

What does rights of rivers mean?

Author - Shrishtee Bajpai, Published on - 12.12.2017



Photo: Ganga at Bhagalpur, Bihar @ Ashish Kothari

In July 2017, on the banks of mighty River Narmada in central India, the sight of people performing rituals on the river bank, fishermen in remote corners quietly angling, pied kingfishers hovering over us and the slowly descending sun provoked a subtle awe in me. I wondered that even though the law in India doesn't recognise non-human entities to have rights, yet the river's self-possession is an accepted part of culture, its physical form is merely one aspect of its divinity as its divinity is considered transcendental by communities living around it. And even though the sacred river is destroyed and polluted, its existence demands inevitable and necessary expansion of rights to it.

Rivers are revered like mothers in India but there is hardly anything left undone to desecrate the mother. The River Ganga passes through five states; covers 26 per cent of the land mass of the country but is heavily dammed in upper reaches and excessively polluted in the plains. The River Yamuna, one of the largest tributaries of the Ganga, is nothing more than a drain in most part of the upper reaches. Excessive pollution and damming have brutally hampered the flora and fauna of the rivers as well as its entire ecological balance, putting at risk not only the sacred rivers' balance but also any reasonable use.

Signalling a radical shift from the extractive mindset, on 30th March 2017, the Uttarakhand High Court ruled that the Rivers Ganga and Yamuna, their tributaries and the glaciers and catchment feeding these rivers have rights as a legal person. A petition was filed complaining that the state of Uttarakhand and neighbouring Uttar Pradesh were not collating efforts with the central government to curb pollution and riverbank encroachment. This judgment came a week after the passage of the Te Awa Tupua bill in the New Zealand parliament, which gives Whanganui River and ecosystem a legal personality. In modern jurisprudence, the inclusion is for two reasons: first, to create mindfulness in society about nature's rights and second to establish legal standing against depletion of nature.

Currently, the order has got a stay after the state of Uttarakhand filed a petition against the State High Court's decision at the Supreme Court of India. Uttarakhand's state government argued that the order is legally unsustainable and simply not 'practical'. Nonetheless, the decision offers the opportunity to reflect on an interesting set of complex concerns. What does it mean for a river to have rights or to be recognised as a legal person? What does it mean to extend it to all of nature? How do we re-think law and governance for the necessary wellbeing of nature? How can our institutions reflect nature's intrinsic value?

The rights of Nature have become a central concern for academics, thinkers, and activists across a range of disciplines worldwide. The idea pre-supposes radical changes in ways of knowing and relating to the natural, non-human world and in our mode of social and political life, and poses a fundamental challenge to the contemporary world over norms and practices that govern our social and political world. The idea of recognising the rights of nature, of course not in the language of statutory law, has for long been part of the worldview of various indigenous peoples and is part of their being. For example, Andean indigenous worldview believes that there is no division between the living and non-living. Pachamama or Mother Earth is a larger living organism that interacts with the sun and the cosmos and humans are just one component of the Earth community.

However, the important contention has been about Western law and its anthropocentric limitation, which regards humankind as the central or most important element of existence. The language of rights is limiting yet extending rights to nature is challenging the legitimacy of the system that believes in surpassing all the ecological limits to satisfy one species' unlimited "wants". For a river to have rights in the eye of Western law would mean that a lawsuit could be brought in the name of the river, injury can be recognised, the polluter can be held liable for harming, and compensation will be paid to benefit the river. What would that mean? Can the river have a right to unimpeded flow which could be equivalent to a person's fundamental right to speech? Would it mean that it can flow maintaining its unique biodiversity and habitat? Will it also mean that there is a possibility of reversing the violations (damming, interlinking, polluting etc.) done to the river? All of this would require challenging government agencies, international "development" views pushed by developmental banks like the World Bank and private firms who indulge in these violations. It would also eventually require re-thinking the basic ethics of the societies that we live in.

But contemplation is required in respect to implementation of the rights. Since the river cannot fight on its own, it would need custodians and guardians. Social movements and civil society groups here will have to push for the involvement of multiple sets of actors from different backgrounds. The decision-making process has to be decentralised and traditional/customary rights of local inhabitants (who stand to be affected the most if the health of the river is disturbed) have to be the priority of any such processes. The New-Zealand law has a greater democratic participation (involving multiple set of actors) than the Uttarakhand High Court order. Under the Whanganui law, the parenthood is shared by the indigenous Iwi people and the government. Also, they have appointed an advisory team and a strategy team comprising of Whanganui Iwi, relevant local authorities, department of state, commercial and recreational users and environment groups. The Uttarakhand High Court order's custodian composition on the other hand is heavily inclined towards the state, although it mentions the possibility of community involvement, it is still weighted much on government official's discretion. It is assumed that the state has a duty to protect "natural resources" and determine its reasonable usage and that it will accomplish this, if it is mandated through court's ruling. However, given the past record where the state governments have not gone beyond offering technical solutions, leaving this problem to state departments is problematic.

Along with the implementation comes the restitution and compensation. Could restitution mean restoring the river as far as possible to its original form as it was prior to its violation e.g. by decommissioning dams? Who will receive the compensation? Could the communities most affected by the damage to the river be the recipients? How will they be identified and who will identify them? And crucially, what will be the form of compensation? These are questions with no easy answers; civil society will have to be intrepid and imaginative in offering solutions to the above.

Although the High Court order right now is on hold, the argument can still be extended to call for legal enforcement of such rights. For the rights of the river to achieve stronger footing, a national level law or constitutional provision is required. It is reported that a draft National Ganga River Right Act, prepared by the organisation -Ganga Action Parivar, is actively under consideration by the central government, but given the exclusive focus on Hinduism, it can be misused by right-wing forces to hijack the process and promote their own cynical agendas.

However, steadily we have to move beyond the inclusion of legal texts on rights of nature. The idea is to bring out the contradictions of the current system, question the ever-increasing human "wants" that underlie the current milieu, and eventually move beyond legal rights. Moving beyond legal rights would mean moving to a society whose moral consideration is not limited to humans but extends to entire earth community, and the rights of nature are not guaranteed but inherent in the way our societies, economies and policies are organised as well as our attitudes, our lifestyles, and our ways of being.

Contact

the author_

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