Every infringement or violation of a right cast upon the holder, a right to recover compensation\(^1\). This right is a primary right conferred by nature and it is founded upon natural reason and natural justice and it has universal application. The entire phenomenon is based upon the maxim *Ubi jus ibi remedium*\(^2\) (where there is violation of right, there is a remedy, i.e. no wrong without remedy).

### 8.1 Compensation: Meaning

*Black’s Law Dictionary* defines the term *compensation*\(^3\) as an “equivalent in money for a loss sustained, equivalent taken for an injury done to another, giving back an equivalent in either money which is but measure of value, or in actual value otherwise conferred, recompense or reward for some loss, injury or service, especially when it is given by a statute”. *Webster’s Dictionary*\(^4\) briefly explains the term as “something given or received as an equivalent for services, debt, loss, injury, suffering, lack etc.” *Bowvier’s Dictionary*\(^5\) makes a distinction between Chancery practice and the Civil Law practice: “in Chancery practice, something to be done for or paid to a person of equal value with something of which he has been deprived by act of negligence of the party so doing or paying”. Under Civil Law, ‘compensation’ means, “a reciprocal liberation between two persons who are both creditors and debtors of each other”. So, according to the definitions in the dictionary, the word compensation should be interpreted on the basis of the nature of loss and purpose for which it has to be given.

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Compensation for willful encroachment is the concern of every society. It is directly connected with man and the economic development of society, the dependability of the legal system, and the political stability of the State. In Monongahela Navigation Company v. U.S., the meaning of compensation was explained in two senses:

(i) Damages by way of compensation (compensatory damages)

(ii) Damages by way of punishment (exemplary damages or punitive damages)

The word ‘compensation’ has wide connotation under various laws in India. The Consumer Protection Act, 1986, enables the consumers to claim compensation for harassment, mental agony or oppression suffered by the consumer. Under Indian Contract Act, compensation for breach of contract may be reasonably computed on the basis of the difference between a contract price and the loss: In Great Eastern Shipping Co. Ltd. v. Union of India, the Calcutta High Court observed that in assessing compensation payable for the work done, the Court shall take into account what the parties contemplated to be a reasonable compensation at the time when the work was done. So far as compensation for goods is concerned, the court shall always

6 AIR 1951 Pat.91. Learned J. stated, “I have no doubt it was intended by the Constituent Assembly should be something which could fairly be said to be equivalent in value to the property taken over by the State”.
7 (1892)148 U.S 312.
8 Lucknow Development Authority v. M.K.Gupta, A.I.R 1994 SC 787. (The Supreme Court held that, “in legal sense it may constitute actual loss or expected loss and may extent to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation). 
9 Section 73 of Indian Contract Act, 1872 reads: “When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.-When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract”.
10 Jagdish Prasad Keshar Wani v. Fertilizer Corporation of India Ltd. AIR 1981 Pat.58.
11 AIR 1971 Cal. 150.
take into consideration the market rate of those goods prevailing on the date on which they were delivered.

Under the Motor Vehicles Act\textsuperscript{12}, the compensation for fatal accident is fixed in terms of money that the heirs used to receive by way of maintenance. The compensation is not in the form of monthly allowances, but in the form of a lump sum\textsuperscript{13}. In the case of tortuous liability\textsuperscript{14} also the principle to pay compensation is applicable to cases where the wrongful act of the defendant is the result of deliberate malice, fraud or reckless disregard for the safety of the person and the property of another or in mere levity and wantonness. He may be responsible for punitive or exemplary damages even for every remote consequence resulting from his wrongful act. In all these cases, the true principle of compensation is the payment of money due to negligence, willful disobeyance or overt act of the other party.

In \textit{Baker v. Willoughby}\textsuperscript{15}, the House of Lords held that physical injury to a man could not be compensated; but for the loss, which he suffers as a result of that injury, disabilities which extent to the whole life and the inability to earn as much he earns previously etc. should be compensated properly.

The word ‘compensation’ etymologically indicates the image of balancing one thing against another. The primary meaning of the word ‘compensation’ is

\textsuperscript{12} See, Motor Vehicles Act 1988,Section 165 (1) which reads: “A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.”

