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A plea for survival: Can the return to eco-centrism strengthen the legal protection of nature in Sri Lanka?

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The right to life of all living beings and the duty of humans to co-exist with nature have been recognized in Sri Lankan tradition and religious practice for centuries. Yet, environmental destruction, degradation and pollution due to human activities have become a common phenomenon in contemporary Sri Lanka. Anthropocentric thinking pervades Sri Lankan jurisprudence. Laws and judicial decisions have largely failed to recognize the rights of nature to be protected for its relational and intrinsic values. There is also limited acknowledgement that the very survival of human beings depends on the continuous existence of Mother Earth. Significant shifts from human-centred thinking are increasingly observed in other jurisdictions. This article considers how environmental protection in Sri Lanka could be strengthened through the adoption of a greater ethic of eco-centrism. The overarching question posed considers how the examination of eco-centrism in Sri Lankan religious and cultural texts might enable the emergence of an Earth jurisprudence approach to nature protection. The article highlights traditional and religious teachings from Sri Lanka to emphasise the need for greater recognition of existing histories and cultures as the foundation of contemporary law for the protection of nature. The article draws on lessons from the emergence of Earth jurisprudence globally to provide recommendations for legal reform in the Sri Lankan context.

Keywords: *rights of nature, environmental protection, eco-centrism, earth jurisprudence*

1 INTRODUCTION

Sri Lanka has been blessed with natural beauty; abundance of flora and fauna, breathtakingly beautiful landscapes, mist covered mountain peaks, golden sandy beaches, calm clear blue oceans, roaring waterfalls and magnificent forests.[1] Despite being a small island of 65,556 km², the country presents remarkable levels of biological

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1. Tariq Jazeel, *Sacred Modernity: Nature, Environment, and the Postcolonial Geographies of Sri Lankan Nationhood* (Liverpool University Press, 2013); Shantha Kumara Withana, *ශ්‍රී ලංකාවේ සුන්දර ස්ථාන* (Rathsara Poth, 2013); Shantha Kumara Withana, *වල් අලින්ගේ රාජධානි* (Rathsara Poth, 2013); PM Senarathna, *ශ්‍රී ලංකාවේ වනාන්තර* (Sarasavi Publisher, 2017); Sisira Kumara Nambuge, *වන සිරියක අසිරිය* (Sooriya Publishers, 2020).

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diversity with 722 species of freshwater fish, amphibians, reptiles, birds and mammals with 49 percent of all species found nowhere else on Earth.[2]

In Sri Lanka, understandings of nature are deeply linked to the nation's history, culture and religion.[3] In fact, the Sri Lankan tradition and practice of conserving nature dates back to the ancient kings. Influenced by religious ideologies, respect for nature formed one of the main duties both of the rulers and the general public.[4] It was not uncommon in ancient Sri Lanka to treat nature on par with or even as superior to human beings.[5]

Short-sighted development and economic plans, rushed for the sake of personal and political gains in recent years, have meant that Sri Lanka is rapidly losing its invaluable natural assets. This is despite long traditions evidencing the reverence of the non-human world. Key examples of this include the construction of a road through the Sinharaja forest reserve – a UNESCO World Heritage site[6] and the country's last viable area of primary tropical rainforest.[7]

Further examples include the destruction of the Anawilundawa wetland and the creation of an artificial beach in Mount Lavinia.[8] The Anawilundawa wetland is one of six Ramsar wetlands in Sri Lanka. The Anawilundawa wetland is a breeding and a feeding ground and a habitat for a substantial amount of aquatic birds; and is also home to different species of rare butterflies, orchids and lichens. Moreover, the Fulvous Whistling Duck or Large Whistling Teal, considered to be an extremely rare migratory bird, was spotted breeding in the wetland in 2015 for the first time in the recorded history.[9] Yet, this irreplaceable wetland has been destroyed to make way for prawn farm tanks.[10]

2. Dinal JS Samarasinghe, Eric D Wikramanayake, Sevvandi Jayakody, Suranjan Fernando, Jagath Gunawardana and Alexander Braczkowski, 'A Biodiversity Hotspot in Turmoil: Doing Away with Circular 5/2001 Could Have Catastrophic Consequences for Sri Lanka's Forests' [2021] *Conservation Science and Practice* <https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/csp2.466> accessed 15 July 2021, 4.
3. Jazeel (n 1) 1.
4. Devaka Weerakoon, 'A Brief Overview of the Biodiversity in Sri Lanka' in DK Weerakoon and S Wijesundara (eds), *The National Red List 2012 of Sri Lanka: Conservation Status of the Flora and Fauna* (Biodiversity Secretariat of the Ministry of Environment and National Herbarium, Department of National Botanic Gardens, 2012) xix; Lalitha Fonseka, *හෙළ රජ දරුවන්ගේ ආර්ථික ප්‍රතිපත්ති* (Lalitha Fonseka, 2009) 76–108; Robert Knox, *An Historical Relation of the Island of Ceylon* (David Karunarathne tr, MD Gunasena, 2020) 81–133; මහාවංශය (Buddhist Cultural Centre, 2020).
5. Knox (n 4) 92–93; *මහාවංශය* (n 4).
6. Arjuna Ranawana, 'President Orders Resumption of Road Construction through Sinharaja' *Economynext* (Colombo, 29 August 2020) <https://economynext.com/president-orders-resumption-of-road-construction-through-sinharaja-73440/> accessed 30 August 2020.
7. United Nations Educational, Scientific and Cultural Organization (UNESCO), 'Sinharaja Forest Reserve' (*UNESCO World Heritage Convention*) <https://whc.unesco.org/en/list/405/> accessed 28 September 2020.
8. 'New Artificial Beach for Mount Lavinia' *Newswire* (Colombo, 20 April 2020) <www.newswire.lk/2020/04/20/new-artificial-beach-for-mount-lavinia/> accessed 20 April 2020.
9. Ama H Vanniarachchy, 'Anawilundawa Withered' *Ceylon Today* (Colombo, 5 September 2020) <https://ceylontoday.lk/news/anawilundawa-withered> accessed 06 September 2020.
10. Imesh Ranasinghe, 'Anawilundawa wetland destruction: Businessman, backhoe driver remanded' *Economynext* (Colombo, 31 August 2020) <https://economynext.com/anawilundawa-wetland-destruction-businessman-backhoe-driver-remanded-73481/> accessed 30 August 2020; Vanniarachchy (n 9).

Further, in the artificial beach project in Mount Lavinia, the Coast Conservation Department of Sri Lanka dredged 150,000 m3 of sand, two to six kilometres offshore of Ratmalana station to create the Mount Lavinia beach.[11] The project, however, had no tangible outcomes and it is predicted that most of the sand will be washed away, adversely affecting the biological and ecological diversity in the coastal stretch from Mount Lavinia to Wellawatte which is of nearly 15 kilometres in length and has remained relatively stable for many decades notwithstanding seasonal changes.[12]

These incidents (and many similar incidents both preceding and following them)[13] clearly mark a shift from the traditional Sri Lankan acceptance of humans as being merely a part of the environment. The continuation of environmental destruction has also adversely affected the people in the country whose lives are inextricably entwined with nature. The gravity of this shift is further exacerbated by contemporary Sri Lankan environmental litigation which often carries an anthropocentric flavour. Such an approach centres economic development and thus instrumentalizes relationships with nature.

This article engages with the broad spectrum of values that characterize human-nature relationships. Dominant neo-liberal framings privilege monetary quantification of the benefits nature provides to humans (instrumental values). In contrast, intrinsic values are widely held to sit at the other end of the spectrum – where nature is held to be valuable in its own right. This article champions a move towards eco-centric approaches in law. Here, we take ecocentrism to encompass not only intrinsic values but also relational ones. Relational values seek to bridge the divide between instrumental and intrinsic values and concern how people connect to each other in relation to nature (e.g. stewardship, individual and collective identity).[14] Thus, in this article we rally against the legal positivism which underpins western legal systems to explore a 'more than human law' which recognizes the relational stewardship responsibilities to nature such as those contained within Indigenous and traditional laws and ontologies.

11. Charitha Pattiaratchi, Nadiya Azmy and Asha de Vos, 'The tragedy of Mount Lavinia beach' (Oceanswell.org) <https://oceanswell.org/wp-content/uploads/2020/06/Mount-Lavinia-beach-nourishment-programme-new.pdf> accessed 23 August 2020.
12. Ibid.
13. The most controversial of these incidents include the decision of the Minister of Irrigation in Sri Lanka to build two reservoirs in the Sinharaja rainforest to supply water to the people in Hambanthota, a town situated in the dry zone of Sri Lanka nearly 175 km away from the world heritage site; and the acquisition of over 5,000 acres of the ancestral lands of veddas (an Indigenous group of persons in Sri Lanka) in the Rambakan Oya forest by Mahaweli Development Authority of Sri Lanka for an agricultural and livestock development project involving private companies. See Mahadiya Hamza, 'Sri Lanka Deforestation: Irrigation Reservoirs to be Built in Sinharaja' *Economynext* (22 March 2021) accessed 15 April 2021; Mahaweli Authority of Sri Lanka, 'රඹකැන්ඔය මහවැලි කලාපයේ වාණිජ මට්ටමේ බඩ ඉරිහු වගාව" (Mahaweli Authority of Sri Lanka, 12 September 2020) <http://mahaweli.gov.lk/PDF/rambaken-oya/Rambakenoya% 2012-9-20.pdf> accessed 01 July 2021, 1.
14. Kai MA Chan, Patricia Balvanera, Karina Benessaiah, Mollie Chapman, Sandra Díaz, Erik Gómez-Baggethun, Rachelle Gould, Neil Hannahs, Kurt Jax, Sarah Klain, Gary W Luck, Berta Martín-López, Barbara Muraca, Bryan Norton, Konrad Ott, Unai Pascual, Terre Satterfield, Marc Tadaki, Jonathan Taggart, and Nancy Turner, 'Opinion: Why Protect Nature? Rethinking Values and the Environment' [2016] *Proceedings of the National Academy of Sciences* <www.pnas.org/content/pnas/113/6/1462.full.pdf.> 28 October 2021.

Significant shifts in human-centred thinking are increasingly observed in other jurisdictions.[15] Particularly, in recent years, there is growing recognition of the rights of nature to be protected or preserved for the relational and intrinsic values that it represents.[16] At the same time, there is increasing incorporation within the law of plural understandings of human-nature relationships. However, to date Sri Lanka has not re-embraced, within its legal systems, the eco-centric principles already existing in its culture, tradition and religious practice. Therefore, this article seeks to make a contribution toward answering the question of how the examination of eco-centrism in Sri Lankan religious and cultural texts might enable the emergence of an Earth Jurisprudence approach to nature protection.

To answer this overarching question, first, the concept of eco-centrism and the notion of rights of nature will be examined. Next, the ancient traditions, cultures and religious practices in Sri Lanka, which place nature on par with or at a higher place than human beings, will be discussed. Through the examination of traditional relationships with the natural world, light will be shed on how Earth jurisprudence is already reflected in the very roots of the value system of the country. The analysis then moves to discuss the contemporary structure of the Sri Lankan legal system and the role that the ancient traditions, practices, and the religion play within such legal system. Following this, there is identification of opportunities for the recognition of Earth jurisprudence and the acceptance of the rights of nature in the modern environmental legal regime in Sri Lanka. Lessons Sri Lanka might learn from comparative jurisdictions across the world are then considered to assess how Earth Jurisprudence might be advanced in Sri Lanka. Finally, paths are laid down that Sri Lanka could take to re-embrace Earth jurisprudence.

2 ECO-CENTRISM, EARTH JURISPRUDENCE AND RIGHTS OF NATURE

The legal recognition of eco-centrism within Western legal systems was deemed preposterous up until the 1950s; and, in the view of some, legal personhood of nature remains a ludicrous proposition.[17] Peter Burdon, quoting legal philosopher Philip Allot, argues that 'law cannot be better than society's idea of itself';[18] and

15. The most prominent examples include the recognition of legal personhood of Whanganui River and Te Urewera National Park in New Zealand, recognition of legal personhood of Ganga and Yamuna rivers in India, recognition of legal personhood of land in Bolivia and recognition of legal personhood of all rivers in Bangladesh.

