
ENVIRONMENTAL PERSONHOOD AND THE FUTURE OF THE GREAT NICOBAR ISLAND: RETHINKING DEVELOPMENT AND ECOLOGICAL JUSTICE

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ABSTRACT

The Great Nicobar Island (GNI) project, approved under India's "Holistic Development" scheme, exemplifies the deep-seated conflict between economic expansion, strategic imperatives, and ecological preservation within Indian environmental governance. Despite constitutional and statutory mandates for environmental protection, state policy continues to privilege anthropocentric and utilitarian interests over ecological integrity and indigenous rights. The large-scale forest diversion, de-notification of protected areas, and displacement of Particularly Vulnerable Tribal Groups under the project expose the inadequacies of India's current environmental clearance regime and its failure to uphold the constitutional vision of sustainable development. This paper argues that the recognition of environmental personhood—the attribution of legal personality and rights to nature—offers a coherent jurisprudential and institutional framework to address these limitations. Situating the argument within the global *Rights of Nature* discourse and engaging with theoretical analogies to corporate personhood, it demonstrates that legal personality is not contingent upon sentience but upon the capacity to hold rights and duties within the legal order. Drawing on comparative insights from New Zealand's *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, the paper proposes a guardianship-based model for the GNI ecosystem that integrates indigenous custodianship with constitutional and statutory obligations, thereby operationalising ecocentric governance. By critically examining India's environmental jurisprudence and policy inconsistencies, the paper contends that granting legal person status to the GNI ecosystem would symbolically and substantively transform environmental law by institutionalising ecological justice and recognising nature's intrinsic value. It concludes that environmental personhood represents a necessary legal evolution to reconcile development with the constitutional promise of ecological integrity, marking a decisive step towards an ecocentric jurisprudence

grounded in coexistence, stewardship, and sustainability.

Keywords: Environmental Personhood; Great Nicobar Island; Rights of Nature; Ecocentric Jurisprudence; Indigenous Community

INTRODUCTION

The Great Nicobar Island (GNI), situated at the southernmost tip of the Andaman and Nicobar archipelago, constitutes one of India's most ecologically fragile and biodiverse regions. It is home to two Particularly Vulnerable Tribal Groups (PVTGs)—the Shompens and the Nicobarese—and encompasses the Campbell Bay and Galathea Bay National Parks, which harbour several endemic species of flora and fauna¹. In 2019, the NITI Aayog proposed the *Holistic Development of Great Nicobar Island* project², an extensive ₹75,000-crore initiative involving the construction of an international container transshipment terminal, dual-use airport, power plant, and township.³ While framed as a “sustainable” and “strategic” development project, its projected ecological and social costs have prompted significant concern among environmental scientists, legal scholars, and human rights advocates.⁴

The GNI project crystallises a recurrent dilemma within India's environmental governance: the uneasy reconciliation of economic development with ecological preservation. Despite the constitutional mandate to protect the environment under Articles 48A and 51A(g) and a robust body of judicially evolved environmental jurisprudence, state policy continues to privilege economic growth and national security over ecological integrity. The environmental clearance process for the GNI project—marked by de-notification of protected areas, inadequate impact assessments, and disregard for the consent and welfare of indigenous communities—reveals the limitations of India's current anthropocentric framework of environmental law. This paradigm, which views nature primarily as a resource for human use, fails to account for the intrinsic value of ecosystems and their right to exist and flourish independently of human interests.

¹ Andaman and Nicobar Islands Integrated Development Corporation Ltd., Gov't of India, Comprehensive Environmental Impact Assessment Report 19-22 (2021), https://dstpcc.andaman.gov.in/Ann_all.php [hereinafter EIA]

² NITI AAYOG, Transforming the islands through creativity & innovation 21-39 (2019), <https://niti.gov.in/sites/default/files/2019-07/Transforming-the-Islands-through-Creativity-%26-Innovation.pdf>

³ Pankaj Sekhsaria, A Monumental Folly 193 (Kalpavriksh 2021), https://kalpavriksh.org/wp-content/uploads/2021/12/A-Monumental-Folly_Final-December-2021-2.pdf [hereinafter *Monumental Folly*]

⁴ EIA, *supra* note 1, at 18.

This paper argues for a paradigmatic shift towards an ecocentric jurisprudence through the recognition of **environmental personhood**—a doctrine that accords legal personality and rights to elements of nature. Rooted in the global *Rights of Nature* movement, this concept reimagines nature as a rights-bearing subject capable of protection in its own name. By extending legal personhood to natural entities, law can move beyond its anthropocentric limitations and establish a framework that both symbolically and substantively safeguards ecological integrity.

In applying this framework to the Great Nicobar Island, the paper contends that recognising the island ecosystem as a legal person can serve as an effective legal and moral safeguard against destructive developmental interventions. Drawing on comparative precedents such as New Zealand's *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, it argues that environmental personhood can reconcile indigenous custodianship with constitutional obligations, thereby aligning India's environmental governance with principles of ecological justice. In doing so, the paper advances the thesis that granting legal personhood to the Great Nicobar Island ecosystem offers a coherent and necessary legal mechanism to ensure its preservation by recognising its intrinsic value and affirming its independent right to protection.

