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Courting Nature: Advances in Indian Jurisprudence

Recent advances in Indian jurisprudence speak to the conversation concerning Rights of Nature. Juridical thinking in India is attempting to navigate an ecocentric course, even if intermittently, by experimenting with a language for Rights of Nature that draws on India's Constitution, the drift of international currents and treaties, the judgments of its apex and provincial courts, as well as the rulings of a green tribunal.

Reflection on the religious and ethical traditions of the Indian peoples is a fertile source of inspiration for juridical thought. The notion of *dharma*, translated as "conduct" according to inherent qualities or character, is understood to characterize all of Nature. Hindus believe that "it is the dharma of the bee to make honey, of the cow to give milk, of the sun to radiate sunshine, of the river to flow."[1] Nonviolence or *ahimsa*, too, continues to be an influential strain of thought in Indian religious traditions and affects the judicature as well.

A well-known jurist and former Supreme Court judge, V. R. Krishna Iyer, observed:

> Justice to animal citizens is as basic to humanism as social justice is to an exploited people. The philosophical perspective of animal welfare is . . . part and parcel of our cultural heritage. Every time cruelty is practiced on man or beast or bird or insect, we do violence to Buddha and Mahavira [founding prophet of the Jain religion].[2]

Some of these ideas resonate with the Rights of Nature movement. As the country's Supreme Court deliberates the rights of citizens and the country's fauna to a "healthy" environment from a contemporary perspective, the juridical view is evolving. What is evident is that judgments on the extent to which the sacredness of long-standing traditions is to be upheld have varied, on occasion, between the provincial and higher courts, and run counter to the view of legislatures as well.

1 Van Buitenen, "Dharma and Moksa," 33–40.
2 Iyer, *Towards a Natural World: The Rights of Nature, Animal Citizens and Other Essays.*

In legal terms, the Indian Constitution safeguards the right to life for its citizens. The right to a healthy natural environment, including clean air and water, for instance, flows from here. But this right comes accompanied by a duty. The citizen, too, is expected to protect the environment and show compassion towards all living creatures by an addition to the constitution that was inserted in 1976 (Article 51 A (g)). By simultaneously emphasizing the citizen's duty towards caring for other forms of life and their spaces, it opens a window for Rights of Nature beyond the rights to or upon nature for pleasure or gain.

So what are the judicial pronouncements that speak to Rights of Nature? I turn to animal rights, first, as a subject that constitutes one of its planks.

The use of animals for entertainment, such as in circuses, street shows, bullfights, and bull races, has been forbidden. In a recent appeal to ban bullfights that were a gruesome but long-standing part of local culture in the province of Tamil Nadu, the judicial decision in 2014 was guided by the concern for animal rights. It argued that this tenet is in keeping with what was recounted in ancient Indian texts, the Isha Upanishads, composed in 600 BCE or even earlier, which run counter to the spirit of speciesism. The writings uphold that: "[n]o creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species."[3]

The two-member Bench enquiring into cruelty against bulls in Tamil Nadu pronounced that the right to life in the Indian Constitution included the right to security and life for animals. The judgment noted that while the rights of animals had been raised to the level of constitutional rights in some European countries, such as Switzerland and Germany, it was to be regretted that neither the United Nations nor any international agreement had yet buttressed the cause of animal rights. The decision underscored that the World Society for the Protection of Animals was conducting a campaign for animal rights and hoped that it would lead to a universal declaration recognizing their intrinsic value.

Strikingly, the rights of animals are at the forefront of varied judicial pronouncements in India that range from how to vaccinate "stray" urban dogs and return them to the

3 Animal Welfare Board of India v. A. Nagaraja and Others (2014) 7 SCC 547.

streets, all the way to recommending the reintroduction and recovery of endangered species such as the wild buffalo and the Asiatic lion. Here, it is emphasized that the focus should not be on the conservation of a few charismatic species just because they happen to be the pride of a state or celebrated as an aspect of national culture, but because of their inherent value from the vantage point of an ecocentric orientation. Citing the UN's 1982 World Charter for Nature, such judgments highlight that "every form of life is unique, warranting respect, regardless of its worth to man."[4]

What about evidence pertaining to the rights of plant life in Indian courts? The laws of the country consider the use value of trees and other flora for humans and in this vein, there is considerable discussion about the rights of forest dwellers to subsist upon and profit from the non-timber products of forests alongside the timber rights of the state. Restrictions on tree felling are largely advocated on grounds of conservation in the wake of deforestation and an environmental crisis. The felling of whole trees without permission is forbidden right across the country and exceptions, by and large, accord with what is termed the doctrine of necessity. The Wildlife Protection Act, too, aims to protect the biodiversity of plant and animal life.

Juridical pronouncements also recommend that the state should compare national lists classifying endangered and threatened species with those issued by the International Union for the Conservation of Nature (IUCN) every three years. The right of farmers to grow certain plant varieties and the rights of the state to the genetic material that falls within its territory is obvious in legal deliberations. Again, there is continuous concern about the patenting of indigenous plant species marketed as strains that are biogenetically recreated and therefore deemed intellectual property by foreign firms, which would impose restrictions upon residents of India. However, jurisprudence in India has so far not considered the rights of plant life to be on par with other components of Nature such as animals or rivers, for instance.

