Protecting and Conserving Commons for common good
- Needs a fresh legal perspective
- An Analysis for the State of Andhra Pradesh

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Commons: A Legal perspective

Commons in a strict legal sense maybe defined to be those lands in which rights of common exist,[1] the use of which is not appropriated to an individual, but belongs to the public or to number[2]. 'Commons' are also defined to mean a tract of land set aside for the general public use[3]. Commons also needs to be distinguished legally as a right or privilege[4] which one or more persons have to take or use some part or portion of that which is another person's land, waters, woods, etc produce. Common property resources thus broadly include community pastures and forests, wastelands, common dumping and threshing grounds, watershed drainages, village ponds, rivers, tanks, irrigation channels and other common pool water bodies as per the various legal texts explained in more detail later.

Although there are various approaches to understanding commons what is less understood is the role of law in regulating commons and how an inadequate legal framework can impact commons in terms of its use, access, conservation and acquisition. It is increasingly clear that conflicting laws and policies, different state priorities and legal uncertainties on commons can result in its total decimation and mostly affect the already affected –the marginalised especially in rural and tribal India.

This paper makes a humble attempt to critically examine the legal spaces within which common pool resources exist in the State of Andhra Pradesh and how national and state actions in terms of their policy and legal choices are impacting them and thereby affecting the marginalised who perhaps are most dependent on them. Four categories of common resources have been chosen namely- land, forest, water and fisheries to demonstrate whether the legal choices made for their regulation have demonstrated intent to sub serve common good or have resulted in disregard of the common purpose. What is increasingly becoming clear that the past legal arrangements may not be adequate and the commons need a fresh legal approach if they have to survive for the larger sustainability of the rural and urban poor? With this backdrop let us study the legal framework on land, forest, water and fisheries in Andhra Pradesh.

[1] Sweet Law Dictionary
[2] Century dictionary
[3] The Black's Law Dictionary, 8th Edition, 2004
[4] Rights of course have to be distinguished from privileges. Simply put rights are enforceable whereas privileges are revocable.

Chapter 1. LAND AS COMMONS

1.1 Constitutional Position

In the Constitution, the subject of land has been allocated to the State List which means that the state governments can frame legislations for governing access, use, preservation of land and related matters. Andhra Pradesh has enacted several land reform legislations primarily for abolition of intermediaries who were rent collectors under the pre-Independence land revenue system; tenancy regulation for improving the contractual terms faced by tenants including fixation of rent and security of tenure; a ceiling on landholdings with a view to redistribute surplus land to the landless; and finally, to consolidate fragmented landholdings to increase land productivity. The land revenue legislations have been the key legal framework for regulating commons. Other legislations on land such as Land Acquisition and Land transfer have also impacted commons. This chapter aims to highlight the impact of such laws on the use of common lands in the State.

1.2 Land Reforms and Commons

As stated earlier, the land reforms resulted in laws relating to abolition of intermediaries, ceilings on land holdings, consolidation and prevention of fragmentation. All these resulted in creation of surplus land which have been assigned or allotted following different processes. The manner in which they have been vested and dealt with in various states have created a complex regime on land throughout the country and especially on common land. It would be useful to examine the study states in this regard.

1.2.1 Abolition of Intermediaries and vesting in the Government: The creation of surplus land in Andhra Pradesh

Various statutes were passed abolishing intermediaries in Andhra Pradesh post independence in order that there is a direct contact of the state and the occupant or the cultivator. These legislations freed lot of land and vested the same in the state government. Thus for example the *A.P (A.A) Inams (Abolishment and Conversion into Ryotwari) Act, 1956, A.P Mahals (Abolishment and Conversion into Ryotwari Regulations 1969, A.P Land Reforms (Ceiling of Agricultural Holdings) Act,1973, The A.P Abolishment of Inams Act, 1975 and The A.P Abolishment of Jagirs Regulation,1358* F abolished the land held as inam.

The state government was at liberty to dispose of these lands. As per the provisions of the *A.P Land Reforms (Ceiling of Agricultural Holdings) Act,1973*, the State government was required to allot the said land to agricultural labourers, village artisans and more importantly one half of such land was to be allotted to SC's and the ST's[5].

1.2.2 Vesting common Lands in Panchayat through land reform legislations in A.P:

Besides, common lands are made accessible to the community through the institution of Panchayats in rural A.P. Currently; Panchayats *(especially the village level Panchayat)* holds all

[5] See Section 14, A.P Land Reforms (Ceiling of Agricultural Holdings) Act, 1973.

common lands, land of particular descriptions or of lands under a particular source of irrigation are also vested with the Gram Panchayat and are administered by it for the benefit of the villagers.[6]

1.2.3. Prevention of fragmentation and Consolidation of Landholdings and Vesting: Creation of Surplus Lands and assignment for public purpose

The A.P (Telangana Area) Prevention of Fragmentation and Consolidation of Holding Act, 1956 has been formulated to ensure that 'fragment' of land holdings are amalgamated to ensure an economic holding for increasing productivity of the land for increased yield in the Telangana region. The procedure for consolidation provides for preparation of a scheme for the land holdings within a village in consultation with the village committee. At the time of preparation of the consolidation scheme, land could be assigned for public purpose if none existed within the village.[7]

1.3. Land Revenue Legislation and Common Lands

In Andhra, the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F is a key legislation governing common lands. The Act asserts that all lands such as public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes, and flowing water are property of the government. However, the right of way or other easement right legally vesting in any person or the public shall subsist[8].

1.4 Disposal (Assignment) of Common Lands:

It is also important to examine how the vested land in the state has to be assigned or allotted for common purposes. In Andhra Pradesh, the Collector has been given the foremost role in assignment of surplus public lands. The Collector shall have the power to dispose public lands under his/her discretion subject to rules and regulations promulgated by the Revenue Department and after careful consideration. The Act sets out special purposes for which assignment shall be held lawful[9]. These include:

a. *Access to Wood*:

   Common access to wood from wastelands outside reserved forests has been given to the villages and agriculturists for their private purpose without the payment of taxes although they may be subject to Rules as may be formulated by the state.[10]

b. *Access to minor minerals:*

[6] Sec 55 A.P Panchayati Raj Act 1994.
[7] Sec 10, The A.P (Telangana Area) Prevention of Fragmentation and Consolidation of Holding Act, 1956
[8] Sec 24, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F
[9] Sect 25, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F.
[10] Sec 47, Permission to take wood from waste land outside reserved forest, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F.

The free common access to carry earth, stones, from river, stream or bed of tank has been provided for. People are permitted to use them for their private purposes. However if the use leads to potential risk of destruction or arising of difficulties in the ordinary requirements of villages or endangering public health the Tehsildar shall intervene and set aside plots for such activity and authorize the same to be done only in the plots provided, with the prior permission of the Board of Revenue and the Collector.[11]

c. *Areas for cultivation:*

The government reserves with the Collector in *taluqas*, the right to let out areas for cultivation beyond the boundaries containing reserved forest or valuable trees[12] after seeking the prior approval of the Forest Department.[13]

d. *Assessment free lands for Groves:*

The Collector has the power to grant land free of assessment for twenty years to any person desiring for his own benefit to grow a mango grove, tamarind grove, *babul* or grove of any other kind of trees as may be deemed to be of public benefit, in the land laying barren or waste outside the reserved forests for more than ten years, and not containing any valuable forest trees. If the trees in sufficient number with regard to their kind are not planted within five years in the whole land that portion of land in which trees have been planted shall, remain free of assessment and the rest shall be assessed from the sixth year[14].

As compared to other states such as Rajasthan where access to common lands is strictly regulated by the government, the Land Revenue legislation of AP is liberal and carefully intends to maintain a balance. It is protectionist in nature on one hand but also promotes the communal access to government lands for their private benefits and builds up the community resources.

1.4.1 Agricultural Land Assignment to land less, political sufferers and ex service men: Larger social good in lieu of common good?

Landless poor[15], Political sufferers[16] and ex-service men are also entitled to government waste land for cultivation. Of course the assignee cannot sell assigned land to others. A process has

[11] Sec 27, Cases in which there shall be right to carry earth, stones, etc., from river, stream or bed of tank, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F.

[12] All the trees outside occupied tracts, river, and stream, road, in the bed of tank, pond, and bund are the property of the government. See Section 30. Trees outside occupied tracts or in bed of rivers, streams

[13] Sec 32, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F. Letting out for cultivation unoccupied land containing valuable trees situate in taluqa where forest boundaries have not been demarcated, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F.

[14] Sec 45, Andhra Pradesh (Telangana Area) land Revenue Act, 1317F. Conditions on which land for raising groves may be given:—
after twenty years it shall be assessed at the dry rate, provided that the Government water is not taken; but if the Government water is taken "dastband" shall be paid.

[15] Landless poor person is one who does not own or has share in ancestral or acquired land in excess of Ac.2.50 of wet land or 5.00 of dry land and also person engaged in agricultural operations having a total income of less than

also been laid out for the grant of such wasteland.[17] Agricultural Land Assignment: Land less poor persons of the village will be given Government wasteland for cultivation. All of the above category people can be assigned a maximum extent of 2 ½ Acres, in case wetland and 5 Acres in case of dry land. In case of landless poor, the total extent under their possession after assignment should not exceed 2 1/2 acres of wetland and 5 acres of dry lands. For land less, people A request shall be filed to the Mandal Revenue Officer (MRO) , who after due verification process shall forward the same to the Assignment Committee, whose decision in this regard shall be final, and in case of grant of the land, assignee will be issued a patta certificate, and due changes shall be made in the Amendment Register and the *Pahani*. Political sufferers have to file a request concerned District Collector with the documents supporting proof for political suffering. The Collector will forward the same to the concerned MRO who will examine and put up the same before the Assignment Committee. The remaining process of assignment of land is taken up as in the case of the land less poor. The Ex-servicemen also have to follow the same procedure as mentioned in case of political sufferers. The supporting documents indicating that they are Ex-servicemen have to be produced too. Some argue that this has also led to the reduction of commons.

1.4.2 Distribution of Ceiling Surplus and Government Wasteland has further led to reducing of commons in A.P.

It has been the accepted policy that wasteland at the disposal of the Government should be distributed amongst eligible rural poor. The criteria governing the distribution of ceiling surplus land should also apply to the distribution of wastelands. So far of a total of 7,09,228.81 acres of land has been disbursed to 5,04,099 beneficiaries [18].

1.4.3 House Sites Assignment[19] : Waste land as vacant land?

Andhra Pradesh Government has assigned waste lands to houseless poor, land less poor, Ex-servicemen, victims of natural calamities for house sites. Interestingly, the government treats grazing land and other waste lands as vacant lands. One of the provision relating to house site assignment states that the land assigned can include Assessed Waste Land, *Poramboke* Lands[20] which include *vacant lands like Grazing Lands* (**emphasis supplied**) , Grave Yards,

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Rs.11,000/- per annum including the income of all family members. The term family members does not include Married son for the purpose of assignment though they may be staying at parental abode and the same roof. [G.O.Ms.1019, Rev. (Asn.I) Dept. Dt. 5-10-94)

[16] Persons who have participated in one of the 8 freedom movements organised by the Indian National Congress remained underground but did not suffer imprisonment provided they were proclaimed offenders of those on whom the award of arrest was announced but were not arrested or persons whose detention orders were issued but not served for a period of not less than 6 months and also Martyrs be declared as political sufferers for the purposes of assignment of Govt. lands under the scheme.

[17]

[18] (http://cm.ap.gov.in/excmrosaiah/01may10press1.asp).

[19] http://apland.ap.nic.in/cclaweb/revassignacts.htm

[20] These are all Government vacant lands like Grazing Lands, Grave Yards, Road Poramboke, Channel Poramboke, Tank Poramboke, School Poramboke etc. ie Lands other than agricultural waste lands for which generally RDO (depending on the rules in force and the said lands are not entered in the prohibition register) is competent to change classification and instruct MRO to issue house site Pattas.....

Road Poramboke, Channel Poramboke, Tank Poramboke, School Poramboke (Lands other than agricultural waste), Surplus lands.[21]

The legislative mandate of assignment of *Poramboke* lands poses a direct threat to the commons. This land is a community land, where free usage is to be promoted, but the allocation of such sites for private use defeats the purpose of common land. Infact, the assumption that waste land is vacant land that can be distributed poses direct threat to commons in Andhra Pradesh.

