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## **BEYOND SYMBOLIC STANDING: BRIDGING THE ENFORCEABILITY GAP IN RIGHTS OF NATURE JURISPRUDENCE**

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**\*Sakshi Jadhav**

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Law Department, Haveli Institute of Legal Studies and Research, Mumbai University  
Silvassa, Dadra and Nagar Haveli

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**\*Corresponding Author: Sakshi Jadhav**

Law Department, Haveli Institute of Legal Studies and Research, Mumbai University

Silvassa, Dadra and Nagar Haveli

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### **ABSTRACT**

For decades, environmental protection laws have operated under an anthropocentric framework, treating ecosystems merely as property or natural resources subject to human ownership. The global emergence of 'Rights of Nature' (RoN) jurisprudence seeks to replace this paradigm with an ecocentric framework, granting rivers, forests, and entire ecosystems intrinsic legal personhood. However, translating judicial declarations and constitutional guarantees into functional, daily enforcement mechanisms remains a persistent challenge. This article investigates the structural legal gaps preventing RoN from becoming an operational compliance system. Through comparative analysis of landmark frameworks—including New Zealand's Te Awa Tupua, Colombia's Atrato River rulings, and Peru's Rio Marañón cases—this paper identifies key enforcement bottlenecks: guardianship liability, standing, and monetary damages. Finally, it proposes concrete statutory mechanisms, including public-trust guardianships and eco-centric restitution funds, to ensure nature's rights are legally enforceable rather than purely aspirational.

### **I. INTRODUCTION & THE ANTHROPOCENTRIC LEGAL DILEMMA**

Modern environmental law faces a severe enforcement crisis. Traditional legislative frameworks rely on regulatory permits, emission limits, and administrative fines, treating nature strictly through an anthropocentric lens—as an asset to be managed for human utility. Under this model, plaintiffs seeking to protect an ecosystem must typically prove direct economic or personal human injury to establish legal standing. This creates an

insurmountable hurdle when severe environmental damage affects non-human ecological systems without causing immediate, measurable harm to human property.

The Rights of Nature (RoN) doctrine fundamentally redefines this relationship. Grounded in Christopher Stone's foundational 1972 question ('Should Trees Have Standing?'), RoN posits that ecosystems possess inherent legal rights to exist, persist, regenerate, and evolve. While early movements relied on constitutional provisions (such as Ecuador's 2008 Constitution) or local ordinances, recent international developments—including the Inter-American Court of Human Rights' Advisory Opinion OC-32/25 recognizing Nature as a subject of rights—have elevated RoN into mainstream public law. Yet, a central paradox remains: declaring an ecosystem a legal person does not automatically equip it with the procedural mechanisms necessary to enforce those rights in court.

## II. Comparative Analysis of Jurisprudential Models

Across various jurisdictions, courts and legislatures have experimented with different legal structures to operationalize nature's rights. The table below details key international models and highlights the specific practical bottlenecks each model encounters in court.

| Jurisdiction & Ecosystem      | Legal Instrument / Case                    | Primary Enforcement Mechanism                                                                                        | Key Practical Bottleneck                                                                                                                   |
|-------------------------------|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| New Zealand (Whanganui River) | Te Awa Tupua Act 2017                      | Statutory Joint Guardianship (Te Pou Tupua) pairing Indigenous iwi representatives with Crown appointees.            | Dependence on ongoing state funding and potential deadlocks between statutory development goals and conservation priorities.               |
| Colombia (Atrato River)       | Constitutional Court Judgment T-622/16     | Biocultural Rights model appointing a commission of local community guardians alongside the Ministry of Environment. | Rampant illegal mining and lack of state security in remote areas hinder physical enforcement by guardians.                                |
| India (Ganga & Yamuna Rivers) | High Court of Uttarakhand (2017)           | State officials appointed in loco parentis (as parental legal guardians).                                            | Stayed by Supreme Court: High Court failed to define whether the river could be sued for flood damage, creating severe liability exposure. |
| Peru (Rio Marañón)            | Superior Court of Justice of Loreto (2024) | Recognized legal personhood and indigenous Kukama women as official guardians.                                       | Administrative resistance from regional petroleum oversight bodies regarding regulatory jurisdiction over river channels.                  |

### **III. The Practical Bottlenecks of Legal Personhood**

#### **1. The Guardianship Dilemma & Conflicts of Interest**

Unlike corporate entities, natural ecosystems cannot independently retain counsel or make strategic choices in litigation. When courts designate state officials (such as environment ministry directors) as primary legal guardians, a structural conflict of interest emerges. The state frequently acts as the regulatory authority granting industrial, agricultural, or mining permits while simultaneously serving as the sworn legal guardian tasked with shielding the ecosystem from industrial harm.

#### **2. The Reverse Liability Paradox**

Equating an ecosystem to a legal person logically implies that the entity bears legal duties alongside legal rights. This paradox was the main ground on which the Supreme Court of India stayed the Uttarakhand High Court's Ganga ruling: if a river is a person, can disaster victims sue the river's guardians for monetary damages during catastrophic seasonal floods? Without explicit statutory liability shields, designating personhood exposes appointed guardians to crippling civil litigation.

#### **3. Remediation & Financial Valuation**

In standard tort claims, monetary damages function as direct financial compensation for human victims. However, when an ecosystem prevails in an environmental lawsuit, traditional damage assessment formulas fail. Ordering a corporate polluter to pay fines directly into a central state treasury does not guarantee ecosystem restoration unless statutory mechanisms strictly mandate funds be used for localized ecological remediation.

### **IV. Proposed Statutory Reforms & Operational Solutions**

To overcome these enforcement obstacles, future legislation and judicial orders must incorporate three essential structural mechanisms:

- **Independent Eco-Trust Commissions:** Jurisdictions adopting RoN must establish independent public-trust commissions. These trusts should combine representation from local indigenous leaders, ecological scientists, and legal experts, entirely separate from state permit-granting bodies.
- **Statutory Shields for Natural Processes:** Legislation must explicitly decouple rights-bearing status from tort liability for natural disasters. Statutes should state that natural cycles (e.g., seasonal floods, wildfires from lightning) do not constitute actionable torts against ecosystem guardians.

- **Earmarked Eco-Restitution Accounts:** Judicial fines assessed on behalf of ecosystems must be deposited into dedicated, court-supervised restoration accounts. By law, these funds must be restricted exclusively to active remediation (e.g., river desiltation, reforestation, habitat rehabilitation).

## V. CONCLUSION

Granting legal personhood to ecosystems marks an essential evolution in legal philosophy, but symbolic jurisprudence without administrative teeth risks alienating public trust. To transition rights-of-nature frameworks from radical theoretical concepts into functional environmental governance, statutory systems must address procedural standing, resolve guardian conflicts of interest, and establish dedicated financial mechanisms for ecological restoration. Protecting the biosphere requires not just giving nature a voice in court, but building the legal infrastructure necessary to enforce what it says.

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