

Reframing The Law To Recognise Nature's Value

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NEW DELHI, Feb 3 – How do we see nature? Do we see it, and therefore, value it – based on its usefulness for human beings – or as something with intrinsic value?

The current framework for the protection of nature is based on the former perspective, as is litigation. Nature tends to be judged and appreciated on the basis of its impact on humans – an anthropocentric view. This approach does not allow for the protection of nature in its totality, bringing to the forefront the need for the rights of nature framework.

Around the world this framework has been gaining greater acceptance. Ecuador and Bolivia have incorporated the right of nature to exist, persist, maintain and regenerate. In India, through litigation, attempts have been made to give natural resources personhood.

There are, however, counter-arguments to these legal developments. Key among them being nature is a non-living thing unable to speak or communicate.

As Christopher Stone famously argued in his seminal 1972 work: “Nor is it only matter in human form that has come to be recognized as the possessor of rights. The world of the lawyer is peopled with inanimate right-holders: trusts, corporations, joint ventures,

municipalities. and nation-states, to mention just a few. Ships, still referred to by courts in the feminine gender, have long had an independent jural life, often with striking consequences’.

This view was echoed decades later by scholars such as La Follette and Maser: “It is of course no answer to say that Nature, or any being of Nature, should be denied rights because it cannot speak. The American legal system gives rights to many entities that cannot speak. All these entities hire attorneys to speak for them and argue their cases in court.”

The root of arguments against the rights of nature framework can be traced to the philosophy that has been at the foundation of industrialised western society – one that acknowledges little or no intrinsic value in Nature, unless it is able to show that it is “good for something” or can be transformed into something of material value, indigenous cultures and Eastern traditions, on the other hand, have a long history of endowing natural resources with intrinsic and often sacred value.

The Ganga (Ganges), for instance, one of the rivers granted personhood by the Uttarakhand High Court, is considered by the Hindus to be a Goddess, with her own sacred history and power. In a similar manner the Whanganui River was granted personhood in New Zealand by the Whanganui Iwi Deed of Settlement owing to the unique cultural relationship the Maori people have with the river. The Maori have a saying: “*Ko au te awa, ko te awa ho au*” – “I am the river, and the river is me”.

The granting of legal personhood to the Whanganui is a key example of the extension of legal rights and personhood to a non-human and inanimate object. But this was not the first time this concept was used in law to protect natural resources. In 2006, the Tamaqua Borough of Pennsylvania, in the United States, prohibited the dumping of toxic waste and sewage as a violation of the Rights of Nature.

In 2008, Ecuador became the first country to recognise the Rights of Nature in its national constitution, which eloquently stated in Article 71 that: “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”

This vision of nature is the hallmark of a more ecocentric Earth jurisprudence that aims to displace the dominant perspective where human beings and their interests are given the central position. An ecocentric approach acknowledges the intrinsic value of every being, and the need to respect the rights, therefore, of every living being.

This is well encapsulated by Bolivia’s Universal Declaration on the Rights of Mother Earth. It recognises nature’s Right to Flourish, as Mother Earth is a living being. To ensure that the Earth and its resources flourish, it acknowledges that one of the key rights of nature is the Right to Life.

Bolivia's law, therefore, calls for public policy and state action to be guided by *Buen Vivir*, a concept of well-being founded on traditional and indigenous values of harmonious coexistence with nature and people. Such harmony is only possible when one acknowledges the interdependence of all things.

The principle of interdependence is beautifully illustrated by the Mahayana metaphor of the Net of Indra — a magical net suspended above the palace of Indra that extends across all directions. Upon each node is placed a glistening gem which reflects within it all the other gems in the net. In the same manner as each gem is reflected in the other and is connected by the net's gossamer threads, we are interconnected and affect each other.

Acknowledgement of this interdependence is found across formulations of the Rights of Nature. The Preamble of Bolivia's Universal Declaration of the Rights of Mother Earth proclaims that: "...we are all part of Mother Earth, an indivisible living community of interrelated and interdependent beings... [and] convinced that in an interdependent living community it is not possible to recognise the rights of only human beings without causing an imbalance within Mother Earth."

In this way, the Rights of Nature framework is reframing the place of human society and human beings within the larger canvas of life on Earth. Indeed, sustainability cannot be achieved if this perspective is not brought into modern society's relationship with nature and, therefore, into the pathway of development.

Of course, it is not without its challenges. There are questions that need to be answered regarding its practical application. Who would be best suited and qualified to be the guardian of the natural resource?

How would they be selected and to what standards would they be held? As the interests of natural resources would still ultimately be decided by state and society, does this approach remain anthropocentric, and does this undermine the very purpose of endowing natural resources with rights?

While these issues need resolution, the level of environmental devastation we now face makes the key role of the Rights of Nature framework in achieving sustainable development apparent.

The current global ecological crisis is the result of unsustainable development, consumption and production patterns. It is time for a new approach — one where we acknowledge and accept interdependence, and begin to live in greater harmony with nature, by firstly, respecting its innate value and rights.

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