

BLUE CONSTITUTIONALISM IN INDIA: RECOGNISING THE RIGHTS OF OCEAN UNDER INTERNATIONAL LAW

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Abstract

The dialogue on environmental justice, which corresponds with India's 75th anniversary of implementing its constitution, recommends a critical revisiting of the way the constitutional principles integrate with contemporary international norms that recognize the fundamental rights of nature. Knowing that the ocean is crucial to the nation's economy, tradition, and coastal lifestyles, it is somehow undervalued in the law among the world's natural entities. The paper examines, in regard to accomplishments in international law, the critical importance of acknowledging the ocean's legal and ecological rights as an approach for fostering constitutional environmental justice throughout India.

Despite the Articles 21, 48A, and 51A(g) under the Indian Constitution's constitute an authoritative basis for safeguarding the environment, these provisions are still predominantly anthropocentric in nature. A universal transition into ecocentric governance has been expressed in many international conventions like the United Nations Convention on the Law of the Sea (UNCLOS, 1982) and the UN General Assembly Resolution (2022) on right to an environment that is healthy, safe, and sustainable. Numerous international instruments indicate that the ocean has become an ecological community wholly vital to the wellness of the world in addition to its status as a resource.

The constitutional protection of that nature's rights in Ecuador, the legally recognized personhood of the Whanganui River as a river in New Zealand, and recent legal developments in Bangladesh and Colombia have all been investigated in the current research through a comparative approach. While rivers play a role in these instances, oceans may benefit as well on the fundamental notions of legal personhood, protective authority, and ecocentric rights. With the objective to safeguard marine ecosystems, this research proposes "Blue Constitutionalism" a system of law that brings together constitutional commitments with international commitments. The recognition of the oceans as a legally recognized personality could make India a pioneer in governance of the oceans around the globe, uphold intergenerational parity, and further strengthen India's constitutional principle of social justice.

Key words: Ocean Rights, Environmental Justice, Blue Constitutionalism, International Law, Indian Constitution, UNCLOS, Ecocentrism.

Introduction

“How inappropriate to call this planet as Earth when it is quite clearly Ocean.¹” This observation highlights the oceans, which approximately cover 71% of Earth’s surface. Human beings and other living organisms enjoy a constant, vital environment because of oceans. The Ocean plays a very crucial role in people’s daily life, and it’s very closely connected to countless individuals. Many people who live in coastal areas perceive the ocean as a fundamental element of their culture and tradition, apart from being a source of food and a means of survival.

The ocean is both a source of economic activity and an essential component of survival for the numerous millions of people worldwide who rely on it to ensure their livelihoods. It is also the place where most of the world’s trade occurs. The abundance of resources that an ecologically sound ocean could provide is vital for the millions of people engaged in fishing and aquaculture, tourism, offshore energy, pharmaceuticals and cosmetics. The Global economy is significantly contributed to by ocean-generated industries.

However, the abundant resources being utilised from the ocean are not being properly protected by the human community². Improper governance of the ocean has depleted its natural capability. Climate change is a major constraint which affects the vulnerable and marginalised people, as those people depend on the ocean for sustenance, identity and livelihood. Marine environmental protection is a major concern that has gained continuous attention in international law and governance.

The UN decade of Ocean Science for Sustainable Development which takes place (2021 to 2030) emphasizes SDG 14 on “Life below water³”. Furthermore, a new convention aimed at protecting the marine environment in areas that extend beyond national jurisdiction was ratified by the International Community in 2023(BBNJ Agreement).⁴ Likewise various international

¹ Clarke, A. (1990, March 8). *Ocean solutions that benefit people. Nature.*

² Stuchey, M.R. Vincent A Merkl, A. & Butchr, M (2018) Ocean Solutions that benefit people, nature and the economy, Nature sustainability.

³ United Nations Conference on Sustainable Development (Rio+20), The future we want, UN Doc.A/CONF.216/L.1(June 22, 2012).

