

# PLPP

## Planning Legislation & Professional Practice

*Comprehensive Explanatory Notes*

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**Topics Covered:** Land Acquisition Act | Resource Mobilisation | Development Control (Ch-21) | Environment Legislation (Ch-30) | SEZ | Project Formulation | ITPI

*Masters of Urban and Regional Planning*

# 1. Land Acquisition Act

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## A. Evolution of Land Acquisition in India (1894 Act)

The Land Acquisition Act of 1894 was the foundational legislation governing the process by which the government could compulsorily acquire private land for public purposes. Enacted during British colonial rule, it remained largely unchanged for over a century, making it one of the most significant — and most criticised — pieces of legislation in Indian planning history.

### Key Features of the 1894 Act

- Empowered the government to acquire any land for a 'public purpose' or for use by a company.
- 'Public purpose' was broadly and vaguely defined, leaving enormous discretion with the government.
- Compensation was based on market value of land as on the date of notification — often understated.
- No mandatory requirement for Rehabilitation and Resettlement (R&R) of displaced persons.
- No Social Impact Assessment (SIA) was required before acquisition.
- Land could be acquired for companies (private parties) under Part VII, enabling misuse.
- Urgency clause (Section 17) could be invoked to bypass inquiry, depriving landowners of hearing rights.

### Why the 1894 Act Failed

- **Inadequate Compensation:** Market value was consistently below actual replacement value; solatium (30%) was insufficient.
- **Forced Displacement without Rehabilitation:** Millions were displaced without any systematic resettlement plan — particularly tribals, farmers, and the rural poor.
- **Vague 'Public Purpose':** The term was stretched to include private industrial projects and SEZs, undermining the public trust.
- **Procedural Delays:** Despite urgency clauses, acquisition proceedings dragged on for years due to litigation.
- **Social Injustice:** Marginalised groups including SC/ST communities, women, and the landless were excluded from compensation.
- **No Transparency:** No public hearing or grievance mechanism was mandated, creating opacity.
- **Protests and Conflicts:** Led to major land conflicts — POSCO, Singur, Nandigram — revealing deep structural problems.

## C. Detailed Case Study: POSCO Steel Plant, Odisha — FDI, Land Acquisition & Involuntary Displacement

This case study examines the POSCO (Pohang Iron and Steel Company) project in Odisha — one of India's largest proposed FDI investments and one of its most significant land acquisition conflicts. The project, signed in 2005 and abandoned in 2017, became a landmark reference point for the failures of the 1894 Land Acquisition Act and the inadequacy of impact assessment frameworks. The analysis below is drawn from the academic presentation prepared as part of the PA6100 course at NIT Rourkela.

### Project Background and Components

- Steel Plant: 12 MTPA integrated steel plant proposed at Paradip, Jagatsinghpur District, Odisha.
- Captive Port: For export-import operations supporting the steel plant.
- Iron Ore Mining: In Khandadhar Hills, Sundargarh District.
- Scale & Impact: ~4,000 acres of land required; 22,000+ livelihoods directly affected across agriculture, fishing, and forest-based communities.
- Context: Odisha's rich mineral resources (iron ore, coal) attracted global FDI. Liberalisation policies and the government's vision of industrial transformation formed the backdrop to the 2005 MoU between POSCO and the Government of Odisha.

### Project Timeline: MoU to Exit (2005–2017)

- 2005: MoU signed between POSCO and Government of Odisha.
- 2006: Rapid EIA / CBA / SIA initiated.
- 2007: Public hearing and Environmental Clearance process.
- 2009: Forest clearances sought — triggering Forest Rights Act disputes.
- 2010–11: Land acquisition attempts, community violence, and new conditions imposed. POSCO Pratirodh Sangram Samiti (PPSS) led road blockades and dharnas; police deployment and arrests followed.
- 2013: Plant capacity cut from 12 MTPA to 8 MTPA.
- 2015: Mining Policy Shift — iron ore mining rights became uncertain under new national policy.
- 2017: POSCO formally exited the project after 12 years of conflict and non-implementation.

### Issue 1: Land Acquisition and Displacement

#### Diverse Land Types & Livelihood Dependence

The acquisition included government land, private agricultural land, and forest land, with large areas supporting high-value betel vine cultivation, a crucial year-round income source.

#### Severe Impact on Vulnerable Groups

Tribals, small farmers, and forest-dependent communities were the most affected, losing not just land but their primary means of survival.

### **Multi-dimensional Displacement**

Displacement was not limited to physical relocation but also caused economic loss and social disruption, affecting livelihoods and community structures.

### **Inadequate Compensation Mechanism**

Compensation was mainly monetary and asset-based, ignoring long-term livelihood systems such as agriculture and forest-based income (e.g., betel vine cultivation losses).

### **Lack of Rehabilitation & Resistance**

Absence of assured employment or alternative livelihood led to resistance, with many households refusing compensation and facing forced acquisition attempts. Issue 2: Livelihood and Socio-Cultural Impact

Prior to the POSCO project, the local economy was self-sustaining and diversified:

- **Betel Cultivation:** Primary cash crop yielding high year-round income using local knowledge and family labour.
- **Fishing and Coastal Resources:** Met both subsistence and commercial needs; ensured food security for coastal communities.
- **Forest Produce:** Fuelwood, fruits, minor forest products — critical for tribals and women's household economies.

Post-displacement, affected families faced an uncertain shift to industrial wage dependency:

- Industrial jobs required technical education most locals lacked; no guarantee that affected families would be hired.
- People shifted from autonomous production to depending on industrial wages — a fundamentally insecure transition.
- No safety net, no retraining programme, and no income bridge during the transition period were provided.

### **Issue 3: Community, Cultural and Socio-Economic Losses**

- **Loss of Traditional Occupations:** Indigenous farming and fishing knowledge built across generations were permanently lost.
- **Disruption of Kinship and Social Networks:** Strong kinship structures, joint family systems, and mutual aid networks within villages collapsed as families were separated and dispersed.
- **Loss of Sacred and Cultural Spaces:** Sacred groves, burial grounds, temples, and ritual spaces — central to religious identity and cultural continuity — were irreversibly lost.
- **Weakened Community Identity:** Shared land, occupation, and culture defined community identity; displacement created pro- versus anti-project divisions and eroded collective agency.
- **Fractured Social Cohesion:** Mistrust replaced solidarity; long-standing social fabric was replaced by division, vulnerability, and a loss of community self-governance.

### **Issue 4: Impact on Vulnerable Groups**

- **Tribals and Forest Dwellers:** Relied on common property resources (forests, water, grazing land). Subsistence livelihoods were built for daily survival — not market-dependent. They often lacked formal land titles and were therefore excluded from compensation. Loss of tribal governance systems and cultural autonomy was irreversible.

- **Women:** Central to betel cultivation, forest produce collection, and household economies. Displacement cut access to land and forest resources, reducing independent income and increasing economic dependence on male members. Social agency and decision-making power declined sharply.
- **Children and Youth:** Schooling was interrupted and economic stress led to dropouts and child labour. Youth were caught between vanishing traditional livelihoods and uncertain industrial jobs. Psychological stress, identity confusion, and deep insecurity resulted.

## Issue 5: Environmental and Legal-Governance Challenges

### Environmental Concerns:

- ~2,958 acres of forest land to be cleared — posing serious deforestation and ecosystem loss.
- Destruction of coastal dune ecosystems and turtle breeding grounds.
- Steel plant operations would cause air pollution (dust, emissions) and water pollution from industrial discharge.
- Heavy water extraction from the Mahanadi river threatened irrigation and drinking water supply.
- Mining in Khandadhar Hills threatened forest cover, wildlife, and long-term ecological sustainability.

### Legal Violations Alleged:

- Forest Rights Act (2006): Gram Sabha consent was required before any land diversion — this was reportedly ignored.
- The EIA and SIA were criticised as incomplete, biased, and missing ground realities.
- Lack of transparency in the clearance process weakened institutional credibility and public trust.

### Recommended Solutions (Policy and Procedural Fixes)

- **Settle Rights Before Diversion:** Gram Sabha certification and Forest Rights Act completion must precede any land diversion or physical possession.
- **Mandatory and Effective Consultation:** Public consultations must be held near the site, reflect affected voices, and genuinely influence project design — not serve as a formality.
- **Livelihood-Based Rehabilitation:** R&R must restore productive capacity — betel cultivation, fishing access, forest rights — not merely offer cash payments or limited industrial jobs.
- **Socially Embedded Impact Assessment:** IA must integrate social, livelihood, and political realities. The EIA and CBA in POSCO missed the complex local economies and conflict conditions.
- **Cumulative Ecological Appraisal:** Coastal dunes, water systems, and forests must shape project siting and design — not be treated as marginal features.
- **Integrated R&R Governance:** A monitored structure with R&R administrator, committee oversight, local representation, and social audit should link all clearance stages.

- **Independent Grievance Redress:** Where coercion or police violence accompanies acquisition, independent fact-finding must precede any further process.

