
PERSONIFICATION OF “NATURE” IN LEGAL THOUGHT PROCESS: MYTH AND REALITY

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ABSTRACT

Nature or environment is recognised as legal person in varying ways and degrees by a few countries and jurisdictions.¹ It is postulated that nature is endowed with rights of a living person. The conferring of such a status is thought necessary to preserve and conserve nature and to provide her effective protection of the law. Viewed in this perspective, conferment of legal personality on environment enhances environmental outcome.² Nevertheless, nature by itself cannot initiate any legal action for protecting her rights.³ The view that status of personhood is implied in such circumstances is disputable. On the other hand, legal representation of nature in legal forums or proceedings is prudent and acceptable. Therefore it is argued that there should be precise mechanism in legal forums to protect the nature.

The legal personhood of nature in the abovementioned background is now widely accepted. Accordingly, injury and harm caused to nature shall be treated as harm or injury towards human beings. However, some critics say that, such technical adoption of personhood does not have any impact or influence in the eye of the law. They would say that what is usually misunderstood as “*rights of nature*” are in fact “*legal duties*” of human beings owned by them to themselves. It is apprehended that, such conferment of personhood on nature may result in unforeseen or far-reaching consequences. It may be even argued that flow of a river, which is declared a legal person, cannot be restrained by constructing a dam for avoiding floods or for generating electricity and its resources could not be used in any manner since river as a legal person has own rights for restraining any onslaughts. The attempt in the following paragraphs is to examine Nature’s legal personality in the context.

¹ Elizabeth Macpherson, Axel Borchgrevink, Rahul Ranjan & Catalina Vallejo Piedrahita (2021) *Where ordinary laws fall short: ‘riverine rights’ and constitutionalism*, Griffith Law Review, 30:3, 438-473, DOI: 10.1080/10383441.2021.1982119.

² Nicola Pain and Rachel Pepper, “*Can Personhood Protect the Environment? Affording Legal Rights to Nature.*” Fordham International Law Journal, Vol 45:2, 315

³ *Id.* at 367.

Introduction

*Salmond on Jurisprudence*⁴ defines a ‘person’ as any being whom law regards as capable of rights or duties.⁵ Legal person includes natural as well as juristic persons. The Constitution Bench of the Supreme Court of India in *Siddiq M (D) v. Mahant Suresh Das and others*⁶ in another context quoted⁷ the definition of *Salmond* and observed that legal systems extended concept of legal personality beyond natural persons.

However, *Salmond* viewed that an animal is as incapable of having legal rights or duties. The reason is that interest of animals is not legally recognised. Hurting an animal may be wrong to the society or its owner. But it is not considered to be wrong action towards the animal. Because no beast can be owner of any property. In his view, duties towards animals are envisaged in law as duties towards the society. It does not amount to private rights vested in an immediate beneficiary, but it is public rights vested in the community. In *Salmond’s* view, when interest of animal conflict with that of a person, the latter prevails.

On the other hand, in the year 1972, *Christopher D Stone*, an American Professor, in his essay “*Should Trees Have Standing? – Towards Legal Rights For Natural Objects*”⁸ observed that he is seriously proposing to give legal rights to the so called natural objects in environment including oceans, rivers and forests, as in his view nature should be granted rights and should be empowered to lodge legal proceedings in its own right through a guardian. This does not mean that nobody should be allowed to cut down trees. To say that environment should have rights does not mean that it has every right as human beings have or suppose to have. His view is broad enough to take in everything in the environment having the same rights as every other entity in environment. This is necessary to safeguard environment from being endangered. For such guardianship, the doors of judiciary or administration must be opened.

It can be seen that both theories for and against environmental personhood are conflicting. It is necessary to take into account different approaches as truth has variable facets. The main reason highlighted for supporting conferring legal rights to environment is that it

⁴ Fitzgerald P.J., *Salmond on Jurisprudence* (Sweet and Maxwell, 1966).

⁵ Clause 2(j) of the *National Green Tribunal Act, 2010* gives an inclusive definition to the term “Person”.

