

**Memorandum-2 For  
Restoration, Reclamation and Conservation of Ponds for  
Protection of Customary Rights of Community, Environment,  
Ecology & Livelihood in Darbhanga District of Bihar**

<b>Submitted to:</b>	DM/Collector, Darbhanga, Bihar
<b>Prepared &amp; Submitted by:</b>	TALAB BACHAO ABHIYAN (TBA) C/o Akhil Bhartiya Maithili Sahitya Parishad Professor Colony, West of Dighi Tank, Darbhanga, Bihar, India, PIN: 846004.

**Contents:**

- i. Background/Memorandum 26 March 2013:
- ii. Representation by TBA Delegate to DM (2 April 2013):
- iii. Landmark Orders of DM, Darbhanga
- iv. Need for Memorandum -2
- v. People's Life with Pond
- vi. New Encroachment & Illegal Construction over Land of Historical Ponds
- vii. Some Cases of People's Protest & Struggle Against Ponds' Encroachment
- viii. National Water Policy (2012)
- ix. Bihar State Water Policy/ DRAFT 2: 10th March, 2010
- x. Bihar Public Land Encroachment Act, 1956 : Definition of Public Land  
(Letter to All Collectors by Revenue Deptt.(Land Reform), GOB, dated 23 March 1963)
- xi. Doctrine of Public Trust
- xii. Polluter Pays Principle
- xiii. Our Submission

**Copy to:**

- |  |                                 |
|--|---------------------------------|
| 1. The Hon'ble Chief Justice of Patna High Court | 5. The I.G of Police, Darbhanga |
| 2. The Chief Secretary of Bihar, Patna.          | 6. The D.I.G, Darbhanga         |
| 3. The Commissioner, Darbhanga                   | 7. The S. S.P., Darbhanga       |
| 4. The DDC, Darbhanga                            | 8. The S.P., Darbhanga          |

**Copy Enclosed:**

- 1. Annexure -1: Photos no 1 to 6 Cultural Activities Related to Pond.
- 2. Annexure -1: Photos no 7 to 20 Related to ponds' encroachment.
- 3. Annexure -2: Complaints letter & reference of Dumduma Pokhar
- 4. Annexure -3: Complaints letter & reference of Gami Pokhar
- 5. Annexure -4: Complaints letter & reference of Sarvajanik Pokhar, Ward no 13, Katahalbari
- 6. Annexure -5: Complaints letter & reference of Nasir Ganj Pokhar

## **i. Background:**

The twin town, Darbhanga & Lahiriasari, had about 250 ponds in 1989-90. People of these towns now face crisis of water in every year, particularly in summer season. More than 70% of hand pumps of the towns get dried. One of the reasons of growing depletion of ground water is that many ponds & water bodies have been converted into homestead and commercial land. Ponds are used for dumping municipal garbage, medical waste and sewage, which has aggravated water pollution of pond, environmental pollution and posing a serious threat to health and environment.

In this background, a memorandum was prepared and submitted by Talab Bachao Abhiya (TBA), Darbhanga to the District Magistrate of Darbhanga on 26 March 2013 with reference to the following orders, acts, policy and declaration:

1. The Hon'ble Supreme Court's Order on Ponds.  
(Case No. Civil Appeal 4787/2001 & 1132/2011)
2. The Hon'ble Patna High Court's Order on Public Lands.  
(CWJC No. 2290/19996, Order dated 16/10/1998)
3. The Bihar Municipal Act, 2007
4. The National Environment Policy (NEP)
5. The Environment (Protection) Act, 1986
6. The Water (Prevention & Control of Pollution) Act, 1974 and Amendments
7. The Forest (Conservation) Act, 1980, Amended in 1988.
8. The Wildlife (Protection), Act 1972, Amended in 1983, 1986 and 1991.
9. New Bio-diversity Bill – 2000.
10. The Declaration of 12<sup>th</sup> World Lake Conference

The following submissions were made in this memorandum for protection, restoration and conservation of ponds:

### **a. Filling with Earth & Construction Works:**

Many ponds in Darbhanga town and rural areas are being filled with earth. Buildings are being constructed over the pond's embankment (mahar) land and its bed, or its kachhair/ slope towards water or over the inlet & outlet of pond's water. Illegal encroachment and construction activities over the pond's land should be stopped.

