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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

FROM PERSONHOOD TO PRACTICE: THE JUDICIAL EFFICACY OF GRANTING LEGAL PERSONALITY TO NATURAL ENTITIES IN INDIA

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Abstract

This article critically examines the judicial efficacy of granting legal personality to natural entities in India, a jurisprudential leap initiated by the Uttarakhand High Court in 2017. It traces the evolution of this concept from its philosophical origins in Christopher D. Stone's seminal work to its adoption in international jurisdictions like New Zealand and Ecuador, before focusing on its unique application within the Indian legal landscape. The analysis dissects the landmark judgments concerning the Ganga and Yamuna rivers, glaciers, and other ecosystems, evaluating them not merely as symbolic declarations but as practical legal tools. The article argues that while these pronouncements represent a paradigm shift from anthropocentrism towards ecocentrism, their judicial efficacy has been severely constrained. Key impediments include conceptual ambiguities regarding the scope of rights and personhood, profound institutional challenges in the *loco parentis* guardianship model, the absence of a supporting legislative framework, and the complexities of enforcement in a federal structure. The Supreme Court's stay on the Ganga/Yamuna judgment underscores these practical infirmities. The article concludes that for the "personhood" of nature to translate into effective "practice," India must move beyond judicial declaration to comprehensive legislative action, creating robust, participatory governance structures and clarifying the substantive rights of these new legal persons.

Keywords: Environmental Jurisprudence, Guardianship Model, Judicial Efficacy, Legal Personhood, Rights of Nature.

1. Introduction

India, a civilization cradled by sacred rivers and venerated mountains, faces an environmental paradox. The very natural entities that are culturally deified are simultaneously subjected to unprecedented degradation.[1] In response to this escalating ecological crisis, Indian environmental jurisprudence has evolved dramatically, from a liability-based regime to a rights-based framework anchored in the constitutional right to life under Article 21.[2] A recent and revolutionary chapter in this evolution has been the judicial innovation of granting legal personality to natural entities. This move, spearheaded by the Uttarakhand High Court, seeks to transform rivers, glaciers, and ecosystems from passive objects of protection into active subjects of law, endowed with the capacity to hold rights and seek remedies.

In March 2017, in a judgment of profound jurisprudential significance, the Uttarakhand High Court in *Lalit Kumar Mishra v. Union of India* declared the rivers Ganga and Yamuna, along with their tributaries and catchment areas, to be "juristic persons/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities."[3]The Court appointed specific state officials as persons *in loco parentis* to act as human custodians for these riverine persons. This decision was quickly followed by another from the same bench, granting similar status to the Gangotri and Yamunotri glaciers, as well as surrounding waterfalls, meadows, and forests.[4] This burgeoning "Rights of Nature" jurisprudence in India, also echoed by the Punjab and Haryana High Court for Sukhna Lake,[5]represents a radical departure from the anthropocentric foundations of traditional legal systems. It attempts to shift the paradigm from managing nature for human benefit to protecting nature for its own intrinsic sake.

However, the laudable ambition of these judicial pronouncements immediately collided with the stark realities of legal and administrative practice. The Supreme Court of India swiftly stayed the Ganga and Yamuna judgment, citing a host of practical and legal complications, from the

[1] See, e.g., Vandana Shiva, WATER WARS: PRIVATIZATION, POLLUTION, AND PROFIT (2002).31
[2] The Supreme Court of India interpreted the right to life under Article 21 to include the right to a healthy environment in Rural Litigation and Entitlement Kendra v. State of U.P., (1985) 2 S.C.C. 431.
[3] Lalit Kumar Mishra v. Union of India, 2017 (3) U.D.R. 43 (Uttarakhand H.C. 2017).
[4] Narayan Singh Negi v. State of Uttarakhand, W.P. (PIL) No. 140 of 2015 (Uttarakhand H.C. Mar. 31, 2017).
[5] Court on its own Motion v. State of Punjab, C.W.P. No. 18253 of 2009 (P.&H. H.C. Mar. 2, 2020).

ambiguity of the guardians' duties to the unmanageable implications of interstate water disputes.[6] This intervention by the apex court serves as the central problematique for this article. It raises the critical question: Beyond the powerful symbolism, what is the actual judicial efficacy of granting legal personality to natural entities in the Indian context?

