

# Environmental Democracy and the Role of the Judiciary

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Legal Initiative for Forest and  
Environment

New Delhi-India

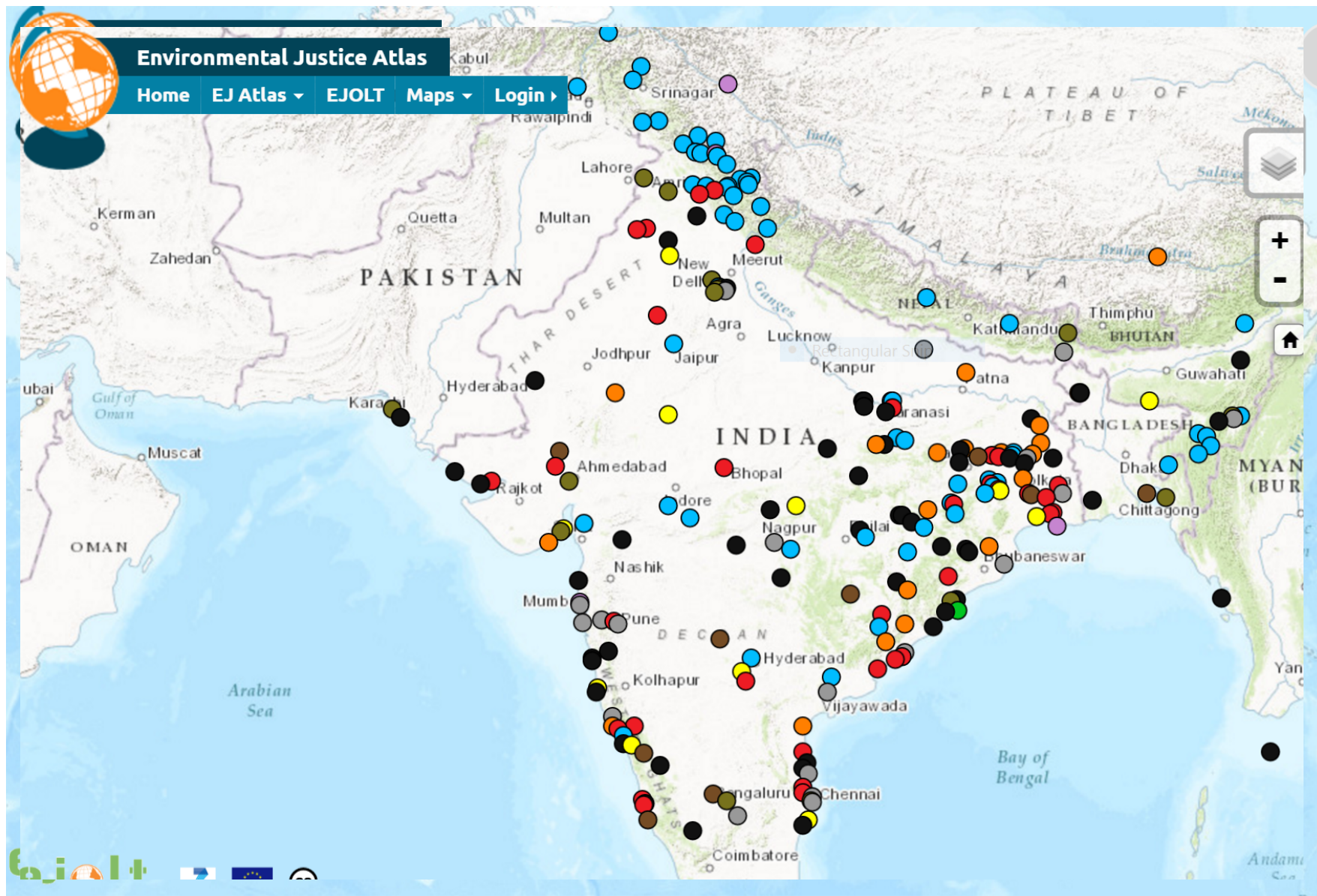
Pre Rio Conference

Rio Declaration,  
1992

Public Hearing,  
1994

National Green  
Tribunal's direction  
on Public  
participation

Public  
Consultation, 2006



## Environmental Justice Atlas (EJAtlas.org): India reaches the top while mapping the ecological conflicts and environmental injustices

