



CAN SRI LANKA'S JUDICIARY PROTECT TREES AS LEGAL ENTITIES? FUTURAMA OF LEGAL RIGHTS FOR TREES

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The concept of granting legal personhood to non-human entities, such as trees, challenges the traditional legal framework and raises critical questions about the intersection of law, ecology and ethics. In this research explores the feasibility of recognizing trees as legal entities within Sri Lankan judicial system focusing on specific categories of trees i.e. religious trees, trees of antiquity, heritage trees, protected species, public trees, and ecologically important trees rather than advocating for universal tree rights. This research critiques the current Constitutional legal provisions on environment in Sri Lanka that are restricted to directive principles of state policy and fundamental duties which are unenforceable. Further, other statutory laws such as the Forest Ordinance (1907), the Flora and Fauna Protection Ordinance (1937), and the National Environmental Act (1980) which while offering some protection, fall short of conferring enforceable rights to trees. Drawing on global precedents, including Ecuador's constitutional recognition of nature's rights and Bolivia's Rights of Mother Earth, the research argues for constitutional amendments in Sri Lanka to grant legal standing to trees. Such reforms would prioritize conservation while balancing human needs, ensuring trees are protected as stakeholders in environmental governance. This research employs qualitative, normative, and applied methodologies, to interpret tree rights as an innovative legal concept. It examines existing standards and explores their practical implementation within Sri Lanka's constitutional framework. Further, data analysis relies on qualitative and content analysis, supported by primary and secondary sources to ensure validity, reliability, and credibility in assessing domestic and international environmental protections. This research also addresses practical concerns, such as legal representation for trees, by proposing mechanisms like public interest litigation, akin to guardianship for minors or incapacitated persons. By advocating for a shift from anthropocentric to ecocentric legal principles, this research underscores the cultural, ecological, and economic necessities for tree rights. It positions Sri Lanka as a potential leader in environmental jurisprudence, demonstrating how constitutional recognition of tree rights could set a global precedent for sustainable and just ecological stewardship. The findings highlight the urgency of reimagining legal frameworks to safeguard biodiversity and ensure the survival of vital natural entities for current and future generations.

Keywords: constitutional reform, ecological jurisprudence, environmental law, legal personhood, Sri Lanka, tree rights

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INTRODUCTION

In the evolving topic of legal discourse, the concept of granting legal personhood i.e. rights to non-human entities, such as trees, presents a challenge to the traditional understanding of legal personhood. This emerging paradigm, rooted in the broader environmental and ecological movements, questions the very foundation of our legal systems and their treatment of the natural world in the 21st century. The researchers identify the notion of a tree as a legal person, capable of holding rights, duties, and legal responsibilities, opening up a new frontier in jurisprudence. This research delves into the complex interplay between the law, ethics, and the environment, examining the practical and legal ambiguities that may arise in the recognition of tree rights. This research focuses on specific categories of trees in Sri Lanka, while not intending on providing rights to the entirety of trees.

- a) Religious Trees
- b) Trees of Antiquity
- c) Heritage Trees
- d) Protected Species of Trees
- e) Public Trees
- f) Ecologically Important Trees

A fundamental question arises as to how the rights of trees be enforced and what legal mechanisms should be enacted to balance the rights of trees with the rights of people. These rights do not cover common tree-related disputes between neighbours, such as overhanging branches, shading, or intruding roots. Legally, the tree owner is the person who owns the land on which the tree is growing since a tree is considered a fixture and thus part of the land. An affected neighbour may request the tree owner to remove a nuisance by trimming back or removing the tree. In this context, the researchers do not emphasize granting trees rights equal to those of humans, due to the necessity of upholding the safety of human living spaces by mitigating damage and nuisance that may arise from unchecked tree growth that threatens human life and property. However, this does not justify cutting trees or their parts when no actual harm to humans is present (Legal Services Commission SA, 2024).