“Explanation.--For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140.” In \textit{Sinu v. Balkrishan} (1977) 2SCR 886, the Supreme Court held that the Claims Tribunal can pass an award with regard to payment of just compensation only after finding that the accident of the nature specified in sub-section (1) of Section 110 (Motor Vehicles Act 1939) was the result of the negligence on the part of the driver or owner of the vehicle.

\textsuperscript{13} \textit{Bedana Bala Dassi v. Calcutta State Transport Corporation}, AIR 1972 Cal. 305 at p.306.


\textsuperscript{15} (1969) 3 All E.R 1528.
‘equivalence’; and the secondary and more common one is ‘something obtained or something given as an equivalent’. In *Polavarapu Somarajyam v. A.P.Road Transport Corp. Hyderabad*¹⁶, the Andhra Pradesh High Court used the term ‘compensation’ in a more comprehensive sense encompassing the following aspects:

a. Mental sufferings; i.e., anxiety, worry and vexations.

b. Actual pecuniary loss sustained directly; i.e. the actual amount of money wrongfully withheld, the pecuniary value of the property wrongfully detained.

c. Value of time, i.e. time taken for establishing the right infringed.

d. Direct pecuniary loss i.e. the loss of benefits, loss of business, loss of reputation, loss of credit etc.

e. The actual expenses or cost of suit.

f. The bodily suffering due to personal injuries, i.e. pain and the consequent illness.

### 8.2 Compensation for Acquisition of Property under Indian Constitution

Before the Forty Fourth amendment to the Constitution, the payment of compensation for acquisition of property was protected under Article 31(2)¹⁷. In *State of West Bengal v. Bela Banerjee*¹⁸ the Supreme Court held that, “compensation should be a just equivalent of what the owner has been deprived of”. The Fourth amendment to the Constitution¹⁹ modified Article 31(2); and limited the power of the court to interfere in the question of compensation awarded according to the provisions of the Act. But in *Bank Nationalisation Case*²⁰, the Supreme Court held that “Constitution guarantees right to compensation, that is, the equivalent in money of the property compulsory acquired”. Thus, in effect, the adequacy of compensation and the relevance of the principles lay down by the legislature to determine the amount of

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¹⁸ AIR 1954 SC 170.
²⁰ AIR 1970 SC 564.
compensation virtually became justifiable inasmuch as the court can go into the question whether the amount paid to the owner is what may be regarded as compensation for loss of property.

To overcome the hurdle, the then government came up with the Twenty Fifth Amendment\(^{21}\) to the Constitution. Under 25\(^{th}\) amendment, the word “compensation” was substituted by the word “amount”. Again the Supreme Court interfered through *Kesavananda Bharati v. State of Kerala*\(^{22}\) and held that the amount payable either fixed by the Legislature or determined on the basis of the principles engrafted in the law of acquisition, shall be not be wholly arbitrary and illusory; and that the Parliament cannot fix an arbitrary amount or illusory amount or an amount that virtually amounts to confiscation. Finally, the government came up with a grass root change in the right to get adequate compensation as well as the fundamental right to property. Forty Fourth Amendment to the Constitution\(^{23}\) removed Article 31 and Article 19(1) (f) from the Constitution and incorporated Article 300A\(^{24}\).

### 8.3 Compensation under Land Acquisition Act

One of the main purposes of the codification of land acquisition laws in India was to bring the rules relating to compensation under a single head. The preliminary report of the Select Committee on the Bill to amend the Land Acquisition Act X of 1870\(^{25}\) stressed the need for the inclusion of a clause so as to bring under the consideration of the court, any diminution in the profits of occupation during the period between the declaration and the Collector’s entry. Accordingly, the Select Committee added a clause to this effect in Section 24\(^{26}\) of the Act and the Collector or

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\(^{22}\) AIR 1973 SC 1461.

\(^{23}\) *Supra* n. 17.

\(^{24}\) For details, See *Supra* Chapter V, pp. 77-97.


\(^{26}\) Prior to the Amendment in 1984.
Judge making the award will find, embraced in a single section, the entire details required for the completion of his estimate of compensation.

Later in 1984, Section 23(A) was inserted\textsuperscript{27}; which stipulates that 12\% of market value from the date of publication of notification shall be given to the interested party as an additional amount. The amendment further states that 15 to 30 percent of market value shall be given as solatium.