### Structural Criticisms of the Development Model

- **Mining-Led Industrialisation Failed Odisha's People:** The failure of mining-led industrialisation to benefit all of Odisha's people is linked to the government's failure to regulate private investment and assess real costs and benefits.
- **Growth Without Inclusion:** Agriculture, which employs more people than industry in Odisha, was starved of investment while industry was subsidised — a pattern characterised as 'growth without inclusion.'
- **State-Enabled Dispossession:** The state allowed agriculture to stagnate and facilitated slow but steady dispossession of agricultural land, forests, and water resources used by traditional cultivators.
- **Structural Bias Toward Industrial Capital:** IDCO's land acquisition support and special security arrangements structurally favoured industrial capital over local socio-ecological economies.
- **Failure to Understand Livelihood Economy:** Assessments did not recognise complex livelihood systems. POSCO failed to quantify the economic benefit from betel vines or propose credible alternative livelihoods, even though the local economy pivoted around betel vines, prawn cultivation, and fishing.
- **Monetising Damage, Not Restoring Livelihoods:** Cash payments and ex-gratia monetised damages rather than restored productive systems. Land was valued as an acquisition cost; livelihoods were not valued as an economic system.

### Key Takeaway for Planning Students

The POSCO case is a textbook demonstration of what happens when large-scale FDI and industrial development proceed without robust impact assessment, meaningful community consent, or livelihood-centred rehabilitation. The project's failure — and the decade of conflict that preceded it — directly contributed to the reform of land acquisition law through the LARR Act 2013. For planners, it underscores that impact assessment must go beyond biophysical parameters to capture the full socio-economic, cultural, and governance dimensions of displacement, and that compensation frameworks must restore — not merely monetise — affected livelihoods.

## B. LARR Act, 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act)

The LARR Act 2013 (also called RFCTLARR Act) replaced the 1894 Act. It was a landmark reform aimed at addressing the failures of colonial-era legislation by ensuring fair compensation, transparency, and mandatory rehabilitation.

### Salient Features of LARR 2013

- Social Impact Assessment (SIA) is mandatory before any acquisition — must be conducted by an independent body and approved by an Expert Group.

- **Consent Clause:** For private companies, 80% of affected families must consent; for PPP projects, 70% consent is required.
- **Enhanced Compensation:** Urban areas — up to 1x (i.e., market value), plus solatium of 100% = total 2x market value. Rural areas — up to 2x market value + 100% solatium = total 4x market value.
- **Multi-crop irrigated land acquisition** is restricted and only as a last resort.
- **Comprehensive R&R Package:** Includes housing, employment or annuity, subsistence allowance, transportation costs, and resettlement area development.
- **Return of Unutilised Land:** Land not used within 5 years reverts to original owner or land bank.
- **Food Security Safeguard:** Special protections for acquisition of irrigated multi-crop land.
- **Time-Bound Process:** Each stage has statutory timelines.
- **Transparency:** All records must be made public; Gram Sabhas must be consulted in rural areas.

### Definition of 'Social Impact' under LARR 2013

The Act defines social impact broadly to include impacts on:

- Livelihoods (loss of land-based income, employment, and business)
- Community assets and infrastructure (schools, roads, water bodies)
- Cultural heritage, burial grounds, and places of religious significance
- Gender impact — specifically women-headed households and women's rights to land
- Vulnerable groups: SC, ST, landless labourers, forest dwellers
- Physical and psychological displacement and its cascading effects

*The SIA must be conducted within a 6-month window and the Expert Group has 2 months to review it. This creates accountability not present in the 1894 Act.*

### How the New Act Faults the Old Act (1894)

- **No SIA then vs. Mandatory SIA now:** The 1894 Act had no requirement to assess social or environmental impacts before acquisition.
- **No consent then vs. Consent now:** The old Act allowed the government to acquire land unilaterally; LARR requires stakeholder consent for private and PPP projects.
- **Inadequate compensation then vs. Fair compensation now:** The 1894 Act's compensation formula was grossly inadequate; LARR multiplies it 2–4x plus solatium.
- **No R&R then vs. Comprehensive R&R now:** The old Act was silent on rehabilitation; LARR mandates housing, employment, and community development.
- **Broad 'public purpose' then vs. Restricted now:** The 1894 Act's public purpose was all-encompassing; LARR restricts acquisition for private parties.
- **No return clause then vs. Return clause now:** LARR ensures unutilised land is returned — preventing speculative acquisition.

## 2. Resource Mobilisation in Urban Planning

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Urban local bodies (ULBs) and planning authorities require substantial financial resources to deliver infrastructure, services, and implement development plans. **Resource mobilisation refers to the various mechanisms through which these bodies raise revenues.**

### A. Revenue Collection Methods

#### i. Tax-Based Revenue

- **Property Tax:** The primary source of revenue for ULBs; levied on the annual rental value or capital value of properties.
- **Advertisement Tax:** Levied on hoardings, banners, and commercial signages.
- **Profession Tax:** Collected from professionals and employees working in the city.
- **Entertainment Tax:** On cinemas, amusement parks, and commercial events.
- **Water & Sewerage Tax:** Charges for use of civic water and drainage infrastructure.

#### ii. Non-Tax Revenue

- **User Charges:** Fees for services like garbage collection, conservancy, markets.
- **Rents from Municipal Properties:** Revenue from leasing municipal land and buildings.
- **Fees and Fines:** Building plan approval fees, trade licence fees, encroachment fines.

### B. FAR/FSI-Based Compensation and Charges

#### Floor Area Ratio (FAR) / Floor Space Index (FSI)

FAR or FSI defines the ratio of total built-up area permissible on a plot relative to its area. It is a key development control tool and also a significant revenue instrument.

#### Transferable Development Rights (TDR)

- When land is surrendered for public purposes (roads, parks), the owner receives TDR certificates equivalent to the lost development potential.
- TDRs can be used or sold to build more floor space on a receiving plot — a market-based mechanism that avoids cash payments by the government.

#### Premium FSI / Additional FSI

- Planning authorities allow developers to build beyond the base FSI upon payment of a premium (a percentage of the land's ready reckoner value).
- This generates large revenues — used in Mumbai, Pune, Hyderabad, and other cities.
- Premiums are often linked to proximity to metro stations, affordable housing components, etc.

### C. Development Charges

Development charges (also called infrastructure development charges or betterment charges) are levied on:

- New construction or change of use of land
- Subdivision or amalgamation of plots
- Grant of planning permission

The revenue is earmarked for provision or upgrading of city-level infrastructure — roads, water supply, drainage, parks — that benefits the development. Development charges are collected by the planning authority at the time of granting permission.

#### **Betterment Levy**

- A betterment levy is charged on properties whose value has increased as a direct result of public infrastructure investment (e.g., new flyover, metro line).
- Captures unearned increment — value created by public action, not private effort.

#### **D. Why Are These Taxes and Levies Mandated?**

- **Fiscal Sustainability:** ULBs have large capital and operational expenditure commitments that cannot be met from central/state grants alone.
- **Internalising Externalities:** Development activities impose costs on infrastructure; charges ensure the developer bears part of this cost.
- **Equity:** Value capture from FAR premiums and betterment charges ensures that windfall gains from public investment are shared with the public.
- **Constitutional Mandate:** The 74th Constitutional Amendment (1992) mandated devolution of financial functions to ULBs, making local revenue mobilisation essential.
- **Plan Implementation:** Development charges provide resources to fund the capital works expected in the Development Plan/Master Plan.
- **Reducing Dependency:** Grants from the state and central governments are finite and often tied; own-source revenues give ULBs greater autonomy.

### 3. Development Control (Ch-21)

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Development control refers to the regulatory mechanism through which planning authorities manage, guide, and regulate the use of land and buildings to achieve orderly development in similarity with the Master Plan or Development Plan.

#### A. Tools of Development Control

- **Zoning Regulations:** Classify land into zones (residential, commercial, industrial, agricultural, etc.) and prescribe permissible uses.
- **Floor Area Ratio / Floor Space Index (FAR/FSI):** Regulates the total built-up area relative to plot area.
- **Building Setbacks:** Minimum distances from plot boundaries that must be kept free of construction.
- **Height Restrictions:** Maximum building height permitted in a zone.
- **Ground Coverage:** Maximum proportion of plot that can be covered by a building footprint.
- **Plot Area Minimum:** Minimum plot size for different uses — prevents over-subdivision.
- **Parking Standards:** Minimum parking spaces required for different uses.
- **Subdivision Regulations:** Rules governing the division of land into smaller plots.
- **Heritage Regulations:** Special controls in heritage zones or near listed buildings.
- **Coastal Regulation Zone (CRZ) Rules:** Development restrictions near coastlines.

#### B. Development Controls – Salient Features

- **Statutory Basis:** Development controls are given legal sanctity through the Town and Country Planning Acts or Municipal Laws of each state.
- **Binding on All Development:** Any person wishing to construct, demolish, or change the use of a building must obtain prior permission from the planning authority.
- **Zoning as Core Tool:** The zoning map classifies every part of the planning area into land use zones; the regulations for each zone specify what is allowed as of right, what requires special permission, and what is prohibited.
- **Flexibility Mechanisms:** Variances and special land use permissions allow case-by-case relaxation of controls when warranted.
- **Hierarchical:** Controls operate at city level (DP), local area level, and plot/building level.

#### C. When is Development Deemed a Violation?

Development is considered a violation of development control guidelines when:

- Construction takes place without obtaining building permission from the competent authority.
- Construction deviates from the sanctioned plan — in terms of area, height, setback, or use.

