Transnational Environmental Law, 10:3 (2021), pp. 467–492 © The Author(s) 2021. Published by Cambridge University Press.
doi:10.1017/S2047102520000424

ARTICLE

Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India

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First published online 15 January 2021

Abstract
A study of the rights regime for environmental protection in India indicates that such protections overlap with constitutional rights guaranteed primarily to citizens or persons under the law. Contemporary jurisprudence has aggressively developed this intersectionality, declaring natural entities to be living persons with fundamental rights analogous to those of human beings. This article explores the role played by two judgments delivered by the Uttarakhand High Court – *Mohammed Salim* v. *State of Uttarakhand* and *Lalit Miglani* v. *State of Uttarakhand* – in the establishment of an effective framework for environmental protection. This is effectuated in both cases by assigning legal personality to rivers and articulating a conceptual shift from the human-centric approach. Accounting for the socio-cultural and spiritual relationships that have received legal protection, this article critically analyzes the judgments, their rationale and contributions to environmental protection. As the judgments articulate a paradigm shift in environmental protection, their effectiveness is best assessed through analyzing the frameworks created for their implementation. While the pronouncement of the Indian courts on the legal personality of rivers is an encouraging paradigm shift in environmental commitment, establishing the rights of nature was undertaken without due attention to the complexities that characterize the Indian socio-politico-religious context and to the legal consequences of bestowing vaguely contoured rights upon natural entities.

Keywords: Indian rivers, Legal personality, Rights of nature, Public trust, *Parens patriae*, Environmental protection

1. INTRODUCTION

In two judgments during 2017 – *Mohammed Salim* v. *State of Uttarakhand* (*Ganga*)[1] and *Lalit Miglani* v. *State of Uttarakhand* (*Glaciers*)[2] – Indian courts designated the

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We thank the anonymous *TEL* reviewers for their valuable comments on earlier drafts of the manuscript.

1 Writ Petition (PIL) No. 126 of 2014 (HC), 20 Mar. 2017.

2 2017 SCC OnLine Utt 392; an alternative citation is 2017 SCC Online Utt 367. The judgment may be accessed at SCC Online (subscription service).

river Ganga and its glacial source, the Gangotri, along with certain other natural features, as 'living entities'. These decisions followed a series of legislative measures and judicial decisions in other countries relating to the rights of nature, where personhood has come to reflect the cultural identity of the people who inhabit the region.[3]

The Constitution of India enjoins to all persons a right to a healthy environment under Article 21, which guarantees the right to life and liberty.[4] Further, Article 51A(g) directs every citizen of India to protect and improve the natural environment, with an emphasis on rivers, among other natural features. These legal provisions represent a predominantly anthropocentric approach, and their adequacy has been tested repeatedly over time. Their contentious nature signals a need to reform India's legal frameworks on environmental protection. With mounting pressures on ecosystems and a sturdier mandate to protect deteriorating water bodies, it has become imperative for Indian courts to innovate beyond the proscriptive mandate of human-centric environmental jurisprudence.

Though appeals have been lodged against both judgments, with the implementation of *Ganga* being stayed by the Supreme Court of India (SCI),[5] the cases are particularly significant for analyzing judicial responses to environmental concerns in India and highlighting the complicated interface of India's relationship with nature, as elements of the sacred.[6] Section 2 of this article outlines the facts and decisions in both cases, and discusses the expansive interpretation of the concept of legal personality to include non-human entities. Section 3 analyzes the *raison d'être* of the judgments and evaluates their role in protecting the environment. Section 4 explores the comparative context of the judgments by examining the development of the rights of nature in other jurisdictions. Section 5 focuses on understanding whether the new legal initiative of granting legal personality to nature improves the existing environmental legal frameworks in India. Section 6 draws conclusions.

2. THE GANGA AND GANGOTRI AS LEGAL PERSONS: FACTS AND BACKGROUND

The Ganga forms an integral part of the Indian ecosystem.[7] The river was given the status of a 'national river'[8] with a coordinating body, the National Ganga River Basin

[3] V. Marshall, *Overturning Aqua Nullius: Securing Aboriginal Rights* (Aboriginal Studies Press, 2017), p. 10; C. Magallanes, 'From Rights to Responsibilities Using Legal Personhood and Guardianship for Rivers', in B. Martin, L. Te Aho & M. Humphries-Kil (eds), *ResponsAbility: Law and Governance for Living Well with the Earth* (Routledge, 2019), pp. 216–39.

[4] *Shantistar Builders* v. *Narayan Khimalal Totame* (1990) 1 SCC 520; *Subhash Kumar* v. *State of Bihar* (1991) 1 SCC 598.

[5] The Supreme Court has grouped together the appeals against the judgments in *Ganga* and *Glaciers*, which has effectively stayed their implementation. See Supreme Court of India, 'Daily Cause List Dated: 16-12-2019', Items 40 and 40.1, pp. 1–155, at 8.

[6] G. Agoramoorthy, 'Sacred Rivers: Their Significance in Hindu Religion' (2015) 54(3) *Journal of Religion and Health*, pp. 1080–90, at 1082.

[7] N. Hasan, R.A Khan & J. Iqbal, 'River Ganga Repository: An Initiative towards the Collection and Dissemination of Knowledge on the River Ganga' (2017) 7(4) *International Journal of Information Dissemination and Technology*, pp. 238–41, at 238.

[8] R. Sanghi, *Our National River Ganga* (Springer, 2014), p. 35.

Authority (NGRBA), being constituted to ensure its continuing protection and management.[9] Through a public interest writ petition,[10] the petitioner, Mohammed Salim, challenged the failure of the Uttarakhand government to cooperate with the central government to constitute the Ganga Management Board, as required by section 80 of the Uttar Pradesh Reorganisation Act 2000.[11] The Uttarakhand High Court (UtK HC), in delivering its judgment, directed the central government to constitute the Ganga Management Board.[12]

The petitioner approached the UtK HC as a consequence of the non-implementation of an earlier direction issued by the Court.[13] The petitioner did not seek a declaration of legal personhood for the river, but directed the attention of the Court to the legislation in New Zealand, which confers legal personhood on the Whanganui river.[14] The Court then proceeded *suo moto* to rely on long-standing theories of legal personhood and earlier SCI decisions that defined juristic persons, to hold the river Ganga to be a legal living entity. It directed the Director of Namami Ganga (a nationwide mission to clean up the river Ganga), the Chief Secretary of Uttarakhand, and the Advocate General of Uttarakhand to be persons *in loco parentis* as the human face to protect, conserve and preserve the rivers and their tributaries.[15]

The *Glaciers* case arose out of a public interest litigation (PIL) filed by advocate Lalit Miglani, highlighting the pollution of the river Ganga.[16] The case was disposed of after directions and orders to control and reverse pollution were issued. However, following the decision of the UtK HC in *Ganga*, the petitioner Lalit Miglani filed a miscellaneous application requesting the UtK HC to declare the Himalayas, glaciers, streams, water bodies and similar to be juristic persons on a par with the river Ganga.[17] The Court accepted this application, and declared a variety of natural features to be juristic persons under the law. In its decision the Court based its rationale on the need to develop more ambitious environmental protection measures. It declared:

> [T]he Glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests[,] wetlands, grasslands, springs and waterfalls, legal entity/legal person/juristic person/juridical person/moral person/artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person,

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9 Ministry of Environment and Forests (MoEF), Government of India, Notification, 20 Feb. 2009, S.O. 521(E), available at: http://moef.gov.in/wp-content/uploads/2018/03/521.pdf.

10 *Mohammed Salim* v. *State of Uttarakhand*, Writ Petition (PIL) No. 126 of 2014, 5 Dec. 2016.

11 Ibid.

12 Ibid.

13 *Ganga*, n. 1 above, para. 6. Both judgments are part of the same writ petition. In environmental matters, courts in India have exhibited a tendency to keep the matters open and issue series of directions without completely disposing of the matter.

14 Te Awa Tupua Act (Whanganui River Claims Settlement), No 7, 2017 (New Zealand); see also E. O'Donnell et al., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) 9(3) *Transnational Environmental Law*, pp. 403–27; M. Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' (2020) 9(3) *Transnational Environmental Law*, pp. 429–53.

15 *Ganga*, n. 1 above, para. 19.

16 *Glaciers*, n. 2 above.

17 Ibid., para. 4.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

> in order to preserve and conserve them. They are also accorded the rights akin to fundamental rights/legal rights.[18]

Both judgments have subsequently been appealed against and the *Ganga* judgment was stayed by the SCI on the grounds of legal and administrative hurdles associated with its implementation.[19] The administrative hurdles, as submitted by the Uttarakhand state government, relate to the cross-border effects in the implementation of the judgment, such as the inability of specific officials from one state to enforce the judgment in other states through which the rivers flow.[20] For example, the judgment declared the state's Chief Secretary and Advocate General to be the parents of the rivers. Both of these officials exercise their functional jurisdiction over matters within the territory of the state, thereby inhibiting their ability to resolve disputes arising outside their jurisdiction.

The legal hurdle manifests through the potential of cross-boundary implications and the consequent liability that can arise from the implementation of the judgment in *Ganga*. The judgment observed that the *loco parentis* doctrine directs the declared parent to protect the dignity of the legal entity over which it enjoys guardianship.[21] This duty entails a responsibility to protect the entity from harm and a failure to discharge the duty enables others to bring an action against the parent.[22] In the appeal against the judgment, the State of Uttarakhand pointed out that liability for pollution arising out of a different state, such as West Bengal, could not be attributed to the Uttarakhand government in accordance with the *Ganga* judgment.

