

**Constitution of India and Environmental Governance: Administrative and
Adjudicatory Process**

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Lecture No. 38

Specific Ecosystems and Their Management III. Wetlands and Water Bodies

We move on to the next component of this particular module dealing with special ecosystems and we come up with one of the other unique ecosystems which is referred to as wetlands, wetlands and water bodies.

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I. WETLANDS

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- **WORLD WETLANDS DAY CELEBRATED EVERY YEAR ON 2ND OF FEBRUARY- MARKS THE DATE OF ADOPTION OF THE CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE, ESPECIALLY AS WATERFOWL HABITAT, IN 1971, IN THE IRANIAN CITY OF RAMSAR (-RAMSAR/WETLANDS CONVENTION-). HOLDS THE UNIQUE DISTINCTION OF BEING THE FIRST MODERN INTERNATIONAL TREATY TO PROTECT AND CONSERVE A PARTICULAR TYPE OF ECOSYSTEM AND THE FLORA AND FAUNA DEPENDENT UPON IT -170 ODD COUNTRIES, PARTIES TO IT - OVER 2300 WETLANDS, INSCRIBED ON THE RAMSAR LIST, COMPRISING OVER 250 MILLION HECTARES OF LAND AREA, BY 2018**
- **WHAT ARE THESE?: DESCRIBED UNDER THE CONVENTION AS, "... AREAS OF MARSH, FEN, PEATLAND OR WATER, WHETHER NATURAL OR ARTIFICIAL, PERMANENT OR TEMPORARY, WITH WATER THAT IS STATIC OR FLOWING, FRESH, BRACKISH OR SALT, INCLUDING AREAS OF MARINE WATER THE DEPTH OF WHICH AT LOW TIDE DOES NOT EXCEED SIX METRES" (ART.1.1) - FOR INSTANCE, DAL LAKE (KASHMIR), CHILIKA LAKE (ODISHA)**



Wetlands day as one maybe aware is celebrated on second of February every year. This was the day when the Convention on Wetlands of international importance especially as waterfowl habitats which was made in the year 1971 in the Iranian city of Ramsar, that is why it is also called as the Ramsar convention or the Wetlands Convention. If you look at the unique feature of this particular international arrangement this is perhaps the first modern international treaty arrangement devoted entirely for the protection and conservation of a particular type of an ecosystem the flora and fauna that are dependent upon it.

There are 170 odd countries which are parties to it, India is also one of the earliest which are signatories to this and all over the world there are over 2300 wetlands that are inscribed on the Ramsar list which comprises over and spread over 250 million hectares of land area by

the year 2018. What exactly are wetlands? If you look to the Convention it comes up with this description that these are areas which are marshy, which are peatlands having water in them which may be a natural formation or something that has been man-made.

It may even be a permanent one or a temporary water body with water that is static or it may even be flowing fresh brackish or salt water including areas of marine water the depth of which at low tide does not exceed 6 meters. So, these are by enlarge a halfway house between land and water, they have substantial quantity of water in them but they have features of land as well in them like lakes and water tanks and the major examples that we have in India are the Dal lake in Kashmir and Chilika lake in Odisha.

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- **WHAT IS THEIR SIGNIFICANCE?: THESE UNIQUE ECO-SYSTEMS ARE IMPORTANT AS THEY PERFORM A VARIETY OF FUNCTIONS LIKE, WATER PURIFICATION; WATER STORAGE FOR USE DURING DRY PERIODS OF TIME; NATURAL BARRIERS TO FLOODS; RECHARGE GROUND WATER; HELP CONTROL SOIL EROSION; HABITAT OF ANIMALS AND PLANTS; PROVIDE FOOD FOR LIVESTOCK; CONSERVE BIODIVERSITY; RECREATIONAL VALUE, ETC.**
- **-SERVE AS "KIDNEYS" OF EARTH- OWING TO THEIR GREAT ECOLOGICAL VALUE AND SUPPORTIVE ROLE IN PROVIDING FOOD, BESIDES MEETING CERTAIN OF THE LIVELIHOOD REQUIREMENTS, INTERNATIONAL INSULATION OF LEGAL PROTECTIVE MEASURES AND MECHANISMS, EXIST UNDER THE TREATY.**
- **RAMSAR CONVENTION, 1971 : A LEGAL FRAME FOR COOPERATIVE EFFORTS AMONG MEMBER COUNTRIES TO PROTECT WETLANDS AND THE BENEFITS DERIVED BY PEOPLE FROM THEM**



