

# **NATURE AS A “PERSON”: HAS ITS TIME ARRIVED?**

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## **ACKNOWLEDGEMENT**

This article has been commissioned for LAWASIA by the Anil Divan Foundation.

## **INTRODUCTION**

“No force on earth can stop an idea whose time has come”- Victor Hugo

Intensified resource extraction due to various human led factors such as industrialisation and urbanisation are having a serious impact on the environment which includes within it various natural entities such as rivers, forests, glaciers etc. India is not immune to this trend and if anything has the most to lose from it due to the large dependence the country’s population has on natural entities like the Ganga and Yamuna rivers, which are facing the twin burdens of climate change affecting the glaciers at their source and pollution that affects their waters downstream. What is the way out of this situation? Is it not the state’s responsibility in our social contract to remedy this situation? What is the most effective solution to guarantee protection to environmental objects? The answer to these questions for some, including recently from a few legal authorities, has been to grant personhood to these entities in order to protect their interests. Is this the solution that these problems require?

The objective of this essay is to dive deep into this question by discussing the concept of environmental personhood. While there exists literature on other options of preventing environmental damage, the jurisprudential concept of providing personhood to such objects is a topic in need of more discussion. Considering the rather rapid pace of climate change, the study done in this paper becomes all the more relevant for any scholar of law.

To proceed systematically, the paper is divided into various sub-parts. It will first lay out the contextual background by discussing the reason of personhood and will then proceed by analysing it from the non-animistic grounds. After discussing various branches of this aspect, the paper will study personhood from animistic grounds. Having gone through both non-animistic and animistic claims to personhood for natural entities, the conclusion reached is that while personhood is well-intentioned, it is not necessary.

## **WHY PERSONHOOD?**

The question of personality for natural entities such as rivers and forests can be viewed from both an animistic and non-animistic one. To understand what personhood for natural entities entails, it becomes necessary to view the subject first from a non-animistic perspective and then based on the insights gathered understand how personhood impacts many such natural entities which have been viewed as spiritual natural beings by many cultures across the world.

Furthermore, it should be understood that personhood is a status separate from mere existence. A legal system is essentially a normative order, which by its very nature, needs a subject and that subject is the person to whom rights and duties are attributed.<sup>2</sup> This can be further understood by the paradigmatic example of human beings, to whom in addition to their humanity, Article 6 of the Universal Declaration of Human Rights requires that they be treated as persons before the law.<sup>3</sup>

The legal system being built around this normative framework means that personhood grants certain ‘legal-operational’ advantages in claims before the system as it is designed to promote first and foremost the interests of legal persons.<sup>4</sup> Thus, in many ways, the bestowal of personhood on natural entities in many legal systems is meant to promote their interests that would not otherwise be sufficiently protected in the absence of such status due to issues such as lack of standing, and nature as being something to which rights and duties are not attributable.

## **VIEW FROM A NON-ANIMISTIC WINDOW**

In such a view the bestowal of personhood should not be understood as the consequence of some innate characteristic of these natural entities themselves but is based on more instrumental grounds such as those outlined previously.

In the oft-cited example of Christopher Stone’s account that is used to promote the idea of personhood for nature, it should be noted that the author refrains from outright advocating such an idea but rather argues for nature as being a ‘holder of rights’<sup>5</sup> which can be understood as a legal platform distinct from that of personhood. By legal platform what is meant here is a

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<sup>2</sup> NEIL MACCORMICK, INSTITUTIONS OF LAW 77 (2007).

<sup>3</sup> *Id.*

<sup>4</sup> VISA AJ KURKI, A THEORY OF LEGAL PERSONHOOD 144 (2019).

<sup>5</sup> CHRISTOPHER STONE, SHOULD TREES HAVE STANDING? 4 (3<sup>rd</sup> ed. 2010)

bundle of legal positions (rights and obligations) that are integrated.<sup>6</sup> The integration being referred to here is that fact the legal positions that are part of such a platform impact each other in certain ways and do not exist in a vacuum.

Property rights provide a useful guide to understanding this concept, with ownership essentially being a bundle of rights consisting of a set of distinct-but-interrelated set of incidents such as possession, liberty to use, letting and so on.<sup>7</sup> Similarly, personhood consists of a set of legal incidents which can be further classified as active and passive incidents.<sup>8</sup> The former refers to the rights one has against the acts of others that affect one's person, whereas the latter refers to the responsibilities and competencies borne by a person by virtue of their own acts, with prominent examples being the ability to enter into contracts and being liable for one's wrongful acts (both criminal and tortious).<sup>9</sup> Thus, what matters when determining personhood is not whether the entity in question holds legal positions (or incidents), but rather which legal positions is it that such entity holds.

The framework of personhood provided above applies in the case of human beings differently according to the stage of life such human being is in, which in turn is derived from his/her overall mental development. In fact, one of the crucial distinctions between children (particularly infants) and adults is how while the former are only endowed by law with the passive incidents of personhood, the latter are endowed by both passive and active incidents of personhood.<sup>10</sup>

The reason this becomes important for our understanding of the personhood of natural entities is that the judgment of the Uttarakhand High Court in *Mohammed Salim v. State of Uttarakhand*<sup>11</sup>. It makes continuous references to the status of the two rivers Ganga and Yamuna being akin to that of a perpetual minor while comparing it to a religious idol to which similar status has been ascribed previously by the courts and will be explained in further detail in subsequent paragraphs.

Much like how a *shebait* (akin to a trustee under Hindu law) is to take care of the affairs and act on behalf of the idol in the manner of a guardian taking charge of the affairs of his minor

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<sup>6</sup> KURKI, supra note 4, at 96.

<sup>7</sup> KAREN MORROW & SEAN COYLE, PHILOSOPHICAL FOUNDATIONS OF ENVIRONMENTAL LAW: PROPERTY, RIGHTS AND NATURE 59 (2004).

<sup>8</sup> KURKI, supra note 4, at 5.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Mohammed Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367 (India).

ward, a similar status was assigned by the Court to the Director, NAMAMI Gange, the Chief Secretary for the state of Uttarakhand and the Advocate General of the state of Uttarakhand as *persons in loco parentis*.<sup>12</sup> The High Court, while explicitly referring to the orthodox definition of personhood under which any entity would qualify as long as rights and duties can be attributed to it, somewhat dilutes this by especially focussing on the passive incidents of personhood.

To understand this further, it would be useful to remember that these passive incidents entail two broad sub-categories, that of substantive and remedy based incidents.<sup>13</sup> The former essentially consists of non-procedural claim rights that the entity in question enjoys such as fundamental protections, capacity to manage one's property, capacity to be a beneficiary of certain special rights and not being someone's property. Whereas, the latter, as the name suggests, essentially provides for remedies to enforce said claim rights.<sup>14</sup> As mentioned before, one of the key aspects of passive legal personhood is that the entity in question has legal representatives meant to represent its interests. However, the mere presence of a legal representative does not tell us about who or what can be represented as a legal person. While such a representative can be appointed for any such entity by bringing into existence a legal platform, this would only constitute personhood if and only if such platform attaches itself strongly to the entity in question.<sup>15</sup> By strong attachment what is meant here is that the existence of the platform is not contingent on the continued existence of the entity it is meant to represent<sup>16</sup>, for instance the existence of the HJ Heinz Company (the legal platform) is not contingent upon HJ Heinz himself staying alive, as he has not been for many years.

