

LEGISLATIVE PROVISIONS AND POLICY SUPPORT FOR WETLAND CONSERVATION IN INDIA

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DOI: doi.org/10.55662/SALER.2023.803

ABSTRACT

Since 1970s, wetlands started to be recognized as one of the richest ecosystems of the world which supports lives and livelihoods of a large number of people. In spite of this recognition, loss of wetlands could not be stopped. India is gifted with a vast inventory of wetlands which is depleting. Though India was a signatory of Ramsar Convention of Wetlands, it is yet to implement any legislation for the protection of these rich ecosystems. During the early years of independence when constitution of India was adopted, there was no mention of the term 'environment'. With the enactment of Constitution (42nd Amendment) Act, 1976, marked the beginning of environmental protection in India. But wetlands were not mentioned in the List-I, List-II or List-III of the seventh schedule of the Indian Constitution. So, neither the Union government nor the state governments are empowered to legislate over the matter of wetlands. Due to this reason the Union government could not implement any legislation for wetland conservation for the country as a whole. Wetlands should be brought to the List-III of the constitution for the sake of wetland conservation. It is the obligation of the States to implement international conventions at the domestic level under a federal system. Verdicts of the Supreme Court and different High Courts reveal full support towards environmental protection. Thus, it is urgently needed to enact a Union legislation for the protection of the wetlands of the country which is supported by the state governments.

Keywords: *Wetland Protection, Wetland Policies, Legislation, Ramsar.*

INTRODUCTION

Wetlands, once considered as wastelands, harbouring various vector borne diseases, like, malaria, dengue and schistosomiasis, are now recognized as one of richest ecosystems of the world. They have been considered as ‘the kidneys of the landscape’, for the functions in the hydrological and chemical cycles, and as ‘biological supermarkets’ because of their capacity to supply a large quantity of food and support rich biodiversity (Mitsch & Gosselink, 1993). Wetlands are important natural resource and critical for biodiversity of the earth. They are significant for environmental functions and provide a range of ecosystem services without which human lives would not thrive. In 2003 the Millennium Ecosystem Assessment (MA) has classified the services of into four categories – *provisioning, regulating, cultural and supporting*. *Provisioning* services are those products that directly enter people’s consumption basket. This include fish, reeds, wild fruits, biofuel and water. *Regulating* services are benefits obtained from the regulation of essential ecological processes. These services include air quality maintenance, groundwater recharge and discharge, controlling soil erosion, water purification, flood attenuation, treatment of wastes and residues, regulation of human diseases and storm protection. The regulating services that the society receives from the wetlands are generally non-tangible in nature and are indirect to users of the wetland. *Cultural* services include nonmaterial benefits in the form of spiritual, recreational and aesthetic values that people derive from the wetlands. *Supporting* services are those services that are necessary for the production processes responsible for activities such as soil formation, nutrient cycling and biodiversity (de Groot *et al.* 2002; Turner *et al.*, 2003).

These rich ecosystems are disappearing very fast due to both the natural phenomenon and anthropogenic interventions. Increasing population resulted in escalating demand for ecosystem resource. Sometimes, pressure on those natural resources exceeds their capacity to regenerate, leading to depletion of those resources. Till 1970s, wetlands were undervalued since their ecological and economic functions were ignored. Though perception of the common people changed since then but degradation of wetlands could not be checked. Pollutant discharges, land filling and unrestricted exploitation of wetland resources has led the very existence of these environmentally fragile habitats at stake (Squillace, 2007). Global wetland data shows that almost 35% of area under wetlands were lost between 1970 and 2015, which is three times the rate of forest loss during the same period (Ramsar Convention on Wetlands,

2018; p. 5). The Wetland Extent Trends (WET) Index (Dixon, *et al.*, 2016) estimated the average annual loss of wetland to be 0.78%, which was three times faster than loss of forest at 0.24% per year during 1990-2015 (*ibid*; 19). The rate of loss is higher in regions with high anthropogenic activities.

India within its large geographical territory supports large area under wetlands. As per the Indian Space Research Organisation (ISRO) mapping study, wetlands cover more than 15.98 million hectares in India which is around 4.86% of its geographical space (Space Based Observaion of Indian Wetlands, 2021). It supports about a fifth of the known biodiversity.

