The Ever-escalating Theoretical Dynamics of Nature's Rights in India

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Abstract

The Rights of Nature (RoN) is a novel and transformative approach to environmental protection. Over the years, global environmentalists have formulated many theories for the recognition and protection of Rights of Nature through legislative initiatives. This research paper investigates the escalation of the theoretical dynamics of RoN in India. Worldwide, the theoretical dynamics of the RoN has started with the reflex theory and progressed through the common heritage of mankind (CHM) theory, the common concern of humanity (CCH) theory, and the legal personhood theory before reaching at the legal naturehood theory. Instead of overtly recognizing or protecting RoN, it has been discovered that in India, the reflex theory has implicitly extended a limited protection to nature and its components by recognizing and defending human rights against nuisance and negligence. The CHM theory looks at only spatial natural resources and allows the worldwide community to peacefully exploit and share the advantages of the natural resources found in the seabed region, but it doesn't endorse legal standing rights to nature and its components. The Indian environmental jurisprudence has no explicit acknowledgment of the CHM theory. Re-orienting the CHM theory, the CCH theory liberates the natural resources from the spatial restrictions makes a call for establishment of cooperative mechanics for the protection and promotion of the natural resources of common concern within the national jurisdictions viz. biodiversity, and beyond the national jurisdictions viz. climate change. However, this theory has likewise failed to accord legal standing rights to the nature and its components. It is noted that the

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CCH theory for environmental protection has been thoroughly explored by Indian judiciaries. The Indian judiciaries are now debating the legal personhood theory for RoN. Finally, this study concludes that the legal naturehood theory has not yet found a home in India. This research paper is presented in six sections. Section I is the introduction; section II deals with the legal reflex theory and RoN; section III examines the CHM theory and its limited contribution in the development of RoN; section IV describes the role of CCH theory in the development of RoN; section V is a detailed discussion of legal personhood theory that has transformed entire RoN movement in India; section VI discusses legal naturehood theory for the RoN; and section VII is the conclusion and suggestions.

Key Words: *Rights of Nature, Legal Reflex, Common Heritage of Mankind, Common Concern of Humanity, Legal Personhood, Legal Naturehood.*

I. Introduction

Since humanity depends on nature and its processes and all people are interdependent, protecting the environment is one of society's core principles.[1] Nature is a resource that all people share. Up till now, the legal status of natural resources has changed from *res nullius* to *res in rem*. The majority of legal systems have acknowledged that flora and fauna are *res nullius*, which indicates that they are not owned by anyone but can be used and appropriated by anyone upon acquisition or capture. The *res nullius* denies that humans have a shared stake in natural resources.[2] The *res cummunis* concept, which declares that humanity has common ownership over natural resources and permits their common appropriation while prohibiting their individual use, was developed as a result of the *res nullius'* rejection of humanity's shared interest in natural resources.

Different legal theories for recognizing rights of nature (RoN) have developed over time. Worldwide, the theoretical dynamics of the RoN has started with the reflex theory and progressed through the common heritage of mankind (CHM) theory, the common concern of humanity (CCH) theory, and the legal personhood theory before reaching at the legal naturehood theory. RoN is indirectly informed by the legal reflex theory as being submissive

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[1]Alexandre Kiss, The Common Heritage of Mankind: Utopia or Reality? 40 International Journal 423–41 (1985).

[2]Dinah Shelton, Common concern of humanity, V Iustum Aequum Salutare 33–40 (2009).

to people's rights to live in peace and without excessive disruption. According to this theory, nature is protected to the extent necessary for human existence, well-being, integrity, and progress. In general, the direct protection of people's right to a healthy and unpolluted environment in a legal framework indirectly protects the rights of nature, particularly the right to develop and evolve and the right to remain healthy and unpolluted. Only humans have the right to a clean and healthy environment; nature itself is not entitled to legal protection against its deterioration. Under the tort law, Indian courts have formulated and implemented this principle for environmental protection in situations including trespassing, negligence, and nuisance. The CHM theory looks at only spatial natural resources and allows the worldwide community to peacefully exploit and share the advantages of the natural resources found in the seabed region, but it doesn't endorse legal standing rights to nature and its components. The Indian environmental jurisprudence has no explicit acknowledgment of the CHM theory.