This article contends that while the judicial declaration of legal personhood for nature is a visionary and normatively powerful development, its practical efficacy has been demonstrably low due to a confluence of conceptual ambiguities, institutional incapacities, and the absence of a coherent legislative framework. The Indian experiment reveals a significant gap between judicial proclamation and on-the-ground implementation. The court-appointed guardianship model has proven to be fraught with conflicts of interest and resource constraints, and the lack of statutory clarity on the specific rights of these new legal persons renders litigation and enforcement a Herculean task.

To substantiate this argument, this article is structured into four main parts. Part II will explore the jurisprudential underpinnings of legal personhood, examining its historical application to non-human entities like corporations and deities in Indian law, and situating the Indian judicial innovation within the global Rights of Nature movement. Part III will provide a detailed analysis of the landmark Indian judgments, dissecting the courts' reasoning and the specific mechanisms they sought to establish. Part IV, the core of the analysis, will critically evaluate the judicial efficacy of this approach by examining the conceptual, institutional, and procedural challenges that have emerged, with a particular focus on the guardianship model and the implications of the Supreme Court's stay. Finally, Part V will discuss the path forward, arguing that for the concept to move from potent symbolism to substantive practice, it must be complemented by comprehensive legislative action that creates participatory governance structures and provides a clear charter of rights and duties for natural entities. The judicial pronouncements, this article concludes, are not the final destination but rather a crucial, albeit incomplete, first step in reimagining humanity's legal relationship with the natural world.

[6] State of Uttarakhand v. Mohd. Salim, S.L.P. (C) No. 016872 of 2017 (S.C. July 7, 2017) (order granting stay).

1.1 Literature Review and Legal Context

The concept of granting legal rights to non-human entities is not a novel invention of the 21st century but is built upon the foundational legal fiction of "personhood," a construct that allows the law to assign rights, duties, and agency to entities other than individual human beings. Understanding this broader jurisprudential context is essential to appreciate the innovation and challenges of applying it to nature.

i. The Juristic Person in Indian Law – Indian law has long recognized juristic personality for non-human entities, most notably in the context of religious endowments. The Supreme Court of India and the Privy Council have held Hindu idols and deities to be juristic persons capable of holding property and having their interests represented in court by a human agent, typically a *shebait* or manager. In *Shiromani Gurdwara Parbandhak Committee v. Som Nath Dass*, the Supreme Court affirmed that the Guru Granth Sahib, the sacred scripture of the Sikhs, is also a juristic person. This long-standing legal tradition provided a powerful domestic precedent for the courts in the Ganga and Yamuna cases, which argued that if religious faith could justify personhood for idols, the life-sustaining significance of rivers provided an even stronger basis.

ii. The Global Rights of Nature Movement – The specific application of legal personhood to nature gained intellectual traction with Christopher D. Stone's influential 1972 article, "Should Trees Have Standing?". Stone argued that for the environment to be truly protected, it should be granted legal rights of its own, akin to other historically rightless entities. This radical idea has blossomed into a global movement with concrete legal expressions:

   a. Ecuador: In 2008, Ecuador became the first country to enshrine the Rights of Nature (*Pacha Mama*) in its constitution, enabling litigation on behalf of natural entities like the Vilcabamba River.
   b. Bolivia: The Law of the Rights of Mother Earth (2010) defines Mother Earth as a "collective subject of public interest" with specific rights, including the right to life and clean water.
   c. New Zealand (Te Awa Tupua): The most influential precedent for India was the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*. This legislation

declared the Whanganui River a legal person and established a sophisticated co-guardianship framework involving the Crown and the Māori *iwi*.

The Indian High Courts explicitly cited the Whanganui River example as a guiding precedent, attempting to import this successful international model into the Indian legal system.

1.2 Methodology and Analytical Framework

This article adopts a doctrinal and critical legal analysis approach to evaluate the judicial efficacy of granting legal personality to natural entities in India. The analysis is structured to dissect the landmark judgments not merely as symbolic declarations but as practical legal tools.

The central problematique of this study is the Supreme Court of India's stay on the Ganga and Yamuna judgment, which serves as a lens to examine the practical infirmities of the High Court's orders. The study evaluates efficacy through three distinct dimensions:

i. Conceptual Clarity: Examining the definitions of "personhood" and "rights" applied to nature.
ii. Institutional Capacity: Analyzing the viability of the *loco parentis* guardianship model.
iii. Procedural Feasibility: Assessing the enforcement mechanisms within India's federal structure.

