eISSN 2581-8996
ONLINE
THE INTERNATIONAL JOURNAL OF ADVANCED RESEARCH IN MULTIDISCIPLINARY SCIENCES (IJARMS)
A BI-ANNUAL, OPEN ACCESS, PEER REVIEWED (REFEREED) JOURNAL
Vol. 5, Issue 01, Jan 2022

A Failed Attempt: The Misinterpretation of Environmental Personhood by Indian Courts

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Received: 10 Jan 2022, Accepted: 20 Jan 2022, Published with Peer Reviewed on line: 31 Jan 2022

Abstract

Another theory that has developed parallel to anthropocentrism is *'ecocentrism'*. Under the purview of this, all nature is accorded intrinsic value. It propagates that the natural world must be protected because it has intrinsic value, beyond its instrumentality. This intrinsic value may be expressed and recognized in diverse ways. One of such ways is environmental personhood. Many countries, under this theory have accorded rights to nature by way of statutes or judicial pronouncements. India tried to instill an ecocentric jurisprudence in the year 2017 when the Uttarakhand High Court gave out a judgment granting personhood to 2 rivers, Ganga and Yamuna While this judgment was lauded as a progressive step in the direction of environmental conservation, it was later revoked by the Supreme Court due to the practical impossibility of its implementation. The question that arises here is that why did India fail while other nations, who took a similar path, may have been successful to some extent?

Keywords- A Failed Attempt, Misinterpretation, Environmental Personhood, Indian Courts.

Introduction

In the words of David Attenborough, a famous broadcaster and natural historian,

"The natural world is changing and we are totally dependent on that world. It provides our food water and air. It is the most precious thing we have and we need to defend it."

This statement reflects the ideology of *'anthropocentrism'* which has been at the core of environmental protection from centuries. This entails that humans have a central role in both geology and ecology, while the environment and other natural beings are merely present to support human life. Any protection that is accorded to the environment, is by virtue of the fact that the ultimate result of such protection is instrumental to humans. The above written statement by a natural historian also reflects this sentiment. He says that since the natural world is instrumental to us, we must protect it. There is no acknowledgement of the natural world as a being in itself that may have the right to be protected without being instrumental.

Another theory that has developed parallel to anthrpocentrism is *'ecocentrism'*. Under the purview of this, all nature is accorded intrinsic value. It propagates that the natural world must be protected because it has intrinsic value, beyond its instrumentality. This intrinsic value may be expressed and recognized in diverse ways.

One of such ways is environmental personhood. Under this, natural phenomenon finds recognition in law as a 'legal person'. Many countries, under this theory have accorded rights to nature by way of statutes or judicial pronouncements. This has been considered a welcome step by the environmentalists who have an ecocentric world view. It has been argued by them that ecocentrism should be the way forward in terms of environmental conservation as humans need to step out of the bubble of narcissism,

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they have been living in. They believe that by acknowledging nature's intrinsic value beyond its utility, it can be accorded with certain rights which shall then be upheld by law.

India made an attempt to instill an ecocentric jurisprudence in the year 2017 when the Uttarakhand High Court gave out a judgment granting personhood to 2 rivers, Ganga and Yamuna in the case of ***Mohd. Salim v. State of Uttarakhand***.

While this judgment was lauded as a progressive step in the direction of environmental conservation, it was later revoked by the Supreme Court due to the practical impossibility of its implementation. The question that arises here is that why did India fail while other nations, who took a similar path, may have been successful to some extent? The theory of 'environmental personhood' was misinterpreted by the Uttarakhand High Court and this rendered their attempt at an ecocentric standard, useless. The Supreme Court also missed the chance to provide a clearer interpretation which would have stemmed a new environmental jurisprudence in the country. This paper aims to point out the loopholes in this judgement which made the attempt of the court futile.

This paper is divided majorly into two parts. The first part talks about what the theory of 'environmental personhood' actually entailed when it was proposed. This also lists out three models that the countries of Ecuador, Bolivia and New Zealand have incorporated, in order to practice environmental conservation from an ecocentric perspective. The next part talks about the judgement in detail and the practical loopholes that it suffered. It also questions the extent of the ecocentric approach that was undertaken by the court, its ability to accommodate reasonable developmental activities and the misuse of the concept of guardianship.

The Original Model

While the idea of nature having intrinsic value existed even in the initial societies, the concept of environmental personhood can be traced back to the work '*Should Trees have Standing? Towards Legal Rights for Natural Objects'* by Christopher D. Stone. In a revolutionary attempt, he argued that nature and natural objects must be viewed as a right-holder in terms of the law. The world of law is filled with inanimate objects having rights, like a corporation. A company is nothing but a legal fiction, having rights and liabilities of its own, separate from the people who own it. Similarly, natural objects, which are also inanimate, may be accorded with rights of their own. He argued that it is only when such inanimate things receive rights, will we be able to value them beyond their instrumentality.

Legal personhood can be defined as 'a body of person or an entity, considered as having many of the rights and responsibilities of a natural person and especially the capacity to sue and to be sued'. However, one must note that according this meaning of *'personhood'* to natural objects may lead to absurd possibilities, some of which will be highlighted in the next section.

