

RIGHTS OF NATURE AND THE RIVER GANGA

Emerging Judicial And Civil Society Convergence In India

As our world comes to terms with the cataclysmic environmental emergencies impacting it, people are beginning to realize that the existing legal framework, which regulates the use of nature, has been woefully inadequate in protecting it. This is essentially because of the judicial premise that nature in its various forms exists only as property to be used and exploited by human beings. Consequently, it has no intrinsic or axiomatic right to exist, evolve and regenerate. As forests, mountains and rivers are seen only as objects to be consumed and sold, nature, and by extension earth itself, cannot be recognized by the current legal system as a living, rights bearing entity. People, communities, organizations and even governments have begun to question the rationale behind this contemporary judicial aphorism.

A radical rethink is taking place at the intersection of law and the environment. The issue is: if climate change and other ecological severities are impacting the earth systems themselves then how do we hold those causing them, legally responsible? That inevitably pushes us in the direction of a Rights of Nature framework where society legally recognizes the fundamental life-sustaining role of earth. As a result of that recognition, rivers, lakes, forests, mountains etc., which constitute nature, acquire legal standing and would be entitled to judicial redress in case of any injury or obstruction to their ability to perform that life-sustaining role. Ecuador became the first country in the world to recognize these rights of nature and enshrined them in its constitution in 2008. Bolivia soon followed suit with a set of nationwide laws. Similarly, in the United States local communities have been voting to enact laws codifying the rights of nature across many states. Earlier this year, the national parliament of New Zealand passed an act to lend legal standing to the Whanganui River and its corresponding eco-system. While it can't yet be said that there's a groundswell of support developing internationally for rights of nature, still the increasing interest in this new legal framework is a positive development.

Rights of the River Ganga – Uttarakhand High Court Ruling

In a path breaking development in March of this year, the High Court in the northern Indian state of Uttarakhand declared the rivers Ganga and Yamuna to be legal or juridical persons. Within ten days the same court went on to declare the glaciers of the two rivers, Gangotri and Yamnotri also to be legal entities. In the second order, the court went even further to ascribe legal personhood also to “streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls” that form a part of the two ecosystems. These are important developments for the environment as well as law in India, given the slow pace at which the legal system moves in the country. But, these rulings emanated from a particular background – both, immediate environmental cases that the court had

been considering for the last few months, as well as the over-arching failure of the Indian government to make any positive headway in cleaning up the Ganga, having made several ineffectual attempts over the last three decades.

The two immediate issues under consideration of the Uttarakhand High Court were as follows:

- The first was that of illegal constructions and encroachments, this time on the banks of a canal emerging out of the Ganga in Dehradun district, where the state capital is located.
- The second issue was the division of water resources between the states of Uttarakhand and Uttar Pradesh, the large north Indian state from which the former was carved out as a separate entity in 2000, a matter which had been pending for the last decade and a half.

The court gave categorical rulings on the two issues towards the end of last year – asking the state to remove the illegal construction and hasten the settlement of the division of resources between the two states in a time-bound manner. Not unsurprisingly, though, the administration failed to take any action and that propelled the court to simultaneously expand its legal consideration of the issue as well as explore at a deeper level its socio-philosophical underpinnings.

Since ancient times, the river Ganga has been considered sacred by the Hindu community. Its strategic geographical expanse through the huge north Indian plains, being the lifeline of the economy, has marked indelibly the religious and ritual fabric of the country. It's regarded as the life sustaining Mother Ganga by the people. Yet, if Ganga is symbolic of the piety of the Indian masses, its current state of environmental degradation also signifies the larger issues of the economic choices that the country has made in the last four decades and the impact they've had on the river's ecology. The court took cognizance of the spiritual and physical significance of the river in the people's lives, and, probably, that is what prompted the court to say in a February 2016 ruling, "The legislation, till now, has not helped to save the Ganga. We need a comprehensive legislation at the national level dealing with the Ganga alone." The court, it seemed, was preparing to make an impact of its own on the issue.

Unique Exercise of Jurisdiction

In granting legal personhood to Ganga, the Uttarakhand High Court invoked the "Parens Patriae" jurisdiction, literally meaning the parent of the country. This jurisdiction is usually associated with the inherent power of the sovereign, yet the court took the bold decision to summon its own legal competence and power within the shared notion of sovereignty granted to the judiciary by the constitution of a democratic republic. In the United State, for instance, the state often invokes

“Parens Patriae” to sue on behalf of the people, by creating its legal standing on the basis of that jurisdiction.

