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FROM WHANGANUI TO GANGA:
A Study on Environmental Personhood

Naman Kumar Sharma**[*] & **Priyesh Pathak**[**]

[Abstract: *Due to climate change in 2021, India lost $169 bn income that was possible from key sectors of service, manufacturing, agriculture, and construction.1 The month of July in 2023 was recorded as the hottest month in earth's history. The United Nations Chief Antonio Guterres declared the onset of the era of global boiling2 (as opposed to its less severe predecessor 'global warming'). Mr. Guterres believes it is difficult but still possible to limit temperature rise to 1.5 degree Celsius which is the Paris Agreement's goal.3 Can 'Environmental Personhood', that is granting rights to nature, and the natural entities help in this fight? Or is it just a facade that looks good on paper? The article seeks to investigate and answer these questions. Across the world, environmental personhood is granted either to (a) complete nature e.g. Mother Earth ('Panchama') in Ecuador or (b) some parts of nature e.g. Ganga and Yamuna in India.4 This paper is divided into three pparts. The first part*

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[1] PTI, *India suffered income loss of $159 billion in key sectors due to extreme heat in 2021: Report*, THE HINDU (20 October 2022) *available at*: https://www.thehindu.com/business/Economy/india-suffered-income-loss-of-159-billion-in-key-sectors-due-to-extreme-heat-in-2021-report/article66035523.ece#:~:text=India%20suffered%20an%20income%20loss,according%20to%20a%20new%20report (last visited on 20 May 2024).

[2] AFP, *'U.N. chief Antonio Guterres warns Earth in 'era of global boiling''*, THE HINDU (28 July 2023) *available at*: https://www.thehindu.com/sci-tech/energy-and-environment/un-chief-antonio-guterres-warns-earth-in-era-of-global-boiling/article67128097.ece (last visited on 10 May 2024).

[3] UNEP, *'Nations must go further than current Paris pledges or face global warming of 2.5-2.9°C'* (20 November 2023) *available at*: https://www.unep.org/news-and-stories/press-release/nations-must-go-further-current-paris-pledges-or-face-global-warming (last visited on 21 May 2024).

[4] Craig Kaufmann, GUARDIANSHIP ARRANGEMENTS IN RIGHTS OF NATURE LEGAL PROVISIONS, Harmony With Nature United Nations, *available at*: http://files.harmonywithnatureun.org/uploads/upload922.pdf (last visited on 1 May 2024); *See also*, Allison Katherine Athens, *An Indivisible and Living Whole: Do We Value Nature Enough to Grant It Personhood?*, BERKELEY LAW, *available at*: https://lawcat.berkeley.edu/record/1128638?ln=en&v=pdf (last visited on 1 May 2024).

deals with the history and the jurisprudential basis of this concept. The second part discusses the application of this concept around the world- Australia, Bangladesh, Bolivia, Colombia, Ecuador, India, New Zealand and Uganda. The last part attempts a critical analysis of the efficacy of this concept in protecting nature.]

I

Introduction

'Let's nurture nature so that we can have a better future.'

An important legal and conceptual accomplishment that redefines the connection between humans and nature is the idea of environmental personhood, which is quite recent. This humanist perspective has been reflected in the majority of legal systems throughout the world. Historically, nature has been seen as a resource to be used for human benefits. The recognition of the fundamental value of the environment has, however, shifted as a result of growing recognition of environmental degradation and the necessity for sustainable development. The notion of environmental personhood has become increasingly popular across the world and offers a revolutionary strategy for environmental preservation. Through an analytical perspective, this research explores the possibilities and impacts of this new legal notion. Our goal is to get an understanding of how environmental personhood is being applied in various cultural and legal situations by looking at the instances of the 'Whanganui River' in New Zealand and the 'Ganga River' in India. In order to look at the possibility for environmental personhood to transform our perception of nature from one of property to one of value in itself and rights, this research will examine the legal and jurisprudential basis of 'environmental personhood.'

