

TREATING RIVERS AS LIVING ENTITIES

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Abstract

In a world-first a New Zealand river has been granted the same legal rights as a human being. The local Maori tribe of Whanganui in the North Island has fought for the recognition of their river, the third-largest river in New Zealand as an ancestor for 140 years. Hundreds of tribal representatives wept with joy when their bid to have their kin awarded legal status as a living entity was passed into law. All Maori tribes regarded themselves as part of the universe, at one with and equal to the mountains, the rivers and the seas.¹

The reason behind this approach is because they consider the river an ancestor and always they have fought to find an approximation in law so that all others can understand that from our perspective treating the river as a living entity is the correct way to approach it, as in indivisible whole, instead of the traditional model of treating it from a perspective of ownership and management.

The new status of the river means if someone abused or harmed it the law now sees no differentiation between harming the tribe or harming the river because they are one and the same. Now river Whanganui will have its own legal identity with all the corresponding rights, duties and liabilities of a legal person.

The approach of granting legal personality to a river is unique. It responds to the view that of Whanganui River which has long recognised through its traditions, customs and practice. As court has ordered two guardians will be appointed to act on behalf of the Whanganui River, one

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from the crown and one from the Whanganui's Iwi community. The new law now honoured and reflected their worldview and could set a precedent for other.²

Keywords: Ancestor, Approximation, Custom, Approach, Guardians, Corresponding, Practice.

Indian panorama

The Ganges River, considered sacred by more than one billion Indians, has become the first non-human entity in India to be granted the same legal rights as people. A court in the northern Indian state of Uttarakhand ordered that the Ganges and its main tributary, the Yamuna, be accorded the status of living human entities.

In a landmark judgement, the Uttarakhand High Court accorded the status of "living human entities" to the Ganga and Yamuna, two of India's most sacred rivers. Exercising extraordinary jurisdiction vested in the court, a division bench of Justices Rajeev Sharma and Alok Singh of the High Court said, "Holy rivers Ganga and Yamuna have been declared to be treated as a living human entities." High Court of Uttarakhand, said the Ganges and Yamuna rivers and their tributaries would be "legal and living entities having the status of a legal person with all corresponding rights, duties and liabilities". The court cited the example of river Whanganui in New Zealand which has been given such status.³

Giving the "legal status" of living humans to the holy rivers, the court ordered that the Director, Namami Gange project for cleaning and rejuvenating the river, the Chief Secretary and the Advocate General of Uttarakhand will act as the "legal parents" of the holy rivers and work as a the human face to protect, conserve and preserve them and their tributaries. The court in the Himalayan resort town of Nainital appointed three officials to act as legal custodians responsible for conserving and protecting the rivers and their tributaries. It ordered that a management board be established within three months. These officers will be bound to "uphold the status" of the two rivers and also promote their "health and well being", the court said. The matter related to mining and stone crushing along the banks of the Ganga.

The decision, which was welcomed by environmentalists, means that polluting or damaging the rivers will be legally equivalent to harming a person.

Issues with Indian rivers

Approximately there are already 1.5bn litres of untreated sewage entering the river each day, and 500m litres of industrial waste. All of this will become illegal with immediate effect, but you can't stop the discharge immediately. So how this decision pans out in terms of practical reality is very unclear.⁴

Indian courts have been critical of three decades of government efforts to clean up the Ganges, a 2,500km waterway named after the Hindu goddess Ganga. The latest cleanup initiative has set 2018 as its deadline.⁵

This decision could be an effort by courts to broaden their scope for intervention in the river's management. The government has been trying to clean up the river by spending a lot of money, putting in a lot of infrastructure and technology but they aren't looking at the governance of the river.

The world's third largest river, the Ganga is the holiest Hindu river and also among the dirtiest in the world, with toxic industrial waste and untreated sewage reducing it to a dirty trickle at several places.

What is needed a simple management system for each of the plants and give independent people the mandate to inspect them, question the officials and have them write daily and quarterly reports so that lessons are actually learned. Environmental activists say many rivers in India have become dirtier as the economy has developed, with city sewage, farming pesticides and industrial effluents freely flowing into waterways despite laws against polluting.⁶

The Yamuna is the main tributary of the Ganges that officials say is tainted with sewage and industrial pollution. In some places, the river has stagnated to the point that it no longer supports

life. Water from the Yamuna is treated chemically before being supplied to Delhi's nearly 19 million residents as drinking water.

