

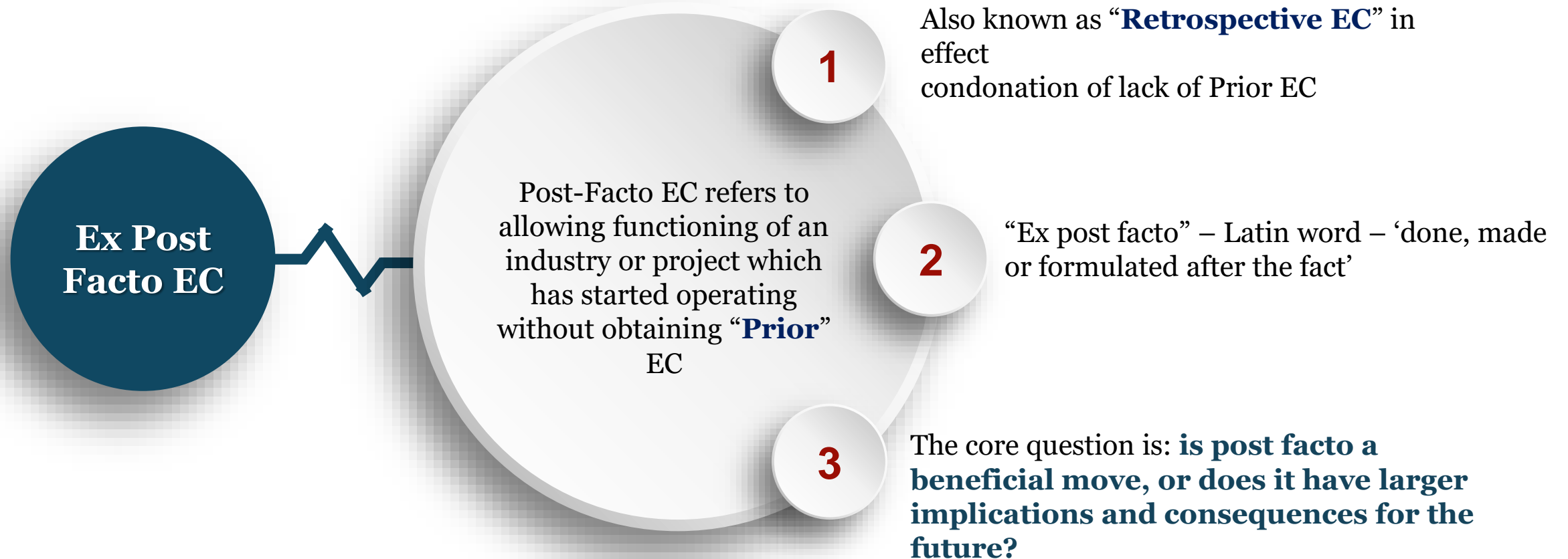
Ex Post Facto Clearance

Team CEERA

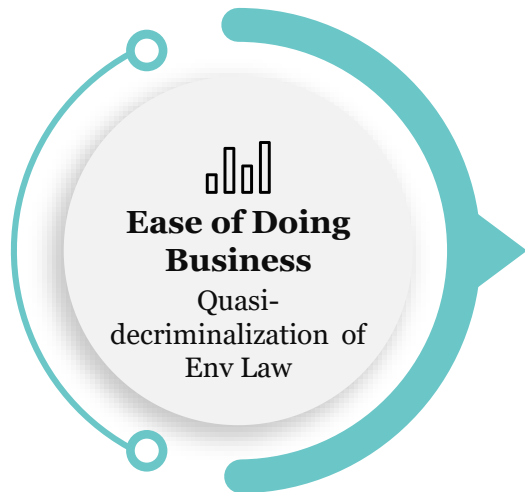


● What is Ex Post Facto Clearance

In recent years, post-facto environmental clearance has stirred an important debate among all stakeholders - policymakers, jurists, industrialists, concerned citizens, and environmentalists, judges.



Arguments in Favour of Post Facto Clearance



Arguments Against Post Facto Clearance

01

Basic Environmental Jurisprudence

Precautionary Principle, Public Trust, Sustainable Development, Polluter Pays Principle



02

Oxymoron - Weakens Rule of Law

Can Mandatory "Prior" EC & Post Facto EC co-exist?

