia and the role of different stakeholders at each step, as stated in the LAA, 1989. The appendix is a matrix in which different steps, followed during compulsory acquisition, are recorded in separate rows, and the columns represent the stakeholders. The intersection of a row and column states the role of each stakeholder at different stages of the acquisition process (see Appendix A).

Part 2 – Stakeholders’ perception of their level of involvement

The perception of the stakeholders is obtained through a structured survey questionnaire. While the research requires inputs from a widely dispersed population of landowners, lawyers, valuers, government agencies, private developers and the wider public in general, it was considered more appropriate to adopt a technique of ‘purposive (or theoretical) sampling’ (see David & Sutton, 2004) and limit the set of respondents to

²⁶ Section 109 of the Australian constitution that, “when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid” (Parliament of Australia, 2017)

a limited number of experts who given their level of experience can adequately represent the sample.

A primary survey was conducted with a close reference group of ten experts who have participated in the compulsory purchase process for various public projects in Australia. Participation of respondents in multiple projects ensured that their perception about the process is not affected by the procedural challenges of any one project. Table 6.3 provides a detailed description of each respondent –

Table 6.3: Respondents’ profile

Respondent	Stakeholder classification
1 A professional valuer who was affected by land acquisition.	Landowner
2 An academic and trained valuer specialising in compulsory acquisition valuation.	Landowner’s agent – Valuer
3 A trained valuer specialising in compulsory acquisition valuation.	Landowner’s agent – Valuer
4 A planner with experience in advising landowners in acquisition cases.	Landowner’s agent – Planner
5 A lawyer with experience in representing landowners in acquisition cases.	Landowner’s agent – Lawyer
6 A senior professional working for Local Planning Authority in Melbourne who is involved in the planning of multiple infrastructure projects.	Planning Authority
7 A senior professional working for acquiring authority who is involved in land acquisition for multiple infrastructure projects.	Acquiring Authority
8 A private developer involved in many public infrastructure projects.	Private developer working on a public project
9 A community representative on consultative committees during the planning process of infrastructure projects.	Objectors of the project
10 An academic supporting public development project.	A supporter of the project

Respondents were sent an electronic copy of the ‘information sheet’ which explained briefly about the aims and objectives of this research and the relevance of this survey. They were also sent an electronic copy of the questionnaire which inquired about their

stake in the project and the strength of interaction²⁷ they had or expected to have with other stakeholders at three different stages of the project, namely - project planning; objection and suggestion; and negotiation (overcompensation amount). Depending on the respondents' subjective opinion of their degree of involvement with other stakeholders at different stages, they rated the strength of interactions on a Likert scale of 0 – 4 (0 – No interaction; 1 – Weak interaction; 2 – Medium interaction; 3 – Strong interaction; 4 – Very strong interaction). Table 6.4 below is a sample of the response received from a Valuer (for the landowner) stating her opinion about the strength of interactions with other stakeholders at each stage.

Table 6.4: Sample of response received from stakeholders

Your stake (any one)	Stakeholders	Stage 1	Stage 2	Stage 3
		Planning	Objection & Suggestion	Negotiation
	Landowner	1	0	1
*	Landowner's Agent -Valuer			
	Landowner's Agent -Lawyer	0	0	0
	Planning Authority	2	0	2
	Acquiring Authority	2	0	2
	Development Authority	0	0	0
	Members of the society who are supporters of the project	0	0	0
	Members of the society who are objectors of the project	0	0	0
	Other (Please specify)			

Note: * indicates the stake of the respondent.

Part 3 – Identification of gaps

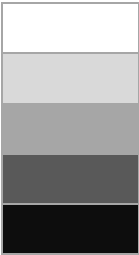
In the final stage, the written responses received from the above-mentioned stakeholders are translated into a matrix with colour coded entries in the boxes (see Figure 6.4). Also, the textual summary created in Part 1, is translated into a matrix with symbol entries in boxes. The method for the identification of gaps is by imposing the

²⁷ Interaction would mean establishment of communication (through any mode) on emergence of a need to communicate regarding issues related to compulsory purchase.

two matrices on top of each other and visually identifying the missing overlaps of colours and symbols.

The list of all the stakeholders forms the first row and column of the matrix. Each box contains information on three important factors, where each factor is represented by a different symbol. The first factor is the interaction between stakeholders as suggested under the LAA 1989. The symbol of the cross or 'X' is used to indicate this. The second important factor is to know the interactions which are performed by the stakeholders in the real-world scenario. A box filled with the colour grey is indicative of actual interactions. The third important information is the intensity of interaction between different pairs of stakeholders. This is indicated by different shades of grey colour where light grey represents weak interaction, and black colour is for very strong interaction.

- 0 - No interaction
- 1 - Weak Interaction
- 2 - Medium Interaction
- 3 - Strong Interaction
- 4 - Very Strong Interaction



Three different matrices are prepared for each of the three major stages of the acquisition process, namely the planning/pre-acquisition stage; the objection and suggestion stage; and the final stage of negotiation. Interaction of each stakeholder (in rows) with other stakeholders (in columns), except self, are recorded in this visual format for all three stages. On analysing the matrix, it reveals gaps between the stakeholder interactions as per the legislature and the interactions that are actually performed by the stakeholders. Gaps in the process can be identified at locations where 'X' and grey coloured cells do not overlap. More specifically, the absence of 'X' over coloured cells or the absence of colour on 'X' cells is indicating the gap.

6.4 RESULTS AND FINDINGS

6.4.1 THE PROCESS OF COMPULSORY PURCHASE IN AUSTRALIA

In reference to the latest Land Acquisition Act, 1989 of Australia, this section reviews the process of compulsory purchase and will identify different actors and their role at different stages of the process, broadly three: (i) pre-acquisition; (ii) reconsideration and review of pre-declaration; and (iii) temporary and permanent acquisition (refer to Annexure 6.A).

At the pre-acquisition stage, the Minister prepares a pre-acquisition declaration and shares it with all affected persons to inform them about the proposed project, the purpose²⁸ of acquisition, the acquiring authority and the land proposed for acquisition. The making of a pre-acquisition declaration is not considered important if the relevant land is available (for sale) in the market (Section 19, Land Acquisition Act 1989) and acquisition is happening by agreement²⁹ between the acquirer and the acquiree. The declaration may also be published in a local newspaper for the information of the wider public. The Minister, who is the main actor at this stage, plans the land acquisition and informs other stakeholders about the proposed acquisition. All other stakeholders have a very limited role of receiving information related to the proposed acquisition.

In the next stage, affected persons are given the opportunity to participate more actively. The legislature allows them to place a request to the Minister for reconsideration or review of the pre-acquisition declaration. However, the Minister has

²⁸ Australian legislature permits exercise of power of compulsory purchase for public purpose which is defined as “a purpose in respect of which the Parliament has power to make laws and includes, in relation to land in a Territory, any purpose in relation to the Territory” (Section 6, Part II, Land Acquisition Act 1989).

²⁹ Section 40 of Land Acquisition Act 1989 provides details on ‘acquisition by agreement’. Section 40(6) states that “if the Minister is satisfied that the acquisition of an interest in land by an acquiring authority would amount to a normal commercial transaction between parties dealing with each other on equal terms, the Minister may give a certificate stating that the acquisition of the interest by the acquiring authority would be a standard commercial transaction” (Section 40(6), Part VI, Land Acquisition Act 1989).

the choice to ignore their requests in which case unsatisfied persons may approach the Administrative Appeals Tribunal. The Minister can further reject the tribunal's recommendations, but she is then obliged to explain the reasons before each House of the Parliament whose decision would be an imposition on the Minister. The Parliament holds all powers to make laws in relation to public purposes and is the final decision-making body for review and reconsideration of the acquisition proposal.

At the third and final stage, the acquiring authority acquires all interests in land and obtains entry and possession on the land. At times, land could also be acquired temporarily to place plants or machinery, depositing building material or construction of temporary roads or sheds or workshops or other similar purposes facilitating execution of the proposed project. Even neighbouring land³⁰ could be acquired for this purpose. Notice for acquisition is sent to each person having an interest in the land proposed for temporary or permanent acquisition. The acquiring authority is authorised for temporary possession of land after seven days of sending the notice. In this process, the acquirees are not given any opportunity to express their views, except for presenting a claim for compensation for losses borne due to damages caused due to the temporary acquisition. Any obstruction caused by 'obstructing persons' could be curtailed by the acquiring authority with assistance from the Australian Federal Police. Similar to temporary acquisition is the process of permanent acquisition, and the involvement of the affected landowner is limited up to the negotiation for compensation. Claimants shall make a claim within a year from the date of acquisition, post which it is at the discretion of the Minister to offer/reject compensation. Claimants lodge their expected claim amount through the submission of a claim form to the Minister, who then presents her offer to the claimant. The claimant has the choice to reject (or accept) Minister's offer, in which case the final amount of compensation is decided either by arbitration through an expert or by the Administrative Appeals Tribunal or by the Federal Court.

³⁰ Neighbouring land means land within a distance of 500 metres from the nearest boundary of the land in which acquiring authority holds an interest (Section 11(1), Part III, Land Acquisition Act 1989)

6.4.2 IDENTIFICATION OF STAKEHOLDERS

The previous section describes the involvement of different stakeholders in the process of compulsory purchase, major ones being affected persons (owners and non-owners) whose interests in land are to be acquired; the Minister along with the acquiring authority; and the public represented by the House of Parliament. These broad groups of stakeholders could be further sub-divided into smaller groups. For example, the group of ‘affected person’ jointly represents the sub-groups of landowners, mortgagees, existing occupier and other similar interest holders. In order to develop a better understanding of the level of involvement of actors in the process, this research will consider the landowner as the only ‘affected person’. However, it is necessary to acknowledge the important role of a landowner’s agent, including valuers, planners, and lawyers, who guide their client with their expert knowledge and experience on property value, development potential, and landowner’s rights. Therefore, the ‘affected person’ includes the landowner along with her agents. Similarly, ‘the Minister’, as the acquirer, is the joint representative of smaller sub-groups of the planning authority, the acquiring authority, and the development authority. The third stakeholder is the general public which could be subdivided into groups of project supporters and objectors. Objectors will be non-governmental, non-elected groups of environmentalists, civic societies or societies emerging as a response to a specific project to represent their specific views towards the proposed project(s). From the discussion above, the following eight stakeholders could be identified (refer to Table 6.5):

Table 6.5: Key stakeholders in the compulsory purchase process, Australia

Stakeholders	
Affected persons	1. Landowners
	2. Landowner’s agent – Valuer; and Planner
	3. Landowner’s agent – Lawyer
The Minister	4. Planning Authority
	5. Acquiring Authority
	6. Development Authority
General Public	7. Members of the society who are supporters of the project
	8. Members of the society who are objectors of the project

The detailed process of acquisition, as per the Act, as discussed in the previous section, is translated into the visual map (Figure 6.4) to indicate interactions between these eight stakeholders. The next section will explain Figure 6.4 in detail while examining differences and overlaps between the process suggested by the act and process perceived by the participants.

6.4.3 IDENTIFICATION OF GAPS IN THE COMPULSORY PURCHASE PROCESS

The legislature suggests that interactions at the pre-acquisition stage shall be initiated by the acquiring authority with intentions to inform landowners about the proposal of acquisition. However, in the perception of the acquiring authority, there are no interactions happening at this stage. Also, the Act does not encourage landowners' participation at this stage, and their role is limited to receiving information about the proposed acquisition. Despite that, landowners and their agents seek opportunities to establish communication with both the planning and the acquiring authorities. It is not necessary that the planning scheme, for which land is to be acquired, is finalised and approved before commencement of acquisition process (Section 172, Planning and Environment Act 1987) and therefore project planning and land acquisition, often run parallel. This arrangement gives the opportunity for stakeholders to simultaneously get involved in both the processes. This overlap often influences their attitude towards the project. For example, a landowner may otherwise support the project but may not be willing to give away their land. During pre-acquisition, a landowner's involvement with the planning agency could be indicative of their attempts to influence planning decisions in a way that their interests in land are protected from being acquired. That said, their interaction with the planning agency could well be born out of necessity and urgency to gather adequate details about the proposed project and the compulsory purchase process. Another gap is observed in interactions initiated by objectors to connect with the landowners and the planning authority. The legislative process does not give objectors the opportunity to express their views on the pre-acquisition proposal, except through their representatives in the Parliament. However, they are actively involved with the planning agency so that their views could get incorporated at the initial stage. Objectors also establish strong links with affected landowners, who could be potential

objectors to the project. Unlike the planning and acquiring agency, the developer (private agency) is involved with landowners and objectors with the purpose of minimising risks of time delays and cost overruns that can be caused by obstructing persons.

Figure 6.4: Diagrammatic representation of interactions between stakeholders during the compulsory purchase process in Australia

Stage 1 - Planning/Pre-acquisition	Landowner	Landowner's agent – Valuer & Planner	Landowner's agent – Lawyer	Planning Authority	Acquiring Authority	Development Authority	Members of the society who are supporters of the project	Members of the society who are objectors of the project
Landowner								
Landowner's agent – Valuer & Planner								
Landowner's agent – Lawyer								
Planning Authority					x	x		
Acquiring Authority	x	x	x	x		x	x	x
Development Authority				x	x			
Members of the society who are supporters of the project				x	x			
Members of the society who are objectors of the project				x	x			

Stage 2 - Objection and Suggestion	Landowner	Landowner's agent – Valuer & Planner	Landowner's agent – Lawyer	Planning Authority	Acquiring Authority	Development Authority	Members of the society who are supporters of the project	Members of the society who are objectors of the project
Landowner		x	x		x			
Landowner's agent – Valuer & Planner	x	x	x		x			
Landowner's agent – Lawyer	x	x			x			
Planning Authority					x	x		
Acquiring Authority	x	x	x	x		x	x	x
Development Authority				x	x			
Members of the society who are supporters of the project								
Members of the society who are objectors of the project								

Stage 3 - Negotiation (for compensation)		Landowner's agent – Valuer & Planner	Landowner's agent – Lawyer				Members of the society who are supporters of the project	Members of the society who are objectors of the project
Landowner		x	x		x			
Landowner's agent – Valuer & Planner	x	x	x		x			
Landowner's agent – Lawyer	x	x			x			
Planning Authority					x	x		
Acquiring Authority	x	x	x					
Development Authority				x	x			
Members of the society who are supporters of the project								
Members of the society who are objectors of the project								

Legend

No interaction	
Weak Interaction	
Medium Interaction	
Strong Interaction	
Very Strong Interaction	
Interaction suggested as per the act	x

Progressing to the second stage, the landowner and her agents are given the opportunity (by the LLA 1989) to request for review and reconsideration of the pre-acquisition declaration. There are multiple interactions happening between landowners, valuers and planners, lawyers, planning authority and acquiring authority. However, the accountability of public agency is low (indicated by light grey colour) towards requests received from affected persons, and favourable outcomes may not be certain for requesters. Australian legislature restricts the involvement of unaffected persons in review and reconsideration process. To fill this gap, informed groups of objectors find alternate ways to convey their suggestions to the planning and acquiring authorities. Landowner's agents and objectors exchange views and information related to proposed projects. If the interests of landowners and objectors match, then their collaboration may prove difficult for the project and can even result in complete termination of the project. To some extent objections from non-supporting members of the society is a sign of healthy democracy as long as there is an efficient mechanism in place for resolution of their issues.

At the last and final stage, the acquirer and the acquiree are given the opportunity to negotiate and derive a compensation amount which fulfils their financial interests. Relatively stronger interactions are happening at this stage between landowners, their agents, and the planning and acquiring authorities. This could be because landowners and their agents are at par with the public authority regarding their (legal) power to negotiate. Also, acquirer and acquiree have an equal opportunity to receive favourable outcomes, and this increases their involvement in the negotiation process. In addition to that, delays in decision-making increase the cost of judgement for both the parties and therefore they tend to be actively involved. However, stronger interactions may not necessarily mean quicker conclusions. Both parties have opposite interests (small ZOPA, Figure 6.3) and strong strength to negotiate through expert support from valuers, planners, and lawyers. This means that derivation of mutually agreeable conclusion could be cumbersome.

6.5 CONCLUSION

The land is a major input required for any physical development activity. Four major stakeholders of public projects are seen to be public agencies, supporting member, objectors and landowners on whose land the project is proposed. Findings from this research highlight the lack of public participation in the land acquisition process, especially at the initial stages. The stakeholders try to establish connections among themselves to discuss the issues and challenges which are unheard by the acquiring agencies. Being the most affected party, the landowners try to establish all possible interactions that could help them in safeguarding their interests. However, the process of compulsory purchase, by definition, is forceful in nature and the decisions are usually taken without the involvement of landowners, who then remain dissatisfied with the outcome as well as the process.

Gaps in the process are indicating a low level of public participation in planning decision-making in Australia (Brunner & John, 2015). Unlike in the USA and the UK, “no Australian state or territory has passed legislation protecting public participation” (Bozic, 2008, cited in Brunner & John, 2015, p. 28). Research suggests that people achieve

psychological satisfaction from participation in the decision-making process because it harnesses their self-esteem, self-identity, and affiliation (Brockner, 2002). When people can provide input into the decision process, then they are more likely to believe that they will receive their share of favourable outcomes (Brockner, 2002). Participation, therefore, increases the tendency to comply with unfavourable outcomes. On the contrary, unfavourable outcome (acquisition of land) accompanied by non-participatory (or unfair) procedure makes the decision maker (the government) much more blameworthy (Brockner, 2002) and landowners feel disenchanted from development activities proposed on their land. Therefore, the process might appear fairer to stakeholders if they are involved in the decision-making process.

However, it is difficult to comment on the appropriate level of involvement, which would increase acceptance and compliance of landowners with the acquisition process. In this reference, Bayles (1990) warns that – “One must not overvalue participation. Participation in decision-making procedures can be a very frustrating, incomprehensible, and discouraging task. Many people seek participation merely as a means to the desired outcome.” (p.130). Stakeholder theory suggests simultaneous attention (of the decision maker) to interests of different stakeholders, but the theory does not provide a solution to the problem of balancing various interests and considerations in decision making (Orts & Strudler, 2009). Further research in this area may be conducted to discover stakeholders’ expectations on their level of participation in the compulsory purchase process. Accordingly, improvements may be derived to make the compulsory purchase process more inclusive and participatory, and thus more acceptable and harmonious.

It is certain that the prevailing practice cannot be regarded as best practice. This research provides evidence of gaps in the current process and people’s expectations. This could be used as a platform for future research towards the evolution of the compulsory purchase mechanism.

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Annexure 6.A: The role of different stakeholders involved at different stages in the compulsory purchase process in Australia, as described in Land Acquisition Act 1989, (Source: Land Acquisition Act 1989)

Stakeholders at Stage 1 - Pre-Acquisition	The Ministry; the Minister	Affected persons: Owner interests NOT available for sale in the market	Affected persons: Owner interests available in the market*	Affected persons: Non-owner interests*	General Public	Administrative Appeals Tribunal	House of the Parliament
Declaration that land is suitable for acquisition	The Ministry <u>may declare in writing about acquisition of land</u> . The declaration shall identify the acquiring authority, , the land, the interest in the land and the public purpose.	No information.	*This includes landowners who have offered their land to the acquirer; whose land is currently advertised for sale or lease (Section 40(5), LAA 1989) Pre-acquisition <u>declaration is not required</u> (Section 19(2)) to be made if the relevant interest is available in the market and acquisition is happening by agreement (refer Section 40, LAA 1989).	*The person is the owner of some other interests (<u>other than mortgage interest</u>) which is getting affected.	No information.	No role.	The Parliament has <u>the power to make laws</u> in relation to purposes defined as 'public purpose'.
Informing affected landowners	<u>The Minister shall inform</u> each affected person* about the nature of acquisition and other related details. *The person is considered affected if (i) she is the owner of interest in land specified in the declaration (ii) person is the owner of some other interest in land which is getting affected partially or fully (Section 22(10), LAA 1989).	<u>Receive information</u> about acquisition of land.	No information.	Same status as affected landowners'.	No information.	No role.	No role.
Publication of the declaration and informing the public	The Minister <u>shall publish a copy of the declaration</u> in the Gazette and, "if practicable", in a newspaper circulating in the district in which the relevant land is situated.	Informed.	<u>May receive information</u> about proposed acquisition should they read the Gazette or the local newspaper chosen for publication of the declaration.	Informed.	<u>May receive information</u> about proposed acquisition should they read the Gazette or the local newspaper chosen for publication of the declaration.	No role.	No role.

Stakeholders at Stage 2 - Reconsideration and review of pre-acquisition declaration	The Ministry; the Minister; Acquiring authority; Secretary of the Department; Registrar-General; Registrar of Titles; Officer of the State or Territory in which subject land is situated	Affected persons: Owner interests NOT available for sale in the market	Affected persons: Owner interests available in the market*	Affected persons: Non-owner interests*	General Public	Administrative Appeals Tribunal	House of the Parliament
Reconsideration of pre-acquisition declaration	The Minister may choose <u>not to act upon the request</u> of affected landowners for reconsideration. No action of the Minister for 28 days is considered equivalent to confirming the declaration. Alternatively, the Minister <u>may confirm, revoke or vary the declaration in writing by stating a reason.</u>	<u>May request the Minister for reconsideration</u> of the declaration by sending a written application within 28 days of receiving the declaration. Affected landowners <u>receive information about revision or revocation</u> of pre-acquisition declaration.	*This includes landowners who have offered their land to the acquirer; whose land is currently advertised for sale or lease (Section 40(5), LAA 1989) Same status as affected landowners' / No Role	*The person is the owner of some other interests (<u>other than mortgage interest</u>) which is getting affected. Same status as affected landowners'.	No say.	No role.	No role.
Review of pre-acquisition declaration	Minister <u>shall send a written acceptance or rejection</u> (within 90 days) to the Administrative Appeals Tribunal.	If landowner is unsatisfied with Minister's decision (of varying or confirming the declaration), he <u>may request the Administrative Appeals Tribunal for review</u> of the pre-acquisition declaration.	Same status as affected landowners' / No Role	Same status as affected landowners'.	No say.	The Administrative Appeals Tribunal will make a written decision, <u>recommending the Minister</u> , to confirm, revoke or vary the declaration.	No role.
Rejection of recommendations of Administrative Appeals Tribunal	In case the Minister rejects recommendations of Administrative Appeals Tribunal then <u>he will present reasons before each House of Parliament</u> , within three sitting days of that House after the rejection of recommendation.	No say.	No say.	No say.	No say.	No role	<u>May overrule Minister's decisions</u> and can confirm, revoke or vary pre-acquisition declaration.
Notification of variations or confirmation or revocation of pre-acquisition declaration	The Minister shall <u>inform each affected person.</u>	<u>Receive information</u> about variations or confirmation or revocation of pre-acquisition declaration.	Same status as affected 'landowners' / No Role.	Same status as affected landowners'.	No information.	No role.	No role.
Registration of pre-acquisition declaration	The Secretary of the Department will <u>lodge a memorandum setting out particulars of the pre-acquisition declaration</u> with the concerned government officer (which could be - Registrar-General; Registrar of Titles; or other officer of the State or Territory in which subject land is situated)	No role.	No role.	No role.	No role.	No role.	No role.

Stakeholders at Stage 3a - Temporary entry on, and occupation of land	Authorised person (from the acquiring agency)	Affected persons: Owner interests NOT available for sale in the market (In this section, <u>neighbouring landowners</u> will also be considered under "persons having interest in land" if her land is considered for temporary acquisition)	Affected persons: Owner interests available in the market* *This includes landowners who have offered their land to the acquirer; whose land is currently advertised for sale or lease (Section 40(5), LAA 1989)	Affected persons: Non-owner interests* *The person is the owner of some other interests (<u>excluding interests in mortgages, charges or other similar security</u>) which getting affected (Section 9(1), LAA 1989).	General Public	Administrative Appeals Tribunal	House of the Parliament
To share information about acquisition	<u>To inform</u> each person having interest in the land (to be temporarily acquired) about her intentions to exercise the power of temporarily occupy the land.	<u>Receive information</u> through written notice about - the intention of exercise of power; reason for the exercise of power; affected persons <u>legal entitlement to compensation</u>	Same status as 'affected landowners'.	Same status as affected landowners'.	No say.	No role.	No role.
To enter on, and examine subject land	Authorised person can <u>exercise the power to enter and temporarily occupy the subject land</u> after 7 days of sending the notice of temporary acquisition.	No say.	No say.	No say.	No say.	No role.	No role.
Temporary possession of neighbouring land	Authorised person can <u>temporarily occupy neighbouring land</u> (within 500m from land proposed for acquisition) if required for the purpose of placing plants or machinery, depositing building materials, construct temporary roads, shades or workshops.	No say.	No say.	No say.	No say.	No role.	No role.
Overcoming obstruction	<u>Authorised person can obtain assistance and force (from Australian Federal Police)</u> to overcome resistance offered by any 'obstructing person'.	No say.	No say.	No say.	No say.	No role.	No role.
Compensation for losses	The Minister is <u>obliged to compensate</u> all affected persons for losses.	May <u>claim compensation for losses borne during temporary acquisition</u> within 3 years after suffering the loss (Part VIII). Process is same as that of determination of compensation for final acquisition.	Same status as 'affected landowners'.	Same status as affected landowners'.	No say	Same role as at Stage 3(c).	Same role as at Stage 3(c).

Stakeholders at Stage 3b - Acquisition by compulsory process	The Ministry; the Minister; Acquiring authority; Secretary of the Department; Registrar-General; Registrar of Titles; Officer of the State or Territory in which subject land is situated	Affected persons: Owner interests NOT available for sale in the market	Affected persons: Owner interests available in the market*	Affected persons: Non-owner interests*	General Public	Administrative Appeals Tribunal	House of the Parliament
Declaration of compulsory acquisition by the acquiring authority	After pre-declaration is absolute and is in force, <u>the Minister shall declare in writing</u> that acquiring authority will compulsorily acquire land. On publication of this declaration in Gazette, <u>all interests in land</u> , of owners and non-owners, <u>is by force vested with the acquiring authority.</u>	No say.	No say.	* <u>Existing occupier</u> and persons owner of some other interests (like <u>mortgages, contracts, charges and rates, licences</u>) which getting affected.	No say.	No role.	No role.
Publication of the declaration of compulsory acquisition	The Minister <u>shall inform the public by publishing a copy of the declaration</u> in the Gazette and, "if practicable", in a newspaper circulating in the district in which the relevant land is situated.	No say.	No say.	No say.	No say.	No role.	No role.
Notification of compulsory acquisition declaration	The Minister <u>shall notify affected persons</u> about (i) declaration of compulsory acquisition; (ii) compensation claim form.	<u>Receive notice</u> of compulsory acquisition, including compensation claim form (refer Section 67, LAA 1989).	The Minister may authorise the ' <u>acquisition by agreement</u> ' if the Minister is satisfied that acquisition by acquiring authority would amount to normal commercial transaction between parties then it shall be certified as " <u>standard commercial transaction</u> " (Section 40(6), LAA 1989)	<u>Receive notice</u> of compulsory acquisition, including compensation claim form (refer Section 67, LAA 1989).	No say.	No role.	No role.
Registration of compulsory acquisition declaration	The Secretary of the Department shall <u>lodge a memorandum setting out particulars of compulsory acquisition declaration</u> with the concerned government officer (which could be - Registrar-General; Registrar of Titles; or other officer of the State or Territory in which subject land is situated).	No role.	No role.	No role.	No role.	No role.	No role.
Entry into property by acquiring authority	After the interest in land is acquired by the acquiring authority and the interest entitles the authority to possession of land, then the Minister may <u>order evacuation of the property</u> ; or may <u>decide the date on which the occupier should vacate</u> the land; or may <u>decide the terms and condition</u> (including any amount payable towards occupancy) on which the occupier remains in occupation of land.	<u>Owner occupier may request for continuation of occupancy of land</u> for certain duration.	No say.	<u>Non-owner occupier may request for continuation of occupancy of land</u> for certain duration.	No say.	No role.	No role.

Stage 3c - Compensation for compulsory acquisition of interest in land	The Minister; Commonwealth	Affected persons: Owner interests NOT available for sale in the market	Affected persons: Owner interests available in the market*	Affected persons: Non-owner interests* * <u>Mortgagee</u> and other persons owner of some other interests (like contracts, charges and rates, licences) which getting affected.	General Public	Administrative Appeals Tribunal	Federal Court
Claim for interest in land and for compensation	The Minister (i) <u>may send a written notice of acceptance of claims</u> and <u>may propose an amount of compensation</u> (ii) <u>may send a written notice of rejection</u> of claims if claimants interests in land are not found to be compulsorily acquired (iii) <u>may not act upon claimants request</u> for 42 days, which would be <u>considered equivalent to rejection</u> of claims.	Affected persons are entitled to make a <u>claim (within 12 months* from the date of acquisition) for compensation to the Minister.</u> If no response is received for 42 days from the Minister regarding acceptance/rejection of claims, then <u>de-facto rejection of claims is assumed.</u> State or Territory is entitled to make a claim for compensation to the Minister as if it had been the proprietor. *If no claim for compensation is made by the affected person (as per section 67) then also the Minister may offer compensation (refer section 74A(1), LAA 1989).	No role.	<u>Mortgagee</u> is given the option to either (i) make a <u>claim for compensation to the Minister</u> ; or (ii) waive off compensation and <u>retain rights against the mortgagor</u> (or landowner) If no response is received for 42 days from the Minister regarding acceptance/rejection of claims, then <u>de-facto rejection of claims is assumed.</u>	No role.	No role.	No role.
Review of Minister's decision to reject claimant's claim on interest in land	<u>The Minister is compelled to adhere to Tribunal's or Court's decision</u> and shall send a written notice of acceptance/rejection of claims as per Tribunal's or Court's decision.	Claimant <u>may apply (within 3 months) to the Administrative Appeals Tribunal OR to the Federal Court for review</u> of Minister's decision of rejection of claim on interest in land (Section 71, LAA 1989).	No role.	Same status as affected landowners'.	No role.	The <u>Tribunal may overrule Minister's decision</u> and may declare that the interests specified in the claim, was/was not acquired from the claimant by compulsory process.	The <u>Federal Court may overrule Minister's decision</u> and its decision is a binding on the Commonwealth. The court may declare that the interests specified in the claim, or some other interest was/was not acquired from the claimant by compulsory process.

Stage 3c (Cont.) - Compensation for compulsory acquisition of interest in land	The Minister; Commonwealth	Affected persons: Owner interests NOT available for sale in the market	Affected persons: Owner interests available in the market*	Affected persons: Non-owner interests* * <u>Mortgagee</u> and other persons owner of some other interests (like contracts, charges and rates, licences) which getting affected.	General Public	Administrative Appeals Tribunal	Federal Court
First offer for compensation	The Minister makes offer for compensation to all claimants who are found genuine by him and by the Tribunal or by the Court.	The person may (i) <u>accept the amount</u> of compensation proposed by the Minister; or may (ii) <u>reject the proposed amount</u> and inform the Minister of expected amount of compensation along with explanation.	No role.	Same status as affected landowners'.	No role.	No role.	No role.
Second and final offer for compensation	Minister <u>may accept or reject claimants proposal</u> of amount of compensation and may send a final offer of amount of compensation. Minister <u>may choose not to act upon claimants request</u> for 2 months after which de-facto rejection of claimants offer is assumed and initial offer is considered the final offer from the Minister.	Claimant <u>may accept/reject the final offer</u> made by the Minister.	No role.	Same status as affected landowners'.	No role.	No role.	No role.
Negotiation over amount of compensation	The <u>Common wealth may institute proceeding in the Federal Court</u> if the compensation offered under Section 74A(1), LAA 1989 is rejected by the claimant. Decision of the arbitrator, expert, Administrative Appeals Tribunal or the Federal Court would be final and an <u>imposition on the Minister</u> .	In case of rejection of final offer, the claimant may choose any one of the following - 1. <u>In agreement with the Minister</u> , may request for settlement of question of amount of compensation by <u>arbitration or to be determined by the expert</u> ; 2. <u>Apply to Administrative Appeals Tribunal</u> for review of Minister's offer within 3 months from the date of receiving the final offer. 3. <u>May institute proceeding in a Federal Court</u> .	The Minister and owner may agree on the amount of compensation (or transaction). Landowner may <u>negotiate over compensation amount</u> and agreement has to be reached within certain	Same status as affected landowners'.	No role.	Can <u>overrule arbitrator's or expert's</u> decision.	Can <u>overrule Administrative Appeals Tribunal</u> decision.

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CHAPTER 7. FUNDAMENTAL FUNCTIONINGS OF LANDOWNERS: UNDERSTANDING THE RELATIONSHIP BETWEEN LAND OWNERSHIP AND WELLBEING THROUGH THE LENS OF ‘CAPABILITY’

Given landowners’ resistance to the compulsory acquisition of land and the recurring debate on the inadequacy of compensation, this research re-examines losses of landowners in terms of loss of functionings offered by land. This research aims to understand the relationship between land ownership and well-being when seen through the lens of Sen’s (1979) ‘capability approach’ and to identify fundamental functionings associated with land that are generalisable across countries. The relationship between wellbeing and functionings offered by commodities is the focus of Sen’s (1979) ‘capability approach’.

Understanding the functionings of land required inductive approach and a primary investigation was performed through focus group discussions with participants from eleven different countries, who are currently pursuing doctoral research at the University of Melbourne. A holistic list of nine fundamental functionings of land was obtained towards the end of these discussions, which are: (i) Secure means to basic ends; (ii) Self-identity; (iii) Social capital; (iv) Social equity; (v) Political empowerment; (vi) Power to take decisions on land matters; (vii) Family’s wellbeing; (viii) Personal comfort and convenience; and (ix) Psychological wellbeing.

7.1 INTRODUCTION

Sen (1979) raises the question of equality (of what?) and argues that the definition of poverty shall be based on access to ‘basic capabilities’ and not ‘basic goods’. Examples of ‘basic capabilities’ include “the ability to meet one’s nutritional requirements, the wherewithal to be clothed and sheltered, the power to participate in the social life of the community” (Sen, 1979, p. 218). The achievement of these basic capabilities shall require food, clothes, shelter and societal linkages respectively.

In the context of Sen's 'capability approach', it may be argued that the land (as a resource) offers functions that shall fulfil 'basic capabilities', and many more. The importance of land ownership is highlighted by George (1880) in his writing that "the ownership of land is the great fundamental fact which ultimately determines the social, the political, and consequently the intellectual and moral condition of a people. And it must be so. For land is the habitation of man, the storehouse upon which he must draw for all his needs, the material to which his labour must be applied for the supply of all his desires; for even the products of the sea cannot be taken, the light of the sun enjoyed, or any of the forces of nature utilised, without the use of land or its products." Thus, land could be considered a 'complete' good that encompasses, partially or fully, functionings of almost all other resources. Although access to different 'functionings' certainly depends on the individualistic ability of the landowner, thus defining the capability (Sen, 1985). This could include individuals' physical, mental, financial, educational, social, political and other abilities.

The discussion on land ownership and its relevance for wellbeing is scattered under different strands of economics and social sciences including land economics, finance, real-estate, social justice, feminism and other similar fields. Considering the discussion on 'capability', these well-beings could be knitted together to create a fundamental list of functions of landownership. Although it is premature to state this, the 'fundamental' list could be useful in indexing the 'capability' of different units of the society, the smallest one being the individual landowner.

Differences in treatment given to private property rights in different countries would also create a difference in the set of functionings achievable through ownership. Even within each country, different types of property title formats are practised which bundle property rights differently, thus creating different functionings. Considering the diversity in political and legal systems, as well as differences in property title formats that are practised in different parts of the world, it is concluded that absolute ownership of land offers a maximum achievable set of functionings and any lesser bundle of rights shall generate functionings that will be subset to absolute ownership. Though property rights are typically interpreted by economists as private property rights, other forms,

like community rights are important in many societies (Besley & Ghatak, 2010). While the major focus of this research is placed on private ownership of land, it is acknowledged that in some society's subjective wellbeing conjuncts with community ownership. Therefore, the scope of discussion in this research is broadened to include functionings offered to individuals operating under community ownership.

As mentioned earlier, the objective of this research is to understand land using Sen's 'capability approach' and to identify various 'functionings' that land generates for individuals. It is acknowledged that due to heterogeneity in individual circumstances and subjective preferences of each landowner, the value of each functioning will vary for each landowner and the context of geography will further differentiate subjective values attached to respective functionings. That said, this research identifies the wide range of functionings associated with landownership, that in the view of the society, are important for the wellbeing of landowners, irrespective of subjective differences in the value of each functioning. Findings from this research provide a list of fundamental functionings that are common across different geographies that differ in private property right regime, as well as in the social and political structure.

The chapter is organised as follows: Section 7.2 discusses the theoretical framework and creates the basic argument about the importance of an 'individual' person and her wellbeing. The discussion proceeds to provide a critique of the traditional utilitarian approach to welfare and then explains the 'capability approach' by Amartya Sen. The literature also includes a brief discussion on the relationship of land ownership with the 'wellbeing' of an individual, which is the main objective of this research. Section 7.3 explains the method adopted for this research. Focus Group Discussions (FGDs) with participants from eleven countries were conducted, and discussions were analysed using Qualitative Content Analysis on NVIVO. Nine fundamental functionings were identified which are generalisable across countries although the level of importance of each functioning may vary for each individual. Although these fundamental functionings have the ability to inform many systems, they do not cover all contexts, for example, all indigenous communities. The relevance of this research and the potential for future research is also discussed in the concluding section 7.4.

7.2 THEORETICAL FRAMEWORK

From time to time privately held land is required for public purposes, and it has for long been accepted that private rights should give way on occasion to the wider public interest. In theory, the loss to the individual is offset by the gain to the wider community of which the individual is a part. The maximisation of social welfare is the economic justification for compulsory acquisition of private land (refer to Blume et al., 1984 for details). Although human welfare (or wellbeing) is the essence of economic and philosophical discussions, there exists no consensus on the theoretical conceptualisation and empirical measurements of welfare (Kuklys, 2005) (see Adler 2011 for different approaches to welfare).

As mentioned earlier under Chapter 2, traditional economics identifies an individual's welfare with the goods and services the person possesses or consumes and the 'utility' that the person gets from its consumption (Basu & Lopez-Calva, 2011). While arguing against over simplistic traditional approach to social welfare, Sen (2003) complains that "the widely prevalent concentration on the expansion of real income and economic growth as the characteristics of successful development can be precisely an aspect of mistake against which Kant (1889) had warned" (p. 41). Sen provides vigorous criticism of the utilitarian approach (Konjovic, 2013) and explains his disagreement over three major pillars of the 'utilitarian' model, which are consequentialism; welfarism; and sum-ranking (Wells, 2016; Sen & Williams, 1982) (refer to Chapter 2 for more details).

While traditional welfare economics associate's well-being with resources (or commodities), the 'capability approach' identifies wellbeing with the freedom of choice or accessing multiple functionings which an individual considers valuable to her life (Sen, 1985). As per this approach, increasing access of an individual to a wider set of functionings shall enhance the capability of the individual, thus increasing her welfare (ibid). Sen replaces 'commodity' and 'utility' with 'functionings' and 'capability', respectively (Basu & Lopez-Calva, 2011). The crux of disjoints between Sen's approach and traditional welfare economics lies in the difference between "goods" and

“functionings” and between “achievements (or utility)” and “freedom” (Basu & Lopez-Calva, 2011).

Sen (1993) explains that “the expression (capability) was picked to represent alternative combinations of things a person is able to do or to be – the various ‘functionings’ he or she can achieve” (p. 30). The term explains the actual ability of a person to achieve various valuable functionings as a part of living (Sen, 1993). Wells (2016) interprets the meaning of ‘capability’ and ‘functionings’ and explains that ‘functioning’ is the state of ‘being or doing’ such as *being* well-nourished, *doing* bicycling. ‘Capability’, on the other hand, is “the set of valuable functionings that a person has effective access to” (Wells, 2016). ‘Functioning’ should be distinguished from both (i) the good (say a bike) which is in use, and (ii) the happiness resulting from the act of using the good (Sen, 1985). Put simply, ‘capability approach’ is “shifting attention from goods to what goods do to human beings” (Sen, 1979, p. 219).