1.4.4. Assignment of Land for common purposes:

However, there have been provisions for assignment of land for common purposes of the village. Thus for example the Collector with the sanction of the Board of revenue may set apart any Khalsa land[22] for pasturage of cattle or for grass reserves or for any other governmental purpose or for the purpose of public benefit[23].

However, since the allocation of land by the Collector is in the nature of assignment, it is a privilege and not a right granted to the community. It can be withdrawn at the discretion of the State or the land could be taken away to serve other public purposes. Therefore, there is not enough security of tenure or control given to the community.

1.5. Resumption of Common Lands

Another example of reducing commons is when the land which was initially acquired for public purposes such as agriculture or pasturage is no longer required for that purpose; it may be transferred back to the original owner[24], though in some cases the right of occupation cannot be granted without the prior approval of the Collector.[25] It needs to be assessed and physically verified, how much of such land

[21] House Sites Assignment: Assignment for house sites is done in the following methods 1. Assessed Waste Lands—Assessed Waste Land is a Government Waste Land like Gutta Poramboke, Grama Kantham etc for which Mandal Revenue Officer is competent to issue House site pattas.
2. Poramboke Lands—These are all Government vacant lands like Grazing Lands, Grave Yards, Road Poramboke, Channel Poramboke, Tank Poramboke, School Porambokeetc. ie Lands other than agricultural waste lands for which generally RDO (depending on the rules in force and the said lands are not entered in the prohibition register) is competent to change classification and instruct MRO to issue house site Pattas.
3. Surplus Lands--- Surplus Lands are all vacant Government lands fetched under Land Ceiling Act. RDO is competent to change classification and instruct MRO to issue house site pattas.
4. Social Welfare Land Acquisition--- Social Welfare Land Acquisition is Land acquired by the Government for house sites purpose using social welfare funds.

[22] The lands on which inami / vatan rights are abolished.

[23] Sec 25 of the A.P (T.A.) Revenue Act, 1317 F.

[24] Sec 54-A When agricultural or pasturage land acquired for public benefit is no longer required the patta thereof shall be made in the name of the person or his successor from whom, such land was acquired provided he consents to refund the compensation originally paid to him. If such person or his successor does not take the land, it may be given on patta under sec 54. (A.P (T.A.) Revenue Act, 1317 F)

[25] Sec 58-A; Sanction of the Collector for transfer of occupied land compulsory in certain cases; A.P (T.A.) Revenue Act, 1317 F.

1.6. Common Lands and Grazing

Classification for grazing and pasturage has emerged as the most common method of using common lands. It is therefore, important to not only understand this preference of treating common lands with grazing but also to examine the manner in which such grazing lands are regulated through various legislations. In Andhra Pradesh, the state may set apart any Khalsa land not in the lawful occupation of any person or class for pasturage of cattle or for grass reserves or for other Government purposes or for the purposes of public benefit.[26] The villages also have right to access such land set aside for grazing for the free pasturage of their animals. Although in case of any dispute the Collector's decision is conclusive[27].

1.6.1 Process of Allocation of Grazing Lands: No process for resolving disputes

There is no provision in regard to settlement of disputes in the act[28]. If there is a dispute as to rights of the people the decision of the Collector in this respect shall be final[29].

1.6.2 De-reservation of land set apart for free pasturage of animals

The land set out for special purpose including the land set apart for free pasturage of animals shall not be appropriated without the order of the Board of Revenue.

1.6.3 Grazing Land to vest with Gram Panchayat

The A.P Panchayat Act provides for vesting of grazing grounds with the Gram Panchayat, but the government has the authority to prescribe such restrictions to control the usage of these grazing grounds[30]. The government through a notification possesses the power to take back the control of these grazing grounds from the Gram Panchayat.

1.7. Allotment of Land

In various states the allotment of Government lands have been primarily for the poor and the land less and other public utilities. Some states have been categorical in prohibiting allotment of common lands, one such example is Andhra Pradesh.

1.7.1. Commons are a prime consideration for non allotment: Laoni Rules in Andhra Pradesh[31]

The *Laoni* Rules 1950 describe the procedure for allotment of land in Andhra Pradesh. A person interested in a particular land shall approach the *Girdawar*, who then will forward the matter to the *Tehsildar*. The *Tehsildar* shall decide whether the grant shall be permitted or not after giving due consideration to the nature of land, purpose of the land etc. While chalking the

[26] Sec 25. Assigning of land for special purposes to be lawful, A.P (T.A.) Revenue Act, 1317 F.
[27] Sec26, A.P (T.A.) Revenue Act, 1317 F.
[28] A.P (T.A.) Revenue Act, 1317 F
[29] Sec 26 A.P (T.A.) Revenue Act, 1317 F.
[30] Sec 58 A.P Panchayat Raj Act, 1994
[31] http://apland.ap.nic.in/cclaweb/revassignacts.htm

considerations out a lot of emphasis has been given to conservation of the common lands. For example the rules elaborate that no land shall be allotted unless the minimum requirement of at least 10 per cent of the total area under cultivation in a village is set apart as grazing lands for cattle has been met. In case of lands which adjoin forest boundaries or which contain *sendhi* or toddy trees at the rate of more than 50 per acre, the Tehsildar shall submit the records to the Collector, who shall pass orders after prior consultation and approval from the Forest and Excise Departments.[32] If the land applied for is reserved for public purposes, such as sources of irrigation, lands with groves of trees where people are in the habit of assembling periodically for purposes of fairs, *jatras* or worship, or when the lands are treated as reserved forests or are set apart for the use of the Public Works Department or for manufacturing salt, or taking clay for purposes of potters trade, then such land is not allotted. In some special cases the grant of land is permitted to landless and other categories of persons.[33] Meeting the minimum requirement of green areas, consulting the forest department are all checks and balances which have been introduced in the act. However, in AP the land is allotted for the following purposes:

1.7.2 Grant of lease of lands for agricultural and non-agricultural purposes in Andhra Pradesh:

The Government lands may be given on lease for Agricultural / Non-Agricultural purpose to an individual / Organization / Institution including Companies and Corporations.[34] The government may also lease lands for public purposes.[35] The MRO is the sanctioning authority up to one year for cultivation and it can be renewed once in a year. If leasing is for other than cultivation, the District Collector is the sanctioning authority. Details of lease of Government lands are recorded in a separate register. The information of lease of lands is also recorded in the *Pahani* Register in the column, type of enjoyment.

1.7.3 Allotment of Land and Institutions of Public Utility to Panchayat

The government may transfer the management or the execution or maintenance of certain institutions to Gram Panchayat or Mandal Parishad or Zila Parishad subject to certain rules which may be prescribed in this regard. All property, endowments and funds shall be held by Gram Panchayat[36]. The Act further provides the Commissioner with the power to transfer certain charitable endowments to the Gram Panchayat subject to certain rules which may be prescribed in this regard[37].

1.8. Survey and Recording of Rights: Legal Position

While assignment, allotment and classification are important, what is paramount is the manner in which such common lands are recorded and it is only such formal record or rights that gives legal sanctity and security to common lands for the marginalized and the dependent. It would

[32] Rule 9. The Andhra Pradesh (Telangana Area) Grant Of Lease Of Lands For Non-Agricultural Purposes Rules, 1977.
[33] Rule 15
[34] Rule 3
[35] Rule 15
[36] Sec 49 A.P Panchayat Raj Act, 1994
[37] Sec 50

therefore be useful to examine the legal process in place for recording such rights to commons especially common lands.

1.8.1. Survey and Boundaries Act in Andhra Pradesh

The *A.P. Survey and Boundaries Act 1923* enjoins upon the land holder to maintain survey stones at his cost. *The Hyderabad Land Revenue Act 1317 F* has similar provisions for the Telangana area of the state. In 1959 the *A.P. Survey and Boundaries (Extensions and Amendment) Act 1958* extended the Survey and Boundaries Act to the telangana area. In A.P. all lands are dry lands and hence there is no land revenue. Since all land is treated as dry lands only water cess is levied on irrigated lands. Lands have been put under four classes as per the source of irrigation. Thus for example first class lands fall under the major irrigation systems and receive water for nine months.

The Village account register Number two (Adangal) coming from the Andhra Area and village account register number three (Pahani) coming from the Telangana Area have been combined to one head and is termed as (Adangal Pahani) system of land records. This system also constitutes the *record of rights*. A number of surveys have taken place and one of the significant surveys is known as the Tribals survey or the framework survey[38]. Such surveys and clarity of rights to common lands need to be recorded so that the rights may be secured.

In addition, a prohibitory order book is maintained, in which common resources such as tank beds, reserve forests and reserved for schools, hospitals and burial grounds are recorded[39].This can be taken to be a conclusive evidence of the rights of the village community over certain common resources.

1.9. Protecting Public Lands*:*

1.9. 1. Protecting Poramboke and Assessed Waste in Andhra Pradesh

As early as 1905, *The Andhra Pradesh Land Encroachment Act, 1905* was passed to protect public lands from encroachment, and to place upon a statutory basis, the customary levy of assessment on such lands when occupied without authority[40]. There are two classes of land which it desired to protect. The first and more important is that which is termed 'Poramboke' that is, unassessed land set apart for public purposes or for the communal use of the village members as village site, threshing floors, roads, paths, water courses and the like. The second class, 'assessed waste', or land available for occupation by private persons, but which has not been formally applied for or assigned by the revenue authorities under the rules prescribed in that behalf. The preamble further states that encroachments upon such 'Poramboke' lands are all together objectionable and require prompt and stringent measures for their prevention.

[38] C. Ashok Vardhan; 1998; *Land records management in fourteen states of India*; National Institute of Rural Development.
[39] http://apland.ap.nic.in/cclaweb/revassignacts.htm
[40] See Preamble of the Act No. III of 1905

1.9.2 From criminal trespass to penal assessment for encroaching public lands in Andhra Pradesh

Another historical fact worth mentioning is that before the year 1869, unauthorized encroachments were generally dealt with as criminal trespass, for which imprisonment might be awarded, and were suppressed accordingly; but in that year the then High Court of Madras-ruled under the Penal Code that the procedure was illegal. The Collectors were accordingly authorised by Government to evict trespasser by charging them assessment at rates calculated to be prohibitive. Such assessment was being collected in accordance with the provisions of the Madras Revenue Recovery Act. 1864. The practice of charging this penal assessment has continued up to the present time, and has generally proved effective in checking encroachment. Any person who unauthorisedly occupies government land shall be liable to pay assessment, and such payment will not confer occupancy rights.[41]

1.9.3 Commons in Prohibitory Order Book

In Andhra Pradesh, another significant provision expressly bans the assignment of lands such as tank beds, reserve forests and reserved for schools, hospitals and burial grounds. As mentioned earlier, such lands are entered in the Prohibitory Order Book[42]. This revenue arrangement, although a very important measure is mostly flouted and needs to be enforced strictly. The current Kolleru Lake controversy[43] is a testimony to this.

1.9.4. Preservation of common lands in Andhra Pradesh

To discourage unlawful acquisition of government land, A.P Land Grabbing (Prohibition) Act, 1982 was passed. The Act prohibits land grabbing[44] in the state.[45] Any person involved in land grabbing shall be punished for a term not less than six months which may be extended to five years and a fine upto Rs.5000/-. Special courts may also be established to adjudicate on such matters[46].

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[41] Sections 3 and 8 of the Act No. III of 1905

[42] http://apland.ap.nic.in/cclaweb/revassignacts.htm

[43] Huge areas of land surrounding the legal sanctuary of Kolleru in Andhra Pradesh, although recorded in the Prohibitory Order Book have been illegally allotted to powerful landlord for commercial fishing and aquaculture. (Personal communication with Ashok Kumar, Former Collector in this region and Member of the Kolleru Committee, Government of India along with the Principal Author.

