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<p.13>

In this article, I focus on how the issue of considering animals as legal persons has been argued in court by the Nonhuman Rights Project led by Steven Wise in the United States and how this project was recently adopted and reinterpreted by an animal rights organisation in India in preparation for their own court battle. In turn, Indian cases raising the question of the legal personhood of animals and rivers have been used by Wise as examples to argue his case in court. The comparison will raise the question of how legal ideas and strategies regarding so-called ‘rights of nature’ travel around the world, giving rise to reciprocal appropriations and possible idealisations.

Keywords: Legal personhood, animal rights, rights of nature, USA, India

I

Introduction

Over the past few decades, the animal and nature protection debate has taken on greater importance throughout the world, with issues increasingly brought before courts in the name of ‘rights of nature’. These rights of nature, as Tănăsescu (2021) puts it, have a twofold history: a theoretical or academic history, in which a Western philosophical debate was recently associated with ‘indigenous views of nature’; and a ‘practical’ history, consisting of a growing number of legislative or judicial decisions in various countries which—although inspired by and contributing to the theoretical debate—vary more greatly. Though these decisions are often presented as being part of a movement, the rights and ideas evoked <p.14> in these cases are far from monolithic and form an ‘ever-diversifying toolbox for achieving a growing number of goals’ (ibid. 69).

While there is consensus for ensuring the reinforced protection of animals and the environment, there is no unanimous opinion on the legal tools to use in order to attain this goal. Most legal proposals and rulings follow a welfarist or conservationist framework within the current legal structure. The question of applying rights to nature, however, has recently taken on a new development, with legislative or judicial institutions addressing the issue of recognising animals and elements of the environment as legal persons—they currently are property and do not have legal status; they cannot sue or be sued in court (through a representative). In practice, as Hermitte (2011) pointed out, the situation allows for legislation and court proceedings to frequently attribute a ‘substantial personhood’ to animals: their interests are considered in terms of possible suffering, feelings and mental world—which is not the case for things—putting them in a kind of dual status, ‘beings/goods’.

This lack of ‘legal standing’ is often the main obstacle for those who try to protect animals or the environment and who see their case dismissed by the judge: those for which they ask protection cannot be represented, and they themselves are not an injured party. In this perspective, although animal and environmental protection have distinct histories, they now appear to be intertwined as the issue of attributing legal personhood is becoming a common strategy.

Due to the complex and eclectic nature of these cases, in turn due partly to the different legal contexts in which they occur, a view of local situations must be combined with a comparative approach, which can throw light on how ideas and discourses circulate at the national and international levels—an approach already advocated by Merry (1992) for the study of legal practices in general. This is particularly true regarding the attribution of legal personhood to animals or the environment, which attracts considerable media and academic interest. When such an issue is raised in a case, regardless of the (sometimes minor) impact it may have at the local level, it immediately captures public attention and can, in turn, become a source of inspiration elsewhere for activists and law professionals. For example, news in 2018 of New Zealand legislation giving legal personality to the Whanganui River appeared in the international media and inspired cases throughout the world. This circulation of ideas and legal arguments, often triggered by an article or by a judicial precedent, <p.15> can lead to reciprocal appropriations and—as we shall see—possible misunderstandings. Internationally shared legal notions, such as ‘rights of non-humans’, can be applied in very different ways when dealing with local interests; conversely, local issues raised in the global debate can be thoroughly idealised.

In this article, I address the question of how the idea of considering animals as legal persons has circulated between the United States and India and the implications this circulation has had on framing the strategy of court cases.¹

I first look at how the legal battle led by activist lawyer Steven Wise and his Nonhuman Rights Project (NhRP) in the United States—around the granting of legal personality to certain animals—has been taken up by an Indian animal rights organisation as a result of an occasional contact.

In the second part of the article, I show how the issue of legal personhood for rivers and animals has been raised by a High Court judge in a series of rulings which, despite being criticised in Indian legal circles, received considerable attention in the West. Although these rulings have been used as arguments in other legal battles, including by Wise, the legal concepts or ideas they seem to have in common with the international debate—such as ‘rights of nature’ or ‘juridical personality’—take on different meanings and implications.

¹ Most of this article was written during the pandemic when I did not have access to the field. For the NhRP I based my observation on academic publications or newspaper articles written about the organisation, on court documents or hearings provided on its website and in the film documenting its activities. For India, along with court files and secondary sources, I relied on fieldwork carried on in Delhi, Dehradun and Haridwar in 2019 and 2022. The identity of the people with whom I interacted—various activists, lawyers and judges—is often made anonymous.

II

The Path of Habeas Corpus

The idea of granting legal status to an element of nature is usually associated with a dissenting opinion that a US Supreme Court judge, Justice Douglas, wrote in a famous lawsuit, *Sierra Club v Morton*.² The American environmental organisation Sierra Club filed a case in the US Supreme Court to block a Walt Disney project to build a ski resort in a wilderness <p.16> area in the Sierra Nevada Mountain range in California. The court rejected the case on the ground that the organisation was no party since it was not injured or lacked legal standing to bring the case. Dissenting—and inspired by his reading of Christopher Stone’s (1972) work *Should Trees Have Standing?*—Justice Douglas suggested that legal personhood should be granted to an environmental object in order to address the issue raised by the court regarding the lack of legal standing of:

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole—a creature of ecclesiastical law—is an acceptable adversary, and large fortunes ride on its cases. [...] So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. (*Sierra Club ... 1972: 742 ff.*)

Although Justice Douglas shared Stone’s concern about the urgency of protecting nature—he was personally committed to nature conservation and had been a member of the Sierra Club (McKeown 2019)—what he was trying to address was primarily a technical issue: the question of the possibility to sue on behalf of a natural element. It was for him a procedural tool, as is the case for ships or corporations which, despite being inanimate objects or abstract entities, have the status of legal persons.

Twenty years after the Sierra Club case, a lawsuit was filed at a New York court to ask for legal status for Tommy, a chimpanzee locked in a cage in a trailer. The case was brought before the court by Steven Wise, an American activist and legal scholar who in 1995 founded the Center for the Expansion of Fundamental Rights, renamed the NhRP in 2012. This followed his involvement in a lawsuit filed in 1991 concerning a dolphin, Kama, who had been transferred to an aquarium in a manner inconsistent with mammal protection laws. Wise argued the case, and lost because the lawsuit was dismissed on the grounds that ‘none of the named plaintiffs, including the dolphin, had standing to sue’ (Doyle 1996: 189). This prompted Wise to elaborate a new strategy. Instead of relying on animal welfare legislation, as in the dolphin case, he turned to a ‘fundamental rights principle,’ the habeas corpus, which entitles one to challenge the legality of being unlawfully detained (Wise 2011).

<p.17>

Wise published a book (2005) on a trial he considered to be a milestone in that perspective, about a historic case in England that would lead to end human slavery. The case involved James Somerset, a Black slave who was shipped from Boston to England in 1769, ran away, but was then captured. A British abolitionist went to court to ask that Somerset be granted habeas corpus, which was eventually accepted. The judgment had a great impact in England and America. Although according to some authors, it is not clear what the judge intended the scope of his decision to be (Cotter 1994: 33), the very possibility of granting habeas corpus to a slave is

² *Sierra Club v Morton*, 405 U.S. 727, 1972.

presented by Wise as ‘unthinkable’ at the time and as a ruling that ‘changed the law and the society’ (Thompson 2019: 22).

