

<b>All that we share</b> <i>by Kanchan Chopra</i>	2
<b>Dependence of the poor on commons</b> <i>by Bhaskar Goswami</i>	4
<b>Common wealth, priceless wealth</b> <i>by David Bollier</i>	7
<b>Consequences of the loss of commons</b> <i>by Bhaskar Goswami</i>	12
<b>How grazing lands became 'waste' lands</b> <i>by Nitya Ghotge</i>	16
<b>The power to take — and displace</b> <i>by Usha Ramanathan</i>	21
<b>The invisible fish hunters of the Godavari</b> <i>by R Uma Maheshwari</i>	26
<b>From owners to 'occupiers'</b> <i>by Thingnam Anjulika Samom</i>	30
<b>Challenging the tourism juggernaut</b> <i>by Aarthi Sridhar</i>	34
<b>The farmer, the lotus pickers and the washermen</b> <i>by Jyothi Krishnan</i>	37
<b>Destroyed by 'development'</b> <i>by Subrat Kumar Sahu</i>	40
<b>Only enlightened local communities can protect the global commons: Interview with A Damodaran</b>	46
<b>Privatising Bangalore's lakes</b> <i>by Rohan D'Souza</i>	48
<b>The fuzzy logic of urban commons</b> <i>by Bhuvaneshwari Raman</i>	49
<b>The Kaikondrahalli lake initiative</b> <i>by Harini Nagendra</i>	50
<b>Guardians of the forest</b> <i>by Kusum Karnik</i>	52
<b>Commons manifesto</b>	54

*This volume has been researched in partnership with Foundation for Ecological Security, which also supported the FES-Infochange Media Fellowships on common property resources in 2010*

**Editors:** Hutokshi Doctor, John Samuel  
**Production and layout:** Gita Vasudevan, Sameer Karmarkar  
**Infochange team:** K C Dwarkanath,  
 Philip Varghese, Ujwala Samarth, Vijay Narvekar, Vishnu Walje

# All that we share

Common property resources are owned, held in trust and managed by an identified set of people — as against private or government ownership. Today, the commons are threatened by market forces, infrastructure development, industrial projects, and archaic rules of land acquisition. ‘Community trusteeship’ of resources is necessary to ensure that future generations are as well-off as we are

KANCHAN CHOPRA

THE COMMONS in many parts of the world continue to represent a management and policy challenge, indeed a dilemma. The following questions are often asked: What is the nature and magnitude of the commons? Are they primarily rural in nature? What are the compelling scientific and social reasons for their continuance? Why can they not be subsumed under ‘public goods’? Or privatised completely? Is it because this form of natural resource management fulfils a particular need for the sustainable supply of some kinds of ecosystem services? Or then, conforms to the norms of social justice? In a dynamically changing situation, can policymakers depend on some underlying principles to provide guidance to an appropriate mix of private, state and common property?

## The commons in land and land acquisition policy

What we refer to as ‘the commons’ or common property resources (CPRs) are resources subject to a form of property rights as real in some parts of the world as private or government property. According to the standard definition, “CPRs are owned by an identified set of people, who have the right to exclude non-owners and the duty to maintain the property through constraints placed on use”. Their continued existence depends as much on social norms and traditional law as on coded and written law. We have pastures, sacred groves, gochar lands, and so on.

Since the 1980s, scholars have tried to estimate the magnitude of the commons using various methodologies. They came up with estimates based on village surveys, reclassification of land use categories, etc. Interestingly, at that time, these estimates fell within a reasonable range, with states with advanced agricultural systems having 5-7% of land in this category, and those supporting rainfed agriculture or pastoralism as major livelihood categories recording a percentage of around 25-32%. The average for the country fell from 25% to 21.25% (1). The only national-level survey to estimate this category (conducted in 1998 by the National Sample Survey as part of its 54th Round survey) concluded that these resources account for 15% of geographical area and amount to about 0.31 hectares per household. The percentage of rural households that rely on access to the commons for grazing is 20%, for water 23-30%, and for firewood 45%. Yet, the general predilection until recently was to let public agencies or even private

parties displace local customary institutions. Another point of consensus in the literature is that the commons are indeed threatened. They are threatened by market forces, by infrastructure development and industrial projects, and by archaic rules of land acquisition. Land has now become the resource in short supply as we surge ahead with accelerated infrastructural and industrial development. In recent times, protests over land acquisition have garnered considerable media attention and a new land acquisition policy is on the anvil. But too much of the current discourse concentrates on private land and security of tenure with respect to it, ignoring the reality of common property rights.

It is appropriate to hypothesise that a part of the public protest is perhaps due to the abrogation of traditional rights and concessions on the land being acquired. There is no way to confirm or refute this as very little information exists on the magnitude and nature of these rights, hence their non-recognition. The issue can be dealt with at a decentralised level in the following manner:

Land acquisition policy and practice should include explicit recognition of areas of land being ‘the commons’ and of the existence of rights, privileges and concessions to these lands. Prior to acquisition of specific land areas, a detailed assessment of all kinds of rights on them should be made. A time period of six to eight weeks can be fixed for this, and all sources such as revenue records, district gazetteers and government notifications studied to identify the nature of these rights. This will enable project proponents, government agencies and other stakeholders to know the exact nature and quantity of income and livelihood loss brought about by changes in land use. Once this has been done for a few projects, the nature of the spectrum of rights in existence, which individual scholars have been documenting for small areas, will also become clear (2). Introducing such documentation as an integral part of the process of land acquisition will pre-empt some of the conflicts witnessed in the recent past over land acquisition. It will also promote transparency.

## Interdisciplinary approaches, trusteeship and governance

Research on the commons in the last two decades has highlighted areas of possible interest in relation to

governance issues in development policy. Economists and anthropologists have tried to come together to study the commons from this perspective (3). The economist's focus on 'management' of common property resources and 'crafting' of institutions is often accompanied by the neglect of an understanding of values, power and symbolism that are embodied in the use and conceptualisation of the commons. In a large number of societies, use of the commons has traditionally been built around notions of the community and its trusteeship of resources such as land and water. The notion of 'community trusteeship' of these resources is implicit in their use. Such notions of trusteeship also find mention in the law and in constitutional documents. The notion of 'development', on the other hand, focuses on the individual, in particular his/her income and employment opportunities.

How relevant is the notion of 'trusteeship' to development? I would like to argue that it is relevant when we refer to 'sustainable development'. We wish to maintain our capital intact, to ensure that future generations are as well-off as we are, and so on. All this implies 'holding resources and the environment in trust'.

The importance of trusteeship also comes up in the context of governance. Good governance implies ensuring that laws are implemented in the spirit in which they are enacted. It also implies that incentive structures set up by markets function efficiently. All this involves moving beyond the individual as the unit of decision-making to conceive of the 'citizen' and her role in the attainment of societal goals with respect to inter-personal and inter-temporal wealth transfers. Very little societal welfare can be achieved without moving beyond individual income maximisation. A great deal of traditional welfare economics is about this. Today, this understanding is being reinforced by the focus on good governance.

Recent developments in policy such as the employment-oriented National Rural Employment Guarantee Act (NREGA) have put village communities and resources, viewed in their entirety, at the centre of implementation frameworks. Can this lead to a more unified trusteeship and value-oriented discussion of the use of the commons as a driver of development of the village community? Could it provide a counter to the privatisation of the commons as an irrevocable by-product of 'development'? In this cross-cut between development and the commons, through schemes such as the NREGS, it is clear that studies on implementation issues can be looked at through two different lenses:

- Efficacy in the creation and maintenance of natural capital such as tanks, water harvesting structures, leading to income-generation.
- Success in the introduction of trusteeship in governance of natural assets for development.

If evaluation criteria for NREGA-related projects give equal weight to both kinds of impacts, development in rural areas can build institution- and value-creation into natural capital augmentation and assist in moving towards

long-term sustainability.

### The new face of the commons: Urban and global

Meanwhile, our understanding of what constitutes 'the commons' and their role is emerging in newer forms. Growing urbanisation means that newer kinds of urban communities are coming up. These are often referred to as 'gated communities' with access to their assets and common spaces being restricted to residents who are also responsible for their maintenance. The emergence of these urban CPRs has come about as a consequence of the felt need for some common services by way of security, green areas, and waste management. In some cases, we have fairly successful management. Beyond the minimum level of common interests, these communities also run into problems of diversity of interests, etc, of stakeholders. In the context of increasing urbanisation and migration, it is important to see what makes these communities work.

The atmosphere constitutes, in a sense, the global commons, owned by all the inhabitants of planet earth. At the start of the 21st century, the nations of the world are seeking solutions to the damage inflicted on the global commons by greenhouse gas emissions. In this case, we have inequity (across nations), we have prior history, and we have very few global institutions whose writ is accepted by all. In other words, as nations of the world, constituting the so-called 'global village', interact on issues of limiting greenhouse gas emissions that endanger the global commons, we find many similarities with village communities. Will the 'global village' be able to exhibit similar foresight and wisdom in solving its problems? The challenge will require the construction of a new international institutional structure, focusing on efficient design rules for efficiency and drawing on shared values and trust for long-term sustainability. Whatever be the outcome, the conceptualisation of the 'commons' as shared spaces between societies, nation-states, and international corporations will continue to be significant. Simultaneously, navigating interacting global changes and preparing for future uncertainty will continue to present the challenge of setting up a co-evolving set of globally focused, collaborative institutions. And what we learn from the village commons and the national commons will continue to be relevant.

*Kanchan Chopra is former Director and Professor, Institute of Economic Growth, Delhi*

### Endnotes

1 See Chopra Kanchan, G K Kadekodi and M N Murty (1990). *Participatory Development, People and Common Property Resources*, Sage Publications. For a later review see Shah Amita 'Rights to Land and Water, and Watershed Development' in Chopra Kanchan and Vikram Dayal (edited) (2009), *Handbook of Environmental Economics in India*, Oxford University Press

2 The lacuna in data collection on land will also be filled simultaneously. Probably because of the mix of qualitative anthropogenic elements with quantitative approaches, the Indian statistical system does not readily provide documentation of the spectrum of property rights on land

3 Two volumes that merit attention in this context are Ghate R, Jodha N S, and Mukhopadhyaya P (edited) (2008), *Promise, Trust and Evolution: Managing the Commons of South Asia*, Oxford University Press, and Bardhan Pranab and Isha Ray (edited) (2008). *The Contested Commons: Conversations Between Economists and Anthropologists*, Blackwell Publishing

## Dependence of the poor on commons

A 1999 NSSO study on the role of land, water and forest commons in the life and economy of rural Indians revealed that CPRs provide as much as 58% of fuelwood requirements and up to 25% of fodder requirements. It also provides evidence of large-scale depletion of CPRs, with CPR lands in rural India declining by almost 2% every five years

BHASKAR  
GOSWAMI

PUBLISHED IN 1999, the National Sample Survey Organisation's (NSSO) study is the largest national-level assessment of size, utilisation and contribution of common property resources (CPRs), with separate estimates for 12 agro-climatic zones. The report is based on a sample survey carried out across 5,242 villages, covering 78,990 rural households, and pertains mainly to the role of three CPRs — land, water and forests — in the life and economy of India's rural population.

According to the report, 15% of the country's geographical area is under CPR lands, excluding forests, though the latter in practice may be used as common property. The average landholding size stood at 0.84 hectares, while each household had access to 0.31 hectares of CPR land. The average area of CPR land available to households was highest among the northeastern states followed by Rajasthan and Madhya Pradesh, states which also have a high proportion of drylands. Most frontline Green Revolution states have a relatively smaller share of per household CPR land availability. Similarly, states with higher population density predictably reported lower per capita CPR land availability.

The report reiterates findings of previous studies on CPR land availability and utilisation across different agro-climatic zones. The percentage of geographical area under CPRs and per household CPR land availability is lowest for the Gangetic plains and highest for the Thar desert. Likewise, the extent of permanent pasture and grazing lands is highest in the western Himalayas, followed by the western coast and central plateau; it is lowest in the Thar desert. The eastern and western Himalayas have the highest proportion of CPR lands under village woodlots and forests, while the Thar desert and the Gujarat and eastern coasts have relatively lower CPR lands under forests.

The report produces evidence of large-scale depletion of CPRs in both size and productivity. CPR land in rural India is declining by almost 2% every five years. The maximum decline was observed in the middle and trans-Gangetic plains, while the loss was the least on the west coast, Gujarat coast, western Himalayas and the Thar desert.

To assess the contribution of CPRs, data on collection of

various materials like fuelwood, fodder, manure, weeds, grass, edibles, and medicinal herbs from them, as well as other kinds of use by villagers, was collected from households in the sample. Nearly half of India's rural households collect something or the other from CPRs; the average value of produce collected works out to Rs 693 per household, annually, which is about 3% of the average consumption expenditure of each household.

The study points out that CPRs provide 58% of fuelwood for domestic consumption and entrepreneurial activities. They also help meet up to 25% of fodder requirement for livestock, besides providing a variety of other products used as raw materials for household enterprises like rope-making and basket-weaving. On average, around 20% of households graze their livestock on CPRs. Interestingly, while agriculturally intensive states like Punjab and Haryana have proportionately less CPR lands, households in these two states collect the most from CPRs in value terms and the bulk of what they collect is fodder for livestock.

Although the degree of dependence on CPRs across landholding classes varies, no discerning pattern emerges. Two categories of holding size — less than 0.2 hectares and more than 1 hectare — show the least dependence on CPRs, while households falling in the intermediate categories collect more. Among all categories, dependence on CPRs is highest among rural labour households. This highlights the reality that the landless, agri-workers and households with the largest share of income coming from wage-paid manual labour rely most on CPRs for food and livelihood security.

Among the various agro-climatic zones, the average value of collection from CPRs is highest in the western Himalayas due to close proximity of villages to forests. The western dry region comprising the Thar desert has vast CPR lands that are barren and marginal and the average value of collection is the lowest among all zones. The Gangetic plains with their fertile agricultural lands have less CPR lands but the value of collection is extremely high, ranking next to the western Himalayas. In the Deccan plateau and coastal zones, though the number of households depending on CPRs is high, the value of collection is quite low.

## Highlights of NSSO report on CPRs

Broadly speaking, common property resources include all such resources that are meant for common use by villagers. They include resources like village pastures and grazing grounds, village forests and woodlots, protected and unclassified government forests, wasteland, common threshing grounds, watershed drainage, ponds and tanks, rivers, rivulets, water reservoirs, canals and irrigation channels. In pre-British India, a very large part of the country's natural resources was freely available to the rural population. They were largely under the control of local communities. With the extension of state control over these resources and the resultant decay of community management systems, CPRs available to villagers declined substantially over the years. Today, in almost all parts of the country, villagers have legal right of access only to specific categories of land and water resources. Nevertheless, it is widely held that CPRs continue to play an important role in the life and economy of the rural population.

Common property resources have been defined in a number of different ways in available literature. The element that is common to most of these definitions attributes primary importance to nature of access in the identification of CPRs. The conceptual approaches vary over a wide range. At one extreme there is an approach that treats all that is not private property as common property. The approach at the other extreme adopts a much more stringent view to distinguish between common property and "free rider" or "free or open access" resources. The latter category is characterised by the absence of any rules for management of resources. The proponents of this approach hold that "a resource becomes common property only when the group of people who have the right to its collective use is *well defined*, and the rules that govern their use of it are set out clearly and followed universally". In their view, common property implies the existence of an institutional arrangement for management of the resources.

Traditionally, systems of community management of CPRs and forest land existed in various forms in many parts of the country till the end of the 19th century. A very large part of the country's natural resources was common property, in the sense that a wide variety of necessary resources was freely available to the rural population. The process of extending state control over common resources, which began with the declaration of "reserved" and "protected" forests in the closing years of the 19th century, has essentially been that of excluding villagers from accessing common resources by law. As a result, systems of community management gradually disintegrated and are now virtually extinct.

Today, in almost all parts of the country, villagers have legal right of access only to specific categories of land like 'pasture and grazing lands' and 'village forests' which are under the jurisdiction of the village or village panchayat. All other categories of land not under private ownership, like

barren and uncultivable land, culturable waste, land put to non-agricultural uses, and forests belong to the state revenue department or forest department.

India's rural population, particularly the poor, depend greatly on goods and services available from these categories of land. Besides, although only those resources are treated as CPRs, to which no individual has exclusive property rights, there are systems of customary rights which support traditional practices, such as gleaning or grazing of cattle in the fields after harvest, which represent common rights on private property in certain situations.

### Common property land resources (CPLR)

- Percentage of common property land resources in total geographical area: 15%
- Common property land resources per household (ha): 0.31
- Common property land resources per capita (ha): 0.06
- Components of common property land resources
  - Community pastures and grazing land: 23%
  - Village forest and woodlots: 16%
  - Other: 61%
- Reduction in CPR land during last five years (per 1,000 ha): 19 ha

### Collections from CPLR

- Households reporting collection of any materials from CPRs: 48%
- Average value of annual collections per household: Rs 693
- Ratio of average value of collection to average value of consumption expenditure: 3.02%

### Nature of use of CPRs

- Households reporting grazing of livestock on CPRs: 20%
- Households reporting use of common water resources
  - Irrigation: 23%
  - Livestock rearing: 30%
  - Household enterprise: 2.8%
- Share of fuelwood in value of collection from CPRs: 58%
- Percentage of households reporting use of fuelwood: 52%
- Households reporting collection of fuelwood from CPRs: 45%
- Average quantity of fuelwood collected from CPRs over 365 days: 500 kg
- Households possessing livestock: 56%
- Households collecting fodder from CPRs: 13%
- Households cultivating fodder on CPRs: 2%
- Average quantity of fodder collected from CPRs over 365 days: 275 kg
- Households reporting irrigation using common property water resources owned/managed by:
  - Village panchayat: 1.1%
  - Community: 0.8%
  - Government: 1.8%
  - River/Government canal, etc: 10.3%

(Reprinted from the NSSO Report on Common Property Resources in India, December 1999)

## Commons contribute more to poor households than anti-poverty schemes

In a study conducted in 81 villages across 21 dryland districts across seven states in rural India, N S Jodha, pioneer of commons research in South Asia, measured the dependence of poor communities (small farm households and the landless) on CPRs. The commons in these districts included village pastures, community forests, wasteland, common threshing grounds, waste dumps, watershed drainages, village ponds and tanks, rivers, rivulets, riverbeds, etc, and the area under commons ranged from 9 to 28% of total village area.

The data revealed that 84-100% of poor households derived benefits such as food, fuel, fodder and fibre from common lands. By contrast, only 10-28% of large farmers used CPRs, and the benefits they accrued were fewer.

Per household income from CPRs ranged from Rs 530 to Rs 830, depending on the region. Small, poor households benefited more than larger, richer households; common lands also serve as a safety net for the poor during periods of crop failure and uncertainty. Since returns for individual users from degraded lands are not much for the rich, the poor, who have surplus labour and fewer opportunities, accept these low-paying options more readily.

Harvesting of seasonal products and the opportunity to benefit from unskilled labour are additional factors that make the commons more attractive for the poor. In fact, the results indicate that CPRs contribute more to poor households than anti-poverty schemes in some of the areas that were evaluated. An analysis of monetary data from this study also suggests that CPRs play a role in reducing inequalities in income between classes. The results call for their inclusion in poverty alleviation and rural development exercises.

One of the key findings of Jodha's work has been the documentation of the decline of CPRs. This refers not only to physical loss in terms of area, but also recorded declines in productivity and changes in status, ownership and governance. In the three decades following India's independence, the area under common lands declined by 26-63% in the dryland districts that were assessed.

While population growth had a role to play, this decline was largely attributable to privatisation for the benefit of the poor as part of various welfare programmes. However, 49-86% of privatised lands ended up being allocated to farmers who were better endowed. In a majority of instances where land was given to the poor, they did not have additional resources to develop the land, nor were they provided any support to do so. As a result, much of the land was sold, mortgaged, remained fallow, or was leased on a long-term basis. The decline in CPRs is often very closely paralleled by a decline in social capital (especially traditional institutions and mechanisms of governance). — *Common Voices 2, FES*

Regarding fuelwood, a staggering 62% of rural households depend on CPRs to meet their energy requirements. On average, a rural household collects nearly 500 kg of fuelwood from CPRs each year, apart from drawing 45% more from other sources. The pressure on CPRs as a major source of energy for cooking will persist, despite their continued erosion, especially when various rural energy surveys point out that 90% of energy consumed comes from non-commercial sources.