The analysis proceeds by first exploring the jurisprudential underpinnings, then dissecting the specific reasoning and mechanisms established in the *Lalit Kumar Mishra* and *Narayan Singh Negi* judgments, and finally critically evaluating these against the "on-the-ground" realities of Indian administrative and legal practice.

2. The Jurisprudential Foundations of Legal Personhood

The concept of granting legal rights to non-human entities is not a novel invention of the 21st century. It is built upon the foundational legal fiction of "personhood," a construct that allows the law to assign rights, duties, and agency to entities other than individual human beings. Understanding this broader jurisprudential context is essential to appreciate both the innovation and the inherent challenges of applying it to nature.

2.1. The Concept of the "Legal Person"

In law, a "person" is any entity that the law recognizes as having the capacity to hold rights and incur obligations.[7] This category is divided into two types: natural persons (human beings) and artificial or juristic persons.[4] The juristic person is a legal fiction, a creation of the law to which it attributes a distinct personality, separate from the individuals who comprise or manage it.[5] The most ubiquitous example is the corporation, which can own property, enter into contracts, sue, and be sued in its own name.[8]

Indian law has long recognized juristic personality for non-human entities, most notably in the context of religious endowments. Hindu idols and deities have been held by the highest courts, including the Privy Council and the Supreme Court of India, to be juristic persons capable of holding property and having their interests represented in court by a human agent, typically a *shebait* or manager.[9] In *Shiromani Gurdwara Parbandhak Committee v. Som Nath Dass*, the Supreme Court affirmed that the Guru Granth Sahib, the sacred scripture of the Sikhs, is also a juristic person.[10] This long-standing legal tradition provides a powerful domestic precedent for extending personhood. The courts in the Ganga and Yamuna cases drew an explicit parallel, arguing that if religious faith could justify granting personhood to idols, then the immense spiritual, cultural, and life-sustaining significance of the rivers provided an even stronger basis for such recognition.[11]

2.2. The Global Rights of Nature Movement

The specific application of legal personhood to nature gained intellectual traction with Christopher D. Stone's influential 1972 article, "Should Trees Have Standing?".[12] Stone argued that for the environment to be truly protected, it should be granted legal rights of its own, just as other historically rightless entities (such as women and slaves) eventually were. He proposed that natural

[7] P.J. FITZGERALD, SALMOND ON JURISPRUDENCE 305 (12th ed. 1966).
[8] See Salomon v. A. Salomon & Co. Ltd., [1897] A.C. 22 (H.L.).
[9] Pramatha Nath Mullick v. Pradyumna Kumar Mullick, (1925) L.R. 52 I.A. 245 (P.C.).
[10] Shiromani Gurdwara Parbandhak Comm. v. Som Nath Dass, A.I.R. 2000 S.C. 1421.
[11] Lalit Kumar Mishra, 2017 (3) U.D.R. at ¶ 17.
[12] Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects, 45 S. CAL. L. REV. 450 (1972).

objects should have legal standing to sue for their own injury, with court-appointed guardians to represent their interests and any damages awarded being used for their restoration.[13]

Stone's radical idea has since blossomed into a global "Rights of Nature" movement, which has found concrete legal expression in several countries:

i. Ecuador: In 2008, Ecuador became the first country in the world to enshrine the Rights of Nature in its constitution. Article 71 states that "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes."[14] This has enabled successful litigation on behalf of natural entities, such as the Vilcabamba River.[15]

ii. Bolivia: Following Ecuador's lead, Bolivia passed the Law of the Rights of Mother Earth in 2010 and a more comprehensive framework law in 2012. These laws define Mother Earth as "a collective subject of public interest" and outline a set of specific rights, including the right to life, to diversity of life, to clean water and air, and to restoration.[16]

iii. New Zealand (Te Awa Tupua): Perhaps the most influential precedent for the Indian courts was the New Zealand Parliament's enactment of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. This legislation, the result of decades of negotiation with the indigenous Māori *iwi* (tribe), declares the Whanganui River to be a legal person named Te Awa Tupua.[17] Crucially, it established a sophisticated co-guardianship framework, appointing one representative from the Crown (the state) and one from the Whanganui *iwi* to act as the human face of the river and promote its "health and well-being."[18]

This global context is vital. The Indian High Courts did not operate in a vacuum. They explicitly cited the Whanganui River example as a guiding precedent, seeking to import a successful international model into the Indian legal system. However, as the subsequent analysis will show,

