Paddy is the most important crop of Kerala. Paddy lands in Kerala are typical wetlands. In India and in Kerala most of the paddy fields remain submerged in water. Waterless paddy fields are less. The Ramsar definition of wetlands brings within it paddy fields. But both under the Central legislation and under the State legislation regarding wetlands, paddy land is treated differently from wetlands. Under the State legislation paddy lands are treated with utmost importance. Their protection and conservation is comprehensively covered under the provisions of the Act. Combined reading of all these can give paddy lands a better protection like wetlands.

Till the recent past, land under paddy cultivation was tried to be protected mainly for food security of the country and to meet the food requirement of the region. After the independence all agrarian legislations enacted by the Centre

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1 Water, soil, and organisms are the main ingredients necessary to classify a land form as ‘wetland’.


4 See the Wetland (Management and Conservation) Rules, 2010 rule 2(g). Also see A. Ramachandran, B. Enserink and A.N. Balchand, “Coastal Regulation Zone Rules in Coastal Panchayath (Villages) of Kerala, India Vis-a’-Vis Socio-Economic Impacts from the Recently Introduced Peoples’ Participatory Program for Local Self-Governance and Sustainable Development”, 48 Journal of Ocean and Coastal Management (2005), pp. 632–653.

The reason stated is that paddy fields are covered under separate provisions of the Coastal Regulation Notification, 1991.

and states were directed towards this common goal of food security\textsuperscript{6}. These legislations exerted various controls over the use and conversion of paddy fields. Their objects reflected the needs of the community for the time being and ecological or environmental considerations were not part of the community consciousness at that time. However these legislations led to an indirect protection of paddy fields and promoted protection of environment. But these legislations failed miserably in preventing the conversion of paddy lands. There was mass conversion of the paddy lands for many purposes\textsuperscript{7}. Only in 2008 legislation with specific reference to protection of environment and ecology\textsuperscript{8} got enacted by the Kerala legislature. Now the ecological importance of the paddy fields is realized by both the community and government. Even after the 2008 Act conversion of paddy fields takes its toll. In this context it is necessary to analyse the state of the use of agricultural lands specially paddy fields in Kerala. It is also pertinent to examine the changes brought about by the Kerala Conservation of Paddy Land and Wetland Act, 2008. Confusions regarding the implementation of the Act are analyzed in the light of judicial decisions. An attempt is made to examine whether the land use regulations exercised over the paddy lands are adequate for sustainable development.

**Need for Regulation of Paddy Fields**

India is primarily an agricultural society. There is a strong linkage between land and social status of an individual. The facts reveal that, close to 70 % of the

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\textsuperscript{6} The Land Reforms Act, 1963 aimed at boosting agriculture and thereby ensuring food security. The Land Utilization Order, 1967 issued under the Essential Commodities Act, 1955, was a central order to boost the production of food crops in every region. The Land Development Act, 1964 and the Land Development Corporation Act, 1974, tried to boost the paddy cultivation by the joint attempt of farmers groups. Along with this the Travancore Fisheries Act, 1951 controlled the use of agricultural fields for the prone cultivation.

\textsuperscript{7} P.B. Sahasranaman, “Buffering Paddy Field”, Kerala Calling Cover Story (October, 2007).

\textsuperscript{8} The Kerala Conservation of Paddy Land and Wetland Act,2008, preamble.
population is dependent on land in myriad ways\(^9\). Therefore it is crucial to address the issue of land from quadrilateral angles that it provides livelihood, dignity, food security and ecology to millions of Indians\(^{10}\). India has the largest number of rural poor as well as landless in the world. Landlessness is a strong indicator of rural poverty in the country. Land is the most valuable, imperishable possession from which people derive their economic independence, social status and a modest and permanent means of livelihood. In addition to that, land also assures them identity and dignity and creates condition and opportunities for realizing social equality and social justice\(^{11}\). Among the many issues, conservation of paddy land for preservation of ecology is an important problem that could be redressed only through land use controls. Even though Indian agriculture claims to be self sufficient from the records\(^{12}\), the position of Kerala is different. Kerala depends on other states for food grains and vegetables. During 1950 production rate of paddy was 50% and now it is not enough to suffice even 15% of the population. The area under paddy cultivation shows a steep decline\(^{13}\). This has in turn affected the environment and the ecology of Kerala.

Land owners economic gain is the main dispute surrounding the land to conversion. But the loss of ecosystem is invaluable. The present rate of conversion shows that it may result in total disappearance of paddy fields in the near future. These areas would shrink to information which can be collected from internet or history books.


\(^{10}\) *Id.*, p. 76.

\(^{11}\) See the Draft National Land Reforms Policy, Department of Land Resources, Ministry of Rural development, Government of India (2013).

\(^{12}\) See the Draft Agricultural Policy of Kerala (2013).

Not only that, most part of the state, which receives an annual rainfall of about 3000mm and having 41 west flowing rivers, numerous backwaters and lakes, experience acute drinking water scarcity for about six months a year. When paddy land gets converted there occurs an abandoning of highly developed and complex wetland agro ecosystems. Irreversible transformation of the ecosystem takes place. The conversion benefits go exclusively to private owners but the suffering is of the whole community. Resource base for the future generation also gets destroyed. Legislations and enforcement machinery need to be activated with new weapons at least to conserve the remaining paddy fields. Judicial attitude also should attune to the legislative intent so that these laws get proper enforcement.

**Ecological Functions of Paddy Field**

Paddy lands perform a number of ecological functions. They functions as feeders of water aquifers and retain the ground water level of the area. They are the water reservoirs of the state. Destruction and permanent conversion of this ecosystem will threaten the water security. Another function of paddy field is from offering food security and biodiversity conservation. Paddy fields provide goods and services. These functions depend on their location, adjacent environment, water source and quality, its biological diversity and other characteristics. They maintain fertility and productivity. They undertake hydrological function. They provide habitat to plants, predators and microorganisms. Numerous economic services are also done by these paddy lands. Even though privately owned, this open access property is used for

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collecting grass, fodder, catching fish, gathering medicinal plants and collecting wild vegetables, materials for housing and handicrafts. The cost benefit of functions performed by paddy fields cannot be calculated with mathematic nicety.

