EVOLUTION OF ECO CENTRISM IN INDIA: THROUGH THE COMMON LAW REMEDY OF WRITS

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Abstract: For decades protection of the environment, ecosystems and wild life has been paternalistic based on the doctrine of parens patriae and principles of sustainable development like inter-generational equity. Such a trend coupled with a solely development driven economy has resulted in the ushering in of a whole new era of environmental degradation, climate change and species extinction. Amidst such environmental crises, in response to a need for a radically different solution in the field of law and economics the philosophy of earth jurisprudence and degrowth economics has emerged respectively. The traditional jurisprudential theory of legal personhood excludes non-human natural entities like rivers, glaciers and other animals like chimpanzees and elephants from the category of legal subjects, i.e. it does not recognize non-human natural entities as holders of rights or even capable of it. This is a result of an anthropocentric worldview whose foundation lies in western religious and Greek humanist philosophy. However, different jurisdictions and legal systems with the changing role of the state from a police state to a welfare state have seen a proliferation of environment litigation through writ petitions and the advent of a novel form of litigation called Public Interest Litigation in India. This was enabled only by the relaxation of traditional rules of 'locus standi' applicable to writ claims. This paper aims firstly, to trace the development of an ecocentric approach to environmental litigation through the writ jurisdiction of the Indian High Courts and Supreme Court, secondly, it aims to establish the scope of possibility of the writ jurisdiction of High Courts and the Supreme Court of India to recognize non-human natural entities as legal persons under the common law granting them certain fundamental common law rights.

I. INTRODUCTION

The historical status of various non-human natural entities including animals as property is attributable mainly to ancient philosophical and religious beliefs wherein, the interest of all other entities of the Earth community was considered subservient to the interest of humanity. This anthropocentric worldview also forms the basis of environmental law and governance. All legal efforts in the direction of nature is thus paternalistic with aims of conservation and animal welfare, motivated purely by the self-interest of humanity and its posterity. This is best revealed in the fundamental theory of legal personhood.

The traditional jurisprudential doctrine of legal personality does not recognize nature as a subject of law, but rather as an object or property requiring the regulation of law. The different areas of law regulating human relationships with nature and animals in traditional legal systems and the common law like the law of torts, property, contract, etc are established in fact to regulate human behaviour and interactions and not aimed at environmental conservation. Further, treatment of nature and animals under environmental law and human rights law although appear to touch upon the interest of environmental entities do not acknowledge the intrinsic value of natural ecosystems and its species. Ecological integrity is thus achieved in a very narrow way by protecting the "human environment" and the wilderness for inter/intra generational integrity and even inter species integrity while failing to acknowledge the rights of such ecosystem and species.

Emerging legal theories of animal rights and earth jurisprudence have criticized this very anthropocentric theory of legal personality which precludes non-human natural entities from being granted legal standing and rights. The non-recognition or acknowledgement of nature and non-human animals as subjects of nature deprives them of any substantial rights and 'standing in their own right'.

The most authoritative rights of nature argument was postulated by the author Christopher D. Stone in his article "Should Trees Have Standing: Toward Legal Rights for Natural Objects", in the 1970's. He identifies three criteria for a thing to be a holder of rights: *"...that the thing can institute legal actions at its behest; second, that in determining the granting of legal relief, the court must take injury to it into account; and, third, that relief must run to the benefit of it."*[1]

In light of the above criteria, he opines that under the common law non-human natural entities are thus *"rightless"* in as much as they do not have a legal standing in their own right to sue at their own behest for injury rather than an injury to a human or in the interest of a human and legal remedies cannot be claimed for their sole benefit.

However, Environmental law jurisprudence in India and across the world has seen much progress with respect to environmental protection through sound judicial action and activism through the medium of the common law writ jurisdiction. In India, progressive judicial action has proved to be a better tool for ecological integrity being equipped as it is with empowering constitutional authority[2] rather than legislative efforts. Additionally the fostering of the scope of Public Interest Litigations in India by few notable judges like Justice P. N. Bhagwati and Justice Krishna Iyer yet reserves hope for the expansion of the concept of legal personhood to include non-human natural entities on par with other juridical fictions like companies and ships.

