

## ARTICULATING RIGHTS OF NATURE: IN PRACTICE, IN INDIGENOUS COMMUNITIES AND BEYOND

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### ABSTRACT

The concept of '*rights of nature*' is not alien to the twenty-first century world. We see even in the pre-modern world, peoples and communities held nature to be sacrosanct. In the ongoing, present-time discourses on climate change and global warming, it has become important to be more aware about the rights of nature, including the intricate details and challenges that underlie their discussion and realisation in practice. The paper looks into some of the theoretical and practical articulations of rights of nature. The paper further reflects on the practices of some countries which have managed to discuss nature as a legal person either through court judgements or by incorporating rights within their Constitution. The paper also aims to view the Rights of Nature beyond 'Rights' and legislations, by understanding the concept of Rights of Nature in the indigenous communities and drawing reference from popular culture. As we move beyond humans and take into consideration the non-human categories, there is a need to expand the existing framework of human rights. This intersection between human rights and rights of nature and what the future holds has also been discussed in the paper.

**Keywords:** Rights of Nature, environmental personhood, indigenous communities, eco-colonialism, rights of nature in popular culture, environmentalism

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## I. Introduction

THERE ARE multiple, varied definitions of the word 'nature'. Some see it as a manifestation of the world, while others say nature encompasses all biotic and abiotic components (living and non-living) such as- water, land, plants, animals, etc. The United Nations General Assembly dialogue on Harmony with Nature released a report in 2013<sup>1</sup> which defined nature as:

Concepts of nature range from the basic elements of the natural world, trees, rivers and animal life, to how our world came into existence, to the world that exists without human beings or human civilizations, to the universe beyond our home planet, in all its staggering complexity. Nature refers to *life in general* and its presence is found everywhere- in the metaphysical, subatomic and cosmic realms. As a concept, it has existed since the beginnings of human history.

Some synonymous words of nature we may be familiar with are- environment, Mother Earth, Mother Nature, ecology, etc. We, as human beings exist *in nature* and *with nature*. Hence, it is vital to understand nature, the way it works and functions, give it the respect due and, also find ways to protect it. Indiscriminate use, misuse will heavily impact our present generation (we are already seeing greater climate radicalisation and natural disasters) and also the future generations to come.

Nature as a distinct entity in itself does not have a 'speaking voice', an ability to vocalise like the human species do. However, this does not mean it holds no value or that it is not deserving of rights. Rights, in the current context mean entitlements (legal, social, economic) which are given and guaranteed to a citizen of a country or to corporations or an individual human being. These cannot be taken away without due process of law.

The legal world as we know it has natural persons and legal persons. A natural person is an individual human being, holding its own legal personality that is acquired naturally, by virtue of being born. A legal person on the other hand is an entity on which legal personality is

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<sup>1</sup> UN Secretary General, *Harmony with Nature- Report of the Secretary General*, UN Doc A/68/325 (August 15, 2013).

conferred upon by due legal process. Legal persons can be firms, corporations, companies, governmental agencies, etc. A simplistic understanding of the world we live in can be one section comprises those having rights (and therefore legal personality) and the other section comprises property (specifically, private property). Those holding rights have responsibilities, duties to fulfil and certain obligations to adhere to. Those not having legal personality i.e. not a rights-bearer are not *seen* by law and courts of the world and thus, not accorded legal protection.

With the influence of post-humanism as a theoretical framework, there is a realisation that treating everything around humans with an anthropocentric lens is not good for the whole of nature (of which human beings are a part of too). We see a reflection of said anthropocentrism in law too, where nature is seen as “*an object of human property relationships- especially private property*”<sup>2</sup>. This narrative views nature as an object which “*exists to satisfy the needs, wants, desires of human subjects*”<sup>3</sup>. Thus, when we begin the conversation of rights of nature or giving rights to nature, we can think of moving beyond existing legal frameworks. Because, as of now, nature as a non-human entity is not a legal person in every nation or State we know of.