While the argument submitted by the State of Uttarakhand requires careful consideration, it is important to understand the role of the High Court in creating cross-border mechanisms for the protection of the environment. In this context, the Indian Constitution entrusts the courts with the function of 'administer[ing] the laws of the Union as well as the laws of the States' with the paramount consideration of the makers of the Constitution being the insulation of courts from local influence.[23] This approach to the cross-border effects of judicial power is adequately highlighted in the text of the Constitution, which provides for the exercise of writ jurisdiction by a High Court, in which the cause of action arises wholly or partly within the territorial limits of the respective High Court.[24]

As the river Ganga originates in and flows through the territory of Uttarakhand, the application of constitutional provisions implies that the UtK HC would not be

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[18] Ibid., para. 62.2.

[19] *State of Uttarakhand and Others* v. *Mohammed Salim and Others*, Special Leave to Appeal (C) No. 016879/2017, Order dated 7 July 2017 (staying the ruling in the *Salim* case); *Union of India* v. *Lalit Miglani*, Special Leave Petition (Civil) Diary No. 34250/2017.

[20] A. Mandhani, 'SC Stays Uttarakhand HC's Order Declaring Ganga and Yamuna River as Legal Entities', *Live Law*, 8 July 2017, available at: https://www.livelaw.in/sc-stays-uttarakhand-hcs-order-declaring-ganga-yamuna-rivers-living-legal-entities-read-order.

[21] *Maharashtra University of Health Sciences* v. *Satchikitsa Prasarak Mandal* (2010) 3 SCC 786.

[22] *Hira Nath Mishra and Others* v. *The Principal, Rajendra Medical College* (1973) 1 SCC.

[23] M.P. Singh, 'The Federal Scheme', in S. Chowdhury, M. Khosla & P.B. Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press, 2016), pp. 451–65.

[24] Constitution of India, Art. 226(2); see also *ONGC* v. *Utpal Kumar Basu*, 1994 SCC (4) 711.

overreaching in exercising its judicial power to protect the river. However, such an exercise of power would not extend to the establishment of an institutional structure such as the Ganga Management Board, which comprises any number of persons, irrespective of their territorial affiliation. From an implementation perspective the SCI, however, can develop a protection framework that involves relevant stakeholders from the central or other state governments to ensure that all concerned parties are equitably represented in the management of the river.[25]

It is expected that the judgment of the SCI will clarify the implementation challenges, but leave untouched the material aspects related to the conferral of legal personality.[26] The granting of legal personality to nature marks a radical judicial departure from existing approaches under Indian law. The following section explores the expansion of the concept of legal personality under the Indian legal system and attempts to understand the role and significance of natural entities as legal persons.

2.1. *Legal Personality under the Indian Legal Framework*

Whom the law regards as capable of holding rights and duties[27] is not static,[28] but has expanded from being confined to human beings to include 'legal persons' as capable of having a will of their own. The idea of a juristic or legal person as an entity in law, to whom rights and duties may be granted, has been developed in response to the economic, social, and developmental needs of society, with corporations being one of the earliest examples of a non-human entity to be granted the status of a juristic or legal person.[29] Francisco Carnelutti traces this development to the collective interest, noting that 'the person is the meeting point of two elements (*namely*, the economic element and legal element), that is, the crux of the matter where both converge'.[30] According to Carnelutti, where the collective interest of many individuals prompts them to act as one, a unity is allowed to emerge and a legal personality would be acquired to protect the collective interest.[31]

This 'collective interest of society' approach has been noted by the SCI, which has held that the concept of juristic person arose out of the necessity to respond to human development and stood subservient to the needs and faith of society.[32] This

[25] The conferment of legal personhood on rivers in New Zealand has been followed by an elaborate representative scheme of management; see generally L. Te Aho, 'Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand: The Waikato River Settlement' (2010) 20(5) *The Journal of Water Law*, pp. 285–92, at 291; O'Donnell et al., n. 14 above; Tănăsescu, n. 14 above.

[26] The Government of Uttarakhand, the appellants in the instant case, has welcomed the effect of the judgment of giving legal personality to the rivers: O. Ahmed, 'Uttarakhand's Case Points to the Challenges of Giving a River the Rights of a Human', *Scroll.in*, 5 July 2017, available at: https://scroll.in/article/842565/uttarakhands-case-points-to-the-challenges-of-giving-a-river-the-rights-of-a-human.

[27] J. Salmond, *Jurisprudence or the Theory of Law* (Steven and Haynes, 1902), p. 338.

[28] B. Smith, 'Legal Personality' (1928) 37(3) *The Yale Law Journal*, pp. 283–99, at 283.

[29] E. Adriano, 'The Natural Person, Legal Entity or Juridical Person and Juridical Personality' (2015) 4(1) *Penn State Journal of Law and International Affairs*, pp. 363–91, at 376.

[30] F. Carnelutti, *General Theory of Law* (Private Law Publisher, 1955), p. 153.

[31] Ibid.

[32] *Shiromani Gurudwara Prabandhak Committee* v. *Som Nath Dass*, 2000 Tax Pub (DT) 1319 (SC).

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

standard was subsequently applied to confer legal personhood on idols[33] to allow endowments to be made to a deity in the deity's name while ensuring that its management remains with the temple priests.[34] This concept of personhood would later accommodate an expanded notion of the right to life under the Constitution[35] and, consequently, emerging rights-based jurisprudence in favour of non-human entities across the world.[36] The renewed understanding of personhood has provided a new impetus for contemporary Indian juridical approaches, which have identified personhood as a vessel for various rights and duties. The following section articulates the jurisprudential foundations for this development.

2.2. *Personality to Personhood: Living Beings under the Law*

The leap from living being to juristic person began with the transformative constitutionalism movement in India, which sought to preserve the inherent dignity of all persons, irrespective of their human-ness. The SCI in *Animal Welfare Board* v. *A. Nagaraja*[37] decided on the validity of Jallikattu, an ancient animal sporting event accompanying the harvest celebrations in Tamil Nadu, a state in southern India. The SCI observed in its judgment that animals have a right to live with dignity, and a right to food and shelter on a par with that of human beings. The equivalence between animal and man in relation to other rights, however, was not examined in that case.

More recently, the SCI has recognized the rights of elephants to roam freely in the Kaziranga National Park (a prominent sanctuary in north-east India) without any encumbrance from private oil fields, which had been introduced because of a lackadaisical governmental approach to the implementation of forestry laws.[38] Echoing similar strands of jurisprudential thought, the Delhi High Court also ruled that birds must be freed to let them enjoy their natural surroundings, as they have a 'fundamental right to fly'.[39]

These judgments articulate an expansionist interpretation of fundamental rights enshrined in the Indian Constitution. Although the judgments endeavoured to provide specific rights for animals by imposing corresponding obligations on humans and state entities, they did not elevate the status of animals by conferring on them separate legal personality.

In stark comparison, the judgments in *Ganga* and *Glaciers* emerge as radical first steps in the environmental protection movement in India in that they confer legal

[33] *Yogendra Nath Naskar* v. *Commission of Income-Tax, Calcutta*, 1969 SCR (3) 742.

[34] *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi* v. *State of UP*, 1997(2) SCR 1086.

[35] M.P. Jain, *Indian Constitutional Law* (Lexis Nexis Butterworths, 2012), p. 1225.

[36] Switzerland, Germany, and Austria have amended their civil codes to declare that animals are not objects; see V. Gerritsen, 'Animal Welfare in Switzerland' (2013) 1 *Global Journal of Animal Law*, pp. 1–15, at 2.

[37] (2014) 7 SCC 547.

[38] R. Ghai, 'Elephants Have First Right on Forest, Says SC while Ordering Demolition of Numaligarh Refinery Wall', *Down to Earth*, Jan. 2019, available at: https://www.downtoearth.org.in/news/wildlife-biodiversity/elephants-have-first-right-on-forest-says-sc-while-ordering-demolition-of-numaligarh-refinery-wall-62888.

[39] *People for Animals* v. *Mohammed Mohazzim and Others*, Criminal Miscellaneous Case No. 2051/2015 (Delhi HC).

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

personhood onto natural features. The judgments in both cases are being hailed for validating respect for nature and bringing forward a new perspective on man's coexistence with nature. This perspective draws strongly from literature recognizing the Anthropocene era, which has influenced a symbolic shift away from human-centric environmental protection laws.

The term 'Anthropocene', as popularized by Paul Crutzen,[40] underlines the monumental impact of human activity on the earth system. The idea has since gained traction in scientific circles, and extensive efforts have succeeded in declaring it a new geological epoch.[41] The Anthropocene, with its emphasis on humanity's exploitative relationship with nature,[42] presents an opportunity to renegotiate our conventional perceptions of environmental law in favour of new legal tools and concepts founded on ecocentrism.[43] Though lacking wholesale acceptance, 'earth-centred law', 'Anthropocene environmental law', 'planetary boundaries law', and 'Lex Anthropocene' have been proposed as legal governance structures in the Anthropocene.[44]

At the heart of this approach lies the recognition of the rights of nature paradigm,[45] which acts as a focal point for the convergence of these approaches while simultaneously functioning as a powerful tool to mediate successfully between the requirements of humans and the requirements of the environment in the Anthropocene.[46] We note that the development of environmental law in the Anthropocene requires this convergence to be fleshed out through court decisions, as the conferral of legal personality on natural entities can potentially foster environmental protection in a unique manner. The following section will analyze the *raison d'être* of the judgments and critically evaluate their role in the protection of the environment.

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[40] P.J. Crutzen, 'The "Anthropocene"', in E. Ehlers & T. Krafft (eds), *Earth System Science in the Anthropocene* (Springer, 2006), pp. 13–8; P.J. Crutzen & E.F. Stoermer, 'The Anthropocene' (2000) 41 *Global Change Newsletter*, pp. 17–8.

