

Jheel Sanrakshan Samiti

An NGO working on the principles of Integrated Water Resources Management (IWRM) & Integrated Lake Basin Management (ILBM), since 1992.



Water in Constitution of India

Responsibilities for water, between the State and the Centre, fall into three categories:

- Under the Center
- In the Concurrent List (i.e under the control of both the center and the state)
- Under the State



Provisions in Indian Constitution

Article 48A enjoins the state to protect and improve the environment and safeguard the forests and wildlife in the country.

Article 51A states that the “fundamental duty of every citizen is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”.



Article 246

- Parliament has exclusive powers to make laws with respect to any of the matters enumerated in 'Central' list
- The center and the states have powers to make laws with respect to any of the matters in the 'concurrent' list
- The Legislature of any State has powers to make its own laws for any matter enumerated in the 'state' list .
- Parliament has powers to make laws with respect to any matter for any part of India even if such matter is enumerated in the State List.



Policies for Water

- **The National Water Policy (NWP), 2002 :-**

It contains provisions for developing, conserving, utilizing, governing and managing in a sustainable way, the important water resources keeping national perspectives and priorities in mind. The preamble of NWP upholds the objectives of IWRM.

- **State Water Policy of Rajasthan 2010:-**

Similar to NWP in spirit, it caters to the management of water in Rajasthan.

- Both the aforesaid policies emphasize on promoting beneficiaries' participation in all aspects of planning and management of water.



Related Policies

- **National Environment Policy, 2004**
- **National Forest Policy, 1988**



National Acts (& Rules)

- **Indian Penal Code**
- **The Inter State Water Dispute Act 1956**
- **The River Boards Act 1956**
- **The Water (Prevention and Control of Pollution) Act, 1974 & Water Cess Act, 1977**
- **The Forest (Conservation) Act, 1980; and Rules 2003.**
- **Environment (Protection) Act, 1986**
- **The Biological Diversity Act, 2002 ; and Rules 2004**
- **National Wetland Conservation & Management Rules 2010**



State Acts (& Rules)

- **The Rajasthan Minor Irrigation Works Act.**
- **The Rajasthan Fisheries Act.**
- **The Rajasthan Forest Act.**
- **The Rajasthan Land Revenue Act.**
- **The Rajasthan Irrigation and Drainage Act**
- **The Rajasthan Soil and Water Conservation Act.**
- **The Rajasthan Panchayat Raj Act.**
- **The Farmers' Participation in Management of Irrigation Systems Act.**



Verdicts/Directions of High Courts and Supreme Court of India

The Supreme Court of India and the state High Courts have given various verdicts/directions for the protection and conservation of water resources mainly on:-

- Provisions for environmental education and sustainable conservation of environment.

Principles of "Polluter Pays".

- Preventive measures to check water pollution.
- Measures to check encroachments and pollution of rivers and lakes, and restoration of their catchment areas.



