
Extending Moral Standing to Environmental Entities- Whom and How? Concerns and Considerations

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Abstract

Extension of moral standing to non-human entities has been a much contested issue. Several philosophers have advocated for bringing the entities of ecosystem into the domain of our moral consideration in order to afford them better protection. Others have resisted the idea. As environmental issues form one of the core areas which needs to be focussed on- given the rampant destruction of ecological footprints, this article seeks to analyse the cases for and against the extension of moral standing to entities beyond humans- how the same may be done, the considerations that need to be kept in mind and the concerns regarding the same- based on the analysis of various jurisdictions that have, in fact, extended moral standing to entities other than humans. It also makes an effort to suggest a way forward.

Keywords: Moral Standing, Moral Consideration, Environmental Ethics, Rights of Nature, Ecosystem.

Introduction

For extending protection to certain entities what is required is that the entity must possess some sort of a moral standing or have the moral consideration. That implies being the objects of his 'social instincts and sympathies'. If history of man may be traced, even slaves, children and women were historically considered to be being without rights, hence, without moral standing in relation to other humans, i.e. males. But gradually, in course of evolution, all these entities were bestowed with some sort of rights, thus giving them some sort of moral status in relation to other human beings (man). But extension of moral standing to entities beyond humans has been a contentious issue. Early philosophers and their emphasis on rationality as a basis for moral consideration meant that entities other than human beings could not have any sort of moral standing. The 'sentience' theorists advocated for extension of moral standing to non-human animals for their ability to feel pain. Later theories like those of 'ethical holism', 'deep ecology' and 'wild law' have argued for the inclusion of the ecosystem as a whole into the sphere of moral standing in relation to man. They have advocated the provision of certain sorts of rights to non-human entities, popularly known as 'rights of

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nature'. But this has led to certain practical difficulties in terms of feasibility of such a step. Also, certain difficulties did arise in the countries that did extend some sort of moral standing to non-human entities. This article seeks to analyse the philosophical background behind the extension of moral standing to non-human entities and the problems in implementing the same. It tries to look at the various countries that have, in fact, provided rights to non-human entities and to suggest a way forward.

What is Moral Standing?

The word 'standing', in its usage as an adjective, means standing having a supporting base. For e.g.: 'a standing lamp'. Used in a noun form, it means social or financial or professional status or reputation 'of equal standing', 'a member in good standing' etc. 'Moral Standing', ordinarily, is used in the later of the two senses. It implies having a status; a locus. The adjective or the qualification of the noun 'standing' is 'moral'. Moral Standing, in ethics, means the status of an entity by virtue of which it is deserving of consideration in moral decision making. An entity has moral status if and only if it or its interests morally matter to some degree, not for the sake of anyone else, but for the entity's own sake.² For instance, an animal may be said to have moral status if its suffering is considered to be morally bad, on account of this animal itself and regardless of the consequences for other beings. The question of moral standing is one of importance in the domain of ethics- it is a key topic of debate in bioethics, medical ethics, environmental ethics etc. To ask the question (by a human being)- if someone or something has moral standing or not is to see if that whether the well-being of that entity should be taken consideration of by humans. It implies a determination of the question- if that entity possesses some sort of a moral value or worth and can make claims. The entity concerned is regarded as a moral patient. Moral patient is an antonym to moral agents. Moral agents are beings who are capable of acting morally, acting for moral reasons and striving for moral improvements. Moral patients are entities towards which moral agents can have moral obligations.³ A being with moral standing is not merely a beneficiary of moral consideration, rather having moral standing implies, to be directly owed some moral considerations. Moral Standing has three features:

- ❖ Relational
- ❖ Scalar

² Agnieszka Jaworska and Julie Tannenbaum, 'The Grounds of Moral Status', *The Stanford Encyclopedia of Philosophy Archive* (Spring edn, 2018) <<https://plato.stanford.edu/archives/spr2018/entries/grounds-moral-status/>> accessed 31 January 2019.

³ Nancy S. Hancock, 'Theories of Moral Standing' (2002) 4(2) *Interdisciplinary Environmental Review* <<https://doi.org/10.1504/IER.2002.053890>> accessed 31 January 2019.

