**Ground Challenges to Collective Governance of Urban Lakes in India,**
*a case of Mansagar Lake in Jaipur*

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**ABSTRACT**

Governing urban lakes in India are more challenging than ever. There is abundance of literature on governmental, private and community kind of governance; as well as a growing consent over collective governance of urban lakes in India. The concepts like adaptive, integrated, interactive, robust, resilient and sustainable water governance are different notions of collective governance; in which participation of the community is considered crucial in successful collective governance. It is observed that small size and homogeneity of community contribute to the success of collective governance. In India where more than fifty cities have above millions and heterogeneous populations, is it possible to realize collective governance of urban lakes? Mansagar lake governance in Jaipur-India is a modern example of collective governance. On one hand Mansagar lake governance is considered successful case of collective governance and on the other hand a section of community believes that collective governance is merely a form of vested interests of few actors from different organizations. This has resulted in a legal crisis between the section of community who are against and the actors who are currently involved in the Mansagar lake governance. The paper highlights the legal aspects of Mansagar lake governance and brings forth the ‘common’ ground challenges to collective governance of urban lakes in India. The paper is prepared as a response to the recent pronouncement of the Rajasthan High Court order on the Mansagar lake governance and for inclusion in a press release for the people of Jaipur city; so that they are able to make informed choices to participate in the forthcoming ‘Save the Mansagar Lake’ Campaign. Attention is given to make the paper logical and legible for the people at large; and comprehensive and scientific to be used for contestation in the legal sphere and to be presented in the academic platform.

**Keywords:** urban lake, Mansagar, pronouncement, collective governance.
1. BACKGROUND

The beginning of the degradation of the Mansagar Lake can be traced back to the decision in the sixties, when the local government planned to dispose the Jaipur city’s waste water into the lake. This decision to me was the first death-penalty pronounced for the Mansagar Lake. The background of this decision was the growing challenge of the disposal of the city’s waste water; and the lake appearing as a potential source of disposal. This is a typical situation of urban lakes and rivers in India. Mansagar lake was considered as a potential waste water sink because of several social-ecological factors (annex 1). After several years of degradation bringing Mansagar Lake to the state of despair; in the beginning of this century there was a decision to rejuvenate it. The decision was led by few leaders and bureaucrats of the state and brought several departments and organizations to a collective agreement to find optimal solution for the rejuvenation of the Mansagar Lake. A high level committee was formed and Mansagar Lake Restoration plan was chalked out. The responsibility of the restoration was distributed amongst few local government and private organizations. With couple of years of implementation of the restoration plan; Mansagar Lake began to show improvement in the shoreline, lake water quantity and quality.

The slow but tangible improvements brought some hope of rejuvenation and sustainability of the Mansagar Lake, particularly, physically, visually, logistically, statistically. It is at this time, the Rajasthan High Court recently ordered (May, 2012) to ‘un-do the restoration efforts’ of the last couple of years (annex 2). The pronouncement of the High Court order linked to the Mansagar Lake precinct is a classic situation of ‘tragedy of win of the social-political-legal battle of the elite community over the environmental struggle of the Mansagar Lake’. The tragedy is further evident from the uprising chaos amongst the several organizations for un-doing the things and taking possessions. This order to me is the re-pronouncement of death-penalty for the Mansagar Lake. Fortunately, the Supreme Court of India has stepped in and declared (May, 2012) stay over the High Court pronouncement.

Let us take a pause and recon what is this all about. Many like me, those who are outside the political-legal systems must be intrigued with questions such as: is this legal chaos required when Mansagar Lake is experiencing some tangible improvements; is this legal chaos a fissure in those tangible improvements; is there any genuine reason to oppose such tangible
improvements? Importantly, is this the way we, the people of Jaipur and India, plan to move ahead with environmental issues; should we accept such legal chaos against the larger picture of social and ecological benefits we ripe from our environment? Finally, is this the way our legal systems should process environmentally sensitive cases? Such questions are puzzling.

The aim of this paper is to understand as well as raise a public discussion on the current social-political-legal processes involved in urban lake governance in India. The focus of the discussion is concerning the social and ecological systems of the Mansagar lake governance; those that are comprehensible to readers from all spheres, particularly to the people of Jaipur and to the scholars involved in environmental issues and environmental law.

The paper is prepared as a response to the pronouncement of the Rajasthan High Court order dated May 17, 2012 on the activities linked to the Mansagar Lake precinct. The 171 page document of the High Court order (available at http://hcraj.nic.in/Jalmahal.pdf) presents the case outline, arguments, other example cases and finally the pronounced orders. There are several highlights in the ‘High Court order’ document that are subject to contestations. At the end of the document, there are thirty one points referred as inter-alia or among other things. According to me, the highlights of the hundred seventy one page document are captured in the thirty one point inter-alia. It may be therefore referred as echo-la-lia or summary of the whole document.

The thirty one points of the inter-alia to the exaction of the High Court order are first presented. Based on the issues raised in the points, the paper builds a discussion in the form of counter arguments backed by scientific and logical reasoning. The discussions and arguments are built from the understanding of the state of current urban lake governance in India, particularly Mansagar lake environs and its governance. My understanding of the Mansagar lake governance is built from the array of data collected through several visits to Jaipur in last three years (annex 3); which includes primary field visits and documentation of the Mansagar lake area, in-depth interviews with several officials and experts who are involved in the lake governance activities, questionnaire survey and several interactions with the local people and visitors; and finally through intensive literature and policy reviews on management of lakes and wetlands (nationally and internationally).
2. MANSAGAR LAKE

Jaipur is one of the early planned cities in India and a well-known tourist destination. Mansagar Lake is situated at the north end of the Jaipur city limits (refer fig. 1). Mansagar Lake is a typical traditional hydraulic water harvesting structure known commonly as water reservoir. It is planned and constructed amidst the picturesque landscape hills namely, the Nahargarh hills, Amer hills and Amargarh hills. It came into existence in the late 16th century, under the decision of the then ruler, to overcome a severe famine period in the region. Mansagar Lake is the only significant water body\(^1\) in Jaipur.

Fig. 1. Jaipur in India and Mansagar in Jaipur

The main characteristics of the Mansagar Lake are linked to the four main social and ecological activities of the lake, the shoreline, and the surroundings (refer fig. 2). They are:

1. The Lake
2. The hills on the north and partly on the west are the main catchment areas. There is a newly constructed lake drive road with a limited entry at the foothills at the north.
3. On the east side, the Mansagar dam is a historic structure currently not in use. The overflow of the lake is from the south of the dam. The top of the dam is a public garden.
4. The west side is thronged with urban activities including a promenade, a highway, and array of tourist, institutional and residential developments. The promenade is the heart.
5. The south side consists of the newly reclaimed land, the inflow drainage channels from the city and the southern catchment area comprising of Jaipur old city.
6. Jal Mahal is the historic water palace located in the middle of the Mansagar Lake. People of Jaipur and most documents refer to Mansagar Lake by the name Jal Mahal. Jal Mahal was until recently in a state of despair. It is now restored to its closest original form.

\(^1\) The other two water bodies namely, Katora Taal (water tank part of the palace complex) and Sukha Nala (dry drain part of the Darbhawati river) are suffering heavily from the stress of urban development and are in a state of despair.
The newly reclaimed land in the southern shoreline (4) of the Mansagar Lake is the main area of contention, on which the Rajasthan High Court has pronounced its orders. The reclaimed land is the result of implementation of the Mansagar Restoration project initiated by a group of state and city level government organizations in 2000. The project is guided by the consultancy firm PDCOR Limited who prepared a Detailed Project Report (2001). Through tendering, the reclaimed land is leased to a private firm namely, Jal Mahal Resorts Private Limited (JMRPL) for development and maintenance for ninety nine years. The lease includes maintenance of the Mansagar Lake and restoration of the Jal Mahal. Public interest litigations (PIL) were filed by few local NGOs and residents against the signatory organizations of the Mansagar Restoration Project. The key aspects of the PILs are: status of the land reclamation; proposed restoration project activities; status of the Jal Mahal; and lake maintenance. The High court pronounced its orders against the project, which is stalled by the Supreme Court.
3. DISCUSSION

In this section, the thirty one points of the inter-alia are discussed and counter argued. The section is followed by final thoughts on the High Court order and a conclusion with future directions to Mansagar lake governance.

