Irrational and haphazard land use attracts severe criticism from several quarters. Several problems are involved in land use. Rational land use method can promote inclusive use of limited and unexpandable resource\(^1\). Interests of all stakeholders are to be taken into account\(^2\). Owner of land should use the property in a way conducive to the general expectations and legitimate demands of the society\(^3\). Even if the land is held by government predominant view is that land should be treated as community property\(^4\). Environmental awareness and land use controls have become a controversial subject\(^5\). In India land filling, land conversion, removal of minor and major mineral resources and activities within the forest are some of the hotly debated issues. In this context a study to explore the law regulating land use controls especially environmentally and ecologically important lands become significant.

**Relevance and Importance of Study**

Land is a significant resource over which proprietary rights are recognised\(^6\). Nuisance created through various land use was tried to be avoided

\(^1\) See the Draft National Land Utilisation Policy, Department of Land Resources, Ministry of Rural Development, India (2013).
\(^2\) Ibid.
\(^3\) Agarwal and Anil “Ecological Destruction and the Emerging Patterns of Poverty and People’s Protests in Rural India”, 35 Social Action, (1985), pp. 54-80.
through the common law controls\textsuperscript{7}. Whether the utility of the activity outweighs the environmental consideration was the consideration before the court. A standard definition\textsuperscript{8} of nuisance could meet most of the problems relating to land use. Later on, planning and zoning laws brought in major changes. Health, safety and facilities of others attracted land use controls\textsuperscript{9}. After the Stockholm the sphere of government interference increased. Several legislations were enacted. Existing legislations were modified. These come in conflict with the interests of different sections of society. Coastal Regulations\textsuperscript{10} and high range protection\textsuperscript{11} are manifestations of such unrest. A systematic study on these issues is of current interest. Exploring of some areas in this respect is also relevant in this respect.

\textsuperscript{7} \textit{Lunda v. Matthews}, 46 Or. App. 701, 613 P.2d 63 (1980).

In this case a cement plant was held liable for emitting debris, dust, and fumes that encompassed a landowner's house and aggravated his bronchitis and emphysema. The court reached this determination despite arguments that the landowner's illness made him more vulnerable to debris and dust than persons of ordinary health. The court also held that the cement plant could not escape liability merely because it was complying with state pollution standards.

\textsuperscript{8} Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. See the California Civil Code, s.3479.


\textsuperscript{10} See the Coastal Regulation Zone Notification, 1991(hereinafter referred to as CRZ Notification, 1991).

\textsuperscript{11} The Gadgil Committee report could have adverse effect on mafias. Due to this when the report was first made public; there were a lot of protests against it. These protests came from the sand mining and quarrying lobbies in Goa. Farmers were freighted by the mafias in Kerala. They were informed that the Gadgil report is against them, and that they will lose livelihood if its recommendations are implemented. This resulted in many problems in Kerala. For more details see http://www.downtoearth.org.in/blog/western-ghats-lessons-in-protection-43735 visited on 10-10-2014.
Reason for Confining the Studies to Protection of Wetlands

Land use controls are abundant and legislations relating to the same are also numerous. An exhaustive study of these laws is beyond the scope of a thesis. Thus a limited area alone is selected for study. Wetland protection is identified as one of such because of environmental and ecological significance attached to those areas. No comprehensive study or analysis over this area is attempted in India. Thus a pioneering study is undertaken in this area.

Rationale for Land Use Controls

Land is a limited resource. It is useful to everyone. Recognition of proprietary right evolved to promote social interest. This could be gathered from the history. Ownership of Land was a grant from government. Usually it was not based on the labour of each individual. Land is to be used for providing maximum interest to all members of the society. Common good for stakeholders is to be assured. Due significance whether given to all stakeholders is an area of debate and analysis.

Object

Control over land use constantly regarded as encroachment over rights of individual land owners. People desire the unrestricted use on shared resources. To protect the environment certain minimum restrictions and regulations are necessary. In India these land use regulations should strike a delicate balance between the individual and social interest. Being a limited resource, land is to be handed over to the future generations with the same quality existing today. To achieve this goal, improper handling and abuse of land resource is to be avoided. So the study aims to examine how far, different stakeholder interests are assimilated in land use regulations in India and also to see, whether the present regime is conducive to the sustainable land use pattern or not?
Chapter 1  Introduction

Land Use Controls with Special Reference to Wetlands

Research Problem

The present study tries to analyze whether land use control measures adopted for the protection and conservation of land, especially wetlands in India are enough to achieve sustainable development and whether they are in tune with the international standards. To carry out the study in a systematic manner researcher has formulated various sub questions in each chapter.

