

Article

River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology

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Abstract: Designating rights for nature is a potentially powerful way to open up the dialogue on nature conservation around the world and provide enforcement power for an ecocentric approach. Experiments using a rights-based framework have combined in-country perspectives, worldviews, and practices with legal justifications giving rights to nature. This paper looks at a fusion of legal traditions, religious worldviews, and practices of environmental protection and advocacy in the context of India. It takes two specific legal cases in India and examines the recent high-profile rulings designating the rivers Ganga, Yamuna, and their tributaries and glaciers as juristic persons. Although the rulings were stayed a few months after their issuance, they are an interesting bending of the boundaries of nature, person, and deity that produce Ganga and Yamuna as vulnerable prototypes. This paper uses interview data focusing on these cases and document and archival data to ask whether legal interventions giving rights to nature can become effective avenues for environmental activism and spiritual ecology. The paper also assesses whether these legal cases have promoted Hindu nationalism or ‘Hindutva lite’.

Keywords: India; rivers; Hinduism; rights of nature; spiritual ecology; Ganga; Yamuna

1. Introduction

Designating rights for nature is a potentially powerful way to open up the dialogue on nature conservation around the world and provide some enforcement power for an ecocentric or nonhuman approach. Experiments using a rights-based framework have combined in-country perspectives, worldviews, and practices with legal justifications for giving rights to nature. This paper looks at such a fusion of legal traditions, religious worldviews, and practices of environmental protection and advocacy within India. It takes two specific cases and examines the recent high-profile rulings designating the rivers Ganga, Yamuna, and their tributaries and glaciers as juristic persons. The two cases, both heard in the High Court of Uttarakhand, India by the same bench of two Judges, are *Mohd Salim v. State of Uttarakhand and others* and *Lalit Miglani v. State of Uttarakhand and others*. These cases represent an earnest attempt by petitioners, advocates, and judges to enforce river and broader resource conservation by creatively combining religious and legal concepts of deity and person with a rights of nature approach.¹ However, the Supreme Court stayed these rulings a few months later, and by doing so rendered them a paper tiger (Mathur 2015). This paper nevertheless argues that these rulings are an interesting bending of the boundaries of nature, person, and deity that warrants an assessment of motivations and effects for religious and environmental practice in India. When thinking of spiritual ecology as a framework and method of practice that links religious practices with environmental concerns, the paper considers the role of legal vectors within this ambit to ask if legal interventions

¹ I have made this assessment after interviews with High Court and Supreme Court petitioners and advocates and a friendly meeting with the Judge in these cases in October 2018.

giving rights to nature have so far been beneficial for devotees or could be effective avenues for spiritual activism or religious environmentalism. The paper also addresses the critical question of whether there may be dangers involved with promoting legal rights to sacred nature if these initiatives also lead to religious nationalism or *Hindutva*.

The problems faced by the rivers of India in terms of pollution, reduced flows, and obstructions from dams have received a great deal of attention. Within this general concern, the rivers Ganga and Yamuna and their tributaries have grabbed the lion's share of the focus because they are important sacred rivers with distinct meanings and roles (Alley 1998, 2000, 2002; 2015; Alley and Drew 2012; Drew 2017; Eck 1982a, 1982b; Haberman 2006; Markandya and Murty 2000; Rauta 2015; Sanghi 2014; Tare and Roy 2015). These rivers have also drawn the attention of the courts and the new environmental tribunal. Some legal cases targeting them have become landmarks in global environmental justice.²

This paper analyzes the motivations for and the effects of these rights of nature rulings within the context of concerns related to spiritual ecology or religious environmentalism. Spiritual ecology is an international movement that highlights cases where religious and/or spiritual values and practices are interwoven with concerns and activities involving environmental or ecological protection or advocacy. Considering spiritual ecology as a broad framework for a diversity of approaches combining religious, environmental, and/or scientific advocacy, this paper asks the following questions in the Indian context of Hinduism, where religious and ecological values have complex historical relationships (Chapple and Tucker 2000). These questions, whose answers may not be mutually exclusive, are: How are these specific legal initiatives related to spiritual ecology or how do these principles become entwined with religion, spirituality and ecology in India? Do legal pronouncements such as these help devotees of rivers to revitalize them? Do the pronouncements strengthen existing cleanup activities or punitive orders against polluters? And since these judgements operate in a political context of government administration, do they help to forward other political or ideological goals apart from river conservation and cleanup? Since the political context also involves complex entanglements of religious interpretations and interests, the paper must also ask how and to what extent these rulings relate to the broader phenomenon of *Hindutva*, or Hindu nationalism. Do they promote Hindu nationalism, and to what degree? Extending the scholarship on *Hindutva* (e.g., Jaffrelot 2007, 2013, 2016; Ludden 2006; Zavos et al. 2004), Dasgupta (2015) and a few others have described what they call 'Hindutva lite', a 'softened approach' that draws on mainstream culture to promote Hindu values in less conspicuous ways. Dasgupta (2015, p. 123) explains, "Hindutva lite is that version of Hindu fundamentalism that avoids militancy yet gently upholds Hindu imageries to narrate an ideology."³ Is *Hindutva* or *Hindutva lite* a condition or consequence of these legal initiatives?

To answer these questions, the paper needs to explain the full extent of the meanings and trajectories embedded in the landmark judgment, since the notions of deity/Goddess, person, and nature have their own histories yet are blended together in the Judges' orders. This sets up a new legal logic, and the paper aims to assess it. The Judges link deity and person by invoking case precedents that have treated idols and deities as juristic persons. The Justices also explain how the deity or Goddess, as a potential juristic person, is also nature, and can therefore be granted rights of nature. The paper explains the legal logic and then shows whether such a logic is convincing and beneficial for

² See the order dated 20 September 2018 in Original Application No. 673/2018 In *The Matter of: News Item Published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB* for a summary of cases focusing on these rivers. See also (Alley 2008).

