A wide-angle photograph of a lake during the day. In the foreground, a rowing team of four people is in a dark boat, moving towards the right. A line of red buoys stretches across the water. In the middle ground, several other rowers are visible. The background features a city skyline with various buildings and a large, leafy tree on the right. The sky is clear and blue.

Wise Use, Conservation, Protection, Rehabilitation and Appropriate Governance of Lakes as Commons in Karnataka

prepared by
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Acknowledgements

We thank hundreds of individuals and organisations who have worked with ESG to conserve and protect lakes over the past decade.

We are especially grateful to our families and friends who have consistently supported us in these efforts.

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Environment
Support Group



In one of her last letters before she passed away earlier this year, Prof. Elinor Ostrom, awarded the 2009 Economics Nobel Prize for her life's work on the governance of commons, wrote about Environment Support Group's efforts to protect, conserve

and advance the wise use of lakes and their interstitial canal networks. The letter addressed to the United Nations Office to Support the International Decade of Action 'Water for Life' 2005-15 highlighted that ESG's efforts were unprecedented *“for effectively utilizing legal redressal mechanisms and eliciting appropriate responses from the judiciary and administration to protect, conserve, and wisely use Karnataka State's 35,000 irrigation tanks (lakes) and their canal networks.”* The letter acknowledges that *“(t)he guidelines evolved to assist in this process are pragmatic as they acknowledge the importance of community centered, democratic, and ecologically viable interventions for managing watersheds and water resources.”* Prof. Ostrom concludes that the initiative taken *“... is an important step towards securing public commons and could go a long way in extending water and food security to millions who are in critical need of the same.”*¹

Over the past decade, ESG has consistently worked to raise awareness to conserve and protect lakes from encroachment, pollution and degradation, and also to secure the livelihoods of those who depend on these wetland systems. This effort has been undertaken collaboratively with many other groups and communities in the Bangalore and wider Karnataka region. A significant focus of this effort has been to raise awareness of the long term consequences of the pollution and encroachment of lakes, especially in urban areas, and to highlight adverse impacts on public health, biodiversity and the environment.

1. A copy of the letter dated 06 June 2012 can be accessed at <http://www.esgindia.org/campaigns/press/late-nobel-laureate-prof-elinor-ostrom-c.html>.



The Vincent and Elinor Ostrom Workshop
in Political Theory and Policy Analysis

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June 6, 2012

Ms. María del Pilar González Meyauri

Responsable de información y sensibilización pública

Programa de ONU-Agua para la Promoción y la Comunicación en el marco del Decenio

Casa Solans - Avda. Cataluña, 60 - 50014

Zaragoza - SPAIN

Dear Ms. González Meyauri:

It is commendable on the part of the Environment Support Group in Bangalore, India for effectively utilizing legal redressal mechanisms and eliciting appropriate responses from the judiciary and administration to protect, conserve, and wisely use Karnataka State's 35,000 irrigation tanks (lakes) and their canal networks. The guidelines evolved to assist in this process are pragmatic as they acknowledge the importance of community centered, democratic, and ecologically viable interventions for managing watersheds and water resources. This is an important step towards securing public commons and could go a long way in extending water and food security to millions who are in critical need of the same.

Sincerely yours,

Elinor Ostrom

Indiana University Distinguished Professor

Arthur F. Bentley Professor of Political Science

Senior Research Director, The Vincent and Elinor Ostrom Workshop in Political Theory and

Policy Analysis



ELINOR OSTROM

2009 Nobel Laureate
in Economic Sciences



The basic emphasis has been to ensure that local water harvesting structures were built, maintained and protected over time to provide water security, enhance livelihood options, improve local environmental qualities and also to secure these as commons for the benefit of present and future generations.

Such efforts highlighted the critical importance of reviving the rich tradition of community organising and traditional knowledge relating to creation and maintenance of the extensive network of tanks over centuries. This was undertaken by acknowledging the problematic caste, feudal, colonial and post-colonial histories that influenced their creation, maintenance, governance and use. The importance of invoking Constitutional guarantees supporting access and use of commons, such as lakes, by all, which the Judiciary has strengthened by incorporating progressive doctrines and principles into Indian law (such as the Precautionary Principle, the Principle of Intergenerational Equity, the Polluter Pays Principle and the Public Trust Doctrine) has also been affirmed and reiterated through ESG's ongoing efforts. ESG's advocacy efforts promoting the wise use and conservation of lakes as commons have thus been grounded in a critical engagement with the social, cultural, environmental, historical and legal underpinnings and interpretations of lakes.



Lakes are our commons:

In terms of the legal interpretations of how lakes as commons are to be governed, ESG's efforts have promoted an understanding of the governance of lakes in terms of progressive constitutional values, particularly Articles 39 (b)², 48A³ and 51 A(g)⁴ of the Constitution of India. In addition, the process has been one of highlighting the immense possibilities that exist for democratising maintenance, governance and sustainable use of these water systems per the Constitution (Seventy-Third Amendment) Act, 1992 (enshrining Panchayat Raj Institutions), the Constitution (Seventy-Fourth Amendment) Act, 1992 (enshrining Urban Local Bodies), and the more recently enacted Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. ESG's advocacy efforts have also highlighted the utilisation of progressive judicial decisions that have proposed the wise use, protection and conservation of lakes- this includes the Indian Supreme Court's decision in *Jagpal Singh v. State of Punjab*⁵, wherein a writ of continuing mandamus was issued to ensure judicial oversight over the widespread abuse of the commons. In each of its efforts, ESG has constantly acknowledged that socio-economic, cultural, political and religious factors have varying influence across differing landscapes in terms of how communities relate with water systems.

2. Article 39. The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

3. Article 48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

4.51A. Fundamental duties.—It shall be the duty of every citizen of India—

(a)

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

5. Civil Appeal No.1132 /2011 @ SLP (C) no.3109/2011 in the Supreme Court of India.

In this context, a major thrust of the effort in sensitising the wider public has been the recognition that lakes and their canal networks are our commons and that the State is not the owner of such assets but is only a Custodian. Further, we have constantly emphasised the collective responsibility of the public and the State in ensuring that the quality of these wetland ecosystems is protected and enhanced for the benefit of present and future generations.

