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Natural Entities Now Legally People: Enough to Save Them?

By Sangeetha Yogendran

Synopsis

In recent weeks, courts in New Zealand and India have granted legal personhood status to three rivers and glaciers. While this is a significant legal development, will this strategy to protect these entities from environmental damage and climate change be enough without proper enforcement?

Commentary

IN MARCH 2017, New Zealand's parliament granted the Whanganui river legal personhood, something which its Maori people have been fighting for since 1873. The granting of legal person status to the Whanganui River formally acknowledges the special relationship between the river and the Maori people.

A few weeks later, in India, the Uttarakhand High Court granted the Ganga and Yamuna rivers the status of "living human entities". India further extended this order to include other natural entities within this ambit of a "juristic (non-living) person". These entities now include glaciers, rivers, streams, rivulets, lakes, meadows, dales, jungles, forests, wetlands, grasslands, springs and waterfalls.

Personhood for Nature: What It Means

What does conferring such legal personhood mean? It translates to conferring all corresponding rights, duties, liabilities and rights akin to fundamental and legal rights of a living person on these natural entities. According to the High Court in India, the rationale for doing so was to preserve and conserve them.

The Court noted the fast rate of recession of both the Gangotri and Yamnotri glaciers

in the Himalayas. Any harm that is caused to these entities will be treated similarly to harm caused to human beings.

A juristic person for the purposes of the law does not necessarily have to be a human being. A juristic person can be any subject matter other than a human being, to which the law attributes personality. However, these rights give the natural entities the legal standing, often depicted as the ability to sue or be sued. This allows these natural entities to go to court to protect their rights.

In fact, these developments are not without precedent. In 2011, Bolivia granted all nature equal rights to humans, in her Law of Mother Earth, and Ecuador similarly did so in 2013. Also in 2013, New Zealand granted legal person status to the Te Urewera National Park.

Both New Zealand and India assigned the natural entities mentioned with legal guardians. The significance of assigning legal guardians is that in any foreseeable future action, they would not need to prove that damage (pollution for example) is harming humans; the proof would only need to be that the damage is harming the river or the other legal entities named.

Challenges in Enforcing Nature's Legal Rights

We are reminded of the significant legal development of giving corporations the status of a legal person, which endowed companies with particular legal rights, and allowed the company to be considered as distinct from the people involved in it.

Questions remain, however, as to whether granting natural entities with these types of legal rights are relevant or even appropriate for nature to begin with. While these developments should be lauded, the true challenge lies in their implementation and enforcement.

For these rights to be enforceable, both the legal guardians and those who use the resource must recognise their joint rights and duties. Any adjudication of a potential case will require specific expertise, time, money, adequate funding, resources and expertise. Enforcement of these rights will require judicial and legislative independence where such action could be politically sensitive.

Many questions remain about the roles and responsibilities of the guardians of the natural entities, how they will decide to enforce which rights, and when they might choose to do so. What is important is ensuring that these rights are used and enforced successfully, instead of remaining ideal on paper but worthless in practice.

Possible Implications on Natural Entities in Southeast Asia

So far, the natural entities named are mostly contained within the geographical limits of one state. This should make enforcement relatively more straight-forward. Enforcement will become much more complicated when dealing with natural entities that cross multiple borders and jurisdictions.

In Southeast Asia for example, any governance of natural entities might require the

need for transnational regional cooperation. Enforcing any legal rights on the Mekong River, for example, would require several countries working together to ensure that the rights can be enforced.

Granting legal status to the Mekong River might require different governance systems, one among countries in the lower Mekong region, and another that includes China as the source of the river. Before immediately suggesting granting the Mekong with legal personhood, it is important to examine whether granting legal rights would be realistic or effective. Efforts might be better devoted to cooperation mechanisms among all the countries concerned, instead of granting legal status first as an impetus for such cooperation.

How Feasible?

If legal status is granted for the Mekong, the motivations for doing so need to be clear. While the motive for doing so in New Zealand was to protect and acknowledge indigenous rights, and in India it was to mitigate climate change and pollution, perhaps both these motivations are relevant to the Mekong.

The Mekong is a lifeline for many in the region, and the many communities that live along the Mekong would greatly benefit from such recognition. But ensuring that such community security is enforceable in ASEAN will require a conversation on national and regional security as well, and will have to include China as a key partner of this conversation.

Whether granting legal status to entities that traverse multiple borders is even feasible remains to be seen. As countries struggle to cope with rising temperatures, melting glaciers and other extreme weather events, according natural entities legal status might be one way to stop, or realistically slow down, these effects.

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