It was around the idea set forth in this precedent that Wise began his legal battle to free some captive animals. The legal tool of habeas corpus being usually aimed at securing the freedom of individuals against arbitrary or unfair detention, Wise had to build his strategy on individual animals. On their website,³ the NhRP presents each as a ‘client’ with their personal history: Tommy, a chimpanzee once used as an actor on film sets, ended up living in a small cage; Hercules and Leo, two chimpanzees used in a research project, were forced to live in the basement of a university lab; Beulah, an Asian elephant used in commercials and theatrical performances, was sold to a zoo.

While Wise is clearly concerned about the conditions in which these animals are kept, he does not simply want to set them free and place them in a sanctuary. Instead, he wants to find a judge who would agree to do the ‘unthinkable’ and grant habeas corpus to an animal, thereby recognising the animal as a legal person: Once again in the history of law, the habeas corpus issue could pave the way for another revolution where, in this instance, through a legal guardian, an animal could sue ‘a human captor’ in an attempt to gain his own freedom. For this, he wanted to distinguish his cases from a welfare framework where only the quality of their living conditions is in dispute.

At a hearing held on behalf of the chimpanzee Tommy in 2013 in New York City, the four judges of the bench appeared very sceptical. ‘Mr. Wise’, one of them asked, ‘can you give any example, anywhere, where in a habeas corpus context the word “person” has been attributed to a non-human being?’ (Hegedus and Pennebaker 2016). Wise replied that <p.18> ‘legal personhood’ is not synonymous with ‘human personhood’; that in the past, certain categories of persons, such as slaves or American Indians, were not considered legal persons; and that abstract objects or entities, such as ships or corporations, may have the status of legal persons. He also mentioned the case of ‘Hindu idols’ which are recognised as legal persons in Indian law—I will come back to this point.

Wise’s demonstration is not without some ambiguity. Although he meant to show that the notion of ‘legal person’ does not necessarily involve a human being, the arguments he used to convince the judge that these animals (chimpanzees Tommy, Kiko, etc.) should be considered legal persons were all pointing to how they were, in fact, sharing some human abilities. In the petition of the Tommy case, we read for example:

Chimpanzees are autonomous, self-determined, self-aware, intelligent and emotionally complex. Cognitively they resemble human beings. They recall their past and anticipate their future, and when their future is never-ending incarceration, they suffer the pain of being unable to fulfil their goals or move around as they wish.⁴

Wise’s idea (2000: 4) is to open a passage in the ‘legal wall’ between animals as property and humans as persons. For him, giving legal personhood to animals is not just a technicality—as in the cases he mentions regarding ships, corporations and Hindu idols. Compared with these cases—where legal personification is a tool to solve a practical problem, what Lazaro (2020: 75) calls the ‘pragmatic approach to law’—Wise raises a moral question.⁵ This leads to some

³ <https://www.nonhumanrights.org/litigation>. Accessed on 17 September 2023.

⁴ *Petitioners’ Memorandum of Law in Support of Order to Show Cause & Writ of Habeas Corpus and Order Granting the Immediate Release of Tommy*. December 2, 2013. State of New York, Supreme Court, County of Fulton.

⁵ On the distinction between the legal and moral implications of legal personhood, Tănăsescu (2022) notes that although in Stone’s work the moral dimension—the idea that it is morally worthy to grant legal personhood to

confusion. Although Wise points out on many occasions that he does not equate a chimpanzee with a human, his idea of granting some animals a right hitherto reserved for humans has led some people to make such a comparison.

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The case received a lot of media attention—mediatisation of the case being part of Wise’s awareness strategy. As shown in *Unlocking the Cage* (Hegedus and Pennebaker 2016), Wise’s legal battle started to be discussed on television shows where the case was presented as ‘a rather bizarre lawsuit with big implications. At the centre of it is a chimpanzee and the key question is whether a chimp is a person’ (Hegedus and Pennebaker 2016). Newspapers played on this confusion. ‘Will this court case be the first step towards a real life “Planet of the Apes”?’ asked Craig Flaster in *MTV News* in 2014, along with an image of Caesar, leader of the ape army in the film.⁶ The *New York Times Magazine* went even further by posting a photo of a chimpanzee dressed in a jacket and tie and sitting in the witness box captioned ‘Should a chimp be able to sue its owner?’⁷

Wise seems to play on this ambiguity from a strategic point of view in order to request habeas corpus not for animals in general—which would be legally unworkable, as the procedure is centred on individuals—nor for a species, though his arguments are based on the specificities and capacities of selected species, but for individual animals. In order to show why they deserve to be considered legal persons, Wise provides the court with affidavits written by scientists who study the species to which these animals belong and who can testify about the complex cognitive abilities that would make them eligible for habeas corpus.⁸

The multiple fronts on which Wise seems to play are probably due—as Thompson (2019) notes—to his need to adjust his argument to the judge’s attitude in order to win his case, which has not happened yet. As Wise (2017: 13) puts it, what he is looking for is to find a ‘principled judge’ who understands justice as doing what is right as opposed to a ‘formal <p.20> judge’ who is likely to feel strongly bound by precedents. His effort to produce a ‘psychological shift’ in a judge’s mind seems to have partly succeeded in some cases. Justice Barbara Jaffe ruled on the case of chimpanzees Hercules and Leo in 2015; she appeared to have been convinced by Wise’s arguments even though she did not grant legal personhood on the grounds that she was bound by the Tommy precedent (where it had been denied). However, she addressed the question: ‘Isn’t it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law?’ (Hegedus and Pennebaker 2016). Or, in 2018, Justice Fahey, ruling on a case filed by Wise at the New York Court of Appeal, wrote: ‘The issue whether a nonhuman animal has a fundamental right to

elements of nature—is not absent, this is not the main concern; on the contrary, the ‘conflation of legal and moral personality’ is present in the work of many authors who refer to Stone’s work (ibid. 22).

⁶ Craig Flaster, “Will This Court Case Be the First Step Towards a Real Life ‘Planet of the Apes’? Rights for Everyone, from Chimpan-A to Chimpan-Z,” *MTV News*, 9 October 2014. <https://www.mtv.com/news/t7663y/chimp-court-case-planet-of-the-apes>. Accessed on 17 September 2023.

⁷ Charles Siebert, “Should a Chimp Be Able to Sue Its Owner?”, *New York Times Magazine*, 23 April 2014. <https://www.nytimes.com/2014/04/27/magazine/the-rights-ofman-and-beast.html>. Accessed on 17 September 2023.