Such a focus has evolved over time into appreciating the reasons why these water commons are neglected today, particularly in urban areas, and what it would take to restore them to serve our current and future needs. Attention has been invested to understand what administrative and governance mechanisms are essential for local communities to regain control over water bodies once again and for local communities to be involved in restoring these water bodies to functional socio-economic, cultural and ecological spaces.

In acknowledgement of all these efforts over the past decade, ESG was awarded the 2012 UN-Water "Water for Life" Best Practices Award in a ceremony held at the headquarters of the Food and Agriculture Organisation, Rome on 22 March 2012, World Water Day.⁶ Similarly, ESG lakes' effort has also the recipient of the 2011 Gold Award in the category of "Best Green Water Stewardship" instituted by the International Green Awards, London.⁷



6. Details of the UN Water Award can be accessed at: <http://www.esgindia.org/education/community-outreach/press/environment-support-group-gets-united-na.html> .

7. Details of the various Green Awards in 2011 can be accessed at: <http://www.greenawards.com/winners/2011-winners>

Tackling the Problem of Neglect and Loss of Lakes in Recent Decades:

There is considerable difficulty in moving away from the current state where lakes have been neglected quite systematically and substantially. The lack of clear legislative support to protect lakes as commons, the withering away of local community structures that traditionally protected and maintained these waterbodies, and the dispossession of local control and its usurpation by publicly unaccountable parastatal entities that have typically employed reactionary methods to farm out lakes to various private corporations under long term leases (ostensibly to enable their better maintenance and protection) are amongst the several factors responsible for the current state of affairs .

The initiator of the policy of privatization of lakes is a non-profit entity called the Lake Development Authority set up by the Government of Karnataka. The object of this organization, when conceived, was to help build local community and government capacities to protect and conserve lakes. However, soon after it was formed in 2002, this parastatal body, manned essentially by Forest Department officials, decided to invite private sector participation under the Public-Private Partnership model for the discharge of its obligatory functions. The Lake Development Authority quickly moved to hand over four principal lakes of Bangalore to four private corporations, viz., Oberois (East India Hotels), Lumbini, Par-C and Biota. These 15 year extendable leases (with very low lease rents) allowed lease-holders to intensively develop these waterbodies into highly commercialized spaces including hotels, restaurants, food courts, water theme parks, etc. Interestingly, all these lakes had already been fully rehabilitated either under the centrally funded National Lake Conservation Programme (NLCP) or the Norwegian Government funded Indo-Norwegian Environment Programme. Therefore, these lakes needed only to be maintained, and not further rehabilitated or developed. This fact, however, was deliberately suppressed given that the lease contracts were allotted on the questionable premise that the lakes were all neglected and in need of rehabilitation and development.

ESG helped build well-informed public position against such wanton privatization and commercialization of lakes. The basic theme was to highlight that lakes are commons and their access, maintenance and governance should be under public control. If corporations were to be involved in the maintenance of lakes, as would be the case in urban areas under the Lake Development Authority's Public-Private Partnership model, then such involvement would have to be primarily in supporting ongoing efforts *without subordinating the water body to exclusionary corporate control or profit*. This theme resonated very well with hundreds of groups and individuals across Bangalore who turned up for these protests against the privatisation policy, and the campaign drew widespread media support. The Government however refused to back down from this policy, and continued to aggressively promote the same as a model to develop or re-develop several more lakes in Bangalore, which would be a precedent that would be applicable to other major urban areas as well. The Gujarat Government, for instance, enamoured by this policy decided to adopt this model. It was clear that this myopic approach was gaining influence in different parts of India and could soon turn disastrous to the very idea of lakes as commons.

ESG's Public Interest Litigation to Protect Lakes:

In such a context, ESG felt constrained to file a Public Interest Litigation (PIL) in early 2008 challenging the legality of the privatization model. The PIL argued that the government resorting to such models was not only illegal but also dispossessed local communities of their due rights to access lakes as commons, destroyed their biodiversity as wetland ecosystems, and also denied just opportunities of livelihoods to various communities. In addition, the PIL proposed that the Court must direct the Government to formulate a scheme to protect lakes and their watersheds to meet the needs of present and future generations based on wise use principles of managing them as commons.

This petition was heard at length and an interim order staying privatization of lakes was obtained early on, based on a consensus extracted by the Court from all parties. The Court observed at the time that “*the License/Lease holders have given a consensual undertaking to the effect that they shall not make any further development in their respective lakes, in order to avoid any further damage to the ecological and environmental conditions of the lakes in question and the same is recorded.*” The Judges also observed that they were “*also satisfied and convinced that in the larger interest of public, and particularly in order to maintain ecology and environment of the the lakes and gardens in the city as well as throughout the State, the Lake Development Authority shall not enter into any fresh agreement with whomsoever and with reference to whatsoever lake is concerned.*” Thereafter, the Principal Bench directed the Government Advocate to “*ascertain the views of the Government as to the future course of action for maintaining the lakes and gardens in the city as well as in the State of Karnataka, and to avoid commercial activities so that the ecology and environment of the lakes and gardens shall be maintained and made available to the common man.*”

Over time as the PIL was heard, the Court realised the complexities of the issues involved and directed Karnataka's Principal Chief Conservator of Forests⁹ (PCCF) to assess the situation of the lakes that had been privatised and report to the court. *The PCCF's report highlighted that all lakes that had been rehabilitated did not need any further effort except appropriate maintenance. Consequently, the PCCF strongly discouraged privatisation and commodification of lakes pointing out that in three lakes (viz., Hebbal, Nagawara and Vengaiahkere lakes) where private parties had already begun work, the damage to the ecology and local community access was extensive.*

8. Daily Orders of the Case Number: WP 817/2008 dated 04/11/2008 by Honble Justices P. D. DINAKARAN (CJ) AND V. G. SABHAHIT, accessible at: http://static.esgindia.org/campaigns/lakes/legal/PIL_817_2008_InterimOrder_041108.zip

9. Dr. P. J. Dilip Kumar, IFS, was Principal Chief Conservator of Forests of Karnataka at the time and is now the Director General of Forests at the Indian Ministry of Environment and Forests.