[44] Sec 2(e), Land Grabbing is defined as, "every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and license agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and license basis for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly;"

[45] Sec. 4, A.P Land Grabbing (Prohibition) Act, 1982

[46] Sec 7, A.P Land Grabbing (Prohibition) Act, 1982

1.10. Competitive Industrialisation within States: Commons is the first victim

Another dangerous trend that is now visible post globalisation with enough evidence is the rush for attracting foreign investments and one of the prime motivators is availability of public lands. Clearly, the commons is the first victim to such mindless industrialisation. Let us look at the stance of Andhra Pradesh in protecting common lands within its larger objectives of economic development.

1.10.1. Common land resources: Land use shift from agricultural purposes to on agricultural purposes:

The process of land conversion from agriculture to non agricultural lands is further simplified by *the A.P (T.A) Grant of Lands for Non Agriculture Purposes Rules, 1977*. The rules lay down for a process through which the agricultural land can be converted into a non agricultural purpose and can be used for establishment of industries. However, the Rules also provide certain safeguards, for instance, when agricultural or pasturage land acquired for public benefit i.e. for construction of school building or industry or for providing housing colony and if any part of the land is not utilised for the said purpose, it does not lose its character of an agricultural or pasturage land and shall be returned to the person or his successor from whom, such land was acquired provided he consents to refund the compensation originally paid to him. If such person or his successor does not take the land, it may be given on patta under Section 54 of the Land Revenue Act.[47]

1.10.2. Sectoral Policy Prescriptions and its impact on Common Land Resources:

The new industrial policy of Andhra Pradesh provides for promotion of investments in industries in the state. However, certain provisions of the policy have the potential of having adverse impact on common lands. Thus for example, it provides for simplification of procedure for land acquisition. Also, the need for conversion of land use from Agriculture use to Industrial use will be dispensed with except in the case of Tank Bed Lands.[48] Order has been issued by the Industries and Commerce Department of Andhra Pradesh which provide for among others, creation of land banks for industrial parks. Industrial Parks will be developed across the State over the next 5 years. These land banks will be created out of waste/baron/dry lands in different parts of the State.[49]

1.11. Significant legal developments on common lands

It is also important to examine a few more significant legal developments on common lands which have direct bearing on its existence and usefulness such as land use planning and management especially after the National Wastelands Boards initiatives of creating the State Land Use Boards (SLUBs).

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[47] Sec 54-A, A.P (T.A.) Revenue Act, 1317 F. Also, see *Koppula Narasiah vs. Government of A.P*. 2000 (6) ALT 337.

[48] Clause 11, Andhra Pradesh- Industrial Investment Promotion Policy (IIPP) 2010-2015

[49] Clause 4, GO, Ms No. 61, Andhra Pradesh Industries and Commerce Department, dated 29.6.2010. http://msmehyd.ap.nic.in/Documents/Left%20Panel/2.MSME%20Policy/State%20Industrial%20Policy/New%20Industrial%20Policy%20of%20AP%202010-15.pdf.

1.11.1 Land Use Planning and Management: Role of State Land Use Board

State Land Use Board (SLUB) was formed as an apex body in every state with major objectives of providing policy directive for sustainable development of land resources, ensuring close coordination among various land user departments and initiating necessary steps for integrated planning for optimal use of available land resources. Key functions of SLUBs are:

- Formulation and implementation of Land Use Policy,
- Launching of massive awareness campaign for promotion of scientific land use even at village level/Panchayat level to make the task of preservation of land resources as mass movement,
- Implementation of 19 point on National Land Use Policy Outlines (NLPOs)
- Preparation of perspective plan, formulation of launching of development scheme in light of suggestion emerged in the perspective plan.

The Andhra Pradesh State Land Use Board was formed in 2002 but has not made much progress towards streamlining the land use in the State. As of today, the state does not have a land use policy.

1.12 Role of Panchayat and Common Lands

Perhaps the most important and decentralised institutional arrangement that can preserve or destroy common lands is the institution of local self government i.e. the Panchayats. It would be crucial to examine Panchayat raj system in Andhra Pradesh although flowing from the same parent Panchayat Raj arrangement under part IX of the Constitution. The Panchayat framework of AP is unique in many respects. Unlike most other state, Andhra Pradesh has made the Gram Panchayat accountable to the Gram Sabha in the use of commons. However, it is also observed that the state is reluctant to hand over the complete control of village commons to the Panchayats and holds the last string in its hands. With this backdrop, let us examine the provision of Panchayat in management of commons in detail.

1.12.1. Gram Panchayat to manage commons for the benefit of the village in Andhra Pradesh

In Andhra Pradesh the Gram Panchayat law[50] vests certain powers to carry out common purposes. These include among others planting and preservation of groves and trees on the sides of roads and other public places; encouragement of co-operative management of lands in the village and the organization of joint co-operative farming[51]. Infact any property or income which by custom belongs to or has been administered for the benefit of the villagers in common, or the holders in common of village land generally or of lands of a particular description or of lands under a particular source of irrigation, shall vest in the Gram Panchayat and be administered by it for the benefit of the villagers or holders aforesaid[52].

[50] The A.P Panchayat Raj Act, 1994
[51] See Section 46 of the A.P Panchayat Raj Act, 1994
[52] Section 55, The A.P Panchayat Raj Act, 1994 -Vesting of Communal property or income in Gram Panchayat

1.12.2. Vesting of commons in Panchayats:

Also, the A.P Panchayat Raj Act, 1994 provides for vesting of communal property or income in Gram Panchayat.[53] Any property or income by customs which belongs to the villagers in common or land of particular description or of land under particular source of irrigation shall vest with Gram Panchayat and is to be administered for the benefit of people[54]. The Act also vests the public roads with the Gram Panchayat[55]

1.12.3 Commons and the Right to Use: Institutional arrangements under Panchayat for commons: a step beyond in A.P

As mentioned earlier, in A.P, commons have been placed under the control and management of Panchayat. Therefore, the right to use is regulated by the Panchayat, subject to overall control of the State Government. The Panchayats have been entrusted to make bylaws to regulate among others, the manner in which tanks, ponds, latrines, land for disposal of dead bodies and burial and burning grounds places are to be maintained and used. Besides, Panchayat can also lease out or sell trees or natural produce. The income thus generated is credited to Panchayat[56].

1.13. Scheduled Areas and Role of Commons

Having understood the Panchayat framework above generally it would be relevant to assess the commons in the scheduled areas[57] . As is well known that the Panchayat legislations were not automatically applicable to Scheduled Areas and another special legislation namely the provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was enacted. PESA legally recognizes the right of tribal communities to govern themselves through their own systems of self-government and also acknowledges their traditional rights over natural resources. PESA assumes that the Gram Sabha (the village assembly) is competent to safeguard and preserve among others community resources.[58] It also empowers the Gram Sabhas to play a key role in approving development plans, controlling all social sectors and more importantly in arriving at a decision regarding land acquisition as well as preventing land alienation among other things.[59]

To operationalise PESA in state, the government passed Andhra Pradesh Panchayat Raj (Amendment) Act 1998 which inserted provisions of Panchayat *(*with exceptions and modifications)* as part VI in the parent act.

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[53] Sec. 55, The A.P Panchayat Raj Act, 1994
[54] Sec. 55, The A.P Panchayat Raj Act, 1994
[55] Sec. 53, The A.P Panchayat Raj Act, 1994
[56] Sec. 55, The A.P Panchayat Raj Act, 1994
[57] The term `Scheduled Areas' (Article 244(1)) has been defined in the Indian Constitution as "such areas as the President may by order declare to be Scheduled Areas". Paragraph 6 of the Fifth Schedule of the Constitution prescribes procedure for scheduling, rescheduling and alteration of Scheduled Areas. The states that have scheduled areas are Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan
[58] Sec 4 (d), PESA.
[59] Sec 4, PESA.

1.13.1 Ambiguity in delineation of Power to manage land resources in scheduled areas: Adverse effect on commons.

In accordance with PESA, the AP Panchayat Raj Act makes every gram Sabha in Scheduled Areas competent to safeguard and preserve the customs and traditions of people, their cultural identity and their community resources (which includes land) among others detriment to any law for the time being in force[60] It means that the Gram Sabha can perform all functions to preserve its common resources. However, contrary to this, the Act further states that before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons evicted by such projects in the Scheduled Areas, mandatory consultation with the Mandal Parishad (block Panchayat) is mandatory. The Act does not envisage any role of the Gram Sabha in this process. This practice might not go a long way in preserving the customary rights and livelihood of the people dependent on common resources in the village and would defeat the purpose of making the gram Sabha a pivotal authority in managing community resources.

1.13.2 Prior Consultation of Gram Sabha or Panchayat at appropriate level for acquisition of land: 'Consultation' is inadequate[61]

Besides, central PESA also explicitly states that prior consultation with the Gram Sabha or the Panchayat (as prescribed by the State Government) shall be done before any land in the village is acquired for development purposes or any resettlement or rehabilitation of people affected by such acquisition is carried out. But the Land Acquisition Act itself has not been amended. However, some other concerns on the subject remain. For instance, if the Mandal Praja Parishad is consulted and they deny a proposed acquisition, then the rules prescribe that the said proposal shall be sent back to Mandal Praja Parishad for another consideration but, if the Mandal Praja Parishad does not agree with the proposed acquisition for the second time the Land Acquisition Officer can pass orders stating reasons for not adhering to the recommendations[62]. It is also important that the Bhuria Committee Report – on whose recommendations the central law on PESA came into being - had advocated for prior consent of the Gram Sabha /local village community before making acquisition of land in Scheduled Areas. The use of the word 'consultation' under PESA instead of 'consent' significantly waters down the power vested with the Panchayat[63].

1.14. Restoration of Common Lands:

The state government is in process of coming out with a comprehensive land policy which shall include all the aspects and issue relating to land[64].

[60] Sec 242-C(1), Andhra Pradesh Panchayat Raj Act, 1994
[61] Rule 5 of A.P PESA Rules 2011
[62] Rule 5 (5), A.P PESA Rules 2011
[63] The difference between the two words is the difference between 'right to consultation before acquisition' and 'the right to deny the acquisition'.
[64] CM statement in House on 28th Mar 2011

Chapter 2: FOREST AS COMMONS

2.1. Conservation *versus* livelihood: Legal Framework tilted towards conservation

In Andhra Pradesh a sizeable amount of the population is dependent on the forest resources for livelihood. The poor obtain 84 percent of their fuel supplies from common property resources, and are employed for 139 days to collect products from common property resources (Jodha, 1992). The people collect a large variety of NWFPs including *tamarind, adda leaf, gum karaya, myrobalans, mahua flowers and seeds, wild brooms and soap nuts*. One study estimated that income from the sale of Non Wood Forest Produce in Andhra Pradesh constitutes anywhere from 10 to 55 percent of total household income. Dependence on forests and common property resources increases as a household becomes economically marginalized.[65]

The legal framework on protection and management of forest does establish procedures for the recognition of above mentioned rights for local people to collect and use some forest products, particularly in protected forests. Nevertheless, the overall effect of the law has been to displace local decision-making and local control of forest areas in favour of government management and policing[66]. Perhaps, the laws did not foresee that the concerns of sustainability and livelihood would become so critical within such a quick span of time. As government agencies exerted greater controls over forests, millions of rural inhabitants, who had used these lands to meet basic needs of food, fuel, building materials, fibers, and medicines, increasingly lost access rights. As the rights of rural communities were eroded, conflicts grew between the state agencies and the villagers[67]. It is against this backdrop this chapter aims to explore how the right to access, use and conserve forest commons have been regulated in Andhra Pradesh and the national developments that would impact forest commons in A.P.

2.2 Constitutional Position on Forest Commons: Concurrent control

It is also important to appreciate the unique legal position that forests have as compared to the other commons. Forests belong to the concurrent list[68] which means that both the centre and state governments are competent to legislate on the subject.

The government of Andhra Pradesh passed Andhra Pradesh forest Act in 1967 on the lines of the Indian Forest Act of 1927, The umbrella legislation, the state adaptation of the umbrella legislation and the Forest Conservation Act of 1980 are the primary legislations which regulate the access and use of forest and forest resources. The sections below explore how forest as common resources has been dealt with in the legal framework. But prior to this, let us understand what does the term "forest" means.