STATE RATIONALES AND THE DEVELOPMENT PARADIGM

The justifications provided by the government of India for pursuing this project relates to the strategic and defence advantage which India will gain in the Indian Ocean Region (IOR) that holds the centre stage of geopolitics ⁵.

The GNI is in close proximity to the International East-West shipping corridor. Thus, building a port and airport here will increase the revenue for the government and provide the local populace with employment ⁶.

This development project indeed has huge economic and national security implications but it was severely criticised and faced intense retaliation from various stakeholders of the society.

⁵ Cenfa, Understanding the Great Nicobar Development Project 2-3 (Centre for Financial Accountability 2023), <https://www.cenfa.org/wp-content/uploads/2023/03/Understanding-the-Great-Nicobar-Development-Project.pdf>

⁶ Niti Ayog, Govt of India, Pre-Feasibility Report 15 (2021), <https://environmentclearance.nic.in/DownloadPdfFile.aspx?FileName=mfeaYaYbdxRbeR8PGLUycwXyG0OWE2QWwm72WXjOAxHQbrEhaMSFRfBrbP1c1ckmdhZ1B7qes6LgOQOuWf2N5mJ2kxDkKrCSHi1WB4/MMxE=&FilePath=93ZZBm8LWEXfg+HA1Qix2fE2t8z/pgnoBhDIYdZCxzXmG8GlihX6H9UP1HygCn3pCkAF2zPFXFQNqA4krKa1Aw==>

The reasons for the same is the deliberate bending of legislation and circumvention of rules⁷ by the government to get environmental clearance for this mega project.

LEGAL AND ECOLOGICAL IRREGULARITIES IN THE GREAT NICOBAR DEVELOPMENT PROJECT

1. De-notifying Wildlife Sanctuaries and Notifying Zero-Extent Eco-Sensitive Zone:

In the year 1997, the Government of India issued a draft notification with an intention to make Galathea bay as a wildlife sanctuary, but the process was never completed and the final notification was not released. In 2021, the Ministry of Environment Forest and Climate Change (MoEF&CC), after getting approval from the Standing committee of the National Board for Wildlife (NBWL), de-notified the Galathea Bay Wildlife Sanctuary⁸. The irony is that the same Galathea Bay was cited as an important turtle nesting site under “India’s National Marine Turtle Action Plan” initiated by the Ministry in the same year, where the Plan also states that the Galathea Bay must never be disturbed and the Leatherback Turtles must be protected and conserved⁹.

In addition to this, an expert committee of the MoEF&CC declared “Zero extent” Ecologically Sensitive Zone (ESZ) for the Galathea National Park making the South-Eastern and South-Western part of the island available for the construction of the port¹⁰. The justification quoted by the government for notifying the area as zero-extent ESZ was that “all major geographical areas of the Great Nicobar Island where the Park is located, is covered under Protected Areas Network and Tribal Reserves; therefore, there is hardly any area left for holistic development”¹¹. The area is also being earmarked for future strategic defence use. This is problematic and questions the very idea of development here that is only focussed at defence

⁷ Pankaj Sekhsaria, ‘Inaccuracies, procedural violations’ in Great Nicobar draft environment impact assessment report, THE HINDU (Jan. 25, 2022, 07:30 PM), <https://www.thehindu.com/sci-tech/energy-and-environment/inaccuracies-procedural-violations-in-great-nicobar-draft-environment-impact-assessment/article38324776.ece>

⁸ Monumental Folly, *supra* note 3, at 176

⁹ Ministry of Env’t Forest & Climate Change, National Marine Turtle Action Plan 11-16 (2021), https://moef.gov.in/wp-content/uploads/2021/02/NATIONAL-MARINE-_compressed.pdf

¹⁰ Ministry of Env’t, Forest & Climate Change, S.O.3874(E) (Notified on October 28,2020). <https://moef.gov.in/wp-content/uploads/2021/08/galathea.pdf>

¹¹ Ministry of Env’t, Forest & Climate Change, Gov’t of India, Minutes of 44th Meeting of the Standing Committee of National Board for Wildlife (2021), <https://moef.gov.in/wp-content/uploads/2021/02/Minutes-44th-ECM.pdf>

and economic benefits, while compromising the ecological fabric and progress.

These de-notifications will impact the Leatherback turtles which will lose its nesting site due to the construction of the port¹². The critics point out that the NBWL has no authority to de-notify the wildlife sanctuary¹³. Also, the act of the environment ministry is illegal as per Section 18 and Section 26 A of the Wildlife Act as well as Article 48A of the Constitution¹⁴. This directly points to inconsistencies and contradictions in the state's actions in the Environmental Impact Assessment processes.