⁴ *Agreement under the United Nations Convention on Law of Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement), June 19, 2023, 63 I.L.M. 1,*

agreements have been signed by the international actors to protect the ocean and marine biodiversity from harm.

The concept of the nature's right has gained global importance recently, promoting a harmonious relationship between nature, environmental protection and human behaviour. The rights of nature must be recognised. Many countries have already recognised the right of the water bodies or rivers through their policies and judicial interpretations. It is the high time to recognise the rights of the ocean under the international legal frameworks and the Indian constitution which is an indispensable step toward guaranteeing ecological balance and justice for sustainable coexistence.

Research Objectives

1. To critically analyse international legal instruments governing ocean protection and identify their limitations in recognising ocean rights.
2. To examine the Indian Constitutional framework and judicial developments in environmental jurisprudence for their potential to support eco-centric governance.
3. To evaluate comparative legal models (Ecuador, New Zealand etc) on the Rights of nature and legal personhood.
4. To conceptualise and develop "Blue Constitutionalism" as a framework integrating constitutional and environmental principles, international legal obligations and ecological justice.
5. To propose legal recognition of the ocean as a rights-bearing entity for strengthening justice and sustainable governance.

Research Problem

In spite of the growing global recognition of the Rights of nature, the Ocean remains legally unrecognised as a rights-bearing entity under both international law and the Indian Constitutional framework. These protective legal frameworks imposed by existing legal frameworks which include the United Nations Convention on Law of the Sea and domestic constitutional provisions (Articles 21, 48A and 51 A(g)). However, these frameworks continue to be anthropocentric and state-centric viewing the ocean as a resource rather than a subject of rights. As an outcome, a standard and regulatory vacuum is created where Ecological harm persists in spite of legislative frameworks, enforcement is solely at the state's discretion and marine habitats lack independent legal status. The lack of an eco-centric constitutional

approach restricts India's capacity to guarantee sustainable ocean governance intergenerational equity and environmental justice.

Research gap

Existing legal frameworks particularly the United Nations Convention on the Law of the Sea remain largely anthropocentric and state-centric focusing on resource utilisation rather than recognising the Ocean as a rights-bearing entity. While comparative jurisprudence has extended legal personality to rivers and nature, the Ocean continues to lack similar recognition and there is limited integration between international ocean governance and Indian Constitutional environmentalism. Additionally, the concept of blue constitutionalism remains underdeveloped highlighting a clear gap in framing ocean protection as a matter of legal rights and environmental justice.

Research Methodology

This study adopts a doctrinal and comparative legal methodology, analysing constitutional provisions, judicial decisions and international instruments such as the United Nations Convention on the Law of the Sea. Comparative insights from jurisdictions recognising the Rights of Nature are also used to develop the concept of blue constitutionalism.

Legal Personality of the Ocean

The international movement for acknowledging the Rights of Nature, that recognizes natural entities as holders of legal rights instead of mere objects of human usage, serves as the basis for the idea of granting the ocean legal identity. The nature of an entity being acknowledged by the law to include the ability to retain rights and obligations and being legally represented by its legal guardians or representatives is referred to as legal personality. This concept has traditionally been applied to enterprises, charities, vessels, deities, and, in more recent times, natural components like ecosystems and rivers⁵. Considering the ocean's ecological importance, significance in culture, and critical role in the continued existence of humanity, the deployment of legal entities to the ocean is an inevitable development in environmental law.

The most significant international legal framework administering the ocean is UNCLOS, which recognizes it as an internationally collaborative heritage that requires it to be properly managed

⁵ Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972).

sustainably through responsible care⁶. Considering the reality that UNCLOS is incapable of formally recognizing the ocean as a legal person, its core tenets like the accountability to defend and conserve the marine environment offer an adequate conceptual foundation for recognizing the ocean as a living thing with capabilities. Similar global treaties which prioritize environmental protection, preservation, and equitable utilization of marine resources encompass the 2023 BBNJ Agreement as well as the Convention on Biological Diversity.