Does the idea of 'environmental personhood', which gives rights to the environment, have a realistic prospect of aiding in sustainable development, or is it just a good research notion? To answer this precise question is the goal of this study. The concepts, jurisprudential grounds and historical background are examined in the first part. With case studies from 'Australia, Bangladesh, Bolivia, Colombia, Ecuador, India, New Zealand, and Uganda', the second part explores its *implementation around the world*. The *efficacy* of this idea in preserving the environment is researched *critically* in the last part of the article. This study offers comparative research of environmental personhood, contributing to the expanding subject of environmental laws and regulations. It contributes to academic discussion by offering new insights on the ways in which legal systems could evolve for safeguarding, more effectively, entities of the nature. It also provides useful guidance for those involved in environmental preservation, highlighting the advantages and disadvantages of granting environmental legal rights.

II

History and the Jurisprudential Basis of Environmental Personhood

Rivers are essential parts of the ecosystem, and environmental protection initiatives have given a lot of emphasis on them, particularly after the historic 'United Nations Conference on the Human Environment in Stockholm in 1972'.[5] Due to the widespread concern, a number of legal frameworks, including the public trust principle, the precautionary principle, and the polluter-pays principle, have been developed with the goal of advancing sustainable development. Despite this, a novel idea is already gaining traction: giving the environment legal personality so that it can stand up for itself. Globally, this progressive perspective is gaining recognition, especially with regard to the acknowledgement of rivers as legal entities.

The raw force of great rivers such as the Ganges, Indus, and Nile, which flow down mountains to lush plains before joining the ocean, has enthralled humans for ages. But with the introduction of sophisticated dams, innovations around the middle of the nineteenth century, a new age focused on 'taming' these bodies of water for farming and other uses began. Although this strategy seemed beneficial at first, it has now shown serious flaws that frequently cause serious ecological harm, or 'ecocide.' Judge Weeramantry of the 'International Court of Justice (ICJ)'[6] promoted 'sustainable development', a concept that emphasises striking a balance between human demands and the safeguarding ecological systems, while balancing the boundary between progress and protecting the environment. Furthermore, it is now well acknowledged that preserving natural flows during dry seasons is crucial for the life and health of the river. As a result, there is an increasing amount of evidence to support the claim that environmental campaigning needs a distinctive voice. The growing push to give rivers legal personhood—that is, to acknowledge them as autonomous beings with their own rights and interests, has been inspired by this point of view.[7]

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[5] United Nations, *United Nations Conference on the Human Environment*, available at: https://www.un.org/en/conferences/environment/stockholm1972 (last visited on 15 May 2024).

[6] *Hungary* v. *Slovakia,* (1998) 37 ILM 162.

[7] Mohan Katarki, *A Personhood To The Rivers For Self-Protection*, LIVELAW (29 April 2022) *available at*: https://www.livelaw.in/columns/a-personhood-to-the-rivers-for-self-protection-international-court-of-justice-icjdamodar-valley-corporation-197822#:~:text=It%20is%20a%20legal%20devise,William%20Douglas%20in%20early%201970s (last visited on 15 May 2024).

Concept and History of Personhood

Personhood is a process by which a legal body is created and established through official incorporation. It gains rights similar to those of a natural person when it is incorporated, including the capacity to sue and be sued in litigation.[8] Black's Law dictionary defines 'any being whom the law regards as capable of rights and duties.'[9] The definition by Salmond is 'any being to whom the law attributes a capability to have interests, and therefore, making them capable of rights, acts, and duties.'[10] The idea of a juristic person undermines the generally accepted view that 'personhood' is exclusive to humans. The legal concept of 'person' has gradually expanded over history. At first limited to naturalised citizens, it has expanded to cover slaves, businesses, and even gods under different legal systems. There are several justifications for expanding 'personhood', including the need to respect cultural values, political and economic considerations, and the desire to safeguard weaker persons[11].

Inanimate objects like idols, vessels, and companies are given rights and obligations by the application of a fiction of law that confers 'legal personality'.[12] However, conventional legal theory frequently associates personhood with characteristics of humans like consciousness and the ability to support lives.[13] For legal experts and activists who want to grant status of the legal person to foetuses, animals, and even plants, this viewpoint appears to be an enormous challenge.[14] Environmental law underwent a revolutionary shift in the early 1970s because to the work of legal experts like Christopher Stone[15] and Justice William Douglas[16]. This trend promoted giving rivers legal status and even suggested giving them a kind of legal personality. Over the past twenty years, several governments have embraced the idea of nature's rights, building on Christopher Stone's legal theory. This adoption of the concept across the world is covered in the next part.

