



# **EVOLUTION OF ENVIRONMENTAL IMPACT ASSESSMENT IN INDIA**

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## **INDIA - 2018**

- ✚ 17.74% of world population (1.368 billion)**
- ✚ Working age population 71.85 %**
- ✚ Unemployment rate – 6%**
- ✚ 2.4% of world surface area**
- ✚ 4% of total fresh water resource on planet**
- ✚ Environmental Performance Index rank : 177/180.**
  - Environmental Health Rank : 180**
  - Ecosystem vitality Rank : 140**
- ✚ Global SDG Index Rank : 112 out of 156**
- ✚ GDP : US \$ 2.71 trillion**
- ✚ Ease of Doing Business Rank : 77 out of 190**

# **EVOLUTION OF ENVIRONMENTAL IMPACT ASSESSMENT**

## **I. ADMINISTRATIVE DISCRETIONARY MODEL 1975 – 1993**

- ✚ 1975 ONWARDS FOR IRRIGATION PROJECTS ON THE INSTRUCTION OF CWC**
- ✚ NATIONAL COMMITTEE OF ENVIRONMENTAL PLANNING AND COORDINATION, DEPARTMENT OF SCIENCE AND TECHNOLOGY TO PREPARE AND APPRAISE**
- ✚ INCLUSION OF ALL PROJECTS WHICH REQUIRE PUBLIC INVESTMENT BOARD APPROVAL AND MEGA PRIVATE PROJECT FROM 1980**
- ✚ EIR AND EMP PREPARATION BY IMPACT ASSESSMENT DIVISION (IAD), MOEF IN CONSULTATION WITH PROJECT PROPONENT BASED ON DPR FROM 1986**
- ✚ APPRAISAL BY IAD, MOEF**
- ✚ SITE VISIT OF APPRAISING COMMITTEE**
- ✚ MOEF GUIDANCE ON ENVIRONMENTAL IMPACTS FOR 9 SECTORS IN THE FORM OF BOOKLETS**
- ✚ PUBLIC HEARING DISCRETIONARY**
- ✚ SELECTION OF SITE FOR SECURED LAND FILL BASED ON EIA PREPARED BY STATE GOVERNMENTS – HW (M&H) RULES, 1989**
- ✚ EIA FOR PROJECTS IN COASTAL REGULATION ZONE - 1991**
- ✚ EIA FOR PROJECTS IN ECOSENSITIVE ZONES – 1992**

