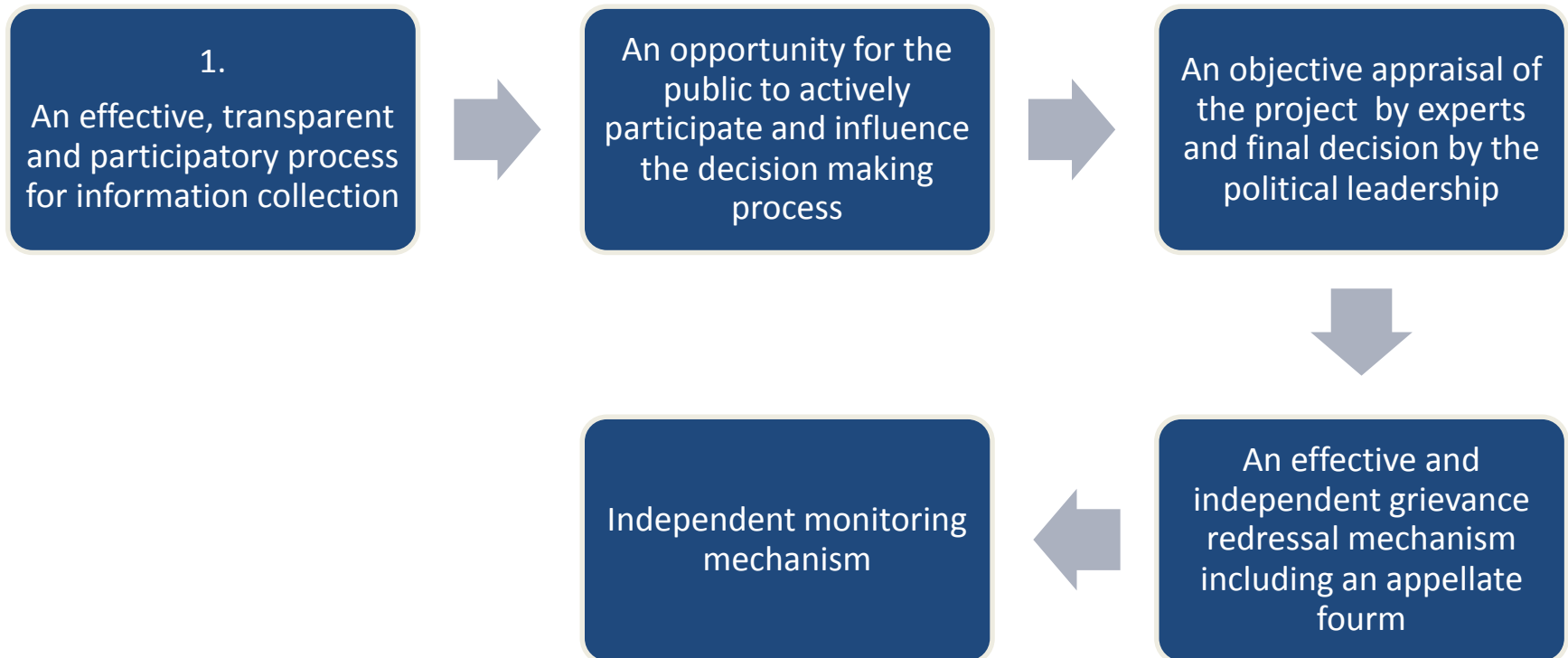


EIA and Public Participation in India

Ritwick Dutta

Environmental Lawyer and Managing Trustee Legal Initiative for
Forest and Environment. India

