

GRANTING PERSONHOOD TO RIVERS: Whether Legal Rights Reverse The Trajectory Of Destruction

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ABSTRACT

India, a blessed country where we consider its rich natural sources of water through numerous rivers and lakes. The country has rightly been called the "Land of Rivers" more evidently people worship the rivers as gods and goddesses. All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and wellbeing. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. But what's ironical is that in spite of our profound respect and reverence for our rivers, we've failed to maintain their purity, cleanliness and also their physical well-being. Be it Ganga, Yamuna, Brahmaputra or Kaveri or the other river flowing within the soil of our motherland, not one river is free from pollution. River pollution has been causing serious water-borne diseases and health problems affecting human population furthermore as animals, fish, and birds within the environment. Indian courts are critical of more than three decades of state efforts to scrub up the Ganges, a 2,500km waterway named after the Hindu goddess Ganga. the newest clean-up initiative had set 2018 as its deadline, one that water ministry officials have reportedly conceded is unlikely to be met. This is the very first time in India that rivers are recognised as a living entity with its own rights and values and given the position of a legal/juristic person. the researcher, through this paper tried to grasp the implications of granting rivers personhood and further the extent to which it is beneficial to them as far as putting a curb on their pollution is concerned. Also to analyse how far is making them persons really effective in undoing the destruction with regard to article 21, 48A and 51A of the Indian Constitution.

Keywords: Rivers, Water Pollution, Personhood, Environment, India.

THE RIVER AS A BEING

"Consider what person' stands for; which, I think, is a thinking, intelligent being, that has reason and reflection."

- *John Locke*

Rivers of India are regarded sacred. Indian rivers have plenty of spiritual importance. Respected, Worshipped, and cared for, these rivers form an integral part of every Indian life.

Nothing progresses in their absence. They are as special as the Indian temples for a devotee. One can visit some of these rivers to understand what they imply to a common Indian man.¹

The Rivers of India not only play a significant role in the lives of the people of India but Indian river systems also help us in a number of ways. They offer drinkable water, cheap conveyance, irrigation, help in producing electricity, and are the sources of income for a considerable number of inhabitants throughout India. On certain occasions, India is denoted as the "Land of Rivers". The large number of tributaries and close association of Indian society and tradition to the indigenous rivers are the bases for this depiction.² Surveys undertaken by the Central Pollution Control Board (CPCB) and the Centre for Science and Environment (CSE) have come up with some hard facts on river pollution, in terms of statistical figures, which makes it a matter of really serious concern,

Out of the 445 rivers surveyed, not even a quarter of them are fit for bathing. Indian cities generate 10 billion gallons or 38 billion litres of municipal waste water every day, out of which only 29% of it is treated. The Central Pollution Control Board also stated that there were only 160 sewerage systems and sewage treatment plants in nearly 8,000 towns surveyed in 2011. Only 20% out of nearly 40,000 million litres of sewage produced daily in Indian cities are treated.²

Yamuna has become a garbage dump area with more than 57 % of Delhi's waste thrown into it. Only 55% of Delhi's residents are connected to a proper sewerage system. According to the CSE, around 80% of Yamuna's pollution is due to raw sewage. Ganga is considered to be the most polluted river in India. Approximately 1 billion litres of raw, untreated sewage is dumped in Ganga regularly. Ganga contains 60,000 faecal coliform bacteria per 100 ml, which is a threat to human health.³

Two of India's most iconic rivers, considered sacred by nearly a billion Hindus in the country, have been given the status of living entities to save them from further harm caused by widespread pollution⁴. The High Court in the northern state of Uttarakhand ruled that the Ganges and the Yamuna rivers be accorded the status of living human entities, meaning that if anyone harms or pollutes either river, the law would view it as no different from harming a person. The judges cited the example of New Zealand's Wanganui River, revered by the indigenous Maori people. The Wanganui was declared a living entity with full legal rights by New Zealand's government.⁵ The legal battle to save the Ganges, the lifeline of more than 500 million people across India, has received a fresh boost thanks to a series of rulings by the high court in the north Indian state of Uttarakhand.

First the court declared the Ganges and Yamuna rivers to be legal persons. In a subsequent hearing, it also gave this designation to glaciers; including Gangotri and Yamunotri (where the Ganges and Yamuna originate from), rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls.

