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The Ganga: From Sacred River to Legal Personhood

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ABSTRACT

In recent times, Indian courts have bestowed legal personhood upon the Ganga, a river highly esteemed in Hindu culture and associated with substantial changes in environmental law. This study examines the revolutionary consequences of acknowledging the Ganga as a living being with legal rights, examining how this unique legal standing may impact environmental preservation and governance. The first section of the paper traces the Ganga's cultural and historical significance, looking at its relevance to Hinduism and its symbolic meaning for millions of adherents. The legal structure that gave rise to the Ganga's personhood is then explored, including significant court rulings and legislative initiatives that altered the river's status.

The effectiveness of this legal innovation in tackling environmental degradation and increasing conservation efforts is evaluated in this study through a critical review of influential cases and the ensuing changes to laws and policies. It looks into the practical ramifications of giving the Ganga legal personhood, such as the difficulties in putting the river's rights into practice and upholding them and the wider effects on related environmental cases. The ramifications of this legal method for other sacred or ecologically significant natural entities are also discussed in the study, along with the possibility that it could spur similar legal recognitions around the world.

The paper concludes by arguing that although Ganga's legal personhood is a step in the right direction towards combining environmental preservation with cultural values, its success hinges on effective implementation

and enforcement procedures. To guarantee that the Ganga's new legal status results in significant environmental and societal benefits, the research emphasises the necessity of ongoing legal innovation and interdisciplinary collaboration. A trailblazing example of how holy natural resources can be legally safeguarded without sacrificing their ecological and cultural value is the Ganga case.

KEYWORDS

Legal Personhood, Environmental Protection, Sacred River.

INTRODUCTION

The River Ganges (also referred to as Ganga) is a symbol of faith, hope, culture and sanity, as well as a source of livelihood for millions since time immemorial. She is the centre of social and religious tradition in the Indian sub-continent and particularly sacred in Hinduism. The very special faith and respect for the River Ganges in India are as old as Indian culture itself. These are amply reflected in such ancient Indian scriptures as the *Vedas*, *Puranas*, *Mahabharata*, *Ramayana* and several others. Respect for the Ganga is a part of Indian identity and the very symbol of Indian culture.

The history of Ganga in nurturing culture and civilizations is appreciated through fostering native culture in its basin, shifting the Indus-Sarasvati basin civilization into its fold, and promoting the integration of cultures to develop Indian civilization.¹

An area larger than one million square kilometres is drained by the Ganges alone. More than 407 million Indians, or almost one-third of the country's population, live in its vast basin, which provides one-fourth of India's water resources. Bangladesh's and India's agricultural economies both greatly benefit from the rich soil of the Ganges basin. A vast region receives irrigation from the Ganges and its tributaries year-round, and they also replenish the groundwater table over their entire path. About one-third of Indians and two-thirds of Bangladeshi people depend heavily on the river for their livelihood, food, and nutritional security. It supports agriculture, animal husbandry and fisheries, tourism, river-based trade, and transportation. The goal of this article is to

¹ River Ganges – Historical, cultural and socioeconomic attributes | Aquatic Ecosystem Health & Management | Scholarly Publishing Collective, <https://scholarlypublishingcollective.org/msup/aehm/article-abstract/20/1-2/8/168603/River-Ganges-Historical-cultural-and-socioeconomic?redirectedFrom=fulltext> (last visited Sep 9, 2024).

give a macro perspective on the Ganges while also offering a more comprehensive context that includes the river's historical, spiritual, cultural, and social aspects—aspects that are sometimes overlooked in scientific publications.

HISTORICAL AND CULTURAL CONTEXT

One of the main rivers of the Indian subcontinent, the Ganga is the longest river in the country, flowing from the Himalayan Mountains to the Bay of Bengal over a distance of around 1,569 miles (2,525 KM). The Ganga basin is home to nearly 400 million people. The Ganga travels through the states of Uttaranchal, Uttar Pradesh, Bihar, Jharkhand, and West Bengal, all of which are part of the EZCC, from its source to its confluence.