Despite recognizing the importance and positive consequences of according personhood to nature, he explicitly stated that nature cannot have every right that a human has. This can be interpreted to mean that the personhood of a human and a natural object cannot be equated. A human has multiple rights along with duties and liabilities. However, practically, nature cannot have all the rights that a human has, and it cannot have liabilities.

In light of this interpretation, this idea was practically incorporated in many countries, two of which are Ecuador and Bolivia. The courts of New Zealand diverged from this path and their interpretation is of immense importance since the Indian courts directly took inspiration from it. A look at their models may set an example of how the theory was meant to be interpreted.

Ecuador

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The country of Ecuador took a revolutionary step in 2008 by according rights to nature in its newly drafted constitution. Articles 71 to 74 stipulate that nature has the right to "exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." Along with this, it also gave every person and every community the right to hold public authorities responsible for the protection of these rights of nature. Additionally, the constitution imposed a duty on the state to ensure restoration of damages that have occurred to nature till now.

Bolivia

In the year 2010, the Bolivian government passed a bill, with a very unique agenda. It is known as the 'Law of the Mother Earth'. It recognizes *'Mother Earth'* as a dynamic living system, of which humans are a mere part. The whole system, including the humans and the environment have to protected. This definition strips the humankind off its dominance on other natural beings. Other than this, they give certain basic rights to the ecosystem as a whole. These rights include; right to life, right to water, right to clean air, right to equilibrium and restoration and right to pollution free living. The act further imposes responsibility and duties on the State and the society to ensure that these rights are maintained.

New Zealand

In 2017, a few days before the judgement of Uttarakhand High Court in ***Mohd. Salim***, New Zealand, by way of judicial pronouncement, gave legal personhood to Whanganui river. This was however, very different from what Stone had suggested. Here the river was given the status of a living entity based on its importance to the culture of an indigenous group, the Maoris. This status entailed that harm to the river was equivalent to harming the community of the Maoris, since they considered the river their ancestor. The judgement stated that the river shall have its own legal identity, along with all the duties and liabilities of a living person. They equated the legal status of a river to that of a human.

All the three models are still in place and despite the loopholes that they may have created, they still have the potential to conserve the natural object to which the legal status was accorded. The first two have a commonality. They both grant only certain limited rights to the natural objects, rather than equating their status to that of a human. Legal personhood, like that of a company or a person, may entail that they also have a capability not just to sue, but also to be sued which becomes a practical impossibility when natural objects are concerned. The third one takes a different route by equating the legal status of humans and natural objects, interpreting Stone's argument differently. This is the model that the Uttarakhand High Court tried to follow, but while it was upheld in New Zealand, it was struck down in India. The following part shall stipulate the reason behind this failure.

Environmental Personhood – The Distortion

How is it different from New Zealand?

The court in the case of ***Mohd. Salim v. State of Uttarakhand***, stated that:

> *"River Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/ legal persons/living entities having the status of a legal person with all the corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna."*

From a brief glance, one can see that this decision of the court seems identical to the approach taken by the courts of New Zealand which came just a few days before the Uttarakhand High Court was presented with a similar question. Both the courts equate the river to a human and accord it with both rights and liabilities. So, what is the distinguishing factor that led to the success of one and failure of another?

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It must be noted that the revolutionary steps taken by Ecuador, Bolivia and New Zealand were in the context of rising political power of the indigenous people. The model of New Zealand equated the Whanganui river to a whole community that was the Maoris. It was based on a popular saying within their community that '*I am the river; the river is me'*. This entailed that the river was a part of their tribe, as their ancestor. Any liability or duty imposed upon the river, shall fall upon the Maoris as they considered the river one of their own. While this approach itself has its practical limitations, it has still been upheld in New Zealand to this date. In the least, any harm to the river is seen as harm to the community and it has made legal room for the protection of the rights of the river.

Meanwhile in India, the context was a public interest litigation (*hereinafter PIL*) filed against the omission of constituting a Ganga Management Board under the purview of Section 80 of Uttar Pradesh Reorganization Act of 2000. The court cited various judgements stipulating what the legal status of a religious symbol can be. They were of the opinion that since a religious idol can have a juristic personality, so can a river that is of religious and public importance. It was clearly stated that it not only enjoys rights but can also have duties and liabilities imposed upon it. However, here there was no indigenous community it was made a part of, that was ready to take care of its liabilities. The guardianship of the river was given to the Director of NAMAMI Gange, the Chief Secretary and the Advocate General of the State of Uttarakhand. It was this ambiguity that invited further challenge to the decision given.

However, this was not the only problem that it suffered.

Was it really Ecocentric?

It is submitted that the court should have based the granting of rights on the theory of environmental personhood, as was argued by Stone and not merely on the religious or social importance of the river.

The court has explicitly stated that:

"To protect the recognition and faith of society, Rivers Ganga and Yamuna are required to be declared as legal persons/living persons."

This kind of approach excludes a lot of other natural objects from the purview of being accorded rights as a person. For instance, a bodhi tree may be accorded legal personhood since it has religious importance, however a fresh water stream next to a factory is bound to be sacrificed for greater human goals.