16. Erin L O'Donnell and Julia Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand and India' [2018] *Ecology and Society* <www.ecologyandsociety.org/vol23/iss1/art7/> accessed 2 January 2021; Gabriel Eckstein, Ariella D'Andrea, Virginia Marshall, Erin O'Donnell, Julia Talbot-Jones, Deborah Curran and Katie O'Bryan, 'Conferring Legal Personality on the World's Rivers: A Brief Intellectual Assessment' [2019] *Water International* 1.

17. For instance, see Holmes Rolston, 'Rights and Responsibilities on the Home Planet' [1993] *Yale Journal of International Law* 18; Donald Worster, 'The Rights of Nature: Has Deep Ecology Gone too Far?' [1995] *Foreign Affairs* 111; Erin Fitz-Henry, 'The Natural Contract: From Levi-Strauss to the Ecuadorian Constitutional Court [2012] *Oceania* 264; Laura Nielsen, *The WTO, Animals and PPMs* (Martinus Nijhoff Publishers, 2007).

18. Peter Burdon, 'Wild Law: The Philosophy of Earth Jurisprudence' [2010] *Alternative Law Journal* 62, 62–63.

consequently, if people believe that the ultimate goal of the universe is to serve human beings, one cannot expect law to serve all living beings.[19]

Worster cites the British naturalist Charles Darwin when explaining that moral values evolve over time. Such values start from a restricted focus on the self and gradually expand their scope to include the entire web of life.[20] Worster describes Darwin's belief that this law of progress will one day subject all living beings to the ethical purview of human beings and they will become a part of the wider earth community empathetically and biologically.[21] Similarly, in the 1930s and 1940s, Aldo Leopold, whose idea of a 'land ethic' largely influenced the ecological movement, deviated from extreme anthropocentrism and suggested that 'whether a thing is right or not depends on its role in the preservation of integrity, stability, and beauty of the biotic community'.[22]

In Western legal scholarship, the strongest recognition of an eco-centric ideology has been argued for by Christopher D Stone[23] and Roderick Nash.[24] Nash holds that humanity has no right to place its interests above those of non-human nature.[25] He believes in the liberation of nature and emphasizes on the necessity of freeing the oppressed entity to proceed according to its own course.[26] According to Stone, there are alternate ways of attaining environmental protection, but a rights-based approach is the most appropriate mechanism to create a rational and a comprehensive legal framework to improve environmental protection.[27]

Eco-centric ideologies such as these have contributed to the growth of a separate school of law known as 'Earth jurisprudence'. Earth jurisprudence is a theory of law and governance that acknowledges and emphasizes the existence of human beings as a part of the broader Earth community.[28] It recognizes the separation between humans and nature as the primary cause of the current environmental crisis and argues against treating environment as a property by the man and the use of it solely for their own benefit.[29] O'Donnell and Jones argue that the complexities of modern environmental pressures require innovative institutional arrangements. Recognizing legal personhood to nature is thus argued to be one such legal development.[30]

It is also pivotal to this discussion to ascertain the different ways in which the law has recognized nature. Western legal systems tend to distinguish between the 'legal person'

19. Pablo Sólon, 'The Rights of Mother Earth' in Vishwas Satgar (ed), *The Climate Crisis* (Wits University Press, 2018) 113.
20. Donald Worster, 'The Intrinsic Value of Nature' [1980] *Environmental Review* 43, 47; See also, Christopher D Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (3rd edn, Oxford University Press, 2010) 1.
21. Worster (n 20) 47.
22. Aldo Leopard, *A Sand County Almanac* (Oxford University Press, 1949) 224.
23. Christopher D Stone, 'Should Trees Have Standing? – Towards Legal Objects' [1972] *Southern California Law Review* 45; Stone (n 20).
24. Roderick Nash, *The Rights of Nature: A History of Environmental Ethics* (The University of Wisconsin Press, 1989).
25. Ibid.
26. Ibid.
27. Stone (n 23); Stone (n 20).
28. Burdon (n 18) 62; Cormac Cullinan, 'A History of Wild Law' in Peter Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 13.
29. Ibid.
30. O'Donnell and Talbot-Jones (n 16) 1.

and 'legal subject'.[31] From a legalist perspective, the legal person is a construction of law – a legal fiction. The legal person comes into being through the assignment of rights and duties.[32] The idea of legal personhood of nature is mostly prevalent in common law jurisdictions.[33] By contrast, civil law jurisdictions use the more specific and flexible idea of 'nature as a legal subject' which enables the legislature or the judiciary to create the specific rights held by the particular legal subject.[34] The law also recognizes the notion of nature as a living being. O'Donnell distinguishes between living persons and living entities (animals, plants, fungi etc.) and argues that a living entity would not hold any legal rights or duties without being conferred the status as a person (living or legal).[35] Therefore, she holds that recognition of something as a living entity is merely an extension of existing legal frameworks which provides specific legal protection for certain entities such as animals or threatened species.[36] While the acceptance of legal personhood in modern legal frameworks does seem innovative, the origin of rights of nature harks back to ancient practices and pantheistic beliefs that nature and divinity are inextricably interconnected. Many Indigenous communities have deep-rooted cultural and spiritual links to their ancestral lands, and the natural resources situated therein have formed a vital part of their lifestyle.[37]

According to Andean belief, the rights of human beings are intertwined with mother nature and humans have a duty to live peacefully with nature and to protect her.[38] Andean Indigenous people embrace the concept of *sumak kawsay* which emphasizes the idea of living well, in harmony with people and nature.[39] Māori tradition recognizes the connectedness between human actions and the natural environment, and accepts that the domination of the environment by human beings is subject to certain limitations.[40] According to Māori belief, human beings shall respect and enhance the quality of nature and natural resources and shall not use them solely to advance human interests.[41] Aho states that 'personification' of the natural world is

31. Erin O'Donnell, 'Rivers as Living Beings: Rights in Law, but no Rights to Water?' [2020] *Griffith Law Review* 643, 648.
32. Ngaire Naffine 'Legal Persons as Abstractions: The Extrapolation of Persons from the Male Case' in Visa AJ Kurki and Tomasz Pietrzykowski (eds), *Legal Personhood: Animals, Artificial Intelligence and the Unborn* (Springer, 2017) 16; O'Donnell (n 31) 649.
33. O'Donnell (n 31) 649.
34. Ibid.
35. Ibid, 650.
36. Ibid.
37. Eric Dannenmaier, 'Beyond Indigenous Property Rights: Exploring the Emergence of a Distinctive Connection Doctrine' [2008] *Washington University Law Review* 53, 71.
38. Hannah White, 'Indigenous Peoples, the International Trend Towards Legal Personhood for Nature, and the United States' [2018] *American Indian Law Review* 129, 138; Vicenta Mamani-Bernabé, 'Spirituality and the *Pachamama* in the Andean Aymara Worldview' in Ricardo Rozzi, F Stuart Chapin III, J Baird Callicott, STA Pickett, Mary E Power, Juan J Armesto and Roy H May (eds), *Earth Stewardship: Linking Ecology and Ethics in Theory and Practice* (Springer, 2015) 65–76.
39. Elizabeth Macpherson, 'The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in the United States of America and Mexico' (2021) *Duke Environmental Law and Policy Forum* 327, 333.
40. John Patterson, 'Respecting Nature: A Māori Perspective' [1998] *Worldviews* 69.
41. Mike Boyes, 'Re-envisioning nature from a New Zealand Māori perspective' (European Institute for Outdoor Adventure Education and Experiential Learning (EOE) conference, Ratece-Planica, 2010) 3–5 <www.researchgate.net/publication/315449649_Re-envisioning_nature_from_a_New_Zealand_Maori_perspective> accessed 15 July 2021.

an inherent characteristic of the Māori tradition with Māori worldviews seeing rivers as having their own life force and spiritual integrity.[42] Similarly, Indigenous ontologies of the continent currently called Australia place nature on a par with human beings and holds that animals, plants and natural forces are all alive and energised by a spirit.[43]

The spirituality attached to nature in Indigenous cultures is the philosophical basis for the notion of personhood of nature.[44] More profoundly, says O'Donnell, the recognition of all of nature as subjects before the law is mostly the result of Western legal systems absorbing the concepts from the traditional legal frameworks of Indigenous communities.[45] In fact, 'the most transformative cases of rights of Nature have been consistently influenced and often actually led by Indigenous peoples'.[46] This view is shared by Tănăsescu, who citing Kauffman and Martin holds that the recognition of rights of nature is a codification of the 'Indigenous cosmovision that Nature is sacred, possesses its own rights, and is part of a living community in which humans exist' for Western legal purpose.[47]

In certain jurisdictions the origin of rights of nature lies amongst religious beliefs and practices. Most particularly, in India, the legal personhood accorded to nature is linked with Hinduism. According to Alley, 'for centuries, Hindu deities have been viewed as personifications of abstract energies or as real beings embodying divine energies and qualities'.[48] Today, the river Ganga is personified as a Goddess and called 'Ganga Maa' or 'Mother Ganga' and one dip in the river is considered as having the power of removing one's sins.[49] This religious significance of natural resources is the underlying reasoning behind granting legal rights to the rivers in India.

Similarly, Earth jurisprudence and the rights of nature are not alien concepts to the Sri Lankan tradition and religious practice. Having considered the recognition of ecocentrism and rights of nature in academic literature and traditional ideologies globally, it is to the specific Sri-Lankan context that this piece now turns.

42. Linda Te Aho, 'Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand - the Waikato River Settlement' [2009] *Journal of Water Law* 285, 285; O'Donnell (n 31) 644.
43. Carol Lee Birrell, 'Meeting Country: Deep Engagement with Place and Indigenous Culture' (PhD thesis, University of Western Sydney, 2006) 135–70, <https://researchdirect.westernsydney.edu.au/islandora/object/uws:2519/datastream/PDF/view> accessed 15 July 2021.
44. Vicki Grieves, 'Aboriginal Spirituality: A Baseline for Indigenous Knowledges Development in Australia' [2008] *Canadian Journal of Native Studies* 363, 363; White (n 38) 130–31.
45. O'Donnell (n 31) 647.
46. Erin O'Donnell, Anne Poelina, Alessandro Pelizzon and Cristy Clark, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights for Nature' [2020] *Transnational Environmental Law* 403, 405.
47. Mihnea Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' [2020] *Transnational Environmental Law* 429, 434.
48. Kelly D Alley, 'River Goddesses, Personhood and Rights of Nature: Implications for Spiritual Ecology' [2019] *Religious Environmental Activism in Asia: Case Studies in Spiritual Ecology* 502, 507.
49. Kelly D Alley, 'Idioms of Degeneracy: Assessing Ganga's Purity and Pollution' in Lance Nelson (ed), *Purifying the Earthly Body of God: Religion and Ecology in Hindu India* (University of New York Press, 1998) 299; See also, Kelly D Alley, 'Ganga and Gandagi: Interpretations of Pollution and Waste in Benaras' [1998] *Ethnology* 127.

3 ECO-CENTRISM IN THE SRI LANKAN CULTURAL AND RELIGIOUS TRADITION

There is a strong history of eco-centrism in traditional Sri Lankan cultural and religious tradition. Trees were given a divine status and tree worship was widespread in Sri Lanka, long before the arrival of Buddhism.[50] According to *Manusmruti*,[51] water is considered divine, and deforestation and destruction of wildlife are considered sins.[52] These ideologies influenced ancient Sri Lanka as the Aryans brought with them some form of Brahmanism when they first arrived in the island.[53]

The Sinhalese Buddhist legacy in Sri Lanka, which claims a heritage of 2,500 years of civilization,[54] personifies natural objects in different circumstances. According to the Buddhist belief, all 28 Buddhas from Thanhankara to Gautama are sheltered by trees in the attainment of the supreme enlightenment.[55] The great teacher of the Dhamma of present times and the fourth Buddha born in this *Badra Kalpa*,[56] 'Gautama' attained supreme enlightenment under an Asathu tree known as the Sacred Fig (Ficus religiosa) (today, the Asathu tree is commonly known as Bodhi).[57] The phrase '*Dutiyañ ca animmisam*' in the Vandanā Gathā (a verse from the Buddhist worship songs) explains how Gautama Buddha paid tribute to the tree that sheltered him by *performing Animisa Lōcana Bō dhi Poojā* (looking at the tree without blinking) for a week.[58] This practice signifies the deep mutual respect of the more-than-human world embedded in Buddhist teachings.