Inter-alia 1, 2

(1) That admittedly area of 13 bigha 17 biswa is recorded as Gairmumkin Talab and area of 14.15 acre was in submergence, which was also included in 100 acres of land leased out for 99 years to the company, which was not permissible. There was no authority under the law to alienate the land of lake bed. Whole transaction is based on flagrant violation of principle of public trust. The respondents-state and its functionaries were trustees of the land and they were holding it for the benefit of people. Such lake/land is of people and the state, JDA and JMC are merely custodian of the same. It is shocking and surprising that respondents-authorities have failed to act in objective manner and they have violated the principles enshrined in Article 48A, 49 and 51A(g) of the constitution.

(2) That it is shocking and surprising that area which was under submergence of 14.15 acres and obviously formed part of the lake was permitted to be reclaimed by Jal Mahal Resorts Pvt. Ltd. There was no authority with the State Government or RTDC or JDA or JMC to allow or permit reclaiming of the area which was in submergence in lake and it was in fact part of lake.

Discussion: Lake submergence area

Historically and universally, the lake submergence areas including shorelines are flexible and are planned according to the needs of the surrounding developments. In India too, from traditional settlement planning to modern land use planning, reclamation of the lake submergence and catchment areas for the purpose of development, is a common phenomenon (ex. Bhoj wetland project on Upper lake in Bhopal, Buddha Purnima Project on Hussainsagar lake in Hyderabad). Important to note are: what is the purpose of maintaining the submergence level; and how is the submergence level decided. Submergence level is decided based on the rainfall pattern, high flood/ full tank level, the dam condition and the surrounding development pattern. Submergence level was crucial in the past for flood control and to hold maximum quantity of rain water. Is it the case today? The developments in Mansagar lake environs over time show clearly that the submergence level was always subject to revision. Below is a graphical representation of the same. Logically, revision in the lake submergence area is inevitable; otherwise developments, particularly promenades could never be built on the shores. Importantly, the reclamation should lead to better conditions of the lake and shoreline.
Discussion: Alienation of the land of lake bed or Delineation?

The actual area of a lake is a continuous and universal debate since the area is flexible and subject to revision every few years. Apart from area, a lake must be also measured with its volumetric capacity. According to historical map, the area water spread area had actually increased in the mid twentieth century and again reduced closer to its inception stage. Under such circumstances, it is naïve to consider a rigid area of Mansagar Lake. So, whether it is alienation of land of the lake bed or should it be called delineation of the lake area according to the development needs? The terms alienation and delineation are interlinked, but it makes a difference particularly where you start looking from. The usual intention of delineation is to carve out extra shoreline since shoreline is the interface where people interact with the lake. The physical design of the shoreline describes whether the land of lake bed is alienated or not. In any case, delineation is bound to include some degree of alienation of land of the lake bed, for example as shown in the picture below how delineation of the shoreline of Mansagar has happened over time. The highway and the Lake drive road have actually alienated the land of lake bed from the hills. The highway should not be so close to the lake. The lake drive...
road is not required at all. The Brahmapuri nala limits the development creeping towards the lake. However it also alienates people from the lake with the presence of the open drain.

There are land uses that can form the lake edge and that allow people to access the lake. The JDA promenade is a better attempt of delineation of the land of the lake bed, since it allows people to interact (physical- psychological access) with the lake. The new reclaimed land is a welcoming promenade since it may allow people to interact with the lake.
Inter-alia 3, 4, 5

| (3) That it is apparent from para 3.4 of DPR that lake level has been reduced to carve out 100 acres land for lease. |
| (4) That the area of 100 acres leased out was to be raised above the lake bed by filling and compaction and was not otherwise available for the so-called tourism project. It has now been created by reducing level of lake water. |
| (5) That from the materials available on record, particularly DPR itself the basis of entire project where it is stated that the current maximum water spread of the lake being 400 acres, there remains no manner of doubt the fact that the respondent authorities have sold/leased out 25% of lake basin itself for the purpose of preparing 100 acres of land to be used for their so called tourism project which is absolutely illegal and unconstitutional and therefore void ab initio. It was not open to tamper with lake water level to create 100 acre land for lease for hotels etc. |

Discussion: Tampering with the Lake water level

It is a common phenomenon to revise the lake water level at certain intervals of time. Reducing the lake level does not happen randomly. There is a scientific and administrative process involved in calculating the lake water level. It is mainly done to calculate the volumetric capacity of the lake. Usually, calculating the lake water level includes, the monsoon pattern, the pattern of development in the catchment area, the surface run-off condition and the lake bed condition. It is mostly revised by the Irrigation Department. A new shoreline is defined (delineated) according to the amount of water that may come and that may be held by the lake i.e. the current capacity of the lake. After deciding upon the new lake water level, the area that falls out of the newly decided water spread area (submergence area) is then transferred over to the local development authority for development purposes. There are administrative procedures involved in the process of transfer of land. What is missed in the procedures of the transfer of land and later in the developments is the development guidelines aligned towards complimenting the ecology of the lake.

It is observed that in most urban lakes in India, the lake water level has reduced rapidly in last one century. This is mainly attributed to the lack of good monsoon bringing less water to the lake; the rains that we receive, most of the water fails to reach the lakes due to the haphazard or unplanned catchment area developments; and the storm water that flows into the lake brings along with it heavy amount of silt and filth from the urban areas resulting in deposits on the lake bed. The lake water level is also dependent on ground water table which is depleting in leaps and bounds in the Mansagar lake environs, owing to the unprecedented extraction of the ground water resources. This should be a bigger concern for lake-water level. The percolation rate has also increased with the ground water depletion. Ground water extraction must be controlled with immediate action. Almost every premise in the vicinity of Mansagar has borewell/ tubewell in use on a daily basis because of the shortage of water supply. Denuding of the forest area in the surroundings and longer summer periods have resulted in higher evaporation rates of the lake water, which also affects the lake water level.
Inter-alia 6, 25,26,27

(6) That in several cases, Hon’ble Supreme Court and this Court has laid down that no right can be given to use nadi land or other water body; there cannot be any activity which affects water body; nadi cannot be used for construction. In the instant case, the Government has included the land of lake in the project area of 100 acres leased out to Jal Mahal Resorts Pvt. Ltd. and apart from this, submerged 14.15 acres area has been given which is part of lake. Even 13 bigha 17 biswa land recorded as “Gaimumkin Talab” part of lake has been leased out, other area is also carved out by reducing water level of lake. Thus, lease deed in question is illegal, void and in violation of the directions issued by the Division Bench of this Court in the case of Abdul Rehman (supra) and principles enunciated by the Apex court in various decisions.

(25) That construction of sedimentation/settling tanks and erection of wall, filling and compaction was an illegal act at the cost of lake bed itself and it has damaged the lake and has reduced its area. Such activity was not permissible without clearance from the Central Government MOEF.

(26) That the respondent no.7 Jal Mahal Resorts Pvt. Ltd. has done illegal acts, filling and compaction of 100 acres from soil of lakebed, construction of wall etc., which was wholly impermissible thereby causing damage to the lake, reduced the water level of lake and affected the ecology, flora, fauna etc.

(27) That desilting and construction of wall was also done in an illegal manner in lakebed.

