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Environmental Personhood in India: An Eyewash or an Answer?

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ABSTRACT

Granting water bodies legal rights have captured the attention of many, however it is debatable if the move actually brings about a tangible change in the protection of the environment. Conservation of rivers and lakes in India is of the utmost importance and the same has been attempted before and crores have been spent on such projects. Granting personhood is an abstract new attempt at solving an old conundrum that continues to plague the country. Many rivers and lakes in India and other countries have religious and social significance and greatly affect and influence the lives of many. This paper attempts to analyse the rights-based approach to environmental protection and demystify the grant of personhood, the practicality of the same, and highlights a cultural perspective in the decision.

I. INTRODUCTION: THE CONCEPT OF A JURISTIC PERSON

"Consider what person' stands for; which, I think, is a thinking, intelligent being, that has reason and reflection." - John Locke²

The concept of personhood is as controversial as it is historically fascinating. Not always all human beings enjoyed or were entitled to a legally and socially recognized personhood. Slaves in ancient Rome, Greece and in more modern memory United States were not considered as persons and were in due course deprived of the rights enjoyed by free men hailing from the same society³. But the concept of a juristic person involves gifting a non-human entity the rights and responsibilities of a person. In many jurisprudential literature personhood is associated with human-like traits like breathing and food consumption⁴. The 19th century saw legal personhood being molded and re-caste into specific legal statuses such as citizen, resident, or a domiciliary of a State, as in the case in Louisville, *C. & C.R. Co. v.*

¹ Author is a student at Department of Law, University of Calcutta, India.

² JOHN LOCKE, *THE WORKS OF JOHN LOCKE, VOL. 4 (Economic Writings and Two Treatises of Government)*(1691).

³ A. WATSON, *THE LAW OF PERSONS IN THE LATER ROMAN REPUBLIC* 44 (1967).

⁴ Deal Hudson, *Catholics and the Personhood Initiative*, January 18, 2010, (<https://www.catholicity.com/commentary/hudson/07516.html>).

Letson⁵, where the US Supreme Court opined that a corporation is "capable of being treated as a citizen of [the State which created it], as much as a natural person."⁶ In 1973, Justice Harry Blackmun delivered the landmark judgement in Roe v. Wade, where he said, that US Constitution does not define "person", thus an unborn foetus cannot be proclaimed the same under the 14th Amendment of the Constitution⁷. Legal personhood is not a binary proposition, there is a differentiation between legal rights and legal responsibilities and also the conundrum that if an entity given the legal rights and responsibilities of personhood, in reality should be allowed to claim said rights and all other shades of personhood.⁸ This article discusses environmental personhood, the instances of the same in India and around the world, and tries to analyse the reasons for the same.

II. ENVIRONMENTAL PERSONHOOD

(A) The Origin Story

The concept of environmental personhood was first introduced by Christopher D. Stone in his work "*Should Trees Have Standing? Towards Legal Rights for Natural Objects*". Stone introduced the concept as being unthinkable and commented:

"Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable. We are inclined to suppose the rightlessness of rightless "things" to be a decree of Nature, not a legal convention acting in support of some status quo."

Stone clarified that environment should have rights is not to say that they should be the same rights conferred to citizens or even the same body of rights enjoyed by human beings, neither should all things in the environment have the same rights. He believed, the granting of rights had two sides to it, the legal-operational aspects and the psychic and socio-psychic aspects. Stone made a prophetic observation in the conclusion of his work, he said, that the Supreme Court in due time may find itself in a position to award rights in a way that may change popular consciousness, and that would be a modest move in the "*furtherance of a large goal: the future of the planet as we know it.*"⁹ Stone's work was referred to by Justice William Douglas in the landmark case of *Sierra Club vs Morton*¹⁰, that very year in the US Supreme

⁵ C. & C.R. Co. v. Letson, 2 How. 497, 558, 11 L.Ed. 353 (1844)

⁶ Ibid

⁷ Roe v. Wade, 410 U.S. 113 (1973)

⁸ ERIC W. ORTS, BUSINESS PERSONS: A LEGAL THEORY OF THE FIRM xv (2013)

⁹ Stone, Christopher D, "*Should Trees Have Standing?—Towards Legal Rights for Natural Objects.*", Southern California Law Review 45 (1972): 450-501.

