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## **Indian Judiciary and Ecocentrism: A Conundrum Resolved Through Feminist Posthumanism**

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## **Indian Judiciary and Ecocentrism: A Conundrum Resolved Through Feminist Posthumanism**

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### **Abstract:**

In litigations concerning the protection of ecosystems, Indian judicial decisions *appear* to be shifting from anthropocentrism to eco-centrism. This essay argues that though the Courts seem to have a greater appreciation of eco-centrism, anthropocentrism runs deep into their seemingly ‘eco-centric’ decisions. It challenges the adequacy of the eco-centric understanding reflected in therein, through a critical reading of Courts’ quintessentially eco-centric judgements. It further argues that if a tangible shift to ecocentrism is desired, the Courts must revisit their understanding of Nature. Feminist posthumanism may serve as an effective lens to accomplish this. Drawing upon Astrida Neimanis’ application of feminist posthumanism, the essay rebuilds the understanding of non-human environment as a vivacious, expansive, and an *intrinsically* valuable entity with an independent *will* and *agency*, subsequently problematizing our anthropocentric hierarchies. Accordingly, the essay suggests, that if feminist posthumanism is injected into judicial decision-making, it could overhaul the deep-rooted anthropocentrism, and prompt a tangible shift towards ecocentrism.

Keywords: Anthropocentrism; Eco-centrism; Feminist-Posthumanism; Judiciary; Environment; Article 21

## **Indian Judiciary and Eco-centrism: A Conundrum Resolved Through Feminist Posthumanism**

Over the past decade, several public interest litigations filed for the protection of various ecosystems, have concluded in judicial decisions upholding animals' right to life under the Indian Constitution, and recognizing animals and rivers as juristic persons. Often, they have been celebrated as eco-centric decisions (Shenoy 2018; Nadkarni and Ghosh 2017; Shastri 2015).

In this context, I make two arguments in this essay. First, I argue that although the Courts appear to have a greater understanding and appreciation of eco-centrism, anthropocentrism runs deep into the seemingly eco-centric judicial decisions. I highlight the anthropocentric undercurrents and tensions within these decisions, simultaneously analysing the accuracy and adequacy of the eco-centric understanding reflected therein. Second, to achieve a tangible shift to ecocentrism, I suggest revisiting our understanding of non-human environment through a feminist posthumanism lens. To that end, I argue that this could be the first step towards achieving a shift to eco-centrism. This synthesis of feminist posthumanism and eco-centrism, is the primary contribution of this essay.

### **1 Understanding Anthropocentrism and Ecocentrism**

A pre-requisite to effective engagement with judicial decisions is understanding the relevant environmental ethics literature. Accordingly, in this section, I will engage with two ethical perspectives: anthropocentrism and ecocentrism.

Environmental ethics literature ascribes two kinds of *values* to various components of an ecosystem, instrumental value, and intrinsic value. The former is the value of things as *means* to further some other ends, whereas the latter is the value of things as ends in themselves regardless of whether they are also useful as means to other ends (Brennan and Yeuk-Sze 2021). Anthropocentrism is an ethical perspective which assigns intrinsic value to human beings alone (strong anthropocentrism), or a significantly greater amount of intrinsic value to humans than to non-human environment such that the protection or promotion of human interests at the expense of non-human environment is nearly always justified (weak anthropocentrism). It takes the position that humankind is the most significant entity in the world and hierarchies human over the non-human environment, assigning only instrumental value to the latter. Consequently, thus far, humankind has exploited natural resources to secure its own interests, which has had severe impacts on the non-human environment.

Anthropocentrism is systemic because it runs deep and appraises our decisions at all fronts, *vis.* social, legal, political, economic, and at all levels, individual, national, and global. For example, the widely adopted definition of sustainable development is itself anthropocentric, for it prescribes for judicious use of natural resources such that the development needs of the present generation are met, while leaving enough for the future generation to meet their own needs (Brundtland 1987). By limiting environmental conservation efforts in so far as they are instrumental in fulfilling human needs and interests, the definition does not account for Nature's intrinsic value or its worth beyond such anthropocentric instrumentality (Fox and Alldred 2020).

Contrastingly, eco-centrism is an ethical perspective which attaches intrinsic value to non-human environment, regardless of human acknowledgment or perception of the said value. This theory of autonomous intrinsic value is at the heart of eco-centrism, and it unburdens humanity from its obsession of attaching sole significance to humankind's value of an entity (Washington et al. 2017). At the same time, ecocentrism is not anti-human as it locates itself in the understanding that neither individual human or non-humans, can be considered the sole focus of value; no individual of any species can exist in isolation from conspecifics or other species (Washington et al. 2018). Accordingly, it focuses on holistic protection of natural entities including species, landscapes, and ecosystems (Woods 2011). Eco-centrists support both inter-human justice, and inter-species justice for the non-human world (Baxter 2005).