On the basis of this report, the High Court then directed the Principal Secretary of the Karnataka Government to comprehensively address all concerns of the petitioners and report to the Court a possible plan of action to redeem the situation. ESG engaged with this process proactively and presented a robust set of arguments to advance the maintenance of lakes as commons and as areas rich in biodiversity, livelihood options and as zones extending water security to lakhs of people. However, the meetings failed to come to any conclusion as the Lake Development Authority, quite in variance with the inferences evident in the PCCF's report, was highly defensive of its privatisation approach and claimed that it was only with private participation that lakes in urban areas could be managed, else they would soon disappear.

Constitution of Justice N. K. Patil Committee to identify Steps to Protect Lakes:

This situation compelled the Karnataka High Court to constitute a Committee under Justice Mr. N. K. Patil, Judge of the Karnataka High Court, involving all top officials of the nine departments that were directly connected with maintenance and governance of lakes and their watersheds. Following several meetings



the Committee produced a comprehensive report entitled: "Preservation of Lakes in the City of Bangalore"¹⁰. The report was evolved in response to key prayers made in the PIL, one of which sought "*necessary directions directing (the Government) to frame a scheme for the effective administration of lakes and tanks in consonance with the 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...*

10.The Report of the Justice N. K. Patil Committee - "Preservation of Lakes in the City of Bangalore", Report of the committee constituted by the Hon'ble High Court of Karnataka to examine the ground realities & prepare an Action Plan for preservation of lakes in the city of Bangalore - can be accessed at: <http://esgindia.org/campaigns/press/campaign-against-lake-privatisation-bang.html> [Hereafter N.K. Patil Committee Report 26th February 2011].

the Union Ministry of Environment and Forests."¹¹ The Petition had also sought "necessary directions (to the State) to 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." ESG was actively involved in the production of Justice N. K. Patil's report which contains various guidelines for the wise use, maintenance and governance of lakes as commons.

In the preface to the report, Justice Mr. N. K. Patil records the anguish of the Court over the state of Bangalore's lakes as follows:

*"Bangalore is on a course of rapid expansion, transforming itself from a metro to a Mega city. During this process, the worst hit (sector) are the lakes of the region, which are put to misuse, threatening the water security, ecology and environment of the region. The estimated population of Bangalore by the year 2020 would be around 120 lakhs (12 million) and it demands a very proactive regulation, planning and execution system in place, to face the challenges of water scarcity and to keep the City habitable."*¹²

The report observes with concern that "were it not for tanks (lakes) providing water security in an otherwise semi-arid area, it is more than likely that the journey (of Bangalore) towards a successful metropolis would have been truncated centuries ago. The critical importance of tanks to the success of this emerging urban area has been recognised by every ruler from Kempegowda, Hyder Ali, Tipu Sultan..

11. The late Lakshman Rau, a former administrator of Bangalore, had produced a report in 1988 in response to a request from the Government of Karnataka. This N. Lakshman Rau Committee Report was made applicable to the protection of about 120 lakes of the then built area of Bangalore by an executive direction. Subsequently, lack of implementation of the recommendations resulted in drastic erosion in the quality and number of lakes of the city, especially when the city expanded in an unplanned manner over the past two decades. A PIL filed by Padmashree Zafar Futehally and ors. (WP 31343/1995) alleged that the recommendations of the report were not being implemented and thus resulting in loss of lakes. This matter which was pending since 1995 was linked to ESG's PIL initiative, as were many other similar matters, and all these cases were collectively disposed by the Karnataka High Court.

12. Preface to N.K. Patil Committee Report 26th February 2011, at pp. 1-2.

and the British as well."¹³ It also observes that evidence of such creative crafting of landscape into a water rich terrain is evident in any toposheet prepared by the Survey of India, with its last and most authoritative account in 1972 revealing not one valley or depression being left uncared for; instead they are all sites to harvest rain and runoff, thus significantly enhancing water security and productivity of agriculture and horticulture."¹⁴

In a rare departure from official initiatives of the past, the 137 page report accounts that Bangalore's intense urbanisation has resulted in seriously compromising the integrity of 386 lakes that are left and that the status of 121 lakes is unknown. The report also acknowledges that upto 100 lakes have disappeared altogether as they have been converted to various urban uses including bus stations, roads, layouts, garbage dumps, truck stands, etc. As regards the still existing lakes, the report provides an overview of the status indicating the extent to which they have been encroached, polluted, and protected, and also specifies the custodial agency of every lake. All this information has been made available in the public domain for the very first time.

Agencies involved in this exercise were the Bangalore Development Authority, Bruhat Bengaluru Mahanagara Palike, Lake Development Authority, Karnataka State Forest Department, Karnataka Revenue Department, Minor Irrigation Department, Bangalore Water Supply and Sewerage Board, Karnataka State Pollution Control Board and Karnataka Town and Country Planning Board. The specific responsibilities of each agency in ensuring the lakes are protected is also prescribed in the report.¹⁵

13. N.K. Patil Committee Report 26th February 2011, p. 3.

14. *Ibid.* N.K. Patil Committee Report 26th February 2011, at p. 4.

15. *Ibid.* N.K. Patil Committee Report 26th February 2011, see specifically the section entitled "Action Plan" at pages 16 – 20 and relevant annexures indicated therein.

Comprehensive Effort to Protect and Rehabilitate lakes:

On this basis, the Justice N. K. Patil Committee made various recommendations beginning with calling for immediate action to remove encroachments of lakes and *Raja Kaluves* (canals interconnecting lakes). This, the Committee submitted, ought to be done by conducting a thorough survey of the legal limits of all lakes and canal areas, and for fixing such boundaries so that the entire watershed is protected. The strategy proposed is "survey, removal of encroachments, fencing, watch and ward, clearing of blocked and encroached raja kaluves and drains, waste-weir repairs, and de-silting to the extent absolutely required."¹⁶ The report further recommends that "lake restoration is to be taken up based on lake series/sub-series and not in isolation" and that "lake preservation is not limited to lake area itself, but very much dependant on catchment area and the drains that bring rainwater into the lake."¹⁷ There is significant thrust in the report to ensure that entry of raw sewage into lakes becomes a thing of the past, and that offenders are strictly penalized.

