

Destroying our Wetlands*

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To say that we are destroying our natural environment in India is only to repeat the obvious. In cities, towns and even villages across the country, we have fouled up the atmosphere to make it almost impossible to breathe; we have polluted water bodies to make them unhealthy or even poisonous; we have injected all sorts of chemicals into the land to cause long-term loss of soil fertility and other problems; we have denuded forests and reduced biodiversity at frightening rates; we are allowing various kinds of hazardous waste, including e-waste, to collect without treatment so that it poisons everything around it. Evidence of the grim fallout of all this destruction piles up on a daily basis, as we realise that the “future” ecological apocalypse may not be so far into the future but may well already be upon us; and that the many ways in which we have fouled up our environment are necessarily giving rise to more inequality, poverty, material insecurity and social tensions.

But we just can't seem to stop. Almost inevitably, the requirements of private profitability and the specific interests of particular powerful players or dominant pressure groups seem to take precedence over what is due to nature, to future generations, or to the less privileged and powerful within society today. Oftentimes, it is in the name of “development” that such destruction occurs, but without any real thought about what such development is supposed to mean for the people in general, or those who will be most affected by the environmental destruction, or indeed whether it will be development at all in any meaningful sense. And in many other cases, it is simply the connections, lobbying power and other ability of particular private agents to “get things done” that leads to the most basic rules and accountability to be completely ignored.

It is not as if we don't know better, most of the time. We have all sorts of perfectly well-sounding laws and rules for protecting the environment. We have the requirement of environmental impact assessments for most large projects. We have large numbers of scientists and activists who can point out quite exactly the specific concerns and likely effects of particular actions, as well as provide alternatives. So when we allow such actions to continue anyway, we are the classic “gyanpaapis” who sin in full knowledge of what they do.

Examples of this proliferate, to the point when we are almost inured to such cases, and can barely muster up the necessary outrage. Even so, there are occasionally examples of such wanton acts of destruction that can still make us sit up in shock, raising the questions of “what can they be thinking? And how can they possibly get away with it?”

Take the example of the ongoing struggle in Rajasthan to control – and in effect destroy – land that had been classified as wetlands by the government earlier, but is now simply declared not to be wetland so as to allow the construction of a five-star hotel on it. This case brings out in sharp precision so much of the difficulty of ensuring adequate environmental controls, even in situations in which the environmental case appears to be “watertight”.

Wetlands are water bodies with a difference: they are places where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities that live there. They include swamps, marshes, bogs, riverbanks, mangroves, floodplains, rice fields – and also, crucially riverbanks and low-lying riverine islands.

Typically, wetlands contain a disproportionately high number of plant and animal species compared to other types of land forms. They are known to provide conducive habitat for fish and wildlife of different kinds, providing biological diversity and also food sources for humans. They are important for agriculture in many ways, including by helping to recharge groundwater. In both rural and urban areas, they fill crucial ecological functions: they trap floodwaters and prevent flooding in low-lying areas; they feed into downstream waters; they reduce pollution.

In India, the central government officially recognised the significance of wetlands by framing specific rules for them in 2010, under the Environment (Protection) Act of 1986. According to the Wetlands (Conservation and Management) Rules 2010, a wetland in India are defined as “an area on or of marsh, fen, peat-land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salty, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland.” The Rules also encompass the drainage area or catchment region of the wetlands as determined by the authority.

The Rules provide for the legal protection of wetlands, including by prohibiting activities like reclamation, industrial development, hazardous substances, solid waste dumping, sewage dumping and permanent construction on areas notified as wetlands. But here’s the catch: in more than seven years since these Rules came into force, not one area has been notified as a wetland under these Rules!

The consequences of this callous and enormous lapse are now being felt all over the country, as precisely the activities that are supposed to be forbidden are merrily undertaken on wetlands. And this is the concern in the city of Udaipur, Rajasthan, where a five-star hotel is being constructed on land that is clearly a wetland, in an island on one of the city’s lakes.

The lake in question – Udaisagar – was constructed around 1565 by Maharaja Udai Singh, founder of the city. Surrounded by Aravalli hills, it has a catchment of 31 square km. On this lake there is an island of around 8 hectares, which was under the tenancy of some peasants. More than three-fourths of the island lies below the high flood level. Since the island is partially submerged during the monsoons, the peasants would cultivate their land when the rain water receded, and in general it was a safe habitat for a wide variety of avian and aquatic species.

In 2008, a hotel company (M/s Vardha Enterprises) purchased the entire agriculture land of the island. While the lake and the island technically fall under the Master Plan of Udaipur city, the island is shown as agricultural and, not for commercial use. However, in 2009, the state government changed the land use for much of the island, and then the Urban Improvement Trust of Udaipur allowed 2.04 hectares of land to be used for construction of a hotel. This decision flouted several rules of the state

government regarding land use conversion, and even went against several Court orders.

Thus, a High Court judgement of 2002 stated explicitly that “all land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.08.1947 should be declared as government land. Any Conversions made after 15.08.1947 should be declared illegal. ... In the Government owned lakes and other water bodies, the khatedari rights of private persons in their submergence should be brought under ownership of the Government.” A subsequent Court order in 2007, directly relevant to the present case, gave specific direction for preservation of certain lakes situated in Udaipur city and further ordered that conversion and construction in and around lakes be completely banned. Then, while deciding the contempt petition arising out of the original litigation in 2012, the High Court quashed the orders relating to change of land use and conversion of the land in question, ordered demolition of the hotel construction and imposed a fine of Rs. 1 crore on the hotelier.

Surely this should be enough to settle the matter once and for all? No such luck, unfortunately. The company in question appealed to the Supreme Court, which in 2014 accepted the civil appeal and quashed the judgements of the Rajasthan High Court. The technicality used was that M/s Vardha Enterprises was not a party before the High Court, and that the land in question is not situated in either Pichhola or Fatehsagar lakes of Udaipur city. The Supreme Court further held that Udaisagar was not covered by the judgements given by the High Court in earlier cases and therefore there was no question of contempt. It is worth noting that the Supreme Court was able to go ahead with this despite this being a wetland, as it held that “in this instant case wetland rules do not have any force on the land in question because there is no relevant notification issued by the competent authority under the rules.”

We can only speculate on the reasons for state procrastination in notifying wetlands and obeying its own Rules, but the role of “lobbying” in various forms must explain part of the disproportionate favours (through sins of omission and commission) that have enabled such transgressions. At present there is a citizens’ movement to protest this, but if indeed the project does get completed, it will have severe long-term consequences for the ecology of one of Rajasthan’s most important cities, as well as the surrounding region. The tragedy is that the state government, the central government, and most disturbingly of all the Supreme Court of India, seem quite content to allow these adverse consequences.

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