[1] Should Trees Have Standing? Toward Legal Rights For Natural Objects, Christopher D. Stone, Southern California Law Review
[2] Articles 32 and 226- writ jurisdiction of Supreme Court and High Courts

II. WRIT JURISDICTION of COURTS IN INDIA *vis-a-vis* ENVIRONMENTAL PROTECTION

The Constitution of India through Articles 32 and 226 authorizes the Supreme court and High Courts of India to enforce fundamental rights (and also other rights in case of the latter) by way of issuing writ remedies. This writ jurisdiction of the Supreme Court and the High Courts of India is in likeness to the English Common Law 'prerogative writs' which is the exclusive jurisdiction of the Crown. This provision of writ remedies provided in the Constitution of India in Part three as the last of the fundamental rights has been opined to be the bulwark of democracy by Dr. B.R Ambedkar.[3]

The scope of Articles 32 and 226 of the Constitution are wider than as construed in English Common Law to the extent that it includes not just the five recognized writs of habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto but also any other order or direction.[4]

This has allowed the Courts not only to issue specific writs but also orders of injunction, declaratory or interim reliefs and directions in the nature of Guidelines to fill in legislative gaps.[5] Neither is it merely remedial, owing to the dynamic nature of issues and extenuating circumstances of petitioners in writ petitions,[6] the Supreme Court has developed compensatory jurisprudence to order the payment of compensation and even exemplary damages[7] wherever appropriate. It is this flexibility in granting relief to vindicate petitioners' rights that has proved instrumental to protect and promote environmental interests.

III. LIBERALIZATION OF LOCUS STANDI AND PUBLIC INTEREST LITIGATION

Nothing in the language of Articles 32 or 226 explicitly state or imply any requirement regarding the nature of the petitioner. Article 32(1) reads "the right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this Part..." the term "appropriate" has been held to mean with reference to the substance of the petition, being the enforcement of fundamental rights.[8]

The traditional rule of locus standi dictated that only the "aggrieved party" could move the court for issue of appropriate writs. Nonetheless, the advent of public interest litigation has emerged as the fundamental cause for the relaxation and dilution of 'directly affected party' requirement in writ petitions. Interestingly, circularly, the liberalization of the doctrine has also resulted in a higher number of public interest litigations.

The modern divergent view of courts with respect to locus standi, recognizes the standing of any person with 'sufficient interest' or 'any public spirited person' filing on behalf of a person or class of

[3] Constituent Assembly Debates, Vol. VII, 953

[4] Article 32(2) - "The Supreme Court shall have the power to issue directions or orders or writs, including in the nature of writs of Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto whichever may be appropriate ..." Article 226 extends similar authority to High Courts.

[5] *M.C. Mehta v. Union of India* (Shriram Oleum Gas), 1987 1 SCC 395

[6] Environmental Law and Policy In India, Cases, Materials and Statutes, Second Ed., Shyam Divan and Armin Rosencraz, Oxford University Press, Pg. 145

[7] *M.C. Mehta v. Kamalnath*, 2000, 6 SCC 213

[8] *Bandhua Mukthi Morcha v. Union of India*, 1984 3 SCC 161

persons where such person or class is unable to approach the courts themselves owing to economic or social disability or any other disability.[9] The focus of this paper with regard to the expansion of locus standi is concerned not so much with the nature of expansion thereafter to include, representative standing[10], citizen standing[11], but with the cause for such expansion which is traced in phases in the case of State of Uttaranchal v. Balwant Singh Chaufal.[12] The second phase starting in the 1980's focussed on preservation and protection of ecology and environment.

