INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

IJLAR

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

IJLAR

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.

IJLAR

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.

IJLAR

THE PERSONHOOD OF RIVERS: A JURISPRUDENTIAL EXPOSITION

AUTHORED BY - KHETRAMANI ATI & SOUMASETU PATJOSHI
P.G Department of Law, Sambalpur University

Abstract

The recognition of rivers as legal persons represents a significant transformation in contemporary environmental jurisprudence, challenging the traditional anthropocentric understanding of legal rights and responsibilities. This paper examines the jurisprudential foundations, philosophical justifications, judicial developments, and practical implications of granting legal personhood to rivers, with particular emphasis on the Indian legal framework. Drawing upon John Salmond's conception of legal personality and the distinction between natural and juristic persons, the paper explores how law can extend rights and duties to non-human entities. It critically analyses the landmark decisions in Mohd. Salim v. State of Uttarakhand (2017) and Lalit Miglani v. State of Uttarakhand (2017), wherein the Uttarakhand High Court recognized rivers and other natural entities as legal persons. The paper also examines the constitutional foundations of environmental protection under Articles 48A and 51A(g) of the Indian Constitution and the relevance of the Public Trust Doctrine. A comparative analysis of New Zealand's Te Awa Tupua Act, 2017, and the constitutional recognition of the rights of nature in Ecuador and Bolivia highlights alternative institutional approaches to ecological protection. Furthermore, the study identifies critical challenges concerning legal representation, guardianship, liability, enforceability, and accountability associated with river personhood in India. It argues for a comprehensive legislative framework, representative river protection boards, and meaningful public participation to ensure effective implementation. The paper concludes that recognizing rivers as legal persons can facilitate a transition from anthropocentric to ecocentric jurisprudence, strengthening environmental justice and promoting sustainable ecological governance.

Keywords: Legal Personhood, Rights of Nature, River Rights, Environmental Jurisprudence, Public Trust Doctrine, Ecocentric Approach, Indian Constitution.

I. Introduction

In recent years, the concept of granting legal personhood to rivers has gained significant traction in both environmental and legal discourses. The idea challenges traditional notions of rights-holders, which have long been confined to humans and corporations, and seeks to elevate rivers to the status of legal persons capable of holding rights and duties. The jurisprudential question is both complex and compelling: Can non-human entities like rivers be regarded as "persons" in the eyes of the law? This assignment explores the concept of legal personhood, particularly in the Indian context, by critically analyzing its jurisprudential roots, judicial recognition, and practical implications.

II. The Concept of 'Person' in Jurisprudence

In jurisprudence, a "person" is not limited to human beings. Rather, it is a term of art. As John Salmond defines, a legal person is "any being whom the law regards as capable of rights or duties."[1] In essence, the law can attribute personality to humans (natural persons) and to non-human entities such as companies, deities, or institutions (legal/juristic persons).

Types of Legal Persons

1. **Natural Persons**: These are human beings who are born with legal rights and duties.
2. **Legal or Juristic Persons**: These are artificial creations of law like corporations, trusts, and even idols. Though not sentient, they are recognized for functional purposes[2] [

The concept is crucial because without legal personhood, an entity cannot approach a court, own property, or be owed any duties by others. As a legal fiction, personhood serves as a foundational tool that allows law to engage with both human and non-human entities.

Types of Legal Persons

The idea that the law can treat non-human entities as persons is not new. One of the most celebrated illustrations of this is the case of **Salomon v. A. Salomon & Co. Ltd.**[3] In this landmark decision, the **House of Lords** upheld that a company, once incorporated, becomes a **distinct legal entity** from its shareholders—even if it is effectively controlled by one person.

"The company is at law a different person altogether from the subscribers to the memorandum... and, though it may be that after incorporation the business is precisely the same

[1] *John Salmond, Jurisprudence* 10th ed. (Glanville L. Williams ed., Sweet & Maxwell 1947), p. 354
[2] *Roscoe Pound, Jurisprudence,* Vol. IV (West Publishing Co. 1959), p. 225
[3] *Salomon v. A. Salomon & Co. Ltd.,* [1897] A.C. 22 (H.L.) (U.K.)

as it was before, the company is not in law the agent of the subscribers or trustee for them." — Lord Macnaghten

This recognition of a **fictional legal person**—the corporation—has formed the basis for recognizing other non-human persons in law, including deities in religious trusts, ships in admiralty law, and more recently, rivers. It demonstrates that personhood is not limited to sentient beings but is a legal construct used to assign rights and obligations where necessary.

