

WHY NOT NATURE RIGHTS?

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Prologue

Law has always been seen as recourse to weed out quite a large number of problems and environmental harm is no exception. Built on a large number of concepts that have been eulogised for many years, laws and legal systems, around the world, have helped in shaping the progress of mankind. ‘Rights’ and ‘Duties’ have always been seen as two important elements of law¹. These help understand as to why we need laws in the first place and create some sort of a basis for the laws that exist, by connecting them with the present day societal needs². The exact amount in which both these concepts gel is one of *the* factors that determine as to how effective a legal system is. This helps in asserting supremacy of law and ensures that the spirit of law is never lost.

While both these concepts have been treated as the two sides of a same coin, one cannot but help that one has been given a predominance over the other; atleast by the general public. Rights, provided by the state, were envisaged in such a way that they were given in lieu of one surrendering himself to the sovereign. Such surrender however, was conditional. The state was to provide rights that are necessary and also afford protection³. Thus, the system was one in which there was a mutually beneficial relationship.

Different philosophers had different conceptualizations of these concepts. Hohfeld⁴ dealt with only legal rights while Hart⁵ looked into moral as well as legal rights. Moral rights

¹ For more see, Stephen D. Hudson and Douglas N. Husak, *Legal Rights: How Useful Is Hohfeldian Analysis?*, 37 *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 45 (1980), available at <http://www.jstor.org/stable/4319347>, accessed on 06/03/2019.

² Carlton Kemp Allen, *Legal Duties*, 40 *The Yale Law Journal* 331 (1931), available at <http://www.jstor.org/stable/790175>, accessed on 06/03/2019, tries to answer the fundamental question as to whether law is to be regarded primarily as a system of rights or of duties. It puts forward the idea that a legal right, however so it has been defined, must mean some enlargement, or at least some guarantee of individual freedom, of action or of enjoyment. On the other hand, a legal duty denotes some restriction, necessitated by the interests of others, upon self-interest.

³ For more see, David S D’Amato, *The Birth of the State*, available at <https://www.libertarianism.org/columns/birth-state>, last accessed on 06/03/2019.

⁴ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 *The Yale Law Journal* 710 (1917).

were looked down upon by Jeremy Bentham⁶ while J S Mill⁷ opined that moral as well as legal rights are interconnected. Right concept was opined to be present in law and morality by Raz⁸ and Wellman⁹. While no consensus is there, White¹⁰ states that this conceptualization is as basic as other conceptualizations. Dworkin¹¹ stated that *rights* are to be treated individually due to their significance. However, a number of philosophers suggest that rights need be looked into in relation with other concepts¹².

While much importance has been accorded to *rights*, an equal footing need be provided for *duties* as well. After all, they are the co-relatives of *rights*¹³. When we do say that one has been imposed with a legal duty, it does convey the fact that a person is by law to do or not to do an act¹⁴. What forms the content of such a duty is the act that is to be done or not to be done¹⁵. This actually forms the very core matter of the duty¹⁶. The beauty of this concept is that irrespective of the fact as to whether one likes it or not, if there exists a duty to

⁵ See, H L A Hart, *Are There Any Natural Rights?*, 64 *Philosophical Review* 175 (1955). Also see, H L A Hart, *Between Utility and Rights*, 79 *Columbia Law Review* 828 (1979) and H L A Hart, *Bentham on Legal Rights*, in A W B Simpson (Ed.), *Oxford Essays in Jurisprudence*, Clarendon Press, Oxford, 171 (1973).

⁶ Jeremy Bentham, in H L A Hart (Ed.), *Of Laws in General*, Althone, London, 1970.

⁷ J S Mill, *Utilitarianism*, in J Robson (Ed.), *The Collected Works of John Stuart Mill*, Routledge, London, 1969.

⁸ Joseph Raz, *The Nature of Rights*, 93 *Mind* 194 (1984). Also see, Joseph Raz, *Legal Rights*, 4 *Oxford Journal of Legal Studies* 1 (1984).

⁹ Carl Wellman, *A Theory of Rights*, Rowman and Allanhead, New Jersey, 1985; Carl Wellman, *Real Rights*, Oxford University Press, New York, 1995.

¹⁰ Alan R White, *Rights*, Blackwell, Oxford, 1984.