The legal paradigm would shift from human-centered exploitation of resources to ecologically focused governance if the marine environment's legal personality was acknowledged⁷. With a view to guarantee the preservation, restoration, and sustainable utilization of maritime marine ecosystems, the recognition would bring about enforceable obligations on individuals, companies, and nations. Furthermore, it would encourage responsible environmental management nationally as well as globally through providing opportunities for representing ocean interests in courts and decisions-making processes.

International legal instruments governing the Ocean

The recognition of rights for the ocean must be understood within the broader framework of international ocean governance. A number of global and regional instruments regulate marine spaces, resources, and environmental protection. Although none of these instruments explicitly confer legal personality or rights on the ocean, they collectively establish duties on States to protect, conserve, and sustainably use the marine environment. These duties form the normative foundation upon which the rights of the ocean can be conceptually developed.

United Nations Convention on the Law of the Sea (UNCLOS) 1982 is considered to be the 'Constitution of Oceans', it defines and explains maritime zones, state jurisdiction to regulate the zones, and imposes obligation to safeguard and conserve the marine environment under Part XII⁸. Developed on this framework, detailed rules for preserving and sustainably using marine resources in areas beyond national jurisdiction, including protected areas under marine environment and environmental impact assessments, the 2023 agreement on bio diversity beyond national jurisdiction (BBNJ) agreement⁹ was established.

⁶ Harriat Harden Davies et al., Right of Nature: Perspectives for Global Ocean Stewardship, 122 Marine Policy 104059 (2020).

⁷ G Chapron, YL Epstein and JV Lopez-Bao, 'A Rights Revolution for Nature' (2019) Science 363, 1392–1393. (*useful for theory and context on rights-of-nature scholarship*)

⁸ United Nations Convention on the Law of the Sea, Dec 10, 1982, 1833 U.N.T.S 397.

⁹ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ).

The international commitment to protect the health of the ocean is apparent in other pertinent documents, which include the London Convention/Protocol as well as the MARPOL Convention, which impose extreme constraints on marine pollution and dumping at sea¹⁰. Climate and ocean interactions and their impact on aquatic ecosystems have become increasingly recognized in the context of climate treaties, notably the UNFCCC and the Paris Agreement¹¹. The UN General Assembly marked the UN Decade of Ocean Science (2021–2030) in order to promote sustainable, evidence-based ocean administration¹². At the regional level, ecologically based and preventative strategies have been strengthened by regional seas conventions which include OSPAR, the Barcelona Convention, and HELCOM¹³. Wholly, these instruments demonstrate that international law generally acknowledges the ocean's essential significance to ecology and poses substantial responsibilities on states, providing an institutional framework that considers it reasonable to move toward the acknowledgment of the ocean's legal rights or legal personality.

Contemporary legal systems fail to recognize the ocean as a subject of rights, regardless of the extensive system of international environmental treaties. The open ocean is mostly considered as a resource or place for autonomy, navigation, and economic extraction by treaties like UNCLOS, the CBD, and the UNFCCC, that placed obligations on countries to protect marine ecosystems. More specifically, UNCLOS, which splits maritime territories into jurisdictional zones and guarantees coastal states sovereign authority for utilizing resources, promotes a state-centric structure by portraying environmental commitments as secondary commitments. Similar to the above, the UNFCCC and CBD place an intense emphasis on sustainable use and preservation but fail to provide aquatic ecosystems any inherent privileges or separate legal personality.