This is not the same for entities like the Gangotri and Yamunotri glaciers which were declared to have legal personality as minors by the High Court in a subsequent judgment<sup>17</sup>, when it would be more appropriate to describe them as legal platforms that are weakly attached to the glaciers. What this means is that the existence of the legal platform is contingent on the continued existence of the entity in question, in this case glaciers, which due to the effects of climate change have been continuously receding over many years, putting their continued

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<sup>12</sup> *Id.* at 374.

<sup>13</sup> KURKI, *supra* note 4, at 95.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 139.

<sup>16</sup> *Id.*

<sup>17</sup> *Lalit Miglani v. State of Uttarakhand*, 2017 SCC OnLine Utt 392, 449 (India).

existence at risk.<sup>18</sup> Clarifying this is important as the mere weak attachment of a legal platform to an entity does not give it a legal personality.<sup>19</sup> This is best illustrated through an example<sup>20</sup> by the legal philosopher Joseph Raz who asks if a group of researchers is to preserve a certain rare species of plants on the verge of extinction because they are only source for a cure against a rare and fatal disease, are the plants right-holders?

## **DO PERSONS NEED TO HAVE AN INTRINSIC VALUE?**

Raz argues that this is not the case due to these plants not possessing what he terms ultimate or non-derivative value.<sup>21</sup> By this he means that the plants derive their value from the benefits they provide to humanity by helping cure illnesses, and not from their mere existence. He defines ultimate value as being intrinsically valuable i.e., by not deriving value by fulfilling some instrumental purpose.<sup>22</sup> He believes that human life possesses such ultimate value, while not extending the same to animals such as dogs.<sup>23</sup> While they do provide a useful framework, his views can seem somewhat anthropocentric and if one were to view other aspects of personhood that will be described below, there is perhaps a stronger case to extend personhood to natural entities which at the very least possess sentience such as larger mammals, if not the more expansive definition of animals who have the ability to suffer pain.<sup>24</sup> However, even the wider definition does not benefit natural entities such as rivers and forests, any value it possesses is ultimately instrumental from the point of view of sentient beings and not inherent to these entities.

Coming back to the aforementioned rare species of plant, one can ask if the duty is extinguished the moment the plants become extinct for some reason? While it may be so in the case of the plants due to additional factors that will be explained below, this is not applicable in all cases though. This is because weak attachment by itself may not be a sufficient reason to deny personhood as one could counter with an example of an animal species that is critically endangered with its population barely teetering above the minimum viable population (MVP) necessary to sustain the species. One could plausibly argue here that there is a weak attachment

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<sup>18</sup> Abhimanyu Shrivastava & Ashish Mansharamani, *Black Carbon is a Threat to Himalayan Glaciers* DOWN TO EARTH (Dec. 7, 2020) <https://www.downtoearth.org.in/blog/climate-change/black-carbon-is-a-threat-to-himalayan-glaciers-74542>.

<sup>19</sup> KURKI, *supra* note 4, at 139.

<sup>20</sup> Joseph Raz, *On the Nature of Rights*, 93 MIND 194, 205 (1984).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Russell Denise & Peter Singer, *An Interview with Professor Peter Singer*, 1 ANIMAL ISSUES 37, 43 (1993).

here as the legal platform of the species being a non-human person is contingent on this critically low population managing to somehow sustain itself. Is this case of weak attachment sufficient though to deny personhood to this species? To which the authors would answer in the negative as there are other aspects of personhood aside from strong attachment which non-human animals satisfy. As brought up in earlier paragraphs, these include being able to have interests and the directedness of duties owed i.e., to whom can duties be owed to in the first place.<sup>25</sup>

In the example provided by Raz, one could also ask is the duty owed to the plants themselves or rather does the duty just happen to pertain to the plants<sup>26</sup>, or for our purposes is the duty owed towards the river itself or rather to those who depend on the river for material and/or spiritual sustenance. Factoring in the analysis about ultimate value made in the previous paragraphs, it becomes clear that natural entities like plants and rivers are not entities to whom duties can be owed due to their lack of sentience, which in turn denies them an ability to hold claims unlike sentient beings like children and non-human animals, to whom these entities have often been compared to. The question then arises why do we attempt to attach these legal platforms to these natural entities. Do these bundles of rights and obligations benefit the entities in question?

### **WHAT IS THE PURPOSE OF RIGHTS?**

Martha Nussbaum argues that assigning rights is an act of recognition of the importance of the subject. For instance, she discusses those human rights are necessary for valuing one's dignity.<sup>27</sup> Proponents for adopting a similar normative stand for nature, argue that giving rights to natural entities is pre-requisite for valuing them.

Valuing natural objects is important because of three reasons. Firstly, the over-exploitation of natural objects in the present times has seen a noticeable rise over the past century.<sup>28</sup> Human-imposed global warming has changed precipitation patterns, inducing droughts and floods as a consequence.<sup>29</sup>

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<sup>25</sup> KURKI, *supra* note 4, at 62.

<sup>26</sup> *Id.*

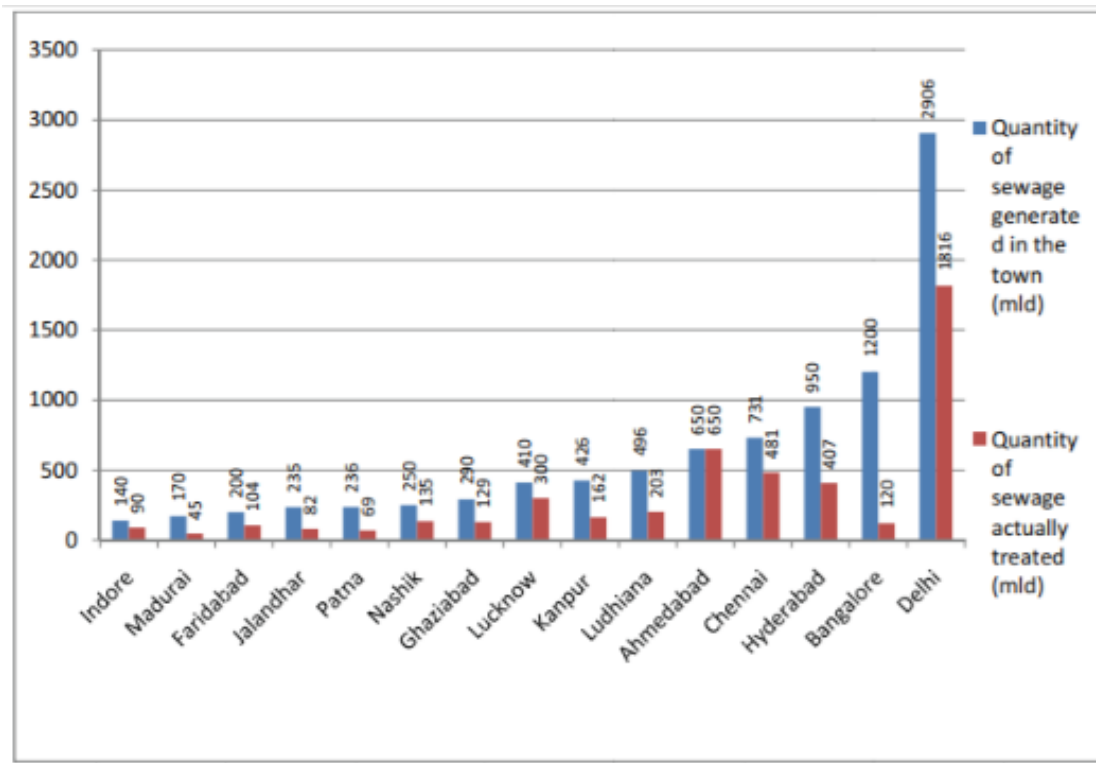
<sup>27</sup> Martha Nussbaum, *Beyond the Social Contract* (2004) 32(1) ODC 3, 13.