**Status of Indian Agriculture and its Impact on Paddy Lands**

Indian agriculture has made tremendous swiftness since independence. Earlier country had repeated food shortages. It depended on food imports. But now India is self-sufficient and a net exporter of food grains. Improved production systems changed the goal of agriculture from sustenance to commercial. Since the inception of five year plans agricultural production has shown steep improvements. The statistics show that growth rate of food production has been well above population growth rate. This transformation in Indian agriculture has been made possible by technological development, adoption of improved policies, hard work of farmers, and by the support of governmental measures through various laws for observation in agriculture and allied activities. Agricultural legislations in the country were the legacy of British. But real efforts commenced only after 1947 to alter the economic condition of farmers and status of farming through legislative measures. The democratic governments of both state and Centre removed the unhealthy practices that existed to the progress of the agrarian sector. But governments could not attain objective of retaining the agricultural lands under the same status. In spite of all these positive changes in production, area under cultivation has shown sharp decline.

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18 An analysis of the following data, provided by the Directorate of Economics and Statistics, the Ministry of Agricultural, India, indicates two disturbing trends. Both the net area sown (Table 1) and the availability of grains (Table 2) have been diminishing.
Chapter 7  
Paddy Land Conservation

This adversely affected environment as a whole and particularly drinking water and breeding of many rare species of animals and reptiles.

**Impact of Agricultural Legislation on Land Use**

Earlier legislations after independence relating to agriculture improvements could be labeled into four groups. They are legislations to abolish intermediaries, tenancy reforms, ceiling of land holdings and laws relating land contribution to the land less people\(^\text{19}\). All these were closely connected to various land use controls over the holder of land. The abolition of Zamindari and similar measures helped actual cultivators. Situations in some north Indian state are examples. In these states Zamindars had large acres of holdings. But in Kerala holdings were comparatively small. Land reform measures fragmented small holdings of agricultural lands. Just after the reforms, production in agriculture had shown a sign of improvement. But country had to face severe famine immediately. This urgency led to the issue of the Central orders to state governments to cultivate land within its bounty. This order aimed to boost the production of food crops mentioned it. But the working of the order was a failure which could be observed from the later developments.

Similarly, to achieve the constitutional aim of social justice redistribution of land was felt as a necessity. Legislations were passed in almost all states to

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<td>Area Sown in Million Hectares</td>
<td>141.36</td>
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<td>141.17</td>
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Table above shows that compared to 2000-01, every year the agricultural land use has been reduced, with the exception of a slight increase in 2005-06 when 141.49 million hectares (349.62 million acres) were sown. Furthermore, when an average of index-row is computed and converted it into an equivalent of base year 2000-01, the results are 139.85. This means that the net area sown has been reduced from 141.36 to 139.85 millions of hectares in eight years or 188,750 hectares (466,400 acres) every year.

restrict the size of agricultural holdings. More than 1 million hectares of agricultural land was declared surplus which the government can distribute.\textsuperscript{20} To achieve this purpose, these legislations were included in the Ninth Schedule\textsuperscript{21} of the Constitution of India. This was the most important land use control measure exerted by state on the private land owners. This was for the common good of the society. In addition to these, the Bhoodan movement, collected land donated voluntarily by land owners for distribution among the landless\textsuperscript{22}. This attempt was subsequently supported by legislatures. This movement obtained sanction and approval by states through legislations and rules. This still continues through many action plans designed by states.

Another attempt in this stream was the Land Development Act, 1964, which tried to define the waste land and to bring these lands under various developmental schemes. This Act also tried to form the union of paddy fields\textsuperscript{23} to bring in the concept of collective management and administration of committees formulated to achieve the aim of food security. But how far these legislations could achieve their aim could be observed from the pathetic condition of paddy fields in Kerala. Along with this some other legislations such as the Travancore Fisheries Act, 1951 also contains prohibitions against conversion of paddy fields

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{20} \textit{ibid.}
  \item \textsuperscript{21} The Ninth Schedule which has relevance to Art.31 B has been added to the constitution by the (I\textsuperscript{st} Amendment) Act, 1951. It contains the enactments made by the legislature, the validity of which cannot be questioned in any court of law. By now it contains as many as 284 enactments included therein from time to time since the commencement of the Constitution.
  \item \textsuperscript{22} J. Drèze and A. Sen, \textit{Indian Development: Selected Regional Perspectives}, Oxford University Press, Delhi(1997), p. 203.
  \item \textsuperscript{23} The Land Development Act,1964, s. 7 A. See also A. Ramachandran \textit{et.al., op. cit.}, at p.542.
\end{itemize}
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for prawn cultivation. A license from the fisheries department is required for filtration and cultivation of prawns in agricultural fields\textsuperscript{24}.

The prestigious position occupied by \textquoteleft Nilams\textquoteright\textsuperscript{25}, were lost in the wake of time. Now there is an alarming increase in the number of pending application for title change of land holdings from \textquoteleft Nilam\textquoteright to \textquoteleft purayidam\textquoteright\textsuperscript{26} before various revenue authorities and even before the High Court of Kerala. All the legislative attempts for land use controls on paddy fields had good aims but there was poor enforcement. This legislation created various authorities for monitoring and regulating the activities in paddy fields. Apart from the increase in food grain production, none of them tried to protect the land under agriculture. Number of other legislative measures had also been made to facilitate land use and management.

The land-reforms measures attempted to rationalize the agrarian structure and the land-man relationship. Such a dynamic approach towards the reorganization of agricultural operations was essential for agricultural progress. This takes to the conclusion that some amount of property in any form is necessary for the self satisfaction and expression of individual. The legal measures adopted reflect this philosophy of property. It is, in this context, the agricultural legislations are viewed as an evolutionary process based on experiences of the past, difficulties of the present and a better vision for the future. But vision for future will be successful only on the wholesome development of agriculture. This not only means the rate in output increase but the improvement of the land and ecology related to agriculture.


\textsuperscript{25} They could be bought by paying highest amount rather than the purayidams.

The green revolution is the best example. Only a sustained growth will exist in the community for long. Immediate gain will be futile if in the long run it exerts such damage to the whole community and future generation. Now contribution of agriculture to the GDP\textsuperscript{27} of India has declined to 13.7\%.\textsuperscript{28} This is largely because of the rapid economic growth in services, industrial output and non-agricultural sectors in India since 2000.