- The use of a building is changed without permission (e.g., residential building used for commercial purpose).
- Structures are built in prohibited zones (e.g., no-development zones, flood plains, CRZ areas).
- Structures exceed permissible FAR/FSI.
- Required amenities (parking, open space) are not provided as prescribed.

#### At the Building Level

- **At the individual building level, violations typically manifest as:** unauthorised extra floors, illegal additions and alterations, encroachment on setback areas, conversion of Open ground floor parking to habitable use, and misuse of common areas.
- **Enforcement Action:** Planning authorities may issue stop-work notices, demolition orders, penalise through compounding fees, or prosecute offenders.
- **Compounding of Offences:** Many states allow regularisation of certain minor violations upon payment of a fee — though this remains controversial as it incentivises violations.

#### D. Role of Planners in Development Control

- Preparing and reviewing development control regulations as part of the Master Plan/Development Plan.
- Processing building permission applications — checking compliance with zoning, FAR, setbacks, parking, and other regulations.
- Conducting site inspections at various stages of construction.
- Advising decision-makers on granting or refusing development permissions.
- Preparing detailed Local Area Plans and Special Area Plans with tailored development controls.
- Reviewing and updating development control regulations periodically to address new challenges (densification, climate change, etc.).
- Acting as arbitrators in disputes between citizens and authorities.

#### E. Innovations in Development Control

- **Form-Based Codes:** Shift from use-based to design and form-based regulations, regulating the physical character of development rather than only its use.
- **Transit-Oriented Development (TOD) Norms:** Higher FSI and mixed-use development permitted around transit nodes to promote compact, walkable communities.
- **Incentive Zoning:** Bonuses (additional FSI) offered for provision of public amenities like affordable housing, public plazas, or green roofs.
- **GIS-Based Zoning Maps:** Digital, GIS-integrated zoning maps replacing manual maps, enabling precise boundary definition and online check of regulations.
- **Online Building Plan Approval (AutoDCR):** Computer-aided verification of building plans for code compliance — reduces corruption and time.

- **Green Building Incentives:** Relaxed controls or FSI incentives for buildings achieving green rating (GRIHA, LEED).
- **Unified Building By-Laws (UBBL):** Model by-laws to harmonise development controls across states.

## F. Case Studies on Jurisdictions of Development Control

### Demolition of Flats in Kochi Coast

1. The **Supreme Court (8 May 2019)** ordered demolition of five apartment complexes (~500 flats) in Kochi for violating Coastal Regulation Zone (CRZ) norms.
2. The decision was based on an **expert committee report** submitted through the Kerala State Coastal Zone Management Authority (KSCZMA).
3. The Court directed authorities to **demolish the buildings within one month** and submit a compliance report.
4. On **21 May 2019**, the Supreme Court rejected the **review petitions filed by flat owners**, emphasizing strict enforcement of environmental laws.
5. The Court stated that **violations of environmental norms cannot be tolerated**, and advised flat owners to seek compensation from builders.
6. The issue originated in **2006**, when Maradu Municipality granted permission for construction in a **CRZ III area**, which is ecologically sensitive.
7. Investigations revealed **irregularities in granting permissions**, and notices were issued, but legal challenges in the High Court delayed action.
8. In **2017**, the Supreme Court appointed an expert committee, which confirmed that the buildings were in **CRZ III**, where construction is prohibited within 200 meters of the coastline.
9. The Court held that the constructions were **illegal and lacked approval from the competent authority (KCZMA)**, and warned that such violations increase vulnerability to natural disasters.
10. Finally, in **September 2019**, the Supreme Court ordered demolition within 138 days, and the flats were demolished in **January 2020**, marking a landmark judgment for **coastal environmental protection**.

## G. RERA – Real Estate (Regulation and Development) Act, 2016

### Introduction

The Real Estate (Regulation and Development) Act, 2016 — commonly known as RERA — is a landmark legislation enacted by the Parliament of India to regulate the real estate sector and protect the interests of homebuyers.

Prior to RERA, the real estate sector in India was largely unregulated, fragmented, and non-transparent. Homebuyers — who invest their life savings into purchasing a house — had little legal recourse against delays, fraud, or mis-selling by developers. RERA fundamentally changed this by bringing statutory accountability to both promoters (developers) and real estate agents.

### 1.1 Pre-RERA Scenario: The Problem Statement

The Indian real estate sector was characterised by several structural deficiencies before 2016:

- No central regulatory body to oversee or adjudicate disputes between buyers and developers.
- **Rampant project delays:** Developers routinely delayed possession by several years with no financial liability.

- **Fund diversion:** Amounts collected from buyers in one project were often diverted to other projects, causing funding crises.
- **Asymmetric information:** Developers had complete control over project details; buyers had no access to approved plans, sanctions, or financial accounts.
- **Misleading advertisements:** Carpet area, super built-up area, and saleable area were used interchangeably, misleading buyers about actual space.
- **Weak grievance redressal:** Consumer courts were inadequately equipped to handle complex real estate disputes; cases lingered for years.
- **No accountability for agents:** Real estate brokers operated without registration, professional standards, or liability.

## Need for RERA

The need for a dedicated real estate regulation law arose from a combination of sector-specific failures, consumer vulnerability, and the massive economic significance of the sector.

### 2.1 Sector-Specific Failures

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#### A. Project Delays

Studies conducted before RERA estimated that over 50% of all under-construction residential projects across major Indian cities were delayed, with average delays ranging from 2–5 years. Buyers continued to pay EMIs on home loans while living in rented accommodation, leading to severe financial distress.

#### B. Fund Diversion

Developers collected advances from buyers in a new project but used these funds to service debt or fund another project. This 'robbing Peter to pay Paul' approach was endemic and led to numerous project collapses.

#### C. Mis-Selling and Fraud

Real estate agents and developers advertised unbuilt amenities, inflated carpet areas, promised approvals that had not yet been obtained, and launched projects before receiving environmental or local body clearances. Buyers had no mechanism to independently verify claims.

#### D. Lack of Standardisation

There was no uniform definition of 'carpet area' or standard sale agreement. Developers enjoyed contractual superiority — sale agreements were one-sided, with penalties only on buyers (for delayed payments) and not on developers (for delayed possession).

#### E. Weak Legal Recourse

While buyers could approach Consumer Forums under the Consumer Protection Act, 1986, or civil courts, these forums were slow, expensive, and ill-equipped for complex real estate cases. There was no specialised forum.

## Objectives of RERA

1. **Protect the Interests of Consumers:** Ensure homebuyers receive what they pay for — in terms of specifications, timelines, and legal title.
2. **Regulate and Promote the Real Estate Sector:** Establish a transparent, efficient, and accountable framework for real estate transactions.
3. **Establish a Real Estate Regulatory Authority:** Create state-level authorities with quasi-judicial powers to resolve disputes.

4. **Create an Appellate Tribunal:** Provide an appellate mechanism above the authority for aggrieved parties.
5. **Lay Down Duties and Responsibilities of Promoters:** Codify obligations of developers from project conception to completion.
6. **Lay Down Duties and Rights of Allottees:** Define the rights and obligations of buyers under the law.
7. **Regulate Real Estate Agents:** Bring brokers under a registration and accountability framework.
8. **Establish Mechanisms for Speedy Dispute Redressal:** Resolve complaints within 60 days — faster than traditional courts.
9. Promote orderly growth of the real estate sector aligned with the vision of 'Housing for All'.
10. Enhance the flow of investment into the sector by improving transparency and investor confidence.
11. Reduce litigation and disputes through proactive disclosure and standardised contracts.
12. Promote affordable housing by creating a level playing field that discourages speculation.

### Salient Features of RERA

1. **Establishment of Regulatory Authority:** States must set up Real Estate Regulatory Authorities (RERA) to regulate residential and commercial real estate transactions.
2. **Mandatory Registration & Transparency:** All projects must be registered. Developers must disclose full project details—layout, approvals, land status, timeline, and key stakeholders.
3. **Track Record Disclosure:** Developers must provide details of projects completed or ongoing in the past 5 years, including delays and pending cases.
4. **No Pre-launch Without Approvals:** Projects cannot be marketed or sold before obtaining all statutory approvals and RERA registration.
5. **Escrow Account (70% Rule):** At least 70% of buyer funds must be kept in a separate account to ensure proper use for construction and land costs.
6. **Strict Timelines & Accountability:** Limited extension (max 1 year). In case of builder change, the new developer takes full responsibility without extending deadlines.
7. **Formation of Resident Welfare Association (RWA):** Must be formed within 3 months of majority bookings to ensure timely handover.
8. **Buyer Rights & Information Access:** Buyers have the right to access all project details, approvals, and periodic progress reports.
9. **Protection Against Misleading Ads:** Builders must deliver as promised. False advertisements require refund with interest and possible compensation.
10. **Time-bound Dispute Resolution:** Complaints and appeals must be resolved within **60 days**, ensuring faster justice.
11. **Penalties & Legal Provisions:** Includes imprisonment (up to 3 years for promoters) and monetary penalties for violations.
12. **Strict Penalties & Deregistration:** Projects can be deregistered; accounts may be frozen, and defaulters publicly listed.
13. **Title Insurance:** Protects buyers against defective land titles.
14. **Adjudication Mechanism:** Authority can appoint judicial officers to handle disputes efficiently.
15. **Buyer-friendly Contracts:** Standardized agreements reduce exploitation.
16. **Equal Penalty for Delays:** Builders and buyers face similar penalties for delays; buyers can withdraw with interest if project is delayed.
17. **Carpet Area Transparency & Consent Rule:** Sale must be based on carpet area; **2/3rd buyer consent** required for major changes or transfer of project rights. Developers are liable for structural defects for 5 years.