As mentioned earlier in Chapter 2, the characteristics of any good remain the same for everyone who possesses the good although the ability to access different characteristics may vary given the differences in individual characteristics and circumstances (Sen, 1985). Specifically talking about land, its characteristics are same for every landowner (operating in same property right regime) although the set of functionings generated from land are specific to each landowner, as demonstrated in the findings of (Rao et al., 2017). In the case of compulsory acquisition of land, functionings lost by the affected landowners’ and the value attached to each are subjective matters and as per the argument presented by Rao et al. (2017), fair compensation mechanism should satisfactorily reconstruct each functioning. In the context of applying the capability approach to human development and adoption of the subjective approach to the identification of functionings, Sen (1985) warns against individuals’ self-bias caused due to adaptation to personal circumstances. Adaptive preferences of individuals may lead to lower self-assessment of valuable functionings. To overcome the problem, Sen (1985) suggests identification of ‘basic capabilities’, mentioned earlier, that are essential for life. On similar lines, this research aims at identifying generalisable fundamental functionings attached to land. While arguing for political principles that should

underwrite constitutional guarantees, political philosopher Martha Nussbaum (2000) developed the list of ten 'central capabilities', which are life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; control over ones' environment (political and material) (see Nussbaum, 2000 for more details). These capabilities command cross-cultural consensus from across the globe. This is strong evidence that supports the development of fundamental functionings of land, that shall contribute towards the development of many central capabilities of Nussbaum (2000) and basic capabilities of Sen (1985). While discussing central capabilities, Nussbaum (2000) acknowledges the importance of property as a tool of human functionings and writes that – "Land is frequently a particularly valuable source of self-definition, bargaining power, and economic sustenance ..." (p. 80). This research reinforces the importance of land as an important tool for many human functionings. In the case of compulsory acquisition of land, fair compensation should satisfactorily reconstruct all additional functionings lost by the affected landowner, as argued by Rao et al. (2017).

As the first step towards identification of fundamental functionings of land, it may be argued that the bundle of property rights is the initial set of functionings offered by land. In the words of Barzel (1989), "property rights of individuals over assets (including land) consist of the rights, or powers to consume, obtain income from, and alienate these assets" (p. 2). Detailed inquiry of each of these rights is performed in this research. As mentioned earlier, these rights are bundled differently to create various types of property titles which grant varying levels of freedom to those who hold them. Given that absolute ownership (often referred to as freehold or fee simple) is the highest achievable form of ownership, it shall generate the 'universal set' of functionings. Any other reduced form of property title shall combine functionings to varying levels from within this universal set. This research looked at the role of absolute ownership of land on the wellbeing of an individual and identified fundamental functionings derived by an individual, through private and community ownership of land.

7.3 RESEARCH DESIGN

Given the interpretivist paradigm of capability approach and the necessity of primary inquiry of functionings, this research adopted a qualitative technique for data collection and analysis, as explained in this section.

While it was important to conduct a primary investigation, the selection of participants was crucial for this research which aims at identifying fundamental functionings of land across different countries. To overcome the subjective bias of respondents, purposeful sampling was used to select fifteen doctoral candidates at the University of Melbourne. The advantage of selecting doctoral researchers was that they were aware of the context of research and could articulate unbiased views, as demanded by this research. As trained researchers, respondents could overcome personal bias and share views of the wider society in the geographical context of their place of origin.

Twelve out of fifteen respondents were professionally trained architects and planners, who possessed a good understanding of property rights and land issues. A few respondents were experts on land matters and have had undertaken academic research on related topics. It is important to mention that their knowledge of property rights was contextual to the country of origin and their responses were about the place of origin.

Selection of respondents was also guided by their country of origin. The intention was to select respondents from countries that spread evenly between rank 1 and 127 on the International Property Rights Index³¹. The final choice of eleven countries was made

³¹ Since 2007, yearly edition of the International Property Rights Index is constructed using three major components of legal and political environment; physical property rights; and intellectual property rights across 127 countries that account for 98% of world GDP, and 93% of the world's population (Levy-Carciente, 2017). Within 'physical property rights' index, there are three sub-indexes of protection of physical property rights; registering property, and ease of access to loans, of which the first sub-index is

based on the availability of respondents from these countries (refer to Table 7.1). The selected countries range between rank 15 and 111 and capture the differences in the level of protection to private property (refer to Table 7.1). These countries together represent all major types of property right regimes, political systems, and income groups across the globe, thus allowing for the variety of functionings associated with land ownership in different parts of the world (refer to Table 7.1). One may, however, validate these by expanding the analysis to other countries and by including a larger sample for each country. This was out of the scope of the present research due to constraints of availability of experts.

Table 7.1: List of countries

S. No.	Region	Global rank of selected countries based on protection of physical property rights ^a	Income Group ^b	Political System ^c
1	Australia	15	High income	Constitutional monarchy
2	Malaysia	31	Upper middle income	Constitutional monarchy
3	Chile	33	High income	Democratic Republic
4	China	47	Upper middle income	People's democratic dictatorship
5	Sri Lanka	57	Lower middle income	Democratic Republic
6	Cameroon	78	Lower middle income	Democratic Republic
7	Nepal	79	Low income	Democratic Republic
8	Egypt	93	Lower middle income	Democratic Republic
9	India	94	Lower middle income	Democratic Republic
10	Iran	97	Upper middle income	Islamic Republic
11	Pakistan	111	Lower middle income	Islamic Republic

Sources:

- International Property Rights Index 2017, <https://ipri2017.herokuapp.com/countries>, retrieved 03/11/2017
- GDP per capita (current US\$), <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>, retrieved 03/11/2017

chosen as the criterion for selection of countries for this research (refer to Table 7.1). Global rank for this sub-index for each selected country is stated in Table 7.1.

- c. Constitution of Australia, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution, retrieved 03/11/2017;
 Constitution of Chile, <http://confinder.richmond.edu/admin/docs/Chile.pdf>, retrieved 03/11/2017;
 Constitution of Malaysia, [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf), retrieved 03/11/2017;
 Constitution of China, http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm, retrieved 03/11/2017;
 Constitution of India, <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text>, retrieved 03/11/2017;
 Constitution of Sri Lanka, <https://www.parliament.lk/files/pdf/constitution.pdf>, retrieved 03/11/2017;
 Constitution of Nepal, <http://www.oagnep.gov.np/uploads/Constitution-of-nepal-2072%20Englishpdf>, retrieved 03/11/2017;
 Constitution of Iran, <https://web.archive.org/web/20160915040829/http://www.iranonline.com:80/iran/iran-info/government/constitution.html>, retrieved 03/11/2017;
 Constitution of Egypt, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>, retrieved 03/11/2017;
 Constitution of Cameroon, <https://www.prc.cm/en/cameroon/constitution>, retrieved 03/11/2017;
 Constitution of Pakistan, http://na.gov.pk/uploads/documents/1333523681_951.pdf, retrieved 03/11/2017

The majority of participants were owners or were expecting an inheritance of property in the country of origin. In addition to their personal experience of ownership, their professional training and doctoral research in the field of built environment and related disciplines significantly contributed to their understanding of property rights and its role in economic and social development, at individual and societal level at their country of origin.

Together their academic training, research background and personal experiences on land-related issues enriched the discussions. While these researchers presented their opinion of the societal views at the macro level, it may be argued that some of the specificities may have been missed. However, this does not limit this study given that the objective is to identify fundamental functionings that are generalisable.

Information was collected through five Focus Group Discussions (FGD) organised between June 2016 to October 2017 at the University of Melbourne. Discussion in group stimulated the thought process of the participants as well as of the researcher

moderator, who was an observer in the process. Three discussants, each from a different country, were grouped to discuss the topic. Transnational group formation reduced repetition of similar issues and widened the range of functionings derivable from land ownership. Regarding different types of property titles that often exist parallel in these countries, it was assumed that functionings generated by any type of titling system should get encompassed within the universal set of fundamental functionings generated by absolute ownership.

During the discussions, information on general societal perception on wellbeing associated with landownership was collected. There were two broad topics of discussions (i) Does ownership of land (or property, house) increase the well-being of an individual? How? And (ii) If the land (or property, house) is compulsorily acquired, then will it affect the well-being of the landowner? How? In addition to these, smaller questions or prompts were prepared with intentions to stimulate the discussions. The average duration of the discussion was between forty to sixty minutes.

All the discussions were audio-taped, and additional short notes were prepared by the researcher observer. In addition to that, participants were asked to fill in a response sheet and prepare a brief written summary of the views shared during the FGD. Detailed transcripts, prepared by careful listening of audio recordings, formed the main source of data. Qualitative Content Analysis (QCA) was performed using NVIVO software resulting in nine broad categories and twenty-six sub-categories towards the end. QCA is defined by Mayring (2000) as the bundle of techniques for systematic analysis of different types of content that consider manifest content as well as themes and core ideas found in the text (refer to Drisko & Maschi, 2015 for more details on this method). The cyclical process of text analysis, category formation, discussion (with academic experts), and modification of categories was adopted until distinct categories were obtained.

7.4 FUNDAMENTAL FUNCTIONINGS OF LAND

It is acknowledged that the wellbeing from landownership shall vary across societies given the differences in the property rights regime and the social, economic, political, legal, cultural, traditional and religious uniqueness. The discussions in this section shall cover these relationships holistically and identify those functionings which are fundamental to all landowners, although with varying level of importance. In summary, nine fundamental functionings of land are identified, the details of which are discussed in the following sections.

7.4.1 SECURE MEANS TO BASIC ENDS

7.4.1.1 *Livelihood security*

“...in terms of well-being, the land is a fundamental requirement” (Africa, FGD 5), said the participant from Africa, while explaining the importance of land for rural communities in Cameroon. For traditional land-based societies, the land is the securest means to livelihood as well as the source for food and shelter. To agriculturists, landownership provides an opportunity for self-employed and security against hunger and poverty. The argument is also valid in urban contexts, particularly in developing countries which do not have effective public securities in place.

7.4.1.2 *Security of physical space and protection from eviction and relocation*

Ownership of land and improvements on it, like house or business, adds to the legal security against eviction and relocation. It also grants the freedom from unwarranted search and seizure, which is considered important for human development by Nussbaum (2000).

Although most developed countries guarantee shelter security, the role of private ownership is still considered important in providing a stable location to a family. There is growing concern towards negative impacts of relocation on the wellbeing of family and children (refer to Family Law Council, 2006; Pettit, 2000; Rumbold et al., 2012). Psychological and emotional comfort from the stability of location of the house was

emphasised during group discussions – “I have moved a lot as a child, and I just want one place that’s mine forever.” (Australia, FGD 4).

Locational stability is also important for businesses, particularly those who depend upon consumer relationships. Negative impacts of relocations in terms of loss of existing clientele and familiar environment were discussed during the FGD. In the context of the compulsory acquisition of a business, another respondent expressed concern towards disturbances to the business operation which are not always measurable and often remain uncompensated.

Legal security against eviction is crucial for the weaker segments of the society, including women. In socially stratified societies, for example, India and Nepal, various forms of exploitation and discrimination are still prevalent, and often women and members belonging to lower casts are victimised. Having legal ownership of land and property adds to their security and strengthens the position of the weak in the family and society.

7.4.1.3 Financial security

In the words of the respondent from Egypt, “Land is a source of financial security, and it is a backup for anything that may happen in the future” (Egypt, FGD 1). Although the process of credit generation from land maybe cumbersome, particularly in developing countries where land markets are immature, the importance of land as a financial instrument is well recognised in all parts of the world. For example, in India, despite the distortions in the land market, the land is the collateral for most loans supplied by formal and informal lenders (Krishnan, Panchapagesan, & Venkataraman, 2017). A participant from Chile emphasised the importance of land for the poor who otherwise do not have access to formal credits. Use of property for credit generation is also important for agriculturists, household industries as well as small businesses (Krishnan, Panchapagesan, & Venkataraman, 2017).

Security of tenure, ownership being the highest achievable level, is globally acknowledged by policy makers as an effective mechanism for poverty reduction (refer to Meinzen-Dick, 2009). As mentioned, the participant from Chile, people in slums lack

security of tenure which discourages them improving the property and seek long term personal and economic benefits linked to property.

Another important financial functionings, brought forward by Australia respondent, was about senior citizens and retirees. For them, home (and real property) is their nest egg, and they often use it for credit generation post-retirement through downsizing, reverse mortgage and similar other financial instruments.

In addition to direct forms of financial security explained above, landowners observe indirect financial securities in 'notional' future benefits from land, as explained below.

A. Financial benefits linked with future development potential of land

Given that land is scarce and the demand for space continues to grow, landowners are often very optimistic about the advancement of the development potential of land in the future even though the extent of remoteness and the nature of development is unpredictable.

B. Opportunity to participate and speculate in the land market

Speculative nature of the land market and associated benefits were also recognised by participants in the FGD - "Investing (in the land) is like betting. You are taking the risk, and that is why you might get more than what you paid for" (Chile, FGD 2). While discussing losses associated with the compulsory acquisition of property, the loss of opportunity to benefit from participating in the land market, particularly for businesses which thrive on it, were highlighted.

C. Store of value

Ownership of property hedges against inflation, as explained by the participant from Egypt – "Suppose if you have land and you have an equivalent amount of money in your pocket or bank account, then generally the land value goes higher than the money in your pocket or bank account." (Egypt, FGD 1). The general societal notion,

as revealed during FGDs, was that the financial performance of land is better than other financial assets in the long run. The asset value of land together with its non-expiring physical life adds to the waiting power and confidence of the owner, as discussed during FGD 3.

7.4.2 SELF-IDENTITY

During the discussions participants often associated their property with self-identity. In his popular work on psychology, William James (1890) explains that “a man’s Self is the sum total of all that he CAN call his, not only his body and his psychic powers, but his clothes and his house, his wife and children, his ancestors and friends, his reputation and works, his lands and horses, and yacht and bank-account ...”. In the context of landowners, there were different ways in which participants identified ‘self’ with ‘property’ (land or house), for example – (i) identity associated with social status granted by ownership of property, especially if located in a superior neighbourhood (ii) identity associated with personalisation of space to reflect one’s choices; (iii) identity with land or property in which one has invested labour; (iv) identity in memories built over time at a place, say house, neighbourhood, city or country (v) identity of self as a part of the territorial identity of the place of origin which has its own culture, tradition, religious practices and norms, language, festivals, flora and fauna (vi) identity of an individual as a part of the community identity, for example in the case of tribal societies. Further discussions on self-identity are taken up in the next section.

7.4.2.1 *Self-identity with possessions as memorabilia*

“Integral to a sense of who we are is a sense of our past.” (Belk, 1988, p. 148). Intangible experiences from the past are stored in tangible physical possessions (ibid). As per Nussbaum (2000) argument, being able to have emotional attachments to things is central to human development. A similar thought was shared by participants who thought that the role of possessions in creating or maintaining a sense of past is important for one’s development (Belk, 1988). Especially in the case of old aged people possessions help in achieving a sense of continuity and preparation for death (ibid). The level of attachment to memory evoking possessions grows with age because the

opportunities to create new pleasurable memories in the future is reduced (Belk, 1988). Therefore, the negative impact on the wellbeing of old aged people, who have had a longer history of association with the property, may be much more devastating. In summary, acquisition of property with which owners have had long personal association causes serious damage to the stock of memories and in turn to the self-identity of the owners.

7.4.2.2 Self-identity in social status

Material possessions, including land and property, are often seen as symbols of social status which boost the relative importance of the individual or family in the society. The social status associated with ownership of property, especially at a superior location, was discussed by participants from Australia, Africa, and Pakistan.

A participant from Africa brought the point forward that the ownership of land by a family and its successors “also has symbolic importance that it has to preserve the family name ... it is an indication of family continuity” (Africa, FGD 5) thus maintaining family’s identity in the society.

7.4.2.3 Self-identity with the personalisation of the place of occupancy

During discussions participants strongly emphasised on being able to modify the “personal environment that you are going to live in for your life” (Australia, FGD 3). In the words of a participant, it is “human nature” to modify the place of occupancy as per one’s liking (FGD 3). She further explains – “You love to make it your own space and you have to customise things as per what you like, painting it in your own colour and you feel free to do that if it is your own house ... Especially suburban houses that all look the same. People need to make the changes to make it their own.” (Malaysia, FGD 3). The association of self, with the place of occupancy and role of physical space in identity creation, is recognised in the works of Csikszentmihalyi & Halton, 1981; and Proshansky, Fabian, & Kaminoff, 1983.

7.4.2.4 Self-identity with property in which one has invested labour

James (1980) builds upon John Locke's theory and argues that the most intimate possessions are those in which one's labour is invested. Discontent of losing the house in which one has invested labour was strongly raised during group discussions - "It is like I have invested myself, my personality and identity in that particular space, and that is being taken from me! I cannot lose the tree I planted for instance." (Australia, FGD 4).

7.4.2.5 Self-identity as a part of the territorial identity

People have strong associations with their place of origin and identify themselves with the culture, traditions, language, food and festival of the place. Raising the discussions on customary traditions of birth and death in Africa, the participant mentioned that "it is important that I am implanted where my placenta was buried." (Africa, FGD 5). In Nepal, some rural communities, for example, the Sherpa clan, are tied to the land for their religious belief in the God with which the village or the clan identifies itself. Ownership of land in the native village shall maintain the connection with the culture and traditions of the place. In worst cases, mass acquisition and dislocation of rural communities may cease the cultural identity of a place. In the Australian context, Zubrick et al. (2014) recognise the importance of connection to land, culture, spirituality, ancestry, family and community, for 'social and emotional wellbeing' of the natives.

Alongside providing territorial identity, another complementary functioning of ownership, as discussed during FGD 4, was the way people use it to safeguard their territorial identity by excluding others from entering. This is also observed in a few urban neighbourhoods of south Italian cities, where owners safeguard the ethnicity of the place by not renting or selling the property to non-natives. At a larger scale, countries safeguard the cultural identity of the nation by regulating the immigration of foreign nationals, as discussed during FGD 3.

Summarising the discussions above it can be said that the role of material possessions in human development is very important, and includes the extension of basic states of existence of oneself, which are - having, doing and being, say for example having a gun,

doing the shooting and being powerful (Belk, 1988). Both Belk (1988) and Sen (1979) emphasise the functional role of possessions, which is the valuable states of doing or being. There is strong evidence which suggests that when possessions, with which one identifies oneself, are unintentionally lost or taken away, one develops a feeling of diminished self (Belk, 1988), as was expressed by participants during the FGD (refer to Australia, FGD 4, under section 4.2.4). James (1890) writes about the psychology of loss of possessions and states that “a part of our depression at the loss of possessions is due to our feeling that we must now go without certain goods that we expected the possessions to bring in their train, yet in every case there remains, over and above this, a sense of the shrinkage of our personality, a partial conversion of ourselves to nothingness, which is a psychological phenomenon by itself.” (p. 293). In the case of compulsory acquisition of land by public authorities, this feeling of reduction of self to nothingness is even more intense due to various reasons. Firstly, the sudden reduction in the power of landowners adds to the feeling of reduction of ‘self’. Unlike in the case of accidental loss of possessions due to theft or fire, which are neither intentional nor avoidable, the loss of property during compulsory acquisition, in the notion of landowner is probably intentional and avoidable though he is not given the power to control these losses thus intensifying the feeling of disempowerment and associated feeling of reduction of self - “Being forced to something might be a significant factor affecting my wellbeing.” (Egypt, FGD 1).

7.4.3 SOCIAL CAPITAL

As a central capability to human development, Nussbaum (2000) discusses the importance of ‘affiliation’ - “Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship.” (p. 79). In addition to creating opportunities for social relationship building, ownership generates other valuable functionings that add to the social capital of the owner, as discussed in the following sections.

7.4.3.1 Formal and informal relationship building

“If I am forced to move from somewhere then I lose my friends, my neighbours, the people at the shop that I used to go and talk with every day, that sort of thing.” (Australia, FGD 4). All these social bonds, arising from different sources, were considered important by the participants. An important source of social capital is informal relationships with friends, neighbours, and even with unknown people whom we meet and greet at common places like the grocery store, or the park. There are other formal sources of social capital which come from formal contacts with the doctor, the schoolteacher, and similar other sources on which one rely for a purpose other than social relationship building, which gets developed over time alongside formal relations.

In addition to having “contentment in associations with the community”, as mentioned by a participant (Australia, FGD 3), social networks were considered important as support systems as well. Therefore, the establishment of social relationships serves dual purposes of selfless socialising and reciprocal arrangements for support. In the context of compulsory acquisition and relocation, participants expressed concern over the loss of social capital which takes a long time to build.

Cox (2002) finds that the strength of social capital comes into play when community-level actions are required to deal with conflicts, problems or changes, as discussed by many participants. In the context of the community’s resistance to a fly-over project proposed in Mumbai (India), the strength of social capital of owner occupiers was highlighted by the participant from India. Participants believed owner-occupiers are usually socially organised and pursue matters concerning their property or neighbourhood more actively than as compared to passive owners or non-owners.

7.4.3.2 Ownership as a socio-cultural requirement

Social and cultural notions associated with the security that ownership of property brings along with it manifests itself in the form of social trends and norms. For example, “in China, land and house is very important. If a young man (who) does not have a house, he cannot get married. No girl wants to get married to him.” (China, FGD 1). Li (2016)

explains the “cultural consensus” between homeownership and marriage in China. Often participants used terms like ‘social trend’, ‘culture’, and ‘tradition’ to describe the socio-cultural necessity of owning property which implies that ownership is perceived as a personal and social achievement.

7.4.4 SOCIAL EQUITY AND EMPOWERMENT

Various forms of social inequalities are prevalent in different parts of the world, of which issues in developing countries are intense and include caste-discrimination, social boycott, usurpation, and other social ills, as discussed by Moses (1995). For this research, social empowerment is defined as the power to overcome the fear of coercion from the dominator.

7.4.4.1 Empowerment for weaker sections of the society

Among various forms of inequalities, caste-based discrimination is a serious concern in socially stratified societies, like India and Nepal. As mentioned in the FGD, the intensity of discrimination in caste-based societies is at times to the extent of practising ‘untouchability’ and maintaining a physical distance from those considered ‘untouchable’ for being lowest in the caste hierarchy (refer to Ghurye 2016 for details on the caste system in India). Legal, social, and economic reforms were introduced from time to time to boost social and economic autonomy among the weaker segments, and the positive role of landownership is well acknowledged in the process (refer to Joshi, 1970; Radhakrishnan, 1981; Sivanandan, 1979; Stilwell & Jordan, 2004; Yadu & Vijayasuryan, 2016).

7.4.4.2 Empowerment for weaker gender

On being asked whether ownership of property empowers women, an affirmative ‘yes’ was the response received from participants from India and Sri Lanka. They explained the reasoning as follows – “In a few divorce cases and even domestic violence cases, I think that (property ownership) does give you the power to say something... you could take some of those risks which generally we (females) are not able to take.” (India, FGD 5). Ownership of land grants legal power to women to use land and its resources to her

advantage and the authority to exclude others (say the partner, as discussed under section 7.4.6) (refer to Rao and Rana, 1997 for more details). As discussed during FGDs, these legal tools, as a subset of property rights, have often been used in many countries to empower women and raise their position equal to men, in the society and the family.

While the constitution in Cameroon embraces equality, the concept is not synced into the statutory and customary laws of the region which heavily outweighs rights of men on land and property (Cheka, 1996). The legal position of women is comparable to that of dependents or legal minors, thus constraining women for entering legal contracts concerning property, for example, buying, selling and mortgaging (ibid). Poorly defined property rights for women makes them more vulnerable to poverty and disempowers them to become victims of domestic and social ills (ibid). A participant from Cameroon explained the high level of discrimination against women and stated the societal view to be that “women are properties of men and property cannot own another property”³².

In majority developed countries like Australia, the financial security for women is integrated into the legal system which mandates appropriate division of wealth and property among partners after divorce. However, the weak position of women in a partnership is explained in the report of World Health Organisation (2013) as per which approximately 23% women in High-Income Countries³³, who have ever partnered, are victims of physical and social violence. Role of ownership in empowering women is evident from the findings of Braaf & Meyering (2011) - “many women considering

³² As per the decision in a court case of 1986 (Appeal No BCA/62/8) “The wife is still regarded as part of her husband's property. That concept is underscored by the payment of dowry on marriage and on the refund of dowry on divorce.” (Cheka, 1996, p. 42)

³³ “High-income countries are classified by the World Bank based on the gross national income per capita calculated using the World Bank Atlas method” (World Health Organisation, 2013). Following high income countries were included in this research: Australia, Canada, Czech Republic, Denmark, Finland, Germany, Hong Kong, Isle of Man, Japan, New Zealand, Poland, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

whether to stay in or leave a violent relationship are influenced by how that decision will affect their housing. Recent research identifies domestic violence as the leading cause of homelessness among women in Australia. Women's ability to access affordable accommodation is, in turn, a significant determinant of their future financial security." (p. 43)

While the usual debate is on the need to empower women, there was an issue of male disempowerment reported during the FGD 5. In the absence of property rights for males, as observed in matrilineal societies like in Kerala (India), widowed men are facing problems of homelessness as explained by the participant from India.

Above discussions support the argument that ownership empowers weaker segments of the society and helps to establish social equality. Ownership of property creates economic empowerment and autonomy which are necessary perquisites to social empowerment, as explained by Stilwell & Jordan (2004). Stilwell & Jordan (2004) argue that even though not all socioeconomic inequalities stem from the unequal capture of the economic surplus associated with land and socioeconomic inequalities are also created due to unequal access to capital, educational and employment, the later are imperfectly correlated with wealth derived from land ownership. Ownership of some form of property (real or movable) by all citizens is strongly recommended by Nussbaum (2000) because the absolute (monetary) value of property supports other forms of functionings, of which social empowerment is an important mention. Above arguments justify formal encouragement given to women and weaker classes, to acquire ownership (of land or real property) in developing countries like India.

7.4.5 FAMILY'S WELLBEING

7.4.5.1 *Interpersonal relationship building*

FGD participants discussed that ownership of property is important because physical property, especially home, preserves a physical record of life events of many generations and is the memorabilia of experiences gathered together by a family. "Let us say that you have a holiday house and every year, for two generations, the whole

family goes for two weeks to the beach holiday house ... that is important because it creates a place for your family ... which is different from inheritance and financial value” (Australia, FGD 3). This may deepen the understating of one’s own family history and harness interpersonal relationships within the family thus improving the overall wellbeing of the family.

7.4.5.2 Security for future generations (bequest)

Ownership of property ensures financial security to the future generations that inherit the property. “May be that is why it (ownership of property) is so sentimental because you are not thinking just about you rather you are thinking about the next generation ...” (Chile, FGD 3). In the Australian context, “people think that the house of their parents will come to the children and will be sold for money. Alternatively, the children will move into the house, or one child will move in and sell the other half to the other child or something like that. So yes, there is inheritance.” (Australia, FGD 3).

7.4.5.3 The wealth effect of land and property on the household's wellbeing

Participants argued that financial security from ownership of property increases the confidence of spending on things which enhance the quality of life. Societal belief, as expressed by participants, is that strong financial foundations make possible planning and achieving larger goals in life. The wealth effect of the property was acknowledged by the participant from Egypt - “if you have land, you can dream of a house. When you have one land, you can think of another. All this is a way to increase the quality of life. So, you can hope and plan for the future, and you have the tools to realise that and reach and achieve that goal one day. To be connected with hope and dream is very important. So, this will be a way towards achieving something.” (Egypt, FGD 1).

7.4.6 POWER TO TAKE DECISIONS ON LAND MATTERS

7.4.6.1 Control over one's physical environment

Multiple expressions were used by the participants to express the importance of having control over one’s physical environment, particularly in the case of a residential property

- “Personal environment that you are going to live in for your life you want to be able to modify that to your own requirements.” (Australia, FGD 3). Ownership awards the opportunity to make physical improvements to the land or property thus providing tools to fulfil one’s requirements, which may change over time.

7.4.6.2 Decision-making power on the use of the property

Within the legally permissible uses, landowners usually have the choice of uses to which the property can be put. An interesting example discussed by participants was in the context of subletting the private property to Airbnb³⁴ - “(as per a newspaper article in Australia) the court has said that if you are a tenant, you cannot sub-lease your apartment to Airbnb” (Australia, FGD 4). Thus, ownership of property provides opportunities to the owners to use it in their best interests.

7.4.6.3 Involvement and influence on matters that can cause externalities

Landownership grants the opportunity to the landowners to participate in the decision-making process and influence decisions causing positive or negative externalities to the property. Landowners’ power to challenge (in the court) the nature of project for which private land is compulsorily acquired; and to rightfully participate in the decision-making process for development projects, particularly those involving landowner’s property was a few important functionings that were discussed. Other examples discussed during FGD include a case from India where landowners could stop a flyover project from coming into their area.

³⁴“Founded in August of 2008 and based in San Francisco, California, Airbnb is a trusted community marketplace for people to list, discover, and book unique accommodation around the world — online or from a mobile phone or tablet.” (Source: <https://www.airbnb.com.au/about/about-us>, retrieved 11th Nov 2017)

In the context of compulsory acquisition, participant from China expressed the need for meaningful involvement of landowners early in the process because that would make them feel authoritative on land matters.

7.4.6.4 Power to exclude others

Ownership encapsulates the legal right to exclude outsiders from using or entering the property. During the FGDs, participants mentioned different types of exclusion that are practised by owners while safeguarding their self-interests. At a small scale, “if it is your house versus if it is a shared house, then you have no control on who comes in it.” (Malaysia, FGD 3). In a different context, Rao and Rana (1997) found that on the role of property rights in empowering rural women in India is important because it builds their capacity to challenge male oppression and domestic violence. In doing so, the power to exclude them physically and legally from accessing land or house shall be important.

At the community level, participants discussed the power of landowners to exclude or to challenge the public authority from acquiring land and stopping the project from entering their land. On similar lines of discussion, the rights of tribal communities may be mentioned who safeguard their natural habitation and exclude others from entering or modifying their environment.

7.4.6.5 Neighbourhood building and placemaking

Level of involvement and motivation of landowners towards improving and maintaining the neighbourhood is believed to be higher than that of non-owners who have a temporary association with the place. Ownership also makes them feel more rightful or ‘empowered’ to participate in decisions and initiate actions which have long term impacts on the neighbourhood. This was explained by the participant from Chile, who said that: “... an owner will feel more interested in doing these things because they see it as a benefit in the long term.” (Chile, FGD 2). An extreme example of the behaviour of temporary settlers is observed in slums, as discussed by Chilean participant. Lack of security of tenure and uncertainty of the duration of association with the place of

occupancy significantly reduces dwellers' investment, both physical and financial, in improving the house and the neighbourhood.

7.4.7 POLITICAL EMPOWERMENT

An important capability identified by Nussbaum (2000) is to be “able to participate effectively in political choices that govern one’s life; having the right of political participation, protections of free speech and association.” (p. 80). The role of landownership in political empowerment at various levels of politics were discussed by the participants, as summarised in this section.

In the case of compulsory acquisition of land, “the owner who owns the house but does not necessarily live in it will have less political leverage than someone who lives within a house and owns that house. Both will have more influence than a renter who just lives in that. So, in that very small setting, there is an influence.” (Australia, FGD 2). Therefore, ownership gives a stronger voice to the landowner who may then influence some major decisions at the societal level.

In stratified societies like India and Nepal, the role of landownership is crucial in the political empowerment of the weaker segments, especially those belonging to lower castes, as discussed during the FGD. As discussed earlier, landownership grants economic empowerment and autonomy, which in turn strengthens confidence to voice their opinion against dominant groups. In addition to that, landownership imparts freedom to express political opinion and extend support to political ideologies of any leader or party (ibid). For example, Dalits of Karanai village (Tamil Nadu, India) installed a life-size statue of political leader B R Ambedkar on a piece of land owned by them, to express their support to the political philosophies.

In tribal societies, the ability to safeguard and expand the territory is the demonstration of sincerity, which strengthens the voice of the landowner (or rather the land user given that land is jointly owned by the community) in the community, as mentioned by the participant from Africa: “Perhaps, you were too reckless, or your father was too reckless, and maybe he sold most of the land, and in that case you lose some kind of political

strength that would have come to you as a result of you owning or having access to too many lands.”

Political power may be derived from large landholdings, as discussed during FGD 5: “... if you own half of Melbourne, you can use it as the basis of telling the people “I am the son of this soil, I can promote your interest, I can support women in the community”, and your son might become the mayor or the governor or the regional (leader) of that locality.” The level of involvement of large landowners in the political decision making, for example, developments on and around their land, is distinct. Perry & Wiewel, (2005) explain the case of the United States and find that large universities with substantial landholdings have acted as a collaborator in the urban development of the region.

Stilwell & Jordan, 2004 discuss the appropriateness of Henry George’s theory, which suggested a strong correlation between landownership and wealth inequality, in the modern society and finds that it is partially applicable in the rural and urban context. For example, in Australia farming land is concentrated in the hands of a few very wealthy corporations and individuals (Stilwell & Jordan, 2004). The concentration of land and wealth, in turn, wields political power or say on matters concerning land. In the Indian context, Joshi (1970) argues that the land reforms bestowed formidable power to medium landowners and big peasants who exercise “direct control over the economic system” and wielded “enormous political power, from the village base to the top levels of the power structure”. Therefore, the influence of landownership may be observed at different levels in the political structure, depending upon the social, economic and political environment of the regions.

7.4.8 PERSONAL COMFORT AND CONVENIENCE

7.4.8.1 Suitability of property and location for oneself

Participants expressed that in the process of selection of ownership property, with which one wishes to have long term association, a careful analysis of the suitability of location and physical characteristics of the property is made. The choice of location is based on nearness to work, school, family and similar other factors of subjective

importance, which if lost shall negatively affect the wellbeing. Accessibility is an important factor in large cities particularly if transport facilities are underdeveloped, for example in Mumbai.

7.4.8.2 Acquaintance with physical space and environment developed over time

An important aspect of wellbeing was discussed in FGDs about personal acquaintance developed over time with physical elements of habited space and its surrounding areas. Familiarity with the physical environment enhances wellbeing in multiple ways, as expressed by the participants – “when I live in a place for a long time I definitely turn that place into a lived space which means that the social things and material things have interacted with each other. I can feel my way because I am so familiar with the atmosphere.” (China, FGD 4). Another participant added, “I suppose it is also like, in my local area I know where everything is. So, if I need a doctor, I know where the doctor is. If I need to catch public transport I know (where it is). So, all of those things are my territory, so it makes my life easier because I know it.” (Australia, FGD 4)

Familiarity and acquaintance with physical space can be very crucial for those who require special assistance in developing that in the first place, for example visually impaired. Since acquaintance is directly linked with the duration of time spent at a place, the role of ownership becomes important.

7.4.9 PSYCHOLOGICAL WELLBEING

7.4.9.1 The feeling of psychological calmness

Many participants mentioned that ownership of property provides psychological calmness, comfort, and security, which may be an outcome arising from all above functionings put together - “As a person who has both owned and rented property, I think owning property increases my psychological comfort ...” (Australia, FGD 4).

7.4.9.2 *The sense of achievement and proud*

There is a sense of achievement in being able to own something as expensive as land or property: “It is the Chilean dream to have their own house. It is like the maximum achievement one can have ...” (Chile, FGD 3).

7.4.9.3 *Dignity and self-respect*

For some, ownership is “dignity thing as well. Its dignity as opposed to homelessness.” (Malaysia, FGD 3). In the opinion of another participant, “as soon as you own something, you can say that I am not homeless. Potentially is you are renting you can always be homeless as soon as you are kicked out of your home.” (Australia, FGD 3).

7.4.9.4 *Intrinsic, extrinsic and contributory value*

Another interesting discussion was around the intrinsic, extrinsic and contributory value of the property. Though the discussion was more on the philosophical definitions of value, participants developed an understanding of ‘intrinsic, extrinsic and contributory’ value of land, and the wellbeing brought along with it. In summary, ownership of the property has many real as well as notional benefits that add to the psychological wellbeing of the owner.

7.5 CONCLUSION

In the context of land and property, functionings offered by ownership are extensive, and this research identified fundamental functionings from within the set of subjectively valuable functionings that are generalisable at the societal level, across many countries. It is acknowledged that even though fundamental functionings have the ability to inform many systems they do not cover all contexts, for example, all indigenous communities. However, the extent and nature of these functionings will vary depending upon the socio-political and legislative treatment given to private property rights in each country.

The relationship of land ownership and wellbeing is identified explicitly in nine fundamental functionings discussed above, which include (i) *Secure means to basic ends*; (ii) *Self-identity*; (iii) *Social capital*; (iv) *Social equity*; (v) *Political empowerment*; (vi)

Power to take decisions on land matters; (vii) Family's wellbeing; (viii) Personal comfort and convenience; and (ix) Psychological wellbeing. These findings may be useful in developing policies on social, economic, political empowerment for the weaker segments of the society which may include tribal communities, women, and trans-genders.

In the context of the compulsory purchase of land, these discussions shall be useful in developing an understanding of profound losses of functionings associated with the loss of land. The existing compensation mechanism has negligible consideration for the loss of 'functionings', the impact of which on the wellbeing of affected landowners is devastating. In the light of discussions on the 'functionings' of landowners, acquisition of property would mean the acquisition of valuable functionings of the landowner. Referring to the definition of fair compensation suggested by Rao et al. (2017), satisfactory reconstruction of all fundamental functionings is crucial.

Given the contemporary approach to compulsory purchase compensation, it is very ambitious to argue the case for compensation based on the characteristics of the person, rather than on the characteristics of the property. Referring to a case discussion in the United States Wyman (2007) explains that under the existing mechanism, the taking compensation is for the property and not the person. Basing the discussion on Sen's (1979) 'capability approach' this research argues that the taking compensation should neither be for the commodity nor the person and instead for the functionings of the person, generated by the land.

The empirical operationalisation of these theoretical discussions on 'capability' requires further research (Anand et al., 2011; Basu & Lopez-Calva, 2011; Kuklys, 2005). In the context of measuring welfare with the use of 'capability' indicator, Sen (1979) expresses that "the problem of indexing the basic capability bundles is a serious one. It is, in many ways, a problem comparable with the indexing of primary good bundles in the context of Rawlsian equality." (Sen, 1979, p. 219). Findings from this chapter identify fundamental functionings of landowners which could be useful in mapping the 'capability' of different units of the society, the smallest one being the individual

landowner. Development of this theoretical framework should facilitate practical application in the future.

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CHAPTER 8. CONTEXTUALISING FUNDAMENTAL FUNCTIONINGS: EVIDENCE OF THE FUNCTIONINGS OF LAND IDENTIFIED BY AFFECTED LANDOWNERS IN INDIA

The power of compulsory acquisition of land is among the most popular instrument used by the state, in many parts of the world, and has been widely debated for its many aspects, particularly the mechanism of compensation. Despite continuous improvements being made to the compensation mechanism, the affected landowners often incur losses greater than the compensation received, and this leaves them aggrieved and disjointed from the development process (Rao, Tiwari, & Hutchison, Capability approach to compulsory purchase compensation: evidence of the functionings of land identified by affected landowners in Scotland, 2017). Through the amalgamation of Sen's 'capability approach' and Maslow's theory of human needs, this research explains the nature and intensity of losses incurred due to compulsory acquisition of land and argues that the mere payment of market value of land is an inadequate form of compensation that should be appropriately modified. Through in-depth interview of forty-seven landowners in and around Bengaluru city, whose land is currently under notification for compulsory acquisition for the Bangalore Mysore Infrastructure Corridor (BMIC) project, this research identifies eighteen functionings of land which are crucial to the well-being of these landowners. Together these functionings include the financial, social, political and personal role of land in harnessing the wellbeing of the landowners. These functionings are broadly classified under the following groups: (i) being able to secure basic necessities for life; (ii) being financially secure; (iii) being able to protect oneself from discrimination, exploitation, violence, and assault, as a fundamental human right; (iv) being able to establish social associations and harness personal, familial, and societal interests through these associations; (v) being able to maintain and enhance self-respect and identity. Given that the Indian society is highly stratified, and discriminations based on caste and gender are observable in the society, this research brings out the role played by landownership in safeguarding the most vulnerable segments of the society which

include Dalits and women. Findings from this research pave the way towards designing a fairer mechanism of compensation through which each affected landowner can satisfactory reconstruct or replace all valuable functionings of land, financial and non-financial.