50. AGS Kariyawasam, *Buddhist Ceremonies and Rituals of Sri Lanka* (Buddhist Publication Society, 1998) 33.
51. An ancient legal text used by teachers of Dhamma in Hinduism.
52. Fonseka (n 4) 84–91.
53. Kingsley M De Silva, *A History of Sri Lanka* (University of California Press, 1981) 9.
54. Wilhelm *Geiger, The Mahavamsa (Asian Educational Services, 2003)*.
55. Thanhankara Buddha under a Ruk Aththana tree or Milkwood Pine, Medhankara Buddha under a Kaela tree, Saranankara Buddha under a Palol tree, Deepankara Buddha under a Neralu tree or a Palol tree, Kondanna Buddha under a Sal tree, Mangala, Sumana, Raevatha and Sobhitha Buddhas under the Na or Ironwood trees, Anomadassi Buddha, under a Kumbuk or an Arjun tree, Paduma Buddha and Narada Buddha under a Murutha tree, Padumuththara Buddha under either a Kiri Palu tree or a Hora tree, Sumedha Buddha under a Bak Mee tree, Sujatha Buddha under a Una or Bamboo tree, Piyadassi Buddha under another Kumbuk tree or an Arjun tree, Aththadasi Buddha under a Sapu or Yellow Champaca tree, Dhammadasi Buddha under a Rath Karaw tree, Siddhaththa Buddha under a Kinihiriya or a Buttercup tree, Tissa Buddha under a Kohomba or a Neem tree, Pussa Buddha under a Nelli or a Gooseberry tree, Vipassi Buddha under a Palol tree, Sikhi Buddha under an Etamba or Sri Lankan Mango tree, Vessagu Buddha under a Sal tree, Kakusanda Buddha under a Great Mara tree, Konagama Buddha under an Attikka or Dimbul tree, Kashyapa Buddha under a Nuga or Banyan tree; '28 Buddhas' (Asian and African Studies Blog, 19 June 2015) <https://blogs.bl.uk/asian-and-african/2015/06/28-buddhas.html> accessed 16 July 2021.
56. *The Pabbata Sutta* of *Samyutta Nikaya* defines *Badra Kalpa*. Accordingly, if a man would come and softly rubbed a great mountain of rock with a very soft silk shawl once every hundred years, the time which it would take to waste away the mountain, consumed by the effort is shorter than the *Badra Kalpa*. It literally means 'an immense period of time', perhaps several million years. 'A Mountain: *Pabbata Sutta*' (*dhammatalks.org*) <www.dhammatalks.org/suttas/SN/SN15_5.html> accessed 16 July 2021.
57. Balangoda Anandamaithreya, බුද්ධ චරිතය (Samayawardhana Book Shop (Pvt) Ltd, 2008) 62–66.
58. Ibid, 73; Elgiriye Indaratana Maha Thera, *Vandanā: The Album of Pāḷi Devotional Chanting & Hymns* (Mahindarama Dhamma Publication, 2002) 10.

According to *Mahavamsa*, the Great Chronicle of Ceylon, a branch of the Asathu tree was brought from India to Ceylon by Arhat Sangamitta, the daughter of Asoka the Great and was planted in Anuradhapura in 288 BC.[59] 'Bodhi Vandanā' (worshipping of the Bodhi/Asathu tree) has been an integral part of the lives of the Sri Lankan Buddhists ever since for nearly 2000 years. Today every Buddhist temple has a Bodhi tree. The verse of the Buddhist worship song (Vandanā Gathā) states:

> Vandāmi chetiyam sabbam
> Sabba thāne su patitthitam
> Sāririka dhātu Mahābodhi
> Buddha rupam sakalam sadā
> In other words, Buddhists visiting the temple shall worship the stupa (a structure containing relics), Bodhi and the statues of Lord Buddha. This is but one example of how Buddhist tradition elevates nature to a place of divine worship.

The Kalinga-Bodhi Jataka, 465th of the *Jathaka Tales* (Stories of the Buddha's past lives), holds that the only place where a Buddha can attain the supreme enlightenment is under a tree. Therefore, the tree which shelters Buddha is itself worthy of worship.[60] The Vandanā Gathā continues:

> Yassa mūle nisinno va
> Sabbāri vijayam akā
> Patto sabbaññutam satthā
> Vande tam Bodhi-pādapam
>
> Ime ete mahā-Bodhi
> Loka-nāthena pūjitā
> Aham pi to namassāmi
> Bodhirāja namatthu te

The above means that 'the sacred bodhi tree assisted the Buddha to defeat mara (evil) and therefore, the sacred tree should be worshipped'.[61] Today, Sri Lankan Buddhists perform Bodhi Vandanā not only to pay tribute to the tree, but for a myriad of other purposes including the avoidance of *Graha Apala* (the evils caused by planets and stars in astrology),[62] receipt of help to achieve different goals in life and to be blessed with children.[63] Moreover, it is not only the sacred Bodhi tree, but all other 27 species of trees that sheltered previous Buddhas are also planted in most of the temples today. All these sacred trees are worshipped by the Buddhists visiting temples as a part of

59. *මහාවංශය* (n 4) 77–85.
60. *පන්සීය පනස් ජාතක පොත් වහන්සේ* (University of Sri Jayawardenapura, 2012) 699–700 <http://dr.lib.sjp.ac.lk/handle/123456789/636> accessed 16 July 2021.
61. Sandford Arthur Strong, *The Maha-Bodhi-Vamsa* (Kessinger Publishing, LLC, 2009) 2.
62. This is known as '*Jyothishya*' in Sinhala and considered a science. It is not linked to any of the religions practised in Sri Lanka, but before carrying out any good deed like a marriage, cultivation of paddies, building a house or giving birth to a child ancient Sri Lankans referred to *Jyothishya*. They also referred to *Jyothishya* when they are facing unfavourable situations, for example when things are not going the way they planned, when they suffer from illnesses etc. This practice is highly prevalent among Sri Lankans even today. See Kawdane Piyadasa Perera, කේන්දරයක් බලන හැටි (Ratna Book Publishers, 2004).
63. Rerukane Chandawimala, බෝධි පූජා (Sri Chandawimala Dhamma Treaties Preservation Board, 2006) 11.

Atavisi Buddha Vandanā, worshipping of the 28 Buddhas.[64] The trees are worshipped by chanting Vandanā Gathā, offering holy offerings and bathing the trees with water.

Moreover, the duties of humans to co-exist with nature and not to harm the environment are recognized throughout Buddhist philosophy. The *Dhammapada* explains how a person should be, stating that 'yathā pi bhamaro puppham, vannagandham ahethayam paleti rasam ādāya evam gāme munī care'. Translated into English this means 'just like a bee leaves the flower, not hurting the colour and smell, having taken its juice, so should a wise man walk through the village'.[65] This phrase carries the understanding that a person's existence should not be a burden to the planet, he or she can take benefits out of it, but nature should not be destroyed for human benefit. Accordingly, the Buddhist ideology believes that one's existence should not affect the Earth adversely, which is the opposite of the anthropocentric ideology that the earth's resources can be utilized for the benefit of human beings.

The Aggañña Sutta of *Digha Nikaya*[66] attaches a superior status to nature providing how Mother Nature became displeased with the exploitative, selfish and lethargic behaviour of the people and withdrew her generosity as a punishment.[67] According to *Petavatthu*, a person who cuts down a branch of a tree that sheltered him is considered to have committed *mittadubba;* betrayal of friendship.[68] Moreover, the Buddhist *vinaya* rules[69] mandate the *Bhikkhus and Bhikkhunis* (monks and nuns) not to harm the environment or any component of it. According to *Bhutagamavagga pacittiakanda* in *Pacittiya Pali*,[70] monks are prohibited from cutting down the trees or having the trees cut down, destructing vegetable growth (what is propagated from roots, stems, joints, cuttings and from seeds), excreting stools and urine in the green grass and into the water and spitting into and discharging garbage on waterways.[71] *Bhikkhunis* (nuns) are prohibited from throwing dust and waste from windows or in the fields full of crops.[72]

Furthermore, through the first precept observed by the Buddhists, *panatipata veramani sikkhapadam samadiyami*, Buddhists undertake to refrain from destroying living creatures. Accordingly, if a Buddhist intentionally kills a living creature, he is committing a sin. While according to the concept of Nāmarūpa,[73] trees, rivers, oceans and so forth cannot be considered as living creatures, this precept definitely prevents

64. Ibid.
65. Buddha Rakkhitha, *The Dhammapada: Buddha's Path to Wisdom* (Buddhist Publication Society, 1985) 31.
66. Buddhist scriptures are known as *Tripiṭaka*. It is divided into three basic parts as: *Sutta Pitaka*, *Vinaya Piṭaka* and the *Abhidharma Piṭaka. Sutta Pitaka* contains more than 10,000 *suttas* (wisdom imparted by Buddha in different occasions). *Sutta Pitaka* is again sub divided into five collections known as *nikaya. Aggañña Sutta* is the 27th *sutta* of the *Digha Nikaya* collection; See *දීඝ නිකාය (පාථික වග්ගය)* (Aathaapi, 2006).
67. Bellanvila Wimalarathna, 'The Present Environmental Crisis and the Way out: The Buddhist Perspective' [2010] *Anussathi* 174, 174–75.
68. Ibid, 175.
69. Rules that are meant for Buddhist monks and nuns.
70. The *Pacittiya Pali* is the second book of *Vinaya Pitaka*.
71. The Tripitaka Translation Committee (eds) *පාචිත්තිය පාලි* (Sri Lanka government Publishers, 2005) 106–45.
72. Ibid. See also *Vinaya Pitaka: The Basket of Guidance* (Create Space Independent Publishing Platform, 2012).
73. *Nāmarūpa* means name and form. In a very basic sense, it specifies the two main components, the mental and the corporeal aspects, of the empiric individual. Y Karunadasa, *The Dhamma Theory: The Philosophical Cornerstone of the Abidhamma* (Wheel Publication, 1996) 9.

the Buddhists from killing non-human animals and thus expands the right to life beyond human beings. *Vanijja Sutta* of *Anguttara Nikaya lays* down five types of businesses that shall not be engaged in by a follower of Buddhism, including trading in arms, living beings, flesh, intoxications and poison.[74] Accordingly, a Buddhist cannot sell any living being, be it a human or a non-human and make a living from it. Moreover, the predominant conception of Buddhist philosophy '*Kamma*' holds that the morality of our actions in the present will shape our character for the future, which manifests that harming the environment today will carry devastating consequences tomorrow.

Buddhist literature also emphasizes that the duties of the ruler extend beyond human subjects towards the environment and all those that inhabit it. As pointed out in *Chakkavattisinhanāda sutta* of *Digha Nikaya*, an ideal ruler should be greatly concerned about the environment.[75] Accordingly, a *Chakkavatti* king (a universal ruler) has a duty to protect not only the people under his rule but also the beasts and birds (*miga-pakkhisu*) living in his kingdom.[76] The *Kutadanta Sutta* states that the ruler has a duty to protect flora and fauna and shall always take active measures in this regard.[77] According to *Mahawamsa*, the King Devanampiya Tissa (the king who ruled the Anuradhapura kingdom of Sri Lanka between 247 BC and 207 BC) met Arahat Mahinda, the son of the Mauryan Emperor Asoka the Great, when he was on a hunting trip (around 223 BC). Arahat Mahinda was sent to Sri Lanka as a Buddhist missionary and the thero, seeing the king chasing after a deer, preached to him the following sermon:

> O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it.[78]

Commenting on the sermon in his separate opinion in *Gabcíkovo-Nagymaros* Project judgment of the International Court of Justice, Judge Weeramantry said:

> [t]he sermon pointed out that even birds and beasts have a right to freedom from fear. The notion of not causing harm to others and hence *sic utere tuo ut alienum non luedus* was a central notion of Buddhism. It translated well into environmental attitudes. 'Alienum' in this context would be extended by Buddhism to future generations as well, and to other component elements of the natural order beyond man himself, for the Buddhist concept of duty had an enormously long reach.[79]

One incident involving King Elara, who ruled the country for 44 years from 204 BC–164 BC, provides a concrete example as to how the ancient rulers of Sri Lanka considered non-human beings on an equal footing with human beings and did them justice. According to this legend embodied in the *Mahavamsa*, King Elara had a bell which could be rung by anyone who wanted to communicate to the King about any injustice that s/he

74. *Vanijja Sutta* is the 177th sutta of Anguttara Nikaya of Sutta Pitaka. අංගුත්තර නිකාය (පඤ්චම නිපාතය) (Book 3, Aathaapi, 2006) 338.
75. *දීඝ නිකාය (පාථික වග්ගය)* (Aathaapi, 2006) 96–135.
76. Wimalarathna (n 67) 177.
77. *Centre for Environmental Justice v Anura Satharasinghe and Others* (*Wilpattu Case)* (2020) CA (Writ) 291/2015, 13.
78. *Geiger (n 54) ch XIV.*
79. Sperate Opinion of Judge Weeramantry in *Gabcíkovo-Nagymaros Project Case (Hungary/Slovakia)* [1997] ICJ Reports 78, 99.

had suffered. King Elara's son, while going to the Tissa reservoir in a chariot, accidentally ran over a calf. The mother of the calf came and rang the bell seeking justice from the King. The King learnt the story and ordered his son to be killed in the exact same way that the calf died.[80] This might have been an exaggeration of what really happened, yet the story arguably shows the status accorded to non-human beings by the ancient rulers of the country.