Discussion: No activity which affects water body

The argument ‘there cannot be any activity which affects water body’, in true sense means ‘no development’ around water body, is a naïve thought. Shoreline is a vulnerable part of lake system. However, including shoreline, the developments in the entire catchment area is equally crucial and affects the water body. Therefore, land use planning must address the catchment area along with the water body and its shoreline. Unfortunately, for decades the land use planning of cities happened in isolation and has failed to integrate the watershed planning of the cities.

The total catchment area of Mansagar lake, as per 2001, was 23.5 sq. kms. out of which urban catchment area was 9.33 sq. kms. and catchment from hills was 13.17 sq. kms. The urban catchment area may have increased in the last 10 years. However, the increase in the figures of the catchment area is not the problem. The problem is the way the development (planned or unplanned) has occurred and the way the infrastructure like road network, drainage and water supply responded to the lake catchment/watershed. Most of the additional urban catchment area in Mansagar surroundings, for example in Parasrampuri area, underwent development (illegally) prior to the planning\(^2\) of the area. Now there is conflict about the provision and maintenance of the infrastructure facilities in these areas, particularly the water supply and drainage lines which has a direct effect on the health of the lake. The water is supplied through tankers which are often considered as ‘not-enough’; resulting in heavy ground water extraction through borewell/ tubewell from most plot dwellers. The main drainage lines are laid out, but there remains a conflict on which organization should provide the connection from the household to the main drainage. Amidst such conflict, most of the

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\(^2\) It is a typical problem of urban planning in India that urban planning and infrastructure is following the development, whereas it should be other way around. This results in compromising situations with the planning and infrastructure provision.
waste waters from the area are discharged into the lake without any treatment. Of them the alarming situation is the untreated waste waters from the dyeing industries.

We must take into account the cumbersome administrative processes involved in first resolving such infrastructure issues, then implementing the infrastructures and finally the most neglected part of our urban management, i.e. the maintenance of the infrastructure systems. In nutshell, any development activity is bound to affect the lake. Conscious effort to minimize the effect must be the priority. This is possible through sensible land-use and infrastructure planning that integrates the natural resources such as water body and forest into the planning. This is easy said than done.

![Fig. 5. Catchment area of the lake](image1)

**Source:** HCM RIPA, OTS, Jaipur in RPCB report, 2010

**Development activities that affect the lake**

**Courtesy:** Google map

Logically and historically, developments at the shorelines are inevitable. The nature of shoreline developments have changed with time. Those shorelines that did not respond to the change have resulted into neglected and no-go areas in the last couple of decades. Examples of such situations are aplenty in India, e.g. Tal Katora in Jaipur (fig.6).

![Fig.6. Status of Tal Katora in 2011 in two seasons.](image2)

**Photo Courtesy:** Arch Point Consultants Pvt. Ltd., Jaipur
For proper lake management, it is important to plan for the nature of shoreline development, particularly the density, the ratio of the soft landscape and hard urbenscape area, the road networking and the drainage pattern. There may be highest density at the shoreline with a beautiful and healthy lake and vice versa. If the development is not planned in ecologically sensitive manner, then there are severe adverse effects, for example the shoreline of Anasagar Lake in Ajmer, where the development of the shoreline began with a necklace road around the lake, but lack of development control over the shoreline led to several subdivisions of the land of the lake bed. Under such circumstances, it is not only difficult but impossible to plan restoration work for the lake. Eventually, the option left for restoration is to make another necklace road (lake drive) and delineate the new shoreline of the lake as shown in figure 7.2.

Therefore, it is necessary to have a protected and maintained lake shoreline, which must be in the form of soft and hard landscape depending on the nature of the surrounding development, instead a road or nala alone as was the case in Mansagar lake before the restoration project. The JDA promenade and the proposed activities in the reclaimed land defines a revised shoreline, which may probably become the final delineation and avoid further intrusion.

**Discussion: Drawing inferences from other cases:**

Referring to other cases are necessary however, looking for panacea from them undermines the merits of the actual case. The Abdul Rehman case and the principles enunciated by the Apex court in various decisions are debatable if referred in Mansagar case. Every case is unique by virtue of its own merits/demerits and so is the way to deal with it.
Inter-alia 7

(7) That no transfer of lake bed or any part thereof was permissible much less construction on it. Property belongs to JDA, Municipal Corporation and part of it held by the State Government in public trust.

Discussion: Property rights

Like most urban lakes in India, Mansagar Lake is a typical case of ‘multiple property rights systems’ (multiple ownerships). The revenue map of the Mansagar lake bed (available at JDA office) clearly shows the multiple ownerships belonging to several organizations. These organizations are JDA, JMC, Irrigation, Forest, RTDC, Fisheries and few others. There are different functioning, rights and limitations of workings among the city level and state level organizations. This resulted in chaos for several decades (after the lake was taken away from the royal family) in deciding on: who should maintain the Mansagar Lake? It also resulted in the conflicts over ownership of the lake area and the actual area of the lake for several years. This was the key governance issue which led to the poor conditions of Mansagar until the early 2000. Eventually it led to the lack of coordinated efforts toward Mansagar.

If the multiple organizations have realized this problem and if they have decided to converge the multiple ownerships into one/joint ownership, it is certainly a positive collective decision. The joint ownership gives directions to: clear delineation of the land of the lake; how to maintain the lake; who is responsible to maintain the lake; what are the financial resources to maintain the lake; and what mechanism to monitor and evaluate the maintenance of the lake. In addition, the delegation of the decision making to one organization, in this case RTDC, allows to expedite the process of restoration.

Inter-alia 8

(8) That the project has adverse effect on ecology, flora, fauna, wild life birds sanctuary considering the importance of the area.

Water level of lake could not have been fixed in the manner done so as to carve out 100 acres area for project, it will affect adversely the ecological balance of area.

Discussion: The project has adverse effect

In the 12th World Lake Conference in 2007, where Prof. Sharma and others from University of Rajasthan ³ talked about the dark future of the Mansagar Lake; Manju Raina ⁴, an official from the MoEF, appraised the Mansagar Lake restoration project. What is interesting is that,

both the research uses similar data sets and draw different results. Raina (2008) studied the physico-chemical characteristics and the management approach of the lake between 2006-2007. The highlights are the improvements in the ground water conditions, bio-diversity in terms of migratory birds, and management model of public-private partnership. She concludes with the recommendation that such management models should be adapted for other lakes management. Prof. Sharma et.al. (2008) studied the physico-chemical characteristics of the lake between 2005-2007. However, at the end they come up with the conclusion on quantity of land that should be used for sedimentation and be reclaimed for development. The basis of hypotheses that 40 acres is good for sedimentation and 60 acres for reclamation is absolutely debatable; since it is not clear as which aspects of limnological study are used to arrive to these land division figures.

It is a common problem in researches on social-ecological system studies, that researchers tend to give recommendations and conclusions on completely different aspects than the ones that are studied and analyzed. The court must take this issue into account. In addition, it will be pity if the court proceedings are based on the results of the research conducted in 2005-2007. It is five years since then and several things have changed with the lake. According to some officials of the State Pollution Control Board, there are tangible improvements in the physico-chemical characteristics of the lake (2010 Environmental Audit report of Mansagar)

In recent (2011-12) conversations, Prof. A.B. Gupta from the Department of Civil Engineering, MNIT, Jaipur echoed about the improvement in the physic-chemical characteristics based on his few years of research on Mansagar lake. He recommends to bypass the first few flushes of the monsoon entering into the lake to maintain the lake water quality. He also recommends on maintenance of Brahmapuri and Nagtalai nalas. In a conversation with during the 13th Birding fair held at the Mansagar Dam site in February 2012 (http://www.birdfair.org/Fair-Dedication.htm), environmental activist Harshvardhan echoed of improvements in the lake ecosystem. He highlighted the role of the islands and the constructed wetlands in the Mansagar lake as important elements to enrich the bio-diversity, particularly the bird and fish population in the Mansagar lake. Both and many others have shown concern over the slowness of the restoration work.