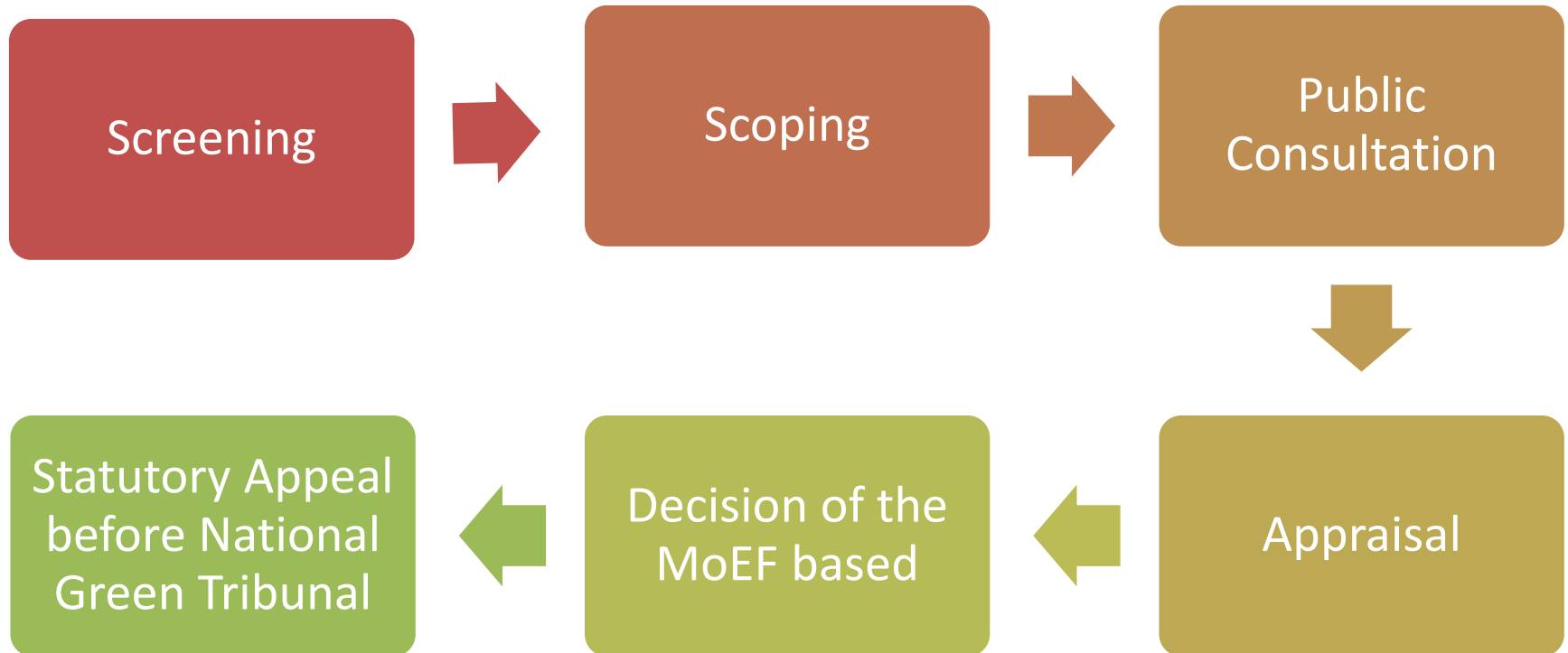
Some essentials for an Effective EIA System



