



PONDERING THE IDEA OF BESTOWING LEGAL PERSONHOOD ON NATURAL RESOURCES:

A NEW DIMENSION TO SUSTAINABLE DEVELOPMENT IN SUPPORT OF THE GREAT JURISPRUDENCE AND MARXIAN AND GANDHIAN PHILOSOPHY OF ENVIRONMENT PROTECTION

Abstract

The entire jurisprudence of the environment and ecosystem developed by humanity to date surrounds the idea that human lives are bestowed with the duty to protect natural resources for their own benefit in the present and future. The emergence of the 'Great Jurisprudence' marks a drastic shift from such anthropocentric views to nature-centric studies, which involve conceiving the reality that human beings are one among many components of the existing ecosystem. It deconstructs the humane perception that humanity needs to be the guardian and ultimate owner of resources available in the ecosystem; instead, society has the right only to utilize the resources essential for them. The Great Jurisprudence conceives a more extraordinary idea of equality among the living things in the world and their access to natural resources. It establishes the novel jurisprudential analysis that the entire legal framework revolving around nature and the ecosystem's protection must be transformed to accommodate the demand to consider us, humanity, as a single contributor to it rather than the center of focus.

The concept of sustainable justice to the environment can be extended and enforced in a stabilized form when a legal system confers a legal personality to such resources, and abuse of such resources would violate their existential right and identity. Though the thought of such transformative perception seems challenging and complicated, instead, it simplifies many protective measures that have already been attempted to be enforced, like the 'polluter pays principle.' The Inter-generational sustainable principle, in fact, can be emancipated by inculcating the philosophy of Great Jurisprudence, which in particular, is derived from the combined ideas of Gandhian and Marxian philosophy on the environment. Both Mahatma Gandhi and Karl Marx advocated for equitable existence in the ecosystem, resulting from

deviating from the anthropocentric superstructure. While Gandhi demanded that humanity derive natural resources only for the utmost necessity, Marx held for equitable distribution of resources optimally without imposing a toll on the ecosystem.

This research intends to delve deep into the idea of Great Jurisprudence and extend the philosophy into the present environment protection principles in India and the world. There is a need to shift from the current legal system concerning environmental protection and ecological justice as it needs to bear fruit effectively enough to sustain the idea of inter-generational justice for the ecosystem. Climatic justice and its scope can be emancipated with the conferment of natural identity for the natural resources, which poses more important jurisprudential questions regarding its sustainability and practicality, which is pondered in the following research.

Key Words: Great Jurisprudence, Inter-Generational Justice, Anthropocentric Philosophy

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Introduction

The jurisprudence concerning the environment is evolving with the different crises faced by our ecosystem due to increased human abuse of nature and the consequences of human over-use of natural resources. The international community became aware of the need to act on the deterioration caused to the ecosystem caused by direct and indirect human activities very later compared to the development of human rights, considering the fact that a healthy environment is cardinal in sustaining such identified human rights.

The nation-state's Constitution is the grundnorm that affects the entirety of the state's functioning, including its citizens' individual lives. The Indian constitution inspired from many other constitutions in the world was crafter to include an internal constitutionalism which will continues to grow and transform in accordance to the changes that happens in the society. The Constitution even though has some inherent features which is non-negotiable in nature, it is always envisioned by our constitutional fathers to have a spirit of growth and continuous transformation. The Indian constitution under Article 21 encompasses almost all the recognized human rights under the Universal Declaration of Human rights, which includes the right to safe and clean environment. Environment jurisprudence as we well know is an area which is constantly evolving to accommodate the changing concerns surrounding our ecosystem and

environment, and the philosophy of preserving such ecosystem is also undergoing changes which needs to be adapted into the individual rights of people to have a safe and clean environment. The transformative constitutionalism in adapting to changing environmentalism also has a more apt terminology, which is the Living Tree Doctrine, which means the conceptual foundation of the constitution even though remains the same has to have enough platform to accommodate growth in society and changing dynamics in the rights guaranteed to the people. The Indian Constitution through Article 21 provides for right to clean and safe environment which was conceptualized through innumerable precedents, judicial activism playing an active role in ensuring the assistance of the globally accepted principles such as ‘sustainable development’, ‘polluter-pays principle’ and ‘precautionary principle’. But it is our understanding that such emancipation of environmentalism and its inculcation into the constitutional philosophy is still not enough to completely curb the misuse of natural resources, and its possible eventual abuse.