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[8] Sanford A. Schane, *Corporation is a person: The language of a legal fiction*, TUL. L. REV. 61 (1986).

[9] Bryan A Garner, Henry Campbell Black, BLACK'S LAW DICTIONARY (2009).

[10] John W. Salmond, JURISPRUDENCE 224 (1913).

[11] Akshita Jha & Adrija Ghosh, *Is Being a 'Person' Essential for the Environment to Hold Rights? Assessing the Legitimacy of Environmental Personhood and Alternative Approaches* 11 NUJS L. REV. 469 (2018).

[12] Christian Hattenhauer, *Der Menschals Solcher Rechtsfähig– Von der Personzur Rechtsperson*, ECKART KLEIN & CHRISTOPH MENKE, DER MENSCH ALS PERSON UND RECHTSPESON (2011)

[13] *Id*.

[14] *Id*.

[15] Christopher D Stone, *Should trees have standing?—Toward legal rights for natural objects' Environmental rights.* ROUTLEDGE, 283-334 (2017).

[16] *Sierra Club* v. *Morton*, 405 U.S. (727).

'Personhood': A Jurisprudential Aspect

Black's Law Dictionary defines a 'person' as any entity capable of rights and duties.[17] The debate on legal personhood is traced back to Roman scholar Gaius, who classified law into persons and things without specifying criteria, notably treating slaves[18] as both. Justinian's Iuris Civilis adopted this framework, influencing European Roman law.[19] Hugues Doneau advanced the concept, using 'persona' as the foundation of legal analysis, tied to an individual's free status, civil rights, and responsibilities.[20] Hermann Vultejus distinguished 'homo' (human) from 'persona' (human with civil standing), while later jurists like Grotius, Pufendorf, and Wolff developed personhood as a central concept for attributing rights and duties.[21] Salmond, aligning with Black's definition, introduced the interest theory, arguing that personhood requires the capacity for interests affected by others' acts, distinguishing natural persons (humans endowed with personality by law) from legal persons (real or imaginary entities granted personality by legal fiction).[22]

Conventional Western theory, interest theory, and will theory, on personhood, are worth highlighting. Western legal systems, as Kaarlo Tuori notes, traditionally distinguish persons from non-persons based on human-centric criteria: humanity, birth, aliveness, and sentience, rooted in Roman law and codified in texts like the Austrian Civil Code.[23] Natural persons are defined as humans born alive with sentience, excluding entities like fetuses or the deceased, though limited rights may persist.[24] However, modern extensions of legal personhood to non-humans, such as corporations or rivers, expose a gap between internal characteristics (e.g., sentience) and external legal recognition, making these criteria outdated for debates involving AI, animals, or ecosystems. In contrast, the interest theory, articulated by Kramer and Feinberg, attributes rights to entities with interests protected by duties, without requiring human-like traits or legal personhood, typically limiting rights to sentient beings like animals or foetuses capable of perception.[25]

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[17] Bryan A Garner, Henry Campbell Black, BLACK'S LAW DICTIONARY (2009).

[18] Alan Watson, ROMAN SLAVE LAW (1988).

[19] Peter Birks, Grant Mcleod & Krueger, JUSTINIAN'S INSTITUTE (1987).

[20] Visa A.J. Kurki, *Revisiting Legal Personhood*, BLACK'S LAW DICTIONARY (July 2016), available at: http://www.uef.fi/documents/300201/0/Kurki+-+Revisiting+legal+personhood.pdf/56e99525-ba384c05-8034-3505d52d84a0 (Last visited on June 20, 2025).

[21] *Id*

[22] John W Salmond, JURISPRUDENCE (1913); Lon L. Fuller, THE MORALITY OF LAW (1964).

[23] Kaarlo Tuori, CRITICAL LEGAL POSITIVISM (2002).

[24] *Id*

[25] Kramer, GETTING RIGHTS RIGHT (1975); Joel Feinberg, *The Rights of Animals and Unborn Generations,* PHILOSOPHY AND ENVIRONMENTAL CRISIS (1974).