One of the key action items as proposed in the report is the selection of lakes that are relatively undisturbed and their rehabilitation into drinking water reservoirs by blocking off sewage entry altogether¹⁸. The report also urges that lakes having very high biodiversity, especially of migratory waterfowl, are to be notified for conservation under the Wetland (Conservation and Management) Rules, 2010, per the Environment Protection Act, 1986.¹⁹



16. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraph 6, page 14.

17. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraphs 3 and 6, pages 13 & 15.

18. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraph 8, pages 14, 15.

19. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraph 9, page 15. The Wetland (Conservation and Management) Rules, 2010 are problematic as they promote a highly centralised and often counter-productive regime for wetlands protection. However, Courts have to rely on such legal instruments in the absence of enabling legislations.

Promoting the involvement of local communities in lake preservation and restoration, the report recommends constitution of lake management committees involving local residents and voluntary organisations.²⁰ Finally, the report highlights the need to protect the interests of traditional users of the lakes such as dhobis (washer-people), fisher-people, etc.²¹

This report was comprehensively accepted by the Court in a direction on 3rd March 2011.²² The Court then observed that the report "*satisfies all the prayers (of the Petitioners) .. except one pertaining to lease holders who have made construction in the periphery of the lake or are in the process of making such constructions. The limited issue that remains in furtherance of the instant and connected writ petition pertains to rights and obligations of lease holders.*"²³ Based on this observation, the Court during a subsequent hearing on the case held on 7th July 2011, directed that a committee should go into this complex issue of privatisation and ruled as follows:

"Undoubtedly, private public participation is a part of the developmental process in today's world. However, there are inherent limitations therein. Even though there may not be any objections to private public participation without commercial benefits to the concerned private party; there may be serious consequences, wherein a private commercial interest is at the back of the mind of concerned private entrepreneur. In order to ensure, that a balanced and reasonable policy is formulated on the issue in hand, which would reduce the financial burden on the State government, as also, the governmental organizations participating in the project, we are of the view, that the committee constituted by this Court..

20. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraph 12, page 15.

21. *Ibid.* N.K. Patil Committee Report 26th February 2011, at paragraph 13, pages 15 and 16.

22. Daily Orders of the Case Number : WP 817/2008 dated 03/03/2011 by Honble Justices J. S. K H E H A R (C J) A N D A . S . B O P A N N A , accessible at : <http://causelist.kar.nic.in/detorder.asp?bench=B&caseno=817&caseyear=2008&casetype=WP&oo=03/03/2011>

23. *Id.*

(in furtherance of the order passed by the motion bench on 26.11.2010) should grant a hearing to the petitioners, as also, the intending private partners, and thereupon, formulate a policy depicting parameters of such private public participation, wherein the limits of commercial involvement shall be defined. These parameters shall include the fee chargeable from the public (who wish to enjoy the benefits of lake rejuvenation.) Accordingly, learned counsel for the rival parties may seek a firm date from the Member Secretary, High Court Legal Services Committee, so that the Committee can grant an opportunity of hearing, to all interested parties, before the framework of the policy can be formulated. The Committee is requested to frame separate parameters for private public participation, in cases wherein the private participation is without private commercial interests, as also, where the same is solely based on consequential commercial interest."²⁴



24.A copy of this direction in WP No. 817/2008 is accessible at:
<http://causelist.kar.nic.in/detorder.asp?bench=B&caseno=817&caseyear=2008&casetype=WP&do=07/07/2011>

Commercialisation and Privatisation of Lakes is Not Acceptable: Justice N. K. Patil

In compliance with this direction, Justice Patil's Committee held 5 meetings to deliberate the nature of the policy that would be most suitable for the long-term sustenance of lake systems. After providing opportunities of hearing to all parties involved, it submitted its report before the High Court on 12 October 2011.²⁵ This report comprehensively addressed the issues involved and made 10 recommendations, one of which explicitly states that “commercial exploitation of any lake cannot be allowed under any circumstance”.²⁶ (Emphasis supplied.) To support this recommendation, the Committee has observed that:

“the private entrepreneurs to whom the lakes have been handed over for maintenance have not been able to do complete justice to ecology. Ultimately, “Profit Motive” has prevailed over the “Public Interest” and “Public Trust”.”²⁷ (Emphasis supplied)

The Committee also observed that:

“any model involving “Private Public Participation” wherein “Dominion over the Natural Resource” belonging to the State is handed over to a Private Entrepreneur either for rejuvenation or for management/maintenance, the same is likely to result in an anomalous situation requiring constant supervision by the State and its Authorities to ensure that there is no deviation from the state policy and norms.”

25.A copy of the Justice N. K. Patil Committee's subsidiary report “Report dated 10.10.2011 submitted by the committee appointed by the Hon'ble High Court in W.P. No. 817/2008 (PIL) and Connected Cases” is accessible at: <http://esgindia.org/campaigns/lakes/press/karnataka-high-court-committee-strongly-.html> [Hereafter N.K. Patil Committee Subsidiary Privatisation Report 10th October 2011].

26. *Ibid.* N.K. Patil Committee Subsidiary Privatisation Report 10th October 2011, recommendation no. ix at page 15.

27. *Ibid.* N.K. Patil Committee Subsidiary Privatisation Report 10th October 2011, paragraph 6 at page 9.

At times, it becomes extremely difficult for the State and its Authorities to find a workable solution which furthers public interest and prevent the private entrepreneur from making an unjust enrichment at the cost of the general public and natural resources which belong to the State". On such rationale, the report proposes that "*it becomes just and necessary that the participation of private sector in the rejuvenation and development of lakes and tanks in and around the city of Bangalore has to be highly discouraged if not eliminated*".²⁸ (Emphasis supplied)

Given that this report categorically states that the ecological quality has degraded in lakes brought under private management, and that privatisation and commercialisation represent an unsustainable and ungovernable model, it seemed inevitable that the defense of the private developers would be to justify that they indeed were not destroying lakes.

