```
invalid CSS module
```

- 2) /home/gmodebate.org/httpdocs_local/lib/admin.inc.php(225): **print()**
- 3) /home/gmodebate.org/httpdocs_local/lib/publish.inc.php(45): **Publisher\A()**
- 4) /home/gmodebate.org/httpdocs_local/lib/publish.inc.php(52): **_error()**
- 5) /home/gmodebate.org/httpdocs_local/lib/css-module.inc.php(48): **error()**
- 6) /home/gmodebate.org/httpdocs_local/lib/css-module.inc.php(58): **_add()**
- 7) /home/gmodebate.org/httpdocs_local/pages/pdf-cover.php(34): **add()**
- 8) /home/gmodebate.org/httpdocs_local/pages/pub-api.inc.php(36): **require()**
- 9) /home/gmodebate.org/httpdocs_local/subindex.json.php(70): **require()**

ENVIRONMENT (HTTPS://SCIENCE.THEWIRE.IN/CATEGORY/ENVIRONMENT/), LAW (HTTPS://SCIENCE.THEWIRE.IN/CATEGORY/LAW/), RIGHTS (HTTPS://SCIENCE.THEWIRE.IN/CATEGORY/POLITICS/RIGHTS/)

'Rights of Nature' Is a Faux Rights Revolution Entangled in Anthropocentrism

21/07/2022

Photo: Shifaaz Shamoon/Unsplash

- *In three recent cases, the Madras and the Uttarakhand high courts invoked* parens patriae *to confer rights on natural elements like rivers and glaciers.*

- Parens patriae *conceives of nature as a perpetual minor, thus cementing the authority of the same state whose failure to implement existing laws properly led to the environmental crisis.*
- *Most global developments in 'rights of nature' are committed to recognising Indigenous peoples' relationship with nature and have involved years of painstaking dialogue and negotiation.*
- *In India, judicial decisions don't appear to have paid much attention to identifying the representative institutional structure to properly develop 'rights of nature' jurisprudence.*
- *The courts' inability to move beyond anthropocentrism, even while granting legal personality to nature, is essentially because the concept of rights is people-centric.*

On April 19, 2022, the Madurai bench of the Madras high court, in *A. Periyakaruppan v. the Principal Secretary*, invoked the jurisdiction of *parens patriae* and declared 'Mother Nature' to be a living being with all the rights, duties and liabilities corresponding to a living person, to preserve and conserve them.

Parens patriae is Latin for "parent of the nation". In law, it refers to the state's power to intervene against a bad parent, guardian or caretaker and assume responsibility for any child or individual in need of protection.

The judgment needs to be seen against the backdrop of some previous decisions. In *Mohammed Salim v. State of Uttarakhand* (2017) and *Lalit Miglani v. State of Uttarakhand* (2017) the Uttarakhand high court declared the rivers Ganga and Yamuna and Himalayan glaciers, respectively, to be legal persons. With these judgments, India joined a small group of countries that have recognised the rights of nature in various forms to halt the world's ongoing environmental crisis.

At its core, the 'rights of nature' movement is founded on the intrinsic value of nature and its right to exist and flourish. It rejects the dominant dogma of humans' control over nature. The movement also articulates legal personhood to nature and its right to participate in legal proceedings against environmental harms.

Granting rights to nature constitutes a paradigm shift in environmental law. However, we must exercise caution on 'rights of nature' jurisprudence assumed by the Indian judiciary, and inculcate respect for ecology through *existing* legal mechanisms – instead of elevating the legal personality of nature – to reverse the environmental crisis.

Evolving rights of nature

In India, the first instance of extending legal personality to non-humans came in the case

of *Animal Welfare Board v. A. Nagaraja* (2014), where the Supreme Court observed that every species has an inherent right to live and should be protected by law. Although the judgment didn't declare the legal personality of animals, it became a predecessor to judgments that declared the legal personality of rivers.

The two judgments of the Uttarakhand high court declaring the rivers Ganga and Yamuna and Himalayan glaciers as legal persons also summarise the jurisprudence on the rights of rivers in India. However, citing administrative and implementation challenges, the Supreme Court stayed the implementation of both judgments.

Nonetheless, the Punjab and Haryana high court evolved the idea in *Karnail Singh v. State of Haryana* (2019), when it declared the legal personality of animals as well as declared all citizens to be *loco parentis* – "in place of parents".

As such, the high courts of Uttarakhand, Punjab and Haryana and Madras have created singular precedents for environmental jurisprudence in India through these cases. But whether granting legal personality to natural entities can help efforts to ameliorate the environmental crisis depends on how effectively these 'rights of nature' are conceived and implemented.

This will, in turn, depend on how precisely we address the question of who should represent nature. In the following section, I evaluate thresholds prescribed by the Indian judiciary to identify the human and institutional representatives for environmental legal persons.

Parens patriae and state authority

In *Periakaruppan*, while disposing of the case, the Madras high court invoked *parens patriae* and imposed obligations on the state and the Union governments to take appropriate steps to protect 'Mother Nature' in every way.

In *Mohammed Salim*, the court ordered the director of 'Namami Gange', the Uttarakhand chief secretary and the advocate general of the state to protect, conserve and preserve the rivers as their legal guardians. In *Lalit Miglani*, the court declared seven persons in *loco parentis* as the 'human faces' responsible for the preservation of Uttarakhand's natural features.

Thus, all Indian judicial statements on 'rights of nature' display a steadfast loyalty to the *parens patriae* doctrine. Note that this doctrine places nature as a perpetual minor, thus cementing the authority of the state.