¹⁰ *Sierra Club v. Morton*, 405 U.S. 727 (1972)

Court. The case has found a standing in environmental and legal history owing to Justice Douglas's dissenting opinion, where he said that different environmental elements should have locus standi in court for their own protection and preservation, he believed that regulatory agencies being the voice of specific environmental elements was not conducive to their preservation as the changing mindset of these agencies meant they were leaning towards development over preservation, and thus it should not be the agencies speaking for the environmental bodies but those who shared a meaningful and purposeful connection with the said environmental body. An excerpt of the dissenting opinion read:

"The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation."

He opined that the proposition wasn't absurd as ships, and corporations were accepted adversaries in the court of law, therefore the same benefit should be extended to rivers, valleys and lakes before the *bulldozers of progress* plow over the aesthetic wonders of the land.¹¹

III. GRANTS OF ENVIRONMENTAL PERSONHOOD: A GLOBAL OVERVIEW

Much has changed since 1972, and protection of the environment has taken centre stage with global warming and climate change looming close with every passing year. The attitude has changed from preservation to active revitalisation, and grants of environmental personhoods across the known world are a testament to the emergency that is climate change.

Ecuador went through a massive change in 2007, with the *La Revolucion Ciudadana* or Citizens' revolution, which propelled Rafael Correa to the country's presidentship. As a furtherance of his promise for an anti-neoliberalist nation, President Correa called for a new constitution. This window of opportunity was seized by the indigenous groups of the country who advocated and proposed for the inclusion of the concept of *sumac kawsay* (Good Living) and *Pachamama* (Mother Earth) in the new constitution. The 7th chapter of the new Constitution thus was titled, "Rights of Nature", and recognised Pachamama as a legal entity. This move granted nature the rights to, "*to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.*" Any individual and a group can

¹¹ Ibid

petition to protect the rights of nature. Ecuador was the first country to enshrine the rights of nature in its constitution.¹²¹³

Bolivia followed suit with demands for rights of nature and in 2010, the Bolivian Government released the Law of the Rights of Mother Earth, this law includes the right to life and to exist; the right to continue vital cycles and processes free from human alteration; the right to pure water and clean air; the right to balance; the right not to be polluted; and the right to not have cellular structure modified or genetically altered, as well as the right "*to not be affected by mega-infrastructure and development projects that affect the balance of ecosystems and the local inhabitant communities*", which might be controversial when viewed from the perspective of economic developments. This law redefines minerals as *blessings* instead of resources, and this shift owes its origin to the Andean belief of Pachamama as the centre of all life, and views human beings as being equal to all other entities. Bolivia defines nature as a judicial entity that "*takes on the character of collective public interest*."¹⁴ This marks a radical shift from the widely known anthropocentric version of environmental law.¹⁵ In 2012 an extended version of the law was released titled "The Framework Law of Mother Earth and Integral Development for Living Well"¹⁶.

The Maori bear an intimate bond with the land and the nature; rivers, and mountains are commonly recognised as *Tupuna* or ancestors, as can be derived from a common saying, "*Ko au te awa, ko te awa ko awu*", which translates to "*I am the river and the river is me*"¹⁷. In 2014, the New Zealand government personified the Te Urewera, and subsequently released the Te Urewera Act, that replaced the National Parks Act of 1980, and proclaimed that Te Urewera is vested in itself as a legal entity, and will own itself in perpetuity¹⁸. New Zealand's decision to grant legal personhood of the Whanganui river concluded the longest running litigation in the country's history. The river was recognised as a living entity, and causing

¹² Kyle Pietari, *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, WILLAMETTE ENVIRONMENTAL LAW JOURNAL, FALL 2016

¹³ Sanket Khandelwal, *Environmental Personhood: Recent Developments and the Road Ahead*, JURIST, April 24, 2020, (<https://www.jurist.org/commentary/2020/04/sanket-khandelwal-environment-person/>)

¹⁴ Gordon, G. J. (2019). *Environmental Personhood*. COLUMBIA JOURNAL OF ENVIRONMENTAL LAW, 43(1). <https://doi.org/10.7916/cjel.v43i1.3742>

