

Environmental Democracy and the Role of the Judiciary

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Abstract

In the world's largest democracy, the people's right to participate in matters concerning the environment is not easy. The State's obsession with economic growth, coupled with the shrinking space for dissent, has meant that the people have to increasingly approach the Judiciary in order to protect their right to participate effectively in decisions concerning the environment. The role of the Judiciary thus becomes one from resolving just conflict between parties, to a more political one, in which it has to balance the State's economic priorities with that of the voice of the people. This task of 'balancing' is not easy, given the fact that Parliamentary Democracy is focused on the exercise of democracy through the election process; as opposed to a more continuous process of seeking public inputs and support. In such a scenario, India's Judiciary and specially its environmental court - the National Green Tribunal (NGT) - has played a crucial role in the last few years in mainstreaming environmental democracy in India's governance process. Through a creative process of interpretation, the NGT, through its various decision has ensured, for the first time, that the process of Free Prior Informed Consent (FPIC) is not just an empty formality, but rather an integral process of decision making process. Public Hearings and the Environment Impact Assessment process is taken more seriously, largely due to Judicial oversight. Despite the positive role of the Judiciary, it would be naive to assume that the Judiciary can always be an effective defender of environmental democracy. For one, the Judiciary is largely inaccessible for the bulk of the people in India who are impacted due to faulty decisions of the State. The Courts are not just geographically inaccessible, there is lack of legal support and financial resources to support those whose rights are impacted the most. Members of the Judiciary are also largely aligned with the Government, in terms of their idea of economic growth as well as the weight to be given to people's voice. In such a situation, if environmental democracy has to firmly take root in India, it cannot solely rely on the Judiciary as its only defender.