

# Implementation of Principle 10: Issues and Challenges

Ritwick Dutta

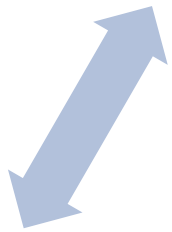
Environmental Lawyer, Legal Initiative For Forest and Environment  
Secretary, National Green Tribunal Bar Association, Principle  
Bench, New Delhi

# Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.

Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Access to  
Information



Access to  
Justice



Public  
Participation

*Secretary, Ministry of Information and Broadcasting,  
Government of India & Ors. v. Cricket Association of Bengal & Anr.*  
[(1995) 2 SCC 161]

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This

“Right to information and community participation for protection of environment and human health is also a right which flows from Article 21 (Right to Life) of the Constitution”

Research Foundation for Science Technology and Ecology Versus Union of India

(2005) 10 SCC 510

# Access to Information



सूचना का अधिकार अधिनियम, 2005

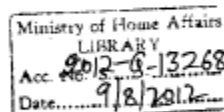
(2005 का अधिनियम संख्यांक 22)

[1 फरवरी, 2011 को यथाविद्यमान]

**Right to Information Act, 2005**

(Act No. 22 of 2005)

[As modified up to 1st February, 2011]



# THE RIGHT TO INFORMATION ACT, 2005

No. 22 OF 2005

[15th June, 2005.]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.



Government of Orissa  
Department of Steel & Mines

No. 3387 /SM. Bhubaneswar, the  
XII(RTI)SM.62/09

20.5.09

25/5/09

FORM C  
[ See Rule 5(1) and (2) ]

To Intimation of rejection for RTI application Sl.No.1468,dated 8.5.09

Biswajit Mohanty,  
S/o Biswanath Mohanty,  
C/o B.Mohanty & Co.,  
Chartered Accountants,  
Link Road, Cuttack-753012.

Sir,

The undersigned regrets to express her inability to furnish the information asked for on account of the following reasons:-

- (i) It comes under the exempted category covered under sections 8 & 9 of the Act.
- (ii) Your application was not complete in all respect
- (iii) Your identity is not satisfactory.
- (iv) The information is contained in published material available to public
- (v) You did not pay the required cost for providing information within the prescribed time.
- (vi) The information sought for is prohibited as per Section 24(4) of the Act.
- (vii) The information would cause unwarranted invasion of the privacy of any person.
- (viii) The information as sought for by you is available in our Website-[www.Orissa Govt.in](http://www.Orissa.Govt.in) you may download the information
- (ix) The information sought for are not specific.

However, if you feel aggrieved for the above said refusal you may file an appeal before the First Appellate Authority , Steel & Mines Department within 30 days of the receipt of this letter.

Place : Bhubaneswar

Date:

( D.S.Jena )

✓ PIO & Under Secretary to Government

# Participation: From EIA to SIA

- EIA process
- Land acquisition process

**THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN  
LAND ACQUISITION, REHABILITATION AND  
RESETTLEMENT ACT, 2013**

**No. 30 OF 2013**

*[26th September, 2013.]*

An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

*A.—PRELIMINARY INVESTIGATION FOR DETERMINATION OF SOCIAL IMPACT AND  
PUBLIC PURPOSE*

4. (1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

# Public Hearing in SIA

5. Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

**B.—APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT BY AN EXPERT GROUP**

7. (1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

(2) The Expert Group constituted under sub-section (1) shall include the following, namely:—

(a) two non-official social scientists;

(b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;

(c) two experts on rehabilitation; and

(d) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,—

(a) the project does not serve any public purpose; or

(b) the social costs and adverse social impacts of the project outweigh the potential benefits,

# India's Green Tribunal







Hon'ble Mr. Justice Swaraj Kumar, Chairperson, with



# Original Jurisdiction

Civil Cases

Substantial  
questions related  
to environment

Legal Right to  
Environment

Enforcement of  
an enactment in  
Schedule I

Date: 10<sup>th</sup> March, 2015  
TIME: After the above Bench

HON'BLE MR JUSTICE Swatanter Kumar  
CHAIRPERSON

HON'BLE MR JUSTICE U.D. Salvi  
JUDICIAL MEMBER

HON'BLE Dr. Devendra Kumar Agrawal  
EXPERT MEMBER

S.No	Case No.	Parties	Counsel For Parties
<b>WP (C) 3727/1985 M.C. MEHTA Vs. UNION OF INDIA along with following Cases</b>			
1.	Original Application No. 196/2014 (M.A No. 879/2014)	Krishan Kant Singh V/s M/s. Hindustan CocaCola Beverages Pvt. Ltd., Mehdiganj, Rajeslab, Varanasi	Mr. Rahul Choudhary, Adv. for Applicant  Mr. Amit Sibal, Sr. Adv. along with Mr. Manu Aggarwal, Adv. for R - 1 Mr. Vikas Malhotra, Adv. for MoEF Mr. Raj Kumar, Adv. for R - 3 Mr. Abhishek Attney, Adv. for R - 4 Ms. Savitri Pandey, Adv. for R - 5 Mr. Pradeep Mishra, Adv. for R - 6 Mr. Devashish Bhanuka, Adv. for R - 18 Mr. Jayesh Gaunav, Adv. for Jharkhand P.C.B Mr. Sanjeev Ralli, Adv. Mr. Narender Hooda, Sr. Adv. along with Ms. Bano Deswal, Adv. for State of Haryana Mr. B.V. Niren, Adv. for M/o Water Resources Mr. A.K. Prasad, Adv. Mr. Bikas Kar Gupta, Adv. for State of West Bengal Mr. Amit Aggarwal, Adv. for W.B. P.C.B