³ Pillalamarri (2018) takes a more benign definition of *Hindutva lite*: "Most Indians are neither Hindu nationalists nor secular liberals, but somewhere in between, as evidenced by the fact that the Congress Party's president, Rahul Gandhi, seems to have picked up with his newfound interest in Hinduism, derided by some on the right as 'Hindu-lite,' or 'Hindutva-lite.' But Hindu-lite is actually a good term to describe the beliefs of the middle class, the urban youth, and the emerging upwardly mobile lower-middle class. These groups are at once proud of and interested in India's past and culture, but also willing to apply these customs selectively at a personal and familial level, while being open to new ideas and cultural influences from around the world. Moreover, these groups remain skeptical of Hinduism as a political movement, and aren't interested in anti-Muslim rhetoric, instead seeing Hinduism more as a mascot for their identity."

devotees and activists of sacred rivers and whether it becomes a tool for advocacy, water conservation or pollution prevention.

First, a few of the central linkages from the judgement can be presented, before explanation of their historical origins is fleshed out. The Judges began the Salim ruling by describing briefly the sacredness of rivers for Hindus. They then cited several cases in which deities were determined to be juristic persons. For example, they wrote: “In 1969 (1) SCC 555 their Lordships of Hon. Supreme Court in ‘Yogendra Nath Naskar v. Commission of Income-Tax, Calcutta’ have held that a Hindu idol is a juristic entity capable of holding property and of being taxed through its Shebaitis who are entrusted with the possession and management of its property.” In the following, they cited, “1999 (5) SCC 50, their Lordships of Hon. Apex Court in the case of ‘Ram Jankijee Deities & others v. State of Bihar & others’ where the Judges further held that the deity/idol are the juridical person entitled to hold the property.”⁴ They wrote further: “In AIR 2000 SC 1421, their Lordships of Hon. Supreme Court in the case of ‘Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others’ have held that the concept ‘Juristic Person’ arose out of necessities in the human development-Recognition of an entity as juristic person- is for subserving the needs and faith of society.”⁵

The oldest part of their logic rests in the notion of juristic personhood. I begin by tracing the articulation of the category of juristic person in colonial India. I lay out the interconnections among legal notions, religious narratives and leadership, and colonial politics. The notion of juristic person is then explained in terms of postcolonial cases arbitrating religious property in India and then explained within the emerging transnational discourse on rights of nature after 2010. This overview provides background for a discussion of the nuances in individual motivations for the rights of nature approach in the two Indian cases on rivers. While describing these motivations and other responses to the rulings, the paper offers an assessment of whether Hindu nationalism or Hindutva emerges in full-fledged or lite form through this advocacy for rights of sacred nature. Then the paper addresses the implications of this rights of nature ruling for devotees who revere these rivers as Mother Goddesses. It also investigates whether these legal interventions helped devotees in cleanup or advocacy related to sacred rivers or whether the rulings drew the support of well-known advocates for river conservation.⁶

2. Methods and Data

This paper uses data collected in September and October of 2018 during interviews with participants in the legal cases described below.⁷ These interview data have been stripped of identifiers and pertain only to the nature of the legal arguments and procedures and the commentary on them. Interviews were also conducted with a sample of residents who work or live along the riverbanks of the river Ganga in Varanasi. Those interviews were tape-recorded and transcribed for use in the quotes appearing in this paper. Identifiers were stripped from these transcriptions. The sample of Varanasi residents was selected by walking transects along the riverbank steps (*ghat*) and selecting people performing a variety of tasks and activities. Pilgrims and tourists were not interviewed as their understandings of the pollution problems were not as clear as those of residents. The interview data were thematically analyzed and incorporated into the generalized statements described in the latter half of this paper. Other observations and generalizations made in the paper are drawn from the author’s thirty years of fieldwork. This fieldwork involved interviews and surveys and participant

⁴ Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. pp. 5–6.

⁵ Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. p. 7.

⁶ For example, social science theory and interpretations of human–nonhuman relations have accounted for relations between human and nonhuman animals and entities (e.g., Gagne 2018; Govindrajana 2018), human engagements with material agencies (Latour 2004), and spiritual ecology (Vaughan-Lee et al. 2016; Sponsel 2012, 2019), to name a few.

⁷ All subjects gave their informed consent for inclusion before they participated in the study. The study was conducted in accordance with the Declaration of Helsinki, and the protocol was approved by Auburn University IRB number 16-229 EP 1606.

observation among residents and pilgrims in cities and towns along the riverbanks and among legal practitioners in the Supreme Court, High Courts, and National Green Tribunal.

3. Juristic Persons, Deity's Rights, and Rights of Nature

The notion of a juristic person underlines the Judges' argument for rights for river Goddesses and the argument that river Goddesses also constitute nature. Other legal and legislative initiatives in which rights of nature have been articulated around the world give some basis for this, as they have joined cultural or indigenous ideas of personhood with the preservation and conservation of nature (La Follette and Maser 2017; Nash 1989; Pecharroman 2018). These experiments have drawn from the concept of juristic person, first defined in Roman law as *persona ficta*. This is a category of law used for nonhuman entities when societies want to recognize them as subjects of rights and obligations (Sohm 1892). In India, the notion of juristic person first emerged in the context of colonial rule and in negotiations between British officials and members of religious communities. The notion drew upon Hindu interpretations of the personhood of deities. During colonial rule, the British established religious idols as juristic persons to decide land, property, and entitlement disputes. This 19th century notion of idols as juristic persons, Doctor (2018) explains, was "a legal fudge, devised by British jurists as a way of getting out of the tedious process of sorting out the claims of various Indian parties, with their complexities of caste and community practices. It is convenient and flattering to devotees, but remains a fudge, with problems that will only show up with time." Doctor (2018) elaborates:

"When these complexities met British laws it usually ended up in Court. And as British judges dealt with increasing disputes over temple property, they hit on the idea of treating the deity as a legal person in whom ownership could rest. At one stroke this avoided having to sift through all the claims of tradition, while also neatly appearing to respect Indian sentiments by treating the idols as living persons. In 1869 the Privy Council, the judges who made up the highest court of appeal in the British Empire decided the case of Maharani Shibessouree v. Mothooranath Acharjo by declaring that the shebait, the manager of the deity, could only act as a trustee on behalf of the deity. In 1875, in another case, the Privy Council articulated that the shebait had to act "as the manager of an infant heir." And in 1887, in what is called the Dakor Temple case, the Bombay High Court finally stated explicitly that the "Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person." As Birla notes, the time was ripe, since this was just a year after the Indian Income Tax Act was passed which allowed exemptions for religious or public charitable purposes."

