
GUARDIANS OF FLOW: EXPLORING THE RIGHTS OF RIVERS

Nishant Pandey, Symbiosis Law School, Pune

Muskan Bansal, Symbiosis Law School, Noida

Introduction:

Rivers, the lifelines of our planet, hold a profound significance in the tapestry of existence. Rivers are not mere geographical features; they are intricate ecosystems that support a diverse array of life. From the smallest microorganisms to the grandeur of charismatic megafauna, rivers provide sustenance, shelter, and a thriving habitat. They create corridors of biodiversity, enriching the surrounding landscapes and fostering ecological balance.

But apart from ecological roles, rivers hold cultural, historical, and spiritual significance in not only my life but everyone's life. Since time immemorial, they have served as avenues of transportation, trade, and communication. Settlements have flourished along their banks, civilizations have risen and fallen, leaving traces of their stories etched into the riverine landscapes.

However, I believe that in today's era rivers are not being maintained and the basic essence and respect that humans have towards rivers is decreasing day by day. The customs that made people worship rivers have started fading which has led to the misuse of rivers on a large scale, causing loss of aquatic life, Reducing the quality of river water, and new diseases that are harmful for human civilization. A theory was proposed by one of the great philosophers Austin. According to me, his gunman theory is the need of hour to protect Rivers.

In this blog I shall try to explain if rivers can be granted legal rights, if there have been instances where it has been granted, what will be the challenges of the same, and also elaborate if rights can be extended?

Can rights be granted to Rivers?

What are rights?

To understand if rights can be granted to rivers, one must be versed with what exactly rights are, or what rights mean in the field of law.

Right as defined by the Oxford dictionary is a *moral or legal claim to have or get something or to behave in a particular way*.

Interpreting the aforementioned statement one can understand that rights are a result of promises that society agrees to follow to make sure that everyone is treated equally and if they are not treated, they have the provisions for a claim that can be based on moral or legal or even both.

Who Can Be Granted Rights?

Rights are basic to every human being as coined for the first time by the political philosopher John Locke in his book *Two Treatises of the Government*. It was in the book John Lock argues that it was the people who had the rights and it was termed as natural, which means that by being human beings one can have these natural rights (right to life, liberty, and property) and it further evolved to what we know as human rights today.

Can rivers be granted rights?

Right of river has been customary and has been in existence from long time, and the concept of giving rights to nature was brought up to the world 50 years ago by the famous scholar Christopher stone, who wrote in 1972 in one of his most famous essays “Should Trees Have Standing? Toward Legal Rights for Natural Objects”¹ In Recent years there have been development in legal area for granting legal rights to rivers. However, it is important to consider that the legal right given to rivers is not same as human rights because human rights include – civil and political rights, legal rights involve these two major elements-

- **Locus Standi**
- Right to sue

Giving rights to rivers would also broaden the ambit of the rights because rivers are not just

¹ Stone, C.D. Should Trees Have Standing? - Towards Legal Rights for Natural Objects. *South. Calif. Law Rev.* 1972, 45, 450–501. [Google Scholar]

cubic meter of water but also an ecosystem of flora and fauna that needs to be protected and protecting these would indeed protect the identity and integrity of the river and would lead to a healthy relationship and generating the respect towards river which I believe has been fading every passing day apart from this the destructive activities like industrial fishing, sand mining could not only be challenged but also be stopped.

Countries where rivers are legal Entity

- The first country on the planet that gave legal rights specifically to its river is *New Zealand*, in march 2017 they granted the river *Whanganui River* legal rights and the river is considered as living community of fish, plants, people, ancestors and water links by whakapapa.²
- Apart from this Ecuador drafted its constitution in the year 2008 and gave nature legal rights and this gave river natural rights indirectly.³
- Bolivia also granted legal rights to nature in 2011, which also indirectly embarked on giving legal rights to the river.
- In India in the case of *Sukhna lake case* the honourable court held up that the lake to be a legal entity.
- Bangladesh, our neighbour gave rights to all its rivers and declared them as living entities in 2017 and they were given the title of legal person.

This growing trend reflects a broader recognition of the intrinsic value of natural ecosystems and the urgent need to protect them.

By granting legal rights to rivers, societies are acknowledging that these vital waterways have their own rights to exist, thrive, and be free from harm, rather than treating them solely as resources for human exploitation.

² Te Awa Tupua (Whanganui River Claims Settlement) Bill, Section 6, (New Zealand), 2017.

³ CONSTITUTION OF THE REPUBLIC OF ECUADOR , Chapter 7 , Article 71

Challenges of giving legal rights to River:

There are many challenges that one has to face while providing legal rights to rivers, it is a complex endeavour that involves legal, political, economic, and cultural challenges. However we will be discussing legal challenges in this legal blog, there are two prominent challenges that we will be addressing, which are:

1. Legal standing
2. Right to sue

1. *Legal Standing*

A concern that arises regarding who will be representing rivers, this can be answered in context to the way the current legal system allows corporations, municipalities, and other entities to have rights and are allowed to appear in courts ; the same way nature could be granted certain rights and could be represented in court⁴.

2. *Right to sue*

People who cause damage or legal injury and even both to rivers can be held liable and can be sued by environmental organizations, government agencies, legally appointed guardians, community or indigenous groups and private Individuals with legal standing.

Conclusion

In conclusion, conferring legal status to rivers is a forward-looking and unavoidable step in our efforts towards safeguarding the environment. Rivers are not only essential ecologically but are also vital culturally, historically and spiritually as they serve as Earth's lifeblood. The urgent need for a paradigm shift in our perception and utilization of such crucial water channels is evident from their current degradation and misuse.

Recognition of river rights legally can provide significant boost to their security. By regarding rivers as living beings that deserve protection rather than assets to be utilized, we can promote more ethical and sustainable ties with the environment. Legal frameworks currently in place

⁴ Salomon v. Salomon, [1896] 11 WLUK 76

make it possible for this concept to work; New Zealand, Ecuador, Bolivia, India and Bangladesh provide excellent examples.

Nevertheless, there are obstacles that lie ahead of this venture. Thoughtful legal innovations and overcoming political, economic and cultural barriers must be considered when bestowing legal standing and the right to litigate on behalf of rivers. Therefore, effective representation will be important in translating these rights into real safeguards which can be enforced.

Ultimately, granting legal rights to rivers represents a broader recognition of the intrinsic value of natural ecosystems. It is a step towards acknowledging that our well-being is intricately linked with the health of our environment. By embracing this perspective, we can work towards a future where rivers, and nature as a whole, are revered and protected, ensuring their survival and the continued flourishing of life on Earth.