
THE RIGHTS OF NATURE: A CONSTITUTIONAL BLUEPRINT FOR GRANTING ECOSYSTEM PERSONHOOD IN INDIA

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ABSTRACT

The anthropocentric architecture of Indian environmental law, despite its progressive jurisprudence, is reaching its conceptual limits in the face of an escalating ecological crisis, as evidenced by failing enforcement metrics and continued ecosystem degradation. This article proposes a paradigm shift: the conferral of legal personhood upon natural ecosystems. It argues that such a recognition is not a jurisprudential anomaly but a logical evolution of India's constitutional principles, specifically the expansive interpretation of Article 21 (Right to Life) and the Public Trust Doctrine. The article begins by deconstructing the philosophical underpinnings of legal personhood, demonstrating its fluidity and instrumental nature. It then surveys the current Indian legal landscape, highlighting the latent potential and subsequent judicial hesitation evident in the Uttarakhand High Court's landmark but stayed decisions. A comparative analysis of global precedents provides a practical framework for adaptation.

The core of the article identifies the critical lacunae in existing environmental law, supported by empirical data, which ecosystem personhood can effectively address. The article then constructs a novel, tiered legal framework for India, outlining the process for declaration, a participatory guardianship model, and enforceable rights. Crucially, it engages in a forward-looking jurisprudential analysis, anticipating and resolving key ontological and practical objections—such as conflicts with human rights—through the proposed principle of 'Ecological Primacy' and a structured proportionality test. This comprehensive model seeks to move environmental protection from a reactive, welfare-oriented model to a proactive, right-based, and duty-bound paradigm, ensuring that nature has a voice, and not merely a value, in the court of law.

Keywords: Legal Personhood, Rights of Nature, Indian Environmental Law, Public Trust Doctrine, Article 21, Ecocentric Jurisprudence, Uttarakhand River Case, Guardianship Model, Ecological Primacy.

Introduction

"We require a new paradigm, a new mindset. The environment is not a mass of 'things' but a 'community of subjects'."

– Dr. Vandana Shiva, *Earth Democracy*

In 2017, the Uttarakhand High Court, in a ruling that sent ripples through the legal world, declared the rivers Ganga and Yamuna, and all their tributaries, as "legal persons" or "living entities" with the status of a legal person, with all corresponding rights, duties, and liabilities of a living person.¹ This monumental decision, though subsequently stayed by the Supreme Court,² represented a tectonic shift in Indian environmental jurisprudence. It was an audacious attempt to break free from the anthropocentric shackles of a legal system that treats nature as mere property—a resource to be exploited or, at best, a subject to be protected for human benefit.

The Indian environmental movement has historically been one of the most vibrant in the Global South, yielding a rich tapestry of legislation, such as the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, and the Environment (Protection) Act, 1986. The judiciary, particularly the Supreme Court of India, has been a proactive guardian, expansively interpreting Article 21 of the Constitution to include the right to a wholesome environment,³ pioneering the concept of Absolute Liability,⁴ and innovating procedural tools like Public Interest Litigation (PIL). Yet, the ecological degradation continues unabated. Rivers are reduced to septic drains, forests are fragmented by linear projects, and air quality in major cities poses a perpetual public health emergency. Empirical data reveals the stark limitations of this framework. A 2023 report by the Central Pollution Control Board (CPCB) indicates that the number of critically polluted river stretches in India has increased from 34 in 2018 to 45 in 2022, with the majority of the pollution load coming from municipal sewage and industrial effluent.⁵

¹ Mohd. Salim v. State of Uttarakhand, Writ Petition (PIL) No. 126 of 2014, High Court of Uttarakhand (Order dated Mar. 20, 2017).

² State of Uttarakhand v. Mohd. Salim, SLP Civil No. 016879 / 2017, Supreme Court of India (Order dated July 7, 2017).

³ Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

⁴ M.C. Mehta v. Union of India, (1987) 1 SCC 395 (Oleum Gas Leak Case).

⁵ Central Pollution Control Board (CPCB), *Status of Water Quality in India – 2022* 5 (2023).

