

Environment As Living Entity- Need For Further Clarity In The Rights Framework

Tanaya Thakur 17 March 2020 12:13 PM



Recently the Punjab and Haryana High Court, in a 2009 suo motu case on depleting water levels in the Lake Sukhna in Chandigarh; declared the lake to be a living person with the rights, duties and liabilities of a minor. The Court stated that the states of Punjab and Haryana and their officials had failed in their duty to protect the lake. It further ordered the states to pay exemplary damage under polluter pays principle for the damage caused to the catchment area and the resulting depletion of water. For the lake's survival, preservation and conservation, the Court declared it to be a legal entity/ living person/ juristic person. All the people of Chandigarh were declared to be its loco parentis – in place of a parent.

Earlier in 2017, the Uttarakhand High Court in the cases of Mohd Salim v State of Uttarakhand and [Lalit Miglani v State of Uttarakhand](#) had declared Rivers Ganga and Yamuna as living entities. The Court in Lalit Miglani case opined that 'rivers, forests, lakes, water bodies, air, glaciers and springs have a right to exist, persist, maintain, sustain and regenerate their own vital ecology system. The rivers are not just water bodies. These are scientifically and biologically living.' Based on this the Court exercised its parens patriae jurisdiction to declare that 'the Glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls, legal entity/ legal person/juristic person/juridical person/ moral person/artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them.' An [appeal](#) to the Supreme Court was preferred against these rulings; which for the interim period ordered a stay on the judgments.

Incidentally all three judgments were delivered by Justice Rajiv Sharma, who also recently opined that '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' ([*Karnail Singh and others v State of Haryana*](#)). This kind of understanding is fairly new to India- but there have previously been similar instances across the globe. For example, New Zealand confers legal personality to the river Whanganui; Bolivia has enacted the law of Mother Earth, recognizing nature's legal rights.

By declaring entities such as rivers, and lakes as legal persons; the courts try to bring them into the rights framework. Any person declared as loco parentis would be able to sue for the protection of such entities' rights. The requirement to establish locus as an aggrieved party would be waived. Another benefit of the approach could be that any fine imposed for polluting or damaging the water body would go to the water body's restoration directly; instead of those aggrieved from the damage. Environmentalists also argue that the status of a living person would enable water bodies, through their representatives to enter into contracts with third parties in matters of constructions that could affect the body- such as hydroelectric projects, canals, dams, etc.

However providing such bodies with the rights of living entities could open up a Pandora's Box. How will these rights and liabilities be decided? For example, the Ganga River Basin Management Plan under the Namami Gange Project understands Ganga through for prevalent concepts – Nirmal Dhara (Unpolluted flow) and Aviral Dhara (Continuous flow), geological entity and ecological entity. The Aviral Dhara understanding is that the Ganga should flow uninterrupted and no physical barriers such as dams should be constructed over it. If the Ganga is to be given the status of a living entity- does the further construction of dams on it violate its rights? Also, what shall be the status of already constructed dams? One probable method to overcome this problem could be through contracts. It is furthermore important to understand that the water body itself cannot enter into contracts and shall require some human to enter into the contract on its behalf. It is possible that the person endorsed with the responsibility to protect the body fails in his duty and enters into contracts that later prove to be detrimental to the river ecosystem's interest. When the river ecosystem is understood in the duties framework- it is easier to ascertain liability. But by bringing it to the rights framework arguments of wavering of rights could follow, disturbing the ultimate objective of protecting the river.

Currently, when we discuss questions on environmental protection, they are placed in the duty framework or as rights of human beings who are negatively impacted by environmental damage. Under this anthropocentric what often happens is that state activities such as building of dams; or developmental activities which have a large scale detrimental impact escape stringent measures and are allowed to happen if certain conditions such as environmental impact assessment, and precautionary principles are followed; and the indigenous population is restricted from using the environment for their purpose. In such circumstances, an eco-centric approach could be important to bring environment to the center of discussions; rather than development.

However, an eco-centric approach can only be successful if means of its implementations are expressed in clear terms. Prescribing rights and duties without specifying the ambit of such rights would not lead to the desired impact of the decisions. Under the jurisprudential principles, the

rights of a person come with some corresponding duties. In the case of environment, the state is vested with the duty to protect and preserve the environment, taking into account the principles of sustainable development. The term sustainable development is most popularly understood as the development that meets the need of the present without compromising the ability of future generations to meet their needs. It is unclear whether vesting environmental bodies with rights would mean something beyond the already prescribed duties for the states and individuals.

Considering the case of water bodies, the state has taken various initiatives to protect and preserve them. For example, the government has taken initiatives such as Namami Gange under the National Mission for Clean Ganga, National River Conservation Plan, River Rejuvenation under MNREGS, National Perspective Plan (NPP) for Water Resources Development, Inter-linking of Rivers (ILR) projects for river development and rejuvenation. However, these plans have not resulted in any substantial change in the condition of these water bodies- primarily due to lack of will on part of the states to enforce the programs to the fullest. The lack of will and state machineries' failure is the reason for giving living person's status to non-human entities. But in this case also the corresponding duty towards rivers shall lie with the state and the population. There is no method in place to ensure that the state shall fulfill its duties in a rights framework- if it earlier failed to do so.

Envisaging rights based framework for the environment in isolation cannot work towards environmental protection. It is of utmost necessity to put in place a mechanism that would ensure that corresponding duties are complied with. The problem lies equally in our very understanding of environmental laws. As long as we think of environmental protection in terms of sustainable development- the developmental agendas shall have an upper hand to environmental protection. In times of a global climate crisis, we need to protect the environment even at the cost of development. A rights based framework has the capacity to ensure this- but only if further clarity is infused in its understanding.

Views Are Personal Only.

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NGT Registers Suo Motu Case Over Pregnant Elephant Death Issue [Read Order]

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The National Green Tribunal has registered a suo motu case regarding the incident of a pregnant elephant allegedly killed in Silent Valley Forest in Kerala.

The news that a pregnant wild elephant in Silent Valley Forest had fallen victim to an act of human act of using explosive substance kept in a Pineapple which was consumed inadvertently by it had generated huge outrage.

The Tribunal presided by Justice K. Ramakrishnan observed that these things are happening probably due to various aspects of not following the norms for protecting the wild animals in the forest exposing them to have conflict with human, thereby their lives were put to danger. The Tribunal said that this case has been registered 'for the purpose of taking an effort to avoid such things in future and also for providing some long term strategy to minimize man-animal conflict in wild life area or fringe village adjoining the forest area.' The Tribunal said:

"This is in fact agitated the minds of the people all over the nation and it has become viral in the social media as well...On going through the allegation in the report, we are satisfied that there arises a substantial question of environment which requires interference of this Tribunal to resolve this issue atleast in future."

The bench, also comprising of Expert member Saibal Dasgupta, has also ordered constitution of a joint committee to study and file a factual and action taken report including the long term management plan to avoid such recurrences in future.

The case is listed on 10th July for further consideration.

Police Registers FIR Against Maneka Gandhi

BJP MP Maneka Gandhi, former Union Minister had triggered controversy by commenting upon issue when she said that "*Mallapuram is known for its intense criminal activity, specially with regards to animals.*" It is being [reported](#) that the Malappuram Police has registered a case under Section 153 of the IPC against her for her "communal" remark.