
FROM MINORS TO MOTHER EARTH: UNVEILING THE REACH OF PARENS PATRIAE IN INDIA & GLOBAL JURISDICTIONS

Vansh Tayal, B.B.A. LL.B. (Hons.), Symbiosis Law School, Pune

ABSTRACT

This research article delves into the evolving concept of parens patriae, exploring its potential as a tool to address environmental issues and ensure the protection of nature. Against the backdrop of increasing environmental degradation, the paper critically assesses the doctrine's implementation within India and globally to safeguard the environment. The central focus is on the doctrine's application as a guardian of ecological well-being, analogous to its role in protecting vulnerable individuals. The paper examines the doctrine's usage in various legal systems and scrutinizes its effectiveness in addressing environmental harm, shedding light on successful and contested applications. Through a comprehensive literature review and analysis of relevant legal cases, the article underscores the urgency of using parens patriae to combat environmental challenges while recognizing the need for an interdisciplinary approach to reconciling environmental interests with state concerns. The authors advocate for the paradigm shift from anthropocentrism to ecocentrism, emphasizing the intrinsic value of nature and its rights. The paper concludes by presenting practical recommendations to enhance the application of parens patriae within the Indian legal framework, drawing inspiration from international models like the Administrative Procedure Act (A.P.A.) to foster transparency, public participation, and effective environmental stewardship.

Keywords: Parens Patriae, Crimtorts, ecocentrism, Nature rights, quasi-sovereign interest

Introduction

Many, revelling late into the night, clashing with their parents, and ditching school, are aware that if an emergency arises, "*their parents*" or "*protectors*" will serve as the stalwart sentinels to safeguard them. However, that might not be the case for *Mother Earth*. It is both preserved like a treasure and exploited like any other resource.¹ As of today, the world has already lost 80% of its forest, and the current rate estimates a decline of 5-10% every decade.² Owing to this, some species are already extinct, and others remain in brittle populations.³



Image 1.1⁴

However, it is never too late, so long readily endeavours to curb the damages are made. For instance, the power entrusted to the state to invoke *parens patriae* – meaning the *parent of the nation* under which Individuals deemed legally incapable of acting on their behalf are protected.⁵

Under the Indian connotation of this doctrine, the state acts as the "*trustee*" or a "*guardian*" only to the country's citizens⁶, leaving the nation's Wildlife and natural resources in the lurch.

¹ Hallenbeck, L., *The Public Trust and Parens Patriae Doctrine*, 16 PUB. LAND L. REV. 87, 90 (1995), <https://core.ac.uk/download/pdf/232674198.pdf>.

² THE WORLD COUNT, <https://www.theworldcounts.com/stories/environmental-degradation-facts> (last visited August 21, 2023).

³ *Id.* at 1.

⁴ *Id.* at 2. The image shows real-time data of the sources extracted from earth in the year 2023 till August 21, 2023.

⁵ Pradhan, A., *Evolution of Child Custody Laws from 'Parens Patriae' to the 'Welfare of the Child'*, 11 I.J.L.J 158, 160 (2020), <https://rebrand.ly/ulsp512>.

⁶ Charan Lal v UOI, AIR 1990 SC 1480

Moreover, its inconsistent interpretation by different courts and imperfect execution breed tumultuous adjudication, undermining the state's authoritative role as the guardian.

Against these backdrops, the paper attempts to

- a. Critically analyze the doctrine of *parens patriae* and provide measures towards better implementation.
- b. Comparatively, analyze India's connotation of the doctrine with global jurisdictions to establish that using the doctrine to protect the environment is a pressing need.
- c. In light of recent precedents, examine the global status quo of the doctrine's application to protect the environment.

By the end of this article, the author aspires to establish that not only the **state has the authority** to control and **preserve the environment** but also an **assenting duty to do so**. This duty originates from the unique connection between the state's ownership of natural resources and people's expectations that the state holds such resources for their benefit. It further advocates the need for India to learn from global examples of the doctrine's application to the environment.