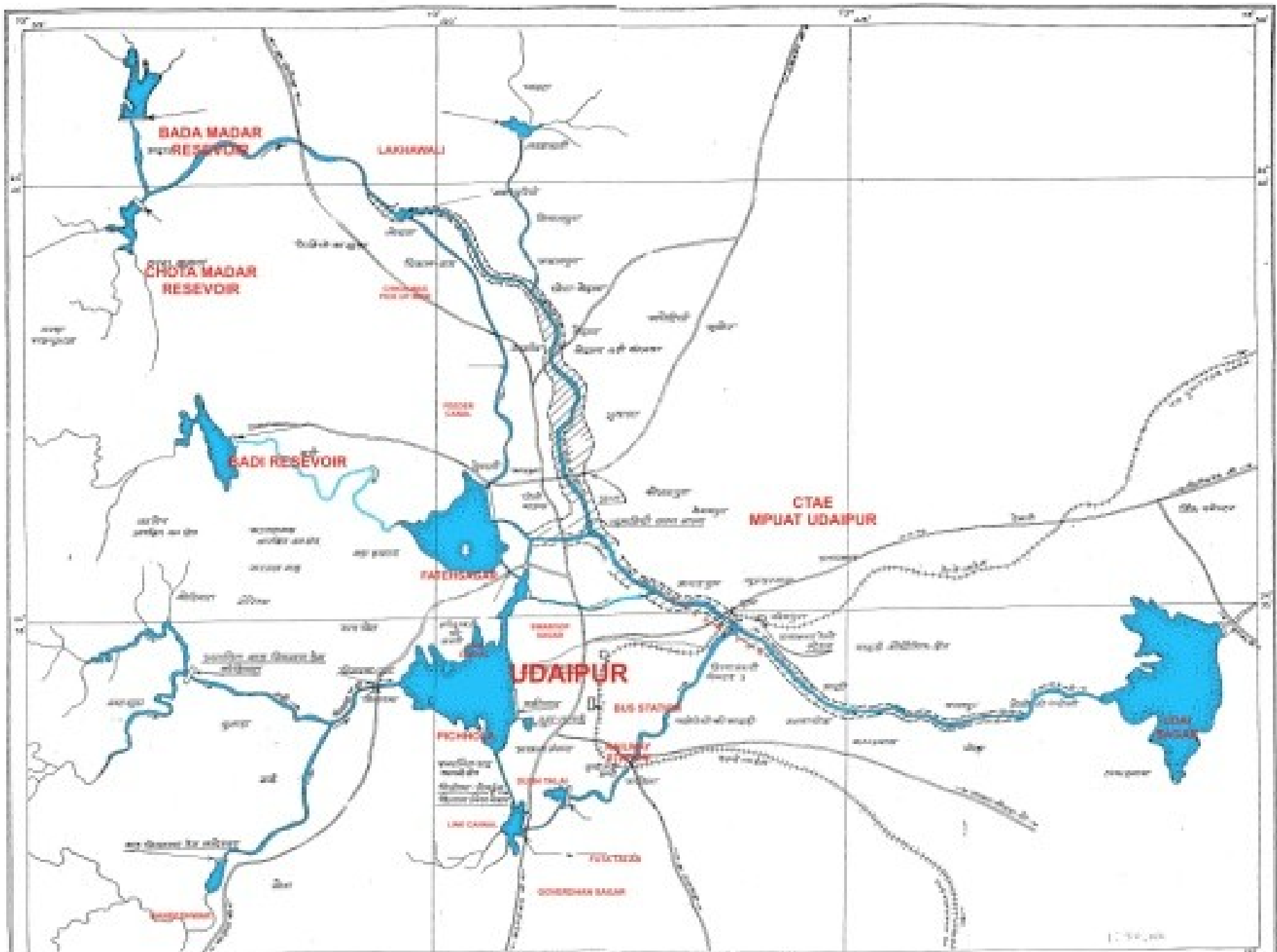
Our Experiences & Observations



Why Was Judicial Intervention Needed for the Lakes of Udaipur?

We chose the path of judicial intervention totally in desperation, when we failed to get the support of politicians, bureaucrats and technocrats in protecting our lakes from encroachers and polluters, because of the following reasons :-