<sup>28</sup> See Damian Carrington, *Earth's sixth mass extinction event under way, scientists warn*, The Guardian, <https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-extinction-event-already-underway-scientists-warn>

<sup>29</sup> *The Effects of Climate Change*, NASA, <https://climate.nasa.gov/effects/>



In India, approximately 40 million liters of wastewater is thrown in rivers every day.<sup>30</sup> Rivers like Sabarmati, Bhadravati and Yamuna and other water bodies such as the Dal and the Dimsagar Lakes have been polluted to the extent of being uncondusive for the organic material.<sup>31</sup> Further, as reflected by the following graph, various cities are producing excessive waste, which is thrown into the natural objects like soil and water:<sup>32</sup>



Such environmental crises are being observed throughout the Asia-Pacific region. It is the largest producer of marine plastic pollution in the world.<sup>33</sup> Industrialisation over the past few decades in the region has significantly increased its carbon footprint, further contributing to the depletion of the ozone layer.<sup>34</sup> Similarly, as reflected by the following graph, it is also the

<sup>30</sup> <https://www.weforum.org/agenda/2019/10/water-pollution-in-india-data-tech-solution/>

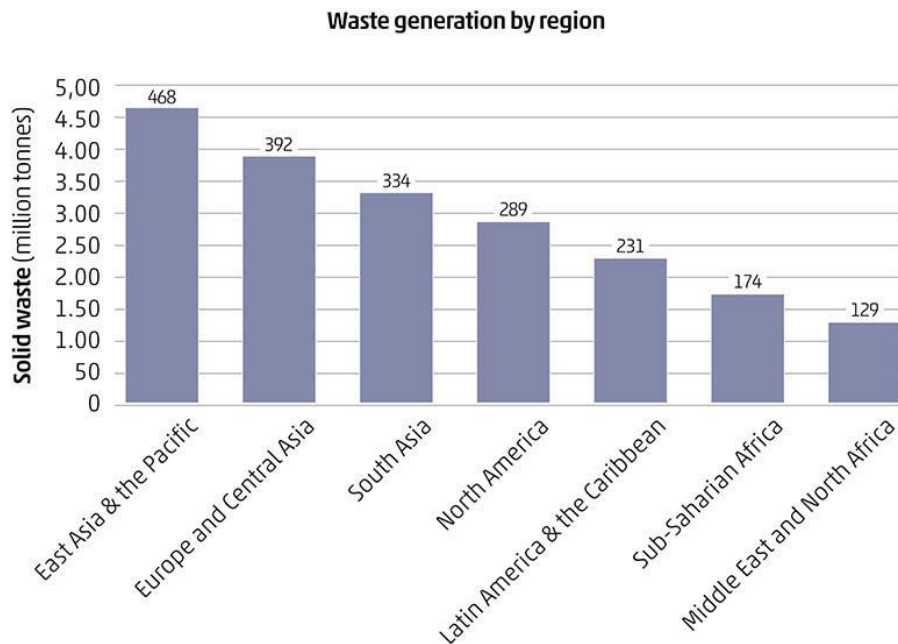
<sup>31</sup> Priyank Hirani, *Water pollution is killing millions of Indians* WEFORUM (4 October 2019) [https://cag.gov.in/uploads/download\\_audit\\_report/2011/Union\\_Performance\\_Civil\\_Water\\_Pollution\\_India\\_Ministry\\_of\\_Environment\\_and\\_Forest\\_21\\_2011.pdf](https://cag.gov.in/uploads/download_audit_report/2011/Union_Performance_Civil_Water_Pollution_India_Ministry_of_Environment_and_Forest_21_2011.pdf), page 78; See also: <https://indianexpress.com/article/lifestyle/health/air-pollution-on-rise-in-indian-cities-7293494/>

<sup>32</sup> *Union Performance regarding Water Pollution: Audit Report*, CAG (19 May 2020) [https://cag.gov.in/uploads/download\\_audit\\_report/2011/Union\\_Performance\\_Civil\\_Water\\_Pollution\\_India\\_Ministry\\_of\\_Environment\\_and\\_Forest\\_21\\_2011.pdf](https://cag.gov.in/uploads/download_audit_report/2011/Union_Performance_Civil_Water_Pollution_India_Ministry_of_Environment_and_Forest_21_2011.pdf)

<sup>33</sup> *Waves of Change*, WORLD BANK (4 March 2021) <https://www.worldbank.org/en/who-we-are/news/campaigns/2021/east-asia-pacific-marine-plastic-pollution>

<sup>34</sup> Thomas Ferkol et. al., *Air Pollution n Asia-Pacific Region* (2019) J. RESPIR. CRIT. CARE. MED. 693

largest generator of waste, which is dumped in stockpiles and landfills that pollute the soil gravely.<sup>35</sup>



Giving rights to natural objects and consequently accepting their value will ensure reduction of such exploitation.<sup>36</sup> To be sure, various legal systems have recognized the value of such objects. For instance, in India, the constitution obligates the government to endeavor to protect the environment.<sup>37</sup> It also obliges the citizens to improve natural environment including forests, wildlife, etc.<sup>38</sup> Apart from this, India has also enacted a host of statutes to enable the protection of nature. With the basic statute of Environment Protection Act 1986, it has enforced the Air (Prevention and Control of Pollution) Act, 1981; the Water (Prevention and Control of Pollution) Act, 1974; the Wildlife Protection Act, 1972; the Forest Conservation Act, 1980; and the Biological Diversity Act, 2002. Apart from these statutes, it has also enacted rules for hazardous and e-waste management<sup>39</sup> and has issued notifications for coastal zone management.<sup>40</sup> India has also made a separate tribunal through the National Green Tribunal Act, 2010.

<sup>35</sup> *Status of soil pollution in Asia and the Pacific*, UN, <http://www.fao.org/3/cb4894en/online/src/html/chapter-06-2.html>

<sup>36</sup> A number of organizations and movements are striving to assign rights for this purpose. For example, see the Great Ape Project (<https://www.projetogap.org.br/en/>) that seeks to give primates the right of legal personhood.

<sup>37</sup> Article 48A, Constitution of India, 1950

<sup>38</sup> Article 51A(g), Constitution of India, 1950

<sup>39</sup> MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GSR 338(E), E-WASTE (MANAGEMENT) RULES (2015).

<sup>40</sup> MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, SO 19 (E), COASTAL REGULATION ZONE NOTIFICATION (2011).

While the existing legal regime does offer a redressal mechanism against such environmentally degrading activities, the beneficiaries of such mechanism are humans affected by such pollution and not the natural objects themselves.<sup>41</sup> As such activities are rectified only when they affect humans, a lot of environmental pollution goes unaddressed.<sup>42</sup> For instance, even when India has enacted various statutes, the underlying jurisprudence is the public trust doctrine, as per which the government is a trustee of natural resources on behalf of the public at large and must maintain the resources such as to enable their reasonable use.<sup>43</sup> Hence, rather than giving intrinsic importance to such objects, the environment is valued only for its instrumental use. The aim here, to quote Kantian philosophy, should be to treat natural entities as ends in themselves as opposed to means in reaching some greater goal.