[13] Id. at 464-73.
[14] CONST. DE LA REPÚBLICA DEL ECUADOR, Oct. 20, 2008, art. 71.
[15] Wheeler c. Director de la Procuraduria General del Estado de Loja, Case No. 11121-2011-0010 (Provincial Ct. of Justice of Loja, Mar. 30, 2011) (Ecuador).
[16] Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], Law No. 071, Dec. 21, 2010 (Bol.).
[17] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.).34
[18] Id. § 14.

the success of such a model is deeply contingent on its institutional design and socio-political context, factors that were not seamlessly transferable to India. The domestic precedent of religious idols provided the conceptual door, and the global movement provided the normative push, but the practical architecture for India's natural persons had to be built from scratch, a task for which the judiciary alone was ill-equipped.

3. The Indian Experiment – Landmark Judgments

The translation of the Rights of Nature philosophy into binding judicial orders in India occurred in a rapid series of groundbreaking judgments from the Uttarakhand High Court, later followed by the Punjab and Haryana High Court. These decisions constructed a new legal reality for some of India's most significant ecosystems.

3.1. Lalit Kumar Mishra v. Union of India (The Ganga and Yamuna Judgment)

The genesis of India's Rights of Nature jurisprudence lies in a public interest litigation concerning mining and encroachments on the banks of the Yamuna River. In its final judgment on March 20, 2017, the Uttarakhand High Court went far beyond the specific prayers of the petition. Drawing on the spiritual and cultural status of the rivers Ganga and Yamuna as "living and sustaining" entities for a majority of Indians, the court embarked on a remarkable jurisprudential journey.

The court's reasoning was multi-pronged. It invoked the rivers' sacred status, citing Hindu scriptures and traditions that personify them as goddesses.[19] It connected this cultural reverence to the legal precedent of recognizing Hindu idols as juristic persons. Furthermore, it leaned heavily on the New Zealand Te Awa Tupua Act, quoting extensively from it to justify the extension of personhood to a river system.[20] The court declared:

". . . to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal person/living person.. .. Accordingly, while exercising the parents patriae jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic

[19] Lalit Kumar Mishra, 2017 (3) U.D.R. at ¶ 12-16.
[20] Id. at ¶ 18.

persons/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person."[21]

To operationalize this declaration, the court appointed a set of guardians *in loco parentis* (in the place of a parent). These included the Director of the NAMAMI Gange project, the Chief Secretary of Uttarakhand, and the Advocate General of Uttarakhand.[22] These guardians were charged with the duty to "protect, conserve and preserve" the rivers and were directed to form a Ganga Management Board to regulate their activities. The judgment was revolutionary in its scope, effectively creating two new, massive legal persons whose physical form spanned thousands of kilometres and multiple states.

3.2. Narayan Singh Negi v. State of Uttarakhand (Glaciers and Ecosystems)

Just ten days after the Ganga and Yamuna judgment, the same division bench of the Uttarakhand High Court expanded the doctrine even further. In a case concerning the welfare of residents living near the Gangotri and Yamunotri glaciers, the court took *suo motu* cognizance of the glaciers' rapid retreat due to climate change and pollution. Arguing that the glaciers, as the source of the Ganga and Yamuna, were central to their existence, the court declared the Gangotri and Yamunotri glaciers, along with the surrounding waterfalls, forests, meadows, and lakes, to be legal persons.[23]

The court again appointed a host of senior government officials, scientists, and local residents to act *in loco parentis*.[24] This judgment demonstrated the court's intent to apply the personhood doctrine not just to discrete entities like rivers but to entire interconnected ecosystems. It implicitly recognized that protecting a river requires protecting its source and its surrounding environment. While ecologically sound, this expansion also magnified the practical challenges of defining the boundaries and managing the rights of these newly recognized natural persons.

[21] Id. at ¶ 19.
[22] Id. at ¶ 20.
[23] Narayan Singh Negi v. State of Uttarakhand, W.P. (PIL) No. 140 of 2015, ¶ 23 (Uttarakhand H.C. Mar. 31, 2017).
[24] Id. at ¶ 24.

3.3. Court on its own Motion v. State of Punjab (Sukhna Lake)

The jurisprudence pioneered in Uttarakhand found resonance in another state high court. In March 2020, the Punjab and Haryana High Court, dealing with illegal constructions in the catchment area of Sukhna Lake, a man-made lake in the city of Chandigarh, declared the lake to be a "living entity" with legal personality.[25] The court declared all citizens of Chandigarh to be the *loco parentis* guardians of the lake, a departure from the model of appointing specific officials. This decision signaled that the concept was not an idiosyncrasy of a single court but was gaining traction as a potentially powerful tool in environmental law across India.