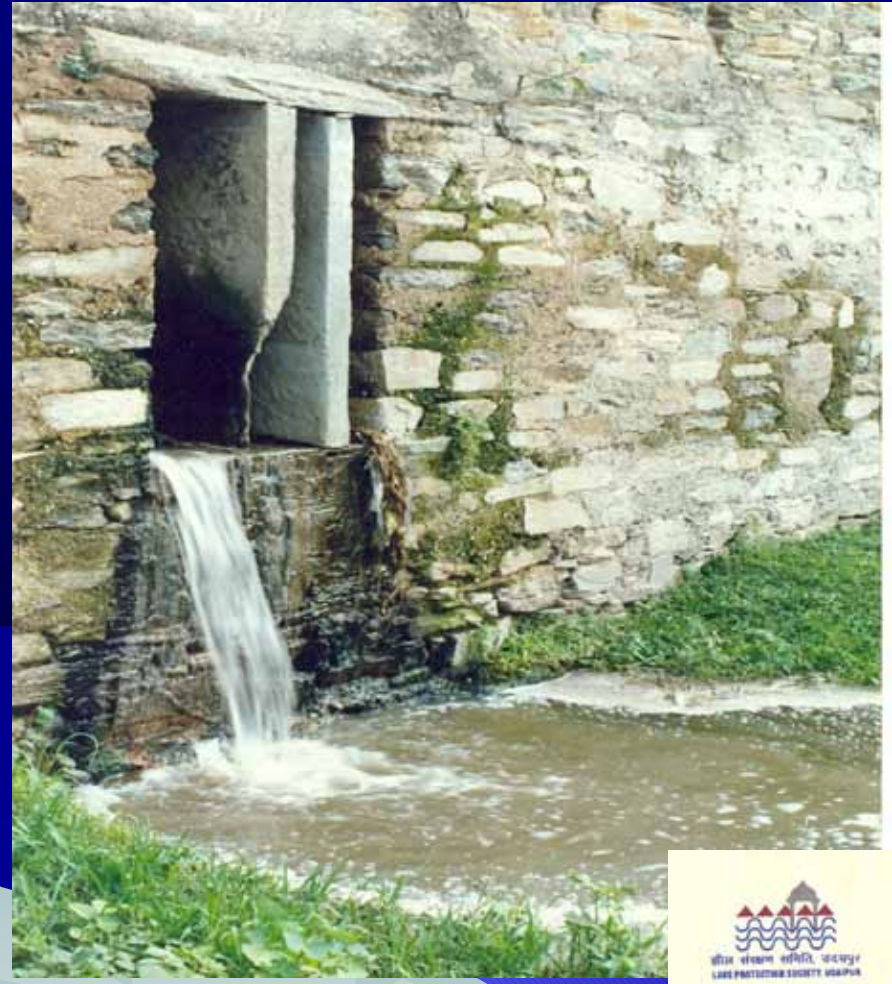


TILL 1947 LAKES WERE CLEAN





Six million liter per day Raw Sewage entering in to the Wetlands





Twenty five to thirty five tons of solid waste
(Municipal & construction) dumped around and
in the lakes.