Over time, the concept of a juristic person became a legal shell, employed to argue for a deity's property claims (Davis 2010), for the preservation of temple endowments for public use, as well as for their removal from the commercial sphere (Birla 2009; Das Acevedo 2016; Sontheimer 1965),⁸ and for temple land acquisition (Mehta 2015). As Das Acevedo (2016, p. 858) notes, "Worshippers who are able to propitiate deities clearly benefit from the existence of temples, but case law has consistently upheld the deity as the official—if figurative—beneficiary of the temple's assets. Assets endowed to a temple are rarely if ever dedicated to the general public; rather they are dedicated to a purpose (rituals, support for pilgrims) which colonial law anthropomorphized in the figure of the deity, or they are

⁸ Endowments were held to: (1) remove assets from the commercial sphere according to the intentions of private individuals, (2) transform assets into the private property of deities, and (3) leave assets in the management of individuals who existed in private contractual relationships with the deity (Birla 2009). Das Acevedo (2016, p. 858) adds, "Lack of differentiation between beneficiaries of the temple (that is, of the very existence of an institution in which one may worship and participate in a religious community) and beneficiaries of the temple's assets is responsible for much mischief (see, for instance, Michael C. Baltutis, 'Recognition and Legislation of Private Religious Endowments in Indian Law', in Baird, Religion and Law in Independent India, p. 449 in which this distinction is not maintained)."

dedicated to the deity itself.”⁹ Interestingly, then, the deities’ rights could advance the interests of Hindu religious communities to claim property and assets, but such a rights attribution to deities also ensured broad-based public access to such property and wealth. The rights attribution also supported the practices of visiting these temples and using their spaces and facilities. When British adjudicators declared the rights of deities, as persons, to own land in India, this reaffirmed the ritual of *prana pratistha*, where the life spirit of the god or goddess is invited into the idol (*murti*) to establish personhood.

Generally, in Hindu philosophy and practice over the last couple of centuries, deities have been viewed as personifications of abstract energies and qualities or as real beings embodying divine energies and qualities. Both views have resulted in worship; either the spiritual aspirant’s worship is directed toward the energy symbolized by the deity or the deity epitomizes the energy or quality that is the object of devotion. In the worship of Ganga today, these approaches are commingling, for Ganga is ‘the Supreme Shakti of the Eternal Shiva’, “our *tarini*” (remover of sin), and a personified goddess in several mythological stories (Alley 1998, 2002; Eck 1982b, p. 219). In one story, she was a daughter of King Himavat and Queen Menavati. In another, Ganga was devoted to Lord Krishna in his divine abode, and this made Radha jealous. In another, Ganga’s devotion to Shiva made Parvati jealous, and she cursed Ganga to drop down to earth and flow as a river. Ganga is conceived by all as a Mother and provider; devotees bathe in her waters to be cleansed of their sins; the ashes of the dead are immersed in her waters and lead the departed soul to a higher birth; and her name is chanted with the belief that it will bestow freedom from poverty and protection and lead to liberation. Yamuna is the daughter of Surya (the sun god) and Saranyu. The Lord of death, Yama, is her brother (Haberman 2006; Kumar and James 2013).¹⁰

These are two trajectories from within Indian Hinduism and law. Another logical trajectory evolves from a Rights of Nature framework developing out of conservation debates in the 1970s. Today environmental activists and cause lawyers around the world are arguing that bestowing rights to natural entities such as national parks, rivers, water sources, and others can help in conservation and protection (Gleeson-White 2018; Lafollette and Maser 2017; Pecharroman 2018). Lafollette and Maser argue that the rights of nature framework “uses western legal constructs, such as personhood and rights-based approaches, to shift the status of nature from property to a subject in law in an effort to protect the natural world” (Gleeson-White 2018). The United States has not made much headway in setting up a legal framework despite the fact that the earliest conceptual writings emerged from there (e.g., Stone 1972). But New Zealand, Ecuador, Colombia, Bolivia, and now India offer interesting experiments (Colwell et al. 2017; O’Donnell 2018; O’Donnell and Talbot-Jones 2018; Shelton 2018).¹¹ This rights designation, as we see in the Indian cases, fuses a lesser known deity’s rights framework with this rights of nature framework.

India’s strong traditions of social action, investigative journalism, and human rights activism spawned the vibrant tradition of public interest litigation, which is the avenue through which the rights of nature approach has been recently applied. This public interest in legal activism is now expressed through cases in the High Courts, the Supreme Court, and now most forcefully in the National Green Tribunal (hereafter NGT). The NGT is an environmental tribunal established in 2010 to take the environmental case load off the Supreme Court (Kumar 2016). The majority of the cases heard in the NGT involve pollution (31%) and environmental clearances (35%).¹²

⁹ Das Acevedo (2016, p. 858 note 44) says: “this ruling redefines public and private, keeping the temple and its wealth both public in the sense of open to all people, yet private in the sense that the deity owns the space and wealth. It is explicitly not private property for any other commercial or political entity however”.

¹⁰ <http://www.mahavidya.ca/2015/03/10/yamuna/>.

¹¹ While the mentioned countries created frameworks that were upheld by citizen vote, in Bolivia, some citizens objected to the 2012 Framework Law of Mother Earth and Integral Development for Living Well, which constituted and operationalized the Earth as a juridical subject and gave it seven rights. They objected on the grounds that it usurped the traditional rights to preserve their land and customs (Calzadilla and Kotzé 2018).