2. Tribals and their Inseparable Lands:

The GNI is inhabited by two aboriginal tribes - the Shompens and the Nicobarese. These tribes were the sole inhabitants of this island until 1969 and share a strong spiritual bond with the entire island ecosystem, which is considered an inseparable part of their lives.¹⁵ However, the GNI Mega project is going to upset this century-old balance, as they will be separated from their ancestral land. This will disturb their deep, spiritual ties with the ecosystem, as they have been the custodians of the island, managing and protecting it.¹⁶

The government plans to acquire the ancestral land of these tribes which is in violation of existing laws and policies like the Shompen Policy of 2015, which states that the tribals' rights must be given priority over any large-scale development projects.¹⁷

3. Forest Cover Diversion and its Mitigation

For this project, forest clearance was given by the MoEF&CC which sanctions the diversion

¹² Ashis Senapati, India's turtle researchers oppose development plans for Little Andaman, Great Nicobar Islands, DOWN TO EARTH (June.10, 2021.), <https://www.downtoearth.org.in/wildlife-and-biodiversity>

¹³ Simrin Sirur, From January to June, wildlife board gave permits that can be 'disastrous' for protected areas, THE PRINT (Oct.10, 2021, 8:00 AM), <https://theprint.in/india/from-january-to-june-wildlife-board-gave-permits-that-can-be-disastrous-for-protected-areas/747507/>

¹⁴ Pankaj Sekhsaria, After Approving Nicobar Sanctuary Denotification, WII Says No Expertise, THE WIRE SCIENCE (July.16, 2021), <https://science.thewire.in/politics/government/wildlife-institute-feeds-doubt-about-fate-of-leatherback-turtles-on-an-islands/> [hereinafter WII]

¹⁵ Kavita Arora, *Sustainable management of tropical forest through indigenous knowledge: A case study of Shompens of Great Nicobar Island*, 9 Indian J.Traditional Knowledge 551,552-560 (2010).

¹⁶ Ajay Saini, Great Nicobar: Whose land is it?, FRONTLINE (Jan.12, 2023, 10.30 AM), https://frontline.thehindu.com/environment/great-nicobar-whose-land-is-it-shompen-and-nicobarese-still-await-return-to-homes-from-temporary-camps/article66349832.ece?utm_source=pocket_saves

¹⁷ Andaman & Nicobar administration directorate of Tribal Welfare, No.89/2015/F No.1-892/2009-TW/557 (Notified on May 22, 2015).

<https://tribal.nic.in/downloads/PVTG/The%20Andaman%20and%20Nicobar%20Gazette%20dated%2022-05-2015%20-%20Policy%20on%20Shompen%20Tribes%20of%20Great%20Nicobar%20Island.pdf>

of 130.75 km of pristine forest¹⁸. Approximately 8 lakh trees¹⁹ will be cut down for the purposes of this project. The mitigation measure includes its compensatory afforestation planned in Madhya Pradesh²⁰ which was pointed out by environmentalists as being “unscientific”, since the trees are cut down from a tropical forest while its compensatory afforestation is planned to be done in a semi-arid zone²¹. Thus, it is a less-thought out and inefficient mitigation strategy, which will result in an ecological imbalance and an irreversible biodiversity loss to the GNI ecosystem.

4. Turning Nelson’s Eye to the Tectonic Zone

The Great Nicobar Island lies in close proximity to the “Ring of Fire”, the most active tectonic zone in the world, due to which it was severely affected by the 2004 Earthquake and Tsunami. This shows the unstable nature of the project area and its vulnerability to disasters. Even though the Form 1 report mentions this, the project proponents argue that they will ensure that the structures made will be earthquake proof and cyclone resistant²². Building earthquake proof structures is not adequate because this does not rule out the possibility that a disaster will not happen²³. Thus, there is all possibility that the entire Rs. 75,000 crores may go in vain in case of a future calamity, after causing environmental damage from its construction.

5. National Green Tribunal and the Prominent Idea of Development

While the project was moving forward, the Conservation Action Trust & Others filed an Appeal in the National Green Tribunal (NGT) challenging the Environment and Forest Clearances granted by the MoEF&CC to the project²⁴.

¹⁸ Ministry of Env’t, Forest & Climate Change, Gov’t of India, Minutes of 297th Meeting of Expert Appraisal Committee (2022), [https://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/1506202239049020297thEAC\(Infra-1\)-FinalMoM.pdf](https://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/1506202239049020297thEAC(Infra-1)-FinalMoM.pdf)

¹⁹ Ishika Ramakrishna, Flora and fauna of Great Nicobar in great peril, FRONTLINE (Jan.12, 2023, 10:30 AM), https://frontline.thehindu.com/environment/niti-aayog-development-project-puts-flora-and-fauna-of-great-nicobar-island-in-great-peril/article66349123.ece?utm_source=pocket_saves

²⁰ Pankaj Sekhsaria, Proposed infrastructure project in Great Nicobar Island a mega folly, FRONTLINE (Jan.12, 2023,10:30 AM), <https://frontline.thehindu.com/environment/proposed-infrastructure-project-in-great-nicobar-island-a-mega-folly/article66349362.ece> [hereinafter Pankaj]

²¹ Diksha Munjal, Great Nicobar Project | Plan for the paradise, THE HINDU (Apr. 2, 2023, 3:24 AM), <https://www.thehindu.com/news/national/great-nicobar-project-plan-for-the-paradise/article66689288.ece>

²² Ministry of Env’t, Forest & Climate Change, Gov’t of India, Form I Environmental Clearance (2020), https://environmentclearance.nic.in/auth/FORM_A_PDF.aspx?cat_id=IA/GJ/IND2/139097/2020.

