THE RAMSAR CONVENTION AND NATIONAL LAWS AND POLICIES FOR WETLANDS IN INDIA

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Case Study

prepared for the

Technical Consultation on
Designing Methodologies to Review
Laws and Institutions Relevant to Wetlands

Gland, Switzerland
3-4 July 1998

The Ramsar Convention is a historical Convention in many respects particularly as it is one of the oldest ecosystem specific Conventions that speaks of wise use of wetlands and not conservation alone. It also enjoins the Parties to the Convention to formulate and implement their planning so as to promote the conservation of listed wetlands and as far as possible, the wise use of wetlands in their territory (Art 3.1). The review of legal and institutional issues related to wise use of wetlands is mandated further by the Additional Guidance for the implementation of the wise use concept (I-2 of the Additional Guidance). However, at least in the case of India, it would be accurate to say that the review of legal and institutional issues has received little attention by the decision makers in the country. On the other hand, India joined the Convention in 1981 and has six listed sites (Keoladeo National Park, Chilika Lake, Loktak Lake, Wular Lake, Harike Lake and Sambhar Lake). Three sites are already on the Montreux record (Keoladeo National Park. Chilika Lake and Loktak Lake) thus making it imperative to examine the legal and institutional aspects of wetlands management in the country.

There are several underlying reasons for this lack of effort by the concerned Government agency to review the legal systems concerning wise use of wetlands. The factors for this oversight range from the lack of resources and ambivalent political interest amongst the concerned agencies (the Ministry of Environment and Forests) to the vast number of multiple users and economic interests attached to these wetland ecosystems as well as the varying geographical characteristics of wetlands and diverse range of wetlands in the country. The difficulty to distinguish terrestrial and aquatic ecosystems (since the latter are periodically waterlogged or submerged for varying periods, thus being a source of confusion amongst scientists[1]) is another possible reason for the Government's inability to address the legal and institutional aspects of wetland management. The lack of accurate scientific information on wetlands particularly with the vast body of decision makers is another key factor responsible for the neglect of the review of laws and institutions governing wetlands. This is further aggravated by the plethora of laws and institutions applicable to wetlands

[1] Gopal Brij (1991), "Biodiversity in Inland Aquatic Ecosystems in India: An Overview" *International Journal of Ecology and Environmental Sciences* 23: 305-313.

(Government agencies often enjoy overlapping jurisdiction in matters connected with wetlands). Since there are so many laws that indirectly have a bearing on wetlands, it would be a Herculean task to amend these laws to attain the objective of wise use or set in place a comprehensive national wetland law. Indeed this may not even be desirable for accomplishing wise use of wetlands in India.

By and large, the need for a national Wetland Policy, in the nature of broad guidelines for achieving wise use of wetlands has been articulated by the community of wetland scientists, activists and NGOs in the country. In the past year, there has at least been considerable thinking on the need to look at the legal and institutional aspects of wetland management in the country (a preliminary Draft Wetland paper and corresponding action plan for India had been prepared under the Capacity 21 Project by the Indira Gandhi Institute of Development Research in association with individuals working on wetlands). However, this preliminary effort to address the need for a National Wetland Policy had been initiated not by the Government but by individuals working of different aspects of wetlands, non governmental organisations and some officials from the concerned Government agencies.

The obstacles and hurdles faced by the Country in conserving wetlands and evolving guidelines for wise use of wetlands are several and need to be closely examined. In general terms, the long-standing environmental problems in India are the growing demand for and pressure on natural resources by an ever burgeoning population. This is compounded by the influx of sizeable rural population to the cities thus leading to a shortage of land in and around cities and causing a mad rush for reclamation of wetlands (especially in cities like Bombay). Significantly in Bombay, environmentalists were successful, in countering the effort of the city's Development authorities to construct buildings in Mahim Creek, an important wetland area which boasts of significant waterfowl. To add to this, the lack of civic amenities in overcrowded cities leads to widespread pollution of the water bodies. To make matters worse, several new development projects (ports, harbours, thermal power plants and industries) have come up especially in fragile coastal areas and these projects generally bypass safeguards to conserve these threatened ecosystems. Most of these projects have to comply with the requirements of the EIA law (the EIA Notification issued in 1994) but the EIAs maybe misleading and or subject to manipulation in order to hasten the progress of clearing such development projects (which are backed by Government policies). These developmental problems are further aggravated by the absence of a coherent policy for wise use of wetlands and the general non-compliance and violation of existing laws that deal with natural ecosystems such as wetlands.