Concepts like Earth Jurisprudence help in bridging the gap and not see nature as something to be given rights and protected just by virtue of what it provides to human existence. Earth Jurisprudence can be seen as a philosophy of law, a form of critical legal theory, or as something which developed from environmental movements.<sup>4</sup> The understanding is that human society offers an anthropocentric worldview and law in particular, has contributed to “*constructing, maintaining and perpetuating*”<sup>5</sup> said anthropocentrism. Thus, Earth Jurisprudence aims to offer a new narrative and do away with the old one which is continuing the account of “*human domination over nature*”<sup>6</sup>. It advocates for a paradigm shift in how we humans view ourselves, the law and government institutions. This paradigm shift is then said to lead to a “*re-thinking of law and governance*”<sup>7</sup> to the betterment of all Earth and everything

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<sup>2</sup> Peter D. Burdon, *Earth Jurisprudence: Private Property and Earth Community* (2011) (Unpublished Ph. D. thesis, Adelaide Law School, The University of Adelaide).

<sup>3</sup> *Ibid.*

<sup>4</sup> Peter D. Burdon, “A Theory of Earth Jurisprudence” 37 *Australian Journal of Legal Philosophy* 30 (2012).

<sup>5</sup> *Ibid.*

<sup>6</sup> Guilia Sajevea, “Do we need Earth Jurisprudence? Looking for change in new old friends” 20 *Diritto & Questioni Pubbliche* 15 (2020).

<sup>7</sup> *Ibid.*

that constitutes said community. There is a need to move beyond considering what all can be extracted and received from nature. Nature deserves rights and protection not because it sustains our life but also because nature as a distinct whole exists, and is an entity in this world. Environmental personhood as a concept ensures that entities in nature are assigned with legal personalities. This is important because law itself is dynamic, with changing times and issues; law is evolving too. Environmental personhood enables one to litigate on behalf of nature. It is also deeply tied to rights of indigenous people and communities and their intrinsic relationship with nature.

## II. What is ‘Rights of Nature’? Who needs it and Why?

The narrative of ‘Rights of Nature’ entails ensuring rights-bearing status to nature and entities within it. A new language needs to be created to ensure the rights of nature. This is required because with our human understanding we may have doubts as to how nature can have legal obligations which we, human beings can comprehend and hold it accountable to. Thus, it is vital to create a framework to protect the rights that nature now has and may have in the future and do it in proper processes to ensure implementation and enforcement.

To realise and enforce rights of nature would include- ways for legal systems of the world to interpret, consider, defend and protect said rights. The creation of a new framework or laws would mean facilitating ‘nature’, which will then give security, protection and realisation that rights of nature are fundamental. The concept of ‘rights of nature’ has its foundations in both law and politics. Thus, its implications and results will affect humans, non-humans, environments, societies, etc. All that is being done and achieved within this movement is followed closely by many around the world, including governments and legal personalities.<sup>8</sup>

Jurist Jens Kersten, has argued that the question of ‘who needs rights of nature’ has multiple answers. Human beings need the rights of nature, so do the future generations and nature itself. Over time, there has been an evolution of “*treating nature as an object*”<sup>9</sup> which needs to be

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<sup>8</sup> Anna Leah Tabios Hillebrecht and María Valeria Berros (eds.), *Can Nature Have Rights? Legal and Political Insights* p.no. 5 (RCC Perspectives: Transformations in Environments and Society, Munich, 2017)

<sup>9</sup> Jens Kersten, “Who needs Rights of Nature?”, in Anna Leah Tabios Hillebrecht and María Valeria Berros (eds.), *Can Nature Have Rights? Legal and Political Insights* 9-14 (RCC Perspectives: Transformations in Environments and Society, 2017)

given protection, to now regarding nature as a “*legal person or a subject which can exercise its own rights*”.<sup>10</sup> Here we see the evolution of legal norms.