From my survey with the local people and visitors, ninety percent people have appreciated the visible improvements in the lake. They also appreciated the role of the private
organization in doing so. Most people remarked about private organization’s intervention as a positive way since they compared the poor maintenance for several decades by the government organizations.

If we are really concerned about the adverse effects, then we have two classic examples in the city where no restoration projects are initiated and are in the absolute state of despair: Sukhanala is at the verge of disappearance with severe stress of development activity; and Tal Katora stands as no more than a dump yard. They certainly require immediate attention.

**Inter-alia 9, 10**

(9) That for the project in question, permission/clearance of Central Government MOEF was necessary to be obtained as per the notification dated 14th September, 2006 issued by the Central Government MOEF under the provisions of Environment Protection Act, 1986. As per note appended to the notification, any project or activities specified in category-B be treated as category A if located within 10 kms from boundary of protected area. Admittedly the Nahargarh wildlife sanctuary is nearby and within the periphery of 1 km. from the project area and thus, the project area is within 10 km. from the protected Nahargarh wildlife sanctuary under the Act of 1972 and hence, project has to be treated in category-A for which as per General condition of the Notification dated 14.9.2006, the competent authority to give environment clearance is Central Government MOEF, no such approval much less prior approval which is necessary has been obtained.

(10) That the sanction granted by Central Government MOEF vide letter dated 5.9.2002 and 23.12.2002 is for Mansagar Lake Conservation Project under NLCP and it has nothing to do with the project in question.

**Discussion: Permission/clearance of Central Government MOEF**

Making all the development approvals go through the central MOEF is too much considering the numbers and areas under wetlands in India. In addition, the central MOEF is a complex organization, which is also responsible for other natural resources in the country. There should be a state representative for the approvals of regular developments to expedite the process; except the special situations going through the approval of the central MOEF. The Wetland Rules 2010, designates the state level authorities for approvals.

**Discussion: 10 kms from boundary of protected area**

Interestingly, the lens through which one looks at such things makes a difference in the way the rules are interpreted and applied, for example, the forest is now at the periphery of city or the city is at the boundary of the forest will suggest different management approach towards the forest and the city. The urban developments (even if it goes to the edge of the forest land) must ensure the protection of the forest land.

The idea that millions of sq. kms. under lake area and forest area, and in addition the 10 kms. diameters surrounding these areas of the periphery should be protected may be necessary but a naïve thought. The 10 kms. boundary of the protected area of the Nahargarh wildlife
sanctuary, if require the permission of MOEF, means the entire development activity in
Jaipur city must get a clearance of MOEF, ex. fig. 8 shows the 4 kms diameter (approx) from
the Nahargarh wildlife sanctuary. Therefore, the rule of ‘10 kms. boundary of the protected
area’ cannot be taken in its literal sense in urban settings. The rule may be practical to
implement in the rural and hinterland settings, but calls for adjustments in urban settings.

![Fig.8. Four kms diameter around Nahargarh wildlife sanctuary](image)

A similar example of rule for the development in the lake periphery is the Gujarat High Court
order 2002 that declared 500 meters diameter around a lake to be reserved as no-development
zone. The rule is impractical to implement (http://www.indiatogther.org/2003/jan/vu-
lakelaw.htm). The red dotted circle in fig. 9. shows the 500 meters diameter around Mansagar
Lake and the red patch shows the area already developed. Lake shorelines are vulnerable,
however the 500mts. no-development zone rule is not the solution. Such rules fail to consider
both the historic and modern water front planning and therefore cannot be taken to its literal
meaning. They show the apathy of the Indian legal system in environment-development
cases. Because such rules do not speak much in themselves, they are bound to be overlooked.

![Fig.9. 500 meters diameter around Mansagar Lake](image)
Inter-alia 10

(10) That the sanction granted by Central Government MOEF vide letter dated 5.9.2002 and 23.12.2002 is for Mansagar Lake Conservation Project under NLCP and it has nothing do with the project in question.

Discussion: MOEF’s stand on Mansagar

Interestingly, the inter-alia statement is contradicting to the previous statements with regard to the status of the reclaimed land. In the previous inter-alias, it is argued that the reclaimed land is part of the lake whereas, this statement refers to the lake and the reclaimed land as two different entities and the MOEF sanction should not be considered for the reclaimed land.

The MOEF and its officials (Raina, 2008) have appraised the Mansagar lake management model in several occasions. In the 12th World Lake Conference 2007, in Jaipur, the MOEF suggested for ‘wise use of wetlands’ for the long term sustainability referring to the Mansagar lake management as a spearhead management model. It said:

“A public-private-partnership has been considered desirable to sustain the lake maintenance on a continuous basis. The private partner has been entrusted with the task of renovating the Jal Mahal monument in the lake and develop the lake precincts for tourism and recreation facilities by developing a sports and sailing club, traditional food restaurants, handicraft shopping complex, amusement park and children’s park, and appropriate parking facilities for the visitors. The revenue generated from the activities managed by the private partner will be used for the maintenance of the lake, thereby ensuring sustainability”.

(Source: [http://moef.nic.in/modules/recent-initiatives/nlcp/Lakes/Mansagar%20Lake.pdf](http://moef.nic.in/modules/recent-initiatives/nlcp/Lakes/Mansagar%20Lake.pdf))

The ‘Jaipur Declaration’ in the 12th World Lake Conference clearly outlines the importance of the people’s participation and public-private-partnership (PPP) to ensure sustainability (annex 4) ([http://www.ilec.or.jp/eg/wlc/wlc12/wlc12_nov2_jaipur_declaration.pdf](http://www.ilec.or.jp/eg/wlc/wlc12/wlc12_nov2_jaipur_declaration.pdf)). Such declaration must be respected in light of this case. The Ramsar Convention in their report on Ecosystems and Human Wellbeing also advocate ‘wise use of wetlands’ through PPP.

Inter-alia 11

(11) That in the light of notifications dated 27.1.1994 and 14.9.2006 issued under the Environment Protection Act, 1986, the respondents were required to carry out environmental impact study and obtain environment clearance from the Central Government MOEF, which they did not do.

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5 A report on Ecosystems and Human Wellbeing: Wetlands and Water for the Millennium Ecosystem Assessment includes Handbook of 21 volumes for Ramsar declared wetlands. The aim (first volume) talks about the wise use of wetlands.
Discussion: Environmental impact study and environment clearance

First, it is unfortunate that we look at the Environmental Impact Assessment (EIA) as an obligation for environmental clearances instead as a monitoring and evaluation tool to maintain our natural resources over time. The ex-ante, intermediate and post evaluations are all necessary for proper monitoring and evaluation of the environmental cases. Interestingly, the world has moved ahead with the Strategic Environmental Assessment (SEA) whereas, we are still holding on to EIA for environmental clearances in India. It is time that we rethink on the use of EIA and consider using the SEA toolkit on water and urban infrastructure for environmental monitoring and evaluations: (http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20885941~menuPK:2450778~pagePK:148956~piPK:216618~theSitePK:244381.00.html).

Second, it is a common (unfortunate) practice in India that large development and ecological projects commence without undergoing prior EIA. True evaluation studies in the form of ex-ante EIA helps to set direction and targets on bio-diversity needs. Many EIA’s happen when the projects run into problems or when the stage of MOEF clearance is arrives in the project. Most projects develop a project feasibility or appraisal report. Such reports do not necessarily tell the impact of development on the environment rather, they are prepared to support certain proposal and uses the predictions and projections approach. The DPR of Mansagar Lake Restoration prepared by PDCOR Limited, Jaipur (2001) is a kind of project appraisal and feasibility for restoration of Mansagar lake and its environs. The report makes projections on the effect of Mansagar Lake on the bio-diversity (ecology, flora, fauna, wildlife, birds).