## 2 Anthropocentric Undercurrents in Eco-centric Judicial Decisions

Indian Courts have appeared to increasingly favour eco-centrism over anthropocentrism. However, a critical analysis of the quintessentially eco-centric judgements reveals compelling anthropocentric undercurrents.

### 2.1 *Animal Welfare Board of India v A Nagaraja*

This petition was filed against a popular sport, *Jallikattu*, where a bull is released into a crowd of people, who then attempt to tame the bull by attempting to get on their humps (Jallikattu 2022). The initial resistance against the sport of *Jallikattu* may be traced back to 2004, when a 14-year-old boy was plowed to death by a bull (Grushkin 2007). In May 2015, the Supreme Court banned this sport, allegedly also a 2000-year-old tradition. However, in 2017, in response to widespread protests in Tamil Nadu, the Prevention of Cruelty Act Against Animals Act 1960 (hereinafter PCA Act), was amended by the Central government, permitting *Jallikattu* (Sivapriyan 2020). Effectively, the sport continues with utter disregard for the Court's judgment.

The judgement was lauded as eco-centric for two reasons. First, it gave primacy to the PCA Act over Tamil Nadu Regulation of *Jallikattu* Act, 2009 (hereinafter TNRJ Act), declaring the latter repugnant. The Court compared provisions of both the Acts and concluded that TNRJ Act is an anthropocentric legislation while PCA Act is an eco-centric legislation (2014: para 73), and thus, the latter shall prevail. However, in doing so, the Court overlooked the inherent anthropocentric connotations of the PCA Act. Undoubtedly, the PCA Act furthers animal welfare, especially in comparison to the TNRJ Act. It lists certain acts causing unnecessary pain and suffering to animals as offences, however, it also lists certain acts as Exceptions, based on the *doctrine of human necessity* (PCA: 11(3)). The very act of giving primacy to human necessity over animal welfare is inherently anthropocentric. The Court's recognition of these Exceptions as 'reasonable restrictions' on the right to life of animals (2015: Para 60), is an example of weak anthropocentrism, defeating the very eco-centrism that the Court sought to further.

Second, it is labelled eco-centric because of its declaration of 'animal life' as an intrinsic part of Article 21. The Court said:

*"Every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding*

*the rights of humans, protects life and the word "life" has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, **including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.** So far as animals are concerned, in our view, "life" means something more than mere survival or existence or instrumental value for human-beings, but to lead a life with some intrinsic worth, honour and dignity.*" (2015: Para 62)

Evidently, anthropocentrism paved its way into the operative part of this decision. Here, in yet another manifestation of weak anthropocentrism, it reinforces the *doctrine of necessity*, subjecting animal life to human necessity. Moreover, while the Court does seem to attach some intrinsic value to animal 'life', w.r.t its inclusion under Art. 21, it includes animal life *only* in so far as it is instrumental to human life.

Interestingly, in its earlier decision in *Centre for Environment Law, WWF-I v Union of India (UOI) and Others*, albeit the Court did not engage with the notion of 'life' under Article 21, its understanding and application of the principle of eco-centrism is noteworthy:

*"Eco-centrism is nature-centered, where humans are part of nature and **non-humans have intrinsic value.** In other words, human interest does not take automatic precedence and **humans have obligations to non-humans independently of human interest...** our approach should be eco-centric and not anthropocentric and **we must apply the "species best interest standard"** ... We must focus our attention to safeguard the interest of species, **as species has equal rights to exist on this earth.**"* (2013: Para 39).

This understanding of ecocentrism is lost in the Jallikattu decision. Additionally, the Jallikattu decision has also diluted the *species best interest standard* by subjecting it to exceptions arising out of 'human necessity' (2015: Para 12).

Cumulatively, these observations reflect inadequacy in the Court's interpretation of eco-centrism and the limited extent of its adoption.

## 2.2 *Animals and Birds Charitable Trust and Ors. v Municipal Corporation of Greater Mumbai and Ors.*

A public interest litigation was filed before the Bombay High Court highlighting the plight of horses and ponies used in carriages for joy rides. The Court, taking cognizance of the deplorable conditions of the horse stables in Mumbai, declared driving horse carriages for joy rides, illegal (2015: Para 49). The High Court based its order on the premises that horse carriages in Mumbai did not qualify as 'public conveyance' under the Bombay Public Conveyances Act, 1920, because they were not being plied 'for hire for conveyance of persons and goods'.