Regarding fodder, around 20% of rural households, both landless and landholders, depend on CPRs to graze livestock while 13% of households collect fodder from CPRs. A small 2% of rural households cultivate fodder on CPRs. States like Rajasthan, Himachal Pradesh, Uttar Pradesh, Madhya Pradesh and Orissa reported high levels of dependence on CPRs for livestock grazing. In Punjab, though collection of fodder from CPRs is quite high, grazing on CPR land is lowest possibly because it also has one of the lowest CPR land available per household. On average, around 275 kg of fodder is collected from CPRs annually by rural households across the country.

As in the case of fuelwood, households in the western Himalayas depend on CPRs the most both for grazing and collection of fodder. The eastern Himalayas follows with respect to grazing but collects relatively less fodder from CPRs, while in the Thar desert, a minuscule quantity of fodder is collected from CPRs although the incidence of grazing is quite high. The value of fodder collection was reported to be very high in the agriculturally rich Gangetic plains, while both grazing and fodder collection was relatively low in the Deccan plateau and the coastal regions.

Regarding common property water resources, the most important use was irrigation; 23% of rural households source water from CPRs to irrigate their croplands. Around 30% of households also depend on them to meet the water requirements of their livestock. The availability of common property water resources like ponds, tanks and lakes for non-domestic use was found to be the highest in the east coast plains and the hills.

The report clearly brings out the fact that CPRs have traditionally been a source of economic sustenance for the rural poor, and have played an important resource-supplementing role in the private property-based farming system. That the poor depend on CPRs as a means of livelihood and food security is clearly highlighted in the report.

*Bhaskar Goswami is associated with the New Delhi-based Forum for Biotechnology and Food Security*

# Common wealth, priceless wealth

The commons represents a very different logic for managing resources than the market. It offers forms of ownership and management that can be more equitable than private property. It seeks sustainability of the resource over the long term, unlike the market's propensity for maximising short-term (financial) benefits. The idea of citizen-management of the commons is to establish fair and effective rules for allocating access to a shared resource

DAVID BOLLIER

WHEN GOVERNMENTS and corporations try to solve problems, they tend to see only two general types of solutions — government action and market competition. For many people it is customary to see these two arenas of power as the only effective regimes for managing resources. Yet it has become clear (in recent years) that there is a third, largely neglected realm of solutions: the commons. The commons describes a wide variety of phenomena; it refers to social and legal systems for managing shared resources in fair, sustainable ways.

So, it can refer to shared resources that a community builds and maintains (libraries, parks, streets); national resources that belong to everyone (lakes, forests, wildlife); and global resources that all living things need to survive (the atmosphere, water, biodiversity). The commons can also refer to "gift economies" such as science, that encourage the creation and circulation of research and information. The Internet is host to countless commons built and maintained by people with shared interests, from open software groups to Wikipedia to specialty archives. Implicit in the commons is a set of values and traditions that give a community identity and help it govern itself.

Although there are countless varieties of commons, many of them quite idiosyncratic and rooted in particular cultures, most of them fall into three general categories — gifts of nature, material creations, and intangible creations. This article offers an overview of different types of commons and governance rules. It also suggests how a discourse of the commons can open up new types of political and policy conversations (1).

## Why talk about the commons?

It is important to talk about the commons because it helps us identify a broad class of resources that ordinary citizens and/or specific communities have a political and moral stake in controlling and managing. A great many commons are being converted into private property so that they can be bought and sold in the market. This is one of the great injustices of our time, one that conventional politics tends to ignore. In both overt and subtle ways, free market ideologues in business and politics are intent on privatising

resources that people collectively own; they wish to convert publicly controlled resources into private property. This process is known as the "enclosure of the commons".

Neo-liberal political systems are essentially engines of market enclosure. The political economies of industrialised societies tend to regard shared resources as under-leveraged market assets. They are seen as raw inputs for generating corporate profits. Restrictions on using them for market purposes, such as social or environment regulation, are often criticised as impediments to wealth-creation, and therefore morally suspect. In the neo-liberal worldview, private property rights offer the most efficient way to produce wealth, and this constitutes "progress".

The point of talking about the commons is to open up a larger conversation about types of wealth and value. Not all wealth can be expressed through a market price. And indeed, other types of value — ecological, social, democratic, moral — need to be fully recognised and actively protected. The very epistemology of conventional economics has trouble doing this; the commons is helpful because it offers a way to name species of wealth that classical liberal and neo-liberal economics prefer to overlook.

For example, market champions like to ascribe a monetary



value to everything — land, crops, music, art — and then focus on maximising the economic exchange value of those resources, as determined by price. So air and water are treated as free and limitless resources, for example. But market valuations often ignore the actual costs of the resources used. They also tend to ignore the costs displaced onto the environment, workers and the public, otherwise known as “economic externalities”. A market may be highly productive and efficient while failing to acknowledge that it is destroying the commons: pollution dumped into the environment, children used as labour, factories that have dangerous safety risks.

The commons helps us develop a broader understanding of ‘wealth’ by introducing the idea of inalienability. Certain resources have value beyond any price, and should be insulated from market forces. The beauty of nature, the sanctity of specific places, the ecological value of wildlife, the ethical norms of selling safe products, the moral values and traditions that define a community — all represent wealth beyond price.

With this broader sense of value, most commoners prefer not to monetise their resources. In a commons, long-term stewardship of resources is seen as more important than maximising profit or sales. Accordingly, resources really understood and managed as commons are allocated on a free or non-discriminatory, low-price basis, or according to social need or ecological sustainability. Some communities may authorise the sale of resources in the market, but only if it can be done sustainably and without harm to the integrity of the commons.

The role of government is to act as a conscientious trustee of the citizens’ resources. But in market-based societies, it is all too common for politicians and government agencies to fail to perform this task; some argue that this is a systemic failure of neo-liberalism. Governments of any sort are prone to corruption, of course. Politicians are known to give politically connected friends free or discounted access to collectively owned minerals, grazing lands, beaches and airwaves, for example. Or they sell resources that should not be sold at all — for example, land that has important ecological value or sacred significance. The growth of the market sector in recent decades, relative to government, has only intensified the pressures to enclose the commons.

### The myth of the ‘tragedy of the commons’

But isn’t the idea of the commons doomed to failure? For decades, conventional economists have assumed that any shared management system would inevitably result in a “tragedy of the commons”.

This myth was popularised by the ecologist Garrett Hardin in a famous essay in 1968, in which he declared that people who share land as a commons will inevitably overexploit it (2). He cited the example of a common pasture to

which anyone may add more livestock for grazing without restriction. When individual farmers can take private benefits from the commons without regard for its overall “carrying capacity”, Hardin said, a shared resource would necessarily be overexploited and fall into ruin. Hence, the “tragedy of the commons” (3).

The most attractive solution, according to conventional economists, is to assign private property rights in land and let the “free market” decide how it shall be used. Economists argue that only private landowners will have the necessary incentives to take care of the land and make worthwhile investments in it; it is said that government and individuals have neither the proper incentives nor skills to manage the commons competently.

To support this general conclusion, economists often cite ‘prisoner’s dilemma’ game experiments that demonstrate the difficulties of getting individuals to cooperate to solve shared problems. In his influential 1965 book, *The Logic of Collective Action*, economist Mancur Olson argued that “rational, self-interested individuals will not act to achieve their common or group interests” (4). The myth of the “tragedy of the commons” is routinely invoked to try to discredit the idea of the commons. A generation of economists and policy experts has used the story to criticise common ownership of land as impractical — and to celebrate private property and markets as the best system for managing resources.

Critics have challenged the tragedy of the commons narrative and prisoner’s dilemma experiments as unrealistic models of the real world, however. They point out that in real life, members of communities develop social trust among each other. They collaborate and solve problems. Scholars of the commons, particularly those connected with the International Association for the Study of the Commons (5), cite hundreds of functioning commons, especially in developing nations, that reveal Garrett Hardin’s abstract scenario as empirically erroneous.

It has also been pointed out that the “tragedy scenario” that Hardin described is not, in fact, a commons. He describes a regime of unregulated open access to land. To a natural resource without boundaries or governance rules. Anyone can appropriate whatever he or she wishes. No one is governing the common pool resources Hardin talks about. In other words, the story he tells is not about common land, it is about no man’s land.

But this is not what a commons is. A commons is a social system — a system of self-governance and consensus rights for controlling access to and use of a resource. Successful commons generally have well-defined boundaries. They have rules that are well understood by the participants of a commons. There is sufficient openness so that “free riders” can be identified and punished.

The governance rules in a commons may be informal and implicit, and embodied in social traditions and norms. Or they may be explicit and formally codified in law. In either case, the people who participate in a commons have a shared social understanding about who has rights to use the land's resources, and under what terms.

The point is simple. A commons is not always a tragedy. A commons can be entirely sustainable. It is a serious and sustainable alternative to market management of a resource.

### The tragedy of the market

The real tragedy, many commoners argue, is the tragedy of the market. It is the market after all that relentlessly uses up so many of our precious gifts of nature and leaves pollution and waste everywhere, without even providing an accurate economic accounting of the actual costs.

The problem with conventional economics is that it too often fails to recognise the value that the commons contribute to market activity. Mainstream economists usually do not identify the hidden market subsidies that come from the commons and the unacknowledged negative economic externalities (6) that companies dump into the commons.

Consider, first, the hidden market subsidies. Broadcasters who use the airwaves for free are using a public resource while providing little in return to the citizens who own the airwaves. When governments give timber companies cheap access to public lands, or give drug companies exclusive rights to taxpayer-financed drug research, they are giving those companies a hidden subsidy. When bottled water companies take large quantities of pure water from underground aquifers for free, they are essentially stealing from the commons.

"Economic externalities" are another set of costs that are not borne by buyers and sellers, but instead shifted to the commons. It is typically cheaper for a company to dump pollution into the atmosphere and to dump radioactive wastes in the ground than to clean them up (or "internalise" the costs). These economic externalities are unacknowledged costs of market activity — costs that are typically borne by the commons.

A commons-based economics, then, would take proper account of the full costs of market activity by recognising its hidden subsidies and unacknowledged (social, environmental and moral) externalities.

To talk about the commons helps us begin to see economic activity in a more holistic way. Just as environmental economists have helped us recognise the fuller context of market activity, the commons can help us recognise the social, environmental and moral factors that quietly subsidise normal market activity. It helps us see the public schools that provide educated workers, the regulations that

make markets stable and trustworthy, the gifts of nature that companies regard as free. The commons helps us name these other, non-monetised sources of value — and in so naming them, we can begin to understand them properly and defend them.

### Governing the commons (7)

How shall the commons — or more specifically, common pool resources — be managed in order to preserve them as commons? This is a key question to the survivability and health of the commons. The answer depends a great deal on the nature of a shared resource and the specific community. One major determinant is whether a resource can be used by many people without destroying it. If too many loggers cut trees in a forest, it *will* destroy the forest. But when lots of programmers join an open source software community and lots of users use the same software at the same time, it doesn't deplete the commons; it *adds value* to the shared body of software code. A forest can be "used up," but a software commons is enhanced by greater participation.

One important factor in the management of a commons, therefore, is whether a resource is depletable or not. Natural resources tend to be depletable (or "subtractable"), while information and culture cannot really be "used up," especially in the age of the Internet and cheap digital reproduction. That is why the information commons tends to grow in value as more people use it — a phenomenon that property law professor Carol Rose calls a "comedy of the commons" (8).

Another important factor is whether a resource is "excludable" or "rivalrous". It is hard to prevent people from benefiting from resources like lighthouses and sunsets, to which everyone has free access; they are "non-excludable". Also, my enjoyment of these resources does not diminish someone else's enjoyment; they are "non-rivalrous". Such non-exclusionary, non-rivalrous resources are known as "public goods". You cannot easily put a meter on them or prevent people from reaping benefits from them.

This analysis suggests that depletable commons require commoners to establish limits on the use of the shared resource, allocate those rights fairly, and police usage. By contrast, managing a "digital commons" is less about managing finite resources than managing social relationships. Online commons typically focus on the criteria of meritocratic leadership, open participation, the cultivation of social consensus, reciprocity and the exclusion of vandals and spammers. The types of governance and decision-making for a given resource will depend on whether it is depletable or non-depletable, rivalrous or non-rivalrous, and excludable or non-excludable. It will also vary by the peculiar culture and history of a given community, and the nature of the resource. Thus, lobster fishermen in Maine will manage their limited supplies of lobster in different ways than farmers in Valencia, Spain, manage limited water supplies, or the

Gutenberg Project, an international project which manages the digitalisation of public domain books (9).

Interest in the commons is surging nowadays in part because it is seen as an antidote to market enclosure. New technologies and powerful corporations are seizing control of many resources that have long existed as public goods. Two prominent scholars of the commons, Elinor Ostrom and Charlotte Hess, write: “The ability to capture the previously uncapturable creates a fundamental change in the nature of the resource, with the resource being converted from a non-rivalrous, non-exclusionary public good into a common pool resource (10) that needs to be managed, monitored, and protected, to ensure sustainability and preservation. (11)”

### **The commons: A different framework for managing resources**

The commons represents a very different logic for managing resources than the market. It offers forms of ownership and management that can be more equitable than private property. It seeks sustainability of the resource over the long term, unlike the market’s propensity for maximising short-term (financial) benefits. The commons also honours self-governance as an important principle. Far from a “tragedy,” the idea of citizen-management of the commons is to establish fair and effective rules for allocating access to a shared resource. It can assure proper maintenance of the resource while protecting against “free riders” who might use the resource without contributing to its upkeep.

The social systems for managing a commons can vary immensely, however. There is no one-size-fits-all template. Different management systems are needed depending upon the nature of the resource, its scale, and the relevant community of commoners. For example, small fishing communities may allocate the rights to fish in certain waters, and police against cheaters, more effectively than a federal government. Yet when it comes to the electro-magnetic spectrum used by broadcasters, the federal government is probably needed to provide an overarching system of technical and legal rules. But note: those rules could favour large corporate broadcasters seeking to maximise market gains or small non-profit broadcasters functioning as local commons. Still other commons, such as open source programmers, can operate wholly independent of government (so long as they can use self-devised licences such as the General Public Licence, based on copyright ownership, to assure free sharing and re-use of their code). Programmers like many other commoners use both formal rules and informal social norms to self-organise themselves.

### **Government and the commons**

In many instances, government acts as a steward for the public in operating libraries, parks, civil infrastructure, airwaves, and other resources that belong to the nation as a whole. But it is important not to conflate a government

programme with the commons. The two may overlap, but they are not the same.

The point of naming a shared resource as a commons is to emphasise that the resource belongs to the people, not to the government, and therefore should serve larger purposes than those afforded by the market. Once a resource is considered “government property,” its moral and legal connection to the citizenry begins to wane. The commons emphasises the prior claims of citizen — the commoner — over and above government.

Second, the government has a larger role to play than bureaucratic management. In many cases, it can best support the commons by facilitating the establishment of new commons institutions that can be managed by the commoners themselves. Such self-governance at the proper scale of the resource can help assure better management and accountability. Examples include cooperatives, local land trusts, community broadcasting and community markets (12).

Government bureaucracies tend not to be very accountable to the commoners, even if they nominally serve them. It is customary to say that the government owns the treasures in the national museum, the highways and wilderness preserves. But in truth, a nation’s citizens own those resources; the government is merely a trustee (it’s worth noting that the idea that anyone can own a living entity as dynamic and sovereign as nature is, of course, an anthropocentric conceit). To talk about the commons, then, is to reassert the people’s moral if not legal rights in reaping benefits from collective resources, thus maintaining them. It is to focus on the ways in which commoners can keep the government accountable in serving the broader public interest, over and above market objectives. The commons helps us articulate an arena of citizen power, self-governance and socially rooted value.

Although we associate the commons with the social management of a resource, there are some variants, while bureaucratic and based on the money economy, that serve worthy goals. Canadians and Brits regard their national healthcare systems as a type of government-managed commons: a resource that is available to all (but not for free), based on people’s needs, and supported by all, based on their means. Government has to act as a steward of the commons, and civil society and citizens at the individual level have the responsibility to reclaim such stewardship if convened democratically.

Another impersonal commons model is the stakeholder trust, in which assets are managed by non-governmental trustees on behalf of a specific group of people. In Alaska, for example, the state government established the Alaska Permanent Fund to serve as a trust fund for revenues derived from the sale of oil on state lands. The Fund, now worth US\$40.1 billion, generated dividends of \$1,107 for

every citizen of the state in 2006. In cases where a country needs to exploit mineral resources or fossil fuels not just for use value but for exchange value, the Fund offers a versatile policy mechanism for equitable sharing of (monetary) benefits from common assets while also reducing inequality and preserving other commons.

A more recent innovation is the Sky Trust, a trust proposed by Peter Barnes and inspired by the Alaska Permanent Fund. Barnes proposes auctioning rights to emit carbon. Large corporate polluters will pay significant sums into a trust fund in which all citizens own equal shares. The expense of buying pollution rights will encourage companies to find more cost-efficient technologies to reduce their pollution. The trust fund, in turn, yields dividends that help citizens offset the higher prices they must pay for using resources (like oil) requiring pollution abatement. The principle behind the Sky Trust — also known as ‘cap and dividend’ — is that polluters should not have a presumptive right to treat the atmosphere as a private dumping ground (13).

In the broad universe of commons, these types of government-engineered commons are exceptional. The more familiar and pervasive types of commons are socially based and relatively small — although the Internet is increasingly the site of all sorts of innovative experiments in self-organised mass collaborations, as exemplified by Wikipedia. Most commons are less about bureaucratic systems than smaller-scale social governance. Members of distinct communities know and respect the resources that they manage, and their management tends to be more accountable.

Indigenous peoples, for example, regard their knowledge of local flora and fauna, and medicinal treatments derived from them, as a community possession, not a marketable commodity. Their ‘traditional knowledge’ helps define who they are as people. Therefore, maintaining the integrity of the commons is the same as maintaining the integrity of their social relationships, values and identity. Money cannot substitute for them. Which is why indigenous peoples are properly suspicious of dealings with large pharmaceutical companies and oil companies; they understand that any wealth generated through the market could well subvert their other, important forms of “common wealth”.

### The commons as a sector of wealth-creation

The full scope of the commons sector is only beginning to be studied. One reason is the alarming number of enclosures underway. Another reason is the growing realisation that socially based commons do not necessarily result in a “tragedy”, but indeed, can be highly generative. A commons can often create value — economic, social, personal — in ways that market regimes cannot.

This is most readily seen on the Internet, where “commons-based peer production”, in Professor Yochai Benkler’s

analysis, is proving to be a more efficient and creative mode of generating value than conventional corporate organisation (14). The rise of GNU/Linux, the open-source operating system, is a frequently cited example of this phenomenon. Managing natural resources as commons may also generate greater value over the long term than markets because a well-designed commons is more likely to internalise pollution and take a long-term perspective.

A great deal more study is needed to give us a better understanding of the many commons around us. But it is abundantly clear that the commons offers a range of wealth-creating, resource-protecting solutions that government and markets simply cannot provide.