2.2.1 What is a legal forest?

The term forest was not defined in any forest related legislation. It is only the Supreme Court in the ongoing Godavarman Case[69] in its Order dated December 12 1996 which for the first time

[65] http://www.fao.org/docrep/x0212e/x0212e06.htm.
[66] Lindsay Jonathan; *Law and Community and the Management of India's State Forests*
[67] The traditional rights to forest resources were converted into 'privileges, concessions or favours'.
[68] Entry 17A, List III of the Constitution of India, Schedule VII.
[69] (1997) 11 SCC 605

gave a definition which was nationally applicable to the term forest. It stated, "the word 'forest' must be understood according to its dictionary meaning. The term 'forest lands' occurring in section 2 of Forest Conservation Act, will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government records, irrespective of the ownership. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of the Forest Conservation Act (FCA). Similarly the term 'forest land', occurring in Section 2 of FCA, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership[70]." On a close examination of this order it is interesting to note that forestland includes the definition of forest apart from any area that may be recorded as forest in the government record irrespective of ownership.

2.2.2 Categories of Forests:

The Indian Forest Act establishes three categories of forests[71]. The most restricted category is "reserved forest." In reserved forests, most uses by local people are prohibited unless specifically allowed by a forest officer in the course of "settlement."[72] In "protected forests," the government retains the power to issue rules regarding the use of such forests, but in the absence of such rules, most practices are allowed.[73]. Among other powers, the state retains, a power to reserve specific tree species in protected forests which has been used to establish state control over trees whose timber, fruit or other non-wood products have revenue-raising potential.

A third classification is "village forests" in which the state government may assign to "any village-community the rights of Government to or over any land which has been constituted a reserved forest."[74] Little use has been made of this provision throughout the country with the only two exceptions of Orissa and Uttaranchal. Infact A.P. does not have this provision at all as explained later. It is pertinent to mention here that the constitutional and statutory powers on forests are interpreted by the government only in terms of rights without any co-related duties i.e. As absolute rights to use the forest land and resources in any way the government deems it proper. None of these constitutional provisions or statutes (including the Indian Forest Act) lay down any specific duty on the state to conserve the forest or use its resources equitably.

2.3 Regulating Forest Commons: Some Trends in Andhra Pradesh

2.3.1 Preambular emphasis on conservation

Departing from the revenue oriented slant of the preamble of the IFA, 1927, the A.P. Forest Act, 1967 lays down that it is "an act to consolidate and amend the laws relating to protection and management of forests in the state of Andhra Pradesh." Again, unlike the three fold classification of forests under the IFA, the A.P. Forest Act provides for creation of, and

[70] Note that the distinction here is between "forest" and "forest land".
[71] However in RLEK vs Union of India AIR 1988 SC 2187 , the Supreme Court saw the Indian Forest Act dealing with four categories of Forests namely, 1. Reserve Forests in Chapter II. 2. Village Forests in Chapter III. 3. Protected Forests in Chapter IV. 4. Non-Government Forests in Chapter V.
[72] Indian Forest Act, Sect 3-26.
[73] Id. Sect 29-34
[74] Indian Forest Act, Sec 28.

procedures relating to, the reserve forests and protected forests while also providing for the preservation of private forests.

2.3.2 Village forest missing in A.P.

The concept of village forest (where the government can assign to a village community its rights over a reserved forest), is absent in the Andhra Pradesh Forest Act, 1967. Whether this is by design or default is not known. Interestingly, the law in effect during the period of the Nizam, by contrast, contained quite extensive reference to the village forest concept. Section 26 to 33 of the Hyderabad Forest Act 1322 *Fasli* described in detail the constitution of village forests. There were elaborate prescriptions for making rules regarding management, formation of managing committees, revenue collection, penalties for breach of rules among other things. These provisions also went beyond the village forest provisions in the Indian Forest Act by allowing for the assignment of *any* specified forest area as a Village Forest. However, for some strange reason this progressive provision dropped when the A.P. Forest Act was drafted in 1967. However, since the A.P. Forestry Project there has been a move to restore this Chapter in a modified way but is yet to see the light of the day.

2.3.3 Recognition of Rights in Various Categories of Forests and Impact on Commons

AP Forest Act provided for creation of Reserved Forest, Protected Forest and Private Forest.

a. *Reserve Forest**:***

The most restricted category is "reserved forest." State government can constitute any land as reserved forest[75]. (Note that the IFA restricts itself to forest land and waste land that can be constituted as RF) A notification is to be issued in this regard specifying the limit of land and appointment a Forest Settlement Officer in this regard[76]. Generally speaking, in reserved forests, most uses by local people are prohibited unless specifically allowed by a forest officer in the course of "settlement. The faulty reservations process nationwide has been regarded as not accommodating genuine forest rights of local communities. The newly enacted Forest Right Act clearly admits this in its preamble.

b. Protected Forest:

The government may, by notification declare any forest or waste land as protected forest.[77] But to declare protected forest the forest or the waste land should be the property of the state or such land should be under the control of the government. This area should not form part of the reserved forest. The Act provides that all the disputes relating to the settlement of rights should first be settled before such area is classified as protected forest[78] but the state can also notify the land as protected forest under the act before the settlement of rights if such

[75] Sec 3, Andhra Pradesh Forest Act, 1967
[76] Sec 4
[77] Sec 24 A.P. Forest Act, 1967
[78] Sec.24 (2), A.P. Forest Act, 1967

settlement will require considerable amount of time. The rights of the individuals and communities shall not be affected or abridged pending such enquiry and record[79]

c. *Private Forest:* As per the AP Forest Act, Private forests comprises waste and communal land containing tree growth and shrubs, pasture land and any other land declared, by the government as a private forest[80]. It is a unique category created in Andhra Pradesh within its Forest Act.

2.3.3.1Rights and Claims of Forest Dwellers in the Settlement Process:

The A.P Forest Act anticipates two types of claims in the forests proposed to be reserved or protected. First, a forest dweller might lay claim to ownership of land. Second, a claim may be to easement rights such as right of way, use watercourse, pasture cattle and collect forest produce.[81] Claims to Rights or Concessions may be on behalf of an individual or a community. Village headman on behalf of a community or tribe may present the claim[82] before the Forest Settlement Officer.

2.3.4 Recognizing Communal Rights in creating Reserve Forests

In A.P Forest Act, the settlement process provides for recognition of communal rights on forest resources. The Act provides for the procedure for settlement of various ownership and usufruct rights under the auspices of the Forest Settlement Officer appointed by the State Government in this regard[83]. The settlement process admits the right of way and right to water course and use of water apart from the right of pasture and the right to forest produce.

2.3.5 The Contours of the Claims! - Total discretion of the FSO

The settlement procedure requires the Forest Settlement Officer (FSO) to consider the claims of local inhabitants to certain usage rights, but leave ample discretion for him to relocate, revise or discontinue such practices[84] . If he allows the claims, then he is to record the "extent" to which they are admitted. Such a record would include the number of cattle the claimant is entitled to graze, how much timber and other products he is entitled to collect and when, whether such products may be sold or bartered by the claimant, etc[85]. The Forest Settlement Officer has been given absolute authority under the act to take such steps as are necessary regarding exercise of that right and record an order, allowing the exercise of the right in such seasons and in such manner as the agreed upon by the FRO and the community[86].

But the act is silent regarding the settlement of disputes relating to agreement on conditions of enjoyment of rights. The current structure gives the FRO much wider power when it comes to

[79] Sec 24 (3), A.P. Forest Act, 1967
[80] Sec. 28 A(a) Andhra Pradesh Forest Act, 1967
[81] Sec 10, A.P. Forest Act, 1967
[82] Rule 5 A.P Forest Settlement Rules, 1969
[83] See Chapter II of A.P. Forest Act
[84] Sec 10, A.P. Forest Act, 1967
[85] Sec 11, A.P. Forest Act, 1967
[86] Sec 11, A.P. Forest Act, 1967

laying down the conditions for exercising these rights. A clear understanding of such admitted claims is a prerequisite in exercising rights on forest commons.

2.3.6 Constitution of Protected forests on wastelands leaves a lot of ambiguity for communities:

The power of the state government to constitute protected forest over government waste land is in a manner fencing the area that is used for common purposes by the communities. The lack of clarity on the definition of wasteland is a cause for worry for exercising of rights or privileges over commons which are usually wastelands. An attempt to define wasteland was undertaken in 1986[87] when wasteland were defined to mean "*as that land which is degraded and is presently lying unutilised except as current fallows due to different constraints*." Once wasteland or forest land is notified[88] to be a protected forest then no new rights can accrue except by succession or contract and the exercise of existing rights are to be settled as per the process in A.P Forest Act. This ambiguity on wastelands doesn't bode well for forest commons.

2.3.7 Bar of accrual of forest-rights: Both under A.P FA and WLPA – Status quo is dangerous:

After the issue of the intention notification to constitute any land a reserved forest, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued[89]. This has huge impacts on those common rights where the settlement process has been pending for years. There have been several instances of Proposed RF, unsettled sanctuaries and national parks which has maintained a status quo in such areas thereby bringing huge discomfort to communities where they are not able to dispose their valid lands even for exigencies.

2.3.8 Commutation of Rights: Money in lieu of rights?

Clearly, the right to access forest land is subservient to the larger objective of conservation. The FSO while adjudicating upon the claims have to keep in mind the long term sustainability of the forests and that the resources are not unduly burdened[90]. Hence, if the Officer determines that it is impossible having due regard to the maintenance of the reserved forest to make any settlement that would allow the practice to continue, he may commute the rights by the payment of money or grant of land or in such other manner as he thinks fit[91]. It would be worthwhile to examine if any rights have been extinguished in this manner.

[87] Report of Technical Group constituted by the Planning Commission under the chairmanship of Prof. MG.K Menon, Member, Planning Commission and Member, National Wastelands Development Board dated 29.05.1986
[88] sec 24
[89] Sec 7
[90] Sec 11 A.P. Forest Act, 1967
[91] sec 12 A.P. Forest Act, 1967

2.3.9 Private Forests in Andhra Pradesh: Customary exploitation of forest produce allowed whereas alienation of such land without permission disallowed:

The Andhra Pradesh Forest Act[92] provides for the preservation of private forests. Under this, no owner of any forest shall sell, mortgage, lease or otherwise alienate the whole or any portion of the forest or the forest produce without the previous sanction of the District Collector. However, this does not prevent the owner from selling or otherwise dealing with the right to gather and remove forest produce, other than tree's timber, in the usual or customary manner. Certain restrictions are imposed on felling of trees such as certain protected species of trees cannot be felled and only those trees shall be felled which exceed 120 cms in girth at 1.3 mtrs height from ground level[93].

2.4 Creation of Protected Areas and Implications on the Right to Access and Use:

2.4.1 Sanctuary and National Park: Restricted but rights possible in Sanctuary but not in national park!

The WLPA as applicable in Andhra Pradesh renders unfettered power on the State government to declare any area as a sanctuary or National Park [94] (other than an area in a reserved forest or territorial waters), for the protection of wildlife. Before a sanctuary or National Park is finally notified, the government has to take into account the customary, traditional unrecorded rights of the people dependent on the said land and settle those rights. The WLPA provides an elaborate procedure for settlement of rights.[95] The Collector is required to not only take into account those rights which are ascertainable from government records but also make *suo motu* inquiries into the rights of affected communities[96]. After the settlement process is completed, a final notification is issued declaring the proposed area as a Sanctuary or National Park as the case may be.[97]

Soon after the state government declares its intention to create a sanctuary a number of restrictions are imposed particularly on entry, grazing of livestocks and residing in the sanctuary among other things. Legally speaking, the Chief Wildlife Warden assumes the management and control of a sanctuary after it is proposed. He may takes steps for the preservation of the wildlife regulates grazing or movement of livestock and takes measures for immunization against communicable diseases of the livestock kept in or within five kilometers of a sanctuary as may be required[98.] Thus for example, no person (except those specified in WLPA) can enter or reside in a sanctuary[99] or remove forest produce[100] without the permission of the Chief Wildlife Warden from a sanctuary and national park. However, in case a forest produce is allowed to be removed

[92] Chapter III-A of the A.P. Forest Act, 1967
[93] rule 3 of the A.P Preservation of Private Forest Rules, 1978
[94] Sec 18 read with sec 26A and 35, Wild Life (Protection), Act 1972.
[95] Sec 19-26A
[96] Sec 22, Wild Life (Protection), Act 1972.
[97] Sec 26A and Sec 35, Wild Life (Protection), Act 1972.
[98] Sec 29 and 33, Wild Life (Protection), Act 1972.
[99] Sec 27, Wild Life (Protection), Act 1972.
[100] Sec 29 and sec 35, Wild Life (Protection), Act 1972.

from a National Park it is only for personal bonafide needs of the people living in and around national park and not for any commercial purpose[101]. Grazing of livestock is also prohibited in a national Park.[102] However, if the creation of a sanctuary prevents the use of a public way or a grazing land, the Collector may if convenient provides for an alternate way or a grazing land. [103] Also pending the settlement process in a proposed sanctuary, the State Government may make an alternative arrangement for meeting fuel wood, fodder and other forest produce of the people.[104]

2.4.2 Creation of a Conservation reserve and a community reserve: Creating wildlife commons

A conservation reserve[105] is created on government land for protecting landscapes, seascapes, flora and fauna and their habitat.[106] Restriction on certain activities are imposed which are similar to those in a Sanctuary except on the entry and movement of livestock for grazing. Further, the Act mandates prior consultation with the local communities before a conservation reserve is created. Also there are no provisions for survey and settlement of the rights that may exist in the area. The Act also provides for the constitution of a Conservation Reserve Management Committee (hereinafter CRMC). The committee has, among others, representatives from the village Panchayat to advise the Chief Wildlife Warden in matters concerning management of a conservation reserve[107].