The interest theory diverges from the will theory, which, as advocated by Windscheid, Hart, Simmonds, and Steiner, equates rights with an entity's rational control over duties, akin to an adult human's mental capacity.[26] The will theory views legal personality as comprising active (choice-making) and passive (sentience) elements, emphasizing rights as tools for exercising freedom rather than protecting interests.[27] However, its applicability falters with infants or non-sentient beings, which lack the capacity to exercise will, and it struggles with inalienable rights, reducing its relevance for modern personhood debates.[28] Meanwhile, the interest theory's distinction between subjective (psychological) and objective interests opens avenues for recognizing non-sentient entities like ecosystems, advocating for their inherent value and functional integrity as bases for rights.[29]

III

Application of Environment Personhood

Australia: Victoria state in Australia, passed the 'Yarra River Protection Act'[30] in 2017. The Act is a significant step forward for environmental preservation. Similar to how the Whanganui River is addressed in New Zealand, this legislation acknowledges the 'Yarra River' as a living being. The legislation creates the 'Birrarung Council', an autonomous structure that serves as the river's voice, even though it does not confer upon the river status of legal person. Notably, the 'Wurundjeri Tribe' and the 'Compensation Cultural Heritage Council'[31] have nominated at least two members to the council, indicating their deep ties to the river and their customary right of safeguarding it.

Bangladesh: In a historic decision, a non-profit organisation in Bangladesh used its fundamental right to life to fight against the 'Turag River'[32] and prevalent pollution and intrusion. This landmark case, made possible by 'Article 102 of the Bangladesh's Constitution', aimed to defend the river and stop its devastation. The ruling of the High Court emphasised how important it is to use the public trust concept and relevant water protection regulations to conserve the 'Turag' and other rivers. It also emphasised the

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[26] Paul Graham, *The Will Theory of Rights: A Defence*, 15 LAW AND PHILOSOPHY (1996).

[27] *Id*

[28] Rowan Cruft, *Rights: Beyond Interest Theory and Will Theory?* 23 LAW AND PHILOSOPHY (2004)

[29] *Id*

[30] Yarra River Protection Act, 2017.

[31] *Supra* note 11.

[32] Mari Margil, *Bangladesh Supreme Court upholds rights of rivers*, MEDIUM, [SPOKANE (EUA)] 24 (2020).

precautionary principle, which supports proactive environmental actions, and has its roots in 'Rio Declaration's Principle 15'.

Invoking global precedents such as the 'Atrato River case' in Colombia and the 'Te Awa Tupua Act' in New Zealand, the court rendered a revolutionary ruling, acknowledging the 'Turag River' and all other rivers in Bangladesh as legal persons with rights comparable to those of people. In addition, the court designated the 'National River Conservation Commission' to be the legal custodian ('in loco parentis') of all rivers in Bangladesh, entrusting it with the responsibility of preserving, protecting, and preventing pollution in these waterways[33]. This historic move is a great example for other countries to observe and represents a major advancement in protecting the environment.

Bolivia: Bolivia accorded natural ecosystems significant rights and protections in 2009, a ground-breaking step forward in environmental conservation.[34] This courageous endeavour, which is similar to Ecuador's[35] strategy, gives every person the ability to speak up in favour of the environment. The '2010 Law of the Rights of Mother Earth',[36] which grants fundamental rights to nature itself, is at the centre of these rights. These rights include the 'freedom from pollution, ecological balance, restoration, clean water and air, biodiversity, and life'[37]. Bolivia's system, in contrast to Ecuador's, changes the perspective by recognising nature's own set of rights that are independent of human interests.

This framework places certain obligations on people, groups, and legal organisations while facilitating the preservation of nature's basic requirements. It is consistent with the 'interest theory of rights,' which acknowledges the inherent worth of beings other than humans. But the Bolivian approach does not acknowledge nature as a sentient entity; rather, it does not attribute consciousness to nature. Some contend that although this 'ecocentric approach' is a great advancement, it is limited by Bolivia's state's need to seek 'balanced forms of production and consumption' in order to fulfil the needs of its citizens. This raises the possibility of a conflict between economic growth and environmental preservation, which may prevent the 'Law of the Rights of Mother Earth'[38] from being fully implemented.