According to the records of Robert Knox, in the period between 1660–79, if a special fruit plant species is found anywhere in the country, it is considered protected and anyone including the owner of the tree cannot inflict any harm upon it. The rules of the kings were such that if anyone harmed the tree, they would be punished with the death penalty.[81] Imposing the gravest form of punishment merely for harming a tree arguably shows the importance attached to non-human organs during the time of the last kings of Sri Lanka.

Other than Buddhism, other religions observed in Sri Lanka (Hinduism, Islam[82] and Christianity[83]) also emphasize the necessity of protecting nature for its own sake in certain circumstances. Similar to many Andean countries, Hinduism even attributes a divine status to nature.[84] Moreover, the Veddas who are considered as the descendants of the first inhabitants of Sri Lanka[85] and the last Indigenous tribe on the island, have always lived in harmony with nature, deeply connected with the environment and its trees, rivers and animals.[86] They still live inside the national parks and, irrespective of the influence of modern developments, struggle to live mostly from hunting and gathering.[87] Therefore, it is not to be doubted that environmental protection forms one of the most respected practices in the Sri Lankan tradition and religion, and it is not uncommon to prioritise the interests of the environment and its components over and above those of humans in the ancient decision-making process of the country.

Despite eco-centric ideas and beliefs being strongly embodied in the Sri Lankan tradition, culture and religion, there is limited incorporation of such tradition within

80. *මහාවංශය* (n 4) 89.
81. Knox (n 4) 81.
82. In Islam, the Holy Quran states that the God has created everything in balance and warns that the transgression of the balance shall have disastrous impacts.
83. In Christianity, there are more than 100 references to the environment and the duty of respecting the environment. For example, verse 35:33 of the Bible states 'So ye shall not pollute the land wherein ye are'.
84. Different theologies of Hinduism contain references to divine in nature. For instance, the religion recognizes that the earth can be seen as a manifestation of the God, Dharma can be reinterpreted to include the duty of the human beings to care for the nature and the way human beings are treating the earth directly affects their Karma.
85. *මහාවංශය* (n 4) 37.
86. RL Spittel, *Wild Ceylon* (Premachandra Alwis tr, Sooriya Publishers 2001) 97; RL Spittel, *Vanished Trails* (AP Gunarathna tr, 2nd edn, Sooriya Publishers 1995) iv; Dambane Gunawardhana, 'The social organization of the traditional Vedda community' [1993] *Soba* 21, 21–24; See also, James Brow, *Vedda villages of Anuradhapura: The historical anthropology of a community in Sri Lanka* (University of Washington Press, 1978).
87. Patrick Roberts, Thomas H Gillingwater, Marta Mirazon Lahr, Julia Lee-Thorp, Malcolm MacCallum, Michael Petraglia, Oshan Wedage, Uruwaruge Heenbanda and Uruwaruge Wainnyalaththo 'Historical Tropical Forest Reliance amongst the Wanniyalaeto (Vedda) of Sri Lanka: An Isotopic Perspective' [2018] *Human Ecology* 435, 436–37; Spittel (2001) (n 73) 32; See also David Blundell, 'Vedda (Vanniyaletto) as Folk Life: Intangible Cultural Heritage in Sri Lanka' [2012] *Bulletin of the Indo-Pacific Prehistory Association* 23.

contemporary Sri Lankan law. In the section that follows, an overview is provided of the contemporary legal system in Sri Lanka, and its structure, sources and foundations, to provide the basis for examining how an eco-centric legal future might be re-imagined.

4 THE CONTEMPORARY SRI LANKAN LEGAL SYSTEM

It is important to ascertain the legal significance of the practices and traditions recognized in the previous section. According to Judge Weeramantry, 'the legal system of Sri Lanka has often been likened to a many coloured mosaic'.[88] Laws stemming from a wide variety of sources such as English, Arabian and Gangetic Plain peacefully coexist with those stemming from Dutch and Indigenous custom.[89] As Jennings and Tambiah describe, 'derived from so many different systems – Roman, English, Sinhalese, Hindu and Muslim – the law of Sri Lanka is embarrassed rather by the richness of its sources than by the lack of them'.[90]

There are two basic reasons for the complexity of the legal system of Sri Lanka. The first reason is that Sri Lanka has been inhabited by different ethnic groups; the Sinhalese, Tamils, Muslims and other smaller communities like Burger and Malay. There are also subdivisions within these major divisions of communities. For instance, Sinhalese are divided as low country and inhabitants of Kandy and Tamils as Jaffna inhabitants and others. The second reason stems from Sri Lanka's colonial history. The maritime provinces in Sri Lanka were under Portuguese rule from 1505 to 1656 and Dutch rule from 1656 to 1796.[91] The Portuguese did not introduce their laws into Sri Lanka, but they had a significant influence on the customs and Sinhala laws in the maritime provinces.[92] The Dutch, on the other hand, introduced their laws into the country and today, Roman Dutch Law is considered as the common and residuary law of Sri Lanka.[93] English Law was introduced into Sri Lanka by the British who ruled the maritime provinces in the country since 1796 and the entire island including the Kandyan Kingdom since 1885 up until 1948, when Sri Lanka received independence. English rulers decided to continue the application of the Roman Dutch Law in the country, subject to such changes that might be made by lawful authority.[94] Consequently, the Sri Lankan legal system today is a mixture of Roman Dutch Law, English Law, three sets of indigenous laws (Kandyan Law, Muslim Law and Thesawalamai) and, to a certain extent, Buddhist Law and Hindu Law.[95]

The customary laws of the country are applicable with regard to personal aspects including marriage, divorce and succession. Thesawalamai law is further applicable

88. CG Weeramantry, *Law of Contracts* (Stamford Lake Publication, 1967) 1.
89. Ibid.
90. Ivor Jennings and HW Tambiah, *The Dominion of Ceylon: The Development of its Laws and Constitution* (Stevens and Sons Ltd, 1952) 184.
91. LJM Cooray, *An Introduction to the Legal System of Sri Lanka* (Stamford Lake Publications, 2003) 2–4.
92. Ibid, 4.
93. Ibid, 4–5; in *Sultan v Peiris* (1933) 34 NLR 281, the court held that the Roman Dutch Law provides a non-statutory foundation of uniformly applicable legal principles to bridge the gaps in personal laws and is thus considered the common law of Sri Lanka.
94. Cooray (n 91) 7; *De Silva v Bank of Ceylon* (1969) 72 NLR 457, 461.
95. Cooray (n 91) 7.

regarding immovable properties situated in Jaffna provinces.[96] Despite customary law forming part of aspects of private law, the influence of customary over the protection of the environment is non-existent. Environmental Law in Sri Lanka, consists of nearly 50 pieces of legislations, accumulated over a century. Many of these statutes were enacted during the British colonial rule and, therefore, the entire Environmental Law regime in Sri Lanka carries British resemblance and influence of modern developments in the international environmental law, but not the characteristics of ancient traditions, practices and religions in the country. O'Donnell emphasizes that colonialism has perpetuated the expansion of the human-nature dichotomy. This has impacted the capacity of Indigenous communities to continue land stewardship and maintain biological diversity and ecological integrity.[97] It is hardly a stretch therefore to suggest that colonialism has also played a significant role in diminishing the implementation of ancient eco-centric principles in environmental governance in Sri Lanka.

Today Hindu Law is considered obsolete in Sri Lanka.[98] While there is a Buddhist Law which forms a part of the legal framework of the country, it is applicable only with regard to the properties and traditions of Buddhist temples. The reason for the non-existence of a Buddhist Law applicable to personal aspects can be ascertained from the reasoning given in the Burmese judgement *Tan Ma Shwe Zin v Tan Ma Ngwe Zin* that the path of Lord Buddha is open to everyone, but not forced on anyone.[99] Yet, according to Article 9 of the Constitution, it is one of the duties of the republic of Sri Lanka to give a foremost place to Buddhism while respecting other religions. Moreover, religion and customs form two of the major sources of law in Sri Lanka.[100] The religion is considered as a source of law having a great persuasive value over the legal system in the country[101] while it is conclusively accepted by the judiciary in Sri Lanka that a custom can be regarded a law if it is ancient,[102] reasonable,[103] certain,[104] observed as a right[105] and in conformity with the statutory laws.[106] Thus, the eco-centric ideologies embodied in the Sri Lankan tradition and religious practice perhaps lack the authority of an act of Parliament but provide the foundation for the laws to stem from.

In his separate opinion in *Gabcíkovo-Nagymaros Project*, Judge Weeramantry recognized that there are some principles of traditional legal systems that can be absorbed into the modern environmental law. According to his Lordship:

> [t]he ingrained values of any civilization are the source from which its legal concepts derive, and the ultimate yardstick and touchstone of their validity … The formalism of modern legal systems may cause us to lose sight of such principles, but the time has come when these must be integrated into the corpus of the living law.[107]

Citing the separate opinion of Judge Weeramantry, Amarasinghe J in *Bulankulama v Secretary, Ministry of Industrial Development* (hereinafter referred to as the

96. Jayatissa De Costa, *Laws of Sri Lanka* (S Godage and Brothers, 2005) 88.
97. O'Donnell (n 31), 646.
98. Ibid.
99. (1932) All India Reporter, Rangoon 97.
100. Cooray (n 91) 189–96.
101. De Costa (n 96) 2–4.
102. *Chinnappa v Kanakar* (1910) 13 NLR 157.
103. *Ferdinando v Ferdinando* (1920) 22 NLR 260; *Baba Appu v Abaran* (1905) 8 NLR 160.
104. *Ferdinando v Ferdinando* (n 103).
105. *Puram v Sandanam* (1915) 1 Ceylon Weekly Reporter 96.
106. *Sinnathangam v Meeramohideen* (1958) 60 NLR 394.
107. Separate opinion of Judge Weeramantry (n 79) 105.

Bulankulama case), accepted that 'the task of the law is to convert such [ancient] wisdom into practical terms'.[108] In the recent judgment concerning the illegal settlement of internally displaced persons inside Wilpattu National Park, De Silva J established that the protection of the environment is well recognized by different religions professed and followed in Sri Lanka and cited Rousseau: '[f]orgetfulness of all religions leads to the forgetfulness of the duties of the man'.[109] Thus, the idea that the man is only a strand in nature undeniably lies at the very core of the Sri Lankan legal system, and is not a foreign or an alien concept to be forcefully imposed upon it. Moreover, the necessity of drawing on traditions in recognizing earth jurisprudence has been accepted in the academic literature. For instance, O'Donnell holds that a pluralistic approach is vital to overcome the inadequacies of 'Western legal theories of personhood, which still struggle to recognize that natural entities can be legal persons'.[110]

Yet, the question remains: what opportunities exist for greater explicit recognition of Earth jurisprudence in Sri Lankan law? The section that follows examines the Sri Lankan Constitution, legislations and case law to identify what openings there might be for a return to the eco-centric approach which underpins Sri Lankan tradition, religion and culture.

5 EARTH JURISPRUDENCE AND SRI LANKAN LAW

Rights of nature have not been expressly recognized anywhere in contemporary state-based law in Sri Lanka. The supreme law of the country, the Constitution of Sri Lanka has only three express references to the environment. Of these, Chapter VI imposes a shared responsibility on the State parties and the common citizenry to protect the environment. According to Article 27(1), 'the directive principles of state policy shall guide the Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society'.[111] Sub-Article 14 states that 'the State shall protect, preserve and improve the environment for the benefit of the community'.[112] Article 28(f) states that 'the exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and it is the duty of every person in Sri Lanka to protect nature and conserve its riches'.[113]

However, Article 29 potentially renders all of these provisions unenforceable.[114] The question whether the provisions in Chapter VI become entirely redundant by virtue of Article 29 has been progressively answered by the judiciary in Sri Lanka. In *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others* (hereinafter referred to as the *Ravindra case*) which was filed in respect of ground water pollution allegedly caused by a thermal power station situated in the Chunnakam area, Jayawardena J emphasized the significance of the directive principles of state policy holding that '[they] are not wasted ink in the pages of the Constitution.