¹⁵ John Vidal, *Bolivia enshrines natural world's rights with equal status for Mother Earth*, THE GUARDIAN, Apr 10, 2011, (<https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>)

¹⁶ Añaños Bedriñana KG, Hernández Umaña BA, Rodríguez Martín JA. "*Living Well*" in the Constitution of Bolivia and the American Declaration on the Rights of Indigenous Peoples: Reflections on Well-Being and the Right to Development, INT J ENVIRON RES PUBLIC HEALTH. 2020;17(8):2870. Published 2020 Apr 21. doi:10.3390/ijerph17082870

¹⁷ Kelly Buchanan, *New Zealand: Bill Establishing River as Having Own Legal Personality Passed*, Library of Congress, Mar 22, 2017, (<http://www.loc.gov/law/foreign-news/article/new-zealand-bill-establishing-river-as-having-own-legal-personality-passed/>)

¹⁸ Te Urewera Act 2014, NEW ZEALAND

harm to the river would signify harming the Maori. It was the result of a 140 year long fight for recognition by the Maori, and a few sub-cultures that regarded the river as their ancestor.¹⁹ These two decisions by New Zealand further veers away from the human-centric approach to environmental protection and reinstates Stone's argument²⁰.

In 2017 Colombia's Constitutional Court, granted legal personhood to Rio Atrato, a river that forms a part of a biological hotspot, and flows through 91 different indigenous territories, for whom the river bear tremendous significance being the source of both survival and cultural beliefs.²¹ The decision established the river as "*subject of rights, which entails its protection, conservation, maintenance, and, in the specific case, restoration.*" The order instructed the government to form the Atrato Guardians Commission which would consist of 14 legal guardians from the indigenous communities in the area, affected from gold mining and pollution. However, local groups are struggling to find a way to implement the orders.²²

Many local governments in the United States have granted legal rights to rivers and lakes, such as the Lake Erie, in Ohio²³ Bangladesh too declared all of its rivers as living entities, so anyone who damages the river can be taken to court by the government appointed National River Conservation Commission, and be tried as having harmed a living entity, as the rivers have been granted right to life²⁴.

IV. INSTANCES OF GRANTS OF ENVIRONMENTAL PERSONHOOD IN INDIA

Judicial decisions in India have often formed the bedrock of societal change and environment protection is no different. In the case of T.N. Godavarman Thirumulpad v. Union of India and Ors²⁵, the Supreme Court held that for justice to be done to the environment it was pertinent to move away from anthropocentric approaches and focus on an alternative eco-centric approach. Similarly, in the landmark case of Animal Welfare Board of India v. A Nagarja²⁶,

¹⁹ Eleanor Ainge Roy, *New Zealand river granted same legal rights as human being*, THE GAURDIAN, (Mar 16, 2017), (<https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>)

²⁰ See Stone. (Ibid pt.9)

²¹ Jens Benöhr, Patrick J. Lynch, *Should Rivers Have Rights? A Growing Movement Says It's About Time*, YALE ENVIRONMENT 260, Aug 14, 2018, (<https://e360.yale.edu/features/should-rivers-have-rights-a-growing-movement-says-its-about-time>)

²² Laura Villa, *The Importance of the Atrato River in Colombia Gaining Legal Rights*, EARTH LAW CENTRE, May 17, 2019, (<https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-in-colombia-gaining-legal-rights>)

²³ Sigal Samuel, *Lake Erie now has legal rights, just like you*, VOX, Feb 26, 2019, (<https://www.vox.com/future-perfect/2019/2/26/18241904/lake-erie-legal-rights-personhood-nature-environment-toledo-ohio>)

²⁴ Sigal Samuel, *This country gave all its rivers their own legal rights*, VOX, Aug 18, 2019, (<https://www.vox.com/future-perfect/2019/8/18/20803956/bangladesh-rivers-legal-personhood-rights-nature>)

²⁵ T.N. Godavarman Thirumulpad V. Union Of India, SC, Writ Petition (Civil) No. 202 Of 1995

²⁶ Animal Welfare Board of India v. A Nagarja, SC, Civil appeal no. 5387 of 2014

the apex court extended the Constitution's Article 21 or Right to Life and Personal Liberty to non-human animals. In 2013 the Ministry of Environment and Forests declared cetaceans as non-human persons, the government body cited research that cetaceans are highly intelligent and sensitive and therefore "*should be seen as 'non-human persons' and as such should have their own specific rights*²⁷."