[41] J. Zalasiewicz et al., 'The Working Group on the Anthropocene: Summary of Evidence and Interim Recommendations' (2017) 19 *Anthropocene*, pp. 55–60; Anthropocene Working Group, 'Results of Binding Vote by AWG', *Sub-Commission on Quaternary Stratigraphy*, 21 May 2019, available at: http://quaternary.stratigraphy.org/working-groups/anthropocene.

[42] W. Steffen, P.J. Crutzen & J.R. McNeill, 'The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature' (2007) 36(8) *Ambio*, pp. 614–21.

[43] L.J. Kotzé, 'Rethinking Global Environmental Law and Governance in the Anthropocene' (2015) 32(2) *Journal of Energy & Natural Resources Law*, pp. 121–56; L.J. Kotze, *Environmental Law and Governance for the Anthropocene* (Hart, 2017), p. 78.

[44] L.J. Kotzé, 'Earth System Law for the Anthropocene' (2019) 11(23) *Sustainability*, pp. 6796–7009, at 6798.

[45] N.A. Robinson, 'Fundamental Principles of Law for the Anthropocene?' (2014) 44(1–2) *Environmental Policy & Law*, pp. 13–26, at 19; M.V. Berros, 'Rights of Nature in the Anthropocene: Towards the Democratization of Environmental Law?', in M. Lim (ed.), *Charting Environmental Law Futures in the Anthropocene* (Springer, 2019), pp. 21–31.

[46] S. Knauß, 'Conceptualising Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador' (2018) 31 *New Zealand and Indian Journal of Agricultural and Environmental Ethics*, pp. 703–22, at 704.

3. THE GANGA AND GANGOTRI AS LEGAL PERSONS: IMPACT, RATIONALE, AND RIGHTS

3.1. *Impact*

Although the judgments are the subject of appeal and the implementation of the *Ganga* judgment has been stayed, *Ganga* and *Glaciers* are significant for their illustration of a new tool of environmental protection in India. Under the Constitution, High Courts are subordinate to the SCI but exercise superintendence over all courts and tribunals within their jurisdiction.[47] The SCI has previously observed that a stay in the operation of a High Court judgment does not destroy its binding effect, as the SCI has had no opportunity to establish a proposition that is inconsistent with that declared by the relevant High Court.[48] Therefore, irrespective of the stay order, the judgments in *Ganga* and *Glaciers* are binding on lower courts and tribunals in Uttarakhand.

High Court judgments also have persuasive value in other High Courts across the territory of India.[49] The persuasive value of *Ganga* and *Glaciers* is best understood by analyzing two High Court judgments delivered subsequently. The first decision concerned the treatment of horses that were being transported across the India-Nepal border.[50] The second case, a revision petition filed before the Punjab and Haryana High Court (P&H HC), concerned the unlicensed export of cows from the state of Haryana to the state of Uttar Pradesh, in contravention of the provisions of state laws regulating the slaughter of cows (the Punjab Prohibition of Cow Slaughter Act, 1955).[51] Highlighting the plight of the animals being subjected to cruelty, the judgments respectively declared that citizens throughout the State of Uttarakhand and the State of Haryana were 'persons *in loco parentis* as the human face for the welfare and protection of animals'.[52] Both judgments went one step further to confer on animals a right of way akin to a citizen's constitutional right to move freely within the country.[53]

Ganga and *Glaciers* have also influenced legislative processes. The legislative assembly of the state of Madhya Pradesh has passed a resolution granting the Narmada river legal personality.[54] A Bill is expected to follow the resolution and provide a comprehensive legal framework that outlines the rights and responsibilities in relation to the river.[55] An official or an organization will be entrusted with the obligation of filing

[47] Constitution of India, Art. 227.

[48] *Shree Chamundi Mopeds Ltd* v. *Church of South India Trust Association*, 1992 SCR (2) 999; *Piyush Kanti Chowdhury* v. *State of West Bengal* (2007) 23 CHN 178.

[49] *All India Reporter Karamchari Sangh* v. *All India Reporter Ltd*, 1988 SCR (3) 774; *Pooran Chandra Joshi* v. *Biswan Chandra Harris*, Civil Appeal No. 6139 of 2009.

[50] *Narayan Dutt Bhatt* v. *Union of India*, 2018 SCC Online Utt. 645.

[51] *Karnail Singh* v. *State of Haryana*, 2019 SCC Online P&H 704.

[52] *Narayan Dutt Bhatt*, n. 50 above, para. 99; *Karnail Singh*, n. 51 above, para. 95.

[53] *Narayan Dutt Bhatt*, ibid, para. 99; *Karnail Singh*, ibid., para. 26.

[54] N. Ciecierska-Holmes et al., *Environmental Policy in India* (Routledge, 2019), p. 128.

[55] M. Ghatwai, 'Madhya Pradesh Assembly Declares Narmada Living Entity', *Indian Express*, 4 May 2017, available at: https://indianexpress.com/article/india/madhya-pradesh-assembly-declares-narmada-living-entity-4639713.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

claims on behalf of the river.[56] The concept of legal personality for natural entities has also been recognized by the SCI, which recently issued a notice on a petition for the recognition of trees as legal persons.[57] The impact of the judgment has extended to foreign jurisdictions, with the High Court Division of the Bangladeshi Supreme Court relying extensively on the ratio in *Ganga* to declare the Turag river a legal person.[58]

In sum, the *Ganga* and *Glaciers* judgments are pioneers in India's attempt to recognize the rights of nature, and have influenced legislative and judicial responses towards developing the rights of nature in both domestic and foreign legal systems. The judgments demonstrate a marked shift in the perception of nature's legal rights, and set forth the judicial context for debating such rights in India and elsewhere.

While recognizing the relevance of the judgments as an important step in understanding nature as a legal person, it is also important to scrutinize the judgments for their legal rationale. The judgments have traced the legal rationale of the decisions to religion, morality, and *parens patriae*, and have also equated the rights of nature with human rights. The next section of this article discusses the legal rationale and mechanisms employed by the courts in elevating and operationalizing the legal personality of the river Ganga and the glaciers.

3.2. *Rationale*

Protection of faith

Indian jurisprudence has expanded the scope of legal personality based on the economic, social, and developmental needs of society. The UtK HC in *Ganga* considered the declaration of personhood for the Ganga and Yamuna rivers as an extraordinary measure aimed to preserve their existence.[59] The rationale behind these judgments is found in the negligent attitude of the Uttarakhand state government towards the protection of rivers,[60] the constitutional provisions of Directive Principles of State Policy and Fundamental Duties,[61] and reference to religion. The UtK HC substantiates the importance of this link to religion as it makes several observations about the relevance of the river Ganga to Hindus. A passage from the judgment reads as follows:

> Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep spiritual connection with Rivers Ganges and Yamuna. According to Hindu beliefs, a dip in River Ganga can wash away all the sins. The Ganga is also called 'Ganga Maa'.[62]

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[56] Ibid.

[57] *Sheela Barse* v. *State of Uttar Pradesh and Ors*, Writ Petition (Civil) No. 1472/2019 (SC).

[58] *Human Rights and Peace for Bangladesh* v. *Government of Bangladesh*, Writ Petition No. 13989 of 2016 (Bangladesh SC).

[59] *Ganga*, n. 1 above, para. 10.

[60] Ibid., para. 9.

[61] Ibid., para. 18.

[62] Ibid., para. 11.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

Further, the UtK HC declares that the rivers Ganga and Yamuna were 'required to be declared as legal persons/living beings' to 'protect the recognition and the faith of society'.[63] The *Glaciers* judgment also refers to religious belief as one of the reasons to expand the scope of legal entities to include nature.[64]

The use of religion as a rationale for determining the legal status of nature sits uncomfortably within the secular legal system of India. The river Ganga is a national river and underlining its religious and spiritual connection has the cataclysmic effect of strengthening the river's bond with a religion, while ignoring and eliding the broad spectrum of community-based interests associated with the river. Instead of addressing the ecological destruction faced by the river systems, emphasizing the inadequacies of the existing legal provisions and the need to declare rivers as a legal entity to preserve their existence, the UtK HC framed the need for environmental protection in terms of the religious and spiritual significance of the rivers. This approach leads to difficult questions: to what extent are religious sentiments to be reflected in interpreting and initiating legal remedies in a secular society, and how do such sentiments influence the genesis of legal doctrines to protect the environment?

The answer is premised on understanding the interaction between religion and environmental protection, an interaction which the literature has identified as both empowering and conflicting. Lynn White has highlighted the ecological crisis of the west as a product of attempts to accommodate the dominant Christian narrative of the supremacy of man over nature.[65] This narrative was used to justify not only the exploitation of nature by man but also to assign to man responsibility for and guardianship of nature.[66] However, in response to White's thesis, others have highlighted relevant religious scriptures that emphasize the importance of environmental protection.[67]

In the Indian context, studies have revealed similarly conflicting positions, with some emphasizing the positive and beneficial role of religion for environmental protection.[68] Environmental movements in India, including the Chipko movement and anti-Tehri dam protests, attribute their efforts not only to ecological or economic positions but also to religious beliefs.[69] Others have underlined the absence of a link between the

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63 Ibid., para. 16.

64 *Glaciers*, n. 2 above, para. 60.

65 L. White, 'The Historical Roots of Our Ecologic Crisis' (1967) 155(3767) *Science*, pp. 1203–7.

66 J. Boersema, A. Blowers & A. Martin, 'The Religion-Environment Connection' (2008) 5(4) *Environmental Sciences*, pp. 217–21.