⁸ For chimpanzees see *Affidavit of Jane Goodall. The Nonhuman Rights Project, Inc., on behalf of Tommy ... against Patrick C. Lavery ...* Supreme Court of the State of New York, County of New York, 2015. <https://www.nonhumanrights.org/content/uploads/36.-Affidavit-Of-Jane-Goodall-Ph.d-Dbc.pdf>. Accessed on 17 September 2023. For elephants see *Affidavit of Joyce Poole. Washington (Dst. of Columbia), Dec. 2, 2016*. <https://www.nonhumanrights.org/content/uploads/Aff.-Joyce-Poole.pdf>. Accessed on 17 September 2023.

liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it.’⁹

Wise’s strategy has been criticised by legal scholars (for instance, Cupp 2017; review in Lynam 2022) and by environmentalists (White 2007). Though aware of the strategic nature of Wise’s arguments, White notes that ‘human intelligence is not the only model from which to evaluate: and to focus on linguistic capacities or mental abilities would create a separation between primates and other intelligent species but on other different criteria.’ However, Wise’s ideas had an impact on other cases in the United States as well as abroad.¹⁰ Wise himself encourages the promotion of the ‘NhRP cause’ in other parts of the world; his assumption is that a victory secured elsewhere creates a precedent that might help him to win a case at home. In 2018, Wise and Kevin Schneider (NhRP executive director at the time) made a trip to Hong Kong, Malaysia and India to promote their project.¹¹ On their website, they mention how they <p.21> met with activists and lawyers close to the Federation of Indian Animal Protection Organisations (FIAPO).

In the next section, I analyse how Wise’s project was discussed and elaborated on by FIAPO members.

III

Wise’s Project in India: Looking for a Strategy

India is often mentioned by Wise with regard to ‘Hindu idols’—temple statues or aniconic representations of gods and goddesses—which are treated as legal persons, as part of his argument that it is not only humans that may be granted legal personhood. This legal fiction was introduced by the British during the colonial period to solve the problem of how to recognise under Western law the ancient Indian practice of land donation to deities. It was a technical tool, much like the legal personhood attributed to corporations and ships in civil and common law (Duff 1927; Smith 1928), which—for the British at least—did not have the moral dimension involved in Wise’s legal battles for animals.¹²

In India, the project of granting legal personhood to animals is recent and follows the international debate. Even if since ancient history the slaughter of animals has been condemned by various movements or figures, the animal welfare and animal rights movements began to develop during British rule as products of colonial history (Berti 2019; Berti and Good 2023; Dave 2014). In the case of FIAPO, the specific debate on legal personhood was initially inspired

⁹ *Matter of Nonhuman Rights Project, Inc. v Lavery* 2018 NY Slip Op 03309. May 8, 2018, Court of Appeals. <https://law.justia.com/cases/new-york/court-of-appeals/2018/2018-268.html>. Accessed on 17 September 2023.

¹⁰ See Douglas O. Linder’s blog: <https://famous-trials.com/animalrights>. Accessed on 17 September 2023. See also Franceschini (2021), which reviews 27 cases across the world, most of them using the habeas corpus strategy for animals.

¹¹ Lauren Choplin, “The NhRP in Hong Kong, Malaysia, and India,” *NhRP*, 9 June 2018, <https://www.nonhumanrights.org/blog/hong-kong-malaysia-india>. Accessed on 23 September 2023.

¹² Cf. Alley (2019), Berti (forthcoming), Patel (2010) and Sontheimer (1965). The ‘presence’ of the divinity in its ‘idol’ is an altogether different, long-standing debate, but is not the rationale for the corresponding legislation—though it may seem to have recently taken a new turn in the Ayodhya case (Mehta 2015) and after.

by the NhRP,¹³ sometimes alongside the somewhat idealised discourse of India as a country where animals have ‘traditionally been treated with dignity’.¹⁴

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Some key players in earlier animal protection movements—such as Chinny Krishna, former vice president of the Animal Welfare Board of India—figure among the FIAPO founders. Others come from the new generation of animal rights movements. Among them is Puja Mitra, former FIAPO director and a cetaceans’ expert who led the ‘Ride for Dolphins’ campaign against dolphinariums in India in 2013 that influenced the decision of the Ministry of Environment and Forests to ban them. The ordinance referred to dolphins’ unusually high intelligence, which has led scientists to believe that they should be seen as non-human persons and, as such, should have their own specific rights.¹⁵ Although the idea did not imply the change of the dolphin’s legal status, the news began to circulate worldwide that ‘India declares dolphins as non-human persons’, and the order was celebrated as a victory by environmental and animal rights organisations.¹⁶

Since the dolphin campaign, thus, Wise’s ideas may have influenced FIAPO activists. However, the FIAPO started paying the NhRP more attention in 2018 when Varda Mehrotra was executive director and Wise and Schneider went to Delhi and met FIAPO executive members and a few judges and lawyers¹⁷ and discussed legal personhood, ownership of animals and other notions related to animal rights. One point brought up during the meeting was Wise’s strategy of focusing on animals whose <p.23> qualities can be brought forward to convince the court to recognise them as legal persons and how this idea could be applied in India. They chose elephants: ‘given their ecological, historical and cultural importance ... [it] would be most appropriate to take the case for their [the elephant] personhood to the public.’¹⁸

The FIAPO’s interest in elephants was mentioned to me when I was in their Delhi office in 2019. Initially, their attention was drawn to a case filed by another organisation concerning Rajini, an elephant used by a renowned magician in his shows. A case of cruelty was registered against him in connection with the show where he pretended to make Rajini disappear.

¹³Other names mentioned on the FIAPO website include Peter Singer and Paola Cavalieri, who founded the Great Ape Project, which also strives for apes to be granted legal personhood (Cavalieri and Singer 1993).

¹⁴For instance, according to Priya Sanal, ‘India has always had a welfare-centric attitude towards animals—a very different approach in comparison to the rest of world.’ Lekshmi Priya S., “Personhood for Animals? This Collective Is Fighting to Make This a Reality!” <https://www.thebetterindia.com/143666/fiapo-personhood-for-animals-nonhuman-rightsstop-animal-cruelty-sentient-beings/>. Accessed on 17 September 2023.

¹⁵Ministry of Environment and Forests, Government of India. 2013. *Circular – Policy on Establishment of Delphinarium*. 17 May 2013. <https://cza.nic.in/uploads/documents/notifications/orders/english/C-1.pdf>. Accessed on 19 September 2023.

¹⁶Jesse Walker, “India Declares Dolphins ‘Non-Human Persons’ with Rights. Dolphin parks to be shut down,” *Reason*, 7 August 2013, <https://reason.com/2013/07/08/indiadeclares-dolphins-non-human-person>; Laura Bridgeman, “What India’s Decision to Ban Dolphin Captivity Means,” *Earth Island Journal*, 12 June 2013, https://www.earthisland.org/journal/index.php/articles/entry/what_indias_decision_to_ban_dolphin_captivity_means; Kumar Sambhav Shrivastava, “India Bans Use of Dolphins for Commercial Entertainment,” *Down To Earth*, 21 May 2013, <https://www.downtoearth.org.in/news/india-bans-use-ofdolphins-for-commercial-entertainment-41127>. Accessed on 22 September 2023.

¹⁷<https://www.nonhumanrights.org/blog/hong-kong-malaysia-india/>. Accessed on 17 September 2023. The story refers to the *jalikattu* (bull race) case (*Animal Welfare Board of India v A. Nagaraja & Ors*, on 7 May 2014. Supreme Court of India: Civil Appeal No. 5387 of 2014) and alleges that in the judgment ‘nonhuman animals were seen as “persons” with fundamental legal rights.’ This judgment does not in fact mention the issue of granting legal personhood to animals.

¹⁸<https://www.fiapo.org/fiaporg/news/personhood-for-animals-the-next-social-usticemovement/>. Accessed on 17 September 2023.

“‘Vanishing jumbo’ has magician in trouble’ headlined a newspaper.¹⁹ A photograph showed the elephant visibly injured before being locked in its cage. The case was then used by FIAPO to put pressure on other magicians in the country.