Recognising that non-humans are also subject of rights is not strange. In the current economic sphere, corporations, firms and companies are rights bearers with legal personalities. In due course of time, human beings got used to the narrative that such firms and trusts are legal persons and now, nobody questions this. Today, we are in a phase where human beings are still getting used to the idea of nature or certain entities in nature as rights bearer/legal persons.<sup>11</sup>

Since the commencement of the 21st century, nature has started receiving due rights. The public are also increasingly aware of the rights of nature, and the media also provides decent coverage. But we see the presence of rights of nature consciousness even during the 20th century. Renowned legal scholar Christopher Stone published an article in 1972, where he made the argument that the natural environment could enjoy legal rights. He linked his argument to morality, that “*nature should have legal standing because it is morally worthy of such*”.<sup>12</sup>

There have been examples of various entities that enjoy legal status without having moral standing. Corporations, firms, ships, etc. do not have moral standing but enjoy legal status. On the other hand, we also see indigenous cultures giving moral standing to special spirits, ancestors and entities without it ever materialising into a legal status. Thus, one should not argue solely on the point of moral worth of nature to ensure rights. Further, one cannot assume that extending rights to nature would “*automatically lead to moral improvement*”<sup>13</sup>.

The question- ‘what does rights of nature mean’ does not have a single specific answer. Political ecologist, Mihnea Tănăsescu, argues that the rights of nature is not “*a universal solution to environmental harm, nor uniquely placed to solve such harm*.”<sup>14</sup> We cannot limit it solely to the environment but rather make it about creation of new relations via which all the issues and concerns concerning nature can be articulated and interpreted differently.

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* p.no. 22 (transcript Verlag, Bielefeld, 2022).

<sup>13</sup> *Id.*, at 23.

<sup>14</sup> *Id.*, at 17.

### III. Rights of Nature in Practice: Some key Legislations and Judgements

The realisation that nature and ecosystems are alive and sustain lives of humans and entities has led to gradual manifestation in the form of rights. Thus, via jurisdiction and legislations, entities in nature have been ensured legal status because they are “*vulnerable to exploitation by the human*”.<sup>15</sup>

1. **New Zealand:** In 2017, their government recognised the Whanganui River as a legal person. “*Indivisible and living whole... Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.*”<sup>16</sup> The *Te Awa Tupua Act, 2017* conferred legal personality to the river and was the first comprehensive legislation across the globe in conferring legal personality to rivers and dealing with it in a very detailed manner.
2. **Ecuador:** It has enshrined the rights of nature in its Constitution (Chapter 7, articles 71-74)<sup>17</sup>. The 2008 Constitution adopted rights of *PachaMama* or Earth Mother/nature. “*Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.*”<sup>18</sup>
3. **Pakistan:** The Supreme Court of Pakistan in 2021 upheld that the rights of nature itself need to be protected. “*man and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights.*”<sup>19</sup> In the case of *D. G. Khan Cement Company Ltd. v. Government of Punjab*, the provincial government of Punjab released a notification barring construction of new cement plants or expansion of existing ones in the “*Negative Area*” which was an environmentally fragile zone. This notification was challenged on the grounds that it violated the right to trade, business and profession. However, their Supreme Court upheld that construction of new or expansion of existing cement plants could cause further depletion of groundwater and other harmful environmental impacts. They stated the importance of having a “*climate democracy*”.

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<sup>15</sup> Kirat Sodhi and Deepa Kansra, “Earth Consciousness and Evolving Frameworks (Special Cover: World Environment Day and International Biodiversity Day, 2020)” *Earth Consciousness & Evolving Frameworks* p.no. 7 (2020).

<sup>16</sup> *Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017*, part 2 subpart 2 (New Zealand Government).

<sup>17</sup> *Constitución de la República del Ecuador, 2008* (Constitution of the Republic of Ecuador, 2008).

<sup>18</sup> *Id.*, art. 71.