Despite acknowledging the adverse impacts of the carriages on horses and the deplorable conditions of stables, the Court's final order only declares horse carriages for joy rides as illegal, reinforcing the very anthropocentrism it claims to address. By omitting to *explicitly* ban *all* horse carriages regardless of their purpose, the Court factored in human necessity (i.e., public conveyance) while determining animal welfare. This gives primacy to human interests over the interests of non-human others.

Jallikattu judgement's understanding of Article 21 was imported verbatim in this case (2015: Para 35,37), without addressing the former's anthropocentric tensions. Therefore, unsurprisingly, the Bombay High Court's decision itself reveals these tensions, i.e., animals' interests being placed secondary to certain human interests.

### 2.3 *Mohd. Salim v State of Uttarakhand and Lalit Miglani v State of Uttarakhand*

In March 2017, the Uttarakhand High Court, while noting the need to take extraordinary measures to preserve and conserve Rivers Ganga and Yamuna and their tributaries, declared them as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person (2017: Para 19). Shortly thereafter, in *Lalit Miglani v State Uttarakhand*, several other entities *vis. glaciers* including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls were declared as juristic persons by the High Court (2017: Para 65). Consequently, all these entities are entitled to protection under Article 21 (Alley 2019:8; Sarkar 2018).

Albeit praised as eco-centric, yet again, the rationale of the Court in both the judgements was overtly anthropocentric. A close reading of the *Mohd. Salim* decision reveals that the declaration of the rivers as juristic persons was for "subserving the needs and faith of the society" (2017: Para 14, 16). Their instrumentality to the "health and well-being of over half of the Indian population" (2017: Para 17), necessitated their declaration as juristic persons, consequently directing their preservation and protection.

The *Miglani* decision imports the same rationale of "subserving the needs of faith and society" to accord the status of juristic persons to a wider set of non-human entities (2017: Para 61). Subtle anthropocentrism finds its way into the judgement through reiteration of the idea that we must protect the Earth for our generations to come (2017: Para 60). However, the judgment does include a recognition of rivers' intrinsic right to not be polluted, (2017: Para 51) and it recognizes them as "scientifically and biologically living entities" (2017: Para 52).

### **3 Resolving the Conundrum through Feminist Posthumanism**

Critical assessment of judicial decisions reflects an earnest attempt to move towards eco-centrism, however the force of our inherently anthropocentric conscience has precluded an actual and comprehensive shift. Accordingly, we must consciously revisit our idea of a non-human environment. Central to this exercise is untethering ourselves from our innate anthropocentric worldview. Feminist posthumanism may serve as an effective lens to accomplish this.

### 3.1 *Unpacking Feminist Posthumanism*

Feminist posthumanism lies at the convergence of posthumanism and post-anthropocentrism (Braidotti 2019). Posthumanism critiques the inherently exclusionary, singular understanding of ‘human’ as the white, able-bodied, middle class, heterosexual Man (Jones and Otto 2019). Post-anthropocentrism critiques the idea that this Man is the central figure who is justified in dominating Nature (Jones and Otto 2019) and destabilizes the notions of species hierarchy. Bringing together these two critiques, feminist posthumanism problematizes the separation and centralization of ‘Man’ from all those considered non-human, i.e., “the colonized and the enslaved, the marginalized and the non-citizen, the woman and the animal-which all of them are made into Other than rational Man”. Therefore, feminist posthumanism might best be conceptualized as an “expansive, inclusive and non-hierarchical way of thinking about the situation of the human in a more-than-human world” (Neimanis 2014: 14). Accordingly, it questions the binary differentiation between Nature and culture; human and non-human; human from animal; and self from environment (Niccolini and Ringrose 2019: 1). I will expand this discussion in the next section.

### 3.2 *Synthesizing feminist posthumanism and eco-centrism*

Albeit a comprehensive comparison between feminist posthumanism and eco-centrism is absent from environmental ethics and feminist theory, the foregoing definitions provide a valuable que for such comparison. Both approaches seek to decenter the focus on humans. However, while ecocentrism seeks to do so by recognizing the inherent value of the non-human environment, feminist posthumanism operates on a more fundamental level, problematizing the very understanding of ‘human’ as excluding the non-human, and argues that both human and non-human are inseparable (Neimanis 2014: 15-16). This inextricability challenges anthropocentric hierarchies. Dismantling such hierarchies could, in turn, enable us to acknowledge the inherent value of non-human environment, beyond its instrumentality for humans. Consequently, it could fuel the project of ecocentrism. Therefore, arguably, feminist posthumanism could be the first step towards eco-centrism.

