



Article Information

Received date : August 19, 2020

Published date: August 25, 2020

*Corresponding author

Zafar Mahfooz Nomani, Professor, Faculty of Law, Aligarh Muslim University, Aligarh-202001, India

Keywords

Ganga, Yamuna, River Ecology, Religious Sanctity, Legal Entity, Juristic Person, Parens Patriae

Distributed under Creative Commons CC-BY 4.0

Ecological Entity and Juristic Personality of River Ganga in India: from Sanctity to Legality

MZM Nomani^{1*}, Zubair Ahmed², Renu Dhawan³

¹Professor Faculty of Law Aligarh Muslim University India

²Research Scholar Faculty of Law Aligarh Muslim University India

³Director Zafar Judicial Academy India

Abstract

The ecological entity and juristic personality of River Ganga traced from the standpoint of the legal status vis-à-vis the reverence and sanctity attached to its identity. The demographic rise, industrialization and urbanization led to degradation of Ganga Rivers. The water laws and policies have endeavoured to protect it from pollution, but the deterioration in the water quality is on the rise. In Mohammed Salim vs State of Uttarakhand the Uttarakhand High Court of India realized that Rivers Ganga and Yamuna are losing their very existence and requires extraordinary measures. To restore its pristine glory, the Court declared these rivers as a living person and legal entity. The precedent of the Whanganui River Case of New Zealand is followed explicitly in the judgment. The paper is an enviro-legal analysis of the decision in the conservation of the Ganga River to keep the religious conscience and science of river health assessment. It assigns a top priority of environmental governance of the river by recognizing the doctrine of loco parentis and parens patriae on the Director Namami Gange (Clean Ganga), the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand for the preservation and conservation of Ganga and Yamuna rivers.

Introduction

The Uttarakhand High Court of India handed down a verdict of seminal significance on ecological significance of River Ganga in India from the standpoint of the sanctity and legality. In the case of Mohammed Salim vs State of Uttarakhand [1]. The Court expressed the utmost expediency to give legal status to rivers Ganga and Yamuna as a living person and legal entity. The verdict derives sustenance from the Articles 48-A and 51-A (g) of the Constitution of India, 1950 [2, 3]. The constitutional mandate fortifies human right as well as duty oriented environmental jurisprudence in India [4, 5]. This Ganga judgment widely assailed and acclaimed as having a ripple effect on ecological sustainability and restoring the mythological glory across India [6] and the world. Though the judgment replicates Sierra Club case of United States and Whanganui River Case of New Zealand [7, 8]. Owes heavily to earlier precedent to the effect of declaring river as a legal entity and juristic personality [9]. The Ganga River, with a length of 2,525 km, has a unique distinction amongst the world's major river systems. The longest river Ganga of India ranked as the 34th longest river in the world. It occupies a total geographical area of 1,087, 3002 km [10]. The Ganga drainage basin geographically ranks only 16th largest river basin in the world. Despite the demographic distinction of being the largest populated river basin of the world. It's plain is an outstanding geomorphic feature, remarkable topography, agricultural productivity and high population density [11].

National River of India

In India, river Ganga is significant being lifeline from the northern to the eastern part of India. It has a civilizational molding of Indian in general and Hindus in particular [12]. They not only depend on it for their livelihood but salvation after death. That is why it is called the 'national river of India. It is experiencing a menacing level of water pollution and contamination despite the fact that the pollution-free environment is the constitutional right of every citizen and constitutional obligation of States [13] Figure 1.



Figure 1: Ganga basin covers 26% of the country's landmass and supports 43% of its population.

The socio-economic profiling of the Ganga basin covers 26% of the country's landmass and supports 43% of its population. The water resources, in general, and Ganga Rivers, in particular, suffers from deterioration of water quality. The global climate change and consequent glacial melt have altered the character of the River non-perennial [14] Figure 2.