If I were to compare animal and plant rights in an overview, what comes to the fore is that human beings, including judges, are affected by animals more than plants. Examining the juridical discourse in India, animal-centrism and animal rights reveal a level of attention and emotion that is not conferred upon the country's flora. By contrast to

4 UN General Assembly, Resolution 37/7, World Charter for Nature (28 October 1982), http://www.un.org/documents/ga/res/37/a37r007.htm.

the judicature, however, people across the length and breadth of the country imbue flora with sacredness that is apparent in practices pertaining to marked trees, smaller plant species, and sacred groves. Over and above the fact that flora have use value for human beings as food and building material, and even in terms of biodiversity, religious practices vis-à-vis marked plants and trees are oriented by the belief that they are manifestations or homes of certain deities in both folk and classical traditions.

But strikingly, neither the religious character of certain trees / plants, nor the plea for legal rights for trees that is so much in the forefront of the Latin American Rights of Nature movement now, features in the judicial discussion of landmark cases pertaining to flora in India. The idea of securing legal rights for trees in India and significantly extending them to other natural objects such as rivers, mountains, and landscapes—as proposed in 1972 by Christopher Stone, Professor of Law at the University of Southern California, and cited in a US court in the same year—have been absent till very recently in the juridical discussion of the subject here. Yet, courts in India have had to reckon with both the secular and sacred rights of swathes of Nature such as landscapes, mountains, and rivers. I will briefly outline three pathbreaking judicial interventions below.

In the province of Punjab, in the wake of the construction of a tourist resort on an ecologically fragile stretch of a river bank and that area's subsequent flooding, the diversion of the river's flow was disallowed by a judicial decision in 1997 by invoking the doctrine of public trust. The resort owners had deployed earthmovers and bulldozers to alter the course of the river and resettle the resort and the sandscape. But the court took cognizance of this incident (following a newspaper report on the subject) and observed that: "[t]he notion that the public has a right to want certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land." The judgment drew on the doctrine of public trust articulated in the Mono Lake case in California, arguing that "the state must protect the people's common heritage of streams, lakes, marshlands, and wetlands."[5]

How does the legal story unfold in relation to mountains as a component of nature? A social movement against the bauxite mining of the Niyamgiri mountain in the province of Odisha had taken its case to the Supreme Court. The ruling of the Supreme Court in

5 M. C. Mehta v. Kamal Nath and Others (1997) 1 SCC 388.

2013 upheld the residents' rights to decide the issue. It advocated a local referendum on the matter and longtime residents of the area voted against mining the Niyamgiri mountain. They believed that the mountain was the abode of their deity and law giver, Niyamgiri, and that it was "sacred to them." Here the desire to preserve the mountain was buttressed by the shared religious beliefs of residents who constituted a majority in that tribal area. However, the right of the residents to exercise their choice on the issue of mining the sacred mountain was recognized and facilitated by the courts.

It was in 2015 that the National Green Tribunal turned its full attention to the pollution of rivers, looking into the ecology of entire river basins. The Tribunal declared that rivers should be rid of industrial effluents and deleterious sand mining. It also mandated that the ritual or sanctified materials that are immersed in rivers should be biodegradable and disposed of in an approved manner. At the same time, the social campaign for a cleaner Ganges had begun to argue for legal rights for this river. The campaigners are collaborating with the Global Alliance for the Rights of Nature, which is seeking to buttress the case for legal rights for Nature worldwide by carrying its battles to the courts. Against the backdrop of such thinking, and in line with the recent according of rights to a river in New Zealand, a recent judgment in March 2017 by the High Court in the province of Utttarakhand, northern India, declared that since the Ganges and the Yamuna are sacred to a large number of Indians, these rivers should be accorded the status of living entities and granted the rights of a juristic or legal person.

However, the judgment of the provincial court at Uttarakhand was overruled by the Supreme Court of India in July 2017 on the grounds that it interfered with the rights of other provinces and raised issues concerning who would be regarded as responsible for compensation in the event of natural calamities such as floods, if rivers were to be treated as juristic persons. Further, environmental activists in India argued that the rights of non-sacred rivers should also be accorded similar treatment from a secular state, such that sacredness could not be the ground for preferential environmental treatment. While granting rivers rights akin to persons was seen as a radical move, whether the state—which in many ways was complicit in the pollution, mining, and construction of dams along the rivers—could rise to be the guardian of rivers was also posed as a moot issue in discussions emanating from the Indian context.

Finally, how might one evaluate or interrogate the turn towards the Rights of Nature as a vision or beckoning? The juridical approach, cast in terms of rights, is a powerful conceptual construction that is blazing a trail. Perhaps the extraordinary and radical labor of thinking like a mountain, as Aldo Leopold put it, or like an animal, plant, or bacterium, that is now being attempted, will help us to rethink the nonhuman. Yet, any determination of Rights of Nature remains an anthropocentric and idealistic construction. Those points at which the juridical construction of Nature's rights is not benign will always call for scrutiny, keeping in mind the varied and often incompatible stakes of a stratified humanity, other species, and swathes of (seemingly) nonliving Nature. At a prosaic everyday level, moreover, court verdicts in India are challenged on the ground by administrative rulings, political and provincial interests, as well as continuing faith-based practices which recast the intent of the juridicature.

Put in a nutshell, Rights of Nature is being articulated and cogitated by Indian courts. Their efforts increasingly incorporate an ecocentric orientation, but not without contention. Judicial decisions draw on or seek to reorient international practices, selectively question or go along with the country's sacred traditions, and exhort the state to act as the guardian of Nature and the public trust. Without an explicit alignment with the Latin American Rights of Nature movement, environmental jurisprudence in India is indeed courting related concerns.

Further Reading

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