Thus agricultural legislations aimed only for boosting agricultural production from land and had no direct objective of protecting the ecology of the area. But they served the purpose of protection of environment indirectly. But due to the failure in implementation later operations in the paddy fields exerted malady on the whole society. Position of Kerala requires a special mention. Kerala has changed its priority from agriculture to service. Analysis of agricultural legislations since independence shows the dismal state of Kerala’s agriculture. These earlier legislations which aimed to boost the production failed to go hand in hand with the land use controls exerted on the paddy fields. Exploration of land legislations in India shows that until the Stockholm Declaration, 1972, India was quite unaware of protection of environment. In the context of regulations on land use, the Land Utilization Order, 1967 deserves a thorough analysis through the judicial interpretations regarding its enforcement.

\textsuperscript{27} Gross Domestic Product.

\textsuperscript{28} As per latest estimates released by Central Statistics Office (CSO) the share of agricultural products/Agriculture and Allied Sectors in Gross Domestic Product (GDP) of the country was 51.9 per cent in 1950-51, which has now come down to 13.7 per cent in 2012-13 at 2004-05 prices. See “Agriculture’s share in GDP declines to 13.7% in 2012-13”, \textit{the Economic Times} (Aug 30, 2013), p.1, col.3.
The Kerala Land Utilization Order, 1967: An Analysis

The Kerala Land Utilisation Order, 1967\(^{29}\) was issued by the Kerala state government under the powers of the Essential Commodities Act, 1955\(^{30}\). The order had two main objectives such as to bring occupied waste or arable lands likely to be left fallow during a cultivation season with paddy or other food crops and to prevent the conversion of any land cultivated with food crops for other purpose. Exception to grant permission for conversion is vested with the District Collector\(^{31}\) or the Revenue Divisional Officers. It must be a written permission.

The State Government could direct every holder of land shall grow over such portion of his land food crops such as paddy, fish, sugarcane, vegetables, tapioca, yarn, tea, coffee, cardamom, pepper, ground-nut, cocoa and banana\(^{32}\). It is in addition to any crop holder had grown over such land\(^{33}\). The Collector is empowered to issue notice to the holder of paddy land to cultivate his land with paddy or other food crops within such period specified in the notice. If the holder doesn’t comply with the notice, Collector may, by order, direct and arrange for the sale by public auction of holders right to cultivate the land in question for a specified period. This period is ordinarily for three years\(^{34}\). Order specifically provided that lands under cultivation of paddy shall not be utilised for fish culture permanently. Clause 7 of the order empowers the Collector to call up on any

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\(^{29}\) Hereinafter referred to as KLUO.

\(^{30}\) Sub-section (1) and clause (2) of sub-section (2) of section 3 the Essential Commodities Act, 1955.

\(^{31}\) Revenue Divisional officer or Collector is vested with the power to consider the applications for conversion. This shall be in accordance with the KLUO and the standing instructions by the government. While approving the application they have to ensure the location and ecology of the nearby lands, irrigation facilities, scope of large scale conversions and the need of farmer for his home purposes.

\(^{32}\) See the Land Utilisation Order,1967,clauses 3 and 4.

\(^{33}\) Id., clause 2(4).

\(^{34}\) Id., clause 5.
person who appears to him contravening the provisions of KLUO to cultivate the land with such food crops and within such period as may be specified in the notice. If the notice is not complied with within the time specified, the Collector may, by order direct and arrange for the sale by public auction. The Collector can arrange for cultivation in certain other circumstances.

Penalties for contravention of any order made under section 3 of the Essential Commodities Act, 1955 makes the KLUO much attractive. Any person who contravenes any of the provisions in the KLUO is punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine. If a person is again convicted of the offence he shall be punishable with imprisonment for the second and every subsequent offence for a term which shall not be less than six months but which may extend to 7 years and shall also be liable to fine. In this context section 8 of the Act is also relevant which provides that any person who attempts to contravene, or abets the contravention of any order made under section 3 shall be deemed to have contravened that order. The Act provides for constitution of Special Courts by the State Government for the purpose of providing speedy trial of the offences under this Act. The Special Court consists of a Single judge who shall be appointed by the High Court.

Most of the measures adopted under the KLUO is purely related to land use controls such as taking away the right to use and enjoyment of the property sometimes even without considering the grievance of the land owner. This made negative impact in the minds of the people regarding the KLUO. There was a

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35 *Id.* clause 9.
36 The Essential Commodities Act, 1955, s. 7.
37 *Id.*, 7(1) (a).
38 *Id.*, s. 12 A.
popular ill feeling existed in the minds of people against the KLUO. Another reason of hatred against the KLUO was the implementation of land reforms and the wounds implemented due to this. People were worried that whether they would be parted forcefully from their property. The available ground for conversion of cultivated lands was only for residential purpose. There were no provisions about the means to boost the cultivation or the grant or aid from the government to help the farmers.

It is evident from the provisions of the Essential Commodities Act, 1955 and the KLUO, 1967 the Government is empowered to take action for bringing under cultivation any waste land or arable land for growing thereon of food crops including paddy. A District Collector or a Revenue Divisional Officer can direct any holder of paddy field to cultivate the field with paddy. In the circumstances, all the District Collectors were instructed to enforce the provisions of the KLUO strictly and to take stringent measures according to the Essential Commodities Act, 1955 against those people who contravene the KLUO. The Collectors are also requested to furnish a list of pending cases filed in various courts regarding violation of KLUO. But the machinery adopted to implement the order was vested with wide variety of duties and they were not in a position to curb the menace or prevent the massive conversion of paddy fields. Not only that the societal consciousness towards the protection of environment was scant in those times. The ecological functions of the paddy fields were not at all realised. All these cumulatively resulted in the steep decline of paddy fields under cultivation.

**Judiciary on Enforcement of Land Utilization Order, 1967**

Enormous numbers of writ petitions were pending before the High Court of Kerala, for conversion of agricultural land. At the inception of the KLUO, 1967 the total cultivated area of paddy field was estimated to be 8 lakh hectors. But
when the bill on Paddy Land and Wetland Conservation, 2007 was presented it was estimated that the land area left back is 2.8 lakh hectares.