The Supreme Court in the famous Doon Valley case, while drawing a fine balance between economic and ecological interests, stated that citizens have a fundamental "*right to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment*."[13] Further the right of enjoyment of pollution free water and air for full enjoyment of life of people was recognize under Article 21.[14]

Further, important international principles like the polluter pays principle, precautionary principle and sustainable development was stitched into the fabric of Indian environmental jurisprudence.[15]

Further in the landmark Span Motels case[16], the Supreme Court cited the case of Lake Mono wherein similar interests of ecological integrity of a lake was affected and held that the Doctrine of Public Trust applied to India. The Apex court in this decision traced the origin of the doctrine under the English Common Law and declared that certain natural resources are 'Res Communious' and are held in the interest of the public in trusteeship by the State. Finally, the fragile ecological status of coastal zones were also sought to be preserved by the Supreme court in petitions filed for the enforcement of Coastal Zone Regulations.[17]

These decisions were yet strife with tendencies of anthropocentrism. However, the Supreme Court in A. P. Pollution Control Board v. Prof. M. V. Nayadu & Others[18] emphasized strongly in its directions on the environmental pillar of sustainable development and reiterated, A. Fritsch, "Environmental Ethics: Choices for Concerned Citizens" by observing that the ecology is an interrelated system of beings and damage to one would be detrimental to all.

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[9] *Calcutta Gas Company Ltd. v. State of West Bengal*, 1962, SC 1044; *S.P. Gupta v. Union of India*, 1981 Supp SC 87; *Bandhua Mukthi Morcha v. Union of India*, 1984 3 SCC 161

[10] *PUDR v. Union of India*, AIR 1982 SC 1473

[11] Ratlam; Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344; M.C. Mehta v. Union of India, AIR 1988 SC 1115

[12] 2010, 3 SCC 402

[13] In Rural Litigation and Entitlement Kendra, Dehradun & Others v. State of U.P. & Others, AIR 1985 SC 652; Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Others AIR 1990 SC 2060

[14] Subhash Kumar v. State of Bihar & Others, AIR 1991 SC 420

[15] Vellore Citizens Welfare Forum v. Union of India & Others, AIR 1996 SC 2715

[16] 1997 SCC 388

[17] S. Jagannath v. Union of India & Others, (1997) 2 SCC 87; Enviro-Legal Action v. Union of India & Others (1996) 5 SCC 281

[18] 1999 2 SCC 718

IV. TREND TOWARDS ECO-CENTRISM THROUGH THE COMMON LAW REMEDY OF WRITS

The unique and exclusive domain of the common law conferral of legal rights is how, in contrast to a complete legislative code such as those in the civil law tradition, is the non-requirement of a pre-existing, comprehensive definition of legal personhood. Rather, personhood may be assumed. In other words, the courts in exercise of the common law jurisdiction can extend personhood simply by applying the doctrine in a legally logical manner.

The Indian judiciary has in the recent times seen a shift from anthropocentrism to eco-centrism. In T.N.Godavarman Thirumulpad v. Union of India[19], the petition was filed seeking directions to preserve the endangered species of Asiatic Lions. The court made a succinct critique of the anthropocentric conduct of man like unbridled human population growth, land use transformation, species loss of habitat, eco-tourism, too much access to reserves, and increase in livestock population bordering the forest, depletion of natural prey base etc. as aggravating the man- animal conflict. Additionally, the court noted that the principles affirmed by the court in the Vellore Citizen's Welfare Forum and Span Motels case were anthropocentric as they depended on the pre-condition of human harm to be invoked; whereas, on the other hand eco centrism was life centric and nature centric, including both humans and non-human animals as having intrinsic and not merely instrumental value for the achievement of human ends. This opinion of the court was later re iterated in a similar case of preservation of Asiatic lions wherein, the court held that human interests must not readily take precedence over that of non-human natural entities and that the court must take an eco-centric approach as other species have equal rights to exist on this earth too.[20] In the same vein the Court sought to recast the significance and impact of the public trust doctrine in contrast to the limited scope it was pronounced in earlier.[21] The court held that - "Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life ... the doctrine of public trust, the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of public trust has to be addressed in that perspective."

