

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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LEGAL PERSONALITY TO THE ENVIRONMENT: AN ANALYSIS

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Abstract

The employment of legal personality to the environment in law by providing legal rights is rising, representing a significant advancement in ecological domains. Personhood has been bestowed to many entities throughout history, including animals, businesses, gods, etc. Experts have noted that these cases of attributing personality are typically arbitrary. One of the most recent additions to the list of entities which have received legal personality is the components of the environment, such as rivers. Various theories and developments from across the globe are beginning to recognize the environment or some element of the environment as having legal personality. Legal acknowledgement of the environment as having legal personhood can be found in a diverse range of philosophies and advancements across the globe. Different rights to the environment/ nature have been enshrined into the constitutions of several countries. Non-human species and other creatures are now being proclaimed legal people in increasing court cases as well as other endeavours however, rivers have largely already been recognized as a person in New Zealand and India, i.e. the river Ganga. The implications, advantages, and limitations of this approach to environmental conservation are examined, but more research is required. The author deals with the problem of examining whether the environment should be given personhood through a jurisprudential and legal lens, and it also answers the question of the practicality of granting legal personality to the environment, i.e. the implementation of this concept into reality. The paper aims to put forth the need to protect the environment and a need for a strong duty-based approach to environmental laws. Along with this, the paper aims to analyse the rights-based approach and investigates the new legal rights given to the environment through various landmark judgements.

Introduction

Environment and its components have been believed to be deities; it has been the core of human life since the dawn of humankind. The divide between humans and their environment began with the agricultural revolution, with the domestication of animals, rivers, and crops. The privatization, and commercialization of nature, a result of increased trade and demand for natural items such as spices and silk, exacerbated the divide. Science advanced, raising people to the status of onlookers, by which they learned to investigate, interpret, and the satisfactory way their surroundings. The components of the environment became nothing more than consumable and useless things from our heavenly perch, subject to the absolute authority of their' master.'

A legal person/ juristic person is not a natural being, a personality that the law of the land attributes to. It's an entity that is capable of holding duties and rights in society. A legal person is anyone who can sue and be sued. Going back to history, not all humans were given legal personality; e.g. the Greeks didn't attribute legal personality to the enslaved people, but now in the 21st century, associations, companies and robots are given legal personality.

"any subject matter other than a human being to which the law attributes personality. This extension for good and sufficient reasons of the concept of a personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination." –Salmond

Christopher D. Stone's work on "Should Trees Have Standing? Towards Legal Rights for Natural Objects" conceives the idea of giving the environment a legal personality. He established a viewpoint to form a legal relationship to establish legislative protection for environmental rights. "In referral to this, in 1972, in the case of Sierra Club v. Morton, the idea of the environment as a legal entity came into being for the first time whereas, Justice William O. Douglas has given a remarkable judgement".¹ He suggested that environmental components have a locus-standi regarding their safety and prevention. All persons who seem to have a meaningful interaction with any particular ecological body must have a locus-standi to conserve the environment.

¹ Aranya Chatterjee, Varun Wahane, Indian Journal of Law and Public Policy. IJLPP, (April, 15,2022, 5am)

International and Indian perspectives.

A number of international cases have addressed the relationship of legal personality to the environment. These are a few instances: The Te Awa Tupua (Whanganui River Claims Settlement) Act, which gave the Whanganui River legal personality, was passed in New Zealand in 2017. The Act acknowledges the river as an indivisible, living being with rights and interests that must be safeguarded and protected by law.

The Atrato River in Colombia, which is revered by the Embera indigenous people, was the subject of a lawsuit brought out in 2016 by the Colombian NGO Comité Por la Defensa del Agua y del Páramo de Santurbán. The Colombian Constitutional Court ruled in 2017 that the river is entitled to protection from pollution and has legal rights.

The Great Barrier Reef, Australia, a group of young activists filed a complaint with the Australian Human Rights Commission in 2019 stating that the Australian government's inaction on climate change violated both their human rights and the rights of the Great Barrier Reef. Even though the complaint didn't specifically ask for the reef to have legal personality, it did emphasise the need for more comprehensive legal acknowledgment of nature's rights.

These incidents show how the need to safeguard the natural world and the growing appreciation of its intrinsic worth. The law recognises that habitats are endowed with intrinsic worth and interests that must be maintained and upheld by giving them legal personality.

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 bears tremendous significance being the source of both survival and cultural beliefs.² The decision established the river as "the 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 by gold mining and pollution.³ However, local groups are struggling to find a way to implement the orders.⁴

² Jen s Benöhr, Patrick J. Lynch, Should Rivers Have Rights? A Growing Movement Says It's About Time, YALE ENVIRONMENT 260 (April 17, 2022, 11:00 PM)

(<https://e360.yale.edu/features/should-rivers-have-rights-agrowing-movement-says-its-about-time>)

³AHANA BAG, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION, Vol 3, IJLSI, Pg No 349-357)

⁴ Laura Villa, The Importance of the Atrato River in Colombia Gaining Legal Rights, EARTH LAW CENTRE,

Many local governments in the United States have granted legal rights to rivers and lakes, such as the Lake Erie, in Ohio Bangladesh too declared all of its rivers as living entities,⁵ 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 the right to life

The various components of nature and the environment in India are linked to customs and religious rituals and are hence respected. Most water bodies have been identified with the god or goddess in India. Like the Krishna, Ganga, and Yamuna, major waterways are worshipped as deities and have been worshipped from time immemorial. Each of these components of nature is crucial to people's lives. The notion of juristic personality is not a novel idea; it has been witnessed and developed innumerable instances in different cases and pieces of legislation. The honourable Supreme Court of India established in the case of "T.N. Godavarman Thirumulpad vs Union of India and Others" that, given the realities of the environment and a need for environmental justice, there is an outright need to transition from the widespread anthropocentric standpoint to a new eco-centric stance.⁶

On the other hand, in the case of "Animal Welfare Board v. A. Nagaraja," where the honourable supreme court said. The Indian Constitution's Article 21 right to life could also be applied to non-humans.⁷ Nevertheless, one of the most excellent example cases of environmental personhood happened to come in the case of "Mohammed Salim v. the State of Uttarakhand"⁸ in 2017, which asserted the recognition of two major religious rivers Yamuna and Ganga, as legal persons, including all legal rights, duties, and responsibilities that a living person has.