III. Philosophical Justifications for Non-Human Personhood

Modern environmental jurisprudence draws upon a range of philosophical traditions to argue for the personhood of nature. Natural law theorists maintain that nature has intrinsic value that warrants recognition in law. The Earth Jurisprudence movement, led by thinkers like Thomas Berry, argues that all components of the Earth community should be recognized as rights-bearing subjects[4]

Legal scholar Christopher D. Stone famously asked: *"Should Trees Have Standing?"* and argued for extending legal rights to natural objects[5] His work catalyzed a shift toward considering non-human entities as legal persons for environmental protection.

IV. Indian Jurisprudence: Groundbreaking Recognition of River Personhood

India has emerged as a leader in recognizing rivers as legal persons. This recognition, although judicially driven and not yet legislatively codified, represents a significant jurisprudential development.

A. Mohd. Salim v. State of Uttarakhand (2017)

In a landmark case, the Uttarakhand High Court declared rivers **Ganga and Yamuna** as "living entities having the status of legal persons." The court stated:

"The Rivers Ganga and Yamuna are central to the existence of half of the Indian population. They are revered, worshipped, and an integral part of the people's lives. To protect their rights is a constitutional obligation."[6]

The Court cited Articles **48A** and **51A(g)** of the Indian Constitution to ground this judgment.

[4] *Thomas Berry, The Great Work: Our Way into the Future* (1999)
[5] *Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects* (2d ed. 1996)
[6] *Mohd. Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367 (India)

Article 48A, a Directive Principle of State Policy, urges the State to protect and improve the environment. Article 51A(g) casts a fundamental duty upon citizens to protect natural resources.

The court also appointed the Chief Secretary and Advocate General of Uttarakhand as the legal guardians of the rivers. This move was compared to guardianship over a minor or a mentally unsound person under Indian law.

However, this judgment was stayed by the **Supreme Court of India** in a Special Leave Petition, citing concerns over administrative and legal enforceability. The Court was hesitant to enforce a declaration without legislative clarity[7].

B. Lalit Miglani v. State of Uttarakhand (2017)

In a follow-up case, the same High Court extended the concept of personhood to **glaciers, forests, meadows, rivers, lakes, and air**. The judgment reiterated the indivisible and sacred nature of the Himalayan ecosystem and declared the entire ecosystem as a legal person[8].

Though progressive, these judgments have been criticized for lack of clarity in execution, with no statutory authority to support such sweeping declarations.

V. Comparative Jurisdictions: Learning from New Zealand

India's judicial declarations contrast with the more structured and culturally rooted approach in New Zealand. The **Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017** granted personhood to the **Whanganui River**, recognizing it as an indivisible and living whole: "Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea."[9]

The Act appointed two guardians—one from the Crown and another from the local Māori community—to act on behalf of the river. This structure contrasts with India's ad hoc judicial approach and provides a useful model for future legislative development.

VI. Rights of Nature in Latin America

Ecuador was the first country to constitutionalize the rights of nature. Article 71 of its Constitution grants nature the right "to exist, persist, maintain and regenerate its vital cycles"

[7] *State of Uttarakhand v. Mohd. Salim*, SLP (Civ.) No. 16847/2017 (India)
[8] *Lalit Miglani v. State of Uttarakhand*, 2017 SCC OnLine Utt 367 (India)].
[9] *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, ss. 12–14 (N.Z.)

[Bluebook citation: *Ecuador Const.*, art. 71 (2008)]. Bolivia followed with its **Law of the Rights of Mother Earth** in 2010, recognizing Mother Earth (Pachamama) as a collective subject of public interest[10].

These approaches reflect an **ecocentric worldview**, shifting legal thinking from human dominion over nature to co-existence and harmony.

VII. Theoretical and Practical Challenges in India

While the Indian judgments are bold, they raise key concerns:

1. **Legal Standing**: Who will represent rivers in legal disputes? Judicial orders appointing guardians lack clear statutory backing.
2. **Liability**: If a legally recognized river causes damage (e.g., flooding), could it be sued?
3. **Enforceability**: Without legislative support, implementing such judgments is difficult.
4. **Accountability**: Guardians appointed without public consultation may not serve riverine or public interests.