**8.3.1 Validity of Sections 23 and 24**

The validity of various provisions of the Act has been challenged frequently. In *Vallabhdas Naranji v. Collector, Nagpur*\textsuperscript{28}, it was observed that, sections 23 and 24 which lay down the main principles of compensation in India are in tune with the then English law on the subject. Both sections lay down the circumstances which a court shall/shall not consider while determining the amount of compensation. Section 23 is not exhaustive. Section 23 and 24 are complementary to each other.

In *Aflatoon v. Lt. Governor of Delhi*\textsuperscript{29}, constitutional validity of Section 23 was challenged on the ground that it imposes unreasonable restriction upon a citizen’s right to hold and dispose of property. The apex Court turned down the contentions and observed that the provision was not *ultravires* the Constitution. In *Ratri Devi v. Chief Commissioner, Delhi*\textsuperscript{30}, the apex court upheld the validity of Section 23 and observed that compensation has to be paid on the basis of the market value of the property acquired at the date of notification under Section 4 and not at the date of making possession of the land. Further, Section 14(3) of the Land Acquisition Amendment and Validation Act 1967 which provides for the payment of interest at 6 percent for three years from the date of the notification under Section 40 to the date of payment of compensation was held to be valid.

\textsuperscript{27} See, Land Acquisition (Amendment) Act, 1984.
\textsuperscript{28} AIR 1929 PC 1112.
\textsuperscript{29} AIR 1974 SC 2077.
\textsuperscript{30} AIR 1975 SC 1699.
Sections 23 and 24 not only lay down the main principles of compensation; but also the procedure for fixing the compensation to the land owner. Such procedure shall be followed; and the High Court cannot usurp the functions of the hierarchy of authorities\textsuperscript{31}.

There are two occasions wherein compensation is paid: Firstly, by way of compensation awarded by the Collector\textsuperscript{32} and secondly, compensation given by the Reference Court\textsuperscript{33}. Section 23 vehemently states that it is the duty of the court to calculate the compensation\textsuperscript{34}; and the term ‘court’ means a principal Civil Court of original jurisdiction or a special judicial officer appointed by the Government\textsuperscript{35}.

\subsection{8.3.2 Award by the Collector}

Proviso to the Section 11 asserts that the Collector shall pass an award only after getting previous approval from the appropriate government. This shows that Collector is only an administrative officer. In \textit{State of West Bengal v. Kalicharan}\textsuperscript{36}, the Calcutta High Court observed that the Collector, while making enquiries in order to determine what compensation the government may offer to the persons whose lands are acquired under Land Acquisition Act, is neither a tribunal nor a judicial officer. He acts as the agent of government. His enquiry and evaluations are departmental in character. The government cannot order the Collector to reduce the amount of his award\textsuperscript{37}. If the owner doubts the correctness of the valuation, his only remedy is a ‘reference’ to civil court under Section 18 of the Act.

The empirical study reveals that nobody is satisfied with the award passed by the Collector even though elaborate powers have been conferred on him. With regard

\textsuperscript{32} See, Sections 11 and 12, Land Acquisition Act 1894.
\textsuperscript{33} See, Sections 23 and 24, \textit{Ibid}.
\textsuperscript{34} 1\textsuperscript{st} Para of Section 23 reads: “court shall take into consideration...” \textit{Ibid}.
\textsuperscript{35} Section 3 (d) says: “a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the court under this Act”. \textit{Ibid}.
\textsuperscript{36} AIR 1965 Cal.638.
to the question of adequacy of compensation, all respondents answered negatively: none was satisfied with the compensation awarded by the Collector.

While awarding compensation, the rise and fall in the market value during the period of transaction and notification has to be taken into consideration. Compensation is also payable when: a part of the property is proposed for acquisition in such a manner that the remainder depreciates in value and when the land notified for acquisition has standing crops or trees.

The Act also prescribes matters to be considered by the Collector at the time of passing an award of compensation to the interested persons\(^{38}\). This provision is equally applicable to the Reference Court as well as the Awarding Officer.

**8.3.3 Reference Court**

The Kerala High Court in *State of Kerala v. Dr. Susheela Varghese*\(^{39}\) observed that the Reference Court has to decide every case based on its own fact pattern and bearing in mind that the Judge must place himself as a prudent purchaser of land; that a balance sheet of *plus* and *minus* factors of the land acquired must be drawn up; and that the general guidelines to be applied with commonsense and sufficient understanding of the social background. While passing the decree, the court has to look into the following matters enumerated under the Act\(^{40}\):

- Firstly, the market value of the land at the date of the publication of the notification under Section 4 (1).