108. *Bulankulama v Secretary, Ministry of Industrial Development* (the *Eppawela Phosphate Case*) (2000) 3 SLR 242, 255.
109. *Centre for Environmental Justice case* (n 77) 13–14.
110. O'Donnell (n 31) 644.
111. Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Art 27(1).
112. Ibid, Art 27(14).
113. Ibid, Art 28(f).
114. Ibid, Art 29.

They are a living set of guidelines which the State and its agencies should give effect to'.[115] The Court, in a series of judgments, used Article 27(14) to justify the application of public trust doctrine against state functionaries who used natural resources for non-public purposes and Article 28(f) to justify according locus standi in public interest litigation cases.[116]

The public trust doctrine denotes the idea that the natural resources of the country are held by the administrative authorities in trust for the public. As such, natural resources shall be used only for a public purpose which benefits the general community.[117] The Doctrine also emphasizes that the powers vested in administrative authorities shall be exercised only for the purposes for which they have been conferred.[118] The exercise of the powers of administrative authorities is therefore, 'subject to judicial review by reference to those purposes'.[119] Public Interest Litigation, therefore, allows 'third parties to bring actions on a wide variety of matters on the basis that it affects their rights and the rights of the public at large'.[120]

However, this recognition of the principles of public interest litigation and the public trust doctrine has always been tainted with an anthropocentric flavour. The *Bulankulama* case[121] decided in 2000, arose out of a proposed agreement sought to be entered into by the then government in Sri Lanka to lease out a phosphate mine situated in the Eppawela area to a foreign company named Freeport Mac Moran of USA, which marked a turning point in the history of environmental litigation in the country, can be cited as an example. In the case, Amarasinghe J overruled the objection raised by the respondents with regard to the *locus standi* of the petitioners holding:

> they are not disqualified because it so happens that their rights are linked to the collective rights of the citizenry of Sri Lanka – rights they share with the people of Sri Lanka. Moreover, in the circumstances of the instant case, such collective rights provide the context in which the alleged infringement or imminent infringement of the petitioners' fundamental rights ought to be considered.[122]

While this justification marked an extremely impressive and significant shift in the rules governing standing back then, it overlooks the possibility of the environment being protected for its own value, rather than because the environmental damage affects any human being. The same position was followed by justice Shiranee Tilakawardane in the *Sugathapala Mendis v Chandrika Bandaranaike Kumaratunga* case (hereinafter referred to as the Sugathapala case) decided in 2008, where the petitioners challenged a decision of the then government to acquire land for a public purpose and then 'deliberately and manipulatively sell it to a private entrepreneur to serve as an

115. *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others (Chunnakam Power Plant Case)* (2019) SC (FR) Application No 141/2015, 50.
116. *Bulankulama* case (n 108) 243; *Sugathapala Mendis v Chandrika Bandaranaike Kumaratunga (Water's Edge Case)* (2008) SC (FR) Application 352/2007, 353.
117. Dinesha Samararatne, *Public Trust Doctrine* (International Centre for Ethnic Studies, 2010) 29–35.
118. Ibid, 27–29.
119. *Heather Therese Mundy v The Central Environmental Authority* (2004) SC Appeal 58/2003.
120. Rajiv Goonetilleke, 'Public Interest Litigation: A Species of Direct Democracy and Good Governance' [2014] Sri Lanka Journal of Development Administration 83, 88.
121. *Bulankulama* case (n 108) 242.
122. Ibid, 258.

exclusive private golf resort in Sri Lanka'.[123] The court accepted that the use of public land which is crucial for flood retainment purposes in Colombo for a non-public purpose is a violation of the duty of the government organs to act in the best interest of the people and therefore, anyone of the people in Sri Lanka can seek redress against the government decision.[124] The decision though upheld public interest litigation, did not take into account the need of protecting the low lying land in question for the inherent values it represents. The expansion of *locus standi* beyond human beings is one of the most fundamental developments that shall be embraced in the adoption of earth jurisprudence and upholding of the rights of nature, but the judiciary in Sri Lanka has never been willing to expand the connotation of the public interest litigation this far.

Second, the recognition of the public trust doctrine has also been anthropocentric. In the *Bulankulama* case, Amarasinghe J expanded the public trust doctrine adopting the idea of public guardianship as explained in the *Gabcíkovo-Nagymaros Project*.[125] In the exact words of the Sri Lankan Supreme Court, 'the organs of state are guardians to whom the people have committed the care and preservation of the resources of the people'.[126] The Court cited the same sermon by Arhat Mahinda to King Devanampiyatissa that Judge Weeramantry drew on in *Gabcíkovo-Nagymaros Project* – that the land belongs to the people and all living beings. Nevertheless, the interpretation of public guardianship by the Court in the *Bulankulama* case failed to live up to the essence of the sermon. The use of the term 'resources of the people' in the case implies the ownership rights of the people towards earth's resources while the case elaborates the duty of all three organs of the government to protect natural resources giving effect to the will of the people.[127] The *Watte Gedara Wijebanda* case, however, subsequently reflected a slight willingness to recognize that nature be preserved for its own sake when Thilakawardane J held that:

> [u]nder the public trust doctrine as adopted in Sri Lanka, the state is enjoined to consider contemporaneously, the demands of sustainable development through the efficient management of resources for the benefit of all and the protection and regeneration of our environment and its resources.[128]

However, the verdict did not mark a shift from anthropocentrism towards eco-centrism; rather, the human-centred flavour is omnipresent in the verdict and it is fairly obvious that her lordship did not intend to embrace eco-centrism or the concept of the rights of nature. This non-recognition of the duties of the government organs towards the non-human world by the contemporary judicial practice in Sri Lanka is surprising given the fact that the concept is so deeply rooted in the core of the legal system of the country.

The judiciary of Sri Lanka has nevertheless played a crucial role in recognizing the necessity of preserving the health of the environment for the benefit of the human community, both present and future generations.[129] The Constitution of Sri Lanka recognizes neither the right to environment nor the right to life expressly in the fundamental rights chapter. The recognition of right to environment has entirely been a

123. *Sugathapala* case (n 116) 343.
124. Ibid, 340 and 348.
125. *Bulankulama* case (n 94) 253–54. See also Samararatne (n 102) 30–31.
126. *Bulankulama* case (n 94) 253.
127. Ibid, 253–58.
128. *Watte Gedara Wijebanda v Conservator General of Forest and eight others* (2007) SC Application No 118/2004, 358.
129. Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Art 12.

judicial innovation. However, such judicial interpretation has always carried an anthropocentric trace. The main reason for the inability of the judiciary to step out of the conventional anthropocentrism is perhaps the unfavourable position that the Constitution has placed it in, with no strong Constitutional provisions to support carving out such an approach.

In 2000, in the *Bulankulama* case, Amerasinghe J recognized, while upholding the sustainable development, inter-generational equity, precautionary and polluter pays principles,[130] that the failure of the government authorities to apply the existing laws relating to environment to a specific set of people or to a specific project is a violation of the equality clause in the Constitution.[131] In 2006, this approach was followed by Tilakawardane J holding that while the environmental rights are not specifically enshrined in the fundamental rights chapter of the Constitution such a right is an integral part of the right to equality embodied in Article 12.[132] In 2019, Jayawardena J held that the equality clause read with the duty of the state to protect the environment and to conserve its riches embodied in Article 27(14) of the Constitution, confers a fundamental right on the people in the country to be free from pollution and environmental degradation.[133]

As stated above, the Constitution of Sri Lanka is silent regarding the fundamental rights to life and the environment. In this context, confirming people's right towards the environment had no doubt been a struggle for the judiciary in Sri Lanka. In this situation, it is perhaps unfair to apportion all responsibility to the judiciary and expect them to expand the connotation of the environmental rights towards nature itself. However, the right to environment has been established, reaffirmed and reiterated by the apex court in Sri Lanka since 2000 with the same narrow anthropocentric focus. It would be better if the judiciary would embrace and uphold eco-centric values signalling a return to Sri Lankan tradition. Unfortunately, the *Ravindra* case,[134] which shattered a near decade's silence on the part of the judiciary in environment-related fundamental rights litigation in Sri Lanka, followed in the same age-old anthropocentric footsteps that had been set by its predecessors. The case recognized the right to environment of the citizens of Sri Lanka as opposed to rights of nature and recognized the duty of the polluter to pay compensation to the victims of pollution without a specific emphasis on his duty to restore the damaged environment.

Taking a slightly promising approach, the Court of Appeal of Sri Lanka, in the recent *Centre for Environmental Justice* case decided in 2020, expanded the scope of the polluter pays principle towards restoration of the environment. This case very clearly and precisely follows the Indian approach.[135] India, in a series of judgments, recognized that under the polluter pays principle, the polluter shall not only bear the costs of

130. The *Bulankulama* case is the first case to recognize these environmental law principles in the context of Sri Lanka. In justifying the adoption of these principles, Amerasinghe J referred to the Stockholm Declaration in 1972 and Rio Declaration in 1992. The honourable justice held that these international instruments are not legally binding in the way in which an Act of Parliament would be, but they form a part of the soft law of the country. Moreover, Amerasinghe J citing Judge Weeramantry in *Gabcíkovo-Nagymaros Project* (n 79) held that sustainable development has been successfully practiced in Sri Lanka for several millennia and it is well-apparent in the ancient irrigation system in the country.
131. *Bulankulama* case (n 108) 243.
132. *Watte* case (n 128) 338.
133. *Ravindra* case (n 115) 52.
134. Ibid.
135. *Centre for Environmental Justice* case (n 77) 13–14.

compensating the victims but also the costs of restoring the environment into its previous condition.[136] This judgment gives a positive inclination that the judiciary is willing to consider the environment for the values that it represents; but at the same time it is obvious that the judge, De Silva, did not intend to embrace an eco-centric approach.[137]

Apart from the supreme law of the country, the Constitution, and the interpretation of its provisions by the judiciary, Sri Lanka's umbrella environmental statute, the National Environmental Act, 1980 also carries an anthropocentric taste. The Act, which provides provisions for the protection and management of the environment and related matters, carries a wider interpretation of 'the environment'. According to section 33 of the Act, 'environment means the physical factors of the surroundings of human beings including the land, soil, water, atmosphere, climate, sound, odours, tastes and the biological factors of animals and plants of every description'.[138] However, notwithstanding this wider interpretation, most of the measures embodied in the Act for the protection and management of the physical environment in the country are formulated from an anthropocentric stance and focus on the rational exploitation of such natural resources for the benefit of human generations. For instance, section 17 reads as follows:

> [t]he Central Environmental Authority in consultation with the Environmental Council shall recommend to the Minister the basic policy on the management and conservation of the country's natural resources in order to obtain the optimum benefits therefrom and to preserve the same for future generations.[139]

According to section 20:

> [t]he Central Environmental Authority in consultation with the Environmental Council shall, with the assistance of the Ministry charged with the subject of Wildlife Conservation, recommend to the Minister a system of rational exploitation and conservation of wildlife resources and shall encourage citizen participation in such activities.[140]

Moreover, the Fauna and Flora Protection Ordinance[141] provides for the conservation of plants and animals which have been declared as protected species and vests in the Minister the power to declare any area of state land as a National Reserve or Sanctuary. Human activities are restricted within these reserves and animals are protected not merely because they are of a particular benefit to the human beings. However, the Act does not intend to confer rights on these animal and plant species, and it is clearly manifested from the preamble of the statute which reads as follows:

> [a]n ordinance to provide for the protection, conservation and preservation of the fauna and flora of Sri Lanka; for the prevention of the commercial exploitation of such fauna and flora; and to provide for matters connected therewith or incidental thereto.[142]

136. See *Vellore Citizens' Welfare Forum v Union of India* 1996 (5) SCC 647; *Indian Council for Enviro-legal Action v Union of India* (*Sludge* case) (1996) AIR SC 1446; *MC Mehta v Kamal Nath* (1997) 1 SCC 388.
137. *Centre for Environmental Justice* case (n 77).
138. National Environmental Act, No 47 of 1980 (Sri Lanka), s 33.
139. Ibid, s 17.
140. Ibid, s 20.
141. Fauna and Flora Protection Ordinance, No 2 of 1937 (Sri Lanka).
142. Ibid, Preamble.