# **EVOLUTION OF ENVIRONMENTAL IMPACT ASSESSMENT**

## **II A. MANDATORY MODEL 1994 – 2006 (EIA NOTIFICATION - JAN 27, 1994)**

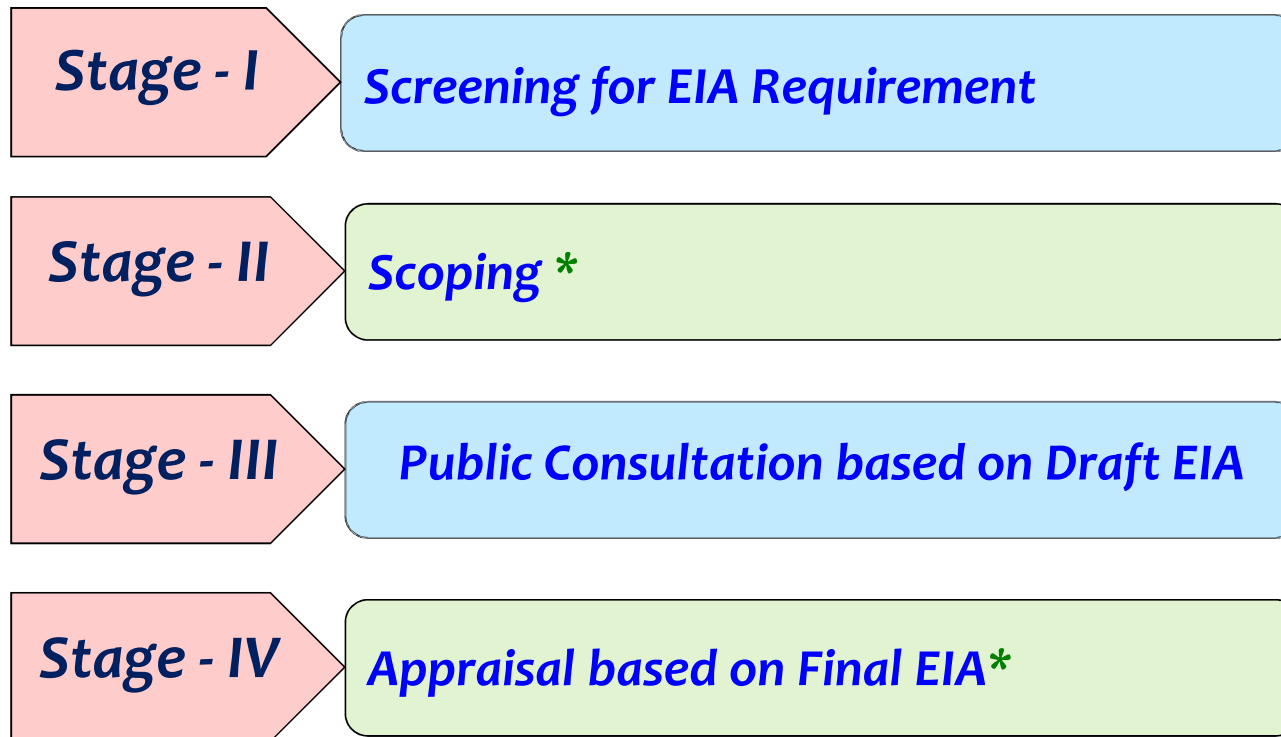
- + FALSE START WITH DRAFT NOTIFICATION SO 85 IN 1992 – WITH DRAWN**
- + IMPACT ASSESSMENT AUTHORITY (MOEF) TO ISSUE EC**
- + 27 SECTORS INCREASED TO 32 BY 2004**
- + SITE CLEARANCE MANDATORY FOR 5 SECTORS**
- + SCREENING BASED ON THE SCHEDULE AND CAPEX**
- + NO SCOPING INVOLVED. EIA SUBMITTED FOR APPRAISAL OR PUBLIC HEARING**
- + 13 AMENDMENTS TILL 2006**
- + GIST OF AMENDMENTS :**
- + DISCRETIONARY PUBLIC HEARING (MAY 1994)**
- + MANDATORY PUBLIC HEARING (APRIL 1997)**
- + DELEGATION OF APPRAISAL AUTHORITY TO STATE GOVERNMENT FOR THERMAL POWER PROJECTS UPTO 500 MW (APRIL 1997)**
- + INCREASE IN THRESHOLD TO Rs. 100 CRORES FOR MANY SECTORS (JUNE 2002)**
- + MANDATORY EIA FOR ALL PROJECTS WITHIN ECOSENSITIVE ZONE OF 15 KM (JULY 2003)**
- + RELAXATION OF PUBLIC CONSULTATION FOR FEW SECTORS (SEPT 2003)**
- + EXPANSION WITH OUT EIA MAY BE INITIATED FOR FEW SECTORS, EIA MAY BE PREPARED WITHIN 2 YEARS (JULY 2005)**

# **EVOLUTION OF ENVIRONMENTAL IMPACT ASSESSMENT**

## **II B. MANDATORY MODEL - 2006 ONWARDS (EIA NOTIFICATION – Sep. 2006)**

- + PRIOR ENVIRONMENTAL CLEARANCE – EXPLICITLY MENTIONED**
- + ACCREDITATION OF EIA CONSULTANTS**
- + 39 SECTORS, DELEGATION TO STATE AUTHORITY FOR LOW POLLUTION POTENTIAL CATEGORY (B) PROJECTS**
- + 39 AMENDMENTS, OVER 220 CLARIFICATORY CIRCULARS, GUIDELINES, OFFICE MEMORANDA ETC. RUNNING INTO 750 PAGES**
- + GENERIC STRUCTURE OF EIA WITH CONTENTS FOR EACH CHAPTER**
- + EXPERT APPRAISAL COMMITTEE TO APPRAISE AND AUTHORITY TO ISSUE EC**
- + 3 AMENDMENTS STAYED BY JUDICIARY DURING 2014 - 2018**
- + GIST OF AMENDMENTS; 22 WITH OUT PUBLIC NOTICE, 3 IN COMPLIANCE OF COURT DIRECTIONS, 15 RELATED TO MINING PROJECTS, 3 REGARDING DELEGATION OF AUTHORITY, 29 DURING 2015 – 2018**
- + MANDATORY PUBLIC CONSULTATION – DRAFT EIA**

