



Karnatali; RDRC

River Rights: Navigating Challenges to Flow Freely

KEY POLICY MESSAGES

- Although rights of rivers have been legally recognized in Bangladesh, protection for rivers in practice is not guaranteed. More importantly, the current legal framework misses the cultural and indigenous epistemic foundations for ‘nature’s rights’ in the Bengal Delta.
- Ensuring rights of rivers in this context can mean the erasure and criminalization of local knowledge, livelihoods and relationships with rivers.
- This policy brief discuss the fields of law, anthropology, economics, planning, and resource governance aims to investigate the socio-legal meaning and implications of the “rights of rivers” in the context of Bangladesh, thereby contributing to the ongoing global discourse on nature’s rights.

The newly established legal entities of rivers are seamlessly integrated into the existing water governance framework. RDRC aims to provide policy analysis on the high court judgement and practical implications & recommendations for policy makers on water issues.

RDRC, as a neutral forum, does not necessarily endorse the views expressed herein.

Visit: www.rdrc.info
 Contact: rdrcinfo@gmail.com

BACKGROUND

In recent years, the concept of granting legal rights to rivers has gained significant attention worldwide. This emerging paradigm shift seeks to recognize rivers as legal entities with inherent rights, deserving protection and preservation. Bangladesh, a riverine country comprising about two-thirds of the active Bengal Delta, faces numerous challenges related to river degradation, pollution, and overexploitation. Although rights of rivers have been legally recognized in Bangladesh, protection for rivers in practice is not guaranteed. More importantly, the current legal framework misses the cultural and indigenous epistemic foundations for 'nature's rights' in the Bengal Delta.

Ensuring rights of rivers in this context can mean the erasure and criminalization of local knowledge, livelihoods and relationships with rivers. Understanding the gap between legal innovation and ground reality requires deeper exploration of the social and cultural models that shape the everyday interactions of people, activists, advocates, officials, and policymakers with rivers. This policy brief discusses the fields of law, anthropology, economics, planning and resource governance, aims to investigate the socio-legal meaning and implications of the "rights of rivers" in the context of Bangladesh, thereby contributing to the ongoing global discourse on nature's rights.

This policy proposal is significant as it addresses a crucial aspect of environmental justice in Bangladesh, where rivers are central to the country's ecosystem and livelihoods. The findings and recommendations of this proposal will contribute to the ongoing national and international discussions on river rights, providing insights for policymakers, legal practitioners, environmentalists, and local communities. We believe this policy issue will raise this fundamental discussion that will facilitate policy recommendations for integrating river rights into the local and national planning and governance frameworks, aimed at ensuring sustainable river management and conservation.

WHAT DO RIGHTS OF THE RIVER MEAN?

Granting rivers legal rights means the law can recognize them as legal persons, allowing rivers to take legal actions to enforce those rights. Legal personhood confers standing, often described as the ability to sue and be sued, enabling rivers to go to court to protect their rights.

Legal personhood also includes the right to enter into and enforce contracts, as well as the ability to hold property.

Creating legal rights for nature more broadly has been considered by many environmental advocates and legal scholars as a step towards the protection of natural resources, although this remains controversial.

Modern societies protect natural resources through laws and regulation, with varying results. Conferring legal personhood, granting rights to rivers or giving rivers explicitly a voice in decision making may be the next evolutionary step. Granting legal rights supplies a method to highlight the imperative of enhancing river protection and can be effective depending on the specific local circumstances.

The personification of nature is not new. Humans have long considered natural elements as living entities. Nevertheless, the earth, ocean, rain, rivers, and lakes were traditionally remained far beyond the legal frameworks. By affording rivers legal personhood, the law acknowledges them as entities with enforceable rights.



WHY DO RIVERS NEED RIGHTS?

The existence of protective legislations does not prevent rivers degradation. This legal recognition could manifest in several ways:

- Enabling rivers to engage in water and ecosystem services markets, thereby integrating market environmentalism principles.
- By giving rivers equal legal status with humans (ecocentrism).
- By giving rivers their own voice in policy debates.

Recent decisions to grant rights to rivers may in principle fill gaps in environmental regulations and represent a more progressive approach to (re)bounding humans with nature.

WHAT DO LEGAL RIGHTS ENTAIL?

Legal person bears rights and duties in law, akin to corporations, public agencies and civil associations. Legal personhood typically confers:

- The right to enter into and enforce contracts;
- The right to own and manage property; and,
- Legal standing to initiate legal proceedings (and be subject to legal action) in a court of law.