This research also addresses the broader implications of such a shift, analyzing how the concept of tree rights might influence environmental laws and practices, and even re-define our understanding of justice itself (Macfarlane, 2019). Drawing upon global examples of natural organisms being granted legal personhood, this research recognizes the legal rights of trees as a pivotal step in developing a legal framework that appreciates and safeguards the natural world, particularly in the face of escalating environmental challenges. The researchers suggest throughout this research to



introduce tree rights to the aforementioned categories in the Constitution of Sri Lanka rather than generalizing it as directive principles of state policy and fundamental duties. Amidst concerns that this concept may appear odd, frightening, or even laughable, the researchers analysed the intricate relationship between the legal rights of non-human entities and the legal identification of corporations, trusts, and/or any other artificial constructs. However, tree rights differ with the fact that it is important for several reasons such as biodiversity conservation, cultural and religious significance, environmental benefits and economic value; and not merely focusing on a shift from an anthropocentric approach to an eco-centric approach. The introduction of legal guardianship for specific natural objects, akin to the representation of minors and incapacitated persons which is to be discussed further will presents a novel approach to upholding the rights and interests of the natural world in legal proceedings (Stone, 1972). This is presented to say that trees should be recognize for their intrinsic value. Finally, by granting legal recognition to the natural world, humans may take a crucial step towards ensuring the survival and flourishing of all life on Earth, for the benefit of present and future generations.

METHODOLOGY

This research emphasizes the necessity for granting legal personhood i.e. rights to specific trees in Sri Lanka against any form of harm or threats that they may experience through human activities. This highlights the positive outcome that will be experienced through the introduction of tree rights that lead to the protection and the balance of the ecology and economic value. This research is based on a qualitative research methodology which is more interpretative in the identification of rights of trees as a novel legal concept. Furthermore, the normative research methodology investigates existing norms, standards, and principles, assessing how they should evolve to meet future environmental needs. The applied research methodology has been used to identify the necessity of legal standing on the aforesaid specified trees and how the rights should be exercised effectively in the Sri Lankan legal system through the Constitution itself.

Under the data analysis methods, primarily qualitative analysis is applied for focusing on the theoretical understanding of social and legal realities and their impact in this regard. Secondly, the content analysis is used with categorically discussing to what extent the tree rights are applied for and what it accommodates for the protection which is beneficial to the present and future generations. The researchers further critically analyse relevant scholarly inputs, legislations, and other sources related to environmental protection by specifically focusing on trees within the domestic and international context. Moreover, in the data collection process, the researchers analyzed primary and secondary sources such as legislation, case laws, books, and articles on this topic. The used methodologies and methods have provided a more in-depth understanding and enhances the validity, truthfulness, reliability and credibility of this research.



FINDINGS AND DISCUSSION

In 1901, the Indian Scientist Jagadish Chandra Bose proved to the world for the first time that plants are also like any other form of life. They have a definite life cycle, a reproductive system, and are responsive to their surroundings and changes (Tandon, 2019). In the discussions regarding awarding rights to specific categories of trees, a common argument frequently presented is the practicality of such an award as, “How would trees be represented in court?” This line of reasoning as the researchers analyze can be counterbalanced by examining the precedent of animal rights and corporate rights, which raises the question of how non-human entities can possess and exercise legal rights.

However, through this research, the researchers propose going one step ahead and introducing enforceable rights to trees that are considered as religious trees, trees of antiquity, heritage trees, protected species of trees, public trees and ecologically important trees through the Constitution itself. Therefore, the discourse thus centers on the broader implications of legal representation for entities that lack human agency. The 1978 Constitution of Sri Lanka addresses environmental protection in a limited manner under Chapter VI on Directive Principles of State Policy and Fundamental Duties. Article 27(14) mandates the state to protect, preserve, and improve the environment for the benefit of the community, while Article 28(f) emphasizes the duty to protect nature and conserve its riches. However, these provisions remain broad and insufficient to ensure strong legal protection for trees. To strengthen environmental governance, the Constitution itself should explicitly recognize and grant rights to trees, particularly those of critical importance, such as religious trees, heritage trees, ancient trees, protected species, public trees, and ecologically significant trees. While general environmental statutes can provide broader protection, constitutional recognition would offer stronger legal standing and ensure prioritized conservation for these vital natural entities. This approach would align with global advancements in environmental jurisprudence, where nature’s rights are increasingly being constitutionally enshrined.

As mentioned above, it is important to note that the Sri Lankan legal system recognizes the importance of trees generally and their role in maintaining a healthy ecosystem even though the country aims towards urbanisation and development. For example the Forest Ordinance No. 16 of 1907, the Flora and Fauna Protection Ordinance No. 02 of 1937 and the National Environmental Act No. 87 of 1980 provide with the primary legal standing, governing tree-related matters.