⁶ 2020 (1) SCC 1

⁷ *Id.* at Para 89

⁸ Christopher D. Stone, “*Should Trees Have Standing?—Towards Legal Rights For Natural Objects*, 45S. Cal.L.Rev. 450(1972).

improves and develops environmental outcomes. It is expected that the same will support advancement of law and legal stewardship in the field. It reduces the impediments of meeting “*standing requirements*” or *locus standi* requirements in litigation. Another argument is that it will change the notion that nature exists only to provide recreational space for humans. In other words, it challenges the concept of narrow and pedantic *anthropocentrism*. Another reason is that granting legal rights to nature will enhance recognition of “*First Nation’s concept of Stewardship*” evolving in the new world.

As is widely conceded and appreciated, the nature of rights conferred upon environment varies drastically. Some rights are expressly conferred by the national Constitutions and Statutes in several jurisdictions.⁹ In some nations, local governments are exercising powers and conferring rights and imposing duties taking into account the impact on environment. In some countries such as India, Colombia and Bangladesh, the judiciary is evolving new rights and obligations through interpretational devices.

During the last decades, several countries endorsed *Christopher Stone’s* idea and conferred personhood on nature and rights on nature. For instance in the year 2006, *Pennsylvania* introduced environmental personhood. Later in 2008, Constitution of *Ecuador*¹⁰ recognised rights of nature. The *Universal Declaration of the Rights of Mother Earth* declared rights of mother earth.¹¹ *Bolivia*¹² also recognised rights of nature by legislation. In 2014, *New Zealand (Aotearoa)* granted personhood to *Te Urewera*, a protected area as per *Te Urewera Act, 2014*¹³. New Zealand experience is considered as a constitutional experiment opening up innovative paths in the direction of transformative changes.¹⁴ In the year 2017 *Australian State of Victoria* enacted *Yarra River Protection Act* [Vic], 2017 (Act No.49/2017) [Aust]. However the river referred to in the Act was not granted personhood rights. In the year 2019, Uganda conferred rights on nature as per *National Environment Act, 2019*. *Mexican State of Colima* amended its Constitution and recognised personhood of nature. Bangladesh High Court declared river as a legal person and as a living entity.¹⁵ Nevertheless, practical viability of these laws is doubted and has to be tested by time.

⁹ New Zealand, Ecuador, Uganda and Bolivia.

¹⁰ Constitution of the Republic of Ecuador, 2008.

¹¹ Adopted at *World People’s Conference of Climate Change and the Rights of Mother Earth*.

¹² *Law of the Rights of Mother Earth*, Law 071 (2010)(Bolivia).

¹³ Act No 51/2014 [N.Z]

¹⁴ *supra* note 1, at 463.

¹⁵ *Human Rights and Peace of Bangl v. Government of Bangl.*, Writ Petition No 13989 / 2016.

The Indian Scene

In India, the Madras High Court in *Periyakaruppan v. The Principal Secretary to Government*¹⁶ declared “Mother Nature” as a “Living Being” having legal entity. It was declared by the Court that nature is having status of a legal person, possessing corresponding rights, duties and liabilities of a living person in order to preserve and conserve the same. The Court went further and held that nature is accorded rights akin to fundamental rights or legal rights or Constitutional rights. According to the Court, such conferment is required for safety, survival, sustenance as well as resurgence of nature. It is required to maintain its status as well as to promote health and well being.¹⁷ It appears that the Court was too emotional in its outlook, rather than considering the viability of the verdict.

Earlier, the High Court of Uttarakhand in *Mohd Salim v. State of Uttarakhand*¹⁸ held that rivers have to be declared as legal persons.¹⁹ Thereafter, the same High Court in *Lalit Miglani v. State of Uttarakhand*²⁰ had further declared that Glaciers including²¹ *Gangotri* and *Yamunotri*, rivers are legal entities / legal persons.²² They have all corresponding rights as well as duties and liabilities of a living person, to conserve and preserve them. The Court further observed that they are entitled to the rights akin to fundamental rights / legal rights. The court also declared that the rights of those legal entities shall be equivalent to rights of human beings and injury/harm caused to them shall be treated as harm/injury caused to human beings.

The Punjab and Haryana High Court in *Karnail Singh and others v. State of Haryana*²³ had, on the other hand, considered the personhood of animals. It was held by that court that the animals cannot be treated as objects or property. It was however concluded that for protecting and promoting greater protection of animals, the animal kingdom entirely including avian as well as aquatic are to be declared as legal entities having a distinct *persona* along with corresponding rights, duties and liabilities of a living person.