April 18, 2022, 3:35AM) (<https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-incolombia-gaining-legal-rights>)

⁵ Sigal Samuel, Lake Erie now has legal rights, just like you, VOX, April 18, 2022, 5:30 AM), (<https://www.vox.com/future-perfect/2019/2/26/18241904/lake-erie-legal-rights-personhood-nature-environment-toledo-ohio>)

⁶ T.N. Godavarman Thirumulpad vs Union Of India & Ors on 10 April, 2006, Indian Kanoon (April 16, 2022, 7:19 PM)

⁷ Animal Welfare Board Of India vs A. Nagaraja & Ors on 7 May, 1949, Indian Kanoon (April 16, 2022, 9:05 PM)

⁸ Salim v. State of Uttarakhand, Writ Petition (PIL) No.126 of 2014 (December 5, 2016 and March 20, 2017), Environment law alliance worldwide,, Environment law alliance worldwide, (April 17, 2022, 4:30 AM)

Subsequently, in the case of “Karnail Singh V. State of Haryana”⁹, a similar verdict was made in the Punjab and Haryana high court. The court granted complete entity to Haryana's animals for their security and permitted the state's people to speak on their behalf. Likewise, in reply to a “2009 petition, in “Own Motion v. Chandigarh Admn”, the Punjab and Haryana high court designated Sukhna Lake as a legal entity with the right to protect the lake from being destroyed and overused by human beings”. "It also declared all citizens of Chandigarh as loco parentis (in the place of a parent) to save the lake from extinction."

Analysis

While one speaks input giving legal personality to the environment, it is often observed that economic development and growth will be hindered if the environment is given legal personality. Although it is undeniable and obvious that primary the short term, some progress would be sacrificed, we must not overlook the portion that will be gained: high growth sustainability. According to the United Nations Environment Programme, "nature protects us" when we conserve nature. It will take time for each individual to think the eco-centric way, but we will indeed be able to manage to live up to sustainable development goals.

Human beings dress up in different roles (i.e. advocates, mediators, judges) to protect other humans. Still, the environment that once was bountiful is now being stifled by the dominant nature of human beings. It is undeniable that some human beings, such as environmentalists, support and voice their opinions for the protection of nature, but this is not enough to reverse the loss that has already been made to the environment by humans. We can either choose to speak for the environment or let it respins to us by its dire consequences, which may even eliminate human existence. We know that the environment can per se speak, but we can be the voice of the environment; we can be voices of a sustainable future

Providing personhood to the environment and its components appears to become a bold response to environmental conservation, but it does have a variety of benefits. This enables a transition from an anthropocentric to an ecocentric perspective of such rules and regulations. Secondly, this gives people the ability to even go to a court of law while also conserving the environment, thereby forming a relationship. Thereafter, the commands seem to be more abstract, lacking substantial definition. The fact that there is no precision raises plenty of

⁹ Karnail Singh vs State Of Haryana on 29 July, 2009, Indian Kanoon (April 16, 2022, 3:00 PM)

concerns on how such legislation and judgements will be implemented. These legislations or judgements do not explicitly or implicitly express anything in regard to whose and which rights would be preferred in case of conflict of interests with the rights of human beings.

Environmental protection and conservation efforts will be impacted in reality by the acknowledgement of the environment's legal personality. The law can ensure that ecosystems and natural resources are not considered as merely commodities or resources to be exploited, but rather as living creatures with their own rights and interests that must be safeguarded and respected. This is accomplished by giving ecosystems and natural resources legal standing.

Conclusion

The fact that we can infer that the concept of giving rights to the environment is jurisprudentially flawed. In essence, the legal acknowledgment of the environment's legal personality is an important and encouraging step in environmental policy and legislation. a number of issues and constraints to be resolved, acknowledging the intrinsic worth and rights of a physical world is an important step in the direction of a fairer and more sustainable future for all. Another practical approach that can be resorted to is to enforce and make the people of India aware of our duties towards the environment and assert duties in the constitution of India. It should be the state's duty to make it compulsory for all the area politically elected representative's citizens and to participate in cleanup programs for all the damage that is already done. For instance, in Australia, the Murray Darling Basin Authority estimates that almost 20% of its annual resources have been committed to this work. ¹⁰Whatever deity offered regarding the nature of the universe has indeed been undone by the ruthless character of humans. It sent out a dire warning to humans that they should alter how they live. It has already developed into a rat race of industrialization and urbanization. Man degrades the environment through his gruesome ways just for the sake of development; all that would be asked of the human is for them to abstain from expansion into the environment to protect it. Notwithstanding this, people assert that humans are the most educated, intellectual beings, with harmony and unity superiority over other species. Are we ignorant, oblivious to our mother earth?

¹⁰ Australian Government, Proposed Basin Plan consultation report, April 18 2022, 7:30 AM)
https://www.mdba.gov.au/sites/default/files/archived/revised-BP/PBP_Consultation_report.pdf