Thus, it is obvious that the drafters as well as the interpreters of legislation have failed to uphold the eco-centric ideologies deeply rooted in the Sri Lankan tradition and religious practice and to keep the interests of the environment and all its constituents on par with those of human beings. It is unfortunate that the contemporary Sri Lankan rulers and decision makers deviated from ancient wisdom, which required not letting at least a drop of water flow into the sea without making the use of it,[143] toward a self-destructive approach of engaging in development activities at any cost, including cost to the environment.

Following Schweitzer, Worster once suggested that it is now nature's turn to be liberated.[144] This is exactly what many countries around the world are doing: liberating nature. Today there are at least nine countries which have recognized inherent rights of nature in some form through Constitutional, legislative, or judicial measures. The section that follows examines global practice to consider how Earth jurisprudence might be advanced in Sri Lanka.

6 THE DEVELOPMENT OF EARTH JURISPRUDENCE AND LEGAL PERSONHOOD AROUND THE WORLD

Early recognition of the legal personhood of nature was laid down by justice William O'Douglas in his famous dissenting opinion in *Sierra Club v Rogers Morton, Secretary of the Interior* (hereinafter referred to as the *Sierra Club* case). While the United States is not one of the jurisdictions selected for this study, the discussion would not be complete without making a reference to this landmark judicial opinion. In his dissenting judgment, Justice Douglas held that:

> environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the court; the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.[145]

By the same logical reasoning, it is imperative to confer standing on environmental objects. The interests of human beings and nature can differ. What is in the best interest of a human community may not be in the best interest of the environment. The environment should therefore be a legal subject in its own preservation and people should only be its spokespersons. No matter how logical this may seem, the idea had been ridiculed before by conservatives and anthropocentric legal thinkers. For instance, John Naff, following the *Sierra Club* case, commented 'How can I rest beneath a tree, if it may soon be suing me? Or enjoy the playful porpoise while it's seeking habeas corpus?'.[146] Some may find the idea strange and ludicrous even today, nearly five decades later, but not when one considers the concept of legal

143. Separate Opinion of Judge Weeramantry (n 66) 98.
144. Worster (n 20) 114.
145. Dissenting opinion of Justice William O'Douglas in *Sierra Club v Rogers Morton, Secretary of the Interior (The Mineral King Case)* (1972) 405 US 727, 741–55.
146. Peter Burden, 'The Rights of Nature: Reconsidered' (2010) University of Adelaide Law School Research Paper No 2011-010 <www.researchgate.net/publication/228223796_The_Rights_of_Nature_Reconsidered> accessed 20 May 2020.

standing of nature with the conscious understanding that the values of the earth are independent of the usefulness of the non-human world for human purposes.[147] Earth jurisprudence is a burgeoning field globally – not just in the literature but also in the different ways by which the concept has made its way into law across multiple jurisdictions. In this section, we canvass how the myriad of ways the rights of nature have been incorporated into law in eight jurisdictions from around the world: India, Bangladesh, Colombia, Ecuador, Bolivia, New Zealand, Canada and Australia. From this, we provide, in Section 7, a synthesis of the legal options that would most likely be adopted in the Sri Lankan context.

6.1 India

When looking at the recent legal recognition of legal personhood and rights of nature, two of Sri Lanka's closest neighbours, India and Bangladesh, have both seen important legal developments towards this end. India was the first to take this path. In 2017, in two landmark cases, *Mohd Salim v State of Uttarakhand and others*[148] and *Lalit Miglani v State of Uttarakhand and others*,[149] the High Court of Uttarakhand recognized the Ganges and Yamuna Rivers as legal persons.

The *Mohd Salim* case was filed on the basis that the Ganges and Yamuna rivers are highly polluted due to industrial activities and discharge of sewage, its banks are encroached, and the government authorities failed to take effective measures to clean up the rivers. The judgement followed a decision delivered by the same court in 2016, where the petitioners sought writs directing and mandating the relevant authorities to take measures aimed at the protection of the rivers.[150] In the 2016 judgment, the court directed the relevant authorities to evict the respondents who had illegally encroached upon the land; to constitute a Ganga Management Board; and to ban mining in river bed of the Ganga and its highest flood plain area and several other measures aimed at the protection of the rivers.[151] The non-compliance by the authorities with the first ruling resulted in a second judgement in 2017. In the *Mohd Salim* second ruling, the Court expressed its serious displeasure about the manner in which the State of Uttar Pradesh and the State of Uttarakhand have acted and said that '[t]he extraordinary situation has arisen since Rivers Ganga and Yamuna are losing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve Rivers Ganga and Yamuna'.[152] The Court then pointed out in clear and cogent terms the deep spiritual connection that Hindu people in India have with the Ganges and Yamuna Rivers. In the exact words of the court:

> Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. … According to Hindu beliefs, a dip in River Ganga can wash away all the sins. The Ganga is also called 'Ganga Maa'.[153] It finds mention in ancient Hindu scriptures including 'Rigveda'.[154]

147. A Drengson (ed), *The Selected Works of Arne Naess* (Springer, 2005).
148. *Mohd Salim v State of Uttarakhand and others* (2017) No 126 of 2014.
149. *Lalit Miglani v State of Uttarakhand and others* (2017) No 140 of 2015.
150. *Mohd Salim v State of Uttarakhand* (Reserved Judgement) (2016) No 126 of 2014, 1.
151. Ibid, 20.
152. *Mohd Salim* case (n 148) 4.
153. *'Maa'* means Mother.
154. *Mohd Salim* case (n 148) 4–5; '*Rigveda*' is a collection of ancient Vedic Sanskrit Hymns.

The Court referred to a chain of judgments which recognized Hindu deities or idols as juristic persons for subserving the needs and faith of the society[155] and held that: 'Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea … There is utmost expediency to give legal status as a living person/legal entity to Rivers Ganga and Yamuna'.[156]

The court granted legal personhood to the two rivers and declared the Director Namami Ganges (national mission for clean Ganga), the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand to be in *loco parentis*, or the human actors acting on behalf of the rivers, to conserve and protect the two rivers and their tributaries.[157] The case provides an excellent example to demonstrate how nature is recognized as possessing inherent rights through the application of religious rights. At the same time, it also emphasizes relational Hindu practice and stewardship obligations.

In the case, *Lalit Miglani v State of Uttarakhand and others*, decided ten days after the *Mohd Salim* case, expanded on the previous *Mohd Salim* judgment and conferred rights on the entire ecosystem associated with the rivers Ganga and Yamuna.[158] The case was initially filed against the pollution of the River Ganga. The petitioners claimed that the authorities are negligent in discharging their statutory duties.[159] They argued that the relevant authorities were aware of the declining quality of the river water but had not taken any remedial measures.[160] A detailed order was issued by the court on the 2 December 2016 directing the relevant authorities to establish the inter-State council for all the riparian States through which the river Ganga flows, accord sanction for interception and diversion of leftover drains for existing sewage treatment plants, take action against 180 Industries polluting river waters and several other measures aimed at the protection of the river.[161] These orders were not complied with and a miscellaneous application was filed by the same petitioner for 'declaring the Himalayas, glaciers, streams, water bodies etc. as legal entities and as juristic persons at par with pious rivers Ganga and Yamuna'.[162] The application was entertained on the basis of 'continuous mandamus' for the interest of the general public and to avoid further litigation.[163] The Court, invoking its *parens patriae* jurisdiction, declared that:

> the Glaciers including Gangotri and Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests, wetlands, grasslands, springs and waterfalls are a legal entity/legal person/juristic person/juridical person/moral person/artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. They are also accorded the rights akin to fundamental rights/ legal rights.[164]

155. Ibid, 5–11.
156. Ibid, 11.
157. Ibid, 11–12.
158. *Lalit Miglani* (n 149).
159. *Lalit Miglani v State of Uttarakhand and others* (Reserved Judgement) (2016) No 140 of 2015, 1–2.
160. Ibid, 2.
161. Ibid, 34–37.
162. Ibid, 1.
163. *Lalit Miglani* (n 149) 1–2.
164. Ibid, 64.

The Court in justifying its position, quoted not only the sacred status accorded to nature in Indian Mythology but also emphasized the significance of protecting these invaluable natural resources for the sake of human beings and earth itself.[165] Thus, the judgment recognized the inherent rights of the nature.

This recognition of the legal personhood of nature in India was, however, stayed by the Supreme Court in the special leave petition, *The State of Uttarakhand v Mohd Salim*[166] thus depriving the previous two judgments of judicial precedent status. In this case, the state governments presenting an appeal against the earlier *Mohd Salim* case argued that the High Court of Uttarakhand has seriously erred in declaring Ganga and Yamuna rivers as legal persons and has put the state governments in a dilemma. They argued that the two rivers flow through different states and it is questionable whether the High Court of Uttarakhand can declare the rivers as legal persons because such decision will affect all other states through which the rivers flow.[167] They further argued the fact that 'these two rivers are considered sacred and important in supporting life and well-being of the people' is not sufficient to confer legal personality on them.[168] The Supreme Court sided with the government argument and allowed the special leave petition.

6.2 Bangladesh

Sri Lanka's other near-neighbour, Bangladesh, recognized legal rights of nature in the year 2019. In a case filed against encroachments on the Turag River by human activities, the High Court Division of the Supreme Court of Bangladesh delivered a landmark judgment recognizing legal personhood of all rivers in Bangladesh including the Turag.[169] The case was appealed to the Appellate Division of the Supreme Court in 2019 and the Appellate Division, delivering its judgement in 2020,[170] largely upheld the decision of the High Court Division subject to minor deviations from some of the directives issued by the latter.[171]

The case was initially induced by an article published in the national Bangladesh newspaper *The Daily Star* describing the dire adverse consequences of unlawful developmental activities on the Turag River. In response to the article, the non-government organization, 'Human Rights and Peace for Bangladesh' filed a writ petition in the High Court Division of the Supreme Court of Bangladesh to save the Turag River.[172] The court held that the pollution and encroachment of the Turag River has increased at an alarming rate and therefore, Court was compelled to declare the river to be a 'legal person' and recognized in law as a living entity.[173] The court appointed the Bangladeshi National River Protection Commission (hereinafter referred to as

165. Ibid.
166. *The State of Uttarakhand v Mohd Salim* (2018) SLP (C) No 16879/2017.
167. Alley (n 48) 12.
168. Ibid.
169. *Human Rights and Peace for Bangladesh v Government of Bangladesh and others* (2019) HCD Writ Petition No 13989/2016.
170. *Nishat Jute Mills Limited v Human Rights and Peace for Bangladesh (HRPB) and others* (2020) Appellate Division Civil Petition No 3039 of 2019.
171. Mohammad Sohidul Islam and Erin O'Donnell, 'Legal Rights for the Turag: Rivers as Living Entities in Bangladesh' [2020] *Asia Pacific Journal of Environmental Law* 160, 161.
172. Ibid, 162.
173. Ibid, *Human Rights and Peace for Bangladesh* (n 169) 277–78.