❖ Unilateral⁴

Relational implies that the being's moral standing is nothing but a function of the considerations that they owe from others,⁵ i.e. an entity has moral standing only in relation to another entity. If not, the entity cannot be said to have moral standing. In determining the question- who or what has moral standing, we essentially seek to answer which entity owes moral consideration from human beings.

Scalar can imply three things. Firstly- how many other beings owe it some sort of moral consideration? Secondly- how many considerations are owed and thirdly- the stringency of the consideration owed.⁶

Lastly, moral standing is **unilateral**, as it only considers what is owed by one to the entity concerned, and not what the entity in turn owes to the other.

As can be implied from the aforesaid discussion, having moral standing implies nothing but having the benefits of moral consideration. But as has been emphasised earlier, it also to some extent normative, because, having consideration does not by itself give an entity a moral standing in relation to another entity.

Having developed a brief understanding of what is standing and moral standing, in the next section the researcher shall proceed to analyse how the question of moral standing works in case of environmental ethics.

Environmental Ethics and Moral Standing

Fundamentally speaking, environmental ethics examines how human beings should interact with the non-human world around them.⁷ It is an attempt to extend the traditional moral discourse, based on normativity, with an aim to incorporate the whole or parts of nature within the domain of moral relevance.⁸ As it is normative in nature, the concepts of 'value', 'worth' and 'good' are fundamental to it.⁹ As, the word 'environment' is of very broad connotation, the domain of environmental ethics is broad too. The term 'ethics' introduces the idea of 'should' or 'ought' and the study of ethics is

⁴ Andrew I. Cohen, 'Dependent Relationships and the Moral Standing of Nonhuman Animals' (2008) 13(2) *Ethics and the Environment* 1-21 <<https://www.jstor.org/stable/40339157>> accessed 30 January 2019.

⁵ *ibid*

⁶ *ibid*

⁷ Clare Palmer, *Environmental Ethics* (ABC-CLIO 1997) Inc 6.

⁸ Martin Schonfeld, 'Who or What Has Moral Standing?' (1992) 29 *American Philosophical Quarterly* 353 <<https://www.jstor.org/stable/20014430>> accessed 24 December 2018.

⁹ *ibid*

concerned with how we should live, what exactly we ought to do, etc.¹⁰ So, understanding the conjoint connotation, environmental ethics is the study of how humans should or ought to interact with environment.¹¹ Palmer speaks of three steps of environmental ethics:

- ❖ Firstly, acquisition of knowledge and understanding about environmental questions as far as possible.
- ❖ Secondly, developing skills of excavating and analysing the different welter of human interests, attitudes and values that are, in some way, related to the environmental problems.
- ❖ Thirdly, the prescriptive element, i.e. offering a guidance or provision of rules about what may be an ethically correct behaviour towards environment.¹²

Charles Darwin observed that the history of man's moral development has been a continuous proliferation by extension of his social instincts and sympathies.¹³ If examined through the historical lens, man's circle was extremely limited. But gradually his social circle enlarged, as Darwin says, to men of all races- to the imbecile, the maimed and other lesser members of the society, and finally to lower animals.¹⁴ In ancient families, everyone outside the family was considered aliens. Even within the family, certain people had little or no rights (like the children). The slaves, women, children, blacks, prisoners and foetuses- all used to have little or no rights in the earliest times. But with passage of time, most of them have become possessed with rights, either fully (like slaves and women) or partially (like children).¹⁵ Today, in view of the birth of eco-centric ethics, the concept of standing is being enlarged gradually, wherein the rights of the ecological entities are being recognised, without having recourse to human interests.

The major differences of environmental ethics and other fields of applied ethics like bioethics, medical ethics is that the former is essentially an expansionist project.¹⁶ Business ethics, for example, makes an attempt to draw out the implications of traditional moral theories for decision making and policy formation into the business world. Same is the case for medical ethics also. But the underlying agenda of environmental ethics somewhere is devoted to change than application.¹⁷ Historically in moral philosophies, the moral

¹⁰ Palmer (n7) 6.

¹¹ *ibid* 6.

¹² Palmer (n7) 6.

¹³ Charles Darwin, *Descent of Man* (Murray 1874).

¹⁴ *ibid*

¹⁵ *In re Gault* 387 U.S. 1(1967) wherein basic constitutional protections were guaranteed to juveniles.