We know, natural resources around the world have their own state-established protection techniques. Still, the question arises enough to completely ward off the changing nature of impacts upon them, which is causing its gradual deterioration. The legal framework surrounding environmental protection has limitations as it is constructed under the philosophy of human beings being the ultimate protector and preservers of the ecosystem, including human intervention. Natural resources include rich flora, fauna, and combined ecosystems like rivers, forests, and mountains. Such resources are considered non-legal entities without a personality of their own, which requires human assistance for their survival and preservation. The new visualization of assigning a legal character to such resources includes conferring legal rights of its own. Assigning a concrete legal personality to natural resources creates a more robust legal structure for preserving and maintaining such natural resources. Such conferment of legal personality to natural resources has its own complications, as it requires the establishment of a separate legal system that embodies these resources as a separate legal personality.¹

¹ Wesley J. Smith, ‘River Rights’ Movement in USA, NAT’L REV. (May 30, 2017, 2:12 PM), <http://www.nationalreview.com/corner/448105/river-rights-movement-usa;>

Transformative Constitutionalism and New Era of Environmentalism

Constitution is the bedrock of any modern nation-state to such an extent that it controls each and every function and policy adopted by the state. The Constitution determines the powers of the state authorities and it is the constitution itself which determines and bestows the necessary powers and functions to such established authorities.² The Constitution also functions as the cornerstone of the philosophy which determines the relationship between the state and the individual, and the

rights guaranteed to such individuals by the state.³ Transformative constitutionalism entails a culture wherein it encompasses the changing nature of human society and its needs which include defining rights and modifying them in accordance with the changes in its dimensions. Transformative constitutionalism is based upon the conceptual foundation of constitutional morality,⁴ which states that each constitution has its own inner morality based on which the extended version of the constitution is constructed and functions. Constitutional Morality has to be distinguished from the concept of constitutionalism, as the latter defines the spirit of the Constitution.⁵ Constitutional morality enshrines certain basic values to be observed under the banner of the constitution, which includes the need for constant transformation of the constitutional principles in tune with the changes endured in the society.

Environmental constitutionalism is a new kid on the block regarding the philosophy of transformative constitutionalism. It is still confirming the essential features constituting the basic foundation of environmental constitutionalism. It has the critical role of spinning together the

² Foundation, (2014) 1 SCC 1. 45 (2018) 10 SCC 1. See further, Abhinav Chandrachud, “Guest Post: Navtej Johar v. Union of India – Key Highlights”, Indian Constitutional Law and Philosophy, 9 September 2018, available at: <https://indconlawphil.wordpress.com/2018/09/09/guest-post-navtej-johar-v-union-of-india-key-highlights/> (last visited 31 October 2019).

³ Andre B eteille, “Constitutional Morality”, Economic and Political Weekly, vol. 43, no. 40, pp. 35-42 (2008); Pratap Bhanu Mehta, “What is Constitutional Morality?”, Seminar (2010), available at: https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm

⁴ Yashwant Sinha v. Central Bureau of Investigation, Review Petition (Crl.) No. 46 of 2019, judgment Dated 14 November 2019; See also, Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, Civil Appeal No. 10044 of 2010, judgment dated 13 November 2019.

⁵ Krier, Environmental Litigation and the Burden of Proof, in LAW AND THE ENVIRONMENT 105 (M. Baldwin & J. Page eds. 1970).

plight of those who are acutely affected and often neglected by the State or the mainstream society, who are directly affected by the degradations caused to the environment by human activities. The emergence of environmental constitutionalism and its rising importance is due to the continued failure of the established legislations and institutions which are entrusted with the duty to protect the environment and ensure justice.

Transformative Environmental Constitutionalism is also evolved to protect the indigenous communities or the Aborigines, whose existence and identity are entirely vanquished due to the interference from either the state or the larger society. The rights of the indigenous population should also be understood as part of the environmental justice, as they are a community who are entirely dependent on their ecosystem and nature for their survival. The United Nations has recognized indigenous rights and their role in sustaining nature within its balance. Indigenous communities' right to self-determination can be traced back to the early 16th century when the

colonies were established in various parts of the world. The jurists among the colonists felt, under Natural law jurisprudence, these aboriginal communities were entitled to their right to determine their livelihood and the colonialists had no right to intervene with them.⁶ The major proponents of this theory were Francisco De Vittoria and Bartolome de la Casas, these jurists tried to establish legal and moral relationship between the colonialists and the indigenous people. But gradually the colonialists overpowered the indigenous communities and their existence was questioned in such states. When modern states were created, the indigenous communities were denied their statehood, but their livelihood remained distinct and remote from the mainstream society which got integrated to the modern state system. In effect, the indigenous people were left behind and thus creating conflict of culture and self-identity.⁷

The inculcation of sustainable development goals into sovereign constitutions were considered to be a quintessential aspect for the future of environmentalism post the Paris Climate Change Summit, 2015, which includes inclusion of principle of sustainable development, and it is needed

⁶ M F Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926) 20; H R Berman, 'Panel Discussion: Are Indigenous Populations Entitled to International Juridical Personality' (1985) 79 American Society of International Law Proceedings 189, 190;

⁷ Douglas Sanders, 'The Re-Emergence of Indigenous Questions in International Law' (1983) 1 Canadian Human Rights Yearbook;

to be converted to concrete legislations so that it can be effectively enforced in the most democratic process. The spirit of transformative constitutionalism enables activation of a constitutional platform which will embrace such development and inculcation of such novel principles into the constitution, and presents itself with a status of law, elevating it from a mere principle to be strictly enforced. The constitutionalism should be liberal enough to conduct such transitions of environment principles into robust legislations which will result in broader culture of environment protection inside domestic legal system.⁸