NRPC) as the guardian (*loco parentis*) of the rivers and imposed a novel obligation on it to protect the rivers from pollution and encroachment and to preserve their natural navigability and beauty.[174]

The court made several other orders including amendment of powers and strengthening the effectiveness and independence of the NRPC, empowering it to be the approving agency of any project related to rivers and water bodies, amendment of the National River Protection Commission Act in 2013 to make river encroachment and pollution a criminal offence, the removal of encroachments within 30 days, requesting government to make maps of river areas publicly available, compilation of publicly available lists of encroachers and offering compulsory education and awareness on rivers.[175]

The Bangladesh judiciary, in justifying its ruling, relied on two basic principles; the public trust doctrine[176] and the duty of the government to protect and improve the environment and biodiversity[177] under the fundamental duties of state policy chapter in the Constitution. The court relied on the interpretation of public trust doctrine by Joseph Sax that the public property must be used only for a public purpose and shall be made available for the use of community, shall not be sold and must be maintained for their specific use.[178] Accordingly, the court held that it is gravely unjust to subject natural resources like air, sea, water and forests to private ownership and that they shall be made freely available to everyone.[179] Referring to Article 21 of the Constitution of Bangladesh, it held that natural resources are public property and every citizen, present and future has an equal right to these resources.[180] The court acknowledged that the human existence depends on nature and recognized the utmost duty of humans to 'protect, preserve and develop the nature as a guardian of a child strives for its utmost betterment'.[181]

6.3 Colombia

Colombia recognized the rights of nature through the judicial recognition of the rights of the Atrato River.[182] Petitioners claimed that the Atrato River had been highly degraded due to industrial activities, most particularly, due to mechanized mining exploitation.[183] They claimed that these activities had mainly affected the upper and middle basin of the Atrato River, its main tributaries and the riverbed.[184] The petitioners sought the protection of the fundamental rights to life, health, water, food security, a healthy environment, the culture and the territory of the active ethnic communities and pleaded the Constitutional judge to issue orders to overcome the health,

174. Islam and O'Donnell (n 171) 163.
175. Ibid; Sarah Bardeen and Lori Pottinge (eds), *Rights of Rivers* (The Cyrus R. Vance Centre for International Justice, Earth Law Centre and International Rivers, 2020) 47.
176. Constitution of Bangladesh 1972, Art 21.
177. Ibid, Art 18A.
178. Islam and O'Donnell (n 171) 164.
179. *Human Rights and Peace for Bangladesh* (n 169) 107.
180. Islam and O'Donnell (n 171) 165.
181. *Human Rights and Peace for Bangladesh* (n 169) 272.
182. *Tierra Digna v Presidency of Colombia* (The Atrato River Case) (2016) Judgment T-622/16 Constitutional Court of Colombia.
183. Ibid, 8.
184. Ibid.

social, environmental and humanitarian crises associated with the Atrato River.[185] Delivering the judgment in November 2016, the Constitutional Court of Colombia declared that 'the Atrato River, its basin and tributaries are a legal person possessing the rights to protection, conservation, maintenance, and restoration'.[186] The honourable judge, Jorge Ivan Palacio, held that the rights of nature are a part of the biocultural rights. His Lordship defined biocultural rights to mean 'the rights that ethnic communities have to administer and exercise sovereign autonomous authority over their territories – according to their own laws, customs – and the natural resources that make up their habitat'.[187] The court held that these rights emerge from the recognition of the deep and intrinsic link that exists between nature, natural resources and indigenous communities which are interdependent on one another and cannot be understood in isolation.[188] Thus, although not expressly stated, we see again the relationality of stewardship of Indigenous and local peoples forming a key part of the decision. The central notion of this concept recognizes the human beings as a part of nature and that the preservation of biodiversity leads to the preservation of life and cultures that interact with it.[189]

6.4 Ecuador

The Ecuadorian recognition of rights of nature arguably reaches the highest level to date of any state globally: the Constitution of the country. It is the first Constitution anywhere in the world which recognizes the inherent rights of nature. Chapter 7 of the Constitution, titled 'Rights of Nature', grants inalienable rights to the environment.[190] Such Constitutional provision derives from the belief in *Pachamama* prevalent within the people living in the Andean mountains. *Pachamama means* 'Mother Earth' or 'World Mother' and it is believed that *Pachamama* presides over everything on Earth necessary for all living beings to sustain their lives. According to Article 10 of the Constitution, nature is entitled to claim the rights of nature recognized by the Constitution.[191] Chapter 7 of the Constitution recognizes the rights of nature:

> to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution, rights of the nature to be restored, the right of the people to demand the recognitions of rights for nature before the public organisms, the duty of the State to promote respect towards all the elements that form an ecosystem and to apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles, and the right of persons, communities, people, and nations to benefit from the environment and the natural wealth.[192]

These rights were used and upheld by the judiciary in Ecuador to protect nature and natural resources in several cases including the Vilcabamba River case.[193] The

185. Ibid, 10.
186. Ibid, 5.
187. Ibid, 35.
188. Ibid.
189. Ibid.
190. Constitution of Ecuador 2008, ch 7.
191. Ibid, Art 10.
192. Ibid, Arts 71–74.
193. María Valeria Berros, 'Defending Rivers: Vilcabamba in the South of Ecuador' [2017] *RCC Perspectives, Can Nature have Rights?: Legal and Political Insights* 37.

Vilcabamba River, which carries the meaning 'sacred valley', is a river situated in the Loja province in Ecuador.[194] The river was diverted to widen the Vilcabamba-Quinara highway.[195] A case was filed by two foreign nationals claiming that the project to expand the Vilcabamba-Quinara highway was embarked on without an environmental impact study or an environmental protection license. Further, it was argued that the rocks, debris, sand and gravel deposited on the banks of the river by the construction company in charge of the expansion of the road was damaging the environment and causing serious flooding in winter.[196] The petitioners argued that these activities affecting the Vilcabamba river constituted a violation of rights of nature recognized by the Constitution of the country and therefore, requested from the provincial government of Loja to remove the debris on the banks of the river and to restore the original course of the river.[197] The Criminal Division of the Provincial Court of Loja held that there had in fact been a violation of the rights of the river highlighting the importance of nature and protecting it from degradation.[198]

6.5 Bolivia

Bolivia has essentially gone as far as Ecuador with regard to the recognition of rights of nature. However, the means of bringing this about differs. Instead of Constitutional amendments, Bolivia has introduced the rights of nature through dedicated legislation. The rights of nature in Bolivia are embodied in two statutes: (i) Law 071 of the Rights of Mother Earth of 2010 (*Ley 071 de Derechos de la Madre Tierra*) (Law of the Rights of Mother Earth) and (ii) Framework Law 300 of Mother Earth and Integral Development for Living Well of 2012 (*Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*) (Framework Law).[199] The first piece of legislation recognizes the specific rights to which Mother Earth is entitled. The second statute provides a framework for the realization and implementation of the rights of Mother Earth recognized in the first.[200]

The Constitution of Bolivia enacted in 2009 recognizes in clear and cogent terms the right to environment[201] and the rights of indigenous communities.[202] The preamble of the Constitution states 'We found Bolivia anew, fulfilling the mandate of our people, with the strength of our Pachamama and with gratefulness to God'.[203] Calzadilla and KotzéDevaka Weerakoon state that 'even though the Bolivian Constitution does not constitutionalize the rights of Mother Earth, it recognizes at the highest constitutional level the importance of ecological integrity'.[204] Thus the Constitution in

194. Ibid, 38.
195. Sofía Suárez, 'Defending nature: Challenges and obstacles in defending the rights of nature Case Study of the Vilcabamba River' (August 2013) <http://library.fes.de/pdf-files/bueros/quito/10386.pdf> accessed 21 July 2021, 1.
196. Ibid, 5; Berros (n 193) 38.
197. Suárez (n 195) 6.
198. Ibid, 7–8; Berros (n 193) 38–39.
199. Paola Villavicencio Calzadilla and Louis J Kotzé, 'Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia' [2018] *Transnational Environmental Law* 1, 3.
200. Ibid.
201. Bolivia (Plurinational State of)'s Constitution of 2009, Arts 33 and 34.
202. Ibid, Arts 30–32.
203. Ibid, Preamble.
204. Calzadilla and Kotzé (n 199) 7.

Bolivia can be said to have set the ground for the recognition of rights of nature through legislative means.

The title of the first statute itself, 'The Law of Mother Earth' signifies the role of nature or Earth in the lives of all the living beings, a mother who loves and lives for her children. Article 3 of the Law recognizes Mother Earth as a dynamic system involving all living beings, systems and organisms interdependent and interlinked with one another and which share a common destiny. Article 5 states that Mother Earth and all her components including humans are entitled to the rights recognized in the Law. In terms of Article 7, these rights include rights to life, the diversity of life, water, clean air, balance, restoration and the right to live free of contamination. Thus, the Law makes human beings a part of the wider earth community and confers on them the rights that they can collectively exercise. Article 6 lays down that any conflict between individual rights and the collective rights of the living system shall be resolved in a way that does not irreversibly affect the functionality of the living system. Article 10 of the Law provides for the creation of the Mother Earth ombudsman to ensure and promote the rights of Mother Earth. The Law therefore appears to be a well thought-out piece of legislation to safeguard the rights of all living beings and to balance the interests of humanity and the wider earth community. The Law also imposes several duties on the State and natural and juridical persons to protect Mother Earth. The Framework Law, on the other hand, deals with the determination of the principles pertaining to the access to living systems of Mother Earth, establishment of plans for integral development, guiding of legislative, policy and regulatory plans to achieve living well and defining the institutional framework for promoting and implementing integral development.[205]

6.6 New Zealand

New Zealand has conferred rights on environmental systems and environmental resources through legislative enactments. The Te Urewera Act of 2014 seeks to establish and protect the legal identity of the Te Urewera national park for its natural and cultural values, and national importance.[206] The Act declares the area of Te Urewera to be a legal entity, having all the rights, powers, duties, and liabilities of a legal person.[207] The Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017 follows a similar path and declares Te Awa Tupua to be a legal person.[208] There is a similarity in the approaches adopted in Bolivia and New Zealand. Both jurisdictions incorporate the rights of nature concept within a legislative framework. However, while Bolivia recognizes the rights of nature in general, New Zealand confers rights on specific natural resources and ecosystems.

6.7 Canada

In Canada, the rights of nature have been recognized in relation to the Magpie River. The Magpie River is an approximately 300 km long river situated in Cote Nord region

205. Ibid, 16.
206. Te Urewera Act, 2014 (New Zealand), s 04.
207. Ibid, s 11.
208. Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 (New Zealand), s 14.

which is deeply connected with the lives of the Ekuanitshit community.[209] The Ekuanitshit community struggled for years to protect the river against the adverse impacts of hydroelectric developments. Addressing the concerns of this community over the river, the Innu Council of Ekuanitshit and the regional municipality of Minganie passed joint resolutions in February 2021 recognizing the Magpie River to be a legal person. The resolutions conferred nine rights on the river including the right to flow, maintain natural biodiversity, be free from pollution and the right to sue. It also appointed guardians to ensure that these rights of the river will be respected and upheld.[210]

6.8 Australia

Under the Australian Constitution, the responsibility for the management of water resources lies with the states.[211] In 2010, in the State of Victoria, a new institution named the 'Victorian Environmental Water Holder' (hereinafter referred to as VEWH) was established with the capacity to and responsibility to hold and manage water rights for the purpose of maintaining and enhancing the health of the aquatic environment.[212] VEWH is considered a legal person with the right to water, right to decide how to use the available water each year and several other rights concerned with water resources.[213] VEWH thus acts as the guardian for instream environmental flows.[214] The establishment of the VEWH does not create legal rights for rivers per se, but it provides a concrete example as to how a legal entity can be established and empowered to manage environmental water rights.[215]

Moreover, the Victorian Parliament recently passed the Yarra River Protection (*Wilip-gin Birrarung murron*) Act 2017. The Act does not expressly confer legal rights on the Yarra River nor recognizes it as a separate legal person. The Act, however, confirms the intrinsic connection of the traditional owners to the Yarra River and further recognises them as the custodians of the land and waterways.[216] The Act states that it aims to provide for the declaration of the Yarra River and certain public land in its vicinity as one living and integrated natural entity for the purpose of preserving them.[217] The Act further establishes the Birrarung Council as the institutional guardian to provide advice to the Minister in relation to Yarra River land and other connected matters.[218] The legal approach, while less revolutionary compared to what has

209. Sean Nickson, 'A Quebec River Now Has Legal Personhood – What That Means for Granting Nature Rights' (Ecojustice, 5 March 2021) <https://ecojustice.ca/quebec-river-legal-personhood-rights-of-nature/> accessed 10 July 2021; 'A River as a Legal Person: McGill Law Students Lend a Hand in Magpie River Case' (McGill, April 2021) <https://publications.mcgill.ca/droit/2021/04/19/magpie-river-legal-person/> accessed 15 July 2021.
210. Counseil Des Innu De Ekuanitshit, 'Resolution' <http://files.harmonywithnatureun.org/uploads/upload1072.pdf> accessed 15 July 2021.
211. O'Donnell and Talbot-Jones (n 16) 3.
212. Ibid.
213. Ibid.
214. Ibid, 4.
215. Ibid.
216. Yarra River Protection (*Wilip-gin Birrarung murron*) Act, No 49 of 2017, Preamble.
217. Ibid, s 1 (a).
218. Ibid, s 1 (c).

been done in Ecuador, Bolivia or New Zealand, forms an innovative legal framework to protect the Yarra River.

This section has examined the range of ways that Earth jurisprudence has been incorporated into legal regimes around the world. Having considered each of these mechanisms, the section that follows considers which of these could most readily provide a model for great eco-centrism within contemporary Sri Lankan law.