The Environmental Justice Atlas or EJAtlas.org is a freely accessible on-line interactive information portal that helps academic scholars and public policymakers across the world in identifying exemplary cases of peoples' resistance against climate change and environment degradation. EJAtlas.org is conceived by the EJOLT project – an acronym for the 'Environmental Justice, Liabilities and Trade' project. EJOLT is a European Commission FP7 programme-funded global research project operated during 2011–2015 and concluded recently. It represents a global distribution map of the ecological conflicts, resistances and environmental injustices, which are mostly located in the Global South. The stated purpose of the project is: 'EJOLT is a global research project bringing science and society together to

resistances in India, which are located across the country in almost every state and union territory. Table 1 shows the

first-level categorization of conflicts in India. Conflicts related to the 'water management' category appear highest

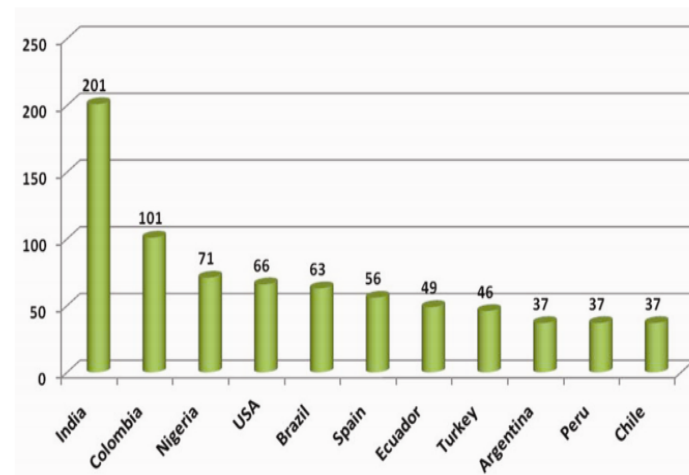


Figure 1. Top 11 countries reporting environmental conflicts on EJAtlas.org portal.

# The origin of Public Interest Litigation in Indian Jurisprudence

Article 21  
Right to Life

Article 48 A  
Duty of the State to  
Protect the  
Environment

Article 51 A (g)  
Duty of the Citizen

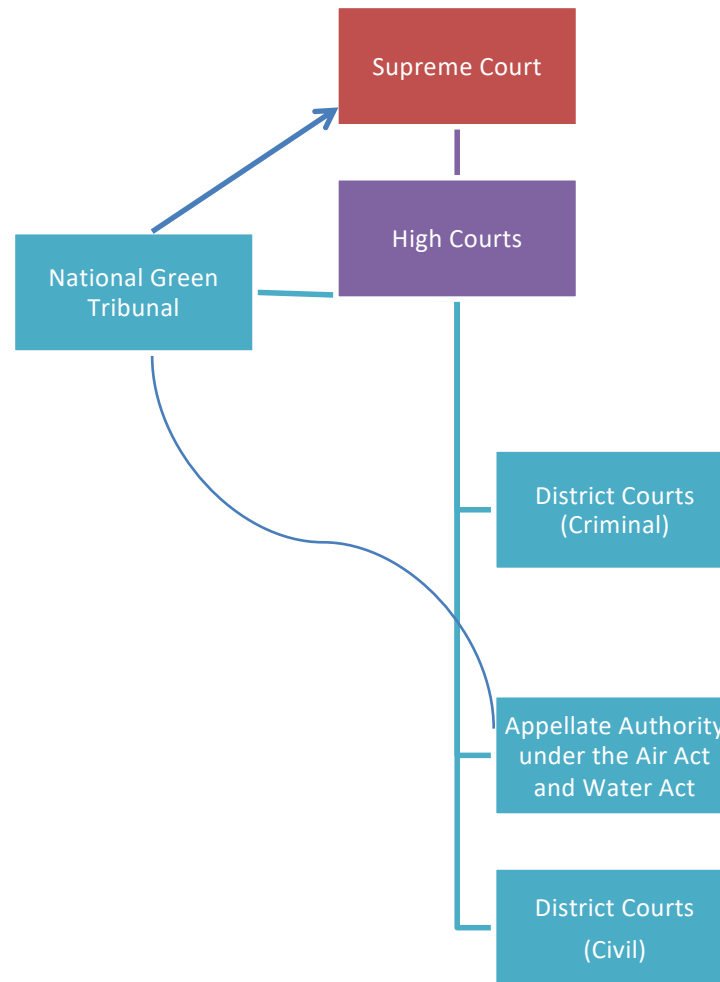
Article 142  
'Complete Justice'