Re-orienting the CHM theory, the CCH theory liberates the natural resources from the spatial restrictions makes a call for establishment of cooperative mechanics for the protection and promotion of the natural resources of common concern within the national jurisdictions viz. biodiversity, and beyond the national jurisdictions viz. climate change. However, this theory has likewise failed to accord legal standing rights to the nature and its components. It is noted that the CCH theory for environmental protection has been thoroughly explored by Indian judiciaries.

However, the legal protection of nature and its elements have been extended by the common concern of humanity (CCH) theory. However, this approach has also failed to give nature and its constituent parts legal personhood. The development of legal personhood theory has addressed this weakness by giving nature and its constituent parts all corresponding rights and duties akin to the natural human. The Indian judiciaries are now debating the legal personhood theory for RoN. The Uttarakhand High Court ruled in 2017 that rivers such as the Yamuna and Ganaga, meadows, woods, marshes, jungles, springs, grasslands, and waterfalls have legal personality and are entitled to all the rights and obligations of a living person for their protection and preservation. The court has, further, declared these rights akin to fundamental rights. However, the Supreme Court halted the implementation of these two RoN rulings due to technicalities when the State of Uttarakhand filed an appeal. The Supreme Court commented, in reverse, that if legal rights of nature are assigned the same status as legal rights of live humans, who would be held

liable for the repair of damages caused by natural disasters like as floods, droughts, and earthquakes?

The naturehood theory is a new theoretical breakthrough in RoN movement. It is a novel and non-anthropocentric theoretical advancement. According to this school of thought, humans and environment have different rights and obligations. Unlike human, nature possesses certain fundamental rights to be restored, rejuvenated, and recreated without an accompanying obligation. According to this theory, rivers have the right to flow freely, but neither they nor the state, which is in charge of them, are obligated to compensate or make up for the harm that floods bring to people. The RoN's naturehood theory is still in the early stages of development and has not yet been incorporated by courts in any case or included in any nation's legal codes. Nonetheless, this concept is finding some reflection in *A. Periyakaruppan v. State of Tamil Nadu*,[3] where Justice S. Srimathi favors avoiding the use of concepts like the doctrine of sustainable development, the precautionary principle, and the polluter pays principle since they are anthropocentric and encourage sustainable destruction.

II. Legal Reflex Theory and Rights of Nature

The "legal reflex"[4] theory is a conventional legal process that acknowledges a given thing's rights indirectly by acknowledging the rights of other objects it is connected to, rather than explicitly. Regarding nature, this theory acknowledges that only humans are capable of having legal rights; it does not acknowledge "nature" as a legal entity. According to this theory, "nature" is a thing that human's control. This theory safeguards nature to the degree required for the survival, welfare, integrity, and advancement of humanity. Overall, the rights of nature, specifically the right to stay healthy and unpolluted and the right to develop and evolve, are indirectly safeguarded under the direct protection of individuals' right to a healthy and unpolluted environment in a legal framework. The right is exclusively conferred upon human people, who may assert a claim to a clean and healthy environment; nevertheless, nature itself cannot seek legal protection against its degradation.

In terms of international legal frameworks, the Declaration of the United Nations Conference on the Human Environment of 1972 is the first international

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[3] 2022 SCC Online Mad 2077.

[4] The term 'legal reflex' is used by Jens Kersten as a contrast to the 'legal personhood' theory for the rights of nature. See, Jens Kersten, Who Needs Rights of Nature? RCC Perspectives 9–14 (2017).

text to reference reflex theory. This declaration, titled 'Human Environment', makes the environment submissive to humans from the start by proposing 26 universal inspirational and guiding principles for the preservation and promotion of the human environment. This declaration does not recognize the right of the 'environment' as an independent legal entity, but rather seeks to establish a global consensus to maintain, restore, and improve the capacity of the earth,[5] as well as to safeguard the natural environment and ecosystem for the well-being and economic development of current and future generations.[6]

At the domestic scale, the reflex theory has been developed and applied by the courts to extend indirect protection to environment as an object subservient to the human by directly protecting their civil rights. The courts have issued injunctions and compensatory orders in the cases of nuisance, negligence and trespass of land under the law of torts. The primary aim of such injunctions and compensatory orders has been the protection of people's civil right to peaceful and undisturbed living. It has indirectly protected that facet of environment which was connected with the human's civil rights to peace and comfort. Courts' primary goals have been to safeguard human life and health, which has been reflected in the legal protection of nature and its components. The reflex theory does not provide nature any legal rights of its own.