**i) Object of Land Utilization Order**

The High Court of Kerala had the occasion to discuss the object of the KLUO,1967 in *Reliance Industries Ltd. v. The Commissioner of Land Revenue*\(^{39}\). The Court held that the paramount object sought to be achieved by the order was to ensure agricultural operations and cultivations. These are made compulsory by the KLUO,1967 and are carried out through the provisions to ensure availability of essential commodities.

**ii) Concept of Sustainable Development**

While deciding the case of *Kairali Swayam SahayaSangham v. State of Kerala*, the Kerala High Court tried to bring in the concept of sustainable development by allowing the removal of clay from the paddy fields\(^{40}\). The court ordered that immediately after the period of license for removal of clay the authority concerned should ensure that the paddy field is made cultivable and brought back to the original position. Therefore any permission to remove clay from the paddy field should not be dealt with casually.

**iii) Matters to be Taken in Account on Conversion**

In *Jayakrishnan v. District Collector*\(^{41}\) the Court considered the matters to be considered while disposing an application under the KLUO. The Court held that while considering the application for conversion not only the status of the land in question but the status of the neighbouring properties should also be considered. Possible detrimental effect of conversion of one property forming part


\(^{41}\) *Jayakrishnan v. District Collector*, 2008(4) K.H.C. 514.
of a larger cluster lands and the attendant ecological factors are to be taken into consideration by the competent authority.

In most of the cases claim for conversion is made due to lack of agricultural operations for more than 20 years. The nature of the petition itself shows that there is absence of implementation of KLUO by the government. After the enactment of legislation it was necessary to see whether it is properly implemented. There should be some mechanism to ensure the proper implementation\textsuperscript{42}. The Court discussed the issue of land lying without agricultural operation for more than 20 years. The Court said that while considering an application under the KLUO for conversion the authority should give due consideration to the provisions of the enactment. This was a subordinate legislation and meant to be implemented with seriousness. The Court reminded that these applications are not to be dealt casually.

\textbf{iv) Legality of Land Utilization Order after the Commencement of the Kerala Paddy Land and Wetland Act, 2008}

Whether the provisions of the KLUO are valid after the enactment of the Kerala Paddy Land and Wetland Act, 2008 was considered by the Court in \textit{Praveen K v. Land Revenue Commissioner}\textsuperscript{43}. The Court held that apart from the paddy land and wetland, the provisions contained in the KLUO still survives in respect of other food crops. Restrictions imposed under KLUO in respect of the food crops and conversion of such lands will be continued to be governed by the provisions contained in the KLUO. Now the procedure ordinarily followed by the

\textsuperscript{42} Ibid.

\textsuperscript{43} 2010(2) K.H.C. 499.
authorities is that the application will have to pass through both KLUO and under the 2008 Act\(^{44}\).

Thus it could be observed that since the time of inception the KLUO was challenged and severally violated. This is due to the lack of acceptance by the society and various impediments in the process of implementation. This leads to the analysis whether there is a tilting of property right to environment protection. Can the Doctrine of Public Trust\(^{45}\) come to the rescue of paddy lands? The judicial activism which India witnessed in 1980’s for the protection of environment has not operated with the same vigor in protecting the paddy lands and wetlands. Very often judiciary protected the violation of the KLUO. An active support from judiciary is highly necessary to protect paddy land in Kerala.

**Emergence of Legislation Bearing on Ecology**

After the realisation of the actual causes for the slow agricultural progress\(^{46}\) in India, government understood that second land reforms measures are necessary to protect the agriculture. Steep decline of paddy land did not occur as a consequence of some natural calamity. Different governments which ruled the State for sixty five years are responsible for the steady decline in paddy fields. They did not consider it important to prevent land conversion or foresee the

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\(^{44}\) The Kerala Land Utilisation Order, 1967, clause 5.


\(^{46}\) The low productivity in India is the result of the following factors: The average size of land holdings is very small (less than 2 hectares) and is subject to fragmentation due to Land Ceiling Acts, and in some cases, family disputes. Such small holdings are often over-manned, resulting in disguised unemployment and low productivity of labour. Overregulation of agriculture has increased costs, price risks and uncertainty. Government intervenes in labour, land, and credit markets. India has inadequate infrastructure and services. Irrigation facilities are inadequate, as revealed by the fact that only 52.6% of the land was irrigated in 2003–04, which result in farmers still being dependent on rainfall, specifically the Monsoon season.
consequences. Government policies were not suitably directed\textsuperscript{47}. The policies adopted by governments were the main reason for the disappearance of paddy fields. Moreover, consciousness about the sustainable development and environment were absent in earlier policies. In 2008 the Kerala Government has enacted a new legislation for complete prohibition on conversion of paddy lands and wetlands. The judicial trend also seems to be in tune with the legislature to achieve the objective of sustainable development.

**Back ground of the Kerala Conservation of Paddy Land and Wetland Act, 2008**

Drastic social transformation took place in Kerala since 1960\textsuperscript{48}. When there is a conflict between economics and environment, in a state like Kerala having more literacy rate, the balance always tilts in favor of the economics. But the state being the custodian of all property and protector of community interest may go with environment. The economic rationale of the private owners of paddy fields suggests the paddy fields to be converted for non-agricultural purposes\textsuperscript{49}. But no one is aware of the real long term impact of ecological and environmental imbalances that may result due to transformation of the paddy wetlands. The receding paddy land and the vanishing wetland in the state is a matter of serious

\textsuperscript{47} For example see the unnecessary burdens put on the farmers, through the Land Utilisation Order, 1967.

\textsuperscript{48} During the middle of 60’s there was opening up of employment opportunities in the Gulf region, the emergence of educated class and the increase in the salary and living conditions, the reluctance on the part of the Central and state governments in generating new employment opportunities relating to agriculture, developments in construction industry and emergence of land mafia. And similarly rail and road transport expansion which the people of the State keenly demand also need land. These reasons are not an exhaustive list of decline of paddy fields.

concern for the citizens. This made the state to come out with stringent measures and rules for protection of the community interest. About two thirds of the population does not have access to safe drinking water. More over the cost-benefit analysis is absent when the question of conversion is considered.