¹² See (Amirante 2012) and (Shrotria 2015). Environmental Clearances, required for 39 types of projects, are supposed to assess and, thereby, avoid or minimize environmental impacts.

Central to these new rulings is the constitutional right to life which Indian legal advocates in these cases argue should be applied to juristic persons such as deities and river goddesses. The Indian constitution contains articles called Directive Principles that add environmental values to the constitutional right to life. These Directive Principles declare the duty of states and citizens to “protect and improve the natural environment”. Court actors have used these provisions on environmental protection to flesh out the constitutional right to life for humans in public interest cases. However, the Courts have read the Directive Principles into the Fundamental Rights to argue that humans have environmental responsibility without declaring directly that a human person has a right to water or any other resource. This creates an interesting template upon which to argue for a rights of nature framework (Alley and Mehta 2019).

In the spirit of opening uses of the law to all citizens, High Court and Supreme Court Justices have also liberalized grievance procedures so that they can accept letters, appeals, and newspaper editorials as writ petitions for the public interest. More importantly for these rights of nature cases, the public interest tradition has also allowed Judges to use suo motu powers to bring a case forward without a petitioner (Latin: ‘of his or its own accord’; an action initiated by an authority on its own). In the cases examined here, Judges declared the rivers Ganga and Yamuna and their glaciers and tributaries as persons with juristic rights just like humans, and they named specific guardians to enforce those rights.¹³ These suo motu powers allowed the Judge’s worldview, convictions, and abilities to shape the trajectories of the case and the writing of orders and judgements (Bhuwania 2017).

4. Ganga and Yamuna as Persons

On 20 March 2017, the High Court of Uttarakhand ruled that, “The Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.”¹⁴ The landmark ruling was inspired by the case of the Whanganui river in New Zealand (Gopalan 2017; Lokgariwar 2017), where the Maori pushed to declare the river a living entity with full legal rights in the country’s parliament. In the *Salim* case, the advocate brought the New Zealand parliamentary decision on Rights of Nature to the attention of the judges when pleading for directions on river protection and coordination of river management among state administrators.¹⁵ When asked about the motivations to bring in Hindu notions of the sacred, one advocate denied a connection between his motivations and the interest in promoting Hindu narratives and ideologies.¹⁶ Rather, he noted that the original party named in the suit was a Muslim man involved in a dispute over encroachment along the Ganga canal. The implication of this response was that the original intent of the case was to defend a Muslim resident’s claims to his land; thus, when the case information from New Zealand was introduced, it was not intended to forward Hindu worldviews and interests. However, the landmark ruling was related to contemporary concerns that rivers are dying, and those rivers are sacred to many.¹⁷ He said:

¹³ I am thinking here of prototypes in the sense developed from Wittgenstein, as provoking graded categorizations extending from a best example. These emerging categories can be traced out using an ethnoscience methodology.

¹⁴ Interestingly, the judge did not say “human person” in the ruling. The media has incorrectly termed it that way. The Judge said, “juristic person”.

¹⁵ The direct inspiration from the transnational discourse on rights of nature and this ruling are not explicit in the judgment but were communicated during interviews. The advocate cited the New Zealand case in the hearing, and one Judge followed up by exploring the literature and cases on rights of nature from around the world.

¹⁶ Interview taken in October 2018.

¹⁷ “The extraordinary situation has arisen since rivers Ganga and Yamuna are losing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve rivers Ganga and Yamuna,” says the order by Justices Rajiv Sharma and Alok Singh. http://economictimes.indiatimes.com/articleshow/57818653.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

“The gist of the judgement, the main judgement . . . forget about the status of the Goddess, etc. The whole concern of the court is to maintain the free flowing of the river, irrespective of the community needs, etc. This is the main concern of the Court. Yes anybody can interpret it in their own fashion. But the main concern is to maintain the piousness as well as the free flowing of the Ganga and its tributaries.”¹⁸

After the Judge was presented with information on the New Zealand case, he proceeded to develop the rationale, articulating rights of nature through the Indian context where deities have also been considered juristic persons. The Judge’s narrative discussed below did not appear to be centrally concerned with advocating a Hindu nationalist or political ideology, but it did validate Hindu notions of sacred ecology and used them as part of a conservation ethic. This kind of approach was also used by the Chairperson of the NGT, Swatanter Kumar, in orders in the MC Mehta case.¹⁹

The Judge’s interpretation of the rights of nature framework was not entirely new within India. A year or two earlier, the Community Environmental Legal Defense Fund and a group of 25 religious leaders of different faiths made a similar declaration for sacred rivers. Justice Sharma began his ruling in the *Salim* case by stating that, “Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered.” He continued, “The Ganga is also called ‘Ganga Maa’. It finds mentioned [sic] in ancient Hindu scriptures including ‘Rigveda’.”²⁰ Following these references to Hindu values, he cited precedents in cases where Hindu idols were considered juristic entities entitled to property and guardianship. This paved the way for linking the views of Ganga and Yamuna as Goddesses and persons and the views of them as powerful yet endangered and therefore in need of rights.

In the *Salim* case, the Court declared that recognition of Ganga as a juristic person is for “subservient the needs and faith of society.” This sounds like support for a specific community in India; the text of the ruling indicates that the Judge acknowledged and supported faith-based justifications but then added scientific and legal definitions and reasoning to argue for the preservation of the rivers. However, the Judges and advocates were not explicitly advancing the interests of Hindu communities alone or attempting to divide the favored community from other minority communities. The Judges noted:

All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea.²¹

Therefore, the Judges intended to connect views of the sacred with views of physical and natural or ecological properties. While invoking and operating within a Hinduized discursive space and iterating a notion of the sacredness of these rivers, the ruling did not extend into the Hindutva ideological space to cater to the political interests of a specific religious community or leader or party. Similarly, [Berti \(2015\)](#) has shown that Judges in a neighboring state acknowledged a religious interpretation of the importance of local Gods and their territorial claims but then decided on the basis of constitutional human rights. In these cases, as well, a specific community’s interests as defined by their common worship of a deity were not promoted by the court orders. However, it appears that when notions of sacred entities and spaces enter legal discourse in High Court cases, the Judges bend the law slightly by recognizing the importance and territories of these deities (which have no evidentiary basis in official

¹⁸ Interview with a senior advocate dated October 2018.