The Final Order of the High Court of Karnataka:

For four years as this case made its way to the final arguments before the High Court of Karnataka, it was listed before the Principal Bench consisting of the Chief Justice. However, early 2012, the Principal Bench consisting of Chief Justice Mr. Vikramjit Sen and Justice Mrs. B. V. Nagarathna were disabled from hearing the petition as the latter had appeared for one of the litigants in a connected matter. Thereafter, ESG's PIL along with all connected matters were referred to a new Bench consisting of Justice Mr. Sreedhar Rao and Justice Mrs. Indrakala who heard the case over the subsequent months and finally delivered the final judgment on 11 April 2012.²⁹

28. Ibid. N.K. Patil Committee Subsidiary Privatisation Report 10th October 2011, paragraph 9 at page 11.

29. Though the order was dictated in Court on 11 April 2012, the final signed order was released only on 31 August 2012. The judgment in W.P. No. 817/08 is available at <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/729409/1/WP817-08-11-04-2012.PDF> [Hereafter Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012]

On the core concerns of the PIL relating to privatisation of lakes, the Bench held that “(with regard to the leases in question, the contention that the lessees have damaged the environment of the lake, appears to be an unsubstantiated allegation”³⁰, thus overlooking the pointed observations of the Justice N. K. Patil Committee which had categorically found that privatisation had resulted in ecological damage to the lakes in question. On the basis of such a leaning towards the facts in issue, the Division Bench approved of privatisation of lakes stating that “material produced by the lessees (which) discloses that there has been an annual inspection by the Pollution Control Board and by BBMP and they are giving the clearance certificate annually for continuation of recreational activities. The contention that the boating activity would destroy the environment of the lake and diminish the potentiality of the bird migration also does not appear to be well substantiated because, in the report of the committee headed by Sri. Laxman Rao, a specific proposal is made for boating facilities in the lakes.”³¹ The Bench did not clarify that the suggestions made by the Lakshman Rau Committee were in the context of lakes as they were in the mid 1980s, when the scale of urbanisation was a third of what it is now. The Judges also did not clarify that even this suggestion was made in a very cautious manner by the Lakshman Rau Committee. The Judges then went on to claim that commercial activities were acceptable as “the report of the committee headed by Justice N. K. Patil also approves pedal boating and battery operated boating, which are pollution free.”³²



30. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 46 at page 56.

31. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 46 at page 57.

32. *Id.*

A variety of material had been produced by ESG in writing and also by way of arguments that privatisation and commercialisation of lakes as a practice was not in consonance with the ecological, environmental and sociological functions of lake systems. Further, it was submitted that per prevailing public policy, the Doctrine of Public Trust which the Supreme Court had invoked to protect the commons and the environment was the appropriate yardstick to define the relationship between the State, the Commons and the People. Yet, the Division Bench of the High Court of Karnataka claimed that “(t)here is no *contra material placed on record to show that the recreational activities undertaken are in conflict with the ecology and the environment of the lakes.*”³³ The Court proceeded to finally hold that “*we find no substance in the contention that the lease granted in favour of respondents 15 to 17 is in violation of law.*”³⁴ The Court also held that “*the public participation in the development of the lakes is in accordance with the National and State water policies*”³⁵ without clarifying what 'public' meant in this context. The Judges also decided that the “*decision of the Supreme Court in M. C. Mehta vs. Kamalanath has no application to the facts on hand*” without substantiating this claim or distinguishing the instant case based on material facts.³⁶

33. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 47 at page 58.

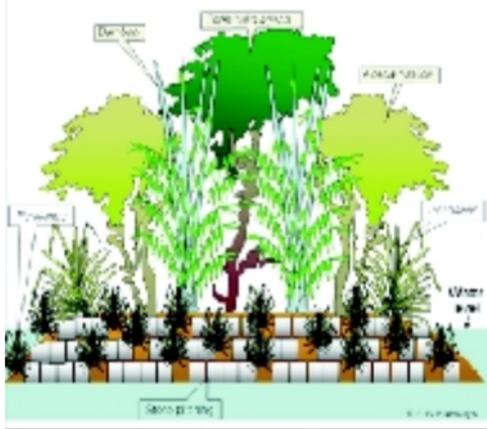
34. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 49 at page 58. Respondent 15 is Lumbini Gardens, lease-holder of Nagawara Lake; Respondent 16 is EIH Hotels (Oberoi), lease-holder of Hebbal Lake and Respondent 17 is Par-C, lease-holder of Vengaihkere. Respondent 14, Biota Natural Systems India Pvt. Ltd. was canceled as a party to the petition as the Lake Development Authority had annulled its lease agreement for violation of contractual obligations. This decision had been challenged by Biota in the Karnataka High Court.

35. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 49 at page 58.

36. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 49 at pages 58 and 59. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, is the case in which the Supreme Court had held that the Doctrine of Public Trust should be the basis for determining the governance and management of commons. The ruling is accessible at:

<http://www.elaw.org/node/1360>.

On the legality of the lease deeds, the Court held that the “*agreement although is styled as a lease, appears to be a misnomer, because the rights and obligations enjoyed by the lessees does not disclose any transfer of land in favour of the lessees. The terms and conditions suggest that lease is more in the nature of a licence without any absolute rights during the lease period.*”³⁷ To justify this argument the Court stated that the “*fact that the fishing rights are granted by the government to some other organisation would itself suggest that the lessees have no absolute control over lakes and the Lake Area. The terms and condition imposed and the permitted recreational activities in the lease does not appear to be detrimental to the environment of the lake since the report of the Committee, headed by Justice N. K. Patil, which is constituted by bureaucrats, experts and the Judge of this Court, after inspection, they found that the lakes are in a good condition.*”³⁸ The reference to the Justice N. K. Patil report, which has comprehensively rejected privatisation and commercialisation of lakes as commons, in the context of the Court’s rationale for approving the leasing out of the lakes, has left the final judgment of the High Court of Karnataka dubiously dependent on specious reasoning and a confused interpretation of facts. This, therefore, necessitates an appeal against this part of the order to the Supreme Court of India, so that the anomalous interpretation of law and policy relating to commons, and critical issues of their governance, ownership and management could be comprehensively and appropriately addressed by the country’s highest legal forum.



37. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 49 at pages 59 and 60.

38. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 49 at page 60.

The Operative portion of the Final Order as regards the Governance and Management of Lakes:

The judgment defines a framework and procedure for governing and managing lakes based on a regulatory oversight system that involves the High Court Legal Services Authority. This is sought to be done by reading an earlier final order of the High Court in WP No. 1841/2006 and the interim directions in WP 817/2008 as a part of the final operative order applicable to governance and maintenance of all lakes of Karnataka State.³⁹ The Bench does this by directing that “*the said directions shall have to be adhered to for the preservation and maintenance of all the tanks and lakes in the State.*”⁴⁰ This means that the following directions from WP 1841/2006 have now become binding for all the lakes of Karnataka. The relevant directions are:

“(i) The sewage or garbage will not be diverted to the lakes and tanks.

(ii) The lake area as per the revenue records will be surveyed by the Revenue Department and would be fenced at the cost of the respondents.

(iii) The Forest Department shall undertake planting of the trees and saplings after getting the necessary technical opinion from the experts concerned.

(iv) The Member Secretary of the State Legal Services Authority shall act as a co-ordinator among all the respondents.. including the revenue department and the forest department for both monitoring the implementation of the undertaking of the above respondents in implementing, executing the work and the ecological and environmental condition of the lakes.”⁴¹

39.A copy of the final order of the High Court in WP No. 1841/2006 can be accessed at: http://static.esgindia.org/campaigns/lakes/legal/W.P.No.1841_2006.zip

40. Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, paragraph 45 at pages 55 and 56.

41.*Id.*

Importantly, this direction makes the Justice N. K. Patil Committee's report, guidelines and recommendations binding for all lakes and their watersheds in Karnataka.

The Bench then makes specific directions to ensure that lakes and canals are properly maintained, rehabilitated and governed. This is to be done in the following manner:

Protection of lake area:

The judgment of the Division Bench mandates that it “*is just and necessary that survey of lakes and tanks in Karnataka have to be undertaken by demarcating the boundaries and to make proper fencing.*”⁴² Read with the recommendations of the Justice N. K. Patil report, fencing would have to be undertaken by planting trees and shrubs and not by building concrete and steel walls.

No-development zone around lakes:

The Court has directed that there should be a no-development area around lakes, thus upholding a similar direction of the Karnataka Government. In specific, the Court has held that “*unauthorised construction within the 30 mtrs of peripheral lake area have to be removed.*”⁴³

Rehabilitation of lakes:

The Court has held that each and every lake would be appropriately maintained and that “*(r)emoval of silt as also, scientific de-weeding for the rejuvenation of some of the tanks and proper embankments have to be done periodically.*”⁴⁴

42. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, at page 61.

43. *Id.*

44. *Id.*

No pollution of lakes and canals:

The Court has held that “*(f)low of sewerage water into lakes and tanks have to be stopped. The channels, which feed the lakes, have to be properly protected and maintained.*”⁴⁵

Greening lake areas:

The Court has also upheld a significant recommendation of the Justice N. K. Patil Committee that lake surroundings and their watershed have to be afforested and has directed that the “*forest department shall undertake to plant the trees and saplings in the buffer area of the lake.*”⁴⁶

Protection and maintenance of lakes in the BBMP area:

For the protection of lakes in the BBMP area (largely consisting of the built area of Bangalore city), the Court has held that the “*Commissioner of BBMP shall be responsible for the proper maintenance and development of the lakes within the BBMP area.*”⁴⁷

Protection and maintenance of lakes in the Bangalore Metropolitan area:

For the protection of lakes in the greater Bangalore area, consisting of planning zones under the jurisdiction of the Bangalore Development Authority, the Court has held that “*the Commissioner, Bangalore Development Authority, the Chief Executive Officer, Lake Development Authority and Deputy Conservator of Forest shall be the Committee for proper maintenance and development of lakes in the Bangalore Metropolitan area.*”⁴⁸

45. *Id*

46. *Id.*

47. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, at page 62.

48. *Id.*

Protection and maintenance of lakes in other Municipal Corporations of the State:

For lakes under the jurisdiction of Municipal Corporations in the State, other than Bangalore, the Court has held that in “*respect of City Municipal Corporation, the Deputy Commissioner of District, the Commissioner of City Municipal Corporation and Commissioner of Urban Development Authority shall be the Committee responsible for proper maintenance and development of lakes within the City Municipal Corporation Area.*”⁴⁹

Protection and maintenance of lakes in other municipal areas and Panchayats:

The task of governing the wise use, rehabilitation, maintenance and protection of lakes in rural areas and small and medium municipal areas of the State shall, according to the Court's directions, be the responsibility of the “*Deputy Commissioner of District, Commissioner of Municipality and District Water Resources Officer (who) shall be the members of Committee and they shall be responsible for proper maintenance and development of lakes situate(d) in municipal and taluka areas.*”⁵⁰

Apex Committee to oversee compliance with Court directions and function as regulatory agency:

In order that these directions of the Court are fully and appropriately complied with, the Court has directed that “*there shall be an Apex Committee consisting of Principal Secretary, Department of Revenue, Chief Executive Officer, Lake Development Authority and Member Secretary of State Legal Services Authority who shall oversee and supervise the maintenance of lakes by above stated committee. The above stated committees shall send quarterly report about the maintenance and development of lakes to the Apex Committee, which shall supervise the development and maintenance of lakes.*”

49. *Id.*

50. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, at page 63

*The Apex Committee can also entertain compliants and giver proper directions to concerned committees for proper maintenance and development of lakes.*⁵¹ The Court has further directed the Chief Secretary of Karnataka to ensure that there is compliance with these judicial directions “*bypassing necessary orders in accordance with law for ensuring proper preservation, maintenance and development of lakes.*”⁵²

In summary:

As a consequence of the High Court's unprecedented initiative in response to a PIL filed by ESG, Karnataka now has a formal institutional framework at the local level exclusively dedicated to the wise use, protection, conservation and rehabilitation of about 38,000 lakes and wetlands that dot her landscape. This initiative could potentially draw upon the pro-active participation of all connected agencies, the Judiciary (through the Legal Services Authority), elected bodies and the wide public. This process could also serve as a model for the country in building water security in a climate challenged scenario, and for the protection of commons, livelihoods and for conserving biodiversity in wetland ecosystems. All that is now required is to ensure that the import of the progressive features of this judgment is implemented in letter and spirit. As for the Court's regressive support for sustaining the privatisation of lakes in Bangalore, challenging the decision in the Supreme Court is essential to settle the issue of who truly owns, controls, and governs the commons in the sovereign, democratic republic of India.

