RIGHTS OF NATURE IN INDIA: BETWEEN SYMBOLIC RECOGNITION AND STRUCTURAL FAILURE

Vrinda Kavdia, B.B.A. LL.B. (Hons.), Jindal Global Law School, O.P. Jindal Global University (2022-2027)

ABSTRACT

In the face of an escalating ecological crisis, Indian courts have transitioned to environmental jurisprudence, reflecting an emerging ecocentric approach that extends legal personhood to rivers, animals, and ecosystems. Drawing on constitutional provisions, comparative models from Ecuador and New Zealand, and scholarly debates on legal standing, this article examines whether India's experiment has failed in principle or in execution. It argues that the fragility of India's rights of nature jurisprudence lies not in the concept of legal personhood itself, but in the misdesigned guardianship structures that appoint the state as both custodian and violator of nature. By analysing conflicts of interest, doctrinal uncertainty, and selective application, the paper shows how bureaucratic guardianship has rendered rights of nature largely symbolic. The article concludes that for these rights to function as meaningful tools of environmental justice, guardianship must be reimagined through participatory, community-led, and institutionally accountable frameworks that align ecological protection with constitutional environmentalism.

Introduction

India's ecological crisis is no longer hypothetical. Every winter, the National Capital Region records dangerously low air quality and atmospheric toxicity that defies international safety standards, the forests face accelerated deforestation for mining projects, and the Ganga, once worshipped as a goddess, is now biologically dead in several stretches due to untreated sewage. Courts have experimented with radical jurisprudential methods in response to the limitations of statutory remedies. In *Mohd. Salim v. State of Uttarakhand*[1], the High Court declared the Ganga and Yamuna to be "living persons" with legal rights. Similarly, in *Animal Welfare Board v. Nagaraja*[2], the Supreme Court extended the right to life under Article 21 to animals, emphasizing their dignity and intrinsic value.

These developments must be situated in the context of a broader scholarly debate. As argued in '*Should Trees Have Standing?',*[3] extending rights to nature represents an evolution in legal thought, similar to the gradual extension of rights to marginalized groups. Global examples, such as Ecuador and New Zealand, serve as models for these actions. However, it is generally warned that rights must be supported by accountability and enforcement to avoid becoming token symbolic gestures.

This piece argues that India's jurisprudence on the rights of nature is innovative but structurally fragile, hindered by the guardianship issue, institutional weakness, and selective application.

The central question is whether India's experiment with the rights of nature has failed not because of the idea of legal personhood itself, but because of the unworkable guardianship structures that place the state as both custodian and violator.

Cultural, Constitutional, and Comparative Justifications for Guardianship

It is argued that guardianship is a practical way of operationalizing legal personhood, even if it is imperfect. In *Mohd. Salim*[4], the Uttarakhand High Court sought to give guardianship of the Ganga and Yamuna to state officials, specifically the Advocate General and senior bureaucrats. The logic was very straightforward: the state, already vested with constitutional duties under

[1] Mohd. Salim v. State of Uttarakhand & Ors, 2017 SCC OnLine SC 291, 29-03-2017
[2] Animal Welfare Board of India vs A. Nagaraja & Ors, (2014) 7 SCC 547
[3] Christopher D. Stone, "Should Trees Have Standing?- Toward Legal Rights For Natural Objects", 45 Southern California Law Review 450, (1972)
[4] Mohd. Salim v. State of Uttarakhand & Ors, 2017 SCC OnLine SC 291, 29-03-2017

Article 48A[5] and statutory obligations under the Water Act (1974)[6] and Environment Protection Act (1986)[7], could act as a custodian of the natural entities.

There is a cultural justification for this decision too. Rivers like the Ganga and Yamuna are intricately woven into Indian religious traditions, where priests, state officials, and community representatives often overlap in custodial roles. Entrusting the state with guardianship was thus presented as an extension of cultural reverence into legal form.

Guardianship has been used as a transitional mechanism all throughout the world. In Ecuador, initial cases under the 2008 Constitution involved state prosecutors acting as guardians of ecosystems until local communities could assert themselves.[8] New Zealand's Whanganui settlement[9], too, involves state actors alongside indigenous representatives. These comparative models show the feasibility of operationalizing rights of nature when guardianship is designed effectively.

By embracing personhood jurisprudence, India signals its engagement with this global legal shift, and its reliance on bureaucratic guardianship, while flawed, can be viewed as a necessary first step towards integrating personhood into Indian law.

From a jurisprudential perspective, scholars like Baxi have emphasized the importance of "judicial experiments" in pushing the boundaries of constitutional interpretation.[10] Even if imperfect, guardianship decisions represent a new jurisprudence of ecocentrism, shifting the conversation from anthropocentric rights to legal recognition of nature. This expansion of the moral and legal community reflects Stone's thesis that the history of justice is one of extending rights to previously excluded entities[11].

