

## Need for Nature Reforms in India: Moving towards a Rights based Approach

*Ria Garg\**

Student, Alliance University, School of Law, Bangalore, Karnataka, India

### **Abstract**

*Worldwide, there has been an increasing body of legislation, jurisprudence, and political declarations challenging the current archetype and recognizing certain rights to nature. Nature, just like humans are also living beings and should be treated as subjects before the law. The rights of nature is a legal and jurisprudential theory, similar to the concept of fundamental human rights, which seeks to extend these rights to nature and ecosystems as well. Nature is described as property under the law. This article aims to focus on the need to pave a way to guarantee rights to nature to balance our stake as a step towards sustainable development. Nature is fundamental to the existence of the planet Earth and not just a mere property to be exploited for human desires. The article also aims to outline the Indian Constitutional mandate of the proposed approach to new legal frameworks.*

**Keywords:** Rights to nature, Sustainable Development, Legal Framework, Property, Constitutional Mandate

**\*Author for Correspondence** E-mail: riagarg.30@gmail.com

### **INTRODUCTION**

“Until the rightless thing receives its rights, we cannot see it as anything but a thing for the use of “us”- those who are holding rights at the time.”[1] - Christopher D. Stone

Law cannot remain resistant to the changes and to remain on the ball, it must continually justify itself and readjust to the needs of the dynamic society. The Hon’ble Court had held that the concept ‘Juristic Person’ arose out of necessities in the human development recognition of an entity as juristic person- is for sub serving the needs and faith of society [2]. The concept of juristic persons has customarily evolved, and the law has always oscillated the changes in society. Our legal system has been flexible enough to confer personhood on corporations, idols, and animals whenever it was necessary. The tropical legal system for environmental protection has manifestly been a deficit in getting to grips with imminent threats of climate change and global warming. New approaches to rethink the way we are administering environmental degradation is the need of the hour. Instead of a person trying

to evince an incidental infraction of his fundamental rights in an environmental suit, safeguarding of nature for the sake of nature itself would prove to be more potent.

Rights for nature were first propounded by Christopher Stone in his 1972 article, “Should Trees Have Standing?” and were illustriously endorsed by Justice William O Douglas’s dissenting judgment in *Sierra Club v Morton* [3], in which he argued that trees should be granted personhood and have the propensity to sue for their own protection. Stone, in his article also called attention to the widening of society’s “circle of concern” which led to the recognition of more extensive legal rights for women, children, Native Americans, and African Americans. There was no good reason, he argued, why increasing public concern for the protection of nature could not lead to the recognition of nature’s rights [4].

When we talk about rights, we do not mean to give nature all legal rights a human has, but the rights which are fundamental to their existence. These rights will acknowledge that nature in all its life forms has the *right to exist*,

*persist, maintain and regenerate its vital cycles* [5].

It's time we depart from the assumption that nature is only a property under the law and guarantee inalienable rights to them.

### SCOPE OF THE STUDY

- To understand the duty of the Indian's Courts to Protect the Environment under the Constitution of India.
- To understand the doctrine of ' Parens Patriae ' and how it has been applied in India to give rights to ecosystems.
- To understand the implementation of Nature's Rights in other Countries.

### The Court Has A Duty to Protect the Environment by Exercising Its Parens Patriae Jurisdiction

Black's Law Dictionary defines 'Parens Patriae' as the State's capacity to protect those unable to care for themselves. The same was explained by the Hon'ble Supreme Court of United States in a case as under:

*"Parens patriae means literally "parent of the country." The parens patriae action has its roots in the common law concept of the "royal prerogative." The royal prerogative included the right or responsibility to take care of persons who are legally unable, on account of mental incapacity, whether it proceed from nonage, idiocy. Lunacy or the ability to take proper care of themselves and their property" [6].*