The anthropocentric perspective which underlies these regimes emphasizes environmental protection exclusively for human benefit. In view of this, the ocean remains to be legally mute, dependent on authoritative regulation, highly vulnerable to contending economic interests,

¹⁰ *International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/1978, Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention), Dec 29, 1972, 1046 U.N.T.S. 120.*

¹¹ *United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S 107, Paris Agreement, Dec 12, 2015, U.N.T.S 54113.*

¹² *G.A. Res. 72/73, UN Decade of Ocean Science for Sustainable Development 2021–2030 (Dec. 5, 2017).*

¹³ *Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), Sept 22, 1992, Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), Feb. 16, 1976, as amended 1995; Convention for the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention), Apr. 9, 1992.*

institutional loopholes, and fragmented governance. For the purpose to develop maritime governance beyond conventional state-centered approaches, this normative gap highlights the necessity of investigating new ideas like rights of nature jurisprudence and Blue Constitutionalism.

Constitutional and Environmental Justice Framework in India

Even though international law currently does not explicitly accord the oceans legal personality, India's constitutional framework provides an adequate foundation for acknowledging the ocean as a legal entity with rights. Through an integration of fundamental freedoms, directive principles, and judicial advancements that expand the definitions of life, dignity, and harmony with the environment, protection of the environment is deeply established in India's constitutional law.

Environmental rights and constitutional provisions

The right to life under Article 21 has been interpreted by the supreme court to include the right to a clean, healthy and pollution free environment. The Court highlighted that degradation of the environment directly undermines the rights of individuals and economic independence, commencing with *Subhash Kumar v. State of Bihar* (1991)¹⁴ and extending through *M.C. Mehta* rulings¹⁵. The Court has always maintained that ecological health and fundamental liberties are inseparably connected, regardless of how the Court has not particularly recognised the "rights of the ocean." It has recently become constitutionally conceivable to defend the safeguarding of marine ecosystems as a crucial component of the right to life owing to this doctrinal enhancement.

The State is under the obligation to safeguard and develop the environment and conserve forests and wildlife under Article 48A of Directive Principles Accordingly, Article 51A(g) under fundamental duties obligates a fundamental duty on all citizens to preserve the usual environment including lakes and rivers¹⁶. Considering as a whole, these provisions demonstrate the constitution's aim to treat the environment like an entity requiring protected status beyond

¹⁴ *Subhash Kumar v State of Bihar* (1991) 1 S.C.C. 598 (India).

¹⁵ *M.C. Mehta v Union of India* (1987) 4 S.C.C 463 (India).

¹⁶ Constitution of India, Art. 48A, Constitution of India, Art. 51A(g).

merely a resource. Furthermore, they justify considering marine ecosystems as beneficiaries of constitutional duties irrespective of their lack of official legal personality.

Numerous natural entities have already been recognized as legal persons by Indian courts. The Supreme Court determined in *Animal Welfare Board v. A. Nagaraja*¹⁷ that animals possess inherent value and have the right to be given protection and respect, whilst the Uttarakhand High Court affirmed the Ganga and Yamuna rivers as legal persons with appropriate rights and duties in *Mohd. Salim v. State of Uttarakhand*¹⁸. The rationale for acknowledging the ocean as a rights-bearing entity has been strengthened through these court achievements, which highlight the growing interpretive willingness to expand rights beyond humans.

Another fundamental principle of Indian constitutional environmental law is environmental justice. Researchers stress that equity, fairness, and engagement have to be maintained in environmental governance, especially with regard to vulnerable groups. Coastal economic development, port expansion, and pollution frequently harm fishermen and coastal populations whose existence is dependent upon marine ecosystems. Studies on coastal governance demonstrates consistent issues with livelihood destruction, displacement, and inadequate compliance with regulations¹⁹. Thus, recognizing the ocean as a legal entity would endorse these people' demands for environmental justice and be in accordance with India's constitutional responsibilities in preserving social justice and ecological balance.

Comparative jurisprudence: Ecuador, New Zealand and emerging models of right to nature

Global trends demonstrate an uninterrupted trend in favor of recognising phenomena of nature as distinct entities with right. In India, whose constitutional environmentalism has become strong, this comparative jurisprudence provides constructive guidance for expanding comparable recognition to maritime ecological systems.