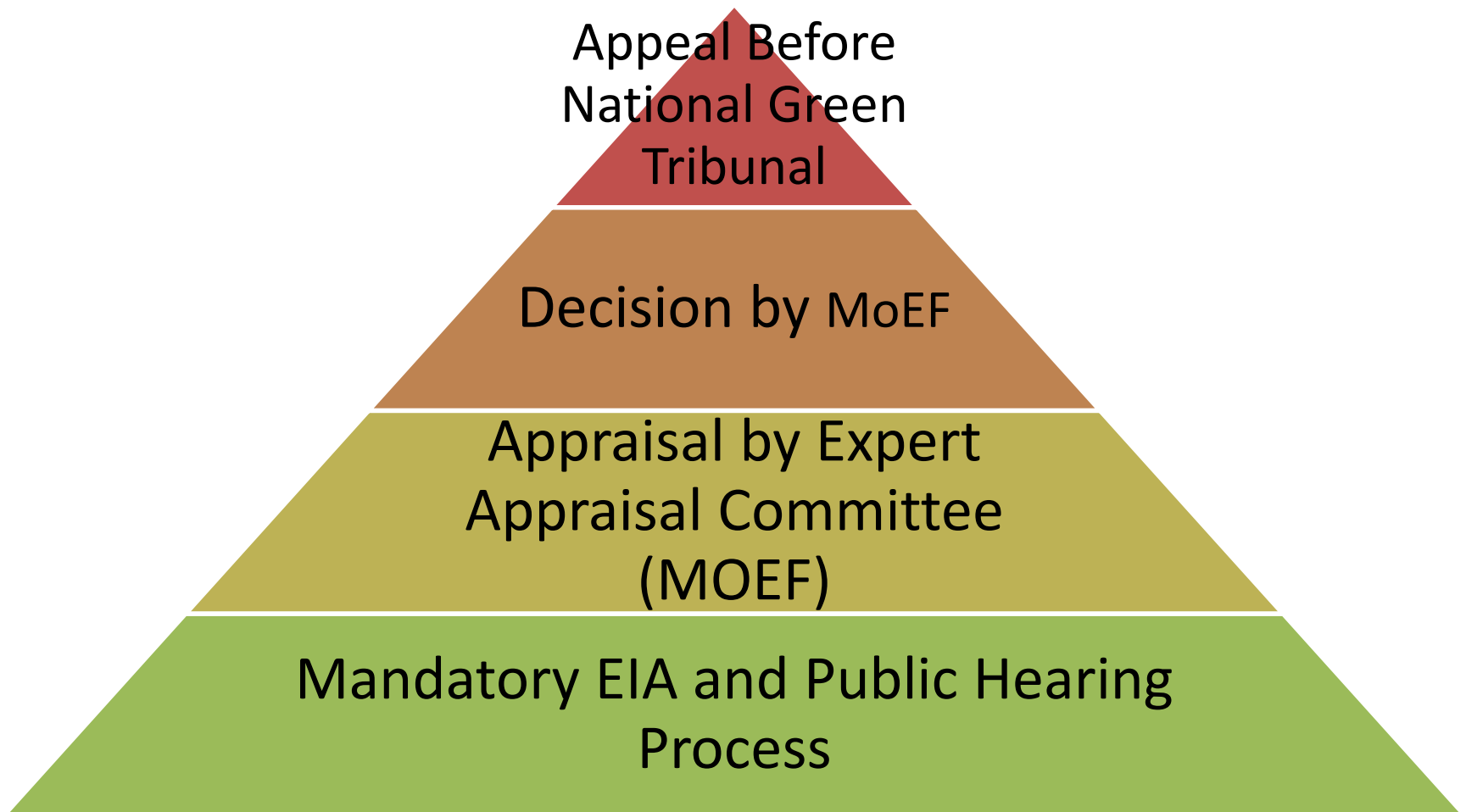
EIA Legislation

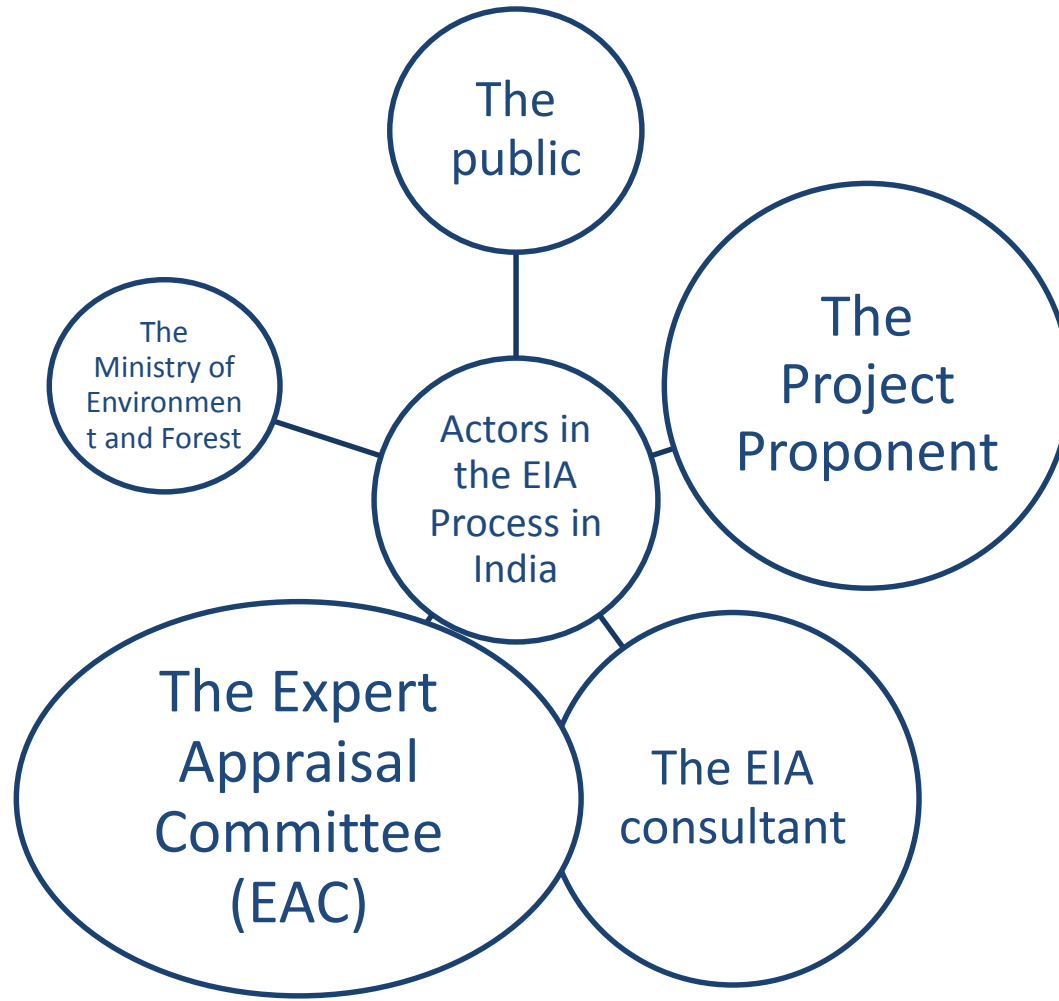
1992	Introduction of EIA Notification as a delegated legislation under Environment (protection) Act, 1986
1994	Public Hearing made mandatory for a range of projects in India
2006	Revised EIA Notification