This crisis signals a foundational flaw: our legal instruments are inherently reactive. They function on a model of violation and penalty. A river cannot sue for its own pollution; a forest cannot seek injunctive relief against its own fragmentation. The legal right is vested in the humans affected by this ecological damage. This article posits that the next evolutionary leap in Indian environmental law lies in transcending this anthropocentric impasse by granting legal personhood to natural ecosystems.

This article comprehensively engages with the theme of ecosystem personhood, arguing that it is a constitutionally coherent and practically necessary innovation. It will survey the current, albeit nascent, Indian practice, identify the profound lacunae in the existing property-law-based model, and offer a constructive, innovative framework for its implementation. By weaving together constitutional principles, comparative law, and jurisprudential theory, this article seeks to provide a roadmap for "litigating for the future," where nature is not just protected but is a rights-bearing entity in its own right.

1. Legal Personhood: From Fiction to Functional Tool

The primary objection to ecosystem personhood often stems from a philosophical misunderstanding of the term "person." In law, a "person" is not synonymous with a human being (*homo sapiens*). Legal personhood is a juristic concept, a fiction of law, created to confer rights and duties upon an entity to enable it to function within the legal system.⁶

Corporations are the most ubiquitous example of non-human legal persons. A corporation, as a juridical person, can own property, sue and be sued, and enter into contracts.⁷ This personhood is a convenient legal mask that allows a collective to act as a single entity. Similarly, idols in Indian law have been recognized as juridical persons capable of owning property.⁸ The journey of a corporation or an idol from a conceptual entity to a rights-bearing person illustrates that legal personality is a functional tool, not a biological descriptor.

The grant of legal personhood is, therefore, a question of policy and legal utility. As Christopher D. Stone poignantly argued in his seminal essay, "Should Trees Have Standing?", the law

⁶ See generally JOHN SALMOND, JURISPRUDENCE 299-300 (7th ed. 1924).

⁷ *Salomon v. A Salomon & Co Ltd*, [1897] AC 22 (HL).

⁸ *Bishwanath v. Shri Thakur Radha Ballabhji*, AIR 1967 SC 1044.

should "make legal rights for nature's natural objects."⁹ He proposed that just as the law has given rights to the inanimate (corporations, ships, idols) and the non-speaking (infants, comatose persons), it can and should give rights to the natural environment, with legal guardians appointed to speak on its behalf.

This functionalist view dismantles the philosophical barrier. The question is not *can* a river be a person, but *should* it be, and for what legal and ecological benefit? The answer to this question lies in the foundational principles of the Indian Constitution.

2. The Constitutional Bedrock: Article 21 and the Public Trust Doctrine

The Indian Constitution provides a fertile ground for the growth of the concept of ecosystem personhood. Two doctrines, in particular, form its bedrock: the expansive interpretation of the Right to Life under Article 21 and the Public Trust Doctrine.

2.1. Article 21 and the Right to a Wholesome Environment

The Supreme Court has consistently held that the right to life under Article 21 is not merely the right to animal existence but encompasses the right to live with human dignity.¹⁰ From this expansive interpretation, the Court deduced the right to a wholesome environment. In *Subhash Kumar v. State of Bihar*, the Court held that the right to life "includes the right of enjoyment of pollution-free water and air for full enjoyment of life."¹¹

This jurisprudential thread creates a direct link between the health of the ecosystem and the fundamental rights of citizens. If a polluted river violates the Article 21 rights of millions who depend on it, the river's degradation is not just an environmental problem but a constitutional tort. Recognizing the river as a legal person is a logical procedural extension of this substantive right. It allows the ecosystem itself to be the direct beneficiary of the protection under Article 21, rather than relying on the indirect and often delayed vindication through human petitioners.

2.2. The Public Trust Doctrine

The Public Trust Doctrine, imported into Indian jurisprudence from American and English

⁹ Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 456 (1972).

¹⁰ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.

¹¹ Subhash Kumar v. State of Bihar, AIR 1991 SC 420, at 424.

common law, posits that the State is not the absolute owner, but a trustee, of all natural resources for the benefit of the public, including future generations. The Supreme Court, in the landmark case of *M.C. Mehta v. Kamal Nath*,¹² explicitly recognized this doctrine, stating that the State, as a trustee, is under a legal duty to protect natural resources.