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- * **THREE-FOLD OBLIGATIONS** EXIST FOR THE PARTIES: (i)- TO DESIGNATE SITES, WITH IN EACH ONES' TERRITORY, AS WETLANDS OF INTERNATIONAL IMPORTANCE; (ii) TO APPLY " WISE USE" CONCEPT (- LOCAL AND NATIONAL ACTIONS AND INTERNATIONAL COOPERATION FOR ITS SUSTAINABLE DEVELOPMENT - THIS WOULD INCLUDE, WATER, LIVELIHOODS, BIODIVERSITY, DISASTER RISK REDUCTION, RESILIENCE AND CARBON SINKS-) and (iii) TO ENGAGE IN INTERNATIONAL COOPERATION- NO LEGAL SANCTIONS FOR NON-OBSERVANCE PROVIDED – ANCHORED TO VOLUNTARY UNDERTAKING OF OBLIGATIONS- SOVEREIGN RIGHT OF USE INTACT, WITH A COMMITMENT TO COMPENSATORY ALTERNATIVE SITES CREATION, FOR CHANGE OF USE
- * **NATIONAL EFFORTS:** ALTHOUGH, A PARTY TO THE CONVENTION, LEGISLATIVE BACKUP, NOT ATTEMPTED TILL 2010 - MOST OF THE NATIONAL EFFORTS, EITHER UNDER ADMINISTRATIVE PLANS



It actually creates 3 sets of obligations for each of the parties to this arrangement, number 1, each member country has to designate sites at least one in each territory as wetlands of international importance with the first requirement, the second requirement being a party they have to apply what is called as the ‘wise use concept’, wise use that means, local and national actions and international co-operations for its sustainable development which includes water, livelihoods, biodiversity, disaster, risk reduction, resilience and carbon sinks all integrated in a management plan.

And third, to engage in international co-operation. It is a very special law because no legal sanctions exist for non-observance, it is essentially rooted to voluntary undertaking by the states of the obligations that are spelt out in this international legal arrangement because these are areas within the territory of any single state and so the sovereign right of any kind of use

by the state remains intact and it is undisturbed.

But once you become a party you have a commitment supposing this wetland is to be used for some other purpose, then you have an obligation and you commit for that to come up with a compensatory alternative site created for this purpose so as to substitute for a wetland that has already been put to a different kind of use. Coming to India, if you just look at the National efforts, legal efforts in this regard there was hardly any till the year 2010, although we were one of the earliest supporters of this arrangement way back in 1971 having ratified it within a couple of years the legislative backup did not come to this till the year 2010, then what did we do between 1971 to 2010?

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OR PROGRAMMES (- LIKE, NATIONAL WETLANDS CONSERVATION PROGRAMME, 1986)- 37 SITES IN INDIA, DECLARED AS WETLANDS OF INTERNATIONAL IMPORTANCE, PROTECTED UNDER THE STRICT GUIDELINES OF THE CONVENTION - OVER 7 LAKH WETLANDS EXIST IN INDIA, COVERING 4.5% OF THE COUNTRY'S AREA, YET NONE OF THESE, NOTIFIED UNDER THE DOMESTIC LAWS!

-JUDICIARY, OFTEN, FILLED IN THE VACUUM, THROUGH PRONOUNCEMENTS THAT STEERED WETLANDS GOVERNANCE IN INDIA.

(- STUDENTS, ARE ADVISED TO GO THROUGH, THE CHILIKA LAKE CASE STUDY, FROM THE READING MATERIALS AND THE CASE OF: PEOPLE UNITED FOR BETTER LIVING IN CACUTTA v. STATE OF WEST BENGAL, THE 1993 CLASSIC DECISION OF THE HIGH COURT, ON THE POINT)

WETLANDS (CONSERVATION AND MANAGEMENT) RULES, WAS FOR THE FIRST TIME BROUGHT IN TO EXISTENCE BY MoEFCC IN 2010- REPLACED BY



In fact, most of the national efforts were either some kind of an administrative plan or a program like National Wetland Conservation Program NWCP that was unleashed in the year 1986, 15 years after the Convention. And under that there are 37 sites in India declared as wetlands of international importance. They are protected under the 6 strict guidelines of the Convention but the irony is India has over 4 lakh wetlands which actually covers nearly 4 to 5 percent of the entire country's area but none of these are notified under any other domestic laws for protection by the states.