Three justifications for the rights of nature follow from this trajectory. First, they reinforce

[5] INDIA CONST. art. 48A, *amended by* The Constitution (Forty-Second Amendment) Act, 1976.
[6] The Water (Prevention And Control Of Pollution) Act, 1974, No. 6, Acts of Parliament, 1974 (India).
[7] The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).
[8] Akchurin, M. (2015) 'Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador', Law & Social Inquiry, 40(4), pp. 937–968. doi:10.1111/lsi.12141.
[9] INNOVATIVE BILL PROTECTS WHANGANUI RIVER WITH LEGAL PERSONHOOD - NEW ZEALAND PARLIAMENT, https://www.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood/ (last visited Sept. 13, 2025).
[10] Mathew John, *Interpreting Narmada Judgment.* ECONOMIC AND POLITICAL WEEKLY, 3030-3034 (2001), https://doi.org/10.2307/4410970.
[11] Christopher D. Stone, "Should Trees Have Standing?- Toward Legal Rights For Natural Objects", 45 Southern California Law Review 450, (1972)

constitutional environmentalism. Article 21 has already been interpreted to include the right to a healthy environment, as seen in *Subhash Kumar v. State of Bihar*.[12] Recognizing ecosystems as legal persons builds on this by granting them autonomous status, enabling guardians of rivers or forests to bring claims directly without depending solely on human petitioners. Second, rights of nature address governance gaps. India's environmental regulators often lack independence and capacity, and judicial reliance on doctrines such as the public trust principle, illustrated in *MC Mehta v. Kamal Nath*[13], depends heavily on continued judicial vigilance. By contrast, personhood provides a standing mechanism for proactive litigation. Third, the Schlosberg's framework of environmental justice[14], moving beyond distribution to recognition and participation, helps to explain how personhood could open institutional avenues that would otherwise be blocked by lax regulators.

Together, these developments demonstrate how guardianship, despite its limitations, functions as a tool for embedding rights of nature within Indian constitutionalism and linking domestic traditions to global legal shifts.

Conflicts of Interest, Doctrinal Confusion, and Selective Application

However, there have been numerous structural flaws within the Indian experiment.

The guardianship model in India has proven itself to be deeply unfeasible. The very state that licenses industrial activity, authorizes dam construction, and fails to regulate municipal sewage was urged to safeguard waterways. This arrangement makes enforcement structurally inconsistent by transforming the polluter into the guardian. Unsurprisingly, the Supreme Court recognized this contradiction and stayed the Uttarakhand judgement[15].

This problem is not merely theoretical. Despite its role as a statutory guardian of the environment under Article 48A[16], the state has consistently failed to protect rivers. The Ganga Action Plan, launched in 1986 consumed thousands of crores with little improvement.[17]

[12] Subhash Kumar v State of Bihar, AIR 1991 SC 420
[13] M C Mehta v Kamal Nath, (1997) 1 SCC 388
[14] David Schlosberg, Distribution and Beyond: Conceptions of Justice in Contemporary Theory and Practice, in Defining Environmental Justice (Chapter 2), OUP (2007)
[15] Mohd. Salim v. State of Uttarakhand & Ors, 2017 SCC OnLine SC 291, 29-03-2017
[16] INDIA CONST. art. 48A, *amended by* The Constitution (Forty-Second Amendment) Act, 1976.
[17] Bhadra Sinha, *Govt admits Ganga plan flawed, yet gives Rs 15,000 cr,* HINDUSTAN TIMES (Mar 15, 2010, 12:31 AM), https://www.hindustantimes.com/delhi/govt-admits-ganga-plan-flawed-yet-gives-rs-15-000-cr/story-2qx8urRMdWU0IKd0HSH4xO.html

Appointing the state as guardian, thus, does little more than just formalize its already feeble custodianship.

The guardianship model also raises doctrinal confusion. If bureaucrats are designated as guardians, are they personally liable for any harm caused by the river? The Uttarakhand High Court suggested they might be, but this leads to absurd consequences, for instance, would the Chief Secretary be liable if floods damaged property? Legal personhood without clear liability standards runs the risk of creating uncertainty rather than meaningful protection.

Pop culture also exposes the limitations of guardianship. In films like *Kedarnath*[18], rivers are portrayed as divine forces that can both nurture and destroy. Yet, the state, not the river, is held accountable for poor management when rivers overflow, as happened in Uttarakhand in 2013. This contrast reveals the impracticality of assigning guardianship to bureaucrats: it obscures human accountability while romanticizing nature.