Courts have ordered the protection of property within the civil rights of individuals to hold property where they have found that an act of nuisance has caused material harm to the property. For instance, in the case of *St. Helen's Smelting Co. v. Tipping*,[7] the House of Lords issued an order protecting trees that are located on an estate inside the designated industrial area. Regardless of whether the trees are located in an industrial area or not, Lord Westbury L.C. decided that the fumes from the copper smelting plant constitute a nuisance if they cause significant harm to the trees.

Indian courts have used the reflex theory to safeguard the environment. The Indian Supreme Court rejected the Ratlam Municipal Council's argument of inadequate funding in *Ratlam Municipal Council v. Shri Vardhichand*[8]

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[5]Principle 3 of the Declaration of the United Nations Conference on the Human Environment, 1972, UN Doc. A/CONF.48/14/Rev.1 (New York, 1972).

[6]Principle 2 and Proclamation 2 of the Declaration of the United Nations Conference on the Human Environment, 1972, UN Doc. A/CONF.48/14/Rev.1 (New York, 1972).

[7](1865) XI House of Lords Cases (Clark's) 642; 11 ER 1483, https://www.e-lawresources.co.uk/st-helens-smelting-co-v-tipping-1865#google_vignette

[8]AIR 1980 SC 1622

and directed the council to reduce its budget for less important things and elitist programs in order to utilize it for community health and cleanliness initiatives. Justice Krishna Iyer has emphasized that the magistrate is required by section 133 of the Code of Criminal Procedure, 1983, to issue an order for the removal of a public nuisance. Failure to comply with this order may result in penalties outlined in section 188 of the Indian Penal Code, 1860. Public nuisance, according to Justice Iyer, is endangering not only human health and life but also the social justice component of the rule of law. In addition to laying the groundwork for distributive justice and polluter pays principles for the future, Justice Iyer has unlocked the potential of the courts to transcend conventional legal notions.

In *M.C. Mehta v. Union of India*[9] the Indian Supreme Court had denied application of strict liability rule of *Rylands v. Fletcher*[10] and developed absolute liability principle holding that an enterprise that engages in a hazardous or inherently dangerous industry that poses an potential risk to the safety and well-being of the people employed in the plant and living in the vicinity possesses the community an absolute inalienable responsibility to guarantee that, in the event that any damage happens, the enterprise must be declared liable under a responsibility to guarantee that the potentially hazardous or inevitably dangerous activity must be carried out with the highest possible standards of safety. If any damage occurs due to such activity, the enterprise must be held completely responsible for it, even if it took every necessary precaution.

III. Common Heritage of Mankind Theory and Rights of Nature

In a 1967 address to the United Nations, Maltese ambassador Arvid Pardo introduced the common heritage of humanity (CHM) idea as a comprehensive and ethical notion of international environmental law that takes into account the ocean floor and seabed outside of sovereign borders as a CHM.[11] By designating marine areas with abundant natural resources as a topic of international commons, the CMH theory aims to supplant Grotius' legal idea

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[9]AIR 1987 SC 1086.

[10](1868) LR 3 HL 330.

[11]Arvid Pardo, Address to the 22nd Session of the General Assembly of the United Nations (U.N. GAOR, U.N. Doc. A/6695, New York, NY, 18 August 1967). Prue Taylor, Common Heritage of Mankind Principle, 2011th ed., 10 vols., in K. Bosselmann, D. Fogel, *et al.* (eds.), Berkshire encyclopaedia of sustainability. 3/10, The law and politics of sustainability (Berkshire, Place of publication not identified, 2023), III.

of "freedom of high sea."[12] The CHM idea, which aims to safeguard certain shared interests of all people through a unique international legal framework, is one step ahead of the *res communis omnium*.[13]

The CHM theory emerged in the United Nations Convention of the Law of the Sea, 1982 (UNCLOS III) and declared the seabed areas and its resources a CHM[14] on which none of the states or persons has the right to ownership[15] rather its ownership right is vested into the International Seabed Authority (ISA) that acts on behalf of all humankind[16] ensuring the equitable distribution of financial and other benefits arising from lucrative activities in the seabed regions considering needs of the developing nations and promotes ecological balance of the marine environment.[17] Only a small section of the marine environment is regulated by UNCLOS III, which is insufficient to fully replace the freedom of the high sea.