¹⁶ Gregory Cooper, 'Teleology and Environmental Ethics' (1998) 35(2) *American Philosophical Quarterly* 195-207 <www.jstor.org/stable/20009930> accessed 5 February 2019.

¹⁷ *ibid*

patients have been limited to human beings. However, a survey of the literatures of environmental ethics suggests that its object has been to expand the class of moral patients.¹⁸

Philosophical Discussions relating to Extension of Moral Standing

Various philosophies and philosophers have viewed the question of moral standing differently. In this section, an attempt has been made to gain an understanding about the divergent views regarding the same. Pythagoreans and the Neoplatonists, in the earliest of times¹⁹ had urged for respecting the interests of other animals. Their view holds a position of significance in the advocacy of animal rights, which finds expression in a more concrete form in some later theories. They were believers in transmigration of souls between human and animal bodies.²⁰

Rationality as a basis

Aristotle, in his 'Logic', sees the world as a totality comprising of the whole of the nature. Man is said to be the part of nature in twofold sense: One, he is a part of matter and as such, partakes experience. On the other hand, he is endowed with active reason which distinguishes him from all other parts of nature. So, he is capable of formulation of his will according to the insights of his reason. Citation of this rationality as a criterion for moral standing has been used many times to exclude and include groups into the moral community.²¹ To Aristotle, morality was an expression of human nature.²² His view was that rationality is present in different groups of human beings to different degrees. He even denied moral standing to women and slaves on grounds that their rational faculty was neither authoritative, nor fully developed. His teleological view of nature saw the world in form of a hierarchy within which the animals and plants had value only in relation to human beings.²³ Immanuel Kant argued for a deontological view wherein human beings have direct moral duties to other human beings. He too assigned a critical role to morality. To him, a moral principle must be one of pure reason, i.e. imposed by reason itself and not of empirical reason.²⁴ Kant's Categorical Imperative says: "I should never act except in such a way that I

¹⁸ ibid

¹⁹ Pythagoreans- 6th-4th Century BCE and Neoplatonists- 3rd-6th century CE.

²⁰ Steven. M. Wise, 'Animal Rights', *Encyclopaedia Britannica* (Aug 18, 2016) <www.britannica.com/topic/animal-rights> accessed 5 February 2019.

²¹ Hancock (n 3).

²² Palmer (n 7) 6.

²³ Wise (n 20).

²⁴ Hancock (n 3).

can also will that my maxim should become a universal law,” and “Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means”.²⁵ However, Kant’s ‘phenomenon’ and ‘noumenon’ implies that moral agent’s reason must be sharpened by experience. Experience is brought into order and shape by human mind.²⁶ To him, only moral agents are rational beings, i.e. humans. Also, only moral agents have the capacity to perform acts of moral worth and hence only rational agents can be moral agents.²⁷ And, all and only moral agents have moral standing. Non-rational beings unlike the rational beings are not ends in themselves, but have ‘only a relative value as means’.²⁸

Sentience Criteria

‘Sentience’ as a criterion has been the focus of the work of the utilitarians like Jeremy Bentham and John Stuart Mill. The cardinal question in determination of moral standing for utilitarians like Bentham was if an entity can suffer.²⁹ Bentham, in regards to animals wrote that the question is not if they could reason, but ‘can they suffer?’³⁰ According to Bentham, nature has placed man under the empire of pain and pleasure and that he, who pretends to withdraw himself from this subjection, knows not what he says.³¹ This understanding of utilitarianism was, to a large extent, neglected until Peter Singer published his book ‘Animal Liberation’ in early 1970s. Herein, he argued, because of the capability to suffer, account must be taken in of animals while making ethical decisions.³² In Singer’s view, all valid moral claims derive from the principle of equal consideration of interests. The comparable interests of all sentient beings must be given equal weight in moral deliberations. Since all and only sentient beings have interests, all and only sentient beings have moral status. The comparable interests of all sentient beings are equal – for example, the interest a parakeet has in satisfying his hunger is on a moral par with the interest a human has in satisfying hers.³³ Tom Regan has argued for the standing of animals based on his ‘subjects of life’ formulation. He argued that animals also possess natural rights, in particular, right to life,³⁴ and that the

²⁵ Immanuel Kant, *Grounding for the Metaphysics of Morals* (Hackett Publishing Company 1785).