---

*David Bollier is the Editor of [www.onthecommons.org](http://www.onthecommons.org), and the author of *Viral Spiral: How the Commoners Built a Digital Republic of Their Own**

### Endnotes

- 1 cf. Contribution of Helfrich and Haas
- 2 Hardin, Garrett: ‘The Tragedy of the Commons’. *Science*. December 13, 1968, pp 1,243-1,248
- 3 Compare: Lerch, Achim: “The Tragedy of the ‘*Tragedy of the Commons*””
- 4 Olson, Mancur: *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, Massachusetts. Harvard University Press, 1965, p 4
- 5 The International Association for the Study of the Commons (IASC), founded in 1989 as The International Association for the Study of Common Property (IASCP), is a non-profit association devoted to understanding and improving institutions for the management of resources that are (or could be) held or used collectively by communities in developing or developed countries. [www.iascp.org/](http://www.iascp.org/)
- 6 In economics, an externality (or spillover) is an impact on any party not directly involved in an economic decision. An externality occurs when an economic activity causes external costs or external benefits to third party stakeholders who did not directly affect the economic transaction. In a competitive market, the existence of externalities would mean that either too much or too little of the good would be produced and consumed in terms of overall cost and benefit to society. If there exist external costs (negative externalities) such as pollution, the good will be overproduced by a competitive market, as the producer does not take into account the external (environmental and social) costs
- 7 Compare: Ostrom, Elinor: *Governing a Commons from a Citizen’s Perspective*
- 8 Carol M Rose, ‘The Comedy of the Commons: Custom, Commerce and Inherently Public Property’, 53 *University of Chicago Law Review* 711-781 (1986, reprinted in Rose, *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership* (Boulder, Colorado: Westview Press, 1994)
- 9 [http://www.gutenberg.org/wiki/Main\\_Page](http://www.gutenberg.org/wiki/Main_Page)
- 10 A “common pool resource” is a shared economic good, independent of any system of legal property rights. Scholars have often used this term to distinguish a resource or a good from a property regime, especially from “common property,” which denotes a resource that is jointly owned through a set of legal rights
- 11 Hess, Charlotte and Ostrom, Elinor: *Understanding Knowledge as a Commons: From Theory to Practice*. Cambridge, Massachusetts. MIT Press. 2007, p 10
- 12 See for instance: Narain, Sunita: ‘When Markets Do Work for People’
- 13 Barnes, Peter: ‘Who Owns the Sky? Our Common Assets and the Future of Capitalism’. Island Press, 2001
- 14 Benkler, Yochai: ‘Coase’s Penguin, or Linux and the Nature of the Firm’. 112 *Yale Law Journal* 369 (2002). Available at <http://www.benkler.org>. See also Benkler: ‘The Wealth of Networks’. New Haven, Connecticut. Yale University Press. 2006

# Consequences of the loss of commons

Seeds, pods, buds, fruits, herbs and other produce collected from common property resources are consumed by communities to compensate for nutritional deficiencies during periods of acute food shortage. In fact, uncultivated food provides as much as 65% of food, and all of the fodder and fuel needs of very poor landless households. It is not difficult to comprehend the consequences when CPRs are closed, encroached upon, or access to them denied to local communities

BHASKAR  
GOSWAMI

*“...THE DWELLERS in the countless villages all over the country had, from time immemorial, obtained a great part of their daily needs from the jungles. First and foremost was the question of fuel with which to cook their food. Without that they could not live. Then there were small timbers for building without which they would have no shelter, ploughs without which they could not cultivate the ground, grazing without which their cattle would die, green-leaf manure for their fields, tanning bark for their leather, bamboos for a dozen different purposes. And these were vital to their wellbeing... And then an authority came into being which denied them what they had always looked upon as their rights. They fought most bitterly and indeed understandably, against the new tyranny.”*

These words from *My Memories of the Forests of India* by C C Wilson, Chief Conservator of Forests of Madras State during 1938-40, aptly sum up the close links between forests, which were once commons, and farming. Farming depends on other common property resources (CPRs) too, which are either dwindling or access to them curtailed. The implications on food production and food security at the local level are therefore serious.

Not only do CPRs serve as a source of farming inputs — fodder, grazing land, irrigation water, manure — they also supply fruits, tubers, honey, gum, small animals, fish, birds, leaves, leafy vegetables, products that are regularly used by rural households. They help supplement rural livelihoods and are a safety net during times of agricultural crisis. CPRs contribute to soil fertility through nutrient cycling, regulate the hydrological cycle, help conserve biodiversity and serve as sinks for greenhouse gases, all of which have a bearing on both food production and food security.

The state of three major CPRs — forests, land and water — and their links with the food and livelihood security of marginal communities is an issue that requires careful examination.

## Forests

Forests are a major source of fuelwood and fodder, while decomposed biomass serves as manure for agricultural lands. During colonial times forests were closed, and the

practice continues post-Independence. Depleting forest cover led to the creation of reserve forests that are out of bounds for local communities, barring a few exceptions. Increasing pressure on wild animals led to the creation of national parks and sanctuaries, where zones were demarcated as ‘no-go’ areas for communities living in the vicinity.

Faced with limited access to forests, rural households have been forced to use cowdung for cooking, thereby reducing its availability for croplands. This, in turn, led to a drop in nutrient supply to the soil resulting in a marked reduction in crop output. Less fodder from the forests affected livestock and disrupted an important source of food to marginal communities.

Timber and non-timber forest produce (NTFP), which constitute a major source of income for adivasis and the landless, have also been lost. The harvesting of produce like tamarind, tendu leaves, lac resin, and medicinal plants is strictly regulated. In many cases, there is evidence of forest department officials favouring contractors over local communities in the handing out of permits to harvest NTFP, which translates to huge profits for select businesses.

Much of this was expected to change after the Forest Rights Act (FRA) of 2006 came into force. The landmark legislation allows inhabitants of forests the “right of ownership, access to collect, use and dispose of minor forest produce, which has been traditionally collected within or outside village boundaries”. However, the reality on the ground has not changed.

Take, for instance, the case of bamboo which the forest department treats as ‘timber’, hence not an NTFP. While the FRA allows the right to collect and sell bamboo, the forest department has done little to educate communities about this right. In some states like Maharashtra the department acknowledges this right of forest-dwellers yet refuses to authorise its transportation, a prerequisite for any produce to move out of the forest (1). So a tribal has the right to collect and sell bamboo, but cannot take it out of the forest! It’s the same story with other important NTFP, despite legislation meant to enable forest-dwellers to exercise their

rights over what has traditionally been theirs.

Dr N C Saxena, retired bureaucrat and presently a member of the National Advisory Council, in an interaction with the press, sums it up well: “Going by this (the FRA), around 60-70% of the forest area of 70 million hectares gets covered. Are we in a position to deal with the rights of people on 50 million hectares, more so when we have done this for only 20,000 hectares so far?” (2) This statement is a reflection of the cynicism that has set in with respect to expectations from the forest department and the associated/ affiliated bureaucracy that is tasked with enabling rights-holders’ access to forest resources.

Control of the commons by the state has adversely affected traditional and historical management systems. Local communities are unwilling to respect customary agreements for protecting, upgrading and regulating the use of common property resources. At present, the commons are exposed to access sans the reciprocal obligation to maintain them. The tacit cooperation built over centuries has been destroyed.

Forests provide food and a number of other products, relieving agriculture of this burden. Deprived of access to forests, farmers encroach on what was theirs by right: the commons. As a result, community woodlots have been degraded to such an extent that hardly anything worthwhile can be got from them. A lot of NTFP can no longer be

collected free of charge, which usually means that instead of food more land is being used to grow cash crops and the money earned to purchase essential NTFP.

### Common lands

Common lands, a non-forest CPR, also face a bleak future. According to the National Sample Survey Organisation’s 54th Round data on CPRs, published in 1999, CPR land is declining by around 2% every year. This translates to a loss of 166,660 hectares yearly — that’s around half the state of Goa! What is worrisome from the point of view of agriculture is that the rate of loss is highest in the middle and trans-Gangetic plains, arguably the most fertile lands in the country.

Loss of CPR land is not a recent phenomenon. It started back in the 1950s when land reforms, as promised by Prime Minister Jawaharlal Nehru, began taking shape. For Nehru, “spoilt children of the British government” — the *taluqdar* and *zamindar* — were anathema to what independent India stood for. He set up the Kumarappa Committee that proposed land ceilings, to be implemented by the states. Any land exceeding ceiling limits was to be treated as surplus land to be distributed among the landless.

While Nehru’s intentions may have been noble, the impact on the ground certainly was not, as states failed to deliver.



*Aquatic vegetables procured by the people of Loktak Lake, Manipur*

Thingnam Anjujika Samom

The policy may have been okay, but the political will to implement it was lacking. In response to the states' failure, the Bhoodan Movement, initiated by the Gandhian, Acharya Vinoba Bhave, began with a target of 50 million acres but ended with a donation of around 5 million acres. This shortfall is not a milestone that remained unattained because the government itself fell short by many millions of acres more; it still does.

No lessons were learned, nor were laws enforced. After failing to acquire land exceeding ceiling limits, an easier path was adopted: instead of seizing croplands from the rich, states poached on CPR lands that the poor depended on and distributed it among the still poorer. These lands were sub-marginal at best, suitable only for growing shrubs, bushes and trees. When cultivated, productivity was a mere quarter of what was obtained from other croplands. Clearly, this could not compensate for the biomass that was produced from the land in the past.

Farming on marginal CPR lands has helped the spread of inappropriate Green Revolution technologies. Citing poor soil fertility, state agriculture departments pushed the case for application of higher doses of chemical fertiliser through their extension machinery. This further eroded the already fragile natural resource base, and indirectly led to greater pauperisation of the poor.

For many rural households across the country, mid-March to mid-June and mid-September to mid-November mark the most food insecure periods. They also coincide with low availability of casual employment. CPRs have traditionally provided food during these times of distress.

Take, for instance, arid Rajasthan where a recent study (3) by scientists from the Indian Council of Medical Research listed 13 famine foods, most of which are sourced from CPRs. According to the study, seeds from grasses, pods from trees, buds from bushes, fruits from herbs, etc, have been traditionally consumed by communities to compensate for nutritional deficiencies during periods of acute food shortage. Depletion and loss of CPR lands therefore deprives dependent communities of a vital safety net during periods of food insecurity and agricultural crisis.

In her foreword to a 2007 publication (4), economist Bina Agarwal writes: "Flourishing in the interstices of the cultivated and the uncultivated, the public and the private, the field and the forest, are innumerable leafy greens, fruits, tubers, roots, small fish, grasses, and other forms of food life hidden from our gaze that constitute the daily diet of numerous villagers across South Asia."

This highlights the importance of food and nutrition derived from the commons.

The aforementioned publication throws up interesting figures for India and Bangladesh: the authors found that

In recent times, the attack on CPR lands has been renewed with the newfound wisdom of cultivating bio-fuels. Chhattisgarh, for instance, has set a target of 1 million hectares under jatropha plantation by 2012; every inch of the land used arguably qualifies as CPR

uncultivated food provides around 65% of food weight, and all of the fodder and fuel needs of very poor landless households; the figures for better-off households are also fairly high. The figures reiterate the findings of NSSO (1999) and similar studies across the country carried out by other scholars: products derived from CPRs constitute not only part of the coping strategy during periods of shortage but are part of everyday sustenance and are key sources of nutrition.

It is not difficult to comprehend the consequences when CPRs are closed, encroached upon, or access to them denied to local communities. While the statistics point to 15 lakh infants below the age of 5 dying on account of malnutrition every year in India, the studies referred to above also highlight the fact that apart from food insecurity, loss of CPRs contributes to nutritional insecurity among rural communities. Still no one in power will ever acknowledge the role of CPR depletion in this silent genocide.

CPR lands have also been lost on account of community forestry projects implemented across the country. One such disaster is the Karnataka Social Forestry Project. The state government leased out over 28,000 hectares of degraded, reserved forest land in villages to Karnataka Pulpwood Ltd, a joint venture between the government and the Birla-owned Harihar Polyfibres, in 1984, to raise eucalyptus plantations. Predictably, the venture ignored the claims of local villagers who depended on these lands to meet their basic needs.

Faced with sustained agitation by locals and pressure from

the courts, the project was scrapped in 1991. However, permanent damage had already been done to farmlands by the surrounding eucalyptus plantations. There are many such cases of land alienation and the planting of misfit species under community forestry programmes. Yet no analysis has been forthcoming from the government on what went wrong.

In recent times, the attack on CPR lands has been renewed with the newfound wisdom of cultivating bio-fuels. Chhattisgarh, for instance, has set a target of 1 million hectares under jatropa plantation by 2012; every inch of the land used arguably qualifies as CPR. In Rajasthan, various government agencies are collaborating with the private sector to implement a 2007 rule that allows 1,000-5,000 hectares of village CPR, termed 'wasteland' in the state's records, to be leased out for 20 years to the bio-fuel industry. In the northeast, tea major Williamson Magor has diversified into bio-fuels and has already brought 1.32 lakh hectares under jatropa plantation through contract farming; it is encouraging gram panchayats to leverage funds under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) to promote the venture. Many such 'well-meaning' bio-fuel projects that end up depriving local communities of their rights have been implemented across India.

Perennial plantations on so-called wastelands sever the close link between common lands and pastoralist communities. It is widely acknowledged that livestock rearing and dairying are the most pro-poor sectors in the rural economy of developing countries as they include not only farmers who own land but also landless labourers and agri-workers. Thanks to encroachment of the commons, or putting them under alien plant species, the latter are left with little land on which to graze their animals, while the former are forced to divert their already meagre landholdings to produce fodder.

### Water

Traditional water harvesting systems have been the backbone of irrigation in India. In Tamil Nadu, for instance, around 40,000 tanks dot the rural landscape, contributing to a third of irrigated agriculture in the state. The *ahar-pyne* irrigation system in Bihar and the *johads* of Rajasthan are more examples of common property water reservoirs and irrigation systems that have existed for centuries. Over time, however, the state has disrupted pre-existing common property relations and usurped remnants of customary rights. This, in turn, has led to the degradation of traditional water harvesting systems and encouraged large-scale encroachments in catchments. Farmers have been left with little choice but to sink borewells and run underground aquifers dry.

Common property water resources also face huge pressure for industrial application and use. While irrigation has the

potential to increase crop yields by almost 30%, barely 40% of the country's agricultural land is irrigated. This limited irrigated land contributes to over half the food produced in the country.

Unmindful of the impact on food productivity, industries are being granted permission to directly source water from rivers and reservoirs. This has given rise to conflict situations in regions where irrigation in the command area of reservoirs has not been met and yet industries are being allowed to draw water. The Godavari river and the Hirakud reservoir is a case in point. There are no existing laws to prevent overexploitation of groundwater. As a consequence, underground aquifers across vast swathes of the country are running dry (5).

It is ironical that in the past, when a bulk of the benefits were cornered by a few privileged communities, CPRs were better managed than they are today, when pursuing the cause of social justice has all but killed traditional values. While it was important to break traditional vested interests in CPRs, institutional and management systems ought to have been designed with an emphasis on preserving and nurturing CPRs whilst allowing access to them by marginal communities. This did not happen, hence the tragic state of our commons today.

As it is, vast tracts of fertile agricultural land are being stripped of crop cover and diverted for non-agricultural use across the country. The remaining croplands are under tremendous pressure to increase production to meet the demands of a burgeoning population. Depletion, erosion and loss of CPRs are impacting food production and adding to the woes of farmers and adivasis who depend on them. Traditional and cultural inter-linkages between farms, farming and CPRs are being trampled upon, something that can never be undone. The concerns being voiced on food and livelihood security of millions are genuine.

### Endnotes

1 See 'Is Bamboo a Tree or Grass?' in December 1-15, 2010, issue of *Down to Earth*

2 'Giving Tribals Jobs Could Have Saved Vedanta'. *The Financial Express*, December 23, 2010

3 Singhi, Manju and Ramesh Joshi (2010), 'Famine Food in Arid Rajasthan: Utilisation, Perceptions and Need to Integrate Social Practices by Bio-Resolutions'. *Studies on Ethno-Medicine*, Vol 4 (2), August 2010, p121-124

4 Mazhar, Farhad, Daniel Buckles, P V Sathesh, Farida Akhter (2007). 'Food Sovereignty and Uncultivated Biodiversity in South Asia: Essays on the Poverty of Food Policy and the Wealth of the Social Landscape'. Academic Foundation: New Delhi

5 For more on poaching of water meant for irrigation see Bhaskar Goswami (2008). 'The Nuts and Bolts of Appropriating Agriculture Land', in *Agenda*, April 2008 (accessible here: <http://infochangeindia.org/200804057058/Agenda/Battles-Over-Land/The-nuts-and-bolts-of-appropriating-agricultural-land.html>)

## How grazing lands became ‘waste’ lands

Under British rule, pastoral lands and uncultivated commons were uneconomic wastelands that needed to be acquired, owned, taxed and brought under the plough. After Independence, the focus on agricultural productivity and land reform caused a further enclosure of the commons, robbing pastoral communities of fodder and sustenance. After liberalisation, industry is encroaching on the commons

NITYA GHOTGE

ACCORDING TO the National Sample Survey Organisation (1), common property land resources constitute about 15% of the total geographical area of India, of which 23% is community pasture and grazing lands and 16% have been classified as village forests and woodlots. At another level, India has the largest livestock population in the world, with 485 million head of livestock, many of them raised by small and marginal farmers who depend on grazing land to meet the fodder requirements of their animals. As the population of both animals and humans rises, there will be a proportional increase in competition for food to feed humans, bringing agriculture and livestock production into direct conflict.

Traditionally, however, Indian agriculture and crop production have shared a fairly close symbiotic relationship. While crop residues from agriculture have formed an essential component of animal diets, a significant portion of livestock feed has come from the commons. These lands — whether open pasture, grazing lands, fallow lands or village forest lands — have sustained livestock populations when and where agricultural residue or crops were not available.

It is generally believed that prior to colonisation by the British, the common property resources under the control of villagers were greater. The policy of enclosures and fences was extended to India, and large chunks of common land became the property of the Crown. The British and the Mughals shared a preference for agricultural production systems and introduced taxes and collected revenue, staking ownership over the land and resources. Lands which were not cultivated were considered primitive. To be ‘civilised’ meant being settled, owning lands and property which were under crops. In rural Punjab they set about acquiring 20 lakh acres of common grazing lands, expropriating pastoralists, setting up agricultural colonies, constructing canals and granting blocks of land to peasants. Arid pastoral regions represented “poverty, ignorance and oppression” (2). Likewise, in Berar in central India, commercial agriculture under that notorious crop, cotton, extended into the village commons displacing cattle and the people who reared them, and leading to a vicious spell of famine and death (3) which continues to cast a dark pall over these districts even today as cotton farmers commit suicide with alarming regularity.

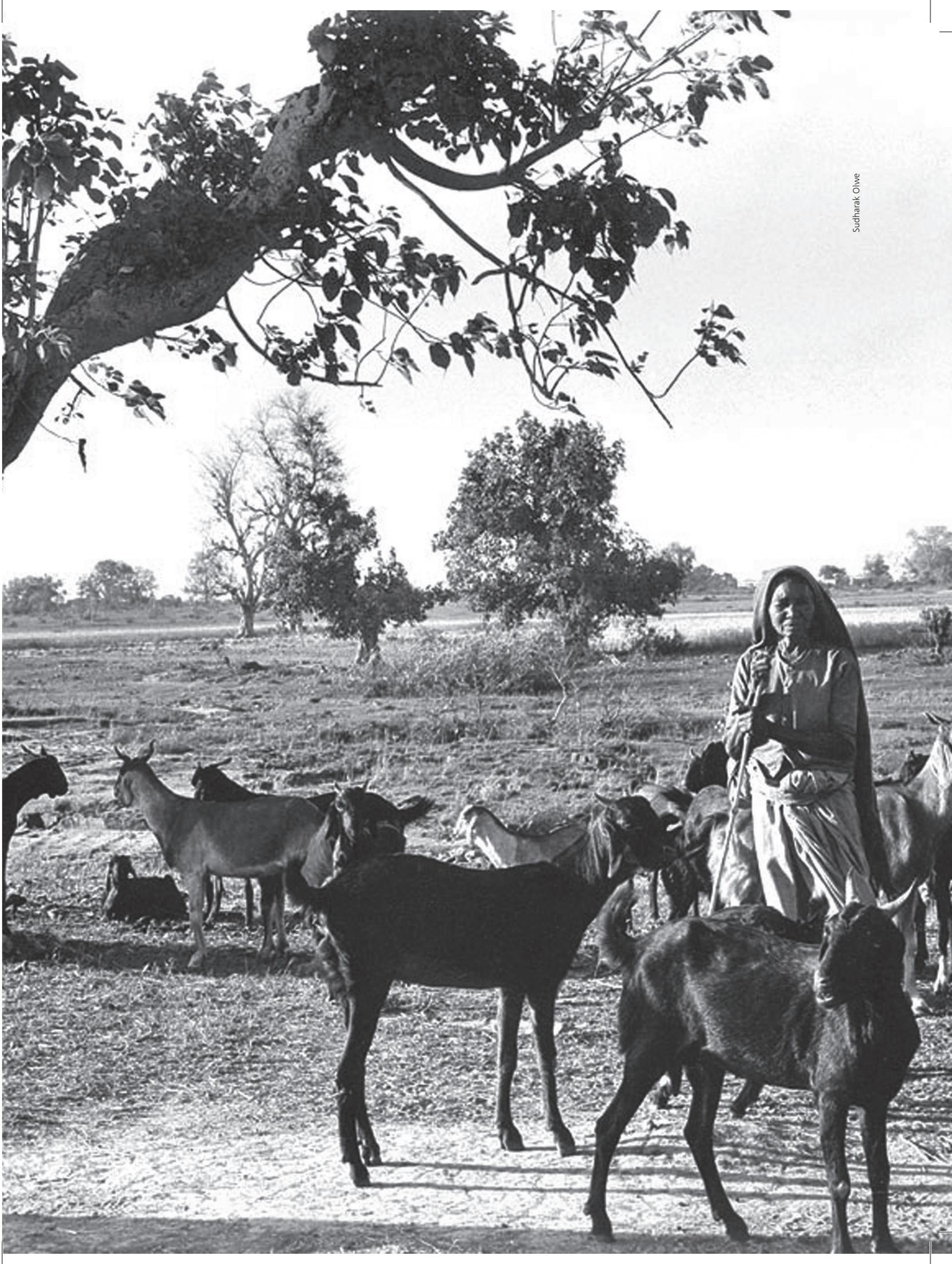
Under the Crown, lands were classified into revenue and

forest. A Land Acquisition Act (1894) enabled the state to acquire the best lands for the Crown. Even today, the Act remains so powerful that it gives the state power to take land away from ordinary citizens (4).