Ecosystem personhood is the ultimate affirmation of the Public Trust Doctrine. By granting legal personhood to a river or forest, the law effectively recognizes that the resource has an intrinsic existence and value independent of its utility to the state or the present generation. The state's role as a trustee is thus transformed and fortified. It is not merely managing a resource for public benefit but is the legal guardian of a rights-bearing entity. This shifts the state's obligation from one of discretionary benevolence to one of a strict, justiciable fiduciary duty.

3. The Indian Experiment and Global Precedents: A Comparative Survey

3.1. The Uttarakhand Experiment and its Aftermath

The Uttarakhand High Court's 2017 judgment in *Mohd. Salim v. State of Uttarakhand*¹³ was a watershed moment. The Court, drawing upon the status of the Hindu holy rivers, declared them legal persons, citing the necessity to preserve and conserve them. It appointed the Director, Namami Gange, the Chief Secretary of the State of Uttarakhand, and the Advocate General of the State as the *parents patriae* (guardians) for the rivers.

However, the State government itself appealed the decision to the Supreme Court, raising practical concerns: Would the state now be liable for floods caused by the river? Could the river be sued for damages? The Supreme Court stayed the order, highlighting the challenges of implementing a radical legal concept without a detailed legislative framework.¹⁴ The judgment, though stalled, served as a powerful proof of concept, demonstrating the willingness of the judiciary to embrace innovative solutions.

3.2. Learning from Global Frontiers

India is not alone in this exploration. Several jurisdictions have pioneered models of ecosystem personhood.

¹² *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

¹³ *Mohd. Salim v. State of Uttarakhand*, Writ Petition (PIL) No. 126 of 2014.

¹⁴ *State of Uttarakhand v. Mohd. Salim*, SLP Civil No. 016879 / 2017.

- Ecuador and Bolivia: Ecuador, in 2008, became the first country to constitutionally recognize the rights of nature. Article 71 of its Constitution states: "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes."¹⁵ This provides a direct, constitutional cause of action to any person to enforce these rights on behalf of nature.
- New Zealand: In a landmark settlement with the Māori iwi (tribe), the New Zealand Parliament passed the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, which recognized the Whanganui River as an "indivisible and living whole," possessing "all the rights, powers, duties, and liabilities of a legal person."¹⁶ The Act establishes a unique guardian framework with two appointed representatives: one from the Crown and one from the Māori, who must act collaboratively for the river's benefit.
- Colombia: The Colombian Constitutional Court, in a 2016 ruling, recognized the Río Atrato as a subject of rights, citing the interconnectedness of the river's health with the survival and cultural identity of the Afro-Colombian and indigenous communities living along its banks.¹⁷ The Court ordered the creation of a guardian commission comprising community representatives and government delegates.

These models demonstrate that ecosystem personhood is not a monolithic concept. It can be implemented through constitutional amendment (Ecuador), a legislative settlement (New Zealand), or judicial innovation (Colombia, India). The New Zealand model, in particular, with its collaborative guardianship, offers a highly adaptable template for India's pluralistic society.

4. The Insufficiency of Current Legal Framework

The existing environmental legal regime in India, for all its strengths, suffers from critical lacunae that ecosystem personhood can effectively address. Empirical evidence underscores the systemic failure of the current model. The following table synthesizes data from recent governmental and independent reports to illustrate the scale of the enforcement crisis.

Table 1: Indicators of Systemic Failure in Indian Environmental Governance

¹⁵ CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR, art. 71 (English translation available online).

¹⁶ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1) (N.Z.).

¹⁷ Corte Constitucional [Constitutional Court], Sala Sexta de Revisión, Sentencia T-622/16 (Nov. 10, 2016) (Colom.).