### Structure of the Act

The Act creates a comprehensive institutional framework for regulation of the real estate sector. The structure includes:

- Real Estate Regulatory Authority (RERA) — State-level regulator
- Real Estate Appellate Tribunal — For hearing appeals
- Central Advisory Council — Policy advisory body at national level
- Fast Track Dispute Settlement Mechanism — For quick resolution
- Adjudicating Officer — For adjudicating complaints at the RERA level

## Retrospective Effect

- The Act applies to all ongoing projects where the completion certificate has not been issued.
- Rules will be made subsequently to make provisions for taking care of all completed projects.

## Application to Residential Real Estate

The Act applies to residential real estate, i.e., housing and any other independent use ancillary to housing. However, it shall not apply where the area of land proposed to be developed does not exceed eight hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases.

## Project Registration

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### Mandatory Registration

Registration of Real Estate Projects and Real Estate Agents with the Real Estate Regulatory Authority is mandatory under RERA. Mandatory public disclosure norms for all registered projects include:

- Disclosure of all project details — names and addresses of the promoters, project layout plan, plan of development works, land status, carpet area and number of apartments booked
- Statutory approvals for the project
- Names and addresses of real estate agents who intend to sell
- Structural engineer details and contractor particulars

### Prior Approval before Launch

The Act contains provisions restricting launch of projects or advertisements unless all approvals are received. No pre-launch sales are permitted without all required approvals from Local Development Authority or Municipal Authority.

### Validity of Registration

Registration once granted can be revoked. Upon revocation, the promoter is prohibited from accessing the website. It is only in the event of natural calamity that registration may be extended. In the event the registration is not settled, either party can approach the tribunal.

### Compulsory Deposit

As notified by the appropriate Government, a compulsory deposit of seventy percent or such lesser percent of funds received by the promoter is required to cover the construction cost of the project. Funds received are to be deposited in a separate bank account.

## RERA Authority

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## Establishment

Establishment of Real Estate Regulatory Authority — The Authority to act as the nodal agency to coordinate efforts regarding development of the real estate sector and render necessary advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector.

## Functions

- Act as the nodal agency to ensure growth and promotion of a transparent real estate sector
- Render necessary advice to the appropriate Government
- Exercise oversight of real estate transactions
- Facilitate transactions between parties and impose penalty and carry out necessary documents
- Appoint adjudicating officers to settle disputes
- Maintain books of accounts, records, and documents

## State-Level Structure

- One RERA Authority is established in each State/UT, or one Authority for two or more States/UTs with appropriate functions and responsibilities
- Each State will establish a Real Estate Regulator and an Appellate Tribunal
- Regulatory authorities can grade projects along with grading of promoters to help buyers take the right decision

## Establishment of Appellate Tribunal

Establishment of Real Estate Appellate Tribunal — Establishment of the adjudicating officer and the Appellate Tribunal, by the State Government to hear appeals from the decisions or directions or orders of the Authority and the adjudicating officer. The Appellate Tribunal is to be headed by a sitting or retired Judge of the High Court with one judicial and one administrative/technical member.

## Duties of Promoters

### Function and Duties of Promoter

Duty of promoters towards disclosure of all relevant information and adherence to approval plans and project specifications, obligations regarding validity of the advertisement for sale or prospectus, responsibility to rectify structural defects, and to refund moneys in cases of default.

### Key Obligations

- **Disclosure:** Provide all relevant information including project approvals, layout plans, development works, and specifications.
- **Prohibition on Taking Advance:** Prohibition on taking more than **ten percent** as advance from buyers without a written agreement; developers are required to refund to buyers the full amount in case of delay.
- **Adherence to Approved Plans:** Must adhere to approved plans and cannot deviate from committed specifications without buyer consent.
- **No Misleading Advertisements:** Cannot engage in false advertising or misrepresent project details.
- **Escrow Compliance:** Must maintain 70% of collections in a dedicated escrow account for the project.

- **Quarterly Progress Reports:** Buyers must receive quarterly updates on project progress.
- **Structural Defects:** Promoters are liable for structural defects for 5 years after handing over possession.
- **Formation of Association:** Must facilitate formation of Residents Association within 3 months of majority handover.

## Restriction on Taking Advance

Prohibition on taking more than ten percent as advance from buyers without a written agreement. In case of delay of projects, developers/agents are required to refund to buyers the full amount.

## Compulsory Deposit for Project

As notified by the appropriate Government, a compulsory deposit of seventy percent or such lesser percent of funds received by the promoter must be deposited in a separate bank account to facilitate the construction and execution of the project.

## Rights of Buyers (Allottees)

### Rights and Duties of Allottees

Rights and Duties of Allottees — Right to obtain information relating to the property booked, to know stage-wise schedule of project completion, claim possession of the apartment or plot or building as per promoter declaration, refund money with interest in case of default by the promoter, and after possession to maintain and preserve books of accounts, obligation to comply with the provisions of the Act, obligation to keep trade practices, obligation to facilitate the possession of document to allottees as entitled at the time of booking, and to comply with such other functions as specified by the Rules made in that regard.

### Key Rights of Buyers

- **Information Access:** Right to obtain all information relating to the project including approvals, progress, and layout plans.
- **Stage-Wise Schedule:** Right to know the complete stage-wise schedule of project completion.
- **Claim Possession:** Right to claim possession of the apartment or plot or building as per the agreement.
- **Refund with Interest:** Right to get a refund of money with interest in case of default by the promoter — the penalty on builders for delay will be the same as penalty on buyers for payment of delays.
- **Compensation:** Right to receive compensation for defects, delays, or misrepresentation.
- **Penalty for Delay:** Penalty on builders for delay in completing projects will be the same as penalty on buyers for payment of delays to ensure completion and delivering the project on time.
- **Formation of Association:** Right to form a Residents Association after handover.

## Role of Real Estate Agents

### Mandatory Registration

Registration of Real Estate Agents is mandatory under RERA. No real estate agent can facilitate sale or purchase of any property registered under RERA without themselves being registered.

## Functions of Real Estate Agents

- Facilitate sale of real estate registered under RERA
- Maintain and preserve books of accounts, records, and documents
- Not involve in any unfair trade practices
- Comply with all conditions of registration
- Must not facilitate transactions for unregistered projects

## Duties Towards Buyers and Sellers

- Duty of allottees not to facilitate any unfair trade practices
- Obligation to facilitate the possession of documents to allottees
- Comply with trade practices, obligation to facilitate
- Must discharge obligation to hand over possession of property to buyers on time

## Accountability

Agents who fail to comply with the provisions of RERA are liable to penalties. The Regulatory Authority has powers to cancel agent registration and impose fines. A real estate agent is liable for penalty for non-compliance with every day for which the default continues.

## Penalties Under RERA

### Punitive Provisions & Compounding

**A promoter is liable for penalty for non-compliance with orders of the Authority for a term up to three years or with fine up to ten percent of project cost.** Non-compliance with orders of the **Appellate Tribunal**, shall be punishable with imprisonment for a term up to three years or with fine up to ten percent or with both.

### Penalties for Promoters

- **Non-Registration:** Any promoter who fails to comply with the rules or regulations, penalty for default period may extend up to five percent of the estimated cost of the real estate project for every day for default registration or of project cost.
- **False Information:** False information for registration — imprisonment up to three years or fine up to further ten percent of the project cost or both.
- **Failure to Comply with Authority Orders:** Fine up to five percent of estimated cost per day, cumulatively up to ten percent of cost.
- **Non-Compliance with Appellate Tribunal:** Imprisonment up to three years or fine up to ten percent of the cost of the plot, apartment or building.
- **Misleading Advertisements:** The Authority can order compensation to consumers in cases of misleading advertisements. Builders will have to return payment with interest to buyers affected by incorrect or false statements.

### Penalties for Real Estate Agents

- **Non-Registration:** A real estate agent who fails to comply shall be punishable with fine up to ten thousand rupees for every day which may cumulatively extend up to five percent of the cost of plot, apartment or building.
- **Imprisonment:** Default may result in imprisonment up to one year or fine or both.

## Advantages of RERA

- Ensures transparency and accountability in real estate through mandatory disclosures.
- Protects homebuyers with legal rights, refunds, and fair treatment.
- Guarantees quality construction with 5-year defect liability.
- Prevents misuse of funds via escrow (separate account) system.
- Enables fast dispute resolution, reducing lengthy legal processes.
- Eliminates fraudulent practices, creating a level playing field for developers.
- Improves credibility of the sector, attracting institutional and long-term investments.
- Promotes standardisation and professionalism in real estate operations.
- Boosts consumer confidence, increasing demand in housing.
- Supports economic growth, urban development, and sector formalisation.