Lands which could not be put under the plough and could not be called forest were classified as ‘waste’. In most states these were the village commons upon which village communities grazed their animals. These were also the lands upon which the country’s nomadic communities lived and survived. By another Act, the Criminal Tribes Act of 1871, many of these tribes were deemed criminal. By 1927, the British had two parallel legal systems in India — one for private property and one for common property (5).

In 1947, at the time of Independence, India inherited the British system of administration, a British legal system, and the British system of land tenure. The country also very soon had to face a terrible famine and an enormous shortage of firewood. Naturally, agriculture to feed our growing population and quick ways of increasing tree cover became the focus of the country’s Plan documents. Agriculture, especially in the well-endowed areas, drew considerable attention. Land reforms were intensely discussed and talked about. Large, privately owned agricultural holdings were passed on to those who traditionally did not own lands so they could own and cultivate them. The Land Acquisition Act of 1894 was amended in different ways to allow land reform. Zamindari Abolition Acts were initiated in Uttar Pradesh and Bihar and followed in other states (6). However, while the Acts were easily introduced and laws amended, when it came to practice, land reforms just did not happen, as the land tenure systems in different states were vastly different. Land records and legal complexities further complicated the matter (7). After all, not all of unified India was uniformly under the British Crown.

In many states such as Maharashtra, where good agricultural land could not be acquired from the wealthy and handed over to the landless, the village commons, grazing lands and waste lands were divided, parcelled out and given to landless communities. Many small movements of marginalised communities and struggles, especially of dalits, were temporarily quelled as small portions of land unfit for agriculture were distributed amongst groups of people,



many of whom had never practised agriculture before (8). The collective struggles of these groups to be able to own land turned into individual and personal struggles to keep small parcels of land alive and under a crop.

Very soon the division of land ended up dividing communities and creating further disparities and discontent, for now many villages had lost their common grazing lands to private ownership. Pushed out of their village grazing lands and commons, migratory groups began travelling to fresh villages, new districts and even other states looking for fodder and sustenance.

In the nation's desire to grow more food, fallows which traditionally served as village commons to graze animals were put under crop. New irrigation schemes and the efforts of the Green Revolution led to an enormous increase in agriculture. It also led to a phenomenal increase in crop residue which became available as fodder. The animal best suited to feed on this kind of fodder was the dairy buffalo which matched the country's dairy policy perfectly. Thus, the well-endowed areas, along with the Green Revolution, were also ready to usher in the White Revolution. The animals that lost out were draft cattle. While the population of dairy buffaloes steadily increased, our draft animal breeds quietly disappeared. Draft animals are used in India seasonally and for only a few days in a year. But they need to be fed, watered and grazed. As grazing lands shrank, there was no place for the draft animal — after all a tractor could very easily replace the draft animal.

But it was not only the buffalo which adapted, other species adapted too. Pastoral shepherds from Rajasthan and Himachal began migrating to Punjab and Haryana, finding new sources of fodder, resulting in new synergies between crop farmers and livestock owners. The successes from well-endowed areas were extended to India's drylands, and more areas which were 'common' became private agricultural land.

It was not easy to expand the Green Revolution model of agriculture to India's drylands. Regular droughts plagued a large part of the country. The DPAP (Drought-Prone Area Programme) was initiated as a land and water conservation programme. It soon morphed into the famous watershed programmes.

Watershed programmes initially had little understanding of the commons and how those resources were to be used collectively. Bans were imposed on grazing, the cutting and lopping of firewood and fodder. The most famous watersheds in the country have often been the most guilty of excluding small ruminants and their owners. Thus, those communities that were landless and depended on the commons migrated out of these watershed areas (9). It was expected that fodder would be regularly lopped, cut and stall-fed to dairy animals. And in some cases this did happen: Ahmednagar district in Maharashtra stands testimony to this kind of development. Yet in many other

areas where this formula of development was cut and pasted, grass grew but there was nobody to cut the fodder and no animals to graze. In the commons of these watersheds the grass remained ungrazed and unutilised, catching fire when the summer winds dried them.

Simultaneously, in an earnest desire to replace India's rapidly depleting green cover, village forest lands went under social forestry programmes. The desire was not so much to provide the people around with an available natural resource, rather to keep people who depended on the commons out. Fast-growing species, which did not have any special value as fodder or firewood, were planted over vast tracts. Grazing was banned in these tracts. Eucalyptus was a favourite species which largely benefited the paper industry. In arid regions of the country, in the states of Rajasthan and Gujarat, the fear of rapid desertification propelled the forest department and other agencies to plant *Prosopis juliflora*, a species called the "mad" babool by shepherds (10) on a considerable portion of grazing lands, destroying local varieties and species on which animals used to graze.

In village forest areas under various schemes, grazing fees were appropriated by the forest department, joint forest management committees and van suraksha samitis, with the stiffest fee for the goat, a species kept by those belonging to the poorest communities.

#### Availability of grazing land: 1947 to 1997

Year	Area: million hectares			Livestock population in million	Area (hectares)/ head of livestock	CPR/ head of livestock
	CPR land*	Protected and unclassified forest land	Total			
1947 (estimated)	70	-	100	280	0.36	.25
1950-51	66.89	38.96	105.85	292	0.36	.23
1960-61	48.82	35.27	84.09	336	0.25	.15
1970-71	43.82	32.79	76.61	353	0.22	.12
1980-81	42.23	35	77.23	416	0.18	.10
1990-91	40.10	34.87	74.97	445	0.17	.09
1997 (estimated)	38	34.8	72.8	467	0.15	.08

\*Includes permanent pastures and grazing lands

Total is sum of protected and unclassified forest and CPR land

Source: *Indian Agriculture in Brief and Indian Council of Forest Research and Education, 1995*

#### Conflicts between grazing lands and forests

As the landscape of the country rapidly changed ecologically, economically and socially, other developments also took place. The Wildlife Protection Act of 1972 and Project Tiger placed the need for conservation of India's wildlife far above India's marginal communities. Forests where animals used to graze were closed to grazing, while national parks, protected areas and sanctuaries emerged. Grazing areas for domestic animals shrank further and poor people who were dependent on these lands were pushed further and further to the periphery. In certain areas, conflicts between livestock grazing and



Sudharak Olwe

wildlife became so intense that the government resorted to firing on pastoralists such as happened in Bharatpur National Park. Many conflicts between the state and pastoralists over grazing lands remain unresolved even today.

### Bright new policies

With the passing of each decade, new development plans and programmes have evolved, supposedly in answer to problems emerging from previous Plans. India's population has grown, agriculture has expanded and encroached, common property resources have shrunk. Surprisingly, our livestock population has surged too. Pastoralists have found new pastures and new grazing areas; their animals have adapted to new feeds and crop residues. And the conflicts have grown.

The obsession with agriculture continues as India contemplates an Evergreen Revolution, and new programmes and developments have already begun to take over as the country strides ahead as an economic power to be reckoned with in the 21st century.

New technologies in agriculture, including genetically modified crops such as GM cotton which are harmful to animals which graze on them (11), corporate agriculture of high-value crops such as grapes, sugarcane, vegetables, chilly and tobacco, have further resulted in keeping grazing animals and their graziers out. None of these crops have fodder value. Many are grown in intensely chemical agricultural systems which are unsafe both for animals as well as humans who consume the animals and their products.

Since the beginning of this century, India's new economic policy has facilitated increased demands on land from a new emerging class of private entrepreneurs. In the recent past, SEZs have laid further claim to common lands. While people who own private lands may claim compensation, what can people living on commons be expected to do besides migrate?

There are no policies or legal framework to provide security or support, or the means to adapt and adopt new livelihoods. Unfortunately for non-pastoral nomads, the situation is much worse as there are hardly any groups working for their cause, nor schemes and policies which take into account the features and traditions of nomadism and seasonal migration.

### The Forest Rights Act and grazing lands

In December 2006, the Forest Rights Act was passed granting legal recognition to the rights of traditional forest-dwelling communities, partially correcting the injustices caused by previous forest laws (12). Under this Act, traditional rights to grazing are recognised. To be eligible for staking a claim under the Act, two conditions have to be satisfied. Firstly, the claimant has to prove that he or she primarily resides in a forest or on forest lands; secondly, the claimant has to establish that s/he is dependent on the forest and forest land for a livelihood and that the above conditions have been true for 75 years. Or, the claimant has to prove that s/he belongs to a 'forest-dwelling scheduled tribe' mentioned in the Act. Although there are provisions in the Act for claiming grazing rights, pastoral communities face various problems while staking claims since the three criteria remain difficult to prove

for itinerant groups that change their migration routes and patterns regularly to adapt to changes in their immediate surroundings. Many do not have valid identity proof or papers recognised by the state. Many graze their animals in villages and spend a large part of the year in forests that are distant from their homes. Most migratory communities do not attend gram sabha meetings as they are often away.

The Act grants land rights, product rights and rights to protect and conserve. These rights are recognised by a three-step procedure wherein the village gram sabha makes a recommendation that is screened at the block and district levels. Although the Act has been in force since 2006, in Maharashtra only 3% of applications filed had been cleared by 2009 and no case has yet been granted for community use. In the country as a whole, over 500,000 individual claims have been filed, but barely 1,200 community claims were filed (13). Most migratory pastoralists do not even know that such an Act exists. For the few groups that are aware of its existence, most are yet to clearly map their grazing routes and see where the route coincides with public land, private land and common land, to be able to stake proper claims. Land records at best are fuzzy.

### Climate change and grazing lands

While the commons sustain many of our poorest communities, the concept of them as ‘non-cultivated wastes’ continues to exist among a large number of planners and development professionals who would like to convert them into economically productive agriculture lands or forests or plantations. Or, if all else fails, into industrial units. In the minds of many of these groups, seasonal pastoralism or collective use of the commons has not yet hit home as a useful method of land utilisation. The general understanding among our country’s planners is that land under open grazing is uneconomic.

The Indian government’s response to climate change and the fossil fuel crisis has seen many efforts to acquire and change the ‘unproductive’ status of these lands. While the renewable energy sector — wind and solar — scouts around for suitable commons to install equipment, the bio-fuels mission along with the corporate lobby which zealously promotes bio-fuels has also staked a claim on all kinds of available land. Grass is considered a valuable economic commodity as it can be digested in biomethanation plants to produce ‘clean’, ‘renewable’ bio-fuel. Wastelands suddenly turn into valuable land as governments offer fallow land on lease to private entrepreneurs to undertake jatropa plantation, on rent. In Rajasthan, in January 2007, the state cabinet introduced a policy for cultivation, processing and utilisation of bio-fuel plants like jatropa and pongamia on cultivable wasteland with a special emphasis on private sector participation. The programme is being packaged and presented as a district poverty project (14).

The Green India mission (15) and the REDD and REDD-plus programmes (16) threaten to repeat the folly of social forestry

with greater zeal. Large-scale plantations to enhance India’s green cover threaten to replace pastures, commons and grasslands with inedible, non-usable monocrops. Corporations in fact flaunt these measures in an effort to get green concessions from the state. Thus, corporations that have grabbed land, fenced and privatised the commons and begun climate-unfriendly activities can neutralise their ‘emissions’ and gain brownie points by claiming to ‘greenwash’ the environment with these plantations, in the name of CDM.

India is proud of its status as one of the largest producers of milk, meat and eggs in the world. More Indians have animal protein on their dining tables now than they did at the time of Independence. India also exports meat and eggs to other countries. If this trend is to continue, our livestock sector needs support and our animals need fodder. Importing fodder from other countries to feed our livestock is not economically, environmentally or socially desirable. We need to seriously review our livestock policies, and the commons are central to that debate.

*Dr Nitya S Ghotge is Director of Anthra, a resource centre offering training, research and advocacy initiatives in the areas of livestock, biodiversity and people’s livelihoods*

### Endnotes

- 1 National Sample Survey Organisation, Department of Statistics and Programme Implementation, Government of India, December 1999. Report No 452(54/31/4)
- 2 Arnold A and Guha R. 1995. *Nature and Culture and Imperialism. Essays on the Environmental History of South Asia*. OUP, 1995 (Bhattacharya N; ‘Pastoralists in a Colonial World’. pg 49-85. NSSO 54th Round, January 1998–June 1998)
- 3 Satya Laxman D, *Ecology Colonialism and Cattle. Central India in the Nineteenth Century*. OUP, New Delhi, 2004
- 4 Singh C. *Common Property and Common Poverty. India’s Forests, Forest-dwellers and the Law*. OUP, 1986
- 5 Miri M (ed). 1993. *Continuity and Change in Tribal Society*. IAS, Shimla (Roy Burman B K *Tribal Population: Interface of Historical Ecology*. pg 175-216)
- 6 Shah G, Sah D C (ed). *Land Reforms in India. Performance and Challenges in Gujarat and Maharashtra*. 2002. Sage, New Delhi
- Jha Praveen K; *Land Reforms in India — Volume 7 Issues of Equity in Rural Madhya Pradesh*. New Delhi, Sage. Ramanathan U; *Common Land and Common Property Resources*. pg 204
- 7 Singh C. *Common Property and Common Poverty. India’s Forests, Forest-dwellers and the Law*. OUP, 1986
- 8 Bokil M. ‘Privatisation of Commons for the Poor. Emergence of New Agrarian Issues’. *Economic and Political Weekly*. Vol 31, No 33. pg 2,254-2,260
- 9 Puskur R, Bouma J, and Scott C. ‘Sustainable Livestock Production in Semi-Arid Watersheds’. *Economic and Political Weekly*. July 31, 2004. pg 3,447
- 10 Ghotge N S. 2004. *Livestock and Livelihoods, the Indian Context*. CEE India and Foundation Books, New Delhi
- 11 Ghotge N S, Ramdas S et al. ‘BT Cotton and its Effect on Livestock. Issues of Concern for Animal Health and Food Safety’. Paper presented at the 9th Annual Conference of the Indian Society for Veterinary Pharmacology and Toxicology, Anand, Gujarat
- 12 www.forestrightsact.com, December 2010
- 13 [http://www.forestrights.nic.in/\(2010\)](http://www.forestrights.nic.in/(2010))
- 14 <http://www.dpipraj.gov.in/biofuel/format2.htm>
- 15 National Climate Action Plan ([www.pmindia.nic.in](http://www.pmindia.nic.in))
- 16 moef.nic.in

# The power to take — and displace

The power of eminent domain has been interpreted as being close to absolute power of the state over all land and interests in land within its territory. The effect of this has been that those without access to land and rights over land, those who may have use rights but no titles, communities holding common rights and others with inchoate interests, have had to bear the burden of eminent domain

USHA  
RAMANATHAN

'EMINENT DOMAIN' is understood as the power that the state may exercise over all land within its territory. Eminent domain, and the law related to the compulsory acquisition of land, requires that the power may be invoked only for a public purpose, but what constitutes public purpose is wide open to interpretation and use. Development debates stoked by the mass displacement that accompanies large infrastructure projects have placed a severe strain on the acceptability of the power of eminent domain.

The endorsement of the eminent domain power of the state in the early constitutional years of independent India was assisted by the jurisprudence that had developed around the colonial Land Acquisition Act of 1894. That 19th century statute and the case law that grew around it made the power of eminent domain, and the nature of 'public purpose', a matter solely for executive determination and statement, and, therefore, non-justiciable.

Today, eminent domain is among the doctrines that have not been attempted to be tamed by constitutionalism. It has also not been tempered by altered notions of the relationship between citizens and the state which independence from a colonial power may well be expected to bring in its wake.

Hugo Grotius defined eminent domain in 1625 thus (1): "The property of subject is under the eminent domain of the state, so that the state or he who acts for it may use and even alienate and destroy such property, not only in cases of extreme necessity... but for ends of public utility, to which ends those who found civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property."

## The power of eminent domain

This understanding of the notion continues to hold sway. Not long after Independence, and a short while after the promulgation of the Constitution, the Supreme Court was charged with judging the constitutionality of certain laws, which were intended to abolish the feudal zamindari (landowning) system. The power of eminent domain was under the scrutiny of the court, even as that power faced severe contest from the zamindars (landowners).

In explicating the power, the court held that eminent domain was "the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is: (a) power to take, (b) without the owner's consent, and (c) for the public use" (2).

The reference to the 'sovereign' was a portent of one of the problems that has dogged the existence and uses of the eminent domain power, that is, the relationship between the state and the people. The power to take, and the unqualified nature of 'public use', has made dispossession and mass displacement possible, and is fast becoming a power which is acquiring illegitimacy, especially among the displaced. Further, the idea that the power to take will be from an 'owner' has excluded large numbers of the displaced from even the minimal consideration that the law provides — usually in the nature of entitlement to compensation — when displacement occurs. Landless labourers, artisans and others whose livelihood is not linked to land ownership, as well as women, have been among those whom this understanding of eminent domain has left excluded from the law.

The power of eminent domain finds its expression in the 1894 Land Acquisition Act. The jurisprudence that has developed around this Act has placed severe constraints on the possibility to challenge the power of the state to compulsorily acquire. It sets out what constitutes 'public purpose' and it hands over land, 'without encumbrances', to the state to do whatever it wants with it, at will. The way the law understands 'persons interested' who would have a right to raise objections, or to contest compensation, leaves no space for women, except for the exceptional woman who may have eluded the stranglehold of law and practice to become the holder of a legally demonstrable interest in the land. The computing of compensation is circumscribed by a set of predetermined factors which are "to be considered in determining compensation" (3) and is restricted to the market value of land; the replacement value is not the norm prescribed by law. There are also "matters to be neglected in determining compensation" (4) which excludes "any disinclination of the person interested to part with the land acquired". "In consideration of the compulsory nature of the acquisition" (5), 30% of the computed market value is to be paid, in the nature of a solatium. That, in sum and

substance, is the right of the person interested in the land. These bare procedural hurdles to taking over the land may also be circumvented when the government declares that there is “urgency”, justifying “special powers” to take possession of the land within 15 days of the notification of intention to acquire — even before the award is decided. Such process too would result in the vesting of the land in the government, free of all encumbrances. This is a law that did not, until 1984, even acknowledge mass displacement, though the law has operated to effect mass evictions. In 1984, the definition of ‘public purpose’ was revised to include “the provision of land for residential purposes... to persons displaced or affected by reason of implementation of any scheme undertaken by government, any local authority or a corporation owned or controlled by the state” (6). This made displacement for a project one more reason for compulsory acquisition under the Act, with no concomitant right to land on which to resettle!

### Consequences and impacts

Strictly construed, the notion of eminent domain does not apply to land other than private land. Yet, because it has not been challenged, and because the relationship of the state to land has not been re-worked after Independence and the promulgation of the Constitution in 1950, presumptions have arisen, and begun to set in, that the ‘power to take’ and to convert to its priority vests with the state. Consequently, common property has got diverted into projects by the state without even minimal due process.

This has resulted in the users of these lands getting displaced without so much as a ‘by your leave’, and certainly without compensation. The lack of interrogation about this sweeping power assumed by the state has been accompanied by the implicit acceptance that the power exists to take over, and convert, divert or hand over all land as the state deems fit. It is not inconceivable that the notion of eminent domain does not accommodate the existence of a power beyond the taking over of private property. Public land, and the systems of answerability for diverting public land, will indeed need to answer to a different understanding of public purpose, as also to whom the land is being handed over.