The question then is how a government entity or certain officials can act independently and discern the interests of nature even as states' failure to implement existing environmental laws has contributed to the current crisis.

In addition, the public trust doctrine is an integral part of India's environmental jurisprudence. Under this, the state is held to be the trustee of natural resources and is obligated to protect and preserve them to balance the interest of present and future generations of people. So instead of implementing this doctrine effectively, granting legal personality to nature by appointing government officials as *loco parentis* can be counterproductive.

New Zealand achieved the representation of the legal personality of the river Whanganui through the Office of the Whanganui river (Te Pou Tupua), which includes representatives of the Crown[footnote]New Zealand is a constitutional monarchy[/footnote] as well as Indigenous communities. A similar modality has been envisaged in Columbia, which has recognised the rights of the Atrato river.

This could be because most global developments in 'rights of nature' are committed to recognising Indigenous peoples' relationship with nature and have involved years of painstaking dialogue and negotiation.

But in India, judicial decisions don't appear to have paid much attention to the complexities of identifying the representative institutional structure crucial to properly develop 'rights of nature' jurisprudence or even its very theoretical or philosophical underpinnings. Unless and until effective representation for nature beyond the state is institutionalised, the problems of conventional environmental law will reemerge.

In *Lalit Miglani,* the Uttarakhand high court referred to the creation of a Nature's Rights Commission to protect nature. Establishing such a commission can be a *starting point* to work on the modalities of an institutional mechanism. But the conception and operationalisation of such a structure should be founded on community participation and must recognise the country's ecological and cultural diversity.

An institutional structure and its functions must also account for and engage with existing environmental principles.

Rights in the existing environmental jurisprudence

In *Periakaruppan,* the Madras high court made some pertinent observations on existing environmental principles. It noted:

> "... under the guise of sustainable development, the human should not destroy nature. If sustainable development finishes off all our biodiversity and resources, then it is not sustainable development, it is sustainable destruction. The phrases like 'sustainable development', 'the polluter pays', and 'the precautionary principle' shall not be allowed anymore."

These observations, on the futility of environmental principles, are problematic. Environmental principles like ;sustainable development', 'polluter pays', and the precautionary principle are integral parts of India's environmental jurisprudence and the main vehicles of environmental judicial activism in India, starting with the famous case of *Vellore Tannery* in 1997.

Even though all these principles are inherently anthropocentric – and the judiciary in India has been inconsistent in articulating the contours of sustainable development and has often preferred economic interests to environmental ones – no one is arguing that these principles are responsible for the current environmental crisis.

The premise of sustainable development is balancing environmental protection with development and handing over *at least* the same quality and quantity of natural resources to future generations as we have today. So sustainable development can't be held responsible for environmental degradation.

The utility and resilience of these principles have been proven time and time again when addressing environmental issues in the last 30 years. To observe that "the phrases like 'sustainable development', 'the polluter pays', 'the precautionary principle' shall not be allowed anymore" and to consider 'rights of nature' to be the solution to the environmental crisis is to oversimplify environmental issues as well as to betray a lack of understanding.

As such, the conceptualisation of 'rights of nature' in *Periakaruppan*, *Mohammed Salim* and *Lalit Miglani* has failed to articulate an understanding of nature founded on the coexistence of all present and future stakeholders and entities.

Anthropocentrism

In *Periakaruppan***,** the Madras high court noted that a natural environment is part of the "right to life itself". That is, having a clean natural environment, and access to it, is part of the human right to life. The court also observed that "the past generations have handed over the 'Mother Earth' to us in its pristine glory, and we are morally bound to hand over the same Mother Earth to the next generation."

This way, the judgment pays homage to the idea of intergenerational equity.

But by suggesting that humans are duty-bound to future generations to preserve their natural resources, and hence leading to the articulated need to grant legal personality to 'Mother Earth', the judgment also reiterated its anthropocentric nature. It squarely places human needs at the centre of environmental law, thus eliminating the intrinsic value of nature – which, ironically, is the whole point of the 'rights of nature' movement.

The court's inability to move beyond anthropocentrism, even while granting legal personality to nature, is essentially because the concept of *rights* is people-centric. Rights were fundamentally developed to protect the dignity of individual human beings. There are inherent limitations to extending this framework to non-human entities.

This is why granting rights to nature presents us with a new set of problems. Balancing the rights of nature with competing human rights may see nature's interests take the back seat. So the focus should instead be on inculcating a respect for ecology instead of farming out rights in the traditional sense to the natural world.

The *rights* of nature are not synonymous with the *legal personhood* of nature. The former is part of a broader movement built around a deep respect for ecology; here, the legal personality of nature is only one dimension. Respect for ecology can be promoted through the recognition of diverse knowledge, nurturing ecological and cultural diversity, and embracing decentralisation, community participation and local autonomy.

Such respect is visible in the Supreme Court's observation in *Municipal Corporation of Greater Mumbai v. Ankita Sinha and Ors.* (2021), when it invoked the 'seventh generation' sustainability principle: it requires all decision-making to keep in mind the interests of those who will arrive seven generations down the line.

If the focus of 'rights of nature' is to develop such respect, it can inspire the creation of more effective environmental laws and improve the prospects for sustainable development. Otherwise, investing traditional rights that can only be enforced by vocal representatives on more and more non-speaking environmental legal persons will do precious little.

Stellina Jolly (https://science.thewire.in/author/stellina-jolly/) is associate professor, Faculty of Legal Studies, South Asian University, New Delhi.