<sup>19</sup> *D. G. Khan Cement Company Ltd. v. Government of Punjab through its Chief Secretary, Lahore*, 2021 SCMR 834.

- 4. India:** In 2017, The Uttarakhand High Court recognised rivers Ganga and Yamuna and their tributaries as legal persons:<sup>20</sup>

...the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.

In the *Mohd. Salim v. State of Uttarakhand* case, the petitioner filed a PIL concerning illegal construction and encroachment along the river Ganga. This judgement was later overruled by the Supreme Court on the state government's challenge that in the case of a flood, how should the victims hold the rivers accountable for taking lives. How do humans hold rivers accountable for homicide against another human being?

However, this case has been important in raising the issue of rights of nature in India and setting a precedent. On 2nd March 2020, Sukhna Lake in Chandigarh was declared a "legal entity, legal person, with rights, duties and liabilities of a living person"<sup>21</sup> by the Punjab and Haryana High Court. It also announced all citizens of Chandigarh as "*in loco parentis*" (in the place of a parent) to rescue it from extinction. The Court also ordered the demolition of thousands of houses and commercial units constructed in the lake's "catchment area", an ecologically sensitive area and further fined the Punjab and Haryana governments Rs. 100 crore each, as they gave permits for such constructions to occur in spite of a ban by the Court in 2011. The bench cited the 'polluter pays' principle of environmental law.

#### IV. Challenges in realising Rights of Nature

One of the most visible challenges currently is that, for Rights of Nature to exist in the world, it would require creation of a whole set of new rights for a living entity. But human tendency is to fit things into an already existing framework. This is not the easiest thing to do when it comes to the rights of nature. The current legal framework was never created with the intention

<sup>20</sup> *Mohd. Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367

<sup>21</sup> *Court on its own Motion v. Chandigarh Administration*, CWP No. 18253 2009 & other connected petitions.

to protect nature with legal rights and thus is in a way a ‘poor fit’. Hence, the rights of nature and granting it legal personhood movement have not been the smoothest. There have been various differences of opinions.

Looking at the concept of ‘legal person’ or ‘rights bearer’, we see that it is interest driven. Whether to withhold or give such a status “to something or somebody is a question of power.”<sup>22</sup> In the humanist worldview, nature is seen as lesser than the human species and so, only certain protections are given based on vested interest and what profit can be extracted. However, it would be a different story if nature or plants could vocalise and were legal persons with rights. Then it would become so much more difficult to destroy, kill or use indiscriminately. One way to understand why there are some arguing against rights of nature is that there could be some vested economic interest. They wish to own, destroy, use and pollute nature without any obstacles whether legal, political, societal or moral.

One must consider other challenges like- tendency to focus on only ‘exceptional environments’<sup>23</sup> or “*creation of new conservation/protection schemes that exclude and alienate the indigenous communities*”<sup>24</sup> from using and protecting nature.

At present, many are aware citizens of the world concerned about nature and ecosystems, but sometimes hidden issues of selective usage (only granting minimal entity status)<sup>25</sup> and varied interpretations may emerge. Another challenge which may emerge is, in a society where all have rights, there could be a possibility of weighing one right over another. In such scenarios, the powerful will rule and there could be instances of extensive surveillance and police force<sup>26</sup>.

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<sup>22</sup> *Supra* note 9 at 10.

<sup>23</sup> *Supra* note 12 at 152.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Id.*, at 151.

<sup>26</sup> *Ibid.*



## V. Beyond Legislations: Rights of Nature in the context of Indigenous Communities and Popular Culture

In the book, *“The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives”*<sup>27</sup> Pablo Solon notes that “The proposal of ‘rights of nature’ was developed to use legislation to help restore the balance in our Earth system but its main aim was never to constrain its vision to legal texts. The final aim is to build an Earth society and this requires much more than a change in legal structures.” He makes a reference to Martin Luther King who said, *“Legislation may not change the heart but it will restrain the heartless”* and further quotes Burdon who says that:<sup>28</sup>

the implementation of Earth rights should not be restricted to the juridical model as is frequently the case. And probably in the struggle for this proposal the concept of ‘rights’ will be replaced by a concept that can better reflect the search for an Earth society and also ‘restrain the heartless.