The Agreement regulating the Activities of States on the Moon and Other Celestial Bodies, 1979 (the Moon Treaty) included the CHM theory and stated that the moon and its natural resources were CHM.[18] The moon transcends national sovereignty claims.[19] It stated that no nation, body, or individual owns the moon, its surface, any portion of it, or its natural resources; additionally, no state, body, or individual may assert ownership of any portion of the moon based on the location of their personnel, spacecraft, facilities, or equipment.[20] This agreement gives right to the state parties to explore natural resources without any discrimination[21] that runs counter not only to the theory of CHM but also to the main purposes of establishment of the international regime proposed under this agreement including *inter alia* orderly and safe development of the natural resources of the moon.[22]

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[12]Prue Taylor, Common Heritage of Mankind Principle, 2011th ed., 10 vols., in K. Bosselmann, D. Fogel, *et al.* (eds.), Berkshire encyclopaedia of sustainability. 3/10, The law and politics of sustainability (Berkshire, Place of publication not identified, 2023), III.

[13]Alexandre Kiss, The Common Heritage of Mankind: Utopia or Reality? 40 International Journal 423–41 (1985).

[14]Article 136 of the Third United Nations Convention of the Law of the Sea, 1982 (UNCLOS III). U.N. Doc. A/6695

[15]Id, Article 137

[16]Id, Article 140

[17]Id, Articles 143-145

[18]Articles 11(1) of the Agreement governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (the Moon treaty). U.N. Doc. Supplement No. 46 (A/34/46)

[19]Id, Articles 11(2)

[20]Id, Articles 11(3)

[21]Id, Articles 11(4)

[22]Id, Articles 11(7)

Non-appropriation, shared benefits, international management, and exclusive peaceful use of natural resources are the four key features of the CHM theory.[23] However, the CHM theory's ability to acknowledge and defend nature's rights is severely constrained. First, it applies to the unique natural resources found in the ocean, seabed, and celestial bodies; second, it only applies to spatial materialistic objects; third, it sounds like the principles of sustainable development but gives the targeted natural resources no standing rights before administrative or judicial institutions; and fourth, it imposes no enforceable obligations on the states, organizations, and individuals involved in the conservation, promotion, and protection of these natural resources. The CHM theory's shortcomings prevent it from being included in other international or regional treaties or conventions for the protection of other topics in other domains, such as the convention on biological diversity and the convention on climate change.[24] Due to their interests, both industrialized and developing nations have generally rejected the CHM theory. Because they fear losing their sovereignty over natural resources inside their borders due to intervention and control by an international entity created for these resources, emerging nations have criticized the CHM theory. The CHM's implied benefit-sharing scheme was rejected by the industrialized nations.[25]

The CHM theory for the defense and acknowledgment of the rights of nature and its constituent parts is not included in any Indian legislation or court decisions.

IV. Common Concern of Humanity Theory and Rights of Nature

Alongside the CHM theory, the common concern of humanity (CCH) theory was created as a theory of international environmental law.[26] According to some experts, the CCH theory emerged in reaction to the implications of the CHM theory.[27] The subject matter, application, and goal of the CHM

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[23]Jimena Murillo Chavarro, Common Concern of Humankind and Its Implications in International Environmental Law, 5 Macquarie Journal of International and Comparative Environmental Law,133—47 (2008).
[24]Ibid.
[25]Ibid.
[26]Dinah Shelton, Common concern of humanity, V Iustum Aequum Salutare 33–40 (2009).
[27]Jimena Murillo Chavarro, Common Concern of Humankind and Its Implications in International Environmental Law, 5 Macquarie Journal of International and Comparative Environmental Law,133—47 (2008).

theory and the CCH theory are different. While the CHM focuses on spatial natural resources, the CCH theory encompasses all natural resources of common concern that exist both within and beyond national borders.[28] While the CCH theory does not view state sovereignty as a barrier to the preservation and advancement of particular natural resources of shared interest, like biodiversity and climate change, the CHM theory is stated to be in opposition to state sovereignty.[29] While the CCH theory suggests protecting and promoting natural resources of common interest, the CHM theory seeks to develop an international system to oversee cooperative exploration and fair distribution of spatial natural resources.[30] Therefore, the CCH theory demands the creation of cooperative mechanisms for the protection and promotion of natural resources of common concern both inside national jurisdictions, such as biodiversity, and outside of them, such as climate change. It also rejects the danger of common ownership of nations and critically examines natural resources free from spatial limitations.[31]

Since cultural and natural resources have exceptional universal value, the World Heritage Convention of 1972 treats them as a shared human concern. The international community is required to work together to protect these natural resources within the state parties' territorial jurisdiction.[32] The CCH concept can be found in Principle 7 of the Rio Declaration on Environment and Development, 1992, which calls for stakeholder nations to work together in a spirit of global cooperation to conserve, maintain, and restore the integrity and well-being of the earth's ecosystem.[33]

The Indian constitution and court rulings expressly uphold the CCH theory for protection and recognition of rights associated with nature. States are

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[28]Dinah Shelton, Common concern of humanity, V Iustum Aequum Salutare 33–40 (2009).

