



## KSLSA - ESG Legal Awareness Workshop Series

October 2021

Report

### ***'Functioning of Lake Protection Committees at Municipal, District and Apex Levels'***

October 25-October 28, 2021

Organised by

**Environment Support Group**

*in collaboration with*

**Karnataka State Legal Services Authority**

The four-day workshop series on Legal Awareness Workshop on '*Functioning of Lake Protection Committees at Municipal, District and Apex Levels*', organized by the Environment Support Group in collaboration with the Karnataka State Legal Services Authority, was conducted on October 25-28, 2021 from 11.00 A.M. to 1.00 P.M. over videoconference. This workshop series was part of the Pan-India Awareness and Outreach Campaign proposed by NALSA to commemorate 75 years of India's Independence - '*Azadi Ka Amrit Mahotsav*'.

The workshop series witnessed participation from 579 officials representing the Apex Lake Protection Committee, representatives of the District Legal Services Authorities, as well as by Deputy Commissioners and Assistant Commissioners of all districts of Karnataka, Chief Executive Officers of Zilla Panchayats, Commissioners of Municipal and Town Councils, Deputy Conservators of Forests, Executive Engineers of Minor Irrigation and Water Resources Department, District Environment Officers of Karnataka State Pollution Control Board, Commissioners of Urban Development

Authorities of Municipal Councils, District Water Resource Officers, etc. To facilitate easy communication and participation, the workshop series involved four sessions addressing each of the four administrative divisions of Karnataka state.





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#### History and Tradition of Tank/Lake Building:

Ms. Bhargavi Rao, Trustee of ESG, coordinated the workshop series by welcoming everyone in each session and setting the context. She acknowledged the signal role played by Mr. H. Shashidhara Shetty, Member Secretary of the Karnataka State Legal Services Authority and Ms. Kaveri, Deputy Secretary of the Karnataka State Legal Services Authority for their support in organising this workshop series. Explaining the context of the webinar, she chronicled ESG's efforts in advancing measures to sustainably protect and govern lakes of Karnataka for posterity, a key approach of which was a Public Interest Litigation in the High Court of Karnataka, *Environment Support Group v. State of Karnataka* (W.P. 817/2008). The decisions of the Court in response to this PIL had deeply democratised and decentralised lake protection, rehabilitation and governance measures.

The history of the construction of lakes (irrigation tanks) goes back thousands of years, she explained, stressing the critical importance of community knowledge and tradition in shaping the landscape to construct intricately interconnected lake systems that enhanced local ecology, economy and water security. For example, the kalyanis, which are also known as bawris in Rajasthan and vaws in Gujarat, are of exquisite design, architectural marvels in fact, and yet always accessible to communities. In this manner surface water flows and rainwater in particular was harvested in interconnected lakes, ponds and wells, which water eventually flowed through thousands of kilometres of canals (called kaluves) augmenting river water flows. The tradition of such sustenance of human settlements has regional variations, she explained, highlighting the Taj bawdi and the Chand bawdi in Bijapur, the Qanat / Karez underground water storage and supply systems of Bidar, and the historic lakes and tanks in the Mysore division, namely, Dhanush Koti, Mahalingeshwara, Hulikere Hoysala Kalyani, etc. In similar ways, across the mountainous Western Ghats, sacred groves and local ponds (kuntas) were associated to build water security and biodiversity refuges.



#### Tank/Lake/Well building history



Kalyanis of Karnataka



Vaws of Gujarat



Bawris / Step wells in Rajasthan

Watershed with tanks/lakes support ground water augmentation.

India has an amazing tradition of building drinking water wells, which are architectural marvels.



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**Tank/Lake/Well building history**

Taj Baudi, Bijapur

Chand baudi, Bijapur

The subterranean tunnels of the Karez water system in Bidar

**Qanat / Karez system of Bidar**  
Qanat/Karez system is one of the most ingenious methods for collecting, transporting, storing and distributing groundwater through subterranean tunnels  
The rehabilitation and preservation of Bidar and Bijapur's hydraulic system is essential in our times considering India's critical need for water

Historic water systems of the Deccan Plateau region

The role of lakes in promoting biodiversity and sustaining traditional, sustainable livelihoods, assumes importance in an era when climate change impacts are being felt, Ms. Rao highlighted. She pointed out that the depletion of lakes, such as in Bangalore through rampant unplanned construction into lakes and kaluves has negatively impacted surface and groundwater aquifers. water security, and emphasized that lakes sustained groundwater and therefore life.