**b. Fixing Boundary of Ponds:** Area of ponds should be fixed with some boundary-stone/indicators/pillar, with the help of map of CS survey to identify the encroachments as well as for preventing further encroachment of pond's land.

**c. Removal & Demolition of Encroachment:**

Ponds of Darbhanga town are highly prone to encroachment. Therefore, some historical ponds should be prioritised for fixing their boundaries and removing encroachments, as per orders of the Hon'ble Supreme Court and High Court of Judicature Patna. Harahi, Dighi, Ganga Sagar, Mirza Khan Talab, Lal Pokhar(near Naka 5), Dighi (KSDS University), Dighi (east of polytechnic), Chhathi Pokhar (Sundarpur) and Jathiyahi Pokhar (near Poonam Cinema) should be taken up for removing encroachment, in the first phase so that a message would go to the society for stopping of encroachment of pond's land. In the 2<sup>nd</sup> phase, encroachment from other pond's land should be removed.

**d. Eco-Park & Eco-Tourism Centre:**

In urban areas, wherever possible, Eco-Park, Eco-Tourist centre or Bio-Conservation centre should be developed. There are six huge ponds in Darbhanga town, which can be developed for Eco-park, provided that the illegal encroachment is removed.

**e. Wild-Life Protection:** In rural areas, restoration of forest on the pond bund should be done for providing natural habitation/forest-belt for local wild animals and birds. Efforts should be made to restore or make at least one or two natural habitation/forest-belt in every Gram Panchayat.

**f. Recharging & Refreshing of Pond's water:**

Refreshing of pond-water during rainy season is essential to maintain cleanliness of the pond. Gram Sabha, Gram Panchayats and Municipal Corporation should be involved with clear responsibility for protection of ponds, for revival of its inlet & outlet and for other aspects of the ponds.

**g. Sewage & Garbage:**

Town, domestic, hotel and hospital sewage & garbage should not be routed to the ponds. It should be stopped as soon as possible. Municipal Corporation should prepare a phase wise plan to stop the routing of sewage and garbage to the ponds.

**h. Non-Environmental Beautification of Pond:**

We must avoid massive brick and RCC works in and around the pond in the name of beautification of the pond. Harahi and Laxmisagar ponds are cases for examples. We should involve environmentalist and professionals if we plan for beautification of a pond. Apart from National Lake Conservation Plan and National Wetland Conservation Plan, Chennai, Karnataka, M.P., Orissa and other states, too, have developed their guidelines for protection & renovation of lakes/ponds/water body. We can take help of these guidelines to develop a guideline for our district and Bihar for beautification of ponds.

**i. Faulty Way of Renovation under MGNREGA Scheme:**

Presently, renovation of ponds under MGNREGA Scheme focuses only on digging out earth from the old pond. Pond has a well defined design, as mentioned above under the head of 'traditional

design & structure'. Present scheme completely ignores slope of water bed, slope of pond bund, planting of trees & plants on the pond bund, revival of inlet & outlet of ponds etc. Therefore, a clear and concrete guideline and instructions should be given to the concerned department and contractors for renovation of the pond.

**ii. Representation by TBA Delegate to DM (2 April 2013):**

A delegation of Talab Bachao Abhiyan/TBA, led by Dr. Ganapati Mishra met the DM of Darbhanga on 2<sup>nd</sup> April, 2013. The members of the delegation briefed him about the deplorable condition of ponds, growing trend of water crisis in the town, encroachment & illegal construction over the pond's land, dangerous level of pollution of the ponds due to dumping of garbage, medical waste and routing of sewage of the town. The DM, Darbhanga expressed his sincere and sensitive concern on this issue and assured the members of the delegation to protect & conserve ponds in Darbhanga.

