



PARENS PATRIAE JURISDICTION & INDIAN CONSTITUTIONAL COURTS IN SAFEGUARDING ENVIRONMENT.

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Abstract: Parens Patriae Jurisdiction – Granting Legal Personhood to Nature – Environmental Personhood in other countries -Decisions of High Courts granting Legal Personhood to Rivers –Decision of Supreme Court of India in Environmental Personhood – Comparative Global Position in Environmental Personhood.

Index Terms - Legal Persons, Parens Patriae, Environmental Personhood, Supreme Court of India, High Courts in India, Wildlife, Natural Resources.

INTRODUCTION:

Granting 'Legal Personhood' to the entities like Rivers, Lakes and other Waterbodies as well as the species and their habitats will give them a best chance for the survival of them in the coming days. Several nations across the globe had taken this approach of granting Legal Personhood to the Natural resources from the beginning of this Century. This article will give a brief outlook on the role of Constitutional Courts in India and their role in granting Legal Personhood to the Nature and their resources.

It is known that on behalf of the victims of the 'Bhopal Gas Tragedy', Union of India in the capacity of 'Parens Patriae' had filed a suit for compensation before the US District Court of Southern District of New York. This suit '*Union Carbide Corporation Gas Plant Disaster, In re*'¹ was filed in opposition to the Union Carbide Corporation to claim reimbursement on behalf of the victims of Bhopal Gas leak disaster. Therefore the concept of the 'Parens Patriae' had emerged before 4 decades in India, in the 'Environmental Jurisprudence'. However the Mohd.Salim's case had marked a landmark decision while two of the biggest rivers of India had granted a legal personhood by the constitutional court by the way of exercising the 'Parens Patriae' jurisdiction.

¹ 634 F Supp 842 (SDNY 1986).

1. Mohd Salim v. State of Uttarakhand²

The Judgment by the Uttarakhand High Court, in response to a public interest litigation challenging the mining of the river beds of the Ganga and Yamuna and the ensuing pollution, and other questions of water quality led to the Court recognising the two largest rivers in India to be legal persons. In this particular case, the Uttarakhand High Court was hearing this matter for the creation of the Ganga Management Board. The Court had ordered for the creation of the Board previously, but the State Governments of Uttar Pradesh and Uttarakhand were not cooperating with the Union Government for the same. The Court expressed their displeasure with respect to this and also observed that the rivers Ganga and Yamuna were losing their very existence. In light of this, the Court noted the need to take extraordinary measures for their preservation, conservation and protection.³ Ultimately the Court had held that:

While exercising the parens patriae jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/ living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna, The Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared persons in loco parentis as the Human face to protect, conserve and preserve Rivers Ganges and Yamuna and also to promote the health and well being of these rivers.⁴

The Uttarakhand High Court then concluded that to protect the recognition and faith of society, it was imperative to grant legal personality to rivers Ganga and Yamuna. The Court highlighted that these rivers provide physical and spiritual sustenance. Accordingly, legal status was granted under Articles 48A and 51A(g) of the Constitution of India. It must be noted that the judgment was appealed to the Supreme Court which had currently stayed the judgment, and we await a final decision on the survival of this precedent.

2. Lalit Miglani v. State of Uttarakhand:

In this judgment, dated 30.03.2017 rendered by Uttaranchal High Court, the Hon'ble Court by invoking "Parens Patriae Jurisdiction", has declared the Glaciers including Gangotri & Yamunotri rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forest wetlands, grasslands, springs and waterfalls as legal entity/ legal person/ juristic person/ juridical person/ moral person/ artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. The Court also accorded the rights akin to fundamental rights/legal rights for their survival, safety, sustenance and resurgence. Then the Court has appointed eminent persons to voice them, maintain its status and also to promote their health and wellbeing including, The Chief Secretary, State of Uttarakhand, Director NAMAMI Gange Project, Mr. Praveen Kumar, Director (NMCG), Mr. Ishwar Singh, Legal Advisor, NAMAMI Gange Project, Advocate General, State of Uttarakhand, Dr. Balram K. Gupta, Director

² 2017 SCC Online Utt 367.

³ Mrinalini Shinde, 'Legal Transplants as Seen in the Comparative Analysis of Judicial Decisions on the Environmental Personhood of Rivers', 7.2RSRR (2021) 85. Page 101.