In fact, judiciary which has taken over this and it has attempted to fill in the vacuum through a number of pronouncements that have actually literally steered the wetlands governance in India and for this in the reading material a wonderful chronological account of a Chilika lake

case study has been given and the students are required to go through just to understand as to how this developed over a period of time in India and also a very important case which is illuminating about the idea wetlands how they have to be conserved and protected in a case decided by the Kolkata High Court.

The case is People United for Better Living in Kolkata versus state of West Bengal. It was a 1993 decision it is a classic decision which actually highlights the importance of wetlands and a kind of an instruction to the administration not to tamper with it. So, between 1971 to 2010 this was the position and for the first time in the year 2010 the wetlands conservation and management rules were enacted for the purpose of the protection of the wetlands.

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WETLANDS CONSERVATION AND MANAGEMENT RULES, 2017 -> SALIENT FEATURES -> SETTING UP OR EXPANSION OF INDUSTRIES AND DISPOSAL OF CONSTRUCTION AND DEMOLITION WASTES WITHIN WETLANDS, PROHIBITED; EACH STATE AND UNION TERRITORY TO SET UP AN AUTHORITY - TO EVOLVE STRATEGIES FOR CONSERVATION AND WISE USE - TO PREPARE A LIST OF ALL WETLANDS WITHIN 3 MONTHS - DEVELOP A COMPREHENSIVE LIST OF ACTIVITIES FOR REGULATION OR RESTRICTION IN THE AREAS AND ZONES OF THEIR INFLUENCE AND RECOMMEND MECHANISMS FOR MAINTENANCE OF THEIR ECOLOGICAL CHARACTER THROUGH PROMOTIONAL ACTIVITIES IN THE NOTIFIED AREAS; WEB PORTAL ESTABLISHED FOR SHARING INFORMATION AND DOCUMENTS UPLOADED BY THE CENTRAL AND STATE GOVTS.
- PRIMARY ROLE AND RESPONSIBILITY OF STATES EMPHASISED WITH THE CENTRE PROVIDING INFORMATION, TECHNICAL AND OTHER ASSISTANCE, FOR WETLANDS MANAGEMENT - SILENT ON RECOVERY OF ENCROACHED WETLANDS (SEE, JUDGMENT OF S.C IN, JAGPAL SINGH v. PUNJAB, 2011)- INSTITUTIONAL ARRANGEMENTS FOR IMPLEMENTATION, MONITORING COMPLIANCE, ACTIONS FOR VIOLATIONS AND CONFLICT RESOLUTION ETC., LEFT FOR THE STATES TO TAKE CARE!



And these later, 10 years later just this year in the year 2020, a Wetland Conservation Management Rules replaced the 2010 Rules. What are its major features? Under these rules setting up of our expansion of industries and disposal of construction and demolition waste within wetlands are totally prohibited. Each state and union territory is required to set up an authority to evolve strategies for conservation and wise use. Number 2, to prepare a list of all wetlands within 3 months. Number 3, develop a comprehensive list of activities for regulation or restriction in the areas and zones of their influence and recommend mechanisms for maintenance of their ecological character through promotional activities in the notified areas.

A web portal is established for sharing of information and the documents are uploaded from time to time by both the Central and State Government both for information and for its retrieval and use. So, under these rules, the primary role and responsibility of declaration identification maintenance and management of the wetlands are there with the State Government, the Centre providing information and technological assistance to them for such a purpose. Unfortunately, these rules both the 2010 and the latest 2020 do not really make any mention of recovery of encroached wetlands. Because these are very soft targets for encroachers for people for their private interest because it is a public resource and unattended to want cared for and thing like that.

And if the state does not take much attention to it, then it is subject to encroachment it is also quite possible that the government may also at times because there are no regulations which are actually going to be implemented in these areas may use it for a different purpose altogether and so the recovery of those last wetlands this law does not make any mention of it. In fact, the student is advised to refer to a decision given by the Supreme Court in the year 2011 the Jagpal Singh versus Punjab which makes a pointed reference that states and the Centre should make earnest efforts in recovering the lost wetlands and these rules unfortunately are silent about that.

The institutional arrangements for implementation monitoring their compliance actions for violations and resolution of conflicts in this regard are left the state left to the states to manage and to take care and the states have been a little bit ambivalent in putting this into application.

