

The Rights of Nature: Taking an Ecocentric Approach for Mother Earth

Somabha Bandopadhyay¹ & Shivam Pandey²

¹Ph.D. Scholar and Research Assistant. The West Bengal National University of Juridical Sciences, Kolkata, India. Email: somabha@nls.ac.in.

²Former Legal Researcher, High Court at Ranchi, Jharkhand, India. Email: shivampandey@nls.ac.in

Abstract

Amidst the developing and progressive world that ensures the balance of needs-rights- duties and politics for human rights i.e. to attain the highest form of self-actualization, the world has truly become anthropocentric. It is only about human beings as such. But, in this process, what we often forget is the reason human beings exist- mother earth or nature. The paper seeks to take a break from anthropocentrism and take a journey of and through ecocentrism that would finally enable human beings to take a step forwards in fulfilling the duties of humans in the truest sense. The paper hopes to contribute to the emerging earth jurisprudence and elaborates on the path that has been traversed and the work yet to be done, both from a philosophical and legal point of view. The paper is primarily a work of doctrinal research using the analytical mode of research to present the developing jurisprudence in the field of earth justice.

Keywords: Rights of nature, anthropocentric, ecocentric, bioregionalism, mother earth, earth jurisprudence, anthropogenic.

1. INTRODUCTION

The selfish world has finally realized that the end might be nearing their fate, there seems subsidence of the development discourse and some kind rights of nature is being propagated. The agenda is to conserve and protect nature having faced wrathful consequences of drastic climate change and global warming or even global cooling, the idea that has been conceptualized is whether giving nature some kind of rights will be useful is this process of preservation. Of course, this too relates to the decade's old debate on the Global South and the Global North contretemps since the times of the Kyoto and Montreal Protocols, the rights of nature too has been propounded by developing nations. The beautiful ideation of rights of nature could be shown to be a victim of this same debate- rather is being advocated by the Global South only. As we shall see that the idea so propagated has been advocated by the USA only as a few exceptions that are individualistic endeavours on the part of a few provinces and their judges. So, these rights of nature conceptions remain entirely dependent upon the sufferers of the practices and laws of the developed nations and hence their voices seem feeble, even though enormous in numbers.

The dichotomy in conceiving the idea remains largely grounded on the universalism-cultural relativism discourse. As mentioned earlier, the concerted efforts of a fleet of nations to declare laws that sustain rights of nature as such gets diminished and overshadowed by the dominant powers that blow such away such claims as moral principles good enough to be termed as soft law. Interestingly, culturally rich nations like Belize, New Zealand, India among many others have accepted the rich notions of rights of nature because nature holds immense

significance in their customs. The daily lives of the people from these regions are surrounded by nature and the course of nature. However, these laws significantly differ from developed nations like the USA or Canada. For the Global North, nature and its elements are properties that exist only to serve the mankind. Thus, nature is subservient to humans. This is the predominant thought on nature that has a reflection in the catena of environmental laws which are thus 'universal'. This deplorable fate is comparable to the case of adoption of the Universal Declaration of Human Rights (UDHR) which too is critiqued in this sense. So, it is not incorrect to state that the international treaties on the environment are dominated by a pseudo universal idea of conservation, preservation and protection of nature that is anthropocentric and the cause of worry for communities that are extensively dependent on nature for its survival.

Rights of nature advocates for 'nature first' and is drawn upon the understanding that the fashionable laws on environment are nothing but a façade because these laws do not respect the 'intrinsic value' of nature (Stone, n.d.) and are heavily materialistic. In essence, the anthropocentric approach seeks to protect nature only for the survival and well-being of humans not for the well-being of nature as such (Stone, n.d.). Jan G. Laitos and Lauren Joseph Wolongevicz have accordingly opined that environmental laws have thus failed to take care of the environment (Laitos & Wolongevicz, 2014).

2. THE BEGINNING - TRACING THE EVOLUTION

The beginning of the notion of Rights of Nature was honestly not a matter of high-level intellectual brainstorming but instead a spur-of-the-moment comment by Christopher Stone in one of his property law lectures at the University of South California. While trying to attract the attention of his students, Stone mentioned how would it look like if Nature had rights with rivers, lakes, trees and animals being conferred with rights. The idea of nature and elements of nature being conferred with rights has also been questioned at later stages of the evolution of the rights of nature movement. But, after such unplanned outburst of the idea of rights of nature, Stone wrote one of the most influential papers of his times- something that has triggered the development of a new philosophy of nature- Earth Jurisprudence and Earth Justice. His paper "Should Trees Have Standing?" caught eyes of millions of people across the world but after almost thirty years since its publication. However, of the crucial reasons for the drafting of this paper in 1972 was an ongoing contentious case in the Federal Court of USA. *Sierra Club vs. Morton*¹ before the bench comprising of Justice Douglas (who has since this case been famed worldwide) seemed to be impressed by the theory of Stone, but the majority did not find it credible enough to be influenced by the same. Thus, despite passionate arguments from Sierra Club- an environmentally conscious collectivity, the bench ruled in favour of the construction of the amusement park by Walt Disney. Interestingly, more than the judgement, the dissenting opinion of Justice Douglas became long-lasting and the legal footing for the movement was probably tested from this opinion. So, the idea with which Stone wrote the paper had started trickling down but the goal was yet far away.