As Christopher Stone puts it, the human beings that have the locus might be indifferent to the pollution, they might themselves be polluting, they might refrain from suing on account of legal costs or they might be economically dependent on the polluter.<sup>44</sup> Furthermore, even when the claim reaches the court and it accepts the same, the benefit usually goes to humans wronged by the pollution rather than to the environmental object itself.<sup>45</sup> Therefore, the present legal scheme is insufficient to safeguard the environment. Hence, it is submitted that such objects should be assigned rights so that they can be effectively valued and the degradation can be reduced. With this, while the suit will still be brought by humans, they will be acting as guardians<sup>46</sup> of environment.<sup>47</sup> They will be able to bring suit for pollution even when it doesn't affect any person and would be able to take the benefits to the object itself.

To understand this point further, one can make a comparison with the rights of slaves in older times. Unless they were assigned the rights, they were thought of as a mere object made for the use of masters. Every day, a slave was over-exploited and was made to endure unthinkable atrocities.<sup>48</sup> Similar to natural objects in the present context, a slave had no rights and only the

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<sup>41</sup> STONE, *supra* note 5, at 55.

<sup>42</sup> *Id.*

<sup>43</sup> Paromita Goswami, *Public Trust Doctrine* (2016) NUJS L. REV. 67.

<sup>44</sup> STONE, *supra* note 5, at 67.

<sup>45</sup> *Id.* at 13. As per Neil MacCormick also, a right holder must have the transactional capacity, i.e., it must be the recipient of the benefits claimed over it: MACCORMICK, *supra* note 1, at 87.

<sup>46</sup> The same legal scheme exists in the context of insolvency proceedings: *Id.*, at 41.

<sup>47</sup> There are many litigators and organizations that can play this role of guardians. For example, see: Preeti Jha, *The Young Activists Fighting South Asia's Climate Crisis* THE DIPLOMAT (11 October 2019) <https://thediplomat.com/2019/10/the-young-activists-fighting-southeast-asias-climate-crisis/>; Zoe Low, *Asia's Young Climate Activists on Joining the worldwide campaign for government action on global warming*, SCMP (18 JULY 2019) <https://www.scmp.com/lifestyle/article/3018803/young-climate-change-activists-asia-pacific-pressuring-governments-take>

<sup>48</sup> FREDERICK DOUGLASS, *THE NARRATION OF THE LIFE OF FREDERICK DOUGLAS* 65 (1<sup>st</sup> edn, AUP 1845)

master could sue and reap the benefits in his name.<sup>49</sup> This changed with anti-slavery laws that assigned rights to slaves and transformed their status from a chattel to a human being.<sup>50</sup> The similar was the transition of rights of women.<sup>51</sup> Hence, the assignment of right works as a formal acknowledgment of value and helps in reduction of atrocities. It is submitted that the same recognition should be extended to natural objects as well. To be clear the assignment of rights is not to be conflated the grant of personhood, the former is possible without the latter.

The second reason for valuing such objects is that it will give effect to the traditional values of various communities. As argued by the prominent legal scholar James Boyd White, law is necessarily a conversation with the culture and an effective law must give effect to the values of the community.<sup>52</sup> This is all the more important in the context of environment, as recognizing the value of natural objects will give a sense of inclusion to various communities, which have attached spiritual value to the environment since time immemorial.<sup>53</sup>

The most prominent example of such community is the Dongria Kondh tribe of Odisha, which successfully restrained Vedanta company from mining the Niyamgiri Hills.<sup>54</sup> Such nature worship is also common for various other Adivasi tribes, which have faced a sense of exclusion for a very long time.<sup>55</sup> As analyzed by the CPR Environmental Education Centre, Indians worship nearly 54 plants,<sup>56</sup> 30 rivers,<sup>57</sup> approximately 100 gardens,<sup>58</sup> close to 200 mountains,<sup>59</sup> nearly 1000 small waterbodies,<sup>60</sup> and more than 5000 local forests.<sup>61</sup> Therefore, it can be

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<sup>49</sup> *Slave History*, BRITANICA (18 June 2021) <https://www.britannica.com/topic/slave-code#:~:text=Slaves%20had%20few%20legal%20rights,not%20strike%20a%20white%20person.&text=Obedience%20to%20the%20slave%20codes%20was%20exacte%20in%20a%20variety%20of%20ways;> Paul Finkelman, *Slavery in the United States* (2012) 12 J. SOC. STUD. 12

<sup>50</sup> William Nelson, *The Impact of Antislavery movement upon the styles of judicial reasoning in 19<sup>th</sup> cty. America* (1974) 87(3) HAR. L. REV. 513; Ibid

<sup>51</sup> KURKI, supra note 4.

<sup>52</sup> James Boyd White, *Law as Rhetoric, Rhetoric as Law* (1985) 52 UCL 684.

<sup>53</sup> Arguably this was one of the most prominent reasons behind granting the personhood to the Whangui river in New Zealand. The local group called as Iwi associated cultural value to the river and treated it as a living entity. While the formal recognition of such personhood was being argued, lead negotiator Gerrard Albert contended that ascribing personhood would be the correct approach as it has been treated as our ancestor since aeon: See Eleanor Ainge Roy, *New Zealand River Granted Same Legal Rights as a Human Being*, The Guardian, <https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>

<sup>54</sup> 'We will die for Nuyamgiri' NEWSCLICK (14 June 2018) <https://www.newsclick.in/we-will-die-niyamgiri-tribes-niyamgiri-protest-against-vedanta-odisha>

<sup>55</sup> Ishan Kukreti, *Sarna Dharam Code: Of Adivasi Identity and Eco-Nationalism* DOWN TO EARTH (10 December 2020) <https://www.downtoearth.org.in/news/governance/sarna-dharam-code-of-ativasi-identity-and-eco-nationalism-74569>

<sup>56</sup> *Sacred Plants*, CPREEC, [http://cpreecenvs.nic.in/Database/SacredPlants\\_945.aspx](http://cpreecenvs.nic.in/Database/SacredPlants_945.aspx)

<sup>57</sup> *Sacred Rivers*, CPREEC, [http://cpreecenvs.nic.in/Database/Sacred\\_rivers\\_885.aspx](http://cpreecenvs.nic.in/Database/Sacred_rivers_885.aspx)

<sup>58</sup> *Sacred Gardens*, CPREEC, [http://cpreecenvs.nic.in/Database/Sacred\\_Gardens\\_810.aspx](http://cpreecenvs.nic.in/Database/Sacred_Gardens_810.aspx)

<sup>59</sup> *Sacred Mountains*, CPREEC, [http://cpreecenvs.nic.in/Database/Sacred\\_mountains\\_849.aspx](http://cpreecenvs.nic.in/Database/Sacred_mountains_849.aspx)

<sup>60</sup> *Sacred Waterbodies*, CPREEC, [http://cpreecenvs.nic.in/Database/Sacred\\_waterbodies\\_928.aspx](http://cpreecenvs.nic.in/Database/Sacred_waterbodies_928.aspx)

<sup>61</sup> *Sacred Forests*, CPREEC, [http://cpreecenvs.nic.in/Database/Groves\\_811.aspx](http://cpreecenvs.nic.in/Database/Groves_811.aspx)

concluded that nature worship is intrinsic to the Indian culture. Apart from India, the belief of animism is held closely by communities throughout Asia and the Pacific region.<sup>62</sup> Hence, to give effect to such beliefs and to include the voices of such communities in the law, it is necessary that the natural objects are endowed with rights.<sup>63</sup>

Apart from these two normative and value-based grounds, the natural objects should be bestowed with rights also because it would ensure allocative efficiencies in terms of law and economics. As per the concept of externality, a business produces a deadweight loss for the society when it leads to unaccounted harms.<sup>64</sup> As discussed above, giving rights to the natural objects is necessary to have a proper redressal mechanism against the harms and the atrocities. Therefore, to effectively address the externalities<sup>65</sup> and to reduce the deadweight loss in the society, it is necessary to recognize the rights of the environment.