### **The concept of Rights of Nature in indigenous communities**

While the concept of Rights of Nature is gaining momentum now, it is essential to note that rights of nature are interrelated with the indigenous communities. Nature worship is an important part. The Sun, Moon, stones, rivers, water, fire are worshipped. The Rights of Nature is very much a part of the culture of the Indigenous communities which is also reflected in their songs, art, literature, way of living and their social structure, economy and the impact of climate and ecosystem change has a direct impact on the local livelihoods.

While the Western philosophical system is based on the idea that man is distinct and has authority over it, Indigenous philosophical systems see humans as a part of nature, often trying to serve as custodians to help keep the ecosystem in balance. Animism is the potential for objects such as animals or rocks to be animated and possess spirits which are also worshipped. Animistic religions can be found in many cultures around the world such as Shintoism in Japan

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<sup>27</sup> Pablo Solon, “The Rights of Mother Earth”, in Vishwas Satgar (eds.), *The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives* 107 (Wits University Press, 2018).

<sup>28</sup> *Ibid.*

which believes in *Kamis* (spirits or deities) and that *Kamis* are interconnected with nature and can be rivers, the wind, or the sun<sup>29</sup>.

One of the popular cases was between the indigenous Maori community and New Zealand when the Whanganui women petitioned the parliament to prohibit the removal of stones from the riverbed. Gravel mining had disrupted fish habitats and, by implication, traditional livelihoods throughout the years. The tribe's famous phrase "I am the river, and the river is me" is important in this context of the Whanganui River as it is said that the Whanganui Iwi share two ancestors, *Paerangi* and *Ruatipua*. It is believed that *Ruatipua* "draws life force from the headwaters of the Whanganui River on Mount Tongariro and its tributaries which stretch down to the sea"<sup>30</sup>. It is believed that the river is a descendant of the ancestor that flows from the mountains to the sea.

### **Colonialism, nature and the impact of eco-colonialism on Indigenous People**

In an article in *Environmental Policy and Law*, Elaine C. Hsiao mentions about the decolonisation of nature as - "*a strategy of resistance to colonisation on the part of peoples whose very cosmology refuses to recognize nature as merely a set of resources for human use and commodification, involves an assertion of environmental sovereignty*".<sup>31</sup>

Paul Driessen coined the term 'eco-imperialism'<sup>32</sup> to describe the coercive imposition of Western environmentalist views on developing countries. Environmental colonialism refers to the various ways in which colonial practices have impacted the natural environments of Indigenous peoples.<sup>33</sup>

The colonial powers viewed the land and natural resources of the indigenous as a scope to exploit the resources, the impact of which is still being suffered by the ecosystem and indigenous communities. Natural resource processing and management are important aspects of the economies of most Latin American countries which were once upon a time under

<sup>29</sup> Yuan Pan, "Human–Nature Relationships in East Asian Animated Films", 10 (2) *Societies* 3 (2020).

<sup>30</sup> Elaine C. Hsiao, "Whanganui River Agreement-Indigenous Rights and Rights of Nature" 42 *Environmental Policy and Law* 371-375 (2012).

<sup>31</sup> *Ibid.*

<sup>32</sup> Paul Driessen, *Eco-Imperialism: Green Power Black Death* p.no. 59 (Academic Foundation, New Delhi, 2005).