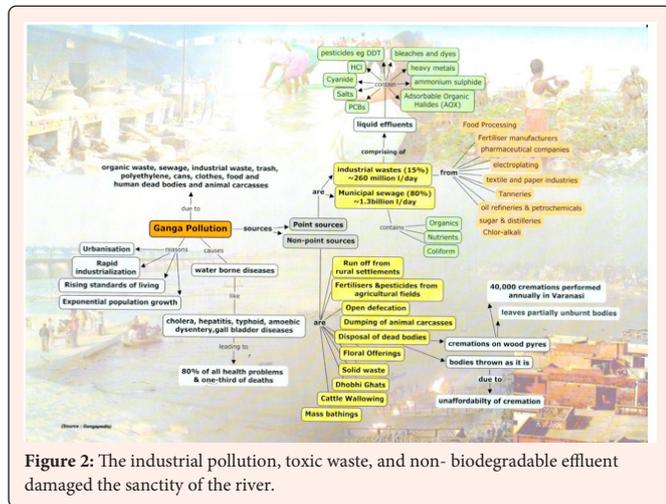


Figure 2: The industrial pollution, toxic waste, and non- biodegradable effluent damaged the sanctity of the river.

The Ganga basin is marred by 12,000 million liters per day (MLD) sewage in contrast to a treatment capacity of 4,000 MLD. The industrial pollution, toxic waste, and non-biodegradable effluent damaged the sanctity of the river. Therefore, the government of India engaged dexterously to improve water quality. It also took step to instill holiness in the minds of the people about the Ganga River [15].

Table: Major Policy Initiatives under NGRBA.

S No	Policies & Projects
1	Ganga River Basin Management Plan (GRBMP)
2	Water Quality Monitoring with focus on Real time, Online assessment
3	Appraisal of Details Project Reports (D.P.R.s)
4	Guidelines for Preparation of Details Project Reports (D.P.R.s)
5	Independent Appraisal of Details Project Reports (D.P.R.s)
6	City Level Monitoring Committees
7	Streamlining of Review and Monitoring mechanism in States
8	Tripartite Memorandum of Agreement (MoA)
9	Involvement of NGRBA experts
10	Third Part Inspections
11	City Level Monitoring Committees
12	Dolphin Conservation.
13	Ganga Knowledge Centre
14	Public Outreach and Awareness, Involvement of youth

International & Comparative Perspective

The Supreme Court of the United States in *Sierra Club v. Morton* delved deep into the legal entity of Mineral King Valley on behalf of Sierra Club. The case examined the issue of standing of Mineral King Valley to block the development of a ski resort under the Administrative Procedure Act [16]. The Court rejected a lawsuit by the Sierra Club because the club had not alleged any injury. Justice William O. Douglas dissented and observed that ecological concerns and environmental objects of valley, meadow, a river, wetland, and lake should be granted legal personhood by the public [17]. The Sierra Club's dissenting opinion popularized the natural resources ought to the legal standing of

natural resources and deserves to be quoted in the present context: The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where the injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their preservation [18].

The second ruling on the subject deals with the Maori tribes of Whanganui, New Zealand in their bid to declare their in severable connection to their ancestral river. They have a belief and belongingness that 'the great river flows from the mountains to the sea. I am the river; the river is me.' Therefore, the right of the river to be free from pollution and form an integral part of the Māori's culture and tradition [19]. The preservation movement of the Whanganui River in New Zealand resulted in settlement of claims between indigenous Māori communities and the state [20]. It is legally recognized under as a result, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 by the state of New Zealand. The Act recognizes that the Whanganui River is a living entity and a legal person with rights that can be judicially enforced by appointed guardians [21]. The river is declared an indivisible and living whole from the mountains to the sea, holding "the rights, powers, duties, and liabilities of a legal person.

Text of Judgments

The petitioner Mohammed Salim filed public interest litigation in the High Court of Uttarakhand concerning illegal construction and encroachments along the Ganges River, as well as the failure to constitute the Ganga Management Board, as required by the Uttar Pradesh Reorganisation Act, 2000. The High Court expressed its displeasure about the indifferent attitude of the authorities in maintaining the health and vitality of the Ganga River. The Court noted as under: The extraordinary situation has arisen since Rivers Ganga, and the Yamuna are losing their very existence. This situation requires extraordinary measures taken to preserve and conserve Rivers Ganga and Yamuna. There are two directions of the Court the one delivered on December 5, 2016 [22]. And the other on March 20, 2017 [23]. In the High Court's December 5, 2016 decision, the Court issued three significant directions for cleaning Ganga River. It ordered for the immediate constitution of the Ganga Management Board. The encroachment in Ganga command area should be free from encroachment and sand mining by the officials in terms of the mandate of the Uttar Pradesh Reorganisation Act, 2000 and creation of the Uttarakhand state.