Literature Review

1. State Protection of Its Economy and Environment⁷

As the doctrine of *parens patriae* is still developing, the article delves into its use in an environmental suit for claiming damages. Its historical use, i.e., protecting the vulnerable through the state, constrains its powers; however, the article argues that if proper use is made, it can be a valuable tool for environmental protection. In the U.S., the scope has been expanded to include cases of **quasi-sovereign interests⁸ for environmental protection**. It then supports the stance through the *Hawaii v Standard Oil Co.*,⁹ where the court held that *parens patriae* could be employed if there is an

⁷ *State Protection of Its Economy and Environment*, 6 COLUM J.L. & Soc. Probs. 411 (1970).

⁸ It includes matters related health, welfare and comfort of the people, interstate pollution-free water rights, environmental protection from pollutants and economy of the state. *See infra* note at 27-28.

⁹ 301 F. Supp. 982

independent interest of the state¹⁰ and the damaging action adversely affects the populace¹¹. However, several contrary opinions were expressed, and it was contended that the sole presence of significant quasi-sovereign interest should be sufficient to initiate an action.

Even though very relevant discussions have been put forth, the lacuna seen in the article is that it jumps into the shift towards quasi-sovereign interest and fails to strike a balance between environmental interest and state concerns such as extraction of minerals and other resources. Moreover, it neglects to emphasize the establishment of delegated legislation through which the state can better exercise its powers.

2. *Parens Patriae* and Public Trust: Litigating Environmental Harm *Per Se*¹²

In Western countries, the legal framework assesses environmental harm through an anthropocentric lens (Elgie & Lintner 2005)¹³ – a method that has proved inefficient in delivering environmental sustainability. In light of this, the author examines using *parens patriae* and public trust doctrine to mitigate environmental harm and employs ecocentrism – a view that portrays the environment as equivalent to human lives to elaborate on the importance of environmental protection. (Nash 1989)¹⁴ Moreover, reliance is based on the U.S. system to establish that if the ability to claim for environmental damages is acknowledged, then *parens patriae* can be promptly used by the state.¹⁵ Furthermore, it has been argued that there is a stringent need to utilize the doctrine as **environmental damage harms human health and the state's economy**. Because most environmental resources are classified as public goods, they exempt firms from bearing the financial burden associated with the environmental costs they

¹⁰ Missouri v. Illinois, 180 U.S. 208, 241 (1901)

¹¹ Georgia v. Pennsylvania, 324 U.S. 439 (1945)

¹² Monique Evans, *Parens Patriae and Public Trust*, 12 J.S.D.L.P. 1, 17 (2016), <https://www.jstor.org/stable/10.2307/48726345>.

¹³ An anthropocentric viewpoint acknowledges the worth of the environment as a public resource on which humans rely for "health, recreation, material needs, and, ultimately,... survival." See Lintner, A., *The Supreme Court's Canfor Decision: Losing the Battle but Winning the War for Environmental Damages*, 38 UBC L Rev 223, 228 (2005), <http://surl.li/khnlk>.

¹⁴ NASH, R., THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS 10 (Wisconsin Press 1989).

¹⁵ British Columbia v. Canadian Forest Products, 2004 SCC 38

generate, harming the state's economy. Such costs include air pollution, water pollution, and the depletion of wildlife habitats. (Rustad 2010)¹⁶

However, despite the author's best efforts, the paper fails to elaborate on its highlighted term "*environmental harm*", which creates a gap in the application of the doctrine and limits the avenues available to litigants, in this case, the state. Moreover, it fails to portray that excessive reliance on one country's principles may lead to discrepancies in evaluating the proposed idea, as every country's administration works differently.

3. Reconceptualizing *Parens Patriae* as Environmental Crimtorts¹⁷

The precedent set under the *B.P. oil spill case*¹⁸ incentivized the author to craft a paper highlighting the evolution of **crimtorts**¹⁹ in environmental litigation by state lawyers. Employing this article, the authors expand the theory of crimtorts and remodel the *parens patriae* environmental lawsuits as crimtorts in order to seal the void formed by insufficient regulation of giant oil firms and other corporate wrongdoers.

