

# Legal Indicators of Public Participation in India

23<sup>rd</sup> and 24<sup>th</sup> of September, 2018

Osaka, Japan

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Legal Initiative for Forest and Environment

New Delhi-India

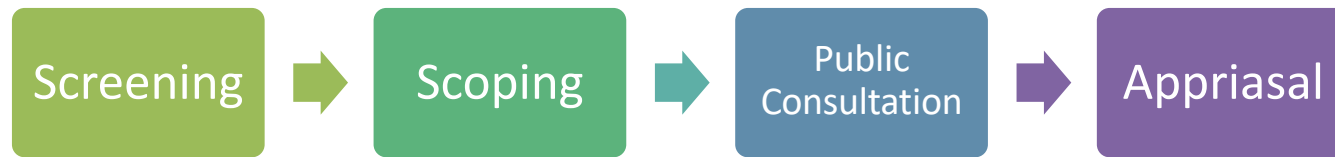
The opportunity to participate is established  
but there are exceptions:

*Buildings and Constructions*

*Area and Township*

*Activities within Industrial Estates*

# Stage where Public Participation is Guaranteed



- A Public Hearing at a Site or in Close Proximity  
– District Wise – for ascertaining the concerns of the locally affected persons
- Obtaining Responses in Writing from those who have a Plausible stake in the environmental aspects of the project

The Summary of the EIA report should be available on the website of the concerned Pollution Control Board. As the Summary has to be made available to the public at least 30 days prior to the date of the Public Hearing,<sup>9</sup> the document should be available on the website at least 30 days before the date of the Public Hearing.



# Where to conduct Public Hearing



## **2.0 The Process:**

2.1           The Applicant shall make a request through a simple letter to the Member Secretary of the SPCB or Union Territory Pollution Control Committee, in whose jurisdiction the project is located, to arrange the public hearing within the prescribed statutory period. In case the project site is extending beyond a State or Union Territory, the public hearing is mandated in each State or Union Territory in which the project is sited and the Applicant shall make separate requests to each concerned SPCB or UTPCC for holding the public hearing as per this procedure.

Chattisgarh



State of Orissa



# Making Citizens Participation Effective in Public Hearing

## **IV. Stage (4) - Appraisal:**

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This

## **National Green Tribunal**

**Samta And Another vs Moef And Others on 13 December, 2013**

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

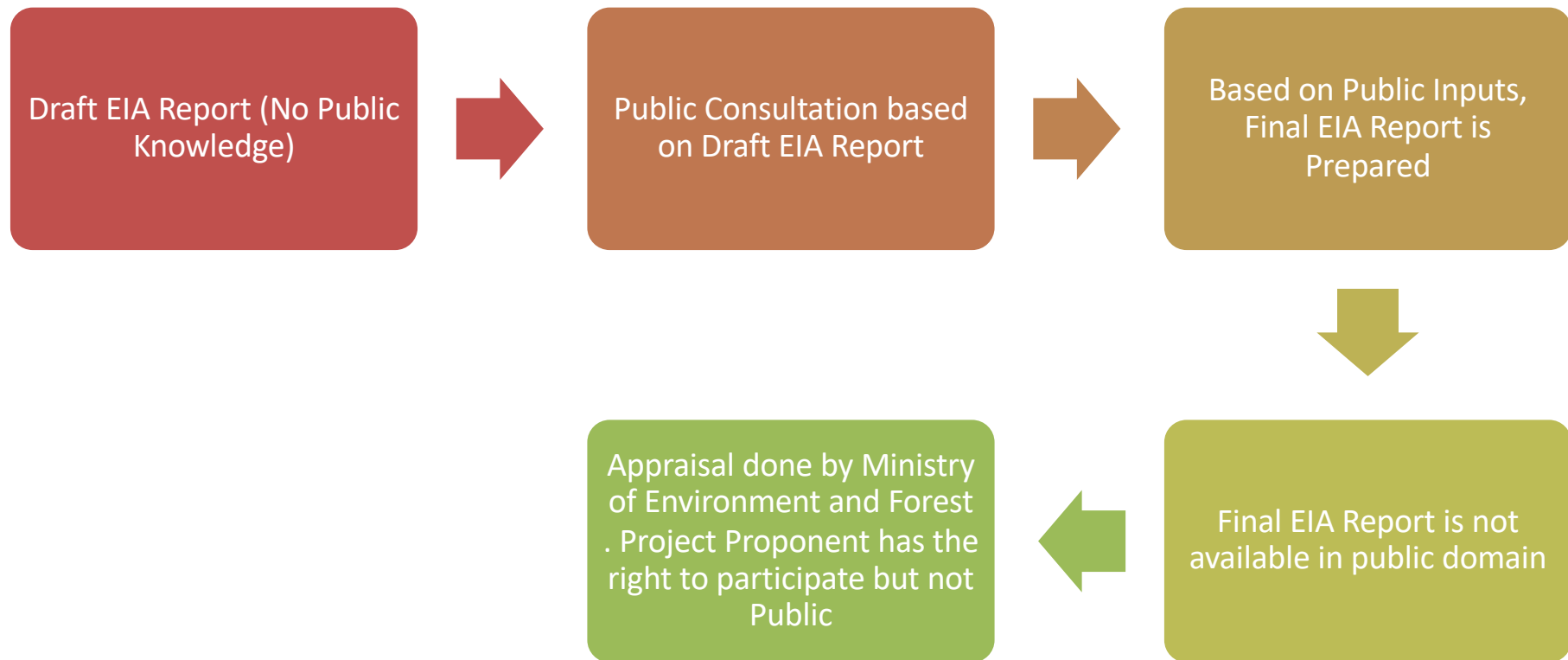
APPEAL No. 9 of 2011

even stated in the above recordings of the minutes. The detailed scrutiny as required by the notification in order to make an evaluation of the project has not been done since there is nothing to indicate in the minutes of the meeting that in respect of the issues raised at the time of public hearing in respect of each issue i.e., objections raised at the public hearing and what was the correspondence and clarification made by Project Proponent thereon and why and for what reasons those objections were negatived and the clarifications of the Project Proponent were accepted. Thus, the Tribunal is able to notice a thorough failure on the part of the EAC in performing its duty of proper consideration and evaluation of the project by making a detailed scrutiny before approving the same.

40. ... We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, 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.”

**Delhi High Court’s decision in  
Utkarsh Mandal v. Union of India & Ors.**

# Key Issues



**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

**CWP No.586 of 2010.  
Alongwith  
CWPIIL No. 15 of 2009**

**Judgment reserved on: 21.3.2012**

**Date of Decision: 04.05.2012**

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**CWP No. 586 of 2010**

1. Him Privesh Environment Protection Society, Head Office Village and P.O. Baruna, Tehsil Nalagarh, District Solan, through its President Jagjit Singh Dukhiya, s/o Sh. Sulekh Singh, r/o VPO Baruna, Tehsil Nalagarh, District Solan, H.P.

clearance and 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. In this case, how could studies have been carried out much before the JAL had even proposed to set up a cement plant in the area and much before there was any proposal to set up a Thermal Plant. How was a study carried out without any Terms of Reference? Therefore, the draft EIA report in our considered view is a totally sham document, not worth the paper it is written on.

# Mode of Publication: 30 day Notice



Limited to few  
Activities

Mostly Hearing  
with no real  
outcome

Consultation  
and not  
consent

Limited to the  
territory of the  
State/Province



Indian Environmental Court

# “THE NATIONAL GREEN TRIBUNAL”





# Jurisdiction

Appellate

Original

Compensation  
and Damages

# Appellate Jurisdiction in EIA