We are fighting for the rights of Rajini, a beautiful elephant from Indore, who is being forced to perform in magic shows and beg on the streets, despite gaping wounds on her back and significant injuries. A highly intelligent elephant, she is being denied the right to a *dignified life and liberty—rights we believe are fundamental for non-human animals* [emphasis in the original].²⁰

Although the mention of Rajini’s basic rights as a non-human animal may make the case sound similar to Wise’s, this was less about legal personhood than about informing the magicians that if they did not stop using animals in their shows, they would also face a court case.

The issue of legal personhood was the topic of a special panel of a conference organised by FIAPO in Hyderabad.²¹ Varda Mehrotra opened <p.24> the session by distinguishing what she called the legislative path—based on welfarism, prevention of cruelty and prevention of unnecessary pain—and the issue of legal personhood: ‘Is it now time for animals to be recognized as persons?’ she asked.

At the conference, Anand Grover, an activist lawyer engaged in cases of fundamental rights and equality, was asked to provide a road map for FIAPO’s legal strategy. Grover suggested shifting from statutory rights, which deal with cruelty issues, to a constitutional rights issue, and elaborated on the notion of ‘right to life’. This ‘right to life’ had been extended to animals in a landmark judgment in 2014 when the Supreme Court of India ruled in favour of banning *jalikattu* (bull races), popular in Tamil Nadu.²² The ruling was given by Justice Radhakrishnan, one of the speakers at the FIAPO conference, who is frequently quoted in India as being a supporter of the animal cause. In this ruling, the judge extended Article 21 of the Constitution of India, the ‘right to life and to personal dignity’, to include ‘all forms of life including animal life’. Since the term ‘life’ (in Article 21) is not about mere survival but about living a life with inherent honour and dignity, this means that ‘animals too have the right to live with dignity.’²³

Another point was raised in the panel by FIAPO president and environmental activist lawyer Norma Alvares. She explained why they chose to focus on elephants for their legal battle: It was a legal strategy because, she said, if they had asked for legal personhood to be granted to all animals, the judge would have immediately dismissed their request. ‘We have been a bit shrewd and we have symbolically decided to take one animal and we have chosen the elephant.’ The aim was to choose an animal whose importance—without being linked to the Hindu identity, as would for instance be the case for cows—would be accepted by different communities.

¹⁹ Rabindra Nath Choudhury, “Madhya Pradesh: Vanishing Jumbo’ Has Magician in Trouble,” *Deccan Chronicle*, 23 May 2018, <https://www.deccanchronicle.com/nation/current-affairs/240518/madhya-pradesh-vanishing-jumbo-has-magician-in-trouble.html>. Accessed on 22 September 2023.

²⁰ <https://www.fiapo.org/fiaporg/personhood-for-animals/>. Accessed on 17 September 2023.

²¹ FIAPO India, “Panel Discussion—Legal Personhood of Elephants in India: Protection of Their Rights and Interests,” 2019. https://www.youtube.com/watch?v=Yhc6Qsz__Rk. Accessed on 19 September 2023.

²² *Animal Welfare Board*... 2014 (see Note 17); the judgment has recently been reviewed and partly reversed by a Constitutional Bench, see *The Animal Welfare Board of India vs Union of India* on 18 May 2023, Supreme Court of India: WP (civil) no. 23 of 2016.

²³ This was through an expansive reading of Article 21, as Riya Jain remarked. Riya Jain, “Article 21: Understanding The Right to Life and Personal Liberty from Case Laws-Academike Explainer,” *Academike*, 12 August 2021, <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>. Accessed on 22 September 2023.

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Alvares was joined by Suparna Baksi Ganguly, an ecologist and elephant expert, who stressed similarities between elephants and humans: ‘The years of life of the elephant—she said—correspond to a human life. ... its brain is well developed ... and it has the extraordinary quality of filtering information, protecting experiences, remembering, processing. It is a mind as complex as a human mind.’ This argument is also mentioned in FIAPO’s website. It led to a ‘Declaration of Elephant Rights’, which states ‘We, the people, recognise the inherent value that the Elephant has.’²⁴ In a white paper to the Ministry of Environment, Forest and Climate

Change, FIAPO (2020) called for a ban on the ownership of captive elephants, arguing that elephants should have certain legal and constitutional rights such as bodily integrity, autonomy, freedom and dignity, which would prevent them from being treated as things.

This request was motivated by several cases reported by the media, in which an elephant had been killed—Saumya, for example, a pregnant elephant, died after eating a pineapple stuffed with firecrackers (FIAPO 2020: 1). Her death, the authors write in the paper, caused ‘a collective national outrage’ (ibid. 4). It led them to draw up a list of names of other elephants that were allegedly treated cruelly and whose cases needed to be investigated. They particularly denounced the practice of temples owning elephants, which is common in South India.

When an elephant attracts the attention of activists, it begins to be known in the media and on social media. In becoming celebrities, these elephants readily lend themselves to becoming the protagonists of legal actions. This is what happened with Masini, a female elephant whose story became famous in 2018 when she trampled her mahout to death (Valayapathy 2018). The incident, which was filmed and posted online, was taken by activists as an opportunity to condemn the practice of keeping an elephant in chains, as her act was presented as a sign of ‘retaliation against daily violence by *ankush* [elephant goad] and bull hooks’ (FIAPO 2020: 4).

At FIAPO, the Masini case was presented to me as the first in India where a prayer was made to give legal personhood to an elephant. Masini became the ‘frontrunner’ in their battle. ‘We were not directly involved <p.26> in the case’, a FIAPO member told me, ‘but we were in the background helping the petitioner to prepare his case’.²⁵

The petitioner was Antony Clement Rubin, a Chennai-based animal activist who, in 2018, filed the case at the Madurai branch of the Madras High Court. In the petition, he wrote how Masini, after being found alone in the forest when she was a baby, was moved to an elephant camp until the then Chief Minister of Tamil Nadu offered her to a temple. There she was kept chained and was denied freedom to the extent that she ‘underwent some distinct behavioural changes’.²⁶ In the petition, it was requested not only that Masini be permanently relocated to ‘her former home’ where she lived before being given to the temple but also that she and other elephants be granted the status of a legal person and the right to bodily liberty, integrity and autonomy, protection against commercial exploitation, torture, cruelty and degrading treatment, the right to physical and mental well-being, the right to interact and socialise with other elephants and to uphold the right to a dignified life.²⁷

²⁴ <https://www.fiapo.org/fiaporg/declaration-on-rights-and-dignity-of-elephants-2/#>. Accessed on 19 September 2023.

²⁵ Field work notes, 2022.

²⁶ Manasa Rao, “‘Return Temple Elephant Masini to Original Habitat,’ seeks petition to Madras HC,” *The NEWS Minute*, 21 September 2018, <https://www.thenewsminute.com/article/return-temple-elephant-masini-original-habitat-seeks-petition-madras-hc-88733>. Accessed on 22 September 2023.

²⁷ *Ibid.*

In the order, although the judge did not follow up the issue of legal personhood, he referred to a ‘larger’ and ‘interesting’ issue that the case had raised and ‘will have to be answered’, which was precisely the question of elephant ownership: ‘Can an Elephant be permitted to be domesticated and used for religious purpose?’²⁸ He called upon the activist to file an affidavit in response to such a query. When the affidavit was filed, however, the case was heard by another judge, who declined to go into the larger issue.