Colombia: The 'Atrato River' was acknowledged as a legal entity with rights by Colombia's top court in a historic decision rendered in 2016.[39] This historic choice was

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[33] Nicola Pain & Rachel Pepper, *Can personhood protect the environment? Affording legal rights to nature*, FORDHAM INT'L. L. J. 45, (2021).

[34] The Constitution of Bolivia, 2009.

[35] The Constitution of the Republic of Ecuador, 2008.

[36] *The Rights of Mother Earth Law n. 071/2010*, Bolivia, 2010.

[37] *Id*.

[38] *Id*.

[39] *Id*.

made in the wake of years of serious environmental damage brought on by logging and mining, which polluted the river and changed its natural course. The judiciary has acknowledged the inherent importance of the 'Atrato River'[40], considering it not only a resource but also an essential part of the natural environment and a source of spiritual significance for those who live nearby. The Colombian constitution's protection of biodiversity, cultural heritage, and human rights served as the foundation for this decision. Article 215 of Colombia's Constitution, which allows for the 'declaration of emergencies' in response to serious risks to the nation's ecological balance, was cited by the panel consisting of three judges, chaired by the Chief Judge.[41] They also presented the idea of an 'Ecological Constitution,' which is a collection of rules and regulations aimed at preserving the environment.

The court emphasised the 'biocultural' nexus, acknowledging the close tie that exists among the condition of environment and the health of people.[42] The 'Atrato River Commission' was formed by the court[43] as part of the verdict, with the responsibility of safeguarding, conserving, and restoring the river. Guided by a panel of specialists, this committee consists of two guardians nominated by non-governmental organisations 'World Wildlife Fund Colombia' and the 'Humboldt Institute'. The 'Amazon River' in Colombia has been recognised by the Supreme Court of Justice of Colombia as a 'subject of rights,' using the 'Atrato River case' as precedence.[44] In order to tackle and decrease the pace of deforestation in the Colombian Amazon, the judiciary instructed the 'Presidency of the Republic, the Ministry for the Environment', and those who were affected to create comprehensive action plans, 'short-term', 'medium-term', and 'long-term' plans within a span of four months.

Uganda: The 'National Environment Act'[45], which established legislative rights for the environment kindred to those acknowledged in Ecuador and Bolivia, was enacted by Uganda in March 2019. According to this law, nature has the right 'to exist, persist, maintain and regenerate its vital cycles, structure, functions, and evolutionary processes.'[46] The Act[47] also expands procedural methods, giving anybody the ability to file a suit concerning any infringement of these rights in a court of competent jurisdiction. The Ugandan government set up a special committee to monitor environmental policies in accordance with applicable laws. This body, which is made

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[40] *Center for Social Justice Studies et al.* v. *Presidency of the Republic et al.* T-622/16 (2016).

[41] *Supra* note *43.*

[42] *Id.*

[43] *Id.*

[44] *Future Generations* v. *Ministry of Environment,* STC4360-2018 , Colombia, (2018).

[45] National Environment Act, 2019 (Uganda).

[46] *Id.*

[47] *Id.*

up simply of government ministers, ensures environmental issues are given high-level strategic advice.[48]

Ecuador: In 2008, Ecuador adopted rights for Mother Earth ('Pachamama') through the Constitution.[49] The rights included 'right to exist, maintain and regenerate vital cycles, structure, functions, and evolutionary processes'[50]. Here the rights to Mother Earth are different from natural and legal persons.[51] These rights to mother earth are not above any rights as there is no hierarchy of rights. Further, rights mentioned in constitution can be restricted by other law only with justification.[52] However, what can be considered as justification is not provided in the Constitution. The state owns all the natural resources here.[53] These environmental rights can be exercised by 'persons, communities, peoples, and nations'.[54] These rights are 'fully actionable'.[55] In other words, violation of rights or dismissal of cases (filed for enforcement) is not justified just because there is no framework to regulate it. Till 2019, only 24 cases were filed dealing with environmental rights.[56]

India: There are numerous provisions in the Constitution of India that seek to protect and promote the environment. These provisions can be found in Part III,[57] Part IV,[58] and Part IVA[59]. Till date there have been four major cases that have personified some components of the environment in India. In the 2017 judgement of '*Mohd Salim* v. *State of Uttarakhand'*[60] ('Salim judgement'), rivers Ganga and Yamuna, their tributaries, and streams were held to be legal persons 'with all rights, duties and liabilities of a living person'[61]. This PIL was filed in 2014 by a local resident seeking to stop illegal constructions, mining and pollution along the river Ganga. The PIL never sought legal

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48 *Id*.