**iii. Landmark Orders of DM, Darbhanga:**

Members of the TBA and citizens of Darbhanga are thankful to the DM of Darbhanga for his landmark orders regarding removal of encroachment of Makhanahi Talab/pond and liberating it from the grab of pond mafia after 25 years. Struggle of local people against the pond mafia got justice and victory after 25 years! Perhaps, this is the first pond in the town which has been saved from the pond mafia. Further, a pond near Municipal Corporation has been freed from the encroachers and pond of Bhagwan Das Muhalla drew special attention for beautification. Time to time statement of DM came into the different media for protection and conservation of ponds. All these progress further strengthen zeal and expectations of citizens of Darbhanga for protection of pond.

**iv. Need for Memorandum -2:**

In spite of several orders, statements, actions of DM of Darbhanga, for protection of ponds, pond mafias and greedy persons are still active to encroach pond's land and construct illegal structures over it. Surprisingly, Ganga Sagar, Dighi, Harahi and Dighi (east of Darbhanga polytechnic, bus stand), upon which administration has put focus to beautify and develop them as tourist centre, are still encroached and buildings are being constructed.

In this background, need has been felt to submit a fresh Memorandum-2 to the DM, Darbhanga to draw his kind attention to the following:-

- \* Some cases of fresh encroachments & constructions over the historical ponds' land during last nine months (from April, 2013 to Dec 2013) with photographs enclosed.
- \* Some cases of People's struggle and administrative response for protection of pond.

\* Doctrine of Public Trust, Polluter Must Pays Principle as enunciated in National and state Water Policy for protection and conservation of the ponds should be adopted for ponds of Darbhanga district.

**v. People's Life with Pond:**

Ponds play an important role in sustaining our cultural and religious heritage besides their other contribution related to environment, ecology, livelihood, recharging of ground water and coping with flood & drought which are highlighted in the previous memorandum.

Please see photos no 1 to 6 in Annexure - 1.

**vi. New Encroachment & Illegal Construction over Land of Historical ponds:**

There are six lakes/big ponds in Darbhanga town, whose names are Ganga Sagar, Dighi, Harahi, Sukhi Dighi (western side of Sanskrit university), Dighi (eastern side of polytechnic), Mirza Khan Talab and Manjil Sah Pokhar. They are about 500 to 1000 years old.

Talab Bachao Abhiyan (TBA) submitted a memorandum on 26 March 2013 to DM with its copy to the Hon'ble Chief Justice of Patna High Court, the Chief Secretary, Commissioner, IG and others. Ponds have been subjected to fresh (new) encroachments between April, 2013 to Dec, 2013, which is evident from the photographs of the respective ponds after 9 months as detailed in the below table and photographic plates number 7 to 13 placed in Annexure 1.

<b>SN</b>	<b>Name of Ponds</b>	<b>Encroachment &amp; Construction</b>	<b>Some photos for Evidence Please See Annex - 1</b>
1	Ganga Sagar  Khata No. 119  Khesara no. 865	On 8 spots at north-western, south-western and north-eastern side.	Photo no 7 & 8,
2	Dighi  Khesara no. 629	On 3 spots at western & one spot at northern sides.	Photo no 9 & 10
3	Harahi  Khesara no. 7274	South-west Corner	Photo no 11
4	Dighi , Near Polytechnic	On 3 spots at western sides.	Photo no 12
5	Manjil Sah Pokhar Shahjadpur and Majhiyam Village, Near Sonaki, Darbhanga Khesara no. 2	3 sides	Photo no. 13

## **vii. Some Cases of People's protest & Struggle Against Encroachment of Pond:**

People of Rahamganj Muhalla of Darbhanga town moved from office to office and court to court since last 45 years for protection of Baba Sagar Das Pokhar. The case of Baba Sagar Das pond started in 1970-71 in DCLR Court (**Case No. 42/1970-71**) and presently it is in the court of the Commissioner of Darbhanga (**case no 137/2013**). In the intervening period, the land mafia succeeded in encroaching the pond's land and filling the pond with earth. There is similar case of Dumduma Pokhar, Katahalbari ward no 13 pokhar, Makhanahi pokhar, Gami pokhar and Nasir Ganj Pokhar which clearly reveals that vested interests succeeded in encroaching pond's land in spite of several Acts and orders of the Hon'ble Supreme Court, High Court, Government, and Administrative Authorities.