The Ganga has been declared a National Heritage by the Government of India and all is the river of India and above all is the river of India, Ganga has held India's heart captive and drawn uncounted millions to her banks since the dawn of history. The story of Ganga is the history of Indian civilization and culture. The great Janpada and Empire was built and flourished on the bank of Ganga. The Ganga is also the river of creation. The cultural diversity of the Ganga basin is highly considerable. About 62 tunes, 254 types of songs and ballads, 122 dance forms, 200 crafts, 12 styles of folk paintings, 26 languages and dialects grew along the waves of Ganga. In the mythology and epics, Ganga has been considered as a holy river. It is regarded by all religions and paths. The Ganga has fascinated several poets and litterateur since ancient times. Today, about 100 festivals and 50 major fairs are celebrated annually at the bank of the Ganga and more than 4-5 billion people yearly visit them. About 1 crore people make their living.

The Eastern Zonal Cultural Centre (EZCC) under the Union Ministry of Culture has Assam, Bihar, Jharkhand, Manipur, Odisha, Sikkim, Tripura, West Bengal and Andaman & Nicobar Islands as the member states. As per the approved scheme, every Zonal Culture Centre have to organize a series of festivals namely-Cultural Yatra, beyond their zone. The Swachh Bharat Abhiyan has also been taken up by EZCC.²

ADVANTAGES TO BE LEGAL PERSONHOOD

1. Enhanced Legal Framework:

² Ganga Sanskriti Yatra showcasing & discovering Culture Heritage of Ganga to begin at Gangotri on 14 February, 2016, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=136349> (last visited Jan 29, 2025).

- **Legal Standing and Accountability:**
 - **Impact:**

The Ganga's legal personality grants it the authority to appoint a representative, such as a state government, to act on its behalf. This legal status allows for stronger implementation of environmental laws, as the river may now be legally represented in court and hold non-compliers responsible.
 - **Example:** In several cases, the legal status has facilitated legal actions against industrial entities and local governments for failing to comply with pollution control measures.
- **Increased Judicial Activism:**
 - **Impact:** Courts have adopted a more assertive approach in guaranteeing adherence to environmental regulatory standards. The acknowledgement of the rights of the Ganga people has resulted in heightened scrutiny and involvement of the judiciary in measures to control pollution.
 - **Example:** The Supreme Court and High Courts have issued directives to various stakeholders, including the central and state governments, to implement and enforce pollution control measures more rigorously.

2. Improvement in Pollution Control:

- **Regulatory Measures and Compliance:**
 - **Impact:** The legal personhood has prompted the formulation and implementation of stricter regulations and standards for industries and municipalities discharging pollutants into the Ganga.
 - **Example:** Efforts such as the Namami Ganga program have been intensified, focusing on setting up sewage treatment plants, improving waste management, and enforcing stricter pollution control norms.

- **Penalties and Remediation:**

- **Impact:** The ability of the Ganga to “sue” for its rights has led to increased financial penalties and mandates for remediation by polluters. This financial pressure encourages compliance with environmental standards.
- **Example:** Industries responsible for high levels of pollution have faced substantial fines and have been required to invest in cleaner technologies and remediation efforts.

3. Challenges and Limitations:

- **Implementation and Enforcement:**

- **Challenge:** Despite the legal personhood, challenges remain in the effective implementation and enforcement of pollution control measures. Issues such as bureaucratic inertia, inadequate infrastructure, and limited financial resources hinder progress.
- **Example:** In some regions, the construction and operation of sewage treatment facilities have faced delays due to administrative and logistical issues.

- **Coordination Among Stakeholders:**

- **Challenge:** Effective pollution control requires coordinated efforts among various stakeholders, including central and state governments, local authorities, and communities. The legal personhood of the Ganga has not always ensured seamless coordination among these groups.
- **Example:** Disparities in implementation and enforcement between different states have led to inconsistent progress in pollution control along the Ganga’s course.

4. Impact on Water Quality Management:

- **Restoration Projects:**

- **Impact:** Legal personhood has accelerated efforts to restore and preserve the Ganga’s

water quality through dedicated projects and programs aimed at cleaning and revitalizing the river.

