

## CAN RIVERS BE LEGAL ENTITIES? -A CRITICAL ANALYSIS

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### Introduction

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“A river seems a magic thing. A magic, moving, living part of the very earth itself.”

*-Laura Gilpin*

Legal entity is defined in Oxford Law Dictionary as an individual, company, or organization that has legal rights and obligations.

For the first time in India, a Court has recognized a non-human as a living entity. 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.

Perceiving the rivers as a living entity grants them newly discovered legal identity and all rights laid out in the Constitution of India. The two rivers in this manner have the rights and privilege to be legally ensured and not be harmed. They can likewise be parties to disputes. The rights can be utilized to ensure the interests of the rivers.

The choice is probably going to help the Namami Ganga (Clean Ganga) Mission, a pet venture of Prime Minister Narendra Modi propelled to clean and restore the river. The central government affirmed a cost of Rs 20,000 crore for a period of five years for the centrally financed mission and made a ministry to concentrate on it. To contact individuals along the river, the administration has been dealing with developing villages as a major aspect of its program. In the primary stage, 400 villages are being developed.

The Ganga, normally called India's life saver, has critical financial, natural and social esteem connected to it. Starting in the Himalayas and streaming into the Bay of Bengal in the east, it travels for more than 2,500km through the plains of northern and eastern India, going through 29 major urban cities, 23 little cities and 48 towns.

It flows through Uttarakhand, Uttar Pradesh, Bihar, Jharkhand and West Bengal and touches about 167 Constituencies in the Lok Sabha. In the 2014 parliamentary elections, the Bharatiya Janata Party (BJP) won in 90 of these and it also won recently conducted elections in Uttar Pradesh and Uttarakhand.

More than 1500 million liters of crude sewage is released into the Ganga every day. This joins 500 million liters of industrial waste dumped by more than 700 profoundly contaminating enterprises situated along it.

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## Critical Analysis of the Order

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On March 20, 2017, the Uttarakhand High Court held that the rivers Ganga and Yamuna are legal entities. This notable decision came just five days after the New Zealand Parliament passed a Bill recognizing the Whanganui River as a legal entity.<sup>1</sup>

It all started with case of Mohd. Salim v. the State of Uttarakhand<sup>2</sup>, decided on December 5, 2016, which was a PIL regarding illegal constructions and encroachment on government land.<sup>3</sup> This decision followed years of wrangling over encroachment disputes as well as a dispute over the management of Water Resources Development and Management in relation to the rivers Ganga and Yamuna and their tributaries, between the newly created state of Uttarakhand and the state of Uttar Pradesh of which it was formerly a part.

As per Section 80 of the Uttar Pradesh Reorganization Act, 2000, the Central Government was to constitute the Ganga Management Board and to induct Uttarakhand as a member of the Upper Yamuna Board, however the High Court of Uttarakhand found that neither one of the steps had been taken.

For judicial purposes, living persons are "juristic persons" — any subject matter other than an individual — to which the law gives personality for good and adequate reasons. At the end of the day, "for a bigger thrust of socio-political improvement, advancement of a fictional personality to be a juristic individual becomes plainly unavoidable."

Referring to *Yogendra Nath Naskar v Commission of Income Tax, Calcutta*<sup>4</sup> in which Hindu idols have been considered as a "juristic entity capable for holding property and of being taxed," the division bench of Uttarakhand High Court, noticed that with the advancement of society where the "connections of people missed the mark to upsurge the social advancement, the concept of juristic individual was devised and made by human laws for the purpose of the general public."

The primary focus of this decision was on the nature of Indian federalism and the respective rights of the federal and state governments, particularly in relation to water rights. The Court directed that the illegal encroachments and construction on government land be removed. More importantly, the High Court directed the Central Government to constitute a Ganga Management Board and induct the State of Uttarakhand as a member of the Upper Yamuna Board within three months. Finally, the Court banned mining in the riverbed of the Ganga and its highest flood plain area with immediate effect.