The existing environmental laws available for conserving and wisely using wetlands are replete with loopholes which are exploited by profit-minded industrialists who use precisely these loosely worded laws to escape the snare of prohibition placed by the law. This is particularly the case with the Coastal Regulation Zone Notification, issued under the central Environment (Protection) Act which regulates coastal development in the country. In India the conservation and wise use of wetlands falls within the mandate of the Central Ministry of Environment and Forests (MoEF). Some of the various central government agencies that may be indirectly making decisions which affect wetlands are: the Department of Fisheries, the Ministry of Agriculture, the Ministry of Water Resources, the Ministry of Surface Transport, the Ministry of Power, the Ministry of Tourism, the Department of Ocean Development, to name a few. Since land is a state subject (under the Constitution of the country), various state government agencies are also involved in decision making over wetlands (which are often

equated to land). The numerous agencies (Government as well as private) involved in decision making on wetlands, make implementation of existing legal provisions for wetland conservation and wise use all the more difficult.

Since legal and institutional issues lay the foundation for conservation action and wise use of wetlands, to some degree, the lack of a review of legal and institutional matters by the Central agency reflects the general lack of interest in evolving and implementing wise use principles for wetlands. The existing body of laws (within the federal structure of the Government of India) applicable to wetlands can be classified into four categories: central laws, state laws, municipal laws as well as customary laws (sanctioning wise use or management of wetlands). Significantly, at the central level, wetlands do not have a separate legal definition or legal entity under the existing environmental laws. In other words, the corpus of environmental laws do not extend exclusive protection to wetlands as distinct ecosystems (although the country has international obligations under an ecosystem-specific Convention).

Under the Wildlife Protection Act (WPA) and other central laws like the Indian Forest Act, wetlands are not even defined as a separate category of ecologically important areas but generally form part of protected areas. Of course they are included in protected areas only when wetlands are the habitat of endangered wildlife (and exist within sanctuaries or national parks). The existing laws would be amended to incorporate a broad inclusive definition of wetlands (specifically in the WPA). This would facilitate and make it legally binding for wetland managers to draw up wetland conservation plans. Equally, it would make it mandatory for the Government agencies (central and state) to offer institutional and financial support for local wetland management and wise use practices.

It would be crucial to bear in mind the shortcomings of the national wildlife laws (particularly the WPA) especially for achieving the objective of wise use of wetlands. Unfortunately the national wildlife law as the forest law is grounded on colonial principles of acquisition of land from local communities despite growing awareness about the viability of joint protected area management and numerous successful examples of communities effectively and wisely using wetlands. The Wildlife (Protection) Act of 1972 which extends to all states in India except the state of Jammu and Kashmir provides for the establishment of sanctuaries (section 18) and national parks (section 35) and thus offers protection to wetlands which are or fall within the boundaries of protected areas. However national wildlife law places a strict ban on grazing within a National park and hence prohibits the human impact and influences on the wetland ecosystem once this is declared as a National Park. This restriction in national parks (which are zones of highest protection in protected area categories) makes wise use of the wetland virtually impossible.

The experience from Keoladeo National Park, an artificial wetland area designated both as a Ramsar site and as a national park needs to be kept in mind by the Government agency when they undertake or commission the review of national legislation and institutional issues related to wise use of wetlands. Keoladeo National Park is significant as this area had a history of conflicts amongst the park management and local people whose traditional (and evidently sustainable) relationship with the wetland had been disrupted following the designation of the area as a National Park in 1981[2]. Grazing and fuel-wood collection from

[2] WWF-India, 1996 *Participatory Management Planning for the Keoladeo National Park*, New Delhi, India.