3.4. The Supreme Court's Intervention: A Practical Reality Check

The ambitious vision of the Uttarakhand High Court was short-lived. The State of Uttarakhand appealed the Ganga and Yamuna judgment to the Supreme Court of India. In July 2017, the Supreme Court issued a stay on the High Court's order.[26] The arguments raised by the state government in its appeal encapsulate the immense practical difficulties inherent in the judgment. These included:

i. Interstate Complications: The Ganga and Yamuna flow through multiple states. A judgment by the Uttarakhand High Court could not be binding on other states like Uttar Pradesh, Bihar, or West Bengal. How could guardians based in Uttarakhand manage a river across its entire length?

ii. Liability Issues: If the river, as a legal person, causes harm (e.g., flooding), who is liable to pay damages? Would the guardians (state officials) be personally liable? This raised unanswerable questions about tortious liability.

iii. Vagueness of Guardianship: The roles, responsibilities, and resources of the appointed guardians were not clearly defined. It placed an immense and amorphous burden on public officials who already had other primary duties.

The Supreme Court's stay was not a rejection of the philosophy of the Rights of Nature but a pragmatic recognition of the deep chasm between declaring a right and creating a workable

[25] Court on its own Motion v. State of Punjab, C.W.P. No. 18253 of 2009 (P.&H. H.C. Mar. 2, 2020).
[26] State of Uttarakhand v. Mohd. Salim, S.L.P. (C) No. 016872 of 2017 (S.C. July 7, 2017).

mechanism to enforce it. This intervention effectively paused the Indian experiment, forcing a necessary confrontation with the practical challenges of translating personhood into practice.

4. From Proclamation to Practice – Analyzing Judicial Efficacy

Judicial efficacy is not measured by the novelty or moral force of a judgment, but by its ability to produce tangible outcomes and operate effectively within the existing legal and administrative system. Judged by this standard, the grant of legal personality to nature in India, while a monumental symbolic victory, has so far demonstrated low practical efficacy. The challenges can be categorized into three interconnected domains: conceptual, institutional, and procedural.

4.1. Conceptual and Definitional Challenges

The High Court judgments, for all their rhetorical power, left a trail of fundamental conceptual questions unanswered, creating significant legal uncertainty.

i. What is the 'Person'? Defining the Boundaries: The orders declare vast and dynamic entities as persons. Where does the "person" of the River Ganga begin and end? The judgment includes "tributaries, streams, [and] every natural water flowing." Does this include groundwater aquifers connected to the river? What about seasonal streams? In the *Narayan Singh Negi* case, the court included "jungles, waterfalls, dales, meadows, grasslands, springs and vales." The geographical and ecological boundaries of these persons are exceptionally vague, making it nearly impossible to determine the precise scope of the guardians' responsibility or the extent of the legal entity itself. This ambiguity is a fertile ground for legal disputes and administrative paralysis.

ii. What are the 'Rights'? Substance vs. Form: The judgments bestow "all corresponding rights, duties and liabilities of a living person" upon the rivers. But what does this mean in substance? A living human person has a vast bundle of rights-civil, political, and economic. Do these apply to a river? A more relevant framework would be a specific charter of ecological rights, such as the right to flow, the right to maintain its natural biodiversity, the right to be free from pollution, and the right to restoration. The judgments do not articulate these substantive rights, leaving a vacuum. Without a clear definition of what rights the river holds, it is difficult to determine when a right has been violated and what the

appropriate remedy should be. Can a dam be built on the river? Is it a violation of the river's right to flow, or a permissible infringement analogous to a restriction on a human's freedom of movement? The lack of specificity renders the "rights" largely unenforceable.

iii. Conflict of Rights: Granting rights to nature inevitably creates potential conflicts with existing human rights. The right to livelihood of communities dependent on fishing, the water needs of farmers for irrigation, and the industrial and domestic water requirements of cities all potentially conflict with a river's absolute right to be pollution-free or to maintain a minimum ecological flow. The judgments offer no guidance on how to balance these competing rights. A robust legal framework would need to establish principles of priority or a mechanism for reconciliation, something a single judicial order is ill-suited to create.