In this section, we will use three key concepts of feminist posthumanism, i.e., *natureculture*, intra-action, and material agency to rethink our relationship with non-human environment as inseparable and inter-dependent on Nature. Hereinafter, the terms ‘Nature’ and ‘non-human environment’ may be used interchangeably.

*Natureculture* attempts to break the binary differentiation between Nature and culture and the concomitant hierarchies of culture over nature. Culture is largely associated with ‘human’ but is inextricably entangled with the biological and ecological setting called ‘Nature’ (Neimanis 2014: 15). Such a state of existence is termed as *natureculture* (Haraway 2004). For example, the human body is made of four Classical Elements *vis.* earth, fire, air and water (Ball 2004); some traditions talk about an additional fifth element i.e., space (Saraswati 2007; Subbarayappa 1965:1). Thus, that which in popular understanding, may be classified as ‘Nature’, is what *essentially* constitutes a ‘human’, and is therefore inseparable from it. Furthermore, ‘nature’ too has ‘culture’, beyond the narrow understanding of ‘human’ culture. Neimanis explains by expressing rivers’ movements as their ‘culture’. She writes, “the river writing the canyon, in a

slow-motion, cursive script...attest(s) to creativity, culture and 'language skills' before or beyond something called the cultural human" (Neimanis 2014: 16).

Accordingly, one cannot delineate where evolution ends and history begins, where genes stop and environments take up, where culture rules and nature submits, or vice versa (Haraway 2004: 2). This understanding that both human and non-human environments are largely inseparable nurtures a sense of mutual respect and equality, effectively displacing anthropocentric hierarchies.

*Natureculture* also makes humans and non-human others inter-dependent. Neimanis suggests they constantly *world* each other and *create* each other (Neimanis 2014: 17); such inter-dependent *creation* is called *intra-action* (Neimanis 2014:16). However, their independent agencies enable them to control their respective actions. Therefore, humans should be mindful while exercising their agency (Neimanis 2014: 17). Unmindful exercise of anthropocentric agency to the detriment of Nature, could eventually backfire because we are worlding the nature which is simultaneously worlding us. Thus, ironically, an anthropocentric view may not even be, ultimately, in our own (human) interest. (Neimanis 2014: 10). For example, anthropocentric climate change has catastrophic impacts for human beings, in the form of extreme weather events. The very real threat of submergence of Small Island States, and the concomitant loss of life and human migration due to such extreme weather events, attests to this. That being said, we are never in *full* control of these *worldings* because, part of Nature's process of worlding us is based on an exercise of its independent agency. Thus, we may control some, but not all, *intra-action* (Neimanis 2014:17). This problematises our sense of superiority and absolute control over non-human environment.

A third, related concept to reassess our understanding of non-human environment is recognizing its *material agency*. Nature is *not inert, powerless, or submissive* (Neimanis 2014: 20). It has an independent *will* and *agency* which enables it to be a more than a silent observer or a backdrop to humankind. Nature manifests its *will* in the form of earthquakes, volcanic eruptions, tsunamis, tornadoes etc., often with a lethal force. At the same time, this agency of Nature is also nurturing, and supports both human and non-human life forms. Acknowledging such an agency increases our sense of a *shared* presence with nature, as opposed to a human-dominated presence (Neimanis 2014: 21).

Accordingly, feminist posthumanism attempts to systemically deconstruct anthropocentric hierarchies. In that, it radically reimagines Nature as an active agent, capable of subjugating humans with its lethal force, as opposed to a passive subject, existing for and at the mercy of human will. In doing so, it attempts to inject respect and equality in our understanding of the non-human environment. Thus, mainstreaming it in judicial decision making could be an effective means to counter the strong anthropocentric tendencies.

#### **4 Conclusion**

Undoubtedly, feminist posthumanism rather radically challenges our current perception of the non-human environment, to a point where one could harbour skepticism about its effective application in judicial decision making. That being said, we must acknowledge that the judiciary has indeed made an earnest attempt to mainstream eco-centrism. Unfortunately, it has



been limited by the strong anthropocentric predispositions, shared by all of humankind. Therefore, arguably, to counter these radical predispositions, perhaps an equally radical alternative is required. To that end, employing feminist posthumanism in judicial decision-making could potentially overhaul the deep-seated anthropocentrism, and prompt a tangible shift towards ecocentrism.

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