

INTEGRATING ECOLOGICAL SECURITY INTO NATIONAL POLICIES :THE CASE OF RIVER RIGHTS IN INDIA

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Executive Summary

Countries have started integrating ecological security into national policies due to such challenges as ecological degradation and the increasing decline of available resources. Among them, some countries have come up with innovative ways to reverse such challenges – the granting of legal personhood to nature. The policy brief centres on one of the innovative ways

applied in India – granting legal rights for the Ganges River. This paper however finds evidence that such kind of government intervention is still facing challenges due to different social, cultural, economic, and political contexts as well as the complexity of the granting process. To overcome these challenges, this study outlines policy options as follows:

- a) Integrate ecological security perceptives into national policies
- b) Establish better regional collaboration between India and Bangladesh
- c) Implement mitigation and adaptation measures based on the 'whole of society approach' – including from the maintenance of the minimum flow of the Ganges River to the strengthening of the existing infrastructure
- d) Allocate a dedicated budget for the River, and
- e) Spell out clear organizational boundaries among government and non-government agencies.

More importantly, policy planning and implementation of the River should be based on the fact that human beings themselves are a part of the ecological system and are embedded in it.

Introduction

Several countries have started integrating climate change into their national policies with the focus being mainly on human, national and international security (Challe, 2021) due to the emerging interconnected problems – for instance, ecological degradation and the declining availability of resources. Some countries such as Australia, New Zealand, and India have come up with innovative ways to conserve the ecosystem (O'Donnell & Jones, 2018). One such innovation is the granting of legal personhood to nature which entails recognizing nature as a whole or a specific part such as a river, as a legal entity. This policy brief examines the legal rights of rivers in India, and the challenges it faces in implementing them. Furthermore, the study analyses the approaches employed in enforcing these legal rights of rivers.

Granting the rivers legal rights in India and its challenges



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What if nature itself can fight back?

As Leonard (2015) mentioned that we are in a global climate crisis, our waters are also threatened, and we are facing a global water crisis. One of the main causes is that nobody owns the rivers, thus, people, companies, and communities tend to use and abuse their resources as much as they like. This leads to a shortage of such resources where everyone loses. Consequently, across the world courts are seeking to avoid this scenario by granting legal rights to nature (O'Donnell & Jones, 2018). It might be uncommon, however, the concept of giving legal rights to a nonhuman entity is not radical nor is it new as corporations can be a good example of a nonhuman entity having legal rights as human beings to sue and be sued. The Ganges and Yamuna Rivers in India are legally a person and can legally do the same.

In 2017, the court in the state of Uttarakhand ordered that the Ganges and its main tributary, the Yamuna, be accorded the status of living human entities because of their sacred and revered status. It recognizes the river 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 (ELAW, 2017). The milestone ruling was inspired by the case of the Whanganui River in New Zealand which was declared a living entity with full legal rights by the government of New Zealand. This legal personhood grants the

river the ability to be visible in a court of law, have its voices heard as a person protected under the law. Meaning that if someone harms the rivers by polluting or damaging them then the eyes of the law it is the same as harming a person. It is hoped that these laws will make a big difference for the rivers and the people that depend on them. The court appointed three officials to act as legal custodians responsible for conserving, protecting, and upholding the health and well-being of the rivers and their tributaries. It also ordered that a management board be established within three months.



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The River with ecological challenges

The Ganges River of India has become the first non-human entity in the country to be granted the same legal rights as people. However, such kind of granting is still facing challenges to deliver the outcomes. On the one hand, the River, which rises in the Himalayas and empties into the Bay of Bengal, is considered sacred by more than 1 billion Indians, and its basin supports hundreds of millions of people making it one of the most densely populated regions on earth. On the other hand, the River has been facing ecological challenges: the untreated sewage, as Lodrick et al (2021) stated, dumped into the river, industrial waste, agricultural runoff, remnants of partially burned or unburned bodies from funerals and animal carcasses all contribute to polluting the Ganges. Given the direct and main pollution induced by human activities, the Ganges main tributary the Yamuna is also polluted with sewage and industrial waste to the extent that it can no longer support life. Nearly 19 million of Delhi's population, for example, has been using the water from the Yamuna as drinking water which is treated chemically before being supplied.