the wetland were stopped following the designation of the area as a protected area. Scientists at the Bombay Natural History Society who have carried out a ten year study of the Park were emphatic in their view that grazing in a regulated way was needed to control the profusion of aquatic macrophytes which were colonising the wetland. The Keoladeo National Park case brings out the contradictions in ensuring the wise use obligation under the Ramsar Convention and the national Wildlife (Protection) Act which is designed for strict protection within a national park. Any legal and institutional review would need to address this apparent conflict in implementing the wise use obligations under the International Convention and stipulations under conventional national wildlife law. Thus merely assigning a protected area status and declaring the area as a listed site under the Convention does not automatically ensure wise use. In fact, while undertaking any kind of legal and institutional review, it would be worthwhile to consider if the listed site status under the Convention has in any way helped in ensuring or continuing the wise use of the wetland. Or has listing the area under the Ramsar Convention merely increased Government control over the wetland resource disrupting the local communities wise use practices in the area and leading to deep-seated resentment amongst them? The experience from Keoladeo National Park reveals that the creation of a boundary wall which both physically and emotionally distanced the villagers living around the wetland from what was now a national park led to the rapid degradation of the wetland. This happened because the critical function of grazing had been stopped. Subsequently the control of the outbreak of weeds (because of grazing) was also stopped, causing widespread weed proliferation in the wetland.

The Environment (Protection) Act, 1986 is an umbrella Act which was enacted with the objective of protecting and improving the environment and for matters connected therewith. 'Environment' as defined in Section 2 of the Environment (Protection) Act included water, air and land and the interrelationship which exists between water, air and land and human beings and other living creatures, plants and micro-organisms and property. The Environment (Protection) Act, 1986 has been instrumental in protecting wetlands and groups of wetlands. Several significant regulations and Notifications have been passed under this broad Act for monitoring pollution and safeguarding the environment. The Coastal Regulation Zone Notification which in fact imposes restrictions on industries, operations and processes in the coastal zone areas (500 metres from the High Tide Line and the area between the High Tide Line and the Low Tide Line) has been issued under this Act. The Environment Impact Assessment Notification of 1994 was also issued under this Act. Section 3 of the Environment (Protection) Act deals with the power of the Central Government to take measures to protect and improve the environment. The section reads as follows:

Section 3 (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Such measures may include:

- Section 3 (v) restrictions of areas in which industries, operations and processes or class of industries, operations or processes shall not be carried out or carried out subject to certain safeguards.

This Act has been useful in checking mushrooming aqua-culture in the coastal areas, protecting threatened wetlands such as the Dahanu wetlands in the state of Maharashtra from

environmentally harmful industries and projects. In fact, in a landmark case (the Dahanu Taluka Environmental Welfare Association versus the Union of India), filed by the leading environmental lawyer in the country, Mr. M. C. Mehta, the Supreme Court gave a landmark decision to conserve the biodiversity rich network of wetlands in Dahanu and limited industrialisation to 500 acres in Dahanu. Furthermore the Court ruled that the Ministry of Environment and Forests should designate and notify Dahanu as an ' ecologically sensitive' area permitting only certain types of industries in this area. Thus the Environment (Protection) Act can be used to notify certain ecologically harmful industries, operations and processes particularly in cases of wetlands which are on the brink of extinction.

In the last five years especially following the Brisbane COP of the Ramsar Convention, the Ministry of Environment and Forests has taken note of the need to formulate what are called wetland management plans for the designated wetlands. However, at the national level, there has been no systematic review, of the laws and policies affecting wetland conservation and wise use. The need to look at the legal and institutional issues has become apparent because although the Executive has failed to take significant conservation measures, the Judiciary has paved the way for law reform especially for environmental laws, through swift judicial activism in hard fought environmental cases. In fact both the High Courts and the Supreme Court have given extremely favourable judgements and orders upholding the loosely worded and deliberately vague environmental laws (such as the coastal zone notification). The Court has taken cognisance of increasing haphazard coastal development and coastal pollution and has given strict orders to conserve coastal wetlands which are covered under the coastal law (the Coastal regulation Zone Notification). Two landmark judicial decisions have been delivered by the Supreme Court of India in Indian Council for Enviro-legal Action versus Union of India and in S. Jaganath versus Union of India. In both these decisions, the Courts upheld the validity of the Coastal Regulation Zone Notification which seeks to impose restrictions upon industries, operations and processes in the CRZ areas. This does bring into sharp focus the need to address not just listed wetlands but wetlands in a particular region i.e. the coastal region or the montane wetlands. The draft policy would need to prescribe measures for wetlands which are threatened by a specific problem, i.e. the rapid growth of high-rise building and large-scale development projects in coastal areas or weak enforcement of law in transboundary wetlands as in the wetlands of Jammu and Kashmir.