Stone's article had inspired another American lawyer, John Naff and in vindication to Justice Douglas in taking this historical step, he reiterated how law- an ever-evolving concept that progresses with the progressing society had reached a threshold wherefrom the time was apt to recognize the rights of non-human entities or creations of Mother Earth. While proposing his theory Stone had transcribed the history of human civilizations, how humans were considered slaves and slaves as property at one point of time who could be owned and disposed at the will of

some other human beings, aliens had virtually no right, women and unborn were not given the due recognition they deserved and voting rights remained restrictive but intriguingly laws matured with time and rights of all oppressed communities were legally recognized (Stone, n.d.). In this regard, Stone had taken aid of the famous *In Re Gault*ⁱⁱ case that argued for guaranteeing basic constitutional protections of juvenile defendants and the Voting Rights Act of 1970ⁱⁱⁱ. He advocated that having recognized rights of almost all of the human species, the anthropocentric world should shift its focus on the other elements that ensure their survival. After all, Mother Earth can outlive us, but humans cannot.

The need for an intellectual movement of this kind where such fundamental advancement and upheaval of even the democratic set-up of the nations, as propaganda now claims, was founded on the realization that environmental laws had failed. This entire gamete of environmental laws had failed because the weakness of the inherent problems that scholars like Susana Borrás^{iv}, Peter Burdon^v, Jan G. Laitos^{vi} and Lauren Joseph Wolongevicz^{vii} among many others have opined emerges from the anthropocentric understanding of nature. Such laws largely formed part of that legal system that almost always found the natural world nothing less than property which can be degraded and exploited without any duty towards its preservation (Borrás, 2016). The apparent façade of environmental laws was only to regulate the human actions aimed towards lessening the speed of destruction (Burdon, n.d.), but not in recognition of the ‘intrinsic value of nature’. Indeed, this introspection of the ‘intrinsic value’ by Stone, Naff, Naes, Arnold and others augmented the movement.

Jan G. Laitos and Lauren Joseph Wolongevicz also dug deep in analyzing all the laws concerning the environment at both the national and international arena to conclude the primary reasons for the breakdown of environmental laws. They have also succinctly brought out the four different eras of environmental laws since the beginning of the regime that has in totality contributed towards the downfall and effectiveness of such laws. The first era was the era of Resource Use without consideration of its repercussions; the next era was of Resource Conservation- the first step towards environmental consciousness; the third era was of Resource Preservation- another step closer to realizing the decaying condition of nature and that it need be protected for the ultimate welfare of the humans and the last phase is the Resource Protection- an aggressive attempt to ensure avoidance of environment disaster (Laitos & Wolongevicz, 2014). To them the following negative attributes of this regime of orthodox anthropocentric laws are responsible for the failure of the hallowed laws:

1. Flawed assumptions of
 - Human superiority and exceptionalism as against nature;
 - Separatedness of the legal regime of environmental laws being effective in protecting the environment and
 - No planetary boundaries that have ultimately transpired to causing environmental disasters.
2. Inaccurate models of
 - Fragmentation of the environmental laws that were believed to be taking better care of nature.
 - Considering nature as self-regulatory and hence human’s utter disregard to nature would quietly be recuperated by nature itself.

- Fulfilment of the self-interest of the stakeholders as primary and needs of nature as secondary.

Now, in order to tread the path shown by Stone and Justice Douglas, CELDF- an NGO working for rights concerning nature realized that the kind of petitions they were dealing with was no way close to conferring any right on nature, it was merely assisting the rural farming communities to fight against the governmental excesses directly affecting their rights. As Burdon notes, the Associate Director, Mari Margil had once commented that in their experience, environmental laws and regulation didn't, in essence, protect the environment, it enabled in reducing the pace of destruction regulating human actions. They gathered that to effectively protect and preserve nature, rights of nature had to be realized and to better effectuate it, a mechanism had to be evolved. Around this time in the 1980s, luckily, a community called the Blaine community approached CELDF for their assistance to appeal before the court to direct ban on 'long-wall mining' that caused a landslide and affected their lives severely. This was when it struck them that drawing inspiration from the philosophy of guardianship, a community that was heavily dependent on the natural elements surrounding them could be conferred the right of guardianship by the virtue of which they shall be regarded as the protectorate of their immediate natural surroundings with duties and rights of nature for survival flowing from their right to protect nature. Accordingly, an ordinance was drafted and accepted by the court that ultimately recognized the inalienable right of rivers, lakes, wetlands and streams. This was the beginning of legal recognition (by having a judgement being ruled in favour of rights of nature *per se* unlike *Sierra Club vs. Morton*) of the concept of rights of nature. Post this, close to 20 ordinances were drafted in Spokane, Washington, Pittsburgh, Pennsylvania and many are still underway, but mostly as individual initiatives and collective interests of the communities not as a governmental prerogative. One of the success stories of CELDF is the *Colorado river case*^{viii} before the Oklahoma Tribunal where the community dependent on the river sought the protection of the river as such for its inherent right of survival and free flow. As mentioned in the introduction, the USA has these spates of exceptions mostly on a micro-level veneration of the rights of nature, something concrete is yet to be witnessed. Additionally, these being simple ordinances can easily be overturned with subsequent higher laws made by the Congress(Burdon, n.d.), so unless a robust framework of laws is adopted the movement shall go on.