A leading constitutional expert says (7): “Some of the *locus classicus* cases in Indian constitutional law have arisen in the area of property rights. The reason for such a development is that the central and state governments have enacted massive legislation to regulate property rights.

“First, the government undertook to reconstruct the agrarian economy, *inter alia*, by trying to confer rights of property on the tiller, abolition of zamindaris, giving security of tenure to tenants, fixing a ceiling on personal holding of agricultural land and redistributing the surplus land among the landless.”

In the early years of constitutionalism, it was about investing rights to land in the tiller and the tenant and as a move against absentee landlordism. It sought then to dispossess

zamindars to prevent the concentration of land in a few hands, redistribute land to the landless and enforce a ceiling on how much land may be held by anyone.

These were the purposes which gave constitutional sanction to the state exercise of the power to take over, redistribute and regulate ownership of land. How is it possible to justify dispossessing the tiller, mass eviction of landless labour, transfer of land rights from the farmer to corporations, and facilitating the accumulation of large acreages in corporate hands, based on the same Constitution?

The power of eminent domain draws its sustenance from the notion of sovereignty of the state. In 2004, while adjudicating on a dispute between two village communities in Nagaland over the ownership and use of a water source, the Supreme Court said (8): “So far as natural resources like land and water are concerned, dispute of ownership is not very relevant because undoubtedly the state is the sovereign dominant owner.” This was preceded, at the start of the judgment, with an acknowledgement of the existence of customary law in those parts: “At the outset, it may be stated that the civil rights to the water source and the land in the hill district of Nagaland comprising the two villages mentioned above are not governed by any codified law contained in the Code of Civil Procedure and the Evidence Act. The parties are governed by customary law applicable to the tribal and the rural population of the hill district of Nagaland.”

The disregard for customary law, the relationship of local communities to natural resources and the presumption about the sovereign power of the state over such resources all indicate the power that eminent domain has handed over to the state. There is also the non-advertence to the Fifth and Sixth Schedules of the Constitution, which negotiate the state’s right to take over land differently in a tribal area. There is a special status accorded to tribal areas, which are termed as ‘scheduled areas’, which includes provisions for protecting the continued possession and enjoyment of lands belonging to tribals, and circumscribes the power of the state to alienate and transfer land in these areas. In 1997, the Supreme Court reinforced this status in what is known as the Samatha judgment (9). That seems to have escaped the court when it made its comment. This is illustrative of the power that eminent domain has handed over to the state.

The question also arises as to whether sovereign power continues to be vested in the state after promulgation of the Constitution even in non-tribal areas. The Preamble to the Constitution proclaims: “We, the people of India” have “resolved to constitute India into a sovereign... republic and to secure to all its citizens justice, social, economic and political.” Does this indicate a change from the understanding deriving from sovereignty as linked with a ruler or king or queen? Can the constitutional version of sovereignty presume absolute power in the state over the people? Or is there such a notion as sovereignty belonging to the people who have arrogated a role to the state to ensure that justice, liberty and equality are delivered to all in the territory of India? To ask it differently,

DISPLACEM

Simon Williams/Ekta Parishad

PARISHAD SU



where does sovereignty reside — in the people, or in the state? Or is an attempt to re-conceptualise sovereignty as belonging with the people merely at the level of rhetoric, but impractical and therefore to be discarded in constitutional interpretation and state practice? What if sovereignty is demonstrably a route to absolute power? It is not improbable that the understanding of sovereignty has been influenced by its import in international law. Characterised as a term that is “notoriously difficult to pin down” (Koskeniemi 2000: 574) (10), it has even yet had to find definition, and scholars of international law have attempted several definitions. The state’s sovereignty has been described as: “(i) a *jurisdiction, prima facie* exclusive, over a territory and the permanent population living there; (ii) a duty of non-intervention in the area of exclusive jurisdiction of other states...” (Brownlie 1990: 574) (11).

An arbitral decision defines it “in the relations between states (as signifying) independence: independence in regard to a portion of the globe is the right to exercise therein, *to the exclusion of any other states*, the functions of a state” (Starke 1989) (12). What has this development in the relationship between states done to the power that a state presumes over its people?

#### Sites of contest

An inquiry into the power of eminent domain may be assisted by acknowledging the many sites of contest that have opened up with the recognition of the inequities embedded in the current model of development and displacement. Several questions and issues may be derived from some current concerns, including the following:

- There are whole segments of persons who are displaced but who, it would seem, can be pushed to the margins of the state’s concerns because of the limited mandate imposed on the state by the eminent domain doctrine. Since only landowners have any direct right to be considered during the exercise of the eminent domain power, those who possess no legal title or interest stand automatically excluded. The landless constitute one such segment. Women, who have at best been subsidiary constitutional subjects in the matter of landholding and ownership, and who, the laws of succession, the notion of ‘family’ and the presumption of dependency especially have disabled from holding legally defined interest in land, constitute a significant group among the excluded.

- The transition from ‘subject’ to citizen has not occurred; nor has the constitutional notion that it is the people who are sovereign evolved. In January 2003, in a judgment of the Supreme Court, we read these words (13): “The power to acquire by state the land owned by its *subjects* hails from the right of eminent domain vesting in the state, which is essentially an attribute of *sovereign power of the state*. So long as the public purpose subsists, the exercise of the power by the state to acquire the land of its *subjects* without regard to the wishes of the owner or person interested in the land cannot be questioned (emphasis added).”

This is the entrenched understanding of the relationship

between the state, the people, and land. Embedded in a colonial law, and enmeshed in a jurisprudence that recognises absolute power in the state, an exploration of what changes would occur to the nature of that power when no longer ‘ruled’ has not taken place. So long as judge-made law continues to harbour the language of sovereign power and subject, it will be near impossible to tame the expansive use of the eminent domain power to dispossess, displace, impoverish and exclude. In the hierarchy of interests created by this reading of power is the state as being sovereign, the owner as a person interested and the rest stand excluded altogether. Issues relating to basic citizenship that are missing in this rendition include matters of equity, distributive justice, evening out the inequality of ownership, and the answerability of the state in the priorities it sets under ‘public purpose’. The perception that citizenship does not invade the field of acquisition has assisted in the assumption and evolution of absolute power. Even in this reckoning, the term ‘subject’ is confined to an allusion to those who are owners or persons interested. Those who fall further and beyond would not qualify for the law’s concern. The National Rehabilitation Policy 2003 (14) acknowledges that such classes of people exist who do get involuntarily displaced, but does not qualify them by rights or by state answerability. Women collapse into this zone of silence, wherein they are certainly not ‘citizens’, and seemingly not even ‘subjects’, for they remain outside the orbit of recognition in law, practice and judicial dicta. This entrenched understanding of the relationship between the state and the people, and of the absoluteness of the power of eminent domain, has, of necessity, to be dislodged if the rampant use of the power to take over land is to be stemmed.

- The idea that the state is the owner of land, and can deal with it as it will, is not rooted in eminent domain. Eminent domain only deals with the taking over of land from a person who has legally recognised rights over the land. In the transfer of land, which is under the control of the state, to a project authority — including revenue land and forest land — notions of the state as owner, possessing powers beyond that which usually inheres in any person as owner, prevails.

In law, there is a procedure for ‘change of user’ of land, which a state must necessarily follow when diverting the land to a purpose other than that for which the land was intended. For instance, if land has been declared to be reserved for grazing cattle, it cannot be changed to any other user without going through a process of consideration and consultation about changing the nature of the use. The idea that the state ‘owns’ lands in its control, and that state ownership is of a higher order than private persons owning land — since the state can coercively acquire from a private owner, but such compulsory dispossession cannot be practised on the state — has allowed even this minimal procedure to descend into perfunctoriness. In the meantime, the popular understanding is that this is part of the eminent domain power of the state. Technically, this is inaccurate, for as has been explained — but as necessitates reiteration — eminent domain only addresses the taking over of land held in private hands, and does not

reach land already in the control of the state. Thus, state-held lands, which are diverted to projects, have to have a different order and process of public answerability. Yet, constitutionally, there has been no investigation into the nature of the relationship between the state and the land — is it that of an owner, trustee, re-distributor, landlord, super-landlord (as the zamindars demanded to know, derisively, in *State of Bihar vs Kameshwar Singh* 1952), or something else altogether?

- In treating mass displacement as inevitable, and surrendering vast swathes of land to corporate houses as relatable to a calculus of opportunity costs, concerns about impoverishment and immiseration, the imperative of finding the least displacing alternative, protecting fundamental human rights and state policies on housing, livelihood and protection from exploitation are elaborately ignored. The width of the power to dispossess and transfer that is presumed to be implicit in eminent domain has made this possible. In fact, mass displacement is not even within the ken of the doctrine of eminent domain. So then, where is this absolute and unilateral power of the state located? Only when that is identified can there be a re-negotiation of this power.

#### Why dislodging the doctrine of eminent domain is necessary

An inquiry into eminent domain demonstrates that the power of eminent domain has been interpreted as being close to absolute power of the state over all land and interests in land within its territory. The effect of this has been that those without access to land and rights over land (including the landless, artisans, women as a composite group), those who may have use rights but no titles, communities holding common rights and others with inchoate interests, have had to bear the burden heaved on to them by eminent domain. Simultaneously, the plenitude of powers presumed to arise from the doctrine of eminent domain has allowed for an engorgement of state power over land.

In relatively recent times, the policies of the state, ruggedly supported by legislation, have re-introduced the power of the 'sovereign' to use its discretion in facilitating the concentration of land in corporations. This is not a replication of the zamindari system of wealth transfer by the use of state power, but a neo-liberal version of it.

Mining and Special Economic Zones (SEZs) have been added to the arenas of contest, wherein the contestants are made even more unequal by law and state force, which are deployed in effecting the transfer. There are nuances that have begun to enter state practice, wherein, for instance, corporations are being advised to buy land in the 'open market'. In such cases, the need for the state to intervene to secure the interests of the landholders is being recognised, even as the potential of a fair transaction of sale is not discounted. Other arrangements, including shareholding and leasing as opposed to outright sale, require the state to step in to conceive and implement alternative arrangements that will allow for varied, but responsible, uses of land, without

dispossession being a necessary consequence.

While these changes are occurring with remarkable swiftness, the status of the recognised property interests of women, the landless and the marginal farming and artisan communities does not even feature in the discourse. It is the zone of neglect that these communities inhabit. Dislodging the current appreciation of the doctrine of eminent domain is a necessary first step in the route to a return to equity, distributive justice and the limiting of the extraordinary and absolute power that the doctrine has been allowed to vest in the state.

---

*Usha Ramanathan writes and speaks about law and its interaction with poverty, power and justice. Her work moves through the justice system, mass disasters, risk and safety, mass displacement, labour law and environmental law*

*(This article is excerpted with permission from the essay by Usha Ramanathan published in *Displaced by Development — Confronting Marginalisation and Gender Injustice*, edited by Lyla Mehta, New Delhi: Sage, 2009)*

#### Endnotes

- 1 *Dejure Belli et Pads*, quoted in *State of Bihar vs Kameshwar Singh*, 1952
- 2 *Ibid*, at 929
- 3 Section 23, Land Acquisition Act, 1894
- 4 Section 24, Land Acquisition Act, 1894
- 5 Section 23 Explanation (2), Land Acquisition Act, 1894
- 6 Section 3 (f) (v), Land Acquisition Act, 1894
- 7 Jain, 2003
- 8 *Tekaba AO vs Sakumeren AO*, 2004
- 9 *Samatha vs State of Andhra Pradesh*, 1997
- 10 Koskeniemi, 2000. 'From Apology to Utopia: The Structure of International Legal Argument', 1989, Chapter 4, cited in Henry J Steiner and Philip Alston (eds), *International Human Rights in Context*, 2000
- 11 Ian Brownlie (1990), Chapter XIII, p 287, quoted in Steiner and Alston, 2000: 574
- 12 *Supra* note 5. The interchangeable use of 'independent' and 'sovereign' as a prefix before 'state' in international law is significant. See also Starke, 1989: 100
- 13 *Sharda Devi vs State of Bihar*, 2003
- 14 Published in the *Gazette of India*, 2004

#### References

- Brownlie, Ian, 1990. *Principles of Public International Law*, Fourth edition. Oxford and New York: Clarendon Press
- Gazette of India*, 2004. Extraordinary Part I, Section I, February 17
- Jain, M P, 2003: *Indian Constitutional Law*, Fifth edition. 2:1466. Nagpur: Wadhwa and Co
- Koskeniemi, Martti, 2000. 'From Apology to Utopia: The Structure of International Legal Argument', in H J Steiner and P Alston (eds), *International Human Rights in Context: Law, Politics, Morals*, Second edition. Oxford: Oxford University Press
- Land Acquisition Act, 1894
- Narmada Bachao Andolan vs Union of India, 2000. 10 Supreme Court Cases 674, p 759
- Ravindra Kumar vs District Magistrate, 2005. *Allahabad Law Journal* 434
- Samatha vs State of Andhra Pradesh, 1997. 8 Supreme Court Cases 191-334
- Sharda Devi vs State of Bihar, 2003. 1 SCALE 85 at p 98, para 31
- Starke, J G, 1989. *Introduction to International Law*, Tenth edition. Singapore: Butterworths
- State of Bihar vs Kameshwar Singh, 1952. Supreme Court Reports 889 at 928
- Steiner, H J and P Alston (eds), *International Human Rights in Context: Law, Politics, Morals*, Second edition. Oxford: Oxford University Press
- Tekaba AO vs Sakumeren AO, 2004. 5 Supreme Court Cases 672

# The invisible fish hunters of the Godavari

The Polavaram dam on the Godavari will send Malladi Posi and hundreds of other inland fisherfolk along the Godavari into the swelling ranks of migrant daily wage labourers. The others displaced will at least get land for land, or compensation. These fish hunters feature nowhere in the R&R plans, because they cannot conceive of — let alone claim — ownership of the river and its waters

R UMA  
MAHESHWARI

“VAALU GODAARI KI GODAARI IIVARU KADA?” (“They won’t give us Godavari for Godavari, will they?”) asks Malladi Posi of Manturu (in East Godavari district) ironically, looking straight into my eyes. “Perhaps we have to go elsewhere, looking for a river, if not Godavari,” reflects Sangani Eswara Rao of Kachluru in Tunnur panchayat, East Godavari district.

Malladi Posi and Eswara Rao are fishermen, belonging to the Palli caste, from villages along the river Godavari that are threatened by displacement by the Polavaram dam.

Malladi Posi is a ferryman-cum-fisherman in Manturu. His is the only boat that connects Manturu, which falls in East Godavari, by river to Vadapally in West Godavari from where you take the road to Singanapally or Polavaram. Manturu is one of the 276 villages that will be submerged by the multi-crore multi-purpose Polavaram (Indira Sagar) Irrigation Project.

Posi and his fellow villagers had gathered by the river one evening, late-May 2010, to discuss their imminent displacement. Posi and his friends stop their fishing activity in the Godavari for three to four months in the monsoon, to resume again by early-September. In that time they will have to survive on the income they earned during the fishing months of September and May. It all depended, of course, on the rains and the volume of water the Godavari ‘churned’ up. Right now they had another, bigger concern.

The multi-crore Indira Sagar Polavaram Dam Project intends to transfer 80 TMC (10 million cubic feet) of water to the Krishna river basin and to Visakhapatnam district in Andhra Pradesh. The project also proposes to generate 960 MW of electricity, besides providing extra irrigation to an area of around 700,000 acres in the delta region of the Godavari.

Posi and Rao’s words throw up deeper questions: For whom does the Godavari flow? Just as tribal communities seek land for land, and forest for forest, can these fishermen seek a river for a river in compensation? Is the Godavari meant only for industry or agriculture, not for fishermen/fishworkers? Whose river is the Godavari? What about those whose lives and livelihoods depend on ‘hunting’ fish (*caapala veta*, as they call it, rather than ‘fishing’, which would be *caapalu pattadam*)?

These questions highlight the plight of men and women

whose lives are more closely linked with the Godavari’s flow than anyone else’s. Should the Polavaram dam see completion, these communities could lose their identity forever as they join hundreds and thousands of wage labourers on construction sites or in agricultural fields.

There is no mention of fisher communities in the R&R (rehabilitation and resettlement) statistics of the Polavaram project; in a strange paradox, they are not counted as part of the population of the ‘agency areas’. Although they have fished in these waters for centuries, subtle changes in their settlement patterns were never important enough to be recorded by census officials. When it comes to voting, however, they do seem to count, as they have ration cards...

How can a people be compensated for the loss of a river? Perhaps the calculations could begin from the losses these fish-hunters/fishworkers of the Godavari are likely to suffer.

“There can be use rights, but not property rights in relation to water,” says Ramaswamy Iyer, former Secretary, Water Resources, Government of India.

A river must be seen as a shared natural resource rather than a common property resource. The idea of property is problematic and part of a commercialised view of natural resources, with exploitation built into it. Indeed, there needs to be discussion on referring to a river or any natural resource as a common property resource, considering the inherent problems within the larger global political economy. When one speaks of rivers, pastures, grazing land as ‘property’, a whole new cycle of asserting rights through ideas of state and power begins, where the marginalised have to prove the onus of owning something they have never considered their property in the first place. The simplest example is the way fishermen build temporary shelters along the banks of the Godavari to fish for five to six months a year. Tribal communities do not question or place ownership rights over the sand and banks that may physically be part of their village. Sharing a natural resource like a river, a mountain, a forest has simply been an extension of their lives, an aspect currently being questioned in the construction of the Polavaram dam and the whole R&R exercise.

Ramaswamy Iyer adds: "The idea of CPR is indeed problematic when it comes to rivers, but it is useful to think of all water sources (rivers, lakes, ponds, groundwater aquifers) as being neither state property nor private property but as belonging to the community and held in trust for the community by the state. This is the public trust doctrine, and the Supreme Court did observe in the *Spam Motels* case that the public trust doctrine was part of Indian law. However, they have not consistently maintained that position in all cases. Now the *Plachimada* case is before the Supreme Court, and one hopes that the Supreme Court will make a definitive pronouncement on this issue.

"The concept of 'project-affected persons' (PAPs) goes beyond those who are displaced and includes any persons or groups who are affected in any manner by a project.

"Apart from the submergence of a certain area, dams and barrages have downstream impacts too: they reduce downstream flows and affect the river regime, its capacity for cleaning itself, its function as a recharger of groundwater, its role as the sustainer of aquatic life and vegetation and downstream communities and their livelihoods, the health of the estuary, and so on. Fisherfolk downstream would be among those affected, and any impact studies would have to include them. I think that the EIA (environment impact assessment) would have to cover this, and that the MoEF (Ministry of Environment and Forests) will go into this."

Can the Godavari ever be 'compensated' then? Does she belong to Andhra Pradesh, or Maharashtra, or Chhattisgarh?

The Godavari needs to be seen as a common pool resource. Today, the state holds sole rights and discretionary powers over the river, either leasing out parts of it (as in the case of Reliance Industry's 'patch' in the Godavari basin, at Gadimoga, by the estuary of the Godavari near the Coringa mangroves, for gas) or diverting a chunk of it towards another delta (Krishna) and towards future industrial development along the Andhra Pradesh coastline.

But then the question arises: Whose stake is paramount when it comes to building irrigation projects on rivers — agriculture, industry or fisherfolk? And is the Indian state the ultimate decision-maker when it comes to rivers and forests and other natural resources?

While experts have often debated these questions indirectly or directly, the people whose daily lives are affected are never consulted in the matter of resources that should, ideally, be 'common' in terms of being 'communally' perceived and treated — the way tribal communities perceived their land and forests until they were marked as administrative divisions in the colonial state; or fishermen/fishworkers perceived rivers (or seas as the case may be) until they were issued licences as 'permits' to define their access to these.

\* \* \*

The larger government plan — to "link the Godavari and Krishna, thereby reducing pressure on the Krishna waters; recreation facilities and pisciculture, etc" — is bound to affect the traditional rights of fisherfolk who settle on the banks of the Godavari during certain seasons. The effects of the project on their rights to the river, once it is dammed, will at some point be under scrutiny.

Malladi Posi says: "With the Polavaram project we will lose our decades-old livelihood because water levels will increase here. We will not be able to fish anymore." Sreenu from Manturu agrees: "We will have to forget about our traditional occupation if the dam comes up."