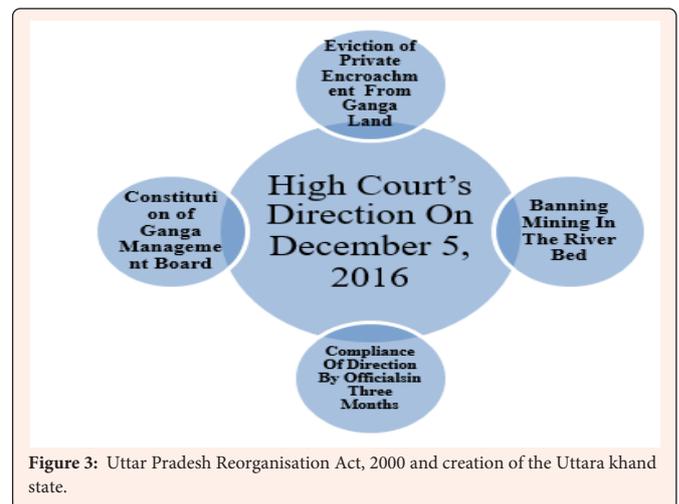


Figure 3: Uttar Pradesh Reorganisation Act, 2000 and creation of the Uttara khand state.

Concept of Juristic Person

The operative part of the judgment pertains to the concept of a juristic person and its application to Ganga and Yamuna rivers of India. The judicial innovations have a significant bearing on the ecological significance of Ganga River and its protection from adverse environmental impact [24]. The ruling and ratio run as under: 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 to preserve and conserve river Ganga and Yamuna. The Court



enunciated the principle that 'like any other natural person is in law also conferred with rights and obligations and is dealt with by law.' In other words, one may infer as follows: The entity acts like a natural person but only through a designated person, as their Lordships have held in the judgments cited hereinabove, which for a more significant thrust of socio-political-scientific development, the evolution of a fictional personality to be a juristic person becomes inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may compel the Courts to recognize it.

Doctrine of Parens Patriae

The High Court appointed two officials from the state of Uttarakhand to serve as persons in loco parentis for the preservation and conservation of Ganga and Yamuna rivers. These officials cast with the obligation to uphold the health and well-being of the rivers. The exercise of its parens patriae jurisdiction implied that river Ganga and the Yamuna and all their tributaries, streams, every natural water flowing have a right as juristic persons and living entities to continuous or intermittent flow [25]. The Court declared that recognition of Ganga as a juristic person is for "subserving the needs and faith of society." The Judges noted: All the Hindus have deep Astha in rivers Ganga and Yamuna, and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of the Indian population and their health and wellbeing. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical nourishment. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea. Therefore the responsible officers owe a constitutional duty under Articles 48-A and 51-A (g) of the Constitution of India, 1950 for the ecological restoration and sanctity of the Ganga river. On this analogy, the Director Namami Gange (Clean Ganga), the Chief Secretary and the Advocate General of the State of Uttarakhand have solemn responsibility of preserving the river from the pollution and land encroachment. Their responsibilities emanate under the doctrine of loco parentis and parens patriae jurisdiction.

Sanctity of River

The judicial displeasure noted that the alteration of the identity of Ganga and Yamuna and called for urgent remedial measures. The Court underlined the religious sanctity, conscience and faith of Hindus towards Ganga River. They worship and revered as Mother Goddess for purification of soul and salvation from life. In justification to uphold the sanctity of Ganga River the Court cited the earlier precedents of Yogendra Nath Naskar v. Commission of Income Tax, and Ram Jankijee Deities v. State of Bihar. In Yogendra Nath Naskar v. Commission of Income Tax [26]. The Supreme Court concluded that the Hindu idol is a juristic entity capable of holding property and of being taxed through its shebait who entrusted with the possession and management of its property. The Court construed the meaning of 10Sup. /69-13 of the word 'individual' in Section 3 of the Income Tax Act, 1961 should be restricted to human being and not to juristic entities.