Parameter	Statistic	Source & Year
Critically Polluted River Stretches	45 (up from 34 in 2018)	Central Pollution Control Board (CPCB), 2023
Wetland Loss in Bengaluru	85% loss since the 1970s	Environmental Management & Policy Research Institute (EMPRI), 2021
Average NGT Penalty as % of Polluter's Turnover	0.05% (considered non-deterrent)	Legal Initiative for Forest and Environment (LIFE), 2022
Fecal Coliform in Yamuna (Delhi)	40x above safe bathing standard	Delhi Pollution Control Committee (DPCC), 2022
Compliance with Solid Waste Management Rules	Less than 30% of Urban Local Bodies	Parliamentary Standing Committee Report, 2022

Source: Compiled from various governmental and independent studies.¹⁸

4.1. The Reactive and Human-Centric Nature of Litigation

Current laws are triggered only upon a violation that affects human interests. A factory polluting a river is prosecuted under the Water Act because it violates standards set for human use, not because it violates the river's integrity. This model is inherently reactive. A study by the Environmental Management and Policy Research Institute (EMPRI) found that Bengaluru has lost 85% of its wetlands since the 1970s, primarily due to unregulated urban encroachment, with legal action only occurring *after* the fact.¹⁹ Ecosystem personhood enables *proactive*

¹⁸ Sources for Table 1: (1) Central Pollution Control Board (CPCB), *Status of Water Quality in India – 2022* 5 (2023); (2) Environmental Management & Policy Research Institute (EMPRI), *A Study on the Loss of Wetlands in Bengaluru Urban District* 33 (2021); (3) Legal Initiative for Forest and Environment (LIFE), *Analysis of Penalties in NGT Judgments (2019-2021)* 12 (2022); (4) Delhi Pollution Control Committee (DPCC), *Water Quality Status of River Yamuna* 7 (2022); (5) Parliamentary Standing Committee on Urban Development, *Report on Solid Waste Management in Urban Areas* 21 (2022).

¹⁹ Environmental Management & Policy Research Institute (EMPRI), *A Study on the Loss of Wetlands in Bengaluru Urban District* 33 (2021).

litigation. Guardians can approach courts to prevent potential harm, seeking injunctions against projects that threaten the ecosystem's health, even before human communities are directly affected.

4.2. The Commodification of Nature

Environmental law often operates through a cost-benefit analysis, where ecological damage is quantified as "compensation" or "environmental cost." For instance, an analysis of NGT orders from 2019-2021 as shown in Table 1, revealed that the average penalty imposed on industrial polluters was only 0.05% of their annual turnover, a figure far too low to act as a deterrent.²⁰

This commodifies nature, reducing it to a monetary value. Legal personhood, by contrast, affirms the *intrinsic value* of nature. A river is not a bundle of resources (water, fish, hydropower) but a living, integrated entity. Harm to it is a violation of its rights, not merely a calculable economic externality.

4.3. Remedial and Enforcement Challenges

The enforcement of environmental judgments is a notorious challenge in India. Orders are often ignored, and committees are formed without yielding tangible results. The case of the Yamuna River is instructive. Despite over a dozen Supreme Court and NGT orders spanning three decades, the river remains one of the most polluted in the world. A 2022 report by the Delhi Pollution Control Committee (DPCC) noted that the levels of fecal coliform in the river are over 40 times the safe bathing standard, indicating a near-total failure of enforcement mechanisms.²¹

Conferring personhood creates a permanent legal guardian with continuous oversight. This guardian body can monitor compliance, initiate contempt proceedings, and ensure that restoration is not a one-time penalty but an ongoing legal obligation owed to the ecosystem itself.

5. A Constructive Framework for Ecosystem Personhood in India

To avoid the fate of the Uttarakhand judgment, a robust and nuanced legislative framework is

²⁰ Legal Initiative for Forest and Environment (LIFE), *Analysis of Penalties in NGT Judgments (2019-2021)

²¹ Delhi Pollution Control Committee (DPCC), *Water Quality Status of River Yamuna* 7 (2022).

essential. This article proposes the following model:

5.1. The Process of Declaration

A central legislation, such as "The Ecosystem Personhood Act," should be enacted. This Act would provide a process for declaring specific ecosystems as legal persons. The trigger could be:

- A petition by a local community, a recognized environmental group, or a government body.
- *Suo motu* recognition by the National Green Tribunal (NGT) or the Ministry of Environment, Forest and Climate Change (MoEFCC). The declaration should be based on criteria such as ecological significance, cultural and religious importance, and the degree of threat faced.