Moreover, the paper argues that in a 'world where businesses can manipulate politicians and corrupt democracy,²⁰ environmental crimtorts are necessary for limiting power exploitation,²¹ and environmental cases based on this doctrine can be true crimtorts since they combine private, public, and administrative legal grounds to seek recompense for environmental harm.²²

Furthermore, the later stage of the paper examines the counterarguments against applying the doctrine to environmental torts and public health. It concludes that despite the potential disadvantages, *parens patriae* represents the most favourable public

¹⁶ *Supra* note 7 at 229.

¹⁷ Michael L., *Reconceptualizing Parens Patriae as Environmental Crimtorts*, 10 UCLA JOURNAL OF ENVIRONMENTAL LAW & POLICY 1, 3 (2010), <https://ssrn.com/abstract=1673529>.

¹⁸ *In re Oil Spill by Oil Rig*, 910 F. Supp. 2d 891

¹⁹ A term coined by the author meaning, a heuristic device to describe how criminal law principles were exported into tort law.

²⁰ WEINBERG, S., *TAKING ON THE TRUST – HOW IDA BROUGHT DOWN JOHN ROCKEFELLER AND STANDARD OIL* 198 (W.W. NORTON & COMPANY 2009).

²¹ 4 HACKETT, S., *ENVIRONMENTAL AND NATURAL RESOURCES ECONOMICS* 206 (ROUTLEDGE 2010).

²² *Id.* at 12.

policy option as it provides collective resolutions while maintaining political accountability and transparency.

The paper succeeds in conveying valid contentions in favour of *parens patriae*. However, it disregards further detail on potential legal issues or practical difficulties in implementing this method. In these cases, are there any legal stumbling blocks or challenges in showing causation and injury? Addressing any counterarguments about the possibility of deploying crimtorts could have reinforced the overall argument of the study.

Metamorphosis of *Parens Patriae* to Eco-guardian

The future of the nation rests on the shoulder of our children. They must be protected under parens patriae as they belong to the vulnerable part of society."²³ While this statement cannot be refuted, what future lies ahead if nature is destroyed?

In society, there may be a debate on how severe the effects of climate change are and how substantial the role of human activity is; however, the upsurging cases of climate change enmeshed in the legal system is one thing that cannot be disputed. Moreover, the most common of all resources, such as air, water, and Wildlife, have the most unique issues in terms of legal frameworks and practical approaches to their management.

While the courts have taken actions across jurisdictions **Earl Faircloth v. Tug Rachael**,²⁴ **New York v. Automobile Manufacturers Association**,²⁵ **Earl Faircloth v. Motor Tanker Delian Apollon**,²⁶ **Pennsylvania v. West Virginia**,²⁷ **Wyoming v. Colorado**,²⁸ **Earl Faircloth v. Vessel Merc Buccaneer**,²⁹ to mitigate the damages, there are no conventional legislations to support environmental claims.

That being said, unprecedented on a global scale, the *Minor Oposa judgment*³⁰ held that "It is an inherent and inviolable entitlement, both in the realm of natural and legal frameworks, for

²³ *Id.* at 5.

²⁴ No. 70-106, Civil-J

²⁵ 69 Civ. 5037

²⁶ No. 70-47, Civil-T

²⁷ 262 U.S. 553 (1923)

²⁸ 286 U.S. 494 (1932)

²⁹ No. 70-104, Civil-J

³⁰ *Minors Oposa v. Factoran*, 33 ILM 173 (1994)

successive generations to inherit a dignified and wholesome environment. Moreover, it extrapolated that governments bear the duty of a guardian in the capacity of **parens patriae** to safeguard the environmental well-being of future generations." **Otherwise**, a time could approach when the current generation and those to come would face profound losses.³¹ Inheritors of a barren and desolate land devoid of life-sustaining capabilities, the prospects for future generations would be bleak and bereft of hope.