## Challenges in Implementation

- **Delayed and uneven implementation** across states, with dilution of central provisions.
- **Legal complexities due to retrospective application** on ongoing/stalled projects.
- Large number of **stalled housing projects** makes execution and completion difficult.
- **Real estate slowdown** due to low demand, delays, and declining buyer confidence.
- **Excess inventory and liquidity crunch** affecting developers' cash flow.
- Impact of **GST, demonetisation, and policy changes** worsening financial stress.
- Rising **developer insolvency cases**, complicating project completion.
- **Conflict between RERA and IBC** creating legal and procedural uncertainties.
- **Governance issues and non-compliance** by some states and authorities.
- Lack of **quick, coordinated solutions**, requiring reforms in finance, taxation, and regulation.

## Case Study: Amrapali Building Projects

The Supreme Court of India in its landmark 23 July 2019 judgment removed the Amrapali Group from its housing projects and appointed National Buildings Construction Corporation (NBCC) to complete them, safeguarding the interests of lakhs of homebuyers. The Court cancelled Amrapali's RERA registration and lease rights, transferring control to a court-appointed receiver, and held the company's directors guilty of diverting funds through shell companies.

It ruled that homebuyers are the rightful owners of the flats and that dues of authorities like Noida and Greater Noida must be recovered from other attached properties, not buyers' homes. The Court also ordered investigation by the Enforcement Directorate into fund diversion.

To ensure project completion, buyers were directed to deposit pending dues with the Court, which would fund NBCC (estimated ₹8500 crore cost for ~46,575 flats). Recovery of about ₹11,000 crore from Amrapali's assets remains crucial. The Court further instructed authorities to provide basic services and fast-track completion certificates for occupied projects.

## 4. ENVIRONMENT LEGISLATION IN INDIA

### Environment and Constitution of India

The **environmental framework in the Constitution of India** reflects a comprehensive and evolving approach toward sustainable development, combining legal provisions, governance structures, and moral obligations. Although the original Constitution did not explicitly focus on environmental protection, growing global awareness—especially after the Stockholm Conference (1972)—led to the incorporation of several constitutional and legislative measures. Today, it is considered both the **duty of the State and every citizen** to protect and improve the environment. This dual responsibility ensures that environmental conservation is not limited to government action but becomes a collective

societal effort. Key environmental legislations such as the **Air (Prevention and Control of Pollution) Act, 1981** and the **Environment (Protection) Act, 1986** further strengthened India's commitment, incorporating principles from international agreements like the Rio Summit.

## . Objectives of Environment Legislation

- To preserve and protect the environment from degradation caused by developmental and industrial activities.
- To ensure sustainable development — meeting present needs without compromising future generations.
- To control and decrease pollution in all its forms: air, water, noise, and soil.
- To safeguard biodiversity including forests, wildlife, flora, and fauna.
- To create institutional mechanisms (Boards, Authorities, Tribunals) for enforcement and adjudication.
- To fulfil India's international commitments under multilateral environmental agreements.
- To protect the constitutional right to life (Article 21), which courts have interpreted to include the right to a clean and healthy environment.

## Environment Legislative Powers

Environment Legislative Powers are available under all the three lists as under:

► **In the Union List subjects included are:** Industries (the control to which is declared by Parliament by law); Regulation and Development of Oil Fields and Mineral Resources; Regulation of Mines and Mineral Development and Regulation & Development of Inter-State Rivers and River Valleys.

► **In the State List subjects included are:** Public Health and Sanitation; Agriculture, Protection against pests and Prevention of Plant Diseases; Land that is to say right in or over land; Fisheries; Mines and Minerals subject to provision of List I; Industries subject to provision of List I and Gas & Gas works are included.

► **In the Concurrent List subjects included are:** Forests, Protection of Wild Animals & Birds and Economic & Social Planning.

## Environment duty of the State

Para IV of the Constitution of India deals with the Directive Principles of State Policy. **Article 47 lays down that the improvement of public health is one of the primary duties of the State.** Article 48-A says: ***“The State shall endeavor to protect and improve the environment and to safeguard forests and wildlife of the country.”***

## Environment duty of the citizens

The Constitution (42nd Amendment) Act, 1976 incorporated Part IV-A after Part IV of the Constitution of India. This part enumerates certain fundamental duties of the citizens of India. Article 51-A(g) specifically deals with the Fundamental Duty regarding environment. The Article says:

***“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.”***

## Right to Environment as Fundamental Right

Sustainable Development has also been included within the meaning of the Right to Life under Article 21 as per interpretation in N.D. Jayal v. Union of India where the Supreme Court was of the opinion that “Right to Environment is a Fundamental Right. On the other hand, right to development is also one. Here the right to ‘sustainable development’ cannot be singled out. Therefore, the concept of ‘Sustainable development’ is to be treated as an integral part of life under Article 21.”

## Constitutional Protection to Environmental Laws

Environmental Laws have certain immunities from judicial scrutiny, under Article 31A. It provides that “No law to secure principle laid down in Part III shall be void if it is inconsistent with the rights conferred by Article 14 or Article 19 and no law containing a declaration giving effect to such environmental policy shall be called in question in any court.”

## Environment and Pollution Control Acts

The contents of Regional Plan include preservation, conservation and development of areas of natural scenery, forest, wildlife, natural resources and landscaping, preservation of erosion, provision for afforestation or reforestation, improvement and redevelopment of waterfronts areas, rivers and lakes, proposal for irrigation, water supply and hydro-electric works, flood control and prevention of river pollution etc. This entails the need for urban and regional planners to know environmental and pollution control Acts listed below:

- Criminal Procedure Code (Section 133, Control on Noise Pollution);
- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Motor Vehicle Act, 1988;
- The Public Liability Insurance Act, 1991;
- The Disaster Management Act, 2005; and
- The National Green Tribunal Act, 2010.

## Mining, Forest Conservation and Wildlife Protection Acts

Town and Country Planning Act defines “Development” with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in, over or under land or the making of any material change in any building or land or in the use of any building or land and includes subdivision of any land. It needs to be ensured that mining and quarrying activities do not adversely affect natural form and natural features by unrestricted and unplanned development. The comprehensive definition of development justifies the need for urban and regional planners to know many Central and State Acts including mining, forestry, and natural conservation Acts as listed below:

- The Indian Forest Act, 1927;
- The Soil Conservation Act, 1935;
- The Coal Mine Act, 1952 (conservation and safety);
- The Mines Act, 1952;
- The Mines and Mineral (Regulation and Development) Act, 1957;
- The Oil and Natural Commission Act, 1959;
- The Atomic Energy Act, 1962;
- The Wildlife Protection Act, 1972;
- The Endangered Species Act, 1973;
- The Forestry Act, 1976;
- The Forest (Conservation) Act, 1980; and
- The Forest Rights Act, 2008.

## Concept of Environment

The concept of environment is the aggregate of all extreme conditions and influences that affect the life and development of organisms, human behaviour, or society. The environment is considered polluted when environmental change creates or is likely to create nuisance or hazards to public health, safety, welfare, livestock, wildlife, fish, aquatic life, or other biological species.

Definitions under the Environment (Protection) Act, 1986:

- **Environment:** Includes water, air and land and the inter-relationship which exists among and between water, air, land and human beings, other creatures, plants, micro-organisms and property.
- **Environment Pollutant:** Means any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to environment.
- **Environment Pollution:** Means the presence in the environment of any environmental pollutant.
- **Hazardous Substance:** Means any substance or preparation which, by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

### Objectives of the Air (Prevention and Control of Pollution) Act, 1981

- To preserve the quality of air and control air pollution.
- To prevent, control and abatement of air pollution.
- Establishment of Boards and assigning powers and functions to such Boards.
- To give powers to issue instructions for ensuring standards for emission from automobiles.
- To take samples of air or emission and to get them analysed in Central or State laboratories.
- To restrict persons carrying on any activity not to allow emission of air pollutants in excess of the standards laid down by Government or by State Boards.
- To achieve the objective, whoever fails to comply with any provision of the Act is punishable with imprisonment or with fine or with both.

### Objectives of the Water (Prevention and Control of Pollution) Act, 1974

- To maintain and restore the wholesomeness of water.
- To prevent and control of water pollution.
- To provide for the creation of boards/authority which advise the government on matters concerning the prevention and control of water pollution.
- The Boards give direction to any pollution units, industry, or person to stop such activity.
- The Government (through the Boards) have power to restrict any unit and to take sample of effluents to get analysed in Central or State laboratories.
- To achieve the objective, whoever fails to comply with any provision is punishable with imprisonment or fine or both.

### Objectives of the Wildlife (Protection) Act, 1972

- To protect the wildlife of the country.
- To use the system of national parks and protected areas for wildlife protection.
- To prevent human encroachments which have posed a threat to Indian wildlife.
- To establish wildlife sanctuaries.
- To protect not only the flora and fauna of the protected region but also of the human communities who inhabit these regions and their way of life.
- To establish national parks to protect natural habitat.
- To improve protection of natural habitat which includes one or more national parks.

### Objectives of the Indian Forest Act, 1927

- To improve protection of the natural habitat.
- To establish Biosphere Reserves to protect large areas of natural habitat which include one or more national parks.

- To achieve ecological balance and sustainable development.
- To assist Town Planners and urban designers to possess elementary knowledge of laws relating to forest conservation and wildlife protection for achieving ecological balance.