### Management and Governance of tanks/ lakes as commons

Mr. Leo Saldanha introduced the critical importance of consistently managing and governing lakes as commons. It is this approach that promoted lake building and maintenance over millennia by hundreds of communities he shared. However, he added, that access to lakes has not been equitable, particularly isolating people from lower caste communities, whose labour was exploited in constructing lakes but were often denied access to them. Dr. B. R. Ambedkar identified this structural injustice that had been systematised across India for centuries and strove to redress the situation by leading the Mahad Satyagraha. The upper caste resistance he met then continues to this day, Mr. Saldanha suggested.



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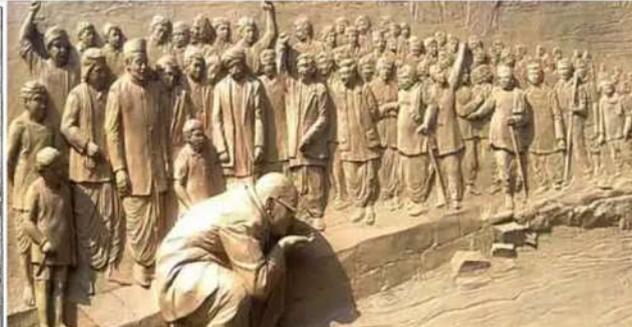
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Focusing on the neglect of lakes and lake systems during colonial and post-colonial periods, Mr. Saldanha identified reliance on mega dam building and irrigation projects, as also withdrawal of ground water through borewells, as significant contributors to the disuse and destruction of thousands of lakes in recent decades. The drying up of Cauvery river is an outcome of such centralised water management, he opined. Besides, he recounted, Lake Development Authority set up in 2002, though well-meaning, resorted to private and corporate management of lakes to protect them. But this approach failed as it resulted in the privatisation of commons and their corporate control. Widespread protests that followed essentially questioned why the State was abandoning its constitutional responsibility to protect and maintain lakes as commons, he shared. As was evidenced in Bangalore, such a model was flawed, he argued, as it resulted in the building of hotels, shopping arcades and floating restaurants inside lakes as a means of generating revenue for maintenance by corporate bodies that were extended long term leases.



## Management of tanks/lakes as commons



Source: Castes and Tribes of Southern India Vol. 5 of 7. Photo taken in 1909 of Vaddars with construction equipment

The skill and labour of the Vaddar people, for instance, has been extensively employed in tank building and maintenance. But, such communities have been discriminated against.

Across India, caste based discrimination is rampant. Dr. B R Ambedkar, himself a victim of the caste system, led the Mahad Satyagraha in 1927 against such structural discrimination.

### The Legal Battle for the Protection of Lakes

As the government was not rolling back its policy on privatisation of lakes despite widespread protests, it became necessary for ESG to approach the Karnataka High Court in W.P. 817/2008. The Court essentially enquired into two major dimensions of the issue: if privatisation of lakes as commons was against public policy and steps needed to redress the widespread neglect of lakes and such other water commons. To get into the deeper dimensions of this matter, the High Court requested Justice Shri. N. K. Patil, who then was Judge of the High Court and also Chairman of KSLSA, to study the issue in detail and make recommendations.



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Justice Patil constituted a Committee composed of 9 senior most officers of 9 departments that were directly involved with lake maintenance, and invited inputs to develop guidelines to govern lakes. The outcome, Mr. Saldanha said, were two reports, one on steps needed to rejuvenate lakes with community partnership and effective regulation and the other on preventing privatisation of lakes. The first report was integrated by the High Court in its 11.04.2012 final order in WP 817/2008. The basic premise of the judgment and the Patil Committee report, Mr Saldanha explained, was to promote decentralised, holistic and ecologically wise lake governance. Further, Justice Patil Committee report focussed on securing access for all to lakes, particularly of communities whose traditional livelihoods were dependent on such waterbodies.