In this context, the Kerala legislature decided to enact a comprehensive legislation to protect and manage paddy lands and wetlands in 2007. This is done in tune with earlier agricultural legislations with more restrictions on the land use. The Act prohibits conversion of paddy fields and wetlands. But from the inception of the bill, rampant conversions and filling of paddy fields were reported. Even though there were criticisms against the legislation the law was enacted in 2008. Preamble of the Act reveals the need for enacting this specific legislation.

**Objectives of the Law for Conservation of Paddy Lands**

The twin objectives mentioned in the preamble are sustainable development and food security of state. Another new objective is protection of

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50 See Malayala Manorama news report dated 29-04-2014 Aluva, which says that the vehicles used for filling the paddy lands unauthorisedly will be seized and an amount equal to the value of vehicle will be charged from the owner of the vehicle for involving in such illegal activity.

51 The Kerala Conservation of Paddy Land and Wetland Act, 2008 was introduced with loadable objectives such as conservation of paddy land wetland in the state. But the problems at the inception are i) non constitution of implementing agencies ii) conferment of wide exemption power on the government to be exercised as discretion without laying down parameters and conditions for its exercise iii) provision for entrusting fallow paddy land to self groups chosen without any determining criteria for cultivation iv) penalty provision not preventive or deterrent v) non-inclusion of provisions relating to subsidy and incentives for encouraging farmers to cultivate fallow land vi) absence of provision casting responsibility on the state to make the land suitable for cultivation by providing the basic infrastructure facilities like irrigation, measures to prevent the entry of saline water by putting up bunds.


53 The Kerala Conservation of Paddy Land and Wetland Act, 2008. Its preamble reads as 'an Act to conserve the paddy land and wetland and to restrict the conversion or reclamation thereof, in order to promote growth in the agricultural sector and to sustain the ecological system in the state of Kerala.
the ecology of the state\(^{54}\). The Act defines paddy land\(^{55}\) and wetland\(^{56}\). If in an important question whether the property sought to be converted is paddy land under the Act. In a case the Kerala High court, held that the answer should be based on actual fact situation and not depending on the description of property as (Nilam) paddy field or wetland in the revenue records. It is difficult to assume that land cannot be used for any purpose other than as paddy field or wetland\(^{57}\). To understand the real fact situation the data bank preparation was made a bounden duty on the part of the committee constituted under the Act\(^{58}\).

The provision of the Act confines its operation to paddy lands and wetlands. Conversion or reclamation and removal of sand from those areas are prohibited \(^{59}\)except in accordance with the provisions of the Act\(^{60}\). In *Shahanaz Shukoor v. Chelannur Grama Panchayat*\(^{61}\), dispute related to land which could not be used for any purpose other than for which a paddy field or wetland could be used. It was held that statute operates on the basis of the facts as they existed on ground realties and not on any quality or type of land, depending on its

\(^{54}\) *Ibid.*

\(^{55}\) *Id.*, s. 2(xii) reads “paddy land means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy, cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals”.

\(^{56}\) *Id.*, s. 2 (xviii) reads “Wetland’ means land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterized by the presence of sluggishly moving or standing water, saturating the soil with water and includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and swamp forests but does not include paddy lands and rivers”.


\(^{58}\) See the Kerala Conservation of Paddy Land and Wetland Rules, 2008, rule 4.

\(^{59}\) The Kerala Conservation of Paddy Land and Wetland Act,2008, s.3, *Prohibition on conversion or reclamation of paddy land.*-(1) On and from the date of commencement of this Act, the owner, occupier or the person in custody of any paddy land shall not undertake any activity for the conversion or reclamation of such paddy land except in accordance with the provisions of this Act.

\(^{60}\) *Id.*, s. 3 (2) reads , “Nothing contained in sub-section (1) shall apply to the cultivation of any intermediary crops that are cultivated without changing the ecological nature of that paddy land or the strengthening of the outer bunds for protecting the cultivation”.

description in the title document. The definition of the terms 'paddy field' and 'wetland' in the Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities. It was shown that the land in question was surrounded by lands on which buildings were being constructed. A part of the land in question also had another building, with the approval of Panchayath. The Court found that there was no reason to hold that the petitioner had to obtain decision of committee under the Act to put the land to use for the purpose of constructing a building.

In *Poyil Sulaiman v. Peravoor Grama Panchayat*[^2] the dictum in the Shahnaz case was followed and said that the ground realities should be assessed by the authorities concerned. The mere description in the title deed cannot lead to rejection of the application for building permit.

**Protection of Farmers**

Government has realized the difficulty faced by farmers in paddy cultivation. This was one of the reasons why the earlier legislations were a failure. In the new legislation government promises to undertake suitable measures[^3] from time to time to assist the farmers to augment the production of paddy in the state. It is made a bounden duty of government to assist the farmers.

**Mechanism for Protection of Paddy Fields and Wetlands**

Societal acceptance is an important requirement for a legislation to survive. Laws which do not promote the happiness people are liable to be rejected. One of the mechanisms to overcome this threat is to make a participatory approach in the

[^2]: W.P.(C) No. 34619 of 2009-V.

[^3]: The Kerala Conservation of Paddy Land and Wetland Act,2008. s.4 reads , Incentives for paddy cultivation.- The Government shall take suitable measures from time to time, in order to assist the farmers to augment the production of paddy in the State.
implementation of the legislation. This method is attempted in the present legislation. The unique mechanism adopted under the Act is that three tire committees\textsuperscript{64} are set up. Every activity is done with the involvement of public.

The committee designed is vested with enough powers\textsuperscript{65}. They are invested with the power to participate, prepare data bank, inspect the lands, and find the reason why lands are not cultivated, inquire the violations or non compliance, accept the complaints from the public regarding the violation and suggest measures to revive the culture of cultivation. They may recommend conversion\textsuperscript{66}. But this power is also limited\textsuperscript{67}. The members of the committee do important functions under the Act. Apart from this, the local committee is also entrusted with the duty of finding out the data of paddy land reclaimed in contravention of the provisions of any law for the time being in force. All these reports are to be submitted to the Revenue Divisional Officer of the area. The data banks prepared in relation to this Act is a public document and it can be inspected by the interested public. Thus the local level monitoring committee monitor the implementation of the provisions of the Act. Any willful omission to take action under the Act is deemed to be an offence\textsuperscript{68}.