²⁶ V.D. Mahajan, *Jurisprudence and Legal Theory* (Eastern Book Company 2016) 512.

²⁷ Hancock (n 3).

²⁸ *ibid*

²⁹ *ibid*

³⁰ Palmer (n 7) 13.

³¹ Jeremy Bentham, *Principles and Morals and Legislation* (Clarendon Press 1907).

³² Peter Singer, *Animal Liberation* (Avon Publishers 1977).

³³ *ibid*

³⁴ Palmer (n 7) 14.

same are inviolable. However, many have argued that Regan did not go far enough for inclusion of environment into our ethical concerns.³⁵

Inclusion of the Entire Ecosystem

One of the most important works in this field has been that of Paul Taylor, in his book 'Respect for Nature'. Taylor has argued for an egalitarian conception of moral standing based on the ground that although humans have capacities that animals lack, men also lack the capacities possessed by animals.³⁶ He argues that all living things are ends in themselves and not merely instruments.³⁷ Taylor thus argues that human beings have duties towards all living beings equally, but he stops short of extending his position to include ecosystems or species.³⁸ Arne Naess first framed the distinction between 'shallow' and 'deep' ecology in 1973. Deep ecology movement, of which he himself is a part, was concerned with the ways with which humans relate to the environment. He argued that much of the Western philosophies came to view humans as separate from nature. He called for development of a 'holistic' outlook of sorts³⁹ and recognising the 'intrinsic value of nature'. Deep ecology has developed in different forms since 1973. Some of the core principles of deep ecology are as follows:

- ❖ The well-being and flourishing of human and nonhuman Life on Earth have value in themselves (intrinsic value). These values are independent of the usefulness of the non-human world for human purposes.
- ❖ Richness and diversity of life forms contribute to the realization of these values and are also values in themselves.
- ❖ Humans have no right to reduce this richness and diversity except to satisfy vital needs.
- ❖ The flourishing of human life and cultures is compatible with a substantial decrease of the human population. The flourishing of nonhuman life requires such a decrease.
- ❖ Present human interference with the nonhuman world is excessive, and the situation is rapidly worsening.
- ❖ Policies must therefore be changed. These policies affect basic economic, technological, and ideological structures. The resulting state of affairs will be deeply different from the present.
- ❖ The ideological change is mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to an

³⁵ Palmer (n 7) 15.

³⁶ Schonfeld (n 8).

³⁷ *ibid*

³⁸ Palmer (n 7) 15.

³⁹ Palmer (n 7) 16.

increasingly higher standard of living. There will be a profound awareness of the difference between big and great.

- ❖ Those who subscribe to the foregoing points have an obligation directly or indirectly to try to implement the necessary changes.⁴⁰

Deep Ecology is a part of the radical ecology movement and though it argues for the extension of standing to nature, it argues that just doing so may not be sufficient in itself.⁴¹

Albert Schweitzer advocated for 'reverence for life',⁴² i.e. all living things have a will to live and that human beings must not interfere to extinguish such a will.⁴³ According to his view, moral standing is accorded to all living beings and equal moral consideration is provided to all of them. He rejected the contention of hierarchy of status amongst beings with moral standing. Social ecology was founded by Murray Bookchin during the 1970s. Influenced by Marxist thoughts he argued that man's conceived superiority over nature is nothing but the extension of the hierarchical nature of human relationships.⁴⁴ Aldo Leopold's 'Land Ethic' was published in the year 1949, wherein he spoke about extension of ethics to its 'third element', i.e. human environment. Leopold spoke about the Ten Commandments that govern the individual ethics, but does not provide anything similar for land ethics. Rather he goes on to define certain rules which help to judge what is right and what is wrong. One of his basic normative principle is- 'A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community'. Leopold's work on Land ethic is of much significance as it provides a moral consideration to the biotic community as a whole. One of the significant philosophical works relating to the debate about to whom moral standings should be extended is one by J. Baird Callicott. In his influential essay, 'Animal Liberation: A Triangular Affair',⁴⁵ Callicott argues that the debate over the liberation and rights of animals is not a bipolar one, as has often been maintained, but is, rather, three-sided. The three competing positions are, as Callicott distinguishes them, ethical or moral humanism, humane moralism, and environmental ethics. The ethical humanists argue that nonhuman animals are not worthy of having moral standing because only human beings are rational, or capable of having interests. This does not necessarily mean that animals may be treated inhumanely. Rather, animals may be treated as 'means' and need not be treated as persons or ends in themselves. The humane moralists, on the other hand, argue that even in lieu of possessing the aforesaid

⁴⁰ Bill Devall & George Session, *Deep Ecology* (Gibbs. M. Smith 1985).