EIA Process

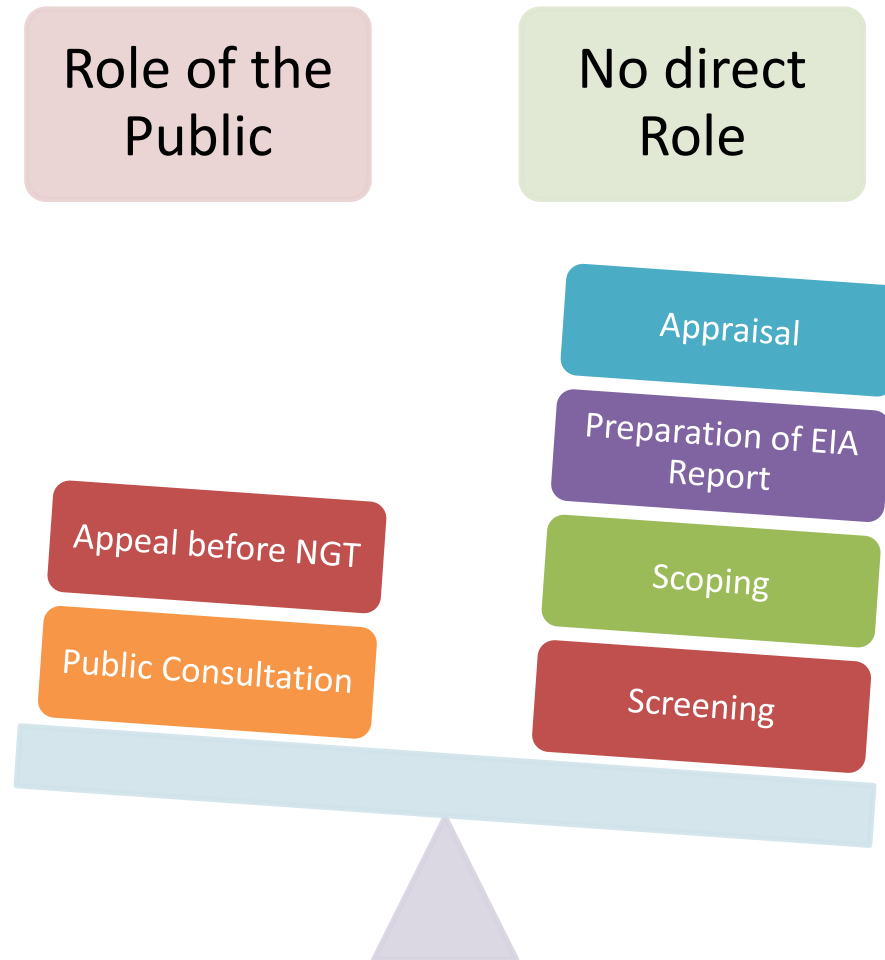


Environmental Regulatory Process





Role of the Public in the EIA Process



Scoping

- Determination of Terms of Reference (TOR) for preparation of Environment Impact Assessment Report.
- Scoping is the '*heart and soul*' of the EIA process. [*Vijay Bansal Versus State of Haryana*, 2009 Punjab and Haryana High court]

Application for Prior Environmental Clearance

Form 1, 1A, prefeasibility report

"I hereby given undertaking that the data and information given in the application and enclosures are true to the best of my knowledge and belief and I am aware that if any part of the data and information submitted is found to be false or misleading at any stage, the project will be rejected and clearance give, if any to the project will be revoked at our risk and cost.