Integration of Environmentalism and Transformative Constitutionalism is integral in the way forward in the world wherein the natural resources are facing a constant threat to their balanced distribution and availability.⁹ Moreover, there must be recognition and integration of modern environmental principle even if it is at the cost of some constitutionally recognized individual or group rights. The introduction of environment impact assessment in Companies Act 2013 is a

welcome move as it enabled in keeping a check over the activities of the companies without going ultra vires the constitutionally declared principles of environmentalism, like sustainable development and precautionary principle. Environmental Constitutionalism is the latest development of transformative constitutionalism, and should not be considered merely as a substitutive measure. The United Nations and United Nations Forum for Climate Change alone cannot be bestowed with the sole duty to preserve ecology and reduce the speed of climate change, rather it must be conceived as a responsibility of individual sovereign states to develop and extend the ideas of post-modern environmentalism into their respective constitutions. The judiciary too has an active role to play, as in India it has always been the judicial authorities who had been in the forefront to transform such principle concerning environment protection from paper to reality. The concept of inter-generational justice which is developed to bridge the reality of environmental justice and reflect the idea of preserving the ecosystem for the future generation as well has to be protected as the most quintessential part of each individual constitution.

⁸ Michael C. Blumm, Public Choice Theory and the Public Lands: Why Multiple Use Failed, 18 HARV. ENVTL. L. REV. 405 passim (2005).

⁹ Schopenhauer, On the Will in Nature, in Two Essays By ARTHUR SCHOPENHAUER 193, 281-304 (1889).

The Groundbreaking Earth Jurisprudence

The emergence of Earth jurisprudence was not a sudden revelation in the field of environmental justice or for the matter in general jurisprudence but a gradual development of an antithesis to the existing environmental philosophy.¹⁰ The Earth jurisprudence originated as a critical theory which points out the fallacies of the already existing justice delivery and determination system concerning our ecosystem and environment, which has led to further deterioration of the environment. The Earth jurisprudence majorly shifts the focus from an anthropocentric¹¹ viewing of ecological preservation to a ecology-centric view of environmental philosophy. It was aimed to deconstruct an idea which considered human beings as the sole, predominant caretakers of the environment and most importantly a falsified perception that they are the primary stakeholders.¹² It tends to restructure the dynamics of relationship between mankind and the environment, as it redefines the role of human being as one among the innumerable components of Earth. The theory of earth jurisprudence in reality discusses about two major legal discourses, which are the Great Law and the Human Law. Great Law, or otherwise known as the natural law is the natural order of things

existing in the nature, which has been in existence even before the living things actually thrived in earth and will continue to exist even after they vanish. The Human Law on the other hand is the law that is made by human beings itself to accommodate their social life and lead them in a 'civic' way. The Earth jurisprudence initiates a dialogue between these two discourses, as it is quintessential to find common ground between them two for the continued, balanced sustenance of the environment. Human Law since its emergence, has always tended to either dominate or mold the Great Law as there was a constant friction between them, and neither could not exist in isolation.¹³

The philosophy of Anthropocentrism is a culmination of the eventual domination of Human law over the Great Law, as it established it is always the mankind that has to take responsibility in

¹⁰ Simpson, *The Analysis of Legal Concepts*, 80 *Lvw Q. Riav.* 535 (1964).

¹¹ *The Macquarie Dictionary: Revised Edition* (Macquarie Library) p. 113, 1985.

¹² Holmes, *Early Forms of Liability*, in *THE COMMON LAW* (1881), discusses the liability of animals and inanimate objects in early Greek, early Roman and some later law..

¹³ Stone, *Existential Humanism and the Law*, in *ExisrENTIAl HUmANSTeC PSYCHOLOGY* 151 (r. Greening ed. 1971).

preserving the nature, as they pictured themselves as having the sole authority to derive resources from nature. The great Albert Einstein had once remarked anthropocentrism as the “optical delusion of human consciousness where we come to regard humanity as the center of existence.”¹⁴ But there was a general consensus in accepting anthropocentrism as the prodigal discourse in western philosophy, compared to Eastern/Asian philosophy, which idolized nature and various constituents of nature. On the other hand, Western Philosophy was heavily influenced by the works of Aristotle and Plato, who held that no resources in nature are made pointless and that nature has made all animals for Man.¹⁵