The complexity beyond the rights

Though the concept of granting legal rights to nature can be ideal in conserving and protecting nature, extending such legal rights to a nonhuman entity involves many complexities. In the case of the Ganges and Yamuna Rivers, the transboundary nature of the rivers makes enforcement of the rights accorded to it challenging. The appointed guardians for the rivers appealed to the Supreme court arguing that their responsibilities of the rivers are not clear as the rivers extend beyond the borders of Uttarakhand into several states and as well as neighbouring Bangladesh (O'Donnell, 2018). It, therefore, becomes difficult to enforce these rights across states beyond the borders of Uttarakhand due to differences in laws and governance systems.

Moreover, making a river a person and giving it the power to sue means that it can also be sued, thus, taking nature's case to court comes down to who can afford it in terms of legal action. There have been cases in Ecuador in which NGOs won in court against companies in protecting the rights of nature but when the companies failed to comply with the court's ruling the NGOs could not afford the cost to continue fighting in court (O'Donnell, 2017). In India, the court has not spelled out the source of financial support for the implementation of the legal rights to the Ganges and Yamuna Rivers.

Lack of commitment from the government and conflict of interest has also been a hindrance in the enforcement of river rights. According to O'Donnell (2017) officials complained that the state government of Uttarakhand and neighboring Uttar Pradesh were not cooperating with federal government efforts to set up a panel to protect the Ganges. And although the responsibility of enforcing these rights was assigned to specific people by the court, these people hold roles in the state government which can cause conflicts of interest as its independence from government is not certain which can affect the way they act on behalf of the rivers.

The unclear organizational boundaries that the court failed to give the Ganges and Yamuna Rivers may as well limit the ability of the assigned guardians to act cohesively on behalf of the rivers and expose them to the risk of interference from the state government (O'Donnell and Garrick 2017).

Recommendations

Taking a cue from the case of India, the national government should first integrate ecological security into national policies, especially climate change and environmental policies of the country. This should moreover be legally binding: meaning that laws should be adopted to enable implementation of the policies on conservation and protection of the ecosystem. This will also help in implementing the Paris Agreement on climate change as the countries argued that lack of legal binding was one of the reasons that they failed to meet their intended commitments (William Nordhaus, 2020).

In addition to national-level integration, second, regional collaboration, for example, between the governments of India and Bangladesh, should be established among countries on ecological grounds. This will help in addressing transboundary conflicts among countries as rivers do not necessarily follow human-made political boundaries and therefore requires a cross-boundary approach.

To address the ecological security challenges, third, mitigation and adaptation measures should be implemented hand in hand. The 'whole-of-societal approach' should be applied – these measures could be from an individual level, societal level to policy level approaches as it demands collective effort. Moreover, targeted policy intervention should be adopted, as suggested by Srinivas, Singh, & Shankar (2020):

- Maintenance of minimum flow of Ganges as the free flow of the river is related to its self-cleaning ability
- Sustainable farming practices through, for example, encouraging organic farming, subsidizing to farmers to practice crops rotations
- Recycling wastewater from industries as the approach can be said as a sustainable method and it is economical for the long term, despite the high initial cost of installation
- Awareness among common masses and better stakeholder participation – this should be done from individuals, communities, society along the rivers to different levels of government.
- Innovative sanitation facilities – for example, a bio-digester toilet could be a good initiative.

- Reinforcing the existing sewerage infrastructure, for example, the lack of uninterrupted power supply from electricity has resulted in shutting down the operations of sewerage infrastructure.

Fourth, dedicated financial supporting should be allocated for river-related activities including cleaning the river. The funding sources could come from the government's budget as well as non-government organizations.

Lastly, clear organizational boundaries should also be spelled out when granting the rights of nature. This would help the appointed guardians who are to act on behalf of nature to effectively carry out their responsibilities and enforce the rights vested in them.



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Conclusion

These legal rights granted to nature such as the rights of the river may not be able to immediately revive or control the damages, but they could transform the legislative approach to nature and reduce the current domination of developmental projects and exploitation of rivers. It can also open up an opportunity to understand the issues of social responsibilities and transboundary rivers with the possibility of collaboration between neighbouring countries on ecological grounds. Furthermore, non-human entities: the natural environment and animals, for example, should be centered when it comes to the ecological system, which is usually overlooked. More importantly, policy planning and implementation should be based

on the fact that human beings themselves are a part of the ecological system and are embedded in it.

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