Research Questions

1. Need for land use regulation especially regulation on wetland use.
2. Can proprietary rights of land owners be restricted?
3. What is the constitutional scheme for regulation of land use?
4. Common law principles relating to land use controls in India.
5. Need for special legislation on conservation of wetlands – national and international approach.
6. Whether the coastal wetland use promotes conservation of ecological resources and help to promote integrated coastal zone management schemes?
7. Whether the laws for promoting estuaries and mangroves in India are capable of ensuring conservation of living resources, flora and fauna.
8. Whether the river bed protection measures adopted in India help to prevent death of rivers in the long run?
9. Whether the laws relating to high altitude and high land wetlands are in conformity with the international aspiration.
Hypothesis

Indian legislations on land use are not comprehensive for conservation of wetlands. This hypothesis is sought to be examined in this study.

Limitations of Study

Legislations, case laws, international documents in this area are collected and studied. Comparative study is made with the laws prevailing in three other countries namely Canada, England and the United States of America. General land use controls are not examined in detail. Land use controls are abundant in India and legislations relating to the same are numerous. An exhaustive study of these laws is beyond the scope of a thesis. So a specific area alone is selected for the study. Wetland protection is identified as one important area involving environmental and ecological significance. The researcher has not found any comprehensive study and analysis in this respect. Thus a pioneering study is undertaken in this relevant area.

Research Methodology

This is a doctrinal study based on primary and secondary sources of legal data. The primary sources are Indian legislation, rules and bye-laws, case laws from Indian, American, British and international courts, international instruments such wetland protection conventions and subsequent developments, international environmental instruments, committee resolutions and guidelines, guidelines of international organizations in relation to various forms of wetlands and various commission reports. The secondary sources are books, journal articles, conference papers, annual reports, web-articles, news-paper and magazine reports. The theories and opinions of many legal scholars are also examined to find out whether they are supporting the existing laws.
Chapter 1  Introduction

Land Use Controls with Special Reference to Wetlands

Scheme of Study

Land use regulations existed since the inception of society. Regulations assumed changed meanings at different period of history. This mainly intended to protect the common interest of society\(^\text{12}\). Changed circumstances demanded more controls\(^\text{13}\). Due to the scarce nature of resources, land use regulations are very crucial\(^\text{14}\). This is more critical in the case of ecologically important areas like wetland ecosystems. At the same time the developmental needs of the society cannot be ignored. Irrespective of the ownership pattern existing in the society each stakeholder has a right over this invaluable gift of nature\(^\text{15}\). The dilemma is regarding the sustainable utilization of land resources.

The concept of land use can be understood from various perspectives\(^\text{16}\). Treating land as a common resource at the disposal of society always comes in conflict with the perspective of individual owner who treats land as a profitable commodity in his custody. Today land use control of any type is looked upon with curiosity by all sections of society. Moreover, land use controls are an important element of environmental protection. There are many international attempts to protect land. Earlier concept of res nullis is rejected and the concept of common heritage of mankind is recognised now.


\(^{14}\) Town and country planning legislations, environmental legislations and land use legislations places many controls over property rights.

\(^{15}\) Eric Freyfogle, an American scholar said that "a new property jurisprudence … Property use entitlements will be phrased in terms of responsibilities and accommodations rather than rights and autonomy. A property entitlement will acquire its bounds from the particular context of its use, and the entitlement holder will face the obligation to accommodate the interests of those affected by his … use" See (E.T. Freyfogle, “Context and Accommodation in Modern Property Law”, 41 Stan. L. Rev. (1988), p.1529.

Chapter 1  Introduction

Since the adoption of Ramsar Convention on wetlands in 1971\textsuperscript{17}, world community is trying to achieve wise use of wetlands through various attempts. The Indian position is much behind compared with other developed countries. India has enacted the Wetlands (Conservation and Management) Rules only in 2010\textsuperscript{18}. It is not comprehensive in nature\textsuperscript{19}. It does not cover all type of wetlands in the country. In the implementation level\textsuperscript{20} also the working of wetland rules do not show much improvement. Centre–state conflict in the management of these resources poses another problem. This study tries to analyze the legislative framework existing in India regarding the land use controls on different types of wetland.

This work is divided into ten chapters. The introduction chapter gives the outline of the area of study. This gives an overview of the existing scenario on the land use controls, especially the wetlands.