Throughout the Natural law legal theories in the history of jurisprudence, we can understand there has always been a conflict between human-made laws and their consequences on the law of nature. The need to provide recognition to non-human things and other living things was always conveniently avoided under the excuse of negating complexities. The establishment of legal positivism as the most prominent legal theory resulted in a situation wherein authoritative laws made by a determinate body like a state are considered the final law, which further took away the significance of the non-human world and the lives in it. Positivism only recognizes a law when an authority with a definite existence promulgates it, and the laws, too, cannot have an abstract nature,

negating the ‘law’ nature of Natural Law.¹⁶ This resulted in constructing a legal system wherein human beings are the sole authority to create laws which govern non-human being, too, as it has self-proclaimed human-made laws as the only validated legal system. This idea of human-made laws as the only self-validated law has deeper roots in a falsified perception in anthropology which considers human being alone with the ability to think and have deliberations, with the remaining non-human world to follow in.¹⁷

¹⁴ To R.M., New York, Letter from Feb. 12, 1950, in ALBERT EINSTEIN, DEAR PROFESSOR EINSTEIN: ALBERT EINSTEIN’S LETTERS TO AND FROM CHILDREN 184 (Alice Calaprice ed., 2002).

¹⁵ Aristotle, *The Politics* (University of Chicago Press, 1256b, 1985).

¹⁶ WILLIAM FREDERIC BADÉ, *THE LIFE AND LETTERS OF JOHN MUIR* ch. 12 (1923) (citing Muir’s letter *Gods First Temples, How Shall We Preserve Our Forests?* Sacramento Record Union, Feb. 5, 1876).

¹⁷ Oliver A Houck, *More Net Loss of Wetlands: The Army-EPA Agreement on Mitigation*, 20 ELR 10212 (1990); *See also* Oliver A. Houck, *Hard Choices: The Analysis of Alternatives Under Section 404 of the Clean Water Act and Similar Environmental Laws*, 60 U. COLO. L. REV. 773 passim (1989).

Humans make the environmental protection laws and the regulations placed based on their own idea that they are sole arbitrators about the best and worst for the ecosystem, and it is they who amend such laws in order to suit their vested interests. Such violations of the already existing conservation laws can be bypassed and apprehended if it is posing itself as a blockade for the larger development of humanity, even if it is at the cost of some integral ecosystem features.¹⁸ The concept of property and how property is constructed out of the resources of the nature is another major flaw that we can observe in the current legal system. The appropriation of land and physical space is always under the over-complicated perception that through laws nature can be recognized into a property and owned by humans. The conversion of natural resources into private property is through embedding such resources in a legal system and eventually turning them into capital, thus ending a free access to such resources. The concept of private property is through the rule of a sovereign, and it is always the right of the sovereign to access and own land and other physical resources in nature through the legal powers exercised by them.¹⁹ The Influence of legal positivism resulted in disconnecting the relationship between land and nature with its cultural significance by converting them into a mere commercial property, thus establishing a system that permeates inequality and further discrimination in the society—the 21st century brought with it the influence of individualism and individual rights, which enlarged the need for converting more resources into private property, thus emancipating the intrusion of humanity into nature. The prominence of

individual rights also increased humanity's space over the non-human world and its beings, thus reaffirming the dominance of Human Law over the Natural law.

Marxian Environmentalism

Marxian philosophy is the most influential social philosophy from the later 19th century in many discourses, including economics, political science, jurisprudence, and general human culture. Even though Karl Marx propounded his theory through *Das Kapital* in an economic sense, it had transcended many boundaries to affect the minute contours of humanity and its lifestyle. It has an

¹⁸ *Minors Oposa v. Factoran*, G.R. No. 101083, 69 S.C.R.A. 181 (July 30, 1993) (Phil.)¹⁹
R Pipes, *Property & Freedom*, Vintage Publications, (2000).

equal number of critics for its followers, as Marxism as a basic ideology divided the world between capitalism and Marxism starkly. Marxism as an economic theory offers a general idea that resources, both economic and non-identified economic, should be shared equally in a society, thus evolving a society wherein there is no concentration of resources and opportunities in a few hands. Even though we can observe that the original Marxian theory in any discourse has an inherent nature of Human Law, as the original theory was silent on including non-human beings in the ecology and their role.¹⁹ But the broadness and depth of the philosophy have opened umpteen number of windows for progressing and integrating such natural law theories as well. It has such a facet associated with it because, after all, Marx was influenced by the works of Hegel and Kant and their theory of dialectical positivism²¹, which encourages an antithesis to any established superstructure in the society. Marxism as a political or economic theory was never meant to be stagnant; as Marx himself had once stated, “no theories and ideas can be stagnant, as it has to have an inherent nature of organic development in it, which allows itself to spread its wings in a different direction with the needs of the society.”²² In the second half of the 20th century and the gradual failure of the Soviet state model and with the growing need to extend Marxian philosophy into many relevant social discriminations and inequalities encouraged Marxian scholars and philosophers at that juncture to develop a post-Marxist philosophy, to construct a more libertarian social system without shedding the inherent and integral features of the original Marxian philosophy. The post-Marxist school of thought had spread its influence even to environmentalism and environmental justice, as, according to them, it had direct nexus to human consciousness and resource distribution. According to Marxian philosophy, environmental justice had the prowess to

extinguish the further spread of inequality in society, as it demanded equal access and opportunity in natural resource distribution. Post-Marxism was also a conscious effort to save original Marxist thoughts from falling into the trap of anthropocentrism and the intense naturalization of man, which would gradually take away the sharpness of the philosophy in ensuring the eventual establishment of an equalitarian society. There was a need to integrate Natural Law for its continued sustenance both as a purely economic theory and as a greater