49 Art. 71-74, The Constitution of the Republic of Ecuador, 2008.

50 *Supra* note 24.

51 *Supra* note 16.

52 *Supra* note 54, Art. 11(4), 11(8), 71.

53 *Id*. Art. 408.

54 *Id*. Art. 71.

55 *Id*. Art. 11(3).

56 Craig Kaufmann, *Why Rights of Nature Laws are implemented in some cases and not others: The Controlled Comparison of Bolivia and Ecuador*, INTERNATIONAL STUDENTS ASSOCIATION ANNUAL CONFERENCE, TORONTO (29 March 2019) *available at*: <http://files.harmonywithnatureun.org/uploads/upload861.pdf> (last visited 25th May 2024).

57 *See* Art. 21, The Constitution of India, 1950 which among other aspects provides the 'right to clean and pollution free environment' as a fundamental right to every person (*MC Mehta* v. *Union of India,* 1987 AIR 1086). Moreover, using Art. 32, this fundamental right can be enforced by directly approaching the Supreme Court.

58 *See* Art. 48A, The Constitution of India, 1950.

59 *See* Art. 51A(g), The Constitution of India, 1950.

60 Writ Petition (PIL) No.126 of 2014.

61 *Supra* note 11.

personhood for these sacred rivers. Still the court opined that this decision was necessary since 2016 directions to form a Ganga Management Board; to prohibit mining in Ganga River bed and floodplains; and to arrive at a water sharing settlement between Uttar Pradesh and Uttarakhand, were not acted upon.

This judgement relied upon precedents where Hindu idols were declared juristic persons, and the court justified these drastic measures by portraying the dire situation of these rivers.[62] The court also declared legal parents and legal representatives of this river.[63] In New Zealand however, environmental personhood is considered legally mature personhood with no legal parents but just legal representatives. In the later 2017 judgement of *'Lalit Miglani* v. *State of Uttrakhand'*[64], the Uttarakhand High Court again granted legal personhood but this time to 'glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls'.[65] Using 'in loco parentis', the court also declared certain government officers and government bodies to protect and preserve this legal personhood. The court here referred to a New Zealand legislation[66] which granted legal personhood to a park, declared permit-requiring-activities and established a Board to act on its behalf.

Similarly, in the 2019 judgement of '*Karnail Singh* v. *State of Haryana'*[67], the Punjab and Harayana High Court declared 'entire animal kingdom' in the state to have legal personality. In 2020 judgement of the *'Court on its own motion* v. *Chandigarh Administration'*[68], the court granted legal personhood to Sukhna lake, and declared every citizen in Chandigarh can protect this lake as *loco parentis.* However, the Salim case was stayed by the Supreme Court in July 2017.[69] The state arguments were that there will be constitutional impediments for giving effect to High Court's directions on interstate rivers; that in case of damage to property caused by flooding of rivers there will be state liability: and that the grant of living status is not justified considering only the importance of rivers.

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[62] *Supra* note 24.

[63] Using 'in loco parentis' ('in place of parents') the Director of Namami Gange Programme, the Chief Secretary, the Advocate General of Uttarakhand were declared as *legal parents.* Further the Advocate General was also made *legal representative. See* page 10 of *Salim* judgement.

[64] Writ Petition (PIL) No.140 of 2015.

[65] *Supra* note 63.

[66] Te Urewera Act, 2014.

[67] *Karnail Singh* v. *State of Haryana*, 2019 SCC Online P&H 704 (India).

[68] *Court on its own motion* v. *Chandigarh Administration*, (2020) AIRONLINE 2020 P & H 122.