67 O.P. Dwivedi, 'Hindu Religion and Environmental Well-Being', in R.S. Gottlieb (ed.), *The Oxford Handbook of Religion and Ecology* (Oxford University Press, 2006), pp. 1–22; R.S. Gottlieb, *This Sacred Earth: Religion, Nature, Environment* (Routledge, 2006), p. 136.

68 E. Tomalin, 'The Limitations of Religious Environmentalism in India' (2002) 6(1) *World Views*, pp. 12–30; O.P. Dwivedi, 'Human Responsibility and the Environment: A Hindu Perspective' (1993) 6(8) *Journal of Hindu-Christian Studies*, pp. 19–26; V.V. Shenoy, 'Eco-Spirituality: Case Studies on Hinduism and Environmentalism in Contemporary India' (Honours thesis, Bucknell University, Lewisburg, PA (United States), 2 May 2016), p. 8; T.R. Dunlap, *Faith in Nature: Environmentalism as Religious Quest* (University of Washington Press, 2004), p. 107.

69 *Dwivedi*, n. 68 above, p. 24.

sacredness of a river and its ecological health.[70] Moreover, religious tenets may differ from some of the actual practices that are rooted in religious beliefs. Some religious practices have been directly responsible for environmental degradation[71] and have required judicial intervention. For example, the SCI has had to step in to regulate the use of firecrackers and the resulting pollution during the Hindu festival of Diwali, and balance environmental obligations with the cultural-spiritual value of the festival to Indians.[72] The literature on the subject thus presents a contradictory and complex picture of the role of religious practices in reducing or increasing ecological impacts.[73]

A rich body of jurisprudence on law and religion has developed in India following various lines of enquiry. These enquiries are entrenched mainly in the idea that religion is a robust social force, is in part constituted by law,[74] but is simultaneously something to be kept at a distance from the law.[75] In the context of declaring idols as legal entities, for example, Indian courts have observed that 'if the people believe in the temples' religious efficacy, no other requirement exists'.[76] In the context of environmental protection, courts have occasionally considered religious beliefs as a fertile source of judicial thought for the preservation of the ecosystem.[77] Although Hindus consider the rivers Ganga and Yamuna to be sacred, both have been misused, exploited, polluted, and overused. This factual scenario challenges the Court's rationale of linking religious beliefs with ecological preservation.

Moderating the influence of religion in matters of law is not a new task for Indian courts. In *Orissa Mining Corporation* v. *Union of India and Others*, the SCI addressed issues related to mining in the Niyamgiri Hills, which the Dongria Kondh (the tribes who inhabit the region) consider as the abode of a spiritual deity. The Court referred to the religious freedoms guaranteed to individuals under Articles 25 and 26 of the

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70 C. Lokgariwar et al., 'Including Cultural Water Requirements in Environmental Flow Assessment: An Example from the Upper Ganga River, India' (2014) 39(1) *Water International*, pp. 81–96; J. O'Keeffe et al., *Assessment of Environmental Flows* (World Wildlife Fund, 2012), p. 8; V. Tare et al., *Environmental Flows for Kumbh 2013 at Triveni Sangam, Allahabad* (World Wildlife Fund, 2013), p. 7; A. Harwood et al., *Listen to the River: Lessons from a Global Review of Environmental Flow Success Stories* (World Wildlife Fund UK, 2017), pp. 15-7.

71 J.D. Proctor & E. Berry, 'Social Science on Religion and Nature', in B. Taylor (ed.), *Encyclopedia of Religion and Nature* (Thoemmes Continuum, 2005), pp. 1571–7, at 1571.

72 P. Mittal, 'Supreme Court Rules out Blanket Ban, Allows 2 hour Window to Burst Crackers', *Live Mint*, 23 Oct. 2018, available at: https://www.livemint.com/Politics/WgGTgSZuT3nzkNdC9amZ6J/SC-refuses-blanket-ban-on-firecrackers-allows-conditional-s.html.

73 D.E. Sherkat & C.G. Ellison, 'Structuring the Religion-Environment Connection: Identifying Religious Influences on Environmental Concern and Activism' (2007) 46(1) *Journal for the Scientific Study of Religion*, pp. 71–85, at 74–5; E. Woodrum & M.J. Wolkomir, 'Religious Effects on Environmentalism' (1997) 17(2) *Sociological Spectrum*, pp. 223–34, at 233; Boersema, Blowers & Martin, n. 66 above; W. Jenkins & C.K. Chapple, 'Religion and Environment' (2011) 36(1) *Annual Review of Environment and Resources*, pp. 441–63.

74 G. Tarabou, 'Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism' (2018) 17 *South Asia Multidisciplinary Academic Journal*, pp. 1–20, at 1.

75 Ibid., p. 4.

76 *Ganga*, n. 1 above, para. 16.

77 *M.C. Mehta* v. *Union of India and Others*, National Green Tribunal (NGT) Judgment, 1 Jan. 2015 (the judgment refers to the Ganga as a Holy River).

Constitution[78] as intended guidelines for community life.[79] Though many people have hailed the judgment as a step in the right direction, there is scepticism and trepidation over the invocation of religious rights. It has been argued that an issue of compliance with the law on forest rights was reduced to a mere violation of religious rights, with ecological considerations not being discussed, although these too could have supported the decision.[80] The cases thus raise misgivings about relying on religious argument as an instrument of environmental protection.

Further, there is a difference between invoking the religious significance of rivers as an additional argument to stimulate environmental protection on the one hand, and crafting the conferral of legal personality reliant on the normativity of a particular religion on the other. Religion, with its strong normative character and emphasis on 'individual duties', can significantly influence behavioural change with regard to environmental protection. However, the *Ganga* and *Glaciers* judgments have not merely highlighted the religious significance of the rivers as a robust force in reversing the trend of ecological destruction; they have also declared the legal personality of the rivers to protect a particular religious faith, thereby making environmental protection subservient to the religious beliefs.

Whenever Indian courts have relied on a religious rationale to expand the scope of legal personality, they have been influenced by the need to recognize and maintain the functional autonomy of religious institutions. However, compared with idols, a religious rationale is problematic in the case of rivers in that rivers do not exist and operate solely in the context of religion.[81] Even non-sacred rivers should be accorded legal personality and sacredness cannot be the yardstick for preferential environmental protection.[82] Thus, the conferment of legal personhood based on a flawed rationale reflects the Court's lack of a holistic understanding about the functioning of nature. The role of law in protecting religion and, conversely, the role of religion in the formation and implementation of law become relevant here. References to religion can be justified if the approach of the court is to consider faith as a critical factor, among others. However, when the protection of faith rather than environmental protection becomes the primary object of the judgment, it may engender legal challenges and can be deeply problematic in a secular societal context. Many beliefs revolve around the river Ganga. One such belief is that the sanctity of the river makes it religiously significant for the performance of the last rites among pious Hindus. A consequence of such rituals is

[78] S. Jolly & Z. Makuch, 'Procedural and Substantive Innovations Propounded by the Indian Judiciary in Balancing Protection of Environment and Development: A Legal Analysis', in C. Voigt & Z. Makuch (eds), *Courts and the Environment* (Edward Elgar, 2018), pp. 142–68, at 142.

[79] S. Jolly, 'The Vedanta (Niyamgiri) Case: Promoting Environmental Justice and Sustainable Development', in S. Atapattu, C. Gonzalez & S. Seck (eds), *Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press, 2021 forthcoming).

[80] I. Chaturvedi, 'A Critical Study of Free and Prior Informed Consent in the Development of the Right to Development: Can Consent be Withheld?' (2014) 5 *Journal of Indian Law & Society*, pp. 37–60.

[81] A. Kothari & S. Bajpai, 'Rivers and Human Rights: We Are the River, the River Is Us' (2017) 52(37) *Economic & Political Weekly*, pp. 103–19, at 108.

[82] R. Brara, 'Courting Nature: Advances in Indian Jurisprudence', in A. Hillebret & M. Berros (eds), *Can Nature Have Rights?* (RCC Perspectives, 2017), pp. 31–7, at 35.

the immersion of mortal remains, ashes or ritualistic remains in the river, which causes high levels of pollution.[83] This practice historically is long-standing and has resulted in major ecological degradation despite the legislature outlawing it a decade ago.[84] It may thus be counterproductive to accord legal personality to rivers using a religious rationale, as this might bolster the unabated continuation of religious practices that result in the pollution of rivers. The backdoor entry of religious principles, even in good faith, may result in adverse legal consequences, ecological harm, and violation of constitutional principles.

Finally, it is important to reflect on the cases in their wider socio-political context. The social and political milieu in India has seen a rise in policymaking on religious matters, which has exposed the work of the courts to intense scrutiny.[85] The *Ganga* and *Glaciers* judgments are therefore part of a wider debate on the relation between law and religion, transcending the field of environmental law. It is relevant and necessary in this context to interrogate the reasons that cite religion as a motivation for environmental protection. Although religion constituted a major rationale for the judicial conferral of legal personality on Indian rivers because of their sacrosanct status for Hindus, this was not done with a view to elevate a Hindu political ideology. Evidence suggests that the framework for river protection was motivated by a secular agenda.[86] Courts continue to impose sanctions on religious activities that pollute the environment, irrespective of religion.[87] The best explanation for the judges' motives in citing religious texts therefore remains that they acted on personal beliefs.

The use of religious imagery in a judgment, however, may have unforeseen political consequences. In light of the varied and complex political factors that accompany some cases in India, such judgments may be used to further a political purpose, as evidenced by the fallout of the *Shayara Bano* judgment.[88] Previously, issues such as interstate

[83] Press Trust of India, 'Floating Bodies, Funeral on Banks Main Causes of Ganga Pollution: ITBP', *The Economic Times*, 21 Dec. 2015, available at: https://economictimes.indiatimes.com/news/politics-and-nation/floating-bodies-funeral-on-banks-main-causes-of-ganga-pollution-itbp/articleshow/50273325.cms?from=mdr.

