



Legal Personhood For Nature Success Story Of Indigenous Advocacy And Conservation Movements

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Abstract. Our sustenance on this planet depends on the nature, to an extent that if any component of the nature is disturbed, the whole symbiotic relationship with which all the life form on this planet mutually coexist get imbalanced leading to a disturbance in the whole ecosystem which is detrimental for the sustenance of any life in this planet. Being the higher form of life, it is pertinent for us to develop such mechanism which will ensure not only the conservation and preservation of the various components of the biodiversity but also will promote sustainable development, without exhausting our biological, mineral and other resources or keeping them at stake for achieving the development. This mechanism must will be in conformity with not only the UN's sustainable goals but also will go in line with the chief objectives of Convention of Biological Diversity (CBD), one of its first and own kind of International legal framework which mandates the member countries to come up with such domestic legal framework in their own countries which will ensure, conservation & preservation of biological/genetic resources, will promote sustainable development and will ensure a fair and equitable sharing of benefits arising out of the commercial exploitation of the biological/ genetic resources between/ among the stake holders involved in the process of generation of such benefits. In this context the discussion on the concept of Legal Personhood for Nature which has been the outcome of the initiatives like Indigenous Advocacy and Conservation Movements, has proved to be substantially path-breaking. In the current research the researchers aim at accessing the scope and extent of reach out of such Initiatives by analyzing some specific case studies around the world where the Legal Personhood for Nature has been ascertained marking the beginning of a new discussion in the jurisprudence, and how the conservation movement in India has remarkably attempted at advocating for cause of our farmer communities.

Keywords: Legal Personhood, Nature, Indigenous Advocacy, Conservation Movement.

1 Introduction

The SDG Goals 13 to 17 deal particularly with environmental conservation and preservation goals ranging from climate action to environmental concerns relating to ocean, biodiversity, forests and desertification. Indigenous communities believe their existence and knowledge is irrevocably linked with their surrounding environment and their cultural practices, daily rituals and livelihood are majorly connected with the sacredness of their natural habitat. Thus, indigenous communities are vastly interested in protection and conservation of their natural habitat and consider it to be inseparable from their identity. Indigenous communities often have taken the responsibility of conserving and preserving the biological resources and associated knowledge as a part of their way of life as they largely depend on them and connect to their biodiversity not only for their sustenance but also develop a deep emotional connect with their natural habitat or the biodiversity in general hence they are very protective about the same. It is often seen that the bio resources which are conserved and protected by these indigenous communities are often misused or accessed without any authorization leading to cases of bio-piracy cases not only in India but across many countries in the world specially the countries which are biodiversity rich countries. Hence it is essential to create protection regime for extending protection to the biodiversity at large and the knowledge over such biological resources held by the knowledge holders who belong to such indigenous communities. Such protection regime should not just be a defensive regime, rather has to be a positive protection regime which will create the concept of right in various components of environment and biodiversity from which the indigenous communities are inseparable. This has given rise to a movement which has marked the beginning of the Indigenous Advocacy for creating legal person-hood in various components of the biodiversity in order to bring them under the ambit of legal protection framework and to protect them against unauthorised access and cases of bio-piracy. This objective of creating a right based mechanism of protection for the various components of nature is possible when the concept of Individual/State Sovereignty (as the case may be in concerned cases) will be created as against the Idea of Openness which predominantly has dominated the nature since inception as the biological resources have always been considered as the gift of nature and has never been considered as the subject matter of Individual or State specific appropriation.

2 Indigenous Advocacy Movement- A Global Perspective: Case Study From Newzeland, India And Bangladesh

This part of the paper will delve into the analysis of scope and extent of Indigenous Advocacy by assessing a few case studies where some of the countries have extended Legal Personhood to various components of nature in order to not only conserve & preserve them but also to protect the against unauthorised access and use with a positive right approach which provides for creating a legal status for certain entities and extending them rights under the legal framework.

2.1 NEWZEALAND

One major success story of indigenous advocacy movements for conservation of nature is when the Māori tribe from Northern Island in New Zealand fought for recognition of legal personhood of their river. The Whanganui River is the first in the world element of nature to be granted legal person¹. According to the Māori tribe's belief, the river Whanganui is a living entity and is their ancestor who is indivisible. The tribe not only fished on the river and have settlements on the river's banks for centuries, the Maori tribe considered the river to be "their source of food, their single highway, their spiritual mentor,". Therefore, the traditional mainstream approach of environmental protection whereby elements of nature are owned (as in case of sovereign rights of State) or managed and maintained by State are not acceptable by the tribe. The tribe rather advocated that any harm to the river is harm to the tribe because they are one and the same and used the concept of "Te Awa Tupua" to describe the inseparability of the people and River in their local language.

This grant of legal personhood to elements of nature is a unique approach of environmental protection strategy whereby since legal rights are attributed to the nature, the nature itself can sue through guardians in court of law on basis of harm suffered like any other legal person. For the Whanganui River in New Zealand, it was an easier job in appointment of the two guardians as they are one from the Crown and another from the tribe. However, closer home the problem becomes more complex in implementation.