4.2. The Guardianship Conundrum: The Failure of the Loco Parentis Model

The lynchpin of the Indian model was the appointment of guardians *in loco parentis*. This mechanism, intended to give a human voice to the natural entity, has proven to be the system's weakest link.

i. Conflict of Interest: The Uttarakhand High Court appointed senior government officials-the Chief Secretary, the Advocate General, and directors of government projects-as guardians. This creates an immediate and intractable conflict of interest.[27] The state government is simultaneously the primary regulator of environmental norms, a major infrastructural developer (building roads, dams), and often a facilitator of industrial activity that may pollute the rivers. How can a Chief Secretary, whose role is to execute state policy, act as a faithful guardian for a river when that policy involves diverting its water or permitting industrial effluent discharge? The guardian is placed in a position where they may have to sue their own government, an untenable and unrealistic expectation.

ii. Lack of Resources and Expertise: The appointed guardians are high-ranking bureaucrats with extensive existing responsibilities. They were given this monumental new role without any additional budget, staff, or dedicated administrative support. Protecting and managing an entity as vast as the Ganga requires a massive, well-funded organization with

[27] Gitanjali Nain Gill, Personhood for Rivers: A New Era in Environmental Protection?, 30 J. ENV'T L. 1, 12 (2018).

scientific, legal, and administrative expertise. Simply naming officials as guardians without providing the institutional capacity to back them up is an empty gesture.

iii. Comparison with the New Zealand Model: The failure of the Indian guardianship model is thrown into sharp relief when compared to the Whanganui River framework in New Zealand, which the Indian court sought to emulate. The Te Awa Tupua Act did not simply name guardians; it created a comprehensive governance structure. The co-guardianship between the Crown and the Māori *iwi* ensures a balance between state interests and the deep, ancestral knowledge and commitment of the indigenous community.[28] The Act also established a strategic planning group and provided a significant financial settlement (NZ$80 million) to establish a fund for the river's health.[29] The Indian judgments lack this crucial institutional and financial scaffolding, making the comparison to New Zealand superficial. The choice of bureaucrats over a more participatory model involving local communities, ecologists, and civil society activists was a critical flaw.

4.3. Institutional, Procedural, and Federal Hurdles

Beyond the conceptual and guardianship issues, the personhood decrees face insurmountable institutional and procedural barriers within the Indian legal system.

i. The Legislative Void: The courts, through judicial activism, created new legal persons but could not simultaneously create the detailed legislative framework needed to govern them. As discussed, issues of liability, definition of rights, balancing competing interests, and funding mechanisms are all matters that fall squarely within the domain of the legislature. In India, environmental protection is on the concurrent list of the Constitution, meaning both the Centre and the states can legislate on it.[30] A coherent approach requires a national law, passed by Parliament, that can provide a uniform framework for the Rights of Nature, rather than a patchwork of conflicting High Court judgments.

ii. Federalism and Jurisdiction: This was the primary reason for the Supreme Court's stay. The Uttarakhand High Court's jurisdiction is limited to its state boundaries. Its order

[28] Jacinta Ruru, Listening to Indigenous Peoples: The Whanganui River Agreement in New Zealand, 32 J. ENV'T L. & PRAC. 125, 138 (2018).
[29] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, § 9 (N.Z.).
[30] INDIA CONST. sched. VII, list III, item 17A.

appointing Uttarakhand-based officials as guardians for a river system that flows through several other states was legally and practically unworkable. Environmental problems on this scale require coordinated interstate action, which can only be mandated and managed by the central government or through interstate compacts, not by a single state's judiciary.

iii. Litigation and Remedies: While the goal of personhood is to facilitate litigation on behalf of nature, the practicalities are daunting. Who has standing to sue? The judgments name the guardians, but can any citizen act as a "next friend" to the river, as the Punjab and Haryana High Court suggested for Sukhna Lake? What is the appropriate remedy for a violation? If a company pollutes the Ganga, should it pay damages? If so, to whom? The river cannot hold a bank account. The judgments envision a management board, but its creation and funding remain hypothetical. Should the damages be paid into a dedicated restoration fund? The current legal framework under the Environmental Protection Act, 1986, and the NGT Act, 2010, already provides for the "polluter pays" principle and remediation orders.[31] It is unclear how the personhood status adds a more effective remedial pathway than these existing statutory mechanisms, which are themselves fraught with enforcement challenges.

In sum, the judicial declaration of personhood has remained largely on paper. Its efficacy is crippled by a lack of conceptual clarity, a flawed and under-resourced guardianship model, and the absence of the necessary legislative and federal machinery to make it work. The judiciary identified a powerful new ideal but lacked the institutional tools to build a functioning reality around it.

