

Nature as a Legal Person-Recent Judicial Developments

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INTRODUCTION

On March 20, 2017, the Hon'ble Uttarakhand High Court passed a remarkable judgement, in the case of *Mohammad Saleem vs. State of Uttarakhand*, wherein it was held that river Ganga and Yamuna are living entity/legal person/juristic person. It is important to point out that the High Court has not recognised 'rivers' per se as living being. It has recognised only rivers Ganga and Yamuna and its tributaries as living entity/legal person. So the first question comes in mind that who is juristic person/legal entity/ legal personality? According to Salmond:-

“Person is any being whom the law regards as being capable of rights and duties. This being doesn't always have to be a human.”¹

Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases like corporate personality, body politic, charitable unions etc. Legal persons have rights and co-relative duties; they can sue and be sued, can possess and transfer property. A person has different connotations in different countries like in Roman laws; slaves were not considered as persons thus devoiding them of basic rights.

Before India declared the rivers Yamuna and Ganga as legal or juristic persons and enjoying all the rights, duties and liabilities of a living person, a court in New Zealand declared its third longest river, the Whanganui, as a legal person.

Similar to the way corporate personality works in some countries, these rivers can now conceivably incur debts and own property, but more importantly, it means these rivers can petition courts (with the help of legal guardians, of course) to protect themselves from pollution and misuse. But by granting personhood status to something that is so clearly not a person, have the courts set both New Zealand and India down a path where literally anything could be afforded the same incongruous status. What will be the effects of these judgements in the future?

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1. Salmond, J. W., & Fitzgerald, Salmond on jurisprudence. Bombay: Tripathi. 1985

JURISPRUDENTIAL APPROACH OF LEGAL PERSONALITY/ ENTITY

A person is juridically classified in two groups: natural persons and legal persons. The first group refers to a human being, who is an individual being capable of assuming obligations and capable of holding rights. The second group refers to those entities endowed with juridical personality who are usually known as a collective person, social person, or legal entity. According to Francisco Carnelutt

“The person is the “meeting point of two elements ((economic element and legal element), that is, the crux of the matter where both converge.” Carnelutti clarifies that the juridical person is not only the man considered in his individuality. Instead, Carnelutti affirms that where collective interest exists, i.e. leading several men as one, unity is allowed to emerge, and personality as a unit will be acquired”

The collective juridical person, as Carnelutti expresses, is created when the economic element and the juridical element of the relationship is the meeting point of more than one man, which is the fundamental principle of this unification of the collective interest. For Carnelutti, a juridical person is a natural or individual person as well as a collective or compound person, and both hold a common characteristic: they are the meeting point of the economic and juridical element. The latter differs from the fact that it is not a single individual in that position; instead it is two or more individuals who are united by a collective interest.

Julien Bonne case on the other hand, defines the juridical personality law as a set of rules and institutions that apply to the person itself, in its individuation and its power of action. For him, the personality law is classified in three parts:

1. The existence and individuation of persons, which means the set of elements that allow on one hand social distinction of the person, and on the other hand, a determination of juridical effect. The elements that allow for further distinction are its name, its legal status, and its address.
2. The legal capacity of natural persons and their variations: on one hand the guidelines of the organization in regard to capacity of natural persons and their variations (capacity to enjoy and

exercise capacity with their limits), and on the other hand the study of the legal bodies which substitute for the incapacity of natural persons.

3. The existence, individuation, and capacity of legal entities or juridical persons, which is the subject matter of this paper. M.F.C. de Savigny is the strongest proponent of the traditional theory, better known as the theory of fiction.

CHARACTER OF LEGAL PERSON: MODERN APPROACH

1. Legal persons are also termed “fictitious”, “juristic person”, “artificial” or “moral person”.
2. Legal person is being, real or imaginary whom the law regards as capable of rights or duties.
3. According to the law, idiots, dead men, unborn persons, corporations, companies, idols, etc. are treated as legal persons.²
4. The legal persons perform their functions through natural persons only.
5. There are different types of legal persons, like- Corporations, Companies, President, Universities, Societies, Municipalities, Gram Panchayats, etc.
6. Legal person can live more than 100 years. Example: (a) the post of “American President” is a corporation, which was created some three hundred years ago, and still it is continuing. (b) “Tata Iron and Steel Industry” was established in eighteenth century in India, and now still is in existence.

It may have come as a surprise to many when God, Bhagwan Sri Ram Virajman, fought litigation for the last 21 years before the Lucknow Bench of Allahabad High Court through his representative, Deoki Nandan Agarwal and has now won ownership rights over the disputed site in Ayodhya.

Can a deity, like a normal human being, fight a legal battle? The High Court replied in the affirmative. The Court is of the view that place of birth that is Ram Janmabhoomi, is a juristic person. In the Indian judicial system, deities have always been regarded as legal entities that can fight their case

2. S.N.Dhyani, *Jurisprudence (Indian Legal Theory)*, Central Law Agency, 2010, p. 245

through the trustees or managing board in charge of the temple in which they are worshipped. The ancient Indian system of law recognized Gods as legal entities. Many of the lands around Chidambaram temple, for example, were registered as property of "Nataraja." Alas, under the British, many men named Nataraja successfully claimed vast swaths of land as their own.

The Supreme Court, in *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi, vs. State of UP*³ recognized, though not for the first time, the right of a 'Deity' to move court and said properties of endowment vest in the deity, Lord Sri Vishwanath. It dismissed the claim of the priests that they alone had the right to manage the temple on behalf of the deity and said management of the temple by mahant/pandas/archakas did not mean it became their property. It upheld the Act saying it was merely for better management of the temple.