In 2022, I met again with some FIAPO members. Varda Mehrotra had left. Since 2019, they told me, they had not done much because of the pandemic and the lack of funding due to the government’s refusal to issue licences to some NGOs. ‘The atmosphere is not very conducive’, they said, ‘we are still under scrutiny ... that’s why the work is slowed up but there are a lot of elephants that need help in India’.²⁹

<p.27>

They had filed a case at the Delhi High Court to ask the government to finalise a 2018 notification which banned the use of animals in circuses.

During COVID, when people cannot survive themselves, how can they take care of the animals? So, we asked, please check the condition of animals and let’s rehabilitate them. So, it was not a direct prayer, it was a smart strategy to take all animals from circuses and rehabilitate them.³⁰

They also followed a case concerning the Dubare elephant camp in Karnataka, a government-run camp to which some wild elephants have been moved, because they had come into conflict with farmers. It was alleged that once in the camp the elephants were subjected to cruel techniques of domestication and forced to perform in different kinds of shows to attract tourists.

These sanctuaries are near human populations so these elephants enter their fields and destroy them. When farmers complain to the forest department, they capture the elephants and put them in the camp to prevent them from entering their fields. They say this is a solution, but this is not a solution.³¹

The camp was presented as a place for captivity instead of being a place for rehabilitation and one that deprived the elephants of their freedom.

People come to see these elephants and there is no norm, and these elephants are always tied in chains because they are wild, so they have to tame them. They are making them captive animals. This is happening in Dubare camp and the investigation is also done by us, by FIAPO (ibid.).

‘In the Dubare case the legal person is not an issue’, FIAPO’s legal manager told me, ‘as it is not about an individual elephant, like in the Masini case, but about a group of elephants, who are kept at that particular camp’. However, she said, a legal person issue could be added as an extra issue to their prayers.

²⁸ *Antony Clement Rubin vs The State of Tamil Nadu & Ors*, on 19 September 2018. Madurai Bench of Madras High Court. WP(MD) No.20001 of 2018.

²⁹ Fieldwork notes, 2022.

³⁰ *Ibid.*

³¹ *Ibid.*

<p.28>

We always ask for more so that even if a judge gives you a passing comment, you can build on that in the next case. ... so you have to portray that there are huge expectations ... but, practically, legal personhood for animals makes no sense because it is not possible to implement ...³²

She was not really expecting such a request to be accepted by the courts because ‘as a society we are not ready’. Therefore, the issue of legal personhood seems to be less present on FIAPO’s agenda today. As FIAPO senior advocate Anand Grover told me, the idea that if granted legal personality animals could have legal standing in court—which is central to Wise’s strategy—did not seem to him to be relevant in the Indian context.

In this regard, he mentioned the public interest litigation (PIL) procedure, commonly used in India, wherein you do not need to be a victim to have legal standing. ‘Animal personhood’, he told me, ‘Doesn’t change much because, in actual practice, it is me [the lawyer] that will move’.³³ This step backwards can be seen in part as the result of criticism from Indian legal and environmental circles addressed to a series of High Court rulings that granted legal personhood to various elements of nature (including the Ganges and the Yamuna) as well as to the entire ‘animal kingdom’. These rulings have generated strong interest in the West. However, and as I will show, the implications behind this idea of granting legal personhood to animals as a collective entity differ from Wise’s and FIAPO’s moves.

Before turning to these rulings and their place in the international debate, I will briefly outline the judicial context in which they were passed.

IV

Judicial Activism in Nature

The discourse on rights in relation to nature—both animals and the environment—has been directly promoted in India by the courts. This is not surprising given the level of activism of Indian judges (Andhyarujina 2018), which increased in India in the 1980s with the development of PIL, <p.29> a procedure that allows any person or institution to file a case to address a problem related to the public interest. Some judges in the higher courts have been particularly active in their desire to become promoters of environmental and ecological values, thus enforcing one of the fundamental duties included in the Constitution: to protect and improve the natural environment (Berti and Tarabout 2015). The PIL procedure has enabled judges to intervene in disputes and control the proper functioning of the administration as well as promulgate numerous regulations.³⁴ With regard to the environment, various rulings were passed by the courts in response to PILs filed by activists in the 1980s: For instance, M. C. Mehta, an environmental lawyer, fought many environmental battles such as the Delhi Pollution Case and the Ganges River Pollution Case, in which he focused on Article 21 of the Constitution,

³² *Ibid.*

³³ In Grover’s view, the concept of habeas corpus is only useful in these cases insofar as it is partly related to the idea of ‘dignity’ because it ensures that a person has been treated fairly in court.

³⁴ In India, PIL was introduced and developed by an avowed reformist judge, Justice P. N. Bhagwati (1921–2017), who served as Chief Justice of India in 1985 and 1986. Its use is now widespread and allows judicial activism, in contrast with US courts which are generally stricter about upholding the principle of separation of powers—this may partly explain why Wise’s strategy of requiring habeas corpus is felt to be less relevant in the Indian context.

the ‘right to life’, which, he argued, had to include the right to clean air, clean water and a healthy environment.³⁵

Some judges were themselves committed to both the environmental and the animal cause.³⁶ With regard to animal issues, I have already referred to Justice K. S. Radhakrishnan, a former Supreme Court judge, who was named ‘Man of the Year’ by PETA³⁷ India in 2014 for having passed the ban on bull races (the Jalikattu judgment). While his rulings mention various notions common to international approaches to animal welfare—the intrinsic value of nature, ecocentric principles and various legislations in Europe—the ‘rights’ in his decisions refer to preventing animals from being treated cruelly or without dignity and do not speak explicitly of legal personhood.³⁸

<p.30>

By contrast, this specific concern was taken up in a series of rulings authored by Justice Rajiv Sharma, a High Court judge who recently retired. Two of these judgments—in Uttarakhand in 2018 and in Punjab in 2019—granted the ‘entire animal kingdom’ rights similar to humans and stated that ‘animals should be treated as legal entities with corresponding rights, duties and liabilities of a living person’.³⁹

These rulings came a year after the same judge declared the Ganges and Yamuna rivers⁴⁰ as well as a Himalayan glacier and other elements of nature⁴¹ legal persons. It is not my purpose here to examine in detail their content, work which has already been done from different perspectives (Alley 2019; Brunet 2019; Jolly and Menon 2021; O’Donnell 2018; Tănăsescu 2021; 2022). Instead, I limit myself to considering some of the reactions the rulings produced in India and abroad.

V

Controversial Rulings of International Resonance

When in 2017, Justice Sharma gave legal personhood to the Ganges and Yamuna as well as to ‘all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers’ (*Mohd. Salim...* 2017: para 19), the news immediately made world headlines.

Such an idea was not included in the Writ Petition that a resident of the area, Mohammed Salim, had filed to request that an end be put to the encroachment and sand mining in the Ganga River

³⁵ Nehal Misra, “How MC Mehta Led to the Formation of Jurisdiction on Environmental Laws in India,” *iPleaders*, 15 August 2020, <https://blog.ipleaders.in/mc-mehta-led-formationjurisdiction-environmental-laws-india/>. Accessed on 22 September 2023. A list of the main cases in which he has been involved can be found at the blog of the M. C. Mehta Environmental Foundation: <https://mcmef.org/>. Accessed on 17 September 2023.