Article 226 and  
Article 32  
Writ of High Court  
and Supreme Court

# ‘Complete Justice’

"This [Supreme Court] Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court."

**Delhi Judicial Service Assn. v. State of Gujarat , 1991 AIR 2176, 1991 SCR (3) 936**



# Supreme Court

Writ Petition  
directly filed

Appeal against  
High Court/  
National Green  
Tribunal

Court on its own  
Motion/ Sou Moto



**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Suo Moto Application No. 4 of 2013  
Tribunal on its own motion Vs. State of Haryana**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. JUSTICE P. JYOTHIMANI, JUDICIAL MEMBER  
DR. G.K. PANDEY, EXPERT MEMBER  
DR. D. K. AGRAWAL, EXPERT MEMBER  
Prof. A.R. YOUSUF, EXPERT MEMBER**

Date and Remarks	Orders of the Tribunal
January 7, 2013	<p>The Times of India, New Delhi dated 7<sup>th</sup> January, 2013 has published news-cum-Article titled "How private players grabbed forest land in the Aravalis." The Article is self-explanatory. It explains how the forest area is being converted into commercial activity with impunity and violation of the provisions of Indian Forests (Conservation) Act, 1980. It has been recorded that it is adversely affecting the ecology and environment of the area in question. At this stage, we have no reason to disbelieve the averments made in the article. Taking the article <i>prima facie</i> to be correct, we are of the considered view that it is a serious illegality and unauthorized intrusion into the forest area. It is bound to affect the environment.</p> <p>Consequently, we issue notice to the following to show cause and produce or cause to be produced before us the relevant record as to whether the averments made in the article are correct and if so, why appropriate directions be not passed and action taken against erring authorities. For this purpose,</p>

# *Extraordinary Situation*

The Supreme Court should not lie entrapped within the confines of any of the relevant statutes. ....The mechanism provided by any of the statutes in question would be ineffective in dealing with the extraordinary situation