## COMPARISON WITH OTHER PERSONS

The previous section reflected upon the reasons for assigning rights to natural objects. As per the present setting of the law, rights and duties exist with a legal person. In civil law jurisdictions, such personhood is a desideratum for having a standing in the law.<sup>66</sup> Since changing this jurisprudential continuum would introduce incoherence and would raise educational and other transaction costs, recognition of ‘personhood’ is a pre-requisite for natural objects to attain rights.<sup>67</sup>

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<sup>62</sup> Anne Yvonne Guillou, *Potent Places and Animism in Southeast Asia* (2017) 18(5) ASIA PAC. J. ANTHRO. 389.

<sup>63</sup> Recognition of this value would also ensure that apart from being based on merely utilitarian grounds, the debate around the value of environmental objects is also based on the deontological grounds, i.e. around the acknowledgement of their intrinsic value.

<sup>64</sup> *What are externalities*, IMF, <https://www.imf.org/external/pubs/ft/fandd/2010/12/pdf/basics.pdf>

<sup>65</sup> It is now an accepted legal principle that the wrongdoer must bear the burden of the wrong committed. In terms of law of damages, the most prominent type is the compensatory damages, which require the wrongdoer to restore the person wronged to the initial position (HARVEY MACGREGOR, MCGREGOR ON DAMAGES 76 (OUP 1961)). Hence, for the environment, this principle will require the polluter to compensate the natural object, say the river, so as to restore the water quality to its original level.

But it may not be always possible to restore something to its original position. This has been accepted in the jurisprudence of motor vehicle accidents, where the compensatory damages cannot be applied when such accident results in death. In such cases, the court adopts another method of damages, where the wrongdoer is asked to pay the estimate amount that the victim could have earned in his or her lifetime (AKSHAY SAPRE (ED.), RATNANLAL AND DHIRAJLAL ON LAW OF TORTS (Lexis Nexis 2016)). Since it is not possible in environmental objects, scholars suggest that there should be an ex-ante due diligence exercise and any activity that is likely to cause irreparable damage must be prohibited (Page 38, *Should Trees have legal standing*). Moreover, since civil compensation would not be possible in such cases, it is suggested that criminal liability must be imposed over irreparable damage.

<sup>66</sup> KURKI, supra note 4, at 107; This requirement for standing has also been accepted by the common law course. For instance, see: *CEASE v New England Aquarium*, 836 F Supp 45, where the court refused to admit dolphin as the plaintiffs as they weren't recognized as legal persons.

<sup>67</sup> Jessica Berg; *Of Elephants and Embroys* (2007) 59(2) HAS. L. J. 369, 372; Oliver E. Williamson, *Transaction cost economics* (1998) 146 DE ECON. 23. Also, as argued by Neil MacCormick, legal personhood is necessarily

Can environmental objects be granted personhood? It has been long recognized that legal personhood also includes artificial entities like corporations.<sup>68</sup> While the rights of “invisible, intangible and artificial being”<sup>69</sup> i.e. corporations were thought to be absurd in medieval ages,<sup>70</sup> the law has increasingly accepted their rights now.<sup>71</sup> In India, this is explicitly recognized by the S. 3(42) of the General Clauses Act, which includes companies (whether incorporated or not) within the purview of legal person.<sup>72</sup> The same is true for various other countries in Asia-Pacific region as well.<sup>73</sup> Moreover, it has also been increasingly accepted that rather than being a derivative right, the rights and personhood of a corporation is independent of the rights that entail from human or natural persons.<sup>74</sup> Hence, since corporations have been granted the status of independent artificial personhood, can the similar recognition be extended to environmental objects?

In terms of liability, the status of personhood can be divided into onerous personhood and limited personhood.<sup>75</sup> The former is a personhood in the full sense and imposes responsibilities along with rights. *Au contraire*, the latter is the passive personhood and makes subject a beneficiary without imposing obligations.<sup>76</sup>

It is an accepted principle that corporations have the onerous personhood.<sup>77</sup> A company can be held liable for breaching its contractual obligations,<sup>78</sup> for abusing its dominant position or rigging the competition,<sup>79</sup> for failing to pay the taxes to the government,<sup>80</sup> and so on.

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an institutional fact or a legal recognition of the normative value. (Neil MacCormick, *Norms, Institutions and Institutional Facts* (1998) 17(3) L. AND ECO. 301) This normative value was argued in the previous section.

<sup>68</sup> Such personhood exists in two categories: Natural Persons and Juristic Persons. Since the former is limited to persons which are genetically human (KURKI, supra note 4, at 7) it's the latter that needs to be explored.

<sup>69</sup> US v. Deveaux; STONE, supra note 43, at 19; Also see: *Trustees of Dartmouth College v Woodward*, 17 US 518 (1819), where the court held that corporations are purely fictional entities that exist only in contemplation of the law.

<sup>70</sup> See Gwendolyn Gordon, *Environmental Personhood* (2017) 12(1) WHAR. L. J. 1, where he argues that unlike other societies, Roman Society did have a conceptualization of such corporate personhood.

<sup>71</sup> It is a truism to say that recognition of personhood was the key factor in granting rights to such entities. As argued by Hansmann and Karaakman, its most prominent benefit was the corporation could now defend its rights against the creditors: H. Hansmann and R. Kraakman, *The Essential Role of Organizational Law*, (2000) 110 YALE L. J. 387

<sup>72</sup> The same is also enforced by Section 11 of the Indian Penal Code, 1860.

<sup>73</sup> See Craig Philipps and Rachel Nicholson, *Brief on Corporations and Human Rights in the Asia-Pacific Region* (20006) AAR 1.

<sup>74</sup> GORDON, supra note 70.

<sup>75</sup> See KURKI, supra note 4, at 117

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, at 122.

<sup>78</sup> KR Chandrate, *A company's capacity to contract*, (2012) PLJ 1.

<sup>79</sup> See S. 3 and S. 4 of Indian Competition Act, 2002.

<sup>80</sup> See *Penalties under the IT Act*, GOI, <https://www.incometaxindia.gov.in/tutorials/28.%20penalties.pdf>

It is submitted that such personhood cannot be extended to natural objects as it will lead to various complex policy problems. For instance, if the environmental objects are endowed with onerous personhood, a natural object could be potentially held liable for causing damages through flood.<sup>81</sup> This would raise complex issues, as such a disaster could be caused by the joint forces of different factors such as excessive rains, melting of glacier, or anthropogenic climate change. Hence, ascribing liability would be impossible. Therefore, unlike corporations, environmental objects can only be endowed with a passive personhood where such object would have the claim-rights without any corresponding liability.