The question raised in \textit{Firose v. Revenue Divisional Officer}\textsuperscript{69}, was whether in the absence of notification contemplated under Sec.5(4)(i) of the Kerala Conservation of Paddy Land and Wetland Act, 2008 a person who converts paddy land or wetland could be prosecuted under the Act. A penal

\textsuperscript{64} The Kerala Conservation of Paddy Land and Wetland Act,2008, S.5 reads “ Constitution of Local level Monitoring Committee”.
\textsuperscript{65} \textit{Ibid.}, S. 5.
\textsuperscript{66} \textit{Ibid.}, s.5(3)
\textsuperscript{67} \textit{Ibid.}
\textsuperscript{68} \textit{Id.}, s.23.
\textsuperscript{69} (2011)11 K.L.C.3896.
consequence for conversion of paddy land or wet land would arise only if such land had been notified in the manner prescribed. The local committee has to prepare the data bank with details of cultivable paddy land and wet land within the area of its jurisdiction. Then it is notified by the concerned local authority for the information of the public.

The environmental jurisprudence and the principles of sustainable development are reflected in the Act. The state level committee while dealing with the applications recommended by the local level monitoring committee examines whether any alternate land other than paddy land is available in that area. Along with this it has to assess the ecological changes that may occur due to such filling up of paddy land and a report regarding the same is to be submitted to the government 70.

A district level committee to take decisions on the application for reclamation of paddy land is also constituted under the Act. An appeal from the order of district committee is heard by the collector and his decision would be final 71.

**Conversion for Public Purpose**

Public purpose is given utmost importance under the Act. The power to make the decisions of reclamation for public purpose lies with the Government. But there are certain checks and balances in the exercise of this power. Before the exercise of the power the Government should be satisfied that there is non availability of alternate land and such conversion will not affect the adjoining

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70 The Kerala Conservation of Paddy Land and Wetland Act, 2008, s. 8.

71 Ibid.
paddy fields and the ecological conditions in that area\textsuperscript{72}. The area which can be reclaimed is paddy land only.

A total prohibition on reclamation of wetland is another feature of the legislation\textsuperscript{73}. Severe draught and problems relating to the drinking water is reported from many parts of the state of Kerala. The solution to this problem is maintaining the available wetlands.

An authorized officer is appointed\textsuperscript{74} to report on the violation of this Act and to take actions. He is vested with the powers necessary to exercise the functions under this Act. He is deemed to be a public servant. Another important feature is that if he fails to report or take action, he will be punished\textsuperscript{75}. The collector can reclaim or reconvert the land already converted in violation of the provisions of the Act. This is one of the most important powers under this Act\textsuperscript{76}.

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\textsuperscript{72} The Kerala Conservation Paddy Land and Wetland Act, 2008, s.10 deals with the Power of Government to grant exemption if such conversion or reclamation is essential for any public purpose. But the exemption shall be granted by the Government, unless the Local Level Monitoring Committee has recommended the conversion or reclamation and the Government are satisfied on the basis of the report submitted by the State Level Committee, that no alternate land is available and such conversion or reclamation shall not adversely affect the cultivation of paddy in the adjoining paddy land and also the ecological conditions in that areas.

\textsuperscript{73} Id., s. 11, Prohibition on reclamation of wetland on and from the date of commencement of this Act, the wetlands of the State shall be maintained as such and there shall be a total prohibition on reclamation of such wetland and removal of sand there from. Provided that nothing contained in this section shall affect the removal of slurry and mud to maintain the ecological condition of such wetland.

\textsuperscript{74} Id., s. 12 Appointment of Authorized Officers are officers of the Revenue Department not below the rank of a Revenue Divisional Officer.

\textsuperscript{75} Id., S.23.

\textsuperscript{76} Id., s.12 (2) reads “The Authorized Officer may inspect the premises to see the violation or prevent the violation of the provisions of the Act, He has the power to enter any premises or any place connected therewith. He can also require any person to stop any act in contravention of section 3 or section 11. He can require any person to furnish such information as he may consider necessary. He can collect evidence regarding the commission of the offence and sent a report to the Court of competent jurisdiction in order to prosecute the accused. Any person required to produce any document is legally bound to produce the same. If an officer authorized under this Act fails to take action on the basis of the report regarding the violation of the Act submitted by the reporting officer under section 7, he shall be deemed to have committed an offence punishable under section 23”.

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In Praveen v. Land Revenue Commissioner, the petitioner filed an application for permission to convert a piece of wet land under provisions of Kerala Land Utilization Order, 1967. The question was whether, after commencement of Kerala Conservation of Paddy Land and Wetland Act, 2008 an application filed by Petitioner for constructing a residential building was maintainable. On a combined reading of the provisions it was held that the application of the Act is confined to paddy land and wet land alone. The owner or occupier or the person in custody of any paddy land should not undertake any activity for conversion or reclamation of such paddy land, after coming into force of the Act. But there is a total prohibition of reclamation of wet land and removal of sand there from after the commencement of the Act except the removal of slurry and mud to maintain the ecological condition of wetland. There is also a provision for making application for permission for reclamation of the paddy land for construction of residential building to the owner of the paddy land. Such application has to be considered by the District Level Authorised Committee on the recommendation of the Local Level Monitoring Committee. If the reclamation should not adversely affect the ecological condition and cultivation in the adjoining paddy land. The owner of the paddy land should not have suitable land in the district. The construction is proposed for own purpose and such paddy land is not situated surrounded by other paddy lands. The Government has also freedom to grant exemption subject to some conditions. The Act totally prohibits conversion or reclamation of wet land and removal of sand there from. There is a total prohibition of reclamation of wet land on and from the date of Section 13 of the Act governs power on the District Collector. “The Collector may take such action, as he deems fit, without prejudice to the prosecution proceedings taken under the Act, to restore the original position of any paddy land reclaimed violating the provisions of this Act, and realize the cost incurred in this regard from the holder or occupier of the said paddy land, as the case may be, so reclaimed after giving him a reasonable opportunity of being heard.”