Mohd. Salim v. State of Uttarakhand

The grant of environmental personhood was pioneered by the extension of personhood to Ganga and Yamuna, by the Uttarakhand High Court. The decision was taken during the proceeding of a Public Interest Litigation that challenged mining and stone crushing activities along the river Ganga ²⁸²⁹. In 2016, in the case of Mohd. Salim v. State of Uttarakhand, the High Court ordered removal of illegal constructions, instructed the constructions of the Ganga Management Board, and further prohibited mining of the Ganga river bed and its highest flood plain. The order also directed the Central government to settle the water sharing conflict between the States of Uttar Pradesh and Uttarakhand in a time bound manner. The court was horrified by the wanton neglect of the rivers and therefore, exercised the *parens patrie* jurisdiction and declared Ganga and Yamuna along with all their tributaries as "*having the status of a legal person with all corresponding rights, duties and liabilities of a living person*", and declared the Director of the Namami Gange Programme, the Chief Secretary and the Advocate General of Uttarakhand, as legal parents of the river system, the Advocate General was appointed as the legal representative of the rivers in the court of law.³⁰ The judgement also made note of the religious importance of the rivers. An excerpt from the judgement reads,

"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 well-being. 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. Rivers Ganga and Yamuna are breathing,

²⁷ *Dolphin's get unprecedented protection in India*, DW, (<https://www.dw.com/en/dolphins-gain-unprecedented-protection-in-india/a-16834519>)

²⁸ Ashish Kothari, Mari Margil & Shrishtee Bajpai, *Now rivers have the same legal status as people, we must uphold their rights*, THE GAURDIAN, April 21, 2017, (<https://www.theguardian.com/global-development-professionals-network/2017/apr/21/rivers-legal-human-rights-ganges-whanganui>)

²⁹ 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>)

³⁰ Mohd. Salim v. State of Uttarakhand, 2017 SCC OnLine Utt 367

*living and sustaining the communities from mountains to sea.*³¹”

Lalit Miglani V. State of Uttarakhand

In the case of Lalit Miglani vs State of Uttarakhand, the High Court extended the grant of personhood from rivers to “*glaciers including Gangotri glaciers & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls*”. In a similar fashion the Chief Secretary of the State of Uttarakhand, the Director and legal advisor of the NAMAMI Gange Project, the Advocate General of the State of Uttarakhand, the Director (Academics) of the Chandigarh Judicial Academy and Supreme Court Senior Advocate Mr. M.C. Mehta were declared as persons in *loco parentis* or in place of a parent, to provide a human face to the preservation and protection of natural wonders of the State of Uttarakhand.³²

Animal rights were up for discussion in the case of Karnail Singh v. State of Haryana, when cows were being transported for meat slaughter in violation of restrictions. The order granted legal personhood or entity to animals in the State of Harayana, and declared every citizen as persons in *loco parentis*, therefore authorizing every citizen to move to the court of law on behalf of any animal that is harmed. In the order Justice Rajiv Sharma clearly opined,

*“All the animals have honour and dignity. Every specie[s] has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. The Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities, and thus, in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/legal person. The animals should be healthy, comfortable, well nourished, safe, able to express innate behaviour without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property.”*³³

The concept of *loco parentis* resurfaced on 2nd of March, 2020, the Punjab and Haryana high court bench of justices Rajiv Sharma and HS Sidhu fined Punjab and Haryana Rs 100 crore each for causing damage to Sukhna Lake. The order was passed in a *sou motu* petition and the state governments were further requested to demolish the buildings in the catchment area, and relocate, and compensate the owners whose building plans were approved by the authority. Owing to the decreasing water levels, the lake was granted “*living entity*” and declared as a legal person, with rights, duties and liabilities as a living entity, and all the

³¹ Ibid

³² Lalit Miglani v. State of Uttarakhand, Writ Petition (PIL) No.140 of 2015.