With not much concretization in the USA, the story of Ecuador is completely different where not just a law but an entire section of the Constitution itself has been dedicated to Rights of Nature. Pachamama Alliance- a similar group like the CELDF working in Ecuador was highly inspired by the success of CELDF. After excessive persuasion, the Pachamama Alliance got a place among the drafters of the Constitution in 2007 and soon after invited them to form a part of the constitutional assembly that was in the process of drafting the Constitution for the nation. In continuation to the introduction, this country- an underdeveloped nation suffered the wrath of the first world nations and their futuristic ideas of development. In this process, the triggering factor for the historic and first-ever step by the drafting committee in adopting Rights of Nature in a document that is otherwise constructed by the people for safeguarding their rights was the dumping of nearly 16 million gallons of oil and 20 million gallons of waste into the pristine forest. This massive dumping affected the local communities that caused cancer and miscarriages(Burdon, n.d.) and the people behind crafting the constitution made no delay in recognizing the notions of Earth Justice in four strongly articulated provisions that were passed without almost no opposition. Though it lacked any specific definition of nature or as they say Pachamama, all the elements of nature as such were construed to be the beholder of rights. With this Ecuador became the first country into the world to codify the rights of nature in their

Constitution(Burdon, n.d.). Effectuating the provisions of the Constitution, the first case that was heard was in the Provincial Government of Loja in 2011 ‘for nature particularly in favour of the Vilcabamba river’^{ix}. This river was facing threats from government’s proposal to construct a highway across the river that would change the flow of the river causing floods and disrupting wildlife and the livelihoods of the people in and around that region. The provincial court strongly ruled in favour of the river declaring that the constitutional right of the river must be sustained for its right to exist and maintain its vital cycles, structures, functions and evolutionary processes.

About ‘beholder of rights’- a crucial aspect in legally justifying this stance was appropriately argued by Stone. Identifying the elements constituting legal rights, he identified:

- a) The capacity to institute legal actions present in the holder;
- b) The determination of injury caused to the holder by the court and
- c) The derivation of the benefit from the relief (Stone, n.d.).

While substituting these principles to natural objects, a case of denial of rights is observed by Stone. For him, there are three instances whereby rights are generally denied. *Firstly*, the rightlessness of natural objects like streams, rivers or forests; *secondly*, the merits of judgements to be claimed only by a human being that has standing in the eyes of law and *finally*, the realization of the favourable judgment by the court only by entities having standing(Stone, n.d.). However, an extremely logical and conclusive idea drawn by Stone is regarding the rights extended to companies or corporate entities which are inanimate objects yet have legal standing and can be considered as a holder of rights. So, using this same line of reasoning, it sounded authoritative to extend the humanistic features to natural objects that are not even virtual, unlike companies. But, there are problems in considering this philosophy of moral extensionism to natural objects that do not hold for companies as such. By considering that human beings extend their self in recognition of the rights of nature, scholars and advocates feel that this asserts the dominance of the human species once again and subjugation of nature is perpetrated. But, the humility with which this conceptualization has been propounded gets highly diluted with this kind of self-assertion. Thus, alternatively, recognition must be fostered for an eco-centric approach where nature is placed at a higher pedestal and its ‘intrinsic value’ or ‘inalienable value’ is truly recognized, rather realized because nature is built with this value and recognition by the human species is of no significance, relevance or utility.