[29]Bharat H. Desai, International Environmental Law and its Interface with India's Domestic Law, in P. Cullet, L. Bhullar, *et al.* (eds.), The Oxford handbook of environmental and natural resources law in India 39–60 (Oxford University Press, New York, 2024).

[30]Frank Biermann, Common Concern of Humankind: The Emergence of a New Concept of International Environmental Law, 34 Archiv des Völkerrechts 426–81 (1996).

[31]Friedrich Soltau, Common Concern of Humankind, 1st ed., in C. P. Carlarne, K. R. Gray, *et al.* (eds.), The Oxford Handbook of International Climate Change Law 203–12 (Oxford University Press, United Kingdom, 2016).

[32]Ibid.

[33]UNGA, Report of the United Nations conference on Environment and Development. UN Doc. A/CONF.151/26 (Vol. I) (United Nations General Assembly, 1992).

required by Article 48 to enact legislation that forbids the killing of cows, calves, milch, and draught animals. The state is required under Article 48A to establish policies for the preservation of the nation's forests and wildlife as well as for the enhancement and protection of the environment. Article 51A(g) mandates that citizens take action to safeguard and enhance the natural environment, including forests, rivers, lakes, and animals, as well as to show compassion for all living things. The District Planning Committee and the Metropolitan Planning Committee, respectively, use the term "common interest" in a similar sense of CCH in Articles 23ZD(3)(a)(i) and 243ZE(3)(a)(ii) to refer to "coordinated spatial planning of the locality, distribution of water and other physical and natural resources, integrated development of infrastructure and conservation of environment."

The Indian Supreme Court has ruled that sections 48A and 51A(g), which impose a basic duty on the State and citizens to preserve and enhance the natural environment, forests, rivers, lakes, and animals as well as to show compassion for all living things, form the basis of Indian environmental law.[34] In the case of *Rural Litigation Entitlement Kendra Dehradun (RLEK) v. State of Uttar Pradesh*,[35] the Supreme Court ruled that the limestone dispute in the Doon Valley should be closed. The court held that the right to a healthy environment is fundamental under Article 21 and used the concept of sustainable development to balance lucrative activities with ecological preservation. The Supreme Court ruled in *Subhash Kumar v. State of Bihar*[36] that the enjoyment of the right to life envisioned in Article 21 requires access to clean water and air. The National Green Tribunal upheld citizens' basic right to a healthy, hygienic, and respectable environment in *Sher Singh v. Government of Himachal Pradesh*.[37] Article 48A of the Constitution requires the State and Article 51A(g) of the Constitution to safeguard and enhance the environment and its constituent parts. The Supreme Court ruled in *M. C. Mehta v. Kamal Nath*[38] that the State is the custodian of natural resources and has a duty to preserve, enhance, and utilize them exclusively for public purposes. In order to repair damaged ecosystems, the court additionally addressed the polluter pays principle. The Supreme Court used the polluter pays principle in *Indian Council for Enviro-Legal Action v. Union of India*,[39] ordering

[34]T.N. Godavarman Thirumalpad v. Union of India & Ors., (2002) 10 SCC 606.
[35]AIR 1985 SC 652.
[36]AIR 1991 SC 420.
[37]CWPIL No. 15/2010 (NGT Principal Bench), decided on February 06, 2014.
[38]AIR 1996 SC 711.
[39]J.T. 1996 (2) 196.

the polluting sector to cover the cost of restoring the damaged ecological. The precautionary principle and the polluter pays principle are crucial components of sustainable development, which seeks to strike a balance between ecological and development, according to the ruling in *Vellore Citizens Welfare Forum v. Union of India*.[40] There are other similar Indian court rulings that address nature and its elements as a topic of shared human interest in various ways.