¹⁹ Engels and Marx, *Reasons, Morals and Philosophic Irony*, in LANGUAGE AND ILLUMINATION 60 (1969). ²¹

I. KANT, *The Metaphysics of Morality*, in The Philosophy of Immanuel Kant § 1 at 230-31 (J. Watson transl. 1908)

²² Balbus, Isaac D., *Marxism and Domination*. Princeton, New Jersey: Princeton University Press, p.89, (1982).

social science discourse, and there was a need to shift itself away from the central role given to men and humanity. The integration of environmentalism provided a fresh life to the formidable 19th-century economic theory, as it now had fresh patches to explore, especially the status and importance to be given to non-human beings in the ecology and providing a novel perspective to resource tapping and its possible abuse, and thus resulted in the origin of “Ecological Marxism”.²⁰

Ecological Marxism was propelled in its development by the Stockholm Conference (1973) and the World Summit at Rio (1993). The proponents of ecological Marxism had two cardinal objectives in developing the theory; firstly, they had to establish a separate existence for human lives from the rest of the environment, and secondly, it introduced the separation between self-individuals and Nature. It attempted to establish for the first time that humanity was one among many constituents of the nature, and it has to have its own place and status equal to other living beings in society. The resources in the nature, according to ecological Marxists, are to be treated in the most equal manner, with enough such resources preserved for the future generation as well as equally for other members of the environment. The discourse has had a conscious effort to develop a self-consciousness inside human individuals to integrate themselves to Nature so that the sophisticated Human-made laws have a reduced significance in determining the dynamics of the relationship between humanity and Nature. It also without losing out on the inherent nature of criticism of dogmatic materialism.²¹ They argued that humans had nature in their inherent composition, and it is the generational interludes of capitalism and its eventual dogmatic materialism that led to the further taking away of humanity from its natural nexus with nature and the ecosystem. Materialism encouraged mending the nature and abusing of natural resources to serve their needs, which ostracized environmental justice further. Karl Marx himself had enumerated his idea on the nature of man and the consequences when there are discrepancies to

²⁰ Schmidt, Alfred. 1971. *The Concept of Nature in Marx*, London, New Left Books (1971).

²¹ Foster, John Bellamy. 2000. *Marx's Ecology : Materialism and Nature*. New York: Monthly Review Press..

such inherent nature of men. This original thought of human nature propounded by Karl Marx was extended to integrating such inherent nature of men with ecological balance.²²

Marxism, both as an economic theory and political school of thought, was developed to counter the fallacies of Capitalism and its related schools of thought from controlling the entire humanity and transforming the entire society into a materialistic one. When we analyze the reality currently, we can understand that capitalism poses a severe threat to ecological preservation and environmental protection, as increased commercialization and commodification have resulted in concerns about environmental degradation taking a backseat. Marxian thoughts provide the best platform to analyze environmental degradation and its causes through the constant urge constructed by capitalism in humanity to accrue capital and maximization of profits.²⁶ The abstract wardrobe of 'sustainable development allows for stacking capitalist theories of prioritizing development over environmental protection in the most subtle way, even though the author admits to the merits of sustainable development as a theory. Sustainable Development is meant to create a social system wherein development and preservation of the balance in ecology go hand-in-hand, whereas, in reality, a society heavily influenced by the perks of Capitalism always prefers further development of facilities for humanity, which can only be done with unchecked tapping of natural resources thus derailing the nature's inherent balance. The Ecological Marxists of the 20th century brooded over the reality of ecological imperialism wherein big capitalist nation-states such as the United States and many other European nations can manage markets and acquire unfair shares of resources from various other nations. It also leads to unequal ecological exchange wherein certain nations are technologically advanced nation-states can abuse the system and acquire for themselves unequal proportions of earth's natural resources and thus impoverish certain other parts of the world.²⁷

The Ecological Marxism was not an attempt to 'Marxise' ecology but rather to 'Ecologise' Marxism which was the right way to establish a direction for both the discourses and avoid separate existence as it came with the realization that both discourses were inherently battling a

²² Habermas, Jürgen. 1986. *The Philosophical Discourse of Modernity*. Cambridge, MA: The MIT Press ²⁶ Foster, John Bellamy. 2000. *Marx's Ecology : Materialism and Nature*. New York: Monthly Review Press.. ²⁷ Förster, Wolfgang, "Kant-Impulse im Denken von Karl Marx," in *Zeitschrift Marxistische Erneuerung* , vol. 51:13, Juni, accessed September 2, 2012 from http://archiv.zme-net.de/archiv/xxinfo/h05_1_s_1_22, (2002).