SN	Name, Location & Area of Pond	Reference of people's protest & Complain and Administrative Response	Present Status of Pond
1	<b>Dumduma Pokhar</b> Ward no 26(old), Muhalla Dumduma, Back of Zila School, Darbhanga, Plot no 23067, 26105 (old), new plot 280, Area: 1 bigha, 7 katha, 13 Dhur	1. Community filed petition against the encroachment of pond to the DM on 18/7/2000, 8/9/2000, 15/3/2002,  2. Letter dated nil address to the Commisioner by Madan Mohan Jha, BJP leader for protection of pond.  3. CO, Darbhanga ordered through letter no 230 dated 13/3/2002 to Laheriasarai Thana for stopping of illegal activities of earth filling into the pond.  The complain letters/petitions have clearly mentioned the names of land mafia and pond's encroachers. <b>Please see Annexure 2 for Reference</b>	* Land mafia succeeded in converting the pond into commercial & homestead land by filling it with soil, managed to sell its land, construction over it is in progress.
<b>Killing of an Advocate:</b> Advocate Mohiuddin, Government Pleader, took strong position against pond's encroachment and he was killed by unsocial elements on 20 August 2002. After that people of Dumdum Muhalla afraid of leading against the pond's mafia & encroachers. The case is still under investigation (FIR no 189/2002), in Laheriasarai Thana.			

SN	Name, Location & Area of Pond	Reference of people's protest & Complain and Administrative Response	Present Status of Pond
2	<b>Gami Pokhar</b> Ward no. 43, Mohalla Shahganj Benta, Darbhanga	<p>1. People of Shahganj Benta submitted a Letter to DM's Public Grievance Cell (Jan Shikayat Kosang) on 13/6/2013 against the encroachment of Gami Pond's land.</p> <p>2. Peaceful protest by blocking road near Gami pond on 14/06/2013 against the encroachment of pond</p> <p>.</p> <p>3. Peaceful Dharana near Samaharnalay on 19/06/2013.</p> <p>4. People of Shahganj Benta requested (VideLetter dated 19/11/2003) to the Commissioner/DM/DIG/SSP/SP, for restoration of pond in its original shape.</p> <p style="text-align: center;"><b>Please see Annexure 3 for Reference</b></p>	<p>The pond has three Pakka Ghats (public bathing place): one for lady Ghat in northern side, second for gents Ghat in southern side and third for outsiders/ (Rahi-batohi) in western side. Theses Ghats are now covered under soil dumped by encroachers to fill the pond.</p> <p>People still use this pond for bathing and cultural activities with risks and difficulties.</p> <p>Administration imposed 144 to stop construction works, but encroachers and mafia work at night for new construction and earth filling.</p> <p style="text-align: center;"><b>Please see Photo No 14, 15 and 16.</b></p>
3	<b>Sarvajanik Pokhar</b> Ward no 13, Near Durga Mandir, Muhalla Kataharbari, Darbhanga  Khesara no. 6585 and 6586.  Area: 12 Katha, 14 Dhur,	<p>1. The DM Court ordered to seize the pond's land under BLR Act, 1950 (case no 54/1985-85) on 25/11/1986 when local community made complaints to DM, Darbhanga.</p> <p>2. The commissioner Court, sustained the order of the DM dated 25/11/1986 in the interest of the local community and rejected the case of the review petitioner.</p> <p>3. Mr. Krishna Kumar Suman Yadav wrote a letter to the Commisioner on 23/2/2012 for protection of the pond, and its copy was given to the DM, DCLR and CO, Darbhanga for taking necessary action.</p> <p>4. In response to Mr. KK Suman Yadav's letter, DCLR wrote a letter (Letter no 299, dated 23 February 2012) to CO, Darbhanga for taking necessary action for protection of pond.</p> <p style="text-align: center;"><b>Please see Annexure - 4 for Reference</b></p>	<p>Pond has still threat from the land mafia &amp; encroachers. Time to time they manage to dump municipal garbage and soil into the pond in last 30 years, which has damaged the pond's shape and beauty, and aggravated pollution to its water.</p> <p style="text-align: center;"><b>Please see Photo No 17.</b></p>