### **Objectives of the Forest (Conservation) Act, 1980**

- To provide for the conservation of forests by checking the indiscriminate diversion of forests to non-forest purposes.
- To provide for the leasing of forest land or portion thereof to private persons or any authority, corporation, agency, or other organisation not owned, managed, or controlled by Government.
- To allow clearing of trees which have grown naturally in any forest land for the purpose of using it for reforestation with prior approval of the Central Government.
- To give comprehensive definition to non-forest purposes which includes cultivation of tea, horticulture, crops, rubber, palm, oil-bearing plants, medicinal plants.
- To make penal provision for contravention of the provisions of the Act by any authority, individual, or institution.

## **2. Salient Features of Key Environmental Laws**

### **2.1 The Air (Prevention and Control of Pollution) Act, 1981**

The preamble of the Act gives reference to India's participation at the United Nations on Human Environment held in Stockholm in June 1972. The Act provides for the preservation of the quality of the air and control of air pollution.

- Establishment of Central and State Pollution Control Boards with specific powers and functions.
- No person can establish or operate any industrial plant in an air pollution control area without obtaining the consent from the concerned State Board.
- No person running an industry, operation, etc., can allow emission of national ambient air quality standards in excess of what is prescribed.
- Power to issue instructions for ensuring standards for emission from automobiles.
- Power to restrict persons from carrying on any activity causing air pollution beyond set limits.
- Whoever fails to comply is punishable with imprisonment or with fine or with both.

### **2.2 The Water (Prevention and Control of Pollution) Act, 1974**

The Act was enacted because domestic and industrial effluents are not discharged into the water, maintaining or restoring the wholesomeness of water. The discharge would render the water unsuitable as a source of drinking water as well as for supporting fish life and for use in irrigation.

- Central and State Governments have constituted Boards. The Boards' composition, terms, and conditions of service of members are defined in the Act.
- The Boards lay down the standards of different constituents of water.
- The Boards give direction to any pollution units, industry, or person to stop such activity.
- The Government (through the Boards) has power to restrict any unit and to take samples of effluents to get analysed in Central or State laboratories.
- No person shall knowingly cause or permit any poisonous, noxious, or polluting matter determined under certain standards to enter any stream or well or sewer or on land.
- No person shall, without the previous consent of the State Board, establish or take any steps to establish any new or altered outlet for the discharge of sewage.

### **2.3 The Water (Prevention and Control of Pollution) Cess Act, 1977**

The Act has 17 sections. Schedule I gives list of industries such as Ferrous Metallurgical, Coal, Power, Processing of Animal or Vegetable Products (including hides, cement, textile, paper, fertilizer, coal, power) and processing in petroleum, petro-chemical, ceramic. Schedule II of the Act gives list of rates and rates per kilo litre for water consumed.

### **2.4 The Wildlife (Protection) Act, 1972**

The Wildlife (Protection) Act was established in 1935 and was substantially expanded in 1972 to protect human encroachments which have posed a threat to Indian Wildlife.

- Protection of the wildlife of the country with national parks and wildlife sanctuaries.
- Using the system of national parks and protected areas for wildlife protection.
- Prevention of human encroachments which have posed a threat to Indian wildlife.
- Establishment of wildlife sanctuaries.
- Establishment of Biosphere Reserves to protect large areas of natural habitat.
- 39 Project Tiger Wildlife Reserves across the country, including a national ban on tiger hunting imposed in 1970 after the Wildlife (Protection) Act, 1972.
- Project Tiger launched in 1973 — one of the most successful conservation ventures in modern history.

### **2.5 The Indian Forest Act, 1927**

The Indian Forest Act, 1927 was enacted to improve protection of the natural habitat.

- Established to improve protection of the natural habitat.
- Forest conservation and wildlife protection for achieving ecological balance and sustainable development.
- Town Planners and urban designers should possess elementary knowledge of laws relating to forest conservation and wildlife protection.

### **2.6 The Forest (Conservation) Act, 1980**

The Forest (Conservation) Act, 1980 was enacted to provide for the conservation of forests and for matters connected therewith. It applies to all kinds of forests whether under control of State, private, or otherwise.

- To provide for the conservation of forests by checking the indiscriminate diversion of forest land for non-forest purposes.
- Clearance from Central Government required for any non-forest use of forest land.
- To allow clearing of trees which have grown naturally in any forest land for the purpose of using it for reforestation with prior approval of the Central Government.
- Penal provisions for contravention — imprisonment for a term up to three years or fine for every day during which the offence continues.
- The Forest Conservation Act, 1980 also ordered detailed a comprehensive study of 24 of the 39 proposed projects for completion in Uttarakhand.

### **2.7 The Forest Rights Act, 2006 and 2008**

The Forest Rights Act, 2006 has pushed the India tiger on the verge of extinction. The exploitation of land by humans along with hunting and trapping for food has led to the exploitation of wildlife in India which is a mix of species of diverse origins.

- Recognises the rights of Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling.
- Recognises the rights of forest dwellers for tenural and access rights and responsibilities.
- Strengthening the conservation region of forests while ensuring livelihood and food security of persons affected by consolidating the rights of ecological balance and sustainable survival.

## 2.8 Noise Pollution Regulation

Noise pollution means an undesirable sound produced by any source that has impact on human beings and skins. Noise has been recognised as a pollutant, especially in urban areas.

- Sources of noise pollution include: High intensity of noise cause physical or psychological damages; Distraction from work, sleep, or concentration in studies; Construction sites; Traffic; Industries and related activities.
- Ambient Air Quality Standards in Respect of Noise for different Areas/Zones: Silence Zone: Day 50 dB(A), Night 40 dB(A); Residential: 55/45; Commercial: 65/55; Industrial: 75/70.
- Section 133 in the Code of Criminal Procedure deals with conditional order for removal of nuisance. A public place has been defined in sub-section to include any unlawful obstruction or nuisance.
- A person may be authorised to enforce noise pollution control measures and take action against violations in accordance with the authority.

## 2.9 Public Liability Insurance Act, 1991

The Act provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substances. Penalty for contravention or failure to comply with directions are also given in the Act.

## 2.10 The National Green Tribunal Act, 2010

The National Green Tribunal has become a powerful institution for environmental enforcement. It has stayed construction on river banks, stopped mining, ordered tree plantations, and directed State Governments to comply with environmental standards.

### Case Study Hydropower projects in Uttarakhand:

The case of **hydropower projects in Uttarakhand** highlights the serious environmental and governance challenges associated with large-scale infrastructure development in ecologically sensitive regions. Following the devastating 2013 floods, the Supreme Court intervened by halting further environmental clearances for hydropower projects and ordering a comprehensive assessment of their impacts. The Court expressed concern over the rapid and unregulated growth of such projects in the Alaknanda and Bhagirathi river basins, emphasizing that their cumulative ecological effects—such as deforestation, blasting, tunneling, and river modification—had not been scientifically evaluated.

The situation also exposed significant administrative failures. The Comptroller and Auditor General (CAG) report pointed out that the state government was unprepared, failed to learn from earlier disasters, and responded inadequately during the crisis. Warnings from meteorological authorities were ignored, and institutional response mechanisms were weak. As a result, both environmental degradation and disaster vulnerability increased.

Overall, the case demonstrates the **conflict between development and environmental sustainability**, the importance of scientific impact assessment, and the need for stronger governance, planning, and disaster preparedness. It underscores that infrastructure development in fragile ecosystems must be carefully regulated to avoid long-term ecological damage and human loss.

## A. Environment (Protection) Act, 1986 (EPA)

### Why It Came Into Existence

- The Bhopal Gas Tragedy (1984) — the worst industrial disaster in history — revealed catastrophic gaps in India's environmental governance.
- India had no umbrella environmental legislation; only sector-specific laws existed (Water Act 1974, Air Act 1981).
- The United Nations Conference on Human Environment (Stockholm, 1972) provided international impetus.
- Parliament enacted EPA 1986 as an 'umbrella legislation' to fill this gap and prevent further disasters.

### Objectives of EPA 1986

- To protect and improve the quality of the environment (land, water, air).
- To prevent, control, and abate environmental pollution.
- To implement decisions arrived at in international conferences on environment.
- To establish authorities to implement the Act and coordinate with other bodies.

### Salient Features of EPA 1986

- **Broad Definition:** 'Environment' includes land, water, air, and human beings, other living creatures, plants, micro-organisms, and property.
- **Powers of Central Government:** Power to issue directions, close units, regulate industrial activity, set emission/effluent standards, and designate restricted areas.
- **Environmental Standards:** Empowers the Central Government to set standards for quality of environment and for emission and discharge of pollutants.
- **Penalties:** Offences under EPA attract imprisonment of up to 5 years or fine up to Rs 1 lakh or both; continuing offences attract additional daily penalties.
- **Special Powers:** Under Section 5, the Central Government may issue directions to any person, officer, or authority — including closure, prohibition, and regulation orders.
- **Delegation:** Functions can be delegated to state governments or other authorities.

### Rules Notified Under EPA 1986 Relevant to Planning

- **EIA Notification 2006:** Mandates environmental impact assessment for 39 categories of development activities before clearance is granted. The most critical planning-related rule.
- **Coastal Regulation Zone Notification 2018 (CRZ):** Regulates development activities within 500 metres of the high-tide line along coasts.
- **Wetlands (Conservation and Management) Rules 2017:** Prohibits conversion of wetlands; relevant for urban fringe development.
- **Noise Pollution Rules 2000:** Sets ambient noise standards for different zones (residential, commercial, industrial, silence).