¹¹ Ronald Dworkin, *Hard Cases*, 88 *Harvard Law Review* 1057 (1975). Also see, Ronald Dworkin, *Taking Rights Seriously*, in A W B Simpson (Ed.), *Oxford Essays in Jurisprudence*, Clarendon Press, Oxford, 202 (1973).

¹² Joseph Raz and Carl Wellman follow this line of thought and state that rights create newer duties with changing circumstances.

¹³ Arthur L. Corbin, *Rights and Duties* 33 *The Yale Law Journal* 501 (1924), at p. 501, available at <http://www.jstor.org/stable/788021>, accessed on 06/03/2019.

¹⁴ Henry T. Terry, *Legal Duties and Rights*, 12 *The Yale Law Journal* 185 (1903), at p. 186, available at <http://www.jstor.org/stable/781938>, accessed on 06/03/2019.

¹⁵ Henry T. Terry, *The Correspondence of Duties and Rights*, 25 *The Yale Law Journal* 171, at p. 172, available at <http://www.jstor.org/stable/786397>, accessed on 06/03/2019.

¹⁶ Henry T. Terry, *Duties, Rights and Wrongs*, 10 *American Bar Association Journal* 123 (1924), available at <http://www.jstor.org/stable/25711521>, accessed on 06/03/2019.

do or not to do, then the same is to be followed to the dot. This is because it is one's duty to do or not to do so¹⁷! This is amplified by the fact that due to the rights that we possess, we owe duties as well, which we owe towards the sovereign and other people. Thus, due to this, it is said that the concepts of rights and duties are co-relative. However, it is said that all rights have co-related duties but not the other way round¹⁸. For any mechanism to function well, these concepts should gel and create a better legal environment. This should take into consideration the fact that both individual as well as collective interests need be accounted for. Thus, a mutually symbiotic relationship between rights and duties is what is envisaged and ideal.

Quite often than not, rights assume significance over duties. It is only in those rare circumstances that duties come to the forefront. For this to happen, the concerned have to cross the *right* aspect and reach the *duty* aspect. Protecting the environment is considered to be a duty that each one of us has. This is corollary to the right to live in a healthy environment.¹⁹ Many factors have been able to put across the distinction between rights and duties, and religion is one of them. Since it has been able to shape man's actions, from time immemorial²⁰, it is considered to have great importance. The conceptualisation of religion has undergone vast changes; more noticeably so in this age of globalization²¹. All these have created newer avenues as far as environmental protection is concerned. Lynn White in 'The Historical Roots of Our Ecological Crisis', opined, "*What people do about their ecology depends on what they think about themselves in relation to things around them. Human ecology is deeply conditioned by beliefs about our nature and destiny - that is, by religion*"²².

¹⁷ Joseph Raz, *Liberating Duties*, 8 Law and Philosophy 3 (1989), at p. 5, available at <http://www.jstor.org/stable/3504627>, accessed on 06/03/2019.

¹⁸ Duties which do not have correlative rights are termed as 'absolute duties' by Austin.

¹⁹ This right has been read as part of the Right to Life, guaranteed under Art 21 of the Constitution of India.

²⁰ John E. Boodin, *The Function of Religion*, 46 The Biblical World 67 (1915), p.72, available at <http://www.jstor.org/stable/3142554>, accessed on 06/03/2019.

²¹ To know more about the changing face of religion in the era of globalization see P. Radhakrishnan, "Religion under Globalisation", 39 EPW 1403 (2004), available at <http://www.jstor.org/stable/4414836>, accessed on 06/03/2019.

²² *All about Religion and the Environment*, available at <http://www.uvm.edu/~gflomenh/ENV-NGO-PA395/articles/Lynn-White.pdf>, accessed on 06/03/2019.

Law learning and imbibing from religious tenets does have a great role to play in so far as environmental protection is concerned²³.

The very conceptual basis is put to test in the case of environmental protection as given the sorry state of affairs; one does feel that law has failed to a certain extent in ensuring its protection. Mere existence of laws has not yet been able to catapult the idea into the minds of the people and ensure that the environment is protected. The foundational basis of environmental law is on a more shaky ground than ever before and a revamp of the legal regime is the only way out to ensure that it continues to exist.

By delving into the problems attached to the existing environmental legal regime, a case is made for a change in approach. This new approach is amplified and examined through some of the developments that have been taking place, for quite some time now. Even then, it is felt that the same needs more impetus to enable it achieve its goal- *Environmental Justice*.