<b>SN</b>	<b>Name, Location &amp; Area of Pond</b>	<b>Reference of people's protest &amp; Complain and Administrative Response</b>	<b>Present Status of Pond</b>
4	<b>Baba Sagar Das Pokhar</b>  Near Naka no 6, Rahamganj, Darbhanga, Khesara no. 24,700, Area: 2 Bigha, 1 katha, 37 Dhurki	1. DCLR Court heard the case (no. 42) of this pond in 1970-71 after complaints by people of Rahamgaj Muhalla.  2. Presently case of this pond is in the court of the Commissioner, Darbhanga. (case no 137/2013)	Several complaints have been lodged by the affected community in last 45 years to the Commissioner, DM, SDO and others, but land mafia succeeded in filling the pond with soil, leveling it to the ground and constructed boundary wall over it. <b>Please see photos no. 18</b>
5.	<b>Makhanahi Pond</b>  Near Raj School, Darbhanga	* Struggle of local people against the pond mafia got justice and victory after 25 years, when the DM of Darbhanga made his landmark orders regarding removal of encroachment of Makhanahi Talab/pond and liberating it from the grab of pond mafia in July 2013.  * There is an urgent need to fix its boundary with stone pillars or RCC pillars or some other ways as soon as possible and removing of water weed from the surface of pond's water so that people can use it.	Municipal garbage & waste materials were dumped into the pond towards eastern side near Raj School, by Tractor no 11 of Municipal Corporation on 4 January 2014, which aggravates its pollution and making it unusable. <b>. Please see photo no. 19</b>
6	<b>Nasirganj Pokhar</b>  Near Main Road, At Nasirganj, GP:Nesta, Block: Singhwara.  Khata No. 825, Khesara no. 352 Area 78 decimal	1. A public petition was submitted to Thana Prabhari, Singhwara on 20 June 2011 against the encroachment of the pond, its copy was sent by registered post to the Commissioner, DM, SP, DSP, SDO, CO and Sarpanch of Nesta GP. The petition highlights in details about the problems & conflict which will arise if the pond is encroached.  2. Upendra Sada, Sarpanch of Nesta GP wrote a petition to CO, Singhwara on 27/3/2012 for his urgent intervention.  3. Upendra Sada, Sarpanch further querried about the action taken on his petition dated 27/3/2012 to CO, Singhwara on 21 MAY 2012 under RTI, but did not get any response from the CO so far.  <b>Please see Annexure - 5 for Reference</b>	1. About 60% area of the pond has been filled and encroached. 2. Encroacher has not punished so far. 3. The encroacher has threaten to the poor who opposed him. 4. Community are not satisfied with action taken by the CO and Thana Prabhri. <b>Please see photo no. 20</b>

## **viii. NATIONAL WATER POLICY (2012)**

The following paragraphs of the National Water Policy are relevant to the protection of Ponds:

### **1. PREAMBLE**

1.1 A scarce natural resource, water is fundamental to life, livelihood, food security and sustainable development. India has more than 18 % of the world's population, but has only 4% of world's renewable water resources and 2.4% of world's land area. There are further limits on utilizable quantities of water owing to uneven distribution over time and space. In addition, there are challenges of frequent floods and droughts in one or the other part of the country.....”

1.2 The present scenario of water resources and their management in India has given rise to several concerns, important amongst them are;

(i) **Large parts of India have already become water stressed (emphasis added).** Rapid growth in demand for water due to population growth, urbanization and changing lifestyle pose serious challenges to water security.