[84] Harvard Divinity School, 'Pollution and India's Living River', Hinduism Case Study, 2018, p. 1, available at: https://rpl.hds.harvard.edu/relgion-in-context/case-studies/climate-change/pollution-indias-living-river.

[85] H.S. Bal, 'The Transformation of India is Nearly Complete', *New York Times*, 11 Nov. 2019, available at: https://www.nytimes.com/2019/11/11/opinion/india-ayodhya-temple-ruling.html; M. Vaishnav, 'Religious Nationalism and India's Future', *Carnegie Endowment for International Peace*, 4 Apr. 2019, available at: https://carnegieendowment.org/2019/04/04/religious-nationalism-and-india-s-future-pub-78703.

[86] IANS, 'NGP Has Improved Ganga Water Quality: Govt', *Outlook*, 10 Feb. 2020, available at: https://www.outlookindia.com/newsscroll/ngp-has-improved-ganga-water-quality-govt/1730874.

[87] S. Ghosh, 'NGT Holds Sri Sri's Art of Living Responsible for Damage to Yamuna's Floodplains', *The Hindu*, 7 Dec. 2017, available at: https://www.thehindu.com/news/national/ngt-holds-sri-sris-art-of-living-responsible-for-damaging-yamuna-floodplains/article21289249.ece.

[88] The SCI, in 2017, decided to strike down the practice of 'triple Talaq' (the pronouncement of instant divorce by a Muslim husband against his wife) as arbitrary and violative of the constitutional guarantee of equality under Art. 14. The judgment was succeeded by the passing of the Muslim Women (Protection of Rights on Divorce) Act 2019, which made triple Talaq illegal and punishable by law. The contents of the judgment and the consequent law have been used by entities to further political debate on religious personal law: *Shayara Bano* v. *Union of India* (2017) 9 SCC 1; see also 'Examining the Political Will Behind the Triple Talaq Debate: A Reading List', *EPW Engage*, 14 Aug. 2018, available at: https://www.epw.in/engage/article/examining-political-will-behind-triple-talaq-reading-list.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

water sharing in India have been politically sensitive, polarizing, and have created fault lines in community-led governance of natural resources. Political parties have already compared the river and its inhabitants with religious figures.[89] Similar messages emanating from judicial decisions could be misappropriated by political elites in a way that might lead to the exclusion of certain communities in the cultural discourse on river conservation. In a secular legal system, conferring personhood on a national river for the goal of safeguarding religious beliefs is legally problematic, as rivers cannot be tied with any particular religious belief. The concept of legal personality is a creation of law and, to be effective, it must be grounded in strong legal principles. In a legally laudable development the *Ganga* decision has been stayed by the SCI, which looked for concrete legal justification for conferring legal personality on the rivers rather than an appeal to faith.[90]

Moral duty to protect the environment

While the Court has referred primarily to the protection of faith as the reason for conferring legal personhood on rivers, it has also emphasized constitutional and moral obligations to protect the environment. In *Glaciers* it stated:

> All persons have a constitutional and moral responsibility to endeavour to avoid damage or injury to nature *(in damno vitando)*. Any person causing any injury and harm, intentionally or unintentionally, to the Himalayas, glaciers, rivers, streams, rivulets, lakes, air, meadows, dales, jungles and forests is liable to be proceeded against under the common law, penal laws, environmental laws and other statutory enactments governing the field.[91]

Morality often guides the law and, if we consider that the assignment of legal personality depends on a society's value system,[92] reliance on morality can be justified as a strong force in lawmaking. However, Indian jurisprudence has fleshed out the distinction between social morality and constitutional morality, while upholding constitutional morality.[93] By referring to the moral obligation of individuals to protect the environment and prescribing legal sanctions for the same failure, the Court in *Glaciers* conflated a moral responsibility with a constitutional mandate. This conflation of moral responsibility with a constitutional mandate can lead to ambiguity in the imposition of legal sanctions, as legal sanctions are imposed only for the violation of constitutional morality.

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89 'Ganga Politics: How the Holy River Turned into the Epicentre of Campaigning in UP Ahead of Lok Sabha Polls', *Firstpost*, 18 Mar. 2019, available at: https://www.firstpost.com/politics/ganga-politics-how-the-holy-river-turned-into-the-epicentre-of-campaigning-in-up-ahead-of-lok-sabha-polls-6281341.html.

90 *State of Uttarakhand* v. *Mohd Salim*, n. 19 above.

91 *Glaciers*, n. 2 above, para. 60.

92 A. Hutchison, 'The Whanganui River as a Legal Person' (2014) 39(3) *Alternative Law Journal*, pp. 179–82, at 180.

93 *Navtej Singh Johar* v. *Union of India* (2018) 1 SCC 791; *Indian Young Lawyers Association* v. *State of Kerala*, 2018 SCC OnLine Ker 5802.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

3.3 *Delimiting the Contours of Rights and Duties*

Recalibration of rights and responsibilities

The Court in *Glaciers* was concerned mainly with the protection and preservation of the river system. However, arguably it paid insufficient attention to the dilemmas to which its decision would lead, such as the difficult recalibration of the relation between rights and responsibilities. The judgment implies that human beings can be held liable for injury or harm caused to natural entities. However, the judgment fails to explain whether natural entities can be held legally accountable in turn. If a forest must be cleared for the protection of the river, can an action lie between the two entities? Such cases call for a difficult balancing exercise between the rights of these entities. The question will be whether this balancing act will serve to protect and preserve the stand-alone rights of nature or whether it will take in the broader context of development, bringing anthropocentrism again to centre stage.

A pointer to such a dilemma arose before the UtK HC immediately after its declaration of the Ganga as a legal entity. A case was filed in the UtK HC, which had to issue a legal notice to the river Ganga in relation to a proposal of the state government to construct a garbage dump in Rishikesh, a town through which the river flows.[94] Though the case was dismissed, the matter highlights the complexities surrounding the imposition of liability on the river for acts over which it has virtually no control. This scenario clearly points to the fact that the decision to declare the river Ganga as a legal entity was an abrupt and impulsive development without a real understanding of the socio-cultural settings and the functioning of nature in a deep manner. The Indian response seeks to amalgamate rights, duties and responsibilities into a 'person' in a manner that blurs the lines between legal and human rights.

Blurring the line between legal personhood and human rights

One of the fundamental requirements of legal personality is the clear definition of the content and demarcation of the scope of rights and duties granted to such persons.[95] For instance, corporate legal personhood characteristically confers the right to enter into contracts, the right to own property, and the right of standing.[96] In *Glaciers*, the UtK HC stated that natural entities would enjoy rights corresponding with those of a living person, including fundamental rights. Having a clearly defined set of rights – such as the rights to exist, flourish and regenerate – would have provided greater clarity on the attributes of such personhood and provided impetus for the establishment of

[94] Diwan Advocates, 'Notice Slammed Against Human River Ganga', *Diwan Advocates*, 2 May 2017, available at: http://www.diwanadvocates.com/notice-slammed-against-human-river-ganga.

[95] N. Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin, and the Legal Person* (Hart, 2009), p. 133.

[96] E. O'Donnell & J. Talbot-Jones, 'Legal Rights for Rivers: What Does This Actually Mean?' (2017) 32(1) *Australian Environment Review*, pp. 159–62, at 159; E. O'Donnell, 'At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India' (2018) 30(1) *Journal of Environmental Law*, pp. 135–44; Martuwarra River of Life et al., 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' (2020) 9(3) *Transnational Environmental Law*, pp. 541–68.

appropriate mechanisms for the implementation and protection of the rights of nature. However, the judgment has simply amalgamated different rights regimes into a single regime to be conveniently applied to nature while consequently ignoring their complexity.

This approach is contrary to the proposal adopted by Christopher Stone, who is credited with initiating the rights of nature movement.[97] Stone suggested specifically that the rights of nature need not be identical to human rights and could even differ among various natural entities.[98] A reference to rights of nature should have required the UtK HC to investigate the specific rights to be granted to a river, such as the right to flow, the right to exist, and so on. The decision to equate the legal rights of nature with human rights may have been a consequence of the Court's premise to treat the river as a being on a par with human beings. However, the conflation of 'legal person' and (human) 'living person' complicates the situation by failing to tailor the rights properly to the needs and circumstances of the natural entity at issue, which can lead to an overly anthropocentric interpretation and may be challenged in future litigation.[99]

The conferment of legal personhood on nature is a recent development and allows us to rethink the status of non-humans in the environment. Legal personhood also places human activity within the framework of nature's laws and limitations. A carefully constructed framework to operationalize this balance between human activity and rights of nature would be a potent tool for ecological sustainability. The Court in *Ganga* and *Glaciers* did not engage with the question of whether nature fulfils the criteria of *corpus* and *animus* for personhood. In *Glaciers*, quoting from Salmond, the UtK HC states that juristic persons are arbitrary creations of law, yet it legitimizes their existence as essential for the development of society.[100] It goes on to say that glaciers and associated natural entities need to be declared legal persons for their survival, safety, sustenance, and resurgence[101] but does not outline a detailed action plan for how this could be achieved. In the absence of a detailed discussion of how natural features qualify for the elements of personality, the judgments fail to offer a definite answer and advance the jurisprudence on the rights of nature.

3.4. Parens Patriae

The Court relied on the *parens patriae* doctrine to rationalize its decisions. The doctrine is rooted in the understanding of the state's guardianship of common resources and its

[97] C.D. Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*, pp. 450–501.