These concerns echo **H.L.A. Hart's** argument that law must be based on a system of rules, not moral or spiritual ideals alone[11]

VIII. Potential within Indian Environmental Law

Despite challenges, the Indian legal framework has space to support the personhood of rivers. The **Public Trust Doctrine**, affirmed by the Supreme Court in **M.C. Mehta v. Union of India**,[12] mandates that the State is a trustee of natural resources, which must be protected for public use and cannot be privately appropriated.

This doctrine aligns with the personhood concept—both seek to protect ecological integrity through proactive legal obligations.

IX. Moving Forward: Recommendations for Indian Legal System

1. **Legislative Framework**: Enact laws modeled after the New Zealand statute that clearly define river rights, duties, and governance mechanisms.
2. **Guardianship Boards**: Establish River Protection Boards with representation from government, local communities, ecologists, and indigenous peoples.

[10] *Bolivia, Law of the Rights of Mother Earth*, Law No. 071 (Dec. 21, 2010)
[11] *H.L.A. Hart, The Concept of Law*, 2d ed. (Oxford Univ. Press 1994)
[12] *M.C. Mehta v. Union of India*, (1997) 2 SCC 353 (India)

3. **Integration with Environmental Law**: Merge the personhood approach with existing laws like the Environment (Protection) Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974.
4. **Public Participation**: Legal recognition should involve river-dependent communities and local stakeholders for democratic legitimacy.

X. Jurisprudential Reflections

The recognition of rivers as legal persons pushes the boundaries of jurisprudence. It embodies **legal realism** by showing that law must evolve in response to social and ecological crises. It also aligns with **Ronald Dworkin's** idea that law is a matter of principle and integrity, seeking coherence between legal doctrines and moral values.

This evolution indicates that personhood is no longer an exclusive human domain but a dynamic legal tool responsive to planetary needs.

Conclusion: Flowing Towards a Just Jurisprudence

The journey of recognizing rivers as legal persons is not merely an academic or legal novelty; it is a fundamental reimagination of the relationship between humans and nature. At the heart of this jurisprudential exposition lies a simple yet profound idea: what we value, we must protect—and what we protect must be given a voice in the legal realm. Declaring rivers as persons is not about metaphors; it is about justice, responsibility, and ecological survival.

In classical jurisprudence, personhood has often been the gateway to legal recognition—bestowing rights, duties, and protections. By extending this recognition beyond natural human beings to juristic persons like companies, trusts, and idols, the legal system has shown remarkable flexibility in advancing societal goals. The recognition of companies as legal persons, starting with *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22 (H.L.) (U.K.), set a precedent that personhood is a legal fiction, used to facilitate meaningful governance, accountability, and protection.

The same jurisprudential logic now finds resonance in the context of rivers. The Indian judiciary, notably in *Mohd. Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367, took a bold and visionary step by recognizing rivers Ganga and Yamuna as living entities with legal rights. While the decision was stayed by the Supreme Court for administrative concerns, the symbolic and legal significance remains unshaken. It marked a paradigm shift from anthropocentric to ecocentric constitutionalism. This approach aligns with the environmental

values enshrined in Article 48A and Article 51A(g) of the Indian Constitution, which mandate the State and citizens to protect and improve the environment.

Yet, declaring rivers as persons also poses complex questions. Who will represent the river in court? What if the river's interests conflict with human development needs? Will this recognition offer actual protection, or merely symbolic comfort? These challenges, however, should not deter us. Every transformative idea in law—from corporate personality to environmental justice—has evolved through trial, error, and constant reinterpretation. Legal personhood for rivers is not a final solution, but a powerful tool—a means to bridge the gap between ecological rights and enforceable duties.

Moreover, recognizing the personhood of rivers also has a deeply moral and cultural dimension. In Indian civilization, rivers are not inert resources but living mothers—Ganga Ma, Yamuna Ma, Narmada Ma—nurturing civilizations for millennia. Law, in this context, is merely catching up with tradition, spiritual consciousness, and ecological necessity. Jurisprudence must embrace this shift—not as an abandonment of doctrine but as an elevation of doctrine to meet the needs of a fragile planet.

In conclusion, granting rivers legal personhood is not about giving nature human characteristics; it is about humanizing our legal system so that it protects all forms of life. It is a reminder that justice must flow—like the rivers themselves—dynamic, inclusive, and life-giving. As climate crises loom large, this jurisprudential evolution offers a glimmer of hope. It calls upon law students, lawyers, judges, and policymakers to reimagine the purpose of law—not just to govern humans, but to sustain life itself.

Let the river flow—not just through lands and valleys, but through our courts, our consciousness, and our collective conscience.