Transparency, Predictability, Accountability



03

Doctrine of Proportionality

What is the proportional ratification of a mining project that has already affected more than 10,000 people and felled 10,000 Trees?



04

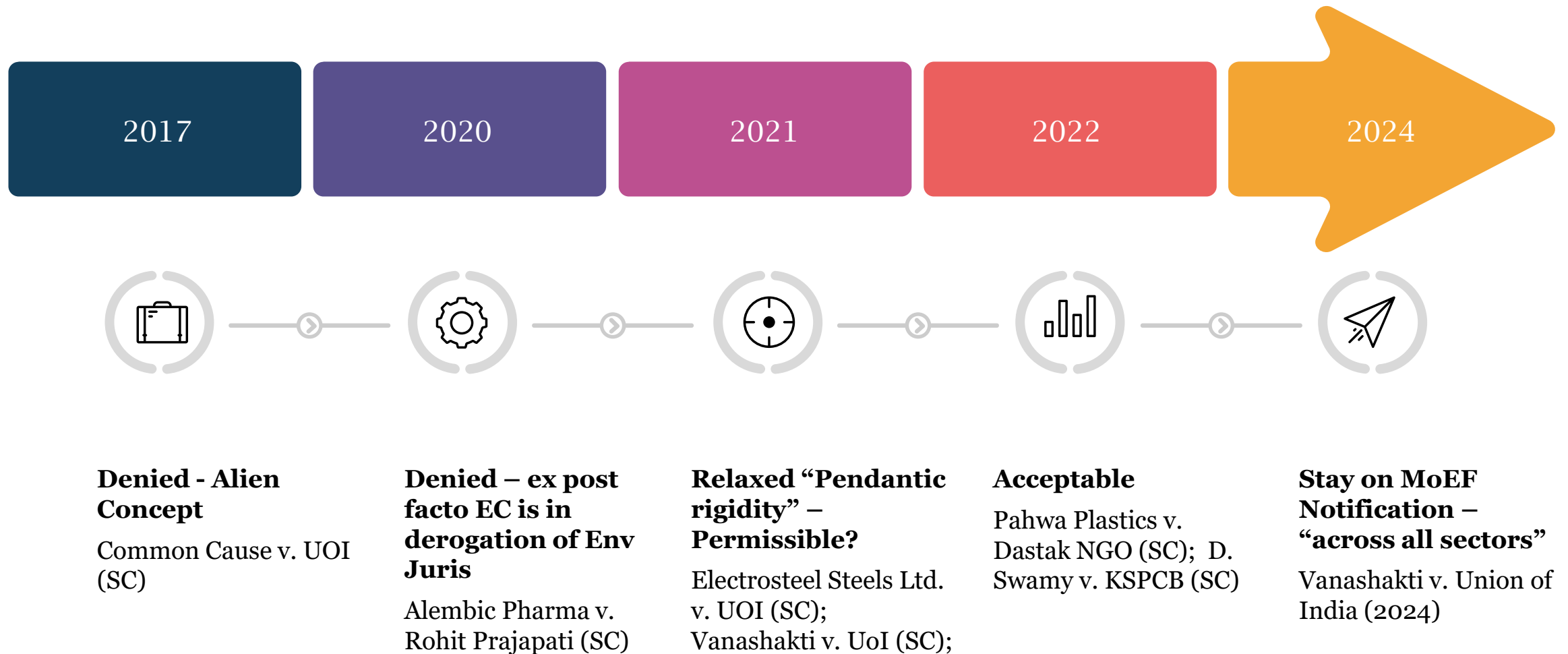
Wrong Precedent

Exceptions can become common practice.

Detrimental to Environment



Judicial Scrutiny of ExPost Facto SC



● D. Swamy v. Karnataka State Pollution Control Board (2022 SC)



Exceptional Cases

regard to the consequences of stoppage or closure of operations



Other Compliances

Pollution norms, rules and regulations



Balancing Test

Adverse Consequence of Refusal > Grant of post facto EC



Penalty

The Court may impose exemplary penalty while granting post facto EC