After the benchmark set by Ecuador, the world community grasped the need for this understanding and the next country that adopted this system was Bolivia. The beauty of the Bolivian administration in recognizing this lies in the fact that it extended the invitation to all nations to participate in the international adoption of the Universal Declaration of the Rights of Mother Earth (hereinafter Declaration) in April 2010 in Cochabamba, Bolivia. Months before the Bolivian government adopted this one-of-a-kind document the President of Bolivia Evo Morales Ayma had appealed before the United Nations General Assembly to come forward in drafting a document that will facilitate the preservation of rights of nature and he expressed his hope to forge the 21st century as the Century of the rights of Mother Earth. With massive participation of people, NGOs and members of the civil society at the People’s World Conference on Climate Change and Mother Earth Rights (People's Conference on Climate Change and Rights of Mother Earth, n.d.), the Declaration that had by then gathered support from Alliance for the Peoples of Our America was finally adopted and brought into effect. This Declaration was inspired from the Universal Declaration of Human Rights and the Earth Charter culling out the principles enshrined therein and the relationship that it aims to forge with the various stakeholders. This Declaration

has provided explicitly for the 'Inherent Rights of Mother Earth' and the 'Obligations of Human Beings to Mother Earth' something quintessential especially for filling the gap in the realization of this regime and bringing it into effect. At the same time, unlike the provisions in the Ecuadorian Constitution, the first Article of the Declaration has elaborated upon the definition of what constitutes Mother Earth and has given an expansive interpretation portraying the interdependence and interrelatedness of each other elements of Mother Earth. This Declaration happens to be historic and remarkable in two senses; *firstly*, it is the first international document in recognition of Rights of Nature and *secondly*, it is the first document that has clearly laid down the 'Rights' in appreciation of the inherent nature of such rights having intrinsic value.

Whilst country-specific enthusiastic initiatives were being taken, at the international level, two major conferences and documents emerging therefrom set the backdrop for the legislative initiatives by Ecuador and Bolivia. These were the adoption of the World Charter for Nature and the Earth Charter enshrining the principles and precepts in pursuance to Rights of Nature. In 1982, the World Charter for Nature (*United Nations, 1982*) (hereinafter Charter) was introduced, discussed, deliberated and resolved in the United Nations General Assembly. In its preamble, it recognized the intrinsic value of nature recalling that humanity is a part of nature and that life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients. It also calls for humans to be guided by a moral code that does not compromise the integrity of those ecosystems or species with which they coexist (Borras, 2016). The precautionary principle and common equity have been appropriately identified and adhered to in this Charter. It is interesting to note that implementation at both international and national levels was specifically listed and ecological education to be incorporated was stressed in the document. Another crucial element that has been taken care of is the military activities that damage nature. In furtherance to this, in 2000, the Earth Charter was agreed by a group of NGOs seeking to inspire all peoples a sense of global interdependence and shared responsibility for the welfare of the human family, the greater community of life and future generations (Earth Charter, 2019). Even though there is no legal backing of this document, the same could be said to have laid down a set of customary international environmental law principles that have universal relevance and applicability. There are four different canons of this document that underlie the development of the contemporary notion of Earth Jurisprudence. These principles are sequentially arranged and calls for respect and care for the community of life; ecological integrity; social and economic justice and democracy, non-violence and peace (Earth Charter, 2019). It has also gathered the importance of the role of traditional, cultural and spiritual knowledge peoples, and principles of non-discrimination and self-determination.

At this juncture, it is worth mentioning that there have been treaties existing for several decades that take into consideration nature and the natural elements of nature in appreciating the intrinsic value of the environment. Some of them include the International Convention for the Regulation of Whaling 1946, the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) 1979, the Convention on Biodiversity 1992 and the Ramsar Convention on Wetlands of International Importance 1975. These Conventions at least give recognition to the various facets of nature as constituting an inherent part of nature and emphasizes its importance in the preservation of life forms on the blue planet. But, despite this positive assertion of the rights of nature, the laws remained anthropocentric, so in its truest sense, the eco-centric approach ushered in at the international level with the World Charter for Nature for the first time and as legislation by the Bolivian initiative of the Declaration.

Furthering this idea, the work of two scholars finds importance. Polly Higgins, a practising advocate and activist based in the United Kingdom has placed a proposal before the United Nations General Assembly regarding the ongoing 'ecocide' akin to the idea of genocide whereby there is a deliberate destruction of ecosystems. She has propounded the idea of strict liability and duty of care for the planet to be identified as criminalizing in nature and an international criminal court be made to try such crimes within its jurisdiction. Several countries have expressed their willingness to identify this crime and implement the same with over ten countries already recognizing ecocide as a crime. In fact, a mock set up of such a court was created and two cases were tried in this court- the fracking for shale gas in Nigeria and the bauxite mining in Niyamgiri Mountain in India. Interestingly, 112,000 people have signed a petition through the European Citizen's Initiative for a European Directive in recognizing ecocide and with this, the movement has gained momentum massively. Peter Rodrick, the other scholar who has significantly contributed to this field has proposed a Draft Declaration on Planetary Boundaries (Rockström et al., 2009) to recognize and respect the processes of Earth that sustain life and the complex adaptive system that is in play regulating the ecosystems and the duties of the human beings in ensuring avoidance of any irreversible harm. In this Declaration, Roderick has also mentioned the three boundaries that have been breached and further degradation cannot be afforded- the Nitrogen cycle, climate change and biodiversity (Borras, 2016).