The pertinent analogy for this can be the kind of personhood granted to a child.<sup>82</sup> While a child can be the beneficiary and has claim to certain rights, it cannot be held liable.<sup>83</sup> Nonetheless, there can be a suit in the child's name and it's the child (not the guardian) who gets the benefit of the verdict.<sup>84</sup> Hence, rather than giving the full personhood, the environmental object should be assigned limited personhood.<sup>85</sup>

Various countries around the globe have recognized this and have assigned rights to such objects without ascribing the liability. For instance, the Bolivian government acknowledged the rights of nature and enacted 'Law on the Rights of the Mother Earth' in 2010. While it was a detailed law, it didn't go into the sphere of onerous personhood.<sup>86</sup> The similar has been the stance of Ecuador, which gave rights to the natural objects without imposing any responsibility.<sup>87</sup> Lastly, the recent ruling of the Columbian constitutional court also entrenched such personhood with respect to the river Atrato.<sup>88</sup>

## **PERSONHOOD: A MERE INSTRUMENT FOR RIGHTS?**

All this theoretical exposition gets us to this point where we realise any 'personhood' that is bestowed on nature is ultimately meant to serve the instrumental purpose of serving nature's

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<sup>81</sup> STONE, *supra* note 5, at 77.

<sup>82</sup> While corporations aren't accurate analogy with respect to liability, they can still be a useful heuristic device in establishing a similar management structure over natural object. A company, which is a legal fiction, is governed by a board of directors that oversees its management. Scholars suggest that a similar collective body could be established as a guardian of the natural object: KURKI, *supra* note 4, at 173.

<sup>83</sup> Alice B Freer, *Parental Liability for Torts* (1964) 53(2) KEN. L. J. 254.

<sup>84</sup> *Id.*

<sup>85</sup> Apart from the nature personhood, the analogy of corporate personality is inaccurate also because of the difference in the sociological acceptance of the status as an entity: *See* GORDON, *supra* note 70.

<sup>86</sup> *Law on the Rights of Mother Earth 2010*, <http://archive.wphna.org/wp-content/uploads/2014/07/2010-12-07-Bolivian-Law-of-rights-of-Mother-Earth.pdf>

<sup>87</sup> Chapter 7, *Constitution of the Republic of Ecuador*, <https://www.wipo.int/edocs/lexdocs/laws/es/ec/ec030es.pdf>

<sup>88</sup> *Columbian Constitutional Court finds that river Atrato possess rights*, CELDF, <https://celdf.org/2017/05/press-release-colombia-constitutional-court-finds-atrato-river-possesses-rights/>

interest in the legal system rather than being the consequence of any inherent qualities that it possesses. Stone himself seems cognisant of this and he refrains from explicitly arguing for personhood for natural entities such as trees. Rather his account of nature as a ‘holder of rights’ is a practical consequence of wanting to find a way around the strict rules of standing in US courts which makes protection of the environment in the absence of a statutory scheme granting nature rights for the same, very difficult.<sup>89</sup> The rules of standing in the US require the plaintiff to show standing by showing that they will suffer, or are likely to suffer, a legally recognised direct injury or harm due to the defendant’s past, current or future actions.<sup>90</sup> The only legally recognised harms or injuries are those which are suffered by legal persons.<sup>91</sup> Such a framework would not only preclude but also make much more difficult to establish standing in a case where the plaintiffs are not themselves the object of the government action or inaction in question.<sup>92</sup> This is in marked contrast to the rules of standing followed in India as will be highlighted in the subsequent section and in such a framework (the US) being a holder of rights is crucial. An entity can only be a holder of rights in this framework if it satisfies the following four criteria<sup>93</sup>:

- i) *Some authoritative public body* is prepared to give *some amount of review* to actions that are colourably inconsistent with a right enjoyed by such entity i.e., an injury,
- ii) Such entity can institute legal actions *at its own* behest,
- iii) When determining the grant of relief in these proceedings the Court must take into account *the injury suffered by such entity*,
- iv) The relief granted must run *to the benefit of such entity*

To bolster his point regarding how being a holder of rights in law provides several operational advantages to an entity seeking to enforce its rights, he provides a rather stark example of two slave societies with the crucial difference between them being how they treat an injury to the slave’s person.<sup>94</sup> In the first society, the right to approach the court for any damages arising out of such injury has been granted to the master, if he so chooses. In the second society however, this right to institute a suit has been granted to the slave himself. Thus, even in a society where

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<sup>89</sup> STONE, *supra* note 5, at 35.

<sup>90</sup> *Lujan v. Defenders of Wildlife*, 504 US 555, 561 (1992).

<sup>91</sup> STONE, *supra* note 5, at 5.

<sup>92</sup> *See Lujan*, 504 US 555 at 562 (1992).

<sup>93</sup> STONE, *supra* note 5, at 4.

<sup>94</sup> *Id.* at 5.



the slave is treated as chattel, the right to represent his own legal interests grants the slave in the second society appreciable operational benefits.

### **HAVE PILS MADE BESTOWING PERSONALITY UNNECESSARY?**

The challenges highlighted in the previous section are not prevalent in India, making the Uttarakhand High Court's bestowal of personhood questionable not only on jurisprudential grounds, but also unnecessary due to the already loosened rules of standing in the country's courts. Public Interest Litigation (PIL) jurisprudence negated a serious need for personhood in order to obtain legal redress. PIL jurisprudence which grew in prominence from the late 1970s onwards<sup>95</sup> has had a tremendous impact on the field of environmental law as well. This is not surprising as one of the major issues plaguing environmental litigation was the issue of standing, in that when filing any such claim the plaintiff had to show that they suffered a specific legal injury either as an individual or as part of a determinate class.<sup>96</sup> However, this then created a situation where if such injury is not caused to the specified classes but rather to the broader public interest at large, this then leaves the question of who has standing in such a situation, with the traditional rule of standing being non-accommodative of this reality.<sup>97</sup>

To which Bhagwati, J. in the *First Judges*<sup>98</sup> case clarified the role and purpose of PILs as means to cover this lacuna by providing that anyone acting bona fide and having sufficient interest shall satisfy the rule of standing in cases involving 'diffused' collective rights and interests.<sup>99</sup> Whether such interest is sufficient is to be determined on a case by case basis.<sup>100</sup> The judgment makes itself quite clear that it had foreseen PIL as a tool in environmental jurisprudence by providing examples relating to the discharge of effluents into lakes and the spreading of noxious gases into the air by factories.<sup>101</sup> By permitting this assertion of diffused and meta-individual rights, the Court was in many instances additionally attempting to remedy the fact that natural entities such as rivers and forests could not represent themselves.<sup>102</sup>

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<sup>95</sup> Maheshwar Nath Chaturvedi, *Liberalizing the Requirement of Standing in Public Interest Litigation*, 26 JOURNAL OF INDIAN LAW INSTITUTE 42, 48 (1984).

<sup>96</sup> *Id.* at 54.

<sup>97</sup> *Id.* at 47.

<sup>98</sup> *SP Gupta v. Union of India*, 1981 Supp SCC 87 (India).

<sup>99</sup> *Id.* at 215

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 214.

<sup>102</sup> Geetanjoy Sahu, *Public Interest Environmental Litigation in India: Contributions and Complications*, 69 INDIAN JOURNAL OF POLITICAL SCIENCE 745, 746 (2008).

An example of what this meant can be found in the case of *Tarun Bharat Sangh, Alwar v. Union of India*<sup>103</sup> where the petitioner alleged that the State was violating various notifications and legislations of its own by permitting mining activities in the Sariska Tiger Park. Here there was no individual or group interest being affected, but rather what was at stake here was a broader issue of a public wrong that was affecting the integrity of protected forest areas. The Supreme Court in this case observed that once an area is declared as a protected forest, it comes within the purview of the Forest (Conservation) Act 1980 which would mean that any non-forest activity such as mining is automatically barred from being carried out in those areas unless there is approval from the Central Government.<sup>104</sup> As this example illustrates, the instrumental purpose for which Christopher Stone proposes the concept of nature as a holder of rights does not bear the same relevance in the Indian context as the loosened rules of standing here mean that broad notions of what counts as public interest can supplant any need for granting natural entities a right to institute suits in their name.