Without scientific assessment, it is difficult to predict that the current changes in the Mansagar Lake may adversely effect on bio-diversity. The situation becomes worse if the scientific approaches become unreliable, particularly when researches use similar data sets generated at a similar time but come up with contrasting results. For example, in TAAL 2007, Raina’s (2008) study projected an improvement in Mansagar Lake. Sharma’s (2008) study of physico-chemical characteristics of the Mansagar lake between 2005-2007 projected a grim situation. Interestingly, both Raina and Sharma presented their paper on a common platform of 12th World Lake Conference, TAAL 2007.
In any case, it will be unfortunate, if the court orders of 2012 are based on the research results of 2005-2007 on physico-chemical characteristics of the Mansagar lake. Things have changed in last five years in the Mansagar lake ecosystem. An update and intermediate assessment of the physico-chemical characteristics of the Mansagar lake is necessary before making orders. Important to note that RPCB maintains an annual monitoring and evaluation of the physico-chemical characteristics of the Mansagar lake and JMRPL maintains a much frequent data on the same. The RPCB Environmental Audit report of Mansagar, 2010 shows improvements in the physico-chemical characteristics of Mansagar lake; similar to the regular records maintained by the JMRPL (prepared by TEAM Test House).

Inter-alia 12, 13

(12) The permission which has been granted on 29th April, 2010 by the State Level Environment Impact Assessment Authority has no value in the instant case as the said authority was competent for the matters falling under Category B and not for the matters falling category-A project and as the project in question is admittedly within 10 kms from the boundary of Nahargarh wildlife sanctuary, which is protected area notified under the Act of 1972, of which notification is on record, therefore, prior permission of Central Government MOEF was necessary for the project in question as mandated in the Notification dated 14.9.2006 and the same has not been obtained and in absence thereof, the entire action taken by the respondent no.7 Jal Mahal Resorts Pvt. Ltd. and other respondents is unauthorized, illegal and void. Permission obtained from SEIAA for the tourism project treating it as category-B as per item 8(a) is illegal and void. The said Authority was not authorized as per para 2 of the Notification of MOEF dated 14th September, 2006 to grant permission for the project in question.

(13) That the permission has also been obtained from the Rajasthan pollution Control Board on the pretext that MOEF has granted clearance to the project and as such, permission granted under Water Act and Air Act by the Rajasthan Pollution Control Board is also of no avail to Jal Mahal Resorts Pvt. Ltd. in the absence of clearance by the Central Government MOEF under Environment Protection Act.

Discussion: Permissions and Clearances

It is unfortunate that the statements do not show respect to the permissions and clearances granted by the State Level Environment Impact Assessment Authority and Rajasthan Pollution Control Board. The state level permissions and clearances should play greater role and set the tone for the permissions and clearances through the central level authority. It should not be the other way round, particularly when devolution of powers and decentralization is preferred, particularly in environmental governance and principally in a democratic system.

Inter-alia 14, 15, 16

(14) That as per Rule 23 of the Rajasthan Tourism, Disposal of lands and Properties by DOT/RTDC Rules, 1997, it was essential that when any land is disposed of for a lease period of 99 years i.e. by way of sale, purchaser shall have to pay cost of the land. In the instant case, cost of land has not been determined at any point of time by the Department of Tourism or RTDC. Thus, the action of virtually selling away of property by way of lease for 99 years is in contravention of rules 22 and 23 of the Rules of 1997. Even if the property is put on the disposal of RTDC for lease, it is bound to act in accordance with law and when Rules are in existence, there is nothing to go bye to the Rules and property could not have been disposed of on lease for 99 years in contravention of Rules 22 and 23 without working out the cost of the property and getting it deposited. It was necessary for lessee as per Rule 23 in addition to value of property to pay such urban assessment or “annual lease” as determined by the Committee constituted under Rule 3. There is no rhyme or reason to make departure from the aforesaid Rules with respect to such a valuable property under the guise of policy decision. Flagrant violation of the Rules cannot be permitted. However, in what manner, the decision was taken giving go bye to the Rules is not understandable. Thus, the lease deed being in violation of the Rules of 1997 cannot be permitted to subsist and the same is liable to be cancelled.

(15) That as per Rule 6 of the Rajasthan Municipalities (Disposal of Urban Land) Rules of 1974, it was necessary to work out the reserve price on the basis of cost of undeveloped land; cost of developed land; and 20% of the developed land to cover administrative and establishment charges. However, no efforts have been made so as to fix the reserve price as provided under Rule 6. When the Municipal property is being sold away on lease as contemplated under Rule 2(10) for 99 years, it has to be on the cost as provided in Rule 6 and fixing...
Discussion: Rules and Policy Decisions

The rules such as Rule 23 of the Rajasthan Tourism, Disposal of lands and Properties by DOT/RTDC Rules, 1997; Rule 6 of the Rajasthan Municipalities (Disposal of Urban Land) Rules of 1974; and Section 54 of the JDA Act; are all important rules to guide and facilitate land developments in right directions. It is important to highlight that usually these rules usually are meant to imply and enforced in individual land dealing situations. Rules are important to have as long as they facilitate development in right directions. Rules should not be seen as a deterrent to development. We have experienced it for decades, how the organizations remaining within the limitation of such rules have failed to maintain our precious water bodies.

The rules when used in conjunction with each other may render complete different sense to its enforcement on land developments. The decision to lease the land is a collective decision made at a policy level. Under such circumstances, the rules that imply to individual situations, should be considered superseded by a higher and collective level policy decisions. It is important to address that the decision to collective action towards Mansagar lake restoration is constructive and goes in alignment to the currently in-practice concept of the Integrated Lake Basin Management (ILBM) (TAAL, 2007). The concepts such as integrated natural resource management, sustainable management of natural resource, participatory management and many others advocate stakeholders collaboration and interaction in collective decision making. If a committee is formed to restore the Mansagar Lake, it is certainly a positive sign of collective decision making. Within this collective decision making, if the committee found the approach of public-private partnership as a way of participation from the society; it should be appreciated as a sustainable approach to manage Mansagar Lake in the long run. To my knowledge of land economics, it is a smart decision by the Mansagar Lake Restoration Committee (of which RTDCL is the nodal agency) to make a policy level decision of indulging in a public-private partnership. The Mansagar Lake restoration project is a true manifestation of the concept of participation and sustainable management of urban water bodies in India.
As remarked in the argument about selling the land at the real cost price; if done so, it would be definitely against those rules aforementioned. It is relieving to learn that the committee decided to lease the land and remain the custodian of the area, particularly in public interest.

**Inter-alia 17**

(17) That purpose for which the lease has been given cannot be said to be strictly in accordance with the recreational purpose, but the project has been sanctioned for commercial exploitations, which is the main objective not the development of tourist facilities. The tourist facilities have been rendered secondary. Even if assuming that the commercial activities are permissible, in that event also, it could not have been done, considering the area in question is part of lake and land was given without following the due procedures prescribed under various Acts and Rules and even environment clearance of Central Government MOEF was not obtained. Hence, the contract cannot be said to be sustainable.

**Discussion: Development of tourist facilities**

It is tricky the way the ideas of recreational purpose and tourism facilities vis-à-vis commercial exploitation are used in the argument. These ideas are interlinked and should not be seen in isolation. Recreational purposes are usually meant to be commercial ventures for its long term sustenance. People at large do not expect recreational as a free service. They are willing to pay and they pay user fee to watch cinema, visit palace-fort, go to water park, national forest and so on. Tourism facilities refers to the different facilities offered for recreation of the people. Providing facilities like boating, public toilets, rides and others; safety and security; park elements like greenery, fountains, seats, lightings; cleanliness; and importantly maintenance of these require financial and human resources. Expecting these facilities for free would be naïve. People do realize this. From my own survey of people, hundred percent people are willing to pay as user fee for using these facilities.