⁴¹ Alasdair Cochrane, 'Environmental Ethics', (September 2008) *Internet Encyclopaedia of Philosophy* <<https://www.iep.utm.edu/envi-eth>> accessed 2 February 2019.

⁴² Hancock (n 3).

⁴³ Cochrane (n 41).

⁴⁴ Palmer (n 7) 17.

⁴⁵ J. Baird. Callicott, 'Animal Liberation: A Triangular Affair' (1980) 2(4) *Environmental Ethics* 311-338 <<http://faculty.smu.edu/jkazez/ar13/callicott.pdf>> accessed 2 Feb 2019.

qualities that serve to constitute personhood, animals are ‘sentient’ beings and hence, we are morally obliged to consider their suffering as much as human suffering. Callicott argues that these two views are similar in important ways. He argues that adherents to both of these theoretical approaches locate moral value in ‘individuals’. Both approaches extend moral consideration to some individuals and exclude others. In the end Callicott argues that both positions are atomistic, reductive, and distributive.⁴⁶ As distinguished from ethical humanism and humane moralism, Callicott defines environmental ethics as a ‘holistic or collective’, and therefore not atomistic or reductive, theoretical approach to the valuation of animals. His environmental ethic is called ‘ethical holism’ because it locates ultimate value in the ‘biotic community’. Cormac Cullinan, a South African legal practitioner, influenced by the ‘rights of nature’ discourse of the likes of Peter Burdon, Thomas Berry and likes, spoke about the ill-effects of the industrialised world on human relationship with nature. He pointed out that how natural sciences had an effect on how we tend to look at the environment. Criticising ‘Cartesian Dualism’, he said that the notions of separateness of the mind from the body has contributed to the creation of a false notion of separateness of man from nature. He said that quantum physics nullified many of the myths natural sciences had given birth to. He said that when human laws were framed, the environment was never in contemplation (i.e. never within the frame) and hence arises all the difficulties with regards to the implementation of rights of nature. He urges the need to observe and learn from the ‘Great Jurisprudence’ and to frame ‘Earth Jurisprudence’. He speaks about ‘wild laws’ which implements ‘earth jurisprudence’.⁴⁷

Understanding the philosophical moorings behind the argument for extension of moral standing stands at the heart of understanding which entities should be given moral standing, and the considerations behind the same. But, the most significant question that remains is how? More so, if moral standing is extended to the biotic community as a whole as someone like Callicott argues, then where do these extended entities stand so far as their legal standing is concerned? The author has sought to provide an answer to these questions in the upcoming sections.

⁴⁶ Richard. J. Klonoski, ‘Callicott’s Holism: A Clue for a Classical Realist Contribution to the Debate over the Value of Animal’, (1991) 7(2) *Between the Species* <<https://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1562&context=bts>> accessed 8 February 2019.

⁴⁷ Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Chelsea Green 2011).

Extension of Moral Standing to Entities Beyond Humans- How?

