Enhancing the status of Rivers

What is the issue?

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- The Uttarakhand High Court **declared the rivers Yamuna and Ganga as legal or juridical persons,** enjoying all the rights, duties and liabilities of a living person.
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- It is the first time that an element of the natural environment has been declared a legal person.
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- Indian courts, previously have granted this status to temple deities, religious books, corporations, etc.,
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What was this case about?

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- The two issues before the High Court were:\n\n
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1. **removal of illegal constructions** on the banks of a canal in Dehradun, and
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2. **the division of water resources** between U.P & Uttarakhand (not resolved since the formation of the new state).
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- In December 2016, the High Court directed the removal of the constructions.
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- It also directed the constitution of the **Ganga Management Board** (a statutory body under the U.P. Reorganisation Act 2000) and prohibited mining of the Ganga riverbed.
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- On the issue of resource division, the court directed the Central government to notify the settlement reached by the two States in a time-bound manner.
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- Three months later, when the matter came up before the court once again, the encroachments were still there, the settlement between the States was yet to take place, and the board had not been constituted.
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What logical leaps did the court has taken?

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- **Extraordinary situation:** First, for the court, an 'extraordinary situation' had been created which required extraordinary measures for the protection of the Ganga and the Yamuna.
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- In a clear breach of statutory duties under the U.P. Reorganisation Act, the case had became the one concerning the protection of the health and well-being of the two rivers.
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- **Physical & spiritual sustenance:** Second, the court recorded how the rivers provide 'physical and spiritual sustenance' to half the Indian population.
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- It found the constitution of the board to be necessary for various purposes including irrigation, water supply, and power generation.
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- **Parens patriae:** Third, the court decides to exercise the **parens patriae jurisdiction** to declare the rivers and all their tributaries, etc. as living persons.
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- It literally 'parent of the country'. It is an inherent power of the sovereign, **and not the courts,** to provide protection to persons unable to take care of themselves.
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- In this case, several high level people have been appointed as the **custodians**, i.e., persons who will act in the place of parents for the two rivers.
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- These officers are now expected to act on behalf of the rivers for their

protection and conservation.
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Is there any unanswered questions?

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- The High Court’s declaration is crisp and it raises several questions.
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- In the eyes of the law, living persons such as companies, associations, deities etc., have rights and duties and primary among these being the right to sue and the capacity to be sued.
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- Which implies that from now on, **the rivers can sue persons acting against their interests.**
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- But what for? Do they have a right not to be a receptacle for tons of sewage? If yes, then who will sue whom?
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- **Do other riparian State governments now have less of a role** in the protection of the rivers as they are not the identified custodians?
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- The judgment does not take away existing statutory and constitutional rights and duties of citizens and government agencies to counter the pollution and degradation of these rivers.
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- What it does do is to identify three officers **who will be the first-line defenders** for the rivers.
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What will be impact?

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- The Court relies on the copious list of rights that humans have as citizens of India.
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- But are these rights enjoyed by the overwhelming majority of the citizens?
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- Even a basic right such as security of life and limbs is difficult for women to enjoy from the pre-birth life in a womb till old age.

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- Men may do better but not by much, unless they are in the top echelons of income and caste.
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- **If we treat them so badly when they are divine, what hope is there that we will do any better calling them human?**
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Source: The Hindu & The Indian Express

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