**Samaj Parivartan Samudaya Vs State of Karnataka (2013) 8 SCC 154**

# Limitation of Judicial Review in Environmental Case

It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits

**186<sup>th</sup> Report of the Law Commission of India**

Indian Environmental Court

# “THE NATIONAL GREEN TRIBUNAL”



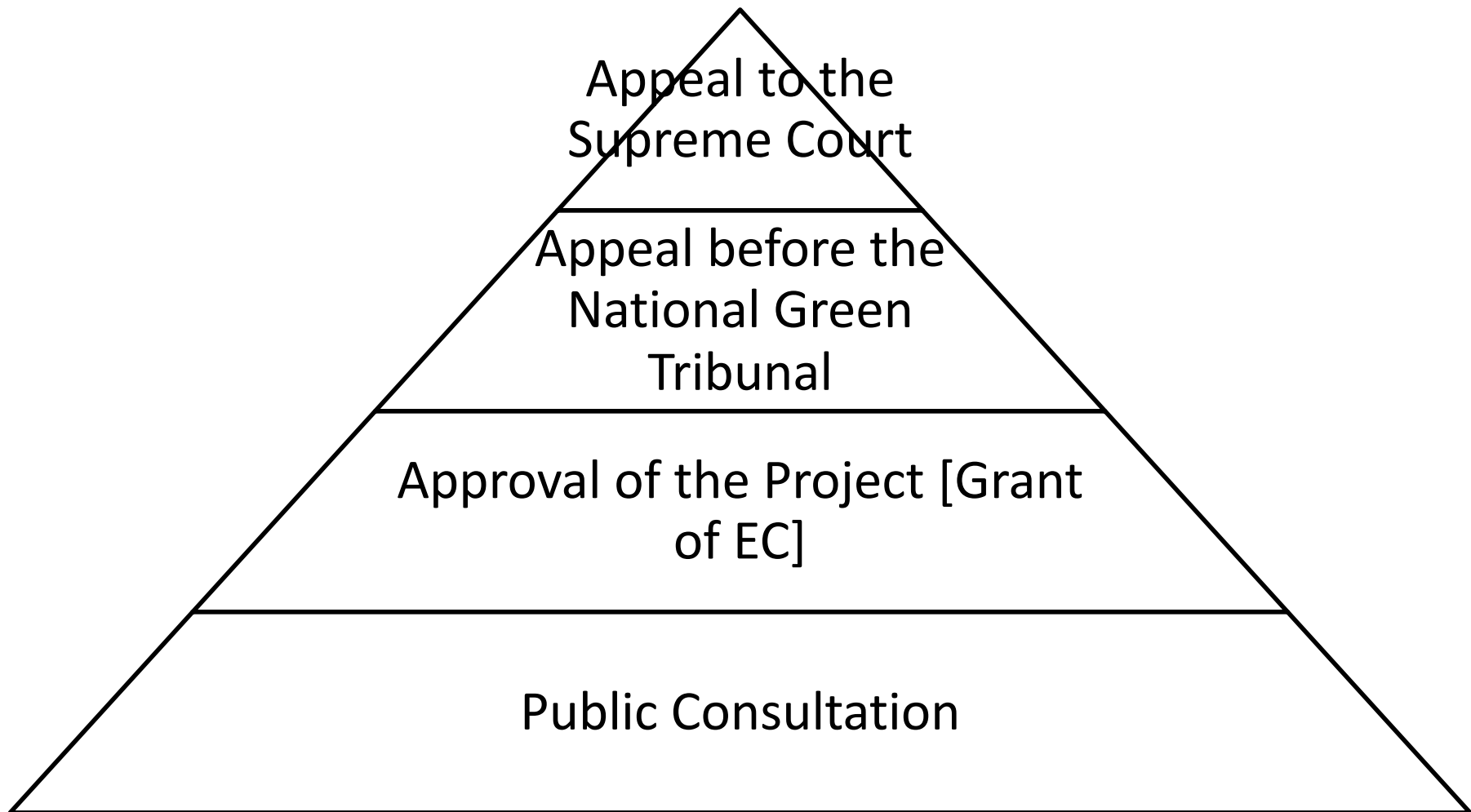
# Jurisdiction

Appellate

Original

Compensation  
and Damages

# Appellate Jurisdiction in EIA



# Original Jurisdiction

The Tribunal shall have jurisdiction over all substantial question relating to environment including legal right to environment

# Relief, Compensation

- A person who has sustained an injury
- A owner of property
- Legal representative of deceased
- Any person aggrieved including any representative body or organisation



# Appeal under Section 16

- “Any person aggrieved” can prefer an Appeal
- ‘Person’ *includes* an association of persons or individuals *whether* incorporated or not
- It also includes *individuals, trusts, local authority*

# Aggrieved Person Interpreted:

Save Mon Region Federation vs Union of India

- “Law gives a right to 'any person' who is 'aggrieved' by an order to prefer an appeal. 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 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”

Dheeru Power Gen,  
Chattisgarh  
(Thermal Power  
Plant)

POSCO, Orissa  
(Steel Plant)

Nayamjanchu,  
Arunachal Pradesh  
(Hydro Electric  
Project)

SUBANSIRI,  
Arunachal Pradesh  
(Hydro Electric)

# Jeet Singh Kanwar versus Union of India (NGT)

APPEAL No. 10/2011 (T) 16TH APRIL, 2013

350 x 3 Coal  
Fired Power  
Plants

Located in  
Critically  
Polluted Area

Concerns  
raised in  
Public Hearing

Concealment  
of information  
in EIA

Deliberate concealment and/or  
submission of false or misleading  
information or data which is  
material to screening or scoping or  
appraisal or decision on the  
application shall make the  
application liable for rejection, and  
cancellation of prior environmental  
clearance granted on that basis.