Legal and institutional review upon ratification of the Ramsar Convention

At the level of the Executive, the Ministry of Environment and Forests has constituted a National Committee on Wetlands, Mangroves and Coral reefs which has representatives from the non governmental sector, academic institutions and other departments and ministries of the Government of India. The Committee meets at least twice a year to review wetland related activity. Recently this committee was divided into two distinct committees- the Wetlands/Lakes Committee and the Mangroves and Coral Reefs Committee. The meeting of the former committee was held on 8th May 1998. Further state level committees have been appointed that look into the conservation and wise use of the listed wetland sites in their states.

Although this National Committee on Wetlands/Lakes had not yet prioritised a review of legal and institutional issues related to wetlands, one of the key issues in the agenda of the latest meeting (on 8.5.98) was the review of action for wetland conservation on the whole and

assessing wise use of wetlands in the country in the last two years. Ironically this meeting highlighted the shortcomings of the executive machinery to fulfil this task alone. Significantly, the Committee took the following recommendations and decisions:

- *At the Central level:*

    - The Ministry of Environment and Forests accepted a recommendation made by WWF and a consensus decision was arrived at the meeting about notifying the six designated Ramsar sites apart from just listing them.

At the state level:

- Various Government representatives reported on the status of various wetlands in the states, which were also Ramsar sites. Special mention was made of Sambhar lake (Rajasthan) and Loktak lake (Manipur) since on Sambhar lake, according to the Government representatives, private salt production had overtaken the conservation objectives of the state government. In Loktak lake, the National Hydroelectric Power Corporation (NHPC) has a major stake in the lake and the Loktak Lake Development Authority has yet to finalise a lake management plan enlisting the support of the NHPC.

- At the state level, attention was also drawn to the fact that the state governments were not paying adequate attention to the conservation priorities of the wetlands in their states. Further it was recommended that the state governments inform the National committee of the detailed financial and physical progress on the various states schemes launched to achieve conservation and wise-use of wetlands.

An observation here is that the state governments are often motivated by political and commercial interests in wetland conservation and wise use and these are relegated as low priority matters on their agenda.

On designation of new wetlands under the Ramsar Convention

It is significant that members of the nodal national agency, the Ministry of Environment and Forests (MoEF) felt that unless crucial steps were taken to remove the three Ramsar sites on the Montreux record viz. Keoladeo National park, Chilika lake and Loktak lake, it would be pointless to add more wetland sites to the List of Wetlands of International Importance.

On identification of implementing agencies (local and others)

Some members expressed the view that the funds for activities undertaken should be directly released to the implementing agency or the field where activities for wetland conservation had to be initiated. It was noted that earlier, the MoEF was directly funding implementing agencies. This recommendation is a valid one indeed as the bureaucratic setup and the structure of Government results in undue delays in transfer of funds to the implementing agencies on the field for undertaking activities to promote conservation and wise use of wetlands.

On the issue of a National Wetland Policy

Representatives of the Ministry of Environment and Forests were of the view that a National Wetland Policy was not really needed as there is an existing conservation strategy on the Environment within the Ministry and this also extends to wetlands. The reluctance to formulate a national Wetland Policy can be explained as this would in effect increase the Central Government's responsibility towards wetland conservation and wise use and that is the possible reason for the Ministry waiving the need for a national policy.

Thus the need for a legal and institutional review has also not been a high priority for the Central Ministry of Environment and Forest as the Ministry is of the view that effective action can only be undertaken by the states and when implementation at the state level is less than satisfactory, according to Ministry officials, a national policy would be superfluous.

The process of monitoring and review of wetlands in the country which is the responsibility of the Ministry of Environment and Forests has been limited to assessing the performance of state level agencies entrusted with the task of wetland conservation. This is a classic example of the Central Ministry passing the buck to the state governments and state governments being unaccountable and irresponsible in fulfilling their duties of conservation and supporting wise use of wetlands. This is further compounded by problems of securing funding for conservation which is a low-priority item in the national budgets. The fact that there is general climate of political uncertainty and governments are being toppled in quick succession does nothing to ensure consistent conservation action by the Government.