It is time that we stop thinking that environment is for free particularly water bodies. For decades we have made that mistake and that is why most lakes and rivers in the country are in a state of despair. We must realize that to maintain the Mansagar lake entails a cost and people at large should be willing to contribute. The mode of contribution may be discussed. As almost everybody in the survey are willing to pay a user-fee upon their use of the services, it may bring some financial resource for the maintenance of the lake. However, to make the facilities available to the maximum number of people, the user prices must be in affordability range. In such case, the maintenance cost rises (if maximum people are aimed to use which should be the case) resulting in more human resources. Then the funds generated through the user fees may not be sufficient to maintain the lake. One must keep in mind that the funds are required broadly to maintain the lake related physical elements and the human resources
involved (employees) in doing so and sometimes of accidents and events. Under these circumstances, if there is a constant source of income through a commercial venture, it must be seen positive and definitive source of funding. Therefore, the commercial venture should not be made to look large in this case, rather it should be seen as complementing the entire development. And when one looks at the Master Plan proposal of the JMRPL, this is clearly evident. Again the commercial venture is based on user fee, which is revenue generating.

**Inter-alia 18**

(18) That India being signatory to Ramsar Convention, State is bound to act in accordance with its mandate and for the purpose, wetlands Rules 2010 have been framed and no application has been filed so far by the State Government or Jal Mahal Resorts Pvt. Ltd. to obtain clearance under the wetlands Rules 2010 as stated by MOEF in its return. Even if the lake in question is not included in the schedule, even than purpose for which the wetlands Rules, 2010 have been framed cannot be ignored by the State Government or any other respondents. Thus, project in question is in flagrant violation of Rule 4 of the wetlands Rules, 2010. As the project phase II has not yet been taken up under the lease agreement and whatever has been done is only some part under the appendix-14 with respect to restoration of monument, in terms of wetlands Rules, 2010, since lake bed has been given including catchment area for permanent construction, such acts area not permissible within 50 meters and projects will have the adverse effect on ecology of area, has been taken into consideration and forbidden activities have been permitted, it is incumbent upon the State Government to identify the wetland under different categories. The project includes submerged land itself to the extent of 14.15 acres and catchment area is also part of the wetland as per rules. Admittedly, part of lakebed in area 13.17 Bighas has been leased out. Other area is also carved out by reducing water lake. Thus, lease is in contravention of wetlands Rules and project cannot be given effect to being in contravention of the wetlands Rules and if given effect to, it would violate the provisions of wetlands Rules, 2010 and Ramsar Convention also.

**Ramsar Convention and Wetlands Rules 2010**

India is a signatory of Ramsar Convention ([http://www.ramsar.org/cda/en/ramsar-pubs-handbooks-ramsar-toolkit-21323/main/ramsar/1-30-33%5E21323_4000_0__](http://www.ramsar.org/cda/en/ramsar-pubs-handbooks-ramsar-toolkit-21323/main/ramsar/1-30-33%5E21323_4000_0__)) and the Wetland Rules 2010 ([http://moef.nic.in/downloads/public-information/Wetlands-Rules-2010.pdf](http://moef.nic.in/downloads/public-information/Wetlands-Rules-2010.pdf)) has its foundation from the mission of the Ramsar Convention. The first goal (Five main goals with several strategies and result areas) and the first pillar (Three pillars for Contracting Parties) of the Ramsar Convention is underpinned at the ‘Wise Use’ of wetlands. The strategies from the Goal 1-Wise Use presented in the box below are worth a mention here.

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GOAL 1. Wise Use: To work towards achieving the wise use of all wetlands by ensuring that all Contracting Parties develop, adopt and use the necessary and appropriate instruments and measures, with the participation of the local indigenous and non-indigenous population and making use of traditional knowledge, while at the same time ensuring that conservation and wise use of wetlands contribute to poverty eradication, mitigation of and adaptation to climate change, as well as prevention of disease and of natural disasters.
Based on the above strategies of the Goal 1 and the expected results, one may certainly argue that the Mansagar Lake Restoration Plan, so far, is in alignment of Ramsar Convention goal. The first pillar of the treaty obligation for the Contracting Parties referring to the wise use of wetlands outlines that there is a general obligation for the parties to include wetland conservation in their national land-use planning. They have committed themselves to implement this planning so as to promote, as far as possible, “the wise use of wetlands in their territory” (Article 3.1). This is interesting and arguably in alignment of the collective decision made by the planning authorities such as JDA and JMC. However, the land-use planning of the Mansagar catchment area is a concern since the vicinity of the Mansagar lake is un-planned and still bears severe infrastructure issues.

The Wetlands Rules 2010 put restrictions on activity such as discharge of untreated wastes and effluents from industries and human settlements (4.1.v); provided that the practice if exist before the commencement of the rule, shall be phased out within a period of one year from the date of commencement of the rule. The focus of the discussion on Mansagar must be on the fact that still untreated waste waters are directly/indirectly and illegally discharged into the lake, by the dyeing industries and human settlements of Pararampuri and Gujarghati. Following figure presents the RPCB’s concerns of the untreated waste waters. Experts remarked that rules must be stringent at the source and not at the end point if Mansagar is to be protected.

It is tricky how one interprets the rules and uses them in court proceedings, particularly since rules such as The Wetlands Rules 2010 is a document with broad statement and does not tell much about the finesse of the context. This makes such broad rules open/loose to be...
interpreted and used according to convenience. Therefore such broad rules requires contextualization. State level court and legal practitioners play crucial role in contextualizing the broad rules laid in Wetlands Rules 2010.

In a visit to the Brahmapi TTP, it was found that the plant was hardly functioning. When talked to the plant workers, they did not talk much about their own plant but complained about not receiving sufficient treated waste water from the STP. In a visit to the Brahmapi STP, the situation was not better than the TTP. When talked to a plant engineer, he told how the plant is overloaded beyond its capacity. The most disappointing experience of tracing the Brahmapi nala was the fact that the so called treated waste water from the STP was eventually getting mixed with first untreated waste water from the dyeing industries and settlements of Parasarmpuri and Karbala area; and then with the untreated waste water from the Nagatalai nala. All the more shocking was that this waste water was directed to a TTP plant downstream in Khor area where the TTP plant was not functional at all. Therefore, the larger concern should be to find efficient and sustainable way to treat the waste water of Jaipur city.

Inter-alia 19

(19) That since the action of the State and authorities is wholly arbitrary, illegal, without jurisdiction, violative of statutory provisions of the Acts and Rules mentioned above and in blatant violation of the public trust doctrine, therefore, to say that this Court cannot interfere in contractual matters or policy decision cannot be accepted. Though there is no delay as requisite sanctions have not been obtained so far for the project, in such cases, even delay and latches does not come in the way of interference by this Court.

Discussion: The action of the State and authorities and the Public Trust Doctrine

The Wetlands Rules 2010 speaks of prior approval of State Government for wetland issues. In this regard, the decision of the Mansagar lake restoration work was initiated from the State Government and processed collectively by the city level organizations. If so many organizations have collectively made a decision for the betterment of the Mansagar lake; a decision that is collectively optimal and possible to abide by independently; must be seen as a decision made on behalf and for the betterment of the Mansagar lake and people at large. If we question the collective decision made by so many organizations, there is a grave concern over the ‘Trust’ on those organizations that we choose to maintain our cities. It is bizarre to think that several organizations collectively made a decision to kill Mansagar lake and only few people in Jaipur are the real well-wishers of the Mansagar lake.

If we recall, people did not visit Mansagar until the recent years since it was not accessible, not safe, the place used to smell and many other reasons that are against public welfare. And
now the JDA promenade is thronged by more than 5000 visitors daily. In light to the above argument, by no means the collective decision made for the restoration of Mansagar lake in a most optimal way, is a violation of the public trust doctrine by the state and city level organizations. It is important to appreciate good work, particularly such ecological sensitive works which find rare opportunities in the market. Also not to forget that Mansagar lake was in the state of despair till the early part of the century. Now some positive results are visible. Mansagar lake is experiencing a new lease of life and giving a hope of survival; all because of the collective decision made by the state and city level organizations and by contribution of a private organization with a good intention.