Intrinsic Value and Instrumental Value

What has been able to bring about a change in the way in which man has looked upon nature are two concepts- *Intrinsic value and Instrumental Value*. This juxtaposes morality and environmental protection. While one might come to a conclusion that the environment should be protected because we owe a duty towards successive generations, there is an equal, if not more strong argument, that the environment need be protected for its own sake! This is where the difference in approach as far as the earlier mentioned two concepts comes to the forefront. While *Intrinsic Value* tries to portray and attach value regardless of whether there is any use or not, *Instrumental Value* attaches value in furtherance of other ends²⁴! The second concept attaches a strong anthropocentric mentality and ensures that humans are better protected. Philosophers, even ancient ones like Aristotle have subscribed to this view²⁵.

²³ For an in depth analysis, see Andrew Greeley, "Religion and Attitudes toward the Environment", 32 *Journal for the Scientific Study of Religion* 19 (1993), available at <http://www.jstor.org/stable/1386911>, accessed on 06/03/2019.

²⁴ John O'Neill, *The Varieties of Intrinsic Value*, 75 *Monist* (1992) 119. Also see, John O'Neill, *Ecology, Policy and Politics*, Routledge, London, 1993 and Dale Jamieson, *Morality's Progress: Essays on Humans, Other Animals, and the Rest of Nature*, Clarendon Press, Oxford, 2002.

²⁵ *Politics*, Bk. 1, Ch. 8.

Even so, there are a number of discussions on the disruptive approaches followed by this view²⁶.

While Carson was able to start such a change²⁷, Lynn White²⁸ took a critical view of the Judeo-Christian way of life, which he attributed to the environmental crisis. The *Population Bomb*²⁹, for the first time put across that the human population was growing exponentially and resources would end pretty soon. The iconic *Earth Rise*³⁰ photograph showcased to the world, the *world* in which we live, together! Rawls³¹, discussed as to how animals as well as nature can be at the receiving end of a right conduct and Tribe³² delved into the relation between law and ethics. Law makers were urged to recognise these *rights* that certain things have of their own and steps were initiated to that effect too³³. Meadows and his MIT team, came up with work³⁴ with newer concerns as regards environment protection.

Extending Standing

While the concept holds good, extension of the concept of standing was one of the challenges that such philosophers had to face. Humans were seen as the only entity to which standing was to be given³⁵. It was concluded that even future generations can possess such

²⁶ See John Passmore, *Man's Responsibility for Nature*, Duckworth, London (2nd ed., 1980); Murray Bookchin, *The Philosophy of Social Ecology*, Black Rose Books, Montreal, 1990; and B G Norton, M Hutchins, E Stevens and T L Maple, (eds), *Ethics on the Ark*, Smithsonian Institution Press, Washington, 1995.

²⁷ See, Rachel Carson, *Silent Spring*, Houghton Mifflin Company, Boston, 1962.

²⁸ Lynn White, *The Historical Roots of Our Ecological Crisis*, 155 *Science* 1203 (1967)

²⁹ P R Ehrlich, *The Population Bomb*, Ballantine Books, New York, 1968.

³⁰ This was taken by Bill Anders in 1968, during the Apollo 8 mission and was published in the *Scientific American* in September 1970

³¹ John Rawls, *A Theory of Justice*, Harvard University Press, 1971.

³² Laurence Henry Tribe, *Ways Not To Think About Plastic Trees: New Foundations For Environmental Law* 83 *Yale Law Journal* 1315 (1974).

³³ See, National Environmental Policy Act, The United States of America, 1969.

³⁴ Dennis L Meadows *et al*, (Ed.), *Limits to Growth*, Universe Books, New York, 1972.

³⁵ John Passmore, *Man's Responsibility for Nature*, Scribner's, New York, 1974. See also, William T. Blackstone, *Ethics and Ecology* in Blackstone, William T. (ed.), *Philosophy and Environmental Crisis*, University of Georgia Press, Athens, 16 (1972).

rights³⁶. Animals were also to be provided standing and Singer and Reagan stated it to be *sentience*³⁷. Individual living organisms were said to have a *will to live* by Albert Schweitzer³⁸. This was further elaborated by Paul Taylor who opined that each living thing is a ‘teleological centre of life’³⁹, thereby portraying the fact that whatever it does will be for its own good. This was around when Aldo Leopold came up with a *Land Ethic*⁴⁰. He opined that “A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise”⁴¹.