A further weakness lies in the selective application of rights of nature. While, iconic entities such as the Ganga, Yamuna, or bulls in *Jallikattu* have received recognition, the forests, wetlands, and lesser-known rivers remain excluded. Such selective application reduces rights of nature to symbolic politics rather than a universal framework for environmental justice. Rights of nature in India, so far, have proven more aspirational than revolutionary.

Principles such as the precautionary principle (*Vellore Citizens' Welfare Forum v. Union of India*[19]) and polluter pays (*Indian Council for Enviro-Legal Action v. Union of India*[20]) are judicially recognized. Layering personhood onto this system without clarifying liability only deepens doctrinal uncertainty.

The unresolved questions of responsibility further undermine the utility of personhood jurisprudence. Taken together, these flaws reveal why guardianship has proven to be structurally fragile.

My Opinion

In my view, India's experiment with the rights of nature has faltered not because legal

[18] *Kedarnath*, (Dir. Abhishek Kapoor/ 1 h 56 m/ 2018).
[19] Vellore Citizens' Welfare Forum v. Union of India and others [(1996) 5 SCC
[20] Indian Council for Enviro-Legal Action v UOI 2010 SC (Bicchri Village case)

personhood is inherently flawed, but because guardianship structures were misdesigned. The Uttarakhand High Court's ruling collapsed under its own contradictions: the state cannot simultaneously act as polluter and protector. For guardianship to succeed, it must be entrusted to independent and participatory institutions.

Rights of nature mark a shift from anthropocentrism to ecocentrism, embedding ecological ethics within constitutional interpretation. However, their effectiveness has been crippled by flawed guardianship models, legislative reversals, and selective enforcement.

As Schlosberg reminds us, justice is not only about recognition but also about participation and accountability.[21] Without participatory guardianship, rights of nature risk remaining rhetorical.

Historical and contemporary examples emphasize upon this. Grassroots movements such as the 'Chipko movement' in Uttarakhand, where local communities actively protected forests from commercial logging, illustrate the effectiveness of community-led ecological stewardship. Similarly, movements against mining in Odisha and river conservation initiatives along the Narmada show how local engagement and participatory governance produce tangible environmental outcomes. These examples demonstrate that when local communities are empowered as custodians, both ecological protection and social legitimacy improve.

Comparative models offer additional guidance. New Zealand's co-guardianship system succeeds by including indigenous Māori representatives alongside state actors, ensuring both cultural legitimacy and accountability. Ecuador's constitutional framework similarly empowers local communities to litigate directly on behalf of nature. Co-management with local communities yields more durable outcomes. India, by contrast, sidelined communities in favour of bureaucrats, thereby undermining both legitimacy and enforceability.

The way forward lies in decentralising guardianship by integrating rights of nature with existing doctrines while grounding custodianship in grassroots participation. Riverine communities, Adivasi groups recognised under the Forest Rights Act, and civil society organisations could serve as custodians, supported by statutory mechanisms and judicial oversight. Without such structural reforms, rights of nature will remain lofty pronouncements

[21] David Schlosberg, Distribution and Beyond: Conceptions of Justice in Contemporary Theory and Practice, in Defining Environmental Justice (Chapter 2), OUP (2007)

rather than practical tools of environmental justice.

In my view, rights of nature in India are an important jurisprudential experiment but remain structurally hollow.

Conclusion

The recognition of personhood for rivers, animals, and forests in India represents an innovative and visionary jurisprudence. It aligns with cultural traditions, strengthens constitutional environmentalism, and places India within a global eco-centric movement. Yet, this vision remains structurally fragile. India's rights of nature jurisprudence exemplifies a paradox: high standards are declared, but weak institutions prevent implementation. By appointing the state as custodian, Indian courts entrusted protection to the very state responsible for ecological degradation, creating a conflict of interest.

Law must move beyond rhetoric to transform sacred rivers from polluted drains, forests from exploitative frontiers, and animals from spectacles of cruelty into thriving ecosystems. Rights of nature must be embedded in community-led guardianship and reinforced through existing environmental doctrines. The conclusion from *Mohd. Salim*[22] is clear: rights of nature cannot succeed in India until guardianship is reimagined. As Schlosberg[23] reminds us, justice requires not only symbolic recognition but also meaningful accountability and participation. Community-led custodianship fosters both legitimacy and durability. These models offer more promise than bureaucratic custodianship.

[22] Mohd. Salim v. State of Uttarakhand & Ors, 2017 SCC OnLine SC 291, 29-03-2017
[23] David Schlosberg, Distribution and Beyond: Conceptions of Justice in Contemporary Theory and Practice, in Defining Environmental Justice (Chapter 2), OUP (2007)