V. Legal Personhood Theory and Rights of Nature

The legal personhood theory for the rights of nature has been introduced by U.S. national Christopher D. Stone in 1972 through his seminal article *"Should Trees have Standing Rights? Towards Legal Rights for Natural Objects."*[41] Stone has advocated for procedural rights such as the ability to participate in environmental impact assessments and be represented in court under human guardianship.[42] The American courts were unable to accept Stone's case for the legal personality of natural things.[43] Nonetheless, Stone was able to overtake Justice Douglas's dissenting decision in the Sierra Club case (1972) about the standing rights of inanimate natural things under Article III of the US Constitution. The Tamaqua Borough, a Pennsylvania municipality, became the first municipality in the United States to pass rights of nature legislation in 2006, almost 35 years after the Sierra Club lawsuit. It has declared natural communities and ecosystem a 'legal person' under the guardianship of Tamaqua Borough residents along with ability to sue for injunctive, declaratory and compensatory reliefs[44] for violations of the rights of natural communities and ecosystems guaranteed under the Borough of Tamaqua Municipality Code, State and Federal civil rights laws.[45] Till date,

[40]AIR 1996 SC 2715.

[41]Christopher D. Stone, Should Trees Have Standing? Towards Legal Rights for Natural Objects, 45 South California. Law Review 450 (1972).

[42]Noah M. Sachs, A Wrong Turn with the Rights of Nature Movement, 36 The Georgetown Environmental Law Review 39 (2023).

[43]Stone's rush to influence Sierra Club v. Morton, 405 U.S. 727 (1972) became unsuccessful since the US Supreme Court had denied standing right of the natural objects through the Sierra Club.

[44]Viktoria Kahui, Claire W. Armstrong and Margrethe Aanesen, Comparative analysis of Rights of Nature (RoN) case studies worldwide: Features of emergence and design, 221 Ecological Economics 108193 (2024).

[45]Tamaqua Borough Sewage Sludge Ordinance, 2006, Ss. 260-66B.

by and large, the Borough of Tamaqua has propelled more than fifty five Municipalities of the U.S. to enact substantive RoN ordinances frequently conferring rights to nature to exist and flourish as a legal person.[46] These ordinances of the U.S. Municipalities remained mere ornamental and have been declared unconstitutional, arbitrary and capricious as being violative of due process clause by taking away legal rights of corporations guaranteed under the State and Federal laws.[47] As such, there is none effective legal frameworks in the U.S. to confer legal personality to nature to hold certain immutable legal rights.

Bolivia and Ecuador have literally implemented the legal personhood theory for the RoN. The first nation in the world to give nature constitutional rights is Ecuador.[48] By acknowledging nature as a legal person, the 2008 Ecuadorian constitution protects the subjective rights of nature to exist, preserve, and renew its life cycles, functions, structures, and evolutionary processes. The Ecuadorian constitution encourages and permits natural individuals, legal entities, and communities to uphold and defend the rights of nature by appealing to public authorities and encouraging respect for all fundamental elements of an ecosystem.[49]

In *Wheeler v. Director de la Procuraduria General del Estado en Loja, Corte Provincial de Justicia de Loja* (2011) is the first case on RoN in Ecuador involving a road expansion project diverting the Vilcabamaba river without complying environmental impact assessment. The constitutional court of the Ecuador has applied rights of nature enshrined in article 71 of the Ecuadorian constitution. In *Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza yAmbiente and others v. Presidente de la Republica* (2021), related to regulations for permitted activities in mangroves, the Ecuadorian constitutional court ruled that every component of the nature has peculiar functions that are interconnected with the whole ecosystem. Mangroves are similarly interconnected both inside and between ecosystems and humans. Because of this, mangroves have a constitutional right to the preservation of their life cycle, functions, structures, and evolutionary processes.

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[46]Noah M. Sachs, p. 49, note 31.

[47]Erin Ryan, Holly Curry and Hayes Rule, Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement, 42 Cardozo Law Review 2447–576 (2021).

[48]Claudia Coral et al., Extractivism triggering new forms of governance for the rights of nature: The case of Northwest Ecuador, 156 *Geoforum* 104111 (2024).

[49]Constitution of the Republic of Ecuador, 2008, Art. 71.