A Community Reserve is created on a private land or a community land (not comprised within a sanctuary, national park or a conservation reserve), if a community or an individual volunteers to conserve wildlife and its habitat in such an area.[108] To carry out this objective a Community Reserve Management committee is constituted comprising of representative of village Panchayat and state forest and wildlife department, to conserve, maintain and manage the community reserve. The committee prepares and implements a management plan for the community reserve for the protection of wildlife and habitat.

2.5 Panchayat and Forest Commons

The role of Panchayats in governing forest commons is quite significant in Andhra Pradesh. Following are some unique provisions in the State.

2.5.1 Transfer of management of forests to Gram Panchayat in Andhra Pradesh:

Subject to any law for the time being in force the State government may, by notification, transfer to any Gram Panchayat with its consent and subject to such conditions as may be agreed upon, the management and maintenance of a forest adjacent to the village; and they may by a similar

[101] Sec 35(6), Wild Life (Protection), Act 1972.
[102] Sec 35(7), Wild Life (Protection), Act 1972.
[103] Sec 25(f), Wild Life (Protection), Act 1972.
[104] Sec 18 A (2), Wild Life (Protection), Act 1972.
[105] Sec 36A Wild Life (Protection), Act 1972.
[106] A conservation reserve comprises government land adjacent to a national park or a wildlife sanctuary; or a land that link one protected area with another;
[107] Sec 36 B, Wild Life (Protection), Act 1972.
[108] Sec 36 C, Wild Life (Protection), Act 1972.

notification, withdraw management and maintenance of such forest from the Gram Panchayat after giving an opportunity to the Gram Panchayat to make its representation. Further, when the management and maintenance of any forest is transferred to Gram Panchayat, the income derived by the Gram Panchayat from the forest under its management and maintenance or the expenditure incurred by the Gram Panchayat, for such management and maintenance shall be apportioned between the Government and the Gram Panchayat in such manner as the Government may, by order, determine[109].

Such provisions may on one hand increase the accessibility to forests for common purposes for the people dependent on them, but doesn't quite lend effective control on the local bodies as these forests can be resumed by the Government any time.

2.6 State Monopoly on Forest Produce: Impact on Commons*:*

State monopoly in forest produce and its impact on marginalised is perhaps the most contested domain in forest commons where the debates range from the Gram Sabha to the Prime Minister office, between Home Ministry and Ministry of Environment and Forests and Ministry of Tribals and Ministry of Panchayati Raj. The issue of control, fair price, rule of law, access, livelihood security especially for the marginalised are all being contested not only within the administrative framework but also contested in the legal domain. In Andhra Pradesh there is a strong institutional arrangement on MFP which actually falls flat on the legal front. Some of these arrangements and complexities in A.P. are captured below. Again it is important to understand the legal context clearly in order to secure not only the valid right to forest commons but also secure livelihoods for the poor and the marginalised.

Andhra Pradesh has passed several Act and Rules to regulate collection, trade, disposal, management of MFP such *as AP Abnus Leaves Act, 1956, the AP Forest Act, 1967*, the *AP Forest Produce Transit Rules, 1970, the AP NTFP (Regulation of Trade) Act, 1971, the AP NTFP (Regulation of Trade in Abnus Leaves) Rules, 1970, the AP Forest Contract (Disposal of Forest Produce) Rules, 1977, the AP Scheduled Areas NTFP (Regulation of Trade) Act, 1979, the AP Forest Produce (Storage and Depot) Rules, 1989, the AP Scheduled Areas NTFP (Regulation of Trade) Rules, 1990.*

Andhra Pradesh was perhaps one of the first states to attempt a definition of NTFP. The AP NTFP Act of 1971 then defined Minor Forest Produce as any forest produces other than timber, trees (Excluding bamboos) and charcoal, specified in the schedule. So this definition virtually puts all the forest produces under NTFP category except for the produces as specified. More or less in line with the AP Forest Act, now the FRA gives a more clear definition of MFP which also includes NTFP[110] Nonetheless, as AP hasn't changed the definition as per FRA, it is important to study it to understand how the state treated its MFP.

[109] Sec 48. of A.P Panchayat Raj Act, 1994

[110] Sect 2(i), FRA, 2006, *Minor Forest Produce:* " includes all non timber forest produce of plant origin including Bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots tubers and the like."

2.6.1 Nationalizing Forest Produce:

As mentioned above several legislations nationalising NTFP has been passed by the AP government. The government retained monopoly over their trade and management, which meant that the community could not access certain valuable forest produce for their livelihood without the permission of the State. The key provisions of some of these legislations are mentioned below to understand the implications of state control.

One such legislation *is AP Minor Forest Produce (Regulation of Trade) Act, 1971* which provides that the forest produces are subjected to control of transport, storage and sale as prescribed. Advisory Committee is constituted, that among others, for price fixation of NTFP.[111] Government Authorised Officer or Agent is bound to purchase the NTFP offered for sale but the former can refuse on the grounds of quality.[112] Growers of NTFP are registered every year.[113] NTFP is disposed off as per the direction of the government.[114]

While the 1971 Act was applicable to whole of the state, the state came out with a separate Act in 1979 - The AP Scheduled Areas *NTFP (Regulation of Trade) Act, 1979* for regulating the trade of certain NTFP by creation of a state monopoly in such trade in the scheduled areas of the state. This was enacted as per the powers conferred by the Fifth Schedule[115] to the Constitution after consultation with the AP Scheduled Tribes Advisory Council. While the government had granted concessions to the Scheduled tribes in the state for removal of timber, bamboo and other forest produces for domestic and agricultural purposes from protected forests under rule 3 of the *AP Protected Forests Rules, 1970*, as per the *1979 regulations*, the government appointed GCC as their agent for the purpose of purchase and trade of NTFP.
In addition there are other state legislations to regulate specific species of minor forest produce. Thus for example; in A.P. one of the important minor forest produce in the region is abnus leaves. *The A.P Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules 1970* aims at regulating the trade of *abnus* leaves in public interest by creation of state monopoly in trade. It is pertinent to specify here that *abnus* leaves fall under the category of nationalised forest produce. *Abnus* leaves can only be purchased or transported by a government official or any appointed agent. The act aims at regulating the trade of *Abnus* leaves in public interest by creation of state monopoly in such trade. For purchase and trade in specified forest produce agents are appointed who are either the officers of the state government or agents appointed by the state government. A transit pass is required for any person purchasing any specified forest produce for manufacturing goods within the state.
The A.P Forest Produce Transit Rules, 1970 also aims at regulating the transit of timber along with other forest produce. Under the rules, the Divisional Forest Officer shall issue permission in respect of the forest produce to the lessee in regard to the leased areas. The complex nature of the above rules make is quite difficult for local communities to understand what is allowed and what is disallowed. Besides, such provision as mentioned above point towards excessive state control

[111] Sec 6, AP Minor Forest Produce (Regulation of Trade) Act, 1971
[112] Sec 4 and 5
[113] Sec 10
[114] Sec 12
[115] See sub paragraph (2) of paragraph 5 of the Vth schedule

in dealing with MFP. However, with PESA and the newly enacted FRA which ownership of MFP to the community, this position is likely to change.

2.6.2 Ownership of minor forest produce- State Specific Laws Still Need Revision

The usage and utilization of forest produce is covered under various forest produce laws such as A.P Forest Act, 1967 and A.P Forest Produce Transit Rules 1970.Further, Minor Forest Produce which is variously called Non Timber Forest Products (NTFP) or Non Wood Forest Product (NWFP) also finds mention in certain laws. Thus for example, the A.P Forest Produce Transit Rules 1970, define "minor forest produce" as forest produce except timber, firewood, charcoal and bamboos. What emerges from above is that there needs to be a clarity in definition of MFP before the law can be applied in scheduled areas. It ranges from a list appended to a schedule to an exclusive definition as well. The Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act, 2006 too uses a comprehensive and inclusive definition and will have to be reconciled.

2.6.3 Ownership of Minor Forest Produce in Scheduled areas of A.P.: Radical but is it working on the ground?

The state of has provided the right to Gram Panchayat or some cases the Gram Sabha in MFP rights in scheduled areas is concerned. The Central PESA provides that the State Legislature shall ensure that the Panchayats at appropriate level (PAL) and the Gram Sabha are entitled to the ownership of minor forest produce[116]. The Amendment of Panchayat Act in 1998 in the state clearly states that "Gram Panchayat, the Gram Sabha shall exercise within its local limits, such powers and perform such functions in such manner and to such extent as may be prescribed in respect of ownership of minor forest produce. The recently enacted Rules too do not make it totally in accordance with PESA or the FRA. This needs urgent correction.

[116] Sec 242 (I) of A.P Panchayat Raj Act 1994

Chapter 3: WATER AS COMMONS

3.1 Regulation of Water Resources: Shifting Control

Initially, water, like all other natural resources, was treated as a 'common property resource' with free access for all and no notion of property rights over it. However, over time the notion of 'riparian rights' (arising out of the ownership of the land) over water resources has been recognized. The concept of riparian rights was statutorily backed by the Indian Easements Act, 1882, which not only laid down the exclusive right of the owner of an immovable property to enjoy his property[117] but also legitimized the customary rights of people[118]. However, the laws subsequent to the Easements Act slowly shifted emphasis on people's natural resources from being natural rights to proprietary rights[119]. This gave way to a massive participative water management regime and an elaborate ground water regime. This Chapter attempts to highlight this shift in control from the community to the state and recently from the state to the community again with reflections from the state of Andhra Pradesh.

3.2 Legal Framework Governing Right to Access, Use and Conservation of Water

Water that is to say, water supplies, irrigation and canals, drainage and embankments; water storage falls in List II Entry 17 of the Constitution which simply means that it's the state government which is competent to legislate on the subject.

The State of A.P has passed several laws like *A.P (T.A) Irrigation Act, 1357 F* and also the very progressive *A.P Water, Land and Trees Act, 2002* governing various aspects of water management such as irrigation and drainage, ground water, integrated watershed development, command area development among others. Primarily, the legal framework points towards state control over access, distribution, use and conservation of water resources, however, there are faint reflections of community participations as well. The sections below present several perspectives on access, use and conservation of water as common property resources.

3.2.1 State as the ultimate custodian of surface water

All the water resources are the property of the state where all ditches, dikes, rivers, streams, ponds, canals, lakes, and flowing water are property of the government except those belonging to person or class legally capable of holding them or those in respect of which any other order under any law may have been given[120]. As the resources are 'property' of the government only the government has the right to dispose of the resource as it deems fit subject to all subsisting

[117] See illustration (j) to sec 7 which provides: The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purpose and watering its cattle and sheep and the right of every such owner to use and consume the water for irrigating such land, and for the purpose of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

[118] Sec 15 and 18 of the Indian Easements Act, 1882

[119] A need for regulatory framework for the management of water resources was felt which led to the enactment of several legislation in the area of water resource management including the North India Canal and Drainage Act 1873 and the Bombay Irrigation Act.