Malladi Gangadharam, another Palli fishworker from Fishermenpeta in Devipatnam (East Godavari district), says: "The dam will come even if we (oppose it). Water from the dam will drown our livelihoods. Wherever else they take us, we have to survive on the Godavari; we know no other craft. We cannot survive as labourers... Living by the Godavari is our dharma. What else can we do if they do not give us what we seek?"

Fishermen build temporary shelters along the banks of the Godavari to fish for five to six months a year. Tribal communities do not question or place ownership rights over the sand and banks that may physically be part of their village. Sharing a natural resource like a river, a mountain, a forest has simply been an extension of their lives, an aspect currently being questioned in the construction of the Polavaram dam and the whole R&R exercise

I had last met Gangadharam during the state and assembly elections in 2009, at Fishermenpeta. Away from the din of the election campaign, in his house by the Godavari, he was knitting nets with his son and daughter.

His boat was the same, with its plastic sheet that worked as a sail, so were his nets that required constant repair. His son helps with this during his school vacations.

The surrounding din this time was that of Praja Rajyam Party (PRP) head, Telugu superstar Chiranjeevi, touring the districts demanding that the Polavaram dam be built immediately.

There are 30 households of Palli fishworkers in Fishermenpeta. Adadadi Rambabu says: “We came here nearly 25 years ago from Tallapudi (in the same district) when fishing became difficult there. We will again lose our livelihood once the dam is built. Be it floods or anything else, our losses are never compensated.”

Gangadharam points out that for two years, fisheries officials have not even visited to collect the usual *pannu* (tax). They find this ‘fishy’. The fishworkers pay an annual tax of Rs 120 that recognises them as fishermen with rights to fish in the Godavari and get compensation in the event of a mishap. In effect, they are taxpayers.

Malladi Peddakondaiah from Vadapally in Kundrakota panchayat (West Godavari) believes that “the Polavaram project essentially means no livelihood for us, either downstream or upstream. We will have to forget fishing. Water will rise up to the hills here. We will have no opportunities. Though we pay *pannu* and have receipts, nobody bothers about the fact that we will be affected by the dam”.

Most of the fishworkers here believe that sea fishermen have always been given relatively greater recognition, thereby government support, compared to inland fishermen who do not exist for the fisheries department except when they come to collect the annual *pannu*.

There is also the larger issue of their being categorised as backward castes (BCs). In colonial times, some of them stated their caste titles as ‘Agnikula Kshatriya’ in what was perhaps a case of upward mobility in caste terms; the term ‘kshatriya’ obviously worked against them. It keeps them away from benefits of the Polavaram rehabilitation package, besides making them appear as a community that is capable of moving to wherever the river takes them, thereby not in need of any special package.

*R Uma Maheshwari is a journalist based in Andhra Pradesh. She has been covering issues related to development and displacement for a number of years. This is part of her series on fisherfolk displaced by the Polavaram dam, researched as part of the FES-Infochange Media Fellowship 2010*

## Water as commons

Ramaswamy R Iyer

*The view of water as ‘commons’ is not universal. There are those who regard water as private property, or as a tradeable commodity or economic good subject to market forces. State governments in India have tended to assert their ownership of, or at least control over rivers and lakes. These divergences are due to the complexity and multi-dimensionality of water which gives rise to different perceptions of water*

The view of water as ‘commons’ is strongly advocated by many and is attractive, but two points need to be noted. The first is that the notion of ‘commons’ (as distinguished from private ownership) is of easy application in the context of a small lake or pond or tank or other waterbody on common land; we can think of it as owned by the community. With larger waterbodies, and with streams and rivers, difficulties begin to arise in the form of ‘upstream versus downstream’ issues, riparian rights, and so on. We can still argue that the water source belongs to the community as a whole, or to ‘civil society’, and that the conflicts that arise can be resolved within that overall framework, but that benign formulation tends to break down when rivers cross national boundaries or even political divisions within a country. Whose commons is the Cauvery: Tamil Nadu’s or Karnataka’s or Kerala’s or Pondicherry’s?

The notion of commons also runs into difficulties in the context of urban water supply systems (where an agency, whether public or private, supplies water to the citizens by a network of pipelines from its storages), or in that of the supply of irrigation water through canals from large reservoirs, whether state owned or privately owned (groundwater presents special problems because the ownership of land carries with it ownership of the water under the land, under Indian law).

However, while the idea of ‘commons’ may be problematic in such cases, we can invoke the slightly different but related concept of common pool resource (CPR) which avoids the notion of ownership but retains the elements of access, rights and control. What we are trying to do is to deny private or state ownership of water and to vest that ownership, or more accurately control and management, in ‘civil society’ (‘civil society’ in the case of groundwater would mean the users of the aquifer).

The reason for the idea of CPR is that water is primarily and fundamentally an essential life-sustaining substance and only secondarily anything else. As an essential for life, water must rank even higher than food. We can live without food for some days, but not without water. Water is really more akin to air in this respect. On this



Aarthi Sridhar

understanding, water is indeed primarily a resource of and for the community. Different actors, such as water supply agencies, commercial and industrial houses, farmers (both large-scale and subsistence), etc, may play different roles in relation to water, but these must be subordinated to the community's prime concern of 'water for life' (or 'water for life and livelihoods', as some might put it).

In a sense, all natural resources — water, forests, land — must be regarded as CPRs. At the same time, we have to avoid the famous or notorious Garrett Hardin bogey of 'tragedy of the commons'. The right answer to that conundrum is community management. This is easily conceivable in the case of common lands, local ponds, small lakes, etc, but is more problematic in the case of big rivers or lakes or groundwater. But possibilities of community management need to be explored and institutional arrangements devised even in such cases. However, the state too has certain roles to play in relation to water, particularly in relation to larger waterbodies, rivers, and so on, and must be enabled to play them (constructively, and in cooperation with civil society).

How then, can we reconcile the idea of water as CPR and that of the sovereign power of the state? The answer to

that lies in the public trust doctrine. Under this doctrine, the state is perceived not as owning the water resources of the country, but as holding them in trust for the community (including future generations). As a trustee, the state will of course have to be empowered to legislate, regulate, allocate, manage, and so on, and all this must involve a degree of control. However, the role of sovereign as trustee, unlike that of a sovereign simpliciter, is not inherently confrontational and may permit a constructive relationship between the state and civil society.

It must be noted that the characterisation of water as commons or as CPR, and the declaration of water as a fundamental or human right are two different statements; one does not follow from the other. We need both statements, and must work out a proper relationship between them.

*(Reprinted from Common Voices 4, published by Foundation for Ecological Security)*

*Ramaswamy R Iyer is the former Secretary of Water Resources, Government of India, and is currently Honorary Research Professor at the Centre for Policy Research, New Delhi*

## From owners to ‘occupiers’

While 12% of Manipur’s population depend on Loktak Lake for their sustenance, some 10,000 people actually live and fish on tiny islands of vegetation called ‘phumdis’ that float on Loktak, the largest freshwater lake in the northeast. Now, claiming that the phumdi-dwellers are polluting the lake where they have lived for generations, the Manipur government is evicting them. Where will they go?

THINGNAM  
ANJULIKA SAMOM

FORTY-YEAR-OLD SALAM TAMU finds it difficult to sleep at her home in Arong Nongmaikhong, in Manipur’s Thoubal district, around 52 km from the state capital Imphal. On moonlit nights, she spends hours gazing across the glistening sheet of Loktak Lake wishing she were back in her one-room lake hut built on the floating vegetation island, locally known as ‘phumdis’.

At 236.21 sq km, Loktak Lake is the largest freshwater lake in northeast India. According to official data, around 12% of Manipur’s total population — mostly living in 53 settlements in and around Loktak in Bishnupur, Imphal East and Thoubal districts — depend on the lake’s resources for their sustenance.

The projected population of Manipur, as of March 2009, is estimated at 26.91 lakh, according to the Economic Survey of Manipur 2009-2010.

While water from the lake is used for irrigation, domestic purposes and power-generation, the vegetation is harvested for use as food, fodder, fibre, fuel, handicrafts and medicinal purposes.

Ten years ago, Tamu was on the other side, standing on the phumdis gazing homewards at the distant lights on the mainland. “I would cry, missing my family and neighbours there. Now whenever I go to Arong Nongmaikhong, I am unable to stay there long. This hut in the middle of the water is more than a source of income, it is my home now,” she says.

According to reports by the government implementing agency Loktak Development Authority (LDA), a census conducted among phum hut-dwellers in 2001 recorded a population of 1,977 fisherfolk living in a total of 733 phum huts. Among them, 84% are permanent dwellers who do not have a house on the mainland. Around 8%, like Tamu, are temporary dwellers who have a house on the mainland where their families live. The rest are migrant fishermen who visit the phums only during the fishing season.

Tamu and her husband Sobha cook, eat, sleep and dry fish on the roughly 250-300 sq ft of floating biomass. In the evenings, Tamu cooks some of the smaller fish she has caught during the day using her dip net. Her husband goes

out fishing most of the day, starting with the first harvest from the trap cages at dawn. Tamu rows out early in the morning in their canoe with the first harvest and the smoked fish to sell in the nearest market.

“This is how we have survived for so many years,” she says. Her only son, Chaoba, stayed behind with her in-laws in Arong Nongmaikhong to study at the nearby school. About a month ago, he got a job with a security agency.

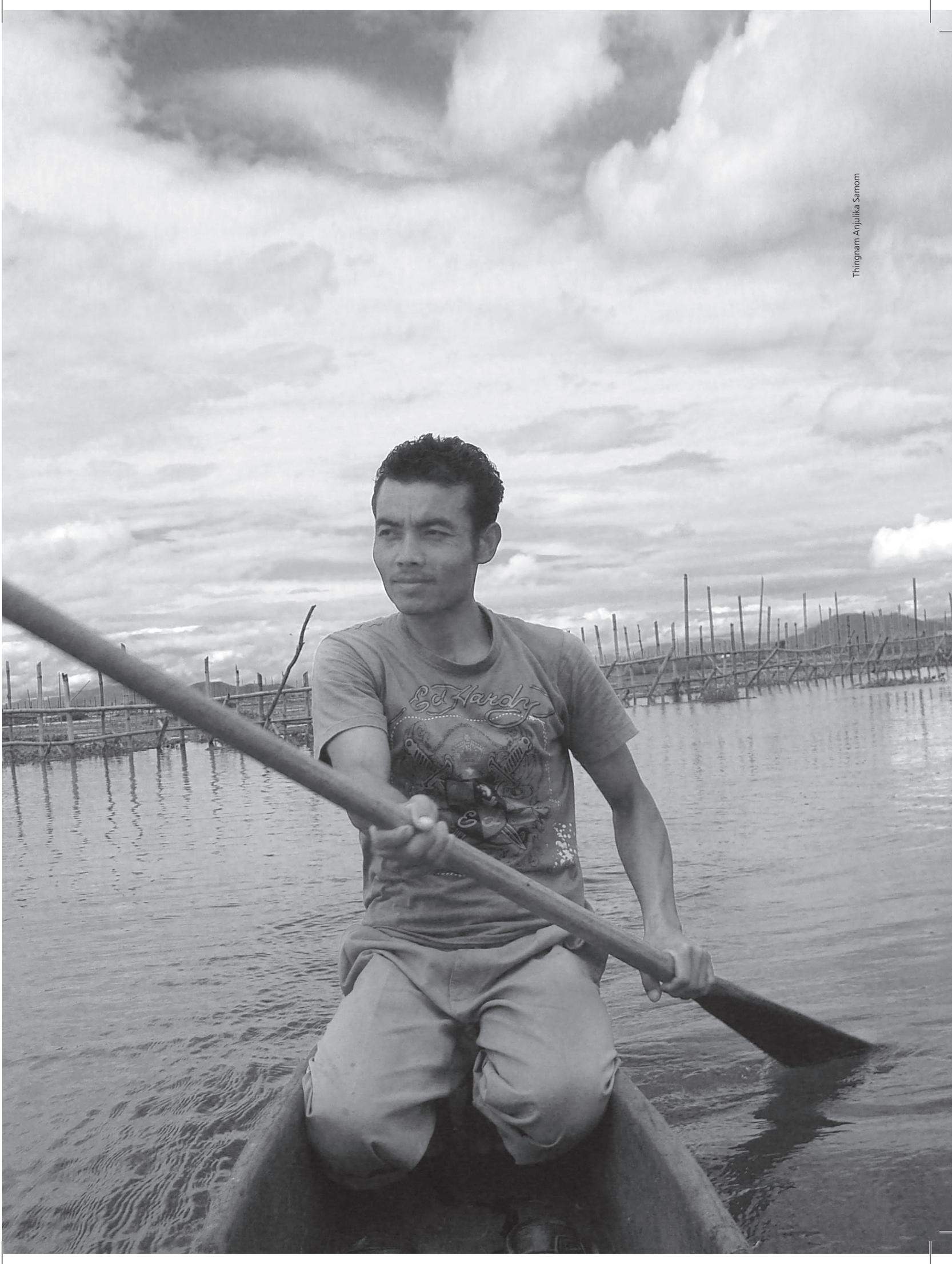
With almost 6.5 lakh educated unemployed looking for jobs there was little scope for Tamu and her husband, who was barely literate, to find proper earning avenues in either the organised or the unorganised sectors. The situation was compounded by the fact that, apart from government jobs, there are very few opportunities in industry or private organisations in Manipur.

Tamu’s neighbour on the lake, 39-year-old Ayingbi, also left three of her children behind at her in-laws in Thongam Mondum when she moved with her husband Herachandra and youngest child, four-year-old Thoibi, to eke out a living on Loktak Lake.

As Ayingbi and her husband had earlier fished at Pumlen Pat, another lake located in the Thoubal-Bishnupur district border area, they were used to the hard work. However, staying in a hut built on a floating island of vegetation in the middle of the lake was a new experience. “When we were working at Pumlen we could return home in the evening and be with our children. But when our expenses rose with the children’s education and rising price of essential commodities, whatever we earned was not enough. We heard that earnings were good on Loktak, so we came here last winter,” she says.

Life in the floating huts is not idyllic, even if the setting is. Dwindling fish stocks and increasing competition mean that profits depend on how much one can invest. “For us poor people, even Rs 10,000 is a huge sum. But for those investing Rs 30,000-40,000 on nets alone, earning Rs 1,000 a day is no big deal. We have to make do with Rs 100-200,” says Tamu.

Added to that is having to buy all the essential commodities from the mainland. “Fish and water are the only freely available items,” says Ayingbi, adding, “but now we have



Thingnam Anjilka Samom

to be careful about the water too.” The water in the lake is becoming increasingly polluted due to the inflow of water from rivers like the Nambul and Nambol that flow through urbanised sectors of the state. Also, the phumdis have no sanitation or drainage system — everything goes straight into the lake.

Medical facilities and schools too are on the mainland.

Small children staying with their parents on the lake are confined to the 10 ft x 10 ft one-room huts where they sleep, cook, eat and process their fish. “When we are at the market selling fish, our hearts are always unsettled thinking about our children back at the lake. Water surrounds them; there have been so many cases of young children drowning in the lake,” says Ayingbi.

Despite all the shortcomings, however, the lake is their guardian. “Loktak is our mother. We are able to feed our children and run our family only because of her grace. Where else will we go,” asks 27-year-old Salam Pramo of Nongmaikhong, in Thoubal district, who has been living in a phum hut for three years. Pramo and her husband Kabi chose Loktak over Ungamen Lake, located close to their home, because of better fish catch and earnings.

But insecurity dogs them here too. Recent legislation passed by the state government, the Manipur Loktak Lake (Protection) Bill 2006, defines “a person who dwells in huts or houses on the phumdis or uses the phumdis” as “occupiers”.

The Act aims “to provide for administration, control, protection, improvement, conservation and development of the natural environment of Loktak Lake, and for matters connected with as incidental thereto”. It prohibits the building of huts or houses on phumdis inside a core zone of the lake. Also, engaging in athapum fishing on the lake. The 70.30 sq km core zone demarcated under the Act includes the area where Tamu, Pramo and Ayingbi’s phum huts are located.

Fifty-six-year-old Ningthoujam Rakhon, general secretary of the All Loktak Lake Floating Hut-Dwellers Progressive Committee, maintains that the Act is a death knell for the nearly 10,000 people living in phumdi huts. “We have no agricultural landholdings or homestead on the mainland. For generations we have been staying here. We do not know another way of life. Evicting us in this manner is the same as asking us to commit mass suicide,” he says.

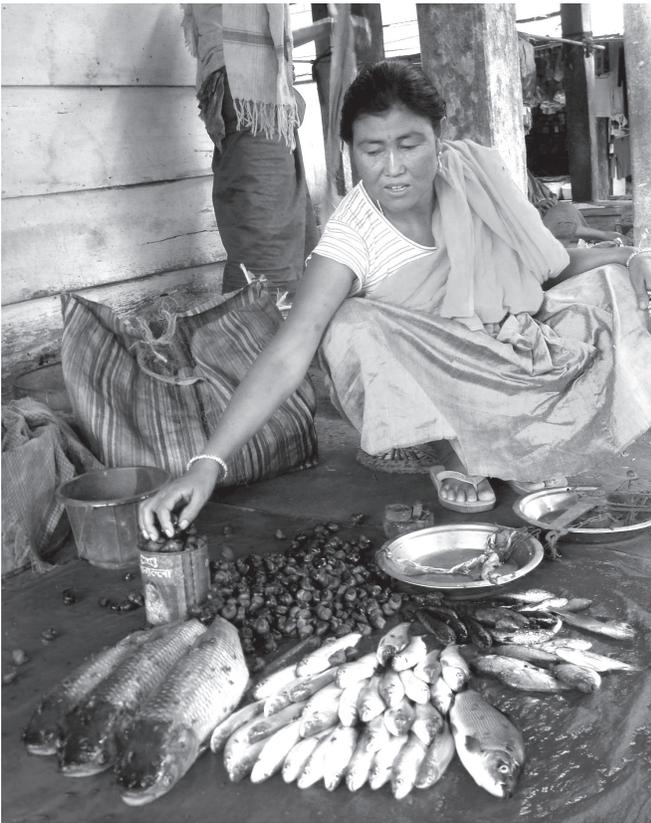
Rakhon lives with his family in Champu Khangpok, a phumdi village on Loktak Lake populated by around 1,500 people. “My great-great grandfather lived here, and those before him. How can we fish in the Loktak waters without having the safety of our huts? The high winds and rough weather could kill us anytime,” he says.

Scoffing at the government’s view that phumdis and phum hut-dwellers are polluting the lake, Rakhon insists that the pollution is due to the inflow of polluted water from the rivers, as well as the Ithai barrage. “We have been living here and fishing here for generations. Loktak didn’t have a pollution problem before. It is

Thingnam Anjulika Samom



Thingnam Anjulika Samom



Thingnam Anjulika Samom



due to the urban waste — rotten, stinking and highly polluted — that rivers like the Nambul, Ningthoukhong and Thongjaorok bring to Loktak. Earlier, this polluted water and sewage would be flushed out through the Manipur river. But after the Ithai barrage was built, Loktak became a standing pool and the pollutants stayed,” he points out.

The Ithai barrage, built at the confluence of the Manipur river, the Khuga river and the Ungamel channel as part of the 105 MW Loktak Hydropower Project has not only inundated a large area of agricultural land on the periphery of the lake, it has also obstructed the river’s traditional flow. This has led to the depletion of migratory fish from the Chindwin-Irrawady river system as well as stopped the natural flushing of the phumdis down the Khordak channel, encouraging the process of eutrophication in the lake and the unchecked proliferation of phumdi.

Phumdi management has been an important part of the Loktak Development Authority’s activities. It recently commissioned New Delhi-based K Pro Infra Works Private Ltd to clean up around 132.94 lakh cubic metres of phumdis from the lake, in a joint venture with Progressive Construction Ltd (PCL) based in Hyderabad. The Rs 224 crore contract, scheduled to be completed in two years and three months, is progressing after its inauguration by Manipur Chief Minister Okram Ibobi on January 6, 2010. The State Planning Commission has also sanctioned an amount of Rs 400 crore to clear the lake of phumdis.

The move threatens the existence of around 10,000 phumdi hut-dwellers living on Loktak Lake who recently joined forces under the banner of the All Loktak Lake Floating Hut-Dwellers Progressive Committee to oppose their displacement. “We have submitted memorandums to the chief minister as well as local MLAs to review the move, but we are yet to hear from them,” says Ningthoujam Rakhon, general secretary of the committee.