¹⁹ Original Application No. 200 of 2014. (C.Writ Petition No. 3727/1985), (M.A. No. 594/2017 & 598/2017) Judgement dated 13 July 2017.

²⁰ Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. p. 4.

²¹ Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. p. 11.

documents) but then decide the matter according to human constitutional rights and laws on property and assets (Berti 2015, p. 23).

Such a kind of legal mingling is evident in these rights of nature cases where the Judge uses the spiritual and religious importance that these rivers have to legitimize the need to assign juristic rights to them. This makes sense in terms of the general view of Goddesses as persons exemplified in the colonial and postcolonial cases and expressed more fully in Hindu mythologies and practices of worship. The right to life is then given to the Goddess as a juristic person and then justified by scientific reasoning that considers these Goddesses as rivers and natural entities subject to environmental and climatic conditions. The entrance way for justifying such rights appears to be a Hindu worldview and values, but the outcomes are considered to be beneficial for ecology, water, all humans, and their adaptations to climate change. This is an interesting mix of Hinduism and science that is not the same as the Hindutva science arguing for the Hindu origins of scientific achievements or the scientific basis of Hindu mythology (Kumar 2019).

The next step in the judgement dealt with the assignment of guardianship to sacred rivers. In other rights of nature cases, power has rested with a guardian who must ensure the right to life of the natural entity. This is inherently problematic in the Indian context, for, as Das Acevedo notes, “the spectacle of a deity claiming a constitutional right to religious freedom is breathtakingly circular” (Das Acevedo 2018, p. 15). The Judges’ selection of guardians in these cases was immediately disputed. The selection of guardians was justified, not in terms of protecting the deities’ gifts, land, and property, as colonial cases did when involving the shebait, the guardian, or a trust administering the deity’s assets. Rather, the selection was justified by the need to protect the life survival of the deity. These High Court rulings show that the matter is not one of protecting the property rights of the deity, claiming a deity’s property rights, or declaring a tax status for a specific entity due to the flow of income and property. This selection of guardians assigned blame for the deity’s extreme harm, in fact for her ability to survive, and located responsibility for her protection. As I explain below, these assignments are directed at government officials and meant to give more serious force to their responsibilities. In terms of legal technicalities, these proposed protections make sense under a right to life rubric in a legal tradition that has targeted government malfeasance and noncompliance to the country laws and policies.

The High Court Judge appointed three guardians—the director of Namami Gange (the national level Clean Ganga Program director), the chief secretary of the state of Uttarakhand, and the advocate general of the state as “persons in loco parentis [meaning ‘in place of a parent’]—the human face to protect, conserve and preserve the Rivers Ganga and Yamuna and their tributaries.”²² By this order, the officers were bound “to uphold the status of [the rivers] and also to promote the health and well-being of these rivers” (Gopalan 2017). The court confirmed that any harm done to these rivers would be a cognizable offence, and the state would initiate criminal proceedings without waiting for a petitioner.

This designation of guardians had more to do with an interest in identifying persons that could be held accountable for the increasing pollution load in these rivers and did not have any direct connection to specific Hindu communities or to setting up antagonistic relations between Hindus and Muslims or other non-Hindu groups. Ten days later, in the *Miglani* case, the same bench designated the glaciers, lakes, and wetlands of these basins as “legal persons”.²³ In that case, the Judge developed the rights of nature approach within a scientific or evidenced-based framework and left off references to the law on

²² Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. pp. 11–12.

²³ W.P.PIL No. 140 of 2015, *Lalit Miglani v. State of Uttarakhand* declared glaciers, including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs, and waterfalls as legal persons (Shivshankar 2017; Studley 2017); The Sad State Of These Persons Called Ganga & Yamuna—Can State Protect Them? South Asian Network for Dams, Rivers and People, 11 April 2017 <https://sandr.p.wordpress.com/2017/04/11/the-sad-state-of-these-persons-called-ganga-yamuna-can-state-protect-them/>.

deities as juristic persons. The second ruling in the *Miglani* case did not reference Hindu values of sacred ecology as the *Salim* case did. An advocate in the *Miglani* case stressed, however, that Hindu values are fundamental to the worldview of the Goddess, and Hindus had every right to worship her according to those values.²⁴

5. Benefits for Devotees

Hindu religious values pertaining to deities are foundational to the *Salim* ruling, but the judgement was not well known among Hindu devotees who visit these rivers for their spiritual rituals and bathing. In Varanasi, for example, most residents had not heard about the ruling when I surveyed them. After explaining the ruling to them a year later, a sample of Varanasi residents explained that the notion of a juristic person was foreign to them. But they said they liked the idea of Ganga and Yamuna having rights. A few disagreed, pointing out that Ganga is a Mother Goddess and does not need *human* rights. Her powers as “*Tarini*” or remover of sin are far more omnipotent. Most respondents claimed they view Ganga as a Mother but do not consider her a regular “person”. She is a Mother whose flow provides for everyone. Devotees feel related to her as a child to a Mother, and they seek protection from her. Devotion and worship rituals are critical to ensuring that protection. One Varanasi resident said:

Researchers: Do you see Ganga as a person?

Respondent: No I see Ganga as a Goddess. No Person. She is no person. Nobody sees her as a person. She is a pure Mama. It is all about your feeling, your understanding and trust. I have been connected with people from all over the world. Since 6 years I am living with the tourism life. I have seen many changes but nothing good is happening. The government has wasted a lot of money but no good is going on.

Another resident adds in greater detail:

Respondent: We do not agree that she is a person. She is a Devi . . . Not an ordinary lady. She is a God lady.

Researcher: So being a lady is only her form?