In Ram Jankijee Deities v. State of Bihar, [27]. The core question was whether a Deity having a visible image and residing in its abode is to be treated as a juridical person for Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. It is worthwhile here to refer to the Privy Council decision in the case of Pramatha Nath Mullick vs Pradyumna Kumar Mullick [28]. The ruling is pertinent to quote here: A Hindu idol is, according to long-established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established. Thus the Privy Council ruled in 1925 that a Hindu idol is a juristic entity and capable of owning property. On the same footing, the Rivers Ganga Rivers carries legal entity besides having the material and spiritual existence. The constitution of Ganga Management Board in Uttarakhand state is sine qua non for the sustenance of Indian people.

Conclusion

The gist of the judgment is twofold the one restoration of pristine glory and sanctity and maintenance of the ecological identity of perennial character of the of Ganga river. The main concern is to maintain the environmental significance of River Ganga in India from the standpoint of the sanctity and legality [29]. The piousness, as well as the free-flowing of the Ganga and its tributaries with the communitarian approach [30]. The Hindu notions of sacred ecology and conservation ethic reflected in numerous judgments of the Courts and tribunal in India [31]. Justice Sharma stated that 'Rivers Ganges

and Yamuna are in sacred scriptures of Rigveda and revered as 'Ganga Maa' (Mother Goddesses). He buttressed his arguments by citing precedents of Pramatha Nath Mullick vs Pradyumna Kumar Mullick, Yogendra Nath Naskar v. Commission of Income Tax, and Ram Jankijee Deities v. State of Bihar to uphold Hindu idols position as juristic entities and concomitant property rights under loco parentis and parens patriae jurisdiction. Thus the Court issued a standing order that any damage to the identity of Ganga Rivers would be a cognizable offence under the criminal law of the land. In a subsequent decision, the Uttarakhand High Court in Lalit Miglani v. State of Uttarakhand [32]. Moderated the rights of Ganga river vis-à-vis natural entities within a scientifically proven and evidence-based framework. The decision recognized the ecological significance of the glaciers, lakes, and wetlands as legal persons but without reference to sacred ecology [33]. None the less, it subscribes to the analogy of the Mohammed Salim vs State of Uttarakhand in recognizing Ganga River as juristic persons. It is unfortunate that in July 2017, the Supreme Court of India issued a stay of the High Court's order and the final verdict eagerly awaited. Meanwhile, the National Green Tribunal (NGT) directed Chief Secretaries of Uttar Pradesh, Uttarakhand, Bihar and West Bengal for the rejuvenation of the Ganga by adopting rigorous planning and monitoring for the rule of law for the protection of the environment and public health. The Tribunal observes that 'it is a pity that even after constant monitoring by the Supreme Court for 34 years and by this Tribunal for six years Ganga remains polluted. After the 46 years after enactment of the Water (Prevention & Control of Pollution) Act, 1974 the discharge of pollutants in Ganga river basin continue to the most holy river[34]. It hoped that the potentiality of the judgment would shape comprehensive sustainability strategies and models for the restoration of pristine glory of River Ganga in India.

Acknowledgement

The author would like to acknowledge the Indian Council of Social Science Research, New Delhi for its funding of Minor Research Projects on Role of International Biodiversity Law in Developing Legal Framework for Access and Benefit Sharing (ABS) Regime in India 2019-20.