5. The Path Forward – Reconciling Symbolism with Substance

The critique of the practical efficacy of India's Rights of Nature judgments should not be misconstrued as a rejection of their underlying philosophy. The shift from an anthropocentric to an ecocentric legal paradigm is a necessary and welcome evolution in environmental jurisprudence. The symbolic value of these judgments is immense; they shave sparked a national conversation and reshaped legal consciousness. The challenge now is to bridge the gap between

[31] See The National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India); The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

this powerful symbolism and substantive, on-the-ground change. This requires moving beyond exclusive reliance on judicial pronouncements and embracing a multi-pronged approach involving legislative action and institutional reform.

5.1. The Imperative of Legislative Action

The fundamental lesson from the Indian experiment and the Supreme Court's stay is that the creation and governance of natural legal persons is a complex task best suited for the legislature, not the judiciary. Parliament should enact a comprehensive "Rights of Nature Act." Such a statute could:

i. Provide a National Framework: A central law would ensure a uniform approach across the country, overcoming the jurisdictional and federalism issues that plagued the High Court orders. It could establish a clear process for recognizing specific ecosystems as legal persons.

ii. Define Substantive Rights: The legislation must move beyond a generic grant of "rights" and articulate a specific, enforceable charter of ecological rights for natural entities. This could include the right to life and biodiversity, the right to maintain natural cycles, the right to restoration from harm, and the right to maintain a minimum ecological flow.

iii. Establish Mechanisms for Balancing Rights: A statutory framework could establish clear principles and procedures for resolving conflicts between the rights of nature and human rights or developmental needs, perhaps through mandatory impact assessments and public participation.

5.2. Reimagining the Guardianship Model

The bureaucratic, state-centric guardianship model has failed. A legislative framework should create a more robust, participatory, and independent guardianship structure. Drawing inspiration from the Whanganui River model and principles of democratic environmental governance, this could involve:

i. Composite Guardianship Councils: Instead of a few government officials, guardianship should be vested in a council comprising diverse stakeholders. This council should include representatives from the central and relevant state governments, independent scientific experts and ecologists, representatives from local communities (especially indigenous and

traditional forest-dwelling communities who have a deep connection and stake in the ecosystem), and members of civil society organizations.

ii. Clear Mandates and Resources: The roles, powers, and responsibilities of these councils must be clearly defined by law. Crucially, they must be provided with a dedicated budget, funded perhaps by a combination of government allocations and fines collected from polluters, to carry out their functions effectively.

iii. Independence and Accountability: The guardianship council must have a degree of autonomy from the executive branch to avoid conflicts of interest. Its duty should be solely to act in the best interests of the natural entity it represents, with clear mechanisms for public accountability and transparency.

5.3. Strengthening Adjudication and Enforcement

Even with a strong legislative framework, effective enforcement will require specialized adjudicatory bodies. While India has the National Green Tribunal (NGT), its role could be enhanced in this new paradigm.

i. Empowering the NGT: The NGT, with its expert members, is well-suited to adjudicate disputes involving the rights of natural persons. The proposed Rights of Nature Act should explicitly grant the NGT jurisdiction over such matters and empower the guardianship councils to approach the NGT directly for remedies.

ii. Clarifying Standing and Remedies: The law should clarify who, besides the official guardians, has standing to represent a natural entity. Adopting a broad "citizen standing" or "next friend" principle would democratize enforcement. Furthermore, it should specify the available remedies, including not just monetary damages (to be paid into a dedicated restoration fund) but also strong injunctive relief and mandatory orders for ecosystem restoration.

6. Conclusion

The journey of legal personality for natural entities in India, from its dramatic judicial birth to its current state of suspended animation, offers profound lessons for environmental law and governance. The High Court judgments in the Ganga, Yamuna, and glacier cases were acts of

remarkable judicial creativity and moral vision. They courageously challenged the deep-seated anthropocentrism of the law and offered a new way of conceiving humanity's relationship with the environment-one based on respect and kinship rather than domination and utility. In a country where nature is so intricately woven into the cultural and spiritual fabric, these judgments resonated with a deep-seated civilizational ethos.