8.1 INTRODUCTION

Compulsory acquisition of private land is among the most common instruments of land procurement used by the state in almost all parts of the world. The process is strongly resisted by the affected landowners mostly for the reason of inadequacy of compensation (refer to Rao et al., 2017). At many occasions, projects have failed to acquire land from private owners because of landowners' strong resistance, such as in Singur and Nandigram in West Bengal (Ghatak M. , Mitra, Mookherjee, & Nath, 2013). Ghatak, et al., 2013 find that the 'reservation price' of landowners, most agriculturists, is much higher than the 'market value' of land and therefore landowners reject any compensation closer to the market value of land. Ghatak et al. (2013) provide empirical evidence from Singur to argue that the 'reservation price' of land for the owner is greater than its market value and therefore they reject to accept any offer for compensation that is close to market value. Rejection of compensation happens when a large set of 'functionings' are attached to land, which together is worth more than the 'market value.' Ghatak et al.'s (2013) idea of 'reservation price' indirectly implies that landowners attach 'monetary' value to the cumulative set of 'functionings' which they derive from land. Ghatak et al.'s (2013) discussion on reservation price opens opportunities for further research on identifying the economic value of 'functionings' of land, such as through auction (refer to Ghatak & Ghosh, 2011 for more details on using auction method for determination of compensation).

Existing legislative norms, in almost all parts of the world where the power of compulsory acquisition is in use, justify 'market value' of land as 'fair compensation,' and any additional payment is purely on sympathy grounds. In 2013, Indian legislature on compulsory acquisition was reformed, and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (also Land Acquisition Act, 2013) came into

enforced. As per the new act compensation is the sum of market value and solatium, and together it amounts to two to four times of market value. There is an ongoing debate on whether this method of compensation determination is generalisable as 'fair compensation' across all landowners or is there a rational way to derive 'fair compensation' (refer to Ghatak & Ghosh, 2011 for critical review of the new act and suggestion on an alternative approach to compensation determination)?

The legal definition of 'fair compensation' is guided by the principle of equivalence as per which 'fair compensation' should put back the landowner in the same condition where she was before acquisition (Rao, *Functionings of Land: Analysing Compulsory Acquisition Cases from Scotland*, 2018b). Economists interpret landowners condition using the traditional utilitarian approach which, after much simplification, equates 'fair compensation' with the market value of land (refer to Blume et al., 1984). The challenge to market value approach to compensation is that while it efficiently captures income-generating utilities of land it does not take account of non-financial utilities, which are crucial to landowners well-being. To overcome the limitation of 'utilitarian approach' to compensation, Sen's 'capability approach' is applied in this research to re-examines the nature and intensity of losses of affected landowners, in the form of 'functionings' essential for landowners personal/familial well-being.

The purpose of this research is two-fold, firstly to identify 'functionings' created by land that is generally valuable to landowners in Indian context; secondly, to explain the value of these 'functionings' and therefore the intensity of loss associated with the loss of 'functionings.' The first objective is achieved through in-depth interviews of landowners to investigate the role of land in personal/familial development. Analysis of primary interviews reveals eighteen 'functionings' of land. The second objective is achieved by arranging 'functionings' in the order of importance using Maslow's hierarchy of human needs. Findings from this research pave the way for designing 'fairer' method of compensation through which landowners can satisfactorily reconstruct their 'functionings' and reinstate themselves in the original position, where they were before their land was acquired (Rao, *Functionings of Land: Analysing Compulsory Acquisition Cases from Scotland*, 2018b).

Section 8.2 presents a brief theoretical discussion on Sen's (1979) theory of 'capability' and 'functionings' and his views on deriving a list of 'functionings' and 'capabilities' (Sen, *Inequality Re-examined*, 1995). Sen's (1979) approach is complemented with a discussion on Nussbaum's (2000) list of 'central human capabilities.' Discussions proceed to explain Maslow's theory of human needs and its relevance in deriving the hierarchy of 'functionings.' Hierarchy of 'functionings' is crucial in explaining the intensity of losses associated with the loss of land ownership and interpersonal differences in the level of importance of these 'functionings.' Details on the research method are discussed in section 8.3. Primary information was collected from landowners affected by the BMIC project in India. Information is analysed using qualitative content analysis, and a list of eighteen 'functionings' is derived. Nature of 'functionings' of land is discussed in detail in section 8.4. These are arranged in the hierarchical order of importance using Maslow's theory of human needs (refer to Figure 8.2) in section 8.5. Section 8.6 concludes this research by explaining the relevance of findings and opportunities for future research.

8.2 LITERATURE

In his Tanner lecture series of 1979, philosopher-economist Amartya Sen questions the approach to human development by questions the definition of 'equality' and redefines equality in terms of human 'capability' and 'functionings.' Sen (1979) argues for equality of 'capability,' which is the freedom of a person to choose from a wide range of 'functionings,' which are valuable for her development. 'Functioning' is the state of 'doing' or 'being,' for example being well nourished, and being well sheltered (Sen, *Equality of What?*, The Tanner Lecture on Human Values, 1979). Sen's capability theory does not necessitate defining basic human capabilities and is left open for interpretation (Sen, *Well-Being, Agency and Freedom: The Dewey Lectures* 1984, 1985).

In reference to enlisting 'centrally important functionings' for human development, Sen (1985) explains that the full range of 'functionings' and 'capabilities' that are relevant for the assessment of human well-being can be extensive and diverse, and it is "neither

methodologically sensible nor practically plausible" to do so (p. 200). However, Sen (1985) acknowledges the possibility of creating an exhaustive list of 'centrally important functionings' and corresponding 'capabilities' in a given context, say for welfare analysis of the extremely poor in developing countries. Although, he does not specify these 'basic functionings' and capabilities except for giving the example of being well-nourished, being well-sheltered, the capability of escaping avoidable morbidity and premature morbidity. Sen (1992) provides a simple definition of 'basic capability' as "the ability to satisfy certain elementary and crucially important functionings up to certain levels" (pp. 45, note 19).

The philosophical basis of Sen's 'capability approach' is linked to Aristotle's writings³⁵ on human good and human flourishing, particularly to his writings in 'The Nicomachean Ethics' (Sen, 1995). Nussbaum (1988a, 1988b) describes in detail the Aristotelian approach and its connection with 'functionings' and 'capabilities.' Nussbaum (2000) takes inspiration from Aristotle's works on ethics and politics and creates a list of ten 'central human capabilities', that include life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reasons; affiliation; other species; play; and control over one's environment (political and material). It is important to mention that Nussbaum (2000) recognises the absolute value of land and property rights as the supporter of other valuable human functionings such as "self-definition, bargaining power, and economic sustenance."

Sen (1995) acknowledges that the interpersonal differences in the level of importance of each 'functioning' and 'capability' as an integral part of the 'capability approach.' In the context of land, each landowner derives a peculiar set of 'functionings', and 'capabilities' from land and each of these 'functionings' and 'capabilities' have different value or importance. Therefore, the 'capability approach' provides the theoretical framework through which the subjective

³⁵ Nussbaum (2000) clarifies that her version of 'capability approach' "developed independently of Sen's work through thinking about Aristotle's ideas of human functioning and Marx's use of them" (pp.70) and that "Sen ever attempted to ground the 'capabilities' approach in the Marxian/Aristotelian idea of truly human functioning" that plays a central role in her argument (pp. 13).

differences in the level of losses of 'functionings' and 'capabilities' of each landowner can be explained.

To assess the value of losses, in terms of 'functionings,' some order may be necessary. Regarding giving weights to 'functionings' and 'capabilities,' Sen (1995) suggests referring to the Aristotelian ordered list of 'capabilities' and 'functionings' (refer to Nussbaum 1988a; 1988b). However, there is no attempt, so far, to allocate weights to 'functionings.' Most successful application of Sen's 'capability approach' is in the creation of the Human Development Index (HDI) as the measure of development. HDI successfully demonstrates how 'functionings' can be measured by using appropriate indicators. However, HDI is limited to using three basic 'functionings'³⁶, all of which are given equal weights and therefore it does not tell anything about ordering 'functionings.'

As a preliminary attempt to arrange land-based 'functionings' in the hierarchy of importance, this research examines the nature of biological and psychological needs fulfilled by each 'functionings' and arranges 'functionings' in the order of importance of needs which they fulfil. This is performed by using a theoretical framework of hierarchy of human needs that was developed in 1943 by the American psychologist, Abraham Maslow. Taking inspiration from the Aristotelian order of 'functionings' and 'capabilities,' Abraham Maslow proposed the theory of human motivation. Two core ideas of Maslow's person-centred theory are (i) creation of independent categorisation of multiple human motivations or needs; and (ii) the hierarchy in which these motivations or needs are prioritised. As per Maslow five 'basic' human needs, in the order of priority are (i) psychological needs; (ii) safety needs; (iii) love

³⁶ HDI was developed in 1990 by economist Mahbub Ul Haq as an alternative measure of country's development, to the Gross Domestic Product (GDP) that narrowly focuses on economic development alone (UNDP, 2018). To create HDI three basic 'functionings' are identified as measures of human development, which are - being able to live a long, healthy and creative life; being knowledgeable; and having access to resources needed for a decent standard of living (UNDP, 2018). These 'functionings' are measured using appropriate indicators such as life expectancy at birth; years of schooling; and gross national income per capita. HDI is the geometric mean of these indicators (refer to the technical notes by UNDP, 2018).

needs; (iv) esteem needs; and (v) self-actualisation needs. Maslow (1943) empirically observed the hierarchical principle in terms of increasing percentage of non-satisfaction as one moves up the hierarchy. Maslow (1943) explains that the hierarchy is not rigid and may change for individuals although the majority of people seem to follow the proposed order. However, the satisfaction of these needs is not mutually exclusive, and an average member of the society is partially satisfied and partially unsatisfied in all above (Maslow, 1943). Maslow (1943) clarifies that the emergence of new needs is not sudden and the desire to progress to the next higher prepotent starts building up alongside current prepotent.

The humanistic approach to growth and development, rooted in the Aristotelian principles, is critical and common to Sen's 'capability approach' and Maslow's 'theory of human motivation' (refer to Grogan, 2008 and Coonan, 2016 for more details on the humanistic approach of Maslow's theory). While Sen argues for equalisation of human 'capabilities' and 'functionings' at the individual level, Maslow's theory explains the sequential fulfilment of the needs of an individual, through the actualisation of her 'functionings' and 'capabilities.' Maslow's theory is a useful guide in understanding the relative importance of 'functionings' and 'capabilities' generated by land, as discussed in section 8.5.

Given that Maslow's theory was initially developed in the context of 'individualistic' American society (refer to Oyserman D. , 1993; Oyserman, Coon, & Kemmelmeier, 2002), it is important to understand if there are limitations to its application to a 'collectivistic' society like India (refer to Sinha, 2014 for more details on 'collectivism' in India). Through a detailed analysis of culture and its implication on cognition, emotion, and motivation, Markus & Kitayama (1991) found that human needs and motivations are common across all cultures. Although human needs may take different forms, depending upon whether the construal of self is '*independent of others*³⁷', as in the American and Western European society, or '*interdependent on*

³⁷ The notion of 'interdependent construal of self' is also referred as 'individualistic', 'egocentric', 'separate', 'autonomous', 'idiocentric', and 'self-constrained' (Markus & Kitayama, 1991).

*others*³⁸, as in the Asian, African, and Latin American society (Markus & Kitayama, 1991). Therefore, Maslow's theory of human needs applies equally to the 'individualistic' or 'collectivist' societies although the nature of 'functionings,' through which these needs are met may be different.

Criticism to Maslow's theory is summarised through Wahba & Bridwell (1976), Pearson & Podeschi (1999), and Kenrick et al. (2010), who together cover good range criticism arising from the disciplines of behavioural science, philosophy, biology, anthropology, and psychology. Within the limited context of work-place studies on human motivation Wahba & Bridwell (1976) criticise the theory for lacking empirical evidence. Pearson & Podeschi (1999) frame the discussion in Marxist ideologies of economic, social and political equality and reject any notion of self and criticise humanistic psychology for excessively emphasising on individualism, that is inherently elitist. Maslow's self-actualizers, in Marxists' context, are viewed as "the psychological embodiment of the social elites who are the decision makers of his (individualistic American) society (Pearson & Podeschi, 1999, p. 45). Stewart (1971) further emphasises that "the concept of the individual self is an integral assumption of American culture so deeply ingrained that Americans ordinarily do not question it. They naturally assume each person has his own separate identity which should be recognised and stressed" (p. 68). While the debate on 'socialistic' versus 'individualistic' approaches to development is too broad to be subsumed in this research, the takeaway point is that both aim at maximising human welfare (and meeting human needs), though in different ways.

With the objective of renovating Maslow's theory, Kenrick et al. (2010) performed a comprehensive three-stage analysis of the theory and recommended preserving Maslow's theory with some modifications. Kenrick et al. (2010) retain most of the original elements, including the first four needs and the hierarchy in which these needs are arranged. They

³⁸ The notion of 'interdependent construal of self' has been variously referred to as 'sociocentric', 'holistic', 'collective', 'allocentric', 'ensembled', 'constitutive', 'contextualist', 'connected', and 'relational' (Markus & Kitayama, 1991).

recommend merging fifth need for self-actualisation into self-esteem needs (Kenrick, Griskevicius, Neuberg, & Schaller, 2010). Because through the functional level analysis³⁹ it was found that although there are distinct goals achieved by the first four needs, while the last need of self-actualisation has the same functional goals as that of self-esteem (Kenrick, Griskevicius, Neuberg, & Schaller, 2010). That said, this research identifies with Maslow's (1943) theory and considers self-respect and self-actualisation as distinct needs. 'Functionings' meeting these needs are discussed in section 8.4.5.

Kenrick et al. (2010) also suggest creating overlapping categories rather than exclusive categories of needs to represent that "early (age) developing motives are unlikely to be fully replaced by next goals but instead continue to be important throughout life ... " (p. 293). This research identifies with Kenrick et al., 2010 argument and discusses association with family and other members of the society as two distinct types of associations, as reported by the respondents (refer to section 8.4.4). Table 8.1 below summarises Maslow's hierarchy of needs and associated pay-offs from Kenrick's et al. (2010) analysis:

Table 8.1: Summary of Maslow's (1943) theory of human needs and associated pay-offs, identified by Kenrick et al. (2010)

Human needs	Description	Functional objectives
1. Psychological needs	Bodily needs – nutrition, water, body temperature, rest and sleep.	Basic survival.
2. Safety and security needs	Safety (or protection) from physical pain – wild animals, harsh weather, crime, assault; Safety from emotional pain – fear of loss or separation from family and friends; fear of abandonment. Financial safety – a job with tenure and protection; monetary savings; insurance	Basic survival.

³⁹ Functional level analysis adopted the evolutionary approach which implies that all human behaviour is goal-oriented (Kenrick, Griskevicius, Neuberg, & Schaller, 2010).

	for health, unemployment, disability, and old age. Following are the characteristics of a safe and reliable environment at family and societal level: stable; structured; organised, predictable, having routine and rhythm; manageable; controllable	
3. Love ⁴⁰ needs	The desire for love, affection, and belongingness through the establishment of an affectionate relationship with people in general – the presence of friends, partner, wife, children, and family; having affectionate relations with people in general.	Social networks are used as an essential insurance policy for survival during difficult times (Hill & Hurtado, 1989) and have benefits of sharing resources, knowledge, and parenting chores (Henrich & Boyd, 1998).
4. Esteem needs	Need or desire for a stable, firmly based (or based upon real capacity), high evaluation of self. Esteem needs are categorised under the following two groups: The desire for self-esteem – self-respect and confidence in the face of the world; strength; achievement; mastery, adequacy; independence and freedom. The desire for esteem from other – desire for reputation or prestige from other people; respect; recognition; attention; importance; and appreciation from others.	Higher status results in benefits arising from the favours that others are willing to perform for those who have acquired special skills and knowledge. Deference to high-status people increases the chances of learning from them (Henrich & Gil-White, 2001).
5. Self-actualisation needs	The desire for self-fulfillment (to become everything that one is capable of and wants to be), namely, to the tendency for him to become actualised in what he has potential.	Kenrick's et al. (2010) acknowledge that the need for self-actualisation could well be functionless, but if not, then the desire to fulfill one's unique potential has similar payoffs as esteem needs.

⁴⁰ Maslow (1943) clarifies that "love is not synonymous with sex. Sex may be studied as a purely psychological need. Ordinarily, sexual behavior is multi-determined, that is to say, determined not only by sexual but also by other needs, chief among which are the love and affection needs." (p. 381).

Source: Author's adaptation of Maslow (1943) and Kenrick et al. (2010).

Both Maslow (1943) and Sen (1979) emphasise upon human-centred approach to growth and development. The humanistic approach of Sen's capability theory and Maslow's motivation theory creates the opportunity for interaction of their theory through which an ordered list of 'functionings' of land is derived, as discussed under section 8.5. After identifying the list of 'functionings' in section 8.4, these are matched with needs which each functioning fulfils. Given that there are five types of human needs identified by Maslow (1943), relating 'functionings' with human needs categorises 'functionings' under five groups of human needs. The relative importance of these 'functionings' is equated with the relative importance of human needs which they fulfil, and a hierarchy of 'functionings' is created parallel to the hierarchy of human needs proposed by Maslow (1943). Personal characteristics of landowners come into play when the relative importance of 'functionings' meeting same need is to be determined. Detailed discussions on the nature of 'functionings' and their relative importance are happening in section 8.4 and 8.5 respectively.

8.3 RESEARCH DESIGN

Between January and February 2017 forty-seven in-depth interviews were conducted, with landowners⁴¹ whose land has been notified for acquisition for the BMIC project⁴² in the urban; peri-urban; and rural areas in and around Bengaluru. The Karnataka government phased out the acquisition process over five years, between 1998 and 2003. At the time of the interview, respondents have had lived the impacts of acquisition notifications for fifteen to twenty years. The Karnataka Industrial Areas Development Act, 1966 was appropriately modified in 1997 to enable the KIAD Board to acquire land for the BMIC project in particular,

⁴¹ Formal division of land among family members is uncommon in India. Therefore, respondents include landowners who are formal owners and others who acknowledged themselves as joint-owners and heirs to the ancestral property even if the legal title to land is not on their name.

⁴²Project details can be found at the official website of Bangalore Mysore Infrastructure Corridor Area Planning Authority, <http://www.bmicapa.org>.

and for “industrial, infrastructural facilities⁴³” in general. Regarding the assessment of compensation, the KIAD Act refers to the old federal act (Land Acquisition Act of 1894) and no amendments have been made to the KIAD Act post launch of the new federal act of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Bengaluru is the epicentre of the BMIC project, and approximately 30 percent of the total project area of 20,000 acres lies in the Bengaluru region (KIADB, 1998). Most land parcels are in the rural areas of Bengaluru, and therefore, majority respondents (forty-four out of forty-seven) are rural agriculturists (refer to Annexure 8.A for respondents' profile).

Two different strategies were adopted to establish contact with urban and rural respondents respectively. Initial contact with urban landowners was made with the help of an organisation⁴⁴ that has been providing legal advice to these landowners on BMIC project related matters. Through the snowball effect, four urban landowners could be contacted, most of whom are using their land for commercial and industrial purposes (refer to Annexure 8.A). Regarding the identification of rural respondents, the process of selection of villages started by shortlisting villages that are fully notified for acquisition. Since the contact details of affected landowners are not available publicly, choosing fully notified villages maximised the chances of identifying affected landowners. However, a greater realisation of ‘functionings’ related to the future development potential of land happens when landowners get to retain a portion of land in the project zone. Therefore, to derive the full range of land generated ‘functionings,’ it was important to include at least one village that is in the project zone but is not fully acquired. Also, it was important to control for difference in locational

⁴³ “Industrial infrastructural facilities mean facilities which contribute to the development of industries established in industrial area such as research and development, communication, transport, Banking, Marketing, Technology parks and Townships for the purpose of establishing trade and tourism centres; and any other facility as the State Government may by notification specify to be an industrial infrastructural facility for the purposes of this (KIAD) Act” (Chapter 1, KIADB Act, 1966).

⁴⁴ Name of the organisation is not mentioned to protect its privacy.

characteristics (nearness to Bengaluru; the influence of BMIC project) and features of land (agricultural productivity, the source of irrigation, cropping pattern). While meeting above mentioned requirements, a group of three near-by villages in Kengeri hobli⁴⁵ was identified. Kengeri hobli, located immediately outside urban boundaries of Bengaluru, is most severely affected by compulsory acquisition process and approximately 5944 acres land (i.e., 30 percent of the total land area acquired for the project) is taken from this region. The group of three villages selected for study include Chinnakurchi where land of a few farmers is acquired (partially or fully, refer to Annexure 8.A) for construction of road in the first phase of the BMIC project; Gonipura, and Thippur which are fully notified for acquisition, since 2003-04, for the next phase of the project. These villages together constitute 47 percent of notified/acquired land mass of Kengeri hobli, which is approximately 8 percent of the total project area. Through random sampling technique, forty-four rural respondents were identified to represent different social groups (male, female, and Dalit) and economic class (landless, small-farmers, large farmers).

Information was collected through a semi-structured interview. Broad questions were designed to capture information on (i) household characteristics: age, family composition, caste, level of education, physical health conditions, willingness to transfer land to the girl child; (ii) financial details on primary and secondary sources of household income, dependency on loans and money lenders, purpose of loans, role of land in meeting financial challenges; (iii) land particulars: area of land owned, area of land acquired/notified, existing use of land, plans to improve or develop land, amount of compensation expected by the landowner, willingness to sell land; (iv) implication of acquisition notice on current and future plans of the family; and other complementary questions, as per the situation.

⁴⁵ 'Hobli' is a cluster of adjoining villages.

Transcripts, prepared from audio-recordings of interviews, are scientifically analysed using the method of qualitative content analysis⁴⁶ (QCA) in NVIVO software (refer to Drisko & Maschi, 2015 for more details on QCA). A comprehensive list of ‘functionings’ is derived by using an iterative process of transcript analysis; category formation; discussion with academic experts; and modification in categories of ‘functionings.’

8.4 ‘FUNCTIONINGS’ OF LAND

The characteristics of land remain the same for everyone who owns it. However, the accessibility to these characteristics or the ability to convert commodity-characteristics into personal achievements of ‘functionings’ depends on various personal and social factors (Sen, 1999a). In a recent work, Rao (2018a) identifies nine fundamental ‘functionings’ of land that are valuable to all landowners, although at different levels. However, as stated earlier, the ability of each landowner to access these ‘functionings’ is different and depends on her abilities and circumstances, assuming all other factors (legal, political, social factors) to be similar. ‘Fundamental functionings’ of Rao (2018a) are broadly defined under nine categories (i) Secure means to basic ends; (ii) self-identity; (iii) social capital; (iv) social equity and empowerment; (v) family’s well-being; (vi) power to take decision on land matters; (vii) political empowerment; (viii) personal comfort and convenience; (ix) psychological well-being. Discussions with Indian respondents were dominated by the first six ‘functionings’ of Rao (2018a) with almost no mention of the latter two ‘functionings.’ However, this does not undermine the importance of the two ‘functionings’ and rather indicates Indian landowners’ adaptation to the personal, social, and legal environment. In using the ‘capability approach,’ it is important that subjective adaptation of the respondent to personal, social, and legal circumstances. Therefore, ‘fundamental functionings’ set the minimum threshold of ‘functionings’ generated by land, that are crucial to landowners’ well-being and deserve

⁴⁶ Earlier Rao, et al., 2017 and Rao, 2018a have successfully applied the method of QCA in analysing ‘functionings’ of land. The sequential procedure of QCA is described in Chapter 1, Rao, 2018b.

satisfactory reconstruction in case of compulsory acquisition of land. This research explores the nature of ‘fundamental functionings’ in the Indian context, as discussed below.

8.4.1 BEING ABLE TO SECURE BASIC NECESSITIES FOR LIFE

Given the high level of poverty in India⁴⁷ and weak state support system for poor, land ownership plays a vital role in creating livelihood securities. Since independence in 1947, India instituted many land reforms that aimed at reducing poverty and social inequality⁴⁸, though their geographical coverage was limited due to political and financial challenges (UN-Habitat, 2008). Wherever these strategies were implemented there were tangible outcomes, for example in West Bengal 1.04 million acres of land was distributed to 2.54 million land-poor households and this has had a positive impact on livelihood opportunities, even though many received as small as 0.07 to 0.38 acres (UN-Habitat, 2008). The small improvement in land ownership in India resulted in poverty reduction by five to nine percent between 1999-2000 (UN-Habitat, 2008). This is attributed to the usefulness of land in creating an additional source of income and food to the poor, sources of credit, social status, and financial security in times of crisis (UN-Habitat, 2008).

For the majority of landowners in Chinnakurchi, Gonipura, and Thippur villages, land ownership means having access to the fundamental ‘functionings’ of being able to grow food and be nourished; build a house and be sheltered, and be self-employed in agriculture. Most rural respondents lack skills for employment in non-agricultural sectors and are heavily dependent on land for basic necessities. It is not to say that landownership provides absolute security against hunger and poverty, but it certainly offers opportunities to reduce poverty,

⁴⁷ International Poverty Line has a value of US\$1.90 PPP (World Bank Organisation, 2018). In 2010, one-third of the world's poor population, i.e., approximately 400 million people, was living in India (Olinto & Uematsu, 2017). Poor people account for 21 percent population of India (in 2011) of which almost two-thirds live in rural areas (World Bank Organisation, 2018).

⁴⁸ Refer to Appu, 1996 for more details on land reform policies and land redistribution in India.

For example, respondent BRMA_17, originally a landless labourer (in agriculture), was granted 1-acre land by the government in the year 1995. In addition to this, he encroached upon 1.5 acres of government land and brought it under cultivation. Through efficient use of 2.5 acres land, he was able to meet all basic requirements of the family including children's higher education. After successful completion of post-graduation degree in Master of Commerce, respondent's daughter has secured a job in the banking sector. The family realises the importance of education and is working hard to give good education other two children, and the role of land is essential in achieving these objectives. Landownership played a very crucial role in lifting the family out of extreme poverty and in the development of the next generation (refer to Figure 8.1).

Role of land in serving basic necessities of life is crucial for those who are vulnerable to unemployment, physical disability; perpetual health issues; and aging. Majority rural respondents are poorly educated and lack skills outside agriculture. Vulnerability to poverty increases manifold due to physical disability; perpetual health issues; and aging, as reported by some respondents, for example, BRMA_45 whose right hand is paralysed; and BRMA_7 who is perpetually unwell. In the absence of efficient state support systems against unemployment, disability, health, and aging, ownership of land acts as an insurance policy, as reported by BRMA_7 and BRMA_45, who are generating rental income from land by leasing it to others.

After the death of her husband, respondent BRFA_26, who is an uneducated agriculturist at Gonipura village could successfully employ herself in agriculture on land that she inherited from her husband. Ownership of land helped her meet basic needs for her children and gave her the self-respect in being self-dependent. She also expressed a sense of freedom and control of her life by using land the way she "wants."

Following 'functionings' arise out of the above discussions:

For the poor –

1. Being able to move out of extreme poverty by using land as a source of food, shelter, income and credit generation

For those who are vulnerable to financial dependency on others –

2. Being able to financially insure oneself (and dependents) against poverty arising out of unemployment, physical disability, aging, family tragedy (such as the death of the main earning member)
3. Being able to maintain self-respect by being financially self-dependent

8.4.2 BEING FINANCIALLY SECURE

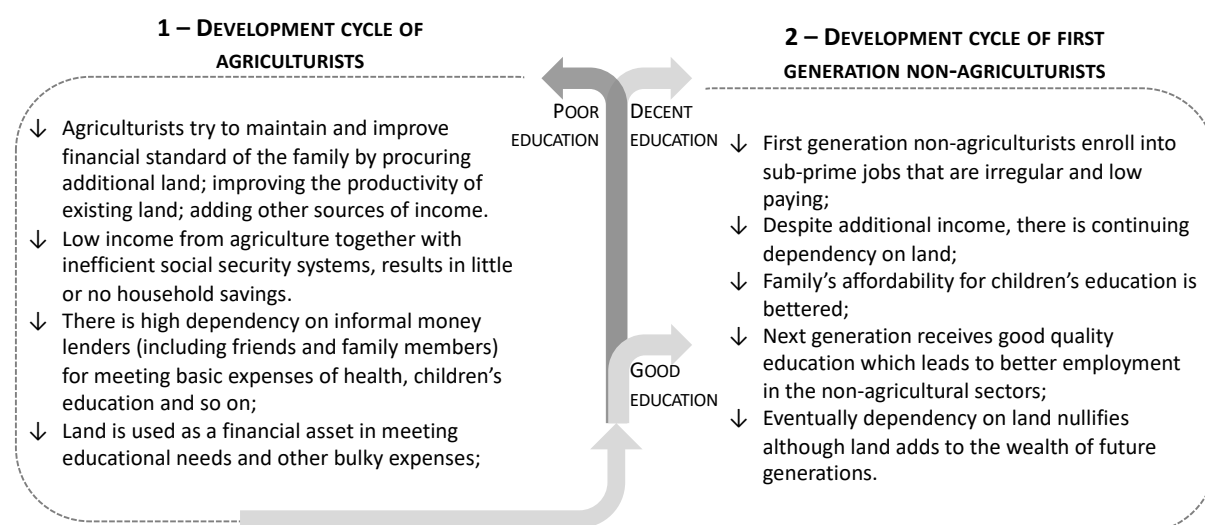
Financial securities arising from ownership of land are a combination of ‘real’ and ‘notional’ security, as perceived by the owners (Rao, Fundamental Functionings of Landowners: Understanding the relationship between land ownership and wellbeing through the lens of ‘capability’, 2018a). Real security in the certainty that land can be liquidated into money through sale and mortgage, although the process may be cumbersome, depending upon the level of maturity of property markets (Rao, Fundamental Functionings of Landowners: Understanding the relationship between land ownership and wellbeing through the lens of ‘capability’, 2018a). Real security also arises from using the land for income generation. On the contrary, notional security has uncertainty quotient, for example, property as a hedge against inflation; financial security arising out of land value appreciation over time; improvement in the development potential of land and change of land use over time (Rao, Fundamental Functionings of Landowners: Understanding the relationship between land ownership and wellbeing through the lens of ‘capability’, 2018a). While financial security is important for all landowners, it creates different ‘functionings’ for urban, rural and transitory landowners (those who are transiting from agriculture to non-agriculture sources of income), as discussed below.

For agriculturists –

Ever since 2003, when acquisition notice was first received in Gonipura and Thippur, landowners are restricted from buying, selling, mortgaging, or improving the land. With the

passage of time, a lot of futuristic financial needs have become real, and landowners strongly expressed financial role of land in their personal/familial development. For example, land plays an essential role in meeting financial expenses of higher education for children, children's marriage, construction of a new house or renovation of the existing house to meet shelter needs of expanding family. As discussed earlier under section 8.4.1, rural landowners depend heavily on land and agriculture for income generation and their personal/familial development is intertwined with developmental opportunities offered by land. Stages of economic development of rural households, as reported by respondents, are broadly explained in Figure 8.1. Slightest disruption to the cycle pushes them into a reverse cycle of poverty, as is the case with many agriculturists who cannot improve their land efficiently after it is notified for acquisition (refer to Banerjee & Duflo, 2011 for a detailed discussion on poverty trap).

Figure 8.1: Cycle of development for agriculturists and the process of transition from agriculture to non-agriculture sectors of employment



Source: Author.

For agriculturists who wish to continue in agriculture (development cycle 1, Figure 8.1), it is essential that the income from agriculture increases and keeps pace with increasing family size. Failing which, the family falls in the vicious trap of poverty, which means that their income in future is less than their income (refer to Banerjee & Duflo, 2012 for more details

on poverty trap). During interviews, landowners expressed their dependency on land for capital required for improving⁴⁹ agricultural output. Also, landowners receive many land linked subsidies in the agricultural sector, such as the free installation of bore-well, subsidised seeds for cash crops, and interest-free agricultural loan. With the help of land linked subsidies, landowners can significantly reduce their cost in agricultural inputs. Agricultural subsidies provide security to agriculturists against falling out of business in case of crop failure, drought, and similar other financial shocks. Due to restriction on improving land and on buying, selling, mortgaging, agriculturists in the notified villages are unable to improve the productivity of land and are financially incapable of providing higher education to their children. The negative impact of prolonged restrictions on using land has been that majority landowner in these villages are trapped in the reverse cycle development.

Rural respondents frequently mentioned the financial difficulty that they are facing in meeting personal/familial needs such expanding house, children's marriage, payment of fees for children's education, health expenses, and other bulky expenses. Knowing fully well that these personal/familial needs will arise and that their fulfillment depends on borrowing against the land, landowners store the value in the land to leverage it at the time of ripening of such personal/familial needs.

For transiting agriculturists/first generation non-agriculturists –

Many young and educated respondents in rural areas have a continuing dependency on land and agriculture, while they are settling into non-agricultural sectors. For these young agriculturists (BRMT_15, BRMT_16, BRMT_40, and BRMT_47), problems of unemployment and sub-primes employment in irregular and low-paying jobs are common and additional income from agriculture helps in maintaining living standards for the family. In the worst case

⁴⁹Common methods of improving income from agriculture, as reported by agriculturists from Chinnakurchi, Gonipura, and Thippur include procuring additional land for agriculture; installing bore-well to irrigate land and improve its productivity; planting cash crops and fruit orchards; creating secondary sources of income such as dairy and sheep breeding.

scenario of not being able to employ oneself in non-agricultural sectors, ownership of land provides insurance against unemployment to the youth by giving an opportunity for self-employment in agriculture or other land-based activities such as developing a nursery and farm-house for commercial use (as reported by respondents). A recent report by UN-Habitat (2014) on 'What Land Means to Youth', it is found that youth unemployment and poverty is closely linked to high levels of landlessness. It is therefore essential to understand the role of land in the development of youth.

Change in land use, although rare, creates opportunities for diversification into non-agricultural activities and accelerates the process of development for first-generation non-agriculturists, as experienced by respondent BUMI_2. As the joint-owner to industrial land, that was earlier under agricultural use, the respondent and other members of the family aspire to diversify their sources of income by improving land for automobile related activities, warehouse, and similar other industrial uses. The family is partially dependent on agriculture during this phase of transition when young members of the family are in the process of acquiring skills and experience in industrial activities.

However, these opportunities of development are curtailed for the youth whose ancestral land is notified for acquisition, thus disrupting the process of personal/familial development linked with the land. In the context of agriculturists aspiring to transit into non-agricultural sectors of employment, following 'functionings' of land is essential:

For urban landowners (or non-agriculturists) –

Unlike rural landowners whose 'functionings' revolve around immediate consumption needs and livelihood securities from land, urban landowners (BUMI_1, BUMC_3, BUFH_4, and BUMS_4) emphasised on futuristic and long-term financial security generated through investment in land. Majority urban respondents have been optimally using the land for the highest and best use, such as for manufacturing (BUMI_1); a luxury resort (BUMC_3). Ownership of land allowed them to plan for expansion and diversification of business and take financial advantage of the change in land use. Acquisition of business and land disrupted

their business plans. Respondent BUMI_1 expressed apprehension that he may have to change business based on the opportunities offered by land at the new location. This would mean the loss of experience in existing business and bearing risks associated with new business. In the case of respondent BUMC_3, acquisition of resort business, established by his father, meant not being able to inherit a well-established family business and financial security that comes along with it.

For all landowners –

The most apparent financial loss mentioned by almost all respondents was the income generated from land; and the opportunity to improve income by improving the use of land for activities that were permissible (as per existing land-use) but were not actualised at the time of acquisition notification. Following are some examples of such losses –

- Respondent BUMI_2 was preparing to install an automobile industry on his land at the time when acquisition notice was received. Ever since then, he is curtailed from improving land, that would have improved his financial situation.
- There is a growing trend of farm housing weddings in India. Therefore peri-urban agriculturists around Bengaluru are actively building farmhouses on their land which they are using for rental purposes for weddings and tourism. However, this opportunity of additional income generation from land is curtailed for agriculturists whose land is notified for acquisition.
- Respondent BUMI_1 had plans to expand business through the installation of additional manufacturing units. However, after acquisition notification, his plans for expansion are, and his business is negatively impacted.

Notional financial security is also derived from future benefits linked with unseen development potential of the land parcel (Rao, Tiwari, & Hutchison, Capability approach to compulsory purchase compensation: evidence of the functionings of land identified by affected landowners in Scotland, 2017). Rao (2017) describes that "the unseen development potential of a piece of land offers the opportunity to the landowners to benefit from a market phenomenon that is certain to happen in the future, but the nature and extent of the development are unseen. Also, the lack of certainty of the timeline of developments may make it look too remote or latent in the present date." (p. 315). Because the BMIC project is delayed by fifteen years, landowners are witnessing improvements in land market conditions

around Bengaluru city with the passage of time. This has made them more aware of the loss of opportunity to benefit from improving the development potential of their land, as seen through the change of land-use.

In general, almost all respondents emphasised the intergenerational role of land in extending financial security to the next generations. Cascading effect of wealth on personal/familial well-being is identified as a fundamental 'functionings' by Rao (2018a). Rao (2018a) explains that strong financial foundations add confidence to spend on next best things through which the quality of life is further improved, such as a house and higher education.

To summarise the above discussions, financial 'functionings' of land, both real and notional, are listed below:

Real financial security-

4. Being financially secure through income generation from land and its produce.

For agriculturists -

- a. Being able to maintain and improve financial position by enhancing agricultural efficiency through investment in land (for example buying additional land; and improving productivity)
- b. Being able to access land linked subsidies

For transiting agriculturists -

- c. Being able to use land as a fallback option (for income and employment) while transiting into non-agricultural sectors for employment (objective: financial security for first-generation non-agriculturists)

For businesses -

- d. Being financially secure due to the certainty of stable business operations at a particular location
- e. Being financially secure through the smooth operation of an established business, in which one has experience and expertise (objective: financial security)

5. Being financially secure by using land as a financial asset

For agriculturists -

Being able to store the value in land and leverage from financial gains at the time of need, such as children's marriage or higher education; renovation or

construction of the house; or for improving sources of income (buy more land, animal stock, improve agricultural practices); and similar other needs.

6. Being able to extend financial security to the next generation and better their quality of life through the transfer of property

Notional financial security-

7. Having notional financial security from expected or planned financial gains from permissible developments that were not actualised at the time of acquisition notification.
8. Having notional financial security in future benefits linked with unseen development potential of the land parcel. For example:
 - a. For businesses - Being able to maximise profit by leveraging from the change in land use (say by diversifying business)
 - b. For agriculturists (and transiting agriculturists) - Being able to accelerate the process of personal/familial development by taking advantage of the change of land use and transiting into non-agricultural sectors

8.4.3 BEING ABLE TO PROTECT ONESELF FROM DISCRIMINATION, EXPLOITATION, VIOLENCE, AND ASSAULT, AS A FUNDAMENTAL HUMAN RIGHT

The disadvantageous position of women and Dalits⁵⁰ has ancient roots (refer to Deshpande, 2011 for details on theories of gender and caste discrimination in India). The *Manu Smriti*⁵¹ and other ancient texts, recommend identical treatment to women and Dalits and impose similar restrictions on the two, especially regarding the denial of religious privileges; access to education; and ownership of property (Deshpande, 2011; Halder & Jaishankar, 2008).