²³ Pankaj, *supra* note 22.

²⁴ Aathira Perinchery, NGT’s Stand on Nicobar Mega Project Disappointing, Say Conservationists, THE WIRE (Apr.8, 2023), <https://thewire.in/environment/ngt-great-nicobar-project-disappointing>

According to the NGT, the discrepancies involved in the project include failure to undertake three season's data for comprehensive Impact Assessment, improper translocation of coral reefs, and violation of the Island Coastal Regulation Zone, 2019 due to the location of the port which is expressly prohibited under the Coastal Regulation Zone - 1A.²⁵

Although the NGT had acknowledged the above discrepancies in the environmental clearance granted to the project proponents, it did not consider this as a sufficient ground to challenge the environmental clearance, and thus constituted a committee with the same government authorities who were part of the project proposal and implementation, to merely revisit these “unanswered questions” in the environmental clearance.²⁶

The NGT ruled that it finds no grounds to “interfere” with the forest and environmental clearances granted by the MoEF&CC, as they have “complied with most procedural requirements”, barring a few. It has justified the same by stating that hyper-technical approach towards EIA procedure should not be adopted while prioritising development and national security, and though “developmental activity has adverse impacts on environment, if it can be mitigated and is beneficial to the society, such project have to be allowed in larger public interest”²⁷.

REFRAMING DEVELOPMENT: TOWARDS ECOLOGICAL SAFEGUARDS FOR THE GNI ECOSYSTEM

The entire vision followed by the enforcement of the project by the state as well as NGT's decision starkly points to the narrow understanding of development, which is focused on the mere balancing of interests between economic development and environment. It only perpetuates and reinforces this false binary between “development” and “environment”, while failing to work towards the conception of making both go hand-in-hand. That development and environment are antithetical to each other is a thing of the past, at least theoretically, but is more prevalent today than ever, as “development projects” such as the GNI mega project are continued to be envisioned, implemented and thus posing a threat to the entire fabric of progress

²⁵ Aiman J. Chishti, NGT Forms High Powered Committee To Revisit Environmental Clearance Granted To Great Nicobar Island Project, LIVE LAW (Apr.8, 2023 , 10:00 PM), <https://www.livelaw.in/news-updates/ngt-environmental-clearance-great-nicobar-island-project-endangered-species-high-powered-committee-225842> [hereinafter Chishti]

²⁶ *Ibid.*

²⁷ *Ibid.*

in modern states. Failing to acknowledge the interconnectedness of economic growth, environmental protection, inequalities etc., would mean that modern states cannot achieve a “holistic development” that promotes and strengthens democracy.²⁸

One cannot afford to go back in time and progress and enforce such narrow ideas of “development” that are inconsistent with the principles of sustainable development. As discussed above, there have been criticisms of circumvention and violation of the laws and regulations, an apparent disregard of procedural requirements in the EIA process, along with inconsistencies in the government policies and notifications released and steps taken towards getting the environmental clearance.

To counter and respond to this problem, the article argues that the GNI ecosystem must be safeguarded from the destruction resulting from the ongoing development project, and explores the possibility of employing the legal personhood mechanism to the island ecosystem for its protection and conservation. It makes a case for the granting of legal person status to the GNI ecosystem and recognizes it as a holder of rights for its own intrinsic value, by deliberating on the practical feasibility of such a model and exploring the shift to a proposed eco-centric worldview.

SITUATING LEGAL PERSONHOOD WITHIN THE GLOBAL RIGHTS OF NATURE MOVEMENT

The ‘rights of nature’ movement (where natural entities are recognised as holder of rights) across regimes has been unfolding with the aim to create an “earth democracy”²⁹ that considers the well-being of not just humans but also of nature. Though many countries have attributed rights to nature as a whole, most countries, including India, have recognised specific natural entities such as rivers, a species, etc., as holding rights of their own to litigate in courts, rather than providing broad protections³⁰ for apparent, practical reasons.

Within the rights of nature movement, the necessity, scope and demand for a tool like legal personhood for natural entities plays a crucial role. It is premised on shifting our

²⁸ Ashish Kothari, *Radical Ecological Democracy: A path forward for India and beyond*, 57 Dev. 36, 1-12 (2014).

²⁹ Martyna Łaszewska-Hellriegel, *Environmental Personhood as a Tool to Protect Nature*, Philosophia 1,14 (2022), <https://link.springer.com/article/10.1007/s11406-022-00583-z>

³⁰ Gwendolyn J. Gordon, *Environmental Personhood*, 43 Columb. J. Envtl. L. 49, 57 (2018). [hereinafter Gwendolyn]

anthropocentric worldview to an eco-centric one by acknowledging the existence and rights of natural entities for their own value, and not for meeting the ends of human interests. This paradigm shift requires a reimagining of fundamental concepts of the western legal system such as property, ownership, legal standing etc., which enables the possibility of including the interests of the indigenous communities. Thus, the development of a legal personhood jurisprudence for nature ought to be centred around non-western frameworks in order to achieve its purpose as an instrument to protect the environment.