\(^{38}\) Section 15 of the Land Acquisition Act, 1894 provides: “In determining the amount of compensation, the Collector shall be guided by the provisions contained in Section 23 and 24”.

\(^{39}\) 1999 (2) KLJ 594.

\(^{40}\) Section 23, Land Acquisition Act, 1894.
Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector’s taking possession thereof.

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

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

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

Sixthly, the damage if any bonafide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and time of the Collector’s taking possession of the land.

In addition to market value of the land, as stated above, the court shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4 (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.41

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41 See, Section 23 (1-A), Ibid.
In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held upon account of any stay or injunction by the order of any court shall be excluded\(^\text{42}\).

In addition to the market value of the land, as provided above, the court shall in every case award a sum of thirty per cent on such market value in consideration of the compulsory nature of acquisition\(^\text{43}\).

### 8.4 Meaning of ‘Market Value’

In *R.C. Cooper v. Union of India*\(^\text{44}\), the Supreme Court observed that Sections 23 and 24 are substantial in nature. It cannot be challenged on the ground of procedural unreasonableness. It is impossible to calculate the amount of compensation without considering Ss. 23 and 24. The word ‘shall’ in the section make the provision mandatory. While calculating the compensation, the first step is to calculate the market value of the land at the time of notification. Sale deed of the land situated in the vicinity and the comparable benefits and advantages which they will have furnished etc. can be taken as grounds for calculation of market value of the property\(^\text{45}\).

The term ‘market value’ is not defined in the Act. The general meaning of the word ‘market value’ is “the highest price which the property can fetch if sold in the open market”\(^\text{46}\). In *Executive Engineer Karnataka Housing Board v. L.A.O*\(^\text{47}\), the apex court held that the determination of market value on the basis of auction sale cannot be relied upon when other regular traditional sales are available. But, where auction sale transactions alone are available, deduction or cut of 20% in auction price disclosed towards factor of competitive price hike, could be considered.

\(^{42}\) See, Explanation to Section 23, *Ibid*.

\(^{43}\) See, Section 23 (2), *Ibid*.

\(^{44}\) AIR 1970 SC 564.


\(^{47}\) AIR 2011 SC 781.
The best way to determine the market value of the property is to consider the prices obtained by contemporaneous sale-deeds of the same land or the land in the vicinity. In *Haryana State Industries Development Corporation v. Pran Sukh*[^48^], the Supreme Court held that factors which are relevant for calculating the market value include the size and shape of the land, the locality and its situation, tenure of the land etc; provided there is evidence on record regarding the value of the property[^49^]. In *Tehsildar Land Acquisition Officer v. T.V.Seesagiri Rao*[^50^], it was held that though the land acquisition officer is competent to fix market value, his decision shall not be binding on the claimant. Fixation by the Collector is neither conclusive nor final. The absence of rebuttal or corroborative evidence in proof of the officer of the government in the award, will not absolve the court of its judicial function of appreciation of evidence.

In *State of Madras v. P. Seetharamaramathai*[^51^], the Madras High Court held that the market rate must be determined with reference to the price which a willing purchaser or vendor is intended to agree. The damage, if any, sustained by the person interested, the rent which an owner was actually receiving at the relevant time, the rent which the neighbouring land of similar nature are fetching etc. can be taken into consideration. Market value includes not only *payment value* but also *potential value* which must include value of minerals lying underground[^52^].

Instead of the term ‘market value’, the phrase ‘fair market value’ is used in Direct Taxes. Fair market value includes economic conditions, market conditions, profitability, conditions of property etc. In *Jaswant Rai v. C.W.T, Patiala*[^53^], Hon’ble High Court of Punjab & Haryana observed that, “it is fair and proper that the benefit of the method of valuation which is most favourable to the assessee should be allowed to him and the choice of the method to be adopted for determining the value of property should be left to the assessee”. So the owner of the property is the best

[^48^]: 2010 (8) SCJ 580.
[^51^]: AIR 1972 Mad.170.
[^52^]: *Metal Corp. of India Ltd. v. Union of India*, AIR 1970 Cal. 15.
person to assess the market value of the property. The role of Advocate Commissioner in the assessment of damage is limited. He could not be considered as an expert\(^54\). He can seek the assistance of experts like surveyor, engineers etc.