India's Entrée into The Parens Patriae Arena

Inspired by various jurisdictions, India also showed significant development in recognizing legal personality for non-human entities in **Animal Welfare Board v. A. Nagaraja**.³² The apex court acknowledged that each species has an intrinsic right to life and should be safeguarded legally. Following the lead of this judgement, in *re* **Mohammed Salim**³³ and **Lalit Miglani**,³⁴ the Uttarakhand High Court officially recognized the **legal personhood** of the **rivers Ganga and Yamuna**, as well as the **Himalayan glaciers** thereby, becoming part of a minority of nations that have acknowledged the rights of nature to address the ongoing global environmental problem.³⁵

In **Periyakaruppan v. Revenue Department**³⁶ (**mother nature case**), relying upon **Karnail Singh v. State of Haryana**³⁷, the court stated that under the pretext of sustainable development, humanity must refrain from causing harm to the natural environment. If sustainable development results in the depletion of biodiversity and resources, it might be argued that it does not truly embody sustainability principles but represents a form of sustainable destruction. Using terms such as 'sustainable development', 'the polluter pays', and 'the precautionary principle' should be prohibited.

There has been an increasing sentiment of exhilaration among individuals who express concern for the environment after this judgment since the court invoked parens patriae and conferred

³¹ Vibhute, K., *Environment, Present And Future Generations*, 39 JILI 281, 285 (1997), <https://www.jstor.org/stable/43953273>.

³² (2014) 7 SCC 547

³³ Mohammed Salim v State of Uttarakhand, SCC OnLine Utt 367

³⁴ Lalit Miglani v State of Uttarakhand, MANU/UC/0067/2017

³⁵ Jolly, S., *Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India*, CAMBRIDGE UNIVERSITY PRESS (August 21, 2023, 10:35 PM), <https://doi.org/10.1017/S2047102520000424>.

³⁶ A. Periyakaruppan v. Revenue Department, 2022 SCC OnLine Mad 2077

³⁷ Karnail Singh v. State of Haryana, (2009) 8 SCC 539

the rights of living beings to Mother Nature in order to ensure the preservation and conservation of all associated rights, obligations, and liabilities of an individual, it is imperative to establish and uphold them.³⁸

A Discerning Critique of Indian *Parens Patriae*

Recognizing rights for nature represents a paradigm transformation in environmental jurisprudence. Nonetheless, it is imperative to approach the notion of 'rights of nature' endorsed by the Indian judiciary carefully. Rather than elevating nature's legal status, instilling a profound reverence for the environment within the framework of existing legal systems is wiser. This approach can serve to address the environmental crisis effectively.

The use of *parens patriae* in the *mother nature case* cements the state's authority in discerning the interest of nature even though the state's negligence in implementing environmental laws led to the current crisis. While countries like New Zealand formally recognized the river Whanganui's legal identity³⁹ by establishing the Office of the Whanganui River (Te Pou Tupua) – an entity comprised both representatives from the Crown and Indigenous groups and Columbia, where the rights of the Atrato River⁴⁰ have been acknowledged.

In the Indian context, it appears that judicial decisions have not given significant consideration to the intricate process of determining the representative institutional structure essential for the appropriate development of the jurisprudence of the "rights of nature," as well as its theoretical and philosophical foundations.⁴¹ The re-emergence of conventional environmental law concerns will persist unless there is institutionalization of effective representation for nature beyond the state. On the surface, the judgement⁴² provides ecocentric reforms. However, claiming that "*we owe the duty to pass on natural resources to the next generation*" firmly prioritizes human requirements at the core of environmental protection, thus disregarding its

³⁸ SCIENCE THE WIRE, <https://science.thewire.in/environment/rights-of-nature-anthropocentrism/>, (last visited August 21, 2023).

³⁹ Hollingsworth, J., This river in New Zealand is legally a person. Here's how it happened, CNN, (August 21, 2023, 10:45 PM), <https://shorturl.at/hqzFY>.

⁴⁰ Wesche, P., *Rights of Nature in Practice: Impacts of the Colombian Atrato River Decision*, 33 J. ENVIRON. LAW 531, 545, <https://doi.org/10.1093/jel/eqab021>.

⁴¹ Yamuna, S., *Parens patriae jurisdiction in biodiversity conservation*, THE TIMES OF INDIA (August 21, 2023, 10:45 PM), <https://timesofindia.indiatimes.com/blogs/voices/parens-patriae-jurisdiction-in-biodiversity-conservation/?source=app&fmapp=yes>.

⁴² *Id.* at 37.

inherent value. It paradoxically contradicts the fundamental objective of the "*right of nature*" movement.