It necessarily means that to qualify for rights garnering better protection, a natural object must be able to prove its social and religious importance. This takes the concept of environmental personhood away from the realm of ecocentrism and towards an anthropocentric perspective, as only what is important to humans must be protected in the form of a legal person.

Should the courts have accorded only rights?

Should the river be sued for flooding and causing damage to human life and property? Since it has a legal status equal to that of a human, along with equal rights, it should also bear the duty of upholding the rights of others. In light of this, if a river floods and causes damage to others, it must be held liable for the same. But since flooding is something that the river could not have controlled, can it enjoy the defense of 'Act of God' in Tort law? If it is indeed allowed that defense, the victims of the flood shall be rendered remedy less.

As absurd as it sounds, the judgement of the Uttarakhand High Court will force one to consider these questions. It is submitted that, as per the models of Ecuador and Bolivia, the court could have opted for granting only rights to nature, shying away from imposing duties and liabilities on it. Through this,

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nature would have become a subject of protection rather than something from which humans need to be protected. This could have also avoided the impracticality of expecting nature to bear responsibility of something that is out of anyone's control. They could have found a precedence in the case of ***Animal Welfare Board of India v. A. Nagaraja*** where the supreme court of India had extended the right to life under Article 21, to non-human animals. It must be noted that only a right was granted to animals in this case without imposing any liabilities upon them.

What is the extent of rights that was accorded to Ganga and Yamuna?

The judgment never clarified the content or extent of rights that it was granting to the rivers. Did the rights include all the rights a human being has under the constitution? If this is true, it steers away from the original idea that Stone had proposed, realizing the impracticality of according all rights nature. For instance, if water is accorded absolute right to life, then drinking it could become a crime. The extent of rights was also not clarified. Did it extend to the flora and fauna in the water or was it limited to water only?

The geographical extent of rights can also be questioned here. Since only the Uttarakhand High Court had accorded rights, would the same water body have rights in another state? Would the guardians appointed by the court be responsible for harm caused to the river in another state through which it flows? These questions remained unanswered and further put a shadow on the court's attempt to accord rights to nature.

How would development be impacted by this?

Even if one interprets that the court wanted to give limited rights to nature, they never clarified how the developmental activities should be accommodated in this framework. Like in Ecuador and Bolivia, the rights of nature were subject to developmental activities. The courts were to analyze each case individually as to when can the developmental goal defeat the right of nature. Here, the courts make no such subjugation. Should this be interpreted to mean that the rights if nature are absolute? Since our ecosystem is a cycle of interdependence, holding this may go against nature itself.

The Concept of Guardianship

Stone, in his work, argued that guardianship is of immense importance when rights are granted to nature. A guardian was key to upholding the rights of nature since only they could sue on behalf of the natural object that was accorded rights. While the court in ***Mohd. Salim*** made sure to incorporate this element of the theory, its necessity and ambiguity can be questioned.

First and foremost, in Bolivia and Ecuador, the community at large was made the guardian of nature. They imposed a positive duty on the public to protect. It was not limited to mere non violation of rights of nature. In this case the court narrowed down the scope of this duty by limiting it to 3 agents of the government. This could have easily been left unanswered since in India we have the concept of PILs. Through PILs every one of us would have has the right to approach the court on behalf of nature.

Since in this situation, the court had appointed guardians and accorded liabilities to the rivers, it followed that these liabilities then fall upon the shoulders of those who were appointed. Now in this situation, what would have happened if the river floods and did unimaginable harm to life and property? Who would have had be liable to compensate those affected? The government or the guardians? It was this fear that led the assigned guardians to seek clarification from the apex court, which then struck down the entire judgement. This paper also argues that the apex court should have taken this opportunity to correct the application of the concept of 'environmental personhood' instead of striking it down all together.

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Conclusion

This paper started by clarifying what the original theory of environmental personhood meant. It argued that Christopher Stone, who made this revolutionary attempt, never envisioned that the nature may also have duties imposed upon it as a consequence of being accorded with legal status. Nor did he argue that the rights of nature be absolute since that would make it practically unimplementable, defeating the whole exercise of according rights to nature.

While Countries of Bolivia and Ecuador, tried to follow the theory as was written, the courts of India and New Zealand took a different route. Both of them accorded rights and liabilities to nature. While it may have worked in New Zealand due to a particular indigenous context, it failed miserably in India due to court's misinterpretation and ambiguity.

First and foremost, it is submitted that while it may appear that the court is adopting an ecocentric point of view, the actual reason behind giving personhood to Ganga and Yamuna was their religious importance. Followed by this is that the court should have followed rights framework, where only rights are accorded to nature and duties are imposed upon the society to uphold those rights. Further, the extent of the rights accorded was also left unanswered as the neither the subject and content of rights was clear nor their geographical aspect. Additionally, there was no room left for developmental activities that may be carried on while respecting rights of nature. Lastly, the court also misapplied the concept of guardianship which ultimately led to the striking down of the legal status all together. Even the supreme court missed out on the opportunity to introduce a new aspect to environmental jurisprudence by not correcting the approach of the high court and merely revoking the rights accorded.

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