[98] Ibid., p. 483.

[99] E. O'Donnell & E. MacPherson, 'Voice, Power and Legitimacy: The Role of the Legal Person in River Management in New Zealand, Chile and Australia' (2018) 23(1) *Australasian Journal of Water Resources*, pp. 35–44; C. Clark et al., 'Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance' (2019) 45(4) *Ecology Law Quarterly*, pp. 787–844, at 820; L. Schimmöller, 'Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador' (2020) 9(3) *Transnational Environmental Law*, pp. 569–92.

[100] *Glaciers*, n. 2 above, para. 61.

[101] Ibid.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

sovereign interest[102] in the protection of citizens, particularly when the citizens are incapable of protecting themselves.[103] This concept flowed from the Directive Principles of State Policy under Articles 38, 39, 39A, 48A and 51A(g) of the Constitution, which compel the state to strive towards becoming a welfare state.[104]

In *Ganga*, the Court applied the doctrine to declare that the Chief Secretary of State, among others, acts *in loco parentis*. The Chief Secretary's functional domain ranges from industrial licensing, to waste management, to the protection of the environment. These wide-ranging functions raise conflict of interest concerns. It is difficult for the Chief Secretary to balance the conflicting interests of the rivers and the industries which that official regulates. In *Glaciers*, in turn, the Court declared seven persons to be *in loco parentis* as the 'human face' to preserve natural features in Uttarakhand.[105] The basis on which they were appointed to represent the interests of the river remains unclear.

The appointment of state officials as the legal guardian of the river is in conflict with the original idea propounded by Stone where he considers only those people who have manifested unflagging dedication to the environment to be appropriate representatives of the interests of nature.[106] Stone's suggested approach is reinforced by the participatory and inclusive model adopted in New Zealand, where the interests of both Indigenous communities and the government are represented.

Government agencies cannot fulfil the criterion of institutional autonomy, especially when the same agencies are concurrently entrusted with the protection of the environment and the regulation of competing interests. Yet the judgments in *Ganga* and *Glaciers* use the concept of *parens patriae* to affix to state entities the status of protector of natural resources. When rights of nature are ensured through the appointment of state instrumentalities, there is a greater need to specify clearly the contours of the rights granted to nature, all the more because the acts of the state also contribute to environmental pollution. In other jurisdictions conferment of personhood on nature was followed by the appointment of independent agencies, which are representative of Indigenous communities and government. Apart from the establishment of the Ganga Management Board, neither judgment is particularly clear about the mechanisms through which the newfound legal personhood-related rights would be implemented and enforced.

In *Ganga*, the Court appointed a state official as the human face to protect the rivers. The decision bestows a superior *locus standi* on these government entities, which

[102] G. Curtis, 'The Checkered Career of *Parens Patriae*: The State as Parent or Tyrant?' (1976) 25(4) *De Paul Law Review*, pp. 895–915, at 896.

[103] *Charan Lal Sahu Etc. Etc* v. *Union of India and Ors*, 1989 SCR Supl. (2) 597.

[104] *Gaurav Kumar Bansal* v. *Union of India* (2017) 6 SCC 730.

[105] *Glaciers*, n. 2 above, para. 63.3. The judgment identifies the Chief Secretary, State of Uttarakhand; Director of the NAMAMI Gange Project; Praveen Kumar (Director of NMCG); Ishwar Singh (Legal Adviser, NAMAMI Gange Project); Advocate General, State of Uttarakhand; Dr Balram K. Gupta (Director (Academics) Chandigarh Judicial Academy); and M.C. Mehta, Senior Advocate, Hon. Supreme Court, as the persons in *loco parentis*. See generally P. Srivastava, 'Legal Personality of Ganga and Ecocentrism: A Critical Review' (2019) 4(1) *Cambridge Law Review*, pp. 151–68.

[106] Stone, n. 97 above, p. 466.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

trumps the *locus standi* of any other private person. The decision therefore raises an important question: can PIL actions be filed on behalf of the river when specific guardians have been appointed to protect and preserve the rights of rivers? As a tool of environmental protection, PIL provides an opportunity for public-spirited individuals to promote environmental matters. It is premised on the fact that no single person is responsible for a particular public resource.[107] It appears that, as a consequence of the application of the *parens patriae* doctrine, the option left for a public-spirited citizen would be to file a case against the guardians for failing to protect the interests of the river: a case could be filed against the guardians, for instance, for failing to initiate actions against the polluting industries. However, even in such cases the court may acknowledge the superior *locus standi* of the guardians for the protection of rivers. This is because under the judgment, state officials are not just representatives but 'persons *in loco parentis* as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries'.[108] This has to be read in light of the way in which *parens patriae* claims are generally used in environmental litigation of late,[109] with environmental PIL actions having a non-adversarial and almost inquisitorial nature. In this context, the government or court, rather than the petitioner, is dominant in determining the course of the litigation. Therefore, the invocation of *parens patriae* through a state official will essentially have the effect of liquidating the *locus standi* of the petitioner and dilute the existing constitutional rights of citizens to file a PIL action in order to seek justice in environmental matters.

Further, the operation of *loco parentis* will raise questions about the human impact on and inclusiveness of environmental protection measures – with a special focus on environmental harm that is disproportionately experienced by marginalized communities. The direction of the Court in *Glaciers* to not allow beggars on *ghats* (a flight of steps leading down to a river) clearly highlights the impacts of human activity on the environment and the flaw in adopting a selective, exclusionary approach to protecting nature.[110] This exclusion risks the loss of traditional methods of conservation and sidelines grassroots environmental activism.[111] This is notwithstanding the emphasis in the *Glaciers* judgment on the important role of the inhabitants of these ecosystems in

[107] Z. Holladay, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19(2) *Indiana Journal of Global Legal Studies*, pp. 555–73.

[108] *Ganga*, n. 1 above, para. 19.

[109] In an industrial accident that occurred in June 2020 in Vizag, despite the victims filing petitions before the NGT Southern Bench, the NGT Principal Bench in Delhi took *suo moto* action. When this action was challenged by the company, the list of respondents who were served notice did not include the petitioners, effectively reducing the petitioners to mere spectators; see H. Moosa & N. Chaudhary, 'Expeditious But Not Effective: Exercise of NGT's Suo Moto Powers in Industrial Accidents Cases', *Livelaw*, 28 July 2020, available at: https://livelaw.in/columns/expeditious-but-not-effective-exercise-of-ngts-suo-moto-powers-in-industrial-accidents-cases-160613.

[110] *Glaciers*, n. 2 above, para. 62; R. Colwell, S. Carr-Wilson & C. Sandborn, *Legal Personality of Natural Features: Recent International Developments and Applicability in Canada* (Environmental Law Clinic, 2017), p. 18; C. Cullinan, 'A History of Wild Law', in P. Burdon (ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011), pp. 12–23, at 18.

[111] V. Shiva, *Staying Alive: Women, Ecology and Survival in India, Kali for Women* (Zed Press, 1988), p. 179.

protecting the environment, observing that those 'whose lives are linked to the rivers … must have their voice too'. [112] In muffling the voices of activists through the *parens patriae* doctrine, the river, too, is silenced.

It should be noted in this context that *Glaciers* does make provision for the nomination of public representatives from cities, towns and villages of Uttarakhand to represent the communities living on the banks of the Ganga and Yamuna rivers.[113] It is therefore important to ensure equitable membership within the management committees of the rivers so that the interests of all vulnerable groups are accounted for. A sound model of representation is set out in the Colombian *Atrato* judgment, which painstakingly outlines the mode of representation, the timelines, powers and functions of the guardians of the Atrato river, along with future action plans for the welfare of the river, which includes a role for expert epistemic communities in such plans.[114] Further, the *Atrato* judgment specifically assigns to communities the power to choose their representatives without giving the government an upper hand.[115] Such detailed provisions offer much needed guidance to consider the interests of marginalized sections of society whose voices are generally ignored or under-represented.

In contrast, *Glaciers* has not clarified whether the representatives will be nominated by the government or chosen by the communities themselves. This highlights a broader omission on the part of the UtK HC. The judgments confer legal personhood on nature with a primary focus on the theories of legal personality but fail to engage with the 'rights of nature' discourse in environmental law. The Court makes a brief reference to rights of nature when analyzing international jurisprudence but does not deliberate on the impact of the approach on existing methods or tools of environmental protection under Indian law.

4. LOCATING THE JUDGMENTS IN THE TRANSNATIONAL CONTEXT

The *Ganga* and *Glacier* judgments arose as a result of the acute environmental degradation of Indian rivers despite the existence of an elaborate scheme of constitutional and environmental protection measures. The decisions, building on the previous jurisprudence of Indian courts on legal personality,[116] assume that conferring legal personality on nature and its components is the appropriate mechanism to address environmental concerns. Evidently, the decisions of the UtK HC are not the first legal pronouncements in the world concerning the legal personality of nature. Naturally, the relevant inquiry in this regard therefore centres on the extent to which the Indian decisions have

[112] *Glaciers*, n. 2 above, para. 53.

[113] Ibid., para. 63.4.

[114] *Center for Social Justice Studies et al.* v. *Presidency of the Republic et al.*, Constitutional Court of Colombia, Judgment T-622/16, 10 Nov. 2016.

[115] Ibid.

[116] The Court relied on the following judgments: *Yogendra Nath Naskar*, n. 33 above, and *Ram Jankijee Deities & Ors* v. *State of Bihar & Ors*, 1999 (5) SCC 50; these judgments conferred legal personality on Hindu idols. Additionally, *Shiromani Gurudwara Prabandhak Committee, Amritsar* v. *Shri Som Nath Dass & Ors*, AIR 2000 SC 1421, conferred legal personality on the Guru Granth Sahib, the holy book of the Sikh faith.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

advanced or engaged with the transnational legal debate surrounding rights of nature. In this section we will discuss the same.

