

Rights of Rivers: A Comparative and Critical Analysis

Recently the Uttarakhand supreme court expanded the environment justice jurisprudence by metes and bounds after its adjudication on the Rights of Rivers in *Lalit Miglani V State of Uttarakhand*[1]. It posited juristic rights on Rivers, glaciers, oceans and other natural bodies, wherein nature's fundamental rights were recognized at par with fundamental rights accorded to humans and citizens under the Indian Constitution. due to this, the rivers had a fundamental right to persist, exist, maintain, sustain and regenerate their own vital ecological system. They also attained an intrinsic right to not be polluted. This recognition also establishes a right to say injury, making any quite pollution and damage to rivers, lakes, water bodies etc as legally like harming and causing injury to an individual . just in case of any injury, intentional or not, the polluter was also made susceptible to be proceeded against under common laws, penal laws, environment laws and other statutory tools governing the topic . It recognized the elemental duty of all citizens to preserve and conserve nature, establishing a requirement of care towards it. This right also extended to the unified and indivisible whole of nature, i.e from the Glacier to River to Ocean, the integrity of rivers has got to now be maintained. It also expanded the understanding of river in cubic meters to the whole ecology residing within in it, including aquatic life, and extended legal protection thereto in total.

Read More [Adwokat Lublin](#)

It also established an onus on the judiciary and recognized its duty to guard environment ecology under the New Environment Justice Jurisprudence and also under the principles of *parens patriae*. The urgency of protection being consistent with the environment is additionally blamed upon the approaching results of worldwide warming, global climate change and pollution, by way of which the very existence of rivers is at stake, is additionally recognized by this court.

There are many benefits to the present . The rivers are ready to defend their rights and ecosystems in court through representations. It puts the river's interest within the forefront of all policy considerations. And lastly, the burden of proof also shifts to the proposed activities to point out the character of harm being done to the rivers, instead of the opposite way around.

Critical analysis

Although there are many upsides to the present judgement, leading towards an optimistic change in attitude of legislative process in preserving the environment, there also are umpteen consequences of this judgement with loopholes which will be easily exploited.

Firstly, to enforce legal personhood of a river and other natural entity, an individual must be appointed on its behalf. The court during this case, has appointed the overall Attorney, Chief Secretary of State, advocates like M.C Mehta and a few other State functionaries as persons in loco parentis. However, to trust the State functionaries to act within the interests of the river, especially when the govt is itself the violator, may be a far-fetched ideal. With the Centre's leader and Prime Minister Narendra Modi also negating the existence of climate change[2], a fanatical commitment towards protecting the environment is an unreasonable expectation. Legislative independence from State and National governments is imperative for seeking enforcement of such rights, especially if it's a political matter, which all cases seem to be. Secondly, for the rights to be enforceable, it must be observed as a right by its guardians and users of the resource by recognizing their joint rights, duties and responsibilities. However, the stark contradiction between the present mode of extractive development and therefore the imagination of the rights of nature within law, fundamentally leads us to question the viability of it all, especially given the opposite sorts of injustices of capitalism, anthropocentrism, patriarchy and casteism. Thirdly, to be ready to fight as a custodian for the rights of rivers, requires money, time and expertise to successfully establish a claim. If the State isn't willing to line aside funds to be ready to protect the interest of nature, fighting legal battles on behalf of rivers are going to be an insurmountable task with limited access to resources.

Read More [Adwokat Lublin](#)

Many States are following suit and are moving towards declaring rivers and lakes in their area as a living entity with rights like that of an individual . As recent as March 2020, Punjab and

Haryana High Court[3] took this decision due to the depleting water levels of Sukhna lake. The court also pulled up the state agencies for his or her willful ignorance towards the damage being done to catchment areas by stating that “The acts of States of Punjab, Haryana have caused permanent damage to the catchment basin of Sukhna Lake. It had been expected from the State agencies to foresee that the permanent structures during a catchment basin would impede the flow of water in Sukhna Lake,”[4] The courts also acknowledged the fallacies within the upcoming plan 2021 by the Haryana government and therefore the Mansa Devi Complex being upon areas covered by Survey of India, as being against public interest. While the judiciary is being more cognisant of the environment damage, the glaring abuse of process by State functionaries is undeniable.

Read More [Adwokat Lublin](#)

The fallacy with appointing State actors as guardians becomes obvious with the New River Basin Management Bill[5], which the Centre plans to cause within the winter session of the Parliament, despite heavy opposition. Under this new law, the central government will take over the management of inter-state river basins, starting with 13 of the most important river basins of India, which initially fell under the State government’s jurisdictions. This flagrant violation of the federal nature of the Indian constitution, including the appointments made to authority to make a decision statutory water allocation to every inter-state basin, to be done on the advice of the Centre. This effectively also destroys any hope of any official being critical of the Centre’s policies and actions. Consistent with Clause 22, official appointments are going to be done by the federal and any decisions undertaken are going to be binding on the state governments.