¹ <https://www.mapsofindia.com/maps/rivers/> Accessed on June 21, 2022 ² Ibid

² B.D. Tripathi & S. Tripathi, Issues and challenges of river Ganga, 211, in *Our National River Ganga* (R. Sanghi, 1st ed., 2014).

³ Michael Safi and agencies, 'Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings' *The Guardian* (21 March 2017) <<https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings>> accessed 23 June 2022

⁴ <https://www.mapsofindia.com/my-india/society/river-pollution-in-india-who-will-bell-the-cat> accessed 21 June 2022

⁵ Improving the Global Environmental Rule of Law by Upholding Indigenous Rights: Examples from Aotearoa New Zealand in *Global Journal of Comparative Law* Volume 7 Issue 1 (2018) accessed 21 June 2022

These verdicts represent a shift from a view that sees nature as a resource to one that considers it an entity with fundamental rights. Other non-human entities that have legal personalities in India include companies, temple deities and trusts.

In jurisprudence, nature is considered property with no legal rights. Environmental laws only focus on regulating exploitation. But this is now changing, with calls for the inherent rights of nature to be recognised, both in India and around the world. Environmental activists say many rivers in India have become dirtier as the economy has developed, with city sewage, farming pesticides and industrial effluents freely flowing into waterways despite laws against polluting. The Yamuna is the main tributary of the Ganges that officials say is tainted with sewage and industrial pollution. In some places, the river has stagnated to the point that it no longer supports life. Water from the Yamuna is treated chemically before being supplied to Delhi's nearly 19 million residents as drinking water.

In New Zealand, the local Māori, or tribe, of Wanganui in the North Island had fought for the recognition of their river – the third largest in New Zealand – as an ancestor for 140 years. Treating the river as a living entity is the correct way to approach it, as an indivisible whole, instead of the traditional model for the last 100 years of treating it from a perspective of ownership and management.

The Ganges, considered sacred by more than 1 billion Indians, has become the first nonhuman entity in India to be granted the same legal rights as people. In the case *Mohd Salim v state of Uttarakhand*⁶ ordered that the Ganges and its main tributary, the Yamuna, be accorded the status of living human entities. The decision, which was welcomed by environmentalists, means that polluting or damaging the rivers will be legally equivalent to harming a person.

In a culturally rich country like India, there will always be a perceived conflict between the right of nature and the human right to 'culture'. For example, in the Hindu philosophical worldview, it is a common belief that one can break the perpetual cycle of samsara – birth and rebirth, and achieve moksha or eternal liberation by having their ashes spread in the Ganga at Varanasi.⁷ This has led to an increased footfall of people into the city and has led to the deterioration of the water quality in the river due to the presence of sewage, industrial waste, human and animal carcasses, etc. Thus, in this case, the human right to practice one's own faith is in direct conflict with the right of the river to not be polluted. Owing to the newness and lack of judicial precedent, the right of humans will most likely win. If the reason for pollution or exploitation has a cultural backing, then legislatures will be in a difficult situation trying to resolve the deadlock with culture versus the right of nature.

The Indian Constitution already has a provision for an individual to seek redress for the violation of their fundamental rights by filing Public Interest Litigations and Writ Petitions under Articles 32 and 226. There have been numerous instances in India, where a PIL has been used to resolve environmental disputes with the broadened concept of *locus standi*. Numerous environmental cases have had litigants who had them faced little to no harm. However, the long-standing issue with PIL has been the implementation of the order by the statutory authorities. This in itself questions the reason for appointing the same regulatory authority as the *locus parentis* for the rivers as senior public officials who have been made the *locus parentis* by the Court already have numerous obligations which might conflict with these new responsibilities to protect the river.

⁶ <https://indiankanoon.org/doc/132806006/> Writ Petition (PIL) No.126 of 2014

⁷ M.G. Faure & A. V. Raja, Effectiveness of environmental public interest litigation in India: Determining the key variables, 21 Fordham Environmental Law Review 239, 254 (2010)

Closer to home, in the case involving the Ganga river, it took a second Public Interest Litigation where the petitioner explicitly extended the ambit of legal personhood to all other natural objects, including glacier⁸

Today, the rivers are not only an economic issue but a regulatory one. In the last two decades, the Judicial system in India has been seeking the on-going problem of how to save and revitalize the rivers more explicitly in the face of the continuous assault resulting from emissions, intrusion and dwindling flow. Judicial activism saw many highs and lows, with the Judges coming down strongly on the violators and only indicating their dissatisfaction and sorrow at the miserable condition of the river. The grief of the judges and their eagerness in attempting to improve the condition can be seen in various orders.⁹

