

Fighting *for* lakes in Court

Existing laws and strategies needed to save waterbodies



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International Water Law

The **Desertification Convention** (1994) clearly links water and desertification. In fact, its Objectives provision recognises that rehabilitation, conservation and sustainable management of water and waterbodies are key to combating desertification.

The **Dublin Principles** sets out recommendations for action at local, national and international levels to reduce water scarcity, through the following four guiding principles:

Principle 1: [Fresh water](#) is a [finite and vulnerable resource](#), essential to sustain life, development and the environment

Principle 2: [Water development](#) and [management](#) should be based on a participatory approach, involving users, planners and policy-makers at all levels

Principle 3: [Women](#) play a central part in the provision, management and safeguarding of water

Principle 4: Water has an [economic value](#) in all its competing uses and should be recognized as an [economic good](#)

Controversy relating to water as “economic good”, and not as a Right, was sought to be corrected by the UN [Committee on Economic, Social and Cultural Rights](#) adopting *General Comment No. 15*, where **water is recognised not only as a limited natural resource and a public good but also as a human right**. This step is seen as a decisive step towards the recognition of water as universal right.

- Convention On Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention, 1971)
- Convention On Biological Diversity, June 1992
- Convention on Conservation Of Migratory Species Of Wild Animals (Bonn Convention).
- International Convention For The Protection of Birds, 1950

Key Principles relating to Water in Indian Law

- Water Law is State based, except in certain issues the Union is entitled to legislate, such as in shipping and navigation on national waterways, use of tidal and territorial waters and in the case of inter-state water disputes. (Interstate Water Dispute Act 1956, River Boards Act 1956)
- India lacks an umbrella framework to regulate freshwater in all its dimensions.
- The Riparian Right Theory has increasingly been rejected and the Common Law Rights today recognises water is a Public Trust.
- The existing framework is largely derived from colonial period, essentially from irrigation acts, common law principles and some water quality regulation and **judicial recognition of a human right to water**.
- Some Acts worth mentioning are The Northern India Canal and Drainage Act 1873, The Madhya Pradesh Irrigation Act 1931, the Regulation of Waters Act 1949, Bihar Irrigation Act 1997, and various revenue laws. All of these largely vested the rights over water with the Government.
- While the Constitution does not specifically recognise a Fundamental Right to Water, Courts have deemed such a right to be implied in Article 21 (Right to Life)
- Article 48 A of constitution of India says that “the state shall endeavour to protect and improve the environment and to safeguards the forests and wildlife of the country.”
- Part IV A of the Constitution directs fundamental duties for every citizen of India. According to clause ‘g’ of Article 51 (A) (g) “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”.
- Further, the guidelines for Environmental Impact Assessment of River Valley projects, Coastal Regulation Zone Notification, the Wetland Rules, etc. are recent determinants promoting conservation of waterbodies in a holistic manner.

Key Central Laws and Policies affecting Water

- Wildlife (Protection) Act, 1972
- Fisheries Act, 1897
- Indian Forest Act, 1927
- Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976
- Water (Prevention And Control Of Pollution) Act, 1974
- Maritime Zones Of India (Regulation Of Fishing By Foreign Vessels) Act, 1982
- Forest Conservation Act , 1980
- Environment (Protection) Act, 1986
- Coastal Zone Regulation Notification, 2010
- Wildlife (Protection) Act, 1972
- National Conservation Strategies On Environment & Development
- Biological Diversity Act , 2002
- Municipal Solid Wastes (Management and Handling) Rules, 2003
- Wetland Rules, 2010
- The National Green Tribunal Act, 2010
- National Water Policy, 2002
- National Policy for Hydro-Power Development, 1998

State Ground Water, Rain Water Harvesting and Irrigation Laws

Ground water:

- The Karnataka Ground Water (Regulation for protection of sources of drinking water) Act, 1999;
- The Kerala Ground Water (Control and Regulation) Act, 2002;
- The Andhra Pradesh Water, Land and Trees Act, 2002;
- The West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005;
- The Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005.

Irrigation:

- The Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997;
- Madhya Pradesh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 1999;
- The Tamil Nadu Farmers' Management of Irrigation System Act, 2000;
- Kerala Irrigation and Water Conservation Act, 2003;
- Orissa Pani Panchayat Act, 2002;
- Karnataka Irrigation Amendment Act, 2003;
- Maharashtra Management of Irrigation System by Farmers Act 2005;
- The Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 2006;
- The Uttar Pradesh Participatory Irrigation Management Act, 2009.

Rainwater:

- Bangalore Water Supply and Sewerage (Amendment) Act, 2011 (with obligation to provide rain water harvesting structures)
- Tamil Nadu District Municipalities Act, 1920 and Building Rules 1973 (Amendments made to make rain water harvesting mandatory)

Joseph Sax on Public Trust Doctrine

The salient features of the said doctrine per Prof. Sax's interpretation are as below:

- “(1) the property subject to the trust must ***not only* be used for a public purpose**, but it must be **held available for use by the general public**;
- (2) the property may not be sold, even for fair cash equivalent;
- (3) the property must be maintained for **particular types of use**. (i) either traditional uses, or (ii) some uses particular to that form of resources.”

Professor Joseph L. Sax in "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law Review, Vol.68 No.3 (Jan. 1970) PP 471- 566.