In 1972, Stone advocated legal rights for natural objects. He argued that nature could institute legal actions at its behest through a legal guardian, and injury to natural objects must be taken into account.[117] Stone's arguments found a foothold in the dissenting opinion of Justice Douglas in *Sierra Club* v. *Morton*, who argued that the court should recognize the concept of standing of the environment through a guardian *ad litem*.[118] Thomas Berry, who asserted that human beings and natural entities possess certain inalienable rights, took this argument forward.[119] These scholastic assertions kick-started a legal debate on the rationale and modalities of granting legal personality to nature.[120] The fact that rights of nature can be enforced only through human agency and thus lack an independent will to initiate legal action has fuelled a debate about whether nature meets the core requirements of legal personality: *corpus* and *animus*.[121]

Despite the indeterminacy associated with the question of whether nature meets the requirements of *corpus* and *animus*, a diverse range of jurisdictions have employed numerous justifications and strategies in order to endow natural resources with legal rights and personality. For example, Ecuador made rights of nature a part of its constitutional mandate and ethos in 2008.[122] Similarly, the government of New Zealand declared the Te Urewera National Park a legal person pursuant to the passage of the Te Urewera Act in 2014. This was done in order to establish and preserve a legal identity for Te Urewera because of its natural importance and intrinsic value.[123] To ensure that the personhood conferred on the natural feature is exercised in a meaningful way, a board consisting of representatives from the Indigenous population and the New Zealand government was established to exercise the rights, powers and authorities of Te Urewera.[124]

New Zealand continued to expand its recognition of natural entities as legal persons. Centuries of Māori struggle to maintain their spiritual connection with the Whanganui river culminated in the unprecedented enactment of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (Te Awa Tupua Act), which granted legal personality to the river.[125] The legislation was an attempt to uphold the Indigenous worldview of nature and its spiritual association with the river. The Te Awa Tupua Act identifies specific rights of the river and it appointed guardians to represent the Indigenous

[117] Stone, n. 97 above, p. 457.

[118] *Sierra Club* v. *Morton*, 405 U.S. 727 (1972).

[119] T. Berry, *The Great Work: Our Way into the Future* (Bell Tower, 1999), p. 5.

[120] Ibid., p. 161; C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2011), p. 93.

[121] See generally E. O'Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge 2018); A. Dyschkant, 'Legal Personhood: How We Are Getting It Wrong' (2015) 4 *Illinois Law Review*, pp. 2075–110.

[122] Constitutión Politica de la República del Ecuador (Constitution of Ecuador), Arts 71–4.

[123] Te Urewera Act, No. 51, 2014 (New Zealand).

[124] Ibid., s. 21; see E. Macpherson, J. Torres Ventura & F. Clavijo Ospina, 'Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects' (2020) 9(3) *Transnational Environmental Law*, pp. 521–40.

[125] Te Awa Tupua Act, n. 14 above.

population and the New Zealand government in governing and managing the river.[126] However, it should be noted that – unlike the judgments in *Ganga* and *Glaciers*, which have conferred on the rivers rights similar to those of a human being – both the Te Urewera Act and Te Awa Tupua Act identify specific legal rights for the river; the Te Awa Tupua Act prescribes the need to govern the river in a manner consistent with the existing rights of private citizens, other entities, and local authorities in relation to the river.[127]

These legislative initiatives have been further supplemented by judicial decisions. The Constitutional Court of Colombia conferred legal personality on the river Atrato[128] and identified specific rights held by the river, including the rights to life, health, water, food security, a healthy environment, culture, and territory for the actors.[129] Representatives from the government and Indigenous communities who inhabit the Atrato basin were put in charge of the legal representation of the river's rights as 'the guardians of the river'.[130]

Our assessment reveals that while India has joined the list of jurisdictions to confer legal personhood on nature, its ascription of personhood to nature differs in substance and method from that of other jurisdictions. The judgments reveal a lack of engagement or substantive discussion with the international jurisprudence on nature, which could have provided rich source material for the development of astute measures for the protection of the environment. The lack of engagement with rights of nature has not only resulted in the Court failing to detail the personality elements of nature, but has also resulted in the Court basing its decision on unsound rationality with reference to faith and morality. Notably, it overlooked the context in which other jurisdictions have adopted the legal personhood of nature. The Whanganui river was granted legal personhood – in recognition of an Indigenous or Māori understanding of man's relationship with the natural world.[131] The legal developments surrounding the Whanganui, Te Urewera and the Atrato are thus premised on the cultural integrity model, which has more to do with protecting the spiritual connection between Indigenous communities and riverine ecosystems in those countries.[132]

The importation of international precedent in Indian jurisprudence must come with an effort to understand the cultural components of such precedents.[133] While Indigenous cultures can benefit from the recognition of rights of nature and protect their natural surroundings against the state, it identifies the community as a special

[126] Ibid., s. 20.

[127] Ibid., s. 16.

[128] *Center for Social Justice Studies*, n. 114 above.

[129] Ibid.

[130] Ibid.

[131] J. Ruru, 'Listening to Papatūānuku: A Call to Reform Water Law' (2018) 48(2–3) *Journal of the Royal Society of New Zealand*, pp. 215–24, at 222.

[132] S.J. Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 1996), pp. 98–104; C. Metcalf, 'Indigenous Rights and the Environment: Evolving International Law' (2013) 35(1) *Ottawa Law Review*, pp. 101–40, at 103.

[133] A. Lillo, 'Is Water Simply a Flow? Exploring an Alternative Mindset for Recognizing Water as a Legal Person' (2018) 19(2) *Vermont Journal of Environmental Law*, pp. 165–90.

case and confines the mandate of protecting the river to achieve objects that are integral to the community's perception of the river's welfare. This comes at the cost of divesting others, who may have a general claim over the environment as an extension of their human rights. That is why, even in the case of the Whanganui river, the enacted legislation was careful to uphold the existing private rights of individuals over the river bed in terms of rent, easements, and similar concerns.

In the Indian context, the recognition of the rivers' personhood was based on the value the rivers held to advance 'socio-political-scientific development' along with the spiritual significance of the Ganga and Yamuna rivers for Hindus. The group of people whose spiritual connection with nature was used to justify nature's protection are not necessarily the Indigenous peoples of India, and the Ganga and Yamuna are not the only rivers that Hindus consider holy.

Further, the Indian approach to Indigenous rights diverges from international law on Indigenous rights.[134] Although India voted in favour of the United Nations Declaration on the Rights of Indigenous People,[135] it stated that it does not consider any specific section of its people to be 'Indigenous people', noting instead that its entire people are Indigenous.[136] Thus, when an international perspective is at odds with the cultural norms of India, judges must be extremely careful in incorporating such legal principles into Indian legal doctrine. The subject matter of the dispute in *Ganga* was not directly or indirectly related to Indigenous rights; the matter under consideration was pollution and the deficient implementation of environmental laws. To travel beyond the doctrinal approach of environmental principles, and create a separate legal personality, can be justified only if it is an improvement over existing principles. The next section of this article analyzes the potential of the judgment to achieve its objective of addressing environmental degradation.

5. ANALYZING THE JUDGMENTS IN THE FACE OF EXISTING ENVIRONMENTAL LAWS IN INDIA

The Constitution of India in its original draft scarcely mentioned the need for the preservation of the environment as the Directive Principles of State Policy focused on the ownership and control of material sources and the need to distribute those resources equitably for the public good.[137] The clarion call for environmental legislation in India sprung forth as a reaction to the UN Conference on the Human Environment

[134] H. White, 'Indigenous Peoples, the International Trend toward Legal Personhood for Nature, and the United States' (2018) 43(1) *American Indian Law Review*, pp. 129–65; C.W. Chen, 'Indigenous Rights in International Law' (2017) *Oxford Research Encyclopedia of International Studies*, pp. 1–25.

[135] UN General Assembly, 'United Nations Declaration on the Rights of Indigenous Peoples' (13 Sept. 2007), UN Doc. A/RES/61/295, available at: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html.

[136] C.R Bijoy, S. Gopalakrishnan & S. Khanna, *India and the Rights of Indigenous Peoples: Constitutional, Legislative and Administrative Provisions concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples* (Asia Indigenous Peoples Pact (AIPP) Foundation, 2010), p. 10.

[137] Constitution of India, Art. 39(b).

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

of 1972 (Stockholm Conference).[138] A plethora of laws were passed by the Parliament to address environmental concerns. The judiciary complemented these provisions by incorporating international environmental principles with due regard to the domestic context in which such principles had to be applied.[139] In this respect, we refer to two long-standing environmental law principles – the polluter pays principle and the public trust doctrine – and contrast their efficacy with the proposed solution of legal personhood for nature. The following section offers some insights into whether legal personhood is an improvement on the existing legal framework for environmental protection in India.

5.1. *The Polluter Pays Principle*

The polluter pays principle (PPP) is one of the key principles on which the National Green Tribunal (NGT) in India relies for delivering its decisions.[140] The PPP attempts to mitigate environmental degradation by allocating the costs of and repairing the damage among multiple stakeholders through preventive, punitive, and restorative measures.[141] As with most of the core environmental principles, the PPP has its roots in anthropocentrism.[142] Anthropocentric environmental laws tend to focus on human needs, and injury or damage to nature may not be remedied or compensated. Thus the understanding of harm in the PPP is generally anthropocentric. In the case of environmental degradation, an approach that does not focus on environmental harm itself is highly inadequate.[143] It was this human-centric focus that the advocates of the rights of nature contested. They believed that the invocation of legal personhood of nature would lead to the recognition of the intrinsic value of nature and recognition of environmental harm. In the Indian context, however, this belief is largely misplaced.