¹⁶ Judgment dated 19-4-2022 WP (MD) No 18636 of 2013.

¹⁷ *Id.* The State Government and the Central Government is also directed to protect the “Mother Nature” and take appropriate steps to protect Mother Nature in all possible ways.

¹⁸ AIR 2017 NOC 350

¹⁹ The Supreme Court of India issued stay in SLP (Civil) No 16879/ 2017.

²⁰ Judgment dated 30-11-2017 in Writ Petition (PIL) No 140 of 2015

²¹ Streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls.

²² The Supreme Court of India issued stay in SLP (Civil) Diary No 34250/ 2017.

²³ Judgment dated 31-5-2019 in CRR 533 of 2013.

The Supreme Court of India in *Animal Welfare Board of India V. A.Nagaraj and others*²⁴ had observed that the statutory rights under the *Prevention of Cruelty to Animals Act, 1960* have to be elevated to the status of fundamental rights so that honour and dignity of animals can be secured. It was further observed that such statutory rights guaranteed under the aforesaid Act have to be read along with Article 51-A(g) and (h) of the Indian Constitution, since the said Article is the *Magna Carta* of animal rights.

It is pertinent to note that the declarations made by Indian Courts have adopted a much wider approach than legislations of other jurisdictions.

However, recently, a five member Constitution Bench of the Apex Court of India in *Animal Welfare Board of India v. Union of India*²⁵ had occasion to consider the question whether animals have fundamental rights. The Court observed that there is no precedent on the issue of conferring fundamental right on animals. The Court clarified that earlier decision of the Division Bench in *A Nagaraj case*²⁶ has not held that animals are having such rights. The Constitution Bench observed that protection guaranteed by Article 21 of the Constitution of India is to a person and it will not be prudent to bring animals within the protected mechanism. The Court expressed its doubt as to whether a *habeas corpus* writ could be issued if a stray bull from the street is detained against its unlimited freedom. The Court viewed that in *A Nagaraj case*²⁷ the aforesaid question regarding fundamental rights of animals was left at advisory level or it was framed only as a judicial suggestion. Therefore, the Constitution Bench left the issue to be considered by appropriate legislative body. The Apex court further concluded that Article 14 of the Constitution of India cannot be invoked in the case against animal claiming status as a person. The conclusion of the Court was that testing of the animal welfare legislations can only be at the instance of a juridical person or a human being, who may espouse animal welfare cause. Therefore, the effect of the aforesaid judgment is that animals cannot be considered to have fundamental rights.

Environmental Personhood alone cannot protect the Environment

For expediency, some Courts, while addressing practical issues, as a matter of policy²⁸,

²⁴ 2014(7) SCC 547

²⁵ 2023(9) SCC 322

²⁶ *Animal Welfare Board of India V. A.Nagaraj and others* 2014(7) SCC 547

²⁷ *Animal Welfare Board of India V. A.Nagaraj and others* 2014(7) SCC 547

²⁸ Dias RWM, '*Jurisprudence*', Fifth Edition, LexisNexis 270.

have declared personhood of nature²⁹ as well as animals.³⁰ At first glimpse, it may appear that environmental personhood may have a wide impact on protecting nature. Outwardly it may appear to be a clear devise to prevent destruction of the environment. It is projected as a solution to the impediments in environmental and animal protection litigation regarding standing to sue or *locus standi*. But on a closer look, it is obvious that the reverse is the truth. The conferred personhood by the judiciary in the matter is not at all rational. It is not supported by any reason or convenience. On the other hand, it may have drastic and unexpected societal repercussions. The supporters of such declaration of personhood explain that there need not be reason in conferring personhood.³¹ But such baseless explanation does not stand to reason and cannot claim legal support the declaration of personhood.

In fact, declaration of environmental as well as animal personhood is quite unwarranted in the Indian context. In India, the issue of standing to sue is not a stumbling block in environmental and animal protection litigations. The reason is that Courts in India rightly permit Public Interest Litigations allowing any public-spirited person or organisation to bring environmental or animal protection issue seeking intervention of the Courts. As a result of extensive recognition of Public Interest Litigation in India, unlike in some jurisdictions outside India, *locus standi* is not an obstacle in environmental protection and animal protection matters.