The existing framework of laws in the country offers adequate safeguards and legal basis for wetland conservation and wise use although there are some glaring loopholes in the law that need to be rectified. The Wildlife (Protection) Act which presently includes certain wetlands (which are the habitat of wildlife) in the conventional protected areas network, would need to be amended to include wetlands in a special category of multiple use areas. This would be imperative as a certain degree of human impact on wetlands would in fact, be desirable to maintain the ecological character of the wetland. The degree to which human impact on wetlands is to be allowed can be decided depending on scientific studies on the carrying capacity of the particular wetland. Thus restrictions/regulations on people's dependence on the wetland would have to be decided by a committee of wetland experts as well the representatives of local communities and stakeholders on a case to case basis keeping in mind the various sustainable traditional and customary practices of wise use which have evolved over centuries. Thus where certain traditional practices are no longer sustainable today, the local communities or stakeholders would need to with the facilitation of NGOs draw up a management plan, reviving certain tradition systems of access and control over the wetland resource. The Environment (Protection) Act, 1986 could also be instrumental in extending legal protection to wetlands as distinct ecosystems and creating restrictions and safeguards for ensuring wise use of these areas. At the state level, several state acts regulate use of wetlands. In fact the states of West Bengal and Tamil Nadu have specific state acts (the West Bengal Inland Fisheries Act and the Tamil Nadu Aqua-culture Regulation Act, 1995) which recognise the value of wetlands and the fisheries they sustain and have specific restrictions for use of wetland areas. Most of the coastal states have state rules for fishing which directly or indirectly have an impact on wetlands.

In fact instead of creating complicated and often superfluous legislation which lack teeth, it would be more useful if the Central agency would first appoint consultants, non

governmental organisations to identify the ecologically unsound practices (including industries, operations and processes in the major wetland areas). Subsequently, it would be more effective to merely notify certain unsound and ecologically destructive practices which are detrimental to wise use of threatened wetlands rather than creating new rules or enacting new laws. This 'notification' for wetlands could broadly classify what might be termed ecologically destructive or harmful industries, operations, processes and include activities such as commercial aqua-culture, mechanised trawling, coral mining, blast fishing etc.

Recommendations

Some specific recommendations for achieving law reform for sustainable development and environmental and social justice:

⇒ Conventional Protected Area management and conventional wildlife law may not be suitable or adequate for achieving wise use obligations imposed by the Ramsar Convention. There is a need for a systematic study of the legal system and the institutions that would be involved in wetland management in the country. This study would need to reflect a holistic perspective of wetland management in the country and therefore would need to go beyond action taken by Government's agencies and departments and look at local and customary practices of wise use and reviving and supporting local institutions that regulate these practices.

⇒ A National Wetland Policy for India would need to suggest broad guidelines for affirmative action for wetland conservation and wise use. However such a policy must reflect the importance of wise use of wetlands by communities and must provide a blue-print for initiating collaborative wetland management plans which could be further modified and adapted by local users and local institutions.

⇒ The Environment(Protection) Act, 1986 can be effectively used to phase out certain unsound practices and ensure safeguards for threatened wetlands. Instead of merely adding more wetlands to the List of Wetlands of International Importance and not maintaining their ecological character, it would be far more worthwhile and pro-active if the Central Ministry of Environment and Forests would notify threatened wetlands as "ecologically sensitive" areas under the existing Environment (Protection) Act and regulate and prohibit certain ecologically harmful industries, operations and processes in these "ecologically sensitive" wetlands. The Supreme Court of India had given a remarkable judgement in the case of Dahanu wetlands in Maharashtra and the notification of Dahanu as an 'ecologically sensitive' area enabled local NGOs to successfully stall an environmentally disastrous project for a mega-port at Vadhavan in Dahanu.

⇒ Lastly any review of legal and institutional issues related to wetlands and their management would be incomplete, unless a case study of local laws for wetlands and customary laws and practices of wise use could be undertaken in four different regions in the country. This would be most authentic if it were undertaken by independent NGOs and experts. Such a study of the local and customary laws and practices would help ascertain what maybe truly wise use of wetlands, in the selected areas. This study would also need to highlight the conflicts in the selected wetland areas and the process of the resolution of conflict (negotiation/arbitration) and the agencies that are involved in conflict resolution.

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