**8.4.1 Market Value under British System**

The term ‘market value’ has been evenly interpreted by Indian and British courts. In *Lala Narsingh v. Secretary of State for India*\(^55\), Lord Buckmaster observed that, it is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired. In *Birmingham City Corporation v. Baptist (Trust) Association*\(^56\), the House of Lords observed that compensation is the value of the property to be given at the time of taking possession of the property.

With regard to the definition of ‘market value’, the House of Lords observed that the market value must be defined with specific reference to the value of the property at a particular point of time, i.e. the time of expropriation of the property. However, in the decisions of the Supreme Court of India\(^57\), this particular time reference has been left out, while all the other particulars of the definition of the English Courts are maintained.

So the word ‘market value’ should be interpreted in a wider and just manner to provide maximum benefit to the persons whose property is acquired by the government.

\(^{54}\) Sreekantan v. Revenue Divisional Officer, 2001 (2) KLT 25.

\(^{55}\) AIR 1925 PC 91.

\(^{56}\) [1969] 3 All ER 172.

8.4.2 Damage Due to Loss of Standing Crops

If damage is sustained due to loss of standing crops or trees, severance of acquired property from other land and if it affects injuriously to other property of the interested person, such persons shall be compensated by the acquisition authority. The amount claimed under second, third and fourth paragraph of Section 23 is different from calculation of market value of the property. The compensation claimed under this clause is ‘damages’ and not ‘market value’ of the property. In *Dayaprakash Trikambhai v. Special Land Acquisition Officer* 58, the Gujarat High Court held that the measure of damage would be the loss which the owner suffers by being deprived of the harvest, and not the price of the unripe crops. The term ‘standing crops or trees’ would be interpreted as things attached to the earth and are part of the land acquired under Section 3 (a) of the Act. It can be calculated under the market value of the property.

Under Section 23 of the Act, damages means the value of the crops or trees that may have grown on the land between the date of the notification and the date on which the Collector took possession. In *State of Gujarat v. Rama Rana* 59, the Supreme Court held that the statistics produced by the agricultural department would be material in deciding the market-value of the property. In the absence of the data, the oral testimony of the witnesses cannot be rejected and the court has to apply the test of normal prudent man.

8.4.3 Compensation for Severance

Severance clause is applicable to the damage sustained by the interested persons at the time of taking possession of property by reason of severing such land from his other land. If the acquisition of a portion of the building or land rendered the remaining portion of building useless, compensation to the extent of the entire

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58 AIR 1969 Guj. 34.
59 (1997) 1 LACC 165 SC.
building should be given. Compensation for severance should be assessed separately and distinctly from compensation under other heads\textsuperscript{60}.

\subsection*{8.4.4 Damage Due to Acquisition Injuriously Affecting Other Property}

In \textit{Balammal v. State of Madras\textsuperscript{61}}, the Supreme Court observed that any loss by reason of the severance of the land from other lands may injuriously affect the earnings of the owner, and in turn, adversely affect the use of the other land.

\subsection*{8.4.5 Damage for the Loss of Earnings}

If the source of income is not destroyed by acquisition, instead of carrying on business in the acquired property, the business has to be shifted somewhere else. Normally this is a time consuming process. Hence the loss that may be incurred during that transit period has to be compensated.

\section*{8.5 Other Methods for the Valuation of Property:}

(a) Land and Building Method  
(b) Rent Capitalization Method  
(c) Average Method  
(d) Standard Rent Method  
(e) Unit Price Method  
(f) Mass Appraisal Method  
(g) Detailed Appraisal Method

\textsuperscript{60} See, Section 23 of the Land Acquisition Act, 1894.  
\textsuperscript{61} AIR 1968 SC 1425.
8.5.1 Land and Building Method

Under land and building method, the fair market value is estimated by adding the value of land to the present cost of construction of the building after a due deduction for depreciation of the building. This method is also known as contractor’s method. In State of Kerala v. Hassan Koya,62 the Supreme Court observed that “the method which is generally resorted to in determining the value of the land with buildings, especially those used for business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land and buildings”.