States like Telangana and West Bengal are already protesting this bill[6]. Telangana government, who within the previous couple of years has spent billions in water system projects cares about its ability to guarantee water system, rendering entirety of the financial investment futile. West Bengal, being the lower most State and last in receiving Ganga river into its boundaries will have little say within the matter as States like Uttarakhand, Haryana, Uttar Pradesh, Delhi, Rajasthan, Madhya Pradesh, Bihar and Jharkhand will get to chair the proposed basin authority and West Bengal will get its turn once in nine years. With the State already suffering thanks to sizable amount of dams, barrages and irrigation canals within the upstream Ganga basin, this is often another blow to the West Bengal government and its water system plans.

With all of this within the works, while the Judiciary's idea of attesting rivers with rights, may be a noble and an important cause, appointing the State as its guardian is against all consciousness, rendering the explanation for environment justice unattainable. Unless there's a democratic setup, allowing the key interest holders to possess a say within the matter, this cause cannot bear fruition. Even within the Uttarakhand judgement, it identified the human settlement in and round the basin to possess a say within the matter, because it affected their way of lives and livelihood. Unless there's a democratic setup to guard the rights of the rivers, which may efficiently and effectively seek remedy in court, this is often merely a thought on paper, rendered impractical altogether other senses.

Comparative analysis

The advance part on the Indian governments isn't an isolated incident, but rather a neighborhood of a nascent global movement. Countries round the world are pushing for eco-activism and increasing the ambit of the law for the protection of the rivers.

Read More [Adwokat Lublin](#)

In 2008, Ecuador was the primary ever to supply such recognition within its constitution. It granted "Nature or Pachamama, where life is reproduced and exists, has the proper to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution"[7]. Several towns within the us also made by-laws protecting and recognising the rights of nature.

In a landmark move, New Zealand recognised Te Urewera park as a legal entity with rights, powers, duties and liabilities as a "legal person", with legal personhood status to the present Whanganui river ecosystem in 2017[8]. It gave up State control of the river and appointed the indigenous groups living around it as its custodians.

In 2019, the Dhaka supreme court in Bangladesh recognised[9] the river Turang as living entity with legal rights and held to be applicable to all or any rivers in Bangladesh. Colombia has also taken monumental steps in safeguarding its rivers. The Atrato river and therefore the Colombian Amazon were deemed as a legal entity, subject to "rights that implicate its

protection, conservation, maintenance and during this specific case, restoration.” [10]The United Nations has also taken umpteen steps in drawing attention and call to action to conserve and protect nature like Harmony with Nature[11], which established a non-anthropocentric relationship with nature and tracks global changes.

While many countries are battling the procedural aspects of executing the designation of treating nature as a living entity, the model followed by New Zealand may be a commendable one. In it, the guardian will contain two people, one appointed by the Whanganui (local Maori people), and therefore the other by the New Zealand government. They need also ensure that a considerable amount of funds are going to be put aside to take care of the health of the Whanganui river. The legal framework that's to be administered by the guardians are going to be even be aided by independent advisory groups. During this model, aside from it being committed and practical, it's also sustainable, within the sense that its rights of rivers aren't influenced by political gains, due to the democratic setup and therefore the involvement of larger interest. In contrast to the present, the overnight development of eco-jurisprudence by the Indian supreme court, assigning Ganga and Yamuna rivers and glaciers the title of minority under the law, represented by director general of Namami Gange project, the Uttarakhand Chief Secretary, and therefore the Advocate General. It also requested new boards to be established for the governance of cleaning and maintaining the river within eight weeks, which may be a very short amount of your time for a conscientious procedure to be established. The judgement also directed the govt to release funds for the cleaning of the river, but seeing how this is often an executive decision, the judiciary cannot encroach on this. It also assigned guardians only within the legal fraternity, who won't have the motivations or the intellect to guard the rivers against the extractive mindset of state, corporations and individuals.

Read More [Adwokat Lublin](#)

Conclusion

The solution to the issues faced in developing a rights-based approach towards saving rivers of India, is to; firstly, establish custodianship or guardianship that really have an interest within the matter. During a manner of suggestion, the perfect custodianship should rest with a gaggle of local communities associated with the river, relevant government agencies and therefore the larger civil society along side a nested institutional framework to make sure participation across the whole stretch of the river. This also means the Law should facilitate negotiations between the various State governments that share the river body, to figure in tandem with one another in furthering environment justice. Secondly, rivers don't follow human-made political

boundaries, like Indus for instance , which flows through China, Pakistan and India. The protection of inter-country river requires a cross-boundary approach. This exposes the necessity for a posh understanding and discourse around transboundary rivers and therefore the possible ways of collaboration between the connected countries, solely on ecological grounds.