Respondent: Yes, like there is Kali, Durga, Parvati, Ganga. They are DevisGanga is amrit (nectar), she is not a river . . . After a person does a lot of karm (good work), he can become a God . . . There is a path, a link road. For us Hindus, Ganga is amrit. Ganga is mokshadani (giver of liberation). Big people come bringing dead bodies and the ashes to immerse in her waters. Why do they come? In this way if we immerse the ashes of our ancestors, fathers, grandfathers, or for the death of anyone, we bring the body to Ganga for moksha. So Ganga is amrit. The Gita and our pandits say whatever dharm-karm a person does, they do it on the riverbank of Ganga, like in Hardwar.

Researcher: So why did Parvati curse Ganga to be a river? Why was it a curse? If she is such a good form, etc., why is she created by a curse? What is the meaning?

Respondent: The curse occurred because thousands and thousands of people come to see her, come to take her water (jal). This is for humanity. It is for kalyan, humanity. It is good.

Researcher: So the curse means it is for the good of humanity. But to me a curse means it is related to something bad.

²⁴ Interview by Alley in October 2018.

Respondent: Well this is like the branches of government. There are branches such as raksha mantralaya, videsh mantralaya, rajya mantralaya. Everyone is in the meeting. So if one man does a bad work they take him out, no? In this way the history of Ganga occurred. At that meetings occurred and the rishis looked and when there was a bad action, then they were opposed to that. If there is any wrong work like in an office, then the person is disciplined. In the meeting a bad matter comes up so the rishis are noticing it. So in this way a curse was made and they said, go in the form of a river! You will work for humanity, for liberation. This is for kalyan (well-being), for moksha (liberation), for shraddha (offering for deceased), for service (seva).

Researcher: So she came for seva.

Respondent: Yes she came for seva and will do so as long as she is alive. Up until her death she will remain and do so. Until she becomes lupt (invisible). Thousands of years from now Ganga will not be here. After thousands and thousands of years, she will be gone. There will be rivers but not Ganga. Like the Saraswati river in Allahabad is finished. Yamuna river will also go like this.

These statements and others mentioned below indicate that the court rulings had almost no impact on the sentiments and everyday lives of devotees. The rulings were not directly connected to them, but they considered the sentiments close to their concerns for Ganga's survival. While the legal strategy linking deity's rights with rights of nature served a juridical logic, it did not create a cultural logic with any immediate valence in Varanasi. While Varanasi residents disputed whether Ganga could be a person, they all agreed that she was endangered, so they could see the bigger importance of the rights discourse the rulings were trying to promote. To these residents of Varanasi, the notion of giving rights to Ganga and Yamuna sounded good, but they do not perceive that these specific legal rights are necessary for their (the Goddesses') survival, since previous government and legal interventions had not done much good. They immediately linked the legal ruling with their perceptions of the inefficiencies of government and the unreliability of government agencies in preventing rampant pollution and obstruction of flows. There was a good amount of complaining about the continuing flows of wastewater, through open drains, into the river especially near locations of ritual bathing. Many lamented, as they have in the past, that government officials just "eat" the financing that should go toward cleaning the river and properly treating wastewater. This is a continuation of expressions I have heard over many years, going back to the early days of the government's cleanup program, the Ganga Action Plan (Alley 1994, 1998). This resident's answers to our questions were similar to others I have heard:

Respondent: There is no change from the Ganga Cleanup program (Ganga safai). There should be cleaning but there is no change over the last 3–4 years.

Researcher: Should Ganga have rights? And if the Court gives the order and Ganga gets rights who should oversee them?

Respondent: If the drains (nalas) that are running into the river are not stopped then how can Ganga cleaning happen? They are running (chaalu). Some are closed but others are not. There is one there, one here. There is dirtiness (gandagi) remaining. Modi has said they will be stopped and that there will be change but there is no change.

Researcher: Do you see Ganga as a person, as in an ordinary woman or as a God (Bhagwan)?

Respondent: We see her in the form of Ma Ganga, as Bhagwan.

Researcher: So should she be given rights or not?

Respondent: Why not? She should be given them.

Researcher: Who should argue for her [to exercise those rights]? People or the government?

Respondent: People should argue for her otherwise who can? What will the Government do? They will just eat the money. People in a movement can argue but government will just get the money from above (upper se) and eat it. What goes to Ganga safai will be eaten by them. It's true isn't it?²⁵

Looking beyond this case toward others noted in the national media recently, we can see that the act of giving a God or Goddess a right to life can produce controversial and conflicting sociocultural responses. For example, controversial and conflictual responses have arisen from the Supreme Court case involving the rights of the God Ayyappan of the Sabarimala temple in Kerala. In that case, the Supreme Court ruled against the state's ability, as administrator of the temple, to enforce a ban on temple entry to women between the ages of 10 and 50. Religious practices and the state's defense of them had supported the notion that the God had a right to restrict entrance to women of menstruating age who might tempt or pollute him. A subset of devotees perceived that the Supreme Court ruling striking down the state's continuation of a gender discriminatory rule undermined the deity's rights to temple administration and also, in one submission, to the deity's right to privacy. Responses for and against this ruling arose immediately and vociferously in the media. Shortly thereafter, political parties stepped in to court those for and against the rulings.²⁶ While the immediate effects of that ruling on right to life appear tense in the Sabarimala case, community responses in terms of mobilizing for conservation and against pollution are almost non-existent in the rights of nature cases. The responses of residents in Varanasi indicate that devotees of Ganga and Yamuna feel that their goddesses are already neglected and not properly attended to in the Clean Ganga or Namami Gange campaigns pushed by the central government. Generally, the public understands that the Clean Ganga Campaign has been directly connected to the political rhetoric of the Prime Minister. Thus, in their skepticism of such central government initiatives, they appeared less interested in giving cultural legitimacy to a legal ruling that had no local input.