³³ Karnail Singh v. State of Haryana CRR-533-2013 High Court of Punjab & Haryana

citizens of Chandigarh, as *loco parentis* so as to protect the lake.³⁴

V. ANALYSIS OF THE GRANT OF ENVIRONMENTAL PERSONHOOD IN INDIA

The idea of granting personhoods to elements of environment, seems a radical answer to environment protection, and indeed the grant bears many positives. The first being, it allows for the shift from an anthropocentric view of the law to an eco-centric view of the law, the second being it provides human beings and citizens with the authority to move to court, as well as preserve and protect the environment, thus creating a bond. However, the orders are more conceptual and lacks specificity. This lack of specificity poses a plethora of questions regarding the implementation of said orders.

The orders do not clarify on the contents of the rights, or prescribe a balance that can be struck between the rights and duties of the environmental entities. Neither do the judgements provide guidance as to which right would gain preference if it does come into conflict with human interests and the right to life of an Indian citizen. It is also has not been clarified why certain natural entities have been granted rights while others have not. In a fundamental level no attempt has been made to categorically distinguish between a living entity and a juristic person, instead they have been drawn in a parallel formation, “*status of legal person with all the corresponding rights, duties and liabilities of a living person*”³⁵. So, this gives rise to the question that if pollutants are illegally discharged into the river, or if an illegal structure is constructed, will it be tried in court as an offence affecting the body, under the Indian Penal Code³⁶?

Cynthia Giagnocavo and Howard Goldstein in their article *Law Reform or World Re-form: The Problem of Environmental Rights* opined that simply ascribing rights to natural environment is highly counterproductive, as it opens up the possibility of a judicial battle, where they argue, the “voice” of nature can be undermined and the rights denied by the courts when faced against human needs, and the dangerous aspect being, this denial unlike before is legitimate.³⁷

VI. CONCLUSION: A POTENTIAL CULTURAL SHIFT?

Protection and preservation of natural resources and the many ecosystems of the world is

³⁴ *Sukhna Lake is a living entity with rights: HC*, HINDUSTAN TIMES, Mar 3, 2020, (<https://www.hindustantimes.com/chandigarh/sukhna-lake-is-a-living-entity-with-rights-hc/story-Jrt8vKUy8kqIUwWaLpcYtM.html>)

³⁵ *Ibid* pt. 30

³⁶ Indian Penal Code, 1860, Chapter XVI

³⁷ Cynthia Giagnocavo & Howard Goldstein, *Law Reform or World Re-form: The Problem of Environmental Rights*, 35 MCGILL LAW JOURNAL (1990)

crucial to human survival, and at this moment of emergency many methods are being applied to secure the same. Environmental personhood is a dynamic and entirely new approach to the growing problem, and despite the misgivings it has its benefits. Since 1972³⁸ much has changed in terms of popular outlook towards the environment and the legal responses towards environmental destruction, and at the heart of environmental personhood lies a failure of human society. Rapid industrialisation, colonisation and westernisation of the world has quashed indigenous values of reverence and co-existence among man and nature and, has thrust the concept of economic gains before all. In United States of America, and Chile, corporations are granted personhood but rivers and lakes which have supported generations are not³⁹. For time immemorial Indians have considered the rivers and mountains as deities, much like the Maori. The citizen's reverence for nature has been etched into folktales, rituals, cultures and customs, yet, unlike the pristine rivers and rolling hills of New Zealand, India bears many of the most polluted rivers. This might be blamed on a long drawn and intense cultural assimilation with the West and unplanned industrialisation⁴⁰. However, these values are being reimposed by the virtue of judicial activism, not just in the subcontinent but all across the globe from Latin America, and Oceania to the United States. Many of these movements like the ones in Ecuador, Bolivia, and New Zealand have been spearheaded by indigenous populations categorically against western laws. The western outlook towards the environment as a resource, instead of a blessing has made its mark on the face earth, the problem has been spread through colonisation and intense exploitation of the natural resources of the colonies. This emerging trend begs the question if traditional Western views of nature as a resource is being rejected by the judicial systems of the world?

³⁸ Ibid pt. 9

³⁹ See yale, Ibid pt. 21

⁴⁰ Kelly D. Alley, *River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology*, RELIGIONS 2019, 10, 502; doi:10.3390/rel10090502