3. CONTEMPORARY DEVELOPMENTS

The most recent developments shall find expression in this section of the paper whereby the legal signs of progress in nations such as New Zealand, Belize, Colombia and India will be discussed. New Zealand happens to be a single example of the active enthusiastic expression of rights of nature with recognition of three elements of nature- forest, mountain and a river to be recognized as a subject matter of rights being an integral part of the ecosystem. The island nation houses one of the oldest tribes- the Maori tribes indigenous to New Zealand. For them, the Tane Mahuta is considered to be an important figure in the form of the Lord of the Forest that has been considered to have legal rights. Apart from the forest, the mountain along with a former National Park Te Urewera and the Whanganui River have all been declared as legal entities having legal rights. Interestingly, implementing the guardianship principle, the Maori tribe has been recognized as the legal person having rights, powers, duties and liabilities to protect and preserve the nature which is extremely crucial to them. A special legislation called the Whanganui River Claims Settlement Act 2017 has been passed that guarantees protection for the river with its health and well-being being maintained and other provisions like funding, restriction on trade activities, coordination group, collaborative group and others have been explicitly provided for.

Belize, a Latin American nation that has most of its landmass open to the sea is known for the Belize Barrier Reef which is the second-longest barrier reef in the world recognized by the UNESCO as a heritage site. This reef is more than 225 million years old and is home to over 60 species of coral reef fish and 500 other species. This also happens to be the Mesoamerican Biological Corridor that links the North and South of America and is a hub of enormous migratory species. So, the importance of the nations in totality and the reef is specific can be construed when looked at from the point of global preservation of nature. However, in 2009 a cargo ship collided with the Mesoamerican Reef near Cay Glory that damaged near about 6000 square metres of the pristine reef. When this was brought before the Supreme Court of Belize, the hon'ble court held that a reef is not owned but is a living being- a part of the national heritage of Belize that cannot be sacrificed^x. The company was made responsible and directed to pay

compensation of 11 million Belize dollars with 3% interest per year for the environmental catastrophe ensued and the cost of restoration. There are also a few instances of indirect protection of the nature in Belize where the Sarstooch Temash Institute for Indigenous Management launched a Maya Lands Registry in August 2011 towards the protection of the rights of nature through the scheme of guardianship of the Maya tribes of Belize.

Colombia another Latin American State granted legal rights to the Rio Atrato River that empties itself into the Caribbean Sea near the border with Panama through the Colombian Constitutional Court. In its decision, the Rio Atrato River was considered to be a “subject of rights” and that it must be protected as an autonomous entity subject to rights. In its judgement, the hon’ble court declared that “the human species are just one more even within a long evolutionary chain that has endured for thousands of years and, therefore, they are in no way the owners of the other species, neither of the biodiversity nor the natural resources^{xi}. In furtherance to this, the court once again in 2018 declared the Colombian Amazon as an entity as a subject matter of rights, and beneficiary of the protection, conservation, maintenance and restoration. Accordingly, it held that the national and local governments should strive towards achieving the same. These instances bring to light the eco-centric approach that has driven the Colombian Constitutional Court and efforts in the form of court decisions and adoption of certain documents like the Intergenerational Pact for the Life of the Colombian Amazon have been undertaken.

In a historical move, the Uttarakhand High Court in India in its landmark decision *Mohd. Salim vs. State of Uttarakhand & Ors.*^{xii} the sacred perennial rivers of Ganga and Yamuna were considered living entities possessing the right to survive. These rivers were “declared [as] *persons in loco parentis* as the human face to protect, conserve and preserve Rivers Ganga and the Yamuna and their tributaries^{xiii}. The officers were directed to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well-being of these rivers. Even though the Supreme Court overruled the decision, it is delightful to observe that the notion of Rights of Nature has made its way to the Indian sub-continent.

4. SCHOOLS OF THOUGHT ON RIGHTS OF NATURE

In the discourse of Rights of Nature, four distinct schools of thought- Deep ecology, Social Ecology and Bioregionalism, Disenchantment and Ecofeminism have developed that ushers in different conceptualizations about upholding of rights of nature. This section shall focus on these schools shedding light on the philosophies and working of these schools of thoughts.

Disenchantment

The not so known Neo-Marxist Frankfurt School of critical theory founded by Max Horkheimer and Theodore Adorno has had much significance in the context of the development of environmental ethics. The essence of the theory lies in a cyclic process and portrays how we come back to elements that make us what we are which is more inclusive wherein nature forms an inseparable part of this understanding.

