

RED EARTH ENVIRONMENT

Can the Ganga have human rights?



Ashish Kothari



Shrishtee Bajpai

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Can a river be blocked? Can it be diverted to a point where there is virtually no water flowing in long stretches? And what about riverine creatures like the Gangetic dolphin—do they have rights as part of the river ecosystem?

Yes, says the Uttarakhand High Court. But can the Indian state, which has diverted, dammed, and polluted rivers, turn protector?

A dolphin bobs up for air before disappearing into the dark waters of the river. At a distance, fishers are casting their nets. As our boat chugs along, a temple comes into view, as does a long line of devotees waiting to enter the *darshan*

room.

We are on the Ganga near Bhagalpur in Bihar, venerated and celebrated, and where life is still at ease with the rhythms of nature. But of course there is the other reality: pollution flowing into the river, sand mining eroding its banks, and grand plans afoot to build barrages for hydroelectricity and irrigation threatening its ecology.

Now, two geographically far-flung events in mid-March look to a possible resolution to this contradiction. On March 20, the Uttarakhand High Court ruled that the Ganga and Yamuna, and their tributaries, have rights as a 'juristic/ legal person/ living entity'. Five days before this, the New Zealand Parliament passed into law the Te Awa Tupua Bill, which gives the Whanganui river and ecosystem legal personality, guaranteeing its 'health and well-being'.

But can a river have human rights? If the most fundamental human right is that to life, what does it mean for a river? An obvious implication is that it should not be irretrievably polluted. But what about dams? Can a river be blocked? Can it be diverted to a point where there is virtually no water flowing in long stretches of the river, as is the case with the Ganga? And what about creatures like that Gangetic dolphin, a rare glimpse of which we got on our boat trip near Bhagalpur—do they have rights as part of the river ecosystem? How can a river or its constituents, with no voice of their own, ensure such rights, or demand justice should they be violated? Who would be the beneficiary of compensatory action?

Both the New Zealand law and the Uttarakhand court order recognise that rivers are lifelines and culturally significant for people living along them. Both see rivers as 'living' entities, with 'spiritual and physical' characteristics. In both, human beings are appointed as custodians to protect the rivers' rights. But there are also crucial differences.

Same but different

The New Zealand law recognises "the Whanganui River as an indivisible and

living whole, incorporating all its physical and meta-physical elements”, covering the entire stretch “from mountains to the sea”, as also “all tributaries, streams, and other natural watercourses that flow continuously or intermittently into (the river)... within the Whanganui River catchment; and all lakes and wetlands connected continuously or intermittently”. It also encompasses the worldview of the Iwi indigenous peoples who live along the river, pithily represented by the phrase “I am the river and the river is me.”

Interestingly, the Uttarakhand High Court (which has copied, verbatim, some aspects of the New Zealand law), does not mention associated lakes and wetlands. Nor does it explicitly cover the catchment area or other parts of the river basins. While the New Zealand law entrusts the protection of the river’s rights jointly to the indigenous Iwi people and the government, the Indian court puts its faith in government officials, namely the Director, Namami Gange, and the Chief Secretary and Advocate General of Uttarakhand. These officials are declared ‘parents’, or “the human face to protect, conserve and preserve” the rivers. But the Indian state has not only failed in maintaining the health of these rivers, it has been complicit in diverting, damming, and polluting them. So how are its officials going to suddenly turn protector?

The court further says: “The constitution of Ganga Management Board is necessary for the purpose of irrigation, rural and urban water supply, hydro power generation, navigation, industries.” Some of these activities are precisely what is killing the Ganga (and almost every other river in India)! Additionally, the order extends to the rivers “the status of a legal person with all corresponding rights, duties and liabilities of a living person”. So could it be argued by the dam construction lobby that it is Ganga’s duty to provide hydro-electricity? Legal rights would mean a suit can be brought in the name of the river, injury recognised, 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?

Human-centred?

There are two more fundamental questions to ask of the High Court judgment. First, recognition of the rivers' rights is based on its value for "socio-political-scientific development", and due to the spiritual significance of the Ganga and Yamuna, especially for Hindus. The rights do not stem from an intrinsic identity or status of the river, but more from their use for humans; and giving them 'personhood' status makes it very human-centred. Can rivers not be recognised as having identity, worth, dignity, and rights as intrinsic qualities, not because they serve us? In the New Zealand law too the Whanganui river is given legal personhood, but it is also noted to have 'innate values'. Perhaps this could be read into the court's observation that "Rivers Ganga and Yamuna are breathing, living."

Also, could the logic of this order be extended to all rivers, and beyond that, to all of nature? These rivers are sacred to Hindus; other rivers, lakes and forests are sacred to other communities. Indeed many peoples' movements such as those against dams in Sikkim and against mining in the Niyamgiri hills of Odisha, have cited the sacredness of the landscape. In the latter case the Supreme Court even asked the government to seek consent for mining from the Dongria Kondh adivasi gram sabhas, recognising their cultural rights. And then again can't all ecosystems be similarly extended protection? This of course will not mean that ecosystems cannot be used by humans, but rather that our treatment of the rest of nature would be within the bounds of what is responsible and sustainable.

River massacre

Perhaps the only long stretch of the Ganga that is still flowing in its original course is the one we boated down in Bihar. The rest have been diverted into lifeless canals. On our visit, local fishers, scientists and activists told us that plans for barrages and dredging will destroy the river, threatening livelihoods of millions and endangering the Gangetic river dolphin. On a number of tributaries of the Ganga and Yamuna in Uttarakhand, the government is building or planning large hydro-projects; we have seen construction related gashes and debris falling into the river near Nandadevi and other parts of the Himalaya, and shudder to think of the consequences. Can the High Court order

be used to stop this massacre of rivers?

There are precedents in other countries. In Ecuador, people went to court in the name of the Vilcabamba river, being affected by a road widening project. They argued that this violated the Ecuador Constitution, which recognises the rights of nature (Pachamama). The court ruled that dumping of rock and earth into the river interfered with its right to flow naturally and perform its ecological functions.

The Whanganui River protection law came after over a century of struggle by the Iwi indigenous people to reclaim their territory and protect the river; these people will keep a sharp eye out for any violations. In the case of the Ganga and Yamuna, people living along their banks, including many religious institutions, are often the ones responsible for the desecration. Will they have the wisdom and organisational capacity to turn this around and use the court orders to protect the rivers? And to do so without being hijacked by communal forces and their agenda? Can a truly independent body of 'parents' emerge for north India's rivers, to take the court's orders to their logical conclusion?

The authors are with Kalpavriksh, Pune.

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