These philosophers tried to carve a niche of their own and give some kind of a backing to the concept of standing. Even so, one cannot but help notice that the judicial system also waded into this area. In the USA, in *Scenic Hudson Preservation Conference v. Federal Power Commission*⁴², the court while holding that the Scenic Hudson Preservation Conference could be treated as an aggrieved party under S. 313 (a) of the Federal Power Act, laid down that it had the Right of Standing. A similar line of thought was taken in *Citizens to Preserve Overton Park v. Volpe*⁴³ as well. However, the *Sierra Club case*⁴⁴ proved to be a turning point in the sense that the previous situation was overturned. Hoping to influence the judges, Stone came up with his celebrated article⁴⁵, which tried to reason as to why standing need be extended.

³⁶ Alan Gewirth, *Human Rights and Future Generations* in Boylan, Michael (ed.), *Environmental Ethics*, Prentice Hall, New Jersey 207 (2001).

³⁷ See, Peter Singer, *All Animals Are Equal*, 1 *Philosophical Exchange* 243 (1974) and Tom Regan, *The Case for Animal Rights*, University of California Press, Berkeley, 1983.

³⁸ See, Albert Schweitzer, *Civilization and Ethics: the Philosophy of Civilization Part II*, (translated by John Naish), A & C Black Ltd, London, 1923.

³⁹ Paul W. Taylor, *Respect for Nature: A Theory of Environmental Ethics*, Princeton University Press, 1986.

⁴⁰ Aldo Leopold, *A Sand County Almanac: And Sketches Here and There*, Oxford University Press, Oxford, 1949.

⁴¹ *Ibid* at p. 218.

⁴² 354 F.2d 608 (2d Cir. 1965).

⁴³ 1971 U.S. LEXIS 96.

⁴⁴ *Sierra Club v. Morton*, 405 U.S. 727 (1972).

⁴⁵ *Should Trees Have Standing- Towards Legal Rights for Natural Objects*, 45 *Southern California Law Review* 450 (1972).

Though the majority took a view that the Club need not be given standing, the dissenting opinion of Justice Douglas⁴⁶, wherein he quoted Stone's article, assumes much significance. In his later writings, he expands the idea and brings within its scope newer arguments⁴⁷. Relying on *Palila v. Hawaii Dept. of Land & Natural Resources*⁴⁸ and *Loggerhead Turtle v. County Council of Volusia County*⁴⁹, this line of thought was expanded.

Providing Rights to Nature- A Road Less Travelled? Not Anymore!!

While many countries have followed different approaches in providing rights to nature and natural entities, what is looked into are some of the latest instances of such rights being provided for. The rights of a river, Turag in Bangladesh and the rights of Lake Erie, in the USA, two of the latest developments, will be used to catalogue the *Rights of Nature*.

This is not the first time around that nature was provided rights⁵⁰. India too has its own fair share of such decisions. In *T N Godavarman Thirumalpad v. UOI*⁵¹ the court opined that rivers were treated as goddesses and were afforded protection. In *Mohammed Salim v. The State of Uttarkhand*⁵² the court held that Ganga, Yamuna and their tributaries were held as *legal persons*. In *Lalit Miglani v. State of Uttarakhand and Ors*⁵³ Gangotri and Yamunotri glaciers and the surrounding parts including meadows, waterfalls, lakes and forests were held to have rights. Though the former case was stayed by the Supreme Court of India in *State of*

⁴⁶ *Sierra Club v. Morton*, 405 U.S. 727 (1972) at p. 742.

⁴⁷ See, Christopher Stone, *Should Trees Have Standing? And Other Essays on Law, Morals and the Environment*, Oceana Publications, New York, 1996 and Christopher Stone, *Should Trees Have Standing? Law, Morality, and the Environment*, Oxford University Press, London, 2010.

⁴⁸ 649 F. Supp. 1070 (D. Haw. 1986).

⁴⁹ 896 F. Supp. 1170 (M.D. Fla. 1995).

⁵⁰ As regards rights being provided for rivers, See, <https://www.clientearth.org/legal-rights-of-rivers-an-international-trend/>, last accessed on 21/03/2019.

⁵¹ (2002) 10 SCC 606.

⁵² Writ Petition (PIL) No.126 of 2014, decided on 20/03/2017. See, <http://www.tribuneindia.com/news/uttarakhand/courts/uttarakhand-hc-accords-human-status-to-ganga-yamuna/379739.html>, last accessed on 21/03/2019.