Wetlands are not uniformly distributed throughout the country. State-wise distribution of wetlands reveals that Lakshadweep has got highest proportion of area under wetlands (96.12 %) followed by the Andaman and Nicobar Islands (18.52 %), Daman and Diu (18.46 %) and Gujarat (17.56 %). Other states with large proportion of area under wetlands are Puducherry (12.88 %), West Bengal (12.48 %), Assam (9.74 %). As against this, the states like Mizoram, Haryana, Delhi, Sikkim, Nagaland and Meghalaya got very little area under wetlands which is less than 1.5 %.

Like the other countries of the world, wetlands of India are also under the threat of degradation and disappearance resulting loss of aquatic biodiversity as they are often under a regime of unsustainable anthropogenic pressures. The wetland ecosystem services benefit a large number of people directly and indirectly to a great extent. They support livelihood to a large number of people. Loss of wetlands have a deep impact on the national economy. So, initiative should be taken for conservation of these rich ecosystems. This paper reviews the judicial, legislative and policy supports for wetland conservation in India.

DEFINITION OF WETLAND

Wetlands have been defined in various ways in different countries for their domestic legislations (MoEF, 2009). Narrow, incomplete and ambiguous definitions in cases have limited the ambit and scope of protection of wetlands (Raju, 2012). National Wetland Conservation Policy of India defined it as “Wetlands are lands, transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by the shallow water.” (NWCP, 1986).

Ramsar convention was a remarkable initiative for the conservation and wise useⁱ of global wetlands. All the parties of the convention were supposed to legislate for protection of wetlands in their respective countries. Among the 163 contracting parties of the Ramsar Convention many of them lag sufficient legislative support for the protection of their wetlands.

Article 1.1 and article 2.1 of the Ramsar Convention described Wetlands in the following terms:

Article 1.1 the Ramsar Convention defined wetlands as “wetlands are 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.”

Article 2.1 of the convention states about wetlands “may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands.”

In India, definition of wetlands has been modified to some extent which defined wetlands as “... area or of marsh, fen, peatland or water; 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 meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114 (E) dated the 19th February, 1991.” (Wetland Rules, 2010).

The Indian definition of wetlands is wider and more inclusive than that provided by the Ramsar Convention. The Kerala Conservation of Paddy land and Wetland Act, 2008, defined wetlands in the following terms “wetland means land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterized by the presence of sluggishly moving or standing water, saturating the soil with water and includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and

swamp forests but does not include paddy lands and rivers.”. Kerala is the pioneer among the Indian states to legislate a law for conservation of wetlands in 2008.

LEGAL PROVISIONS AND IMPLEMENTATION OF INTERNATIONAL TREATIES AND CONVENTIONS IN THE COUNTRY

In the early years of independence there was no separate policy for the protection of environment in India. One reason may be that, environment problems were not so severe that time as they are now. Of course, there were several Forest Acts in India since 1865, but those were meant for protecting forests from further degradation (Whitehead, 2010), no initiative was seen to protect the environment as a whole. During the time when Indian constitution was adopted, there was no direct mentioning of the term ‘environment’. In the year 1976, with the enforcement of the Constitution (42nd amendment) Act, 1976, a new regime of environmental protection started in India. Article 48A states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Article 51A(g) holds that “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. These two articles clarify that the States and the citizens should be positive towards the protection of environment and also take steps for the improvement of already degraded environment and safeguard forests, flora and fauna.

The seventh schedule of the Indian Constitution comprises Union List (List-I), State List (List-II) and Concurrent List (List-III). None of these lists has any clear mention about who will legislate on matters relating to the wetlands. The State List consists of items like public health & sanitation, water supply, agriculture, irrigation & drainage. The Union List is without any mentioning of the term ‘environment’. The Article 253 of the Indian constitution empowers the parliament to legislate for any residual matter and to implement international obligations and decision taken at international conference, association etc. As the wetlands are mostly considered as water bodies and its related items like water supply, irrigation & drainage and fisheries are mentioned in the State List, the States have exclusive power to legislate on matters related to wetlands under the federal system of India.