<sup>33</sup> Mary Lyn Stoll, "Environmental Colonialism", in Robert W. Kolb (eds.), *The SAGE Encyclopaedia of Business Ethics and Society* 1155 (SAGE Publications, 2018).

colonial rule. There are cases where the restrictions for protected areas restrict how indigenous people can utilise their land in certain Latin American countries where large areas of land are used for agriculture. Although it appears that one has the right to live freely in unprotected agricultural areas, there exist restrictions on traditional customs and ways of utilising the environment which is generally in harmony in protected zones. The best protected forests in the Amazon, according to environmental experts, are on indigenous reservations where conservation is deeply ingrained in the culture.<sup>34</sup> According to a study released in March 2021 by the United Nations Food and Agriculture Organisation, deforestation rates are much lower on protected indigenous lands.<sup>35</sup>

Climate change is rapidly transforming indigenous relations to the environment in ways that undermine indigenous cultural and knowledge systems.<sup>36</sup> Indigenous approaches and wisdom are often reduced to ‘traditional’ and ‘primitive’, confined within the discourse on indigeneity<sup>37</sup>. Indigenous knowledge is reduced to empirical comprehension of the physical environment rather than a tentative shift in legal structures and governing institutions.<sup>38</sup> A 2012 International Declaration of Indigenous Peoples mentioned that modern laws destroy the earth because they do not respect the ‘natural order of Creation’ and mention that the concept of ‘Green Economy’ only promises to ‘save’ nature by commodifying its life giving and life sustaining capacities as a continuation of the colonialism<sup>39</sup> that indigenous peoples and the Earth have faced and resisted.

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<sup>34</sup> Anthony Boadle “Brazil indigenous people tell COP26: you need us to solve climate crisis” *Reuters*, Nov. 1, 2021, available at: <https://www.reuters.com/business/environment/brazil-indigenous-people-tell-cop26-you-need-us-solve-climate-crisis-2021-11-01/> (last visited on 11 October, 2023)

<sup>35</sup> U.N. FAO and FILAC, *Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean* (Santiago, Chile 2021).

<sup>36</sup> Kyle Whyte, Chris Caldwell, *et.al.* “Indigenous lessons about sustainability are not just for ‘all humanity’”, in P, Taylor, Alcott, L, *et.al.* (eds) *Routledge Companion to the Philosophy of Race* 152-167 (Routledge, New York, 2018).

<sup>37</sup> Jason C. Young, “Environmental colonialism, digital indigeneity, and the politicization of resilience” 4(2) *Environment and Planning E: Nature and Space* 230-251 (2021).

<sup>38</sup> John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* 29-55 (University of Toronto Press, Toronto, 2002).

<sup>39</sup> Kari-Oca 2 Declaration: Indigenous Peoples Global Conference on Rio+20 and Mother Earth, 17 June, 2012 available at <https://villageearth.org/wp-content/uploads/2012/09/DECLARATION-of-KARI-OCA-2-Eng.pdf> (last visited on 11 October, 2023).

## Social media as a tool to communicate the concept of Rights of Nature

In an era where social media can be considered a soft power tool and, platforms like Twitter and Instagram have made it easier, more accessible to communicate issues and spread awareness and influence perspectives about the Rights of Nature, climate change and other topics of international debate; it is time that we look beyond traditional and conventional methods of communicating the policies to the citizens. It also acts as a medium through which the citizens can voice their opinions and add their perspectives to the debate. Thus, this form of soft power tools assist in providing an overview of the bottom-up approach to the legal frameworks as well as the policies and strategies devised by the States at the administrative levels.

## Rights of Nature and Popular Culture

Miyazaki's films are some of the most popular ones in terms of the subtle underlying themes of environmentalism<sup>40</sup>. Hayao Miyazaki is a Japanese animator, one of the greatest animated filmmakers and storytellers. His films highlight the themes of environmentalism, the respect for nature and the message that humans and non-humans should live in harmony for a sustainable tomorrow.<sup>41</sup>

*Nausicaä of the Valley of the Wind* was released in 1984<sup>42</sup> with a special recommendation from the World Wildlife Fund for Nature; it explores the complexity of human–nature relationships alongside highlighting powerful environmental narratives and rights of nature. One thousand years ago in an apocalyptic war- ‘Seven Days of Fire’, the ecosystem was devastated and the forest became a toxic environment filled with poisonous fungal spores. The Princess of the Valley of the Wind is compassionate, she interacts with the non-human beings and aims to understand the ecosystem in the forest and find a way for the non-humans and humans to coexist and restore harmony to the region.