Subsequently, on March 20, 2017, the Uttarakhand High Court issued a set of mandatory, follow-on directions noting its displeasure with the lack of cooperation of both the

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<sup>1</sup> Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 Public Act 2017 No 7 Date of assent March 20, 2017.

<sup>2</sup> (Writ Petition (PIL) No. 126 of 2014, (March 20, 2017)

<sup>3</sup> Mohd. Salim v. State of Uttarkhand and Others (Writ Petition (PIL)No. 126 of 2014 (December 5, 2016

<sup>4</sup> AIR 1969 (1) SCC 555

governments of Uttar Pradesh and Uttarakhand with the Central Government in constitution of the Ganga Management Board. The Court also noted that the encroachers on government land had not been evicted and issued directions for eviction within seven days from the order.

The Court focused on the critical circumstance as to the very existence of the two rivers, Ganga and Yamuna, as requiring phenomenal measures for protection and preservation. In this context, the Court declared the Gangas and the Yamuna as legal entities.

The Court underscored the spiritual importance of these two rivers, taking note of the fact that Gangas and Yamuna are holy to Hindus and worshiped by them. Tracing the evolution of Supreme Court of India jurisprudence regarding personhood for Hindu deities, trusts and temple endowments, the High Court reaffirmed the recognition of a Hindu deity or idol as a juridical person entitled to hold property as well as to be subject to taxation, to be managed by those “who are entrusted with the possession and management of its property.” The Court stated that “to protect the recognition and the faith of society, Rivers Gangas and Yamuna are required to be declared as the legal/living persons”. Drawing on Hindu spirituality and religious faith, the Court noted that these rivers “support and assist both the life and natural resources and health and well-being of the entire community. Rivers Gangas and Yamuna are breathing, living and sustaining the communities from mountains to sea.”

Further supporting its argument with constitutional provisions under Articles 48-A and 51A(g) of the Indian Constitution, the Court invoked the need for the constitution of the Ganga Water Management Board to focus on irrigation, rural and urban water supply, hydropower generation, navigation, industries as part of the imperative to confer legal personhood on these two rivers.

Article 48A is a directive principle of state policy and obliges the state to protect the environment. It provides: “The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”<sup>5</sup> Relying on the fundamental duties set out in the Indian Constitution, the Court cited Article 51A (g) which provides that is the fundamental duty of every Indian citizen, “to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.”<sup>6</sup>

To sum up, the High Court stated, " While exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, every one of their tributaries, streams, every natural water streaming with stream constantly or intermittently these rivers are declared as juristic/legal persons/living entities having the status of a legal individual with every corresponding rights, obligations and liabilities of a living individual keeping in mind the end goal to safeguard and conserve river Ganga and Yamuna. The Director NAMAMI Ganga, the

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<sup>5</sup> Article 48A, Constitution of India, 1950

<sup>6</sup> Article 51A(g), Constitution of India, 1950.

Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared in loco parentis as the human face to preserve, conserve and protect the Rivers Ganga and Yamuna and their tributaries.

These Officers will undoubtedly maintain the status of the Rivers Ganga and Yamuna and furthermore advance the well-being and prosperity of these rivers.

The future implications of the decision are mixed. There are significant environmental implications, including the protection of the rivers, conservation of the waters, the prohibition against the dumping of waste in the rivers and the complete ban on mining in the riverbed and high plain area.

Indeed, according to estimates, more than 3,000 million liters of untreated sewage are pumped into the Ganga on a daily basis from towns along the river.<sup>7</sup>

At the same time, this decision brings up issues about the repercussions for the controversial river linking plan proposed by the central government including the diversion of water through the construction of reservoirs, dams, and canals, from the Ganga to areas of water shortage. It also has potential consequences for the cross-border use of water as these rivers cross India's borders with Nepal and Bangladesh.<sup>8</sup> Notwithstanding the obvious environmental implications, the centrality of Hindu religious faith to the directions issued is worrying.