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

Signature of the applicant  
with name and full address

Date :

Place :

There cannot be any doubt about the fact that installation of such thermal power plant, based on consumption of coal as fuel, would cause additional pollution load in the surrounding area.

*The MoEF failed to anticipate probable ill impact of the project, in conjunction with the pollution level caused due to the other projects already existing in the surrounding area.*

economic interest shall be put in the backseat when it is found that degradation of the environment would be long lasting and excessive. It need not be reiterated t

Taking a stock of the forgoing discussion, we have arrived at the conclusion that the impugned order of the MoEF, granting EIA to set up the coal-based Thermal Power Plant is illegal and liable to be quashed. Needless to say, the Appeal succeeds and must be allowed.

# Samata Versus Union of India

## NGT, December, 2013

- 660 x 3 MW Coal Fired Power Plant
- Challenged before NGT
- Appeal allowed. EIA Approval suspended.  
Fresh study directed

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**

“It is not as if the Tribunal is not unmindful of the fact that the proposed project is a thermal power plant and if commissioned the State would be relieved of the acute shortage of power when it is noticed by the Tribunal that the EAC had not made proper exercise by **applying its mind** to make a proper evaluation and the same also remained unnoticed by the MoEF while granting the EC 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 either for the the recommendations made by the EAC or for the grant of EC made by MoEF”



Name of Case and Project	Decision	Ground
Jeet Singh Kanwar versus Union of India (Coal Fired Power Plant)	Cancellation of EIA Permit	Wrong Submission. Concealment of Information
Adivasi Kisan Majdoor Sanghatan versis Union of India (Coal Mines)	Cancellation of EIA Permit	Faulty Public Hearing
Prafulla Samantray versus Union of India (Posco Steel Plant)	Suspension of EIA Permit. Fresh studies	Faulty EIA and Cumulative Studies
T. Muruganndam Versus Union of India (Thermal Power Plant)	Cancellation of EIA Permit	Wrong and Misleading data on air quality
Save Mon Region Federation (Hydro Power plant)	Suspension of EIA Permit and fresh Public Hearing	Wrong and Miseleading data

Name of case/ Project	Decision	Ground
Deboaditya Sinha versus Union of India (Coal Fired Power Plant)	Cancellation of EIA Permit	False information. Faulty Public hearing
Bimal Gogoi versus Union of India (Hydro Power Project)	Suspension of permit.	False information
Tularam Gogoi Versus Union of India (Hydro Power Project)	Suspension of permit	Non Compliance
Gau Raxa Hit Raxa Pauchav Trust Versus Union of India (Port Project)	Suspension of permit	Faulty Public Hearing
Sreeranganathan Versus Union of India (International Airport)	Cancellation of permit	False data

# Tribunals should facilitate growth, not strangle it: Vice-President Venkaiah Naidu

Venkaiah Naidu also praised the Swachh Bharat Mission and said there was a balance between development and environment.

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SHARES



Express News Service | New Delhi | Updated: November 4, 2017 7:16:51 am



“Tribunals are doing a great job but I would like to tell the tribunals and other regulators that regulation should be a facilitation. Regulation should not become a strangulation. That feeling is also there between people,” he said. “But at the same time, every disposal of the issue will help, otherwise what will happen if you stay something for a certain period, you are staying the growth. That has to be

understood,” he said at the opening session of the International Conference on Environment , organised by the National Green Tribunal.

## India cannot afford to have a weak tribunal to adjudicate on environmental issues

Unless immediate corrective action is taken, the National Green Tribunal which has till recently served as an institution to provide environmental justice, will increasingly become an institution to perpetuate environmental injustice. If this is to happen, it will be a sad day for both India's environment and democracy.

Free for all  
**ANALYSIS**

Updated: Sep 21, 2018 18:00 IST



Ritwick Dutta