Christopher Stone in 1992³¹, while propounding one of the first legal justifications to why natural objects should have a standing, argued that natural objects in themselves should have rights before the law, unlike the then prevalent position in law that recognised the rights of owners and users of the natural objects alone.³² He also suggested that the granting of rights for nature was crucial to ensure the protection of the environment since humans tend to see nature only as a resource to be exploited, until it is bestowed upon with rights of its own. This points to the significant impact that language of rights holds in law, enabling the subtle shift in jurisprudence.³³ The symbolic rationale behind adopting a legal fiction such as personhood comes together with the instrumental rationale of bestowing rights to nature³⁴, and sends across the strong message that nature must not be exploited, for it holds value for itself.

THEORISING ENVIRONMENTAL PERSONHOOD: FROM LEGAL FICTION TO ECOCENTRIC JURISPRUDENCE

Legal personhood for nature, alternatively referred to as Environmental Personhood, is analogous to and drawn from theories of Corporate Personhood. Dyschkant³⁵, suggests that in order to genuinely and accurately appraise an entity's legal person status without the humanity bias, one has to divorce the concept of legal person from that of 'human', as one can have the attributes of legal personhood without being a human being, and one can be a human being without being a legal person.³⁶ Any entity, even beyond the class of human beings, that is

³¹ Christopher D. Stone, *Should trees have standing? : Law, Morality and the Environment* 1-23 (3rd ed.2010). [hereinafter Stone]

³² *Ibid.*

³³ Nicola Pain & Rachel Pepper, *Can personhood protect the environment? Affording legal rights to nature*, 45 *Fordham Int'l L.J.* 315, 322 (2021). [hereinafter Pain & Pepper]

³⁴ Visa A.J. Kurki, *Can Nature Hold Rights? It's Not as Easy as You Think*, 11 *Transnat'l Environmental Law* 525, 529 (2022).

³⁵ Alexis Dyschkant, *Legal Personhood: How we are getting it wrong*, *U. Ill. L. Rev* 2076, 2108 (2015).

³⁶ *Ibid.*

capable of bearing rights and duties, by principle, should be a legal person³⁷.

Corporations which are the aggregate of its members who are gathered under a common economic enterprise, are given legal person status, as rights of the corporation are nothing but an extension of the rights held by the people that make up the corporation. A natural ecosystem also includes human beings who contribute to its change, in the same way that people influence a corporation. By this analogy, an ecosystem should also be accorded with rights and legal status held by the humans that are part of the ecosystem. While nature is not created by individuals to pursue their socio-economic interests as corporations are, it constantly interacts with and is shaped by humans.³⁸

A fundamental difference worth mentioning between the corporate personhood and environmental personhood is that while corporate personhood might be imagined as merely legalistic, environmental personhood transcends beyond law to embody the social and the cultural, through indigenous worldviews and revisiting of the relationship between human beings and nature.³⁹ Environmental Personhood is no longer just a concept for who can sue and be sued within environmental litigation, but extends to the protection of interests, and is an avenue for reviewing anthropocentric worldview.

In 2008, Ecuador brought a new chapter in its Constitution that incorporated ‘Rights of Nature’ where “Mother Earth was recognised as a legal entity with the right to exist, maintain and regenerate its vital cycles and processes”⁴⁰. Bolivia followed the same in allowing any person to legally defend the rights of nature, and recognised Law of the Rights of Mother Earth in 2009, later extending it to ‘The Framework Law of Mother Earth and Integral Development for Living Well’, where human beings were considered equal to all other entities and Mother Earth was the centre of all life forms.⁴¹ Though these countries did not grant environmental personhood to nature per se, they set examples for a significant step towards an ecocentric ethic in environmental laws.⁴²

³⁷ Fitzgerald PJ, Salmond on Jurisprudence 541 (12th ed.1966)

³⁸ Gwendolyn, *supra* note 32, p.49-91

³⁹ Gwendolyn, *supra* note 32, p.89

⁴⁰ Ecuador. Consti.art 71.

⁴¹ Akshita Jha & Adrija Ghosh, *Is being a ‘Person’ essential for the environment to hold rights? Assessing the legitimacy of Environmental Personhood and alternative approaches*, 11 NUJS Law Review 2, 484 (2018).

[hereinafter Akshita & Adrija]

⁴² *Id.* at 483.

EXTENDING LEGAL PERSONHOOD TO THE GNI ECOSYSTEM: FEASIBILITY AND JUSTIFICATIONS

From the above discourse on the justifications of legal personhood to nature, it is evident that granting of legal person status to natural entities is not anything new, and so is employing legal personhood as a tool to protect the environment from degradation. However, as multiple nations have incorporated it into their governance through legislations, constitutional amendments or judicial interpretations, there is all the more necessity to deliberate on the concerns and criticisms against the proposition of legal personhood for nature. It becomes particularly important to evaluate the feasibility of conferring legal personhood to the GNI ecosystem, while arguing for a case to protect the ecosystem from the irreversible destruction caused to it by the ongoing development project.