With regards to rising Hindu right wing rhetoric, the Court's linking of the Hindu faith with national identity and the corresponding casting out of religious minorities inferred by this strategy for argumentation by the court is cause for concern. To be sure, while this decision and its mandatory directions look good for ecological protection, the premise of such protection is disturbing for the future of minority rights and India's democratic secular consensus.

The remarkable measure that the judges had in mind was to declare,

As needs be, while exercising the parens patrie jurisdiction, the Rivers Ganga and Yamuna, every one of their tributaries, streams, every natural water streaming with stream persistently or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal individual with every corresponding rights, obligations and liabilities of a living person keeping in mind the end goal to safeguard and conserve river Ganga and Yamuna.

The judges buttressed their contention by referring to Articles 48A and 51A (g) of the Indian Constitution. The first refers to the obligation of the state to protect and improve

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<sup>7</sup> <https://www.thequint.com/environment/2017/03/20/ganga-is-now-a-living-entity-what-does-it-mean-for-the-river-uttarakhand-high-court-order>

<sup>8</sup> <https://www.thethirdpole.net/2014/11/20/india-renews-disasterous-river-linking-project>

environment and take care of wildlife, while the second is a part of the crucial fundamental duties of an Indian citizen to do likewise in their capacity. Article 48A has frequently been referred to by Indian courts in passing judgments for ecological protection.

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### **Rights for Holy Rivers**

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In this particular case, however, the contention of judges laid on the sacrosanct idea of the two rivers, which are blessed to Hindus. In Indian law a god may be a legal entity and is represented by the administration staff of the temple. This is on account of such religious entities likewise have secular aspects – cash given to religious trusts, for instance – that implies that their rights and obligations also exist. On account of the rivers, the judges have conceded the *parens patrie* (the power of the state to act as parents when the parents are not able to fulfill those functions) powers to state delegates, with the "Director NAMAMI Ganga [the National Mission to Clean the Ganga], the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are thus declared persons in loco parentis as the human face to secure, conserve and save Rivers Ganga and Yamuna and their tributaries."

In spite of the fact that the judges refer to a great extent Indian law, the wording of their statement is strikingly similar to enactment passed in New Zealand – circumstantially given the royal consent on 20 March 2017 – in connection to the Whanganui River, sacred to the Maori indigenous people. The New Zealand law also recognized the river as a legal entity with every one of the "rights, power, obligations and liabilities of a legal individual", and was billed as a world first.

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### **What does this mean for India's river diversion plans?**

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All the more altogether, with the new legal status given to rivers, India's ambitious water connecting scheme would become impossible to achieve. The controversial venture being pushed by Narendra Modi's administration includes the substantial scale diversion of water from the Ganga and Brahmaputra basins in eastern India to water scarce regions of western and central India through the construction of canals, dams and reservoirs. This leaves open the vital question that if the legislature interferes in the river by making these interventions, will the Advocate General of Uttarakhand act?

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### **Potential for new clash**

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An extra complication with the Ganga is that it is a Trans boundary river. Not exclusively does it twist through various Indian states, it additionally has tributaries coming in from Nepal, and is one of Bangladesh's significant rivers – where it is known as the Padma. How the officers of Uttarakhand will represents the other Indian states, and other nations?

There is additionally the issue of point of precedent. One of the most contentious water issues in India revolves around the Cauvery River flowing between Karnataka and Tamil Nadu. It is likewise viewed as sacrosanct, as are numerous other water bodies in India –

giving them "personhood" is probably going to fuel, rather than calm, already frayed relations.

Given the quantity of inquiries that the directions raise, they ought to be found in the light of the Indian judiciaries proceeded with sense of duty regarding the Directive Principles found in the Constitution to safeguard the environment – Articles 48A and 51A (g) – and the judiciary's disappointment at how badly these articles have been disregarded.