8.5.2 Rent Capitalization Method

In Viluben Jhalejan Contractor v. State of Gujarat63, Supreme Court observed that the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified with regard to the proximity from the time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regarded to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. Positive factors affecting the acquisition are smallness of size, proximity to road, frontage on a road, nearness to development area, regular shape, level vis-à-vis land under acquisition, and special value for an owner of an adjoining property to whom it may have some very special advantage. Negative factors are largeness of area, situation in an interior/distant place from the road, narrow strip of land with very small frontage compared to depth, lower level requiring the depressed portion to be filled up, remoteness from developed locality and some special disadvantageous factors which would deter a purchase.

63 AIR 2005 SC 2218.
8.5.3 Average Method

The *Average method* of valuation is a means of valuation in accordance with land and building method and rent capitalization method. This method is applied in cases where there is great disparity between the valuations arrived at by applying different methods as in the case of property where there is no clear-cut evidence on record regarding the rent which the property is fetching or where the property is not fully tenanted.

8.5.4 Standard Rent Method

In *standard rent method*, the rent is fixed by the assessing authority under Rent Control Act. Thus the expected buyer of a property can calculate the rent of the property according to the provisions of the Rent Control Act. In *Dewan Daulat Rai Kapoor v. New Delhi Muncipal Committee*\(^{64}\), the Supreme Court held that “when the rent control legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable”.

8.5.5 Unit Price Method

The *unit-price method* is based upon land and improvement classifications. These values are based upon valuations by other agencies for similar items of damage and similar types of land. Appraisers are then employed to proceed along the location of the proposed route and obtain classifications of land and improvements which have to be acquired. Such a system was used by the Taconic State Park Commission in New York.

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\(^{64}\) (1980) 122 ITR 700.
8.5.6  Mass-Appraisal Method

The mass-appraisal method is used by some agencies that desire to obtain a rough estimate of right-of-way costs in determining whether or not a given expenditure is warranted or whether adequate funds are available. Under this system appraisers are employed to inspect each property, to estimate the value of the land acquired and to bring in a list of the damages which will be incurred and their approximate value. This method was used in Westchester County, New York, in determining the right-of-way costs of a given route.

8.5.7  Detailed Appraisal Method

The detailed appraisal method is used most widely for properties which require court action. Under this system, the appraisers make a thorough inspection of the land to be acquired and a complete analysis of the improvements according to size. This method is, however, considerably more expensive than the two former methods. The unit-price or mass-appraisal methods should be given consideration by public agencies that propose to acquire private property. From these appraisals, more detailed analyses may be made for those parcels necessitating court action.

Whatever agency is engaged in acquisition, the personnel employed in negotiating with property owners and the methods used in establishing prices should be given consideration. Although the use of a single agency may be desirable in public developments, land acquisition by minor governmental units can be economical if effective central control and supervision are exercised. This control must be flexible, if it is to be effective.

8.6  Judicial Approach on Compensation under the Act

In many cases, Indian judiciary is reluctant to give a wider meaning to the term ‘compensation’. It disregards all meanings of the word ‘market value’ given in
other statutes. The rate determined by the Collector under Stamp Act and Rules framed there under, for the purpose of collecting stamp duty, does not form the basis for determining market value of land under Section 23(1). Similarly, civil suit for compensation under Section 36(4) of Defence India Act, 1962 is barred by Section 12 of the Land Acquisition Act. All claims for enhanced solatium and interest should be filed only after the amendment. If the acquisition proceedings are initiated much prior to the commencement of Amending Act, parties are not entitled to enhanced solatium.

In Raghubsans Narainsingh v. Govt. of U.P., the Supreme Court has defined the term market value as the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing conditions, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired.

No writ petition can be filed against the acquisition notice or against any proceedings there under after the award passed by the Collector. Land acquired under private negotiations is also exempted from the purview of the Act. Therefore in such cases, the land owner is not entitled to claim payment of solatium and interest.

In Union of India v. Mangat, the Supreme Court held that the price of land which is land –locked and which is far away from the National Highway cannot be the same. The market value of land which abuts on the National Highway is much more than that of the land which is away from it. Mathematical formula applied indicating that price of entire land irrespective of location of different parcels of land is incorrect. The sale deed of a land cannot be the conclusive evidence for the purpose

69 C. Padma v. Dy. Secretary to the Govt. of Tamil Nadu, (1997) 2 SCC 627.
70 Digambar Ambadar Magar v. State of Maharasthra, AIR 2009 (NOC) 997 (Bom.)
71 AIR 2000 SC 3527.
of determining valuation\textsuperscript{72}. Tenanted agricultural land cannot be valued on the basis of building potential. It would be valued on the basis of yield\textsuperscript{73}.