Date: _____

Place: _____

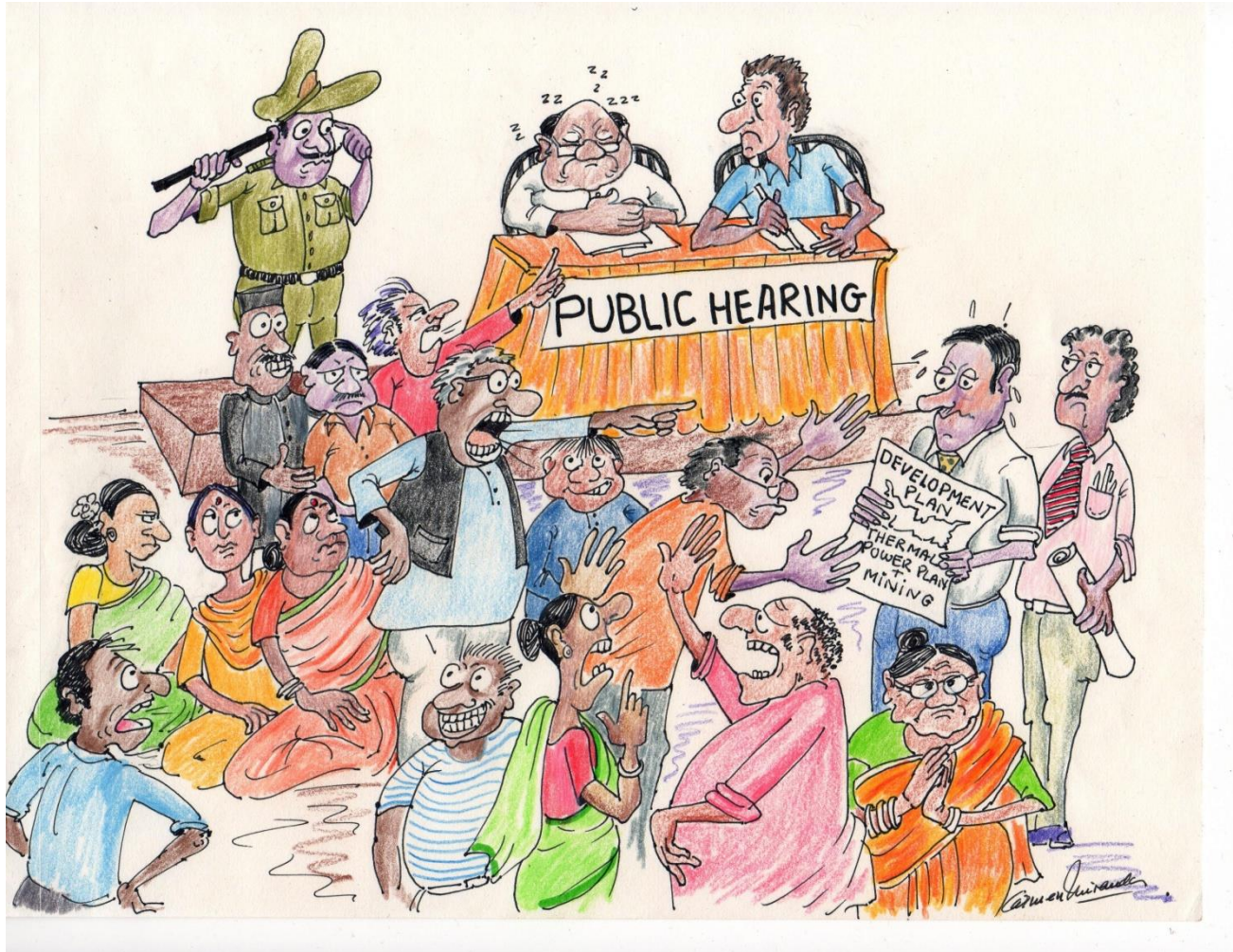
Signature of the applicant
With Name and Full Address
(Project Proponent / Authorised Signatory)