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### **Now, Narmada is also a living entity**

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The Madhya Pradesh cabinet has passed a resolution declaring Narmada river as a living entity keeping in mind the end goal to control pollution, illegal mining on the waterway banks and to spare the river from depletion. The protection program for the river has just been begun and the legislature is intending to start the preservation of other rivers like Kshipra, Gambhir, Ken, Betwa and Kali Sindh with open cooperation soon. Likewise, considering the new status of the river, the state government will be drafting a bill for the Narmada River to guarantee strict legal action against those polluting the Narmada River.

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### **Present Position**

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The Supreme Court by order dated 07 July, 2017 stayed the Uttarakhand High Court decision declaring river Ganga and Yamuna as a juristic individual and as a living entity. This comes after the Uttarakhand government moved the Supreme Court challenging the High Court order allowing rivers Ganga, Yamuna and their tributaries the status of living human entities<sup>9</sup>.

The plea asked that in the event that human casualties in a flood, can the affected people file suit for damages or compensation against the Chief Secretary of the State, and besides if the State Government would be liable to bear such financial burden.

Giving the "legal status" of living people to the holy rivers, the High court ordered that the Director of the Namami Ganga project for cleaning and restoring the river, the Chief Secretary and the Advocate General of Uttarakhand will be acting as the "legal guardians" of the holy rivers and work as the human face to conserve and protect them and their tributaries.

Seeking for a stay on the March 20 order of the High court through a Special Leave Petition, the State Government has urged the Supreme Court to consider "Substantial questions of law" emerging from the decision.

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<sup>9</sup> <http://indianexpress.com/article/india/sc-stays-uttarakhand-hc-order-on-ganga-yamuna-living-entity-status-4740884/>

The petition questions whether the high court had not surpassed its writ jurisdiction in passing the order as granting the status of living entities to the rivers was neither argued nor prayed in the writ petition<sup>10</sup>.

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## Conclusion

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There is however an essential distinction between New Zealand's acknowledgment of their third biggest river as a living entity and that of Uttarakhand High Court concurring the status to two of India's prominent rivers. It has prompted questions being raised by different stakeholders here. The New Zealand enactment is the result of one of the longest legal disputes in the country's history and is essentially a power dispersion understanding about the administration of an ensured territory whose parameters and status are clear.

This is absolutely not the case with the Yamuna or the Ganga – which are widely utilized as a part of irrigation system and different types of other uses. Not at all like the Te Awa Tupua, the secured region of the Whanganui River, the Ganga is "a standout amongst the most engineered rivers on the planet" – with vast dams, irrigation projects, and a huge number of tube wells. New Zealand has designated two guardians — one from the crown and one from the Whanganui iwi tribe itself. In India, the three custodians are exclusively government authorities: the chief secretary of the state of Uttarakhand, the advocate general of the state of Uttarakhand and the director of the National Mission for Clean Ganga (NMCG).

Activists point to the absence of local representatives as custodians of the rivers and say that the judgment rather permits the polluter – which in several occasions is the government itself – to act as custodians. "We think the judgment is really directed just at policymakers and not the larger public," Mallika Bhanot from Ganga Avahan, a NGO working for the preservation of Ganga, said. "The state of Uttarakhand ought not be made custodians, they should be held responsible."<sup>11</sup>

If an agriculturist pumps water onto his property from the river, is he damaging the "person" of the river? What happens on account of a flood, will the authorities in loco parentis compensate the people harmed?

The issue that the court had disregarded in making a comparison with deities regarded as legal persons. "On account of temples and their trusts, there are rights and obligations, however for this situation there are just rights. A religious trust can both sue, and be sued. Who will sue a river, in the event that it runs dry, or if it is polluted, or if chance that it floods? Certainly, the high court ruling has thrown up difficult issues which needs to be addressed otherwise it will create a state of uncertainty and confusion.

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<sup>10</sup>Mohd Salim v. State of Uttarakhand (Writ Petition (PIL) No. 126 of 2014

<sup>11</sup> <http://indianexpress.com/article/explained/when-2-rivers-are-legally-living-persons-some-rights-some-questions-4683384>