For the purpose of calculation of compensation, the potentialities of land, its location, amenities available can be taken into consideration. Where most acceptable rate had been taken and suitable reduction had been deducted, the method adopted for adjudging compensation cannot be said to be unreasonable or arbitrary\textsuperscript{74}. Land in the vicinity or even abutting onto a fast developing land or development all around the acquired land has to be considered while computing the compensation provided under the Act\textsuperscript{75}. If the acquired land is situated about 4 km away from town or abutting National Highway, a further increase of 10\% escalation per year has to be added in respect of the acquired land\textsuperscript{76}.

In the case of the takeover of a firm by another firm or company, if the price paid did not represent price of the land purchased, then it cannot be taken as evidence of value of land\textsuperscript{77}. If the valuation of government approved valuer is not based on any method of valuation but solely on the basis of facilities available to land, it is illegal\textsuperscript{78}. Similarly the price fetched in auction of sale cannot be regarded as value of the property; since auction sale has an element of competition\textsuperscript{79}.

The absence of a particular time reference in the definition of the term ‘market value’ by the Supreme Court of India does not, however, make any material difference between the definitions given by Indian Supreme Court and the House of Lords. The market value as defined by the Supreme Court is the price that a willing purchaser would pay to a willing seller. In \textit{State of Madhya Pradesh v. Medha Secretary, Agricultural Produce Market Committee Koderma v. Mohata Concerns Ltd.}, AIR 2009 Jhar. 70

\textsuperscript{72} State of Goa v. Smt. Merina, AIR 2009 NOC 996 (Bom.)
\textsuperscript{73} Raj Kumar v. Haryana State, AIR 2007 SC 3127.
\textsuperscript{74} Mummidi Apparao v. Nagarjuna Fertilisers and Chemicals, AIR 2009 SC 1506.
\textsuperscript{75} Revenue Divisional Officer-cum-LA Officer v. Shaik Azam Saheb, AIR 2009 SC 1914.
\textsuperscript{76} Numaligarh Refinery Ltd. v. Green View Tea and Industries, AIR 2007 SC 1733.
\textsuperscript{77} Nelson Fernandas v. Spl. Land Acquisition Officer, South Goa, AIR 2007 SC 1415.
\textsuperscript{78} State of Haryana v. Rajinderkumar, (2000)1 LACC 360 P & H.
Patkar\textsuperscript{80}, the Supreme Court held that the State government has power to re-
determine market value of the land by advancing date of notification under section 4
of the Act and make supplementary awards.

\section*{8.7 Deduction on Agricultural Land}

While acquiring agricultural land, considering the potential of land and
deduction of more than 30\% would be prejudicial to the interest of claimants\textsuperscript{81}. However if the agricultural land is situated within Municipal limits, within a distance
of one kilometer from Railway Station and Bus stand and there were several
residential colonies and colleges in surrounding areas, then they could be classified as
lands having urban development potential, deduction of 40\% towards development
cost would meet the ends of justice\textsuperscript{82}.

\section*{8.8 New Formulae for the Calculation of 'Just Compensation’}

The current laws on compensation have raised a hornet’s nest from all quarters
of society. The government also proposed to amend the formula for the court-
determined “fair market value” of the condemned property. Thomas Merrill\textsuperscript{83}
suggested a ‘macro approach’ to pay compensation. It is based on statistical
measurements. The number of sellers who would be willing to sell for less than
market value would actually be paid more, and the number of sellers who would only
be willing to sell for more than the fair market value would actually be paid less.

However, the incentive structure under such a rule of increased compensation
is not likely to improve dramatically. Although such a regime might have a rather
deterrent effect on governments, it may still result in under or overcompensation for
landowners, thus potentially causing the failure of socially desirable plans. The
purpose of compensation is to reflect the subjective value that the owner places on his

\textsuperscript{80} AIR 2011 SC 3827.
\textsuperscript{81} RadhaMudaliyar v. Spl. Tahsildar (L.A) T.N.H.Board, AIR 2011 SC 54.
\textsuperscript{82} Executive Engineer Karnataka Housing Board v. L.A.O, AIR 2011 SC 781.
\textsuperscript{83} http://www.law2.byu.edu/jpl/papers/v20n1_Nathan_Burdshal.pdf (visited on October 21, 2012).
property. It ensures genuine evaluation of property by the officers. According to Saul Levmore\textsuperscript{84}, compensation may be calculated on the basis of ‘special bids’, that is assessments voluntarily offered in return for government benefits. He proposed publicizing the periodic self-assessment of the property, and to allow any willing buyer (including the government) to take the property against pay.