Mr. Saldanha then went on to discuss some of the specific recommendations under Justice N. K. Patil Committee Report, such as surveying and recording the legal limits of all lakes, adding live fencing (with native plants to create a bio-corridor), and dealing with encroachments on the no-development zone of 30 m surrounding the lake. He added that anyone who had encroached on lakes and rajakaluves would be dealt with in accordance with law, and the exception was to ensure the poor who encroached would first be rehabilitated. He also brought attention to the critical importance of avoiding sewage dumping in rajakaluves, as the sewage ends up in lakes and also pollutes groundwater aquifers.



## LDA, the leasing of Bangalore Lakes and public protests



The policy of privatisation of the management of lakes by LDA (from early 2000s) extending long terms lake management leases to private corporations, was widely opposed.

On governance of lakes, Mr. Saldanha drew attention to the importance of Principles of intergenerational equity. He drew upon the provisions of the Constitution, such as Articles 243ZD and 243ZE, brought in through the 73rd and 74th Amendments, which require decentralized planning to



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be the basis for any scheme development country wide, including of natural resources and environment. Implementing these constitutional provisions in their letter and spirit would also help in restoring lakes and such other common property resources. He added that this potent power was devolved with financial support through democratic apportionment by the State Finance Commission which had the obligation of ensuring equitable distribution of state funds.

Mr. Saldanha highlighted that the lakes jurisprudence that has developed in Karnataka builds upon the Public Trust Doctrine, which states that commons property is subject to be held in public trust and must only be used by the general public. Provisions of the Karnataka Land Revenue Act, such as S 67, which assert government ownership of commons, contradict the principles under Article 39, the 73rd Amendment and the 74th Amendment. However, he believes that the state should be the custodian of the resources owned by the public, and all three layers of governance - local, district and state - should collaborate to preserve the commons.

### **Functioning of Lake Protection Committees**

Mr. Eswarappa Asst. Coordinator (Capacity Building - Commons) of ESG explained that the court in its final order of 11.04.2012, which was further modified on 15.06.2021, effectively decentralised the lake governance approach by directing the constitution of District, Municipal Council/Corporation and Apex (State) Lake Protection Committees. He explained the structure, functioning and responsibilities of these committees in detail. He highlighted that all these committees are required to implement directions of High Court in WP 817/2008 and WP 38401/2014, on the one hand, and also assist local communities and local governments at all levels to ensure lakes and raja kaluves are rehabilitated as per the guidelines of the Justice N K Patil Committee report seeking the advice and regulatory support under Karnataka Tank Conservation and Development Authority Act, 2014 (as amended in 2018).

### **Lake Protection in Action**

Ms. Sana Huque, Asst Coordinator (Research) of ESG explained the scope of a recent PIL being heard on lake protection by the Karnataka High Court (*Citizen Actions Group v State of Karnataka*, WP No 38401/2014). She highlighted key directions passed by the Court in the course of hearing this PIL, including those for survey of all lakes and rajakaluves in Karnataka to demarcate legal limits and No Development Zones, and ascertaining the location of disappeared lakes. The Court has also decided to consider the issue of how to deal with private property constructed in lake buffer zones. She also highlighted that these proceedings resulted in the modification order in WP No 817/2008 expanding its scope to rural areas.