6.1 Discussion and Analysis

The analysis of their judicial efficacy reveals a stark reality: good intentions and powerful symbolism are not enough to forge effective legal tools. The Indian experiment demonstrates that a top-down, judicially-driven approach, without the requisite legislative and institutional support, is bound to falter. The conceptual vagueness, the fatally flawed guardianship model, and the intractable problems of federalism and enforcement exposed the limits of what the judiciary can achieve on its own. The Supreme Court's stay was less a rebuke of the principle and more a recognition of these profound practical infirmities.

i. The Indian Experiment: Landmark Judgments – The Uttarakhand High Court initiated this jurisprudence in *Lalit Kumar Mishra v. Union of India* (2017), declaring the rivers Ganga and Yamuna, their tributaries, and catchment areas as "juristic persons... with all corresponding rights, duties and liabilities". The court appointed state officials—including the Chief Secretary of Uttarakhand and the Director of the NAMAMI Gange project—as guardians *in loco parentis*. This was quickly followed by *Narayan Singh Negi v. State of Uttarakhand*, which expanded legal personhood to the Gangotri and Yamunotri glaciers and surrounding ecosystems, recognizing the ecological interconnectivity between rivers and their sources. In 2020, the Punjab and Haryana High Court followed suit, declaring Sukhna Lake a "living entity" and appointing all citizens of Chandigarh as guardians.

ii. Critical Evaluation of Judicial Efficacy – Despite the visionary nature of these judgments, their practical efficacy has been demonstrably low due to significant structural flaws:

    a. Conceptual Ambiguities: The judgments created vast, dynamic legal persons with vague geographical boundaries. It is unclear if the "person" includes groundwater aquifers or seasonal streams, creating fertile ground for disputes. Furthermore, the courts granted "all corresponding rights... of a living person," failing to distinguish

which human rights (civil, political) are applicable to a river, versus a specific charter of ecological rights.

b. The Guardianship Conundrum: The *loco parentis* model has largely failed. Appointing senior government officials creates an intractable conflict of interest, as the state is often the primary regulator, developer, and polluter. These officials were given monumental responsibilities without additional budget, staff, or expertise. This stands in sharp contrast to the New Zealand model, which provided a financial settlement of NZ$80 million and a dedicated governance structure.

c. Institutional and Federal Hurdles: The Supreme Court's stay was necessitated by the practical impossibility of a state High Court regulating interstate rivers. The High Court's order could not bind other states like Uttar Pradesh or West Bengal, through which the rivers flow. Additionally, questions of liability remained unanswered: if the river floods, are the guardians personally liable for damages?

6.2 Findings and Path Forward

i. Findings: The analysis reveals a significant gap between judicial proclamation and implementation. While the judgments successfully challenged anthropocentrism and sparked a national conversation, they failed to create a workable mechanism for enforcement. The top-down, judicially driven approach lacked the necessary legislative scaffolding to address issues of funding, interstate coordination, and conflict of rights. The Supreme Court's intervention was a pragmatic recognition that the judiciary alone cannot build the institutional architecture required for such a massive paradigm shift.

ii. Path Forward: The future of the Rights of Nature in India now lies at a crossroads. The path forward is not to abandon this revolutionary concept but to build a durable legal and institutional home for it. The onus now shifts from the judiciary to the legislature. The vibrant, albeit stalled, judicial conversation must evolve into a concrete legislative project. A national Rights of Nature Act, which provides a clear framework, establishes participatory and well-resourced guardianship councils, and clarifies the substantive rights of nature, is the necessary next step. Only through such a comprehensive, multi-stakeholder effort can India hope to translate the profound promise of personhood into the practical reality of protection. The rivers and mountains have been granted a voice by the courts; it

is now up to the entire political and legal system to create the conditions under which that voice can be truly heard and heeded.

For the "personhood" of nature to translate into effective "practice," India must move beyond judicial declaration to comprehensive legislative action. The article concludes that Parliament should enact a national "Rights of Nature Act". Such legislation must:

1. Define Substantive Rights: Articulate specific ecological rights (e.g., right to flow, right to biodiversity) rather than generic human rights.
2. Reimagine Guardianship: Replace bureaucratic guardians with "Composite Guardianship Councils" comprising independent scientists, local communities, and indigenous representatives, provided with independent funding.
3. Strengthen Enforcement: Explicitly empower the National Green Tribunal (NGT) to adjudicate disputes involving natural persons and clarify standing for citizens to act as "next friends" to nature.

The judicial pronouncements were a crucial, albeit incomplete, first step; the onus now lies with the legislature to reconcile this powerful symbolism with substantive substance.

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