Anthropocentrism, as an understanding, is deeply embedded in the Western philosophical roots.⁴⁸ As Lynn White argues in his article,⁴⁹ viewing humans as separate and superior to nature is deeply embedded in the Christian view. This poses perhaps the challenge at the inception for extending moral standing to entities beyond humans. The acceptance and inculcation of eco-centric ethics is still at a nascent stage. Laws and policies across the world are still dominated by a human centred view of environment. In the literature on environmental ethics the distinction between instrumental value and intrinsic value has been of considerable importance. The former is the value of things as means to further some other ends, whereas the latter is the value of things as ends in themselves, regardless of whether they are also useful as means to other ends. Many traditional western ethical perspectives are anthropocentric or human-centred in that either they assign intrinsic value to human beings alone or they assign a significantly greater amount of intrinsic value to human beings than to any non-human things such that the protection or promotion of human interests or well-being at the expense of non-human things turns out to be nearly always justified.⁵⁰ Emergence of the discipline of environmental ethics posed a challenge to the norms of anthropocentric world view. In the first place, it questioned the assumed moral superiority of human beings to members of other species on earth. In the second place, it investigated the possibility of rational arguments for assigning intrinsic value to the natural environment and its non-human contents. Some theorists in this field felt no need to develop new anti-anthropocentric views. They rather focussed on development of enlightened anthropocentrism.⁵¹ In this view, all moral duties we have towards the environment are derived from the direct duties we have towards our human cohabitants. They have argued that practical purpose of environmental ethics is to provide moral backing for formulation of social policies aimed at protecting the earth and prevent environmental degradation. For it, to the enlightened anthropocentrists, argue that their view is sufficient. In fact, they consider the same to be more effective in delivering desired outcomes than other non-anthropocentric views, because of the backing they need to provide for their radical theories advocating for intrinsic value for the environment. Brennan says that some ‘prudential anthropocentrists’ may argue for some sort of ‘cynical anthropocentrism’ that argues that humans have a higher-level anthropocentric reason to be non-anthropocentric. The basis of the argument is that even if some find the idea of intrinsic value hard to swallow, a day to day non-anthropocentrist may tend to act more benignly

⁴⁸ Andrew Brennan and Yeuk-Sze Lo, ‘Environmental Ethics’, *The Stanford Encyclopaedia of Philosophy* (Winter edn, 2016), <<https://plato.stanford.edu/archives/win2016/entries/ethics-environmental/>> accessed 3 February 2019.

⁴⁹ Lynn White, Jr, ‘The Historical Roots of Our Ecological Crisis’, (March 10, 1967) 155(3767) *Science*, New Series, <<http://www.jstor.org/stable/1720120>> accessed 5 August 2009.

⁵⁰ Brennan and Lo (n 48).

⁵¹ *ibid*

towards environment, and the same may lead to generation of a non-anthropocentric worldview in general. He argues that for such a sort of strategy, it may be essential to hide one's position of even cynical anthropocentrism from others and herself also. This view has a lot of criticism too. It has been argued that the entire anthropocentric conception is flawed as it proceeds on certain assumptions like- human beings are separate from nature, they are superior to other entities of nature, there are no planetary boundaries to natural resources.⁵² There are inaccurate assumptions as to how something as complex as nature behaves which assumes a self-regulatory side of the nature. It has been argued that nature must be viewed as a complex adaptive system and that human beings must be viewed as being dependent on natural processes and not vice versa.⁵³ The 'wilderness area' approach to environmental protection- the idea that nature must be left alone, has been accredited to this sort of anthropocentrism. As Lynn White argues, 'neither atavism nor prettification will cope with the ecological crisis of our times'.⁵⁴

Even if certain entities are given moral standing, the question as to its implementation is another important point where complex questions arise. Provision of moral standing is coupled with the question of how such standing is to be made compatible with the laws, i.e. the question of legal standing assumes significance. Provision of legal standing to non-human entities has been a challenge for the legal systems that have treaded that path. Christopher Stone's influential article⁵⁵ has sought to delve into these questions. Extension of moral standing to non-human entities requires also the provision of certain rights, which subsequently become recognised by law. Inanimate right holders have also come to be recognised under law, like trusts, corporations, municipalities etc. He proposed the provision of legal rights to forests, oceans, rivers and other so-called 'natural objects'- to the environment as a whole,⁵⁶ though he did not advocate the provision of all the rights that human beings are possessed of. Such rights cannot have any content until and unless public authoritative bodies are prepared to give some amount of review to actions which are inconsistent with such rights. He draws the analogy of a stream in a common law system. The stream, not being possessed with rights of itself, one of the ways in which it can be protected is by the conception of lower riparian, another riparian, whose rights are also infringed by the upper riparian polluting the stream. But the lower riparian is hardly concerned with the pollution of the stream as such. She is concerned only about her own interest in having unpolluted water in the stream. Sometimes, the economic loss

⁵² Jan.G. Laitos and Lauren Joseph Wolongevicz, 'Why Environmental Laws Fail' (2014) 39(1) William & Mary Environmental Law and Policy Review <<http://scholarship.law.wm.edu/wmelpr/vol39/iss1/2>> accessed 1 February 2019.