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II. WATER BODIES



- * LAKES, TANKS AND WATER BODIES, PRIMARILY SUBJECTS FOR LAW-MAKING AND ENFORCEMENT BY THE STATES UNDER THE CONSTITUTION-A VERY LIMITED ROLE FOR CENTRE, EXCEPT OFFERING MODEL AND DRAFT LAWS FOR THE CONSIDERATION AND ADOPTION BY THE STATES.
- * THE CENTRE, CAN ALSO OFFER ASSISTANCE TO STATES- BY BUDGETARY ALLOCATIONS, UNDER A PLAN , PROJECT, PROGRAMME OR A DEVELOPMENTAL ACTIVITY, WITH A REQUIREMENT THAT THE STATES COULD AVAIL THE CENTRAL ASSISTANCE, IF CERTAIN TERMS AND CONDITIONS, STIPULATED BY THE LATTER ARE CONFORMED TO- (- LIKE MODEL DRAFT LAWS, RULES ETC., EVOLVED FOR THE PURPOSE-) IN THE CASE OF LAKES AND WATER BODIES
- * IN THE ABSENCE OF A SPECIFIC CENTRAL LAW FOR ENVIRONMENTALLY SUSTAINABLE MANAGEMENT OF LAKES AND WATER BODIES AND STATES HAVING THEIR OWN PIECE-MEAL APPROACH OVER WATER BODIES (- LIKE FISHERIES) AND BEING A COMMON PROPERTY RESOURCE, THE AQUATIC ECO-SYSTEM, LACKED BOTH AN UNIFORM POLICY AND LAW FOR ITS PROTECTION.



Unless there is some kind of an international funding or national funding states have invariably been lacks in putting into operation those guidelines and rules that are framed for this purpose. Very closely related to this is the development with regard to the water bodies. Water bodies like lakes and tanks which are once again the state subjects under the constitution for law making and the Centre having a very limited role except offering model and draft bills for the consideration and adoption by the states.

Here, the Centre many a time have come up with innovative methods since the Centre has no direct role what they do is they offer assistance to the states under some project under some scheme under some kind of an international funding or anything like that by making budgetary allocations to the states, look we are going to provide you money, we are going to provide you assistance under this particular plan or a project but we laid out a certain set of conditions for protection, maintenance, management and sustainable development of these water bodies.

If you follow these conditions, here are our assistance available to you and accordingly they have even drafted model bills for accommodation and application by the states in case of lakes and water bodies. Since there is no specific central law for environmentally sustainable management of lakes and water bodies and states also having their own piecemeal approach for water bodies like fisheries law and being a common property resource, the aquatics ecosystem lacks both uniform policy and law for its protection.

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- * CENTRAL INTERVENTION, FROM THE ENVIRONMENTAL ANGLE, LIKE IN THE CASE OF WETLANDS, ALSO TRIGGERED BY HIGHER JUDICIARY (SEE, AJAI SINGH RAWAT v. UOI, 1995 S.C., IN WHICH THE S.C., OBSERVING THE PATHETIC STATE OF THE NAINITAL LAKE, REMARKED, THAT ' THE BEATIFUL BUTTERFLY HAD TURNED INTO AN UGLY CATTERPILLAR' AND URGED IMPLEMENTATION OF REMEDIAL MESURES UNDER THE SUPERVISION OF A COMMITTEE; M. C. MEHTA v. UOI, S.C., 1997-BADHKAL AND SURAJKUND LAKE CASE, -IN WHICH THE COURT APPLIED THE PRINCIPLE OF PRECAUTION, TO STOP CERTAIN LAND DEVELOPMENT ACTIVITIES AFFECTING THE "CARRYING CAPACITY" OF THE ECO-SYSTEM)
- THE FOLLOWING CENTRAL MEASURES ILLUSTRATE THIS:
- * NATIONAL LAKE CONSERVATION PLAN (NCLP), 2001 : TO CONSERVE AND MANAGE POLLUTED AND DEGRADED LAKES IN URBAN AND SEMI-URBAN AREAS- PROVISION FOR CENTRAL ASSISTANCE TO STATES FOR THE CONSERVATION AND SUSTAINABLE MANAGEMENT OF LAKES- FOLLOWED BY THE GUIDELINES FOR NATIONAL LAKE CONSERVATION PLAN, IN 2008 , FOR PREPARATION OF DETAILED PROJECT REPORTS, EMPHASISING THE RESPONSIBILITY OF STATES TO WORK IN PARTNERSHIP WITH THE CENTRE TO ENSURE PROTECTION, CONSERVATION AND SUSTAINABLE MANAGEMENT OF LAKES