## STAGES IN PRIOR ENVIRONMENTAL CLEARANCE PROCESS - INDIA



*\*Scoping and Appraisal are done by Expert Appraisal Committee (EAC)*

Ref: Notification S.O.1533 and its amendments issued by MoEF&CC, Government of India

## **TRANSFORMATION OF EIA NOTIFICATION**

<b>Year</b>	<b>Notification</b>	<b>Circular</b>	<b>Office Memorandum</b>	<b>Orders</b>	<b>Office Order</b>
<b>2006</b>	<b>1</b>	<b>5</b>			
<b>2007</b>	<b>1</b>	<b>5</b>			
<b>2008</b>		<b>6</b>	<b>1</b>		
<b>2009</b>	<b>1</b>	<b>17</b>	<b>9</b>		<b>2</b>
<b>2010</b>		<b>5</b>	<b>24</b>	<b>1</b>	
<b>2011</b>	<b>1</b>	<b>1</b>	<b>33</b>	<b>1</b>	<b>1</b>
<b>2012</b>	<b>2</b>	<b>1</b>	<b>18</b>	<b>2</b>	
<b>2013</b>	<b>3</b>		<b>25</b>		
<b>2014</b>	<b>7</b>	<b>2</b>	<b>22</b>		
<b>2015</b>	<b>8</b>		<b>4</b>		
<b>2016</b>	<b>8</b>		<b>5</b>		
<b>2017</b>		<b>6</b>	<b>4</b>		
<b>2018</b>	<b>6</b>	<b>1</b>	<b>18</b>		
<b>2019</b>	<b>1</b>		<b>3</b>		
	<b>39</b>	<b>49</b>	<b>166</b>	<b>4</b>	<b>3</b>

## **EIA NOTIFICATION AMENDEMENTS - MINING SECTOR**

<b>Year</b>	<b>Public Notice</b>	<b>No Public Notice</b>	<b>Total</b>
<b>2006</b>			
<b>2007</b>		<b>1</b>	<b>1</b>
<b>2008</b>			
<b>2009</b>	<b>1</b>		<b>1</b>
<b>2010</b>			
<b>2011</b>		<b>1</b>	<b>1</b>
<b>2012</b>		<b>1</b>	<b>1</b>
<b>2013</b>	<b>1</b>		<b>1</b>
<b>2014</b>		<b>1</b>	<b>1</b>
<b>2015</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>2016</b>	<b>5</b>		<b>5</b>
<b>2017</b>			
<b>2018</b>	<b>2</b>		<b>2</b>
<b>Total</b>	<b>10</b>	<b>5</b>	<b>15</b>