51. *Id.*

52. *Ibid.* Karnataka High Court Judgment in W.P. No. 817/08 dated 11th April 2012, at page 64.

Guidelines & Models for Ecological Restoration of Lakes

1) List of tree species for live-fencing around lakes

Common Name

Neem (Bhevu)

Peepul (Aarali Mara)

Ficus (Aathi hannu)

Banyan (Goni Mara)

Jamun (Sanna Nerale Mara)

Red Silk Cotton (Buruga)

Flame of the forest (Muthuga)

Indian Coral Tree (Harivana)

Rain Tree

Bamboo

Gliricidia

Indian Cork tree

Scientific Name

Azadirachta indica

Ficus religiosa

Ficus recemosa

Ficus benghalensis

Syzygium cumini

Bombax ceiba

Butea monosperma

Erythrina indica/verigata

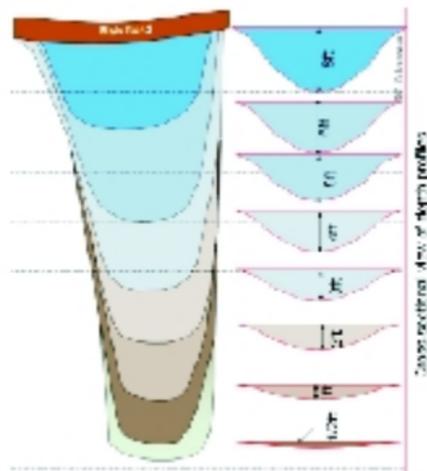
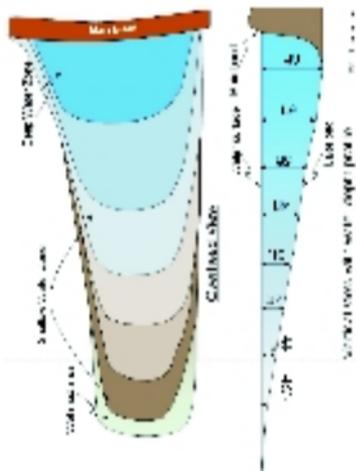
Samanea saman

Dendrocalamus strictus

Gliricidia sepium

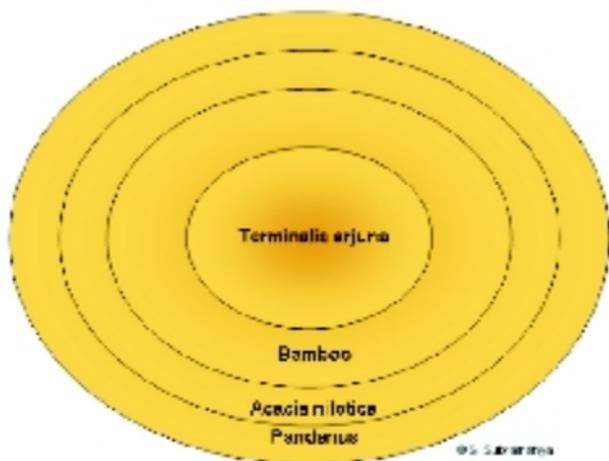
Millingtonia hortensis

2) Desilting Pattern and Depth Profiles to be maintained in a typical lake



3)List of tree species for planting along RajaKaluves

<u>Common Name</u>	<u>Scientific Name</u>
Neem (Bhevu)	<i>Azadirachta indica</i>
Ficus (Aathi hannu)	<i>Ficus recemosa</i>
Pogamia (Honge)	<i>Pongamia pinnata</i>
Jamun (Sanna Nerale Mara)	<i>Syzygium cumini</i>
Flame of the forest (Muthuga)	<i>Butea monosperma</i>
Indian Coral Tree (Harivana)	<i>Erythrina indica/verigata</i>
Bamboo	<i>Dendrocalamus strictus</i>
Gliricidia	<i>Gliricidia sepium</i>
Indian Cork tree	<i>Millingtonia hortensis</i>
Peepul (Aarali Mara)	<i>Ficus religiosa</i>



Planting plan for Islands: Planting different tree species in concentric zones

4)List of tree species for live-fencing around lakes

<u>Common Name</u>	<u>Scientific Name</u>
Neem (Bhevu)	<i>Azadirachta indica</i>
Peepul (Aarali Mara)	<i>Ficus religiosa</i>
Ficus (Aathi hannu)	<i>Ficus recemosa</i>
Banyan (Goni Mara)	<i>Ficus benghalensis</i>
Jamun (Sanna Nerale Mara)	<i>Syzygium cumini</i>
Red Silk Cotton (Buruga)	<i>Bombax ceiba</i>
Flame of the forest (Muthuga)	<i>Butea monosperma</i>
Indian Coral Tree (Harivana)	<i>Erythrina indica/verigata</i>
Rain Tree	<i>Samanea saman</i>
Bamboo	<i>Dendrocalamus strictus</i>
Gliricidia	<i>Gliricidia_sepium</i>
Indian Cork tree	<i>Millingtonia hortensis</i>



Study Structure

1. Introduction
2. Assessment of Morphology of Lake
3. Review of historical and spatial dimensions of the lake
4. Review of the Existing status of the lake based to identify issues and challenges
5. Proposals for rehabilitation of the lake in ecologically and socially sensitive manner

Aim:

Conservation and rehabilitation of Subramanyapura lake in an ecologically viable and socially sensitive manner based on cost-effective and economically viable technologies.