7 WAYS FORWARD AND CHALLENGES

The discussion above suggests three alternative methods that Sri Lanka could adopt to re-embrace eco-centrism within its existing legal framework: (1) through the courts; (2) constitution; and (3) through legislative enactment. In this section, each of these are considered in turn.

7.1 Judicial interpretation

A key means by which eco-centrism could be incorporated in Sri Lankan law is through progressive judicial interpretation in the manner seen in India, Bangladesh and Colombia. The cases decided in these three jurisdictions provide important examples of the role that can be played by the Supreme Court of Sri Lanka.

The judicial recognition of Earth jurisprudence appears to be the most viable method of returning to eco-centrism in the context of Sri Lanka due to several reasons. First, the Sri Lankan judiciary has played an extremely vibrant role in environmental litigation following the *Bulankulama* case in 2000. As such the judiciary has bridged salient gaps in the Constitutional framework. The recognition of environmental rights and environmental legal principles such as sustainable development, polluter pays and the precautionary principle all emerged as a result of judicial innovations. Second, while its independence is questioned in certain circumstances,[219] the judiciary in Sri Lanka has played a vital role in protecting democracy and upholding justice in the most crucial junctures of the Sri Lankan history. It is not uncommon for the courts – the judicial arm of the government in Sri Lanka – to play a powerful and active role in influencing the executive and legislative branches.[220] Third, in recent times, there have been a

219. For example, the impeachment of the former Chief Justice Shirani Bandaranayake in 2013 is commonly perceived as a political move.

220. This dynamic role was particularly visible during the Constitutional crisis in Sri Lanka in the year 2018, where the then President Maithripala Sirisena appointed Mahinda Rajapaksa, the former president and Member of Parliament, as the Prime Minister, without legally removing the incumbent Prime Minister, Ranil Wickremasinghe. The incident dropped the country in absolute chaos and considered by many constitutional and legal experts as the death of Constitutionalism and Democracy in Sri Lanka. The most significant role against the Constitutional coup was played by the Supreme Court in Sri Lanka, which determined that the act of the president was unconstitutional. See the cases of *Rajavarothiam Sampanthan v Attorney General and others* (2018) SC (FR) Application No 351/ 2018; *Kabir Hashim and others v Attorney General and others* (2018) SC (FR) Application No 352/ 2018; *Centre for Policy Alternatives (Guarantee) Limited and others v Attorney General and others* (2018) SC (FR) Application No 353/ 2018; *Lal Wijenayake v Attorney General and others* (2018) SC (FR) Application No 354/ 2018; *Gabadagamage Champika Jayangani Perera v Attorney General and others* (2018) SC (FR) Application No 355/ 2018; *Anura Kumara Dissayanake and others v Attorney*

significant number of unsustainable development projects which have been proposed by the executive branch of government which have been endorsed by the legislature. In contrast, the judiciary has played a significant role in ensuring that such projects are either stopped, or necessary alternative paths are adopted to ensure environmental sustainability. Fourth, the Sri Lankan judiciary has frequently expressed willingness to be guided by global legal developments.[221] In fact, in many of the environment related cases, progressive case laws from other jurisdictions are cited by the parties and used as a guidance by the judiciary.[222] Therefore, the adoption of rights of nature by the judiciaries in India, Bangladesh and Colombia could also be persuasive as a foreign judicial precedent.

The rights of nature models adopted in India, Bangladesh and Colombia share a common feature, for all of them recognize the rights of a particular ecosystem. This is understandable since a court cannot logically be expected to go beyond the matter at hand and confer rights on the entire environment. Therefore, recognition of rights of nature through judicial activism will most likely confer rights only on the specific eco-system or the natural resource in question but the precedent that it can set cannot in anyway be underestimated.

In justifying the adoption of rights of nature, the judiciary can rely on the justifications provided by the judiciaries in both India and Bangladesh. It can rely on the religious rights and beliefs which recognize the significance of treating the environment on a par with humanity. On the other hand, the public trust doctrine and the duty of the state parties to protect nature is already well-established in the Sri Lankan jurisprudence and therefore, it would not be difficult for the Sri Lankan judiciary to place humanity within nature and embrace earth jurisprudence on a parity of reasoning to Bangladesh.

It would however not be very promising to expect the judiciary in Sri Lanka to adopt the biocultural rights approach adopted in Colombia to justify the rights of nature since the indigenous community rights are an area entirely left out in the human rights debate in Sri Lanka. The fundamental rights of indigenous communities in Sri Lanka have been violated, they have been ousted from their ancestral lands and

General and others (2018) SC (FR) Application No 356/ 2018; *Manoharan Ganesa v Attorney General and others* (2018) SC (FR) Application No 358/ 2018; *Rishad Bathiudeen and others v Attorney General and others* (2018) SC (FR) Application No 359/ 2018; *Rauff Hakeem and others v Attorney General and others* (2018) SC (FR) Application No. 360/ 2018; *S Ratnajeevan H Hoole v Attorney General and others* (2018) SC (FR) Application No 361/ 2018; See also, Amalini De Sayrah, 'A Historic Judgement' (*Groundviews* 14 December 2018) <https://groundviews.org/2018/12/14/a-historic-judgment-supreme-court-holds-dissolution-of-parliament-illegal/> accessed 8 August 2021.

221. For instance, one of the main reasons for the relaxation of the rules pertaining to standing with regard to both fundamental rights and writs in Sri Lanka is the obligation on the judiciary to bring the Sri Lankan jurisprudence in line with global development especially those in India. See Mario Gomez, 'Blending Rights with Writs: Sri Lankan Public Law's New Brew' [2006] *Acta Juridica* 451, 466.

222. For example, in *Bulankulama* case (n 108), the court referred to and was guided by *MC Mehta v Kamal Nath* (1997) 1 SCC 388 case in India, in *Centre for Environmental Justice* (n 77), the court referred to and was guided by *Indian Council for Enviro-legal Action v Union of India (Sludge Case) (1996) AIR SC 1446*; *Vellore Citizens' Welfare Forum v Union of India* 1996 (5) SCC 647; *MC Mehta v Kamal Nath* (1997) 1 SCC 388; *MC Mehta v Union of India* (1987) AIR SC 965; *S Jagannath v Union of India* (1997) 2 SCC 87 *and MC Mehta v Union of India* (1997) 2 SCC 411 cases in India.

forcefully settled in new colonies,[223] but they have never approached the courts of law seeking their rights enforced. Therefore, whether biocultural rights can be recognized by virtue of existing fundamental rights is yet to be tested. It can however be positively expected that the rights of indigenous communities to nature will be upheld strongly by the judiciary perhaps even with certain references to the rights of nature in the *Uruwarige Wannila Aththo and others v Central Environmental Authority and others* [2020] (CA), a writ petition filed by the *vedda* community against a proposed agriculture and livestock development project, the first one of that kind.

7.2 Constitutional amendment

A further way in which Earth jurisprudence could be incorporated into Sri Lankan law is through the Constitution. Constitutional guarantees sit at the apex of the hierarchy of norms and have the power to surpass any conflicting norms of lower value.[224] In Sri Lanka, the Constitution is considered supreme and therefore, recognition of the rights of nature and legal personhood of nature in the Constitution following Ecuador, will give these two concepts the highest legal recognition.

However, when considering the actual context within which these drastic changes are expected, it is highly doubtful whether there will be any commitment on the part of the legislature to adopt such a ground-breaking development into the supreme law of the country. The Constitution of Sri Lanka has many significant gaps – including in relation to the environment; but it seems that amendments made to the Constitution to date have been aimed at achieving political ends. Since its enforcement in 1978, the Constitution of Sri Lanka has had 20 amendments, but none of them were aimed at the protection of the environment; except, perhaps, for the 13th amendment which devolves certain environmental matters to Provincial Councils. This non-commitment by the legislature and the executive in a four-decade period raises serious doubts about the willingness of legislative and executive branches of the government to protect the environment of the country.

Presently, the Cabinet of Ministers has appointed an experts committee to draft a new constitution to replace the second republican Constitution of Sri Lanka for consideration by the Cabinet of Ministers and the Parliament, and inclusion of a chapter or at least several articles on rights and legal personhood of nature could be a revolutionary step forward in the Constitutional history in Sri Lanka. In doing so, Sri Lanka could recognize the Earth as a living being with inherent rights and the true position of man as a part of nature. The rights of Earth to exist, persist, re-generate, restoration, to be free from pollution and rights to water, air and health shall essentially be recognized. Following the Ecuadorian model, any interested personnel should be allowed to go before the courts defending the rights of nature.

In terms of Article 82(5) of the Constitution, a bill for the amendment, repeal or replacement of the Constitution shall receive the votes of not less than two-thirds of the whole number of members in the Parliament in favour. Article 83 lays down the types of bills which require the approval of the people at a referendum. In terms of this Constitutional provision, a bill to include rights and legal personhood

223. *Indigenous Communities in Sri Lanka*: The *Veddas* (Ceylon Tea Service PLC) 10.
224. Dinah Shelton, 'Human Rights and the Environment: Substantive Rights' in Malgosia Fitzmaurice, David M Ong, Panos Merkouris (eds), *Research Handbook on International Environmental Law* (Edward Elgar Publishing Limited, 2010) 266.

of nature will not require the approval of the people at a referendum. However, according to the same article, if it is brought forward as a part of a bill to repeal or replace the Constitution, then it must be approved by the people at a referendum. Such a proposal would receive a wider support by the public who are now engaged in a social-media lead campaign to protect the environment against the arbitrary decision makings by the government of Sri Lanka.

7.3 Legislative enactment

Finally, Earth jurisprudence could also be incorporated through legislative enactment. The lessons discussed so far demonstrate two pathways that Sri Lanka could adopt. First, it can confer rights on nature generally; on every part and component of it. Any one of the interested parties shall be allowed to go before the courts defending the rights so recognized. This approach aligns with the legislative approach adopted by Bolivia.

Second, it can recognize the legal personality of specific eco-systems and grant them with appropriate rights following the New Zealand model. A specific guardian or a human face shall be made legally obliged to defend the rights of the ecosystem and to ensure that they will be respected. In doing this Sri Lanka could first select the most vulnerable natural resources and ecosystems and grant them with legal personality and rights and then gradually expand its scope to other natural resources as appropriate. This method would be particularly effective in protecting highly threatened, vulnerable and invaluable ecosystems like the Sinharaja rainforest reserve.

While in a relative sense, legislative reform is far more likely than Constitutional amendment, it should not be forgotten that the likelihood of the Parliament and the executive of Sri Lanka initiating such a ground-breaking step forward is far too remote. This is well apparent from the most recent circular MWFC/1/2020 issued by the ministry of Wildlife and Forest Conservation giving power to District and Divisional Secretaries to use lands classified as Residual Forests for various activities. The circular MWFC/1/2020 cancelled out the previous circular 05/2001 which had prevented arbitrary use of residual forests in the past.[255]

8 CONCLUSION

> We stand now where two roads diverge. But … they are not equally fair. The road we have long been traveling is deceptively easy, a smooth superhighway on which we progress with great speed, but at its end lies disaster. The other fork of the road -the one less travelled by- offers our last, our only chance to reach a destination that assures the preservation of the earth.
>
> Rachel Carson, invoking Robert Frost[226]

Sri Lanka is now at a juncture of alarming levels of environmental pollution, degradation and destruction. Many recent judicial decisions in Sri Lanka have fail to recognise that developmental activities should not only be for human benefit. A shift is

225. Cabinet Circular MWFC/1/2020 <https://msdw.gov.lk/files/resources/management-of-other-state-forests.pdf> accessed 17 July 2021.
226. Rachel Carson, *Silent Spring* (Houghton Mifflin, 1962) 277.

therefore need to ensure concomitant protection and preservation of nature itself and of all its constituents. However, an exposition of the ancient history and tradition of Sri Lanka shows that the country has a long history of treating nature as equal, or even superior to, human beings long before the concept of Earth jurisprudence arose in the Western world. Many countries are now moving towards eco-centrism, embracing Earth jurisprudence and adopting eco-centric principles including according rights and legal personhood to nature. Therefore, it may now be an apposite time for Sri Lanka to delve back into its traditions, customs and religious practices; and to embrace the earth-centric ideologies embodied therein. This could be done through judicial, constitutional or legislative mechanisms; or through conferring a greater legal recognition to the customary legal principles. Ultimately, there is the need to recognize that a good quality human life is one intrinsically entwined with nature. Humans cannot survive when nature is dead.