Participation during EIA Preparation

“For any proper environment impact assessment study to be considered genuine the studies should be made after informing people of the area. Studies carried out behind the back of the persons who are likely to be affected by the establishment of a plant are meaningless”

*Him Parivesh Environment Protection Society Vs State of Himachal Pradesh
Judgment dated 4-5-2012 **Himachal Pradesh High Court***

Public Hearing



“Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate”

[EIA Notification, 2006]

“There is no use of having a public hearing if the public is not aware of the effects of the project both positive and negative. A public hearing without first informing the public is a total sham”

*Him Parivesh Environment Protection Society Vs State of Himachal Pradesh
Judgment dated 4-5-2012 Himachal Pradesh High Court*



Duty to give reason

- “We therefore hold that in the context of the EIA Notification... and the mandatory requirement of holding public hearings to invite objections it is the duty of the Expert Appraisal Committee , to whom the task of evaluating such objections has been delegated, **to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived.** The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary.

Utkarsh Mandal versus Union of India. Judgment of the Delhi High Court followed in Gram Panchayat Tiroda, Gau Raxa Hitraxa and Samata Vs Union of India

On Appeal against Approval Granted

- “Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved', again, has to be construed liberally. The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest. The grievance of a person against the Environmental Clearance may be general and not necessarily person specific”

On Appraisal process in EIA

Appraisal is not a mere formality. It does require the detailed scrutiny by the EAC or SLEAC of the application as well as documents filed such as the final EIA Report, outcome of the public consultation, including public hearing proceedings, etc.

[Gau Raxa Hit Raxa Pauchav Trust versus Union of India, NGT 2013]

Adivasi Kisan Ekta Sanghatan versus Ministry of Environment [NGT, 2012]

- Coal Mining Project in Chhattisgarh by Jindal Steel and Mining Company.
- Challenged by an unregistered association of tribals and farmers
- Challenged on the ground of faulty Public hearing and lack of cumulative impact assessment

Public hearing in Chattisgarh



NGT's Response..

This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public hearing, which is one of the essential parts of the decision making process, in the grant of Environmental Clearance. This is a classic example of violation of the rules and the principles of natural justice to its brim. Therefore, we consider it appropriate to declare that the public hearing conducted in this case is nullity in the eye of law and therefore is invalid.

**[Adivasi majdoor Kisan Ekta Sanghatan vs Union of India, NGT
April, 2011]**

Samata Versus Union of India

National Green Tribunal, 2013

- Coal Fired Power Plant of 2640 MW
- Located in Andhra Pradesh and Challenged by a group representing the local tribal communities.

-It is not as if the Tribunal is not unmindful of the fact that the proposed project is a thermal [coal fired power] power plant estimated at a cost of approximately Rs.11,830 crore [approx 2 Billion USD] **and if commissioned the State would be relieved of the acute shortage of power to some extent**..... But, when it is noticed by the Tribunal that the EAC [Expert Committee] had not made proper exercise by applying its mind to make a proper evaluation [of the EIA] and the same also remained unnoticed by the Ministry of Environment and Forest while granting the EC [Approval] for the project in question, taking into account the larger interest of the nation from the point of view of ecology and environment, the Tribunal cannot give its nod ... for the approval made by MoEF.

Jeet Singh Vs Union of India [NGT, April 13, 2013]

- 1050 MW Coal Fired Power Plant, Chhattisgarh, India
- Challenged by two farmers before the NGT.