Construction (unauthorized/Illegal), within and around the lakes



Reclaiming of land from lake through earth filling



Tube wells in Lake Bed



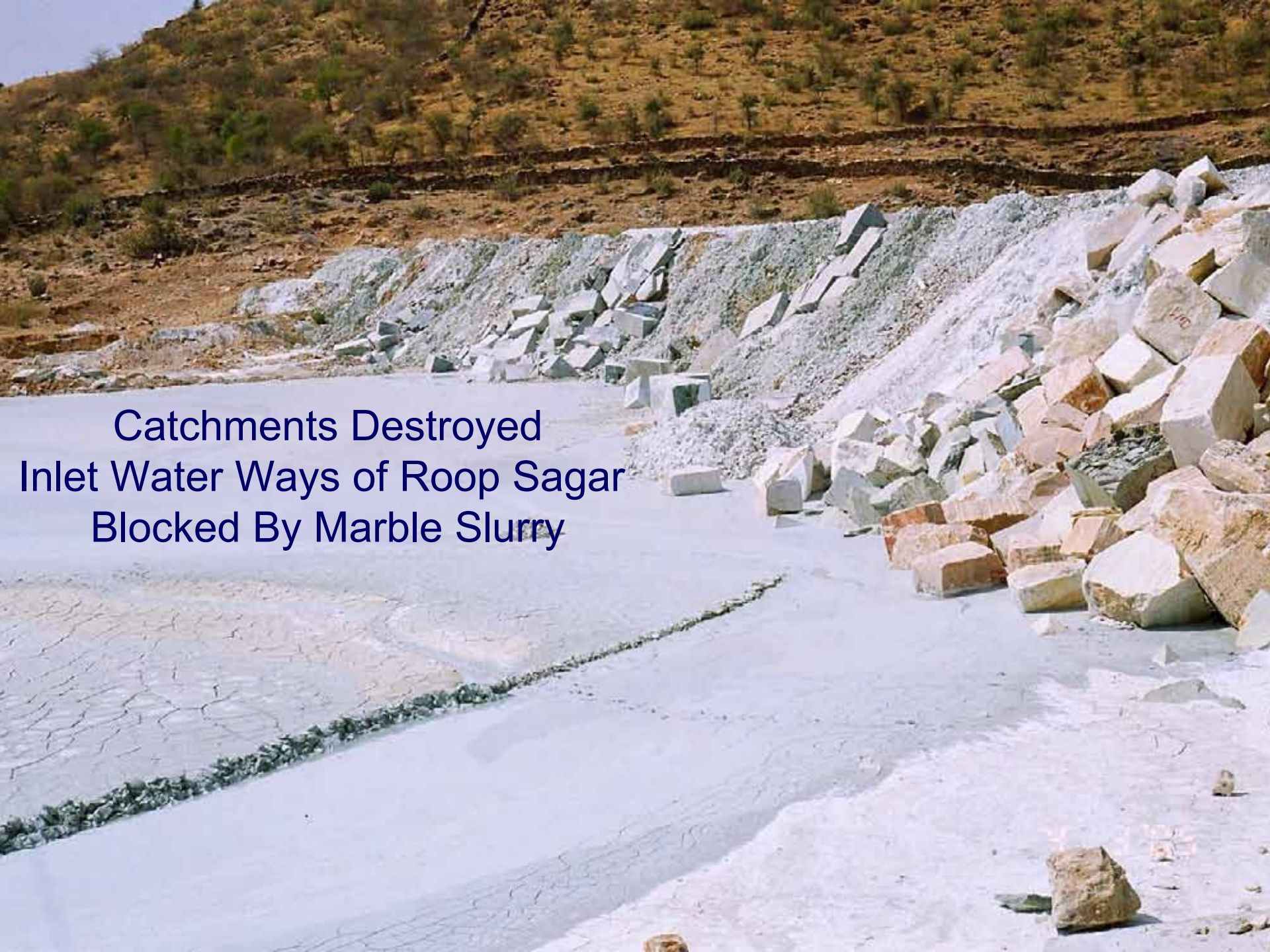
The Ultimate Result

100 Feet Road Bisected Naila Lake Embankment



Land Use of Small Lakes Changed

20 4 05



Catchments Destroyed
Inlet Water Ways of Roop Sagar
Blocked By Marble Slurry

- The multiplicity of government agencies (responsible for our lakes), resulted in a complete lack of accountability by any of them.
- Each agency passed the buck to some other agency (possibly due to their connivance with destroyers of our lakes).
- This situation promoted the dubious nexus between politicians, bureaucrats, technocrats, land-mafia, and other vested interests that threatened our lakes.



Our Efforts to Combat the Aforesaid Nexus

- We submitted numerous petitions, memorandums, and representations to the Government of Rajasthan & the Central Government.
- We tried to enhance public-awareness through timely pamphlets, rallies, street plays, puppet-shows, audio-visual lectures in school and colleges etc.
- We tried to activate the media to counter the nexus and to promote public awareness

Litigation-----A Time Consuming Exercise

CASE NO.	APPLICATION FILED IN	VERDICT IN	TIME TAKEN
SB CIVIL WP 2317/1982	1982	1994	12 Years
SB CIVIL WP 4816/1990	1990	2007	17 Years
DB CIVIL Contempt Petition No 193/1997 SUO MOTO	1997	2000	3 Years
DB CIVIL WP 4271/1999 2716/2004 2466/2005	1999 2004 2005	2007 2007 2007	8 Years
DB CIVIL WP 2982/1999	1999	Still Pending	12 Years
CONTEMPT PETITION	Feb 2010; taken-up for hearing in March 2011	Awaited	Anybody's Guess !!

Litigation-----An Expensive Exercise

High Cost of :-

- Collection of relevant facts, data, & documents.
- Preparing & filing the cases.
- Prohibitive fee(s) of lawyers
- Keeping the cases alive by frequent follow-ups.
- Travel & stay.



Difficulties Faced during Litigation

1. Contradictory interpretations of the term “lake”
(According to govt.-----lakes are the geographical area of water-spread.

(According to us-----lakes form an eco-system, consisting of “upstream--water- body—down-stream”)



Difficulties Faced during Litigation (contd.)

2. Land use rights are, at times, damaging to water bodies.

(e.g. pumps/wells on the land adjacent to a water-body can exploit it legally. This affects adversely the hydrology of the water body)



Difficulties Faced during Litigation (contd.)

3. Conflicting interests and priorities of different government departments.

(e.g. while the priority of the irrigation department is to maintain the minimum sill-level of water in the lake, the top priority of PHED is to supply drinking water even by sinking tube-wells in the lake-bed.)



Difficulties Faced during Litigation

(contd.)

- 4. Our court – cases could be used as effective tools by the government to combat the influential polluters or encroachers of the lakes, instead, the government chose to view us as its rival or adversary, in its attempt to sympathies with offenders.



Difficulties Faced during Litigation (contd.)

- 5. There was also the wilful, malicious misinterpretation of the directions / verdicts from the courts, by the govt. departments, often to malign us.
(e.g. the court had ordered “no construction & regulated construction zones” in the upstream of lakes. Ironically, the govt. agencies closed their eyes to many constructions by influential people in “No construction Zones.” On the other hand, ordinary people were denied permission even for justified repair/ construction of their houses in “regulated construction zones” in the name of litigation by JSS.

Forces Influencing the Process of Litigation

- Social & Political Psyche
- Role of Media
- Pseudo NGOs & pseudo litigants.



Verdicts & Follow up

- **Future Risks**

If any direction/verdict from the court fails to protect the genuine interests of the lake, such a decision becomes a basis for more long term damage to other water-bodies also.

- **No effective mechanism at present to monitor implementation of the directions & verdicts of the courts.**



Suggestions

- To convince every citizen that s/he is a stakeholder in water-bodies.
- Educating and encouraging all stakeholders to involve themselves actively for conservation of lakes, should be the topmost priority of governments and NGOs and civil society at large.



- An effort must be made to prepare a list all the laws (pertaining to water & water-bodies), under different Acts, so that there is clarity about the laws at all levels.
- Formation of a Lake Development Authority at the local or the state level for conservation of lakes based on ILBM approach, and also for implementing the directions/verdicts of the courts.
- **Judicial intervention should be sought as the last resort**



Thanks