The idea that this theory of radical ecology seeks to promote is based on the evolution of science and technology that has led humans to gradually dissociate from nature which Adorno and Horkheimer represent as the problem of “human alienation”. Nature in the earlier days of civilization was understood to be something magical, metaphysical and incomprehensible. People feared the wrath of nature. Nature flowed as per its own course without any interference. But,

with development in technology and rationality, this enchanting element gradually subsided and that has led as per the advocates of this theory to environmental degradation and ecological crisis.

With the evolution of technology natural and human processes have become predictable that can be easily manipulated. Thus, nature remains no more a mystery. It can be controlled, if not tamed- at least so as what some people believe. This has thrown the human populace to a situation where the sense of wonderment and awe is not lost alongside the loss of fear of nature. Thus, positivism “disenchants” nature- along with everything that can be studied by the sciences, whether natural, social or human (Environmental Ethics, 2015). Today, nature has become a commodity for consumption, whose materialistic value or aesthetic value is to satisfy the desire of the anthropocentric world. According to critical theorists, the oppression of “outer nature” through environmental science and technology is bought at very high prices where there is the complete suppression of our own “inner interests”. In order to find a solution for this and remedy the alienation, the advocates of critical theories propagate and promote replacing the narrow positivistic and instrumentalist model of rationality with a more humanistic one where ethical, sensuous, aesthetics and expressive aspects of human life shall play a critical role. It is thus a movement which shall forge a relationship between Romanticism and Enlightenment, to return to anti-deterministic values of freedom, spontaneity and creativity- a mechanism to bring about enchantment to the human consciousness. This Adorno terms as “re-enchantment” to be facilitated through aesthetic experience to make lives meaningful. This outlook has given way for another branch of critique of the prevalent environmental protection regime, i.e. “eco critique” (Luke, 1997).

This approach defends legitimate anthropocentrism and enables us to envision an independent, unified and transcendental environmental jurisprudence to be set up to ensure that there is a real effect of the movements and are not superficial because “putting something called Nature on a pedestal and admiring it from afar does for the environment what patriarchy does for the figure of woman” (Morton, 2007).

New Animism

Another group of environmentally conscious people form the segment of people who can be identified as new animists. They are mesmerized by the traditional and archaic practices of conservation of nature and believe that this disenchanted world which has lost all its charm and sacredness can be rejuvenated to some extent with the implementation of this idea. There shall be re-conceptualization of the boundary between persons and non-persons which shall enable respect for both of them. This way of understanding environmental ethics aims to bring transformation in the established political set up by questioning the faults and the reasons for which environmental laws fail to achieve success.

Social ecology and Bioregionalism

Countering the wrath of modern western ideas even while dealing with environment and shedding light on the ecological crisis from a societal point of view, Murray Bookchin, the key social ecologists drew inspiration from Naess’s deep ecology. His writings primarily focus on the prevalent hierarchies in nature which for him is the cause of a strained relationship between nature and the human world. The hierarchy that works in the society extends beyond its limits and extends to the domination of the environment which he identifies to be the critical point of ecological crisis. Being a radical ecologist focused on changing the political understanding of the environmental ethics framework, Bookchin augments an overhaul of the existing institutional system through radical, subversive and countercultural methods. In an attempt to reduce

dominance and eradicate hierarchical relationships, free-market and diminishing nature with its elements to mere commodities for consumption and enjoyment by the humans must be recognized and mitigated to liberate humans and nature from this unjust dependence.

Bookchin's ideas were strikingly different from that of Marxist thoughts that man's freedom is dependent on the complete domination of the natural world through technology (Bookchin, 1982) because social ecologists sought for a society that should be beyond this narrow orthodox fragmentation of humans and nature which must be identified as one whole and not as separate entities. This has been the common understanding even while drafting laws on conservation and protection of the environment which Jan G. Laitos & Lauren Joseph identifies as separateness and one of the primary reasons for the environmental laws to fail (Laitos & Wolongevicz, 2014). According to the philosophy of social ecology thus, only this kind of an approach can surely eradicate the hierarchical relationship that is found in the natural world and forge interdependence moving towards a blueprint for a non-hierarchical human society (Bookchin, 1982) for this approach seeks to confront social problems- the roots for ecological disintegration (Environmental Ethics, 2015).

While discussing the overhaul of the democratic institutions and replacing it with new modes of governance that is more compassionate towards the environment and its concerns, the idea put forth by these ecologists is doing away with an all-powerful centralized state and to them is merely another agent for domination. The proposal thus is to have an integrated society and as the terminology suggests- societal prerogatives must be directed towards a more sustainable and self-subsistent ecology with the integration of the local community through communal agriculture, participation through direct democracy and freedom through non-domination. This is the optimistic view of human's potential that shall enable to foster a benign relationship with nature. This idea can also be traced back to Elinor Ostrom's idea of Commons that envisions minimal intervention of the State and prominence being accorded to the local communities. For Bookchin thus, it is the bad and misunderstood relationship between nature and the human world that is the cause for the ecological crisis, not the relationship as such.