1.3 Public policies on water resources need to be governed by certain basic principles, so that there is some commonality in approaches in dealing with planning, development and management of water resources. These basic principles are:

(i) Planning, development and management of water resources need to be governed by common integrated perspective considering local, regional, State and national context, having an environmentally sound basis, keeping in view the human, social and economic needs.

### **2. WATER FRAMEWORK LAW**

2.1 There is a need to evolve a National Framework Law as an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governing bodies. This should lead the way for essential legislation on water governance in every State of the Union and devolution of necessary authority to the lower tiers of government to deal with the local water situation.

**2.2** Such a framework law must recognize water not only as a scarce resource but also as a sustainer of life and ecology. **Therefore, water, particularly, groundwater, needs to be managed as a community resource held, by the state, under public trust doctrine to achieve food security, livelihood, and equitable and sustainable development for all (emphasis added).** Existing Acts may have to be modified accordingly.

### **3. USES OF WATER**

3.6 Community should be sensitized and encouraged to adapt first to utilization of water as per local availability of waters, before providing water through long distance transfer. **Community based water management should be institutionalized and strengthened (emphasis added).**

### **4. ADAPTATION TO CLIMATE CHANGE**

4.1 Climate change is likely to increase the variability of water resources affecting human health and livelihoods. Therefore, special impetus should be given towards mitigation at micro level by enhancing the capabilities of community to adopt climate resilient technological options.

4.2 The anticipated increase in variability in availability of water because of climate change should be dealt with **by increasing water storage in its various forms, namely, soil moisture, ponds, ground water, small and large reservoirs and their combination (emphasis added).**

States should be incentivized to increase water storage capacity, which inter-alia should include revival of traditional water harvesting structures and water bodies.

Source: [http://www.mowr.gov.in/writereaddata/linkimages/DraftNWP2012\\_English9353289094.pdf](http://www.mowr.gov.in/writereaddata/linkimages/DraftNWP2012_English9353289094.pdf)

### **ix. STATE WATER POLICY**

GOVERNMENT OF BIHAR, PHED, DRAFT 2: 10th March, 2010

The following paragraphs of the State Water Policy are relevant to the protection of Ponds:

#### **Paradigm shift :**

"While adopting an appropriate State Water and sanitation Policy a 'Paradigm shift' is needed which is a 'series of peaceful interludes punctured by intellectually violent revolutions and in those revolutions one conceptual world view is replaced by another.'

Bihar, through the ages, has been inspiring the nation and the World. While others advocated for 'the survival of the fittest' Bihar come forward for ' the Survival of the weakest'. When many countries started their freedom struggle from harnessing from violence; Mahatma Gandhi started freedom struggle from Champaran Satyagrah on the strength of truth non-violence learning from the teaching of Buddha and Mahaveer. When many other countries were in intellectual darkness Kautilya, the legend could write a definitive directive on economies and government, some 2500 years ago.

**So, Gandhian concept of 'Self-governing village republics' and Kautilya's emphasis on sound management principles shall be the basis for creating an enabling environment in the State Water and sanitation Policy (emphasis added). "**

## **8. LEGAL ENABLEMENT:**

8.1 A critical review of the laws related to water sector will be undertaken. Out-dated laws will be repealed, and necessary enabling laws will be framed and the existing laws will be amended to suit efficient integrated water and sanitation management.

8.2 The role, responsibility and authority of local community structures (VWSC) will be legally specified to allow them to manage their own water resources. Within this legislation provision will be made for socially inclusive groups have a substantive voice in their local water-user group.

**8.5 A legal framework will be developed to preserve existing water bodies from unauthorized construction, pollution and encroachment (emphasis added).** In the event of significant pollution the local water-user group will be required to remedy the source of pollution, using technical and material assistance from the appropriate department.