Ecuador: Constitutional Recognition of Rights of nature

Ecuador emerged as the very first nation to formally recognise under its 2008 constitution rights of nature (Pachamama). With its 2008 Constitution, Ecuador emerged the first nation to formally recognize the Nature's Rights (Pachamama). Ecosystems have the authority to exist,

¹⁷ *Animal Welfare Board of India v A.Nagaraja* (2014) 7 S.C.C 547 (India).

¹⁸ *Mohd. Salim v State of Uttarakhand, W.P. (PIL) No 126 of 2014 (Uttarakhand H.C. Mar 20, 2017).*

¹⁹ R. Parthasarathy et al., *Coastal Resource Governance and Community Rights in India*, 107 *Marine Policy* 103597 (2019).

flourish, rejuvenate, and be brought back according to Articles 71–74²⁰. In the historically significant Vilcabamba River Case (2011), the Provincial Court of Loja determined that road erection debris interfered with the right of the river to safeguard its biological functioning and prescribed rehabilitation, thus reaffirming this obligation²¹. The present instance has been recognized by experts as an important turning point in the practical application of constitutional ecological rights²².

New Zealand: Te Awa Tupua (Whanganui River) and Legal Personality

The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, that provides the Whanganui River an independent legal entity including entitlements, responsibilities, and legal legitimacy, constitutes an exclusive paradigm that was adopted by New Zealand²³. *Ko au te awa, ko te awa ko au*, or "I am the river, and the river is me," refers to the Māori conceptual framework that ultimately gave rise to this understanding. The Act establishes two guardians (Te Pou Tupua) that will stand in for the river, one selected by Crown and the other one chosen by the Whanganui Iwi. This co-governance system has its foundation on indigenous cosmologies²⁴. Legal experts emphasize that this approach indicates how personhood, against resource exploitation, can foster environmental protection by means of relational stewardship²⁵.

Learnings for India

These comparative examples provide beneficial knowledge to India. While New Zealand's guardianship-based model illustrates how legal personhood may encompass cultural and ecological interaction, Ecuador's constitutional framework exhibits how environmental rights could be incorporated at the highest legal position and judicially implemented. The Supreme Court's acknowledgment of the inherent value that nature has in *A. Nagaraja*²⁶ and its acknowledgment of rivers as legal persons in *Mohd. Salim v. State of Uttarakhand*²⁷ are two examples of the jurisprudential underpinnings existing in place in India.

²⁰ *Constitution of Ecuador*, arts. 71–74 (2008).

²¹ *Wheeler v Director de la Procuraduría General del Estado (Vicabamba River Case)*, Judgment No 11121-2011-0010, Provincial Court of Loja (Ecuador 2011).

²² María Valeria Berros, *The Rights of Nature in Ecuador; An Overview of the New Environmental Constitutionalism*, 4 *Revista Catalana de Dret Ambiental* 1 (2013).

²³ *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.)*.

²⁴ Jacinta Ruru, *Listening to Papatuanuku, A Call to Reform Water Law*, 48 *J. Royal Soc y N.Z.* 215 (2018).

²⁵ Erin O'Donnell & Julia Talbot Jones, *Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India*, 45 *Ecology L.Q.* 67 (2018).

²⁶ *Animal Welfare Board of India v A. Nagaraja* (2014) 7 *S.C.C* 547 (India).

²⁷ *Mohd. Salim v State of Uttarakhand, W.P. (PIL) No 126 of 2014 (Uttarakhand H.C. Mar 20, 2017)*.

Implementing these comparative models strengthens the notion why the ocean could potentially be acknowledged as a rights-bearing entity because it is both economically and ecologically of greater importance than rivers and forests. This acknowledgment would encourage India's constitutional responsibility to environmental justice, ecological sustainability, and the safeguarding of coastal communities while simultaneously remaining in line with global trends.