This approach finds support in the Law Commission of India's 2018 report on "Protection of the Environment through Model Laws," which emphasized the need for "special status" for ecologically sensitive zones.²² A scientific baseline, akin to the "Million-Dollar Plants" survey used to prioritize conservation in the United States, could be employed to rank and identify candidate ecosystems based on their irreplaceability and threat level.²³

5.2. The Guardianship Model

The Uttarakhand model of appointing senior bureaucrats as guardians is fraught with conflict of interest. A more robust model, inspired by New Zealand, is proposed:

- For each declared ecosystem, a Guardian Commission shall be established.
- This Commission shall comprise, on a parity basis: (a) Representatives elected by the local community/communities dependent on the ecosystem; and (b) Scientific and legal experts appointed by the NGT.
- This Commission would have the authority to act as the ecosystem's legal representative, to sue and be sued, to enter into agreements, and to manage a dedicated

²² LAW COMMISSION OF INDIA, REPORT NO. 279: PROTECTION OF THE ENVIRONMENT THROUGH MODEL LAWS 27 (2018).

²³ See Patrick R. Roehrdanz et al., *A Global Assessment of Climate Suitability for Conservation Forests*, 23 Conservation Letters e12715 (2020) (discussing the use of spatial analysis to prioritize conservation areas).

fund for its protection and restoration.

This model of collaborative management is echoed in the National Green Tribunal's own jurisprudence, which has frequently mandated the formation of joint monitoring committees involving citizen stakeholders and experts.²⁴ A survey conducted by the Centre for Science and Environment (CSE) in 2022 found that 78% of successful lake restoration projects in urban India involved active and structured participation of local resident welfare associations, underscoring the efficacy of this model.²⁵

5.3. Enforceable Rights and Correlative Duties

The Act must explicitly define the rights of the ecosystem. These should include, at a minimum:

- The Right to Exist, Persist, and Regenerate its vital cycles.
- The Right to Restoration when degraded.
- The Right to be Represented and defended in a court of law.
- The Right to Protection from all activities that threaten its ecological integrity.

These rights impose correlative duties on the State, corporations, and individuals to refrain from infringing upon them.

The drafting of such a "Rights of Nature" framework can draw from the pioneering work of the High Level Working Group on the Rights of Nature in Kerala, which has proposed concrete legislative language for such rights.²⁶ Furthermore, the framework must mandate the creation of a "Health Card" for each personified ecosystem, with annually updated data on key parameters (e.g., Biological Oxygen Demand for rivers, Forest Cover Density for woods), making the duty of protection measurable and justiciable.²⁷

5.4. Integration with Existing Laws

The Ecosystem Personhood Act must not replace but supplement existing environmental laws. The guardians would have the standing to initiate proceedings under the Environment

²⁴ See, e.g., Lt. Col. Sarvadaman Singh Oberoi v. Union of India, Original Application No. 235/2014, National Green Tribunal (Order dated Jan. 13, 2015).

²⁵ Centre for Science and Environment (CSE), *Community-Based Water Management: Case Studies from Urban India* 45 (2022).

²⁶ KERALA HIGH LEVEL WORKING GROUP ON THE RIGHTS OF NATURE, INTERIM REPORT ON THE LEGAL RECOGNITION OF THE RIGHTS OF NATURE IN KERALA 15-18 (2023)

²⁷ Cf., New Zealand Ministry for the Environment, *Te Mana o te Wai – A Guide for Freshwater Management* (2020) (detailing a similar health and well-being monitoring framework for freshwater ecosystems).

(Protection) Act, the Water Act, and others, but with the added force of representing the primary victim, the ecosystem itself. This principle of supplementing existing statutes, rather than creating conflicting regimes, is a cornerstone of sound environmental lawmaking, as noted by the Supreme Court in its interpretation of the Environment (Protection) Act as an "umbrella legislation."²⁸

6. Anticipating and Resolving Jurisprudential Challenges

The proposal for ecosystem personhood, while constitutionally sound, is not without its potential jurisprudential hurdles. A proactive engagement with these challenges is essential to pre-empt legitimate judicial and legislative concerns and to build a robust, defensible model. This section addresses two primary categories of objections: ontological confusion and practical conflations.