The Ganga, where life is still at ease with the rhythms of nature. But of course there is the other reality that is pollution flowing into the river, sand mining eroding its banks, and grand plans afoot to build barrages for hydroelectricity and irrigation threatening its ecology.

Mythological issues: River Ganga as a Goddess in India

Described in the Mahabharata as the 'best of rivers, born of all the sacred waters', the Ganges is personified as the goddess Ganga. Ganga's mother is Mena and her father is Himavat, the personification of the Himalaya Mountains.⁷

In one myth Ganga marries King Sanatanu but the relationship comes to a shattering end when the goddess is discovered to have drowned her own children. In the *Mahabharata* Ganga is the mother of Bhishma and in some myths Skanda (Karttikeya), the Hindu god of war, is her son with Agni, the god of fire.⁸

In Hindu mythology the Ganges river was created when Vishnu, in his incarnation as the dwarf Brahmin, took two steps to cross the universe. On the second step Vishnu's big toe accidentally created a hole in the wall of the universe and through it spilled some of the waters of the River Mandakini. Meanwhile, the great mythological king Bhagirath was concerned to discover that 60,000 of King Sagara's ancestors had been incinerated from the stare of the Vedic sage Kapila. Wanting these ancestors to reach heaven, Bhagirath asked Kapila how this might be achieved. The response was to pray earnestly to Vishnu and perform ascetic acts for a thousand years. The great god, gratified by Bhagiratha's piety, agreed for Ganga to descend to earth where she might wash over the ashes of the 60,000, purify them, and permit them to ascend to heaven. There was a problem though, that if Ganga merely dropped from heaven her swirling waters would do untold damage. Therefore, Shiva offered to gently lower the goddess in his hair which he did, rather cautiously taking 1,000 years. Safely arrived on earth, Bhagirath guided Ganga across India, where she split into many subsidiaries, and successfully washed the ashes of Sagara's ancestors in her sacred waters.⁹

The Ganges often appears in Hindu mythology as a background location, for example, as a place where the famous figures Atri and Death performed various acts of asceticism. In the Siva Purana the Ganges carries the seed of Shiva which, when carried to a clump of reeds, became Skanda. In the Matsya Purana and the story of the Great Flood the first man Manu throws a giant fish into the river which then continues to grow to gigantic proportions, eventually escaping to the sea.¹⁰

The Ganges is considered a tirtha (holy place) which means a crossing point between heaven and earth. At a tirtha, prayers and offerings are thought most likely to reach the gods and, in the other direction, blessings can descend most readily from heaven.

The river is, along with two other sites, the location of the extraordinary Kumbha Mela ritual which dates back to at least the 7th century. Now held every three years by the term at Allahabad and Haridwar cities at the bank of river Ganga, Hindu pilgrims of all social status perform a ritual bathing in the river which is thought to purify body and soul, wash away karma, and bring good fortune. The event, involving from 70 to 100 million people, grows ever bigger and can claim to be the largest human gatherings in history. Waters from the Ganges are also collected by believers and taken home for use in rituals and as an offering. Drops from the river are also dropped into the mouth before a body is cremated.¹¹

One of the most sacred sites in India is alongside the Ganges at Varanasi. Here, in one of the oldest inhabited cities in the world, there is the Hindu Golden Temple, dedicated to Shiva. The site is also sacred to Jains and Buddhists but it is perhaps most famous as a place of retirement, cremation, and the spreading of ashes upon the sacred river.¹²

The goddess is often depicted in Hindu art wearing a white saree and riding a crocodile. Ganga frequently appears in sculpture near temple doors and on decorative relief panels along with her sister river goddess Yamuna. A celebrated representation of Ganga is from a sandstone lintel of a temple at Beshnagar. Dating to century 500, the goddess stands on a makara (a mythological mix of crocodile and elephant) which symbolises the life-giving nature of water.¹³