The Bolivian Law of the Rights of Mother Earth, 2010, and the Bolivian Framework Law of Mother Earth and Integral Development for Living Well, 2012, both instantly mirrored the Ecuadorian constitutional approach of RoN. It has proclaimed Mother Earth to be a dynamic living entity made up of complementary, interconnected, and inseparable living things.[50] Mother Earth has been endowed with seven distinct rights: the ability to preserve living systems, natural processes, and the capacity for regeneration; protection from genetic modification; preservation of the water cycle, air quality, and composition; efficient and prompt restoration of man-made ecological damages; and pollution-free living conditions.[51] Mother has been accorded legal standing with all inherent rights in order to carry out its duties.[52] The RoN shall be exercised by the Bolivians in consistency with their individual and collective rights.[53] Violation of RoN is violation of individual and collective rights of the Bolivians.[54] Notwithstanding promising RoN within the Bolivian laws, the Bolivian courts couldn't enforce the RoN in TIPNIS case (Territorio Indígena y Parque Nacional Isiboro-Sécure) concerning military road broadening in heavily biodiversity protected indigenous region of Amazon and Bala-Chepete case concerning to construction of mega-hydropower project causing flood in the Madidi National Park and Pilon Lajas Biosphere Reserve.

There is no law in India that grants RoN by acknowledging the legal personality of nature and its constituent parts. Nonetheless, a few Indian High Courts have acknowledged that RoN gives the elements of nature legal identity. The *Animal Welfare Board v. A. Nagaraju*[55] is the first Indian case in which Supreme Court has recognized fundamental rights of the non-human species and declared fundamental rights of animals to safety of their lives. The court directed to the Animal Welfare Board of India and Central-State governments to take suitable measures to ensuring safety and wellbeing of animals by their custodians. Although the court did not acknowledge the animals' legal entities, this decision served as a precursor to the acknowledgment of nature's legal personality and its constituent parts, including RoN.

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[50]The Bolivian Law of the Rights of Mother Earth, 2010, Art. 3, https://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html
[51]The Bolivian Law of the Rights of Mother Earth, 2010, Art. 7.
[52]The Bolivian Law of the Rights of Mother Earth, 2010, Art. 5.
[53]The Bolivian Law of the Rights of Mother Earth, 2010, Art. 6.
[54]The Bolivian Law of the Rights of Mother Earth, 2010, Art. 38, http://files.harmonywithnatureun.org/uploads/upload1131.pdf

Mohd Salim v. State of Uttarakhand[56] is the first Indian case heard in the High Court of State of Uttarakhand for the preservation of rights of river. Justice Rajiv Sharma has not only reiterated sacredness of holy River Ganga and Yamuna among the Hindus but also emphasized on their spiritual and physical sustenance supporting life, natural resources, health and wellbeing of entire community. He declared River Ganga, Yamuna and their tributaries a living entity having legal personality[57] with all associated rights and duties of a living person for conservation of their lifecycle. He declared *persons in loco parentis* to the Director of NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand as a representative to protect and conserve lifecycle of these rivers. Within a span of ten days, the High Court of Uttarakhand has delivered another landmark decision through Justice Rajiv Sharma in *Lalit Miglani v. State of Uttarakhand*[58] and declared glaciers including Gangotri & Yamunotri, rivers, meadows, forests wetlands, jungles, springs, grasslands and waterfalls legal entity having a legal personality with all rights and duties corresponding to a living person for their preservation and conservation. The court has, further, declared these rights akin to fundamental rights. However, these two verdicts on RoN couldn't survive longer and their implementation has been stayed by the Supreme Court in an appeal by the State of Uttarakhand on grounds of technicalities. The Supreme Court remarked reversely that if legal RoN are accorded akin to legal rights of living human beings then who would be held accountable for restoration of damages caused natural calamities like flood, draught, and earthquakes etc.

But, Justice Rajiv Sharma of High Court of Uttarakhand has kept on his nature conservation wisdom and held in *Narayan Dutt Bhatt v. Union of India*[59] that all animals of animal kingdom are legal persons along with

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[55](2014) 7 SCC 547.

[56]Writ Petition (PIL) No.126 of 2014, High Court of Uttarakhand. Decided on March 20, 2017.

[57]Justice Rajiv Sharma applied the concept of juristic person to the Riers Ganga, Yamuna and their tributaries in the light of jurisprudence of juristic person developed by Salmond and Paton and applied by Indian Supreme Court in Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass, AIR 2000 SC 1421; Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta, (1969) 1 SCC 555; and Ram Jankijee Deities v. State of Bihar, (1999) 5 SCC 50. The concepts of juristic person have been developed for the fulfilment of needs of human development and serve the faith of society.