⁵³ WP (PIL) No. 140 of 2015. The judgment is available at <http://www.livelaw.in/uttarakhand-hc-declares-air-glaciers-forests-springs-waterfalls-etc-legal-persons/>, last accessed on 01/10/2017.

*Uttarakhand and Ors. v. Mohammed Salim and Ors.*⁵⁴ citing administrative reasons, the decision does hold great importance.

While such instances are aplenty around the world as well, proper implementation does pose a huge challenge. In the US, the *Tamaqua Sewage Sludge Ordinance, 2006*⁵⁵ was the earliest instance of such rights being provided. There were a number of other states also which took note of this development and came up with similar rights⁵⁶. The Supreme Court of Belize in *The Attorney General of Belize v. MS Westerhaven Schiffahrts GmbH & Co KG and Anr*⁵⁷ held that the Belize Barrier Reef was held to be a living thing. While constitutional rights were provided by Ecuador⁵⁸, Bolivia came up with a specific legislation- *Universal Declaration on the Rights of Mother Earth*⁵⁹. Colombia provided the Atrato river as well as the basin having rights to ‘protection, conservation, maintenance and restoration’⁶⁰. In April 2018, the Supreme Court of Justice of Colombia granted similar rights to the Colombian Amazon⁶¹.

New Zealand is yet another country which has provided rights to nature. Legal recognition was given to a national park by the Te Urewera Act, 2014. The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, gave the Whanganui River, after a 170 year old battle legal rights and the river was treated as a legal entity. A mountain was also given legal recognition⁶². Mexico, in 2013, passed the *Environmental Law for the Protection of the*

⁵⁴ Petition to Special Leave to Appeal No. 016879/2017.

⁵⁵ https://www.huffingtonpost.com/kate-beale/rights-for-nature-in-pas_b_154842.html, last accessed on 27/03/2019.

⁵⁶ Halifax, Hawaii, Santa Monica were some of them.

⁵⁷ Claim No. 45 of 2009, in the Supreme Court of Belize. Judgment available at <https://www.elaw.org/system/files/westerhaven.26.4.10.pdf>, last accessed on 21/03/2019.

⁵⁸ Chapter 7, Articles 71- 74, Constitution of Ecuador, available at <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>, last accessed on 27/03/2019.

⁵⁹ Available at <https://therightsofnature.org/universal-declaration/>, last accessed on 27/03/2019.

⁶⁰ Expediente T-5.016.242. The original decision is available at <http://cr00.epimg.net/descargables/2017/05/02/14037e7b5712106cd88b687525dfeb4b.pdf>, last accessed on 22/03/2019.

⁶¹ STC4360-2018. Judgment delivered by Judge Luis Armando Tolosa Villabona, on 05/04/2018. Original decision available at <http://files.harmonywithnatureun.org/uploads/upload605.pdf>, last accessed on 09/03/2019.

⁶² A Record of Understanding over Egmont National Park (Taranaki Maunga), 2017.

*Earth*⁶³ wherein the earth is treated as a living being. The State of Guerrero, in Mexico, amended its State Constitution in 2014 and included Art.2 which provides such rights. The new Constitution of Mexico City has in Art. 13, included the Rights of Nature⁶⁴. In Brazil, the Municipalities of Paudalho⁶⁵ and Bonito⁶⁶ brought about amendments to its organic law and included Rights of Nature. Costa Rica by an Executive Decree declared April 22 as National Day of Mother Earth⁶⁷. Australia had also provided legal recognition to River Yarra⁶⁸, The European Citizens Initiative came up with an End Ecocide Plan⁶⁹ aimed at providing such rights. One could also see that the same was incorporated in political agenda as well, the foremost being the Green Party of England and Wales⁷⁰. France is seeking to amend its Constitution and include such rights along with crime of ecocide, principle of non-environmental regression etc⁷¹.

Treading Newer Paths

The whole new conceptualization of *rights* in light of *nature* and *natural entities* being a subject matter capable of expression has opened up hitherto unknown avenues. Nations across the world have found ways and mechanisms in which such rights can be furthered and have pretty much come up with avenues providing such rights⁷². A few examples from across the world are looked into, which have, recently given *nature- rights*.

⁶³ <http://www.bdlaw.com/assets/htmldocuments/Mexico-City-Law.pdf>, last accessed on 02/04/2019.

