

Gods, Animals and Natural Resources as Legal Persons in South Asia



René Magritte, 1966

Panel 13,

coordinated by Daniela Berti (CNRS, CEH) and Anthony Good (University of Edinburgh)

25th European Conference on South Asian Studies (ECSAS), 24-27 July, Paris

25 July 13.30 - 15.00.

IISMM, 96 Boulevard Raspail, Paris 75006.

Casting Rivers as Juristic Persons: The Entanglements of Judicial Culture and Sacred Nature in India

Rita Brara, University of Delhi

From Animal Protection to Animals' own Rights. Arguing the Legal Status of Animals in Indian courts

Daniela Berti, CNRS, CEH

Non-Human Citizens: Circus Animals and Indian Law

Nisha Poyyaprath Rayaroth, Centre for Indian Studies in Africa, University of the Witwatersrand, South Africa

Rights of non human animals based on human obligations

Nupur Rana, Department of Political Science, Delhi University

Panel abstracts

Juristic Personalities and the 'Rights of Non-Humans'. Gods, Animals and Natural Resources as Legal Persons in South Asia (Panel 13)

The question of which legal status to attribute to animate or inanimate 'beings' (gods, animals, institutions) has recently taken on a new development since the law in various countries has granted the status of 'non human persons' to animal species (dolphins, chimpanzees, birds) as well as natural resources (rivers, mountains, glaciers). These laws draw on scientific findings, on the legal or ethical arguments made by environmental lawyers and animal right activists, and stem from conflicts on which courts have had to decide. Some issues concern the courts' handling of religious or cultural practices such as animal sacrifices, the use of elephants in temple processions, bullock races and cock fights, etc., where a discourse about cruelty and religious reform clashes with a discourse about ritual traditions and religious freedom. Other cases deal with conflicts over animals that receive special protection either because they are important from a religious viewpoint (cows or monkeys); are 'in danger' (tigers, lions or leopards); or, being considered an 'intelligent species', are granted fundamental rights. By contrast, in other situations the courts or state administrative bodies (such as the Wildlife Department) have classed specific species (monkeys, wild boar, peacocks) as 'vermin' or dangerous, and authorize their killing or capture on the grounds that their behaviour is incompatible with human life and activities. These cases call upon a variety of notions (of personhood, intentionality, responsibility, cruelty, morality) or of 'rights' (right to life, to live with dignity, human and animal rights, right to fly, statutory rights), and also entail issues concerning the separation of powers among state institutions.

Casting Rivers as Juristic Persons: The Entanglements of Judicial Culture and Sacred Nature in India

Rita Brara, University of Delhi

Christopher Stone's (1972) argument in favour of juristic personhood for nature is blazing a trail in many parts of the world including India. However, the movement of legal notions and terms across diverse national and religious contexts often reshapes the content of juridical thought. Since the colonial era in India, the notion of a juristic person has developed in relation to the legal characterization of Hindu deities. So while New Zealand's Parliament was mooting the status of a juristic person for the Whanganui River, this thinking resonated for two Judges of the Uttarakhand High Court who went a step further. Confronted with the degradation of the sacred rivers Ganga and Yamuna, they drew upon both developments in New Zealand and notions of juristic personhood elaborated in the context of Hindu deities to justify the status of juristic persons exclusively for these two 'sacred' rivers. I examine the religion-phrased reasoning by the Uttarakhand High Court in the course of this pronouncement that bestowed the status of a juristic person upon the Rivers Ganga and Yamuna. Method-wise, I draw upon the 'performative turn' in legal studies, looking to the

insights afforded by both Austin (1962) and Butler (1993; 2010) on performativity and Grunwald's (2012) adaptation of this notion for a judicial context in order to analyse the judgment profitably. The final transposition of the juristic status of the Hindu idol onto the rivers held sacred by the Hindus is a remarkable performative enunciation that overlooks a secular status for the river. It reveals the entanglements of sacred nature and judicial culture and the porous relations between the two alongside claims made for the authority and impartiality of law.