Firstly, the most prevalent yet superficial criticism against legal personhood for nature is that natural entities are non-sentient, and hence cannot be endowed with rights, as they do not have an actual voice resulting in issues of representation while appearing in court. Jurisprudence of Legal Personality has come a long way, to grant legal person status to many non-sentient entities such as corporates, ships, foetuses etc., and these rights-holding entities have represented themselves in courts to sue and be sued. Under the third-party standing doctrine, an organisation is permitted to bring a legal action on behalf of a third party.⁴³

The application of the third-party standing doctrine for nature flags a serious concern, as to how an organisation can understand and represent nature's best interests.⁴⁴ However, many countries like India, South Africa and Bangladesh through their constitutional provisions enable public interest cases to be brought before the court by anyone approaching in public interest, implying that the legal standing of such parties is not in issue.⁴⁵ Moreover, Stone provides a practical solution to this problem by proposing a guardianship model, either by accommodating the guardians of natural objects in existing guardianship statutes of the states or by enacting special environmental legislations that are consistent with the traditional guardianship laws.⁴⁶

⁴³ Matthew Miller, *Environmental Personhood and Standing for Nature: Examining the Colorado River case*, 17 U. of New Hampshire L.Rev. 355, 374 (2019).

⁴⁴ *Id.* at 375.

⁴⁵ Pain & Pepper, *supra* note 35, p.368.

⁴⁶ Stone, *supra* note 33, p.9.

Thus, essentially in India, anybody can approach the court on behalf of the GNI ecosystem in public interest, to represent and protect the interests of the ecosystem, and the issue of legal standing does not come in the way of conferring legal personhood to the GNI ecosystem. The Supreme Court of India, has in various instances, developed the scope of environmental law as a result of extensive public interest litigation, to strategically circumvent the inaction of the legislature and executive.⁴⁷

If the current constitutional provisions already enable the representation of the GNI ecosystem as a natural entity in court to sue and be sued, what more does the granting of a legal person status to GNI entail? The concept of legal personhood is more profound than just suing and being sued, and what it actually aims to achieve will be discussed in the following sections.

Another practical difficulty in litigation that may arise in conferring legal personhood to the GNI ecosystem is the physical or definitional limits of it. What would constitute the extent, boundaries, inclusions and exclusions of the island ecosystem itself? Which of its islands, bays, sanctuaries would be included and where do its oceans commence and end?⁴⁸

It is not that this could not be decided in law, it is more that such a requirement and rationale itself is located within the property-based conception of nature that permeates western epistemologies and law, and ignores the indigenous epistemologies and their relationship with nature. Indigenous relations to land cannot be fully encompassed within the legal concepts of boundaries, property and ownership. The ecosystem as such in environmental jurisprudence has to be understood as an interconnected system and cannot be separated as individual entities. Indigenous frameworks help us achieve this kind of a shift in perception, demonstrating that the legal personhood mechanism is compatible with indigenous worldview.

The Shompen and Nicobarese communities inhabiting the Great Nicobar Islands for centuries consider the island as their ancestral land and wish to be returned back to it from the rehabilitation shelters that they were temporarily moved into post the 2004 Tsunami.⁴⁹ They share a spiritual connection with the island ecosystem and their lives are closely interconnected to the natural ecosystem, where they protect and take care of their ancestral land.

⁴⁷ Geetanjoy Sahu, Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence, 4 L.ENV'T & DEV. J. 1, 3-4 (2008).

⁴⁸ Ruth Barcan, *The campaign for legal personhood for the Great Barrier Reef: Finding political and pedagogical value in a spectacular failure of care*, 3 ENE: Nature & Space 1, 15 (2019).

⁴⁹ Ajay, *supra* note 18.

Acknowledging the GNI ecosystem as a legal person would help protect the indigenous community's interests, which will in turn protect and preserve the island ecosystem as they have been the custodians of the land, maintaining and preserving it through their way of living and traditions.⁵⁰

Western legal systems have evolved to protect and prioritise the interests of legal persons, which is why the legal persons status provides several legal devices to their expense that are not available to nonpersons.⁵¹ This shows that the legal personhood concept itself emanates from a western framework, pointing to the express contradiction in the outcome of applying legal personhood to the environment as that of promoting indigenous worldviews and interests. But it is apposite to acknowledge that we function in a legal system derived from common law, and cannot be fully removed from the influences of western framework, however, the goal must be to reimagine and adapt non-western postulations into the present system, in order to make it more inclusive, democratic and feasible, as the existing state falls short of achieving environmental protection efficiently. Through providing rights to nature and codifying the indigenous community's conceptions into law within the environmental personhood framework⁵², the tribes of the island ecosystem may be given more agency within their custodial lands. New Zealand through a novel enactment in 2017, has established itself as a forerunner in this endeavour.

ADAPTING NEW ZEALAND'S GUARDIANSHIP MODEL: LESSONS FOR THE GNI ECOSYSTEM

New Zealand was the first country to grant legal person status to a river called Whanganui through a legislation enacted in 2017, on account of the indigenous tribes (Maori or iwi)⁵³ who share close ties with the river for its protection and conservation. They regarded the river as their own ancestor and hence were inseparable from it, as it provided both physical and spiritual sustenance to them. This reinforced the responsibility of the tribes of Whanganui with regard to care, management and protection of the river.⁵⁴

⁵⁰ *Ibid.*

⁵¹ Visa A.J. Kurki, *A theory of Legal Personhood* 144 (Oxford University Press 2019).