Table 27: Existing Legal Provisions in Related Statutes

Legal Provisions	Detailing
1. The Forest Ordinance	
Section 3	Establishes reserved forests and outlines the restrictions on activities within these areas.
Section 7	Details the prohibited and illegal activities such as felling trees, clearing land, and setting fires in reserved forests, etc.
Section 20	Power to make rules and provides for the protection of specific tree species and prohibits their removal without permission.



2. The Flora and Fauna Protection Ordinance	
Part I	Establishes national reserves and sanctuaries, including provisions for the protection of flora within these areas
Part IV	Specifically addresses the protection of plants listed in Schedule V and includes protection of tree species
3. The National Environmental Act	
Section 2	Establishment of the Central Environmental Authority
Section 21	Management policy for forestries
Section 31	Offences for persons who contravenes or fails to comply with any provision of the act.

To say that trees should have rights is not to say that no one should be allowed to cut down trees, nor is it to say that trees should have the same rights as humans. This can be identified as the researchers suggest, in a similar capacity as public interest but in this context, in the interest of specific categories of trees which must be protected and must be given legal rights. There is no generally accepted standard for the usage of the term legal rights and therefore many scholars argue that the user of the legal right must have the capacity and ability to institute legal actions on behalf and to gain relief and benefit from it. Additionally, the common law denies rights to natural objects, prioritizing property-owning human over minimal weighing of any values. Further, scholars stipulate that rights are inherently linked to the fundamental attributes of a sovereign state, particularly to its human constituents (Stone, 1972). They argue that if a nation's jurisprudence were to extend rights to non-human entities such as trees, it could precipitate a cascade of claims from other non-traditional claimants seeking similar legal recognitions (Stone, 1972). This may raise critical questions about the parameters and scope of legal personhood within a jurisdiction.

We, the authors suggest that the conferment of legal rights upon trees could align with the established principles of animal rights, however, recognizing trees as pivotal environmental stakeholders. Here the researchers emphasizes not merely on the critical role of trees in sustaining life of humans and animals, but an enhanced legal protection through the Constitution of Sri Lanka with enforceable rights for trees, mainly categories of religious trees, trees of antiquity, heritage trees, protected species of trees, public trees and ecologically important trees. These categories of trees can be analysed as follows:

“Religious Trees” are trees that hold sacred, symbolic, or ritual significance within a religious or spiritual tradition. These trees may be worshipped, protected, or revered due to their association with deities, myths, spiritual figures, or divine events. They often serve as focal points for worship, meditation, or ceremonial practices and are frequently found in religious texts, folklore, and sacred landscapes (Cusack, 1985). For example, the Bodhi tree in Buddhism is highly revered. The veneration of trees within Sri Lankan Buddhist traditions augments the cultural impetus for legal reforms aimed at tree conservation. Secondly, “Trees of Antiquity” can be recognized as ancient trees that have been around for centuries or even millennia (Rackham, 2006). They are often protected due to their historical and cultural value. The “Heritage Trees” are recognized for their historical, cultural, or ecological importance. They may be associated with significant events or figures. Further, “Protected Species of



Trees” focus of species of trees that are protected due to their rarity or ecological importance. This includes species that are endangered or have a limited distribution. Next, “Public Trees” located on public lands, such as parks, streets, and other government-owned properties, are often protected to preserve public green spaces. In the context of Sri Lanka, a nation with limited geographical expanses, the preservation of arboreal entities is particularly consequential for the regulation of air quality and thermal conditions, especially within urbanised vicinities and therefore protection of public trees in urban areas are highly important. Finally, “Ecologically Important Trees” play a crucial role in maintaining biodiversity and ecosystem health. They provide habitats for various species and contribute to the stability of the environment

Such reforms can entail the establishment of a legal mechanism for public interest litigation, enabling concerned entities to seek judicial remedies for the protection of trees through legal personhood. Even though the researchers discuss fortifying trees with legal personhood in Sri Lanka, this notion of legal standing for trees does not in any way anthropomorphize them or equate their rights with human rights. Therefore, specific rights must be established separately through the constitution in this regard.