The descent of the goddess aided by Shiva is another popular scene in art and an outstanding example is the 7th century granite relief panel at a cave-shrine at Mamallapuram near Madras. The scene shows Ganga descending in the centre surrounded by gods, people, and animals. A cistern positioned above the relief could be filled on special occasions and so water trickled down the sculpture to add some three-dimensional realism to the miracle of the great Ganges arriving on earth.¹⁴

River Ganga : At a glance

The river Ganga, which originates in the Hindu pilgrimage town of Gangotri glacier from Gomukh in Uttarkashi district of Uttarakhand. Here this river is known as Bhagirathi. Bhagirathi flows down and merges with Alaknanda river at Devprayag district of Uttarakhand, which originates from Santopath glacier. Alaknanda before merging in Bhagirathi at Devprayag joins Dhauliganga river at Vishnuprayag, Nandakini river at Nandprayag, Pindar river at Karnaprayag and river Mandakini at Rudraprayag. All these small rivers have their own divine importance separately. Finally combination of Alaknanda and Bhagirathi at Devprayag is known as Ganga.¹⁵

Yamuna, a tributary of the Ganga merges at Allahabad district in Uttar Pradesh, originates at Yamunotri glacier in the Garhwal Himalayas. Gomati river another tributary of Ganga which originates from Pilibhit district of Uttarakhand merges in Ganga at Ghazipur district of Uttar Pradesh. Other tributaries of Ganga are Ghaghra river which originates from Nepal merges at Chhapra district of Uttar Pradesh, Soan river at Patna district of Bihar, Gandak river which originates from Nepal merges at Hajipur district of Bihar, Koshi river at Bhagalpur district of Bihar. After this Ganga river reaches at West Bengal. At Farakka district of West Bengal river Ganga divides in two parts Bhagirathi and Hugli. Bhagirathi flows further and reaches at Bangladesh where this river is known as Padma. River Padma joins river Brahmaputra at Golundo in Bangladesh. Here Brahmaputra river is known as Jamuna. Joint stream flows as a Padma and merges in river Meghna at Chandpur in Bangladesh. After that Meghna and Hugli merges in bay of Bengal. In this way falling river is divided in so many branches and known as Jalangi, Echhamati, Bhairvi, Vidyadhari, and kalindi. Worlds largest delta is situated between Hugli and Meghna.¹⁶

Rivers joining Ganga from left side is Yamuna and from right side are Ramganga, Varuna, Gomti, Ghaghra, Gandak, Kosi, Mahananda. Rivers coming from south plateau are Tonse and Soan.¹⁷

River Ganga : A life line of Indians

The Ganga, often called India's lifeline, has significant economic, environmental and cultural value attached to it. Originating in the Himalayas and flowing into the Bay of Bengal in the east, it travels for more than 2,500km through the plains of northern and eastern India, passing through 29 major cities, 23 small cities and 48 towns.¹⁸

The river flows through Uttarakhand, Uttar Pradesh, Bihar, Jharkhand and West Bengal. Reverentially referred to as Maa Ganga (Mother Ganga) for the water it provides to millions and fertile plains it feeds, more than the 2,500km river crosses several states before emptying into the Bay of Bengal. River Ganga flows around 450 kilometres in Uttarakhand State, 1000 kilometres in Uttar Pradesh state, 405 kilometres in Bihar state, 40 kilometres in Jharkhand state and 520 kilometres in West Bengal state in India.¹⁹

A third of the drinking-water supply in India's capital, Delhi, comes from a reservoir in the northernmost corner of the city that breaks away from the Yamuna right before it becomes toxic.²⁰

Over 1500 million litres of raw sewage is discharged into the Ganga every day. This joins 500 million litres of industrial waste dumped by more than 700 highly polluting industries located along it.²¹

Legal issues

The Uttarakhand high court has recognized the Ganga and the Yamuna as so-called living entities, giving the rivers that have seen years of damage at the hands of humans, a legal voice. Animals, for instance, aren't considered living entities by law. Only humans are. The flowing river has been granted a legal status. It is an extension of the philosophy of allowing a river to flow freely. As it was intended in its nature, any interference with the river as a whole, including

construction of dams, takes away from its essential and basic character etc. such a move by court would involve a re-look into construction activities across the river such as sand mining and construction of dams.²²