Objectives:

1. To identify threats and disturbances to the lake ecosystem.
2. To assess the extent of encroachment into the lake and its watershed on the basis of Survey of India, Revenue and Google Earth maps.
3. To propose appropriate measures for the protection of the lake territory and also that of its watershed.
4. To identify the potential for constructed wetland and tree park system in the Bangalore.
5. To identify alternative space for rehabilitation of poor families who have encroached the lake.
6. To promote ecologically wise methods to enhance the bio-diversity value of the lake.

Profile of Venkatappana Lake:

Lake name:	Venkatappana lake (near Subramanya pura Lake)
Assembly name:	17A-Bangalore south
Ward name:	174-Utharahalli
Area:	5.22 Ha (As per topo sheet)
Perimeter:	1295.37 Mts (As per topo sheet)
Survey number:	ufbura hall -64,63,116,120,117
Status:	Polluted

Location:

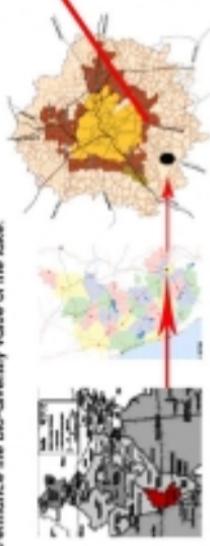
Located in Bangalore South, in Subramanyapura village limits, Utharahalli Hobli.

Key Threats and Disturbances to the Lake

- Lake area is seriously compromised by encroachment along the margins.
 - Lake waters are highly polluted and eutrophic due to inflow of untreated sewage from Guebbata village (discharge from large apartments blocks of North and Gueita (BECKOH).
 - Lake is contaminated by disposal of garbage as a means to landfill and encroach from the margins.
 - 90-100% coverage by water Hyacinth during 2009-10, prior to which lake waters were relatively clean.
 - Serious encroachment along its northern and eastern borders for housing, especially by poor families.
 - Watershed is threatened by potential encroachment
 - Infringement of Ganareba Idah during the festival.
 - Serious threat to lakebed also from potential road widening.
- ### Potential Impacts of Neglect
- Possible encroachment of lake and its watershed, especially Bopabate.
 - Eutrophication and consequent fish kills and extermination of other aquatic life fauna.
 - Public health hazard due to infection of drinking water sources.
 - Extinction of habitat of birds, especially migratory waterfowl.
 - Potential depletion of surface and ground water flows, resulting in local water scarcity



Venkatappana lake



Karnataka

Bangalore



The existing encroachment into lake bed by poor can be immediately rehabilitated by designating an area of Gomata land for group housing. All other encroachers may be dealt in accordance with law.

The Rajakavu can be converted into a Constructed Wetland to contain surface water pollution flowing into the lake.

The area around the Rajakavu can be converted into an aesthetically pleasing and biodiversity rich tree park.

A Kalyani can be provided in the upstream reaches of the Gomata land, as indicated, for immersion of the Ganesha idols, as well as for providing drinking water source for cattle.

The discharge of untreated sewage from large apartment complexes developed by Moriti and Gokulam Apartments must be immediately tackled. They must be allowed to discharge only treated sewage into the Rajakavu.

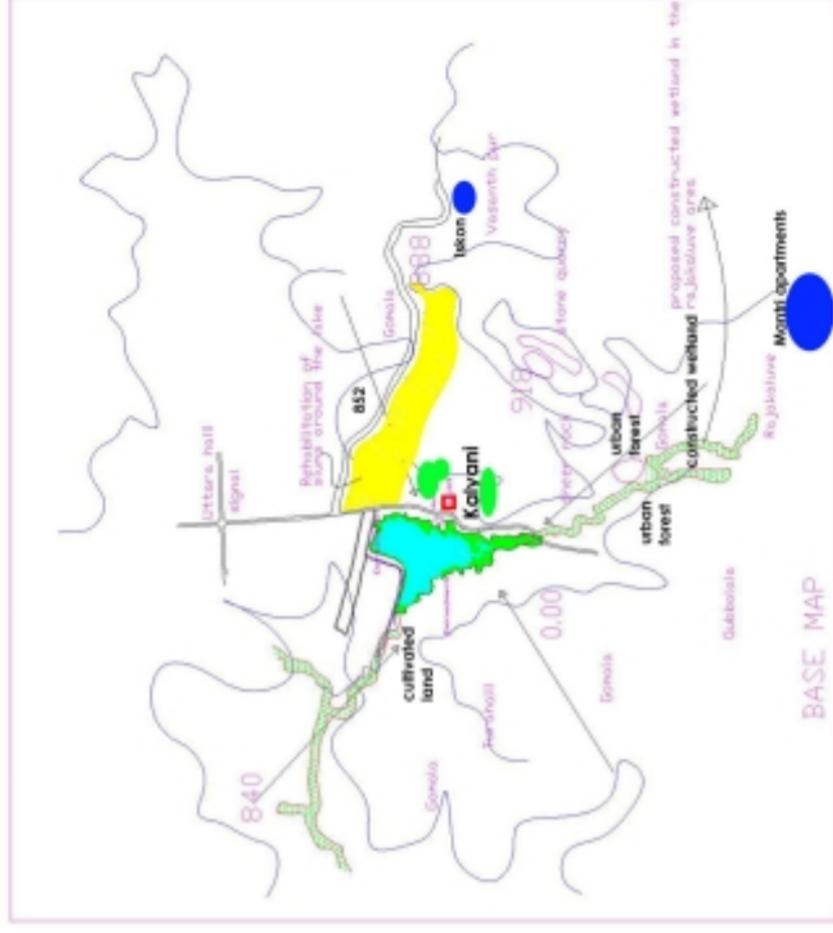
Similarly, discharge from surrounding villages should be channelised into constructed wetlands for treatment. No garbage disposal in the watershed or lake bed must be allowed.

The slums which have developed in and around the lake must be fully provided with sanitary facilities so as not to further contaminate the lake.

The lake has to be de-silted in an ecologically sensitive manner.

A recreational park may be developed in the Gomata land including play facilities for children.

The COP-2015 that does not recognise the Gomata land and lake area as public commons must be revised and corrected to provide for the above.



BASE MAP





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