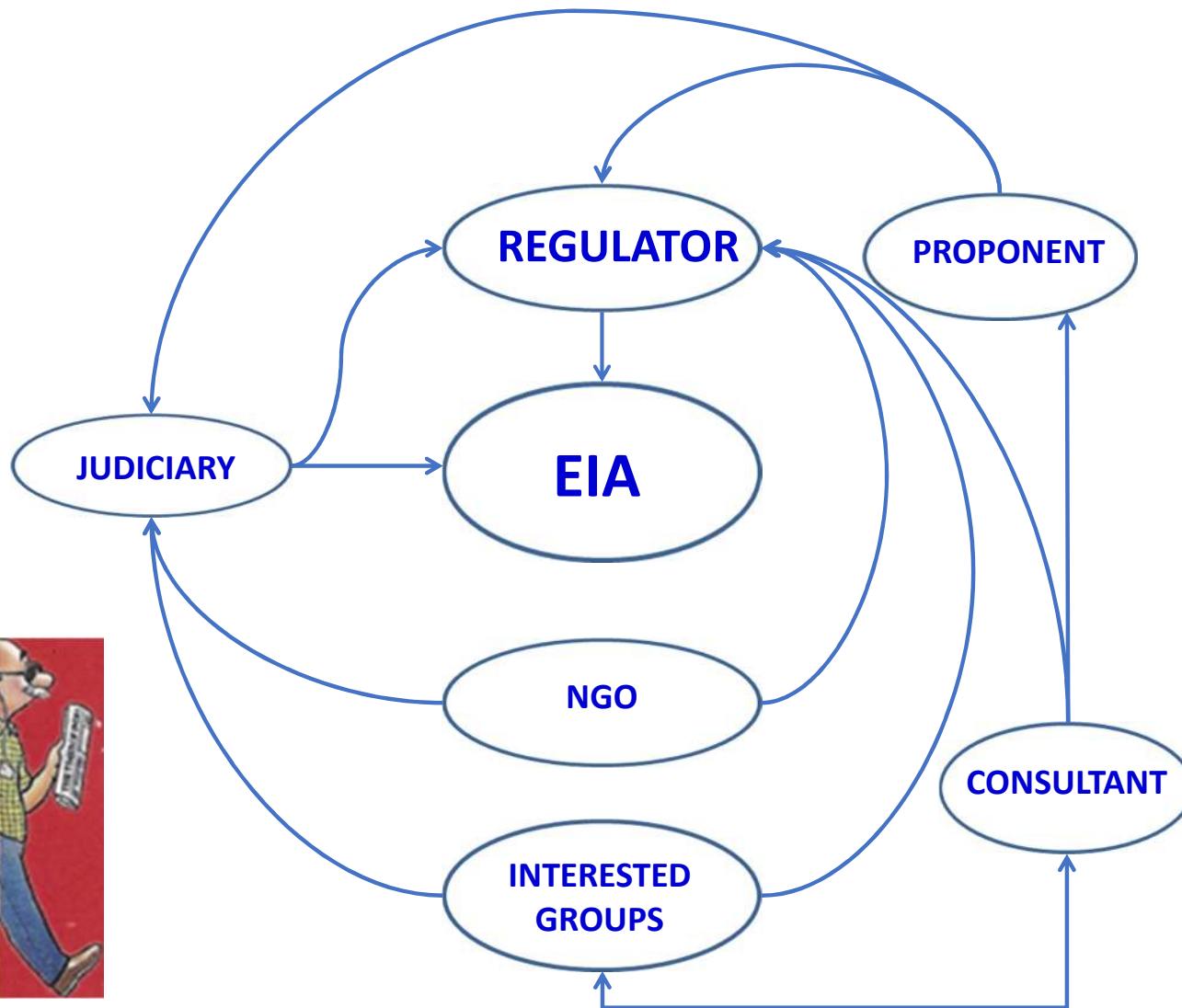
## **AMENDMENTS RELATED TO MINING SECTOR**

<b>Month/Year</b>	<b>Description</b>
Oct 2007	<b>Exemption for mineral prospecting</b>
Dec. 2009	<b>Coal mining in &gt;5 - &lt; 150 ha is category B (instead of 50 ha)</b>
April 2011	EC required at the time of renewal of mine lease – Apply 1 year in advance
Dec. 2012	EC required at the time of renewal of mine lease – Apply upto 2 years in advance
Mar. 2013	No EC requirement during mine lease renewal if it has already obtained EC
Sept. 2013	EC under old EIA notification requires new EIA in case of renewal of lease after November 2011.
dt. 07.10.2014	Applicability of general condition, if the cluster area exceeds 5 ha.
Mar. 2015	<b>EC of a coal block can be transferred to new owners in case of change in ownership due to court judgement. No fresh appraisal of EIA required.</b>

## **AMENDMENTS RELATED TO MINING SECTOR**

<b>Month/Year</b>	<b>Description</b>
<b>Jan. 2016</b>	<b>Decentralization and delegation of authority to district magistrate to issue EC for &lt; 5 ha minor mineral projects or clusters there of. Preparation of district survey report Procedure for riverbed sand mining.</b>
<b>Jan. 2016</b>	<b>Dilution - Composition of DEAC</b>
<b>July 2016</b>	<b>Definition of cluster</b>
<b>Sep. 2016</b>	<b>EC validity for mining projects – 30 years</b>
<b>Dec. 2016</b>	<b>Iron ore mining – Karnataka - Clarification</b>
<b>July 2018</b>	<b>Format for District survey report for sand mining</b>
<b>Aug. 2018</b>	<b>Dilution Category B upto 100 ha Mine lease, in addition to the specific relaxation for coal mines Applicability of general condition excluded for mine leases of &lt; 25 ha and all B1 clusters including interstate mining projects</b>