However, the central intervention has come from the environmental angle like in the case of wetlands mainly because of the higher judiciary is intervened and there are cases like Ajay Singh Rawat vs Union of India decided by the Supreme Court where the Supreme Court looking into the pathetic state of the very acclaimed Nainital lake it remarked look at this beautiful lake, it is a beautiful butterfly that had turned into an ugly caterpillar and urged the Centre and the State Governments to implement remedial measures under the supervision of a committee.

There is also another case decided by the Supreme Court in 1997. It is M.C Mehta vs Union of India it is with regard to Bhatkal and Surajkund Lake in which the Court applied the principle of precaution. "Please stop certain land developmental activities which affect the carrying capacity of these ecosystems." So, it is urging, prompting, coding, guiding, directing, instructing by the Supreme Court and the high courts from time to time which actually led to a number of measures unleashed by the Central Government and one such was started in the year 2001 the National Lake Conservation Plan NCLP for short to conserve and manage polluted and degraded lakes in urban and semi-urban areas.

The provision for central assistance was made for the states to conserve and sustainably manage these lakes. This was followed by a set of guidelines for National Conservation of Lakes, a plan for national lake conservation in the year 2008 and this is to help the states to prepare a detailed project report, it emphasized the responsibility of states to work in partnership with the Centre to ensure protection, conservation and sustainable management of

lakes.

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- **NATIONAL PLAN FOR CONSERVATION OF AQUATIC ECOSYSTEMS (NPCA)-** A CENTRAL SPONSORED SCHEME , IMPLEMENTED BY MoEFCC , FORMULATED BY MERGING NLCP & NWCP, TO PROMOTE BETTER SYNERGY AND AVOID OVERLAP OF ADMINISTRATIVE FUNCTIONS IN RELATION TO LAKES AND WETLANDS - SEEKS TO MAINSTREAM AQUATIC ECOSYSTEMS IN DEVELOPMENTAL PROGRAMMING, DOVETAIL WORKS, FUNDED UNDER THE TWO ACTIVITIES AND STRENGTHEN THE INSTITUTIONAL ARRANGEMENTS AT THE STATE LEVEL.
- WHILE THE RULES FOR WETLANDS CONSERVATION AND NATIONAL PLAN FOR CONSERVATION OF AQUATIC ECOSYSTEMS, PRESENT AN IDEA OF A BLUEPRINT FOR CONSERVATION, "WISE USE" AND DEVELOPMENT OF THIS SPECIAL ECOSYSTEM, THE GROUND REALITY IS STILL FAR FROM APPROXIMATING TO ACTUALIZING THE ASPIRATIONS OF THE WETLANDS CONVENTION AND JUDICIAL EXPECTATION
- - THIS REMAINS, A WORK IN PROGRESS !



This was later found a little cumbersome because you had a separate set of plans with regard to lakes and water bodies you had a separate set of rules and guidelines evolved in relation to wetlands, the government thought it fit to merge these two and they came up with what is called as the National Plan for Conservation of aquatic ecosystems NPCA. It is a centrally sponsored scheme implemented by the Ministry of Environment, Forest and Climate Change to promote better synergy and avoid overlap of administrative functions in relation to lakes and wetlands.

A very logical step it seeks to mainstream aquatic ecosystems in a developmental paradigm where the works funded under the two set of activities are synergized and are made to detail and strengthen the institutional arrangements at the state level. Well, the rules for wetland conservation and this particular national plan that has been mentioned just now present an idea of a wonderful blueprint for conservation wise use and development of this very special ecosystem.

The ground reality unfortunately is still far from approximating in realizing the very aspiration of the wetlands convention and so many expectations expressed and spelt out from time to time by the judiciary. In brief, it can be said that the legal evolution the plans and programs of the Centre and the State Governments they remain a work in progress not having accomplished the mission set for itself a long way to go. With this, we complete 3 segments

of our discussion on the coastal zone, the ecologically sensitive zones and wetlands. We move on to the last segment of our inquiry and that is water bodies, water law and water governance.