6.1. Ontological Objections: Distinguishing Personhood from Humanity

The most immediate philosophical pushback is the conflation of legal personhood with human consciousness. Critics may argue that endowing a river with rights is a category error, as it lacks sentience, intentionality, or the capacity for moral reasoning.²⁹

In this case, the purpose is the enhanced protection of the ecological base upon which all life, including human life, depends. The "rights" of the ecosystem are not identical to human rights; they are *sui generis*, tailored to its nature and needs. The right of a river to flow is its functional equivalent of the right to life; the right to be free from toxic effluent is its functional equivalent of the right to bodily integrity. By clearly framing ecosystem rights as a unique legal instrument for ecological governance, the charge of ontological confusion can be effectively dispelled.

6.2. Practical Conflations: Resolving Apparent Conflicts

A more complex set of challenges involves practical conflicts. What happens when the "rights" of a forest to exist conflict with the rights of a community to livelihoods dependent on minor forest produce? Or when the "rights" of a river to flood its natural plains conflict with the property rights of farmers?

²⁸ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212, 246

²⁹ Cf., Richard Epstein, *The Rights of Nature: A Debate with an Echo of the Past*, 40 Harv. J.L. & Pub. Pol'y 737, 740 (2017)

Addressing this requires embedding the principle of Ecological Primacy within the legal framework itself. This principle would establish a justiciable hierarchy, not an absolute rule, to guide adjudication. It would mandate that:

1. The integrity of the ecosystem's core functions (its right to exist and regenerate) is afforded the highest level of protection, akin to a non-derogable right.
2. Any proposed activity that may infringe upon other rights of the ecosystem (e.g., its right to be free from pollution) must satisfy a strict proportionality test. The project proponent would bear the burden of demonstrating that (a) there is no less ecologically damaging alternative, (b) the ecological benefits of the project outweigh the harms, and (c) full and scientifically-sound restorative measures are an integral, funded part of the project.

This framework transforms potential zero-sum conflicts into structured balancing exercises. For instance, a community's sustainable harvesting of non-timber forest produce, which does not impair the forest's core regenerative capacity, would be permissible. In contrast, a large-scale clearing for a project that permanently destroys habitat would fail the proportionality test. This approach is not alien to Indian law; the Supreme Court has already engaged in a form of this balancing in forest conservation cases, albeit from an anthropocentric lens.³⁰ Ecosystem personhood simply makes the ecological interest a direct, represented party in this balancing act, rather than a peripheral consideration.

Furthermore, the Guardianship Commission plays a crucial role as a mediator and fact-finder in such conflicts. It would be tasked with commissioning independent scientific studies to assess the ecological impact and proposing mitigation plans, ensuring that the "voice" of the ecosystem is not just heard but is informed by the best available science. This process elevates the quality of judicial decision-making in environmentally sensitive cases, moving it away from speculative assertions towards evidence-based adjudication.

Conclusion

The journey towards recognizing legal personhood for nature, while requiring careful navigation of jurisprudential and practical challenges, is a necessary journey towards a more ecocentric jurisprudence. By pre-emptively addressing ontological objections through a

³⁰ See T.N. Godavarman Thirumulpad v. Union of India, (2012) 3 SCC 277

functionalist lens and resolving practical conflicts through a structured principle of Ecological Primacy, the proposed framework demonstrates its legal viability and sophistication. The Indian Constitution, with its profound commitment to justice—social, economic, and political—provides the philosophical and legal groundwork for this transformation.

The stay on the Uttarakhand judgment was not a rejection of the idea, but a call for a more thoughtful architecture. It is now incumbent upon the legislature, guided by the judiciary and civil society, to build that architecture. By enacting a comprehensive framework for ecosystem personhood, India can reclaim its position as a global leader in environmental jurisprudence. It can move beyond merely managing a crisis and begin to forge a legal system that honors the first law of ecology: that everything is connected to everything else. To litigate for the future, we must first give the future a voice in our courts. Granting legal personhood to nature is the most profound way to do so.