[69] Express News Service, *SC stays Uttarakhand HC order on Ganga, Yamuna living entity status*, INDIAN EXPRESS (8 July 2017) *available at*: https://indianexpress.com/article/india/sc-stays-uttarakhand-hc-order-on-ganga-yamuna-living-entity-status-4740884/ (last visited on 25th May 2024)

New Zealand: Environmental Personhood in New Zealand is extended to two entities- Te Urewera forest and Whanganui river. Like in Ecuador and Bolivia, indigenous people's worldviews played a huge role in New Zealand.[70] Maori tribes or subtribes consider natural entities like mountains or rivers to be their ancestors (*'tupuna'*).[71] Christopher Stone's 1972 article, titled 'Should Trees Have Standing?- Towards Legal Rights For Natural Objects'[72] was a light bulb moment for Mr Morris and Ms Ruru, two Maori academics. Taking inspiration from Prof Stone's paper they argued that all rivers in New Zealand should be granted personhood as it aligns with the Maori and State beliefs.[73]

Four years after their paper, the *Te Urewera Act 2014* came into force granting the forest named Te Urewera legal personhood. This was a result of an agreement between a Maori Tribe and the government. Te Urewera was given all 'rights, powers, duties and liabilities of a legal person'.[74] These functions can be performed by Te Urewera Board, the representative entity framed under the 2014 Act. Then in 2017, the Whanganui river was granted personhood after the culmination of one of the longest standing cases in New Zealand led by Maori Iwi.[75] This was the result of the Te Awa Tupua Act 2017. The Maori Iwi Tribe had historically exercised rights over the river. However, in 1840, the 'Treaty of Waitangi' between Iwi and the British Crown started the tussle. Two versions of the treaty, one in Maori and the other English had conflicting rights which favoured the speakers of that particular language.[76]

The Iwis filed numerous cases between the 1930s and 1960s claiming their historical rights over the river and violation of the Treaty. The Court of Appeal in 1962 decided in favour of the Crown but the Waitangi Tribunal in 1999 ruled in favour of the Iwis stating the 'Treaty had guaranteed Iwis the control, management and ownership over the river'[77] and they never surrendered it.[78] Like the 2014 Act, the Te Awa Tupua granted 'rights, powers, duties and liabilities of a legal person'[79] to Whanganui river but left the

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[70] Abigail Hutchison, *The Whanganui River as a Legal Person*, 39(3) ALTERNATIVE LAW JOURNAL (GAUNT) 179-182 (2014) *available at*: https://heinonline-org.elibraryhnlu.remotexs.in/HOL/LuceneSearch?terms=The+Whanganui+River+as+a+Legal+Person&collection=all&searchtype=advanced&typea=text&tabfrom=&submit=Go&sendit=&all=true (last visited on 1st June 2024).

[71] James Morris and Jacinta Ruru, *Giving Voice to Rivers:Legal Personality as a Vehicle for Recognising Indigenous People's Relationship to Water?* 14(2) AUSTRALIAN INDIGENOUS LAW REVIEW 49 (2010).

[72] *Supra* note 13.

[73] Gwendolyn J. Gordon, 'Environmental personhood', COLUM. J. ENVTL. L. 43-49 (2018).

[74] *Supra* note 24.

[75] *Supra* note 11.

[76] *Supra* note 49.

[77] *Id*.

[78] Waitangi Tribunal, *The Whanganui River Report* 265 (1999).

[79] *Supra* note 24.

functions with *Te Pou Tupua*, the representative body. These two laws have been rarely used as they are not controversial and are supported by both parties (government and the people).[80]

IV

Critical Analysis of Environmental Personhood

This analysis is limited to Indian decisions. While there was a good intention to protect Ganga and Yamuna from pollution, illegal mining and construction, what was not good was declaring them as living persons. Legal person declaration was what was needed. This decision in the Salim case was also a hasty decision considering the eight years of discussion before formulating the legislation for Whanganui river in New Zealand. The court could have opted to request the state/centre for a carefully drafted law on the same.