³⁶ For instance, Justice V. R. Krishna Iyer (1914–2014) published in 2004 *Towards a Natural World. The Rights of Nature, Animal Citizens and Other Essays*.

³⁷ People for the Ethical Treatment of Animals.

³⁸ However, the Jalikattu judgment has sometimes been seen as an implicit recognition of legal personhood for animals, on the assumption that giving rights equates to attributing legal status.

³⁹ *Narayan Dutt Bhatt v. Union of India & Others*, on 4 July 2018. High Court of Uttarakhand: WP (PIL) 43 of 2014. *Karnail Singh and Others v. State of Haryana*, on 31 May 2019. Punjab & Haryana High Court: CRR-533-2013.

⁴⁰ *Mohd. Salim v. State of Uttarakhand & Others*, on 20 March 2017. High Court of Uttarakhand: WP (PIL) 126 of 2014.

⁴¹ *Lalit Miglani v. State of Uttarakhand and Others*, on 30 March 2017. High Court of Uttarakhand at Nainital.

near the town of Haridwar. However, when the case was heard in court, the judge began to discuss it, as he had been clearly impressed by the internationally mediated New Zealand legislation to declare the Whanganui River a legal person. A lawyer who attended the hearing told me what happened:

When the (Salim) case came up in court, the news about the Whanganui River had just been announced in the media and the judge appeared <p.31> to be very inspired by this idea. He started talking about that and Mr. Pant (Salim's counsel), just capturing the judge's thought, told him "My Lord, please give legal entity to Ganga and Yamuna as well." The judge then said that yes, it can be. Then he gave the judgment to Salim.⁴²

The judge based his decision partly on the importance of the two rivers to the Hindu religion. We read in the ruling, for example, that 'Rivers Ganges and Yamuna are worshipped by Hindus. ... The Ganga is also called "Ganga Maa" [mother]' (*Mohd. Salim...* 2017: para 11). When I asked Salim's lawyer, Mr Pant, about the case, he told me that they were foremost concerned by 'the river as a natural flow' because encroachment would have prevented it from flowing. With regard more specifically to the religious importance of the river as emphasised in the ruling, he told me 'Yes, it is true, there is a soul in the water ... there is the goddess there ... if the natural flow is stopped you can kill that living entity.' The religious (Hindu) aspect of the issue was however not mentioned in the motion he filed in court on behalf of his client, who is in fact a Muslim.

Moreover, in the ruling, the mention of the Ganges as a goddess is immediately followed by a quotation from precedents concerning the legal personality of Hindu idols. Although the implications of these quotes are not explained by the judge, the overlapping of the two ideas—that the Ganges and Yamuna are goddesses for Hindus and that gods' idols in India are granted legal personhood—clearly suggests that he equates a 'divine person' with a 'legal person' (Jolly and Menon 2021; O'Donnell 2018; Tănăsescu 2022). As Tănăsescu (2022: 111) puts it, 'this parallel is not explicit in the judgment but given the Indian context it is also obvious that it informed the underlying thinking'.

Considering a river as a living/divine person resonates strongly with Hindus, especially with regard to the Ganges, often represented in religious classics and popular repertory in its anthropomorphised form as a goddess who descended from the sky to save the earth from a drought. She is honoured in temples and addressed as *mata* (mother) in devotional contexts. Some press articles reporting news of the ruling obviously drew on this religious repertoire by playing on the confusion between a divine (human-like) person and a legal person. As in the cases mentioned above, <p.32> the process of anthropomorphising, here of the Ganges, is explicit in the title of a BBC documentary film: 'Mother Ganges becomes a legal person'.⁴³

An appeal was lodged against the Uttarakhand decision at the Supreme Court by the state through the then Chief Secretary of Uttarakhand, who is named in the ruling as one of the 'guardians' of the river. The Chief Secretary's main worry was the practical consequences that his role as guardian could imply in terms of responsibility, for example if the river caused damage to people or property:

Hence, in case of coming of flood vis-à-vis someone dying in these rivers due to such flood, then as to whether the effective party can file suit for damages against the Chief

⁴² Field work notes, 2019.

⁴³ Sanjay Ganguly, "'Mother' Ganges Becomes a Legal Person," *BBC News*, 5 April 2017, <https://www.bbc.com/news/av/world-asia-india-39488528>. Accessed on 23 September 2023.

Secretary of the State and as to whether State Government is liable to bear such financial burden?⁴⁴

The Chief Secretary also criticised the religious argument behind the ruling, arguing that it was not present in the petition. Despite the rivers Ganges and Yamuna and other tributaries undoubtedly having a ‘social impact’ on the community, he noted, they could not be declared legal persons ‘only to protect the faith of the society.’⁴⁵

While the religious argument behind the judgment was criticised in the appeal and more broadly among the secularised elite in India (Brara 2017: 35), this is exactly what attracted the media attention and fascinated academics and professionals in the West. Even those who questioned the effectiveness of the judgment point out the implications the ruling had for ‘spiritual ecology’ (Alley 2019). The Ganges and Yamuna rulings have generated so much interest in the West that they have been included in a law textbook (Zelle et al. 2021) of rulings that mark a ‘paradigm shift’.

Nevertheless, problems with this ruling have been identified by scholars. While describing this and other judgments written by Justice Sharma as ‘powerful examples of the growing relevance of rights-based environmental protection’, O’Donnell (2018) criticised the confusion between legal person and living person; she also pointed out the enforcement problem these rulings raise. Similarly, while appraising the Ganges–Yamuna <p.33> decision as an ‘innovative approach to environmental protection’, Jolly and Menon (2021: 14) note that it is nonetheless the result of ‘an abrupt and impulsive development without a real understanding of the socio-cultural settings’. Moreover, as O’Donnell (2018: 11) also notes, the sacredness of rivers, along with their divine/anthropomorphic nature, does not prevent these rivers from being polluted. They are also destroyed—particularly the Ganges—by hydroelectric projects and human pollution. Not only does the religious idea of the Ganges not prevent the river from being polluted, but it may even encourage it due to the idea that the purity of the river will ‘clean away’ the pollution.⁴⁶

The religious argument behind the Ganges–Yamuna judgment attracted the interest of Wise’s team. On the NhRP website, Schneider penned in 2017 a post entitled ‘Why you should be excited about India’s “rivers with rights” ruling’.⁴⁷ He explained how such a ruling helped the NhRP by presenting the rivers’ ‘legal status of “living entity” ... as functionally similar to the status of “legal personhood”, which the Nonhuman Rights Project is currently seeking in the New York courts on behalf of two captive chimpanzees’. In that sense, Schneider noted, the Ganges–Yamuna decision represented a potential inroad for nonhuman animal rights in India. It also seemed to confirm what was visibly already his idea of India as a religious country and how ‘the religious significance of the rivers impacted the court’s decision’. This idea led Wise to support—and, perhaps, to inspire—FIAPO’s idea of focusing on elephants in preparing their own court strategy. As Schneider put it:

We think a similar [religious-focused] approach could be put to work to secure elephant personhood in India. Like the rivers, elephants have been worshipped in India for centuries. A sacred animal in Hinduism and a symbol of mental strength, earthiness and responsibility, the elephant represents the living incarnation of the god Ganesh, one of the most important gods.

⁴⁴ Court file.