# THE PLAYERS



# REGULATOR

- ✚ GUIDANCE BOOKLETS ON ENVIRONMENTAL IMPACTS IN 80S
- ✚ EIA MANUAL - JANUARY 2001
- ✚ MOEF : DRAFT FRAMEWORK FOR EC – ERM, 2002
- ✚ VOLUNTARY ACCREDITATION OF EIA CONSULTANTS – 2006
- ✚ MANDATORY ACCREDITATION OF EIA CONSULTANTS BY NABET, QCI, GOI - 2009
- ✚ 36 SECTOR SPECIFIC EIA MANUALS - 2010
- ✚ MAUSKAR COMMITTEE RECOMMENDATIONS – OCTOBER 2009 - PROCEDURAL CORRECTIONS, AGAINST DILUTION OF EIA PROVISIONS
- ✚ REVIEW OF EIA NOTIFICATION - KASTURI RANGAN COMMITTEE - MARCH 2013 - USAGE OF GIS AS A DECISION SUPPROT TOOL, AGAINST DILUTION
- ✚ HIGH LEVEL COMMITTEE ON FOREST AND ENVIRONMENT RELATED LAWS – NOVEMBER 2014 - STANDARD TOR, NEMA/SEMA, GAZETTE OF EIA NOTIFICATION INCORPORATING ALL AMENDMENTS, DILUTION OF PROCEDURES
- ✚ PARLIAMENTARY STANDING COMMITTEE REJECTS RECOMMENDATIONS MADE BY THE HLC - “WOULD RESULT IN AN UNACCEPTABLE DILUTION OF THE EXISTING LEGAL AND POLICY ARCHITECTURE ESTABLISHED TO PROTECT OUR ENVIRONMENT”. – JULY 2015
- ✚ CAG AUDIT REPORT ON EC AND POST CLEARANCE MONITORING - “MINISTRY HAD NOT FOLLOWED DUE PROCESS IN ISSUE OF OM AND THE OM SO ISSUED HAD THE EFFECT OF DILUTING THE PROVISIONS OF ORIGINAL NOTIFICATION” – 2016

# JUDICIARY







- ✚ LIFE, PUBLIC HEALTH AND ECOLOGY HAVE PRIORITY OVER UNEMPLOYMENT AND LOSS OF REVENUE PROBLEM – SCI 1987
- ✚ IN RE: NEWS ITEM PUBLISHED IN ‘HINDUSTAN TIMES’ TITLES ‘AND QUIET FLOWS THE MAILY YAMUNA’ – PIL – EIA FOR CONSTRUCTION PROJECTS – SCI 2003
- ✚ DISCOURAGE SALAMI SLICING OF MINES TO AVOID EIA – SCI 2009
- ✚ REGULATOR MUST DISCLOSE THE REASONS UNDERLYING ITS DECISION – DHC 2009
- ✚ “PRESENT MECHANISM UNDER THE EIA NOTIFICATION IS DEFICIENT ... AND WHAT IS REQUIRED IS A NATIONAL REGULATOR” – SCI 2011
- ✚ RECOMMENDED STRICT ACTION AGAINST EIA CONSULTANT FOR PROFESSIONAL MISCONDUCT - FURNISHING FALSE INFORMATION – NGT 2012
- ✚ RIGHTS OF INDIGENOUS PEOPLE AND THEIR BELIEFS MUST BE CONSIDERED BEFORE GRANTING APPROVAL – SCI 2013
- ✚ GROUNDS FOR REVIEW OF ADMINISTRATIVE ACTION ON EIA – ILLEGALITY, IRRATIONALITY AND PROCEDURAL IMPROPRIETY – SCI 2013

# JUDICIARY

- ✦ EIA AFTER INITIATING THE PROJECT WORK NOT ACCEPTABLE, ADMINISTRATIVE ORDERS CAN NOT MODIFY NOTIFICATION – NGT 2015
- ✦ “UNDER THE INTERNATIONAL LAW, THE DOCTRINE OF NON-REGRESSION IS AN ACCEPTED NORM. IT IS FOUNDED ON THE IDEA THAT ENVIRONMENTAL LAW SHOULD NOT BE MODIFIED TO THE DETRIMENT OF ENVIRONMENTAL PROTECTION. THIS PRINCIPLE NEEDS TO BE BROUGHT INTO PLAY BECAUSE TODAY ENVIRONMENTAL LAW IS FACING A NUMBER OF THREATS SUCH AS DEREGULATION, A MOVEMENT TO SIMPLIFY AND AT THE SAME TIME DIMINISH, ENVIRONMENTAL LEGISLATION PERCEIVED AS TOO COMPLEX AND AN ECONOMIC CLIMATE WHICH FAVOURS DEVELOPMENT AT THE EXPENSE OF PROTECTION OF ENVIRONMENT.” - NGT 2017.
- ✦ “ ... IN THE AREA OF ENVIRONMENTAL GOVERNANCE, THE MEANS ARE AS SIGNIFICANT AS THE ENDS. THE PROCESSES OF DECISION ARE AS CRUCIAL AS THE ULTIMATE DECISION. .... PATH WHICH IS PRESCRIBED FOR DISCLOSURES, STUDIES, GATHERING DATA, CONSULTATION AND APPRAISAL IS DESIGNED IN A MANNER THAT WOULD SECURE DECISION MAKING WHICH IS TRANSPARENT, RESPONSIVE AND INCLUSIVE.” – SCI 2019