ESG Lakes Petition - WP 817/2008

GROUNDNS

- Challenged privatisation of Lakes by Lake Development Authority as being illegal
- State cannot abandon its role in protecting water bodies as per the Public Trust Doctrine [Supreme Court in *Intellectuals Forum, Tirupathi vs State of Andhra Pradesh and others* [reported in 2006 (2) SCJ 293], put it beyond doubt that lakes are not tradable commodities and must be held in Public Trust per Prof. Sax's interpretation]
- Sec. 67 of the Karnataka Revenue Act, vests in the State lakes, tanks and other water bodies and water courses, and power to lease is with the State, *not* any other authority. LDA was merely a society.
- Changing lake land use to recreation or any other purpose, illegal per the Lakshman Rao Cmt Report, 1988
- Supreme Court in *A. P. Pollution Control Board vs. Prof. M. V. Nayudu and Ors.*, reported in 1999 (2) SCC 718, invoked Principle of Intergenerational Equity to protect lakes [The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.]
- Karnataka High Court in WP No. 17823/1999, Suresh Heblkar and ors. vs. State of Karnataka and ors ruled: "...it is the fundamental duty of not only the State, but also the citizenry to preserve water resources." Karnataka High Court in *Masay and Others vs Bangalore City Corporation and Ors.* reported in 2003 [AIR (Kar) 468 and 2003 (4) KarLJ 168] held; "The Corporation is duty bound to maintain the public character of such lands and any effort to deviate from this statutory obligation would amount to breach of public trust which on having so found has to be corrected by the Courts."
- Supreme Court in *Municipal Council, Ratlam vs. Shri Vardhichand and Ors.*, [reported in 1980 AIR(SC) 1622] held: "A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability."

ESG Lakes Petition - WP 817/2008

PRAYERS

- Frame a Scheme to protect lakes and similar water bodies on lines of .Principle of Intergenerational Equity and Public Trust Doctrine, in terms of the recommendations of the Lakshman Rau Committee and also in conformance with principles for Wetland Conservation and Management as laid down by the Union Ministry of Environment and Forests (later to become Wetland Rules, 2010)
- Ensure that any scheme regarding the preservation and conservation of tanks, lakes and such other water bodies protects free Right of Access to all publics in exercise of traditional and customary rights, and of enjoyment of nature and its resources in a responsible manner.
- Initiate proceedings to fix personal responsibility on the officials of State Government and LDA by instituting necessary judicial enquiry, for having been directly involved in causing irreparable damage and loss of biodiversity, destruction of wetland habitats and diminishing the quality of the wetland from the point of view of migratory and nesting birds, due to their action in leasing out lakes to private profit making entities in advancing commercial interests in abject violation of the applicable laws and norms.
- State to take necessary steps to restore the lakes concerned to its original restored states prior to entering into Privatisation Lease Agreements at their expense in accordance with the Polluter Pays Principle

Justice N. K. Patil Committee Report

- Proposed Guidelines to protect and conserve, and also recover encroached and polluted lakes
- Rejected Privatisation of Lakes; instead promoted their protection by involving local communities and local elected bodies
- Proposed no-development zone around lakes
- Proposed survey of all lakes and Raja Kaluves to fix legal limits and begin recovery of encroached areas
- Proposed developing live fencing around lakes and Raja Kaluves with indigenous trees and bushes and thus prevent future encroachment, besides improving local biodiversity
- Called for stop to civil engineering constructions that turned lakes into 'soup bowls' and thus destroying wetland characteristics and biodiversity value
- Pushed for reviving lakes into drinking water reservoirs, at least bring them to a quality where swimming is possible.
- Proposed a comprehensive survey of all lakes in Bangalore area by nine departments who are in one way or the other responsible for lake management
- Promoted the concept of returning Bangalore to a "Land of Thousand Lakes"

Karnataka High Court 11th April 2012 order in ESG Lakes Case

- Comprehensively accepted Justice N. K. Patil report as part of its order
- Reemphasised support of previous High Court order in WP 1841/2006 preventing pollution of lakes and requiring their protection
- Ordered survey of lakes, tanks and Raja Kaluves per their original Revenue Records to fix their legal limits, *all over Karnataka*
- Unauthorised construction within 30 m of lake to be removed, and the area kept as no development zone.
- Lakes to be rehabilitated comprehensively a
- nd scientifically, and not turned into concretised bowls.
- No sewage or any other pollution to enter lakes, and all Raja Kaluves to be properly maintained
- Buffer area of lakes to be planted with indigenous trees and bushes by Forest Department
- District Lake Development Committees set up to monitor implementation of directions, and also receive complaints of negligence, pollution, encroachment, etc.
- An Apex Committee at the State Level Set up under Revenue Secretary, who would work with Member Secretary of Karnataka Legal Services Authority, in implementing the order and also act as an Appellate Authority over the District Committees. Power to issue appropriate directions vested with this Committee. (It took a Contempt Petition to get the Karnataka Government to constitute these committees

Outcomes?

Karnataka Lake Conservation and Development Authority Act, 2015

- Problem with this law, it simply does not trust local elected bodies and communities
- Extremely bureaucratic
- Leaves back door open for privatisation of water bodies
- But, promotes integrated protection and rehabilitation of lakes, and provides serious penal provisions against pollution and encroachment
- Violative of Nagarpalika Act, as District/Metropolitan Planning Committees have no role whatsoever