⁵² Pain & Pepper, *supra* note 35, p.328.

⁵³ Akshita & Adrija, *supra* note 43, p. 488.

⁵⁴ John Prebble QC, *From rights to responsibilities using Legal personhood and Guardianship for rivers*, Victoria U. Wellington Legal Res.Paper, 2021, at 7. [hereinafter John]

The river was declared as a legal person through the Te Awa Tupua Act, which was the result of a settlement agreement between the tribes and the government, after a 140 years long battle to gain back their guardianship and right to control the management of the river, as the Crown had assumed ownership of the riverbed over the years and began using it for developmental projects such as hydroelectric power schemes and extraction of resources⁵⁵. They also argued that the Crown's actions were both in breach of their property rights and in conflict with their cosmology.⁵⁶

The Act acknowledges the Te Awa Tupua as an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements⁵⁷, imparting that such a consciousness is borrowed from the indigenous worldview. Segregating ecosystems as individual natural objects or as property with boundaries stem from western frameworks, and the same misdeed is being placed even on the GNI ecosystem while contesting its legal person status.

There are two most significant takeaways from the Te Awa Tupua Act, for the case of environmental personhood as a tool for its protection. Firstly, the recognition of the river's own intrinsic value, as it is declared as a legal person with all rights, powers, duties, and liabilities, providing for the mechanism of ownership, but at the same time, vests the ownership on no one but itself, for its own value, devoid of human interests.⁵⁸ Secondly, the development of a guardian model as the Act enables the creation of statutory guardians to uphold the interests of the river. All these represent a vital step for environmental protection.

The Guardianship model of New Zealand helps to refute the typical criticism directed at environmental personhood mechanisms, that it creates ambiguity in its application as rights of nature is overly broad, and results in vague legal cause of actions discouraging the courts and litigants.⁵⁹ This is countered by identifying a specific ecosystem upon which the rights are conferred, such as the 'Te Awa Tupua' as defined in the legislation, and a similar application holds well for the 'GNI ecosystem'.

⁵⁵ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, §69(5) (N.Z.).

⁵⁶ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, §70 (N.Z.).

⁵⁷ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, §12 (N.Z.).

⁵⁸ Jade-Ann Reeves & Timothy D.Peters, *Responding to anthropocentrism with anthropocentrism: The biopolitics of environmental personhood*, 30 Griffith L.Rev. 474, 474-504 (2021).

⁵⁹ Pain & Pepper, *supra* note 35, p. 342.

The model includes multiple stakeholders in the structure of the guardianship and prioritises indigenous interests by the creation of representative entities as members to control and manage the river, thus including independent non-government representatives. The New Zealand statute also provides for a detailed scheme for the management of the representative entities such as the establishment of Trust Board and Fund. This also means that such an organisational structure is embedded within the governance of the environment, implying that the rights of the relevant ecosystem can be protected through legislations and policy-making processes rather than merely by depending on the courts through litigation.⁶⁰ Statute enactments or constitutional amendments can more extensively establish the structure and parameters of the legal personality, its rights and functioning, than a court hearing specific pleadings in individual cases.⁶¹

Placing the GNI ecosystem under the guardianship of a board of trustees who are solely responsible with ensuring its ecological welfare is also a cogent step away from governance structures which might have its own enforcement issues and conflicting interests. This makes protection and conservation of the natural entities more efficient. This is in addition to the other transformative advantages involved in appointing the indigenous communities as guardians and protecting their interests by restoring the relationship with their ancestral lands. Pursuing this model will also allow cases to be brought in the interests of the island ecosystem itself, as it is declared a legal person and holds rights for its own intrinsic value, and not only in relation to damaged human interests. It also enables the fight against inappropriate development on environmental grounds and for the island to be awarded damages when accidents occur.

Thus, by creating new instruments such as the Guardianship model to implement legal personhood to protect the environment, the indigenous rights are also upheld, and fundamental concepts of property ownership reimagined. It can be seen as a clear rejection of a human centric rights movement for protecting nature. The outcome is an environmental personhood that has a more robust legal footing, a more effective protection mechanism that is independent of directly associated human interests.⁶²

⁶⁰ Pain & Pepper, *supra* note 35, p. 343.

⁶¹ John, *supra* note 56, p.19.

⁶² Gwendolyn, *supra* note 32, p.62.

THE EXCEPTIONALISM PRINCIPLE IN ENVIRONMENTAL JURISPRUDENCE

Several jurisdictions have explored granting legal personhood to natural entities in order to protect them from degradation such as the Whanganui River case in New Zealand⁶³ or the Great Barrier Reef campaign in Australia⁶⁴. However, for the case in hand, that is, the granting of legal personhood to the GNI ecosystem in order to safeguard it from the damages of the ongoing development project, it does require the invoking of the exceptionalism principle in some ways.