- **Example:** Initiatives like the Ganga Action Plan and Namami Gange have been launched with a focus on water quality improvement, habitat restoration, and sustainable management practices.
- **Public Awareness and Engagement:**
 - **Impact:** The recognition of the Ganga as a living entity has raised public awareness and encouraged community involvement in protecting the river. Increased public pressure and activism have contributed to better water quality management.
 - **Example:** Community-led clean-up drives and awareness campaigns have gained momentum, fostering a sense of responsibility and stewardship among local populations.

5. Future Directions:

- **Strengthening Enforcement Mechanisms:**
 - **Recommendation:** Enhance enforcement mechanisms and address implementation challenges by investing in infrastructure, improving administrative efficiency, and providing adequate resources for pollution control efforts.
 - **Strategy:** Develop clear guidelines and accountability measures for all stakeholders involved in the managing of the Ganga.
- **Expanding the Model:**
 - **Recommendation:** Explore the potential of applying the legal personhood model to other rivers and natural entities facing similar environmental challenges.
 - **Strategy:** Assess the outcomes of the Ganga's case and adapt successful strategies to other contexts, considering local cultural, legal, and environmental conditions.

The legal personhood of the Ganga has significantly influenced pollution control and water quality management by enhancing legal frameworks, increasing judicial activism, and fostering public engagement. However, challenges in implementation and coordination remain. Addressing these issues through strengthened enforcement and expanded models can further improve Ganga's water quality and serve as a model for other environmental protection efforts

ATTRIBUTION OF PERSONHOOD TO RIVERS IN OTHER COUNTRIES: AN ANALYSIS

“I am the River, and the River is me: Legal personhood and emerging rights of nature”

1. New Zealand-- the Whanganui River

What was it about the river, and its people, that led to this unique legal result? Legislation was passed by the New Zealand government on March 20th, 2017, acknowledging the Whanganui River as a legal entity with rights and obligations comparable to those of a person.

Following the initial announcement of this settlement, there has been much speculation on the broader implications of the ruling, its potential applicability in different situations, and its potential global impact. The distinctive historical context of this legislation warrants a comprehensive elucidation.

The Māori people of the river, known as the Whanganui Iwi, bear a longstanding ancestral relationship with the River that predates the colonisation of New Zealand. The statute concerning the Whanganui River codifies that pre-existing relationship. The ruling is important in conferring legal rights to a natural thing and defining a method to develop the common law to more accurately acknowledge and embody Indigenous legal ideas.

The river is considered to be fundamental to the life of the tribes, fulfilling both physical and spiritual needs from time immemorial. Because of this, these people considered the river their Tupua (ancestor) and believed they could not be separated from the River. It is this belief that gave birth to the Whanganui Proverb “Ko au te Awa, ko te Awa ko au” “I am the River and the River is me”³

Under common law, legal personhood has been granted to corporations, as well as to other non-human entities including

³ ‘Defending Rivers on JSTOR’ (n 4).

trusts, joint ventures and nation-states. Cases like the Whanganui River, though grounded in Māori law, also illustrate a common law shift in extending legal personhood rights to the natural world.⁴

2. Ecuador: The Vilcabamba River

Ecuador was the first country to give legal status to its River. In 2008, the Loja Provincial Government started constructing buildings, and dams beside the Vilcabamba River and dumped all the excavation materials and rocks into the river, this resulted in a change in the flow of the river causing significant flooding in 2009 and 2010. Consequently, some affected citizens filed a “protective action” against the provincial government.⁵

In this instance, the Court acknowledged that the rights of nature had been infringed upon—more particularly, the right of nature to exist, to be preserved, and to renewal of its essential cycles, structures, and functions.

The Court based on this reasoning asked the Provincial Government to prevent any future dumping and grant legal status to Vilcabamba River under Article 71 of Ecuador’s constitution “which establishes every citizen or nation’s right to demand the authorities to comply with the rights’Improving the Global Environmental Rule of Law by Upholding Indigenous Rights: Examples from Aotearoa New Zealand in Global Journal of Comparative Law Volume 7 of nature”.⁶

3. Colombia- The Atrato River:

In 2019, Colombia made a significant move towards environmental conservation by granting legal personhood to the Atrato River. As one of the most biodiverse regions on the planet, Colombia is acutely aware of the importance of preserving its water sources and natural habitats.