The content of rights and duties were not defined by the courts. By a mere reading there arises a possibility that the environment has duties and can also be sued in courts. This was nowhere the idea. This could have been avoided had the scope of rights and duties been clarified further. It appeared that the court had accorded human rights and not legal rights. Cynthia and Howard have criticised by noting that giving rights to nature can result in humans seeing them as competing interests.[81] Rather what should be aimed at is to create a system where humans are obligated to protect the environment. Jha and Ghosh suggest adoption of interest theory where rights of the environment are protected because the environment has 'interests which are worthy of being protected'. Thereby, humans would have corresponding duty to protect. This would lead to more discussion on the rights of nature as well as the environment would not be a mere object for protection. Also, there was Humanisatoin of nature rather what should have been done was to recognise nature as living entity.

The decision of the court has resulted in the representation to be filled with more Government appointees and less non-government people. This is certainly not what Prof Stone suggested, or Ecuador/Bolivia has adopted which is the environment being represented by those having interest in it (more non-government people). The court could have even left the creation of legal representation considering there is Public Interest Litigation in India. With the inclusion of injury to the environment, the scope of

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[80] Cyrus R. Vance, Center for International Justice, Earth Law Center, and International Rivers, *Rights of Rivers*, International Rivers, *available at*: <https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf>, (last visited 20th May 2024)

[81] Cynthia Giagnocavo & Howard Goldstein, *Law Reform or World Reform: The Problem of Environmental Rights* 35 MCGILL LAW JOURNAL 346 (1990).

PIL could have been increased to environmental cases. This is also a step back considering other laws where citizens can file cases against polluters.[82]

In New Zealand the case involved indigenous beliefs of personhood, long standing dispute with Crown, legislation as a result. None of which was a case in India, still the court took inspiration from the NZ decision which could have been done better by asking for formulation of a law. This seems to be a case of Judicial overreach. No doubt there are spiritual significance of rivers in both India and NZ still all rights of living persons were given in India whereas limited rights were given in NZ. Also, in Colombia the guardianship was balanced between government and general people and scope of rights was well defined, both of which could have been done in India. The court in India did not take notice of the fact that the Whanganui river, unlike ours, was in a protected area. NZ law also prescribed activities that can be prohibited which was a welcome step. Also, in NZ the living entities were considered mature persons unlike India where *loco parentis* concept was appointed.

V

Conclusion and Suggestions

We saw the history and jurisprudential basis of personhood. We have also discussed the environment and it's status in different countries across the world. Some provide specific parts of nature like river, mountains to be persons (India, NZ) while others like Ecuador, Bolivia consider the whole of nature to be persons. The four cases discussed in India had good intentions but the authors believe they were hasty decisions. Each decision had shortcomings, the common in all was declaration of natural entities as living persons rather than legal persons. The courts got confused and opted for the bigger scoped personhood whereas they should have declared them as legal persons. The scope of rights and duties were not defined where there should not have been any duty in the first place for environmental persons.

In 2018, in Bhutan without giving legal personhood status to the environment, the Royal Court of Justice of Bhutan allowed cases seeking to protect the environment to be admissible considering persons as 'trustees of nature'. Likewise, in the Philippines, cases can be filed on behalf of citizens, unborn or minors for protection of the environment. This provides an alternative to nature or natural entities being declared as legal persons for protection. We can protect the environment without declaring them as legal persons as can be seen from Bhutan and Philippines. The same could be done in India with the relaxation of the PIL standing. Presently, art. 32 and 226 allow PIL to be filed before SC

[82] The Environment Protection Act, 1986, Sec 19; The Air (Pollution and Control of Pollution) Act, 1981, Sec 43; The Water Act, 1974, Sec 49.

and HC respectively when there is violation of FRs or even citizens' rights. By inclusion of injury to the environment in the scope for filing PIL, the troublesome task of deciding legal personhood can be avoided.

This would also ensure non-government participation in protection of the environment which is necessary as it is usually the case that the government takes on development work and therefore expecting them to be protecting the environment also does not promise to be helpful. This can lead to more influx of cases but at the cost of protecting the environment. The role of NGT could be increased for hearing these types of matters which would ensure the judiciary gets relieved from these matters. It is necessary that if environmental personhood is to be used there should be personification of the environment rather than humanisation of the environment. The authors believe environmental personhood can be a tool to protect the environment if the standing for filing cases to protect the environment is opened to the public like in Sukhna Lake case or that the environment could be protected like in Bhutan and Philippines with open 'locus standi'.