[120] Sec 24 A.P (T.A) Land Revenue Act, 1317 F

rights over the property. A claim to a subsisting right is to be claimed by the person and the Collector or the survey officer is empowered to adjudicate claims against the government. The exercise of riparian rights and use of common water resources by landholders is dependent upon payment of water rate levied either under *A.P (T.A) Land Revenue Act, 1317 F* or A.P (T.A) [121] or under Irrigation Act, 1357 F. Clearly, the control over water is entirely with the state with very little space for communities.

3.2.2 Regulation of Water Resources: Role of the State Government

In A.P, surface water exploitation is regulated by the A.P (T.A) *Irrigation Act, 1357 F* conferring to the State a sovereign right upon surface water and its use for irrigation schemes. The applicability of the Irrigation Act is dependent upon water channels, field channels, drainage works, water courses, pipes, reservoirs constructed and maintained by state government, works, embankments, structures, supply and escape channels of all channels, water courses, pipes, reservoirs, notified[122] part of river, stream, lake, natural collection of water, natural drainage channel. There is provision for construction of canals, field channels, drainage works for supply of surface water and for levy of water rates for use of surface water. The water tax is recovered on water supplied for irrigation or for any other purpose and shall be prescribed by the government[123] . The Irrigation act covers not only the water resources but also the land resources that are concomitant with the water resources.

3.3 Panchayats have a key role in the protection of community's water resources:

In the state, the Panchayats have also been given certain rights over control and management of water resources. Therefore, it would thus be useful to see the manner in which the PRI framework has addressed water commons issues including management and the right regime associated with it.

3.3.1 Panchayat and Water commons in A.P.: Can the Panchayats deliver?

In the *Andhra Pradesh Panchayat Raj Act 1994* there are number of provisions relating to common water resources. For example, the Panchayat in Andhra Pradesh has the power to make reasonable arrangements in the village for the sinking and repairing of wells, the excavation, repair and maintenance of ponds or tanks and the construction and maintenance of water works for the supply of water for washing and bathing purposes and of protecting water resources for drinking purposes[124]. Panchayat also has to make provisions for the establishment and maintenance of cattle ponds[125]. Further under the 1994 Act, the Government may transfer to any Gram Panchayat the protection and maintenance of any village irrigation work, the regulation of terms of irrigation, or distribution of water from any such irrigation work to the field. The Gram Panchayat also has the power to execute *Kudimaramaat* (people's maintenance by donated labor)

[121] Sec. 30 of A.P (T.A) Irrigation Act, 1357 F.
[122] Sec 6, A.P (T.A) Irrigation Act, 1357 F.
[123] Sec 30, A.P (T.A) Irrigation Act, 1357 F.
[124] Sec 45 (viii), Andhra Pradesh Panchayat Raj Act 1994
[125] Sec 52, A.P (T.A), Andhra Pradesh Panchayat Raj Act 1994

in respect of any irrigation source in the village subject to restrictions and control laid down by the government.[126] (See Box)

Kudrimaramat-*A customary practice of people's maintenance of communal property and its place under the current legal regime*

Under the AP Panchayati Raj Act, Panchayat has the power to execute kudrimaramat in respect of any irrigation work in the village[127]. The kudrimaramat is an important customary practice that has to be understood in the backdrop of legislative and institutional developments for the control and management of common property in the state. In the past, in order to bring all the bigger tanks under the direct control of Public Works Departments (PWDs) for repair and maintenance, a modern centralized administration for irrigation was evolved. The Public Works Department tried to induce kudimaramat (people's maintenance by donated labor) in the mistaken belief that local communities would undertake voluntary labor to maintain the tanks as a tradition. The colonial government enacted the Madras Compulsory Labour Act of (1858) known as the Kudimaramat Act and later several Kudimaramat Bills were drafted (1869, 1883) to enforce the custom by law. Eventually, all this led to more destruction of the traditional management institutions as the Public Works Department (PWD) did not have the budget or the staff to take care of such widely scattered independent systems of tanks; besides people were under the impression that state would look after these tanks structure with the formation of Public Works Department (PWD). The Kudimaramat was recreated as a myth of a traditional autonomous village institution by the colonial government in order to invent a village tradition in the image of the state's planned irrigation administration. The myth was build by the colonial government that the village communities would undertake voluntary customarily labor of kudimaramat, which they had abandoned). In fact in the pre-colonial time, cultivators did not voluntarily donate their labor for the maintenance of the tanks but were paid from the funds mobilized at the village level (*Source: Farhat Naz, Saravanan V. Subramanian, Water management across Space and time in India, Bonn 2010)*. Nonetheless, under the present legal regime the kudimaramat tradition has been reduced to an obligation which the Panchayat under the law is empowered to execute for carrying out the irrigation work in the village.

[126]Sec 56 (2) Rule 5 of A.P PESA Rules 2011
[127] Sec 56 Rule 5 of A.P PESA Rules 2011

3.3.2 Control of water resources by the Panchayat-A robust framework for both ensuring and restricting control over common water resources in A.P

The Panchayat Raj Act of AP categorically lays down that all public water courses, springs, reservoirs, tanks, wells and other water works whether erected or made at the cost of the Gram Panchayat or otherwise for the use of the public shall vest in the Gram Panchayat and be subject to its control [128]. The act provides a robust framework for the regulation of water at the village level. For doing so the Gram Panchayat may perform repair and maintain tanks or wells and clear streams or water courses, cleanse or repair any tank, well, stream or water course or provide facilities for obtaining water there from; contract with any person for supply of water ,or do any other act for carrying out the purposes. The Panchayat is empowered to set apart for the supply of water to the public for drinking or culinary purposes, any tank, well, stream or water course. Panchayat may prohibit bathing, washing of clothes and animals or other acts likely to pollute the water of any tank, well, stream or water course set apart for drinking or culinary purpose during epidemics. It is also provided that two or more Gram Panchayats may construct or maintain water works for the supply of water for washing and bathing purposes and protected water for drinking purposes from a common source[129].

3.3.3 State Can Resume Control: Panchayats to be consulted in case of resumption of water sources by Government

Though the Act vests control of the local water resources in the Panchayat as mentioned above, the Government may by notification however, define or limit such control or may assume the administration of any public source of water supply after consulting the Gram Panchayat and giving due regard to its objections.[130] The Andhra Pradesh High Court has clarified that once the government issues a notification, the Gram Panchayat becomes divested of the possession and control vested in it. In other words, the possession and control of tanks, reverts to the government subject, of course, to the rights of the community. The government is the owner of the tanks in consequence of the notification, and is entitled to put it to such use as it thinks appropriate, subject always to the rights of the community. It may even be entitled to breach or fill up the tank and put it to such better use as it thinks appropriate. Further, the High court has held that it is obvious that in case of any such diversion or change the persons affected would be the members of the community of the village as such, and it is they alone who can complain, if any of their rights are pre-judiciously affected and not the Gram Panchayat[131].

3.3.4 Assigning of Tank Bed Lands disallowed in A.P.:

Some of the judgements of Andhra Pradesh High Court are particularly relevant for our present purposes. It has been held that 'tank' includes tank, water of which is used not only for drinking purposes for men and cattle but also for washing purposes and they vest in the Gram Panchayat. Therefore, tehsildar has no jurisdiction to assign the tank bed lands.[132] Further, until a notification is issued by the Government divesting the Gram Panchayat of its

[128] Sec 144 of the A.P Panchayat Raj Act, 1994
[129] Sec 80-83, Andhra Pradesh Panchayat Raj Act 1994
[130] Sec 80, Andhra Pradesh Panchayat Raj Act 1994
[131] See AIR 1982 AP 15.
[132] 1979 (1) APLJ 387.

control over the water works within the Panchayat Area, the tank existing in Gram Panchayat cannot be converted into house sites and allotted to displaced or other person.[133] It has also been clarified that where Tank poramboke is vested in the Gram Panchayat, the Government has no jurisdiction to totally exclude the lands from the control of the Gram Panchayat and assign the land to the land less poor.[134]

3.4 Regulating Ground Water:

Control and development of ground water resources have been the order of the day. Although, the Easement Act ensures the water beneath the surface of the earth as the one to be enjoyed by the owner of the private property a number of states have come up with legislations to regulate and control the development of ground water resources.

3.4.1 Regulating Ground Water in Andhra Pradesh: A.P. Water, Land and Trees Act 2002, and Rules 2002- A unique legal attempt in Andhra Pradesh.

In Andhra Pradesh with a view to promote ground water conservation, there is a special Act named *A.P. Water, Land and Trees Act 2002, and Rules 2002*. This unique legislation not only provides for the legal frame for ground water but also links the water, land and trees regime in the State. The Act regulates the access, use and conservation of ground water resources mainly through the agencies of the State Government and does not envisage the community participation.

The Act defines ground water as water existing in an aquifer below the ground at any particular location of the local area regardless of the geological structure in which it is stationary or moving and includes all grown water reservoirs[135]. The users of ground water again are typically defined to mean person or persons or an institution including a company or an establishment where government or not, who or which owns or uses or draws ground water for any purpose including domestic, industrial, environmental, ecological and agricultural uses made either on a personal, institutional or community basis.

The Act regulates all the ground water resources under the Authority set up under it.[136]

Every owner of the well is required to register his well with the Mandal Authority in his jurisdiction.[137] The Designated Officer, with the approval of the Authority, has the power to prohibit water pumping by individuals, groups of individuals or private organizations in any area, if he thinks water pumping in such area is likely to cause damage to the level of ground water or cause deterioration and damage to natural resources or environment. Furthermore no wells shall be dug in such areas.[138] No person is permitted to sink any well in the vicinity of a public drinking water source unless the well is sunk for public drinking purpose and hand pump for public or private drinking water purpose.[139] Further, with a view to protect public drinking sources if a well is found to be adversely affecting any public drinking water source then the extraction of water for commercial, industrial, irrigation or any other purposes from such well shall be prohibited. If these measures are insufficient then such well shall either temporarily or permanently be closed or sealed off.[140]

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[133] 1996 (1) ALD 134
[134] 1978 (1) APLJ (NRC) 46
[135] Sec 2 (4) of The A.P Water Land and Tress Act 2002
[136] Sec 8, The A.P Water Land and Tress Act 2002
[137] Rule 11, The A.P Water Land and Tress Act 2002
[138] Sec 9, The A.P Water Land and Tress Act 2002
[139] Sec 10, The A.P Water Land and Tress Act 2002
[140] Sect 12 , The A.P Water Land and Tress Act 2002

Also, to promote better management of critical ground water sources, as per the potential of availability of ground water, the Act gives the power to the authority to declare areas as 'scheduled areas', 'water scarcity areas' and 'over exploited areas'.

It has also attempted to promote and operate irrigation projects in command area development and schemes for drinking water and industrial water supply to harness the water of rivers of the states through a corporate institutional structure[141].

3.5 Protecting Watersheds: A decentralized structure is the first step

The Guidelines for Watershed Development[142] envisages a very central role for the Panchayati Raj Institutions (Local Self Government) in Watershed Development Projects. The Guidelines categorically assert that the *Zilla Parishad* or the District Council shall be fully responsible for implementation of the Watershed Development Programmes at the district level. The *Panchayat Samiti* at the block level shall have the right to monitor and review the implementation of the programme. Further, at the village level, the *Gram Panchayat* (Village Council) shall be fully involved in the implementation of the programme. Most significantly, where the Watershed is co-terminus with a Village Panchayat, the Gram Sabha of the Panchayat concerned will be designated as the Watershed Association which may be registered as a Society under the Societies Registration Act of India. In the year 2000 the Union Minister for Rural Development strongly asserted the need to replace 'Government oriented centralized supply – driven rural water programs' with 'People Oriented , decentralized and demand driven water programs.' In December, 2002, Government of India through the Ministry of Rural Development launched a scheme for the rural areas of all the states known as *Swajaldhara*, where it provides for community participation in planning, implementation, operation and maintenance in the schemes of its choice. Full ownership of the drinking water assets vests in appropriate levels of *Panchayat*. A new nationwide Watershed Development Programme named *'Haryali'*[143](greening) is also being implemented by Panchayati Raj Institutions (PRIs) and is now an accepted national strategy. The *Common Guidelines for Watershed Development Projects-2008* are the recent guidelines being implemented. The watershed institutions have no statutory powers and are an outcome of an executive order unlike acts that have been enacted for backing the water user associations. One of the principles of the Common Guidelines for Watershed Development Projects-2008 is ensuring access to usufruct rights from the common property resources for the resource poor.[144] One of the objectives of the 'Watershed Development Team' under the guidelines is '*common property resource management and equitable sharing*'[145]These new Guidelines for watershed development projects usher in a new framework for the next generation watershed programme. Some of the key features of these guidelines are delegating powers to states, financial assistance for institutions, livelihood orientation etc.