The Supreme Court (SC) of India expressed its view over the matter of exercising power of States and the Union to legislate over subjects in the case *State of West Bengal vs. Union of India*ⁱⁱ: “The Constitution of India is not truly Federal in character. The basis of distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue specially those which tend to maintain the economic, industrial and commercial unity of the country are left to the Union ... Even if the Constitution were held to be a Federation and the States regarded qua the Union as sovereign, the power of the Union to legislate in respect of the property situate in the States would remain unrestricted.”

The power of the States to legislate on matters in Part-III of the constitution is subject to the Union legislations. Article 254 holds that if there is a repugnancy between State law and Union law, Union law will prevail over the State law to the extent of repugnancy. But, on the matter of repugnancy between state law and Union law in *M. Karunanidhi vs. Union of India*ⁱⁱⁱ, the Supreme Court observed that “Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential”.

It can be concluded that the States have exclusive jurisdiction over matters in List-II which barred the Union from introducing any unified policy on wetlands. So, it is urgently needed to shift water and agriculture from List-II to List-III of the Seventh Schedule of the Indian constitution.

According to the Article 51C of the Indian Constitution “foster respect for International Law and Treaty obligations in the dealings of organized people with one another.” While Article 253 holds that “Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, Association or Other body.” These two

constitutional provisions undoubtedly empower the Indian Parliament to legislate over the matter of implementation of international treaty obligations of the country.

Despite being a signatory of the Ramsar Convention, India could not enact any law for the protection of wetlands because of the constraint under the constitution. But Articles 51(C) read with 253 empowers the central Government to legislate over the matters related to the implementation of international obligations and decisions taken in international treaty, association etc. Once Union is obliged under international law, the States are also bound by the international law. So, it becomes the duty of every States to enact appropriate legislations to protect wetlands in their respective States.

Till the turn of the last decade, there was no separate legal framework in India for conservation, management and wise use of wetlands. Wetland (conservation and management) Rules, 2010 was the first regulatory framework especially meant for conservation and management of wetlands which was notified under Section 25 read with Section 3 of the Environment (Protection) Act, 1986.

But the rule was not free from flaws. In the Rules, no comprehensive suggestions or recommendations was made for the protection of wetlands. The Rule made an attempt to bring the wetland resources of the country under official control. For this purpose, a proposal was made to constitute Central and State level wetland regulatory authorities, where the members are government officials. The Rules neither mentioned the importance of maintaining the livelihoods of the poor nor did it discuss the effect of wetlands degradation on poor and vulnerable. The provision made under the rule for formation of '**Central Wetlands Regulatory Authority**' (CWRA) was not reconstituted since 31 March 2015. The old rules were replaced by new Wetland Rules in 2017. Both the 2010 and 2017 Wetland Rules made it clear that the conservation of wetlands should be maintained by keeping their 'ecological character'. 'Ecological character' refers to the processes and components that make a particular wetland a unique ecosystem. The new rules were criticized for doing away from strong wetland monitoring system and omitting some important type of wetlands from the list of water bodies to be protected.

Besides Wetlands Rules, 2010 & 2017, now, conservation and management of wetlands is being ensured by following legal instruments:

Legislations: Indian Forest Act, 1927; Forest (Conservation) Act, 1980; Wildlife (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Water Cess Act, 1977, 1991 & 2003; Environment (Protection) Act, 1986; and Biological Diversity Act, 2002.

Policies: National Plan for Conservation of Aquatic Ecosystems, 2015 (It was formulated in 2015 by merging the National Wetland Conservation Programme and the National Lake Conservation Plan); National Water Policy, 2002, and National Environmental Policy, 2006.

Plans: National Biodiversity Action Plan.

JUDICIAL SUPPORT FOR ENVIRONMENTAL PROTECTION IN INDIA

India has a rich jurisprudence for environmental protection attained through various decisions by different high courts and the Supreme Court. In one of the cases from the Calcutta High Court, the decision was very important for the environmental protection in India. In the case, *People United for Better Living In ... vs. State of West Bengal And Others*^{iv}, 1992, Hon'ble J.U.C. Banerjee held that "in a developing country like India, there shall have to be development, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment." The verdict was given to a case on Eastern Calcutta Wetland which is a Ramsar site (Ramsar site No. 1208). The petitioner won the case and all the developmental activities at the site were stopped.