( Source: <http://www.cseindia.org/userfiles/bihar%20state%20water%20policy%202010.pdf> )

## **x. Bihar Public Land Encroachment Act, 1956 : Definition of Public Land**

Reference: Government of Bihar, Revenue Department (Land Reform Section) letter to all Collectors on Enforcement of Bihar Public Land Encroachment Act, 1956 (letter no. B/E-20-30/63-3167 –R, dated the 23<sup>rd</sup> March, 1963)

“2. A 'public land' as defined in section 2(3) refers to all lands belonging to the Union or to the State or to any local authority or to any public undertaking or to any educational institution or to railway company or to Gram Panhayat and includes **any land over which the public or the community has got a right of user (emphasis added)**, such as right of way, burials, cremation, pasturage or irrigation.

6. Government are not satisfied with the way in which the cases are instituted or the way in which the disposal gets prolonged. **Energetic steps be taken by producing requisite evidence without delay and effective orders should be obtained for the removal of the encroachments in public interest (emphasis added) .**

7. A copy of this letter is being sent to the Commissioner of your division.”

## **xi. DOCTRINE OF PUBLIC TRUST/ Introduction:**

“Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of

nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Public trust doctrine serves two purposes: it mandates affirmative state action for effective management of resources and empowers citizens to question ineffective management of natural resources. “

(Source: AUTHOR TANVI KAPOOR: <http://www.legalserviceindia.com/articles/ptdoc.htm>)

The Indian courts have applied the public trust doctrine to protect and preserve the public land and natural resources of environmental and ecological importance like forest, air, water hill, mountain, river, seashore, park, lake etc.

#### **xii. Polluter Pays Principle: M.C Mehta v. Kamal Nath**

“Justice Kuldip Singh while delivering the judgment relied extensively on the doctrine of public trust. The case dealt with certain forest land which was given on lease to the Motel by the state government situated at the bank of River Beas. The area which was ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.[18]

In India M.C. Mehta v. Kamal Nath was the landmark judgment as far as the doctrine of public trust was concerned. In that case Span motel, owned by the family members of Shri Kamal Nath, Minister for Environment and Forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The apex court ordered the management of the Span motel to hand over forest land to the Government of Himachal Pradesh.

The Court delivered a land mark judgment and established principle of exemplary damages for the first time in India. **The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs on the Span motel as exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine (emphasis added)."**

(Name of Source: <http://www.lawteacher.net/public-law/essays/doctrine-of-public-trust.php#ixzz2b1ICHEc7>)

Ponds/tanks are our valuable public resource of highly environmental and ecological importance. Polluters must pays principle can be applied to punish pond mafias for paying the cost of removing the earth or RCC structure or both and cost of restoration the pond in its original shape, because their acts of encroachment or filling earth into the pond or construction of bricks & RCC structures used to damage the pond fully or partially.

### **xiii. Our Submission:**

The Memorandum-2 should be considered in continuation of previous memorandum submitted by TBA on 26 March 2013. As mentioned above, in the background of National Water policy, State Water Policy, definition of public land under Bihar Public Land Encroachment Act, 1956, Doctrine of Public Trust, Polluter Must Pay Principle, members of TBA decided to request the District Magistrate of Darbhanga with the following submissions for protection, restoration and conservation of ponds:

#### **(1) Urgent order to stop ongoing encroachment & construction:**

There is an urgent need to order for stopping the ongoing encroachment & construction over the pond's land of Dighi, Harahi, Ganga Sagar, Dighi near Polytechnic, Mirja Khan Talab, Lal Pokhar (Near Naka 5), Baba Sagar Das Pokhar(Near Naka 6), and other ponds of the town and district.

#### **(2) Polluters Must Pay:**

There is need for strong action against the pond mafia by punishing them to pay the cost of damage of pond as well as for its restoration cost as per judgement & orders of the Hon'ble Supreme Court because Darbhanga district has 9115 ponds and it is not possible to file case on each pond for its protection and restoration. Therefore, 'Polluters must pay principle' should be immediately applied for restoration of Gami Pokhar, Dumduma and Baba Sagar Das Pokhar, near Naka no. 6, Kavaraghat pokhar and other ponds/pokhars of the town and district.

Place: Darbhanga

Date:

Convener

Talab Bacha Abhiyan