⁴ 2017 SCC Online Utt 367.

(Academics), Chandigarh Judicial Academy and Mr. M.C. Mehta, Senior Advocate, Hon. Supreme Court, who were declared as the persons in loco parentis as the human face to protect, conserve and preserve all the Glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls in the State of Uttarakhand.

Further the court had observed in this judgment that *“Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to person. 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 and these are scientifically and biologically living. The rivers, forests, lakes, water bodies, air, glaciers, human life are unified and are indivisible whole. Mother Earth is grasping for breath. We must recognize and bestow the Constitutional legal rights to the ‘Mother Earth’. The rights of these legal entities shall be equivalent to the rights of human beings and the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings and shall proceed under the common law, penal laws, environmental laws and other statutory enactments governing the field.”*

3. Court on its own motion v. Chandigarh Administration:

Further the High Court of Punjab and Haryana went on to grant a legal personality to the Sukhna Lake in Chandigarh in the case of *Court on its own motion v. Chandigarh Administration*⁵. The court declared in Para No. 178 (b) as mentioned below;

We, by invoking our parens patriae jurisdiction, declare Sukhna Lake as legal entity/legal person/juristic person/judicial person/moral person/artificial person for its survival, preservation and conservation having distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens of U.T. Chandigarh are hereby declared as loco parentis as the human face to save Sukhna Lake from extinction.

It is noteworthy because this judgment has been co-authored by the same justice who co-authored the judgment in Mohd.Salim’s case, and it is evident how a single judge placed across different High Court in India (both Uttarakhand, Punjab & Haryana) has been at the helm of granting legal personality to rivers, a lake and the entire animal kingdom. Through this particular judgment in expanding legal personality to Sukhna Lake, all citizens of Chandigarh were declared as Persons in loco parentis of the lake, for its conservation and protection. By the way of common order, the Court decided seven related petitions, reiterating that protection of ecologically sensitive zones like Sukhna Lake is the duty of the government under Public Trust Doctrine, and thereby bridged the doctrine of Public Trust and the concept of legal personality by declaring citizens of Chandigarh as Persons in loco parentis. This judgment primarily follows the same legal rationale, cases and authorities that were relied upon in Mohd.Salim’s case.

⁵ *Court on its own motion v. Chandigarh Administration*, CWP No. 18253 of 2009 & other connected petitions, Punjab and Haryana High Court (02/03/2020)

4. **Narayan Dutt Bhat v. Union of India:**⁶

That this present petition has been filed as 'pro bono publico' for the protection and welfare of animals. The petitioner in this petition has sought for the directions to the respondents to restrict the movement of horse carts/tongas from Nepal to India and from India to Nepal through Banbasa, District Champawat, India. Petitioner has prayed that there should be provisions for vaccination, medical checkup of the horses for suspected infections before entering into the Indian territory from Nepal and for regulating the traffic on the border areas.

In this case, when Uttarakand High Court extended legal personality to entire animal kingdom, it relied heavily on Hindu mythology in making its reasoning, referring to how Jainism, Hinduism and Buddhism deify animals, and how animals are associated with gods in Hindu mythology. The court in the Para No.99 (b) of this judgement had held as follows;

The entire animal kingdom including avian and aquatic are declared as legal entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Uttarakhand are hereby declared persons in loco parentis as the human face for the welfare/protection of animals.

5. **A.Periyakaruppan v. The Principal Secretary to Government:**⁷

The Question whether, 'Mother Nature' is a living being having legal entity, Hon'ble Madurai Bench of Madras High Court stating that the past generations have handed over the "Mother Earth" to us in its pristine glory, the court had expressed that it is the right time to declare/confer juristic status to 'Mother Nature'.

As far as the facts of this case is concerned, the petitioner had served in the Revenue Department for the past 35 years and lastly served as a Distillery Officer in the cadre of Deputy Collector in the Rajashree Sugars and Chemicals Private Limited. The petitioner attained superannuation in the year of 2006 and was not allowed to retire but was placed under suspension because of the pendency of the disciplinary proceedings. Further in 2009, Government decided to impose the punishment of compulsory retirement for the proven charges and later in 2012, by a Government Order, the petitioner was eligible for 2/3rd pension and 1/3rd of the eligible pension and the retirement gratuity was reduced as penalty. Petitioner had contended that he was not provided opportunity before imposing the penalties and he challenged the above said penalty in this case.