**Inter-alia 20**

(20) That grant of lease for 99 years amounts to sale and the same is against the provisions of the Municipalities Act, Rules of 1974, Rules of 1997, JDA Act and in breach of public trust doctrine.

**Discussion: lease for 99 years amounts to sale**

The lease for 99 years amounts to sale and the lease for 30 years does not amount to sale, according to the rules. If 99 years is against, then 30 years is debatable. Although, it is easy to assign ownership rights for a fixed numbers of years, but it is a typical problem to assign ‘X’ years to sustainability of environmental issues. Today, most environmental policies and researches face the problem of finding the ‘right’ year to deal with the governance and sustainability, e.g. the current debates on local and global climate change solutions face this problem. Although 30 years is seen as ok for lease (kind of ownership) rights of Mansagar, it is certainly not enough to boast on the sustainability of the lake as a resource. It is therefore necessary to have a long term institutional arrangement, primarily for funding and responsibility of maintenance. In light to this and to remain within the rule, the contract may be revised to ‘30 years lease contract with provision of multiple renewable package of 30 years; the renewable being based on the evaluation of the ecological performance of Mansagar and societal impacts of Mansagar’.

**Inter-alia 21, 28**

(21) That it is a case of illegal siphoning of the valuable property of several thousand crores for paltry sum of annual lease with obligation on lessor to maintain lake etc.
(28) That the State has not considered that Dargah and temple are situated there and effect on the religious places.

**Discussion: Legality in property development**
It is an interesting remark since, the area of 500 meters around the lake as shown in the figure below, has more than fifty percent area developed in illegal and unplanned manner at some point of time, particularly some of the social and religious institutions and private residences in Parasrampuri, Karbala and Gujarghati areas. Some of them are still in the illegal and unplanned stage and face severe infrastructure crisis. The property in contention is a rare government deal that is open in public domain and known by most people of Jaipur.

Fig.1. Area in the 500 meters vicinity of Mansagar

Several communal and religious premises (mazaar, dargah, temple, gurudwara etc.) are developed in the Mansagar vicinity without prior government approval. They are legalized over time on the grounds of communal feelings. It is important to realize the demand of such facilities in our society. The modern land-use planning approach, unfortunately, still do not acknowledge the full provision of facilities such as religious, social, recreational according to the density. For example, in the Draft Master Development Plan of 2025 of the Jaipur region, there is meager mention of provision of such facilities in the proposed areas of development. If we look at our traditional planning and the western planning, the settlements are generally known by the social and religious buildings, e.g. Jaipur old city.

The annual lease amount should not be seen as a paltry sum. Lack of constant flow of funds for the upkeep of the Mansagar lake, was infact, one of the main reasons of its deterioration for decades. There is a provision of revision of the lease amount at a regular intervals. It is naïve to believe that the religious, social, recreational developments can run for free. Different financial mechanisms are applied to recover the cost of maintenance. What is important to discuss here is whether the funds generated are properly utilized for the upkeep of the Mansagar lake or not. From the fieldwork enquiries it is found that the annual lease amount is still not put to use due to conflicts between the contracting government
organizations. This situation also warns for proper institutional arrangement to resolve the conflicts raised in the maintenance of the Mansagar lake.

**Inter-alia 22**

(22) That under the agreement, lessee/licensee has been given right to realize **amount of Rs.25/- per person as entry fee** which could be escalated by 10% every year; even for entering in the garden, Jal Mahal Resorts Pvt. Ltd. was authorized to levy an amount of user charges on the public and restrict the visitors failing to pay the specified user charges and such levy of fees and charges on the public after paying just Rs.1/- per year under lease and license agreement, Appendix 14 to lease agreement, to the State Government is arbitrary, contrary and in violation of the principles of transparency, accountability, public financing and smacks of highhandedness.

**Discussion: Willingness to pay**

From the survey questionnaire with the local people and visitors to the Mansagar lake, that most respondents acknowledge the improvements in the lake in past five years. They also appreciate that the JMRPL managed to restore the Jal Mahal. Most people reflected their excitement about the upcoming tourism facilities. Most people are also willing to contribute as ‘user fee’ to use the recreational and public facilities. Time and again we have realized that lakes, parks and gardens cannot be maintained for free. The Kankaria lake development model in Ahmedabad is a successful example of sustainable maintenance of lake (fig.12). People at Kankaria reflected that it is important that people pay for the use of the facility because: it makes people aware that environment maintenance involves costs and people appreciate and value a well maintained place more than a non-maintained place. People also added that some fines and sanctions are also necessary to impose for the use of such places because it makes people conscious of wrong doings and creates awareness. It has certainly increased the vigilant behavior of people towards the maintenance of the Kankaria premise.

![Fig.12. Activities at Kankaria Lake, Ahmedabad](image1)

**Inter-alia 24, 29, 30**

(24) That even revised plan could not have been cleared without prior sanction of MOEF; action relating to tourism project appears to be on extraneous consideration, favouritism and against the public trust doctrine and violative of Articles 14, 21, 48A, 49 and 51A(g) of the Constitution of India. The decision dated 10.10.2007 was illegally reviewed on 10.9.2009.
(29) That the PIL is bonafide and in public interest. There is no concealment of material facts on the part of the writ petitioners. The petitioners cannot be said to be motivated by newspapers.
(30) That the order passed by this Court in Writ Petition No.1008/2011 cannot come in the way of maintainability of the writ application of behalf of the petitioner Prof. K.P. Sharma in any manner; other two writ applications were already pending when Writ Petition No.1008/2011 was permitted to be withdrawn. Withdrawal of writ precluded Ram Prasad, not other persons from filing writ application.

Discussion: Public Interest Litigation (PIL) and the Public interest

On one hand the provision of PIL empowered common people to demand clarification, justification and accountability from the government, whereas on the other hand it crippled the functioning of the governing organizations to a higher degree. Interestingly, of the fourteen lakes studied across four cities, it is found that most of the lake governance approaches are being brought to the courts through PILs by local NGOs and CBOs. Some of the government officials remarked that they spend several hours in the court proceedings which do not lead them anywhere except waste of time and money of the government (indirectly people). People should demand for the maintenance of the lakes. There are no perfect solutions in the world. But atleast the ones that show positive results must be appreciated by the people. The dilemma is: what and how should people be involved in the governance processes so that their involvement facilitation the process instead of blocking?

Inter-alia 23, 31

(23) That the state or its tendering authority is bound to give effect to the essential condition of eligibility stated in the tender document and was nor entitled to waive such conditions. Since KGK Enterprises was not fulfilling the eligibility condition, its offer ought to have been rejected at threshold, but condition was relaxed and its bid was accepted. Thus, action cannot be said to be based on bonafide reasons. It was wholly unreasonable and impermissible. It was not open to waive condition, though it was open to scrap entire process as laid by Apex Court in Shrinmit Utsch India Private Limited & anr. V/S West Bengal Transport Infrastructure Development Corporation Limited & ors.(supra).
(31) That there was no rhyme or reason to even exempt payment of stamp duty. The decision appears to have been taken in order to benefit the licensee.

Discussion: Conditions of eligibility

As court orders are expected to be respected, it is also important to respect the collective decision made by the contracting organizations. However, it is important to realize that individual benefits must not be made at the cost of organization’s benefit. If such situations exist, then the individuals involved in contracting must be questioned and not the entire organization. In a situation top officials from several organizations are engaged in making a collective decision, it is hard to believe that the licensee is the only beneficiary. And, if we go by logic that everyone in this collective decision is corrupt and wrong.