⁵⁰ Dalits are members of lowest caste (scheduled caste) in the traditional Indian caste system.

⁵¹ “The ‘Manu smriti’ is the Hindu code of ancient India, which dealt with the relationships between social and ethnic groups, between men and women, the organisation of the state and the judicial system, reincarnation, the workings of karma, and all aspects of the law. This Hindu Code is essential for its classic description of so many social institutions that have come to be identified with the Indian society.” (Halder & Jaishankar, 2008).

Negative impacts of prolonged discrimination practices are observed in the form of the weak economic, social, and political position of the two groups (Agarwal, *A field of one's own : gender and land rights in South Asia*, 1994).

In reducing social discrimination against women, scheduled castes; and scheduled tribes, and religious minorities in India many affirmative actions have been taken, mostly in the form of quotas in education, employment, and politics (Deshpande, 2011). Discussion on the nature and effectiveness of affirmative action plans is beyond the scope of this research, and an avid reader may refer to Deshpande (2011), Thorat (2008) and others. This research limits the scope to discussing the value of land/property ownership for women and SC/STs and its role in safeguarding women from domestic violence and in empowering Dalits to combat atrocities, which are the most notorious forms of discrimination.

9. Being able to protect oneself from domestic violence and familial crimes against women

The problem of female victimisation is widespread in India, and approximately 29 percent of women in India are victims of lifetime physical and sexual intimate partner violence⁵² (United Nations Women, 2018). Role of property rights in economic, social and political empowerment is widely documented, especially in the context developing countries (refer to Agarwal, 1994; Roy, 2015). Focusing specifically on the impact of property ownership on domestic violence, Agarwal & Panda (2007) present empirical evidence to support that ownership of house or land significantly reduces the risk of domestic violence. Agarwal & Panda (2007) find that ownership of property achieves better risk protection for women than employment. While employment gives financial autonomy, it makes a little difference to domestic violence unless it is regular, and also has a perverse effect, unlike property (Agarwal & Panda, 2007).

Roy (2015) finds that even after legislative reforms⁵³, the inheritance rights of women are poorly acknowledged in Indian society, and parents have devised alternative ways to transfer all property to male heirs. This is usually attributed to gender biased preferences of parents in favour of a male heir (Roy, 2015). Similar adaptation to social preference (of transferring property to sons) is observed among rural females, let

⁵² "Proportion of ever-partnered women aged 15-49 years experiencing intimate partner physical and/or sexual violence at least once in their lifetime. Source: International Institute for Population Sciences (IIPS) and ICF, 2017. National Family Health Survey (NFHS-4), India, 2015-16: India. Mumbai: IIPS." (United Nations Women, 2018).

⁵³ Hindu Succession (Amendment) Act 2005

alone men, in Chinnakurchi and Gonipura village. Three female respondents (BRFA_9; BRFA_26; BRFA_28), who are young mothers between the age of 25 and 38, expressed negative views on female inheritance and believed that daughters should instead inherit land from their husband and his family, as per the existing social practice. On the positive side, these respondents were indifferent in providing financial support for the education of sons and daughters, to the extent that they were willing to sell or mortgage land.

Being able to protect oneself from domestic violence and assault is a basic functioning for human development, and an essential human right (Sen, 1999b; Sen 2006). Marital violence can subdue a range of other economic, social and political 'capabilities' and 'functionings' of women, as discussed by Agarwal (2007). Land and property, as the means for achieving 'safety-functioning,' is therefore especially value to females.

10. Being able to protect oneself from social discrimination in the land market

Given the long history of social injustice witnessed by non-landowning communities (who work on other people's land as labourers or renters, the majority being from lower caste), the idea of 'social justice' in the context of rural India has got linked to the 'ownership' of land. Post-independence, serious land reforms were introduced to grant ownership or owner-like rights to the landless, especially SC/STs (refer to Mohanty, 2001). Despite several reforms, the condition of landless rural poor has improved only marginally (refer to Mohanty 2001). Continuous efforts being made to reduce poverty, ensure food security, and reduce social inequality through the grant of land ownership and use rights.

Even though the ownership rights of SC/STs are strictly safeguarded under the Karnataka Scheduled Castes, and Scheduled Tribes (prohibition of transfer of certain lands) Acts, 1978, there are continuing incidences of forceful usurpation by non-SC/STs (Sharma, 2015). Around 47,000 cases of atrocities⁵⁴ were registered in the country during 2016 against a person belonging to Scheduled Caste and Scheduled Tribe (National Crime Records Bureau, 2018). Among nineteen metropolitan cities, Bengaluru recorded the fourth highest number of atrocity cases (National Crime Records Bureau, 2018). Recent literature on violent crimes against SC/STs reveals that crime is increasing as the economic position of the upper caste improves (Sharma, 2015). Sharma (2015) explain these as 'hate crimes,' that are deliberately conducted to "deprive the victim of his property symbolic of his material progress" (p. 220). This

⁵⁴ Atrocities refers to Crimes committed against SC/STs by Non-SCs/STs. Cases under only Indian Penal Code (without SC/ST Act) have been excluded as those cases refers to Crime against SCs by SCs/STs

is not to say that ownership of land and property has victimised SC/STs but to explain the level of discrimination prevailing in the land market, despite legal protection to their property rights.

There is relative discrimination among landowners and landless even within the SC/ST community. Respondent BRMA_31, from 'Valhar' caste (recognised as Scheduled Caste in Karnataka), is a small farmer owning 5 acres of land and is the president of the agricultural union for Thippur village. Another member of the same family is respondent BRMA_32, is a landless labourer. When interviewing BRMA_32, some symptoms of social oppression were observed, such as the respondent chose to sit on the floor while others sat on the chair; on being asked about his desire to become a landowner the respondent replied in a low voice that he could not answer this question in front of others.

While affirmative actions have in general brought positive improvements to their political and financial position of SC/STs, there is continuing social discrimination against SC/STs in multiple spheres of the society, including the land and labour markets (Thorat, 2008). It may be challenging for SC/STs to get fair treatment in the land market that is dominated by non-SC/STs. In the context of the compulsory acquisition of land, compensation in the form of the market value of land may not always enable SC/ST landowners to buy another land due to continuing discrimination against these social groups.

8.4.4 BEING ABLE TO ESTABLISH SOCIAL ASSOCIATIONS AND HARNESS PERSONAL, FAMILIAL, AND SOCIETAL INTERESTS THROUGH THESE ASSOCIATIONS

Aristotelian list of human 'capabilities,' as discussed by Nussbaum (1988b), mentions "social association" and virtues of sensitivity and friendliness to be important for human development. Taking inspiration from Aristotle's theory, Nussbaum (2000) includes 'affiliation' in the list of central human 'capabilities.' Nussbaum (2000) describes affiliation as the capability of "being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship" (Women and Human Development, p. 79). These are like affection and belongingness needs identified by Maslow (1943). Kenrick et al. (2010) explain that there are functional and neurological differences between systems of affiliation within the family and with other group members outside the family. For example, cognitive decision biases leading to uneven distribution of costs and benefits between parents and children can

trigger feelings of 'injustice' if they occur between friends. Therefore, to better explain social 'functionings' of land arising out of association within the family and with other members of the society, the two are dealt with separately here.

Another part to affiliation, as per Nussbaum (2000), is "being able to be treated as a dignified being whose worth is equal to that of others." This is self-respect arising out of non-discrimination and non-humiliation based on race, sex, sexual orientation, religion, caste, ethnicity, or national origin (Nussbaum M. C., 2000). The human need for protection from non-humiliation and social-rejection, discussed by Nussbaum (2000), may be associated with 'safety needs' identified by Maslow (1943). Though Maslow (1943) does not explicitly discuss the need for non-humiliation, he indirectly includes these under psychological fears, such as the fear of abandonment. Pieces of evidence from neurological science and philosophy reinforce the importance of protection from humiliation for human development. For example, after analysing functional objectives of the need for social-association (or 'love needs' as described by Maslow, 1943), Kenrick, et al., 2010 find that "human beings are exquisitely sensitive to cues of social rejection, and they respond to such cues using some of the same neural circuits used to register physical pain." (p. 7). The ability to harness self-respect arising from social acceptance and non-humiliation is "vital to living a satisfying, meaningful, flourishing life" (Dillon, 1997, p. 226). Role of land is boosting self-respect in the social context is discussed later in this section.

Association with family members

Division of property within the family is uncommon in rural India. Joint ownership of land usually leads to joint ownership of agricultural produce. This builds a safety net around the weaker members of the family (physically or financially), who are otherwise less capable of exploiting their land (if the land is divided). Joint ownership of land strengthens familial ties and creates many reciprocal arrangements within the family such as extending financial assistance at the time of needs, assisting with labour in agriculture, dividing household chores and parenting chores. Many agriculturists shared their strategy to pass on additional land as

a gift to the heir (mostly son) who would care for them in their old age. This provides insurance to the elderly, who are owners to land.

Urban respondents BUFH_4 and BUMS_4 have plans to use their land to build a farmhouse where they can live post-retirement. Also, they want to build a tennis court in their farmhouse to be used by their grandchildren when they come to visit. By creating attractive facilities for the next generations, the elderly couple is creating reasons to invite grandchildren and enjoy togetherness with family and strengthen family ties. Following two 'functionings' are identified in this discussion:

11. Being able to create a safety net for weaker members of the family, including the elderly
12. Being able to develop and maintain interpersonal relationships across different generations of the family

Association outside family

There is ample literature from psychology and social science to suggest 'collectivist⁵⁵' behaviour among Indians and the existence of strong symbiotic relationships within social groups (refer to Roland, 1982 and Sinha, 2014). Social associations reduce emotional depression and create positive stimuli in human beings (Kenrick, Griskevicius, Neuberg, & Schaller, 2010). Alongside these biological benefits, there are other benefits to social life, such as sharing resources, knowledge, parenting chores (Henrich & Boyd, 1998) and having an essential insurance policy for survival (Hill & Hurtado, 1989), as reported by many respondents. On the contrary, solitary life avoids costs such as exploitation (Kenrick, Griskevicius, Neuberg, & Schaller, 2010), as discussed later in this section.

⁵⁵ Hofstede (1997) conceptualizes 'collectivism' with "societies in which people from birth onwards are integrated into strong, cohesive, in-groups, which throughout people's lifetime continue to protect them in exchange of unquestioning loyalty" (p. 51).

Recognises social 'functionings' of land the Food and Agriculture Organisation (2002) states that "rights to land are not just a source of economic production but are also a basis of social relationships and cultural values, and a source of prestige and often power. The resulting social networks that are built up within a specific social and cultural group are a vital asset in ensuring sustainability of livelihoods of rural households" (p. 5), as observed in the three villages. Respondents often rely on their extensive network of known people (friends, extended families) when it comes to dealing with financially demanding situations such as health expenses, children's education, children's wedding, renovation and construction of the house. Banerjee & Duflo (2011) share findings from the study of Christopher Udry to explain the power and limits of such informal insurances. In summary, in the absence of regular income streams and formal securities, as is the case of agriculturists and poor, formal financing is difficult while informal financing is operational because information on borrower's intentions and ability to return the money, and her family history is known to the lender through personal/social associations. Therefore, in the absence of measures of creditworthiness, trustworthiness plays a crucial role. Certainly, landownership adds to the trustworthiness and creditworthiness of the borrower, even though there may not be any formal contract to keep the land as the security, as observed in these villages.

It is important to acknowledge that informal insurance is "far from perfect" and almost non-existent when it comes to meeting prolonged health expenses (Banerjee & Duflo, 2011). For example, respondent BRMA_5 is a kidney patient and requires regular dialysis treatment. Total income of the household is adequate to meet regular expenses but not good enough to sustain perpetual health expenses. Even though there is a secure network of family and friends, their occasional help provides minimal insurance against prolonged health expenses.

Following functionings of land is revealed from the above discussions:

13. Being able to establish symbiotic social relations through which an informal safety net is built around every member of the social group

Within the limited context of the compulsory acquisition of land, landownership grants legal powers to the owners to oppose the project and safeguard interests of other people, and the

society at large. For example, respondent BUFH_4 is a staunch opponent of (a part of) the BMIC project because she believes that it is socially disastrous to compulsorily acquire private land for the development of the private township. She also expressed concerns towards poor agriculturists who are on the verge of losing land and livelihood without even receiving fair compensation. In her words, “the fight is not about compensation amount (for her land), it is about the right and wrong.” In the broad context of central human ‘capabilities,’ Nussbaum (2000) recognises the ability to be concerned for other human beings and to live towards others as central to human development.

In the urban context, respondent BUFH_4 leveraged her knowledge, intellectual ability, contacts with lawyers and interest groups to promote common interests by opposing the project. Being a landowner, particularly to big land, directly translates into having leadership roles at the village level. Forwarding personal and societal interests is more accessible through socially and politically influential positions. For example, respondent BRMA_31, owner to 2-hectare land, is the president of farmer’s union for Thippur village who could influence formal financial institutions to release loan against notified land in his village. However, formal finance on land is inaccessible to other affected landowners in Gonipura and Chinnakurchi. Respondent BRMA_36 (owner to 10-hectare land) is the elected head of Gram Panchayat of Thippur and is utterly concerned about the negative impacts of acquisition and relocation on his community, especially on small farmers who may struggle to buy small agricultural land parcel elsewhere. The acquisition may force them to migrate to cities thus resulting in a total loss of self-identity and self-respect from being respectfully employed in agriculture to becoming an uneducated, unemployed rural immigrant.

Ownership of land equates to having the ability to harness social well-being through the donation of land for public purpose. Being able to contribute to social welfare adds to the socio-political power of the landowner. At the level of an individual and the community, landownership enhances opportunities for furthering public goods. While discussing his contributions to the village as the agricultural union leader, respondent BRMA_31 mentioned how he was able to accumulate land from the community for building a school. As a land-holding community, Thippur village is one of the strongest opponents to the BMIC project and

is strongly negotiating for the interests of the agriculturists. In a similar discussion on donating private land, respondent BUMI_2 (joint owner to industrial land at the urban periphery) referred to an earlier incidence of compulsory acquisition of his land for the construction of ring-road around Bengaluru. A portion of his land was taken without the payment of compensation, and the respondent chose not to claim compensation because he viewed it as a contribution to the development process from which he has been himself benefiting. On the contrary, the respondent is strongly opposing the BMIC project through a court appeal because he doubts the public nature of the project (Nandi Infrastructure Corridor Enterprise Limited). Large landowners in rural India have been donating land for the construction of roads, schools, hospitals, and other similar infrastructure facilities. Therefore, landownership directly enhances the ability of the individual, and the community, to contribute to social welfare.

In a socially stratified society like India, landownership adds to the socio-political power of socially weaker members such as respondent BRMA_31, who is a Dalit and the village leader for the agricultural union. On the other extreme was respondent BRMA_32, who is a landless Dalit, and could only weakly express his opinion. The latent form of oppression was observed when the respondent denied sharing views in front of others, and village leaders and the discussion was taken over by other members of the community. Even within the weaker caste, landownership plays a role in improving the socio-political status of the owner.

On another note, being a landholding community adds to the socio-political strength of the community, as observed in the case of the BMIC project (Balakrishnan, 2013). Balakrishnan (2013) compares the socio-political strength of rural landowners in India to the organised village collectives in China and explains their strong role in the success or failure of large-scale infrastructure projects such as the BMIC project in Bengaluru and the Magarpatta township in Pune.

Above discussions explain 'socio-political functioning' of land, in urban and rural societies, as listed below:

14. Being able to voice an opinion and participate meaningfully in the decision-making to further self-interests and interests of others (to the extent these are not in conflict)
15. Being able to take decisions on land matters and have to control over one's physical environment

It is important to acknowledge that imbalance in reciprocity may lead to exploitation of the dependents. Therefore, social life (as opposed to solitary life) may come at the cost of exploitation by dominant group members, as has been the case with landless Dalits who depend on the landowning community for employment and livelihood. As discussed earlier in section 8.4.1, granting landownership to landless Dalits induces financial autonomy that reduces dependency, exploitation, and humiliation by the landowning community. Functioning arising out of the above discussion is:

16. Being able to protect and harness self-respect arising out of non-humiliation by other dominant groups (objective: socio-political empowerment)

8.4.5 BEING ABLE TO MAINTAIN AND ENHANCE SELF-RESPECT AND IDENTITY

Being able to protect one's self-identity is crucial to being well. Theories on 'self' and 'self-identity' are extensively discussed by psychology literature⁵⁶ and are beyond the scope of this research that focuses on 'self-identity' in the limited context of land. Rao (2018a) identifies six types of self-identity 'functionings' associated with land, which include (i) identity associated with social status granted by ownership of property, especially if located in a superior neighbourhood (ii) identity associated with personalisation of space (especially house) to reflect one's choices; (iii) identity with land or property in which one has invested labour; (iv) identity in memories built over time at a place, say house, neighbourhood, city or country (v) identity of self as a part of the territorial identity of the place of origin which has its own culture, tradition, religious practices and norms, language, festivals, flora and fauna (vi) identity of an individual as a part of the community identity, for example in the case of

⁵⁶ An avid reader may refer to James (1890), Mead (1934), Jung (1939), and Hilgard (1949).

tribal societies. Most of these 'functionings' are also reported by Indian respondents and are discussed together under two groups of 'functionings,' which are - being able to maintain self-identity; and being able to enhance self-identity. Former 'functionings' are the necessary form of self-respect (Maslow's need 4, refer to Table 8.1) while latter 'functionings' boost one's social status (Maslow's need 5, refer to Table 8.1). The two are distinct in their functional objective because the former is sort of necessary for one's respectful existence while the latter improves one's social reputation and adds to the quality of life. The idea is to distinguish between the loss of self-identity and loss of opportunity to enhance self-identity. For example, to be able to boost one's social status by owning property is an opportunity to enhance one's self-identity; while on the other hand, to be uprooted and relocated from the native place is the loss of self-identity for original inhabitants.

17. Being able to maintain self-identity

Loss of self-identity associated with the place was concerning for the residents of Gonipura and Thippur villages (given that both villages are fully notified for acquisition) who will be forced to relocate if the village is compulsorily acquired. Those who were confident of being able to buy land in another village were more concerned about the loss of place-identity, cultural identity and social networks. Dalits, whose land is notified for acquisition, are apprehensive that they do not stand a fair chance in the land market and therefore they may lose their identity of being a landowner. Those who are landless and may be forced to migrate to the city in search of employment expressed the feeling of being reduced to no-one for everyone around them in a big city.

There is a sense of belongingness and a desire to maintain place-identity in the next generation as well. They aspire to own land in their native place, as expressed by respondent BRMA_24 whose son, working in the United States of America, has bought land close to the village and aspires to build a farmhouse where he can live after returning in India. Proshansky et al. (1983) write that the subjective sense of self is defined and expressed not only by one's distinction with other but also by one's relationship to other people and to the various physical settings that define and structure day-to-day life. He

further explains "... 'self' can be thought of as a term which describes the individual as a total system including both conscious and unconscious perceptions of his past, his daily experiences and behaviours, and his future aspirations" (Proshansky, Fabian, & Kaminoff, 1983, p. 58).

18. Being able to enhance self-identity

Ownership of land enables people to enhance their self-identity, as reported by respondents. Land ownership grants social status and creates other opportunities for self-actualisation through which status is boosted.

a) Self-actualisation in being an owner to land and property

Given that land and property are hard earned, valuable assets, its ownership induces a sense of achievement and pride, as found by Rao (2018a). A similar feeling was shared by respondent BUFH_4, who feels proud of being a landowner as opposed to owning other materialistic things such as jewellery, and car. A sense of achievement as the owner to land and property is particularly valuable to those who have been devoid of ownership rights in the past (for socio-cultural reasons), such as women and Dalits (refer to Deshpande, 2011 for more details). Those who are big landowners are also concerned about their traditional identity and social status in the community.

b) Self-actualisation in being an agriculturist

Feeling of self-satisfaction and contentment in being an agriculturist, was strongly expressed by respondents BUMS_4 and BRMT_40. BUMS_4 is a pathologist who pursues agriculture as a hobby. He enjoys working on the farm and trying new methods of farming. Being able to pursue his hobby of farming; own land in which he has invested labour and implement his innovative ideas of farming is crucial to his well-being. Another respondent BRMT_40 wants his children to be well-educated and working in knowledge-based industries while also learning to farm. In his views, agriculture is a noble profession that benefits society at large.

Table 8.2 below summarises above discussions on eighteen ‘functionings.’ Functional objectives achieved by individuals via the execution of these ‘functionings’ are also mentioned in the table. More discussions on functional objectives, human needs, and hierarchy of ‘functionings’ follow in section 8.5.

Table 8.2: Valuable ‘functionings’ of land and their functional objectives, reported by Indian landowners

‘Functionings’			Valuable to -	Functional objectives
Being able to secure basic necessities for life	1	Being able to move out of extreme poverty by using land as a source of food, shelter, income and credit generation	Poor	Livelihood security
	2	Being able to financially insure oneself (and dependents) against poverty arising out of unemployment, physical disability, aging, family tragedy (such as the death of the main earning member)	Vulnerable to financial dependency on others	Livelihood security
	3	Being able to maintain self-respect by being financially self-dependent	Vulnerable to financial dependency on others	Maintaining self-respect
Being financially secure	4	Being financially secure through income generation from land and its produce	All landowners	Real financial security
	4a	Being able to maintain and improve financial position by enhancing agricultural efficiency through investment in land	Agriculturists	Real financial security
	4b	Being able to access land linked subsidies	Agriculturists	Real financial security
	4c	Being able to use land as a fallback option (for income and employment) while transiting into non-agricultural sectors for employment	Transiting agriculturists	Real financial security
	4d	Being financially secure due to the certainty of stable business operations at a location	Businesses	Real financial security
	4e	Being financially secure through the smooth operation of an established business, in which one has experience and expertise (objective: financial security)	Businesses	Real financial security
	5	Being financially secure by using land as a collateral	All landowners	Real financial security
	6	Being able to extend financial security to the next generation and better their quality of life through the transfer of property		Notional financial security

	7	Having notional financial security from expected or planned financial gains from permissible developments that were not actualised at the time of acquisition notification		Notional financial security
	8	Having notional financial security in future benefits linked with unseen development potential of the land parcel		Notional financial security
	8a	Being able to maximise profit by leveraging from the change in land use	Business	Notional financial security
	8b	Being able to accelerate the process of personal/familial development by taking advantage of the change in land use and transiting into non-agricultural sectors	Agriculturists	Notional financial security
Being able to protect oneself from discrimination, exploitation, violence, and assault	9	Being able to protect oneself from domestic violence and familial crimes against women	Women	Physical safety; Financial Empowerment
	10	Being able to protect oneself from social discrimination in the land market	Dalits	Social equity
Being able to establish social associations and harness personal, familial, and societal interests through these associations	11	Being able to create a safety net for weaker members of the family, including the elderly	Vulnerable to financial dependency on others	Informal insurance through familial ties
	12	Being able to develop and maintain interpersonal relationships across different generations of the family	All landowners	Familial well-being
	13	Being able to establish symbiotic social relations through which an informal safety net is built around every member of the social group		Informal insurance through social ties
	14	Being able to voice an opinion and participate meaningfully in the decision-making to further self-interests and interests of others		Social and political empowerment
	15	Being able to take decisions on land matters and to have control over one's physical environment		Safety arising out of property rights
	16	Being able to protect and harness self-respect arising out of non-humiliation by other dominant groups	Dalits	Physical safety; Self-respect
Being able to maintain and enhance self-respect and identity	17	Being able to maintain self-identity	All landowners	Maintaining self-respect
	18	Being able to enhance self-identity		Boosting social status

Source: Author.

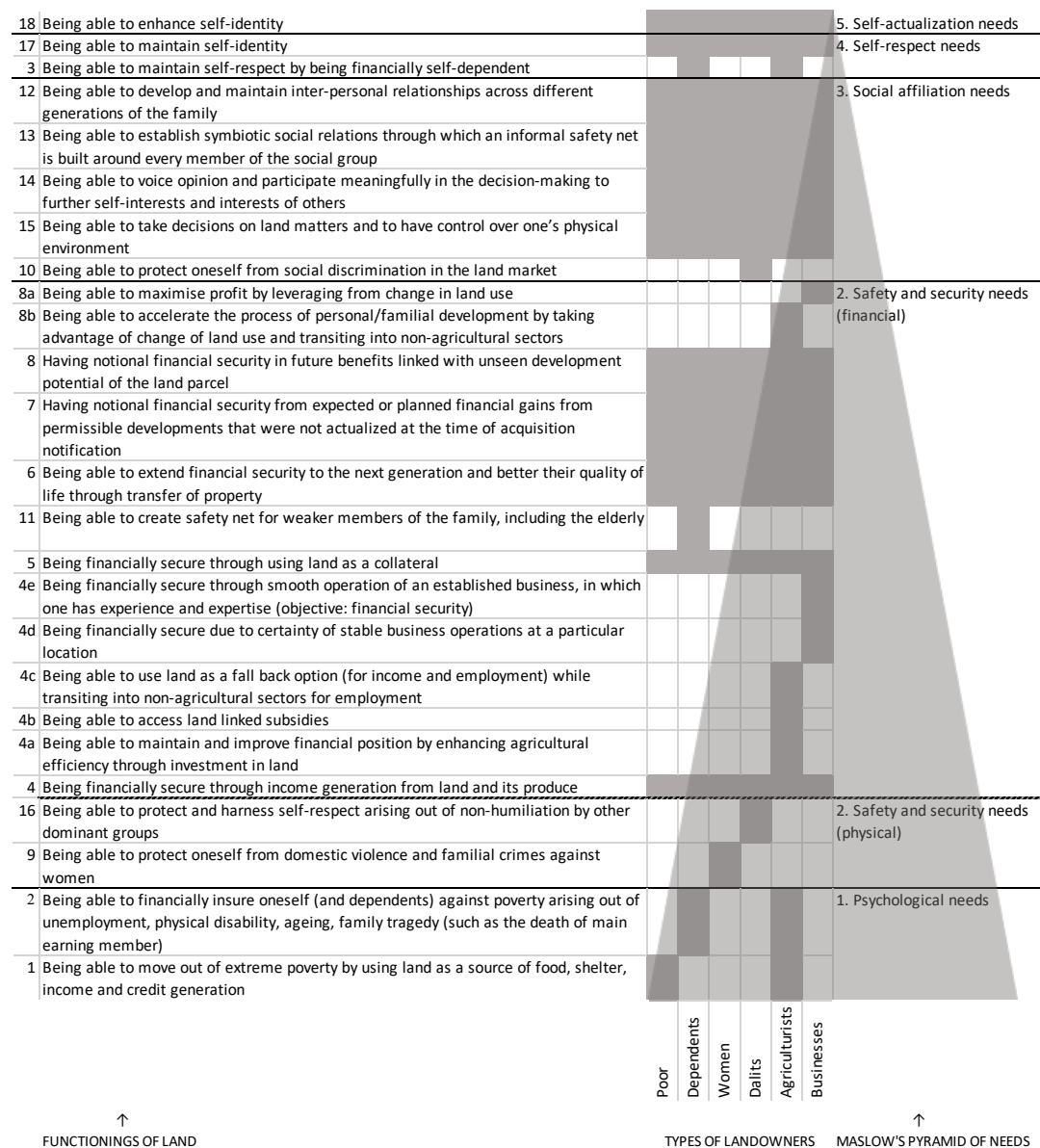
8.5 HIERARCHY OF 'FUNCTIONINGS'

Eighteen 'functionings' identified in section 8.4 vary in importance for the landowners, depending upon its role in the overall well-being of the landowner. To better understand the level of importance of 'functionings,' it is important first to understand the functional objective fulfilled by each functioning (refer to Table 8.2). Functional objectives achieved by each functioning are then matched with human needs identified by Maslow (1943). By doing this, eighteen 'functionings' are grouped in five hierarchical categories, depending upon the type of need which they fulfil. For example, 'functionings' 18 meets self-actualisation need and is less important than 'functionings' one and two which fulfil basic survival needs (refer to Figure 8.2). Arranging 'functionings' in the hierarchy of importance helps in explaining the intensity of losses for landowners.

'Functionings' meeting the same need is further stratified depending on the level of vulnerability of the landowner for whom it is valuable. For example, livelihood security for the poor is given higher importance than livelihood security for non-poor who would probably have access to other sources of livelihood. This hierarchy reflects greater importance of land for the poor, who have a higher dependency on land in the absence of other financial resources that may be accessible to non-poor.

'Functionings' at the bottom of the pyramid have a greater impact on personal well-being for two reasons: firstly, because human needs met by these basic 'functionings' are relatively more crucial for well-being; and secondly, because basic 'functionings' (forming the bottom of the pyramid) pave the way for achievement of the next higher level of 'functionings' and needs. Any obstruction to 'functionings' at the bottom of the pyramid means reducing the opportunity to access the next level of 'functionings.' Therefore, relatively bigger losses are induced if 'functionings' at the bottom of the pyramid are affected.

Figure 8.2: Hierarchical arrangement of ‘functionings’ as per Maslow’s pyramid of human needs



Source: Author.

Note:

1. Grey triangle represents Maslow's pyramid of human needs in reducing the order of importance starting from the bottom– Livelihood security (most important); Safety and security; Social affiliation; Self-respect; Self-actualisation (least significant).

2. Dark grey cells highlight 'functionings' for each type of landowner – Poor, Dependent (those vulnerable to financial dependency due to unemployment, physical disability, old age, and other reasons); Women; Dalit; Agriculturists; and Businesses.

From the hierarchy of 'functionings' in Figure 8.2, it is easily demonstrated that vulnerable segments of the society such as poor, physically disabled, elderly, women, Dalits, and agriculturists derive many 'functionings' from land that fulfil basic human needs (at the bottom of Maslow's pyramid). Progress to the next level of needs (positioned higher in the pyramid, say self-actualisation) is possible after satisfactory achievement of all lower needs. The progressive upward movement also implies that lower 'functionings' pave the way to the next level of 'functionings,' thus building a ladder of development. Due to compulsory acquisition of land, the well-being of the poor and vulnerable groups is affected differently and relatively more severely than others (say businesses) because most 'functionings' of the poor are associated with basic needs (at the bottom of the pyramid). While this research limits the scope of ordering 'functionings,' it opens the opportunity for further work on identifying the economic value of these 'functionings.' These findings pave the way for future work on designing a fairer mechanism of compensation that would give due consideration to the nature and intensity of losses for different types of landowners.

8.6 CONCLUSION

This research contributes to the ongoing works aiming at deriving 'fair' compensation for compulsory for those whose land is compulsorily acquired for public projects. Using Sen's capability approach this research re-examines the nature of losses in the form of 'functionings' generated by land. Based on the in-depth interview of forty-seven respondents in urban and rural areas around Bengaluru (India), that is notified for acquisition for the BMIC project, eighteen 'functionings' of land are identified, which landowners have reason to value.

Most crucial functionings of land, as identified in this research, are: the ability to move out of extreme poverty; having insurance against poverty arising out of unemployment, physical disability, aging, or other forms of financial vulnerabilities; being able to protect

oneself from domestic violence and familial crimes; for Dalits, it is crucial to protect one's self-respect by not exposing oneself to humiliation by the dominant groups; having sustainable livelihood and security of income. Many forms of financial functionings are expressed by respondents, including financial benefits created through the forward improvement in the use of land (say from agricultural to commercial); financial benefits linked to the unobservable development potential of land in the future; wealth effect for the next generations; safety-net for vulnerable members of the family; and being able to protect oneself from social discriminations (against Dalits) in the land market. Ownership of land also grants social and political empowerment and enhances self-identity. These 'functionings' are broadly categorised into five groups - (i) being able to secure basic necessities of life; (ii) financial security; (iii) being able to protect oneself from discrimination, exploitation, violence, and assault, as basic human right; (iv) Being able to establish social associations and harness personal, familial, and societal interests through these associations; (v) being able to maintain and enhance self-identity.

As reported by respondents, these 'functionings' play a vital role in their personal and familial development in various spheres of life - social, political, and economic. A preliminary attempt is taken to explain the value of these 'functionings' by ranking them in the order of importance, depending upon the needs fulfilled by these 'functionings.' Maslow's hierarchy of human needs is used as a reference. However, Maslow's categorisation of needs is too broad and finer stratification of human needs is demanded to understand the value of 'functionings better.' Further work on the crystallisation of the capability approach to compensation is demanded. Also, a detailed inquiry on the role of land in creating valuable 'functionings' for the vulnerable groups, such as women and Dalits, is pending and there is an opportunity for future research in the area.

Findings from this research are a useful guide to designing a fairer mechanism of compensation. Fair compensation, when looked through the lens of 'capability' and 'functionings,' would mean a mechanism through which all valuable 'functionings' for

each affected landowner are satisfactorily reconstructed or replaced (Rao, et al., 2017; Rao, 2018a). In an earlier research Rao (2018a) identifies nine 'fundamental functionings' that are generalisable in the global context. As per Rao (2018a) 'fundamental functionings' set the lower threshold of compensable losses and a fair mechanism for compensation would at least reconstruct the fundamental functionings. This research expands Rao's (2018a) work and identifies the nature of 'fundamental functionings' in the geographical context of India. Further research is demanded towards designing a fairer mechanism of compensation, using the 'capability approach.'

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Annexure 8.A: Respondents' profile

S. No.	Respondent ID ¹	Location of land	Portion of land notified for acquisition	Age of respondent	Education ²	Profession ³	Family size
1	BUMI_1	Bengaluru (urban)	Partial	36 - 60	Post-graduation (finance)	Business (acoustic board)	4
2	BUMI_2	Bengaluru (urban)	Full	36 - 60	Diploma (tertiary education)	Business (industrial)	26
3	BUMC_3	Bengaluru (urban)	Partial	20 - 35	Post-graduation (business administration)	Business (resort owner)	4
4	BUFH_4 (wife); BUMS_4 (husband)	Bengaluru (rural)	Partial	> 60	Post graduation; Graduation (medicine)	House-wife; Pathologist	2
5	BRMA_5	Chinnakurchi	Full	36 - 60	Secondary	Small farmer	8
6	BRMA_6	Chinnakurchi	Partial	> 60	Primary	Small farmer	8
7	BRMA_7	Chinnakurchi	Partial	36 - 60	Primary	Small farmer	4
8	BRMA_8	Chinnakurchi	Partial	> 60	Primary	Small farmer	8
9	BRFA_9	Chinnakurchi	Partial	20 - 35	Primary	Small farmer	4
10	BRMA_10	Chinnakurchi	Partial	> 60	Primary	Small farmer	8
11	BRMA_11	Chinnakurchi	Partial	> 60	Primary	Semi-medium farmer	4
12	BRMA_12	Chinnakurchi	Partial	> 60	Primary	Small farmer	8
13	BRMA_13	Chinnakurchi	Partial	36 - 60	Primary	Small farmer	4
14	BRMA_14	Gonipura	Full	36 - 60	Primary	Small farmer	4
15	BRMT_15	Gonipura	Full	20 - 35	Graduation (B.A.)	Grocery shop + Small farmer	6
16	BRMT_16	Gonipura	Full	20 - 35	Diploma (tertiary education)	Private job + Semi-medium farmer	8
17	BRMA_17	Gonipura	Partial	36 - 60	Secondary	Small farmer (originally landless)	5
18	BRMA_18	Gonipura	Full	36 - 60	Primary	Small farmer	5
19	BRMA_19	Gonipura	Full	36 - 60	Primary	Small farmer	4
20	BRMA_20	Gonipura	Partial	36 - 60	Secondary	Small farmer + security guard	4
21	BRMA_21	Gonipura	Full	> 60	Primary	Small farmer + factory worker	2
22	BRMA_22	Gonipura	Full	36 - 60	Primary	Semi-medium farmer	5
23	BRMA_23	Gonipura	Full	36 - 60	Primary	Semi-medium farmer	8
24	BRMA_24	Gonipura	Full	36 - 60	Primary	Semi-medium farmer + factory worker	2
25	BRMA_25	Gonipura	Full	> 60	Primary	Semi-medium farmer	8
26	BRFA_26	Gonipura	Partial	36 - 60	Primary	Small farmer	4
27	BRMA_27	Gonipura	Full	36 - 60	Primary	Semi-medium farmer	9
28	BRFA_28	Gonipura	Full	20 - 35	Senior secondary	Small farmer	4
29	BRMA_29	Gonipura	Full	36 - 60	Senior secondary	Small farmer	3
30	BRMA_30	Gonipura	Full	36 - 60	Secondary	Small farmer	4
31	BRMA_31	Thippur	Full	36 - 60	Primary	Small farmer	5
32	BRMA_32	Thippur	Full	36 - 60	Primary	Landless labourer	2
33	BRMA_33	Thippur	Full	> 60	Primary	Small farmer	10
34	BRMA_34	Thippur	Full	36 - 60	Primary	Small farmer + labourer	5
35	BRMA_35	Thippur	Full	> 60	Primary	Small farmer	10
36	BRMA_36	Thippur	Full	36 - 60	Primary	Large farmer	13
37	BRMA_37	Thippur	Full	36 - 60	Secondary	Semi-medium farmer	12
38	BRMA_38	Thippur	Full	36 - 60	Primary	Small farmer	5
39	BRMA_39	Thippur	Full	20 - 35	Primary	Small farmer	9
40	BRMA_40 (father); BRMT_40 (son)	Thippur	Full	> 60	Senior secondary; Graduation	Small farmer; Private job	10
41	BRMA_41	Thippur	Full	> 60	Primary	Medium farmer	5
42	BRMA_42	Thippur	Full	> 60	Primary	Small farmer	2
43	BRMA_43	Thippur	Full	36 - 60	Primary	Small farmer	4
44	BRMA_44	Thippur	Full	36 - 60	Primary	Small farmer	5
45	BRMA_45	Thippur	Full	> 60	Senior secondary	Small farmer	2
46	BRMA_46	Thippur	Full	36 - 60	Secondary	Landless labourer	9
47	BRMT_47	Thippur	Full	20 - 35	Graduation (B.Tech)	Small farmer	6

Notes:

- Respondent ID code: B - Bangalore; U/R - Urban/Rural; M/F - Male/Female; A/C/I/S/H/T - Agriculture/Commercial/Industrial/Service sector/House-wife/Transiting agriculturist
- Level of education: Primary education (school up to year VIII); secondary education (year IX and X at school); senior secondary (year XI and XII at school); diploma (tertiary education); graduation; post-graduation
- As per the Agriculture Census 2010, farmers are classified under following groups based on the area of land under operational holding: marginal farmers - less than 1 hectare; small farmers - between 1 to 2 hectares; semi-medium farmers - between 2 to 4 hectares; medium farmers - between 4 to 10 hectares; and large farmers - greater than 10 hectares (Ministry of Agriculture, 2014).

CHAPTER 9. CONTEXTUALISING FUNDAMENTAL FUNCTIONINGS: EVIDENCE OF THE FUNCTIONINGS OF LAND IDENTIFIED BY AFFECTED LANDOWNERS IN SCOTLAND

This research was inspired by the challenges faced by landowners seeking adequate compensation for all their losses following the compulsory acquisition of land by public authorities in Scotland. This research uses Sen's 'capability approach' and argues that the wellbeing contribution of land extends beyond its market value and therefore compensation payable following compulsory acquisition should include these other losses. The aim of this research is to identify the valuable functionings (or usefulness) of land from the perspective of the existing landowners. The functionings which contribute to their wellbeing, can be both financial and non-financial and should be appropriately compensated.