# Relief

Relief and  
Compensation to  
victims of pollution

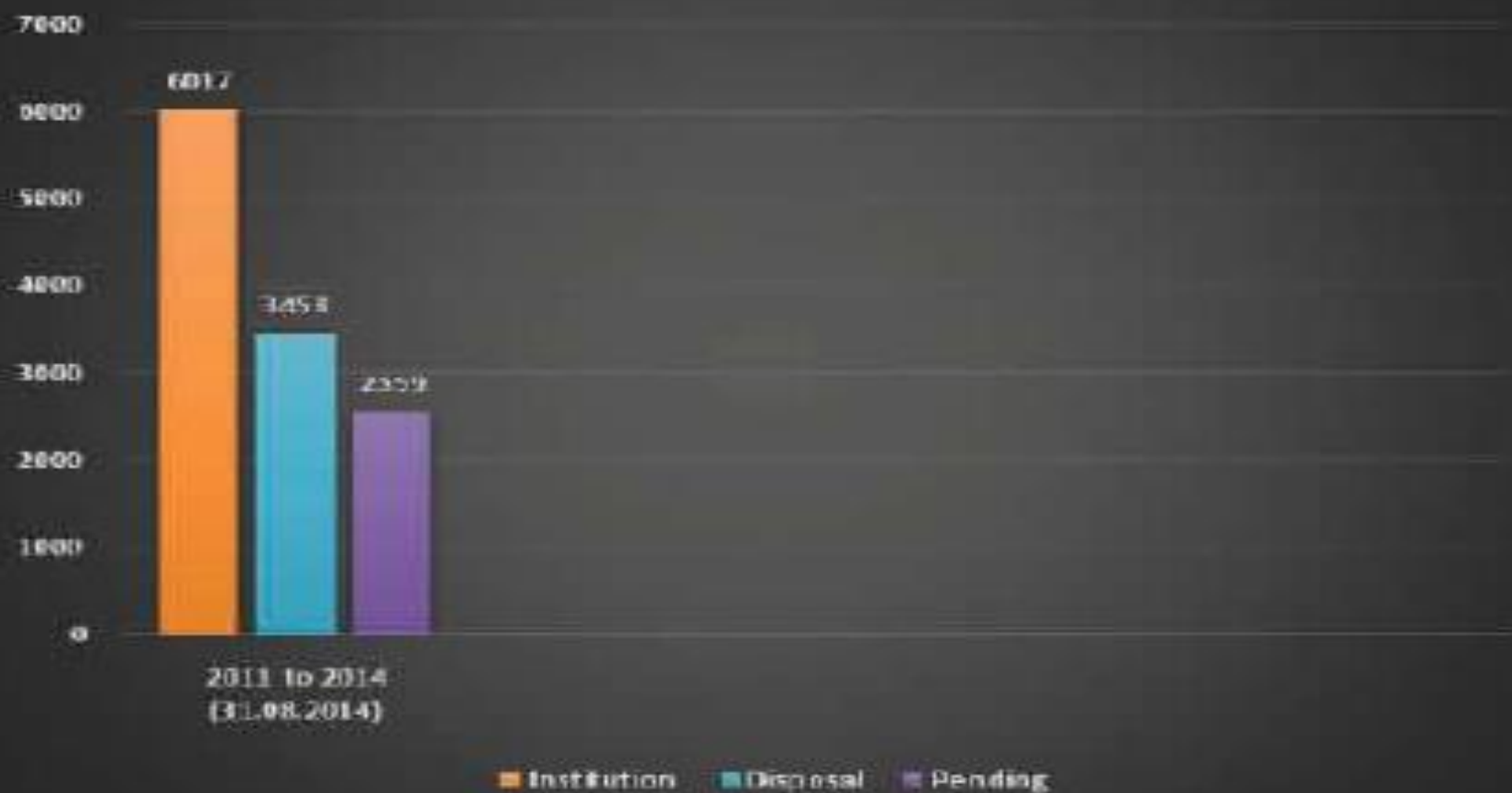
Restitution of  
property damaged

Restitution of  
Environment of  
such area and  
areas

## Key challenges in Access to Justice

- Volume of litigation
- Physical barriers i.e Distance factors
- Limitation
- Time taken for disposal of cases/ appeal
- Judicial Review and Merit Review
- Direct threat to litigant
- Supreme Court's regressive approach

## DATA - National Green Tribunal





**The Vedanta Bauxite Mine**



**The resistance**

## chronology

- 2003 Environmental Permit challenged before a special supreme court committee CEC by NGO's
- 2005: Site visits and hearings.
- 2005: CEC recommends to Supreme Court to revoke approval
- 2007 Supreme Court refuses to accept CEC report.
- 2008 : grants approval for bauxite mining
- 2009 Tribal's challenge approval before Environmental Court
- 2010. Environmental Court says EIA report was not made available before the Public at the time of PH.
- 2011 Decision of Environmental Court challenged before the Supreme Court





# Supreme Court judgment on 2013

- "Needless to say, if the BMP [Bauxite Mining Project], in any way, affects their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hills top of the Niyamgiri range of hills, that right has to be preserved and protected." (para 58)
- 59. The Gram Sabha [Village Council] is also free to consider all the community, individual as well as cultural and religious claims, over and above the claims which have already been received from Rayagada and Kalahandi Districts. Any such fresh claims be filed before the Gram Sabha within six weeks from the date of this Judgment. State Government as well as the Ministry of Tribal Affairs, Government of India, would assist the Gram Sabha for settling of individual as well as community claims.

## Result

- All 12 Village Councils rejected the proposal unanimously stating that it will affect their traditional rights including cultural rights (August, 2013)
- On January 2014, The Government of India accepted the people's verdict and rejected the proposal