common anti-thesis, a capitalist society.²³ Karl Marx and Frederick Engels viewed the history of mankind

as the history of Nature itself, as, according to them, the former did not have a separate existence.²⁴ The human history and existence were one among the many developments and evolutions that followed inside the superstructure called the nature, and this understanding would promote greater integration of human activities in tune with the ecological balance.²⁵ The constant metabolic interaction between human activities and nature was the reason why humanity was able to develop and evolve in its own way, but the gradual influence of capitalism resulted in the breakage of such interaction and instilling an attitude inside the humanity that they are now able to dominate nature by themselves, and control the ecological dynamics for their own benefits. According to Marx, who was heavily inspired by the works of Maitland and his theory of the 'Lauderdale Paradox' which talks about the human nature taking the example of colonists in Virginia when they had to destroy certain public resources to cultivate private wealth, according to Marx public wealth specifically refers to the natural resources of the Earth. The ecological imperialists can abusively destroy certain amounts of such public resources to accumulate wealth and create capital. Thus, Marxism and Post-Modern Marxist theories developed a robust ecological philosophy that still holds good and has even influenced the much-celebrated Sustainable Development Goals, 2030, and is the reminder of the relevance of ecological Marxism, which has stood the test of time and changes in society.

A Sneak into Gandhian Model of Environment Protection²⁶

Mahatma Gandhi, beyond his stature as a political being and a freedom fighter for the independence of the Indian Republic, was a visionary, philosopher, and an ardent environmentalist. He had an in-built personal philosophy that he tried to spread to his followers as well: to lead a very subtle life, in balance with the ecosystem, and never to derail the environmental balance consciously.²⁷ The resources which are provided by nature are on plenty,

²³ Wendling, Amy, *Karl Marx on Technology and Alienation*. New York: Palgrave Macmillan, (2011).

²⁴ Claude Meillassoux, 'Past and Future Relevance of Marx and Engels' Works to Anthropology" *Dialectical Anthropology*, Vol. 9, Nos. 1-4, June 1985, pp.365

²⁵ Rorty, Richard, *Philosophy and the Mirror of Nature*. Princeton: Princeton University Press, (1979).

²⁶ Grundman, Reiner, *Marxism and Ecology*, Oxford: Clarendon Press, (1991).

²⁷ C. Gangal, *Value of Gandhian Norms Today*, The Times of India, October 5, 1994, p. 10 and Gandhi M.K., *Hind Swaraj*, Madras, 1921, p.89

according to him, but not enough for a society that attempts to abuse such resources. Gandhi, during his early days in South Africa when he was experimenting with his political philosophies, was heavily influenced by Leo Tolstoy through his Natural Farm culture, wherein he used to stay on a self-

made farm away from all the civilization, near to the forests, it was his method to integrate himself with nature and the natural order of things. Gandhi, inspired by Tolstoy, had his own Gandhi Farm in Transvaal, South Africa; he had constant communication through letters with Tolstoy and had constructed his own idea of environmentalism through such communication. Here, he decided to integrate himself completely with nature and lead a subtle life without personally distorting the natural order of the ecosystem. He was also inspired by the Hindu mythology and how the ancient Hindu scripts considered nature and natural resources as deities and even worshipped them. He thus pointed out the status given to forests, air, water, fire, and soil, and each had its own mythological stature.²⁸ He was against viewing ecology and environment distinctively from humanity and human lives, as it was viewed in a holistic manner. Gandhi was also heavily influenced by the Jainist school of thought on nature, as Jainism viewed nature as a natural entity and idolized it in that manner, and respected the other living beings inside such nature.²⁹

Gandhi, as a visionary, had pointed out the possible fallacies and consequences of intense industrialization, even before it was actually brought forward on a global platform. According to him, the physical needs of individuals can be determined and restricted to the most important needs and can ascertain the rest as delusion and unwanted cravings; such unwanted needs and desires cannot be entertained, which would be detrimental to the environment in the long term.³⁰ Therefore, he objected to industrialization in India; he stated, "God forbid India never take industrialization after the West. The economic imperialism of a tiny island in Europe has kept the whole world in chains." According to him, industrialization and commercialization lead to further societal division. On the other hand, Nature does not have such inherent divisions, as it deals with all the life as a whole. He believed that educated Indians should return back to villages

²⁸ Dwivedi O.P., "Global Dharma to the Environments", *IJPA*, Vol. XXXIX, No. 3, July-September 1993, p.572

²⁹ Rele S.J., "The poison that is called Lead", *Yojana*, Vol.29, No. 23 December 16-31, pp.31-32

³⁰ Ashraf Ali, "*Gandhian View of Sustainable Development*", *IJPA*, Vol.XXXIX, No.8, July-September 1993, p.270

in India, where he believed that Indian society was ever more closer to nature, which was his ideal way to lead the life, than the industrial model from the West, which he considered to be self-destructing in nature. Ramachandra Guha, the renowned writer on Gandhi and Indian Environmentalism, had once remarked that Gandhi was actually against Industrialism rather than industrialization, as industrialism focused on substituting humanity with machines and, more importantly, disconnecting the relationship between man and nature. But on the other hand, his version of

industrialization is more about propelling the individual human development, which also emancipated the individual human effort, which, although, according to Gandhi, should never shift away from the laws of nature.