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<sup>40</sup> Hannah Kang Wolter, “Hayao Miyazaki, Studio Ghibli, and the ‘Environmental Message’” *The Cambridge Language Collective*, 18 January, 2023 available at <https://www.thecambridgelanguagecollective.com/asia/hayao-miyazaki-studio-ghibli-and-the-environmental-message> (last visited on 11 October, 2023)

<sup>41</sup> *Id.*, at 2.

<sup>42</sup> Topcraft, *Nausicaä of the Valley of the Wind*, Hayao Miyazaki (1984).

In *My Neighbor Totoro* (1988)<sup>43</sup>, two little sisters relocate to a house in the countryside with their father, because their mother is recovering from illness. The sisters explore the surrounding forest, when they come across Totoro, a giant forest spirit and develop a bond with the forest spirit, who consistently arrives when they are in need. The interrelation between human–nature wellbeing is highlighted in this film.

*Princess Mononoke*<sup>44</sup> revolves around the story of a young Emishi prince named Ashitaka, and his involvement in a struggle between the gods of a forest, the “Kamis” and the humans who fight for consuming the forest resources. Kami derives from Shintoism, one of Japan's oldest and most animistic religions. Shintoism is based on the concept of human-nature relationships<sup>45</sup>. In *Princess Mononoke* and *Spirited Away*<sup>46</sup> Miyazaki employs the traditional concept of kami to create fictional and fascinating landscapes to highlight the themes of environmentalism and the identity of entities in nature as living beings beyond only resource providers.

## VI. Intersection of Rights of Nature and Human Rights

Rights of nature are interrelated to human's right to life, right to self-determination, right to development, right to food, right to water and sanitation, right to health, right to housing, right to meaningful and informed participation<sup>47</sup>, rights of those most affected by climate change and the rights of future generations<sup>48</sup>.

With that being said, it is very important to note that all the conversation around the Rights of Nature still boils down to humans' right to access various resources from nature in one way or the other. Humans are still shown on the superior side as they are shown as the defenders and representatives of the rights of nature. There also exists a discourse of humans being a part of

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<sup>43</sup> Studio Ghibli, *My Neighbor Totoro*, Hayao Miyazaki (1988).

<sup>44</sup> Studio Ghibli, *Princess Mononoke*, Hayao Miyazaki (1997).

<sup>45</sup> Young-Sook Lee, Seiichi Sakuno, Nina Prebensen & Kazuhiko Kimura, “Tracing Shintoism in Japanese nature-based domestic tourism experiences” 4:1 *Cogent Social Sciences* p.no. 4 (2018).

<sup>46</sup> Studio Ghibli, *Spirited Away*, Hayao Miyazaki (2001).

<sup>47</sup> OHCHR, “Understanding Human Rights and Climate Change”, Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015, available at: [www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf) (last visited on July 27, 2022).

<sup>48</sup> OHCHR, Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/HRC/32/23 (May 6, 2016).

nature<sup>49</sup> and being a custodian of the rights of nature. It is undeniable that there is always a human centric approach to the discourse surrounding the rights of non-humans and there exists a gap in accountability of the legal frameworks and policies devised. Moving beyond legislation, when we rethink rights and justice for non-humans, themes of environmentalism and rights of nature, social media and popular culture have a very important role to play.