6. Government Motivations

Given that the Indian Prime Minister has made the Namami Gange (Clean Ganga) project and large religious bathing festivals such as the Kumbh Mela into programs and events for galvanizing votes and party support, we are led to ask why the leadership would not use this landmark ruling as an ideological way to further centralize their power. To answer this, we need to look deeper into institutional politics at the central and state levels. It came as a surprise to petitioners and advocates in these cases when, a few months later, state and central governments submitted appeals in the Supreme Court to impose a stay on the rulings in both these cases. A petition for a stay of a High Court order is called a "Special Leave Petition" in the Supreme Court. The governments' main motivation appears to be that they did not want the named officers to assume liability as guardians. The aim of the High Court ruling was to fix responsibility in key government officials, designating them as *loco parentis*, "the human face to protect, conserve and preserve the Rivers Ganga and Yamuna and their tributaries".

To probe the motivations of the state and central governments as petitioners in the two Special Leave Petitions, one for each case, we must consider the relations between the central government (or Union government) and the state governments at the time these cases were being heard. There are two key context points. First, the states have significant power over water in the state list of the Constitution. Secondly, the Prime Minister contested his seat the first time from the Samajwadi Party

²⁵ Interview by Kelly Alley, October 2018.

²⁶ https://www.business-standard.com/article/news-ians/lord-ayyappa-at-sabarimala-too-has-rights-under-article-21-sc-told-118072601325_1.html; (Das Acevedo 2018).

(SP) stronghold of Varanasi and in the process claimed Ganga cleanup as his mission. His first election victory cast a shadow on the state Chief Minister of the SP party and provoked a competitive spirit among them in matters related to Ganga rejuvenation. The result was that the state government began dragging its feet on central government Namami Gange initiatives and misused government funds. In 2017, the dynamics changed when the SP lost its majority in Uttar Pradesh and the BJP took control in Uttar Pradesh and Uttarakhand. From this time to the present, the BJP has held control of both the central and state governments as the party in control and won re-election in May 2019.

Before this single party control across state and central governments was established, the Judges took it upon themselves as *parens patriae* to propose that interstate coordination boards should be established when planning river uses in the basin. In the *Salim* case, Judges ordered a Ganga Management Board, and in the *Miglani* case, they directed reconciliation of the Inter State Council under Article 263 of the Constitution. Both the Board and the Council are meant to be used to negotiate the various uses of the river such as for hydropower, irrigation, potable supply, and water and wastewater treatment. The *Salim* ruling explicitly links centre–state coordination and personhood: “The Constitution of the Ganga Management Board is necessary for the purpose of irrigation, rural and urban water supply, hydropower generation, navigation, industries. There is utmost expediency to give legal status as a living person/legal entity to rivers Ganga and Yamuna r/w Articles 48-A and 51A(g) of the Constitution of India.”²⁷ Yet coordination was not on the central government agenda at the time, especially when other parties were running the states.

When elections were over at the end of March 2017, control of the two states of Uttarakhand and Uttar Pradesh had flipped from the opposition party to the BJP. Knowing that centre–state alignment could be achieved through the everyday working of the single party bureaucracy, the Uttarakhand state government in July, and the union government in October filed appeals of both the *Salim* and *Miglani* judgements.²⁸ In the appeal of the *Salim* case ruling, the Supreme Court stated:

“The order had put the state government in a quandary. Since the rivers flow through several states, only the Centre could frame rules for their management. The ruling also raised questions like whether the victim of a flood in the rivers can sue the state for damages and also about whether the state and its officers will be liable in case of pollution in the rivers in another state through which it flows.”²⁹

In these petitions to appeal, both the state and central governments appeared interested in avoiding liability and responsibility for the grievances and criminal charges that people could bring to them in the name of Ganga’s rights.

²⁷ Order dated 20 March 2017 in Writ Petition (PIL) No. 126 of 2014 Mohd. Salim v State of Uttarakhand and others. p. 11.

²⁸ Special Leave to Appeal (C) No(s). 016879/2017 *The State of Uttarakhand and Ors. Versus Mohd. Salim and Ors.*, Order dated 7 July 2017, stayed the ruling in the *Salim* case. Special Leave Petition (Civil) Diary No(s). 34250/2017 *Union of India vs Lalit Miglani*, order dated 27 November, 2017 stayed the ruling in the *Miglani* case. The copy of the original pleading is difficult to obtain because the case is still sub-judice (in progress). Thus, in the absence of the original document, we can only quote *The Times of India* as it reported the stay: “The state government contended that the two holy rivers played a very important role in supporting the life and well-being of people in the country but that could [was] not a ground to declare them as living entities. “Only to protect the faith of the society river Ganga and Yamuna cannot be declared as legal person,” state government said in its petition. “If there arises any dispute in respect any kind of different illegalities being committed in other states, then how can the Chief Secretary pass any instruction against any other states or Centre,” it said. The government said that Centre had been given the right under the constitution to frame rules for efficacious management of all the interstate rivers and the HC did not examine the provision while passing the order. “The High Court has gravely erred in declaring Ganga and Yamuna as legal person/living entity. Hence, in case of coming of flood vis-a-vis someone dying in these rivers due to such flood, therefore, the effective party can file suit for damages against the Chief Secretary of the State and then in that case State Government will be liable to bear such financial burden,” the petition said.” (<https://timesofindia.indiatimes.com/india/sc-stays-uttrakhand-hc-order-declaring-ganga-yamuna-as-living-entities/articleshow/59494002.cms>).

²⁹ <http://archive.indianexpress.com/news/sc-stays-2g-court--summons-to-ravi-ruia/1100575/>.

7. Rights of Nature and Hindutva Lite

It appears that the government's interest in avoiding liability trumped their possible interest in drawing political gain from these interpretations of rights of nature or in using Hindu values to set the foundation for the interpretation of the law in the Supreme Court. In the Special Leave Petitions, the state and central governments argued that the transboundary nature of the river would complicate the work of guardians, who while living in one state cannot decide matters occurring in the other states through which these rivers flow. In doing so, government administrators intimated that these new legal rights would encumber them in a tangle of responsibilities and liabilities that they were not eager to have. In addition to the interstate problems, we can also surmise that government officials did not want the ruling to impinge on their decisions regarding river water extractions and dams that reduce or change flows, especially since these transactions are garlanded by money-making agreements and clearances (Alley 2017). Looking at the ruling from the environmental activist's angle, the appointment of only a few guardians would have narrowed the checks and balances on water resource uses, endangering more quickly the survival of these critical rivers.