Legal standing implies that a river, as a legal entity, can pursue legal action to safeguard its interests without the necessity of resulting harm to human users. Acknowledging rivers a legal 'voice' in contentious policy and regulatory discussions requires:

1. A river's voice must be empowered to a level where it is effectively heard, with its guardians supplied with sufficient funding, distinct identity, and autonomy from governmental, societal, and economic influences.
2. A river must promote its own interests ahead of those who rely on it. This may entrench an adversarial relationship between people and the environment.



THE PARADOX OF LEGAL RIGHTS

Granting rivers legal rights, either directly or indirectly, generates a paradox. Constructing the rivers as a legal person increases the legal powers available to help protecting the rivers from future impacts. However, in doing so, it strengthens the narrative that the river should protect itself and weakens the narrative that the river is worthy of protection by human action.

Shifting narratives can drive legal reform that can weaken the new legal right.

The experience of the new river persons raises crucial questions for water governance:

What role do we expect rivers with legal rights to play in integrated water resource management? Rivers have traditionally been protected in water law to varying extents as legal objects, but when they have a voice of their own, they acquire the capacity to complete for policy outcome with other issues. This fundamentally changes their roles and responsibilities in water governance framework.

RIVER RIGHTS NEED SUPPORTIVE STAKEHOLDERS.

The power of expressing community's democratic right of raising voices is required. Successful collaboration with NRCC and stakeholders, communities, CSOs, and NGOs engagement with local communities bolsters the legitimacy of the initiatives results in the guarantee of legal rights to rivers.

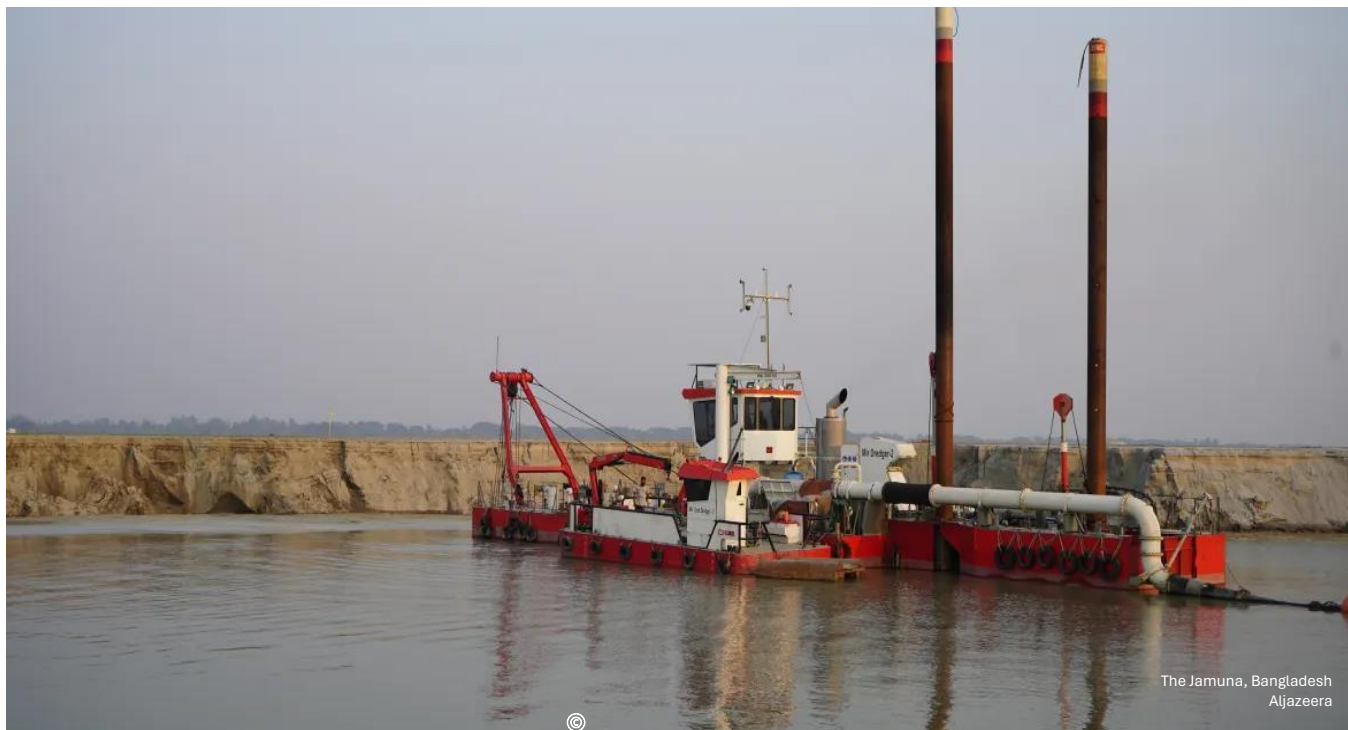
CRITICAL SITUATION MAY ARISE FOR THE CLAIMS FOR RIVER RIGHTS.