Firstly, the Indian courts have interpreted the PPP in a way that includes consideration of harm to the environment itself. In *Indian Council for Enviro-Legal Action* v. *Union of India*,[144] one of the first cases to employ the PPP, the SCI observed:

> The liability to compensate is twofold; one, to compensate the victims of pollution for inconvenience and health loss; and the other, to restore the environmental degradation *viz.*, of the soil, underground water and the vegetation cover of that area. Such remediation of damaged environment is part of the process of 'sustainable development'.[145]

[138] S. Jolly, 'Application of Solar Energy in South Asia: Promoting Inter-Generational Equity in Climate Law and Policy' (2014) 7(1) *International Journal of Private Law*, pp. 20–9.

[139] Jolly & Makuch, n. 78 above, p. 143.

[140] G.N. Gill, *Environmental Justice in India: The National Green Tribunal* (Routledge, 2017), p. 22; S. Atapattu, *Emerging Principles of International Environmental Law* (Brill, 2007), p. 476; G.N. Gill, 'Environmental Justice in India: The National Green Tribunal and the Expert Members' (2016) 5(1) *Transnational Environmental Law*, pp. 175–205.

[141] L. Krämer & E. Orlando, *Principles of Environmental Law* (Edward Elgar, 2018), p. 35.

[142] *T.N. Godavarman Thirumulpad* v. *Union of India & Ors* (2012) 3 SCC 277, para. 14.

[143] S.F. Mandiberg, 'Locating the Environmental Harm in Environmental Crimes' (2009) 4 *Utah Law Review*, pp. 1177–222, at 1187.

[144] *Indian Council for Enviro-Legal Action* v. *Union of India*, 1996 SCC (3) 212.

[145] M.Z.M. Nomani, 'The Human Right to Environment in India: Legal Precepts and Judicial Doctrines in Critical Perspective' (2000) 5(2) *Asia Pacific Journal of Environmental Law*, pp. 113–34.

As noted in the observation of the Court, the PPP in the Indian context was applied to compensate for environmental damage and not just to remedy the suffering caused to victims.[146] Courts have also held that the principle of 'polluter pays' does not mean that the polluter can pollute and pay for it later.[147]

It could still be argued in this context that environmental damage under the PPP is conceived from an anthropocentric perspective in that the principle emphasizes the value of the environment to humans. In contrast, the rights of nature approach accords nature a legal status and the capacity to sue in respect of harm *per se*, defending its intrinsic value and not merely its instrumental value. However, even this argument is problematic as the very concept of the intrinsic value of nature and its quantification is a social construct that eventually leads back to the same anthropocentrism.[148]

It should be acknowledged that, despite the PPP accounting for environmental damage, the institutional and structural issues associated with its implementation in India have left the country struggling with massive levels of environmental degradation.[149] This points to the fact that, unless a principle is supported by a carefully constructed framework and effective implementation machinery, the ecological sustainability that the principle attempts to achieve continues to suffer. By extension, in the absence of a carefully structured framework, it is inconceivable to see how the newfound legal personhood of nature would address the implementation flaws associated with the anthropocentric environmental principles and protect the intrinsic value of nature.

5.2. *The Public Trust Doctrine*

The public trust doctrine (PTD), under which the state holds natural resources in trust for the benefit of the people,[150] evolved in the context of water resources.[151] The SCI, in *M.C. Mehta* v. *Kamal Nath*, directed that natural resources be held in trust for the common good of citizens, planting the roots of the PTD in India.[152] Public trust has continued to widen its impact in environmental jurisprudence in India[153] with the duty

[146] *Vellore Citizens Welfare Forum* v. *Union of India*, AIR 1996 SC 2715, 2721; *A.P. Pollution Control Board* v. *Prof M.V. Nayudu*, AIR 1999 SCW 43.

[147] *Saloni Ailawadi* v. *Volkswagen India Private Ltd*, 2019 SCCOnLine NGT 69.

[148] M. Evans, '*Parens Patriae* and Public Trust: Litigating Environmental Harm *per se*' (2016) 12(1) *McGill Journal of Sustainable Development Law & Policy*, pp. 1–22; R.F. Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press, 1989), pp. 9–10.

[149] C. Bhushan, S. Banerjee & I. Bezbaroa, *Green Tribunal, Green Approach: The Need for Better Implementation of the Polluter Pays Principle* (Centre for Science and Environment (CSE), 2018). The CSE has pointed out the following as the primary reasons that hinder the efficient application of the PPP in India: lack of monitoring, the absence of an appropriate formula, the difficulty of locating and identifying polluters, bureaucratic control, and the lack of implementation by states.

[150] J.L. Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention' (1970) 68(3) *Michigan Law Review*, pp. 471–566, at 495.

[151] R.J. Lazarus, 'Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine' (1986) 71 *Iowa Law Review*, pp. 631–716, at 637–41.

[152] *M.C. Mehta* v. *Kamal Nath* (1997) 1 SCC 388.

[153] *M.I. Builders* v. *Radhey Shyam Sahu* (1999) 3 SCR 1066.

https://doi.org/10.1017/S2047102520000424 Published online by Cambridge University Press

of the state to protect natural resources – such as the air, sea, water, and forests – being regarded as absolute and rooted in the Constitution.[154]

Though based on anthropocentrism and human benefit, the PTD is a powerful means of addressing environmental harm and degradation.[155] The doctrine has been invoked often as an important affirmative tool to protect natural resources and strike down actions that destroy the nature of property held in public trust. When the PTD enables and even obliges states to affirmatively fulfil their public trust duties of protecting natural resources, a move towards conferment of legal personhood on nature can be appreciated only if the newfound legal status is able to make a substantial difference to the way in which environmental protection is addressed or if the extant application of the PTD suffers from certain drawbacks which personhood remedies.

In this context, one of the limitations on the enforcement of the PTD is the uncertainty surrounding the scope of the state's duties regarding public resources. This problem is yet to be addressed adequately by the courts in India, which are yet to formulate a precise definition of the state's duty under the PTD. Consequently, the PTD continues to be defined in accordance with the circumstances of the specific case, without uniform guidelines on how states must treat resources held in public trust.

While *Ganga* and *Glaciers* were both opportune cases to address this vacuum, the judgments have not elaborated specific duties or guidelines for the declared guardians of natural features towards their protection. The Court in both cases, through the invocation of *parens patriae*, entrusted state officials with the responsibility to protect and preserve the river system. Yet it failed to articulate how the scenario in which state officials are given the responsibility to protect the river will differ from the application of the PTD, which also identifies the state as the trustee and guardian of natural resources. Moreover, even without the conferment of legal personhood and guardianship on rivers, states could have standing to sue under the doctrine of *parens patriae* on the basis of their sovereign ownership of their resources.[156]

6. CONCLUSION

This article has traced the broadening horizons of legal personality and rights jurisprudence in India, which culminated in the conferment of personhood initially on the river Ganga and consequently to a broader set of natural features. The granting of legal personhood to nature alters the traditional legal status of nature as an object of rights to a holder of rights, which marks a step forward in jurisprudence. However, the problematic nature of references to religion and morality employed by the UtK HC as the legal rationale for declaring nature as a legal person requires a rethink, as the determination

[154] *K.M. Chinappa* v. *Union of India*, 2002 (8) SCALE 204.

[155] G.P. Smith II, 'Environmental Hedonism or, Securing the Environment through the Common Law' (2015) 40(1) *William & Mary Environmental & Policy Review*, pp. 65–114.

[156] D.G. Musiker, T. France & L.A. Hallenbeck, 'The Public Trust and *Parens Patriae* Doctrines: Protecting Wildlife in Uncertain Political Times' (1995) 16 *Public Land Law Review*, pp. 87–116, at 105.

of constitutional rights and wrongs in the context of natural features should rely on positivist and constitutional legal values.

The failure to engage with rights of nature at a deeper and granular level has resulted in the judgments falling short of delineating the specific contours of nature's rights and establishing independent mechanisms for the implementation of such rights. The judgments have also failed to appreciate the differences between the circumstances of attribution of legal personality to rivers in other countries and the methodology involved in such attribution. Finally, the invocation of *parens patriae* to appoint instrumentalities of the state as guardians of the river remains problematic when the states concerned act as major polluters themselves. In light of the appointment of state instrumentalities to tackle these important issues, it is difficult to imagine how the conferral of legal personhood by the judgments will differ from earlier approaches, how they will ensure effective environmental protection and ensure that their precedential value extends beyond a mere symbolic shift in the perception of environmental law.

State involvement also conflicts with the importance that the rights of nature movement attaches to independent entities, who have shown unwavering dedication to the environment, acting as the guardians of environmental components. Drawing upon its past activism, it appears that the judiciary was eager to project an image of being serious about environmental protection and follow recent trends in other jurisdictions. However, a lack of contemplation of the socio-cultural narrative and the modalities of implementation have prevented the judgments from establishing concrete and detailed mechanisms for protecting nature. Hence, many of the problems that plague existing environmental laws may simply re-emerge. While the development of granting legal personality to natural entities should be welcomed, the legal rationale and method of implementation envisaged by the Indian court judgments are founded on legal ambiguities.

Nevertheless, by invoking the legal personality of the river in a non-Indigenous context, both the judgments contribute to the global debate on this issue and set a significant precedent for rights of nature litigation in India and elsewhere. It is therefore important that the legal processes undertaken in this direction continue to be refined. The judgments are pending appeal before the SCI. A further understanding of the importance of the judgments may be achieved once the SCI delivers its judgment and observations.