The ruling said the rivers, both of which are considered sacred to Hindus and personified as goddesses, were crucial in providing "physical and spiritual sustenance" to locals. The order also ends the five-day reign of New Zealand's Whanganui River as the only one in the world to be granted living entity status.²³

The court's order will allow complaints to be filed in the name of the two rivers, held sacred by millions of Hindus. It also gives the Centre eight weeks to set up boards for cleaning and maintaining the rivers. It means now Ganga and Yamuna rivers will be treated like a natural person but only through a designated person. A bench of High court Uttarakhand allowed the director general of Namami Gange project, Uttarakhand chief secretary and advocate general the right to represent the Ganga.²⁴

The bench comprising Justices Rajiv Sharma and Alok Singh also held that if the state government failed to fulfil its responsibility regarding the rivers, then the central government should step in. The court also directed the central government to constitute the Ganga Management Board within eight weeks to look into the issue of cleaning and maintaining the river.²⁵

The court justified its ruling on the grounds that the rivers were "losing their very existence" and the situation required "extraordinary measures to be taken to preserve and conserve the Rivers Ganga and Yamuna," using an alternative name for the Ganges.²⁶

Recognizing the rivers as a living entity grants them new found legal identity and all rights laid out in the Constitution of India.

Legal status of river: A critical analysis

Now, two geographically far-flung events in mid-March look to a possible resolution to this contradiction. On March 20, 2017 the Uttarakhand High Court ruled that the Ganga and Yamuna, and their tributaries, have rights as a ‘juristic/ legal person/ living entity’. Five days before this, the New Zealand Parliament passed into law the Te Awa Tupua Bill, which gives the Whanganui river and ecosystem legal personality, guaranteeing its ‘health and well-being’.²⁷

But can a river have human rights? If the most fundamental human right is that to life, what does it mean for a river? An obvious implication is that it should not be irretrievably polluted. Moreover what about dams? Can a river be blocked? Can it be diverted to a point where there is virtually no water flowing in long stretches of the river, as is the case with the Ganga? And what about creatures like that Gangetic dolphin, a rare glimpse of which we got on our boat trip near Bhagalpur? Do they have rights as part of the river ecosystem? How can a river or its constituents, with no voice of their own, ensure such rights, or demand justice should they be violated? Who would be the beneficiary of compensatory action?²⁸

Both the New Zealand law and the Uttarakhand court order recognise that rivers are lifelines and culturally significant for people living along them. Both see rivers as ‘living’ entities, with ‘spiritual and physical’ characteristics. In both, human beings are appointed as custodians to protect the rivers’ rights. But there are also crucial differences.²⁹

The New Zealand law recognises “the Whanganui River as an indivisible and living whole, incorporating all its physical and meta-physical elements”, covering the entire stretch “from mountains to the sea”, as also “all tributaries, streams, and other natural watercourses that flow continuously or intermittently into (the river)... within the Whanganui River catchments; and all lakes and wetlands connected continuously or intermittently”. It also encompasses the worldview of the Iwi indigenous peoples who live along the river, pithily represented by the phrase “I am the river and the river is me.”³⁰

Interestingly, the Uttarakhand High Court (which has copied, verbatim, some aspects of the New Zealand law), does not mention associated lakes and wetlands. Nor does it explicitly cover

the catchment area or other parts of the river basins. While the New Zealand law entrusts the protection of the river's rights jointly to the indigenous Iwi people and the government, the Indian court puts its faith in government officials, namely the Director, Namami Gange, and the Chief Secretary and Advocate General of Uttarakhand. These officials are declared 'parents', or "the human face to protect, conserve and preserve" the rivers. But the Indian state has not only failed in maintaining the health of these rivers, it has been complicit in diverting, damming, and polluting them. So how are its officials going to suddenly turn protector?³¹

The court further says: "The constitution of Ganga Management Board is necessary for the purpose of irrigation, rural and urban water supply, hydro power generation, navigation, industries." Some of these activities are precisely what is killing the Ganga (and almost every other river in India)! Additionally, the order extends to the rivers "the status of a legal person with all corresponding rights, duties and liabilities of a living person". So could it be argued by the dam construction lobby that it is Ganga's duty to provide hydro-electricity? Legal rights would mean a suit can be brought in the name of the river, injury recognised, the damager be held liable, and compensation benefiting the river paid. This means the river needs to have a protector that is independent of those who have been violating its rights. Do government officials fit this bill?³²