RECENT DEVELOPMENT

In the month of March, 2017 the world has gained three notable new legal persons: the Whanganui River in New Zealand, and the Ganga and Yamuna rivers in India.

In New Zealand, the government passed legislation that recognised the Whanganui River catchment as a legal person. This significant legal reform emerged from the longstanding Treaty of Waitangi negotiations and is a way of formally acknowledging the special relationship local Māori have with the river. In India, the Uttarakhand High Court ruled that the Ganga and Yamuna rivers have the same legal rights as a person, in response to the urgent need to reduce pollution in two rivers considered sacred in the Hindu religion. This was then followed by a much wider order dt. 30.03.2017 passed in another unconnected public interest litigation, W.P.PIL No. 140 of 2015, *Lalit Miglani vs. State of Uttarakhand*, which declared glaciers, including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls as legal persons.

The Lalit Miglani PIL is an overarching one, dealing with pollution of the river Ganga. The Petitioner is an advocate practising before the Uttarakhand High Court and his petition essentially contended a gross failure by all the governmental authorities (both central and state) in

discharging their statutory duties to prevent pollution of the Ganga. In this PIL, the High Court had passed an extremely detailed Order date 02.12.2016 highlighting the desperate situation that had been reached in terms of the pollution of the river Ganga. In its order date 02.12.2016, the Court held that every citizen has a right to clean water under Article 21 of the Constitution, highlighted the importance of the river Ganga to the Hindus and noted the rapid deterioration of the quality of the river. The Court then proceeded to issue a whole host of mandatory directions which included the following:

- (i) a direction to the Union of India to establish an inter-State Council under Article 263 of the Constitution for all the riparian states of the Ganga within three months for making recommendations for the rejuvenation of the river;
- (ii) various directions towards the establishment of Sewage Treatment Plants;
- (iii) directions for taking action against/closure of polluting industries;
- (iv) directions to take actions against Ashrams and other establishments that let out untreated sewage into the river, etc. The Court also recommended that the Union of India frame a law exclusively for the Ganga to save it from extinction.⁹

Despite such an elaborate order being passed, the Court was faced with a situation of gross non-compliance of its directions.

Two other points are worth mentioning here. Firstly, the Court, in its order date 02.12.2016, recognized that the issue of pollution of the river Ganga involved many States, and suggested that an inter-State mechanism be evolved to solve the problem. Secondly, the Court stayed within the bounds of well-established principles of environmental law to justify the directions that it made.

EARLY RESPONSES TO THE MOHAMMAD SALEEM CASE:-

The Mohammad Saleem case directions attracted widespread attention for their novel approach, but some early commentators reacted,

9. Lalit Miglani vs State Of Uttarakhand And Others on 2 December, 2016 Writ Petition (PIL) No.140

rightly, with caution. Prominent environmental lawyer Mrs. Shibani Ghosh, in her article highlights how the Mohammad Saleem case transformed, in a succession of “logical leaps”, from one pertaining to illegal encroachments to one concerning the protection of the health and well-being of two rivers. She points to the Court's failure to articulate how the grant of legal personhood to the rivers would be a sequitur that follows from the premise that rivers provide “physical and spiritual sustenance” to half of India's population. Finally, she concludes that the Mohammad Saleem orders can hardly be considered a game-changing development.

In my humble opinion, few points may be pondered over regarding the grant of personhood to a river. Firstly, the limited scope of the orders - the Court's protection did not extend to associated lakes or wetlands, catchment areas or other parts of the river basins. Secondly, how the orders did not envisage any role for the community in the protection of the Ganga and the Yamuna, but vested stewardship solely with the government authorities. Thirdly, the “human-centric” approach of the High Court which appeared to have recognized rivers' rights based on the value of rivers for “socio-political-scientific development” and the spiritual significance of the Ganga and Yamuna for Hindus, instead of the intrinsic identity or status of the river. Finally, why just these two rivers?

The Lalit Miglani Order is heartening as regards three aspects. Firstly, it acknowledges that other riparian states have stakes in the protection of rivers. Thus, the appointment of “persons in loco parentis” is restricted to the State of Uttarakhand. The implication seems to be that other states can appoint their own “persons in loco parentis” for the protection of resources within their territory. Secondly, the Order acknowledges the importance of community participation. Thirdly, it expands the personhood principle to a whole host of other natural geographical features other than the Rivers Ganga and Yamuna.

Conclusion

It is perhaps a good starting point to debate the conferral of personhood of important natural resources as a strategy for their conservation, but as ever, the devil lies in the details. The mere grant of legal personhood may not achieve much, without developing effective community based stewardship frameworks for the protection and

conservation of such resources, especially in the face of known government inaction and failure. Though the Court, in its latest order, has moved towards recognizing community participation, it is clear that a lot more calibration is needed in choosing the correct community representatives and ensuring that their participation is taken seriously.

In both cases, there are still big questions about the roles and responsibilities of the rivers' guardians. How will they decide which rights to enforce, and when? Who can hold them to account for those decisions and who has oversight? Even in the case of the Whanganui River, there remain biting questions about water rights and enforcement. For instance, despite (or perhaps because of) longstanding concerns about levels of water extraction by the Tongariro Power Scheme, the legislation specifically avoids creating or transferring proprietary interests in water. Ultimately, both of these examples show that conferring legal rights to nature is just the beginning of a longer legal process, rather than the end. Although legal rights can be created overnight, it takes time and resources to set up the legal and organisational frameworks that will ensure these rights are worth more than the paper they're printed on.