The exercise of the power of compulsory acquisition is a common instrument of land procurement for public projects and is often resisted, by the affected landowners, for a variety of reasons, of which inadequacy of compensation is the most debated. In recent decades, there have been spasmodic attempts at the policy level to harmonise the procedure and derive a fairer compensation mechanism for the loss of land and property rights. The first step towards achieving this bigger objective is to understand the role of land and property in the overall well-being of an individual landowner. In this context, this research identifies and creates a list of valuable 'functionings' of individual landowners who have suffered losses due to compulsory acquisition, servitude and severance under various public projects in Scotland.

Qualitative Content Analysis is applied to analyse in-depth interviews of twelve affected landowners, and nineteen legal case reports prepared by the Lands Tribunal for Scotland. In depth analysis of these primary text materials is performed with the use of NVIVO software and reveals a list of fifteen different functionings of land. Results show that financial functionings are the most frequently discussed at the Lands Tribunal. The

debate on the loss of financial benefits from expected and planned development on land in the near future is the most debated topic by the landowners. Alongside financial functionings, there is good emphasis on the loss of non-financial functionings such as physical and psychological comfort arising out of landownership, stability and location.

Findings from this research can be advanced, in future research, to create a universal list of functionings offered by land and ownership rights that would help in understanding the role of landownership in the well-being of the landowners.

9.1 INTRODUCTION

The importance of land for the welfare of an individual is unequivocal (see for example (FAO, 2002). Attempts to measure welfare in economics, have employed microeconomic techniques as a measuring tool at the economy level. Economists concerned with welfare derive a social welfare function and then determine a ranking of feasible allocation of resources based on the social welfare that they entail. Typically, these functions include measures of economic efficiency and equity. Recent literature has argued that the measure of welfare based on economic efficiency and equity is limited and Sen (1979) argues that welfare measures should include measures of economic freedom. This research applies Amartya Sen's (1979) capability approach to welfare to identify individual specific factors associated with land ownership that contribute to well-being.

Using Sen's "capability approach" to welfare, this research acknowledges the importance of 'land' for landowner's well-being and discusses the valuable functionings that are offered by the land. The objective of this research is to create a comprehensive list of functionings offered by land, in the context of Scotland. In summary, this research explains the relationship between land, ownership and well-being of an individual through the theoretical framework of the "capability approach".

The scope of this research is limited to understanding the functionings of land that have been identified as being valuable to landowners, based in Scotland, but which are often

left uncompensated when land required for a public project is acquired through compulsory purchase. The research question is thus what are the valuable functionings of land that are often ignored and are not compensated under the existing compensation mechanism? Using qualitative content analysis of nineteen relevant case reports from the Lands Tribunal for Scotland⁵⁷, the chapter identifies functionings associated with land in Scotland, with the objective that the findings from this research will contribute in refining the compensation strategies and the process of compulsory acquisition to make it fairer towards the affected landowners.

The chapter is divided into four further sections. Section 9.2 below, reviews the literature on private property and the theoretical principles underpinning the existing compensation model and the challenges to it. The research design is discussed in detail in section 9.3. Section 4 analyses the data and discusses the findings and section 9.5 presents conclusions from the research.

9.2 LITERATURE REVIEW

Since the 19th century, private and public ownership of land has been the most common ownership type prevailing in the land market, with the former characterised by individual ownership of land and the latter state ownership. Other types of land rights, such as native title, tribal rights, community rights to land, and rural collectives are recognised as important, but are uncommon. Private ownership has enhanced personal

⁵⁷ The Lands Tribunal for Scotland, established in 1970, has statutory power to deal with various types of dispute involving land or property (Lands Tribunal for Scotland, 2016). The Lands Tribunal Act 1949 authorises the tribunal and governs various details of its constitution and jurisdiction (Lands Tribunal for Scotland, 2016). The Act describes the Tribunal as a specialised judicial body that shall deal with “questions relating to compensation for the compulsory acquisition of land and other matters...” (Lands Tribunal for Scotland, 2016). The members of the Tribunal comprise of both legal and valuation experts. The cases dealt by the lands tribunal therefore, present a rich discussion on the loss of useful functions of land for which the landowner expects (monetary) compensation.

freedom for those who own the land and has concentrated wealth in the hands of owners. The idea of private ownership of land developed as a response to a sovereign's power in monarchies where the nobility in order to guard their power, pushed for recognition of their land rights (Gilman, 1984). In the words of Gilman (1984) "private property permitted the individual to be a "little king" of his/her own lands, imitating and competing against the claims of the state". This, however, poses problems for the availability of land for the use of public benefits as from time to time privately held land is required for public purposes. It has long been accepted that private rights should give way on occasion to the wider public interest. To avoid public purposes being delayed or frustrated and to ensure that private rights give way when required, governments across the world have been ready to confer powers of compulsion.

The importance of land in Scotland is expressed in the recent report produced by the Land Reform Review Group (2014) in which the Minister for Environment and Climate Change, argued that "The relationship between the land and the people of Scotland is fundamental to the well-being, economic success, environmental sustainability and social justice of Scotland and her communities. The system and structure of land ownership is a defining factor in that relationship: it can facilitate and promote development, but it can also hinder it." (p. 5).

Literature on welfare or well-being associated with land at the macro-level (not individual specific) is abundant and concerns the analysis of the impact of land reforms and land rights on economic performance (see for example Skoufias, 1995; Yao, 2000; Carter and Salgado, 2001, who analysed the impact of distribution of land rights on functioning of land markets). Authors such as Deininger & Jin (2003) and Lerman (2001) analysed the efficiency effects of land reforms in transitional economies. There is, however, a paucity of literature on land and well-being and welfare at the micro-level. The studies which have looked at welfare aspects of land at micro-level have analysed income effects and effects of land allocation due to land reforms and land rights as a measure of welfare (see for example Deininger & Jin, 2003; Brasselle, Gaspart, & Platteau, 2002). These are an important but only partial view of well-being and welfare.

The traditional economic definition of “well-being” was recently reviewed by Nobel Laureate Amartya Sen who identified “well-being” with “capability” and “functionings”. Wells (2016) interprets the meaning of ‘functionings’ and explains that ‘functioning’ is the state of ‘being or doing’ such as *being* well-nourished or *doing* an activity like cycling. ‘Functioning’ should be distinguished from both (i) the resource (say a bicycle or a piece of land) which is in use, and (ii) the utility or happiness resulting from the act of using the resources possessed (Sen, 1985). Therefore ‘functionings’ are different from ‘utility’, where the former delivers rational benefits and the latter could merely be an emotional or mental state. ‘Capability’, on the other hand, is “the set of valuable functionings that a person has effective access to” (Wells, Sen’s Capability Approach, 2016). Sen (1993) writes that “the expression (capability) was picked to represent alternative combinations of things a person is able to do or to be – the various ‘functionings’ he or she can achieve” (Sen, 1993, p. 30).

The rights that ownership of land gives to the owners are central to what uses and functionings are drawn (Land Reform Review Group, 2014). In legal terms, the concept of private ownership of land has evolved as a bundle of rights. These rights include the right to (i) use (or not to use); (ii) exclude others from using; (iii) irreversibly transform; (iv) sell, gift or bequeath; (v) rent or lease; (vi) retain all rights not specifically granted to others; (vii) retain these rights without time limit or review (Gilman, 1984). In the context of Scotland, the rights of ownership for all landowners will allow (legal) access to the same set of functionings. But the ability of an individual to (practically) access these functionings varies depending upon landowners’ subjective characteristics. Sen (1985) uses the example of a bread loaf to explain these differences more clearly. He argues that “the possession of food (bread) gives the owner the access to the properties of the food which can be used to satisfy hunger, to yield nutrition, to give eating pleasure and to provide support for social meetings. However, the characteristics of the goods do not tell us “what the person will be able to do with those properties.” (Sen, 1985, p. 9). By putting emphasis on differences in individualistic capability, Sen argues that each individual shall be treated ‘as an end’, in completeness, and not merely as a module of social welfare (Basu & Kanbur, 2008). In the context of land as a good, each landowner

will have different ability (say physical, fiscal, social, intellectual) to access functionings from the “universal set” of functionings of land. They will choose a few or all from among the accessible set, depending upon their requirements and choices. Increasing social welfare will mean equal marginal increase in the welfare of each individual, as well as widening the set of accessible functionings for each individual, thus increasing their capability.

In the case of compulsory acquisition of land in Scotland, the ownership rights (mentioned earlier) are suddenly withdrawn, but not without the payment of monetary compensation recommended by the law. However, compensation received by the affected landowner is often disputed because of its inadequacy (Rowan-Robinson & Hutchison, 1995) and does not necessarily satisfactorily replace or reconstruct the functionings lost when ownership is relinquished, especially the non-financial functionings, which are explained in detail in section 9.4. Often, dissatisfied landowners enter cumbersome negotiation process that are concluded in the court. In this context, the Land Reform (Scotland) Bill 2016 emphasises that the Scottish legislature on compulsory purchase should be reformed to bring greater social justice to the individuals and businesses affected by compulsory acquisitions (Land Reform Review Group, 2014). Thus, when viewed from the lens of capability, fair compensation may be defined as a mechanism to identify and reconstruct the chosen and valued “functionings” of each affected landowner.

The history of the development of compulsory powers by public authorities has been one of striving to achieve a fair balance between, on the one hand retaining safeguards for the individual whose land is required and on the other, the importance of not delaying schemes which are to serve a much need public purpose, while offering value for money to the tax payer. With reference to the practice of payment of compensation, Stonebuck (1972) finds that such a principle is only “to the extent such can exist without a constitution.” (p. 554). The Scottish Law Commission narrates the history of English legislation on compulsory purchase and finds that land acquisition was happening prior to the nineteenth century, but its recognition in the legislature was demanded in 1830s when massive acquisitions were happening for railway development. Legislature was

dealing with compulsory acquisition laws in a piecemeal format and private bills were passed by the Parliament that specifically dealt with a project. “Much of the legislature was repetitive and the volume of each Bill tended to obscure the real issues” of rail routes and viability (Scottish Law Commission, 2014, p. 47). As a solution to these problems, a separate legislature was proposed in 1845⁵⁸ to combine the provisions that were considered necessary for standardising procedural aspects of the compulsory purchase process. The Lands Clauses Act of 1845 was the first permanent, general statute in England, on the topic of compulsory acquisition and earlier to that, the power of acquisition and the obligation to pay compensation were stated by respective Acts that directed the project for which the taking would occur (Stonebuck, 1972).

It is interesting to note that even though the 1845 Act did not explicitly state the requirement of payment of compensation, it was a common practice in England until the 1950s to pay ten per cent higher than the estimated value of condemned property to account for incidental losses. Epstein (1985) explains that this extra bonus can be justified on two grounds, “first, as a balm for the infringement upon autonomy brought about by any forced exchange, and second, as an effort to correct the systematic underestimation of value in the market value test.” (p. 184). An interesting justification is presented in an article in the Yale Law Journal (1957) that the need for extensive taking emerged in the first half of the nineteenth century when England was undertaking massive railroad developments. This required assembly of huge land stretches and thus acquisition could not be limited to small parcels of undeveloped private land and rather extended to big parcels that were highly developed industrial and commercial areas, thus causing more severe damages to the landowner than ever before (The Yale Law Journal, 1957). Moreover, the land that was getting acquired was for the benefit of

⁵⁸In 1845, the Land Clauses Consolidation (Scotland) Act 1845 and the Railway Clauses Consolidation (Scotland) Act 1845 came into force in relation to Scotland and the Land Clauses Consolidation Act 1845 and the Railway Clauses Consolidation Act 1845 came into force in relation to England and Scotland. (Scottish Law Commission, 2014)

profitmaking railroads and therefore the courts were more sympathetic towards the claimant and were generously paying for incidental losses over and above the payment of the market value (The Yale Law Journal, 1957). A more political justification is presented by Benson (2008) where he finds that until the nineteenth century, voting rights in England were limited to property owners and the parliament was primarily represented by powerful landed aristocracy, the landholding knights and the merchants who owned homes and businesses in the town. These landowners were also the land losers and therefore “the requirement of compensation greater than the assessed value are not surprising” (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008, p. 428).

In general, the payment of compensation is more of a customary obligation rather than a constitutional mandate (Benson, The evolution of eminent domain - A remedy for market failure or an effort to limit government power and government failure, 2008). For example, in the case of *Attorney-General v De Keyser's Royal Hotel Ltd, 1920*, Lord Atkinson observed: “The conclusion [from the review of past practice], as I understand it, is this: that it does not appear that the Crown has ever taken for these purposes the land of the subject without paying for it, and that there is no trace of the Crown having, even in the times of the Stuarts, exercised or asserted the power or right to do so by virtue of the Royal Prerogative.” (Scottish Law Commission, 2014, p. 27). In the ongoing discussions to reform Scottish legislature on compulsory purchase, the Scottish Law Commission (2014) writes that “although a right to compensation can be readily inferred from the 1845 Act, it is not expressly stated. We therefore propose that the right to compensation as a result of compulsory purchase in Scots law should be expressly provided for in the new statute.” (p. 37). The right to compensation is deemed necessary for just treatment towards the loss of property rights of the affected landowner and also, for their ‘welfare’.

The Scottish Law Commission (2014) deliberates over the issues with the existing compensation methods and explains the legacy of legislative ambiguities associated with the assessment of ‘fair’ compensation. The discussion paper scrutinizes the 1845 Act and brings out the problem of non-conclusive expression of assessment of

compensation, though, the inference can be derived from Sections 48 and 61 of the Act, that compensation should include the value of land, injurious affection to other lands of the same landowner and also the damages sustained by the landowner, if any (Scottish Law Commission, 2014). The UK Parliament later adjusted the approach to compensation by setting out six rules in the 1919 Act that are consolidated under Section 12 of the Land Compensation (Scotland) Act 1963, as stated below –

“Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

1. No allowance shall be made on account of the acquisition being compulsory;
2. The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;
3. The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers;
4. Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account;
5. Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbiter is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
6. The provisions of rule (2) shall not affect the assessment of compensation for disturbance⁵⁹ or any other matter not directly based on the value of land: and the following provisions of this Part of this Act shall have effect with respect to the assessment.”

The first rule stated above disallows compensation for non-financial losses and has invited criticism since inception (Scottish Law Commission, 2014). This problem was

⁵⁹ For more details refer to Part III of Land Compensation (Scotland) Act, 1973

partially addressed in the 1973 Act⁶⁰ that advocates supplementary payments for home loss and farm loss (for more details refer to Part III of 1973 Act). In summary, the existing compensation mechanism advocates payment of (i) the land acquired; (ii) consequential losses including injurious affection on other land owned by the same landowner and damages sustained by the owner due to the carrying out of the works; and (iii) 'non-financial' losses (Scottish Law Commission, 2014). Yet the definition of consequential losses and non-financial losses is very narrowly defined in the current legislature and therefore the courts are relying upon case laws that are evolving as a parallel reference to these Acts (ibid).

The existing legislative mechanism does offer limited opportunities of compensation for the loss of future development potential of the subject land by considering future hope value (for more details refer to Robinson & Farquharson-Black, 2009). That said, the 'hope value' does not take full account of all opportunities of development compromised in the taking of land and is rather deterministic in nature (Robinson & Farquharson-Black, 2009). Put simply, its realisation is evidence based and does not account for unforeseen opportunities that a landowner may have at the time of acquisition (ibid). In addition to that, it is difficult to value opportunities in the remoteness of time, for the obvious reasons of identification of future potential and the uncertainty surrounding the success of a planning application in the future.

Thus, the way hope value is realised now, extinguishes the real option aspects of landownership. In real estate, real option theory has been used to value future investment and development opportunities (Howell, et al., 2001). Private property rights encapsulate a real option for the landowner to take decisions on sale or investment at one or more points in the future. Marjit (2010) proposes a theoretical framework for option pricing of land for agrarian landowners in India. Though real option theory may help in valuing financial aspects of losses that are currently remaining

⁶⁰ Land Compensation (Scotland) Act, 1973

uncompensated, it will still leave out other non-financial functionings associated with landownership.

When considering the loss of benefits linked with future development potential, it is important to acknowledge the Pointe Gourde principle (see Section 6 of the Land Compensation (Scotland) Act 1963), which recommends that where the subject land has benefited as a result of the proposed project, an equivalent reduction should be made to the amount of compensation payable to the affected landowner:

“The compensation payable on a claim shall be reduced by an amount equal to any increase in the value of –

- a. the claimant's interest in the land in respect of which compensation the claim is made; and*
- b. any interest in other land contiguous or adjacent to the land ... to which the claimant was entitled in the same capacity on the relevant date, which is attributable to the existence of or the use or prospective use of the public works to which the claim relates.”*

Reducing the benefits caused by the proposed project from the compensation payable to the affected landowners is an additional check on future benefits linked with land holding. This raises further debate on the unequal distribution of positive and negative externalities as a consequence of public projects at the societal level.

In the case of compulsory purchase of land, most governments have been relying on the traditional approach to economic ‘welfare’, where the benefit is equated with money and market value of land is found to be the most appropriate compensation (see Blume, Rubinfeld, & Shapiro, 1984 for details on economic derivations). The income approach to welfare ignores non-income generating contributions of land in the well-being of an individual. Overall, there is a growing realisation towards non-monetary components of ‘welfare’ and one good example is the replacement of Gross Domestic Product by the Human Development Index as an indicator of country’s development (Basu & Kanbur, Arguments for a Better World: Essays in Honor of Amartya Sen: Volume I: Ethics, Welfare, and Measurement, 2008). Taking advantage of the development of economic theory advocated by Sen (1979), that for the first time proposes a non-monetary

approach to 'welfare', this research initiates discussion on redefining the 'value' of land, in terms of its usefulness to the landowner.

9.3 RESEARCH DESIGN

As the Land Tribunal for Scotland is the final arbiter on compulsory purchase compensation claims, decisions from this body are considered the best available evidence of interpretation of the existing legislation. For a claimant, taking a case to the Lands Tribunal is costly in terms of their own legal fees (upwards of £30,000 in 2017) and is not without risk, as vexatious claims run the risk of the claimant having to pay the acquiring authority fees as well as their own. However, the very fact that claimants are willing to take matters to the Tribunal perhaps illustrates the strength of feeling on the veracity of certain heads of claim, a level of uncertainty on the interpretation of the rules, and undoubtedly in many cases the substantial sums of money which are at stake should the judgement find in favour of the claimant.

It is acknowledged that there are weaknesses in using Land Tribunal cases as evidence. For example, the high cost of legal fees may act as a barrier to landowners taking forward claims where they have limited wealth and cannot afford to do so, and it may simply not be economic to pursue small value cases where transaction costs exceed the potential gain. Thus, evidence from the Lands Tribunal cases are potentially bias toward higher value cases or more wealthy claimants, and against more speculative claims, smaller value cases and financially weaker claimants or to simply those who are risk averse. That said, there is also a practical reason for adopting Land Tribunal evidence in that it is very difficult to obtain detailed information on cases that have not gone to the Tribunal, as these remain confidential to the parties involved, whereas the Tribunal judgements are now available online with cases dating back to 1997.

To overcome these challenges, primary investigation with twelve affected landowners was undertaken between February and June 2017. The respondents were identified with the help of their agents who, as experts on compensation valuation, were preparing their report for claims. In-depth interviews were conducted with these respondents

whose land was compulsorily acquired for an ongoing road project in Scotland, called the Aberdeen Western Peripheral Route (AWPR). Open-ended questions were asked from the landowners on the nature of losses associated with land; their dependencies on land; its use at the time of acquisition; their future plans to use or develop the land; positive and negative impacts of the project on their life and livelihood; and similar other open-ended questions around functionings of land. Respondents represented diverse types of landowners including residential property owners, agriculturists, agriculturist businesses, and those whose property had not been acquired but were negatively impacted by the externalities caused due to the road project. Of these, some landowners were members of an organised group of objectors which had been actively involved in the process at all stages.

Thus, in this research, the subjective utility of land to landowners was identified through an analysis of claims presented to the Lands Tribunal of Scotland and primary information revealed by the affected landowners. Qualitative Content Analysis (QCA) was adopted to evaluate the evidence with the use of NVIVO software.

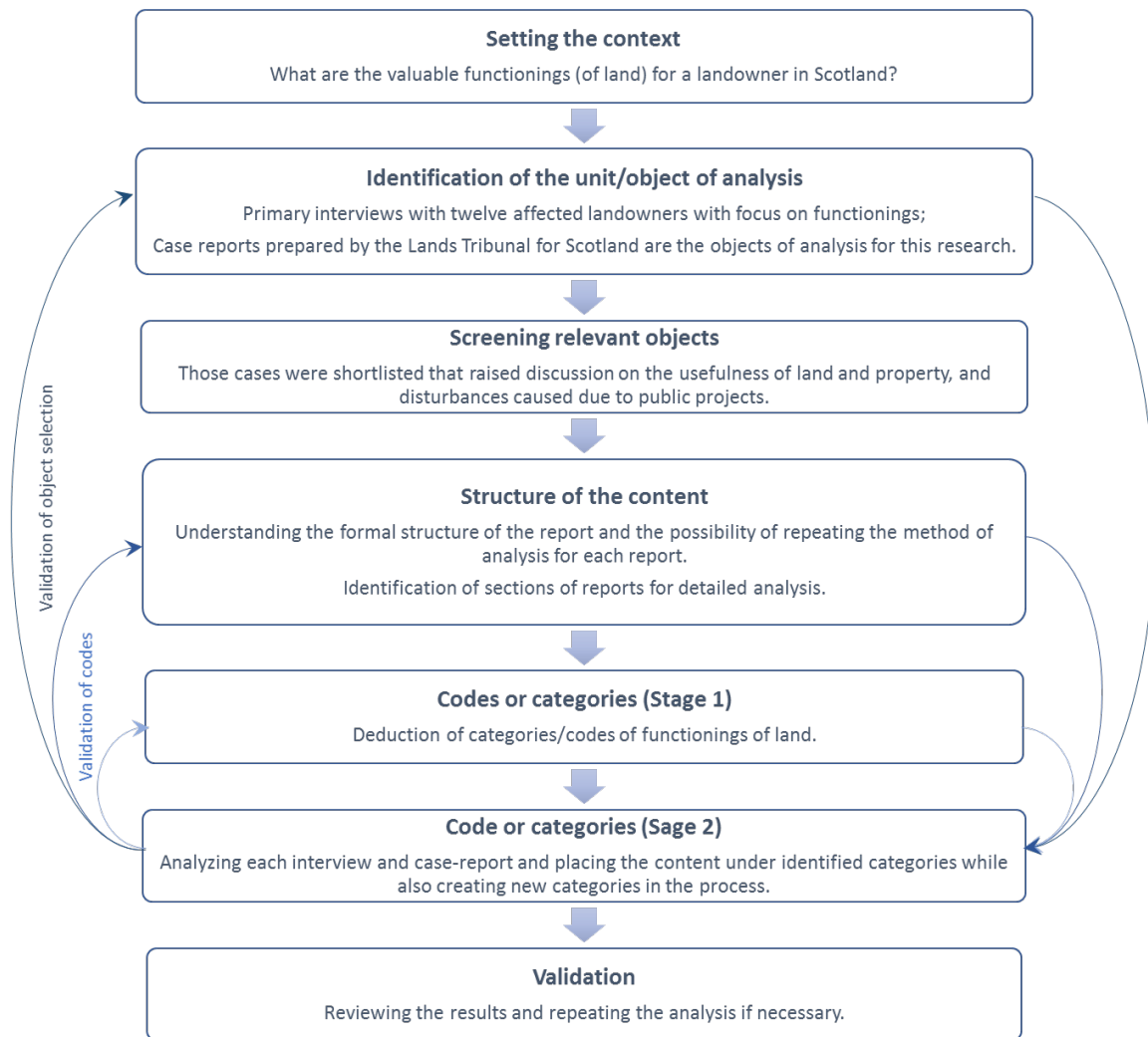
As a scientific tool of research, it is important that QCA is performed in a systematic manner that produces replicable findings. The first step was to formulate the criteria of selection of the object/unit of analysis. Information collected during primary survey was transcribed and analysed to identify functionings of land (discussed in this Chapter), and gaps in the process of compulsory acquisition (discussed in Chapter 4). Regarding analysis of legal case-reports, as at August 2016, there were thirty-eight⁶¹ case reports on disputed compensation available online on the website of the Lands Tribunal for Scotland. In depth reading of all thirty-eight cases was performed and the content was analysed briefly at this first stage of screening. The criteria of selection were the availability of information (or content) on the functionings of land and on this basis

⁶¹ Online records are available from 1997. The latest decision considered in this research was issued on 10 August 2016 while the earliest record available was released on 14 March 1997. Thus, this research covers decisions spread over two decades.

nineteen cases were selected and the remaining nineteen were rejected⁶². Among the selected nineteen cases, the most recent case was decided in 2016, while the earliest case was in 1997, thus offering evidence over the two most recent decades. Detailed content analysis was performed on the selected nineteen cases. The flowchart in Figure 9.1. summarizes the procedure adopted.

Figure 9.1: Step model for content analysis and inductive category development

⁶² Case reports that were not taken into consideration were related to compensation matters other than functionings of land, such as a discussion on whether to reopen a settled case of compensation; or a simple request for granting claims that were not covered previously.



To be able to apply the same method of analysis on each case, it was necessary to ensure that the format of the text documents was the same. Transcripts for primary interviews were prepared in the same format for all respondents. Regarding legal case-reports it was found that the formal structure to this report and all discussions presented before the Tribunal and the opinion/decision of the Tribunal are written for all cases in a similar format. Major sections of the case reports are summarised in Table 9.1:

Table 9.1: Structure of the case report

Section	Coverage
Introduction	Preface to the problem raised by the applicant and issues to be discussed in following sections
Statutory material	All relevant statutory references to the Acts, schedules and paragraphs, oft citing/quoting them directly.

Authorities cited	List of all the authorities and previous cases that are referred at any stage, during the discussions
Procedural background	Describes the sequence of actions, by the public authority and the landowner if important. 'Background' provides information on both the procedural and factual matters.
Factual background	Discusses subject property in detail (date of purchase, use, area details, intended use, the sequence of events post purchase such as development permissions or rejections) and its association with the landowner. This usually states the about the property and its landowner.
Evidence for applicants	Elaborate textual description of the opinion (on the subject matter) of the witnesses and experts employed by the applicant.
Evidence for respondents	Elaborate textual description of the opinion of the witnesses and experts used by the respondents (usually the public authority).
Applicants' submission	Summary of the facts, figures and evidence discussed earlier, as acknowledged by the Land Tribunal. There are commentaries by the Tribunal about its interpretation of the evidence.
Respondents' submission	Summary of the discussions and evidence put forward by the respondents. Also, it contains the Tribunal commentary on the facts and figures presented by the respondents in the section on 'evidence for respondents.
Discussion by the Tribunal	Analysis of all arguments and evidence presented by different parties and puts forward its opinion on each matter respectively. This section is also the preface to the final decision.
Decision	Final decision of the Tribunal is stated explicitly under this section.

Source: Author's adaptation of case-reports of the Lands Tribunal of Scotland.

Although it is important to read and understand each section of the report, the emphasis was on analysing the 'background', 'applicant's submission' and the discussion by the Tribunal. The content was analysed in detail using NVIVO software.

This research used the procedure advocated by Mayring (2000) for inductive category development, presented as a step model in Figure 9.1. The criteria for defining the categories (or codes) are derived from the theoretical background of this research and the research question. The textual material was analysed to tentatively deduce the codes using an iterative process. A list of fifteen functionings were created, which formed the "sub-categories" in NVIVO. These sub-categories have further been classified under four broad headings and are discussed in section 9.4 below.

The focus of this research was on the manifest part of the text. In the analysis of manifest content, the codes or categories were based on existing theory and the codes were

revised as the analysis progressed (Zakaria & Zakaria, 2015). The words and phrases were directly cited from the dataset, which in this research was the statement report prepared by the Tribunal. In analysing the content from the Tribunal, it was assumed that there was no evidence to the contrary, that all parties were equally knowledgeable and capable to state their concern and opinions. This ignores the comparative advantage of power, profile, knowledge, and other similar characteristics of some participants over others. Further possible limitations of using case reports as the source of information are that it may miss discussion on important functionings that are acknowledged as compensable losses as per the current legislature and that it may discuss only those functionings that are uncompensated but are believed to be provable and admissible under the existing legislature. This may leave out some basic functionings from being discussed.

9.4 DATA ANALYSIS AND FINDINGS

The various losses that emerged from the discussions in the case reports, cover a wide range of functionings associated with land and property. Four broad headings (A to D) and fifteen sub-categories of functionings were obtained. Each of these functionings are discussed in detail below.

A. Financial functionings of the landowner

9.4.1 FINANCIAL GAINS FROM EXPECTED AND PLANNED DEVELOPMENT IN THE NEAR FUTURE

The most prevalent discussion in the Lands Tribunal cases was around the potential for development of the subject land in the future. The records show that there was often an expectation to receive financial benefits, direct or indirect, from these developments. This also covers cases where landowners had already initiated the planning or execution of some development in the near future. Examples of this type of losses are the following –

- a. Loss of two additional wind turbines that were planned by the landowner in the case of *Auquhirie Land Company Limited v Scottish Hydro Electric Transmission plc* (2016).
- b. Sterilisation of the land for the establishment of two additional wind turbines, thus diminishing the value of land in the case of *Marjory Gordon, Hugh Gordon and Executors of Hugh Gordon v National Grid Gas plc* (2016).
- c. Loss of development potential of land which was in use as a nursery and was considered developable as a holiday park in the case of *Christies of Scotland Limited (Applicant) v Scottish Ministers (Respondents)* (2015).
- d. Loss of development potential of land for a supermarket in the case of *David Strang Steel and Richard Strang Steel v Scottish Ministers* (2014).
- e. Division of a large, contiguous land parcel into two parts and the loss of agricultural efficiency and intensity and consequential reduction in the value of the remaining land, as seen in the case of *Emslie v Scottish Ministers* (2014).
- f. Loss of development potential for a golf course in the case of *Danzan Trust & The Dundas Trust v Edinburgh City Council* (2007).
- g. In the case of *Julien v City of Edinburgh Council* (2006), the landowner argued for better value of his land. The planning permission for a residential development was obtained but not used, thus demonstrating that the land had potential for residential development.
- h. Sterilisation of land for residential development as a result of a wayleave which was granted for an electricity transmission line in the case of *G S Brown Construction Limited v S P Transmission Limited* (2003).
- i. In the case of *Freshbright Cemeteries Limited v The City of Edinburgh Council* (2001), the landowner (Freshbright Cemeteries Limited) purchased the cemetery land with intentions to carry out reinterment of the cemetery and to redevelop the site into a memorial garden and housing.

This heading also covers the loss of developability of the remaining land due to severance, for example in the case of *David Strang Steel and Richard Strang Steel v Scottish Ministers*, (2014) and *Glenmore v Transco* (2003). The claim was for injurious affection to the remaining land parcels that were being landlocked due to the acquisition of a part of the land holding.

To explain this functioning more clearly it is important to emphasise that the nature of losses in this category are linked with the curtailment of development activities, “expected” and “planned”, on the subject land, the emphasis being that the landowner was already planning the development activity before the Compulsory Purchase Order was issued; and was aware of the type (or nature) of development activity on their land. The landowners could support their claim with formal evidence validating their attempts towards developing the land. In reference to proving the loss of development potential,

the evidence produced by the landowners often included formal planning permission, prior to the CPO, or Certificates of Appropriate Alternative Developments (CAADs), after the CPO.

9.4.2 FUTURE BENEFITS LINKED WITH UNSEEN DEVELOPMENT POTENTIAL OF THE LAND PARCEL

The unseen development potential of a piece of land offers the opportunity to the landowners to benefit from a market phenomenon that is certain to happen in the future, but the nature and extent of the development is unseen. Also, the lack of certainty of timeline of developments may make it look too remote or latent in the present date. A good example is the case of *Young v City of Edinburgh Council* (2001), in which the landowner argued for the unseen development potential of his land and while this was acknowledged by the Lands Tribunal, such was the uncertainty of obtaining the requisite planning permission, this cancelled out any increase in value.

The CAADs explain the probable uses of land in the future but the onus lies on the applicant to initially propose the classes of developments. For example, in the case of *Marjory Gordon, Hugh Gordon and Executors of Hugh Gordon v National Grid Gas plc* (2016); *Christies of Scotland Limited (Applicant) v Scottish Ministers (Respondents)* (2015); *David Strang Steel and Richard Strang Steel v Scottish Ministers* (2014); and *Danzan Trust & The Dundas Trust v Edinburgh City Council* (2007), the landowner applied for CAAD and the certificate mentioned uses which otherwise were unseen by the landowners. It is important to note that the CAAD is not conclusive and the onus still lies on the landowner to prove that the land has the potential for specified classes of development.

9.4.3 BENEFITS FROM EXPECTED IMPROVEMENTS IN THE MARKET CONDITION IN THE NEAR FUTURE

There is often expectation of improvement in demand of certain goods for which the production is dependent upon the availability of land. For example, in the case of *Auquhirie Land Company Limited v Scottish Hydro Electric Transmission plc and Marjory Gordon, Hugh Gordon and Executors of Hugh Gordon v National Grid Gas plc* (2016) it was argued that the demand for renewable energy from wind turbines was likely to

increase in the future. In another case, *Glenmore v Transco* (2003), the landowner expected that the demand for residential units in the area would improve in the future. In the recent case of *Christies of Scotland Limited (Applicant) v Scottish Ministers (Respondents)* (2015), the landowners argued that the demand for recreational property, including caravan parks, was increasing despite the economic recession. The demand for a supermarket in the area was clearly established in the case of *David Strang Steel and Richard Strang Steel v Scottish Ministers*, (2014). In the case of *Danzan Trust & The Dundas Trust v Edinburgh City Council* (2007), the landowner was hopeful to benefit from improved demand for golf courses in the future.

9.4.4 MARKET VALUE OF THE PROPERTY AND CONSEQUENTIAL REDUCTION DUE TO PUBLIC WORKS

Land is a physical asset that normally appreciates in value over time through inflation or changes in real demand. This advantage is at times lost or hindered as a consequence of public works. The following are some reasons for the reduction in the property value, that were observed during case discussions –

- a. “sterilisation” of a portion of land that was otherwise considered useful for installation of wind turbines (*Marjory Gordon, Hugh Gordon and Executors of Hugh Gordon v National Grid Gas plc*, 2016);
- b. “material detriment” was established based on the extent of loss of amenity (of a portion of the garden) (*Aberdeen City Council v Glen Morrison and another*, 2014)
- c. sterilisation of land for residential development due to the grant of wayleave for electricity transmission lines (*G S Brown Construction Limited v S P Transmission Limited*, 2003);
- d. blight of land for the development of housing units (*Glenmore v Transco*, 2003);
- e. physical damages to the existing industrial unit (*Fitzpatrick v The Coal Authority*, 2001);
- f. physical factors (for example noise) caused by the use of the new by-pass, depreciated the value of residential property (*Dobbie v Fife Council*, 1998);

9.4.5 INCOME (EXISTING AND EXPECTED) FROM LAND AND ITS PRODUCE

This functioning is derived from cases where the landowner was using the subject property for income generation or was expecting to modify or intensify its use for income generation. This includes cases of acquisition of properties that were being used for the business of a nursery and garden centre (*Christies of Scotland Limited (Applicant)*

v Scottish Ministers (Respondents), 2015); agricultural income generation (Emslie v Scottish Ministers, 2014); industrial activities (McEwan v East Dunbartonshire Council , 2004); brickworks and mineral extraction (SBC Properties Limited v Midlothian Council , 2002); cemetery (Freshbright Cemeteries Limited v The City of Edinburgh Council, 2001); and joinery business operation (Bussell and Others v City of Edinburgh Council, 1998).

9.4.6 AGRICULTURAL EFFICIENCY THAT RESULTS FROM OWNERSHIP OF LARGE LAND HOLDINGS

In the case of agricultural use of land, the cost (including money, time and ease) of using machinery and tools is justified for large and contiguous landholdings. This cost increases if the land parcels are not contiguous or the size of the land is small. There is an interesting discussion in Emslie v Scottish Ministers (2014) on the reduction in the efficiency of an agricultural unit after it was split, by a road, into two smaller units. This functioning is especially valuable for the agriculture community.

B. Personal comfort offered to the landowner, both physical and psychological

9.4.7 PERSONAL COMFORT FROM THE PHYSICAL ENVIRONMENT IN AND AROUND THE PROPERTY

Owner occupiers are usually appreciative of the physical environment in and around their property and this forms an important factor in the enjoyment of their property. Changes in the physical elements of the property may cause inconvenience to the occupiers. For example, in the case of Dobbie v Fife Council (1998), as a consequence of a new road, the owner occupiers found their personal comfort was compromised due to (i) increase in the noise level from the traffic on the new by-pass road; (ii) the loss the views of the open fields; and (iii) the loss of their hobby of pigeon keeping. The following are some other examples of changes in the physical environment that negatively impacted the well-being of the owner occupier: reduction in the size of the garden and increase in traffic noise on the front road (Aberdeen City Council v Glen Morrison and another, 2014); physical damage caused to the industrial unit during execution of public works (McEwan v East Dunbartonshire Council , 2004); physical damages caused to a dwelling unit as a consequence of mining subsidence (Fitzpatrick v The Coal Authority,

2001); increase in traffic noise level (Robertson, King, McKinlay & Croll v Perth & Kinross District Council, 2004).

9.4.8 CERTAINTY OF STABLE BUSINESS OPERATIONS AT A PARTICULAR LOCATION

The physical location of the property is at times crucial for a stable business operation. In the case of compulsory acquisition of commercial properties, the businesses are forced to relocate. Alongside monetary losses to the business, there is often the loss of certainty of stabilising the business operations given that the advantages of the earlier location, including old clientele, are usually lost after the relocation, as argued in the case of Bussell and Others v City of Edinburgh Council (1998).

In addition to that, there is a lack of certainty of finding a suitable place for re-establishment of the business that will fit into the budget as well as be an equally good replacement of the earlier location. A good example is the case of Callum Stewart Macfarlane v North Lanarkshire Council (2011), in which the owner argued over the inadequacy of compensation to find a suitable replacement of garage lockups for rental or ownership purposes, in a location where he could have possibly continued with his business.

9.4.9 EXPERIENCE AND EXPERTISE IN A PARTICULAR TRADE

Acquisition of business often compels change of trade, in response to the change of location and even otherwise. This is a serious loss of experience and expertise in the initial trade which may disturb the financial well-being of the affected person as discussed in the case of Bussell and Others v City of Edinburgh Council, (1998).

C. Rights of the landowner

9.4.10 MARKET POWER TO NEGOTIATE IN THE OPEN MARKET

The landowner often enjoys the privilege of negotiating the deal in the open market. However, in the case of compulsory acquisition of property the opportunity to negotiate is limited by the predicated outcome of forced sale. The loss of market power to

negotiate is especially mentioned by landowners who were under discussion with different buyers and were hopeful to benefit from the existing competition among prospective buyers. This includes the case of *Young v City of Edinburgh Council* (2001). A good example is presented in the case of *David Strang Steel and Richard Strang Steel v Scottish Ministers*, (2014) where the landowner had offers from Tesco, ASDA, Morrisons and Sainsbury.

9.4.11 OPPORTUNITY TO MAKE STRATEGIC INVESTMENT IN THE LAND MARKET, WITH THE HOPE OF RECEIVING FINANCIAL GAINS IN THE FUTURE

This is an interesting function which has the potential of being highly valuable to landowners who purchased land for investment purposes, as in the case of *Glenmore v Transco* (2003) and *Freshbright Cemeteries Limited v The City of Edinburgh Council* (2001). The loss of land often causes a reduction in the expected investment return. The functioning of participating in land market speculation is often difficult to prove to the Tribunal, unless there is a provable loss of the development potential.