Other issues involved

There are two more fundamental questions to ask of the High Court judgment. First, recognition of the rivers' rights is based on its value for "socio-political-scientific development", and due to the spiritual significance of the Ganga and Yamuna, especially for Hindus. The rights do not stem from an intrinsic identity or status of the river, but more from their use for humans; and giving them 'personhood' status makes it very human-centred. Can rivers not be recognised as having identity, worth, dignity, and rights as intrinsic qualities, not because they serve us?³³

In the New Zealand law too the Whanganui River is given legal personhood, but it is also noted to have 'innate values'. Perhaps this could be read into the court's observation that "Rivers Ganga and Yamuna are breathing, living."³⁴

Also, could the logic of this order be extended to all rivers, and beyond that, to all of nature? These rivers are sacred to Hindus; other rivers, lakes and forests are sacred to other communities. Indeed many peoples' movements such as those against dams in Sikkim and against mining in the Niyamgiri hills of Odisha have cited the sacredness of the landscape. In the latter case the Supreme Court of India even asked the government to seek consent for mining from the Dongria Kondh adivasi gram sabhas, recognising their cultural rights. And then again can't all ecosystems be similarly extended protection? This of course will not mean that ecosystems cannot be used by humans, but rather that our treatment of the rest of nature would be within the bounds of what is responsible and sustainable.³⁵

The plans for barrages and dredging will destroy the river, threatening livelihoods of millions and endangering the Gangetic river dolphin. On a number of tributaries of the Ganga and Yamuna in Uttarakhand, the government is building or planning large hydro-projects; there has been construction related gashes and debris falling into the river near Nandadevi and other parts of the Himalaya, and shudder to think of the consequences. Can the High Court order be used to stop this massacre of rivers?³⁶

There are precedents in other countries. In Ecuador, people went to court in the name of the Vilcabamba River, being affected by a road widening project. They argued that this violated the Ecuador Constitution, which recognises the rights of nature. The court ruled that dumping of rock and earth into the river interfered with its right to flow naturally and perform its ecological functions.³⁷

The Whanganui River protection law came after over a century of struggle by the Iwi indigenous people to reclaim their territory and protect the river; these people will keep a sharp eye out for any violations. In the case of the Ganga and Yamuna, people living along their banks, including many religious institutions, are often the ones responsible for the desecration. Will they have the wisdom and organisational capacity to turn this around and use the court orders to protect the rivers? Apart from this, doing so, that to without being hijacked by communal forces and their agenda is also toughest job. Not only this in maximum cities of India from where these rivers like Ganga and Yamuna Flows, are occupied by illegal occupants, builders. They construct

houses, colonies, buildings at the river bank when river flows back in course of nature. Due to complicated process of local land allotment authorities, map passing authorities, corrupt public work department authorities and municipal authorities in India, this is toughest step to expel trespassers. Moreover these trespassers go to court and due to prolong court process in India it is impossible to demolish the illegal constructions. Can a truly independent body of 'parents' emerge for north India's rivers, to take the court's orders to their logical conclusion?³⁸

Conclusion

Although there will be long find to find an approximation in law so that all others can understand that, from our perspective, treating the river as a living entity is the correct way to approach it, as an indivisible whole, instead of the traditional model for the last so many years of treating it from a perspective of ownership and management.³⁹

We can trace our genealogy to the origins of the universe and therefore rather than us being masters of the natural world, we are part of it. We want to live like that as our starting point and that is not an anti-development, or anti-economic use of the river but to begin with the view that it is a living being and then consider its future from that central belief.⁴⁰

This order may be seen as a precedent and come across as strange but it is not any different from the status of being a legal entity as in the case of family trusts or a company. Still, it is the first time a court has recognized a non-human as a living entity in India. The two rivers thus have the right to be legally protected and not be harmed or destroyed. They can also be parties to disputes. The rights, experts say, can be used to protect the interests of the rivers.⁴¹

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