4. CONCLUSION AND RECOMMENDATION
If the case is considered for public interest and if the order is made on public interest, then the first reactions are: the document is too long for common man to comprehend and react; the language used is in the limitation of the legal language, however such public documents must be meaningful and comprehensible; too many repetitions does not really tell more. From the content of the case, the case reflects personal conflict rather than a conflict occurring only with the social and ecological conditions of the Mansagar lake. The court is therefore expected not to get hostile to such situations and make a neutral decision. This is only possible if the court considers the current tangible improvements over last five years.

The order seem to have a prejudice over what has happened and overlooks some of the tangible improvements evident in the social and ecological conditions of the Mansagar lake environs over past few years; since the implementation of the multi-actor agreement to restore the Mansagar lake. The larger concerns are: should such ecological cases as this be fought with the same logics as that of civil cases; are our civil-natured courts and court experts ready to deal with such ecologically sensitive issues. It is for sure that the order will not do any good to the future of the social and ecological conditions of the Mansagar lake. Rather, it may set apathy for those several organizations including private organizations to indulge in such ecological activities as this. Again, works towards Mansagar restoration may take a back seat. Do the petitioners or the court have any plan for the same? It took years to build a plan and implement it. Un-doing those without any action plan will be a real pity for the Mansagar lake and its governance. The court should take these issues into consideration prior to crafting an order to undo the recent Mansagar lake restoration activities. The order could have been constructive, considering the tangible improvements, with more instructions on monitoring and evaluation of the performance.

Scientifically, every lake and its ecology has a particular natural life span. In urban context, the life span is heavily dependent on the existing social system, particularly regulatory rules and cultural norms. The legal system is a crucial part of the social system. It has a far reaching impact on the social system. Therefore, courts must look at such cases beyond the question of the legality. It is important to take a fresh look at our judicial systems, more so to make sure that the orders do not lead to decisions against the ecology and that people at large do not exploit the legal system for such ecological sensitive issues into personal civil issues.
There are larger concerns to address linked to the Mansagar lake than the area of submergence. It would be more meaningful to fight over those concerns. Some of them that require immediate attention pertaining to Mansagar lake environs are:

- the waste water from the dyeing industries are mixing with the treated water in Brahmapuri nala.
- The waste water from Nagtali nala
- The denuding of the surrounding forest
- The first flush
- The poorly functioning STP and TTPs
- The downstream agony with waste water

It is time to consider private organizations equally as part of the society as are the government and other non-government organizations. The discrimination between private, government and community organizations (run by social-environmental activists) is not relevant anymore, particularly since the different forms of organization are humanly constructed organizations, contributing in their own way in urban developments and aspire for financial incentives to do so.

Finally, it is good that a democratic set up allows to question everything and anything. However, a logical cost-benefit analyses is a must before such legal interventions rather interruptions on the positive results such as the Mansagar lake restoration. If there is improvement in the lake, without government and common man doing much about it; for a common man it is the best choice to experience the improvements and then later pay to use the facilities. Bottom line is that the lake is improved from its previous situation according to the average population of Jaipur and it must be respected.

Where do we go with such environmental sensitive legal cases that take years to come to a decision? In the Mansagar case, it did not lead us anywhere. Where do we go from here now? It is time for the people of Jaipur to make a choice between: having a deteriorated 400 acre Mansagar (as it was in 2000) or have a restored 300 acre as it is seen today.
Acknowledgement

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About the Author

Mansee Bal, is a researcher-entrepreneur for development-environment. The current research on Urban Lake Governance in India is part of a PhD research project (commenced in Sep’ 2009) at the Department of Public Administration, Erasmus University, Rotterdam, The Netherlands. The research includes in-depth case study of Mansagar Lake Governance. It uses both qualitative and quantitative research methods and is inspired by Prof. Elinor Ostrom’s work on social-ecological systems framework.

ANNEX

Annex 1: The social-ecological factors that made Mansagar Lake potential waste water sink:
E1. Topographically the lowest point for northern Jaipur, so drainage and disposal by gravity.
E2. Geographically located at the verge of the city administration and outside the urban area.
E3. Existence of Brahmapuri and Nagatalai nala guiding natural drainage to the lake gave clues.
E4. Unpredictable monsoon leading to either shortage of water or flooding in the lake.
E5. The surrounding hills became a barrier to go beyond for waste water disposal.
S1. The land ownership with several departments of the government organizations. Lack of clarity of the beneficiary department and lack of allotment of the maintenance responsibility.
S2. Common perception and memory of the lake is a picturesque landscape that exists in the city.
S3. No direct use of the lake means no direct benefit from the lake leading to no direct cost reserved for its maintenance.
S4. Change in value of the lake from being water reserve for the Palace-fort uphill and the downstream village to a mere visual water body.
S5. There was no alternate solution for the disposal of the waste water. If not Mansagar, then other water bodies somewhere.

Annex 2: Final High Court Order Statements
http://hcraj.nic.in/jalmahal.pdf, accessed on 20 may 2012
1. That Mansagar lake Precinct Lease Agreement dated 22nd November, 2005 giving 100 acres of land on lease for a period of 99 years to respondent no.7-Jal Mahal Resorts Private Limited is declared illegal and void;
2. That similarly, Jal Mahal Leave & License Agreement dated 22nd November, 2005, appendix 14 to Mansagar Lake Precinct Lease Agreement is also declared illegal and void.
3. That Jal Mahal Resorts Pvt. Ltd. is directed to bear costs to be incurred in restoration of the original position of 100 acres of land in removing the soil filled-in by it and to restore back the possession to the RTDC who shall in turn give it to Jaipur Development Authority, Jaipur Municipal corporation and State.
4. That respondents are further directed to immediately remove all sedimentation and settling tanks from the Mansagar Lake basin and to realize costs from Jal Mahal Resorts Pvt. Ltd. and to examine restoring position of Nagtalai and Brahampuri Nalah (Drains) to their original position as realigned by RUIDP under Mansagar Lake Restoration Plan, in consultation with Central Government MOEF.
5. That respondents-authorities are further directed to monitor, maintain and re-fix boundaries of the Mansagar Lake in its full original length, breadth and depth in consultation with Central Government MOEF and not to reduce normal water level.
6. That all encroachments made in the catchment area of Mansagar Lake be removed immediately;
7. That wall erected by Jal Mahal Resorts Pvt. Ltd. in the lake is ordered to be dismantled and cost be realized from Jal Mahal Resorts Pvt. Ltd.

Annex 3: The Documents collected from fieldwork
Ground challenges to collective governance of urban lakes in India


Annex 4: Jaipur Declaration
http://www.ilec.or.jp/eg/wlc/wlc12/wlc12_nov2_jaipur_declaration.pdf

Realizing the urgency of actions needed at national, regional and global level to prevent the degradation of lakes & wetlands; the 12th World Lake Conference organized by the Ministry of Environment and Forests, Government of India at Jaipur during 29th October to 2nd November 2007, calls upon the governments and international organisations that:

1. Appropriate research methods be applied and data banks be established to facilitate execution of Management Action Plans,
2. Standards be developed for physical, chemical and biological parameters for lakes and wetlands,
3. Guidelines/protocols be developed on priority to control invasive aquatic species,
4. Innovative low-cost eco-friendly technologies be developed for enhancing the process of restoration of lakes & wetlands,
5. Active participation of all stakeholders including women and youth in local communities be encouraged through awareness programs for the conservation and wise use of water bodies, and traditional knowledge be blended with latest techniques for better results,
6. Rational public private partnerships be promoted in conserving lakes & wetlands and maintaining their ecological services,
7. Scientific studies be undertaken on priority and strategies for adaptation be developed to meet the challenges of climate change. Possibilities of linking Clean Development Mechanism (CDM) projects with lake sustainability be explored,
8. Strong institutional and financial mechanisms be developed for regional and international cooperation in management and restoration of lakes & wetlands,
9. An Asian Centre of Excellence be established with international assistance for promoting research, training & education, and development of appropriate technologies for sustainable management and restoration of lakes and wetlands,
10. Restoration and management of lakes & wetlands be promoted through twining arrangements with international support.

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