[141] Andhra Pradesh Water Resources Development Corporation Act of 1997
[142] The Guidelines for Watershed Development of Ministry of Rural Development, Government of India, 1994
[143] Under Water Shed Management, villagers can take up many small works to conserve water for drinking, irrigation, fisheries & afforestation which, to him, would not only add to '*Haryali*' to the rural landscape but also create new employment opportunities.
[144] Common Guidelines For Watershed Development Projects-2008 issued by Ministry of rural development
[145] Para 5.4 of Common Guidelines For Watershed Development Projects-2008 issued by Ministry of rural development

In one of the progressive legislation i.e. *A.P Water, Land and Trees Act 2002* there is mention of about Water use in watersheds[146] which tries to get the watersheds in the legal structure of the state. In May 2000, the government renewed its drive to give an impetus to water conservation efforts by bringing under one mission the various water conservation programmes set up until then. It launched the Water Conservation Mission or "Neeru-Meeru" (water and you) programme to focus on drought and water shortage at a time when groundwater levels had fallen by over three metres in some places. An ambitious Rs.100-crore project was launched to conserve water on one crore acres (about 40 lakh hectares) of land, across different climatic and geophysical zones. Its success depended largely on the efforts of the local community, especially in the rural areas where gully-plugging, rockfill dams and percolation tanks facilitated better water storage. The programme thus saw the constitution of committees at the State, district, constituency, municipal, mandal and gram panchayat levels, duly involving elected representatives, officials, non-governmental organisations and other agencies concerned. In order to execute conservation works, at the local level separate stake-holder groups or committees such as the Vana Samrakshana Samithi (VSS), water users' association (WUA) and watershed committee were set up.

3.6 Participatory Approaches to Water Commons: A Long Way to Go

Participatory approaches are the flavour of the legal frame across the natural resource management regime. Water is no exception. Consequent upon the formulation of the *National Water Policy, 1987* the Ministry of Water Resources issued guidelines for farmers' participation in water management, primarily for areas under the Centrally Sponsored Command Area Development Programme. The guidelines drew sustenance from policy provisions mandating involvement of farmers in management of irrigation systems.[147] The guidelines covered various aspects like operation of farmers' associations in different irrigation schemes, duties and responsibilities of the farmers, training and monitoring. The main objective of the guidelines was create a sense of ownership of water resources and the irrigation system among the users, so as to promote economy in water use and preservation of irrigation system. It set up water users association (WUA). The revision of the earlier policy and formulation of the *National Water Policy, 2002* also gave further impetus for development of WUA.

The legal issue however, remains on the primary debate of specialist versus general institution and constitutional versus ordinary legislative mandate between panchayats and specific resource related legislation. With this background let us examine the participatory approaches to water management in Andhra Pradesh and see whether it strengthens the community regime to water management or not.

3.6.1 Farmers Participation and Constitutional mandate of Panchayats: Is there a potential conflict brewing? :

In Andhra Pradesh, *Farmers' Management of Irrigation Systems Act, 1997* has been passed which provides for the compulsory membership of farmers coming under a water-users-area, which would be delineated by the district collector. [148] These organisations have been provided a very important function. They are required to usher in improved water use

[146] Sec 21
[147] National Water Policy, 1987
[148] The A.P Farmers Management of Irrigation Systems Act,, 1997

efficiency and reduction, if not elimination, of wastage of this precious resource, greater crop discipline, elimination of concealment of unauthorised irrigation, equitable distribution of water, better collection of water rates, superior maintenance and operation of the irrigation system[149]. The main duty of these organisations is to promote and secure distribution of water among its users, adequate maintenance of the irrigation system, efficient and economical utilization of water to optimise agricultural production, to protect the environment, and to ensure ecological balance by involving the farmers.

These developments point towards the shift from overall government control towards involvement of users in conservation and management of resources and also viewing of water as a common property resource. However an area of concern is that in the light of the fact that distribution and supply of water, control and management of minor water bodies has also been given to PRI and Gram Sabha, clearly, the mandate of Farmers' Organisation as discussed above, regarding supply of water, management of minor water courses among others in any Panchayat area comes in conflict with the functions of Panchayat or Gram Sabha. Thus this, ambiguity in delineation of power can result into operational difficulties in the functioning of participatory water management systems and hence powers need to be clearly distributed and also enabling framework needs to be created to harmonise the functions of local bodies and Farmers' Organisations.

3.7 Rights over Common Water Resources in the Scheduled Areas

As stated earlier, there is a constitutional mandate to view scheduled areas and natural resource management separately. The coming of PESA and Forest Rights Act further strengthens the legal frame within scheduled areas. Like other resources, the management of water resources is under a special legal frame too. It would be useful to examine how the state legal framework on water bodies, especially minor water bodies have responded to the central frame.

3.7.1 Rights over common water resources in the Scheduled Areas of Andhra Pradesh- Discretion remain regarding allocation of powers

The Andhra Pradesh Panchayat Raj Act 1994 was amended in 1998 to bring it "in tune with the provision of the Central Act 40 of 1996 (PESA) in their application to schedule areas in this state".[150] The Amendment introduces a new part, part VI – A and comprising special provisions relating to the Panchayat, Mandal Parishads and Zila Parishads located in the schedule areas. Some of the aspects of this amendment Act are noticeable with regard to community's rights over common water resources. First, the Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, and community resources among other things but *'without determent to any law for the time being in force'*. Notably, the amendment lays down that planning and management of minor water bodies in the scheduled areas shall be entrusted to "Gram Panchayat, Mandal Parishads, or the Zila Parishads, as the case may be, in such manner, as may be prescribed".[151] These prescriptions are still not in place.

[149] Sec 16, The A.P Farmers Management of Irrigation Systems Act, 1997
[150] See Act No. 7 of 1998
[151] Sec 242 G of A.P Panchayat Raj Act, 1994

3.8 Coastal Water Resources

Another lesser treaded path which has great relevance in the case of A.P. is of coastal water commons. The rampant coastal development and the regulation of these activities under the *Environment Protection Act, 1986* through the *Coastal Regulation Zone Notification, 1991* which incidentally has been amended 26 times. This by itself demonstrates the complexity of regulating coastal commons. This is dealt with in some detail in the Fisheries commons Chapter but it would be useful to touch on some generic issues of infrastructure development such as port development and the issue of zonation of coasts and its impact on coastal commons.

3.8.1 Coastal Regulation Zone: Zonation and extraction of water resources and preservation of customary rights

The Coastal Regulation Zone (hereinafter referred to as 'CRZ') is delineated and regulated as per the Coastal Regulation Zone notification, 1991 issued under the Environment Protection Act, 1986. The coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 meters from the High Tide Line (HTL)[152] and the land between the Low Tide Line (LTL) and the HTL is termed as the Coastal Regulation Zone. The CRZ area is further classified into CRZ-I, II, III, IV areas. CRZ-I areas are ecologically sensitive such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity etc.

The rural areas where the traditional communities primarily reside fall within the CRZ-III areas. Some of the activities that are prohibited include withdrawal of ground water but the same is permitted by hand pumps for domestic use, with a rider that restriction can be imposed by an authority designated by State Government/Union Territory Administration in areas affected by ingress of sea water. Further, construction/reconstruction of dwelling units between 200 and 500 meters of the HTL is permitted so long it falls within the ambit of traditional rights and customary uses such as existing fishing villages and Gaothan. The CRZ notification recognises the existing traditional rights of communities and provides access to them and their resources. But whether the onslaught of massive coastal development will allow them to remain is the moot question.

3.8.2 Coastal Zone Management Authority of Andhra Pradesh- Custodian of Coasts and State Territorial Waters

Coastal Zone Management Authority is constituted by the Central Government for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in areas of the State of Andhra Pradesh, namely. [153]In pursuance of these objectives the Authority performs several functions such as examination of proposals for changes or modifications in classification of Coastal Regulation Zone areas and in the Coastal Zone Management Plan (CZMP) received from the Andhra Pradesh State

[152] High Tide Line means the line on the land up to which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard. (CRZ notification, 1991)

[153] Ministry of Environment and Forest, Order dated July 9, 2009 , http://envfor.nic.in/legis/crz/SO1676.pdf

Government and making specific recommendations to the National Coastal Zone Management Authority therefore. Besides this the Authority also has the power to identify ecologically sensitive areas in the Coastal Regulation or coastal areas highly vulnerable to erosion or degradation Zone and formulate area-specific management plans for such identified areas.

Clearly, the coastal regulations completely exclude the participation of communities dependent on the coastal resources in their preservation and management such as in the preparation of coastal management plans. The control is tilted in favour of the State. This needs to change soon.

Chapter 4: FISHERIES AS COMMONS

4.1 Constitutional Position

At the outset, it is important to understand the Constitutional scheme of India laying out the jurisdictional control of the states and the Union. This actually forms the basis of exploitation of ocean and coastal resources within the coastal waters. The distribution of items in the Union, State and Concurrent List under Schedule VII of the Indian Constitution has a specific design that has to be understood in the context of fisheries. While fishing and fisheries beyond territorial waters is listed in the union list[154] which simply means that the central government is competent to legislate on this item, fisheries generally is listed in the state list[155] which means that the state governments have the exclusive power to make laws with respect to the items listed in the state list. A combination of these two items makes it clear that the jurisdiction over the maritime zones in respect of fishing is clear between the centre and the state. While the state has a jurisdiction over fisheries within 12 nautical miles, it is the central government which regulates fishing and fisheries beyond territorial waters i.e. beyond 12 nautical miles.

It is also important to emphasise that while the use oriented framework on fisheries is clearly demarcated the protection of certain species of fish lies in the concurrent jurisdiction of both the centre and the state[156].

Further, Article 297 of the Constitution follows the property and proprietary interest of the nation state, wherein the sovereign powers of the Union over things of value within territorial waters or continental shelf or resources of the exclusive economic zone is underlined. However, the property regime does not take away the legislative competence of the Centre and the State under Article 246. The above stated jurisdictional limits of the Centre and the State over fisheries resources in the marine areas need to be looked at in this light. It is interesting to note that there has been a progressive thinking on the limit of these territorial zones resulting in a comprehensive legislation in 1976[157]. The constitutional mandate has expanded the territorial zones to include not only the territorial waters or the continental shelf or the exclusive economic zones but also all other marine living resources of the exclusive economic zone. The limits of such maritime zones are specified as per the Maritime Zones Act, 1976.

Fisheries also need to be understood in two different contexts they are Marine fisheries and inland fisheries.