## VII. Conclusion

Broadly, there have been two different opinions to go about protecting and preserving the non-human world. One has anthropocentric underpinnings- that humans have a right to a healthy and clean environment. The other is eco-centric, which talks of recognizing the rights of nature. But with gradual emergence of the post-humanist worldview and more knowledge about the non-human world, the divide/gap between anthropocentric and eco-centric methods is reducing. One new way of interpreting this can be to see human right to a healthy environment as inclusive of the rights of nature *itself* to be healthy.<sup>50</sup>

Over time we have seen in the legal sphere that non-humans have also been given rights and protection. There is a holistic view of justice, which earlier was seen mostly in indigenous communities and their practices. As mentioned in the sections above, countries like India and Ecuador have recognised rivers and nature as rights bearers. We saw successful examples of countries like New Zealand, which via legislation recognised the Whanganui River as a legal person.

As argued in Rodríguez-Garavito's working paper<sup>51</sup>, in this age of the Anthropocene (human epoch) if economic activity is to be sustainable then society "*needs to be embedded in the biosphere*".<sup>52</sup> Within human rights, the strategy used is to look back and bear responsibility for past actions. But now, with climate change concerns the method is to look forward to the future

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<sup>49</sup> Anna Leah Tabios Hillebrecht, "Disrobing Rights: The Privilege of Being Human in the Rights of Nature Discourse." in Anna Leah Tabios Hillebrecht and María Valeria Berros (eds.), *Can Nature Have Rights? Legal and Political Insights* p.no. 20 (RCC Perspectives: Transformations in Environments and Society, 2017).

<sup>50</sup> César Rodríguez-Garavito, "Climatizing Human Rights: Economic and Social Rights for the Anthropocene" *NYU Law and Economics Research Paper No. 21-20, Oxford Handbook of Economic and Social Rights, Forthcoming* 27 (In Press, 2022).

<sup>51</sup> *Id.* at 16.

<sup>52</sup> *Ibid.*

as well and take preventive measures to safeguard against harsh global warming fallouts.<sup>53</sup> When talking of rights of future generations, the conventional time-span used in human rights is tested. Even while talking of legal personhood of non-humans, it is quite unlike the usual human rights perspective of who can be 'rights holder'.<sup>54</sup> Thus, we see gradual changes occurring in the language and narrative of human rights as a whole due to the emerging consciousness that the human and non-human are interconnected and interdependent. It has given momentum to re-thinking the human-nature relationship dynamic.

While the term 'rights of nature' may be seen in plurality, the narrative and movement is also about delineating what all comes within it. It is concerned about the right to protection, right against extinction, right against depletion and damage, right against exploitation and right to existence, etc. Organisations have come up that speak about said rights. They are composed of known jurists, environmentalists, ecologists, students, scholars, etc. who urge governments and the world to be more sensitive and sustainable in such times of climate crisis. Some examples of such organisations are- The Global Alliance for the Rights of Nature (GARN), Center for Earth Jurisprudence, Center for Democratic and Environmental Rights, The Community Environmental Legal Defense Fund (CELDF).

Within the discourse on the Rights of Nature, it is also important to understand the colonisation and decolonisation of nature, the process of exploitation and commodification of nature by the colonial powers, the brunt of which is borne by the indigenous communities who attempted to resist the commodification of nature by the colonial powers and continue to resist the exploitation of nature at the hands of the developed nations who aim to secure their economic interests.

The changes in the legislation were made but the changes in the way we approach nature and how we respect and coexist with nature is something that is yet to be looked into. When we rethink the rights of nature and move beyond legislation, one of the key tools in today's age are social media and popular culture which continue to influence narratives and perspectives. Diverse forms of popular culture are used in most countries as a form of resistance against the administrative powers. Seen in the case of animated films; through their subtle and powerful

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<sup>53</sup> *Id.*, at 23.

<sup>54</sup> *Ibid.*

themes on environmentalism, have been advancing knowledge about the rights of nature, respecting non-human entities in nature, and coexisting in the ecosystem.

The entire framework of rights of nature is not simply applying theory to practise. We see that there have been steps made for a more holistic view of justice. We must remember that nature and the entities within it, have their own way of living and functioning, it is independent and existing. To give it due rights is not a simple 0, 1 mathematical equation with a quick answer. It is a complex, intricate process to realise and implement rights of nature.