78 The Kerala Conservation Paddy Land and Wetland Act, 2008, ss. 1, 2, 4 and 5.
commencement of the Act. It was held that the land in question was a *paramba* and not a paddy field as defined in the Act, 2008. It was not a property as defined under the KLVO, 1967. Therefore, there was no need or necessity to seek any permission either under KLVO, 1967 or under the Kerala Paddy Land and Wet Land Act, 2008. The Government may grant exemption from the provisions of this Act, if such conversion or reclamation is essential for any public purpose. The Local Level Monitoring Committee has to recommend the conversion or reclamation and the Government should be satisfied on the basis of the report submitted by the State Level Committee, that no alternate land is available and such conversion or reclamation would not adversely affect the cultivation of paddy in the adjoining paddy land and also the ecological conditions in that area. Though there is a total prohibition on reclamation of wetland and removal of sand there from, removal of slurry and mud can be undertaken to maintain the ecological condition of such wetland.

In *C.V.Lalu v. The Director of Mining and Geology*\(^{79}\) the question was whether mining sand from paddy lands is prohibited. It was held that the Act does not bring about a complete prohibition of mining sand from paddy fields. It cannot be done except on the strength of a specific permission granted in that behalf by the competent authority. An enquiry was ordered to be conducted by the Revenue Divisional Officer as to whether there is removal of sand from the paddy land or wet land, within his jurisdiction. If he finds that sand is being removed from wet land he should proceed to take action as contemplated by the Act. He should also take action to see that no sand is removed from paddy land except with authority granted on that behalf by an officer not below the rank of the Revenue Divisional Officer.

\(^{79}\) WP(C).No. 8452 of 2009(B).
Community Involvement in Protection of Paddy Lands

Community involvement in cultivation of fallow paddy land could be seen under the Act. If the holders of are unable to cultivate the paddy land, it could be entrusted to Padasekhara Samithi, self help groups, or kudumbasree units in those areas. This is one of the restrictions on the owner of land by state. It is reiterating the provision of the Land Utilisation Order, 1967. But there is wide gap between the provisions. Earlier there was practical difficulty in entrusting the land to another person who is interested in cultivation. The authority was conferred on the collector. He is always over burdened and the practical implementation of cultivation of fallow lands would be of great difficulty. This is overcome by the insertion of interested groups. In today’s society these groups play an important role in many functions. Thus this seems to be a possible solution to remedy the difficulty existed under the earlier enactments. Cultivation of other intermediate crops other than the paddy is left to the discretion of the holder of land. By this discretion the owner is allowed to retain the power of ownership over his land. The sustainable development principle is thus incorporated in the legislation. This would bring consensus among the holders of land regarding the acceptance of the legislation. The absolute ownership is with the holder himself. His right to sell the property is retained with him even when it is under cultivation as per the provisions of the Act. Thus for the greater community interest the individual is deprived of his one aspect of property rights for a period of time. This is for larger community interest. But there is a balance and his permanent enjoyment and disposal rights are retained. Thus the Act tries to strike a balance between individual interest with those of community interest. The entrusted person has only the right to cultivate and he will be evicted after the period of time. Thus it

80 The Kerala Conservation Paddy Land and Wetland Act, 2008, s.16 (5).
81 See the Kerala Conservation Paddy Land and Wetland Rules, 2008, rule (vi).
tries to remove the fear of permanent deprivation exerted by the Land Reforms Act, 1963. This was one of the reasons for the failure of many legislation which imposed restrictions on the uses of land.

Collector is given the power for the proper implementation of the provisions. The Act has enabled the authorities to take up cases of reclamation and deal with them appropriately. District collectors have initiated action against use of tipper lorries and earthmovers for paddy-field conversion. The administration had imposed fines on the owners of the vehicles for their involvement in reclamation.

The question in Kaipadath Property Development v. State of Kerala\(^2\), was whether section 13 confers wide and unrestricted power on the District Collector to order restoration of reclaimed paddy land and wet land. The court also considered whether he can exercise the power in the absence of notifying paddy lands and wet lands and whether he is exercising an unguided power. Evidently, if the property is a wetland, the District Collector is not having any jurisdiction.

Restoration of wet land is not mentioned anywhere in the Act even though there is total prohibition of its conversion. This is a lacuna in the Act. Wet land used for any paddy cultivation is not included in the definition of either paddy land or wet land. Paddy lands and rivers are specifically excluded from the definition of wetland. Evidently, no attempt was made by the District Collector to resolve this issue before the order was passed. He had proceeded as if the property is wet land, based on the fact that kol land is included in the list declared as Ramsar sites and by relying on certain other details. Consequently the power was invoked under describing it as wet land. He is not conferred with any jurisdiction as regards restoration to the original position of a wet land itself. It is pointed out that unless and until a notification is there, the District Collector is not able to proceed.

\(^2\text{WP(C).No. 10248 of 2010(E).}\)
Therefore it cannot be assumed that the District Collector can exercise such a power to direct reconversion and restoration of the property to its original position. It was pointed out that the non obstante clause contained will not help the District Collector to exercise such a power. The power given to the District Collector is evidently to restore to its original position as paddy land in case of violation of the provisions of the Act. After the data bank is prepared and notified the District Collector can find out whether there is any violation in respect of a paddy land. In the absence of any rules framed for exercising the powers the only conclusion possible is that he will have to rely upon such a notification to find out whether the area under dispute is a cultivable paddy land or wet land or a converted land. No other machinery have been provided to the District Collector to have any other source of information on these vital aspects to exercise the power.


The Kerala conservation of Paddy land and wetland Act, 2008 contain many provisions giving powers to beurocratic authorities. The Act is to a great extend is weak on institutions and institution building. The provision of the Act prohibits conversion or reclamation of paddy land except in accordance with the Act. The grounds mentioned for the reclamation of paddy land, are public purpose and for construction of residential building for the owner of the paddy land. The Committee cannot recommend filling of paddy land of more than ten cents in a Panchayath or five cents in a Municipality or Corporation, for the construction of residential building for the owner. The Government also acts as an advisor to the farmers while there is no platform for knowledge base of farmers benefiting the farming community. Local level monitoring committee is constituted at Panchayath and Municipality level but the farmer participation is limited to 3
members. No local authority can grant any license or permit for carrying out any activity or construction in a paddy land or a wetland converted or reclaimed in contravention of the provisions of this Act. Access to an uncultivated paddy land or wet land could be given by the owner of the land or the government to a new farmer if existing owner doesn’t not cultivate. The penalty for the violation of the Act is imprisonment for a term which may extend to two years. Minimum punishment is six months. Fine up to one lakh rupees can also be imposed.