References

1. (2017) Mohd Salim vs State of Uttarakhand. Online Utt Pp. 367.
2. (1976) Article 48A in The Constitution of India 1950: Protection and improvement of environment and safeguarding of forests and wildlife 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.'
3. (1949) Article 51A in the Constitution of India 1949:51A. Fundamental duties it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
4. Nomani MZM (2000) the Human Right to Environment in India: Legal Precepts and Judicial Doctrines in Critical Perspective. Asia Pacific Journal of Environmental Law 5:113-134.
5. Nomani MZM (2000) Enviro-Constitutional Ethos in Right-Duty Discourse: Towards Creation of Sustainable Socio-Legal Order. Journal of Indian Law Institute: Special Volume on Constitutional Law 42: 432-42.
6. Pavan A (2005) The Ganges: Along Sacred Water, Thames & Hudson, New York, USA.
7. (1972) Sierra Club v. Morton, 405: 727.
8. James DK Morris & Jacinta R (2010) Giving Voice to Rivers: Legal Personality as A Vehicle For Recognizing Indigenous Peoples 'Relationships To Water? ALLR 14: 49-62.
9. Nomani MZM (2007) Future and Direction of Environmental Justice in the Context of Narmada Valley Projects Judgments', Indraprastha Technology Law Journal 2: 219-241.
10. Hollick JC (2007) Ganga, Ramdom House India, New Delhi, India.
11. Nomani MZM (1998) Water Pollution and Conservation Existing Legal Framework and Strategy for Reform. in Farooq A. Khan (ed.), Water Resource Development: Thrust and Challenges, Anmol Publication, New Delhi, India.
12. EP Anderson, S Jackson, RE Tharme, M Douglas, JE Flotemersch, et al.



- (2019) Understanding Rivers and Their Social Relations: A Critical Step to Advance Environmental Water Management. Wiley Interdisciplinary Reviews: Water 6: 1381.
13. Nomani MZM, Zafar Hussain, (2020) Ecological Nuisance and Common Law Environmentalism: Relevance and Revival in Combating Environmental Pollution in India. Journal of Advanced Research in Dynamical and Control Systems 12: 1197-1204.
 14. Nomani MZM, Rehana Parveen (2020) Prevention of Chronic Diseases in Climate Change Scenario In India. Environmental Justice 13: 97-100.
 15. Nomani MZM (2010) Peoples Participation through Public Hearing and Environment Impact Assessment Law: Some Perihelion Anecdotes. Law Journal Guru Nanak Dev University Journal 18: 121-136.
 16. Schrepfer, Susan R (1989) Establishing Administrative 'Standing': The Sierra Club and the Forest Service, 1897-1956". The Pacific Historical Review 58: 55-81.
 17. Nomani MZM (2012) Legal Policy for Wetland Conservation in India: A Review. Pragyaa Journal of Law 2: 76-87.
 18. (1972) Law School Case Brief: SIERRA CLUB v. MORTON - 405 U.S. 727, 92 S. Ct. 1361.
 19. Aikaterini A, Harry H, (2019) Legal Personality and Economic Livelihood of the Whanganui River: A Call for Community Entrepreneurship, Water International 44: 6752-768.
 20. Nomani MZM (2019) the Access and Benefit-Sharing Regime: An Environmental Justice Perspective. Environmental Policy and Law 49: 259-26321.
 21. Hsiao EC (2012) Whanganui River Agreement: Indigenous Rights and Rights of Nature. Environmental Policy and Law 42: 371-375.
 22. (2016) Salim vs State of Uttarakhand, Writ Petition (PIL), Pp. 126.
 23. (2017) Salim v. State of Uttarakhand, Writ Petition (PIL), Pp. 126
 24. Nomani MZM (2011) Legal Framework for Environment Impact Assessment in India: A Contemporary Appraisal in Corporate Perspective. Chartered Accountant Journal 59: 1872-1879.
 25. Nomani MZM (2009) Environment Impact Assessment of Himalayan Ecology in the Context of Tehri Dam Verdict. Aligarh Law Journal 19: 143-150.
 26. (1969) Yogendra Nath Naskar vs Commission of Income Tax.
 27. Ram Jankijee Deities v. State of Bihar, (1999) SSC, 5: 50
 28. (1925) Pramatha Nath Mullick vs. Pradyumna Kumar Mullick, BOMLR, 27: 1064.
 29. Kelly DA (2019) River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology. Religions, 10: 502.
 30. Nomani MZM (2002) Community action and environmental protection: a review of legal and judicial mechanism. Indian Bar Review 29: 93-108.
 31. (2017) Original Application No.200 of 2014(Civil Writ Peititon Pppp. 3727.
 32. (2017) Lalit Miglani vs State of Uttarakhand, Writ Petition (PIL) Pp. 140.
 33. Nomani MZM (2004) Natural Resources Law and Policy, New Delhi: Uppal Publishing House, Pp.73-94.
 34. (2020) NGT tells States to monitor Ganga rejuvenation,' The Hindu Daily: New Delhi, India.