In these appeals, the potential to forward a Hindutva agenda was therefore muffled by the Supreme Court stay. This muffling revealed the government's lack of interest in taking on the liability that a rights-based ruling would inspire. This is surprising to the High Court advocates because the central government was at the same time highlighting their interest in river cleanup as a flagship initiative. Their actions to quash the order giving rights and thus more protections to these rivers occurs at a time when Hindu devotees are exposed to more dangerous levels of pollutants in their everyday ritual practices.

The *Salim* case shows that the High Court Judges were willing to invoke the Goddesses as "juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person" as a way to make the more profound application of the fundamental right to life to rivers, glaciers and all tributaries.³⁰ These imaginaries create Ganga and Yamuna as vulnerable and not all powerful goddesses, in need of guardians. Yet for many residents of Varanasi, Ganga remains "our *tarini*". For them, it appears contradictory that, on the one hand, these rivers are abused and overused by humans, and on the other, that legal authorities call for their protection by naming the same humans that abuse and overuse them. This is an ontological turn from *shakti* to vulnerability at a time when guardians are highly suspicious. As mentioned earlier, Varanasi residents do not see them as competent to care for critical resources with a mind to sustainability.³¹

8. Conclusions: Rights of Nature and Spiritual Ecological Activism

Given that the rulings did not support devotees of these rivers in their everyday practices, and that the rulings were also quashed by the very government officials who could have turned them into ideological tools, we can finally ask: How have these legal initiatives helped or hindered spiritual ecological activism or religious or scientific environmentalism involved with protecting sacred rivers? Have these legal pronouncements helped activists in advancing their conservation and cleanup plans? This ruling could have garnered support among environmentalist communities, but there was little if any activist movement attached to it, apart from the celebratory media reports announcing that Indian law had joined the global discourse on rights of nature. Immediately after the judgements, there were demonstrations for and against the *Salim* ruling by residents of the area around Hardwar. Those demonstrations involved the original problems of encroachment addressed at the outset of the petition. Once the orders and rulings were issued, some residents were evicted from their homes on the banks of the Ganga canal, and they protested for that reason. For seasoned activists using varying

³⁰ See also Studley (2017) on philosophical approaches to the juristic personhood of nature in cases around the world.

³¹ These were the phrases I reported on in the 1990s. Corruption and eating the money meant for Ganga rejuvenation remain prominent themes in local discourse.

combinations of spiritual ecological, religious environmental or science advocacy, the rulings were not a useful support for their demands and activities, and they did not lead to any petitions submitted in the courts at any level.

For example, a hardline activist fighting against pollution and the over-extraction of water from these rivers, Dr. G. D. Agarwal or Swami Sanand was opposing government policies on hydropower development that were reducing instream flows. Swami Sanand argued for continuous flow (*aviral dara*), or what ecologists and hydrologists call environmental flows, through a variety of pressure tactics. These tactics involved letter-writing to the Prime Minister, conferences with state and central government officials, court petitions, and personal fasting for long periods of time. This activist was well known to other river activists in India for his strategy of fasting as a way to move government officials toward his demands. But his direct actions did not reference these High Court rulings or use the support of them in specific grievances or writ petitions. The leader of a religious organization, Parmarth Niketan, also gave verbal agreement to the High Court order but did not use the ruling for any direct ideological, religious or legal action.³² Activists involved with the South Asian Network on Dams, Rivers, and People celebrated the ruling but then criticized the fact that there was no implementation road map to declare extractions and obstructions of flow as illegal actions (Goswami 2017). A science advocacy organization, The Center for Science and Environment, also highlighted the rulings but did not campaign against the Supreme Court stay orders.

Returning to the conceptual creativity of these rulings, there is a question of whether it is helpful to make these rivers into vulnerable prototypes of nature/person/Goddess. This kind of inclusive conceptualizing matches the movement of the rights of nature discourse across countries. The conceptualizing is rhizomatic, joining branches from domains of knowledge that are sometimes overlapping in Indian legal and religious practices. In interviews, respondents have been able to work with the overlapping notions of person and deity; legal respondents found their roots in colonial law, while devotees and some activists found support by agreeing that the Mother Goddesses should have rights. But defining Ganga and Yamuna as vulnerable does not have full support among devotees. Some Varanasi residents have countered that Ganga cannot, in her role as "*Tarini*", be vulnerable and need human protection. Moreover, she does not get much protection from government which is generally corrupt and exploitative.

Nevertheless, the rhizomatic movement of the notion of juristic personhood from colonial law to postcolonial rights of nature designates the rivers as potential rights bearers and could help to set the stage for other legal actions focused on cleanup and protection. More importantly, the fusion breaks down boundaries between realms of thought and practice (e.g., law, science, religion) and gives all these viewpoints an interpretive space in the understanding of river predicaments. Even if protections cannot be enforced by guardians who are responsible and accountable, the prototype construct helps to prevent pigeon-holing the problem as a scientific one or a legal one or a religious one. A prototype does not invite a sense of bounded identity but engenders grades of likeness, so that other entities can be likened to the original prototype with more flexibility. Designated as nature/person/deity, these prototypes can then stand for the predicaments of many other entities, for rivers that are sacred and not so sacred, and for other forms of nature.

A semantically creative effort does not mean it will translate into a powerful tool for devotion or activism. The key disabling feature is that devotees and environmental activists associate the legal initiative with general government malaise and corruption in the implementation of pollution prevention and conservation programs. Thus, if the ruling requires a vigilant government to enforce it, then devotees are immediately skeptical. The benefits of the ruling for people and these rivers seem to be confined to the conceptual framework and not to any grounded change.

³² "Mother Ganga: A Juristic Person", *Kanooni Patrika*, August 2017. <https://www.parmarth.org/mother-ganga-a-juristic-person-kanooni-patrika-august-2017/>.

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