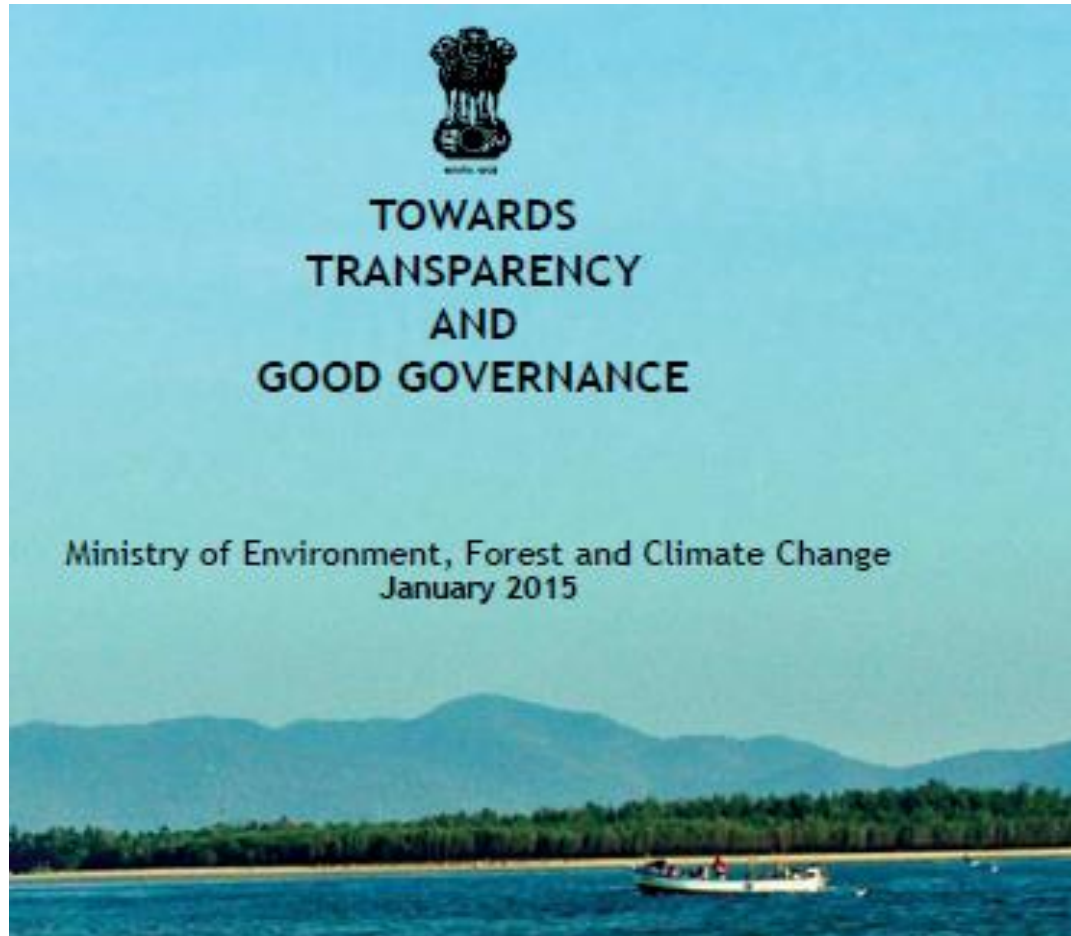
The Precautionary Principle requires the authority to examine probability of environmental degradation that may occur and result into damage.....In our opinion, therefore, by applying precautionary principle, the EC [approval] should not have been granted by the MoEF. **As stated before, the economic interest shall be put in the backseat when it is found that degradation of the environment would be long lasting and excessive....**It is well settled that the person who wants to change the *status quo* has to discharge burden of proof to establish that the proposed development is of sustainable nature. We are of the opinion that the Project Proponent failed to discharge such burden of proof..

- Having considered the facts and legal position as above, we are of the opinion that the impugned EC [Approval] is granted without appropriate balancing act to see whether the project is proper and viable on the touchstone of principles of “Sustainable Development” and “Precaution” needed to avoid future disaster or irreversible environmental degradation.
- ...we have arrived at the conclusion that the impugned order of the MoEF, **granting approval to set up the coal-based Thermal Power Plant as sought by the Project Proponent is illegal and liable to be quashed.**



TOWARDS TRANSPARENCY AND GOOD GOVERNANCE

Ministry of Environment, Forest and Climate Change
January 2015





राज्य मंत्री (स्वतंत्र प्रभार)
पर्यावरण, वन एवं जलवायु परिवर्तन
भारत सरकार

MINISTER OF STATE (INDEPENDENT CHARGE)
ENVIRONMENT, FOREST AND CLIMATE CHANGE
GOVERNMENT OF INDIA

Preface

one million have been cleared. We had appointed a High Level Committee to scrutinize existing laws as almost all decisions were being challenged in the courts. The courts intervened every other case due to infirmity in laws, non-clarity in rules and non-transparent processes. We have received the report of the Committee and now we are working on evolving clear laws, firm rules and transparent processes to ensure a policy-based predictable regime, which is not only transparent but avoids delays.

While more initiatives are in the pipeline to meet the sustainable development goals, this booklet captures some of the important recent initiatives taken by the Ministry of Environment, Forest and Climate Change.

(Prakash Javadekar)