[58]Writ Petition (PIL) No.140 of 2015, High Court of Uttarakhand. Decided on March 30, 2017.

[59]AIRONLINE 2018 UTR 613.

all rights and duties akin to living human beings. All Uttarakhand residents are loco parentis of animals for protection of rights of animals. The nature centric approach of High Court of Uttarakhand has influenced High Courts of Punjab and Haryana and Madras to hold RoN viable. Justice Rajiv Sharma has manifested his view on RoN in *Karnail Singh v. State of Haryana*[60] and declared that whole animal kingdom including avian and aquatic are legal entities with distinct legal personality to hold corresponding rights and duties akin to living human beings and all the residents of Haryana are human face i.e. *loco parentis* of these animals. In Court on its Own Motion vs Chandigarh Administration,[61] the High Courts of Punjab and Haryana has declared Sukhna lake of Chandigarh city a living legal entity along with all rights and duties akin to human beings for its survival, conservation and protection. The court held residents of Chandigarh *loco parentis* of Sukhna lake.

The High Court of Madras has taken a long leap in *A. Periyakaruppan v. State of Tamil Nadu*[62] holding that Mother Earth is a living legal entity along with legal personality having rights and duties for its preservation and conservation and it is akin to rights and duties of natural human. The court, further, held that the State is *parens patraie* of Mother Earth for two basic reasons; first, the State is under obligation to take necessary steps for the protection and conservation of Mother Earth; and second, the State is a human face of the nature to litigate on its behalf before the legal forums. Justice S. Srimathi has condemned anthropocentric concept of sustainable development in *A. Periyakaruppan* holding that if under the guise of sustainable development nature is destroys then it's it not a sustainable development rather its sustainable destruction. For this reason, she objected further use of terms like Sustainable Development, polluter pays and precautionary principles.

VI. Legal Naturehood Theory and Rights of Nature

A novel and non-anthropocentric theoretical advancement for the recognition and protection of RoN is the legal naturehood theory. According to this school of thought, humans and environment have different rights and obligations. Humans and the environment each have their own rights and obligations. A person who has a specific legal right also has a corresponding obligation. To put it another way, if someone has the right to operate a company, he

[60] 2019 SCC ONLINE P&H 704.

[61] AIRONLINE 2020 P AND H 122.

[62] 2022 SCC Online Mad 2077.

is also accountable for making up for whatever harm his operations may have produced. On the other hand, nature possesses certain fundamental rights to be restored, rejuvenated, and recreated without an accompanying obligation. According to this theory, rivers have the right to flow freely, but neither they nor the state, which is in charge of them, are obligated to compensate or make up for the harm that floods bring to people.

The RoN's naturehood theory is still in the early stages of development and has not yet been proposed by courts in any case or included in any nation's legal codes. Nonetheless, this concept is finding some reflection in *A. Periyakaruppan*,[63] where Justice S. Srimathi favors avoiding the use of concepts like the doctrine of sustainable development, the precautionary principle, and the polluter pays principle since they are anthropocentric and encourage sustainable destruction.

VII. Conclusion and Suggestions

The concept of protection and preservation of nature is not unknown to Indians. It is deeply embedded in Indian civilization. Indians have kept nature ahead of their personal interests since long back and that can be seen in recent years also in the movements like Chipko. Growing demands of Indian uncontrolled population has compelled people to satisfy their developmental wants at the cost of nature. It has necessitated for the robust legal theories and juridical pronouncements concerning to RoN. Though there is no explicit mention of either of legal theories in Indian laws except the CCH theory that finds a feeble mention in the Indian constitution, the Indian courts have extensively recognized RoN within the legal personhood theory. These judicial recognitions of RoN have not attained universal acceptability across India rather these are the laws of the States within their jurisdictions. This state of law has left implementation of RoN under the challenges of cross-border issues and others. However, contribution of these High Courts to the RoN can't be undermined rather should be seen with gratitude in the light of *Municipal Corporation of Greater Mumbai v. Ankita Sinha*[64] wherein the Supreme Court of India has invoked the seventh-generation sustainability principle requiring all decisions to be informed with interest of people arriving seven generation down the line. I would suggest that Indian legislator should learn from the Ecuador and Bolivia to incorporate RoN in the Indian laws and similarly our courts should come forward with more strong rulings to hold RoN.

[63] 2022 SCC Online Mad 2077.
[64] AIRONLINE 2021 SC 861.