The state government is adamant about having its way. As evident from Chief Minister Ibobi’s Khongjom Day speech last year, there will be no tolerance from the government’s side on the eviction issue “as necessary compensation has been given to the athaphum owners and the LDA has set in motion (the task) of removing the phumdis from the lake”.

*Thingnam Anjulika Samom is a Manipur-based journalist. This article was researched as part of the FES-Infochange Media Fellowships 2010 on common property resources*

## Challenging the tourism juggernaut

Hotels and emporia have crowded out the fishworkers in Puri, in coastal Orissa. But the state has been deaf to the demand for land rights of fishing communities that have traditionally used the beaches to land their craft, dry their fish, etc. Who 'owns' the coast, and who has rights to it?

AARTHI  
SRIDHAR

IT'S IMPOSSIBLE to proceed any further. The freshly laid tarmac has abruptly disappeared. It appears that the waves of the Bay of Bengal only recently swallowed up the road. Strangely, on its landward side, building construction continues undeterred by the sea's appetite. The only people audacious enough to live this close to the sea must be fisherfolk. But 'Sonar Bangla Hotel'? The sprawling and psychedelic Sri Dhananjaya Katha Baba Ashram? The housing colonies of the Gandhi Labour Foundation? Pretty inappropriate titles for fisherfolk residences. Nor do the uncountable clothing emporia, lodges, hotels, or restaurants jostling each other on Puri town's congested Sea Beach Road remotely resemble fisher establishments. In fact, nothing on that road looks like it belongs to this coastal stretch of Orissa.

'Save the Coast, Save the Fisher!' This slogan, raised at its all-India coastal yatra, in May 2008, resurrected the National Fishworkers Forum's (NFF) enduring demand for guaranteed land rights for traditional fishing communities. It was this rally, and a series of protests that accompanied it, that made the Ministry of Environment and Forests (MoEF) retract its ill-conceived draft Coastal Management Zone (CMZ) Notification 2008 (replaced by CRZ 2011 since the writing of this article — eds). The NFF and its various allied unions had declared the notification a 'sell-out' of the coast to non-coastal and corporate interests. Environment Minister Jairam Ramesh promised the NFF public consultations to re-examine the CMZ Notification and work on measures to strengthen the frail Coastal Regulation Zone Notification — a law in existence since 1991.

One of these public consultations was held in Puri's Town Hall, in January 2010. Here, fisher leaders placed before the environment minister their concerns about being choked out by coastal development. Point noted. The minister and his entourage moved on.

Six months later, standing on the riotous Sea Beach Road, the NFF slogan seems anachronistic and slightly hopeless even. In July every year, lakhs of devotees descend on the town for the Rath Yatra of Lord Jagannath and his siblings. The temple effortlessly overshadows any connotation of Puri being a fishing town, and the tourist-devotees it attracts

quickly colonise the amusements on offer at Sea Beach Road. This brings more of the hinterland onto the beach, squeezing out existing coastal residents. Where do the fishers go?

Three fishing hamlets are located within Puri's municipality limits. They are populated by the Noliya people — a fishing caste comprised of Telugu-speaking fisherfolk who migrated to this part of the coast in different stages, before the formation of the state of Orissa. Balinoliyasahi, the oldest hamlet, 150 years old, lies in the centre. About 5 km to its north is Pentakota, only about 60 years old, and to the south is Goudabadsahi. Pentakota is the largest, with a population of about 20,000 fisherfolk, while Balinoliyasahi and Goudabadsahi are home to 5,000 and 3,000 fisherfolk respectively. Most fishers here belong to the dominating Wadabalji sub-caste, said to have learnt their sea skills from the Jalari fisher caste.

Never before have I had such trouble spotting a fishing hamlet on the coast. Where on earth is Balinoliyasahi? Anka Ganesh Rao, coordinator of the Puri district wing of the Orissa Traditional Fishworkers Union, leads the way to the hamlet, navigating a labyrinth thick with hotels and shops. None of the fisher families in this hamlet possess *pattas* (individual land titles) and neither does the hamlet of Balinoliyasahi by itself have any collective land rights. Along with Anka Narayan Rao, president of a local organisation called the Fishermen's Development Association, these local fisher leaders of the hamlet currently lead what was a two-decade-long engagement between the Noliyas and the Orissa government, trying to secure rights for 314 families from Balinoliyasahi.

The year 1991 is marked by the tenure of the Biju Patnaik government in Orissa — the same political (and ruling) party that the present fisher leaders have thrown their lot behind. These leaders brandish a faded official parchment dated 1991, issued by the deputy secretary of the Excise and Revenue Department at that time, to the district collector to enquire into the claims for titles made by 314 Noliya families residing over 4.6 acres of land. According to the order, the Noliya families were to be identified and their claims settled; other Noliya families' claims were also to be looked

into. But over the years, the community's composition has changed; many families migrated away from the coast, and others made this hamlet their home. The present leaders now continue the battle with a significantly whittled down demand for title deeds for 10 families from the original 314.

In May 2010, three months after Jairam Ramesh's public assurances that coastal management policies would be fisher-friendly, the Orissa government's Board of Revenue sent a clarification on the subject of allotment of land to the Noliya families of Balinoliyasahi. It stated: "As per the CRZ Notification Regulation, (sic) coastal area coming within 200 metres from the High Tide Line is to be set apart/kept reserved as a restricted zone, prohibiting construction of any building or structure or any sort of encumbrances as to make it (sic) pollution-free zone of silence." A pollution-free zone of silence! Sea Beach Road? Not only is the interpretation of the CRZ Notification in this case incomplete and incorrect, but the authorities, so concerned about the impact of according *pattas* to 10 Noliya families, are evidently deaf and mute to the consequences of the tourism juggernaut rumbling along the coast.

The state's prevarication on according titles and conferring land rights and entitlements to fishing communities is an

outcome of unsolved puzzles. Who 'owns' the coast, and who has rights to it? Is it not common property and open to all? The confusion and multiple opinions on this subject have led to legislations that attempt to either regulate or legitimise activity on the coast without attempting to clarify the position of fishing communities and their rights. Only the CRZ Notification did this to some extent by recognising that there were traditional rights and customary uses of the beach space by fishing villages. However, even this law was not clear on rights over beach space, access rights, or even the extent to which expansion within settlements could take place. This has led to improper assessments as to whether or not fishing settlements could be permitted within 200 metres of the coast — as seen in the case of Balinoliyasahi, a hamlet that existed well before this law or its guardians were even conceived of.

The beach and the coast are embedded in the socio-economic and cultural lives of traditional fisher communities, which explains why they often tolerate the tempestuous coastal weather, cyclones and storms. Despite the supercyclone of 1999, almost all fishing settlements are located in the same spot — right on the coast. Only recently, certain factors are driving communities to seek hinterland spaces to relocate to. Lack of availability of land

Aarthi Sridhar



*Sea Beach Road  
— A 'pollution-free' zone!*

or beach space to facilitate the growth of the settlement is a big constraint. Sea erosion in the southern Orissa coast of Ganjam has also caused some families in Kontiagad hamlet to consider a government offer of relocation to the hinterland. But the large majority of traditional fisherfolk, especially of the Noliya community that operates beach landing craft (not mechanised boats that need harbours), require the beach space for the operation of shore seines, for landing fish catch, for auctions, drying fish, storing boats, mending nets, and an endless list of activities sure to flummox the average tourist who visits a beach twice a year. The hotel owners of Puri are not unfamiliar with fishing activities — just intolerant.

The British leased and granted many of the coastal lands under the Calcutta Presidency to residents of Bengal. It is from their successors that K Prasad, the *peddamanaslu* (village elder) from Pentakota, has managed to procure land and titles for some of his people. He owns the sole operational ice factory in the village and has built Pentakota's only community hall in the name of his late father. He traces the sequence of harassment they face matter-of-factly: the fishers haul in the fish and begin spreading them; the hotels complain that the place smells to the district collector; the police threaten the fisherfolk; the fishers vacate the area. They then wait a while, watch, and return. "Where else can we store or dry fish if not on the coast?" Balinoliyasahi fishers have already been told to relocate their boats and nets a few kilometres away from their landing sites. Even the present fish landing site is a new one; the old favoured one has been colonised by petty shops under a sea of blue tarpaulin.

The last brick of tourism construction is laid at the foot of the Pentakota fishing hamlet. Unlike Balinoliyasahi, although crowded, it is large and sprawled out along the coast like so many Noliya settlements on the Orissa coast. K Prasad heads the Pentakota struggle for land and explains that they have been demanding about 30 acres of land in the nearby 'jungle' — casuarina groves planted by the Orissa Forest Department. He explains: "The families located in the first two rows of houses near the shore have agreed to move. They will live in multi-storeyed constructions in the hinterland. People do not want to live so close to the sea now, after the tsunami. There is no land here anyway. Whatever it is, people will move only if the leaders ask them to. Our leaders are tough, that is why Pentakota is strong."

Pentakota is one of India's 3,202 marine fishing villages, home to 3.52 million marine fisherfolk, according to the latest CMFRI census. Since Independence, no state government has thought it necessary to accord the fishing community rights over coastal lands or even access-based rights. On the contrary, there are proposals for coastal industrialisation and non-coastal activities which have the blessings if not a push from each government.

If coastal areas are common property resources, then surely anyone can use them any way they please. This facile assumption is as incorrect as it is tempting to accept. Coasts and beaches are considered 'traditional commons' governed by rules of communal use and governance, although with a high degree of diversity from hamlet to hamlet. A diversity of management practices are followed by fishing communities over coastal lands and offshore waters along the east coast of India. In some villages, there are no fines for sharing coastal lands; in others, strict penalties are imposed on boats from other villages landing or fishing within a village's area. Therefore, while there may not have been exclusive ownership of land, there definitely was a sense of belonging to it, and vice-versa.

Nobel laureate Elinor Ostrom's work on the commons shows that the notion of common property resources (CPRs) is poorly understood in general, and any misinterpretation impacts the very survival and identities of communities traditionally dependent on these resources. Puri's Sea Beach Road is a fitting example of this, and the reason why its fishers resist being jostled out.

V Vivekanandan, convener of the National Campaign for Protection of Coasts, headed by the NFF, knows first-hand the diversity, depth and degree of complexity that accompanies the simple term 'rights over commons'. He emphasises the need to make a distinction between land rights and land titles and deeds: "Land titles or *pattas* are becoming necessary for a range of government schemes, and the demand for *pattas* is legitimate. In many villages in Tamil Nadu, *patta* or no *patta*, there is no question of the state displacing fishing communities, some of which pre-date agricultural villages and which trace their establishment to the time of the Chola dynasty. The demand for *pattas* by fisherfolk varies between states and really depends on the precariousness of their existence. Land rights are broader and include the settlement and common spaces associated with villages which are now threatened. That has always been the NFF's demand." Unmistakably, a more political demand.

The letter from the Board of Revenue to the collector on the Balinoliyasahi land titles case ends with a warning: "This aspect (of according titles) needs further examination in view of escalating safety and security concerns along the coast of the country." A fisherman from Puri paraphrases this for me: "We are Noliyas, not Oriyas. That's what they think. They don't say it, but it's in their hearts."

---

*Aarthi Sridhar is a trained social worker and environmental researcher-activist. She heads the Dakshin Foundation. This article was researched as part of the FES-Infochange Media Fellowships 2010*

# The farmer, the lotus pickers and the washermen

For generations, the farmers on whose land Kerala's traditional ponds stood would share the waters and fish with the community. Now, with increasingly commercial fishing and sand mining, the lotus pickers, washerfolk, cattle owners, and bathers are being ousted. Can there be a hierarchy of ownership of something as fluid and life-sustaining as water?

JYOTHI KRISHNAN

MUTHA AND HER FAMILY used to bathe regularly at Pandalamkulam, a pond exclusively owned by Kochukuttan in Kollengode panchayat of Palakkad district, Kerala. This is a perennial pond, located at the valley bottom. Except during certain summers when it ran completely dry, Pandalamkulam was a relief to many poor families in the vicinity. After a long day's work, they would rush to the pond before it was dark for a quick bath. Kochukuttan never had a problem with people coming and bathing and washing clothes in the pond, for it never interfered with his requirements in any way.

Pandalamkulam is one of the traditional water harvesting structures, known as *kulam*s, in the dry, eastern Palakkad landscape of Kerala. This system of water harvesting was a response to the need for moisture and water conservation in the dry region. It was a system of water harvesting and water use that facilitated double cropping of paddy in the valleys.

The private property regime governs the use of land in Kerala. Community norms regarding the protection and use of common lands do not exist here, except in tribal-dominated regions of the highlands. However, until the recent past, farmers and rural folk followed a certain land use ethic. This is manifest in the recollections of older farmers of how they managed the land. It is also manifest in their recollection of water use practices. As one old farmer in Kollengode said, they took care of the water in the pond like a speck of gold, never wasting even a drop.

In 2005, however, by mid-April, Kochukuttan had pumped out all the water in the pond. His son had begun to pursue fishing as a commercial proposition; he made as much as Rs 40,000 from fishing, in 10 months.

Kochukuttan's pond was completely drained in order to eliminate any fish that may be in it. The water was pumped into the nearby coconut plantations. Before introducing fresh fish eggs, farmers sometimes plough the pond bed with a tractor and apply a coat of lime.

Of late, panchayats have been extending support to farmers who want to pursue fishing in ponds, by distributing fish eggs. Farmers who combine farming

with fishing are considered enterprising.

So Mutha and her companions had to go to a pond much further away that summer. The thought of protesting against Kochukuttan's decision to pump his pond dry during peak summer did not even occur to anybody, Mutha said, for it was an accepted fact that Kochukuttan had every right to do so.

In the past anyone could go and fish in the pond once in a while; Kochukuttan did not really mind if someone occasionally threw in a bait. At times there would be no food at home, so Mutha's son would go and try his luck. A fish or two was enough, she said.

Since Kochukuttan's son embarked on commercial fishing, however, they were forbidden from fishing in the pond. Naturally, Mutha said understandingly, they had invested a lot of money in it.

This case illustrates the commonplace, everyday appropriation of a common resource. A form of appropriation that we tend to take for granted.

Who needs the pond the most? The landowner who has been vested with ownership rights over it? The women nearby who come regularly to bathe and wash in its waters? The lotus pickers who come to pick lotus flowers and tubers? The cattle that are bathed here? People who come to spend a quiet evening? The occasional fisherman?

Who uses the pond the most?

These are difficult questions that come to mind as one studies the conflicting claims around ponds, as well as the many ways in which different groups of people rely on them. The conflict arises from the supremacy of the landowner's rights over the pond. The fields located below each pond hold the first stake over water in the pond.

The system of land ownership that has evolved in this region grants pond ownership rights to the farmer who owns land in the ayacut of the pond. These rights underwent a phenomenal change with the introduction of energised pumping devices that intensified the farmer's control over

water. Hitherto restricted manual lifting was replaced by unrestrained pumping. The pond owner was now free to pump as much water as he wanted for irrigation. He could also pump it completely dry in preparation for fishing. If the pond was shared by more than one farmer, all that was required was a consensus amongst them regarding the pumping of water.

The farmers' decision to forbid fishing in ponds irritated many young people, who, out of spite, began to fish at night causing losses to the farmers. Such instances are small rumblings of discontent over the exclusive powers that pond owners enjoy. Some farmers were forced to catch their fish before they were fully grown, for fear that local people would get them instead.

Chami, an 80-year-old agricultural labourer, said things were different when fishing was not a commercial proposition. When water levels fell, pond owners would tell the labourers to fish in the pond. Whatever was caught was distributed, with the pond owner deciding how. The labourers involved in the fishing would also receive a share. Now, said Chami, with fish breeding, there are many more fish in the pond but pond owners and local people are pitted against one another.

I encountered the lotus tuber pickers quite by accident. Nobody had told us about them, about how ponds sustained the livelihood of this small group of people. We were walking past Churikadkulam in Matacode in Kollengode panchayat when we saw a group of 15 men and women standing in the slush of the pond bed, pulling at something. They were extracting lotus tubers which are used to make pickles, and also chips for which the tubers have to be cut into small pieces and dried. The group belonged to the Chettiar community, and were from the nearby town of Pallasana (about 15 km away).

The Chettiar colony at Anaikode in Pallasana consists of around 70 families. Besides Pallasana, the Chettiars have settlements in many parts of Palakkad district — Vadakkenchery, Kallekkad, Chittoor-Ambatupalayam, Vandazhi, Kanjikode, Velayodi, Alampallam, etc. It is only the Chettiars from Pallasana and Alampallam who pick lotus tubers, possibly because there are many more ponds in these parts of Palakkad. The Chettiars speak Tamil at home. They don't remember when exactly they came to Palakkad but they know from their grandfathers that they came here during the time of Tipu Sultan's invasion of Kerala. They know the ponds of the region extremely well, particularly the ones that have lotuses. They also pick lotus flowers and take them to temples. In addition, many collect and sell honey.

Lotus tubers are harvested twice a year — first in the months of December-January and then again in April-May. Lotus flowers are harvested in the months of July-August. The tubers are thick when harvested in December; during

the second harvest they are thinner.

Appu, the leader of the group I met, explained that it was a lot of hard work as they had to stand in the thick slush for hours, feeling around with their feet for tubers and then gently pulling them out without breaking them. There were four women in the group.

Appu takes a seasonal contract with the owners of certain ponds. Once it is learnt that he has entered into a contract with a particular individual, other tuber pickers do not visit this pond; and he does not go to ponds where others are involved in picking. He then mobilises a team of people who assist him in picking the tubers, and pays them for their work. He takes a larger share as he has to mobilise them and pay for their transport, food and wages. The tubers are given to tuber traders. Earlier, Appu used to deliver them mainly to the Brahmin community who routinely consume the tuber in its dried form. Now, they deliver their produce to tuber traders as it is becoming popular for use in pickles. The increased demand for pickles in which tubers are used has enhanced its market value. In the past, Appu used to get Rs 5 for 30 kg of tubers; now he earns Rs 10 for every kilo he sells.

Some pond owners allow them to plant lotuses on the pond bed so that there will be plenty to harvest in the coming season. A pond full of water is best for the plant's growth. (This is why they grow very well in temple ponds where water is not used for irrigation.)

Sand mining in the pond beds, however, poses a threat to tuber picking. Of late, many pond owners have allowed JCB machines to mine sand from their ponds. The increased demand for sand to meet construction requirements in the state has fuelled sand mining, not just in river beds but pond beds, stream beds, even paddy fields. The pond owner gets a lumpsum amount from the private contractor. JCBs cause large holes in the pond bed as a result of which the tuber pickers find it hard to stand and search for tubers. Sand mining also destroys the plants.

The other group of people who rely on ponds are the washerfolk who traditionally belong to the Mannan community. I had heard of an old conflict between the washerfolk and the owner of Veliya Eri in Manalipadam in Kollengode panchayat, over water use. People have been washing their clothes for years, at Odungatuchira. During the implementation of land reforms, the pond was surrendered by the landlord as land in excess of the stipulated ceiling. Subsequently, the land on which the pond was located was vested with the government. This turned it into a common pond, implying that its water could not be pumped out for irrigation. When a later owner of the pond attempted to pump water from the pond, people in the area belonging to the Mannan community objected on grounds of it being a common pond, a pond where they had been washing their clothes for years.

I tried to find out more about the issue some years later. I went to visit the Mannan household that lives closest to the pond, and found that they had switched their traditional livelihood. The family had moved to Mumbai years ago and were just back in their hometown after having built a larger house. I happened to meet the present owner of the pond, who had migrated to the area around 30 years ago. He told me that the incident was true and that the Mannan community had indeed been up in arms against the previous owner when water was pumped out of the common pond. He also recalled how cleverly the former owner of the pond had evaded giving up land in excess of the ceiling. For one, he surrendered land on which the pond was located, as excess land, knowing fully that this would not benefit anyone. Two, in order to retain control over the pond he surrendered only land that was located at the centre of the pond. The four sides of the pond, and the bathing ghats, were retained as his land! It's amazing how the authorities managed to overlook such blatant instances of evasion. So, when the washerfolk resisted moves by the owner to pump water out of the pond, he retaliated by saying that the water may be common but the land on which they stood and washed was his!

Over a period of time, the washerfolk stopped washing at Veliya Eri and moved to Gramakulam, a pond that was part of Kollengode gramam (where the Brahmin community resided), in Kollengode panchayat. Initially there was opposition to the washing of clothes there, but, over time, the washerfolk established their right to wash clothes in the pond.