- **Solid Waste Management Rules 2016:** Governs collection, segregation, and disposal of municipal solid waste.
- **Plastic Waste Management Rules 2016:** Regulates manufacture and disposal of plastic; bans single-use plastics.
- **Eco-Sensitive Zone (ESZ) Notifications:** Buffer zones around National Parks and Sanctuaries restricting development activity.

### Relevance to Planning

- Any project requiring EIA clearance under the 2006 notification must go through the planning process AND the environmental clearance process — planners must coordinate both.
- CRZ rules directly restrict land use in coastal cities.
- ESZ notifications create de facto planning restrictions around protected areas.

## B. National Green Tribunal Act, 2010 (NGT)

### Introduction

The National Green Tribunal (NGT) Act, 2010 is a landmark piece of legislation in India's environmental governance framework. It established a specialized, dedicated judicial body — the National Green Tribunal — to handle all civil cases pertaining to environmental protection, conservation of forests, and other natural resources, as well as enforcement of legal rights relating to the environment and the award of compensation for damage caused to persons and property.

The NGT Act was passed by the Parliament of India and came into force in 2010. It is significant because it acknowledges the pressing need for a fast-track, expert judicial mechanism to address the growing number and complexity of environmental disputes in India — disputes that ordinary civil courts were ill-equipped to handle with sufficient speed or technical expertise.

### Background & Context

India's commitment to environmental protection is rooted in its Constitution. The 42nd Constitutional Amendment Act, 1976, inserted:

- Article 48-A (Directive Principles of State Policy): The State shall endeavor to protect and improve the environment and safeguard forests and wildlife.
- Article 51-A(g) (Fundamental Duty): Every citizen has a duty to protect and improve the natural environment including forests, lakes, rivers, and wildlife.

Despite these constitutional provisions, India lacked a dedicated fast-track court for resolving environmental disputes. Ordinary civil courts were slow, and litigants had to navigate lengthy procedures under the Code of Civil Procedure, 1908. This created a critical governance gap that the NGT Act was designed to fill.

## Objectives of the National Green Tribunal Act, 2010

Section 14 of the NGT Act prescribes the objectives and the scope of the Tribunal's jurisdiction. The Act was designed with several specific, clearly articulated objectives:

- To establish a specialized forum for the effective and rapid disposal of environmental cases.
- To enforce legal rights relating to the environment.
- To give relief and compensation to victims of pollution and other environmental damage.
- To deal with environmental disputes involving multi-disciplinary issues.
- To provide access to justice in environmental matters.

## Why and How the NGT Came into Existence

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### 3.1 The Need for a Specialized Environmental Court

Prior to the NGT, India had no dedicated court for environmental matters. The legal gaps were glaring:

- Existing legislation such as the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 focused only on specific pollutants and had no fast-track dispute resolution mechanism.
- The Environment (Protection) Act, 1986 — enacted as an 'umbrella legislation' after the Bhopal Gas Tragedy — provided the Central Government with vast regulatory powers, but citizens could only approach regular civil courts for redress.
- Environmental cases in ordinary civil courts were subject to the Code of Civil Procedure, 1908, which led to delays stretching over years or even decades.
- Courts lacked the specialized expertise to deal with complex scientific and ecological questions embedded in environmental disputes.

### The Bhopal Gas Tragedy

The **Bhopal Gas Tragedy (1984)** is regarded as one of the **deadliest industrial disasters in the world**, caused by the leakage of around **40 tons of methyl isocyanate (MIC)** gas from the Union Carbide pesticide plant in Bhopal on the night of 2–3 December 1984. The toxic gas spread rapidly over densely populated areas due to prevailing wind conditions, leading to **immediate deaths (initially ~800, later estimates ~15,000–20,000)** and **over 5 lakh people affected**, many suffering from permanent disabilities, respiratory disorders, blindness, and other chronic illnesses. The disaster also caused **severe ecological damage**, including contamination of soil and groundwater, killing livestock, and long-term health impacts across generations.

The tragedy exposed serious **failures in industrial safety, urban planning, and regulatory oversight**. Hazardous industries were located close to residential settlements, and there was a lack of emergency preparedness, warning systems, and risk communication. These gaps highlighted the dangers of **unregulated and poorly monitored industrialization**, especially in developing countries.

From a legal perspective, the case was initially filed in the United States but transferred to India under the doctrine of *forum non conveniens*. The Government of India, through the **Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985**, assumed exclusive rights to represent victims. In **1989**, the **Supreme Court approved a settlement of ₹705 crore (\$470 million)** with Union Carbide, which was widely criticized as being **grossly inadequate** given the scale of damage. Criminal proceedings were initially quashed, later reinstated in 1991, but charges were diluted in 1996 from **culpable homicide (Section 304 IPC)** to **negligence (Section 304-A IPC)**, significantly reducing punishment. In **2010, eight Indian officials were convicted**, but accountability of top corporate executives remained limited.

Despite decades of litigation, several **post-disaster issues remain unresolved**. Large quantities of **toxic waste (around 1.5 million metric tons)** were left untreated at the site, leading to continued **groundwater contamination** affecting dozens of nearby colonies. Efforts for scientific disposal of

waste and site remediation have been slow and contested. Victims have continued to demand **enhanced compensation, proper healthcare, and environmental cleanup**, indicating gaps in long-term rehabilitation and justice delivery.

The Bhopal disaster became a **turning point in India's environmental governance**. It directly led to the enactment of the **Environment (Protection) Act, 1986**, strengthening regulatory powers of the central government. It also influenced the development of **hazardous waste management rules, environmental impact assessment (EIA) procedures, and disaster management frameworks**. Globally, it raised awareness about **corporate accountability, environmental justice, and the need for stricter safety norms** for hazardous industries.

## **Salient Features of the National Green Tribunal Act, 2010**

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The Act empowers the Central Government to take all necessary measures to protect and improve environmental quality.

- It allows setting standards for emissions and discharge of pollutants.
- It regulates industrial locations and environmental safeguards.
- It provides power to issue directions including closure or regulation of industries.
- It authorizes inspection, sampling, and analysis of environmental pollutants.
- It prescribes penalties for violations.

## **5. Special Economic Zones (SEZ)**

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A Special Economic Zone (SEZ) is a geographically defined area within a country that operates under more liberal economic and trade regulations than the rest of the country, to encourage investment, promote exports, and create employment.

### **A. Historical Evolution / Why SEZs Were Set Up**

- India's first Export Processing Zone (EPZ) was established at Kandla, Gujarat in 1965 — the first in Asia.
- EPZs had limited success due to infrastructural bottlenecks, bureaucratic red tape, and rigid controls.
- In 2000, the government announced the SEZ Policy to overcome EPZ limitations, modelled on China's highly successful SEZ model.
- The Special Economic Zones Act, 2005 provided the statutory framework and came into force with the SEZ Rules, 2006.

### **B. Objectives of SEZs (SEZ Act 2005)**

- Generation of additional economic activity
- Promotion of exports of goods and services
- Promotion of investment from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructure facilities

- Maintenance of sovereignty and integrity of India, the security of the State, and friendly relations with foreign states

## C. Features and Benefits of SEZs

### Salient Features

- A Special Economic Zone is a **designated duty-free area** deemed to be foreign territory for the purpose of trade operations, duties & tariffs.
- There is no requirement for a license for import.
- The units in SEZ must become net foreign exchange earners within a period of 3 years.
- Full freedom for subcontracting.
- Special Economic Zones are allowed for trading, manufacturing, and other service activities.

### Fiscal Benefits

- 100% Income Tax exemption for the first 5 years; 50% for 5 years thereafter; 50% of ploughed-back profits for next 5 years.
- Exemption from Customs Duty on imports of goods required for activities within the SEZ.
- Exemption from Central Sales Tax, Service Tax, and State taxes (subject to state legislation).
- No routine examination of cargo by Customs — self-certification by units.

### Types of SEZs in India

- **FTWZs (Free Trade and Warehousing Zones):** Trade-focused SEZs near ports/airports functioning as international trading hubs.
- **EPZs (Export Processing Zones):** Sector-specific industrial clusters with specialized facilities.
- **EOUs (Export Oriented Units):** Small captive SEZs; many IT parks fall in this category.
- **Large Multi-Product SEZs:** 9–10 large zones functioning like industrial towns with residential, medical, and educational facilities.

## D. Criticisms and Challenges

- Large-scale Land Acquisition: SEZs often required acquisition of agricultural land, causing displacement — Nandigram, Goa, and Rajasthan SEZ protests.
- Revenue Losses: Large tax concessions led to revenue foregone without proportionate economic gains in some cases.
- Manufacturing vs. Services Debate: Many SEZs are predominantly IT/services parks rather than manufacturing zones — criticised for not creating blue-collar employment.
- Ghost SEZs: Several approved SEZs remain undeveloped; de-notification trend post-2008 crisis.
- DESH Bill: Government proposed to replace the SEZ Act with the Development of Enterprise and Service Hubs (DESH) Bill 2022 — to expand scope and remove export obligation.