### **NATURAL DIVINITY: THE ANIMISTIC CASE FOR PERSONHOOD**

Thus, from a non-animistic point of view it becomes clear that the bestowal of personhood by the High Court lies on questionable jurisprudential grounds. However, it has to be emphasised at this juncture that this decision did not in fact proceed from a non-animistic point of view, rather it did from the opposite position (an animistic one). What was repeatedly emphasised was the sacred nature of these rivers for millions and how they have been personified as deities by the population living along their banks.<sup>105</sup> They were considering the rivers and the glaciers from which they originate as being spiritual, living entities. From this point of view, it would only logically follow that the other spiritual entity to which they are most similar to is that of religious idols. The judges did not lose sight of this fact and used this comparison as one of the driving reasons behind the decision they reached. By doing so they based their judgment on a long established body of precedent treating the idol as a minor in law.

One of the earliest common law decisions reaching this conclusion is the Privy Council's judgment in *Prosonna Kumari Debya v. Golab Chand Babu*<sup>106</sup> where it was held that a religious idol is a perpetual minor in law with the management and possession of any property gifted to it being carried out by a *shebait* whose role was in line with that of a trustee as opposed

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<sup>103</sup> *Tarun Bharat Sangh, Alwar v. Union of India*, 1992 Supp (2) SCC 448 (India).

<sup>104</sup> *Id.* at 451

<sup>105</sup> See *Mohammed Salim*, 2017 SCC OnLine Utt 367 at 370.

<sup>106</sup> *Prosonna Kumari Debya v. Golab Chand Babu*, 2 LR IA 145.

to an owner.<sup>107</sup> This status of the idol as juristic person was further affirmed by the Bombay High Court in *Manohar Ganesh Tambekar v. Lakhmiram Govindram*<sup>108</sup> and more recently by the Supreme Court in the *Ram Janmabhumi*<sup>109</sup> case. As mentioned earlier, by virtue of the High Court's judgment, the Chief Secretary of the State and the Advocate General of the state of Uttarakhand along with the Director, NAMAMI Gange were placed in a role similar to that of a *shebait*.<sup>110</sup> The Advocate General here was assigned the responsibility of representing the interest of the rivers in all legal proceedings.<sup>111</sup> This responsibility was, as previously mentioned, expanded in the *Glaciers* case to include 'all the Glaciers including the Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests, wetlands, grasslands, springs and waterfalls' in the state.<sup>112</sup> These orders went on to be stayed on appeal by the Supreme Court on July 2017.<sup>113</sup>

While not being in effect at the time of writing, the two aforementioned judgments of the High Court still provide a useful window to look into animistic claims of personhood for natural entities and what they entail. These judgments came close on the heels of legislation being passed in New Zealand which recognised the Whanganui River and its catchment area as being a legal person. This was preceded earlier in the decade in the year 2010 when Bolivia passed the 'Law of Mother Earth' which granted legal rights for nature in the country.<sup>114</sup>

The situation surrounding the Whanganui River in particular is useful to analyse as similar to the cases before the Uttarakhand High Court, as it deals with a river which has been assigned anthropomorphic characteristics by a surrounding population who believe in its spiritual significance to them. Much like the belief of Ganga Ma surrounding the river Ganga, the Maori *iwi* (tribe) living on the banks of the river believe it to be a living being called Te Awa Tupua.<sup>115</sup> The 2017 enactment which declared the Te Awa Tupua to be a legal person opts for a more extensive definition of what falls within this entity by stating that Te Awa Tupua 'is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea,

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<sup>107</sup> *Id.* at 147-148.

<sup>108</sup> *Manohar Ganesh Tambekar v. Lakhmiram Govindram*, 12 ILR Bom 247 (1887) (India).

<sup>109</sup> *M. Siddiq (Ram Janmabhumi Temple- 5 J.) v. Suresh Das*, (2020) 1 SCC 1, 264-265 (India).

<sup>110</sup> *See Mohammed Salim*, 2017 SCC OnLine Utt 367 at 375.

<sup>111</sup> *Id.*

<sup>112</sup> *See Lalit Miglani*, 2017 SCC OnLine Utt 392 at 449.

<sup>113</sup> Isha Kukreti, *SC Stays Uttarakhand HC Order Declaring Ganga, Yamuna Living Entities DOWN TO EARTH* (July 7, 2017) <https://www.downtoearth.org.in/news/water/sc-stays-uk-hc-order-declaring-ganga-yamuna-living-entities-58245>.

<sup>114</sup> Ley de Derechos de la Madre Tierra 2010 (Bolivia).

<sup>115</sup> Erin O'Donnell & Julia Talbott-Jones, *Creating Legal Rights for Rivers: Lessons from Australia, New Zealand and India*, 23 *ECOLOGY AND SOCIETY* 7, 10 (2018).

incorporating all its physical and metaphysical elements.<sup>116</sup> It could be argued that the *Glaciers*<sup>117</sup> judgment follows a similar path in providing a much more expansive definition of what natural entities qualify for legal protections as persons.

While there do exist rather clear parallels between the declaration of personhood for the Whanganui and Ganga (and Yamuna) Rivers due the factors mentioned above, there also exist crucial differences. While grant of personhood in both cases is based on an animistic conception, the type of personhood bestowed on each is different. S 14 of the 2017 New Zealand Act simply declares the Te Awa Tupua to be a legal person with all the rights, powers, duties and liabilities that are incident to it.<sup>118</sup> Both judicial pronouncements by the Uttarakhand High Court on the other hand seem to conflate various classes of personhood, which could potentially lead to some unintentional results as will be shown later. This could be seen for instance in the *Mohammed Salim* judgment where in comparing the river to a religious idol, the Court essentially used the term natural person interchangeably with juristic person stating that the latter differs from the former only in that it acts through a designated person whose acts are processed within the ambit of the law.<sup>119</sup> The *Glaciers* judgment which followed took it a step further when extending personhood to a variety of other natural entities in the state of Uttarakhand by stating that any ‘legal entity/legal person/juristic person/juridical person/moral person/artificial person’ as all having the status of a legal person.<sup>120</sup>

These judgments by conflating these notions seem to be taking environmental jurisprudence into uncharted territory by equating harms to nature with harms to humans.<sup>121</sup> By doing so the judgments seem to ignore some fundamental aspects of natural personhood. In understanding the previous statement, it would be appropriate to take a step back and understand by what one means by the term natural person. More broadly, jurisprudence fundamentally divides the class of persons into two categories, that of the natural persons with humans being the paradigmatic example, and juristic persons refers to artificial persons which can own property and enter into contracts in their own name.<sup>122</sup> In the case of natural persons, the criteria to be satisfied is being born, being currently alive and finally, being sentient.<sup>123</sup> While humans maybe the

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<sup>116</sup> Te Awa Tupua Whanganui River Claims Settlement Act (Act No. 7/2017), Section 12 (NZ).

<sup>117</sup> See *Lalit Miglani*, 2017 SCC OnLine Utt 392 at 449.

<sup>118</sup> Te Awa Tupua Whanganui River Claims Settlement Act, Section 14.

<sup>119</sup> *Mohammed Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367, 374 (India).