The Atrato River, located in the Chocó region, is an environmental lifeline for countless communities and diverse species. By bestowing it with legal personhood, Colombia

⁴ I am the River, and the River is me: Legal personhood and emerging rights of nature | West Coast Environmental Law, (2018), <https://www.wcel.org/blog/i-am-river-and-river-me-legal-personhood-and-emerging-rights-nature> (last visited Jan 29, 2025).

⁵ Lidia Cano Pecharroman, ‘Rights of Nature: Rivers That Can Stand in Court’ (2018) 7 Resources 13.

⁶ Catherine J. Iorns Magallanes, *Improving the Global Environmental Rule of Law by Upholding Indigenous Rights: Examples from Aotearoa New Zealand*, 7 Global Journal of Comparative Law 61 (2018).

acknowledges its crucial role in maintaining the ecological balance and ensures a more holistic approach to its protection.⁷

THE JUDICIAL PRONOUNCEMENT FOR GRANTING LEGAL PERSONHOOD TO THE GANGA

Mohamad Salim v. State of Uttarakhand and others (2017)

Petitioner: Mohd. Salim (resident) **Respondents:** State of Uttarakhand, Central Government and Others

Facts: The Ganges and Yamuna rivers are regarded sacred by Hindu people and constitute a water source for nearly 500 million people. Both rivers are among the most polluted rivers in the world as untreated sewage and industrial trash enter the waterways every day. Governmental efforts to clean up the waterways have failed thus far. The judgment followed a ruling from 5 December 2016 in which the High Court of Uttarakhand dealt with mining activities and land encroachment near the Ganges River. The non-compliance with the Court's directions by government parties led to the second ruling in March 2017.

Decision: The Court declared that the Ganges and Yamuna river and its tributaries are legal and living entities with all corresponding rights, duties and liabilities. The Court relied on jurisprudence recognising Hindu deities/idols as juridical persons. Since these types of legal persons are considered "children" under Indian law, they require the court to name a legal guardian to act on their behalf. The Court did so, using *parens patriae* jurisdiction (in a sense, to act as the legal guardian), which is rarely exercised by the judiciary. The decision is rooted in environmental and spiritual considerations. The Court recognised that the rivers' existence is threatened and that swift and extraordinary action is required to preserve and conserve them. The rivers are crucial to the health and well-being of India's population. Additionally, the Court emphasises the rivers' spiritual significance to Hindus

What is the order of the court: The Court ordered the Director of Namami Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand to protect, maintain and preserve the rivers as their legal guardians.

Current status: After the State of Uttarakhand appealed the

⁷ Granting rivers legal personhood | Aquatech, <https://www.aquatechtrade.com/news/surface-water/granting-the-worlds-rivers-legal-personhood> (last visited Jan 29, 2025).

March 2017 decisions, the Supreme Court stayed the order. It found the decision legally unsustainable due to its impracticality. It held, for instance, that the ruling does not deal with the question of who was to satisfy compensation claims in the case of casualties due to flooding. Furthermore, the Supreme Court thought that the judgment interfered with the rights of other provinces as the river runs through several states. The challenge also asserts that the Court went beyond its jurisdiction in granting rights to the river, as no party had pled this; Salim had only asked the Court to remove encroachments.

*The judges granted the Ganges and Yamuna rivers all rights, duties and liabilities of a living person without further specifying the practical implications.*⁸

The ruling came only a week after New Zealand had awarded legal personhood to the Whanganui River. However, in contrast to the detailed and adequately constructed Whanganui River Act which also provides funds for implementation, the ruling at hand remained exceedingly vague. The court accorded the Ganges and Yamuna rivers complete rights, duties and obligations of a live person without clarifying the practical repercussions. For instance, the ruling included no directions on how to deal with the illegal flow of sewage and industrial trash into the river system, which could not be blocked immediately. Another huge problem stemmed from the Court's decision to establish state authorities as the rivers' legal guardians. Since the government's conservation efforts had been unsuccessful to this point, opponents questioned if any constructive conclusion could be reached from a ruling that places the rivers' destiny in the hands of persons who have proved to be unable to bring about change. Further criticism was targeted at the spiritual underpinning of the ruling. Critics maintained that benefits provided to the Ganges and Yamuna rivers should be extended to non-sacred rivers. Despite this criticism, the ruling was praised for its progressive stance on the protection of nature and Sedipta Sen, a history professor at the University of California, concluded that "Although the ruling has stayed a few months after its issuance, it is an interesting bending of the boundaries of nature, person, and deity that produce Ganga and Yamuna as vulnerable prototypes.