[154] (See item 57 of list I)
[155] (See item 21 of list II)
[156] (See entry 17B relating to protection of wild animals and birds. Importantly wild animal definition includes fishes as listed in Part II A of schedule I of the Wildlife Protection Act, 1972)
[157] Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

4.2 Laws that directly regulate marine fishing activities

The following four major legal instruments of the Central government, described below, directly govern fisheries activities especially in the marine waters: The Indian Fisheries Act, 1897; The Maritime Zones of India (Regulation of fishing by foreign vessels Act, 1981 (No. 42 of 1981); The Maritime Zones of India (Regulation of fishing by foreign vessels) Rules, 1982 and the Operation of Deep Sea Fishing Vessels, 20m OAL and above, Notifications dated 14 December 2006. Apart from these there exists the state Marine Fishing Regulations[158]

a. *The Indian Fisheries Act, No. 4 of 1897*

   It is a very brief and its current usefulness very limited. Although it is to be read as supplemental to other fisheries laws in force, its substance is directed at prohibiting destruction of fish by use of explosives and poisons in inland waters and on coasts and allowing State governments to make rules for the protection of fish.

b. The Maritime Zones of India (Regulation of fishing by foreign vessels Act, 1981 (No. 42 of 1981):

   The Act's main provisions deal with the grant of licences, prohibition of Indian citizens using foreign vessels, procedures for granting of permits or licenses, and the responsibility of permit holder for compliance.

c. Balancing competing needs on fisheries resource use and conservation:

   Then there are conservation oriented laws as well that include the Wildlife Protection Act, 1972 that protects certain species of fish and Environment Protection Act, 1986. The Coastal Regulation Zone Notification 1991 described earlier, also regulates the activities in the coasts.

4.3. Fisherfolks Rights Law? : Securing Tenure on fisheries commons

The most recent is the announcement of the *Fisherfolks Rights Act* on the lines of the Forest Rights Act which may recognise the traditional rights of the traditional fisherfolks and secure their tenure on the coastal spaces. Infact, the nature of claims and its identification could be an important pre-condition before their settlement. One of the greatest lacunae for traditional fisher folks is the lack of titles on both land and the resource. So the nature of claims, which include any claims for welfare entitlements currently under the law and which may or may not be based on Government Records would go a long way in securing the interest of the Indian traditional fisherfolks and small scale fisher folks.

What is also important for sustainable development is the balancing of conservation laws, impacts of coastal area development and right to livelihood through fisheries. The legal framework must take a judicious view on such competing claims and need to adequately balance them. Further, customary practice and norms on fisheries and whether they qualify to be customary law needs to be assessed and documented.

[158] Orissa Marine Fisheries Regulation Act, 1981, (OMFRA)

4.4. Multiple Institutions and Jurisdictional Overlaps will adversely impact fisheries commons:

There are alteast ten departments involved in decision making and organization responsibilities on fisheries and related activities. These include the Ministry of Agriculture which is primarily associated with the development of fisheries, aquaculture, fish processing. Then there is the Ministry of Environment and Forests which looks after the management of resources in the coastal water as the nodal ministry with major responsibility for protecting marine environment, includes implementation of legislative measures. Then there is the Department of Ocean Development which is responsible for scientific monitoring of the marine environment and management of resources in the high seas. The Ministry of Water Resources deals with erosion. Then the important Ministry of Defence which not only hosts the Indian Coast Guard but is also responsible for taking pollution response measures, including oil pollution. The Ministry of Surface Transport which is the nodal Ministry for Ports and shipping development. Further, the Ministry of Petroleum and Natural Gas is responsible for offshore installations, coastal refineries and pipelines among other things. The Ministry of Tourism is entrusted with tourism activities in coastal regions. Further the Ministry of Mines which is mandated to carry out mining activities in coastal regions. The Ministry of Commerce imports foreign trawlers and industrial fisheries of the deep sea.

Then there are some other Institutions involved which include the Coast Guard; Nine Chief Wildlife Warden's Office (entrusted with protection and management of endangered species in each of India's states) in nine coastal states, Marine Products Export Development Authority under the Ministry of Commerce; National Marine Fisheries Development Board and Fishery Survey of India among others. Needless to add that a sound mechanism to ensure coordination by aligning the allocation of business Rules is a must for sustainable fisheries and coast management

4.5. The Policy Framework: The India Marine Fishing Policy, 2004 and Fisher Welfare

The India Marine Fishing Policy was originally drawn up in 2000 and adopted in 2004. Its objectives relate to increased production, exports and food security, ensuring socio-economic security of the artisanal fisher and ensuring sustainable development of marine fisheries "with due concern for ecological integrity and biodiversity".[159] Among other things there is a thrust on Fishermen's Welfare. It clearly states that this area in fishing is the sole livelihood for about 10 lakh fishermen households along the coastline and this policy attaches top priority to ensuring their social security and economic well being. A number of measures are elaborated in this component, mostly to do with economic issues. A concern in their implementation is the human capacity of governments to achieve maximum implementation.

Measures for Fisherfolk welfare:

- detailed enumeration of the fisherfolk of the entire country
- each household would be given a card for easy identification and for settlement of claims.

[159] The stated objectives are:Augment marine fish production of the country up to the sustainable level in a responsible manner so as to boost export of sea food from the country and also to increase per capita fish protein intake of the masses; Ensure socio-economic security of the artisanal fishermen whose livelihood solely depends on this vocation; Ensure sustainable development of marine fisheries with due concern for ecological integrity and bio–diversity.

- cooperative movement of fisherfolk would be strengthened and extended to areas where it is non-existent
- apex bodies of cooperatives of each state would be up- linked to the national body
- uniformity in welfare schemes
- schemes operated in parallel by States and Centre to be rationalized
- NGOs and local self Governments would be sought in implementation of welfare schemes for fisher folk , thereby reducing the direct role of Central and State Governments in the process
- the admissibility and extent of concessions for each of the following to be re-determined
- artisanal fisheries deploying OBMs and small-mechanised boats up to 12m. would be treated at par with agriculture
- small scale fisheries involving mechanised boats under 20m OAL would be treated at par with small scale industries (SSIs)
- fishing vessels above 20 m and fishing activity involving mother ships or factory vessels would be treated as industrial activity

It needs to be clarified however, while equating such activities to agriculture, SSIs or industrial activity whether the regulatory frame such as Industrial Development and Regulation Act or the labour laws of the Industry as well as the benefits due to the existent policies such as subsidies would also apply.

Having understood the broad national frame on marine fisheries it would be useful to examine the marine fisheries in A.P.

4.6 Absence of clear definition on key terms such as fish, fishing and fishing vessel doesn't help in managing fisheries commons- Andhra Pradesh

The Andhra Pradesh Marine Fishing (Regulation) Act, 1994 with reference to the *Marine Fishing Regulation Rules 1995*[160] covers fishing in Andhra Pradesh waters – the belt of territorial sea out to 12 nautical miles.[161] It applies to vessels registered in Andhra Pradesh[162] that may fish beyond the 12 miles, in the Indian Exclusive Economic Zone (EEZ), the waters of another State or the high seas. The definition of terms under this Act is not clear and can be critical for effective enforcement; it is difficult to charge someone with fishing in contravention of the Act if terms such as "fish" and "fishing", and "fishing vessel" are undefined or given a restrictive definition that would make enforcement technically very difficult.

4.7 Protecting Interests of Traditional Craft*:*

The State Governments are empowered to regulate, restrict or prohibit fishing in any area by any class of fishing vessels, the catching of (as opposed to "fishing for" which would be broader) designated species of fish in any area and the use of "such fishing gear in any

[160] Other fisheries-related laws are the Indian Fisheries (A.P.) Andhra Area Amendment Act.1927 (Act II of 1929, the Indian Fisheries (AP Extension and Amendment) Act,1961 (Andhra Pradesh Act V of 1961) and the Andhra Pradesh Cooperative Societies Act,1964 which also empowers Commissioner of Fisheries & officers in the Department to perform the functions under the Act in respect of fishermens' cooperative societies.

[161] The Act extends to the whole of the State of Andhra Pradesh, including the marine waters.

[162] Either under the Marine Products Export Development Authority Act, 1972 (MPEDA) or the Andhra Pradesh Fishing (Regulation) Act, 1994

specified area as may be prescribed". This approach to management recognizes different management approaches in areas demarcated for traditional craft, and mechanised and industrial vessels. The need to protect the interests of different sectors is acknowledged in some Acts including Andhra Pradesh.

4.8 Making Traditional fishing legally and economically viable:

The coastal fishing communities using traditional methods of fishing depend on coastal fishery resources as their primary source of subsistence and livelihood. These communities on account of continued use of the resource are well versed with the method of extraction of the resource and also with methods of preserving it.[163] The problem related to fisheries is twofold: how to keep species of fish at ecologically sustainable level and how at the same time to assure the livelihood of people. The inherent problem associated with fisheries is the lack of specific ownership of the resource. The traditional community of fishermen have not been given legal rights though their activities are regulated under legislation. This must urgently change.

4.9 The Coastal Aquaculture Authority Act, 2005

Another contentious use of marine resource is the unregulated development of aquaculture. *The Coastal Aquaculture Authority Act, 2005* is the primary legislation that regulates aquaculture. It provides for the establishment of the Coastal Aquaculture Authority for regulating the activities connected with coastal aquaculture in coastal areas and relevant matters. The Act mandates the Central Government to take measures that it deems necessary or expedient to regulate coastal aquaculture by prescribing guidelines. An objective is to ensure that coastal aquaculture does not cause any detriment to the coastal environment. The concept of responsible coastal aquaculture contained in the guidelines is to be followed in regulating coastal aquaculture activities, in order that the livelihood of various sections of people living in the coastal areas is protected. Coastal Aquaculture Authority is an outcome of a judgment of the Supreme Court. The act and rules prescribes guidelines to be followed for setting up and running of coastal aquaculture farm and it lays emphasis on protection of the livelihood of the coastal communities.[164] It would be worthwhile to do an assessment of the impact of this significant legislation on aquaculture and its impact on traditional fishing in A.P.

[163] Akimichi 1984; Amarasinghe et al. 1997; Berkes 1999; Doulman 1993; Dyer 1994; Freeman et al. 1991; Hviding 1993; Lim et al. 1995; McConney 1997; Normann et al. 1998; Johannes 1978, 1982; 8 Pomeroy 1995; Ruddle 1988, 1993; Swezey 1997

[164] Para 19.0 Rule 3 Guidelines for regulation of coastal aquaculture under sec 3 of the Act

4.10 Constitution of Marine Protected Area (MPA): enclosing the fisheries commons: Ecological concerns versus livelihood dependence

In order to protect ecologically fragile areas the MoEF initiated a formation of network of marine protected areas under provisions of *Wildlife Protection Act, 1972* (WLPA). The Marine Protected Areas constituted in the state are either national parks or sanctuaries. The application of provisions of WLPA brings in an entire system of settling the rights of the communities who had existing rights over the resources that are constituted as MPA. The restrictive regime in the interregnum impacts the traditional fishing communities. This is primarily because the rights have to be ascertained through government records and traditional rights have not been recorded under any formal process or legislation. This is a huge gap that needs to be urgently filled.

4.11 Inland Fisheries Commons

The inland Fisheries regime throws a completely different set of legal issues that is evident by the manner in which rights are allocated and the kind of management structures that are being constituted among other things.

4.11.1 Fisheries rights on minor irrigation tanks to panchayats in Andhra Pradesh

The fishery rights in minor irrigation tanks and the right to auction weeds and reeds in such tanks and the right to plant tree on the bunds of such tanks vests in the Gram Panchayat[165]. The State Government had issued rules in the past relating to the right to lease fishery rights in minor irrigation tanks, water courses etc. vested in the gram Panchayat[166]. It has been held by the Andhra Pradesh High Court where the rule of the Panchayat Raj Department requiring Gram Panchayat to lease fishery rights in minor irrigation tanks to Fisherman Co-operative Society without public auction was challenged, that Co-operative Societies not operating in the local area of the Gram Panchayat have no right to claim the lease of fishery rights in respect of the tanks situated in the Gram Panchayat.[167]

CONCLUDING REMARKS:

It is clear from the above analysis that there are many gap areas that needs urgent attention in terms of commons access, commons use and commons disposal. The Effectiveness of prohibitory order book or the absence of village forests in the law. The ambiguity in the survey and settlement process, the reluctance of handing over natural resource management to decentralised institutions, the lack of clarity on the jurisdictions of coastal commons, the absence of protection regime for traditional methods and systems of management of natural resources are few of the examples that needs corrective measures. This preliminary analysis of law and commons in Andhra Pradesh is just a curtain raiser to crease several infirmities in managing commons.

[165] Sec 56, of the Act

[166] issued under G.O. Ms. No. 343 dated 10-04-1978 also held in the Fisherman Co-Op. Society vs. The State of Andhra Pradesh And Ors, AIR 1982 AP 53

[167] See 1978 (2) ALT 443. And AIR 1982 AP 53