Another observation of the court in the same case was "Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment

thereof would be detrimental to the society which the Law Courts cannot permit. This benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society - what is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature's bounty is required for the proper maintenance of environmental equilibrium..." the court pointed out that there must be a balance between developmental activities and environmental protection. The judgement is considered as a milestone in the interpretation of environmental protection guideline in India.

In *M.C. Mehta v. Kamal Nath*^v case, the Supreme Court pointed out that "Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust ...". the court ordered the motel to pay for the restoration of ecology and environment of the area.

In *M.C. Mehta vs. Union of India (Taj Mahal Case)*^{vi} case the Supreme Court clearly stated that the development of the industries is important for the economy of the country but the environment and ecosystems should also be taken care of. The same position was confirmed in the case of *Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group*^{vii}. Court expressed its view that considering the principle of sustainable development as a fundamental concept of Indian Law, it was observed that the development of the doctrine of sustainable development is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. In this exercise, intergenerational interest must not be ignored, it is also not possible to ignore the dire need which the society requires to fulfil urgently.

M. Indira and 55 Others v. State of Tamilnadu^{viii} is a case from the state of Tamilnadu where wetland is involved directly. Here, the petitioners challenged the de-notification of 317 hectares of the Marsh land (swamp) near Pallikaranai, 20 KM south of Chennai. The legal suit was filed under the Tamilnadu Forest Act, 1882 and Forest (Conservation) Act, 1980 by the Government. Government of Tamilnadu argued that originally 5000 hectares of wetland reduced to 500 hectares over a period of time and it was the duty of the state to protect the wetland under the

National Wetland Conservation Programme (1986). The Court ruled in favour of the state government.

An interesting observation is that the state of Tamilnadu did not have any specific legislation for the protection of wetlands at that time, but the court found the Forest Act to be appropriate to invoke the protection of the wetlands. Absence of specific law relating to wetlands acts as a hindrance for the protection of wetlands in the respective states. So, there is an urgent need to have a Union Law in India to followed by the states.

CONCLUSION

Although India is a signatory of Ramsar Convention on Wetlands where the parties committed to take initiative for conservation and wise use of their wetlands, it could not implement any legislation for wetland protection due to constitutional barriers and constraints. Out of the vast wetland inventory of India, 75 wetlands (13,26,677 ha) are recognized as Ramsar sites and 115 more wetlands are protected under the National Wetland Conservation Programme. Besides this small effort no other national level program is there to cover to all the wetlands in the country. Even the state level initiative is miserable. Only Kerala has a specific law for the protection of its wetlands (The Kerala Conservation of Paddy land and Wetland Act, 2008) and the govt. of West Bengal made a draft policy for the conservation of West Bengal in 2012 (West Bengal Wetlands and Water Bodies Conservation Policy). The jurisprudence reveals that public interest litigations play an active role in the management of wetlands and court decisions are in support of conservation of wetlands. India should implement a uniform wetland policy for the entire country which is supported by central legislation to enforce it. In the absence of any specific legislation for wetlands, they are governed by water laws. But, “a wetland is neither truly aquatic nor terrestrial; it is possible that wetlands can be both at the same time depending on seasonal variability” (National Wetland Atlas, 2010). So, land laws of the country should be extended to include protection of wetlands. Sustainable development approach requires to fulfil both the developmental needs and environmental protection at the same time. Recognising the importance of initiative of the states for the protection of wetlands, a common policy is required to bring uniformity in wetland protection provisions.

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ENDNOTES

ⁱ Wise use is defined as “sustainable utilization for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem” under the Ramsar Convention.

ⁱⁱ 1963 AIR 1241, 1964 SCR (1) 371.

ⁱⁱⁱ (1979) 3 SCC 431; *Govt. of AP vs. J.B. Educational Society*, (2005) 3 SCC 212

^{iv} AIR 1993 Cal. 215, 97 CWN 142

^v Writ Petition (C) No. 182 of 1996

^{vi} (1997) 2 SCC 353

^{vii} (2006) 3 SCC 434

^{viii} W.P.Nos.17233, 20469 and 21261 of 2009 and W.P. No.7941 OF 2010, Judgment dated 7 March 2012.