The major objective of creating a resource management policy would be sustainability of resources and livelihood protection of stakeholders. The Act is defined on those lines. However there is a gap on the hope and reality. The focus of the Act is to bring more government control over resources. The Act completely disregards the existing community arrangements which would have been created for sustainability of resources and livelihood security. This is evident as the Act explains more on the roles and responsibilities of government officials and their constitution of committees for execution of the Act rather than policies for strengthening institutional arrangement which will ensure resource sustainability. It could be found that the stake holder’s of these common properties hardly have any role in resource management and the implementation of the Act. They are mere takers and there is no platform for expressing their concerns as their participation is limited to the committees which control and command the resources. The question is whether this act as an incentive for farmers to depend on government machinery for livelihood protection. Does this change of personals of government machinery will help to ensure sustainability of resources? But this can hardly take place. It’s a kind of division of interest on same resource pool happening out here. Logically without community participation; management and maintenance of these resources will be costly. This may end up in collapsing the control mechanisms introduced by government and
end up leaving the resources in the hands of some mafias. This Act should contribute to the idea of good governance. The good governance principles like participation, accountability, transparency and legitimacy should be promoted. From the institutional stand point, the Act centers around access and appropriation without much focus on collective action and monitoring. Even if they are minimally touched, the government machinery doesn’t have the infrastructure to implement the same. Hence though access is there, it has limited concern on livelihoods of stake holders. Removing the community from resources management could lead to discarding centuries old best practices

**Conclusion**

There are certain questions while deciding the priority for cultivation. What are the other crops which do not affect the nature of paddy fields? It relates to environmental protection. Under the shield of seasonal crops certain *Kole lands* are being permanently converted to aquaculture areas. These result in serious ecological problems. This makes saline water intrusion into water aquifers creating drinking water shortage in the surrounding areas.

While analyzing the role of judiciary there is absence of positive activism on the part of the High Court to incorporate the principle of sustainable development, while dealing with the cases under this Act. The Court allowed some violations\(^83\). This may become precedents in t subsequent cases.

This Act is under operation now. But rampant violations are reported by media’s every day. Even in the name of the public purpose certain violations takes place. A small state like Kerala having three international airports tries to fill large

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extent of paddy fields for establishing a fourth one. The question is whether Kerala need a fourth one at the cost of losing a large area of wetlands and paddy lands? The land mafia plays a great role which could not be controlled even by the stringent provisions of the Act. As many other pieces of legislation, this legislation is also is not free from defects. One of the recent proposals for development of projects on reclaimed land, came up for official consideration. It was for establishment of a golf course, a hotel, and luxury resorts in the Kuttanad area of Alappuzha district. The project, if sanctioned, aims at reclamation of 180 hectares of wetland, named Methran Kayal\textsuperscript{84}. What are the developmental priorities deserves consideration. Even Kuttanad, the granary of Kerala is not spared. The area under paddy in this region has shrunk to around 37,000 hectares from around 55,000 ha. The Kayals are being reclaimed for converting them into resorts, townships and golf courses. The “Rani kayal” included in the Rs1,860-crore Kuttanad package created by M.S. Swaminathan Research Foundation, in order to bring it back to paddy cultivation, has gone into the hands of a major private group engaged in financial and tourism business. Thus the provisions are not implemented in its letter and spirit. There are no provisions under this Act to make the whole community aware of the need for conservation\textsuperscript{85}. But there are certain hopes. It shows that people are becoming more and more vigilant in protecting and bringing up a life style in tune with the nature or bringing back the traditional life style.

Before implementing a legislation of controlling land use or exercising control over property rights, mass awareness is to be created. Environmental

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\textsuperscript{85} Conservation of paddy lands is necessary because of the various ecological functions of paddy fields. This cannot be performed by any other area of land. For more details see G.K. Nair, “No Food, no Water in Lush Kerala”, \textit{Times of India}, Ernakulum edn. (March 7, 2013), p.4, col.5.
\end{footnotesize}
awareness and the need to protect ecology should be given utmost importance. Creation of farming culture in the society is necessary. Farmers should be given respectable position in the society. The youth should be made aware of the ecology. Only by the community awareness and acceptance such legislation could survive. National policies should be more farmer oriented. Agricultural subsidies and the promotional measures for the farmers are to be made clear. Every type of assistance, technical and scientific should be given to them. Unsustainablility in agriculture should be removed. Price escalation and the market forces must be controlled to help farmers. Farmers should not be put to a loss at any cost. All round prosperity of the farmers are to be ensured. They should be given more infrastructure facilities to fulfill the entire community aspirations. More over the governments should have the will to strictly implement the provisions\textsuperscript{86} of the Acts. Agricultural services are to be strengthened to protect the farming community and paddy fields.

\textsuperscript{86} The principle of cost- effect analysis and impact study are to be made mandatory duty of the committees involved in taking decision regarding conversion.
Inland wetland ecosystems are cradles of biological diversity. They provide water and primary productivity. Countless species of plants and animals depend for their survival in these areas¹. Inland wetland includes different types of land situated between marine wetlands and forest wetlands. A comprehensive definition of inland wetland is lacking. Analysis of Ramsar definition and the Wetland (Conservation and Management) Rules, 2010² gives a picture of the areas covered under the term. Understanding of the term ‘inland wetland’ is highly necessary to make a proper study and evaluation. Improper use or abuse of inland wetlands leads to a number of disasters to the ecosystem and environment. Causes of deterioration are to be analysed to devise a mechanism for control of wetland degradation. There are some central and state legislation bearing on conservation and protection of inland wetlands. Certain provisions under those legislations help to protect these areas. There is a need to identify the legislative measures to prevent the threats and to upgrade these areas. Specifically protection of rivers, river beds, river banks and lakes are assuming great importance as primary source of drinking water to the increasing population. Sand mining has become a major problem. In spite of strong controls this menace still continues. Administrative and legislative measures bearing on the inland wetlands need analysis. Various enforcement mechanisms