[19] 2012 3 SCC 277
[20] Centre For Envir. Law, WWF v. U O I & Ors, 2013
[21] See, Span Motels case

In an earlier judgement of a division bench of the Kerala High Court[22], in deciding whether a government notification banning exhibition and training of animals in circuses only without bringing zoos within its ambit was discriminatory, the court categorically held that the notification did not infringe Article 19 (1) (g) as it was directed against the cruel and unnatural treatment of animals. The court also stated the following- *"If humans are entitled to fundamental rights, why not animals'? In our considered opinion; legal rights shall not be the exclusive preserve of the humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side. While the law currently protects wild life and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change."*

Thus, the recognition of rights of non-human natural entities is not an unheard concept and has also been furthered by the Supreme Court in the recent controversial Jallikattu judgement in 2014. The Supreme Court in *Animal Welfare Board of India v. A. Nagaraja & Ors*[23] delivered a watershed judgement by banning Jallikattu and other Bullock cart races in Tamil Nadu and Maharashtra respectively, declaring them to be inherently cruel[24] (both mental and physical cruelty to the bulls) by acknowledging that the rights of animals under the constitution[25] were of seminal importance. The Supreme Court expressed itself to be duty bound under the doctrine of parens patriae *"to take care of the rights of animals, since they are unable to take care of themselves as against human beings."* Further, The Prevention of Cruelty to Animals Act, 1960 being a 'welfare legislation of a sentient-being' construed in the backdrop of the standard of "Species Best Interest" was held to have an overriding effect over any apparent traditions or culture. The ratio of the decision in the AWBI case was reiterated and followed by the Bombay High Court in another Public Interest Litigation, Animals and Birds Charitable Trusts and Others v. Municipal Corporation of Greater Mumbai and others, wherein Article 21 was recast to include within the ambit of "life" even animal life. It thus elevated the obligation imposed on Indian citizens under Article 51 A (g) of "compassion to living creatures" and Article 51 A (h) the duty to foster humanism into a fundamental right of animals to a life free of cruelty, disability and recognized the intrinsic worth of other species and their right to a life of dignity.

The most recent contribution of the Uttarakhand High Court towards this end is the declaration of the "entire animal kingdom including avian and aquatic" as legal entities with corresponding rights and duties in Narayan Dutt Bhatt v Union of India and Ors.[26] The Uttarakhand High Court in Md. Salim v. State of Uttarakhand stated that the Ganges and its main tributary the Yamuna be accorded the status of living entities, with the Director of NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of the State as *persons in loco parentis.* This followed the example of the

[22] N.R. Nair and Ors. v. Union Of India (UOI) And Ors, AIR 2000 Ker 340
[23] (2014) 7 SCC 547
[24] Under Sections 3, 11(1)(a) & (m), 21 and 22 of the PCA Act, 1960
[25] Articles 51A(g) and (h) of the Constitution- compassion for all living beings
[26] W.P (PIL) No. 43 of 2014

Whanganui river case in New Zealand. Additionally in the case of, Lalit Miglani v. State of Uttarakhand[27], the Gangotri and Yamunotri glaciers, other water bodies etc were deemed to possess the right not to be polluted, and positively said to possess rights akin to fundamental rights like, the right to exist, persist, maintain, sustain and regenerate their own vital ecology system in compliment with rights of dependent community.

V. CONCLUSION

There is a strong trend in favour of recognition of fundamental rights of non-human entities under the Common law, mainly the right to life and integrity. Further, the Common law principle of equality dictates that- categorization of entities based on their human or non-human status is not a reasonable enough classification to render them right less under law. The rights approach to conservation is not unheard of and is a constitutional mandate in the countries of Ecuador and Bolivia. Further, in the United States of America many states have developed local laws codifying the rights of nature. However it may be noted here, that the Uttarakhand High Court itself has failed to completely embrace the secular and bio centric principles of Earth jurisprudence like eco centric governance, moral and legal considerableness of non-human natural entities. Additionally the honourable Supreme Court has failed to endorse this view and has even stayed the order declaring Ganga and Yamuna as living entities.

Nevertheless, the wide and expansive ambit of the prerogative writs conferred by the Indian Constitution authorizes the judicial review of both administrative and judicial actions but most importantly it is the only flexible mechanism of justice to respond to the changing needs of society. The judgements cited above signify the role that the Supreme Court and High Courts of India can play in the exercise of their writ jurisdiction, to provide a better thrust for ecological conservation by acknowledging the rights of Nature and other non-human animals. Such an acknowledgement would be subservient to the need of the earth community as a whole.

[27] W.P. No. 140 of 2015