⁵³ *ibid*

⁵⁴ White (n 49).

⁵⁵ Christopher. D. Stone, 'Should Trees Have Standing? – Towards Legal Rights for Natural Objects' (1972) South California Law Review.45, 450.

⁵⁶ *ibid*

suffered by the lower riparian may be very little after offsetting the cost of bringing a suit. So, the lower riparian may not institute a suit at all. Even where the lower riparian has a right to receive unpolluted water and the upper riparian has a duty not to pollute, certain limitations are placed like: reasonable use, balance of convenience, public interest etc. But what is hardly considered is the damage to the stream, its fish turtles and lower life. Also, the cost benefits of such a human based jurisprudence is assigned to the lower riparian and hardly assigned for the improvement of the conditions of the stream. Stone says that though the law applicable specifically to common resources like rivers, lakes, streams, air etc. are different in certain aspects, they as an entity do not get any standing of its own rights. He advocates for provision of rights to these entities for their own- to be recognised as ‘persons’ before law. He argues for a legal system, where friend of a natural entity perceives its danger and can move the court as a guardian or someone *in loco parentis*.⁵⁷

Analysis of certain cases in regard to provision of such legal standing may be helpful in providing light on the issue. In *Scenic Hudson Preservation Conference v FPC*,⁵⁸ environmental conservation group, Scenic Hudson Preservation Conference was held to have the *locus standi* to initiate a suit as they were ‘aggrieved by’ the license that had been granted by Federal Power Commission to New York Consolidated Edison to construct a hydroelectric project on Hudson River at Storm King Mountain as their activities and conduct exhibited a special interest in ‘aesthetic, conservational and recreational aspects of power development’.⁵⁹ In *Road Review League v Boyd*,⁶⁰ plaintiffs, which included a non-profit organisation, the Road Review League brought an action to set aside determination of Federal Highway Administrator regarding the alignment of an interstate highway. Argument was that the same would have an adverse effect upon local sanctuaries. Court held that the plaintiffs had standing to obtain the judicial review. However, in *Sierra Club v Morton*,⁶¹ the United States Supreme Court rejected a lawsuit by the Sierra Club, which had sought to block the development of a ski resort at Mineral King, a valley in Sierra Nevada Mountains as the club had not alleged any personal injury. But the case is famous for the dissenting opinion of Justice Douglas who asserted that natural resources ought to have right to sue for their own protection, in their own name. He pointed out that the suit would have been more properly labelled as *Mineral King v Morton*. People having meaningful relationship to a resource should be able to speak for the values that such resource represents. This opinion was given, I order to allay the fears that any new organisation may spring up and institute litigation as ‘aggrieved persons’ leading to flooding of the courts with cases without merit.

⁵⁷ Stone (n 55)

⁵⁸ 354 F.2d 608 (2d Cir. 1965).

⁵⁹ *ibid*

⁶⁰ 270 F. Supp. 650 (S.D.N.Y. 1967).

⁶¹ 405 U.S. 727 (1972).

Centre for Environmental Legal Defence Fund (CELDF), a non-profit organisation has been a key player in recognition of certain sorts of rights for nature within the United States legal framework. In 2006, residents of a rural township in the U.S, Blaine, engaged the CELDF to oppose the expansion of a coal mining project within their community. With the assistance of CELDF, the Blaine community, with the assistance of the CELDF, drafted an ordinance that sought to ban corporations from mining in their area.⁶² It recognised the rights of ecosystems and aimed at stripping the corporations of their power to override the ordinances. Following this, the CELDF worked with hundreds of other communities to protect the environment, and, quite significantly, was also able to influence the Constitution of Ecuador,⁶³ which became the first country in the world to recognize the rights of nature in their constitution. In 2010, Bolivia passed the Law of the Rights of Mother Earth which recognised the right of earth as a whole.