Surprisingly, the Courts have still not deemed themselves adequately prepared to cope with challenging ecological problems. Even the Apex Court of judicature observed in the case of

A.P Pollution Control Board v. Prof M.V Nayadu¹⁰ that “In matters relating to industrial pollution serious issues involving pollution and related technology have been arising in this Court and the High Court. The cases involve the correctness of the technological and scientific opinions presented to the Courts In such a situation considerable difficulty is experienced by this court or the High Court in adjudicating upon the correctness of the technological and scientific opinion presented to the Court concerning the efficiency of the technology proposed to be adopted by the industry or concerning the alternative technology or modification as suggested by the Pollution Control Board”¹¹. A perusal of the numerous applicable orders of the Courts shows that either the Courts have accepted structural approaches focused on technologies for coping with river contamination or have regularly repeated the loathsome state of the river.

CONCLUSION

The above fetched data and research raises many questions and issues on providing personhood to rivers firstly to start with the very nature of the concept of legal/juristic person in case of rivers because it is not clear that what are the legal consequences and also the sense what of giving legal personality can be. The concept of legal personality is different and differs through the legal framework, as we have seen that the provision of river is different from the legal rights which are granted to the Wanganui River. The scope of rights is expanded if we see a river as an ecosystem rather than just a body of water with a certain volume. In addition to the nearby human groups that depend on it, it also encompasses the aquatic flora and wildlife, biodiversity in its catchment areas, forests, its tributaries, groundwater, and the rocks and soil in its bed and banks. In that sense, a river's identity and integrity are maintained through protecting the ecological factors and conditions that make up its natural environment. This does not abolish fishing or other specific, localised human needs associated to the river; rather, it promotes a positive relationship that respects the river as an ecosystem, as previously articulated. Environmentalists have also argued that the legal rights given to Rivers have not been fully implemented in practise, which creates confusion.

Secondly the legal guardian aspect to protect such rights which is necessity has been overlooked. It is evident through the delay in implementation of law which if done timely can actually benefit the cause ,as it has been numerous years since the Union government in India has embarked on a new mission to establish a River Basin Authority (“RBA”) for all river basins in the country through the proposed River Basin

⁸ E.L. O'Donnell, At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India, 30 Journal of Environmental Law 135, 140 (2018)

⁹ ‘Judicial Activism and Judicial Restraint’ <<http://www.legalservicesindia.com/article/2019/Judicial-Activism-and-Judicial-Restraint.htm>> accessed 23 June 2022

¹⁰ A.P Pollution Control Board v. Prof M.V Nayadu 2000(3)

¹¹ The Hindu, Ganga, Yamuna termed ‘living persons’, THE HINDU, March 21, 2017,

(<https://www.thehindu.com/news/national/ganga-yamuna-termed-living-persons/article17547682.ece>) accessed on 24 June 2022

Management Bill, 2018. The draft bill envisages a two-tier system for the RBAs. The first tier will comprise the Governing

Council, represented by the chief ministers and ministers in charge of water resources from each of the basin state, along with the chairman of the executive board (nominated by the Central Government). The second tier will be the entire Executive Board, headed by the chairman, a financial adviser, and state level bureaucrats and experts in environment, waterplanning, power, groundwater.

Giving water bodies legal rights has attracted a lot of attention, but it is questionable if the action would truly result in a noticeable improvement in environmental protection. In India, river and lake conservation is of highest importance. Attempts to do so have been made in the past, and initiatives of this nature have cost millions of dollars. Giving someone personhood is an amorphous new attempt to address a persistent problem that the nation continues to face. In India and other nations, numerous rivers and lakes have religious and social significance that has a significant impact on and influences the lives of many. Whether these kinds of legal rights are even pertinent or acceptable for nature is still up for debate. However, it is evident by expanding this idea to other non-human things that these legal rights are useless if they cannot be enforced.

The goal of giving rivers legal rights if done with efficacy and timely goes well beyond just keeping our rivers clean. It might start a completely new conversation and radically alter how we relate to our rivers. One must also be aware of the absence of research that has accompanied the march into this unexplored region, which is reflected in the section above. Most crucially, if we want to follow in the footsteps of Wanganui in the post-COVID age, new institutions must be established and a robust regulatory system must be in place.