8.9 Matters Need not be Considered

Section 24 of the Act deals with matters that need not be considered in determining compensation. It means that the court shall not take into consideration following:

- the degree of urgency, which has led to the acquisition;
- any disinclination of the person interested to part with the land;
- any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;
- any damage which is likely to be caused to the land acquired, after the date of the publication of the use to which it will be put;
- any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;
- any increase in the value of the land of the person interested likely to accrue from the use to which the land acquired will be put;
- any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the collector after the date of the publication of the notification under Section 4 (1); or

any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

8.9.1 Degree of urgency

The degree of urgency should not be considered while giving compensation to the interested person. In other words, the fact that the land is required for some urgent and immediate necessity is no ground to make a special or additional value on that account. The purpose for which the land is required should not influence the award of compensation. In *Land Acquisition Officer, Eluru v. Jasti Rohini*\(^{85}\), the apex Court observed that ‘it shall not take into consideration the degree of urgency for the acquisition, disinclination of the person interested to part with possession of the acquired land’. Therefore at the time determining compensation, Collector or the Reference Court shall not consider the factors connected with future or later development in the locality or neighbourhood and should not get influenced by the prevailing situation as on the date of the determination of the compensation.

8.9.2 Disinclination of person

If the owner is not willing to part with his land, it cannot be considered as a ground to award special compensation.

8.9.3 Damage caused by private persons

Any damage sustained by him which, if caused by a private person, would not render such person liable to a suit. So a suit for damages cannot be filed against any private person after acquisition of property under Land Acquisition Act.

\(^{85}\) (1995) 1 SCC 717.
8.9.4 Damage caused after date of publication of notice

It is the value to the owner which has to be compensated for and not the value to the acquiring body. The court should not consider any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6 or in consequence of the use to which it will be put.

8.9.5 Prospective increase in value of land acquired and other lands of person interested

It is quite natural that the value of the surrounding land will increase if the property is acquired for public purpose. While determining the amount of compensation to be awarded for land acquired under Land Acquisition Act, the court shall not take into consideration any increase to the value of other land of the person interested likely to accrue from the use to which the land acquired will be put.

8.9.6 Improvements after acquisition

Any improvement or any disposal since the date of declaration under section 6 is not to be considered while assessing the compensation. In State of Gujarat v. Parshottamdas Ramdas Patel86, the Supreme Court held that, any outlay or improvement on disposal of the land acquired, commenced, made or effected without sanction of the Collector after the date of the publication of the notification under Section 4 (1) of the Land Acquisition Act shall not be taken into consideration while awarding compensation.

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86 AIR 1988 SC 220.
8.9.7 Any improper use of land

Any use of the land not authorized by the acquiring authority should not be considered for compensation to the affected parties.

So it is very clear that the rules enunciated by the Courts for determining the compensation for compulsory acquisition under the Land Acquisition Act vary according to the nature of the land acquired. For properties which are not marketable commodities, such as lands, buildings and incorporeal rights, valuation has to be made on the application of different rules. The principle of capitalization of net rent at the current market rate on guilt-edged securities, the principle of reinstatement, the principle of determination of original value less depreciation, the determination of break-up value in certain types of property which have outgrown their utility, and a host of other so-called principles are used to determine compensation payable. Special adaptability to schemes of development and potentialities, but not the urgent need of the acquirer and the disinclination of the vendor, has to be taken into account. The Land Acquisition Act provides for determination of compensation by reference to the market value subject to certain matters being taken into account and some others being excluded. The rules relating to determination of value in regard to the agricultural and non-agricultural lands, house-sites, buildings, machinery and other properties, vary greatly and the value in respect of the same item of property by the application of different rules may lead to vast disparities87.

The discussion hitherto, highlights that the Indian judiciary remains the only ray of hope for the “little man”. However, the situation has been further complicated by the New Economic Policy of India, which has added fuel to the fire. Hence, the next chapter explores the adverse impact of the New Economic Policy in India.