As the Court is also 'State', can also act as *Parens Patriae* to meet the ends of justice [7]. Relying on the same doctrine, the Supreme Court has stated that in the case of an incompetent person, the Court alone, as *parens patriae*, can ultimately take decisions [8]. The Uttaranchal High Court has also recently said it would act as the legal guardian of cows in the state, by invoking the 'parens patriae' doctrine [9]. The Supreme Court in the case of *Animal Welfare Board of India v. A. Nagaraja & Ors* [10] has held that Court has also a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings. The Delhi High Court placing

reliance on this case, held that since an animal is unable to express itself, *parens patriae* jurisdiction will apply [11]

In the case of *Lalit Miglani v. State Of Uttarakhand And Others* [12], the High Court, by invoking their *parens patriae* jurisdiction, declared glaciers, rivers, streams, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfall to be juristic persons and accorded them rights akin to fundamental rights/ legal rights. Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to person as they also have a right to exist, persist, maintain, sustain and regenerate their own vital ecology system. These are scientifically and biologically living.

Thus, with respect to environmental jurisprudence, it has become important to confer those rights on nature, which are fundamental to their existence.

### Rights of Nature Have Been Recognised in Other Legal Systems

"You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete." - R. Buckminster Fuller

The United Nations Universal Declaration of Human Rights (UDHR), adopted in the year 1948 was coined on the belief that fundamental human rights arise from "the fact of existing. Arguing that if "existence" is the defining condition for fundamental rights, this could not be limited to the rights of only one form of existence, and that all forms of existence should enjoy fundamental rights including nature. The concept of nature's rights and legal personality has been proposed in a variety of formulations, from legally enforceable rights, to "biotic rights" as moral imperatives, to human responsibilities and duties towards nature [13]. A prodigious legal revolution is transpiring across the globe and gaining ground over the past decade. United Nations Conference on Sustainable Development (2012), entitled "The future we want":

*"We recognize that planet Earth and its ecosystems are our home and that "Mother Earth" is a common expression in several countries and regions, and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development."*

In 2008, Ecuador became the first country to declare nature to be a legal person in its Constitution and gave nature "the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution" [14]. Similarly, Bolivia's constitutional amendment also gave nature equal rights to humans. New Zealand has also recently enacted the Te Urewera Act, 2014 which grants an 821-square-mile forest the legal status of a person. It is its entity with all the rights, powers, duties, and liabilities of a legal person [15]. A Rights of Nature legislation has also been introduced in Australia, into the Western Australia Parliament.

Some countries opening gambit to include nature rights have also been recognised by the international community. The General Assembly in a resolution [16] and the G77 [17] have noted that some countries recognize the rights of nature in the context of the promotion of sustainable development. The International Union for Conservation of Nature Programme for 2017–2020 also stated that it "aims to secure the rights of nature and the vulnerable parts of society through strengthening governance and the rights-based approach to conservation" and "to advance rights regimes related to the rights of nature". The United Nations Conference on the Human Environment (Stockholm Declaration) accepts the environment as part of basic human rights- the right to life itself. We must understand that the fundamental human rights on which human survival depends are Nature's rights.

The subsistence of these precedents provokes the idea of recognition of the rights of nature in other parts of the world, both on national and local levels. Such an approach would radically transpose new perspectives that would accelerate the changes necessary to withstand the documented climate change, and

prevent the depletion of natural resources necessary for continuity of live on earth.

### **Persual of Article 48-A and 51(A) (G) of the Constitution of India**

A perusal of directive principle of state policy- Article 48-A [18] and a fundamental duty under article 51(A) (g) [19] shows that both State and the citizens are under an obligation to protect and safeguard natural resources, which will have an impact on the environment. Environment and ecology are national assets and subject to intergenerational equity.

Even after there being plethora of constitutional provisions, and central and state laws , the environmental destruction in the last three decades have witnessed a rapid degradation of the environment as these laws by and large, remain unenforced or mismanaged. Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A of the Constitution, and Article 51-A (g) . When the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority.

In order to attain the constitutional goal of protection and improvement of the environment and protecting people inhabiting the vulnerable areas from the hazardous consequences of the arbitrary exercise of power without due regard to their life, liberty and property, a legally strong ideal environment is required.

A juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Rights of nature is a tradition of legal and political scholarship that advocates legal standing for certain natural objects in the environment, or the environment as a whole [20].

### **CONCLUSION**

"If we continue to think of ourselves mostly as consumers, it's going to be very hard to bring our environmental troubles under control. But

it's also going to be very hard to live the rounded and joyful lives that could be ours. This is a subversive volume in all the best ways.” - Bill McKibben, author of *Deep Economy and The End of Nature*.

The current climate emergency has uncovered how ineffective our plethora of national governance regimes are in dealing with the side effects of consumerism and the excessive use of natural resources. Giving rights to nature will allow legal suits on behalf of trees and other “natural objects” and would mean that damages could be recovered and applied for their benefit [21]. As Chilean lawyer Godofredo Stutzin pointed out in 2002, one practical advantage of recognizing rights for nature is that anyone seeking to alter or destroy any aspect of it would have to put forward reasons to justify why this should be permitted, instead of making people who wish to prevent destruction prove why nature should be conserved [22]. Our Earth is a community and all beings have a fundamental right to exist and these rights should be balanced against rights of human beings and thus India must adapt their legal system to be consistent with the fundamental principles that governs the functioning of this universe. As Einstein said you can't solve a problem with the mentality that created it. The most radical shift we can envision is to consider nature as a person and then to treat nature accordingly.

Thus, placing human activities within the framework of nature's law by extending nature fundamental rights can be one of the most important form of ecological governance to reach true sustainability.

## REFERENCES

1. Christopher D. Stone, *Should Trees Have Standing? - Towards Legal Rights for Natural Objects*, 45 Southern California Law Review, 450-501 (1972)
2. Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others, (1984) 2 SCC 600 (India)
3. Sierra Club v Morton, 405 U.S. 727 (1972)
4. Christopher D. Stone, *Should Trees Have Standing? - Towards Legal Rights for Natural Objects*, Southern California Law Review (1972)
5. *What is Rights of Nature?* GLOBAL Alliance for the Rights of Nature (2017), <https://www.rgnul.ac.in/PDF/2e10b025-4906-4da8-adcf-dcf492683753.pdf>
6. Snapp & Son Inc. v. Puerto Rico Ex Rel. Barez 458 U.S. 592 (1982)
7. State of Kerala v. N.M. Thomas, (1976) AIR 490 (India)
8. Aruna Ramchandra Shanbaug v. Union of India & Ors., (2011) 3 SCC 298. (India)
9. Alim v. State of Uttarakhand And Others, Writ Petition (PIL) No. 112 of 2017 (India)
10. Animal Welfare Board Of India v. A. Nagaraja & Ors, (2014) 7 SCC 547 (India)
11. Mr. Saddam v. Union of India & Ors, W.P. (CrI) No. 156/2020 (India)
12. Lalit Miglani v. State Of Uttarakhand and Others, Writ Petition (PIL) No.140 of 2015; Mohd. Saleem v. State of Uttarakhand and Ors, Special Appeal No. 368 of 2018 (India)
13. Dinah Shelton, *Nature as a Legal Person*, 22 Vertigo (2015)
14. Republic of Ecuador Const. art.71-74
15. Te Urewera Act, Section 11(1) (2014) (New Zealand)
16. G.A. Res. 70/208, (Dec. 14, 2012).
17. G.A. Res. 68/948, (July 7, 2014).
18. India Const. art. 48, cl.a. *amended by* The Constitution (Forty Second Amendment) Act, 1976.
19. India Const. art. 51, cl.a (g). *amended by* The Constitution (Forty Second Amendment) Act, 1976.
20. Stone, *supra* note 4
21. Joseph Campbell, *the Hero with a Thousand Faces* (Princeton, NJ: Princeton University Press (1973).
22. Joseph Campbell with Bill Moyers, *The Power of Myth* 48 (New York: Anchor Books, 1988)

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