⁴⁵ Court file.

⁴⁶ For example, when using firecrackers during the Diwali festival or immersing Ganesh images (Jolly and Menon 2021; Kothari and Rajpai 2017).

⁴⁷ Kevin Schneider, “Why You Should Be Excited About India’s ‘Rivers with Rights’ Ruling,” *NhRP*, 28 March 2017, <https://www.nonhumanrights.org/blog/rivers-with-rights/>. Accessed on 23 September 2023.

<p.34>

We have seen, however, that this religious argument was not put forward by FIAPPO activists. On the contrary, they wanted to avoid addressing the issue in religious, Hindu terms. Schneider, on the other hand, obviously believed that a religious approach would be an effective way to achieve in India what NhRP was striving to obtain in the United States.

While all the reactions mentioned above focus on the religious arguments behind the ruling, a judge I spoke to told me not to over-interpret the judge's religious motivation. For him, what could have also motivated the judge could be the media coverage of the case. This is what also emerges in the second Uttarakhand case on the Ganges that was later brought as a PIL before the same judge by Lalit Miglani, an activist lawyer. When I met Miglani, he told me that after attending the Salim hearing and seeing the impact it had at the international level, he started to 'have some thoughts' and, with his brother, made a plan to file an application. Miglani then told me what happened, after he had argued the case in court, when the order was announced.

As soon as the order was given, I received so many calls... I was on the way home ... and I saw many messages on my phone from journalists saying *khao khao* (tell us, tell us). I told them *bhai* (brothers), I have not gone through the judgment yet so I can't make a statement without going through it. At 9:30 we got home and all these journalists were sitting here, waiting for me! I felt like a revolutionary.⁴⁸

The issue of legal personhood was raised by the same judge in relation to animals. The case I shall present shows, however, how, despite Schneider's assumption of equivalence between Justice Sharma's rulings and Wise's NhRP, the idea of legal personhood differs profoundly in these two cases.

VI

The Animal Kingdom Declaration

In 2018, in a case concerning the use of animal-pulled carts, Justice Sharma (along with Justice Lok Pal Singh) declared 'the entire animal kingdom including avian and aquatic [to be] legal entities having a <p.35> distinct *persona* [emphasis in the original] with the corresponding rights, duties and liabilities of a living person' (*Narayan Dutt Bhatt...* 2018: para 99A)⁴⁹—the ruling attracted international interest again.

As in the Ganges–Yamuna case, the issue of legal personhood was not brought up by the petitioner—their request was limited to denouncing the non-respect of regulations concerning the use of animals for transport; the question was raised by the judge himself without elaborating on the notion explicitly but implicitly through a series of eclectic quotes. After quoting precedents concerning Hindu idols he moved on to international sources, such as the dissenting opinion in the Sierra Club case, English law, legal status of corporations, American books and articles concerning the issue of attributing legal personhood to great apes. Scientific quotations intermingled with religious and moral references to animal mythology, Jainism, non-violence, Buddhism and quotations from Mahatma Gandhi and the Dalai Lama.

⁴⁸ Field notes 2019.

⁴⁹ This decision was followed by a similar judgment in 2019 in a case filed under the Prohibition of Cow Slaughter Act (*Karnail Singh and Others v. State of Haryana*, 2019).

Despite reference to the idea of legal personhood, the judge's intention remains very similar to Radhakrishnan's ruling on jalikattu—which he quotes at length and where it is said that the court has the duty 'to take care of the rights of animals, since they are unable to take care of themselves as against human beings' (*Animal Welfare Board...* 2014: para 26). The incapacity of animals 'to take care of themselves' contrasts with Wise's argument: Because chimpanzees or elephants are autonomous, responsible individuals they must be considered legal persons. While Wise's aim is precisely to distinguish his argument from a welfare issue and to prevent any form of animal exploitation, Justice Sharma seems to maintain a welfare logic: In the mandatory guidelines enumerated at the end of the judgment, apart from point 99A quoted above, all the other 30 points exclusively concern questions of well-being or prevention of cruelty to animals.

Moreover, despite the judge's declaration that the entire animal kingdom is 'a distinct *persona* with corresponding rights, duties and liabilities of a living person', many questions still have to be addressed. For example, can animals be killed for food? What about animals that eat other animals? Would an animal be able to own a property as idols do in India? None of these issues were addressed in the ruling, which makes the judge's declaration more of a rhetorical statement with no effect at the <p.36> legal or practical level.⁵⁰ In the animal kingdom ruling, the judge seems to do two different things. One is to recall the rules on animal transportation. In this respect, his order is operational. The other is to apply to India ideas about legal personhood that come from the international debate. As in the Ganges case, this does not seem to be made so much with a clear intent of enforcing it than as a way of engaging in a global discussion.

However, some reactions were quite critical. For example, in a newspaper article with the apparently laudatory title 'The Animal Kingdom can defend itself now. And it's all thanks to Uttarakhand's crusader judge', the reporter remarks how Sharma's 'crusade' actually seemed to confirm what Bhuwania (2017) notes about the PILs in general: that the system 'incentivizes judges to give orders that are attention-grabbing'.⁵¹ A judge I met made a similar point, jokingly expanding the term PIL to publicity interest litigation.

Justice Sharma retired recently. Despite his judgments' international visibility, what their impact will be is not clear. Opinions in India seem to be mixed. While some admire the judge for his intentions, others are sceptical about the outcomes. An activist I spoke with told me of her disappointment: 'All his rulings do not stand ... and getting a stay from the Supreme Court is worse than not having that order.' Though she could not say she was unhappy with these rulings from an activist perspective, she criticised them from a procedural point of view. When the ruling on the 'animal kingdom' was announced, she went on, the government of Uttarakhand wanted to file an appeal at the Supreme Court because, as in the Ganges case, they were worried about the consequences of the decision.

They thought that everybody would jump on them saying 'this is a person' or whatever, so I told them that there is nothing, there is no direction for you, for the government, you haven't been given any duty, <p.37> so forget it. He (the judge) said legal person: OK! We told them that we understand the judge's sentiment, just let it be.⁵²

⁵⁰ The problem of considering the whole animal kingdom a legal person was raised at the FIAPO meeting by Ashish Kothari. While criticising the attitude of those who focus on animals that are the most similar to humans, he noted that the alternative option of conferring legal personhood on all animals was equally anthropocentric.

⁵¹ Apurva Vishwanath, "The Animal Kingdom Can Defend Itself Now, and It's All Thanks to Uttarakhand's Crusader Judge," *The Print*, 22 July 2018, <https://theprint.in/india/governance/the-animal-kingdom-can-defend-itself-now-and-its-all-thanks-to-uttarakhandscrusader-judge/84710/>. Accessed on 22 September 2023.

⁵² Field work notes, 2019.