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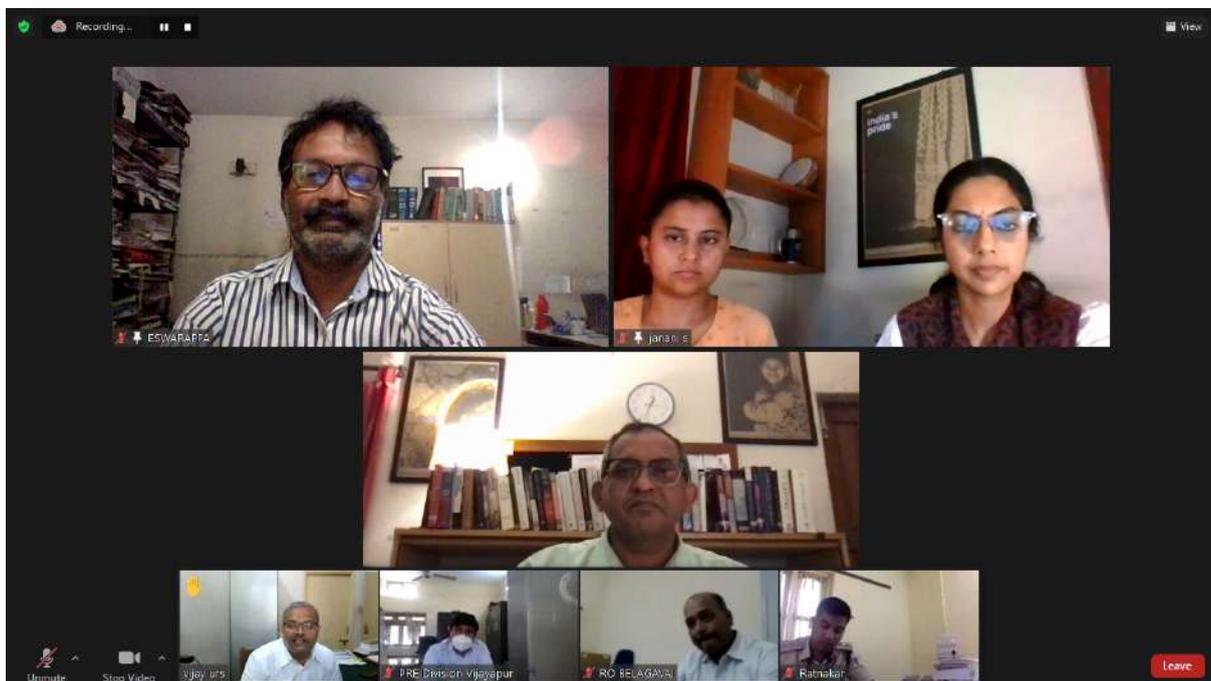
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#### Question and Answer Sessions

At the end of each session, Ms. Rao invited the audience to ask questions and share their experiences, which led to some very engaging discussions.

The Member Secretary of the District Legal Services Authority of Yadgir enquired if lake protection committees could be established at local community levels and wondered how local governments would be able to implement such measures with meager resources. Responding, Mr. Saldanha highlighted the need for constituting lake committees at the Panchayat level for rural areas and the Ward level for urban areas, and stressed that it has to be inclusive and participative. He suggested that these Committees could formulate a plan for action for five-year periods, in coordination with District/Metropolitan Planning Committees as per Article 243ZD/E of the Constitution. Mr. Saldanha emphasized that Panchayats and Wards had the power to formulate schemes for resource management, and these could have a major positive impact on lake protection. He suggested securing funding from State Finance Commissions.