CHALLENGES IN GIVING LEGAL STATUS TO RIVERS

In India, granting rivers legal status presents several particular

⁸ Environmental Court Cases: Ganges River, Natural Justice, <https://naturaljustice.org/publication/environmental-court-cases-ganges-river/> (last visited Jan 29, 2025).

difficulties.

1. **Complicated Legal Framework:** The idea of non-human entities as legal persons is not currently supported by India's legal system, which is built on a combination of common law and statutory law.
2. **Cultural and Religious Significance:** India's rivers have a great deal of cultural and religious significance, which causes different communities to interpret their rights and status differently.
3. **Economic Dependency:** Rivers play a vital role in daily life, industry, and agriculture. Legal safeguards could be in opposition to current economic endeavours, provoking businesses that depend on river resources.
4. **Environmental Degradation:** Since present methods frequently breach environmental regulations, pollution and excessive water extraction make it difficult to enforce any legal rights rivers may have.
5. **Lack of Awareness:** It could be challenging to garner support for legislative changes if the general public has a limited grasp of the idea of river personhood.
6. **Political Will:** It might be difficult to get the political will required for such major law reforms because environmental issues frequently take a backseat to development goals.
7. **Implementation and Enforcement:** Setting up a system to keep an eye on and uphold rivers' rights may necessitate significant infrastructure and resource deficiencies.
8. **Judicial Interpretation:** Because recognising a river's legal character could have precedent-setting effects on other legal matters and environmental policy, courts could be reluctant to do so.
9. **Interstate Disputes:** In India, rivers frequently cross state lines, making it more difficult to establish jurisdiction and enforce rights.

To overcome these obstacles and establish a long-lasting framework for acknowledging rivers' rights, legislators, environmentalists, and local communities would need to work together.

CONCLUSION & SUGGESTIONS

Final Assessment

The designation of the Ganga as a living creature signifies a significant transformation in our comprehension of environmental care. By conferring legal rights upon the river, we recognise its ecological significance as well as its cultural and spiritual value to millions. This action can act as a significant motivator for safeguarding the Ganga from pollution and degradation while promoting a collective sense of responsibility for its preservation. Nonetheless, advancing necessitates a meticulous evaluation of legislative structures, community engagement, and enforcement strategies to provide substantial protection.

Suggestions

- **Establish a comprehensive legal framework** – that explicitly delineates the rights of the Ganga, specifying the obligations of many parties, including governmental entities, industries, and local communities.
- **Community Involvement:** Engage local populations in the decision-making processes about the Ganga. Their ancestral knowledge and spiritual affiliation can guide sustainable practices and conservation initiatives.
- **Monitoring and Enforcement:** Establish dedicated bodies to monitor the health of the Ganga and enforce legal rights, leveraging technology and citizen interaction to assure compliance.
- **Public Awareness Campaigns:** Launch educational programs to create awareness about the significance of the Ganga and the concept of river personhood, encouraging a sense of ownership and duty among the public.
- **Interstate Collaboration:** Encourage cooperation among states through agreements and collaborative projects centred on the Ganga's conservation, addressing concerns that transcend borders.
- **Harmonisation with Development Policies:** Align developmental policies with the rights of the Ganga, ensuring that economic activities do not jeopardise its health, so fostering sustainable progress.
- **Conduct study and documentation** to elucidate the biological, cultural, and economic significance of the

Ganga, utilising this information to guide policy and legal determinations.

By embracing these proposals, India may take great advances toward conserving the Ganga, ensuring it survives as a vital lifeline for future generations.