From Animal Protection to Animals' own Rights. Arguing the Legal Status of Animals in Indian courts

Daniela Berti, CNRS, CEH

In this paper I look at how the issue of animal protection and animal rights is handled at a legal and judicial level – by environmental lawyers, activists, and organizations that take part, in various ways, in state action. Over recent years all these actors have become involved in a number of cases that have brought the question of animal protection and animal rights before the court. After presenting these activist and legal milieus I go into some court cases related to animals – on banning bullock races, cock fights and animal sacrifices, on prohibiting dolphins or birds from being held captive or antelopes from being considered 'vermin'. Based on court files and ethnographic research I show how, in contrast to animal rights activists who are sometimes criticised for using the same principles (the idea of compassion, of equality, the right to life) for all animals, environmental lawyers focus on the reasons why a particular species living in a specific place needs to be protected. In some cases what is put forward is the animal's affinity to humans : its capacity to experience pain and suffering, to communicate using 'grammatical structures'; the percentage of DNA it has in common with human beings;; or its religious and cultural importance for a particular community. In other cases, the focus is on the animal's specific quality or behaviour - elephants' need to follow a particular corridor, black-neck cranes' habit of migrating to a particular stretch of river for the breeding season, birds' right to fly freely in the sky.

Non-Human Citizens: Circus Animals and Indian Law

Nisha Poyyapraph Rayaroth, Centre for Indian Studies in Africa, University of the Witwatersrand, South Africa

Animals have always been an indispensable part of circus around the world until the recent legal proscriptions in many countries and emergence of new concepts such as 'Nouveau Cirque'. The ban of the training and performance of certain wild animals by the Environment Ministry of India in 1991 was a watershed moment for the century and a half years old circus industry in the subcontinent. This paper explores the legal battle that followed the ban, various discourses around animals, both wild and captive, the human- non-human association in circuses and the history of animal training and performance and critically examines the ideas of rescue, rehabilitation and conservation. Many cases were filed by the circus companies around the country in the courts seeking compensation from the government. The most significant ruling came from the High Court of Kerala in a petition filed by the employees of Jumbo circus. Dismissing the petitioners' plea, the Division Bench asked, "If

humans are entitled to fundamental rights, why not animals?”, triggering open questions of citizenship, rights and animal subjectivity. Through this research I hope to probe the limits of the binary cruelty/compassion, the dominant cultural sense of the ‘high’ and the low’ and also how are we to interpret the love and intimacy in the case of humans and non-humans. Animals in circus brings to the fore a long tradition of animal trade, taming, training, and human accompaniment, raising significant questions regarding their acquisition, captive life, breeding and changing relation to forests and wilderness over the periods. They are inextricably linked with a colonial genealogy of the ‘exotic’ and ‘exhibit’.

Rights of non human animals based on human obligations

Nupur Rana, Department of Political Science, Delhi University

Trying to establish personhood of animals can cloud the debate about rights owed to animals and falls easy prey to the slippery slope argument. Although there are some clear examples where personhood is warranted, for example many apes show evidence of having the thinking ability of a small child, and possess a complex range of emotions, almost human, the line becomes unclear when one takes the argument further down to different mammals. There is evidence that cows mourn the loss of their loved ones, there have been studies recently that show that sheep can recognise faces, intelligence in animals is evident to anyone who has tried to spend time with one. What makes one type of animal a person and not others? It is better on the other hand to focus on a duty based approach to animals rights. In India the courts have ruled in a number of cases to establish basic rights of non human animals, the challenge is ground level awareness and acceptance of the rights as was evident from the popular refusal of the court ban on the practice of Jalikattu (bullock cart racing). A sense of duty to the well being of animals needs to be engendered by translating the legislation into effective measures that seek to eradicate cruel practices in the use of animals in industry like poultry and dairy. Merely establishing fundamental rights based on personhood does not solve the answer to the problem.