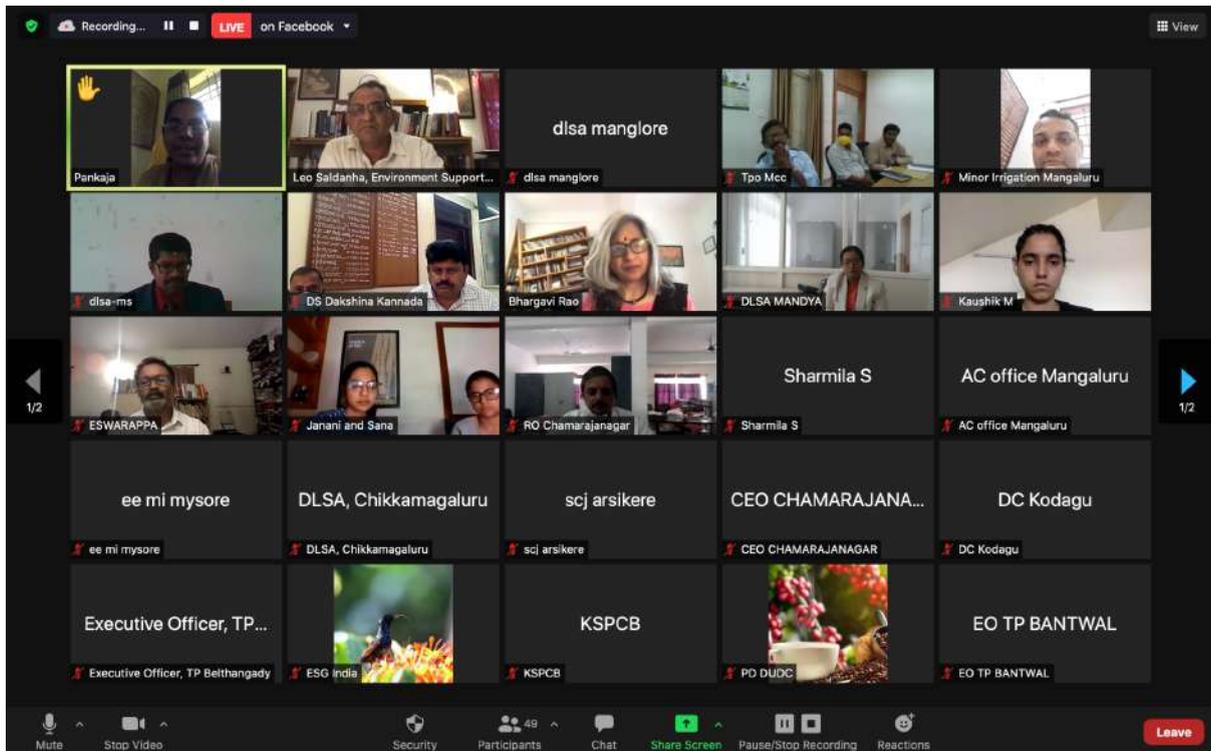




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The Assistant Commissioner of Bidar DC office asked the team to elaborate on the guidelines on the 30 metre no development zone around the lake. She pointed out that many a time the development free zone overlapped with a private area, and asked how committees should deal with instances where patidars have private property rights over the land. She also asked if the guidelines had anything on acquiring those areas and on obtaining the funds for such acquisition. Mr. Saldanha responded that this question was currently pending before the Hon'ble High Court for determination. However, he said that in ESG's submissions before the Court, they had argued that the no development zone could continue to be privately owned, but private landowners would not be allowed to build into them as per the Justice Patil Committee guidelines. Besides, 'live fencing' with local endemic and useful trees and shrubs was recommended to protect lakes, minimise cost of protection and also increase biodiversity value.

In a follow up question, the Asst. Commissioner enquired about a situation where private landowners have already encroached upon the lake and no development area after taking conversion permissions. She pointed out that this would amount to retrospectively applying the guidelines, and that conversion laws did not have provisions specifically related to this aspect. Mr. Saldanha responded by saying that one of the issues before the Court was the inaccuracy of revenue maps in many cases, and the Court held that to determine the boundaries of lakes, older revenue maps could



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be looked at. Satellite imagery is also useful to determine earlier land use patterns. Further, he said that the no development zone of 30 metres was both judicially mandated (order dated 11 April 2012 in WP 817/2008) and statutory (Section 12 of the Karnataka Lake Conservation and Development Authority Act, 2014). Further, larger lakes required greater no development zones, and the Justice Patil Committee recommendation, which is binding, has recommended that for lakes over 40 hectares in size, for every additional 5 ha increase in area, the no development zone would further increase by further 2 metres.

The District Commissioner, Bidar enquired whether encroachments in the 30 meter no development zone should be treated as encroachments, as that would lead to a lot of legal challenges. Although his own Zilla did not have any problems, he wondered what enforcement would look like in the example of Subramanyapura Lake in Bangalore. Mr. Saldanha said that it would be ideal if these disputes were resolved locally by the District Protection Committees. He added that local-level committees were created to avoid taking matters to court as the judicial backlog would inevitably lead to long delays. He reiterated that the District Committees had the authority to decide on people's grievances, and that people could appeal to the Apex Committees, where the Member Secretaries of the Legal Services Authorities is also a member. He also shared that the High Court in WP 46523/2012 had directed poor families who had encroached Subramanyapurakere must first be rehabilitated by the Karnataka Slum Development Board in the abutting gomala land, but that this relief was not extended to any other encroachers.