<sup>120</sup> See *Lalit Miglani*, 2017 SCC OnLine Utt 392 at 449.

<sup>121</sup> Erin O’Donnell, *At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India*, JOURNAL OF ENVIRONMENTAL LAW 1, 4 (2017).

<sup>122</sup> KURKI, *supra* note 4, at 7.

<sup>123</sup> *Id.* at 8.

paradigmatic example here, some argue that some larger mammals may indeed fulfil at least partly the criteria of natural personhood.

Either way, natural entities such as rivers and glaciers still do not satisfy these criteria. By including them as having the same rights as human beings, it is essentially bestowing certain rights and liabilities on nature that it would not make sense to do so. Take the case of glaciers for example, it would be absurd for humans to have a cause of action against them due to certain flooding caused by a glacial burst as happened earlier this year in the environs of the Nanda Devi National Park.<sup>124</sup> For one, would it be appropriate to even attribute the damage caused to the glacier itself which lacks any will of its own and like a lot natural phenomena, the burst was caused by certain external stimuli, in this case the dislodging of certain heavy rocks and ice from the Ronti Peak.<sup>125</sup> Would the peak be liable now then? The answer much like the case with the glacier would have to be a no, as like glaciers, mountain peaks too lack any will of their own, thus principles of attribution do not apply here as well. The appointment of a designated person does nothing to alter this reality and if anything, it would not make sense to make to those in the state government appointed as *persons in loco parentis* responsible for the acts of such natural entities. Moreover, due to the effects of anthropogenic climate change, some level of attribution of blame and hence liability would inevitably go back to human beings often when such situations arise.

### **GRANTING OF PERSONHOOD: AN ILLUSORY SOLUTION?**

Furthermore, aside from problems of attribution, it should be noted that the granting of personhood or rights is certainly no panacea for the troubles that the environment and if anything may present us with a new set of problems, particularly those of conflicting interests. By granting personhood and when made to compete against human needs, particularly those of extractive institutions, nature's interests take a backseat.<sup>126</sup> Additionally, the rights discourse much like in the case of humans, while generating awareness of the rights of nature, also diminishes the feeling of collectiveness, resulting in the otherisation of nature.<sup>127</sup> This could be

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<sup>124</sup> Shailshree Tewari, *Chamoli Glacier Burst: It is Time to Learn from Our Mistakes* DOWN TO EARTH (Feb 7, 2021) <https://www.downtoearth.org.in/blog/climate-change/chamoli-glacier-burst-it-is-time-to-learn-from-our-mistakes-75419>.

<sup>125</sup> *Rock, Ice Avalanche Triggered Chamoli Disaster, Satellite Images Show* DOWN TO EARTH (Jun 15, 2021) <https://www.downtoearth.org.in/news/natural-disasters/rock-ice-avalanche-triggered-chamoli-disaster-satellite-images-show-77459>.

<sup>126</sup> Cynthia Giagnocavo & Howard Goldstein, *Law Reform or World Re-form: The Problem of Environmental Rights*, 35 MCGILL LAW JOURNAL 345, 369 (1990).

<sup>127</sup> *Id.* at 370.

seen in the case of Bolivia and Ecuador, where even after clearing constitutional and statutory changes recognising rights of nature, a lot of developments since have undermined those very rights. For instance, a 2009 mining law was upheld by the Constitutional Court of Ecuador, even when it prejudiced the rights of nature.<sup>128</sup> Thus, any bestowal of rights on nature must not be made in the abstract but must be rather framed in the manner of concrete duties which humans owe nature in order to protect its interests.<sup>129</sup>

Different entities require a different bundle of rights and obligations i.e., legal platforms, to protect their interests and it is not necessary that the grant of personhood is needed to carry out that function. This view gains more force when we recognise that a lot of the environment law perspectives that deny nature standing seem to take an anthropocentric approach, not taking nature's own needs sufficiently into account.<sup>130</sup> Simply granting nature status similar to that of human persons as highlighted previously does not take into account nature's own needs and interests being very different from that of humans.<sup>131</sup> Rather, as some scholars have argued that natural entities cannot make use of human rights but rather need rights more eco-centric rights tailored to their needs.<sup>132</sup> The philosopher Thomas Berry for instance argues that trees should be given 'tree rights' that are substantively and procedurally different from human rights.<sup>133</sup> This is true even for the oft-used comparison of natural entities with religious idols in this context as mentioned previously in this piece. Unlike human beings, the question of whether religious idols and natural entities like rivers can possess interests is a vexed one.

There are theorists like Joel Feinberg who explicitly link having interests with the possession of certain cognitive abilities which give us desires and aims.<sup>134</sup> In this view both rivers and religious idols lack the ability to possess interests. Whereas on the other hand theorists such as Raz and Kramer while arguing for the possession of interests as being a necessary but not sufficient condition for holding rights, equate the interests of the entity in question with their well-being.<sup>135</sup> Even in the situation where, to concede that a religious idol cannot possess

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<sup>128</sup> Craig Kauffman & Pamela Martin, *Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail*, 20 *WORLD DEVELOPMENT* 1, 5 (2016).

<sup>129</sup> Akshita Jha & Adrija Ghosh, *Is being a 'Person' Essential for the Environment to hold Rights? Assessing the Legitimacy of Environmental Personhood and Alternative Approaches*, 11 *NUJS L. REV.* 1, 25 (2018).

<sup>130</sup> Klaus Bosselmann, *Grounding the Rule of Law*, in *RULE OF LAW FOR NATURE* 75, 83 (Christina Voigt ed., 2013).

<sup>131</sup> O'DONNELL, *supra* note 121 at 4.

<sup>132</sup> THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 5 (1999).

<sup>133</sup> O'DONNELL, *supra* note 121 at 4.

<sup>134</sup> Joel Feinberg, *The Rights of Animals and Unborn Generations*, in *PHILOSOPHY AND ENVIRONMENTAL CRISIS*, 52 (William T. Blackstone ed., 1974).

<sup>135</sup> Matthew H. Kramer, *Do Animals and Dead People Have Legal Rights?*, 14 *CANADIAN JOURNAL OF LAW & JURISPRUDENCE* 29, 33 (2001).

interests, this does not preclude the idol from still being able to hold rights.<sup>136</sup> This view benefits both rivers and religious idols, but also makes clear how they are distinct from minors, who are natural persons unlike them.

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<sup>136</sup> P.W. Duff, *The Personality of an Idol*, 3 CAMBRIDGE LAW JOURNAL 42, 44 (1927).

## **CONCLUSION: PERSONHOOD, WELL INTENTIONED BUT UNNECESSARY**

While the High Court and various courts before it have constantly made use of the analogy between a religious idol and a minor in law, even a good analogy operating at a low level of abstraction does not amount to an equivalence. Rather it makes more sense to describe the ‘personhood’ of a religious idol being more in the nature of a legal platform operating in a manner akin to that of a minor in law, with the *shebait* and guardian respectively occupying a similar position with respect to the subjects whose interests they are to take care of. Therefore, the legal platform established for the benefit of a religious idol should be viewed as being different from personhood and similarly any platform established for the benefit of natural entities such as rivers and forests should not be conflated with personhood in light of the observations made above. It should be emphasised that personhood is only one among multiple legal platforms meant to protect the interests of its subject, it would therefore be a fallacy to equate the holding of rights with the status of being a person. Thus, the critique of the High Court’s judgment lies not so much in wanting to protect the interests of the natural entities in question but rather the manner in which it has chosen to do so.