Furthermore, Section 20 of the National Green Tribunal Act, 2010 mandates that the said Tribunal while passing any order, decision or award shall apply the principles of sustainable development, precautionary principle and the “*polluter pays principle*”, which take care of almost all conceivable apprehensions in the matter. Outside India, the bestowal of environmental personhood may eliminate hurdles on the way of environmental litigations in those countries regarding the meeting of *locus standi* requirements to sue. But so far as India is concerned, conferring such personhood for standing is uncalled for. Such technical implementation of personhood has very little impact on the ground.³²

Conclusion

In fact, what is usually addressed and often misunderstood as “*rights of nature*” or “*rights of animals*” are in fact legal duties of humans themselves. Human beings have an

²⁹ Mohd. Salim v. State of Uttarakhand, 2017 SCC OnLine Utt 367

³⁰ *supra* note 23.

³¹ Dias RWM, ‘Jurisprudence’, Fifth Edition, LexisNexis 270.

³² Section 20 of the *National Green Tribunal Act, 2010*.

inherent duty to protect and preserve environment and all living creatures forming part of the same. The Indian Constitution mandates discharge of fundamental duties of citizens of India to protect and improve natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures³³ and to safeguard public property.³⁴ The Right to a healthy environment is part of rights guaranteed under Article 21 of the Constitution. If such duties of human beings are properly discharged by human beings themselves or enforced by law, when it is so necessary, there is no need for apprehension regarding violation of the rights of nature as well as animals. In other words, the failure to fulfill duties on the part of the human beings is wrongly projected some times as violation of the rights of nature or the rights of animals.

If animals are given status of persons, one may, for instance, even argue the extreme proposition that fundamental right under Article 21³⁵ of the Constitution of India which guarantees right to *life and personal liberty* to persons applies to animals also and enforceable as such since animals are declared in the eye of the law as persons. Besides, it is likely to be argued that the State shall not deny animal equality before the law or equal protection of laws pressing into service even Article 14³⁶ of the Constitution of India in such cases. The absurd result in such cases may lead to baseless situation in which “*personal liberty*” of animals could not be touched even in the case of dire need.³⁷ It may even lead to restrictions in regard to milking of cattle. The stupidity of such situations is clear enough. The construction of dams or bridges over rivers could be objected by arguing that the flow of the river, which is declared a legal person, could not be restrained.

While considering nature or animals as legal persons, it acquires the rights as well as duties as a corollary. However, nature or animals cannot be endowed with duties as in the case of human beings. For instance, a river cannot be proceeded against for compensation for its floods or a dog cannot be proceeded against for compensation for attacking a person. Clearly, in the absence of duties enforceable by law, nature as well as animals cannot be considered legal persons by any stretch of imagination. The conferment of personhood to natural

³³ Article 51A(g) of the Constitution of India.

³⁴ Article 51A(i) of the Constitution of India.

³⁵ Article 21 of Constitution of India *guarantees life and personal liberty*.

³⁶ Article 14 of Constitution of India *guarantees equality before the law and the equal protection of the laws*.

³⁷ In *Hasmattullah v. State of Madhya Pradesh*, (1996) 4 SCC 391 it was held by Supreme Court of India that absolute ban on slaughter of bulls and bullocks is not necessary for complying with Article 48 of the Constitution of India.

phenomenon at the instance of the judiciary leads to embarrassing situations. It is beyond the jurisdiction of the Court as envisaged by the Constitution of India.³⁸

More importantly, the Courts in India have no jurisdiction to declare personhood without constitutional, legislative or other legal backing for such declaration.³⁹ It is all the more so because the Constitution of India or the legislations does not contemplate such a declaration by Courts. Juristic personality is essentially a fiction of law, which could be conferred only by the Legislature or could be attributed in some cases by customs having the force of law. Juristic personality cannot be declared by Courts without any Constitutional or legislative basis.

Environmental personhood bestowed by Judiciary may also lead to judiciary encroaching on the other fields. There is no constitutional basis for assuming such jurisdiction.

³⁸ *supra* note 25.

³⁹ *Id.*