Despite the activist's recommendations, the Uttarakhand government filed an appeal to the Supreme Court in 2019, which put on stay the point of the ruling concerning legal personhood. According to the judge who decided the case, this point exceeded the limits of judicial power. 'You see', he told me, 'For the general public this judgment may be right or wrong ... but, for those who are well versed in law, they know that you are going far beyond your duty.'⁵³

Sharma's rulings on legal personhood were seldom followed up at the judicial level in India. In 2020, a PIL was brought before the Supreme Court, where the lawyer and activist Devesh Saxena, mentioning Justice Sharma's precedents, requested that the court declare the animal kingdom a legal entity. At the hearing, he started talking about species equality, but Chief Justice Sharad A. Bobde was visibly not impressed by his argument. He told the lawyer that animals are already protected by law and that there was no need to give them legal standing. 'What exactly do you want?' he asked, 'Animals are not equal to humans. Is your dog equal to you? According to your logic, even trees need to be treated as legal entities.' He dismissed the request.⁵⁴

The Uttarakhand decision was mentioned yet again in a 2022 Madras High Court ruling where the judge wrote about the moral need to hand over 'Mother Earth in its pristine glory... to the next generation' and that it was, therefore, time 'to declare/confer juristic status for/on Mother Nature':

This Court by invoking 'parens patriae jurisdiction' is hereby declaring 'Mother Nature' a 'Living Being' having legal entity / legal person / **<p.38>** juristic person / juridical person / moral person / artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them.⁵⁵

The Madras judge reproduced the Uttarakhand judgment's wording, without developing arguments. Although this ruling is a variant of the animal kingdom one and, as Ritwick Dutta notes, unlikely to have an impact 'in day-to-day decisions about the environment',⁵⁶ the mere mention of legal personhood was enough for an otherwise ordinary judgment to make the headlines (again) in the national press.

While in India Sharma's rulings on the animal kingdom had little echo,⁵⁷ they caught the attention of the legal milieu abroad. For instance, American activist lawyer of Indian origin, Rajesh K. Reddy, director of the Animal Law LLM programme at Lewis & Clark Law School, praised Sharma's judgments as a further development on the jalikattu judgment. According to

⁵³ *Ibid.*

⁵⁴ "Supreme Court Questions Plea for 'Legal Entity' Status to Animals," *The Hindu*, 9 September 2020, <https://www.thehindu.com/news/national/supreme-court-questions-pleafor-legal-entity-status-to-animals/article32565056.ece>. Also, Akshita Saxena, "PIL Filed in SC to Declare Entire Animal Kingdom as 'Legal Entities' & Humans as 'Loco Parentis'; Issue Guidelines for Animal Protection," *LiveLaw*, 11 August 2020, <https://www.livelaw.in/top-stories/pil-filed-in-sc-to-declare-entire-animal-kingdom-as-legal-entities-humans-asloco-parentis-issue-guidelines-for-animal-protection-read-petition-161258?infinite-scroll=1>. Accessed on 22 September 2023.

⁵⁵ "'Mother Nature' Is a Living Being... with Rights and Duties: Madras High Court," *The Hindustan Times*, 30 April 2022, <https://www.hindustantimes.com/india-news/mother-nature-is-a-living-being-with-rights-and-duties-madras-high-court-101651311461556.html>. Accessed on 22 September 2023.

⁵⁶ Ritwick Dutta, "Rights for 'Mother Nature' Only Feeds the Myth of Sustainable Development," *Science the Wire*, 8 May 2022, <https://science.thewire.in/environment/mother-nature-rights-madras-high-court-parens-patriae/>. Accessed on 22 September 2023.

⁵⁷ They are rarely quoted in landmark lists in India; "Landmark Judgement of Indian Judiciary on Animal Rights," *Prashudhanpraharee*, 26 December 2022, <https://www.pashudhanpraharee.com/landmark-judgement-of-indian-judiciary-on-animal-rights/>. Accessed on 23 September 2023.

him, while in the jalikattu ruling, Justice Radhakrishnan had not explicitly referred to the ‘language of legal personality’, it was precisely the link between rights and personhood that Justice Sharma established in the animal kingdom ruling, defined by Reddy as a ‘monumental’ decision, in stark contrast to the criticism in Indian legal circles.⁵⁸

<p.39>

VII

Conclusion

What may appear to be the same idea—to recognise an animal as a legal person—may take very different meanings. We have seen how Wise focuses on habeas corpus, which requires looking for individualised animals. Though cognitive characteristics do not enter per se for habeas corpus, Wise’s strategy has been to present cases for autonomous, intelligent animals, individualised with a name, a court file and a personal story. In Wise’s case, the rationale for showing the proximity with human beings—who are the subjects of law—is no longer focused on the argument that they are sentient beings capable of suffering, which has been the premise of the welfare movement over the last centuries, but that they have their own interests and, because of their detention, are prevented from fulfilling them. Despite the criticism of anthropocentrism that has sometimes been raised behind the idea of selecting animals that fit the criteria of ‘autonomous beings’, Wise is battling for a specific ontological revolution that consists in opening the ‘legal wall’ between humans and animals, not because humans have a moral duty to ensure the well-being of animals, but because (some) animals and humans share characteristics that require a rethinking of the boundaries between the two. Paradoxically, this is associated with the argument that a legal person may also be an object or an abstraction. Moreover, precisely because of his use of habeas corpus, granting legal personality to animals appears to be different from granting legal personality to rivers, despite the equivalence the NhRP made. In Wise’s argument, the problem concerns the animal’s imprisonment and its physical and mental freedom, an argument that does not arise in the case of rivers.

For their part, FIAPO activists have been clearly inspired by Wise’s idea of framing their struggle in terms of fundamental rights, as well as by the idea of focusing on individual animals, as the case of Masini shows. Recently, however, due to the criticism raised around this issue, FIAPO members seem to simply consider it as a possible additional prayer to add to a petition in order to raise expectations and increase the chances of obtaining small concessions. Still, the arguments used by FIAPO in choosing an individual animal or a species on which to focus are again <p.40> based, as for Wise, on an anthropocentric perception of what an adult, healthy person is—intelligent, autonomous, self-aware—that, for most legal scholars, is in fact not required for granting legal personality.

In the case of Justice Sharma’s rulings, the whole ‘animal kingdom’ (of the states of Uttarakhand and Punjab) becomes a legal person, which moves even further away from Wise’s strategy of finding an individual animal that could be used to break the human–nonhuman animals’ boundary. The animal kingdom idea seems less concerned with the logic of human proximity, and turns the notion of legal personhood for animals into a rhetorical injunction. In Sharma’s rulings, we are closer to an environmental logic, where rivers, streams, glaciers,

⁵⁸ Rajesh K. Reddy, “Groundbreaking Litigation Seeks to Extend Formal Personhood Status to India’s Animal Kingdom,” *Lewis & Clark Law School*, 8 September 2020, <https://law.lclark.edu/live/news/44234-groundbreaking-litigation-seeks-to-extend-formal>. Accessed 22 September 2023.

meadows, the air, etc., get legal personality. Animals, also, are taken as a natural whole requiring protection. Even the human protectors are not individualised and all citizens become guardians of the animal kingdom. In this sense, far from the moral challenge of obtaining habeas corpus for an animal-client, ruling that the animal kingdom is a legal person becomes a mere declaration. This may be partly related to the different position that Sharma has as a judge: Compared to Wise or FIAPO, he does not need to come up with a strategy to convince a court in order to win a case, but has the power to give himself a judgment. Declaring the animal kingdom a legal person does not really seem to be made with the intent of enforcing it, but is a way of fuelling ideas that might be used to mobilise public opinion and legal discussions.

This is at least what the lawyer in the Salim case, Mr Pant, believed when he told me that by putting Sharma's rulings about the Ganges at stay, the Supreme Court could only stop their execution, but the essence of the judgment was not wiped out.

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