⁶⁴ See, <https://www.earthlawcenter.org/international-law/2017/3/mexico-city>, last accessed on 02/04/2019.

⁶⁵ <http://files.harmonywithnatureun.org/uploads/upload720.pdf>, last accessed on 02/04/2019.

⁶⁶ <http://files.harmonywithnatureun.org/uploads/upload658.pdf>, last accessed on 02/04/2019.

⁶⁷ <http://files.harmonywithnatureun.org/uploads/upload741.pdf>, last accessed on 02/04/2019.

⁶⁸ Yarra River Protection (Wilip-gin Birrarung murrn) Act of 2017.

⁶⁹ Objective 1. For more see, <http://www.citizens-of-europe.eu/articles/end-ecocide-europe-campaign>, last accessed on 02/04/2019.

⁷⁰ <https://www.greenparty.org.uk/?q>, last accessed on 02/04/2019.

⁷¹ For more see, <http://files.harmonywithnatureun.org/uploads/upload716.pdf>, last accessed on 02/04/2019.

⁷² For more see, <http://www.harmonywithnatureun.org/rightsOfNature/>, last accessed on 02/04/2019.

The High Court of Bangladesh recently gave Turag River the status of a legal person⁷³. The Human Rights and Peace for Bangladesh filed a Writ before the High Court to save rivers from rampant encroachment based on a report in the Daily Star⁷⁴. There were a number of illegal structures and the same were sought to be evicted by this Writ Petition. Upon the direction of the High Court, the Gazipur CJM surveyed the area and noted that there were 30 odd illegal structures. They were directed to be demolished by the High Court. While some of the owners challenged this decision in the Appellate Division of the Supreme Court, the court had stayed the order and asked the High Court to dispose the matter.

One of the arguments that were raised was that the appellants were owners of the land and they had bought the land on the river banks and that they were at liberty to construct buildings. The bench consisting of Justices Moyeenul Islam Chowdhury and Md Ashraful Kamal heard the matter and opined that laws are being made to protect rivers, across the world⁷⁵.

Relying on the Public Trust Doctrine, the bench declared that the state is the trustee and has to ensure that all of its area is protected. While giving legal entity status to the river, the court asked the authorities to remove the illegal structures. The court said that the same will be applicable to every river in the country as well⁷⁶. The court also declared that the National River Protection Commission is the legal guardian of all the rivers and has to take all measures to protect rivers⁷⁷. The court said that if rivers are not protected from encroachment, the future of the country and its citizens' is in danger⁷⁸.

⁷³ See, <https://bdnews24.com/bangladesh/2019/01/30/bangladesh-court-gives-turag-other-rivers-status-of-legal-person-to-save-them-from-encroachment>, last accessed on 02/04/2019.

⁷⁴ “Time to declare Turag dead”, The Daily Star, Nov.6, 2016.

⁷⁵ See, <https://www.dhakatribune.com/bangladesh/court/2019/01/30/turag-given-legal-person-status-to-save-it-from-encroachment>, last accessed on 02/04/2019.

⁷⁶ For more see, <https://www.dhakatribune.com/bangladesh/court/2019/02/01/hc-stop-playing-blind-man-s-bluff-about-rivers>, last accessed on 02/04/2019.

⁷⁷ See, <https://www.daily-sun.com/printversion/details/367891/2019/01/31/HC-gives-%E2%80%98legal-person%E2%80%99-status-to-rivers>, last accessed on 02/04/2019.

⁷⁸ *Supra* n. 76.

Another recent victory of the *Rights of Nature* movement was the step that was taken by Toledo, Ohio⁷⁹, where they gave a lake, rights⁸⁰. Lake Erie was voted to have rights⁸¹; thereby paving the way for the lake to *exist, flourish and naturally evolve*⁸². The aftermath of this victory is that people can now bring lawsuits on behalf of the lake⁸³. This was the climax of a lot of regulations which tried to protect the lake and failed⁸⁴; even after it had been termed biologically dead⁸⁵. The lake was a hotspot for toxic algae blooms⁸⁶. This was also a victory for the citizens as the previous attempt wherein a lawsuit was filed was unsuccessful⁸⁷. The citizens wanted to reduce the *environmental burden* that the lake carried⁸⁸.