9.4.12 OPPORTUNITY TO CHOOSE A CONVENIENT TIME FOR SALE, DEPENDING UPON AN INDIVIDUAL'S (PHYSICAL) AVAILABILITY TO BE ABLE TO SATISFACTORILY MANAGE THE (FORCED) SALE AND RELATED ISSUES

Sale of land and property is a major decision for a landowner and the process, which involves activities such as market research, documentation and negotiation, requires active involvement of the landowner or the decision maker. In the process of compulsory purchase, it is often assumed that the landowner will make themselves available to attend to the process. However, in the case of *Julien v City of Edinburgh Council* (2006), it was noted that the landowner could not make himself available at various occasions and it was difficult for him to remotely manage the process of sale and negotiation, to his satisfaction. Even though the process of compulsory purchase allows for slight adjustments in the time schedule, to suit the availability of the landowner, the time frame for final decision making is pre-decided. The process of compulsory purchase is therefore different from the open market sale, in the sense that the latter gives the

landowner the opportunity to prepare for sale and to initiate the process at a convenient time when they are available to be actively involved.

In the context of the case of *Julien v City of Edinburgh Council* (2006), the applicant expressed dissatisfaction over the value of land that was concluded in negotiation with the security holder of the property. He was “contending that the settlement effected with Neilson’s did not effectively exhaust the value of the subjects.” The applicant (Julien) was often negotiating with the Tribunal to borrow time to be able to put his application “in shape”. He also expressed concern with the compulsory purchase procedure, the details of which are not mentioned in the case report.

9.4.13 CHOICE OF USE TO WHICH LAND (PORTION) CAN BE PUT

In the case of *Marjory Gordon, Hugh Gordon and Executors of Hugh Gordon v National Grid Gas plc* (2016), servitude rights for the gas pipeline were imposed on a portion of the land. This constrained the choices of the landowner to use the land for certain type of developments which can co-exist with the gas pipeline. These functionings were derived in the context of this case and are considered generalisable for servitude acquisitions.

D. Securities for the future

9.4.14 DEPENDENCY ON LAND AS A FALL-BACK OPTION AND FINANCIAL SECURITY

The discussions in the case of *Emslie v Scottish Ministers* (2014), brought forward the landowner’s dependency on her land as a fall-back option for income security in the eventuality of losing her job. This functioning of “future security” is of special value to landowners for whom the primary source of livelihood is dependent on land, for example those operating farms.

9.4.15 OPPORTUNITY OF SELF-EMPLOYMENT ON LAND

Land is a reliable asset that can be used for self-employment in labour intensive activities like farming. The security of employment is guaranteed for agriculturists as in the case

of *Emslie v Scottish Ministers* (2014). The security of self-employment is considered highly valuable for such landowners.

From the above case studies, the following results, in Table 9.2, have been derived with the help of NVIVO software. The percentage in the table shows the total number of times these functionings were discussed as a percentage of the total number of discussions on functionings. For example, there were 129 total references (or statements) found together from the nineteen cases and 56%, (72 discussions), were on financial functionings of land. It is important to note that there were multiple phrases within the same case study that discussed one particular functioning. The percentage does not reflect the “value” or importance of these functionings to an individual landowner. Rather, it reflects the frequency of discussions on each functioning. A probable explanation for the reasons why those functionings were discussed more, could be that these were admissible in the existing legislative statute, for a claim for compensation. However, this is only a probable explanation and would require further investigation into the legislature, to get a definitive explanation. Due to the current scope of this research, which is limited to the identification of functionings, this area of research is left for future studies.

Table 9.2: Relative recognition of functionings discussed by the Lands Tribunal of Scotland

A- Financial functionings of the landowner	56%
1- Planned developments	22%
2- Unseen potential	9%
3- Market condition	5%
4- Market value	11%
5- Income generation	9%
6- Agricultural efficiency	1%
B- Personal comfort offered to the landowner, both physical and psychological	19%
7- Personal comfort	12%
8- Stability and location	5%
9- Experience of trade	2%
C- Rights of the landowner	20%
10- Negotiation opportunity	9%
11- Strategic investment	3%
12- Convenience and availability	8%
13 - Land use choices	1%

D- Securities for the future	5%
14- Fall back option	2%
15- Self-employment	2%
Total (A+B+C+D) = 100% = 129 references	

Results from NVIVO reveal that the loss of financial functionings, particularly from expected developments in the near future, were frequently argued by the landowners. Non-financial losses are considered equally important by landowners and discussions on the loss of calm surroundings, green views, gardening and related hobbies were not uncommon. Other functionings mentioned by landowners include locational advantages to the business and the stability of the operation due to experience and expertise in a particular trade. Loss of right to negotiate in the open market was also mentioned in a few cases where landowners have had offers from prospective buyers other than the acquiring authority. Another important aspect of future securities associated with land ownership was brought forward in these case discussions.

The nature of functionings discussed in these cases varied in nature from individualistic loss of a hobby to more generalisable loss of development potential of land. In a few cases landowners expressed dissatisfaction over specific losses that may otherwise be less important for other prospective users. In reference to generalisability, it may be reasonable to assume that wherever the Tribunal admitted the functioning as a compensable loss, it could be regarded as an important functioning for other landowners as well, thus being generalisable. It is important to mention that the scope of this research is limited to the identification of functionings and refrains from commenting on the Tribunal's judgement. That said, the findings from this research may encourage future research towards assessment of the value of these functionings for different landowners. This may be useful for the derivation of a fairer mechanism of compensation for land.

9.5 CONCLUSION

The existing approach to compensation which is based on the identification of the market value of land as the level of compensation, has produced sub-optimal outcomes from a welfare perspective. Land has far greater value for its owners than simply an income generating asset, and this has been reflected in disputes that have followed compulsory acquisition of land in Scotland. In many cases the monetary compensation paid in lieu of the acquired land has not been enough to compensate for the loss of land to its owners.

This research investigated the functionings that land creates for its owners, which leads to their well-being. Sen in his capability approach argued that there are a few basic functionings that are considered important for the well-being of each individual, and these are independent of an individual's own perception which at times is biased against self, due to circumstances and limitation of knowledge. On similar lines of argument, it may be contended that there are some basic functionings associated with landownership that are considered valuable for all landowners, for example the decision and timing to sell or to decline a sale. In addition to that, there will certainly be more specific and individualistic functionings that may not necessarily be generalisable. The objective of this research has been to identify as many functionings as possible with the intention that this will pave way for future research on the well-being associated with landownership. Given that the Scottish Law Commission is reviewing the existing legislature concerning compulsory acquisition and compensation, it is pertinent that the scope of review should include non-financial losses if a satisfactory solution for affected landowners is to be derived. Within the current political situation, where there is willingness to address issues concerning compulsory acquisition, this research should help in carrying forward the dialogue on losses to the affected landowners. Formal recognition of these losses in the legislature would help in forming a holistic solution.

In compensation cases related to compulsory land acquisition, it is paramount that the value of land is understood in reference to the ability of the landowner to convert this resource into a valuable functioning. This opens opportunities to develop a framework

for the assessment of subjective losses of affected landowners with respect to the loss of their functionings related to landownership, when their land is acquired compulsorily. This may prove helpful in devising a fairer compensation mechanism that could reduce the tension between affected landowners and the acquiring authorities.

Further analysis of the case discussions revealed that landowners often faced challenges in providing evidence to support their claim of the loss of their many valuable functionings. Provability of non-financial functionings is even more cumbersome. The loss of such functionings may require more attention from policy makers who are working towards deriving a fairer compensation mechanism.

Further research on the well-being associated with land ownership is strongly encouraged as it is an under-researched area of compulsory acquisition. Social scientists and economists may dig further into understanding the (economic) value of each of these functionings with particular attention on non-financial losses of landowners. This research has identified that there is a requirement for the Scottish Government to investigate ways in which the loss of functionings can be minimised and any unavoidable loss properly compensated.

When viewed from the social lens, more specific inquiry, in the context of demography, for example, age, gender, and class, may help in understanding the role of land ownership among the 'weaker' segments of the society. Findings in this field of research may inspire policy makers to respond more efficiently towards deriving social equality for all the members of society.

In summary, the improvement of well-being of each individual member of the society should be the end objective of all development. The distribution of fruits of development may not always be equal and some may derive more benefit, depending upon their ability (e.g. financial, physical, intellectual) to convert resources to their usefulness. There is a need to make the process of development more inclusive and equitable in a way that the welfare of all the members of the society is maximised.

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CHAPTER 10. ESTIMATING THE VALUE OF FUNCTIONINGS FOR LANDOWNERS WHOSE LANDS ARE COMPULSORILY ACQUIRED: EVIDENCE FROM BENGALURU, INDIA

Public agencies often rely on their power of compulsory acquisition of privately-owned land when it comes to procuring land for large infrastructure projects. Over the years, the process of compulsory acquisition has evolved to compensate the affected landowners better, to the extent of paying additional monetary compensation or solatium. For example, according to the most recent improvements made to the Indian legislature on compulsory acquisition of land, the acquiring agency should make an additional payment of two to four times the original market value of land to the affected landowner. This is the polity and law's indirect acknowledgment that fair compensation extends beyond the market value of land, although there is less clarity on the theoretical and empirical justification for the same. There is an existing body of literature, such as "Functionings of Land" by Rao (2018), that has applied Sen's capability theory to explain the value of land as a cumulative value of usefulness (or functionings) for its owner, of which the monetary value is only one functioning. While there are many non-monetary functions of land, which deserve compensation, this research limits the scope of the discussion to measurable monetary losses associated with land.

Advancing the discussion on adequate monetary compensation for the affected landowners, this research argues that compensation extends beyond the market value of land to include other forms of financial losses that compulsory acquisition imposes, such as (i) the loss of financial benefits accruing from improvement in land use in the future (or the "hope value" of land), which ranged between 39% and 527% in the case of the Bangalore-Mysore Infrastructure Corridor (BMIC) project; and (ii) the reduction in land value due to acquisition notification, which amounted to approximately 31% in the case of the BMIC project in India. In addition to these objective losses, which are common across all landowners, there are person-specific characteristics that influence the market value of land. For example, research has found that the landowners' lower caste

negatively affected the value of land around the BMIC project. This reduction could be a joint outcome of the legal protection of ownership rights of Scheduled Caste/Scheduled Tribes (which curtails purchase by non-SC/STs) and the lack of bargaining power due to the lower social status of SC/ST landowners. The above findings suggest that a fair compensation model extends beyond the market value of land to take account of the comprehensive value of land to its owner, and it is possible to derive this as a joint function of personal and land characteristics.

10.1 INTRODUCTION

The procurement of land for large infrastructure and development projects through market mechanisms involves huge transaction and information costs, which make the whole process expensive and time consuming. In India, the lack of accessible land records further extenuates the situation, as it is difficult for market participants to ascertain the ownership of land, complicating the negotiation. The consequence has been that the promoters of such projects have eschewed market negotiations for land procurement in favour of the use of compulsory acquisition powers of the state. These powers of the state, legally backed by the provision of enabling law, allow the government and its agencies to acquire a private interest in land (land rights of individuals) for public purposes.

The affected private landowners, however, strongly resist the process of compulsory acquisition. As Rao (2018a, 2018b, 2019) discussed, these landowners bear the loss of many functionings associated with land for which the present mechanisms of compensation (or resettlement) are unable to compensate. Aggrieved landowners, who often bear losses exceeding the compensation that they receive (Ghatak et al. 2013; Grover 2014), seek opportunities for negotiation, giving rise to legal disputes between the landowners and the acquirers. There is ample empirical evidence from many parts of the world to suggest that the majority of legal disputes for compensation conclude in favour of the landowner, and an upward improvement in compensation is commonly observable (Newell, Chan, and Goodridge 2011; Singh 2012; Wahi et al. 2017). The landowners lose a significant amount of money and time in negotiating for their losses

in the court given the arbitrary nature of many essential components of compensation, for example the market value determined under the no-scheme scenario; the hope value (or the value of land for the highest and best use in the near future); severance; injurious affection; disturbances; and blight, for which the legal debate in the court determines the final value (refer to Sams 2016, 2017; Rao 2018a for details of court cases in Australia and India). While it is important to give the opportunity to the landowner to access the judicial system and have a fair chance to negotiate, there is growing realisation that there are losses other than the original market value of land that also deserve compensation (refer to Wahi et al. 2017 for legal disputes on compensation in India).

Laws across countries legislate compensation on principles of “just compensation,” “fair compensation,” and “equity or equivalence” (Olanrele et al. 2017). However, an oversimplified interpretation of “just” and “fair” compensation equates compensation to the market value of land and other tangible losses (Olanrele et al. 2017). For example, the components of compensation in the UK, Denmark, the US, and New Zealand, though their descriptions are different, broadly include the market value of land and improvements, severance, disturbance, and injurious affection (refer to Olanrele et al. 2017 for details of the components of compensation across different countries). At times, the landowners receive an additional amount or solatium as compensation for the compulsory nature of acquisition. For instance, in India, the old legislature recommended the payment of an additional 30% solatium (under Section 23(2), Land Acquisition Act of 1894), and the new act has further revised the solatium upward to up to 200% of the market value of land (refer to the first schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013). The new law cumulates many losses in the solatium, such as severance, injurious affection, disturbance, and so on, hence the upward shift. Even though these headings cover a good range of financial losses, many remain uncompensated, as the next paragraphs discuss.

For a comprehensive understanding of the losses associated with the compulsory acquisition of land, Rao (2018a) used Sen’s “capability theory” to explain the value of

land to its owner. The concept of “functionings” lies at the heart of Sen’s “capability theory,” which argues against equating individuals’ well-being with income and resources and instead proposes equality of “capability.” He defined “capability” as the set of functionings that are accessible to an individual and “functionings” as the states of wellness and doings that add to his or her well-being. In other words, functionings are the usefulness derived from resources while capability is the set of functionings that are accessible to a person. Enhancing well-being would therefore mean strengthening the “capability” of a person or improving his or her access to a wider set of functionings that are valuable to a person. In the context of compulsory acquisition of land, the loss of land compromises a wide range of functionings of landowners. Through a series of studies involving a survey of affected landowners and analysis of secondary data, Rao (2018a, 2018b, 2019) identified a set of 27 fundamental functionings that are generally valuable to landowners and deserve compensation. Rao, Tiwari, and Hutchison (2017) argued that a fair compensation mechanism should satisfactorily replace or reconstruct all the fundamental functionings of land for each affected landowner. This paper contributes to the wider debate on fair compensation and focuses on two crucial financial functionings of land, as Rao (2018b) identified, which are:

1. Being able to generate financial benefits linked with the future development potential of land: Earlier studies on urban land markets suggested that continuous growth in the demand for urban land, coupled with its regulated supply, has led to land value appreciation over time (Cheshire and Hibler 2017). Landowners are therefore optimistic about the advancement of their land’s development potential and the consequential improvement in its value. This research refers to this as the “hope value” of land. Referring to the formal definition of “hope value,” which the Lands Tribunal for Scotland used, Rao (2018a) explained that “hope value” is the estimated improvement in the value of land due to its potential for development in the future.
2. Being able to use the property as a financial asset at the time of need: Sometimes there is a time gap between the actual acquisition of land and its notification for acquisition, as occurred in the case of the BMIC project. Landowners may find it challenging to sell or mortgage land during this time, after the state has earmarked their land for acquisition. The reduction in property value due to the notification of the property for acquisition for a public purpose is termed

“blight.”⁶³ Blight is the buyer’s response to the risk of receiving inadequate compensation payment at a later date (post-acquisition); time and costs involved in the settlement of compensation negotiations; restrictions on improving the property and associated financial and personal losses; uncertainty of the time duration for which the property will be under notification; and so on. Blight may pose serious financial challenges to the landowners and reduce the financial security arising from landownership, as the landowners that the BMIC project affected reported (refer to Rao 2019 for more details of blight and other functionings of land that landowners that the BMIC project affected identified).

While feeding into the bigger objective of designing a fairer compensation mechanism, this research estimates the economic value of two important financial functionings of land that remain uncompensated under contemporary methods of compensation,⁶⁴ that is, hope value and blight, as discussed above. The specific questions that the research asks are: (i) What has been the impact of the improvement of land use on its value? (ii) What has been the impact of land acquisition notice on the value of land? (iii) Are the effects on different social groups different? This research finds answers to the above questions in the case of the Bangalore–Mysore Infrastructure Corridor (BMIC) project, which is a typical example of a public–private partnership (PPP) road infrastructure project in India. The findings suggest that there is a significant positive impact of improvement of land use on land values. However, landowners whose land the project acquires compulsorily do not receive any share of the project-generated benefits, unlike other landowners in the region. The results indicate that there is “blight” or a negative effect of a compulsory acquisition notice on the value of the property. This adds to the financial hardships of those landowners who need to sell or mortgage property post-notification. In addition, the negative impact is stronger for marginalized

⁶³ The Scottish Government defined “blight” as the reduction in property value because the state has earmarked it for a public purpose, such as a new road (Scottish Government 2011). If owners find it challenging to sell their property because of the notification, then they may serve a blight notice to the acquiring authority and force the authority to buy their interest at its value before blight affected it (Scottish Government 2011). Unlike the Scottish Government, the Indian Government does not compensate for blight.

⁶⁴ Even though some countries, like Scotland, allow negotiation over “hope value” and “blight,” these are not explicit components of compensation and the onus lies on the landowner to prove his or her claim. Arbitration over these losses is expensive and discourages landowners from undertaking the negotiation. This research is a useful guide to applying the hedonic approach to the identification of economic value of some of these (obvious) losses that deserve compensation.

segments (belonging to the scheduled castes and scheduled tribes), thus worsening the situation.

The structure of this paper aims to advance the discussion on “fair” compensation in two parts. The first part discusses the theoretical framework of Sen’s “capability approach” and its application to the complete range of losses associated with the compulsory acquisition of land. Sen’s economic theory allows us to include both financial and non-financial functions of land in the set of economically rational losses that deserve compensation. It is understandable that full compensation for all these losses, particularly non-financial losses, may be hard to achieve and is beyond the scope of the present research. However, there is an urgent need to examine those losses that are financial in nature and yet remain uncompensated. These uncompensated financial losses are the focus area of this research.

The second part of this paper is a natural extension of the first part and proposes a statistical solution for estimating the value of two important financial functions of land that landowners lose and that do not qualify for compensation in the contemporary approach to compensation in India. First is the loss of financial benefits arising due to an improvement in the use of land or its potential for development over time, which the study defines as the “hope value” of land. The hope value may be non-deterministic at the present time and yet landowners expect an improvement in value in the future. The second financial loss arises due to depreciation in the land value, or “blight,” due to the notification for compulsory acquisition. Given that the process of compulsory acquisition is often time consuming, the period for which land is under notification but not acquired may be long and uncertain. This is especially disadvantageous for those landowners who require their land for raising formal finance, say through sale or mortgage. This research estimates the depreciation in land value or “blight” due to acquisition notification and argues for its compensation.

Regarding the empirical estimations, this research takes its inspiration from the hedonic theory of land, which section 10.4 describes. Sen (1987) explains the connection between capability, commodities, and their characteristics, and sections 10.2 and 10.3

discuss it briefly. These discussions further clarify the definition of functionings and capabilities and form the foundation for later discussions on the estimation of the value of functionings using the hedonic model. The structure of the rest of the paper is as follows. Section 10.5 presents a brief overview of the BMIC project and its relevance to this research. Section 10.6 discusses the data sets that this research uses and elaborates on the characteristics of villages that have undergone acquisition in comparison with those that are in the project planning zone but have not undergone acquisition. Section 10.7 discusses the results of hedonic estimation. Lastly, section 10.8 concludes the above discussions and suggests the future direction for works in this area.

10.2 RELATIONSHIP BETWEEN COMMODITIES AND CAPABILITIES

This section explains the relationship between commodities, characteristics, and utility, which forms the basis for hedonic theory, as section 10.4 discusses later. More important discussions follow and explain the difference between utility and capability, using Sen (1987) as a key reference. Most discussions use the same notations as Sen (1987).

x_i = the vector of commodities possessed by person i

$c(.)$ = the function converting a commodity vector into a vector of characteristics of those commodities

$f_i(.)$ = a “utilisation function” of person i reflecting one pattern of use of commodities that i can make (in generating a functioning vector out of a characteristic vector of the commodities possessed).

However, “the conversion of commodity characteristics into personal achievements of functionings depends on a variety of factors—personal and social” (Sen 1987, 17).

F_i = the full set of utilisation functions for person i to choose from

$h_i(.)$ = the happiness function of person i related to the functionings achieved by i

Using the above notation, Sen (1987) explained functioning $f_i(.)$ as a utility-generating function of commodities and their characteristics. If person i chooses the utilisation function $f_i(.)$, then, with i 's commodity vector x_i , we can write the achieved or chosen functions as:

$$b_i = f_i(c(x_i))$$

b_i may be interpreted as the person's being, for example being nourished, mobile, and so on. We can write the happiness that would then enjoy from the functioning vector b_i as:

$$u_i = h_i(f_i(c(x_i)))$$

Sen (1987) argued that function h_i is a scalar-valued function and tells us "how happy the person is with the functioning vector b_i and it does not tell us how good that way of living is" (8). Through his "capability" theory, Sen (1987) argued that happiness is not a plausible criterion for the goodness of life and certainly not the only criterion. Thus, the exercise of measuring happiness is not the same as the exercise of measuring the value of life. Regarding the valuation of the quality of life and i 's states of being b_i , Sen (1987) asserted that the valuation function to estimate the value of the vector of functionings b_i is:

$$v_i = v_i(f_i(c(x_i)))$$

The discussions above focus on a single utilisation function $f_i(.)$ from a set of functions $F(.)$, where $F_i(.)$ is the set of feasible utilisation functions given i 's personal features and command over commodities. The complete set of vectors of functionings feasible for person i with commodity vector x_i is the set $Q_i(x_i)$:

$$Q_i(x_i) = [b_i | b_i = f_i(c(x_i)), \text{ for some } f_i(.) \in F_i \text{ and for some } x_i \in X_i], \text{ where } X_i \text{ is the set of commodities.}$$

Following Sen's (1987) theory, $Q_i(x_i)$ represents "capabilities" or the freedom that a person has in terms of various alternative bundles of feasible functionings given his or her personal features F_i (the conversion function of characteristics into functionings) and his or her command over commodities X_i (entitlements). Then, the set V_i gives the value of well-being that a person can achieve:

$$V_i = [v_i | v_i = f_i(b_i) \text{ for some } b_i \in Q_i]$$

The well-being of a person is then an evaluation of b_i (beings) or an index of the person's functionings. Sen (1987) explained that the evaluation exercise will be similar to ranking the set of b_i , in which a scalar value is attached to each b_i to represent "how good is that set of functionings—that particular achievement of doings and beings" (8). While Sen (1987) acknowledged the need for valuing vectors of functionings, his theory is silent on what determines this value. The valuation exercise is further made difficult because, according to Sen (1987), people do not always choose the highest value of v_i in V_i , because maximising one's well-being may not be the only motivation for the choice of functionings. There could be other "deontological" reasons for people's choice of functionings, for instance their obligations toward others. A simple interpretation of this non-maximising behaviour of individuals in the context of land would probably mean that landowners do not aim to maximize their welfare derivable from land. Sen (1987) justified this non-maximisation behaviour based on a landowner's concern regarding another individual's welfare. Thus, non-maximisation behaviour might result in a higher level of joint well-being for the landowner and others and a lower level of personal well-being for the landowner. This research avoids the complication of joint well-being and limits the scope to the personal well-being of the landowner. For simplicity, we assume strict individualistic behaviour of the landowner, who would be motivated to maximize his or her personal well-being.

While research has recognized capability theory as one of the most satisfying and comprehensive approaches to well-being, it is methodologically demanding and thus has received less empirical application so far (Chiappero-Martinetti et al. 2015). Continuous methodological developments are happening in the area, and an avid reader may refer to Chiappero-Martinetti et al. (2015) for an elaborate discussion on the operationalisation of the capability approach. The UNDP has successfully applied capability theory in the development of the Human Development Index⁶⁵ (HDI), and

⁶⁵ Technical notes on calculating the human development indices are available at http://hdr.undp.org/sites/default/files/hdr2018_technical_notes.pdf.

many economists, such as Anand et al. (2009), have used this theory to study a wide range of developmental issues. In this research, we use hedonic theory to study the implicit value of functionings of land, which add to the well-being of the owner and are therefore crucial from the compensation point of view in cases in which public projects compulsorily acquire private land. We limit the scope of this research to identifying the value of two crucial functionings of land, which are hope value and blight, as section 10.1 discussed earlier.

In the light of the above discussions on how converting commodity characteristics into useful functions can derive capability, the next section explains the theoretical framework of hedonic theory and its application in estimating the value of land-based functionings.

10.3 WHY IS LAND MORE VALUABLE THAN ITS MARKET VALUE?

Section 10.2 above explained how people associate value with commodities for the functionings that commodities offer (Sen 1987). Taking the discussion forward, this section explains, within the capability theory framework, why some landowners are reluctant to sell land and/or are dissatisfied with receiving the market value of land as compensation for the compulsory acquisition of land.

For an easier understanding, we assume a simple case in which land is the only commodity that a person possesses and all the functionings come from the land alone. The level of well-being of person i would be the cumulative value of the functionings derived from the land. As discussed earlier, v_i is the function to estimate the value of the vector of functionings of land:

$$v_i = v_i(f_i(c(\text{land})))$$

Where:

c is a function that converts land, as a commodity, into a vector of characteristics. In addition, c is independent of the personal characteristics of the landowner, which means that each individual will associate the same level of characteristics with a land

parcel. In the words of Rosen (1974), characteristics are objectively measurable, which means that all buyers and sellers would read the same level of characteristics that each good embodies and their personal characteristics would not affect their reading.

$f_i(.)$ is the utilisation function that converts land characteristics into functions by using the personal characteristics of the owner i . Thus, $f_i(.)$ will vary for individuals with different personal characteristics. As mentioned earlier, $f_i(.)$ is a single selection from the set of feasible utilisation functions $F(.)$ for the given personal features of person i .

The notation below explains a situation in which the owner's level of well-being associated with land is greater than or equal to what she/he can achieve from selling the land, that is:

$$v_i(f_i(c(\text{land}))) \geq v_i(f_i(c(\text{monetary value})))$$

In this case, the landowner prefers to continue owning the land and does not exchange it for money or does not sell it. This is probably the case for all those landowners who are not in the market. This also explains why landowners are dissatisfied when the government (or its agencies) compulsorily acquires their land in exchange for money. To explain this simply, many affected landowners are dissatisfied with receiving the market value of land as compensation, because they find it challenging to reconstruct the same level of well-being from money as from their land.

Investigating the explanation for why some landowners value land ownership more than its monetary equivalent further, it is because many functionings derived from land are valuable to the landowner alone, given his/her personal and social circumstances, and may not have the same value for everyone else. These may be termed "subjectively valuable functionings" for the landowner, say f_{is} . For example, a Dalit⁶⁶ landowner may value land for the financial security, like any other landowner, but additionally for the

⁶⁶ A person belonging to a scheduled caste and scheduled tribe, as Articles 341 and 342 of the Indian constitution list, which people consider to be the lowest caste in the Indian social hierarchy (Deshpande 2011).

consequential social independence or the freedom to break away from a society that non-Dalit exploiters dominate (Deshpande 2011). All landowners would value financial security equally or it would be objectively valuable f_{i_o} , while a Dalit landowner would probably consider social independence to be subjectively valuable. Another simpler example of a subjectively valuable functioning could be the emotional well-being associated with the possession of an ancestral property that has been in the family for many years or generations. The original owner attaches emotional well-being to this land, which is otherwise not observable by others. Thus, it is possible to convert objectively valuable characteristics into both objective and subjective functionings⁶⁷, and the value of land to its owner is the cumulative value of all these functionings. A landowner is reluctant to sell land when the cumulative value of these functionings exceeds the monetary equivalent of land, that is:

$$v_i(f_{i_s}(c(\text{land}))) + v_i(f_{i_o}(c(\text{land}))) > v_i(f_i(c(\text{monetary value})))$$

A rational assumption here is that the subjective functionings of land are non-substitutable with money and other commodities. If the value of subjective functionings is too large, the landowner would prefer to hold onto land in perpetuity and would choose to sell only when he/she either has made alternative arrangements for the subjective functionings or is prepared to give these away and the monetary value that the market offers for land either exceeds or matches the value of the objective functionings, that is:

$$\text{Condition 1 for wilful sale: } v_i(f_{i_s}(c(\text{land}))) = 0$$

⁶⁷ As mentioned earlier in section 3.6, subjective functionings are those which contribute to the wellbeing of the owner and may not be valuable to others. For example, the value of ancestral property is specific to the owners and is therefore subjective in nature. On the other hand, an objective functioning is valuable to others, outside the owner, and thus would be demanded and traded in the market and contribute to the price of land (an objective measure of value of land).

$$\text{Condition 2 for wilful sale: } v_i(f_{i_o}(c \text{ (land)})) \leq v_i(f_i(c \text{ (monetary value)}))$$

The first condition means that landowners prepare over time and make alternative arrangements for their subjective functionings or willingly part with them. Regarding objective functionings, a landowner would sell land for a (monetary) value that allows him/her to regenerate the same or a greater level of functionings as the land. Thus, the monetary value of land equates to the value of objective functionings, while the landowner willingly surrenders subjective functionings. This is a typical case of wilful sale. On the contrary, if land undergoes compulsory acquisition, the landowner is often neither prepared nor willing to part with subjectively valuable functionings, and the payment of the market value of land is merely compensation for objectively valuable functionings.

It is important to mention here that, when estimating the monetary equivalent of land, a landowner tries to maximize his/her profit and takes account of the most valuable set of functionings derivable from the land, which may not necessarily match his/her own set of functionings. As discussed earlier, the maximisation of value (of personal well-being) may not be the only motivation for a landowner when choosing his/her set of functionings $f_i(\cdot)$, but, when estimating the value of land for transaction purposes, the landowner takes account of the highest and best possible uses of each characteristic of the land and thus the highest achievable level of well-being. A landowner decides to sell when the value offered by the market matches or exceeds his/her estimated value of the best set of functionings:

$$v_{max} \leq p(c)$$

where v_{max} is the value of maximum achievable well-being from using land with characteristics c and $p(c)$ is the price of land in the market.

It is important to note that the price function $p(c)$ is independent of the personal characteristics of the original owner i and the market decides it according to the land characteristics c . Price $p(c)$ is an indicator of the value of highest level of well-being v_{max} derivable from land with characteristics c . To put it another way, v_{max} is the value

of maximum level of well-being achievable from land with characteristics c assuming that the owner-user, decided through market competition, would have the personal and social characteristics that allow the efficient conversion of the land's characteristics into the optimal set of functionings $f_{max}(\cdot) \in F_i$. Later, in section 10.7, we discuss further the influence of landowners' personal characteristics or caste on the monetary value of land.

From the above discussions, we conclude that the transaction value of land in the market $p(c)$ is a measurable indicator of the highest-valued set of functionings achievable from land, which may not necessarily be the chosen set of functionings of the original landowner. In addition, according to the hedonic hypothesis, the price of land that a market transaction reveals reflects the implicit price of each characteristic of land when put to its best use. A further discussion on the implicit price of land's characteristics and the impact of personal characteristics on this price follows in section 10.4.

At this stage, it is important to clarify that this research applies hedonic theory in the traditional way to estimate the implicit price of each characteristic of land. Capability theory explains how these characteristics generate functionings, and research has acknowledged that it is empirically challenging to estimate the value of a functioning itself, because: firstly, each functioning is an outcome of a combination of personal and land characteristics for which the functional form is unknown; secondly, personal characteristics vary at the individual level, thus leading to the generation of differential "levels" of functioning for each individual, even though the set of commodity characteristics remains the same. For example, having livelihood security would be a crucial functioning for an owner and comes from the utilisation of many characteristics of land, such as its area, productivity, and so on. As a functioning, livelihood security associated with a land parcel would be different for, say, an agriculturist and an industrialist, and it is difficult to measure the "level" of security and the "value" attached to it objectively. However, it is still possible to measure the characteristics of land, that is, its area and productivity. Hedonic theory makes it possible to identify the empirical relationship between the well-being associated with land (for which the monetary

transaction value is a measure) and each of its characteristics. In addition, knowing the stages of transformation of a commodity (or land) into characteristics and functionings, which eventually create well-being of different levels, helps in building a comprehensive definition of the “value” of land. At this stage, we explain the aim of this research again, which is to estimate the implicit value of the future development potential of land and blight, which are both important characteristics of land that contribute to the financial well-being of the owner and therefore deserve compensation in the case of compulsory acquisition of land. In addition, this research studies the impact of landowners’ caste on the transaction value of their land.

10.4 HEDONIC THEORY AND LAND VALUES

Hedonic theory is applicable in a willing sale scenario in which a landowner enters the market and the transaction value of land with characteristics c reveals the monetary measure of the highest-valued set of functionings $f_{max}(\cdot)$.

In his seminal paper, Rosen (1974) defined hedonic prices as the implicit prices of attributes that are “revealed to economic agents from observed prices of differentiated products and the specific ‘amount’ of characteristics associated with them” (34). The hedonic hypothesis states that people value commodities for their utility-bearing attributes or characteristics (Rosen 1974). In reference to “capability theory,” it is possible to reinterpret the hedonic hypothesis to mean that commodities derive value from functioning-bearing characteristics. We re-emphasize that the hedonic model estimates the value of characteristics of land, although the interpretation of value is theoretically different from the traditional utility theory and instead adopts Sen’s (1987) capability theory. Even though the two theories differ in their interpretations of the market value of land as meaning utility and capability, respectively, these theoretical differences do not affect the empirical application of hedonic theory. We may draw theoretically different conclusions when interpreting the value attached to each characteristic of land and its impact on the personal well-being of the owner.

Advancing the discussion on hedonic theory, we describe a land parcel as a bundle of n objectively measurable characteristics. On a plane of several dimensions on which

buyers and sellers locate, the vector of coordinates $c = (c_1, c_2, \dots, c_n)$ represents any location, where c_n measures the amount of the n^{th} characteristic of the land parcel (Rosen 1974). Their perceptions of the amount of characteristics embodied in each land parcel are identical, although they may attach different values v_i to alternative packages of characteristics (Rosen 1974). When the amount of the characteristic that the seller offers equals the amount that the buyer choosing to locate their demands, then the land transaction takes place and reveals the price of land and the implicit price of the characteristic.

$$p(c) = p(c_1, c_2, \dots, c_n)$$

Each land parcel's market transaction reveals the price function p relating prices and characteristics. The price function is the buyer's (or seller's) equivalent of hedonic price regressions, obtained as an outcome of comparing the prices of land with different characteristics. For example, the market reveals the price for land parcel $p_i(c_1, c_2^*, \dots, c_n^*)$ and $p_j(c_2^*, \dots, c_n^*)$, and this information reveals the implicit price of characteristic c_1 .

Rosen (1974) clarified that both buyers and sellers base their locational and quantity decisions on maximisation behaviour. According to the traditional utilitarian theory, maximisation behaviour of the buyer would mean maximising personal utility u subject to a non-linear budget constraint.⁶⁸ In reference to "capability theory," the maximisation behaviour of the buyer and seller would mean that they estimate the value v_i of any characteristics c_n for the most valuable set of functionings achievable from using characteristic c_n , which may or may not match their personal set of functionings. Section 10.3 discussed this earlier. For simplicity of mathematical notations, we restrict our discussion to the traditional utilitarian argument of utility maximisation and budget constraint, assuming that the hedonic argument for utility u is equally applicable to the value of functionings v_i . We dedicate the next few sections to explaining how

⁶⁸ For more details of general conditions under a non-linear constraint, refer to Intriligator (1971).

a tangential intersection of the bid and offer function for the buyer and the seller, respectively, determines prices $p(c)$. Rosen (1974) described the offer function of the seller at length, and we discuss it here briefly.

Let y be the income function of a person. Then, $y = p(z) + \theta(c)$, where $p(z)$ is the price of other commodities with characteristics z and $\theta(c)$ is the expenditure that a person (or buyer) would be willing to make for land characteristics c . The bid function $\theta(c; u, y)$ is a family of indifference surfaces⁶⁹ of alternative combinations of characteristics possible with a given utility and income. It is the amount that a buyer is willing to pay for a set of characteristics with a fixed budget and utility, while $p(c)$ is the minimum price that he/she must pay in the market. Therefore, the buyer maximizes his/her utility, $u = u(z, c)$, when $\theta(c^*; u^*, y) = p(c^*)$ and $\theta_{c_n}(c^*; u^*, y) = p_{c_n}(c^*)$, where c^* and u^* are optimum quantities.

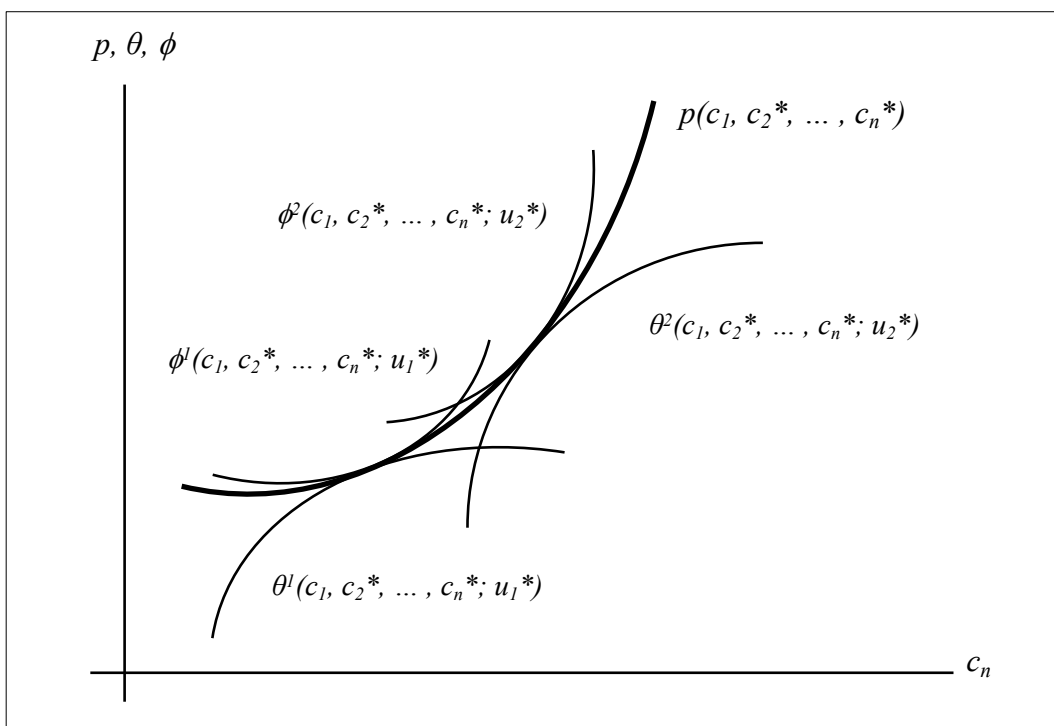
Let $\phi(c; \pi, \beta)$ be the function of the offer price that the seller is willing to accept for an alternative set of land characteristics c , at a given profit level π and with factor prices β , while $p(c)$ is the maximum price that he/she can achieve in the market. The maximisation of the seller's profit is equivalent to the maximisation of the offer price. Put simply, profit maximisation occurs when the offer price equals the market price, $\phi(c^*; \pi^*, \beta) = p(c^*)$ and $\phi_{c_n}(c^*; \pi^*, \beta) = p_{c_n}(c^*)$, where c^* and π^* are optimum quantities.