## Project Formulation and Implementation

Project formulation is the process of identifying, defining, and structuring a project proposal in a systematic manner so that it can be appraised, funded, and implemented effectively. In the context of urban planning, this applies to infrastructure projects, housing schemes, urban renewal programmes, and development plan implementation.

## A. Why Project Formulation Matters

- Ensures clarity of purpose: what is to be done, why, and for whom.
- Identifies actions to be taken and resources required.
- Distinguishes between desired/intended and undesired/unintended consequences.
- Allocates resources efficiently to achieve defined goals.
- Ensures continuity and accountability.
- Achieves objectives in a cost-effective and time-efficient manner.

## B. Steps in Project Formulation

### Pre-Formulation Activities

- **1. Review Past Proposals:** Examine similar project proposals from own/other institutions to understand strengths, weaknesses, and lessons learned.
- **2. Consult Experts:** Engage domain experts, consultants, and previous project coordinators for insight.
- **3. Review Evaluation Reports:** Study past project evaluation reports to understand methodology and impact assessment strategies.
- **4. Interact with Beneficiaries:** Engage with the target group to understand their actual needs and assess the relevance of the proposed intervention.
- **5. Check Statistical Data:** Collect and analyse baseline data and reports on similar past projects.
- **6. Focus Group Discussions:** Conduct FGDs with stakeholders — elected representatives, ULB functionaries, community groups — to assess needs and priorities.

### Components of the Project Proposal Document

- **Title Page:** Project title, sponsoring agency, submitting institution, contact address.
- **Abstract:** Problem statement, objectives, implementing organisations, key activities, expected outputs, total budget.
- **Introduction:** Brief background of the topic and why the project is necessary.
- **Problem Statement:** Background of the problem, needs of the target group, evidence of the gap.
- **Problem Analysis:** Causes and effects of the key problem; how addressing causes will solve the problem.
- **Project Goal and Objectives:** Goal = general aim; Objectives = specific, measurable targets (SMART).

- **Project Output:** Services or products to be delivered, measurable in quantity, time, and space.
- **Target Group:** Clearly defined beneficiaries with demographic and socioeconomic details.
- **Strategies:** Logically linked strategies for each objective.
- **Implementation Plan:** Activity plan + Resource plan; timeline (Gantt chart/Log Frame).
- **Monitoring and Evaluation:** Indicators, data sources, frequency of monitoring, mid-term and end-term evaluation.
- **Reporting:** Monthly progress reports to donor; mid-term and final reports.
- **Management and Personnel:** Consultants, resource persons, qualifications, remuneration.
- **Budget:** Line-item budget; own contribution of implementing agency; total outlay.

### C. Project Implementation

- **Mobilisation of Resources:** Financial, human, and material resources are assembled as per the resource plan.
- **Activity Execution:** Activities are carried out as per the activity plan and timeline.
- **Progress Monitoring:** Regular site visits, progress reports, and compliance checks against milestones.
- **Coordination:** Between implementing agencies, contractors, local authorities, and beneficiaries.
- **Adaptive Management:** Mid-course corrections based on monitoring findings.

## 7. Institute of Town Planners, India (ITPI)

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The Institute of Town Planners, India (ITPI) is the premier national body representing planning professionals in India, similar to the RTPI in the UK or AICP in the USA.

### A. About ITPI — Origin, Vision, Objectives

#### Origin

- ITPI was established in 1951 — the year India launched its first Five-Year Plan.
- It was incorporated under the Societies Registration Act.
- Founded at a time when India urgently needed trained planners to guide post-independence development.

#### Vision

To be the premier professional body of Town Planners in India, promoting the art and science of town and country planning for the welfare of society.

#### Objectives of ITPI

- To promote the art and science of town planning.
- To facilitate the exchange of knowledge and ideas on planning.
- To advance the professional interests of town planners.
- To conduct examinations and admit qualified persons to membership.
- To advise governments and public bodies on planning matters.
- To maintain a Code of Professional Conduct for members.
- To publish journals, reports, and educational material.

### B. Membership of ITPI

#### Categories of Membership

- **Student Member:** Students enrolled in ITPI-accredited planning programmes.
- **Graduate Member (GITPI):** Holders of a recognised planning degree — eligible for Associate Membership after professional experience.
- **Associate Member (AITPI):** Professional planners with a planning degree + 2 years of experience (or equivalent) who have passed the ITPI admission examination.
- **Fellow (FITPI):** Senior members with significant contribution to the profession — elected by the Council.
- **Honorary Fellow:** Conferred on eminent persons who have rendered distinguished service to the planning profession or to society.

### C. Code of Professional Conduct

ITPI's Code of Professional Conduct governs the ethical and professional behaviour of its members.

#### Key provisions:

- Members must act with integrity and in the public interest at all times.
- Members must not engage in conduct unbecoming of a professional.
- Members must declare conflicts of interest.
- Members must maintain professional competence through continuing education.
- Members must not misrepresent their qualifications or experience.
- Members must respect confidentiality of client information.
- Members must comply with all applicable laws and regulations.

## **D. Conditions of Engagement — Part I: Types of Consultancy Services**

The various consultancy services are grouped in the following three categories:

1. Urban and Regional (including rural areas and environment) planning;
2. Transport Planning; and
3. Spatial Planning Policy Studies / Guidelines.

**1. Urban and Regional (including rural areas and environment) Planning is further classified into the following eight categories:**

- Statutory Plans (as per Act);
- Non-Statutory Area Development Plans;
- Infrastructure Project Planning and Studies such as Water supply, Sewerage, Drainage, Solid Waste Management, Power Supply, etc;
- Monitoring and Evaluation;
- Impact Assessment Studies;
- Technical Assistance / Advisory Services / Project Management Consultancy;
- Technological Studies and Services related to Planning; and
- Institutional / Capacity Building Studies / Training.

**2. Transport Planning can be further classified into the following six categories:**

- City / Urban Transport Plans;
- Regional / State Level Transport Plans; Preparation of Master Plans / Development Plans / Regional Plans
- Project Planning Studies such as BRTS, Metros, LRTS, Monorail, Tunnels, Elevated Roads, Grade Separators, Bridges, Airports, Sea Ports, Inland Water Transport, Regional Rail Rapid Transit System (RRTS), Multi-modal Logistic Hubs, etc.
- Monitoring and Evaluation / Impact Assessment Studies;
- Technical Assistance / Technical Advisory Services, and;
- Institutional / Capacity Building Studies / Training.

**3. Spatial Planning Policies / Guidelines Policies refer to evaluation of existing and / or formulation of new policies and may be related to urbanization, housing, urban land pooling, transportation, resource mobilization, rural development, etc.; and include:**

- City Level Policies / Guidelines;

- State Level Policies/ Guidelines; and
- National Level Policies / Guidelines.

## E. Part II — Methods of Professional Fee Calculation

ITPI prescribes methods for calculating professional fees to prevent undercutting and ensure fair remuneration:

### i. Percentage-Based Fee

- Fee calculated as a percentage of the estimated project cost — typically 1–5% depending on project type and scale.
- Higher percentage for smaller, more complex assignments; lower for large infrastructure projects.

Table - 3.2.1: Professional Fee Based on Land Development Cost

Sl. No.	Description	Fees
1	All Layouts / Projects / Schemes	1.5% of the land development cost
2	Detailed Project Reports (DPRs)	2% of the project cost for which the DPR is being prepared

- Notes 3.2.1 :
- Land development Cost includes cost of provision of water supply, sanitation, sewerage, drainage, construction of roads, electricity and street lighting, arboriculture and site leveling based on schedule of rates of CPWD / PWD.
  - This fee does not include the preparation of Building Plans.

### ii. Lump Sum Fee

- A fixed fee agreed upfront for a defined scope of work — appropriate for clearly defined projects.
- Scope creep must be managed through formal variation orders.

Table - 3.2.2: Professional Fee For Short-Term Assignments on Per Day Basis (in Rupees)

Sl. No.	No. of Years of Experience	Team Leader	Deputy Team Leader / Project Manager	Other Key Experts / Personnel
1	25+	30,000 to 35,000	25,000 to 30,000	25,000 to 30,000
2	20-25	25,000 to 30,000	20,000 to 25,000	20,000 to 25,000
3	15-20	20,000 to 25,000	15,000 to 20,000	15,000 to 20,000
4	10-15	15,000 to 20,000	10,000 to 15000	10,000 to 15000

### iii. Time-Based Fee

- Fee based on the time spent by professionals (principal, associate, draughtsman, field worker) at prescribed hourly/daily rates.
- Appropriate for advisory services, peer reviews, and open-ended assignments.

#### iv. Retainer Fee

- Monthly or annual retainer paid for ongoing advisory services.
- Appropriate for ULBs or development authorities requiring regular planning support.

Table - 3.2.3: Professional Fee as Retainer on Per Month Basis (Rupees in Lakh)

Designation	Range* of fees per month**
Advisor / Senior Consultant	2.0 to 2.5
Consultant Domain Expert	1.5 to 2.0

- Notes 3.2.3:
- \* Depending upon the experience, fee can be charged within this range.
  - \*\* One month is defined as a period comprising 22 working days in a month and fees per month includes the professional fees of the Consultant Planner and overheads for one month.