

Rights of Nature

MOHD. SALIM V. STATE OF UTTARAKHAND AND OTHERS

The Hague Court of Uttarakhand. Decided 17 March 2017

A court takes matters into its own hands to protect India's sacred rivers.

Parties

- **Petitioner:** Mohd. Salim (resident)
- **Respondents:** State of Uttarakhand, Central Government and Others

Key Facts

- The Ganges and Yamuna river are considered sacred by Hindu people and constitute a water source for over 500 million people.
- Both rivers are among the most polluted rivers in the world as untreated sewage and industrial waste enter the rivers every day. Governmental efforts to clean up the rivers have failed so far.
- The judgment followed a ruling from 5 December 2016 in which the High Court of Uttarakhand dealt with mining activities and the encroachment of land near the Ganges river. The non-compliance with the Court's orders by government parties led to the second judgment in March 2017.

The Court's Decision

- **The Court declared that the Ganges and Yamuna river and its tributaries are legal and living entities with all corresponding rights, duties and liabilities.** The Court relied on jurisprudence recognising Hindu deities/idols as juridical persons. Since these types of legal persons are considered "children" under Indian law, they require the court to name a legal guardian to act on their behalf. The Court did so, using **parens patriae jurisdiction** (in a sense, to act as the legal guardian), which is rarely exercised by the judiciary.
- The decision is rooted in environmental and spiritual considerations. The Court recognised that the rivers' existence is threatened and that swift and extraordinary action is required to preserve and conserve them. The rivers are crucial to the health and well-being of India's population. Additionally, the Court emphasises the rivers' spiritual significance to Hindus.

The Court's Order

The Court ordered the Director of Namami Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand to protect, conserve and preserve the rivers as their legal guardians.

What now?

After the State of Uttarkhand appealed the March 2017 decisions, **the Supreme Court stayed the order. It found the decision legally unsustainable due to its impracticality.** It held, for instance, that the ruling does not deal with the question of who was to satisfy compensation claims in the case of casualties due to flooding. Furthermore, the Supreme Court was of the opinion that the judgment interfered with the rights of other provinces as the river runs through several states. The challenge also asserts that the Court went beyond its jurisdiction in granting rights to the river, as no party had pled this; Salim had only asked the Court to remove encroachments.

“ *The judges granted the Ganges and Yamuna river all rights, duties and liabilities of a living person without providing further specification on the practical implications.* ”

International Impact

- The ruling came only a week after New Zealand had granted legal personhood to the Whanganui River. However, in contrast to the comprehensive and clearly structured Whanganui River legislation which also provides funding for implementation, the judgment at hand remained particularly vague. **The judges granted the Ganges and Yamuna river all rights, duties and liabilities of a living person without providing further specification on the practical implications.** For instance, the judgment provided no guidance on how to deal with the illegal discharge of sewage and industrial waste into the river system, which could not be halted immediately.
- Another major concern stemmed from the Court's decision to declare state officials as the rivers' legal guardians. Since the governments conservation efforts had been unsuccessful to this point, critics questioned whether any beneficial outcome could be derived from a judgment that places the rivers' future in the hands of those who have proven to be unable to bring about change.
- Further criticism was directed at the spiritual basis of the ruling. Critics argued that rights granted to the Ganges and Yamuna river should be extended to non-sacred rivers. Despite this criticism, the ruling was praised for its progressive stance on the protection of nature and **Sedipta Sen**, history professor at the University of California, concluded that, **"Although the ruling was stayed a few months after its issuance, it is an interesting bending of the boundaries of nature, person, and deity that produce Ganga and Yamuna as vulnerable prototypes."**

Key Issues

Rights of Nature; Deities as Juridical Persons.

References & Further Reading

Judgments:

1st decision (Dec. 2016): [PDF Download here](#)

2nd decision (March 2017): [PDF Download here](#)

Additional information:

Shibani Ghosh "[The River as Being](#)"

Goutham Shivshankar "[The Personhood of Nature](#)"

Pallav Das "[Rights of Nature and the River Ganga](#)"