SCI : Supreme court of India, NGT : National Green Tribunal, DHC : Delhi High Court

# ***CORNERSTONES OF ENVIRONMENTAL JURISPRUDENCE***

-  **PRECAUTIONARY PRINCIPLE**
-  **POLLUTER PAYS PRINCIPLE**
-  **INTERGENERATIONAL EQUITY**
-  **PRINCIPLE OF SUSTAINABLE DEVELOPMENT**
-  **DOCTRINE OF PUBLIC TRUST**
-  **PRINCIPLE OF NON REGRESSION**

## **CIVIL SOCIETY**

- + PROJECT PROPONENTS AND INDUSTRY GROUPS** : SEEK SIMPLIFIED PROCESS, CONCERN ABOUT TIME TAKEN FOR EIA AND APPROVALS, SEEK EXEMPTION FROM EIA PREPARATION AND OR PUBLIC CONSULTATION
- + NGO** : SEEKS TRANSPARENCY, APPLICATION OF PRECAUTIONARY PRINCIPLE, SUSTAINABLE DEVELOPMENT
- + OTHER INTERESTED GROUPS** : SEEK PROTECTION OF INDIGENOUS PEOPLE'S RIGHTS, SEEK THEIR VOICE HEARD IN THE EIA PROCESS.
- + COMMON MAN** : LIVELIHOOD OPPORTUNITY, HEALTH AND SAFE ENVIRONMENT



# WHY ?

## CONSULTANTS/EIA PROFESSIONALS

- ✚ POOR QUALITY OF EIA REPORTS
- ✚ LEARNING BY DOING
- ✚ INADEQUATE SCOPING

## REGULATOR

- ✚ INDEQUATE SCOPING
- ✚ LACK OF FEED BACK LOOPS IN EIA
- ✚ POOR POST PROJECT MONITORING
- ✚ LACK OF INSTITUTIONAL MEMORY
- ✚ PRESSURE FROM GOVERNMENT TO ACHIEVE “EASE OF DOING BUSINESS” RANK

## CIVIL SOCIETY

- ✚ LACK OF INFORMED DECISION MAKING
- ✚ NON LINEARITY OF CAUSE AND EFFECT
- ✚ APPREHENSIONS/CONCERNS DUE TO UNCERTAINTY – IGNORANCE AND AMBIGUITY

## WHAT NEXT?

- ✚ ACCREDITATION OF ENVIRONMENTAL CONSULTANTS – 2009 ONWARDS
- ✚ PUBLIC CONSULTATION DURING SCOPING
- ✚ EASE OF DOING SUSTAINABLE BUSINESS MUST REPLACE EASE OF DOING BUSINESS
- ✚ UNCERTAINTY TO BE EXPLICITLY MENTIONED IN THE EIA TO REDUCE JUDICIAL INTERVENTION
- ✚ ADDRESSING CONCERNS EXPRESSED IN OTHER PROJECTS - EXPLICIT COUNTER ARGUMENT
- ✚ ADDRESSING CLIMATE CHANGE IN EIA REPORTS
- ✚ INCORPORATION OF 13 PRINCIPLES FOR DEVELOPING AND IMPLEMENTING SOLUTIONS FOR ECOLOGICALLY SUSTAINABLE DEVELOPMENT – IUCN DECLARATION OF ENVIRONMENTAL RULE OF LAW – 2016, IN EIA REPORTS
- ✚ ADDRESSING SDG COMPONENT IN EIA REPORTS
- ✚ CAPACITY BUILDING – REGULATORS, CONSULTANTS, FUTURE PROFESSIONALS
- ✚ ENFORCEMENT THROUGH POST PROJECT MONITORING

# THANK YOU