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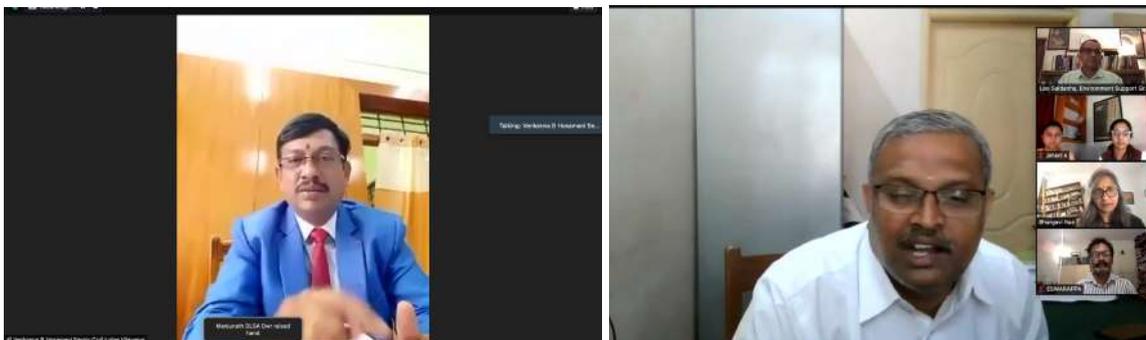
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Mr. Devendra Pandith complimenting the presentations highlighted that Revenue Act was very clear that tanks and bunds were government land. He also raised the question of fake permissions and licenses by villagers encroaching on lakes. Ms. Rao replied that the issues raised by him were extremely pertinent, and that they would try to raise them in the ongoing lakes case. Mr. Saldanha added that the question of documentation being used to divert from the purpose of the KTCD Act was worrying. He further elaborated that the Facilities Committee constituted at the Panchayat Level could be used to protect all natural resources. He urged that the High Court order was an opportunity to revive many provisions of the Panchayat Raj Act and the Nagar Palika Act, and bring local governments to work in collaboration with the District and Municipal Lake Protection Committees.

Another question from the Asst Commissioner of Bidar District Commissioner's office was about utilising treated water for lake rejuvenation, and what standards need to be followed. Mr. Saldanha said that this question had come up before the Court, the Karnataka Tank Conservation Development Act and the State Pollution Control Board. He recommended reaching out to the District Pollution Control Board Officer for detailed assistance, but added that under the Water Act, 1974, treated water could be received in a live stream. He said that contaminated water in lakes would end up contaminating the groundwater, which could be disastrous. Recycling is required but has to be done extraordinarily carefully to protect public health.

Mr. Vijay Urs, of Bellary District Legal Services Authority, pointed to the pollution caused by sewage from the Bangalore University and Kengeri areas, which was dumped into lakes. He also shared how in areas such as Chamarajapet and around Kempabudi kere, borewells were drilled illegally without permission, and open dumping of sewage was carried out. He enquired whether a civil case would be the best course of action.



Mr. Saldanha responded by reiterating the importance of maintenance of sewage systems, particularly to ensure that sewage water was not mixed with other water and that the Water Act of 1974 had strict prohibitions on the release of untreated sewage into water bodies. He said that one of the underlying issues was the lack of accountability of bodies such as BWSSB, which functioned as parastatals. He cited the example of the recent case filed by Mr. Gaurav Gupta, Commissioner of



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BBMP against the BWSSB before the State Pollution Control Board as an example of legal action that could be taken.

Mr. Venkanna B Hosamani, Senior Civil Judge, intervened to point out that all environmental laws relied on criminal law for their enforcement. Mr. Saldanha agreed, elaborating that environmental infractions often infringed upon the right to life under Article 21, which is why it often attracted strict criminal sanctions.