The appointment of government representatives as guardians e.g. NRCC in Bangladesh introduces the risk of conflicts of interest, particularly when economic imperatives or human rights priorities clash with the asserted rights of the river.

Acknowledging the rights of nature, particularly recognizing those river rights in this declaration, should bolster the formation of a new legal and social discourse depending on residing in harmony with nature and valuing nature's rights together with human rights and rights of indigenous peoples.

Granting legal rights adds value into the right framework:

- Declares that all rivers are entitled to the fundamental rights set forth in this Declaration, which arise from their very existence on our shared planet.
- Further declares that all rivers are living entities that possess legal standing in a court of law.



The Jamuna, Bangladesh
Aljazeera

- Establishes that all rivers shall possess, at least, the following basic rights:
 - a. *The right to flow;*
 - b. *The right to perform necessary functions within its ecosystem;*
 - c. *The right to be free from pollution;*
 - d. *The right to feed and be fed by sustainable aquifers;*
 - e. *The right to native biodiversity; and*
 - f. *The right to restoration.*
- Settles that all rivers shall have their best interests evaluated and considered as a dominant consideration by both government and private entities in all actions or decisions that warn them.
- Asserts that these rights are intended to guarantee both health of rivers and river basins.
- Assures that all nations shall execute these rights entirely within a reasonable amount of time, including by developing and performing metrics and thresholds corresponding to the newly scientific understandings of integrated ecological river health.
- Strongly urges all nations to guarantee prompt and financial processes to recognize these fundamental river rights, as well as the right of all rivers to restore.

However, granting rivers legal rights will not, à priori, overcome the limitations of existing instruments, but could add value with the right frameworks.

WHAT CAN MAKE RIVER RIGHTS WORK?

Key elements include:

- An explicit voice to protect rivers.
- Community support for why rivers need protecting.
- Adequate funding and organizational support for river guardians/NRCC etc.
- Enforced decisions and regulations.
- Supporting legislation in all riparian countries for international rivers.

CONCLUDING REMARKS

Granting legal rights to rivers poses a formidable challenge to effective water governance. In the absence of adequate measures fostering the connection between communities and their natural surroundings, and the reinforcement of cultural values, the introduction of new legal rights for rivers may have unintended consequences. There is a risk that legal reforms aimed at affording rivers enhanced protections might inadvertently result in a weakening of such safeguards.

It is imperative for policymakers to articulate a clear understanding of the role that these newly designated legal entities will assume in the realm of water governance. The notion of providing rivers with a 'voice' becomes pertinent only when there is an expectation that they will actively compete for their own outcomes. However, this approach could be construed as an evasion of our responsibilities in environmental protection, as it implies a reliance on rivers to autonomously safeguard their well-being.



Reference

Ashish Kothari, Mari Margil, and Shrishtee Bajpai, 'Now Rivers Have the Same Legal Status as People, We Must Uphold Their Rights' *Guardian* (21 April 2017). www.theguardian.com/global-development-professionals-network/2017/apr/21/rivers-legal-human-rights-ganges-whanganui.

O'Donnel, Erin (2019). *Legal Rights for Rivers: Competition, Collaboration and Water Governance*. Earthscan Studies in Water Resource Management, Routledge.

Jo-Ann Goodie, 'The Invention of the Environment as a Legal Subject' (PhD thesis, Murdoch University, 2006) vi.

Yoshihide Wada and Marc F P Bierkens, 'Sustainability of Global Water Use: Past Reconstruction and Future Projections' (2014). *Environmental Research Letters* 104003;

Julie C Padowski and Steven M Gorelick, 'Global Analysis of Urban Surface Water Supply Vulnerability' (2014). *Environmental Research Letters* 104004.

WWF, 'Historic Presidential Decrees Create Hundreds of Water Reserves in Mexico' *World Wide Fund for Nature* (5 June 2018) http://wwf.panda.org/our_work/water/intro/wetland_conservation/?328874/Historic-presidential-decrees-creates-hundreds-of-water-reserves-in-Mexico.

Yarra River Protection (Wilip-gin Birrarung Murrong) Act 2017 (Vic) s 1.

Katie O'Bryan, 'Giving a Voice to the River and the Role of Indigenous People: The Whanganui River Settlement and River Management in Victoria' (2017) 20 *Australian Indigenous Law Review* (advance).

Elizabeth Macpherson and Felipe Clavijo Ospina, 'The Pluralism of River Rights in Aotearoa New Zealand and Colombia' (2018). *Journal of Water Law* 283.

R Quentin Grafton et al., 'An Integrated Assessment of Water Markets: A Cross-Country Comparison' (2011), 5(2) *Review of Environmental Economics and Policy* 219.

Christopher D Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450, 461.

Ngairé Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart Publishing, 2009).

