

# Rights of Nature Case Study

## Ganga River and Yamuna River

*In March 2017, the High Court of Uttarakhand at Nainital recognised the legal personhood of the Ganga River and Yamuna River, in response to public interest litigation concerning water management, mining, illegal construction and pollution impacting the river systems.*

<b>Location</b>	India
<b>Date</b>	March 2017
<b>Source</b>	Court judgment (High Court of Uttarakhand) – <i>Mohammed Salim v State of Uttarakhand and others</i> , Writ Petition No. 126 of 2014
<b>Jurisdiction level</b>	National
<b>Context</b>	<p>The Ganga River is the longest river in India, flowing for approx. 2,500 km from the western Himalayas in the state of Uttarakhand, through north India and into Bangladesh, where it reaches the Bay of Bengal. It is the third largest river on Earth by discharge. It is considered sacred to Hindus and is a lifeline to millions of Indians who live along its course and rely on it for their daily needs and livelihoods. In Allahabad, the River Ganga joins the approx. 1,400 km long Yamuna River.</p> <p>In 2000, Uttarakhand became India’s 27<sup>th</sup> state, pursuant to the Uttar Pradesh Reorganisation Act 2000, which created this new state out of the existing state Uttar Pradesh. Certain parts of the Act related to the supply of water and provided for the formal constitution of the Ganga Management Board.</p> <p>Following many decades of mobilisation and attempts by various groups to address extensive pollution of the rivers, in 2014, Haridwar resident Mohammed Salim commenced public interest litigation in the High Court of Uttarakhand against the State of Uttarakhand, the central government and non-state actors, requesting the removal of illegal construction along the Ganga River and seeking an order that the central government issue appropriate directions to the states of Uttarakhand and Uttar Pradesh regarding the disbursement of land and water resources and constitution of the Ganga Management Board, as this had not yet been formed by the central government. Further, it was submitted that large-scale mining was being carried out in the riverbed and on the highest flood plain area of the Ganga River, impeding its natural water flow and causing extensive pollution.</p> <p>In December 2016, the Court ordered the eviction of several respondents and the immediate banning of mining in the riverbed and highest flood plain of the Ganga River. It also ordered the central government to take a final decision regarding the settlement of assets and properties between the relevant</p>

	<p>states, to constitute a functional Ganga Management Board within three months and induct the State of Uttarakhand as a member of the Upper Yamuna Board within three months.</p> <p>However, following a lack of compliance with these mandatory orders, the case returned to the High Court of Uttarakhand at Nainital.</p>
<p><b>Rights of Nature recognition</b></p>	<p>On 20 March 2017, the Court formally recognised legal personhood in the rivers pursuant to Constitution of India Article 48(A) (which provides that “[t]he State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”) and Article 51(A)(g) (which provides that “[i]t shall be the duty of every citizen of India...to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”).</p> <p>In noting that the Ganga River originates from Gaumukh Glacier and the Yamuna River originates from Yamnotri Glacier, the Court confirmed that such legal personhood encompassed the rivers “from mountain to sea” including “all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers”.</p> <p>The Court appointed the Director of the NAMAMI Gange Project (which aims to reduce pollution and support the conservation and rejuvenation of the Ganga river), the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand as the “human face to protect, conserve and preserve [the rivers] and their tributaries...to uphold the status [of the rivers] and also to promote the health and well being of these rivers.” Further, it confirmed that the Advocate General shall represent the Ganga River and Yamuna River in all legal proceedings to protect their interests.</p>
<p><b>Significance</b></p>	<p>This decision constituted a landmark outcome, as India became the second country in the world after New Zealand to declare the legal personhood of a river. In doing so, it shifted from an anthropocentric perspective and recognised the river system itself as a subject within the law. It is interesting to note that the Chipko forest conservation movement began in the 1970s in Uttarakhand, then a part of Uttar Pradesh (at the foothills of Himalayas) and went on to become a rallying point for many future environmental movements all over the world. The movement is particularly noted for its non-violence, the activism of women in particular, the leadership of tribal and marginalised people and the centrality of local communities in natural resources management, and deforestation prevention practices that recognised kinship between people and nature. Although not explicitly connected, the 2017 judgment represented a codification within the national legal system of this kinship view of the world.</p> <p>The case represented a novel remedial response to a dispute arising in connection with illegal construction, mining and a lack of water management,</p>

	<p>governance practices and decision-making both between states and between state and federal levels of government. The case represented both an attempt to resolve a specific dispute and the highlighting of a much broader problem of significant pollution throughout the river ecosystem.</p> <p>In reaching its conclusion, the Court explored the evolution and purpose of the concept of legal personhood, discussing how legal frameworks have recognised different communities of ‘natural persons’ over time, as well as ‘artificial legal persons’ such as corporations, institutions, funds and idols. The Court noted that the concept of legal personhood was devised to facilitate societal development, stating that “[w]ith the development of the society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of society.” This is an important reminder by a high-level court of the purpose of law being to continually evolve in service to society’s interests – an understanding that is often forgotten in circumstances where dominant laws are presented as inevitable, static or apolitical.</p> <p>In the specific circumstances of the case, the Court considered the declaration of the Ganga and Yamuna rivers as ‘legal persons/living persons’ to be necessary given “...Rivers Ganga and Yamuna are [losing] their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna.” Further, the Court acknowledged the intrinsic connection between the rivers and the Indian population, affirming that:</p> <p style="padding-left: 40px;">All the Hindus have deep Astha [belief] in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well-being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountain to sea.</p> <p>In emphasising the existence and gifts of the rivers ‘from time immemorial’, the judgment emphasises a reframing from a narrower human perspective to a broader ecocentric perspective, which supports the evolution of legal and policy-making approaches which take into account this expanded story of the world and its human and more-than-human communities.</p>
<p><b>Implementation</b></p>	<p>Shortly after the above decision, the High Court of Uttarakhand issued a similar decision with respect to the legal personhood of the Himalayan ecosystem of glaciers. The Court affirmed that:</p> <p style="padding-left: 40px;">Rivers, Forests, Lakes, Water Bodies, Air, Glaciers and Springs have a right to exist, persist, maintain, sustain and regenerate their own vital ecology system. The rivers are not just water bodies. They are scientifically and biologically living.</p>

	<p>In July 2017, the Supreme Court of India issued a stay of both decisions by the High Court, effectively pausing the recognition of the rights of the rivers for the time being. An appeal has not yet been decided.</p>
<b>Key documents and links</b>	<ul style="list-style-type: none"><li>☼ Supreme Court decision (July 2017) [not available]</li><li>☼ <a href="#">High Court judgment</a> (20 March 2017)</li><li>☼ <a href="#">High Court judgment</a> (5 December 2016)</li><li>☼ The <a href="#">Constitution</a> of India</li><li>☼ <a href="#">Uttar Pradesh Reorganisation Act</a> 2000</li><li>☼ NAMAMI Gange Project <a href="#">webpage</a></li></ul> <p><b>See also:</b></p> <ul style="list-style-type: none"><li>☼ Glacier case: <a href="#">Lalit Miglani v State of Uttarakhand and others</a> (High Court of Uttarakhand) (2 December 2016)</li></ul>

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