It was pointed out by Tish O'Dell that the whole idea stemmed from the realization that the people will have to take initiative to protect the lake⁸⁹. The Toledo water crisis in

⁷⁹ The petition can be assessed at <http://files.harmonywithnatureun.org/uploads/upload763.pdf>, last accessed on 02/04/2019.

⁸⁰ For more see, Matt Hickman, *Why this Ohio city just granted Lake Erie the same legal rights as humans*, available at <https://www.mnn.com/earth-matters/wilderness-resources/blogs/toledo-wants-grant-lake-erie-same-legal-rights-person>, last accessed on 02/04/2019.

⁸¹ 61.37% voted in favour of the Lake being provided rights. See, Pierre Bouvier, *In the United States, Lake Erie now has the legal right to "exist and prosper naturally"*, available at https://www.lemonde.fr/planete/article/2019/02/22/les-habitants-de-toledo-dans-l-ohio-appelles-a-donner-un-statut-juridique-au-lac-erie-pour-sa-survie_5426743_3244.html, last accessed on 02/04/2019.

⁸² See, S. 1(a), Lake Erie Bill of Rights.

⁸³ See, <https://www.loe.org/shows/segments.html?programID=19-P13-00009&segmentID=1>, last accessed on 02/04/2019. Also see, <https://www.nationalreview.com/corner/nature-rights-movement-lake-erie/>, last accessed on 02/04/2019.

⁸⁴ <https://celdf.org/2019/02/mother-jones-holy-toledo-this-ohio-city-is-voting-to-give-legal-rights-to-a-lake/>, last accessed on 02/04/2019.

⁸⁵ Michael Rotman, *Lake Erie*, <https://clevelandhistorical.org/items/show/58>, last accessed on 02/04/2019.

⁸⁶ Jason Daley, *Toledo, Ohio, Just Granted Lake Erie the Same Legal Rights as People*, <https://www.smithsonianmag.com/smart-news/toledo-ohio-just-granted-lake-erie-same-legal-rights-people-180971603/#ugOjrl6vAkAbYy3R.99>, last accessed on 02/04/2019.

⁸⁷ Malory Pickett, *Ohio Just Granted Lake Erie the Same Rights as a Human*, <https://medium.com/s/story/ohio-just-granted-lake-erie-the-same-rights-as-a-human-5403783279a>, last accessed on 02/04/2019.

⁸⁸ Common Dreams, *In 'Historic Vote,' Ohio City Residents Grant Lake Erie Legal Rights of a Person*, <https://www.ecowatch.com/lake-erie-bill-of-rights-2630261411.html>, last accessed on 02/04/2019.

⁸⁹ Jackie Flynn Mogensen, *Holy Toledo! This Ohio City Is Voting to Give Legal Rights to a Lake*, available at <https://www.motherjones.com/environment/2019/02/toledo-ohio-lake-erie-bill-of-rights-ballotmeasure/>, last accessed on 02/04/2019.

2014 was the catalyst to protect the lake⁹⁰. A lawsuit was filed against this Bill by Drewes Farms and it wanted the Bill to be held unconstitutional⁹¹. The argument was that the farm might incur a huge liability if the fertilizers used ran off into water sources. Though there were people for and against this Bill of Rights⁹², the whole idea seems to have captured the imagination of the larger public. Echoing the historic moment, Markie Miller of Tolodeans for Safe Water opined that this is the beginning of a new era⁹³.

The Lake and its watershed were to be treated as an ecosystem. Since the ecosystem had suffered a lot, the idea was to provide it rights. It suffers from algae blooms every summer and this threatens the various avenues to which the water is put to use⁹⁴. The Bill makes it unlawful for any corporation or government to violate the rights that have been given to the lake⁹⁵. It also makes it clear that even if permits, licenses, privileges, or any kind of authorization that have been accorded to the corporation, by the state or any federal agency, will not be valid in Toledo if it violates the rights given to Lake Erie⁹⁶. Fines are provided for⁹⁷ and actions can be raised by Lake Erie as the real party in interest⁹⁸.

⁹⁰Jesse Higgins, *Lake Erie first lake to be granted same rights as a human*, https://www.upi.com/Top_News/US/2019/02/27/Lake-Erie-first-lake-to-be-granted-same-rights-as-a-human/1661551286456/, last accessed on 02/04/2019.