Gandhian school of thought on nature and environment profoundly impacted Indian environmentalism and ecological movements since independence. The consideration of nature having its own entity and the need to reduce human intrusion from the natural balance of the environment is required to enforce the principle of sustainable development efficiently. The first major popular movement concerning environmental protection was the Chipko movement which was against rampant deforestation that entailed in India in the 1970s, which was also an ecofeminist movement, with the predominant participation coming from the women. They claimed they were deeply influenced by the Gandhian ideals of environmentalism, which was developed further by J C Kumarappa and Mira Behn, according to Ramachandra Guha. The Chipko movement adopted a non-violent approach, with activists hugging the trees and thus preventing them from being cut down. J C Kumarappa, an ardent follower of Gandhi, developed the ideals of environmental justice on the ground of basic Gandhian philosophy, an alternate framework for sustainable development that has its origins in Gandhian philosophy. Kumarappa advocated for agriculture which, the then principal form of profession which, is rooted in ordeals of nature without disrupting the natural order of things. Kumarappa's work on the environment and ecology helped to raise the underrated Gandhian thoughts of eco-liberalism, which was otherwise subdued due to its strong influence from religion. Gandhian Environmentalism was strongly rooted in the basic philosophy that individual wants should be restricted to the most optimum level so that the behavior of acquisitiveness of humanity can be eventually vanquished. Even though to an extent, Gandhi also advocated to turn a blind eye towards chemical medicines,

as he wanted the doctors of India to venture into Indian forests and discover the medicinal qualities of the plants and utilize them rather than placing overreliance on Western medicine.³¹

Mahatma Gandhi was never renowned for his contributions to environmentalism and its preservation, but for his ideas of integrating humanity deeper into nature and organic check that is quintessential to industrialization created a possible platform, a fresh outlook in protecting our

environment and ensuring justice against deterioration of our ecosystem. The fundamental Gandhian school of thought left enough doors open for his followers and philosophers like J C Kumarappa, Mira Behn, and lately, Ramachandra Guha to fine-tune a robust alternative model for environmental justice applicable to both India and abroad.³² The call to return back to Indian villages to find the authentic connection between humanity and nature is so much true even today, as it would also ensure justice for the indigenous communities and their still unrecognized rights to habitat and identity. Gandhi advocated for conscious efforts to be taken to slowly blur the distinction between the human world and the rest of nature, which in a way, is his method of declaring to walk away from the anthropocentric system. Mahatma Gandhi and his teaching, including non-violent struggle and happiness in leading a simple life, is adopted by the global environmental activists, which includes considering Nature and its resources as having a personality of its own, which itself can be the cornerstone of inter-generational environmental justice.

The Novel Idea of Conferring Personhood to Nature

As we have already discussed, various communities and religions have their own method of visualizing nature, which includes the Hindu mythology bestowing a God-like stature to rivers, forests, air, and water, thus constructing a sanctified persona for such resources preventing the people from abusing such resources and unconsciously forcing them to protect and preserve them. Beyond limiting ourselves to Hindu mythology, we can also understand the indigenous communities in Indian and abroad consider the forests and natural resources provided by such forests as deities and practice rituals by offering prayers to them, which shows the connection

³¹ Guha, Ramachandra, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Indian Himalaya*, New Delhi, Oxford University Press, (1989).

³² R.P Pathak, *Environmental Challenges and Gandhian Solution*, The Indian Journal of Political Science, pp.367-376, (2004).

between such communities and their identity with nature, taking them away from their natural habitat would be an indirect method of deconstructing their identity and blocking their development. The radical shift from anthropocentric philosophy to environment protection considers conferring a separate legal personality on nature and natural resources.³³ It confers a personhood upon the nature, which would assign rights to the nature, which in a way, constructs a more expansive jurisprudence associated with climate justice.³⁴ The idea of legal personality to

nature is almost unthinkable under the auspices of the present legal system concerning the environment, which is similar to attempting to understand the rights of African-Americans in a pre-civil rights movement United States. The momentum gained to this discourse of assigning a legal personality to natural resources was as a result of the rights movement of indigenous communities and the mileage gained by such movement.³⁵ The realization of indigenous communities and their relationship with nature and the dynamics of the relationship between such communities with nature. Ecuador created history by changing its constitution in 2008 itself by assigning legal status and rights to nature. Bolivia followed this landmark feat by changing its own constitution similarly in 2010. In Bolivia, nature has the right to “to exist, persist, maintain and regenerate its vital cycles, structure, functions and its process in evolution.”³⁶ When the constitution provides the rights, the legal system provides a fresh perspective on environmental protection by transforming the dimensions of climate justice and alternations associated with environmental protection. The legal system in Bolivia and Ecuador would also establish the ultimate extinguishment of the domination of humanity over nature. In New Zealand, they took another approach in connection with the cultural tradition of the indigenous communities by providing an ancestral status to each natural resource like a river, mountain, or forest with a particular tribal community. It was integral in conferring legal personality to each such constituent of nature in New Zealand. In *Animal Welfare Board of India v. A. Nagaraj & Ors*,⁴² the Supreme Court of India held that the Right to Life under Article 21 of the Indian Constitution also includes the right to life of non-human animals. Thus, we can understand that granting

³³ J. Harte & R. Socolow, *PATIENT EARTH* (1971).