At equilibrium, the bid function of the buyer $\theta(c; u, y)$ matches perfectly the offer function of the seller $\phi(c; \pi, \beta)$ and the locus of the points of tangential intersection of the two is the envelope of prices $p(c)$. Figure 10.1 represents this graphically, where θ^i and ϕ^i represent the bid function and offer function of the i^{th} buyer and seller and the points connecting the tangential intersection θ^i and ϕ^i is the implicit price function $p_{c_n}(\cdot)$ for characteristic c_n . Stated differently, the gradient of the market

⁶⁹ Refer to Alonso (1962) for a further explanation of indifference surfaces in urban economics.

clearing implicit price function $p(\cdot)$ for each characteristic gives the common gradient of the two functions at the point of tangential coincidence.

Figure 10.1: Joint envelop of the bid price of the buyers and the offer price of the sellers at equilibrium



10.4.1 IMPACT OF PERSONAL CHARACTERISTICS ON TRANSACTION VALUE AND DISTORTION OF THE EQUILIBRIUM

As discussed earlier, the market value is a measurable indicator of the highest level of well-being v_{max} that a landowner can achieve from using land. The underlying assumption here is that the owner-user would be fully capable of converting the land characteristics into the highest-valued set of functionings $f_{max}(\cdot)$. However, given that the level of well-being derivable from land is a combination of personal and land characteristics, if the personal characteristics of the landowner are any less than those of the most efficient user, then the value of functionings of the owner may not match the market-determined value of the land. Personal characteristics also include landowners' negotiation power, which, in turn, may depend on their social status, education level, and so on. For example, a "Dalit" landowner, who does not enjoy an equal social status to others in the society, may not be able to demand the same value

of land in the market as a non-Dalit owner (empirical discussions follow in section 10.7). Harding, Knight, and Sirmans (2003) and Harding, Rosenthal, and Sirmans (2003) made a similar argument in their earlier studies, in which they found that women have less bargaining power than men in the American housing market (Harding, Rosenthal, and Sirmans 2003).

Regarding the impact of bargaining power on the overall price of the house $p(c)$ and on the implicit prices of each characteristic $p_{c_n}(c_n)$, Harding, Knight, and Sirmans (2003) confirmed the earlier findings, which is that the best model of bargaining power is as a parallel shift in the hedonic function and that the impact is much weaker on the implicit prices. In the light of these earlier findings, this research discusses the impact of landowners' caste on the transaction value of land, and further research on its impact on each characteristic is pending.

Bargaining implies the distortion of market equilibrium, which means that either the buyer or the seller can influence the transaction price and shift it to his/her advantage. This is contrary to the assumption of an ideal competitive market, in which there are numerous buyers and sellers with equal negotiation power, and no one can influence the price or charge any negotiation premium. The transaction price $p(c)$ after bargaining would be $p(c) \frac{N_S}{N_B}$, where N_B and N_S is the bargaining power of the buyer and the seller, respectively, and takes values between zero and one. At equilibrium, the bargaining power of the buyer and that of the seller are equal, $N_B = N_S$, and the bid price of the buyer, the offer price of the seller, and the price that the market determines coincide, that is:

$$\theta(c^*; u^*, y) = \phi(c^*; \pi^*, \beta), \text{ and}$$

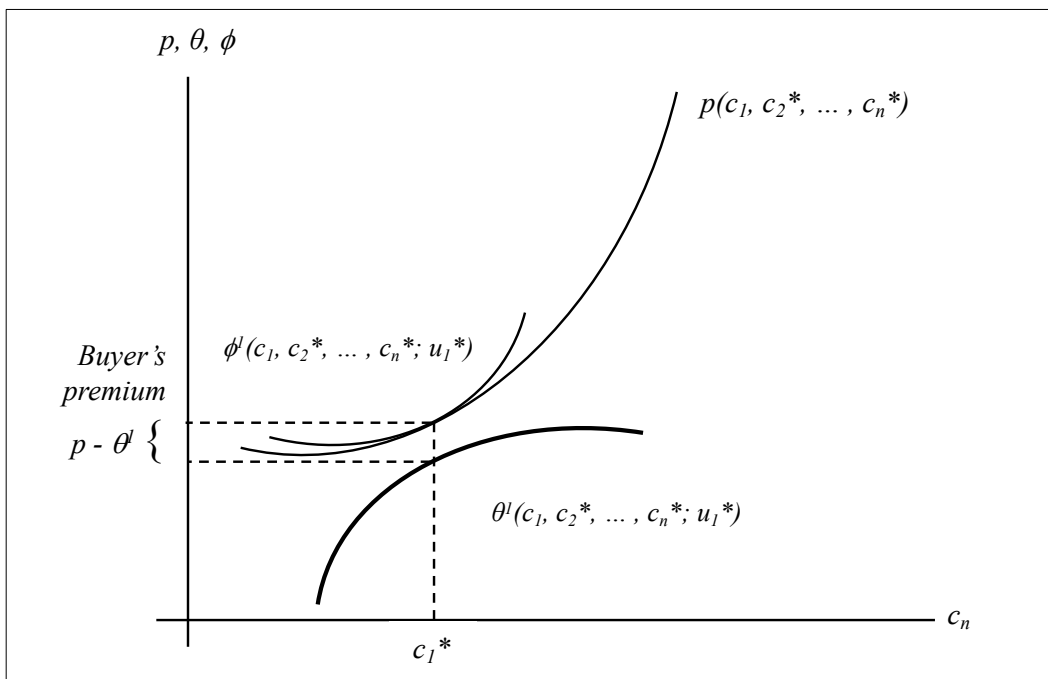
$$p(c^*) \frac{N_S}{N_B} = p(c^*)$$

Case 1: When the negotiation power of the buyer is greater than that of the seller ($N_B > N_S$), then $\frac{N_S}{N_B} < 1$ and the bid price is lower than the observed market price $p(c)$.

$$\theta(c^*; u^*, y) = p(c^*) \frac{N_S}{N_B} \text{ and this is } < p(c^*)$$

The buyer would receive the negotiation premium $= p(c^*) (1 - \frac{N_S}{N_B})$, and the transaction would happen at a lower price than the observed market price. The seller would either withdraw from the sale or sell at a lower price than the observed market price. In the extreme scenario, the negotiation power of the buyer may be much greater than that of the seller, $N_B \gg N_S$; then, $\frac{N_S}{N_B} \rightarrow 0$ and $\theta(c) \rightarrow 0$. That is, if the buyer has infinite bargaining power, then he/she will not want to pay any price to the seller.

Figure 10.2: Buyer's premium: The negotiation power of the buyer is greater than that of the seller and transactions happen at the (bid) price, which is lower than the observed market price



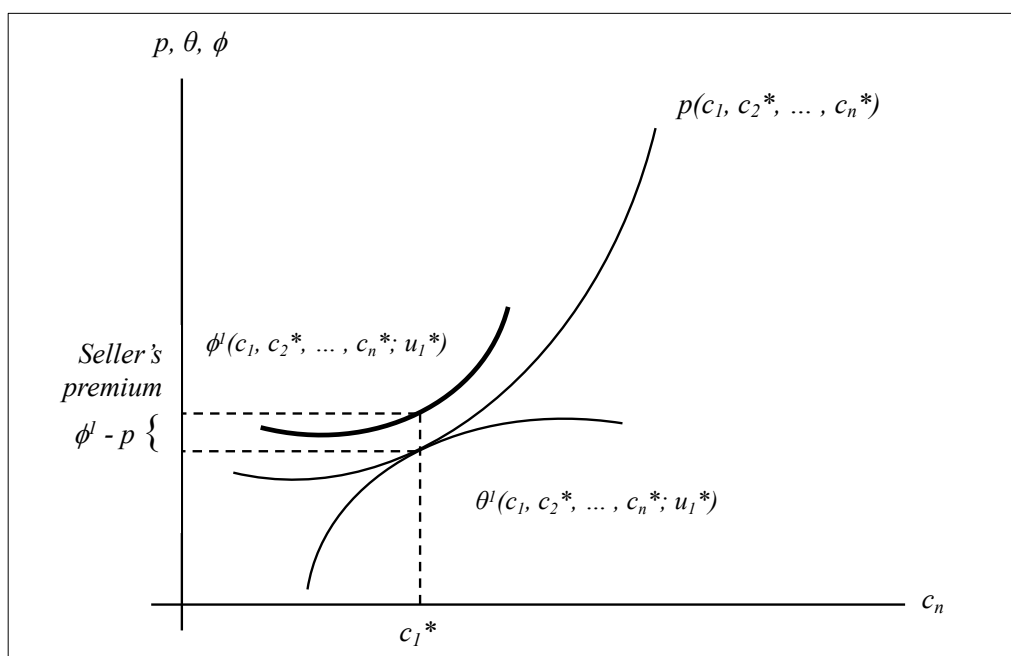
For example, in the case of a public agency's compulsory acquisition of land, the negotiation power of the acquirer/buyer is greater than that of the landowner, given that the outcome is predetermined in favour of the acquirer/buyer. Therefore, the compensation that the acquirer offers to the landowner, which should ideally match the market value, may actually be lower to favour the acquirer/buyer. Consequently, landowners may receive inadequate compensation. Unfair compensation may stimulate

the resistance of landowners to the compulsory acquisition process and force them to seek the opportunity for a fair negotiation in the court of law.

Case 2: When the negotiation power of the seller is higher than that of the buyer ($N_S > N_B$), then $\frac{N_S}{N_B} > 1$ and the offer price is greater than the observed market price $p(c)$.

The seller would receive the negotiation premium $= p(c^*)\left(\frac{N_S}{N_B} - 1\right)$, and the transaction would happen at a higher price than the observed market price. The buyer would either not enter into buying or would buy at a higher price than the observed market price. In the extreme scenario, the negotiation power of the seller may be much greater than that of the buyer, $N_S \gg N_B$; then, $\frac{N_S}{N_B} \rightarrow \infty$ and $\phi(c) \rightarrow \infty$. That is, if the seller has infinite bargaining power, then he/she will charge a very high premium or hold out the property.

Figure 10.3: Seller's premium: The negotiation power of the seller is greater than that of the buyer and transactions happen at the (offer) price, which is higher than the observed market price



Harding, Rosenthal, and Sirmans (2003b) used an additive term for bargaining power, B , in the original hedonic price function to estimate the effect on price, that is:

$p(c) + B$, where:

$$B = b^{sell}D^{sell} + b^{buy}D^{buy} + e$$

D is the vector of both demographic and non-demographic characteristics of the buyer and the seller; b is the vector of coefficients that reflect the effect of D on the bargaining power; and e captures any idiosyncratic differences in the bargaining power of the seller and the buyer.

Given that the nature of the relationship of personal characteristics with property characteristics and its value is unknown, a sophisticated model would use an interactive term for bargaining power, $p(c) \frac{N_S}{N_B}$, alongside an additive term. More discussions on the functional form of the hedonic function appear in the next section.

10.4.2 CHOICE OF FUNCTIONAL FORM FOR THE HEDONIC PRICE FUNCTION

The hedonic slopes of the land price function are the implicit prices of land attributes, which are instruments for both objective and subjective functionings, as Section 10.2 discussed earlier. Since we do not have any prior notions about the functional form of hedonic functions, we start by discussing the most general form that incorporates all the other functional forms as special cases, that is, the Box–Cox functional form, as the literature has proposed (Halvorsen and Pollakowski 1981; Chattopadhyay 1999):

$$P^{(\theta)} = \beta_0 + \sum_{i=1}^m \beta_i c_i^{(\lambda)} + \frac{1}{2} \sum_{i=1}^m \sum_{j=1}^m \gamma_{ij} c_i^{(\lambda)} c_j^{(\lambda)}$$

where P is the price; β s are the market-determined parameters; c_i are the attributes or characteristics of the land and may also include the personal characteristics of the buyer and the seller; $\gamma_{ij} = \gamma_{ji}$; and $P^{(\theta)}$ and $c_i^{(\lambda)}$ are Box–Cox transformations:

$$P^{(\theta)} = \frac{P^{(\theta)} - 1}{\theta}, \text{ when } \theta \neq 0$$

$$= \ln P \text{ when } \theta = 0$$

and

$$c_i^{(\lambda)} = \frac{c_i^{(\lambda)} - 1}{\lambda}, \text{ when } \lambda \neq 0$$

$$= \ln c \text{ when } \lambda = 0$$

The Box–Cox function allowed us to estimate the complex functional relationship between the personal and property characteristics and the property value. We estimated the following functional forms and found the log-log relationship to be the most explanatory:

1. $\theta = 1, \lambda = 1, \gamma_{ij} = 0$; *linear*
2. $\theta = 0, \lambda = 1, \gamma_{ij} = 0$; *semi-log*
3. $\theta = 0, \lambda = 0, \gamma_{ij} = 0$; *log-log*
4. $\gamma_{ij} = 0$; *Box-Cox ~ linear*
5. $(\theta, \lambda, \gamma_{ij})$ *unrestricted; Box-Cox ~ quadratic*

In the next section, we provide more details of the case of the Bangalore–Mysore Infrastructure Corridor (BMIC) project. Background knowledge of the BMIC project is necessary to allow the reader to develop a better understanding of the data and variables in section 10.6.

10.5 BANGALORE-MYSORE INFRASTRUCTURE CORRIDOR (BMIC) PROJECT

The State Government of Karnataka conceived the initial ideas about the Bangalore–Mysore Infrastructure Corridor (BMIC) three decades ago, in 1988, when it felt the need to provide an expressway between two major cities—Bengaluru and Mysuru (formerly known as Bangalore and Mysore). After a sequence of events between 1988 and 1995, the state government decided to build the expressway through public–private partnership, which was a newly emerging format in India. In February 1995, the Governor of Massachusetts State (US) visited India and, as an outcome of his meeting with the Chief Minister of Karnataka, H. D. Deve Gowda, a private consortium formed by two US-based companies (VHB and SAB) and one Indian company (Kalyani Group) and the Public Works Department (Government of Karnataka, GoK), signed a

memorandum of understanding (High Court of Karnataka 1998). The BMIC project had two main objectives: (i) to develop an expressway connecting two major cities in the state of Karnataka—Bangalore and Mysore; and (ii) to develop growth centres (townships) along this expressway and facilitate spatial distribution of the burgeoning population growth in Bengaluru and Mysore (BMICAPA 2017). The financial model of the project was to leverage from the land value appreciation post-project (Raghuram 2009). From its inception in 1995, the project generated controversies over the acquisition of land, which caused significant delays. However, the project has overcome many legal controversies since 1995 and has been progressing steadily.

The land requirement for the project is 23,846 acres (KPWD 1998). Table 10.1 presents the distribution of land requirements by administrative divisions (called Taluk⁷⁰). By 2004, the Karnataka Industrial Areas Development Board (KIADB) had notified all land for compulsory acquisition under the Karnataka Industrial Areas Development (KIAD) Act of 1966. It successfully acquired the land for the first phase of the project, and this allowed the construction of a peripheral road around Bengaluru city and a short stretch (12 km) of the expressway, which it opened to the public in June 2006. At this stage of the project, the plan was to develop two townships, but the landowners strongly resisted the acquisition of their land for townships, because they viewed townships as private projects (for more details on the private gains arising from the BMIC project, refer to Raj and Angadi 2018).

Table 10.1: Taluka-wise land requirements for the BMIC project, 1998

Administrative division (Taluk)	Area (acres)
Bangalore North	855
Bangalore South	5,089
Ramnagaram	8,170
Channapatna	3,572
Maddur	481
Mandya	667

⁷⁰ Taluk is an area of land with a city or town that serves as its administrative centre, with possible additional towns and usually a number of villages.

Srirangapatnam	4,839
Mysore	173
Total	23,846

Source: KPWD (1998)

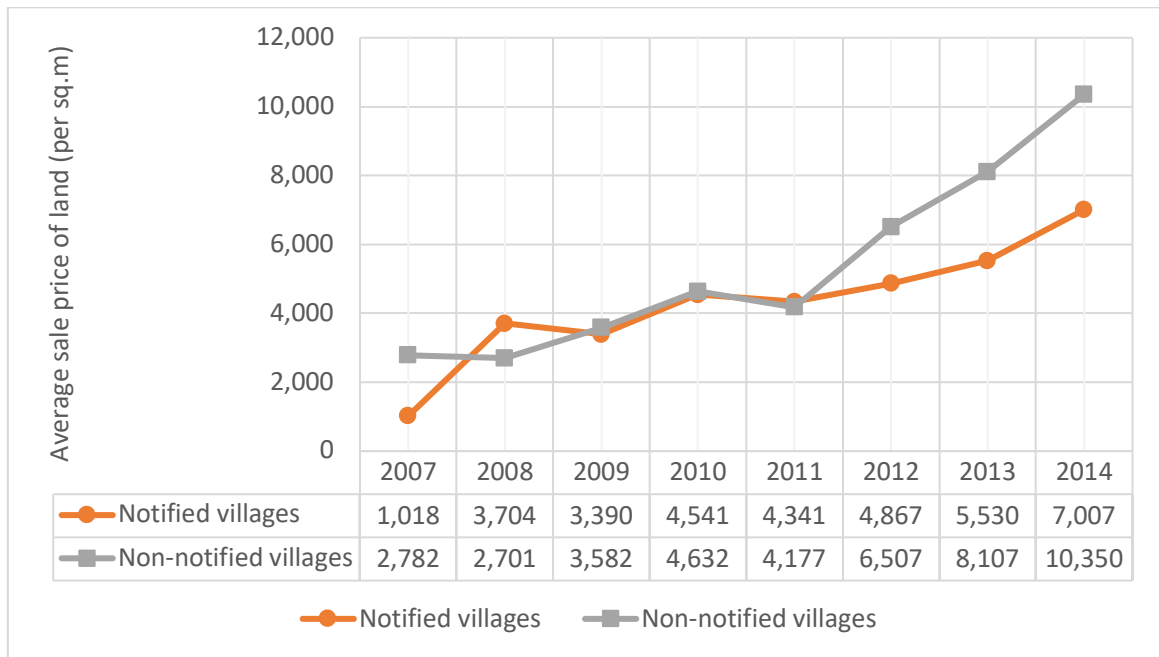
The status of landowners to date is that they have received notification of land acquisition but the KIADB has not yet acquired it. The original owners continue to use their land with the restriction of improving their land. To explain the procedure in more detail, under Section 28(1) of the KIAD Act, 1966, the State Government issues a preliminary notice for acquisition and the land transfers to it, free from all encumbrances, only after the publication of the final declaration for notification under Section 28(4). The state pays compensation only after taking possession of the land. The act does not specify any timeline for these processes, and often the time gap between preliminary notification and actual acquisition is uncertain, as in the case of the BMIC project. According to a report by the Comptroller and Auditor General of India (2017), in 2016–17, approximately 28,720 acres of land received preliminary notification from the KIADB, of which 63% has been pending acquisition for the past five years. After preliminary notification for acquisition of land, the original landowners continue to operate under the legal restrictions that the KIAD Act imposed on improving, selling, or mortgaging land.

Once the state has earmarked the land for acquisition (under preliminary notification), its value starts depreciating. Influential market players see this is an opportunity to procure notified land at reduced prices from desperate landowners. Even though there is a risk of losing land to the acquirers, there is still an opportunity to have the land de-notified (Comptroller and Auditor General of India 2011). By virtue of its power under Section 21 of the Karnataka General Clause Act, the State Government has the authority to cancel final notification orders (issued under Section 28(4) of the KIAD Act) at any time before the acquiring agency takes possession of the land (Comptroller and Auditor General of India 2011). In the past, the Karnataka State Government has de-notified land on many occasions based on public and political considerations (Comptroller and Auditor General of India 2011). This develops hope of de-notification, and the strategic

purchase of notified land is common in Karnataka state. Given that the notification of the land occurred between 1997 and 2004 for the BMIC project and that the project is facing strong resistance from the public and political parties, strategic buying and selling of land is happening in the region. Over the years, many real-estate developments, particularly residential apartments, have evolved in Bengaluru South, along the expressway, and the property values of land in the region have increased significantly. Figure 10.4 presents the average sale price per square meter for notified and non-notified land in 23 villages around the BMIC project. The price per square meter for non-notified land is higher than that for notified land except in 2008, when the prices were comparable. Post-2012, the price of both notified and non-notified land increased, though the growth rate was significantly greater for non-notified land.

The prolonged period of development has revealed the impact of the change of the use of land from agricultural to non-agricultural, particularly high-rise residential. In addition, landowners have observed the negative impact of acquisition notification on the property value. Accordingly, landowners who have received acquisition notification, but acquisition has not yet taken place, have been demanding compensation for the loss of “hope value” and “blight.” However, the acquirers are reluctant to pay more than the “original” market value of land in its existing use, that is, agriculture. Given the interesting situation described above, the BMIC project allows us to observe a positive impact of the change of use on agricultural land (“hope value”) and the negative impact of acquisition notification (or blight). Additionally, this research estimates the negative impact of landowners’ caste (SC/ST) on the property value, which is reflective of the lower social status and bargaining power of SC/STs.

Figure 10.4: Comparing the average sale price of land (per square meter) for notified and non-notified land in 23 villages along the BMIC project in Bengaluru South region, 2007-14



Source: Author's calculations based on data from Sub-Registrar's Office, Bengaluru.

10.6 DATA AND VARIABLES

To develop a comprehensive hedonic model of land value and the above functionings, which together constitute the value, this research relies on two primary sources of information:

- Firstly, we obtained the land and property sales registration data from the Inspector General of Stamps and Registration, Government of Karnataka, through the registration databases that 45 sub-registrar's offices (SROs) maintain in the Bengaluru region. As of February 2016, the databases digitally recorded 34,799 sale transactions⁷¹ in the Bengaluru region between 2006 and 2015. However, very limited data are available for the years 2006 (114 transactions) and 2015 (127 transactions), and therefore we restricted the period of analysis for this research to 2007–14. The number of transactions ranges from 2364 in 2007 to 4316 in 2014. The maximum of 7004 transactions occurred in the year 2013. In total, this research analysed 33,424 genuine transactions. Each record contains information on the date of the transaction, sale price, land area, land use, and location. From the transaction data, it was possible to derive four major land use types: agriculture (3,497); vacant land (available for development,

⁷¹ Prior to 2006, SROs recorded land transactions manually, and each transaction has a physical file stored at the SRO that registered the property. These records are difficult to access.

25,206) and petty shops (2); residential use (low-rise houses on the urban periphery, 3,981); and residential use (apartments, 740). We observed land use from the data rather than from the planning regulations, because the proposed plans for the region came into question along with the BMIC project. To explain further, in 1999, the Bangalore–Mysore Infrastructure Corridor Area Planning Authority (BMICAPA) came into being as the planning authority for the BMIC project area (High Court of Karnataka 2003). It prepared the Outline Development Plan for the BMIC planning area and identified the land required for the road, townships, and so on using aerial and land surveys (para 31, High Court of Karnataka 2005). As the project encountered legal controversies, opportunistic sellers and buyers carried out land transactions in the area by speculating on the future development potential of the land according to the BMICAPA. Given the organic nature of residential development (except apartments), typical of rural areas in India, we can assume that residential improvements of land (except apartments) do not add to the value of land. Thus, the transaction value is essentially the value of the land itself. To extract the value of land from the transaction value of the apartment, it is possible to estimate a hedonic price function on apartment characteristics, such as the built-up area; the number of rooms; car parking; and the undivided share in the land. In summary, the data set contains information on 33,424 sale transactions that took place in 13 notified and 10 non-notified villages between 2007 and 2014. Of the total number of transactions, 29% occurred in the notified villages.

7. Information on the personal characteristics, such as the caste, of the buyer and seller are not available along with the transaction data; therefore, we relied on village-level information (as opposed to personal information) to estimate the impact of the caste on property values. We also observed locational parameters at the village level and assumed that they remain the same for all the observations in that village but vary across villages. These parameters include the total geographical area of the village; area under irrigation; non-agricultural area; primary manufacturing activity in the village; infrastructure facilities, such as some public and private health care centers; education facilities; availability of drinking water taps; and drainage availability. We relied on census data for information on the caste and locational characteristics discussed above. Given that India collects census data every ten years, we projected the population (total, scheduled caste (SC), and scheduled tribe (ST)) for the years 2006–2015 using data from the years 2001 and 2011. We assumed that the data on locational parameters from the census for the year 2011 were consistent during the period 2006–15. Table 10.2 summarizes the village-level characteristics of notified and non-notified villages.

In general, the proportion of land under irrigation in non-notified villages is larger than that in notified villages except in Naganayananahalli (where 41.19% of the land is irrigated) or Badamanavarthekeval (where 24% of the land is irrigated). An important observation from the characteristics of villages is that, in notified villages, a relatively

larger proportion of land than in non-notified villages is under non-agricultural use. For example, Gonipura has about 40% of land under non-agricultural use. We may highlight here that non-agricultural use excludes land under forests or grazing or fallow land and that this land is used for productive purposes other than agriculture. The demographics of these villages suggest that the proportion of the scheduled caste (SC) population is around one-fifth or more in six out of the total 13 villages notified for acquisition as compared with four out of 10 in the non-notified villages. The scheduled tribe (ST) population in Naganayakanahalli (a notified village) is as high as 85%. Rachanamadu, another notified village, has a 30% ST population. These are substantially larger than the SC/ST population in non-notified villages. The infrastructure facilities are comparable across these villages. In terms of public health care facilities, based on the Census 2011, many notified villages are better endowed than non-notified villages. However, the endowment of private health care facilities is better in non-notified villages than in notified villages. A key message from the above discussion is that the evidence is contrary to the argument of the acquiring authority that most of the land in the notified village is less productive and houses less marginalized communities.

Table 10.2: Village level characteristics

S. No.	Village Name	Area Irrigated (% total geographical area)	Non-agricultural area (% total geographical area)	Public Health Facility (no. of health workers per 1000 person)	Private Health Facility (no. of health workers per 1000 person)	SC Population (% of total population)	ST Population (% of total population)
Notified for acquisition							
1	Badamanavarthekeval	24.10%	14.80%	0.479	0.479	37.96%	3.25%
2	Chinnakurchi	10.28%	16.20%	0	0	14.28%	0.00%
3	Dodderi	9.30%	0.00%	0	1.427	38.95%	2.66%
4	Gangasandra	13.12%	3.65%	0	0	23.18%	0.74%
5	Gonipura	1.80%	40.55%	2.118	0	13.89%	0.21%
6	Hampapura	2.80%	22.36%	0	0	18.46%	0.00%
7	Kengeri	10.43%	0.00%	10.153	0	5.19%	1.52%
8	Kolur	14.32%	10.99%	1.008	0	28.71%	0.45%
9	Kumbalagodu	6.94%	0.00%	6.4289	0	21.43%	1.71%
10	Naganayakanahalli	41.19%	5.37%	0	0	2.09%	85.12%
11	Rachanamadu	2.93%	0.00%	0	0	19.58%	29.97%
12	Thippur	2.35%	33.64%	0	0	16.35%	0.62%
13	Uttari	3.89%	6.33%	0	1.379	4.41%	7.44%
Not notified for acquisition							
14	Doddabele	13.90%	0.00%	0	0.742	25.64%	1.56%
15	Gangondanahalli	28.68%	0.42%	0	0.610	12.43%	13.30%
16	Kachohalli	26.47%	10.19%	0	0.245	19.08%	1.85%
17	Kommaghatta	29.89%	0.00%	0	1.291	12.25%	21.29%
18	Lakshmipura	23.92%	10.17%	0.525	0	28.62%	3.56%
19	Madavara	28.17%	20.22%	0	0.490	9.78%	2.25%
20	Mallasandra	3.12%	0.00%	0	2.060	6.64%	0.86%
21	Manganahalli	20.10%	9.04%	0	0.752	14.01%	0.87%
22	Uttarahalli - Manavarthekeval	0.00%	31.73%	0	0	12.51%	0.00%
23	Vaddarapalya	33.43%	10.16%	1.155	0	32.35%	3.47%
	Total	19.47%	7.14%	0.576	0.614	19.92%	5.04%

Source: Author's calculations based on census 2001 and 2011.

10.7 ESTIMATION RESULTS

We conducted the analysis in two steps. Since the value of the apartment is not equivalent to the value of the land, the first step estimates a hedonic price function for the apartment sale value as a function of the apartment characteristics and the apartment's undivided share of land. The second step involves the estimation of hedonic functions for land sales.

Table 10.3: Descriptive statistics

S. No.	Variables	(1) Expected sign	(2) Mean (Std. Dev.)
	Market value (dependent variable)		878664.500 (3002183)
1	Area of land transacted (sq. m)	+	337.466 (2102.007)
2	Non-agricultural area (share of total geographical area)	+	0.071 (0.071)
3	SC Population (share of total population)	-	0.199 (0.109)
4	ST Population (share of total population)	-	0.050 (0.063)
5	Dummy for primary manufacturing activity (bricks)	+	0.161 (0.367)
6	Dummy for primary manufacturing activity (medicine)	+	0.270 (0.444)
7	Dummy for notified for acquisition	-	0.290 (0.454)
8	Dummy for nearest town being BBMP	+	0.632 (0.482)
9	Dummy for residential land-use (apartment)	+	0.022 (0.147)
10	Dummy for residential land-use (house)	+	0.119 (0.324)
11	Dummy for vacant land	+	0.754 (0.431)
12	Percentage of area under irrigation (as a share of the total geographical area of the village) x Transacted property being in agricultural use (dummy)	+	0.018 (0.062)
13	Dummy for the year of transaction - 2008	+	0.071

			(0.256)
14	Dummy for the year of transaction - 2009	+	0.067 (0.251)
15	Dummy for the year of transaction - 2010	+	0.084 (0.278)
16	Dummy for the year of transaction - 2011	+	0.151 (0.358)
17	Dummy for the year of transaction - 2012	+	0.204 (0.403)
18	Dummy for the year of transaction - 2013	+	0.210 (0.407)
19	Dummy for the year of transaction - 2014	+	0.129 (0.335)
Total observations - 33424			
Village level parameters - variable 2 to 8			
Property level parameters - variable 1 and 9 to 19			

Source: Author.

10.7.1 HEDONIC FUNCTION FOR THE APARTMENT SALE VALUE

We assumed that the relevant value for consideration in our analysis is the value of the apartment's "undivided share of land"⁷² "rather than the value of the apartment. We then used the estimated function to predict the value of an undivided share of land for all the observations related to apartment sales in the data. This allowed us to estimate the hedonic price function for land for all the apartment sales, as Table 10.4 shows. All the variables have the expected signs. The elasticity of an undivided share of land is 0.45, implying that a 1% increase in the undivided share of land for an apartment increases the value by 0.45%.

Table 10.4: Hedonic function for a market value of apartments

Variables	Market value of apartment (log)
Undivided share of land (log)	0.451*** (0.041)

⁷² We define the undivided share of land as the proportionate share of land for each apartment in the land area of the entire apartment complex project. We calculate this as the built-up area (or saleable floor area) of each apartment divided by the total built-up area (or saleable floor area) of the project multiplied by the total land area of the project.

Number of bedrooms	0.192*** (0.018)
Number of car parking slots	0.174*** (0.013)
Dummy for floor being greater than 4	0.044*** (0.009)
Dummy for the year of transaction - 2011	0.038** (0.016)
Dummy for the year of transaction - 2012	0.119*** (0.015)
Dummy for the year of transaction - 2013	0.152*** (0.016)
Dummy for the year of transaction - 2014	0.499*** (0.026)
Constant	11.044*** (0.236)
Observations	739
R-squared	0.750

Note: Standard errors in parentheses; *** $p < 0.01$, ** $p < 0.05$

Source: Author.

We used Table 10.4 to predict the value of an undivided share of land for those transactions that have identified the nature of the transaction as “apartment.” The predicted value replaces the transaction value of the apartment in the data for the estimation of the hedonic function for land sales.

10.7.2 HEDONIC FUNCTION FOR LAND VALUES

From running five versions of hedonic functions—linear; log-linear; log-log; linear Box–Cox; and generalized Box–Cox—we found that the transformation coefficients of the Box–Cox functions were not very different from zero and the likelihood ratio test statistics were close to $\tau = 0$. Therefore, there was merit in using a log-log model for computing the implicit prices. However, the Breusch–Pagan test for the linear, log-linear, and log-log models indicated that the variance was inconsistent and that there was heteroskedasticity. Nevertheless, the problem of heteroskedasticity did not cause bias in the OLS estimates of the coefficients, even though it tended to underestimate the standard errors. In addition, the R^2 for the log-log model was reasonable, and we used this functional form to estimate the results and implicit prices.

Table 10.5 (column 3) presents the implicit prices for various functionings obtained from the log-log model:

$$\begin{aligned}\log(\text{market value}) = & \alpha + \beta_1 \log(\text{area}) + \beta_2(\text{percent non agri area}) \\ & + \beta_3(\text{percent SC pop}) + \beta_4(\text{percent ST population}) \\ & + \beta_5(\text{dummy brick}) + \beta_6(\text{dummy med}) + \beta_7(\text{dummy notified}) \\ & + \beta_8(\text{dummy BBMP}) + \beta_9(\text{dummy resi. apt.}) \\ & + \beta_{10}(\text{dummy resi. house}) + \beta_{11}(\text{dummy vacant land}) \\ & + \beta_{12}(\text{interactive irrigated}) + \beta_{13}(\text{dummy year 2008}) \\ & + \beta_{14}(\text{dummy year 2009}) + \beta_{15}(\text{dummy year 2010}) \\ & + \beta_{16}(\text{dummy year 2011}) + \beta_{17}(\text{dummy year 2012}) \\ & + \beta_{18}(\text{dummy year 2013}) + \beta_{19}(\text{dummy year 2014}) + \varepsilon\end{aligned}$$

The results indicate that the transaction value at means, for a given year, is 31% lower for land that has received notification for acquisition than for land in villages that has not, all things being equal. This is calculated as following (refer to Table 10.5 for coefficient value):

Percent reduction in property value due to acquisition notification (or blight)

$$= 100 * (1 - e^{-0.374})$$

As mentioned earlier, blight due to the notification has been observable because of the long gap in time between notification and acquisition, during which land transactions take place. Notice for acquisition causes blight even though the amount of compensation in the initial offer for each land parcel undergoes a few revisions before the formal land acquisition and the settlement of compensation.

As for the size of land transacted, a 1% increase in the land area increases the transaction value by 0.77% (Table 10.5). Given that these are largely agrarian settlements, irrigated land fetches a higher value than rainfed or unirrigated land. The sign for the coefficient of a share of the irrigated area in the total agricultural area is positive and significant. A larger share of economic activities that are non-agricultural in a village increases the general level of the land value in the village. The positive coefficient of a share of non-

agricultural land in the total area of the village confirms this hypothesis. With the manufacturing activities, villages that have engaged in brick manufacturing have a higher value of land than others, as the positive and significant coefficient for BRICKS indicates. These are the villages that are closer to the BBMP and where large-scale apartment building activity has commenced, particularly since 2011, with the completion of the ring road component of the expressway. Landowners have sold their land at higher values as the demand for brick manufacturing to meet the demand for apartment construction activity in the village has increased. The potential for economic activities also has a significant impact on the land values. The main economic activity in most villages before 2006/2007 was agriculture. The construction activities that began particularly after the completion of the road in 2011 led some landowners to sell their agricultural land to brick manufacturers in many of the notified villages. The prospect of losing land had extenuated this situation, and the value that the landowners realized for land for brick manufacturing activity was higher than that for agricultural activity. Furthermore, land in villages that have become part of the BBMP is valued higher. This reflects the premium attached to being part of the metropolitan Bengaluru and receiving services from the Greater Bengaluru Municipal Corporation.

Table 10.5: Results from estimated hedonic models

S. No.	VARIABLES	(1)	(2)	(3)	(4)	(5)	(6)
		Linear	Log-Linear	Log-Log	Box-cox (LHS)	Box-Cox linear (both side)	
					No-trans	No-trans	Trans
1	Area of land transacted (sq.m.)	851.7*** (6.376)	0.000115*** (1.90e-06)	0.769*** (0.00348)	2.40e-05 (0)		1.000 (0)
2	Non-agricultural area (share of total geographical area)	2.773e+06*** (223,063)	3.356*** (0.0663)	2.648*** (0.0447)	0.823 (0)		0.00629 (0)
3	SC Population (share of total population)	-523,133*** (161,564)	-1.037*** (0.0480)	-1.257*** (0.0323)	-0.261 (0)		-0.0513 (0)
4	ST Population (share of total population)	301,711 (258,049)	-0.0365 (0.0767)	-0.699*** (0.0517)	-0.0276 (0)		-0.00458 (0)
5	Dummy for primary manufacturing activity (bricks)	909,416*** (54,162)	0.475*** (0.0161)	0.479*** (0.0108)	0.101 (0)	0.175 (0)	
6	Dummy for primary manufacturing activity (medicine)	487,675*** (54,228)	0.147*** (0.0161)	0.329*** (0.0109)	0.0299 (0)	0.131 (0)	
7	Dummy for notified for acquisition	-641,440*** (43,792)	-0.246*** (0.0130)	-0.374*** (0.00877)	-0.0551 (0)	-0.197 (0)	
8	Dummy for nearest town being BBMP	183,311*** (40,494)	0.695*** (0.0120)	0.609*** (0.00810)	0.181 (0)	0.348 (0)	
9	Dummy for residential land-use (apartment)	-730,576*** (130,642)	0.370*** (0.0388)	1.357*** (0.0265)	-0.0150 (0)	0.673 (0)	
10	Dummy for residential land-use (house)	219,861** (100,798)	0.181*** (0.0300)	1.071*** (0.0205)	0.0472 (0)	0.387 (0)	
11	Dummy for vacant land	-589,398*** (93,198)	-0.593*** (0.0277)	0.499*** (0.0193)	-0.132 (0)	0.138 (0)	

	Percentage of area under irrigation (share of total geographical area)*					
12	Transacted property being in agricultural use (dummy)	-602,416 (441,635)	0.595*** (0.131)	1.541*** (0.0882)	0.176 (0)	0.408 (0)
13	Dummy for the year of transaction - 2008	290,345*** (65,085)	0.0326* (0.0194)	0.122*** (0.0130)	0.00372 (0)	0.0559 (0)
14	Dummy for the year of transaction - 2009	419,893*** (66,407)	0.0368* (0.0197)	0.204*** (0.0133)	0.00683 (0)	0.0993 (0)
15	Dummy for the year of transaction - 2010	131,703** (65,483)	-0.0338* (0.0195)	0.103*** (0.0131)	-0.00233 (0)	0.0734 (0)
16	Dummy for the year of transaction - 2011	127,344** (57,957)	0.0473*** (0.0172)	0.209*** (0.0116)	0.0173 (0)	0.115 (0)
17	Dummy for the year of transaction - 2012	327,187*** (56,269)	0.338*** (0.0167)	0.476*** (0.0113)	0.0906 (0)	0.238 (0)
18	Dummy for the year of transaction - 2013	517,505*** (56,786)	0.517*** (0.0169)	0.645*** (0.0114)	0.135 (0)	0.318 (0)
19	Dummy for the year of transaction - 2014	830,178*** (62,325)	0.779*** (0.0185)	0.911*** (0.0125)	0.196 (0)	0.456 (0)
	Constant	358,696*** (100,707)	12.58*** (0.0299)	8.031*** (0.0297)	6.859 (0)	5.295 (0)
	Observations	33,424	33,424	33,424	33,424	33,424
	R-squared	0.404	0.568	0.805		
	lambda				-0.181*** (0.00523)	
	theta				-0.108*** (0.00400)	-0.0576*** (0.00336)
	sigma				0.168 (0)	0.222 (0)

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Test H0: Box-Cox (LHS)

theta= -1

theta= 0

theta= 1

Test H0: Box-Cox Linear (Both Side)

theta=lambda= -1

theta=lambda= 0

theta=lambda= 1

Restricted log likelihood

-488977

-469602

-537299

-482561

-457441

-537299

Source: Author.