Critics have noted few problems in these arguments; it is felt that his ecological understanding seems to be an extrapolation from the natural world to human societies. As a result of the overemphasis on the human world which can steer through this ecological crisis, some scholars feel that in essence social ecology promotes anthropocentrism. Some have warned about the dangers of drawing inferences about how society should be organized from certain facts about how nature is. (Smith, 1995) Finally, that humans are the facilitators for these changes itself is a problematic understanding and probably brings us one step back to the vision that radical ecologists portray.

5. FUTURE IN SAFE HANDS

A remarkable feat achieved in the movement on environmental justice was in January 2014, when for the first time an International Rights of Nature Tribunal (What is an International Rights of Nature Tribunal?, n.d.) has been established with Global Alliance for the Rights of Nature. The inaugural meeting was held in Ecuador which appropriately was the originating State for Rights of Nature. This Tribunal is a permanent platform that works at multiple locations concerning cases of violations of the rights of nature that take place across the world. This remarkable feat has been a result of a wide range of social movements and organizations from the world over that aimed at taking actions against the attacks to nature in the name of 'progress'. In its first session, it had

admitted nine crucial cases of which one of them concerns the Great Barrier Reef, Australia and a few more concerning Ecuador. This initiative has strengthened the movement for augmenting Rights of Nature and has legally set a benchmark in this regard.

The important seventeen principles (*Jemez Principles for Democratic Organizing Activists meet on Globalization*, n.d.) of environmental justice that was adopted by the delegates to the First National People of Color Environmental Leadership Summit held in October 1991 in Washington D.C. had set the grassroots for the movement for environmental justice and the propagation of the Rights of Nature is definitively the single most example of the achievement of this endeavour.

6. CONCLUSION

'Rights of mother nature' has been a development of the modern legal era that has conjoined philosophy of environmental protection not through shallow laws but through overhauling the approach to perceiving nature as such with legal interventions which have given rise to earth jurisprudence. While the history of humankind has been a witness of phased development of the discourse of human rights for slaves, children and women; the fate of rights of trees, water, rivers, mountains and all other elements of nature is the same. Sadly, yet taking an optimistic approach, scholars of environmental justice and jurists compassionate to the cause of nature opine that the time has finally arrived when the lacuna in perceiving environmental protection only as a matter of sustenance of the human beings has been realized. It is from this realization that Christopher Stone began postulating the rights of trees while teaching his class on laws on the property to begin by questioning whether nature and its elements are considered as 'property' that can be owned and disposed of as per the whims of the human beings. This had an immense trickling effect in the then American society and could influence Justice Douglas who offered his dissent in the landmark *Sierra Club vs. Morton* case. Even though, as per the prevalent ideas on nature and mechanical approach to calculating environmental harm or loss, the majority differed with Justice Douglas, but the environmental justice movement had begun.

The paper has taken the journey of a few decades and has attempted to lay down the evolution of "rights of nature" and its growing acceptability by assessing its feasibility and rationality, from across the world. The development was initially limited to the interpretation of the judges of the courts in Latin America and America then being accepted as *sui generis* legal propositions in the form of Statutes and also being accepted within the constitutional framework that accorded the much-deserved recognition and respect to Mother Nature. In the process, several elements of nature have been conferred rights like rivers, mountains, forests and reefs. The movement took enormous speed when the international community recognized at various international platforms the rights of Mother Nature, whether at the United Nations or responding to the call of a particular environmentally conscious nation or a group of nations by adopting the Charter and accepting several Principles. A poignant component of this process has been the acknowledgement of the community's rights and inextricable link with elements of nature and their greater dependence for their survival as such. The Maori tribe of New Zealand serves as the perfect example of this. This was earlier identified as moral extensionism i.e. extending the rights of human beings to that of nature in a similar pattern as that of 'rights' of humans as such. This has undergone remarkable change where the guardianship of nature and its rights have been effectuated. The community that is heavily dependent on nature and the best protectorate of nature itself has been identified and responsibility bestowed upon them. This has become a very

effective mechanism of ensuring the protection of nature and having voices for the rights of nature to be put across in case of violation or derogation through these community members.

The jurisprudence has now become ripened enough to be taken up by other nations and supplanted in the domestic contexts with adequate customization to suit the needs of each jurisdiction. For countries like India that has been intrinsically related to an environment where its tribal population and many religions worship mother nature, an approach of this kind will not be difficult to immerse and ingrain into. It is heartening to see slowly such steps being advocated for by conscientious individuals who are propagating rights of elements of nature including forest, rivers and fauna. Even though there has been only one instance and that being a failed case so far as the apex court is concerned, there is a ray of hope considering that the beginning of the journey of environmental justice in America was through the failure of the landmark case but the groundbreaking dissent. Taking this approach is not only beneficial to Mother Nature but will, in turn, enrich the lives of mortal beings. Gathering inspiration from the possibility of accepting such a proposition, courts are encouraged at all levels within their jurisdictions to give effect to the principles of rights of nature and the legislature is urged to produce laws akin to the ones detailed in the paper that shall keep nature at the same footing with human rights ushering in the anthropogenic approach to conservation of nature. The cumulative outcome of this in India and all other nations shall be effectuating principles of Earth justice- the pristine form of justice that can ever be achieved!