Hon'ble Madurai Bench of Madras High Court had opined that, since the co-delinquent's disciplinary proceedings were quashed, the petitioner was entitled to the same benefit. Further the Bench ordered that the

⁶ 2018 SCC OnLine Utt 645.

⁷ 2022 SCC OnLine Mad 2077

delinquents deserved to be treated equally in the matter of punishment in the departmental proceedings for the act of omissions and commissions.

The Bench while noting that the land in question was classified as 'Forest Land', observed that the 'Mother Nature' ought to be preserved and went on to observe that,

Indiscriminate destruction or change is leading to several complications in ecosystem, ultimately is endangering the very existence of the animals, flora and fauna, forests, rivers, lakes, water bodies, mountains, glaciers, air and of course human. Strangely the destruction is carried on by few humans. Any such act ought to be checked at all levels.

Invoking the 'Parens Patriae Jurisdiction', court declared 'Mother Nature' as a 'Living Being' having legal entity/ legal person/ juristic person/ juridicial person/ moral person/ artificial person having the status of legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. Further the Court had also accorded the rights akin to fundamental rights/legal rights/constitutional rights for the survival of Nature and its safety, sustenance and resurgence in order to maintain its status and also to promote their health and wellbeing. Adding to this, the Court had stated that the State Government and Central Government are directed to protect the 'Mother Nature' and take appropriate steps to protect 'Mother Nature' in all possible ways.

The Court in the Para No.18,19 and 20 had observed the need to safeguard the 'Ecosystem', which is deciphered in the following paragraph,

In India, 'Protected Areas' like National Parks and Sanctuaries notified under the Wildlife Protection Act, 1972 occupies less than 5% of India's geographical area. While this 5% of the land provides ecosystem services for the human survival, rest of the 95% of India's geographical area is available for humans. In spite of the same, the human is so desperate to intrude in the said 5% area. The indiscriminate activities of the human in the said 5% area are causing huge irreversible damage to the ecosystem.

Further the court went on to highlight another report which indicates that 60% of earth's ecosystems are experiencing terminal loss and the few remaining original forests which are our biodiversity treasury are being destroyed to make way for huge mines or dams and lucrative real estate projects. And the attempts of the humans to pacify the destruction with the words like 'Compensatory afforestation' is similar to giving sanction to kill all the 'Wild Tigers' and replace them by farming the same population in captivity, which is absolutely against 'Nature'.

The court observed in Para No.20 of the judgment that the human should not destroy the nature under the guise of the 'Sustainable Development'. If sustainable development finishes off all our biodiversity and resources, then it is not sustainable development, it is 'Sustainable Destruction'.

Conclusion:

Like any new jurisprudence in Legal arena like ‘Compensatory Jurisprudence, Judicial Activism, Judicial Review etc.,’ had evolved over a several years and took a concrete shape today. Likewise, granting legal personhood to the ‘Natural Resources’ by exercising the Parens Patriae Jurisdiction either by the Judiciary or Legislature has started in the past few decades all over the world, which will took a concrete shape in future in Environmental Jurisprudence and evolve into a ‘Concrete Subject’ like ‘Compensatory Jurisprudence, Judicial Activism, Judicial Review etc.,’ in the next decade.

References:

1. *Union Carbide Corporation Gas Plant Disaster, In re cited in* 634 F Supp 842 (SDNY 1986).
2. Mohd Salim V. State of Uttarakhand 2017 SCC OnLine Utt 367
3. Mrinalini Shinde, ‘*Legal Transplants as Seen in the Comparative Analysis of Judicial Decisions on the Environmental Personhood of Rivers*’, 7.2RSRR (2021) 85. Page 101.
4. *Court on its own motion v. Chandigarh Administration*, CWP No. 18253 of 2009 & other connected petitions, Punjab and Haryana High Court (02/03/2020)
5. Narayan Dutt Bhat V. Union of India 2018 SCC OnLine Utt 645.
6. A.Periyakaruppan V. The Principal Secretary of the Government 2022 SCC OnLine Mad 2077