Table 10.6: Implicit prices (in Rupees) based on the log-log functional form

S. No.	Variables	Marginal effect
	Market value (dependent variable)	
1	Area of land transacted (sq.m.)	2,002
2	Non-agricultural area (share of total geographical area)	2,326,704
3	SC Population (share of total population)	-1,104,481
4	ST Population (share of total population)	-614,186
5	Dummy for primary manufacturing activity (bricks)	420,880
6	Dummy for primary manufacturing activity (medicine)	289,081
7	Dummy for notified for acquisition	-328,621
8	Dummy for nearest town being BBMP	535,107
9	Dummy for residential land-use (apartment)	1,192,348
10	Dummy for residential land-use (house)	941,050
11	Dummy for vacant land	438,454
	Percentage of area under irrigation (share of total geographical area)*	
12	Transacted property being in agricultural use (dummy)	1,354,022
13	Dummy for the year of transaction - 2008	107,197
14	Dummy for the year of transaction - 2009	179,248
15	Dummy for the year of transaction - 2010	90,502
16	Dummy for the year of transaction - 2011	183,641
17	Dummy for the year of transaction - 2012	418,244
18	Dummy for the year of transaction - 2013	566,739
19	Dummy for the year of transaction - 2014	800,463
Total observations - 33424		

Source: Author.

The negative effect on the sale value worsens in the case of land belonging to the scheduled caste (SC) and scheduled tribe (ST) population. The negative signs for percentage of SC population and percentage of ST population indicate a lower value for SC/ST-owned land. A higher percentage of SC and ST population in the village (indicating higher land ownership among these socially marginalized groups) is associated with lower land values, confirming that the legal restrictions on the sale of SC/ST-owned land to persons who are not SC/ST have lowered the value of their land. The reduced land

values for SC/STs may be a combined effect of legal restrictions on the sale of SC/ST land to non-SC/ST buyers and the lower social status and negotiation power of SC/ST owners.

As explained earlier, all the land was originally in agricultural use until the formation of the BMIC area planning authority. While some land parcels remained in agricultural use, others underwent improvements to host more valuable uses, like high-rise residential. The magnitude of the coefficient for apartment use is the highest, followed by residential low-rise or houses and vacant sites. Thus, the “hope value” of land is observable and the owners of notified land expect compensation in accordance with the improved values that capture the potential for the development of agricultural land for other, better uses.

10.8 DISCUSSION

Table 10.7 presents the estimated impact of acquisition notification (or blight) and improvement in the development potential (or hope value) on the transaction value for land. The results indicate that the value of notified land is 31% lower than that of non-notified land in any given year. The reduction in value is the difference in the predicted value of “notified” and “non-notified” land at means in the same year, which the table expresses as the percentage of value of “non-notified” land.

Table 10.7: Blight and Hope Value calculated as the percentage change in land value at means in the same year, (taking base value for non-notified land under agricultural use, in an agricultural village)

Use of land parcel	Village level activities	Change in land value
Agriculture	Agriculture (notified for acquisition)	-31% (Blight)
Hope value		
Agriculture	Agriculture + Medicine manufacturing	39%
Agriculture	Agriculture + Brick manufacturing	61%
Vacant land (developed)	Agriculture	65%
Vacant land (developed)	Agriculture + Medicine manufacturing	129%
Vacant land (developed)	Agriculture + Brick manufacturing	166%
Residential (peri-urban housing)	Agriculture	192%

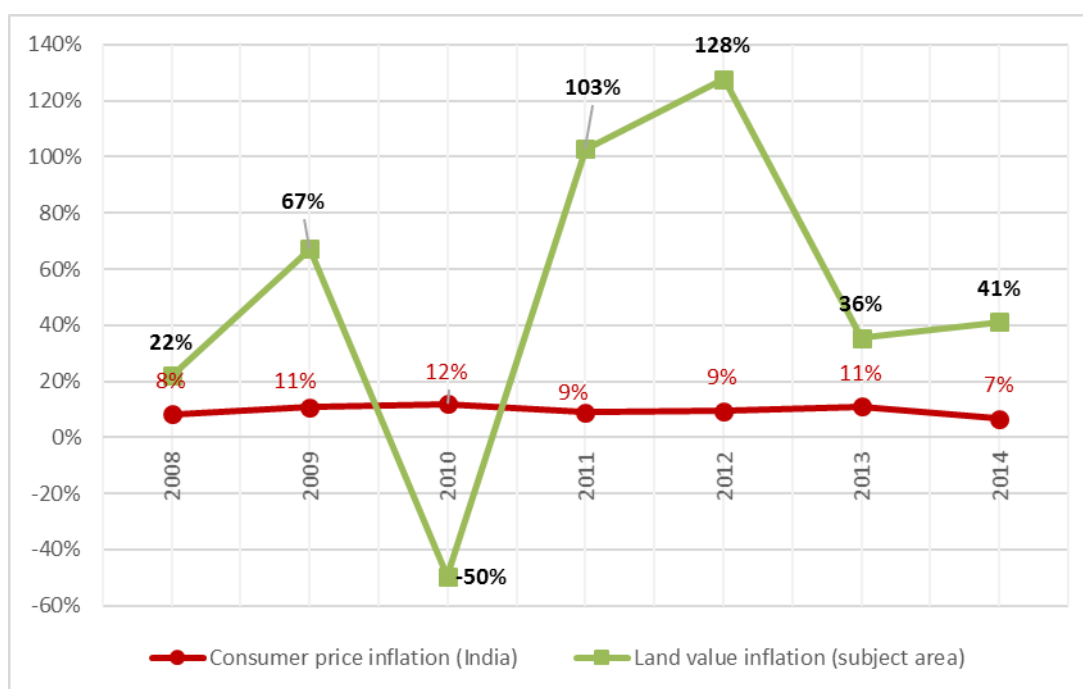
Residential housing)	(peri-urban	Agriculture + Medicine manufacturing	306%
Residential housing)	(peri-urban	Agriculture + Brick manufacturing	371%
Residential (apartment)		Agriculture	288%
Residential (apartment)		Agriculture + Medicine manufacturing	440%
Residential (apartment)		Agriculture + Brick manufacturing	527%

Source: Author.

As discussed earlier, the development potential of land is observable through the improvement in the use of land either at the property level or at the village level. Taking the base value of non-notified land in agricultural use, in an agricultural village, the hope value ranges between 39% and 527%, depending on the use of the land and the village-level activities. For example, the value of agricultural land is 39% higher if it is in a village that manufactures medicine as opposed to an agricultural village. Similarly, brick-manufacturing activities improve the land value by 61%. While these are village-level activities that improve the average value of land in the region, at the property level, the agricultural land value improves by 65% if the development takes place as a plot; 192% if conversion to residential use (houses) occurs; and 288% for apartment use.

As Figure 10.5 shows, the inflation in land value (in the subject area) has been much higher than the consumer price inflation in India, except in the year 2010.

Figure 10.5: Comparing inflation in land values (around the BMIC project) and general consumer price (India), 2008-14



Source: Author's calculation based on inflation data from the World Bank Organisation (2019) and land transaction data from the Sub-Registrar's Office, Bengaluru.

While land is a store of value, it additionally serves consumption requirements, unlike other asset classes. Regarding compensation for the compulsory acquisition of land, it is important that estimations of the market value of land appropriately capture its rapid value appreciation over time, as in the case of the BMIC project. Table 10.8 presents a comparative structure of the estimated value of compensation for compulsorily acquired land if the compensation is based on (i) the KIAD Act of 1966, which refers to the Land Acquisition Act 1894 for compensation determination; (ii) the new, improved act of *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013*; and (iii) whether the compensation includes the value of functionings (blight and hope value):

Table 10.8: Toward fair compensation: Comparing components of compensation across LAA 1894, LARR 2013, and as suggested by this research

Components of compensation	Fair market value (KIAD act and Land Acquisition Act of 1894)	Compensation based on Land Acquisition Act 2015	Compensation for loss of (objective) functionings

Market value of Land in current use	P	P	P
Blight	-	-	0.31P
Hope Value	-	-	0.39P to 5.27P
Solatium	0.3P	P to 3P	-
Total	1.3P	2P to 4P	1.7P to 6.58P

Source: Author.

Table 10.8 raises an important point regarding the appropriateness of the current and proposed compensation mechanisms, which at times may inadequately compensate for the loss of “hope value” and “blight,” which the market value of land estimations using conventional valuation methods do not capture accurately. Compensation for loss of hope value and blight would raise the amount to between 1.7 times and 6.58 times the original agricultural value of the land. In terms of the financial feasibility of the acquirer and private developer, Raj and Angadi (2018) found that the BMIC project generated an internal rate of return (IRR) of 135% for the developer, and this was 6.5 times higher than the originally agreed IRR of 17.5%. This increase is largely attributable to the appreciation of land value. Thus, in the case of the BMIC project, it ensures the profitability for the developer even after compensating the affected landowners for hope value and blight.

The economic value of the functionings estimated above is contextual to data from Bengaluru, around the BMIC project area. While the behaviour of the land market in other metropolitan cities in India may be comparable to that in Bengaluru, region-specific data are necessary for an accurate estimate of the economic value of hope value and blight. The generalizability of these findings is debatable at this stage, and further research should include a range of types and scales of projects across multiple cities, if data are available. With appropriate modifications, researchers can adopt a similar approach to the assessment of hope value and blight in other countries.

Recognition of loss of functionings associated with land would be useful in designing the mechanism for compensation. We may, however, highlight here that we were only able to compute the value of those functionings that the market measures objectively in this research. In addition, there are subjective functionings that landowners lose in the

compulsory acquisition. However, the lack of data on household characteristics precluded us from estimating the value of these functionings, even though there is a possibility of many of them being valuable.

10.9 CONCLUSION

Compulsory land acquisition is a contentious issue between landowners and acquirers, and policy makers and economists have debated it widely regarding various concerns but mostly inadequacy of compensation for the affected landowners. Despite the underlying principal of the legal framework being “just” or “fair” compensation for the affected landowners, in practice, “fair” compensation narrowly equates to the “market value” of land. While the market value of land is a good measure of the monetary losses of the affected landowners, it does not cover the full range of financial and non-financial losses associated with the compulsory acquisition of land.

The three questions that this research investigated are: (i) What has been the impact of the improvement of land use on its value? (ii) What has been the impact of a land acquisition notice on the value of land? (iii) Are the effects on different social groups different? We answered these questions using the hedonic price approach. The research did not impose a functional form for the estimation of the hedonic model, and it estimated a range of functional forms. The estimated models and their performance statistics indicate that functionings combine in a log-log form to determine the value of land.

Using empirical data on property transactions conducted in the Bengaluru Mysore Infrastructure Corridor (BMIC) project area and registered with sub-registrar offices in Bengaluru, India, during the period 2006–15, this research estimated the appreciation in land value due to an improvement in land use from agriculture to residential. The results indicated that the value of agricultural land may improve by between 39% and 527%. Additionally, the study found that, once a property has received notification for acquisition, its value depreciates by almost 31%. Together, these compensable financial losses, that is, “hope value” and “blight,” amount to nearly 0.92 to 5.58 times the value of land. The potential for the development of land changes with micro-level factors, such

as the distance from the city centre; therefore, the estimates of “hope value” and “blight” vary across regions depending on the local land market conditions. Raj and Angadi (2018) found that the benefit that the private developer generated or the internal rate of return (IRR) that the NICE consortium generated was 650% higher than the approved IRR of 17.5%. This is attributable to the accrual of unaccounted benefits stemming from land value appreciation (or hope value) after the project launch. In addition, there is caste-based discrimination in the land market, and ownership of land is especially important for social equality and empowerment of the weaker segments. These results indicate that the KIAD Act of 1966, under which land acquisition took place, clearly under-compensated the landowners.

While the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013, in India has revised the compensation upward to two to four times the market value of land, situations of under-compensation could still occur in some circumstances. A more logical estimation of these factors, such as one based on losses like “hope value” and “blight,” would have reduced the chances of over- or underestimation of compensation. The discussion in this paper paved the way for designing a fairer mechanism of compensation as a combination of monetary and non-monetary strategies, which together satisfactorily reconstruct or replace all the financial and non-financial functions of land for each affected landowner.

The findings from this research are a useful guide for designing a fairer compensation mechanism that encapsulates these losses, which are definite yet not compensable unless negotiated in the court. We may, however, highlight that this research estimated the value of losses in the context of the BMIC project in Bengaluru, and a similar contextual approach would be necessary for the appropriate estimation of the hope value, blight, and impact on value due to social and demographic characteristics.

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CHAPTER 11. CONCLUSION

Land is a critical resource necessary for development projects. The complexities involved in the negotiation process to procure land for development projects has led governments to eschew market mechanisms in favour of the state's power to acquire land compulsorily. The State's acquisition of land compulsorily by extinguishing private rights even for public purposes meant to benefit society, is a contentious issue resulting in numerous court cases, and incidences of public unrest. Given that, historically, a disproportionate burden of social cost of public purpose physical development projects has fallen on the landowners whose land has been taken for such projects, most academic research on compulsory acquisition has described it as a problem rather than an instrument to address market failure problems that arise in infrastructure development. This research acknowledges that compulsory acquisition is a powerful instrument for physical development of public projects that market mechanisms are unable to provide but are necessary for socio-economic development. However, it is essential that this instrument is reexamined and designed with the aim that those who are negatively impacted because of land acquisition become a part of the process of development. *Therefore, this research aims at informing the design of a fair mechanism of compulsory acquisition for the affected landowners and society at large.* It is important to assert at the outset that for large public projects that require large tracts of land (often in contiguous parcels), it becomes necessary that some or all the land is compulsorily acquired. This research does not contest compulsory acquisition of land as an instrument of state, but it focuses on what can make compulsory acquisition fair for landowners. Achieving this aim requires disentangling the mechanism of compulsory acquisition to understand each part, followed by a detailed diagnosis of each component to identify the problem and then designing solutions to each of the identified problem. Put another way, designing a fair mechanism of compulsory acquisition would require improvement in those areas which have been the pain points for the affected landowners.

The term ‘compulsory acquisition’ by itself has a negative connotation and hence to review the mechanism without any preconceived notion it is suggested that ‘compulsory acquisition’ be considered as any other development policy. Successful development policy is a mechanism through which the “greatest happiness of the greatest number” (refer to Chapter 2) of people is created by using means that are morally and socially acceptable. In other words, the success of a development policy would depend on, firstly, how larger (quantum of benefits) and wide (number of beneficiaries) are the benefits of the policy; and secondly, how idealistic has been the process of creating such benefits? Considering compulsory acquisition of land as part a development policy, the success of this mechanism would depend on the magnitude of benefits and their distributional effects; and the fairness of processes through which these benefits are created and distributed. The above discussions are simplified interpretations of the theories of distributive justice and procedural justice which underpin this research (as discussed in Chapter 2). This research pays attention to both these crucial aspects of the compulsory acquisition mechanism, i.e. the quantum and distribution of outcomes/burdens, and the procedure. The coming sections deal with each of these components in greater detail and explain the problems in each and the solution towards a fair mechanism of compulsory acquisition.

11.1 PROCEDURE - HOW CAN THE PROCESS OF COMPULSORY ACQUISITION BE MADE FAIR FOR THE AFFECTED LANDOWNERS?

As Leventhal (1980) explains, since the very beginning the concept of distributive justice has invited attention and research developments in the area of procedural justice. Procedural fairness concerns with the fairness of the process of distribution/allocation. Discussions on procedural justice are usually found in the legal literature concerning the process of dispute resolution, where fairness is crucial. Procedural fairness of the compulsory acquisition process is an underdeveloped area. Given that coercion is involved in the exercise of the power of compulsory acquisition, probably it is assumed that all other forms of unfairness become integral to the process. However, the process of compulsory acquisition does involve dispute resolution among the many stakeholders

who get involved at multiple stages of the process. Therefore, it is important to design a fair mechanism which balances the powers of multiple stakeholders and leads to a fair outcome.

It is important to understand that the objective of compulsory acquisition is linked to 'social welfare' and even if the government is representative of the society it is accountable to the people particularly when forming decisions involving interference with the rights of the citizens, like property rights. Examples of misuse of the power of compulsory acquisition are found in all parts of the world, be it the special economic zones in India (Jenkins et al., 2014) or the East-West Link road project in Australia (VAGO, 2019). Apprehensions arise over every new project like the newly proposed Mexican wall in the United States of America. The common element across all these projects is the lack of public's trust in the project and the state's ability to fairly distribute gains and losses among members of society, let alone the affected landowners. Therefore, it is important that the process of compulsory acquisition is re-examined and made fair for the people. As observed in the case of India, Australia and Scotland, and is probably true for other countries, the process has been designed with the objective of facilitating the government and from time to time appropriate amendments have been made to keep it easy and quick for the government to acquire land (refer to Chapter 4, 5, and 6). Arcane regulations, such as the use of the urgency clause in India, have been used to silence objectors. Other examples include, amendments proposed to the new Act of compulsory acquisition in India so that the government can bypass social impact assessment and majority landowner consent clause (refer to Chapter 5). This amendment will certainly make the process faster and easier for the government but will reduce the accountability of the government. Making the government more accountable to the people may extend the time required in the process of compulsory acquisition, but without accountability, the process is unfair, which is certainly a more serious problem for the society.

It is necessary that the process of compulsory acquisition meets key criteria of fairness proposed by Leventhal (1980), which are consistency, bias-suppression, accuracy, correctability, representativeness, and ethicality. The fair process should ensure that the

outcomes are fair and trustable, which in turn improves compliance of the people with unfavourable outcomes. The fair process ensures that the original objective of 'social welfare' are safeguarded and that the affected landowners are provided with fair opportunities to exercise their rights. Above all, a fair process founded on right principles is trusted and accepted by the people and the affected landowners. Discussion on process in this research has focused mainly on the process of authorisation of compulsory acquisition notice and the process of compensation determination given that the landowners are most involved and most affected by these processes. Through analysing the process of compulsory in three countries – Scotland (Chapter 4), India (Chapter 5), and Australia (Chapter 6), the following common gaps in the process of compulsory acquisition have been identified:

1. Poor involvement of the people in project planning and design.
2. Poor accountability of the acquiring agency and its agents –
 - a. to address or provide reasoning for objections and suggestions made by the people.
 - b. for timelines for compulsory acquisition and project completion
3. Lack of neutrality in the assessment of objections and suggestions invited from the people
4. Imbalance in the negotiation power (arising out of imbalance in financial and information resources) between the affected landowners and the acquiring agency;
5. The legal process of compensation negotiation requires time, effort, and resources;
6. No fair consideration for stress and time lost in the process which is not of your choosing
7. No penalty for delays in the payment of compensation
8. Poor transparency and information sharing
9. Lack of consistency of government's support to the project
10. The poor mechanism for bias-suppression resulting in 'favouritism' and 'regulatory capture.'
11. Poor correctability and inefficient grievance management
12. Lack of benevolence and humanitarian approach towards the affected landowners.

Even though procedural problems are one of the major causes of dissatisfaction among the affected landowners, there is little attention paid to the topic. This research acknowledges that for designing a fair mechanism of compulsory acquisition, it is essential that equal attention is paid to procedural issues and compensation strategies.

Based on the analysis of the process of compulsory acquisition in the three countries and the best practices; suggestions provided by the affected landowners, their agents, and experts in each country; and review of suggestions provided by the Scottish Law Commission, a summary of suggestions for improvements and best practices is presented in the Table 11.1 below.

Table 11.1: Suggestions for improvement and best practices of compulsory acquisition from Australia, India, and the United Kingdom

Suggestions for improvement and best practices	Based on -
Improving the involvement of the people in project planning and design, through: • holding public consultations and meetings on the project proposal, design, location, and other details; • providing opportunities for cross-examination of parties involved in the project; • giving decision-making power to the community.	Scottish laws; Localism Act 2011 (England)
Demonstration of the public purpose of the project and justifying the use of compulsory acquisition at the lowest tier of government (urban and rural local governance bodies) in the project affected area.	Indian laws
Necessary to have the consent of at least 70-80 percent affected families for acquiring land for public projects where private partners are involved.	Indian laws
Having an independent body for the assessment of social impacts of the project on local communities	Indian laws
Having an independent body for the assessment of objections raised by the people to preliminary notification to the acquisition, and for confirming the acquisition notice.	Suggestion by the Scottish Law Commission
Giving the opportunity to the people to challenge the Government's decision of overruling their objections to the preliminary notification and making the Government accountable to the Parliament.	Australian laws
Determination of compensation amount by an independent and neutral agency.	Australian and Scottish laws
Providing full information on the components of compensation and valuation report of the subject property	Australian laws
Considering non-monetary forms of compensation such as providing help in finding alternative property, changing school for children.	Practised in Australia
Judicial reviews on compensation to be performed by an independent legal agency having experts from law and property (called the Lands Tribunal)	Scottish laws
Affordable and (relatively) informal opportunities for negotiation and dispute resolution in the shadow of the Tribunal/Court, such as through arbitration, mediation, and Administrative Appeals Tribunal.	Australian laws/ Suggestion by the

	Scottish Law Commission
Making arrangements for rehabilitation and resettlement of the affected families wherever mass displacement is caused due to the compulsory acquisition of land.	Indian laws
Providing compensation for non-owners of land who are dependents on land for livelihood.	Indian laws
Providing compensation for the negative impact of the project on the property value (or blight).	Scottish laws
Considering the loss of 'hope value' for future development potential of land (for which planning permission is not obtained but could have been obtained in the near future).	Scottish laws
Improving the accountability of the acquirer by – necessitating written reasoning for overruling objections raised by the people at different stages of the project; charging penalty interest rate, over and above base rate, for delays in payment.	Suggestion provided by the affected landowners; Scottish Law Commission
Designing appropriate compensation strategies for satisfactory reinstatement of non-financial functionings.	Researcher's suggestion.
Improving financial compensation strategies to include the loss of the future development potential of the land.	Researcher's suggestion.

The above suggestions on procedural fairness will be a useful guide to policymakers and lawmakers in improving procedure-related problems with the mechanism of compulsory acquisition. As mentioned earlier, there are two parts to the mechanism of compulsory acquisition which is the procedure and the outcome. The following section presents a summary of discussions on the second important part of the mechanism, which concerns the outcomes of the compulsory acquisition for the affected landowners.

11.2 OUTCOME

Like any other development policy, the objective of the State when using the power of compulsory acquisition of land has been to harness 'social welfare'. However, 'social welfare' has a broad definition (refer to Chapter 2), and it is more appropriate to say that outcomes achieved through compulsory acquisition of land are concerned with physical development. The usual expectation is that physical development should lead

to economic and social development. Though, physical development brought by using the power of compulsory acquisition comes at a social cost which may at times be too large and outweigh socio-economic benefits created by the project. Therefore, physical development may not always improve social welfare and the reduction in social welfare caused due to the negative impacts on the affected landowners may balance out or even exceed any increment to the social welfare due to the project. Thus, it is not obvious that physical development involving compulsory acquisition of land would improve 'social welfare'. It is expected that a rigorous social cost-benefit analysis would appropriately inform decisions on undertaking physical development projects requiring the compulsory acquisition of land. The social cost-benefit analysis has been established as a necessary pre-condition to compulsory acquisition in some countries. For instance, in India, the new law on compulsory acquisition necessitates the "study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project" (Section 4(4), LRR 2013) (refer to Chapter 5 for more details). The main objective of the social impact study is to ensure that social benefits exceed costs from the project. Social costs are estimated as the monetary cost of mitigating socio-economic damages that can be fixed (at least partially). While the idea of social impact assessment is appreciable, the contemporary approach to studying social impacts is limited to the identification of only those social costs that can be gauged in monetary terms. However, it has been realised that the negative impacts on the day-to-day lives, and on the development trajectory of the affected families manifest in many forms, which are at times difficult to quantify. One of the main objectives of this research is to identify the many forms of losses which affected families must bear when their land is compulsorily acquired. Another distinct, yet thoroughly linked objective is to design a fair mechanism of compensation through which these multifaceted losses can be overcome.

The debate on 'fair' compensation has its origin seeded in the idea of compulsory acquisition. Economists have been using the traditional utilitarian theoretical framework to understand the losses of the affected landowners and accordingly design compensation. Very simplified interpretation of 'utility' derived from land is the value

of land in monetary terms (refer to Chapter 2). Though, monetary interpretation of 'utility' of land only partially captures 'utility' because a large portion of unmonetisable 'utility' enjoyed by the landowner is left out. Unmonetisable things constitute a large portion of an individual's 'utility' or happiness from using the land. This research relies on the Sen's 'capability approach' for a rational explanation of what creates utility. A simple interpretation of Sen's (1979) argument is that utility or happiness is the end achievement or the outcome of being able to do valuable acts which add to one's well-being; and being able to reach valuable states (such as being well-nourished, socially integrated). Sen (1979, 1993) uses the term 'functioning' to define an individual's ability to do valuable acts or to be in the states of wellness (e.g. being well-nourished, socially integrated). Thus, the 'utility' of land to its owner is consequential to valuable functionings derived from land. Value of utility is constituted by the value of functionings derived from land. Therefore, to assess the loss of utility due to the compulsory acquisition of land, it is essential to identify functionings derived from land.

As mentioned earlier, the main objective of the State in using the power of compulsory acquisition is to improve social welfare arising out of physical development and if social costs of hampering with the welfare of the affected landowners exceed benefits to be created by the project, the physical development is not leading to an increase in social welfare. By ensuring satisfactory reinstatement of the functionings of the landowner any reduction in the social welfare is controlled. The important questions in hand are – What are the valuable functionings of land? How can a fair mechanism of compensation be designed to reinstate or replace all valuable functionings for each affected landowner?

11.3 WHAT ARE THE VALUABLE 'FUNCTIONINGS' OF LAND TO A LANDOWNER?

Identification of the functionings offered by land has been the most important and challenging part of this research and the most valuable contribution. For understanding the nature of functionings derived from land this research relied on the owners of land who have experienced compulsory acquisition of their land (refer to Chapter 8 and 9). Alongside this, researchers working in the related areas have also informed these

findings (refer to Chapter 7). There is an ample store of knowledge in secondary literature on the importance of landownership. Using the above mentioned sources of information nine broad functionings of land have been identified in this research. These ‘fundamental functionings’ are considered valuable to landowners across the globe and are summarised in broad categories in the Table 11.2 below.

Table 11.2: Fundamental functionings of Land

I. Secure means to basic ends	1. Livelihood security
	2. Security of physical space and protection against eviction and relocation
	3. Financial security
II. Self-identity	4. Self-identity with possessions as memorabilia
	5. Self-identity in social status
	6. Self-identity with the personalisation of place of occupancy
	7. Self-identity with property in which one has invested labour
	8. Self-identity as a part of the territorial identity
III. Social capital	9. Formal and informal relationship building
	10. Ownership as a socio-cultural requirement
IV. Social equity and empowerment	11. Empowerment for weaker sections of the society
	12. Empowerment for the weaker gender
V. Familial wellbeing	13. Interpersonal relationship building
	14. Security for future generations (bequest)
	15. The wealth effect of land and property on households' wellbeing
VI. Power to take decisions on land matters	16. Control over one's physical environment
	17. Decision-making power on the use of the property
	18. Involvement and influence on matters that can cause externalities
	19. Power to exclude others
	20. Neighbourhood building and place-making
VII. Political empowerment	21. To be able to put forward one's opinion without any suppression or fear
VIII. Personal comfort and convenience	22. Suitability of property and location for oneself
	23. Acquaintance with physical space and environment developed over time
IX. Psychological wellbeing	24. Feeling of psychological calmness
	25. The sense of achievement and proud
	26. Dignity and self-respect
	27. Intrinsic, extrinsic and contributory value

Creating the list of functionings helps in explaining the real value of land to its owner. Fair compensation for the loss of land would require satisfactory reconstruction or replacement of valuable functionings of land for each affected landowner. In saying so, it is acknowledged that the set of valuable functionings and the value of each functioning in that set will vary for each affected landowner. Also, the nature of functionings will be contextual to the social, economic, legal, and political environment in which the landowner operates. Therefore, knowledge of the nature of functionings in the context of the community is crucial to designing compensation strategies that are efficient and socially acceptable. Contextual understanding of functionings was also considered important for triangulation of the list of fundamental functionings. Therefore, a detailed study of functionings of land was performed in the context of India and Scotland. Multiple sources of data, such as in-depth interviews and legal case-reports, were used to create a rigorous list of functionings from India (Chapter 8) and Scotland (Chapter 9). From the list of functionings obtained from these countries it can be said with confidence that the list of fundamental functionings is comprehensive. There may be some scope for further expansion of this list in other contexts than India and Scotland, which is otherwise a good representation of the value of land in a diverse range of societies where allodial ownership of land is permitted. Having identified the functionings, the next important question is about the fair mechanism of compensation for compulsory acquisition of land, and thus functionings.

11.4 HOW CAN THESE TANGIBLE AND INTANGIBLE LOSSES (OF FUNCTIONINGS) BE ASSESSED AND OPERATIONALISED IN THE COMPENSATION MECHANISM?

By applying the ‘capability approach,’ this research redefines fair compensation in terms of functionings of land. Fair compensation will be a combination of monetary and non-monetary compensation strategies which together reconstruct or replace all valuable functionings of land for each affected landowner. While both forms of compensation are crucial for completeness of the compensation mechanism, the scope of this research is limited to suggesting improvements to monetary strategies of compensation. Research on non-monetary strategies of compensation is underdeveloped and much

improvement is demanded in this area. Basic forms of non-monetary compensations are occasionally adopted in some cases, but a holistic approach to designing non-monetary compensation strategies is missing. For example, in case of the East-West link road project in Australia, home losers were helped with finding alternative property; changing school for children; and counselling sessions to help residents overcome the stress. Usually, non-monetary compensation is provided on sympathy grounds rather than as a legal right. However, after the prolonged debate on issues of rehabilitation and resettlement (R&R) of displaced landowners, the India law has been recently modified to include R&R package as a legal right. R&R package is another form of non-monetary compensation that has gained legal recognition. Any big or small initiative in the direction of non-monetary compensation is appreciated and is a motivation to developing comprehensive strategies for non-monetary forms of compensation which can efficiently re-establish valuable non-monetary functionings of the affected landowners that are identified in this research. Fair compensation would require that both monetary and non-monetary compensation strategies are developed hand in hand and ensure satisfactory re-establishment or replacement of all valuable functionings interrupted due to the compulsory acquisition of land.

While designing a theoretical framework for the fair compensation mechanism, this research takes forward the discussion on monetary compensation strategies. In this research, the meaning of monetary compensation is not defined as only the payment of compensation in the form of money. Instead, monetary compensation refers to all forms/methods of compensation which create financial benefits for the affected landowners, directly or indirectly. It is usually assumed that all financial functionings of land are captured in its market value and are therefore satisfactorily compensated on payment of the value of land. Findings from Chapter 7, 8, and 9 highlight the importance

of ‘future development potential of land’⁷³, as a valuable financial functioning which is only partially captured in the market value. To the extent the ‘development potential’ is observable in the present date, the market pays for it but the unobservable ‘development potential’ which reveals over time is not a part of the market value in the present date, and thus it is not compensated⁷⁴.

Using evidence from India, this research identifies the ‘economic value’ of the functioning of ‘future development potential’. In Chapter 10, improvement in the development potential of land is interpreted in terms of improvement in land-use, and it is found that agricultural land on the urban fringes of Bengaluru has a very high potential for development. In monetary terms, the development potential of agricultural land is 192 percent if its use improves to residential and is 288 percent if improved to apartment use. Value appreciation of agricultural land for commercial and industrial developments could not be assessed due to data constraint but the methodology adopted in Chapter 10 allows that to be estimated as data becomes available. The takeaway point is that the development potential of land improves over time and is partially captured in the market value to the extent it is observable in the present time. Whereas a landowners’ losses are not confined to only observable potential in the present time and they are deprived of future benefits from the development potentials that are unobservable in present time.

Using the theoretical framework of functionings of land it has become possible to explain that there is more financial loss than just the market value of the land because

⁷³ In saying so, the usual assumption is that the development potential of land improves in the long run. Even though there may be fluctuations in property values in the short-run, land is a hedge against inflation in the long run and its value appreciates over time.

⁷⁴ In case when a portion of developed land with improved land-use is returned to the affected landowners, the compensation for the acquired land area is offset by the amount of appreciation in the value due to improvement in use. It may be argued that the improvement in the development potential of the acquired land extend beyond the observable improvements in present time and deserve compensation.

the affected landowners lose the unobservable development potential of land when the land is compulsorily acquired. On analysing other formats of compulsory acquisition, it is found that they all practice coercion though there are differences in the mechanism of compensation. For example, through a land trust or land leasing, it is possible to share the benefits of development happening on land over time, if the use of land is continuously improving. The research does not compare these formats of acquisition, and therefore it is difficult to comment which format of compulsory acquisition is better. The takeaway point here is that by using the framework of functionings, it is possible to design a fair mechanism of compensation for compulsory acquisitions of different types.

Another important finding in Chapter 10 is that there is caste-based discrimination in the land market in India. The greater the share of the *Dalit* population (person belonging to the lowest caste) in the village population, the lower is the average value of land in the village. Put another way, the value of land is negatively impacted by the caste of the owner if they are *Dalit*. This relationship implies that societies, where social inequality and discrimination is higher, will have greater importance for the functioning of ‘social equity and importance’. In Chapter 10, the importance of this functioning is demonstrated in terms of depreciation in land value arising out of discrimination in the land market against *Dalits*. Larger dips in land values would imply higher discrimination in the society and therefore greater importance of the functioning of ‘social equity and empowerment’ for those belonging to weaker/discriminated segments. The economic value of ‘social equality and empowerment’ does not imply that payment of money can compensate for the loss of a valuable but non-financial functioning. Rather, knowing the ‘economic value’ of a non-financial functioning may help in designing appropriate monetary compensation strategy, if there is need and desirability to do so. While it is understandable that monetary compensation strategies will directly address financial functionings, it may also be at times useful in compensating for some non-financial functionings indirectly. For example, payment of additional compensation, in proportion to the observed depreciation in the value of land owned by a *Dalit*, may improve their bidding power and thus their chances of buying land in the open market. It is important that special attention is paid to social acceptability and efficiency when designing the

method of monetary compensation for non-financial functioning. It may be useful to run a pilot study and co-design compensation strategies with the affected families. The modus operandi of compensation (monetary and non-monetary) is open for debate and should be contextual to the community and people.

Discussions in this section are concluded at the note that the value of land for its owner is constituted by the value of functionings which contribute in their personal/familial/societal development and add up to utility (or happiness). If the land is compulsorily acquired, then on fairness grounds it is essential that all valuable functionings of the affected person are satisfactorily re-established. Alongside that, this research also initiates the discussion on exploring opportunities for designing inclusive developmental policies which achieve some social development objectives alongside physical development, such that the affected landowners are put back in a better position if their original position was weak. Joint welfare of the affected landowners and society should be the way forward to achieving 'social welfare'.

11.5 RESEARCH CONTRIBUTIONS AND RELEVANCE

The topic of compulsory acquisition of land has been very well researched since its inception, despite that there has not been much success in improving the admissibility of this instrument among the people. Two major reasons for this failure are, firstly the ignorance of procedural aspects of compulsory acquisition mechanism; and secondly, limiting the scope of compensation to only monetary loss. This research identifies and addresses these gaps in knowledge and proposes a novel theoretical framework for designing a fair mechanism of compulsory acquisition through improvement in the process, and in the compensation mechanism. Principles of procedural fairness have been used as a theoretical guide for analysing the process of compulsory acquisition. Regarding the fair design of compensation mechanism, this research uses the 'capability approach' to explain that the value of land extends beyond its market value and is constituted by the combined value of financial and non-financial functionings which add to the wellbeing/utility. The 'capability approach' to fair compensation design is a holistic approach to compensation which initiates a new debate on the inadequacy of

compensation. This research also suggests ways for fairer distribution of developmental gains among the members of the public, including those whose land is acquired.

The usefulness of the functionings framework extends beyond the topic of compulsory acquisition into the areas of rebuilding functionings of disaster-affected families (both natural and human-made disaster); understanding the value of non-marketed land for the users who are not always the formal owners of land, and other similar areas which are currently underdeveloped.

Therefore, the relevance of this research is well established due to the fact that it contributes to the knowledge on compulsory acquisition and bridges crucial gaps; opens opportunities for future research on many important topics concerning land and wellbeing; and is a useful guide to policymakers and lawmakers working in related areas.

11.6 FUTURE RESEARCH DIRECTIONS

This research opens many opportunities for future research. Research in some key areas of land acquisition is urgent, yet less attended probably because of the absence of a clear theoretical framework. The framework of functionings may be very useful for future works on the following:

11.6.1 NON-MONETARY COMPENSATION

In this research, many non-financial functionings of land have been identified which are crucial to the wellbeing of the affected landowners. Even though there are small examples of non-monetary forms of compensation, there is no comprehensive mechanism in place that can satisfactorily reconstruct these functionings for the affected families. There is a pressing demand for further research in this area.

11.6.2 PROGRESSIVE COMPENSATION AND SOCIAL WELFARE

By satisfactorily instating all valuable functionings of each affected landowner it is ensured that the wellbeing of the affected landowner is not negatively impacted and that the overall welfare of the society is improved. It may be the case that the original

condition of the affected landowners had been weak before acquisition, in which case it may be 'fair' on the grounds of 'equivalence' to put them back in the same condition (refer to Chapter 2 for the principle of equivalence) but this may not be the best approach to 'social welfare'. For example, In India, most of the families that are affected by compulsory acquisition are poor agriculturists and landless labourer. 'Compulsory acquisition' is a powerful instrument which creates an opportunity for the amalgamation of the social and physical development objectives. If 'compulsory acquisition' is compared with any other development policy aiming at improving social welfare, then it is realised that enhancing the wellbeing of the affected landowners (as opposed to putting them back in the same condition) is a holistic approach to 'social welfare'. This is to say that a 'holistic' compensation mechanism should have two components (i) fair compensation i.e. compensation for the loss of functionings of land (ii) progressive compensation i.e. creating a wider set of functionings for the poor landowners so that they can push themselves out of the poverty trap and launch themselves on the trajectory of development. Progressive compensation strategies may rely on benefits created by the project or may be funded by the government like other social development programs. The above discussions on 'progressive' compensation open opportunities for further research on designing compulsory acquisition projects in a way that 'social welfare' objectives of the project could also include socio-economic welfare objectives for the affected landowners.

11.6.3 COMPENSATION FOR DISASTER-AFFECTED FAMILIES

Other reasons for the loss of land may include various other forms of human-made and natural disaster like nuclear explosions, earthquake, and Tsunami. Irrespective of the cause of the loss of land, the loss of functionings of the affected landowners remain the same. Therefore, the theoretical framework of functionings is also useful in designing compensation for disaster-affected families. It is understandable that in the case of disaster, people lose other valuable resources and services in addition to land. Therefore, a broader understanding of functionings is needed on which fair compensation strategies can be founded. The topic of compensation design for disaster-

affected people is underdeveloped, and the framework of functionings may be very useful for the development of this area of research.

11.6.4 UNDERSTANDING THE VALUE OF INFORMAL/NON-MARKETABLE PROPERTIES

The market is well established for formally owned land, and its importance is measured in terms of the value determined by the market. On the other hand, there is much land for which either the formal title and the formal market does not exist, for example, land used by the tribal communities. The framework of functionings of land may be useful in estimating the usefulness of land for the original owners in many countries such as Australia, New Zealand, Canada and the United States of America. While this framework explains the humanitarian value or the wellbeing attached to the land, it may also be possible to estimate its economic value. For this, tools of contingent valuation or similar other methods of measuring subjective wellbeing may be used. Estimating the economic value of subjective functionings may be a challenging yet important topic for future research.

Findings from this research make a meaningful contribution to development research works, which has been progressing well in all directions.

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