³⁴ Cousteau, *The Oceans: No Time to Lose*, L.A. Times, Oct. 24, 1971, § (opinion), at 1, col. 4.

³⁵ McHarg, *Values, Process and Forms, in The Fitness of Man's Environment*, p. 213-14 (1968).

³⁶ Article 73, Bolivian Constitution ⁴²
Civil Appeal No. 5387 of 2014.

personhood to natural resources is no longer a ridiculed idea but a radical movement that is gaining momentum worldwide, envisioning a transformative facet of climate justice and environmental preservation.³⁷

The major roadblock to realizing the idea of granting personhood to nature is simply traceable to ‘environment capitalism,’ which is a prodigal son of widespread commercialization and globalization, which has reduced nature and its associated constituents to mere goods in a market.³⁸ Environment Capitalism transformed their natural resources into a global market in which the

multinational corporation backed by capitalist sovereign nations to extract such resources to the maximum level to serve the interest of such capitalist forces. The conferment of personhood to nature would confer equally strengthened rights to such resources and thus constructing a legal system wherein abuse and deterioration of such resources are almost impossible, thus achieving the objective of reducing human intrusion into the balance of the ecosystem

Concluding Observations

The beginning of the 21st century saw new dimensions to environmental protection and prevention of climate change policies with increased popular movements that had bankrolled in almost all the continents and enforced their own domestic policies in line with the growing dynamics of environment deterioration and degradation. The gradual transformation of human rights and the evolution of the individual right to a safe and clean environment has forced the

³⁷ D. RUDHYAR, *Directives for a New Life*, p.21-23 (1971).

³⁸ *San Antonio Conservation Soc'y v. Texas Highway Dep't, cert. Denied*, 400 U.S. 968, (Black, J. dissenting to denial of certiorari), (1970).

states to develop their own domestic legislation and policies to accentuate such right to a safe and clean environment.³⁹

Granting of personhood to natural resources surely was a radical transformation in the method of viewing nature and its constituents, especially when a legal system specifically bestows legal rights upon such entities, which is an unprecedented and totally indifferent thought when considered from inside the present legal system. In the northeastern part of India, we can find communities that consider the river Brahmaputra as a separate legal entity, having its own existence, which has improved the sanitation and preservation of the river. Similarly the, according to ancient Indian mythology, the river Ganges is considered a goddess, which granted a separate legal existence for the river, thus smoothening the process of river preservation in various parts of Central India. In the state of Kerala, there is an age-old tradition of preserving forests even near residential areas, as Cobras are worshipped as God. Such small-scale forests are considered the home of such deities,

which can never be destroyed or even molded to people's interests. Therefore, we can see tales of separate legal personalities being assigned to non-human beings across the globe; the only task left is to have an integrated platform wherein such discourse is combined and converted into a robust legal system.

As we have seen earlier, the Gandhian and Marxian schools of thought have maintained a wide enough platform to accommodate the changing demands that occur in the society, including climate change and environmental degradation, which has a direct nexus to man-made problems. Ecological Marxism and Gandhian Environmentalism unanimously require a sudden shift from the anthropocentric views that exist in preserving ecology. The idea of equitable distribution of natural resources without vicious concentration of such resources in a few hands in society, permeates further discrimination and ostracisation in society. Ecological Marxism, on the other hand originated from the fundamental idea that there is a need to reduce the domination of Human Law over the Great Law, which is the Law of Nature. It is also inspired by dialectical

³⁹ Lawrence Tribe, *The Clean Power Plan Is Unconstitutional*, WALL ST. J., Dec. 23, 2014

materialism, which predicts that there will always be an antithesis to discourse when such discourse fails to meet the demands of justice.

Thus, we can conclude that to materialise the demands of the Sustainable Development Goals, 2013 and the objectives of the Paris Climate Conference, 2015, there is a drastic shift in the present discourse relating to the ecosystem and the environment. An alternated model thus suggested is providing a separate legal existence to such nature and natural resources, which itself is a colourful feather belonging to the wings of Transformative constitutionalism. It is the need of humanity and equality of other non-human living beings in society to have a robust legal system that preserves the balance in the ecosystem so that there is no direct conflict between the human-made laws and the laws of nature which will detrimental to the entire ecosystem in the longer run.