Chapter two gives an analysis of historical evolution of land use controls. Comparative analysis with different legal systems is attempted in this chapter. Development of land use controls based on the property concept is examined. This chapter gives an overview of the general area of land use controls in India. Analysis of historical evolution shows that land use controls changed from time to time. This was done mainly to protect the interest of society. In earlier days laws

\textsuperscript{17} The Convention on Wetlands of International Importance, Especially Waterfowl Habitat, 1971. It is an intergovernmental treaty which involves the frame work for national action with international co-operation for the conservation and wise use of wetlands and their resources.

\textsuperscript{18} By the combined reading of sections 25 and 3(2)(v)(1) of the Environment (Protection) Act, 1986, the Central Government made the Rules for protection and conservation of wetlands.

\textsuperscript{19} The Wetlands (Conservation and Management) Rules, 2010, r.2 (g) defines wetlands. It resembles Ramsar Convention, 1971 but differs in some aspects. It offers a wider definition. Under the definition itself, wetlands determined by authority is ambiguous. Wetlands under private ownership are not taken care of. Rules lists out regulations on land use and shows some overlapping areas. But no proper answer could be discerned from the provisions.

\textsuperscript{20} \textit{Id.}, r. 7.
perpetrated the interest of the ruling classes\textsuperscript{21}. With the emergence of welfare state the Constitution set out the goal of an egalitarian society\textsuperscript{22}. This tries to incorporate radical changes both in the property rights and the consequent land use controls. But the state as a machinery in protecting the society could not gain acceptance of people regarding controls on land use. This resulted in rampant violation of laws regarding land use and innumerable litigations were brought before courts. The evolution of land use controls in every society shows that it was really complex. The conflict is becoming aggravated in the changed situations. It has become a crucial area before the world community. Overview of the general land use controls reveals that they are scattered under the central and state legislations. There is a need for co-operation of various ministries and authorities of the Centre, state and local governments.

The focus of the third chapter is on the constitutional aspects of land use controls in India. This chapter analyses the existing constitutional provisions on land use controls especially the provisions relating to wetlands. It explains the legislative scheme regarding land use. The division of legislative power, and its conflicts are analyzed. Attempts made by judiciary to settle the dispute are explained. From the constitutional assembly debate on land, it is clear that the authority to make laws on land was given to states. This was for propagation of agriculture and for proper management at micro level. At that time land had not acquired prominence to promote environmental laws. But now the situation is different. Land, especially fragile ecosystem and certain biomes are treated as world heritage of mankind. Thus the resource has acquired a national and international character. A strong central policy with requisite control is the need of the hour.


\textsuperscript{22} The Constitution of India, 1950, preamble.
Land use controls in India are governed by the type of property relations followed. Indian Constitution envisages an egalitarian society giving more importance to societal considerations over individual’s right to acquire and hold property. The Constitution asserts that, land could be acquired for public purpose with or without compensation\(^\text{23}\). But at the same time the Constitution recognizes freedom of individual to hold and dispose of property\(^\text{24}\). The amount to be dispersed as compensation on acquisition always invited the criticism from judiciary\(^\text{25}\) and society\(^\text{26}\). During the constitutional assembly debate, Shri.Jawaharlal Nehru rightly pointed out that equity must apply to society and not to the individual who is deprived of the property\(^\text{27}\). The government must not encroach on the right of individual unnecessarily. Thus the concept of ‘public purpose’ remained as the criteria of acquisition. Concept of public purpose is defined as an unruly horse. Thus the question of feasibility of land use controls changed from time to time. After independence centre and states enacted many legislation to give effect to the constitutional dream of egalitarian society\(^\text{28}\). Land Reforms and land ceiling was the first measure adopted. This resulted in a tug of war between judiciary and legislature resulting in removal of property rights from fundamental right part\(^\text{29}\). Agrarian reforms were the primary aim of governments during those times. Now apart from agrarian reforms, environmental protection and sustainable development have assumed lead role. Considering the area of land use regulations, a comprehensive legislation is impossible in this area. Rather

\(^{23}\) The Land Acquisition Act, 1894 and related provisions of acquisition.

\(^{24}\) The Constitution of India, 1950, Art.19(1)(f) which related to fundamental right to property.


\(^{26}\) The Land Utilisation Order, 1967 was an utter failure due to its non acceptance by land owners.

\(^{27}\) The Constituent Assembly Debates, Vol.IX, p.1199.

\(^{28}\) The Land Reforms Act, 1963.

\(^{29}\) The Forty Fourth Amendment Act, 1978.