Blue Constitutionalism and Ocean rights

The global constitutional imagination has recently been expanded by the recognition of nature's legal rights in countries like Ecuador and New Zealand. Blue Constitutionalism extended the constitutional status of environmental protection to incorporate the marine and coastal regions, developing on this revolutionary concept. By affirming that oceans, like rivers or forests, have unique ecological significance which have to be protected by the constitution, it re-frames the relationship between human cultures and the ocean²⁸. The broader concept of Earth Constitutionalism, the movement which advocates integrating environmental stewardship into constitutional governance, is the root of Blue Constitutionalism. It proposes shifting from an anthropocentric perspective centered around economic gain and consumption by humans to an ecocentric and planetary viewpoint that recognises the ocean as a living, rights-bearing system²⁹.

Thus, the conception considers the ocean as a constitutional subject that needs to be recognized, safeguarded and recognized in legislation, instead of being seen simply as a resource as part of sovereign control. This approach is in accordance with international agreements counting the United Nations Convention on the Law of the Sea (UNCLOS), that is frequently referred to in terms of the "constitution for the oceans"³⁰. States are obligated by its environmental protection laws (Articles 192–194) to preserve the marine environment and prevent contamination. In a similar way by articulating marine conservation as a fundamental constitutional obligation across the international community, the Convention on Biological Diversity (CBD) and Sustainable Development Goal 14 ("Life Below Water") convey the moral and normative foundation of Blue Constitutionalism³¹. Blue Constitutionalism can be considered as a

²⁸ Klaus Bosselmann, *The Principle of Sustainability, Transforming Law and Governance* 142-45 (Routledge 2016).

²⁹ Erin O'Donnell & Julia Talbot Jones, *Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India*, 45 *Ecology L.Q.* 67 (2018).

³⁰ United Nations Convention on the Law of the Sea, Dec 10, 1982, 1833 U.N.T.S 397 arts. 192–194.

³¹ *Convention on Biological Diversity*, June 5, 1992, 1760 U.N.T.S 79.

manifestation of the environmental ethos contained in Articles 48A and 51A(g) of the Indian Constitution, that is further strengthened through the judiciary's comprehensive interpretation of Article 21, which includes the fundamental right to a clean and healthy environment³². Indian courts have repeatedly recognized environmental preservation as a vital constitutional duty that could potentially be enlarged to involve the marine environment. Hence, incorporating the ocean into the purview of constitutional environmental justice would effectively bring national constitutionalism into alignment with contemporary international standards which recognize the ocean as a living, integral component of the Earth's legal system. Ultimately, Blue Constitutionalism embeds incorporation of the ocean's rights into national constitutions, eliminating the disparity between constitutional law and ocean governance. It requires a paradigm shift that considers the ocean as an essential constitutional entity whose sustainability and health are essential to protect life and justice on Earth instead of merely as a frontier for commercial predation.

Conclusion

The acknowledgement of the ocean's inherent importance constitutes an important turning point in contemporary legal thought. The call for states to recognise the rights of the ocean symbolizes a moral and legal enlightenment that goes beyond the traditional anthropocentric framework and recognises the ocean as an ever-evolving framework critical for both human survival and the harmonious functioning of the planet. An emerging paradigm that the health of the oceans is strongly linked to human health is demonstrated by both international and constitutional trends. The concept of "Blue Constitutionalism" incorporates the ocean in the larger framework of national constitutions, urging for governing mechanisms that guarantee fairness for all living things and ecological interdependence. The proposed approach redefines environmental jurisprudence instead of just expanding it. In an effort to guarantee accountability, sustainability, and justice for both present and future generations, states have to function as trustees rather than as exploiters as they recognize the legal personality of the ocean. In ultimate terms, the campaign for ocean rights is not only symbolic, alternatively, it embodies an essential development in the ethical thinking of law, grounding justice in the very oceans that help sustain life on Earth.

³² *M.C. Mehta v Union of India*, (1987) 4 S.C.C 463 (India), *Subhash Kumar v State of Bihar*, A.I.R 1991 S.C. 420 (India).

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