Endnotes

ⁱ *Sierra Club vs. Morton*, 405 US 727 (1972).

ⁱⁱ *In Re Gault*, 387 US 1 (1967).

ⁱⁱⁱ 42 USC §§ 1973 (1970).

^{iv} Susan Borrás is associated with the Centre for Environmental Studies of Tarragona, Rovira I Virgili University, Spain.

^v Peter Burdon is an Associate Professor, Adelaide Law School, University of Adelaide, Australia.

^{vi} Jan G. Laitos is a Professor of Law, University of Denver Sturm College of Law.

^{vii} Lauren Wolongevicz is associated with the University of Denver Sturm College of Law.

^{viii} *Colorado river case*, 424 US 800 (1976).

^{ix} This case being referred is the *Wheeler vs. Director de la Procuraduria General Del Estado en Loja*, Jucio, Sentencia Cause, 30 Mar. 2011, Accion de Proteccion No. 11121-2011-00010.

^x The landmark decision in this regard is *The Attorney General of Belize vs. Westerdhaven Schiffahrts GmbH & Co KG and Reider Shipping BV*, A.D. 2009, Claim No. 45 of 2009, 2010.

^{xi} Decision T-622/2016.

^{xii} PIL No. 126 of 2014.

^{xiii} *Mohd. Salim vs. State of Uttarakhand & Ors.*, PIL No. 126 of 2014.

Bibliography

- Borras, S. (2016). New Transitions from Human Rights to the Environment to the Rights of Nature. *Transnational Environmental Law*, 5, 113–143. [https://doi.org/10.1017/\\$204710251500028X](https://doi.org/10.1017/$204710251500028X)
- Burdon, P. (n.d.). *The Rights of Nature: Reconsidered*.
- Jemez Principles for Democratic Organizing Activists meet on Globalization. (n.d.). www.ejnet.org/ej/
- Bookchin, M. &. (1982). *The ecology of freedom: The emergence and dissolution of hierarchy*. Palo Alto: Cheshire Books.
- Earth Charter. (n.d.). Retrieved from www.earthcharter.org
- (2019). Retrieved from Earth Charter: www.earthcharter.org
- Environmental Ethics*. (2015, July 21). Retrieved from Stanford Encyclopedia of Philosophy: <https://plato.stanford.edu/entries/ethics-environmental/>
- Laitos, J. G., & Wolongevicz, L. J. (2014). *Why Environmental Laws Fail*. <http://scholarship.law.wm.edu/wmelprhttp://scholarship.law.wm.edu/wmelpr/vol39/iss1/2>
- Luke, B. (1997). *A Critical Analysis of Hunters' Ethics*. Philosophy Documentation Centre.
- Morton, T. (2007). *Ecology without nature: Rethinking environmental aesthetics*. Cambridge: Harvard University Press.
- Rockström, J., Steffen, W., Noone, K., Persson, Å., Chapin, F. S., Lambin, E., Lenton, T. M., Scheffer, M., Folke, C., Schellnhuber, H., Nykvist, B., de Wit, C. A., Hughes, T., van der Leeuw, S., Rodhe, H., Sörlin, S., Snyder, P. K., Costanza, R., Svedin, U., ... Foley, J. (2009). *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*.
- Smith, F. S. (1995, December). *The Importance of Evaluating Rarity*. Retrieved from Society for Conservation Biology: <https://conbio.onlinelibrary.wiley.com/doi/abs/10.1046/j.1523-1739.1995.09061648.x>
- Stone, C. D. (n.d.). *Should Trees Have Standing? Toward Legal Rights for Natural Objects*. <http://heinonline.org/HOL/License>
- People's Conference on Climate Change and the Rights of Mother Earth* (n.d.). Retrieved from Global Alliance for Rights of Nature: <https://therightsofnature.org/cochabama-rights/>
- People's Conference on Climate Change and Rights of Mother Earth*. (n.d.). Retrieved from Global Alliance for Rights of Nature: <https://therightsofnature.org/cochabama-rights/>
- United Nations. (1982). <http://www.un.org/documents/ga/res/37/a37r007.htm>
- What is an International Rights of Nature Tribunal?* (n.d.). Retrieved from Global Alliance for Rights of Nature: <https://therightsofnature.org/rights-of-nature-tribunal/>