2.2 INDIA

In India, the High Court of Uttarakhand had granted similar legal rights to the first non-human entity from India i.e., river Ganga and its main tributary river Yamuna. The problems relating to pollution and damage of ecosystem in the scared rivers Ganga and Yamuna is a problem Indian government is trying to tackle over decades. The core reasons for such environmental damage are often stated to be the untreated sewage water and industrial waste that are dumped into the rivers. However, the State of Uttarakhand challenged the judgement of the High Court and on appeal, the Supreme Court of India stayed the judgement of High Court as the State reasoned that legal status of river is unsustainable at law as who are the custodians for the river is an uncertain fact when such rivers are running across Indian States. The legal questions raised by the State are pertinent as India has rich natural resources spread over States and its natural resources reach beyond its boundaries. Fixing liabilities for government becomes a complicated procedure in such shared resources status where environmental harm caused in one place has rippling effect all over.

2.3 BANGLADESH

The Supreme Court of Bangladesh (neighboring country to India) has granted legal status to all its rivers in 2018 and have appointed a National River Conservation Commission as the guardian of the rivers. But the same issue relating to trans-boundary nature of rivers continue as many rivers running in India has their effect (via construction of dams in India) felt in Bangladesh.

Even though the instances of extending Legal Personhood to various components of nature have been few, but it surely is gaining substantial attention in the International legal arena and many countries are in favour of experimenting with this newly developed area of jurisprudence and this certainly is a welcome step as it will definitely pave the path of a new dimension in our attempts of conserving our nature.

3 Conservation Movement: Protecting Traditional Farming Practices And Conserving Biodiversity -An Indian Perspective

Under the banner of "Transforming our World: The 2030 Agenda for Sustainable Development," the United Nations, through its agency Food and Agriculture (FAO), set 17 Sustainable Development Goals (SDGs) in 2015. Ending Poverty and Ending Hunger are the cornerstones of the Sustainable Agriculture Goals (SDGs) movement. Sustainable agriculture goes beyond simply adopting antiquated or traditional farming methods or low-tech equipment. It's possible that scientists in their labs will create new, cutting-edge technology for sustainable agriculture like genetically modified (GM) crops. The problem lies in the fact that farmers have been engaged in this process of development of new crops traditionally over centuries and it is possible to maximize internal resources by making better and more effective use of the traditional knowledge and indigenous methods of cultivation that agricultural communities have to offer, rather than relying on external inputs like agrochemicals and investing in multi-million-dollar GM-Crops. .

Although the regulated and approved cultivation of genetically modified crops which does not harm the environment and health; may ultimately not threaten sustainable agriculture. But the property rights of such genetically modified crops can be a source of corporate dominance in the agricultural sector, to the exclusion of the interests of farmers.

India is compliant with its international commitments in attempting to exclude plants, plant parts, and "essential biological processes." The Trade-Related Aspects of Intellectual Property Rights Agreement, 1994 (TRIPs) under Article 27.3 (b) allowed Member States to exclude from patentability patents and essentially biological processes on adoption of alternate effective sui generis law. India adopted this sui generis law in 2001 by enacting the Protection of Plant Variety and Farmers' Right (PPVFR) Act.

Farmers are granted the right to save, use, sow, resow, exchange, share, or sell their farm produce, including seed of a variety protected under PPVFR Act, "in the same manner as he was entitled before the coming into force of this Act," as stated in Section 39 of the Act in India. Pepsico Pvt. Ltd, on the other hand, filed a lawsuit against four farmers in Gujarat for preserving seeds for the next generation propagation of a PepsiCo variety that is utilized in Lays potato chips that is registered under the Act. Following widespread public outcry, Pepsico ultimately decided to drop the lawsuit.

However, this case emphasizes the value of farmers' rights in poor countries like India, where the farming community lacks the funds to purchase seeds for each cycle of propagation. It also emphasizes the significance of sustainable agricultural methods, as outlined by the FAO in its Sustainable Development Goals.

4 Conclusion

The success and effective implementation of the Sustainable Development Goals across the countries in the world depends a lot on the intent of the nations to protect and preserve their environment, biological/ genetic resources and the knowledge associated with such resources held by the indigenous communities, farming communities residing in those nations. Till the nations don't consider these traditional communities/ indigenous communities/ farming communities at par with their mainstream population, they will not be able to appreciate the contributions from such communities towards conservation and preservation of the nature in general and its various natural/biological/genetic resources in particular, which is substantially important in furtherance of achieving the Sustainable Development Goals as laid down by the United Nations for all the nations. Hence it is high time the nations realize the need and the importance of the jurisprudence behind creating a positive right concept for the nature by extending Legal Personhood for the various components of the nature which will not only extend them the legal status but also will entrust them with rights which can be enforceable under the law when need arises. And this would certainly be a welcoming step towards conserving and preserving our nature and its components. Also it is pertinent here to draw attention towards the importance of Indigenous Advocacy in recognizing the contribution of our indigenous communities in the conservation movements as they are the major stakeholders in this initiative by being the custodians of nature. It will be substantially relevant in the larger interest of the mankind if more thrust is given by the nations on the idea of creating Legal Personhood for Nature and promoting the Indigenous Advocacy in letters and spirit to motivate the indigenous communities to contribute their best towards the conservation of nature which in turn will help us achieve the Sustainable Development Goals.

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