Therefore, to ensure that *parens patriae* succeeds in India, other reforms and practices must be incorporated into the present system.

Recommendations

The effectiveness of the *parens patriae* doctrine lies in its adaptability within the legal system. Accordingly, to establish a functional system of the doctrine in environmental litigation, the government must follow a systematic order of actions:

1. Consistently monitor the impact of approved activities on nature to preserve the protected resources by revisiting and updating delegate legislations such as **E.I.A. notifications**⁴³ and establishing new legislations for protecting the environment, for instance, **coastal and marine environment**⁴⁴.
2. If step 1 fails, the state may initiate legal proceedings to prohibit detrimental acts and seek compensation for harm caused to its species, invoking the *parens patriae* doctrine.

Moreover, the enhancement of applying the *parens patriae* principle in environmental matters in India can be bolstered by using established legal frameworks, such as the **Administrative Procedure Act (A.P.A.)**⁴⁵, integrating its principles into the decision-making process. It can draw valuable lessons from the ideals espoused by the A.P.A. to improve transparency, justice, and efficacy in its endeavours towards environmental conservation. The following guidelines can be applied:

1. **Public Participation and Transparency**⁴⁶: Integrate measures that guarantee substantive public engagement in environmental decision-making procedures by

⁴³ The EIA notification serves as the primary legal mechanism for granting environmental clearance for the formation or growth of an industry, based on an assessment of the anticipated environmental consequences of the project.

⁴⁴ The implementation of marine protected areas (MPAs) and the regulation of activities that have the potential to negatively impact marine biodiversity are crucial measures to safeguard marine ecosystems.

⁴⁵ The process of developing and issuing regulations by federal agencies is governed by the Administrative Procedure Act (APA). Furthermore, it establishes criteria for the evaluation of legal decisions in cases where an individual has experienced negative consequences or harm as a result of an action taken by a government agency.

⁴⁶ Ernest, G., "Public Participation in Administrative Proceedings." 81 Y.L.J. 359, 370 (1972), <https://doi.org/10.2307/795196>.

implementing a need for public notice and comment periods for proposed activities that may have environmental consequences. Facilitate the dissemination of information to the general public by ensuring its availability in local languages and forms tailored to cater to diverse segments of society.

2. **Review and Appeal**⁴⁷: Develop a procedural framework to facilitate the administrative review process and the subsequent lodging of appeals against judgements. Establish mechanisms to provide opportunities for impacted stakeholders to contest decisions they perceive as non-compliant with environmental protection regulations. It is vital to guarantee that the appeals process exhibits transparency and accessibility.

Conclusion

The domain in which the *parens patriae* theory is appropriately applied appears to be characterized by a significant degree of ambiguity and discord. In various situations, states propose that *parens patriae* standing is suitable.

However, based on an examination of the legal precedents, it can be inferred that to effectively file a damages suit under the doctrine of *parens patriae*, the state must pursue remedies for harm inflicted against a quasi-sovereign interest and strengthen the **watchdogs** under legislation to prevent environmental damages. Therefore, for a state to effectively employ the *parens patriae* doctrine, it is imperative to meticulously construct a method that Indian courts will be inclined to embrace fully.

⁴⁷ Dickinson, John. *APA: Scope and Grounds of Broadened Judicial Review*. 33 AM. BAR ASSOC. J. 434, 500 (1947), <http://www.jstor.org/stable/25715951>.

Bibliography

Case Laws

1. Charan Lal v UOI, AIR 1990 SC 1480
2. Missouri v. Illinois, 180 U.S. 208, 241 (1901)
3. Georgia v. Pennsylvania, 324 U.S. 439 (1945)
4. British Columbia v. Canadian Forest Products, 2004 S.C.C. 38
5. In re Oil Spill by Oil Rig, 910 F. Supp. 2d 891
6. Earl Faircloth v. Tug Rachael, No. 70-106, Civil-J
7. New York v. Automobile Manufacturers Association, 69 Civ. 5037
8. Earl Faircloth v. Motor Tanker Delian Apollon, No. 70-47, Civil-T
9. Pennsylvania v. West Virginia, 262 U.S. 553 (1923)
10. Wyoming v. Colorado, 286 U.S. 494 (1932)
11. Earl Faircloth v. Vessel Merc Buccaneer, No. 70-104, Civil-J
12. Minors Oposa v. Factoran, 33 ILM 173 (1994)
13. Animal Welfare Board v. A. Nagaraja (2014) 7 SCC 547
14. Mohammed Salim v State of Uttarakhand, S.C.C. OnLine Utt 367
15. Lalit Miglani v State of Uttarakhand, MANU/UC/0067/2017
16. Hawaii v Standard Oil Co, 301 F. Supp. 982
17. A. Periyakaruppan v. Revenue Department, 2022 SCC OnLine Mad 2077
18. Karnail Singh v. State of Haryana, (2009) 8 SCC 539