The environmental personhood jurisprudence is always individualistic and extraordinary to the jurisdiction concerned, as it has to be understood in the context of the reasons and events causing its environmental degradation, including its geographical significance. The High Court of Uttarakhand Decisions in *Lalit Miglani v. State of Uttarakhand* (Lalit)⁶⁵ and *Mohd Salim v State of Uttarakhand* (Salim)⁶⁶ demonstrates this well. The river Ganges was granted legal person status to protect it and government officials were declared as the river's legal guardians for managing and conserving the river. Lalit also extended the personhood status of the rivers to the surrounding ecosystem including glaciers, mountains, etc., and referred to the Te Awa Tupua Act.⁶⁷

In Salim, the petitioner did not even pray for a grant of legal personhood to the river, and had filed the case only for a direction to remove illegal construction along its banks. However, the Court took a leap forward to grant legal person status to the river, by giving the justifications that there is a constitutional mandate⁶⁸ for the state to protect the environment, and upon the negligence of the state in doing so, the Court can take extraordinary measures to invoke the *parens patriae* jurisdiction that enables the state to act as the parent of any child who needs protection. The Court also justified using religious law as a basis to recognise the spiritual connection of the Hindus to the river Ganges.⁶⁹

Considering the river as an ancestor or a deity by the Court, entails an entirely different

⁶³ John, *supra* note 56, p.1.

⁶⁴ Ruth, *supra* note 50, p.2.

⁶⁵ Lalit Miglani v. State of Uttarakhand, 2016 UTTAR 885 (India).

⁶⁶ Mohammed Salim v. State of Uttarakhand, 2017 SCC OnLine Utt 367 (India).

⁶⁷ Lalit Miglani v. State of Uttarakhand, 2016 UTTAR 885 (India).

⁶⁸ India Const.art.48A, amended by The Constitution (Forty-second Amendment) Act,1976 ; India Const.art.51 A, cl.g, amended by The (Forty-second Amendment) Act, 1976.

⁶⁹ Mohammed Salim v. State of Uttarakhand, 2017 SCC OnLine Utt 367 (India).

perspective from viewing it solely as a natural resource. An ancestral relationship emphasises that there is a duty to take care of nature rather than just focusing on rights, and this applies unequivocally in all the above cases of the Whanganui, the Ganges, and the GNI ecosystem.

The GNI's exceptional biodiversity, its locational proximity to the vulnerable tectonic zone, the context of the development project and its anticipated destruction to the flora, fauna, natural habitats along with the displacement and loss to the tribal communities who will no longer inhabit, conserve or manage the ecosystem as their ancestral land, are to be understood specifically while campaigning for legal personhood of the GNI ecosystem. The Uttarakhand High Court too, took the events of environmental destruction such as the massive bushfire damage in 2016, its vulnerable position in the Himalayas and the religious significance of the river as points of consideration⁷⁰, while deciding on and declaring the river as a legal person.

Thus, the Courts have not hesitated in innovating, re-interpreting doctrines or invoking extraordinary or exceptional principles when it comes to fulfilling the constitutional obligations for environmental protection. In the *Vellore Citizens Welfare Forum vs. Union of India*⁷¹, the Supreme Court imposed obligations on certain stakeholders to prevent the causes of environmental degradation, and placed the onus on these actors to demonstrate that their actions are not environmentally harmful, thereby shifting the burden of proof. This kind of extraordinary approach of the Courts stem from the idea that environmental justice can be achieved only if we drift away from human-centred, anthropocentric principle to that of ecocentrism, where human beings are only a part of nature that has its own rights and intrinsic value.⁷²

The basis for environmental personhood stems from constitutional obligations for protecting the environment such as the case with India, but also emanates from an ecocentric approach to protect nature for its own sake, as in the case of New Zealand through the protection of indigenous interests in the Te Awa Tupua Act.

CONCLUSION

The role of a legal fiction concept such as the legal personhood in actually protecting the

⁷⁰ Pain & Pepper, *supra* note 35, p. 362.

⁷¹ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715 (India).

⁷² *Thirumulpad Godavarman v. Union of India*, AIR 2012 SC 1254 (India).

environment is a significant one. The question of whether environmental personhood can protect the environment, does not have a straightforward response. However, it is in all capacity that environmental personhood may overcome the difficulties that have historically burdened environmental protection litigation, particularly with respect to justiciability and legal standing.⁷³

Creating new instruments such as the guardianship model, adds to the project by making the legal personhood mechanism feasible in its aim of environmental protection by alluding to rights of nature movement. Taking reference from New Zealand's case, the statutory enactment of Te Awa Tupua was able to successfully vest ownership of the river in itself, as the indigenous community's century long struggle resulted in the fostering of legislative will, even before the courts acted to accord the river with 'rights' or 'personhood'. The efforts to foster legislative action through political will, must take precedence over the struggle in courts to recognise environment personhood and standing for nature.

The GNI ecosystem ought to be safeguarded from the serious impact of the ongoing "holistic development project" that can cause irreversible destruction to the island ecosystem. Employing the legal personhood mechanism that will grant rights to the island ecosystem in its own name, will aid in the enterprise of its protection and conservation.

Even the transition from the anthropocentric approach to the prospective eco-centric approach would mean that states will have to change their law, policy and perspective towards the idea of development, one that is not antithetical to but goes hand-in-glove with environment, as development for modern societies today place the highest stake on environmental protection and conservation.

⁷³ Pain & Pepper, *supra* note 35, p. 375.