The Uttarakhand High Court, further, used the “in loco parentis” or ‘in the place of parents’ jurisdiction to make a set of government bodies and officers responsible to act on behalf of the rivers for their protection and conservation. In its ruling, the Court has appointed the Chief Secretary of the state of Uttarakhand and the Advocate General of Uttarakhand, as well the Director of a new government initiative for the cleanup of the river as the persons who will act ‘in the place of parents’ for the two rivers. Acting on behalf of the Ganga and the Yamuna, these officers are ‘bound to uphold the status’ of the rivers and also to promote their health and wellbeing.

Ganga – The Environmental Challenges

Ganga is a holy river but it’s also a polluted mess. 5 of the 20 most polluted cities in the world are in the Ganga basin, including the Indian capital city of New Delhi, situated on the banks of the river Yamuna. According to geoscientists, stretches of over six hundred kilometers on the Ganga were essentially ecologically dead zones. 2,723 million liters a day of sewage is generated by 50 cities located along the river and duly discharged into it. Not surprisingly, coliform bacteria levels in the Ganga have been routinely tested at 5,500 and higher. That should prohibit the use of its waters for agriculture let alone drinking and bathing. Carcinogens like chromium abound in the Ganga because of the discharge from leather tanneries situated on its banks. The levels of chromium in the river now stand at more than 70 times the recommended maximum level. A study conducted by the Indian Council of Medical research said that, “those living on the banks of the Ganga in Uttar Pradesh, Bihar and Bengal are more prone to cancer than anywhere else in India.”

Further up near the headwaters of the river, the Gangotri glacier has receded 3 Kms in the last two centuries. The rate of retreat, which was around 62 feet per year between 1935 and 1971, has almost doubled. Due to climate change and the rise in temperature, the river flow will increase by 20 per cent initially because of more snowmelt. But, ultimately, the flow will decrease by 20 per cent, impacting the lives of a population equal to Europe, which lives in the Ganga basin. The unpredictability of the monsoon rains, thinning of glaciers and glacier lakes bursts which discharge heavy amounts of water, the breakdown of the upstream watershed and unplanned development all along the river have made a messy situation potentially calamitous. A harrowing preview of that was seen in 2014 when more than 6000 people died in flash floods in the state of Uttarakhand, apart from the biblical destruction that ensued.

In the last three decades, several large-scale attempts have been made to clean the Ganga. National Ganga Action Plan (1985) focused on improving the water quality by interception, diversion and treatment of domestic sewage and toxic and industrial chemical wastes. National Ganga River Basin Authority (2009) under

Mission Clean Ganga, went beyond the focus on a few of the river's riparian cities to deal with the entire river basin. Both attempts were unqualified failures. The latest attempt to rejuvenate the Ganga is "Namami Gange", or "Obeisance to Ganga", in Sanskrit, an initiative launched in 2014 by the BJP government. It has a budget outlay of roughly \$3 billion for five years and a comprehensive plan to integrate infrastructure and urban development, drinking water and sanitation treatment all along the river, and forests and environmental interventions backed by a four battalion Eco-task force to ensure enforcement.

Ganga and the Rights Of Nature Debate

The Uttarakhand High Court rulings are, in a certain sense, an attempt at addressing the anxiety that afflicts the people and the administration in India about the absolute helplessness in dealing with the ecological mess that is Ganga. The court order provides the river "the status of a legal person with all corresponding rights, duties and liabilities of a living person". But as my colleague, Ashish Kothari stated recently, "Legal rights would mean a suit can be brought in the name of the river, injury recognized, the damager be held liable, and compensation benefiting the river paid. This means the river needs to have a protector that is independent of those who have been violating its rights. Do government officials fit this bill?" Or, could it be said that the state itself is sometimes complicit in inflicting stresses on the river, and in the process infringing upon its rights? How would we solve this contradiction?

The other issue is that of exercising the river's rights. In fact, what are a river's rights? Can it refuse to accept sewage, for instance? Or, could a representative of the public sue the administration on behalf of the river to stop polluting the river with sewage? Or, could similar cases be brought up to demand that rivers not be dammed or diverted? We are, obviously, in uncharted waters, here. Other socio-politically important questions could also arise – while Ganga is sacred to the Hindu community, there are other natural bodies – lakes, streams, sacred groves, hills -- which are similarly venerated by other communities. Could this ruling be extended to grant a similar status to these entities? And, in fact, shouldn't the logic be extended to all rivers and to the entirety of nature?

Conclusion

The Uttarakhand High Court rulings, obviously, are not perfect given how new the entire discussion on rights of nature is. Litigations, which arise in the context of these judgments, would further flesh out their meaning and substance. Ultimately, however, the environmental emergencies confronting us demand that we take the issue of rights of nature with due seriousness. The high court has taken a bold, even if a small step in that direction. It's up to us to take it further.

Thank you

Pallav Das (21st April 2017)