Mr. Manjunath, DSLA, Dharwad, shared his experiences with mobilising local youth, through workshops by the Zilla Parishad and by NGOs, for the implementation of these laws. Mr. Saldanha commented that it is a local approach to environmental protection that would save us, and a localised approach had the backing of law and judgments, and all that was needed was action.

Mr. Mahantesh Mulgund, Bagalkote, asked about the action to be taken against structures already built in the 30 m no development zone. Mr. Saldanha replied that Section 12 of the Karnataka Tank Conservation and Development Authority Act institutionalised the 30 m no development zone, and violations were to be dealt with in accordance with the directions passed by the Karnataka High Court. While those encroachers below the poverty line were to be rehabilitated, such as through bodies like the Karnataka Slum Development Board, the rich and influential encroachers should be mercilessly removed with the support of police and revenue authorities.

The Member Secretary of DSLA from Mandya shared that she had specialised in environmental law, and that while she had been conducting programmes from Mandya for the past four years, she had never received a notice for the protection of lakes. She stressed the need for a monitoring committee to ensure that the lakes committee functioned as required. Mr. Saldanha responded that the Apex Committee is the monitoring committee for the District Level Lake Protection Committees. However, the orders of the Hon'ble High Court are currently not being properly implemented. He stressed that District Level Committees needed to meet once a month, and the Apex Committee should review the proceedings of all District Level Committees once every three months. He also stressed certain principles that should be kept in mind in coming up with plans, such as rehabilitation of slums that encroach on lakes, dealing with wealthy encroachers firmly, and finding non-extractive ways of using water resources.

Ms. Pankaja from the Chamarajanagara Development Authority spoke of a situation in her district where land records stated that certain farmers owned land that was part of lakes and had cultivated the land. She wondered how best the No Development Zone could be enforced in such cases. Mr. Saldanha stated that the same issue was present all through the state; however, the law was very clear on the need for a buffer zone around not only lakes but also rajakaluves. He also added that the Act had provisions for allowing for the conservation of an area because of its historicity and biodiversity value.



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The Environment Officer of Puttur asked about the implementation of these measures on a day-to-day level and about dispute resolution. Mr. Saldanha responded that the constitution provided for Draft Development Plans by the District Planning Committees, and that these could be submitted to the State Finance Commission to obtain funding for projects. He added that one way of preventing disputes is through careful planning at the local level.

The Minor Irrigation Officer from Mangaluru, Ms. Sharmila S, and DSLA MS from Chamarajnagar district complimented ESG for organising these sessions which they said were very useful and eye-opening, and that this had inspired them to ensure proper implementation of the lake protection measures.

Ms. Rao, in her concluding remarks, stated that the four-day workshop series had been a remarkable experience, and reiterated her thanks to Mr. Shashidahara Shetty Member Secretary and Ms. Kaveri, Deputy Secretary, of the Karnataka Legal Services Authority. She expressed her thanks to the participants for their commitment and for being at the frontlines of lake protection every day.

Mr. Saldanha drew the workshop series to a close inviting the participants to integrate the principle of *vasudhaiva kutumbakam* in their praxis and particularly to consider the Principle of Ecocentrism that the Supreme Court has brought into Indian jurisprudence. Such consciousness, he suggested, would then remind us of our responsibility to ensure every small or major waterbody and wetland is habitat for thousands of aquatic flora and fauna, and is particularly looked out for by migratory waterfowl who come visiting our lakes mid winter - November to February, every year, and from as far away as Mongolia, Siberia and Eurasia. In this way he hoped we would be able to secure the lakes not just for our future generations, but also for the biodiversity dependent on them. He also invited the participants to consider commemorating 125 years of Mahad Satyagraha, and expressed his hope that in this manner we would make all waterbodies and commons fully accessible to all communities, thus honouring Dr. Ambedkar. Such a sentiment could make Karnataka not only a water rich and biodiversity rich state, but would also make it a model for all the world.

[Report prepared by Vani Sharma, ESG.]



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