New Zealand and India, very recently followed the precedent of Ecuador and Bolivia in granting personhood to inanimate entities. New Zealand granted its third largest river Whanganui river legal personhood. It had earlier granted personhood to the Te Urewera national park personhood.⁶⁴ Indian Uttarakhand High Court immediately after declared Ganga and Yamuna as ‘persons’ before law.⁶⁵ The Uttarakhand High Court, in a later decision declared the entire animal kingdom of Uttarakhand as a ‘person’ before law.⁶⁶ In case of Whanganui River, the river has been appointed two guardians- one by the Government and one by the Maori tribe. In case of Ganga and Yamuna rivers, Director of the Namami Gange project, Chief Secretary and Advocate General for the state of Uttarakhand were assigned as legal parents. In India’s case, the Uttarakhand government filed a suit against the order in the Supreme Court. The plea also asked if in case of human casualties in flood, affected people can sue the Chief Secretary of the State and if the State Government would be liable to bear the financial burden. The Supreme Court stayed the order of the High Court. One of the contentions raised by the State Government was that if it was proper to make the government of Uttarakhand liable if the river was polluted in other States through which the river also flows.⁶⁷ These issues are seriously ones that need consideration and ones that are extremely pertinent to granting of legal status to non-human entities. The rights-duty

⁶² Peter D. Burdon, ‘The Rights of Nature: Reconsidered’ (2010) 49 Australian Humanities Review 69 <<https://ssrn.com/abstract=1709015>> accessed 4 February 2019.

⁶³ *ibid*

⁶⁴ George Dvorsky, ‘India and New Zealand Were Wrong to Recognise Rivers as Persons’ *Gizmodo* (24 March 2017) <<https://gizmodo.com/india-and-new-zealand-were-wrong-to-recognize-rivers-as-1793612698>> accessed 5 February 2019.

⁶⁵ *ibid*

⁶⁶ Dvorsky (n 64).

⁶⁷ Supreme Court stays Uttarakhand high court’s order declaring Ganga and Yamuna ‘living entities’. *The Times of India* <<https://timesofindia.indiatimes.com/india/supreme-court-stays-uttarakhand-high-courts-order-declaring-ganga-and-yamuna-living-entities/articleshow/59489783.cms>> accessed 7 February 2019.

interrelationship posits that since non-living entities are not capable of having duties, granting rights to them is not feasible. Also, others argue that true legal persons deserve specific sets of freedoms and protections. The needs of rivers and trees are objectively different from the needs of actual people. Rivers are objects and not subjects, although they do need to be kept clean and safe.⁶⁸ Practical implementation of the provision of independent rights to non-human inanimate entities posits certain difficulties so far as provision of some sort of legal standing to ecological entities are concerned.

Conclusion

Extending moral standing to entities beyond human has been a chief contention of environmental ethics movement for a long time. Some sort of a moral consideration for these entities are the need of the day so as to preserve the environment, without having regard to human interests, rather to aim at conservation of nature of whom human beings are part. Extending moral standing, hence, to the non-human entities, whose welfare has long been neglected in face of human self-interest seems to be a morally correct argument. As has been argued, it may well be seen as some sort of enlightened anthropocentrism or ecocentrism- what matters is to aim at survival of nature, because that is how human beings may have a future. But the cardinal question that remains is how to make humans less human-centric? Probably the answer lies in a more duty-based approach towards environment conservation. A duty not imposed only on individuals, but there is a requirement of some sort of affirmative action from the State itself. We have already overused the environment for our benefit and merely providing rights to the environment may not be sufficient. Rather, there should be an affirmative effort made to undo the harms that have already been committed on the environment. There is a need to create positive environmental externalities also so that nature can procure benefits from human transactions. Environmental entities should also be vested with some sort of rights towards which, human beings must have a duty to protect or refrain from violating. Human beings, through historical processes has been gradually more and more divorced from nature, in whose close proximity they once used to live. Their own sustenance was once perceived to be dependent on nature and hence, protection of nature was part of the human culture- something which can be traced even today by observing the indigenous tribes. But this perception has gradually changed as time has passed and human beings have come to view themselves as separated from nature and even superior at times. Having said so, the arguments for extension of moral standing to biotic entities seem to be cogent and well founded. For, provision of rights to natural entities and inculcation of a duty- based approach it the basic ethical change that needs to take place irrespective of the questions highlighted above.

⁶⁸ *ibid*

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