As exemplified by the landmark precedent of *In Re Gault* 387 U.S. 1 (1967), which questioned and analyzed the juveniles possessing certain legal rights without encompassing the full spectrum of adult privileges. Therefore, the legal recognition of trees would not imply an extension of all human rights to them or to say anything as silly as that no one should be allowed to cut down trees but to acknowledge their intrinsic value and the ecological, religious and economical imperatives they fulfil (Stone, 1972). As researchers identify, the Sri Lankan environmental legislation focuses on the regulation of activities to protect the environment rather than delineating specific environmental rights categorically. The legal framework is geared towards the preservation and management of the country's natural resources, setting standards for pollution control, waste management, and the conservation of biodiversity. While these laws reflect a commitment to environmental stewardship, they do not explicitly confer individual environmental rights to trees with importance in Sri Lanka, instead placing the onus on regulatory compliance and environmental protection licensing which the researchers identify as a lacuna that must be filled by way of tree rights within the Constitution of Sri Lanka itself. Finally, the implementation of tree rights in the Constitution of Sri Lanka, while perhaps not widely recognized as a pressing issue currently, is imperative for the sustenance of life on Earth as well as other importance. (World People's Conference, 2010). As a nation, Sri Lanka's commitment to such environmental stewardship, despite its modest geographical footprint, has the potential to set a global precedent. By adopting tree rights, Sri Lanka can emerge as a pioneer, demonstrating to the world the practical application and benefits of such introductions, thereby inspiring global ecological reform and preservation.

The idea that nature should have legal rights was once seen as a radical or even laughable approach but it is now gaining real traction around the world. When Christopher Stone published his landmark article “Should Trees Have Standing?”



proposing that natural entities like trees and rivers should have the ability to be represented in court, the concept was largely dismissed (Stone, 1972). Even though, Justice Douglas expressed support for such an idea in the case of *Sierra Club v. Morton* 405 U.S. 727 the U.S. Supreme Court rejected the argument and the American Bar Association even published a poem mocking the notion that nature could hold legal standing (Franks, 2021). In the internationally arena early efforts to promote a Universal Declaration of Nature's Rights also struggled to gain momentum. However, in recent years, this once-marginal idea has gained renewed interest and support. This shift is centered by the philosophy of Earth jurisprudence, which calls for a legal system that recognizes the interconnectedness of all life and the intrinsic value of the natural world (Burdon, 2011).

One of the most significant developments in this area came in 2008, when Ecuador amended its Constitution to recognize the Rights of Nature under Article 10 and Chapter 7, Article 71-74. Since then, dozens of legal cases in Ecuador have invoked these rights to prevent harm to ecosystems like rivers and forests (Franks, 2021). Bolivia followed with a 2011 Constitutional Amendment introduced "the Rights of Mother Earth" explicitly equating the rights of nature with those of humans, asserting that nature has the right to remain undisturbed by large-scale development projects (Bolivia Constitution, 2011). Several other Latin American countries including Peru, Colombia, Belize, Costa Rica, Mexico, and Brazil have adopted similar laws. Notably, in 2019, Brazil's Superior Court of Justice recognized non-human animals as subjects of rights, drawing from an ecological interpretation of human dignity (Franks, 2021).

This growing recognition of nature's rights has spread to countries in Africa, such as South Africa, Zimbabwe, Uganda, and Nigeria, which have taken steps to embed nature's rights into law. In 2017, the African Commission on Human and Peoples' Rights emphasized the intrinsic value of sacred natural sites and called for their protection (Wilton, 2017). Even within international institutions, the conversation is evolving. The United Nations General Assembly has come close to formally integrating Earth jurisprudence into a global framework, and in 2015, Pope Francis used his global platform to urge humanity to re-evaluate its relationship with the environment and act as responsible stewards of the Earth (Franks, 2021). Together, these developments reflect a growing global consensus that nature is more than a resource to be exploited but it is a living system deserving of respect, protection, and legal recognition. Embracing nature's rights, both nationally and internationally, may prove essential in reimagining environmental law for a world facing deep ecological crises and striving for a more just and sustainable future.

In light of these global developments, the researchers argue that Sri Lanka, too, is well-positioned to take a significant step forward by incorporating the rights of trees and nature directly into its Constitution which was introduced in 1978. Rather than limiting such recognition to the directive principles of state policy which are aspirational and non-enforceable, constitutional recognition would create a legally binding framework safeguarding ecological integrity and biodiversity. Drawing on the successes of countries like Ecuador and Bolivia, Sri Lanka can create enforceable

CONCLUSIONS

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