Research Papers/ Articles

1. Hallenbeck, L., The Public Trust and Parens Patriae Doctrine, 16 P.U.B. LAND L. R.E.V. 87, 90 (1995), <https://core.ac.uk/download/pdf/232674198.pdf>.

2. Pradhan, A., Evolution of Child Custody Laws from 'Parens Patriae' to the 'Welfare of the Child', 11 I.J.L.J 158, 160 (2020), <https://rebrand.ly/ulsp512>.
3. State Protection of Its Economy and Environment, 6 C.O.L.U.M. J.L. & Soc. Probs. 411 (1970).
4. Monique Evans, Parens Patriae and Public Trust, 12 J.S.D.L.P. 1, 17 (2016), <https://www.jstor.org/stable/10.2307/48726345>.
5. Lintner, A., The Supreme Court's Decision: Losing the Battle but Winning the War for Environmental Damages, 38 U.B.C. L Rev 223, 228 (2005), <http://surl.li/khnlk>.
6. Michael L., Reconceptualizing Parens Patriae as Environmental Crim torts, 10 UCLA JOURNAL OF ENVIRONMENTAL LAW & POLICY 1, 3 (2010), <https://ssrn.com/abstract=1673529>.
7. Ingham R., Climate Change: Dogs of Law are Off the Leash, YAHOO! NEWS (August 21, 2023, 4:30 PM), <http://news.yahoo.com/s/afp/20110123/lf afp/>.
8. Vibhute, K., Environment, Present And Future Generations, 39 JILI 281, 285 (1997), <https://www.jstor.org/stable/43953273>.
9. Parens Patriae Standing for State Global Warming Plaintiffs, 96 GEO L.J. 1059, 1062 (2008), <https://rb.gy/j87ml>.
10. Engel, K., State Standing in Climate Change Lawsuits, 26 J. LAND USE & E.N.V.T.L. L. 217, 212 (2011), <https://www.jstor.org/stable/42842964>.
11. Srivastav, P., Legal Personality of Ganga and Ecocentrism, 4 CAMBRIDGE L. REV. 151, 156 (2019), https://www.cambridgelawreview.org/_files/ugd/fb0f90_3c177ad570134b34a38f8a9bcd3e00bf.pdf.
12. Yamuna, S., Parens patriae jurisdiction in biodiversity conservation, THE TIMES OF INDIA (August 21, 2023, 10:45 PM), <https://timesofindia.indiatimes.com/blogs/voices/parens-patriae-jurisdiction-in-biodiversity-conservation/?source=app&frmapp=yes>.
13. Gellhorn, Ernest. "Public Participation in Administrative Proceedings." 81 THE Y L.W. REW. 359, 370 (1972), <https://doi.org/10.2307/795196>.

14. Dickinson, John. "Administrative Procedure Act: Scope and Grounds of Broadened Judicial Review." 33 AM. BAR ASSOC. J. 434, 500 (1947), <http://www.jstor.org/stable/25715951>.

Others

1. THE WORLD COUNT, <https://www.theworldcounts.com/stories/environmental-degradation-facts> (last visited August 21, 2023).
2. SCIENCE THE WIRE, <https://science.thewire.in/environment/rights-of-nature-anthropocentrism/>, (last visited August 21, 2023).
3. THE BASTION, <https://thebastion.co.in/legal-policy-analysis/out-of-the-woods-how-mother-nature-as-a-legal-being-can-help-attain-ecological-justice/> (last visited August 21, 2023).