⁹¹ Aris Folley, *Ohio city votes to give Lake Erie same legal rights as a person*, available at <https://thehill.com/policy/energy-environment/431859-lake-erie-becomes-first-lake-to-be-granted-the-same-legal-rights-as>, last accessed on 02/04/2019.

⁹² *Ibid.*

⁹³ Simon Davis Cohen, *Toledo Residents Vote to Recognize Personhood for Lake Erie*, <https://progressive.org/dispatches/toledo-residents-vote-to-recognize-personhood-for-lake-erie-davis-cohen-190227/>, last accessed on 02/04/2019.

⁹⁴ Yessenia Funes, *A U.S. City Just Granted Legal Rights to a Lake*, available at <https://earther.gizmodo.com/a-u-s-city-just-granted-legal-rights-to-a-lake-1832960779>, last accessed on 02/04/2019.

⁹⁵ S. 2, Lake Erie Bill of Rights.

⁹⁶ S. 2(b), Lake Erie Bill of Rights.

⁹⁷ S. 3, Lake Erie Bill of Rights.

⁹⁸ S. 3(d), Lake Erie Bill of Rights.

Musings over 'Nature Rights' and the Way Forward

Providing *rights to nature* obviously has had its own share of fair criticism⁹⁹. While those *for* such rights argue that it is an absolute necessity, others do criticise that providing such rights does have its own ramifications as well. Connecting it with the *duty* aspect that was discussed earlier¹⁰⁰, naysayers opined that if *rights* are provided, then *duties* should also be present. This would, in all certainty, open up litigation floodgates wherein *nature* will be on the receiving side! Imagine if a person sues a river for flooding his property! Seems scary, but then these are possibilities that are sure to happen!

All said and done, the current is stronger in favour of providing rights, exemplified by steps that are taken in various countries who want nature to be provided with rights. Gavin Barker argues that UK for example, where there is no written Constitution need provide recognition to such rights. He argues that constitutional considerations should include within it 'responsibility to nature', harmony and balance, amongst others, as complimentary to individual rights¹⁰¹.

The innovative remedies, discussed earlier, that were provided for by the court, does actually go a long way in ensuring that the rights which are given to such entities do hold good. It is up to the courts to figure out ways in which such rights can be provided for. Do these rights fall in the same bracket as those human rights that we possess or are these rights to be treated as a different class? The answer is a bit difficult and cannot be answered at one go.

The concept has been able to demolish the very crux of a basic tenet which held the human being as an exceptional creature. By providing rights to non-human entities, this line of thought has been done away with. There is absolutely no need and necessity to provide an elevated status to humans! It is high time that we understand that we are only a part of the thread that binds this world together. Arguments put across to the effect that the *value* of *rights* will fall down if different entities are provided rights too falls flat because, by building a strong basis of *rights* as well as *duties*, one should be able to do away with this notion. So

⁹⁹ Wesley J Smith, *The Return of Nature Worship*, Religion and Liberty 28 (3), available at <https://acton.org/religion-liberty/volume-28-number-3/return-nature-worship>, last accessed on 02/04/2019.

¹⁰⁰ Refer the prologue to the current article.

¹⁰¹ *Ibid.*

the onus is to create a balance of these two concepts and not give prominence to one over the other. While it can be argued that such rights do interfere with the Right to Development, as human activities would be seen as an attack over the environment, this line of thought too need be dispelled as we are to be seen not as opposing parties but rather as partners.

While it is true that the *Rights of Nature* Movement has been able to galvanize various nations into coming up with specific legislations, how far it is practical need be known¹⁰². This, for sure, is because the movement is still in its stage of infancy. Whether providing such rights will make a difference or not in affording standing and protection to nature and natural entities is something that time alone will be able to answer. While it is said that the conceptualization of *rights* have changed over time, the world does agree that many of the rights that have been specifically provided for by numerous international instruments have not yet been fully realised¹⁰³. Similarly it has been argued that *nature rights* too, albeit being a little vague and limited will have its day come in the near future.

The million dollar question therefore is and always should be - ***WHY NOT 'NATURE RIGHTS'?***

¹⁰² Sigal Samuel, *Lake Erie just won the same legal rights as people*, available at <https://www.vox.com/future-perfect/2019/2/26/18241904/lake-erie-legal-rights-personhood-nature-environment-toledo-ohio>, last accessed on 02/04/2019.

¹⁰³ See, Guillaume Chapron *et al*, *A Rights Revolution for Nature*, 363 *SCIENCE* 1392 (2019).