Once again, the water requirement of this group of people was given secondary status. Sixty-five-year-old Ponnu from Mannantara in Manalipadam began washing clothes with the rest of her community when she was just 10. She recalled that when water levels in the pond and streams dropped in summer, they would go with bundles of clothes on their head all the way to Seetarkundu in the Tenmala hills, where water was more plentiful. Ponnu said her feet used to hurt walking all the way to the hills, especially after standing in the water for long.

Despite the younger generation looking down on this profession, it continues to provide economic security to the elderly in the Mannan community. Ponnu told me that despite the hard work, it provided her a monthly income which was becoming more and more important as she grew older. Her children were economically burdened themselves, so she was happy that she was able to fend for herself. It is pertinent to note that even at a time when most members of the Mannan community followed this profession, their water requirements were not given special consideration. If there was not enough water nearby, they were expected to go and wash wherever it was available.

Being catchment-based water harvesting structures that promoted both water conservation and irrigation, ponds were

definitely intended to enhance agricultural security. In so doing, their management was located within the land relations of each age; it was the landowning class that had the greatest say over the management of ponds. But ponds have supported a range of other livelihoods as well, such as lotus tuber collectors, washerfolk and fisherfolk who have no land and subsist on traditional livelihoods. Not being in the agricultural sector, they are not covered by any welfare measures. Their rights to water in the pond are not protected and are threatened by the decisions of individual pond owners. Their livelihoods and daily water requirements are subject to the exclusive powers enjoyed by the present-day pond 'owners'.

The fundamental question is regarding ownership. Unlike land, water cannot be strictly viewed as private property; its fluid and life-sustaining nature makes it difficult to categorise it as a piece of private property. Despite ponds being viewed as the property of the landowner, several other people use the pond in various ways. And yet there is a hierarchy, with the landowner at the top. The claims of all other groups are ambiguous.

Recognising these multiple claims over water could result in a more equitable sharing of the water that is available. There must be open discussions between the different groups of people who rely on the pond in different ways. At present, the pond owners are extremely resistant to open discussions, for they have the most to lose. The idea of viewing ponds as 'commons' is unthinkable for this group of people who are also powerful, socially and economically.

This issue has repeatedly emerged in proposed pond protection measures by the concerned panchayat. When the panchayat undertakes to protect a pond, the implication is that the pond ceases to be a private pond. Because of this, many farmers have refused to hand over their ponds to the panchayat for protection fearing that tomorrow they will not be able to exercise exclusive powers over the use of water in the pond.

Recognising multiple claims over water and the 'common' status of water also implies recognising the need for a shared sense of responsibility towards the protection of these unique waterbodies. Inculcating a sense of responsibility into our day-to-day dealings with land and water is one of the big challenges we face today.

---

*Jyothi Krishnan is a researcher on natural resource management and is presently Research Associate with the Tata Institute of Social Sciences, Mumbai, and Team Leader for the MGNREGA Evaluation Project in Kerala. This article was researched as part of the FES-Infochange Media Fellowships 2010*

## Destroyed by ‘development’

As resource-rich Orissa hurtles towards ‘development’, huge swathes of forest are being cut to make way for industry, mining and infrastructure. Some 200,000 hectares of forests are believed to have been diverted to non-forestry use since the 1940s, and hundreds of thousands of forest-dwellers have been evicted from these common property resources

SUBRAT KUMAR SAHU

SEVENTY-FIVE-YEAR-OLD Raimati has to make quite an effort to walk up the 50-foot slope from her ‘workplace’ to her tiny hut in Benakhmar village on the banks of the Upper Indravati reservoir in Nabarangpur district, Orissa. Her ‘workplace’: a manual stone-crushing unit (illegal, according to the administration) run by women like her in the village. They heat the stone by burning fuelwood underneath it for hours; crush the stone into small pieces using big hammers, and then pound the small pieces into stone chips using medium-sized hammers. Even as this tedious process goes on non-stop every day, they might have to wait months for a contractor to come by and buy the chips, at Rs 750 per tractor-load: a meagre sum for a task that involves a month of hard work by a group of four to five women.

Raimati can barely lift the hammer. But she has no choice. “Despite the hardship, I cannot ensure a square meal for myself every day,” she says absent-mindedly, looking across the vast spread of the Upper Indravati reservoir. She points somewhere in the distance and says: “That is where we used to live, in our village surrounded by dense forests. They drowned our happiness, our beautiful world... And look at me now!”

Punai, a 55-year-old woman, comes up to Raimati and

says: “Life was so beautiful in the forest. No one ever went hungry. The fruits alone sustained us for four months of the year. The forest used to provide us plenty. We also ploughed the land. But they threw us out, and drowned everything.”

Nearly 50,000 forest-dependent people were forcibly evicted from their homes in the 1980s and 1990s to make way for the multipurpose Upper Indravati Hydroelectric Project that submerged 11,000 hectares of prime forest, which was also one of the most diverse wildlife habitats in Asia. The displaced forest communities had no option but to retreat to the banks of the reservoir. The road that came with the project, tearing into the heartland, ensured that the remaining forest around the reservoir was wiped out by the timber mafia, in connivance with forest officials, in less than a decade. And so the 50,000 displaced forest-dwellers lost whatever livelihood base they were left with.

The misery of the people of Indravati is a small example of how ‘development’ has destroyed traditional communities that depend on natural resources not only for their survival but also to keep their rich socio-cultural ethos alive: a way of life that is aligned with the natural evolution of the planet, its resources, and its life forms.

Subrat Kumar Sahu



The ‘environment-friendly’ way to destruction

Dr Walter Fernandes, director of the North Eastern Social Research Centre, Guwahati, and former director of the Indian Statistical Institute, Delhi, estimates that between 1947 and 2000 over 60 million people in India were forced to move from their natural homes. Of this, 3 million people were displaced in Orissa alone, most of them forest-dwellers.

### A colonial legacy

The sovereign Indian state was born in 1947. But the newborn did not cry at birth; it came smiling, wrapped in colonial covers. Drunk with the often-debated ideals of his 'nation-building' programme, Jawaharlal Nehru, the first prime minister of India, did not mind 'sacrificing' the country's natural resources (especially forests) and its indigenous people to make way for industries and big dams — for what he called 'national interests'. As though the rural and forest folk did not matter in the rush for 'development', the National Forest Policy of 1952 — among other policies — clearly turned them into sacrificial lambs. For example, it read:

*"Village communities in the neighbourhood of a forest will naturally make greater use of its products for the satisfaction of their domestic and agricultural needs. Such use, however, should in no event be permitted at the cost of national interests. The accident of a village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset... Restrictions should be imposed in the interests not only of the existing generation, but also of posterity."*

So, for the self-ruled Indian state, a "village being situated

close to a forest" was just an 'accident'! Even though the 1952 policy sought to keep one-third of India's total land area under forest cover, large tracts of primary forests were decimated to build infrastructure, big dams, and industries, and millions were evicted from their natural homes.

The Hirakud dam in Orissa — an impeccable symbol of development for the insensitive middle class — submerged around 75,000 hectares of dense forests, grazing lands, and farmland, rendering homeless around 180,000 people who were dependent on local ecosystems for their survival. The Rourkela steel plant — another pride of the Oriya middle class — decimated 11,200 hectares of primary forest, evicting 15,000 indigenous people. And it does not end here: in order to feed the steel plant electricity and water, the Mandira dam was constructed, submerging 4,500 hectares of virgin forest and displacing an unaccounted number of forest-dwellers. Then the rail network linking the steel plant with Hatia, Barsuan, Bondamunda and other places evicted 20,000 more people.

Apart from big dams, in recent decades it has been the mining and metal sector in Orissa that has caused the most distress to forest-dwellers. Of the 5,813,700 hectares of 'categorised' forest area in the state, mineral reserves have been identified on some 3,500,000 hectares; that's more than 60% of the total forest area. According to a press statement by Orissa's Steel and Mines Minister Raghunath Mohanty in June 2009, "preliminary exploration for mining had already been done on 3,100,000 hectares of forest land". That, coupled with the rate at which the Orissa government has been signing MoUs — more than 80 by now — with metal, mining, and related industries speaks volumes about the dark



*Raimati crushes stones for a living. She used to live in a village surrounded by dense forests*

Subrat Kumar Sahu

destiny that awaits forest-dependent people in the state.

Indeed, the situation is so chaotic that nobody even knows what happened to around 32,000 adivasi families (more than 200,000 people) in the Joda and Badbil areas of Keonjhar district, where mining (mostly iron ore) has been taking place for the past 40-odd years. They disappeared without a trace! In Damanjodi, in Koraput district, where NALCO (National Aluminium Company) has been mining bauxite in the Panchpatmali mountains since the 1980s, over 70% of indigenous forest-dwellers who once were completely self-reliant today eke out an existence below the poverty line. While the price paid for such large-scale mining is already etched on the wrinkled foreheads of the adivasis of Koraput, the Damanjodi project is being glorified by the state as an indisputable symbol of progress and development for the local populace; a benchmark for private mining and metal companies to follow.

Michael Ross has already warned of the ‘resource curse’ that rampant mining unleashes, in his insightful report, ‘Extractive Sectors and the Poor’ (Oxfam 2001). Studies by the Centre for Science and Environment (CSE) too show that all the poverty indices in Planning Commission statistics are invariably worst in mining-affected districts. The fact that mining breeds poverty rather than diminishes it is glaringly on display at Damanjodi.

The onslaught on forest communities that started with the commercialisation of forests during the British Raj has now become a multi-pronged attack, with scores of ambitious development projects — mining, dams, metal factories, rail networks, tourism, sanctuaries — in the pipeline, and many more in the offing. These so-called ‘development’ projects seek to wipe out large tracts of primary forest forever and destroy forest-dependent communities.

In Orissa, the extent of forest area diverted for non-forestry use since the 1940s would be close on 200,000 hectares, most of this inhabited for generations by forest-dependent tribal populations. Between 1980 and 2007 alone, according to government records, the area of forests diverted for non-forest activity was close on 35,000 hectares. And this does not include vast tracts of forest promised in MoUs but not yet transferred by the state to industry.

### Response of forest-dependent communities

Soon after Independence, especially around the time when the Hirakud dam was coming up, communities displaced by such projects did not know how to ‘effectively’ respond to their predicament. But resist they did. However, an unprecedented degree of state repression, ironically now empowered with ‘democracy’ and assisted by the feudal class that primarily represented the new political class in independent India, succeeded in suppressing the spontaneous but unorganised resistance by forest-dependent communities.

By the late-1970s and early-1980s, the winds of ‘environmentalism’ had already started blowing in Orissa. By this time too, most communities had witnessed the devastation caused by ‘development’ projects. The 1980s saw the beginning of a new phase of resistance to such projects. The ‘Save Gandhamardan’ movement around the Gandhamardan mountains in western Orissa is a classic example in which communities, social formations and individuals cutting across social structures joined in to successfully force the state government to scrap a huge plan to mine bauxite by BALCO (Bharat Aluminium Company). Gandhamardan has been a source of livelihood not only for thousands of adivasis but also for scores of farmers, traditional health practitioners, and other social groups.

Another successful people’s resistance was the Baliapal movement in coastal Orissa where people fought a long, hard, democratic battle with the state to stop a huge military base from being set up there.

Unfortunately, after the economic reforms of 1991 in which India took the path of rapid and indiscriminate industrialisation, Orissa turned into a sort of ‘laboratory’ for the neo-liberal agenda, putting huge pressure on the state’s forests, water resources, and energy supply. Metal factories, power plants, dams and mining units sprouted like mushrooms all across the state, especially in forest areas.

### Taking on the assault

Of late, communities everywhere are resisting being sacrificed at the altar of development. In many cases, people have been able to halt the progress of industry, putting the brakes on the disruption to their lives and livelihoods: Kalinganagar, Kashipur, Jagatsingpur, Niyamgiri are just a few...

But despite the widespread resistance, a number of communities have already been devastated. A prime example is the Sambalpur-Jharsuguda stretch in which Lapanga falls. Lapanga boasts the oldest ‘recorded’ instance of community forest management in Orissa, since 1936.

An elder (who pleaded anonymity) of the widely publicised and respected Lapanga Prajarkshit (community-protected) Jungle Committee says: “What tremendous collective efforts and care went into protecting the village forests here, for decades. But today this place has become unfit for human beings to live. Not only have we lost large areas of forests to factories all around, the environment is totally destroyed... Even the social environment now stinks! Living here is going to be even tougher in future.”

Another member, a middle-aged man who also pleaded anonymity, says: “Our elders had sown the seeds of prosperity for us by keeping the forests, and my generation reaped the harvest. But what is our next generation going to do? What will they survive on? We still have about 300

hectares of forests. But suddenly, after these companies came here, trees in our forests are being felled every day and transported out. We do fight, but they come with the company goons. We do not know how to tackle the problem. Our elders had protected this forest for over 100 years by contributing foodgrain set aside from family rations and also by putting in voluntary labour. Earlier, 80% of the village forest and farmlands were lost to the Hirakud dam; now the remaining 20% of forest is in the greedy sights of the companies. We do not even know where they came from."

The present situation might point to a kind of travesty of history: Lapanga has always been a prime example of the glorious tradition and history of Orissa's community forest management (CFM), which started around 1900 as sporadic, localised resistance in various places, in response to the British takeover of people's forests, and had turned into a mass movement by the 1970s. The enormous efforts of communities throughout the state to regenerate and protect their forests since then is reflected in the fact that today there are about 17,000 village forest protection committees (FPCs) covering around 19,000 villages, protecting about 2 million hectares of forests in Orissa. This means, over one-third of the total forest area in the state is now under community control and care even though 'legally' it is state property.

Walking with the man in the forest, I could feel his helplessness. The forest is dotted with hundreds of stumps of freshly felled sal trees. Our conversation is repeatedly interrupted by the sound of heavy trucks plying right through the forest. He says: "This was the *go-danda* (path meant for cattle to return home). But now it is a sort of highway for heavy vehicles belonging to the Hindalco coal mine located just a few kilometres from here. They cut so many trees to build this road." He adds: "Due to the factories all around, especially of the Bhushan Steel Company, and the coal-carrying vehicles, this place has turned into an industrial dumpyard. We are afflicted with strange diseases now."

I saw industrial waste, especially ash, dumped randomly all over the place, even on the main road — a state highway. I learnt that in order to carry away one truckload of ash from the factory, a truck owner gets Rs 11,000. However, it is not specified where he is supposed to dump the ash and so he takes the easiest way out! On a prominent signboard showing you the way to the Hindalco coal mine, you cannot miss the tagline: 'We care for the environment'!

I follow the 'environment-friendly' directions given by Hindalco and end up near Beheramunda village, about 10 km from Lapanga. Manbodh Biswal, a local activist who was arrested for questioning the state about allowing the company to set up on forest land, and is now out on bail, wonders: "There was a dense forest standing here. How did the company manage to get the land? Moreover, they have acquired the village commons and have paid some paltry

compensation. It's like hacking your head off and then saying that the rest of your body is okay for you to live a lifetime!"

A little while later, he laughs and tells me that what I had mistaken for a hill in front of us was actually a dumping site for soil extracted through mining! Ugrasen Mahanand adds: "Because of the dumpyards, our farmlands remain waterlogged due to which we have not been able to cultivate our lands since the past six years."

The Sambalpur-Jharsuguda stretch is testimony to the dark side of Orissa's ambitious industrial development drive in the past 10 years. Apart from destroying forests rich in resources, industrial pollution and waste have reduced farm output as well. An un-plucked cauliflower looks like a palm-full of cowdung meticulously placed on the ground! And the biggest paradox is that many of the industrial units have been certified as CDM (clean development mechanism) projects even as the rest are awaiting certification!

The middle-aged man in Lapanga says: "When we keep the forests and, in effect, keep the environment clean we never get such certificates! Why?"

### Deepening paradoxes

Amidst the intense conflict of interests, in post-reforms India, between natural-resource-dependent communities on one side and the state and corporations on the other, in December 2006 the Indian Parliament passed a 'historic Bill' relating to India's forests — the Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Bill 2006, generally referred to as FRA 2006. At the outset, it seemed that the ignominy of the British legacy mindlessly carried forward so far to exploit forests and forest-dependent people was finally coming to an end. With a strong CFM network in place, one would think communities in Orissa would be upbeat about FRA 2006. But on the ground, the Act has only compounded the crisis.

As I moved from one village to another, the usual story was that people on the ground are utterly confused about the concept, scope, process, and the very objectives of the Act. On the other hand, the state is doling out *pattas* against 'individual' claims as a 'favour'; there is virtually no information made available to communities about the provision of 'community rights' enshrined in the Act. It is also evident in many places that the forest department is spreading misinformation about the scope of the Act and misguiding forest communities — especially discouraging them from claiming 'community rights' over the commons, and promoting JFM bodies whilst grossly undermining the gram sabha, which, according to the Act, is supposed to be the most empowering body.

Besides the forest department's regular tricks to undermine the Act and retain its lordship over people's forests, what

## State appropriation of forest commons in India

Forests in India, however described or legally defined — whether scrub jungle, dense evergreen or even desert lands — have always seen human interaction, use and management. They are considered ‘traditional commons’ and have often been governed by local communities, either tribal or ‘forest-dwelling’ people. The idea of ‘rights’, particularly collective, is intrinsic to the notion of commons, and for communities dependent on these resources, rights over the resource and its governance have been critical. Forests in South Asia are still thriving socio-ecological systems where dependent communities derive not just economic returns, but their entire existence and identities are determined by the health of the resource, their rights over it, and access to the same.

In pre-colonial times, vast tracts of forests were under different regimes of ownership, administration and management. In 1878, the British colonial administration passed the Indian Forest Act, through which most lands were classified as ‘reserve forests’ or ‘protected forests’ and people’s access to these areas and resources was restricted.

The Indian Forest Act (IFA), 1927, a revised version still in operation in independent India, marked a significant starting point for the state’s appropriation of the commons which were declared ‘forests’ and brought under the administration of the forest department with the objective of maximising extractive use. The lands that came under these definitions of forests included hilly lands, scrub forests, grasslands, even coastal lands and desert regions of mountain areas. Therefore, many of these forests that did not even physically exist, and revenue lands that were supporting livelihoods, were sealed off as forests. In the bargain, several communities dependent on these lands were alienated from these areas as were their unrecorded rights over these resources.

The governance of the commons and the direction of policy reforms in the present context must incorporate a historical understanding of forest management in India. This history is responsible for very significant changes in how the commons are viewed today, the definitions of various common resources such as ‘forests’ and ‘grasslands’, and the present-day relationship between people and the state over the governance of these areas.

The most significant social phenomenon since Independence has been the growth of various people’s movements aimed at securing rights over the commons and their different trajectories, which has resulted in the state’s present conception of people’s rights to forest commons.

## Policies over forest commons management: Steps towards reform?

### *The meaning of forests*

The Forest Conservation Act (FCA), 1980, presumably a conservation legislation, put in place a system for the diversion of forests for non-forest purposes, with the state forest departments and the Ministry of Environment and Forests (MoEF) deciding the fate of these forest lands.

Recent analyses of this legislation show that it has actually led to greater alienation of forest lands through its evolving clearance procedures. The MoEF declared several forest communities as encroachers, in litigations around the FCA argued in the Supreme Court (SC). Newer complexities arose in the famous ruling by the SC in T N Godavarman Thirumulpad vs Union of India (Writ Petition 202 of 1995 — popularly known as the Godavarman case). The Supreme Court’s interpretation, and the subsequent application by its Central Empowered Committee in this landmark case, of the FCA being applicable to ‘all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof’, led to further cases of encroachment and alienation of communities from forests.

### *Participation versus ownership*

Several people’s struggles have marked post-Independence forest management regimes. In 1988, the government initiated a small change in its forest policy. The National Forest Policy was introduced in 1988 which recognised environment conservation and meeting rural people’s needs as important objectives of forest management. In addition, it envisaged the creation of a massive people’s movement with the involvement of women for achieving these objectives.

On June 1, 1990, the MoEF sent a circular to the forest secretaries of all states and union territories asking them to involve people in the management of forests, in a programme titled Joint Forest Management (JFM). This was to be implemented under an arrangement between the village community (notably now defined as ‘beneficiaries’), the forest department and voluntary agencies. The village community was to organise itself into village forest committees (VFC) for the regeneration and protection of forests. In return, they were entitled to a percentage of ‘usufructs’ like grass, ‘lops and tops’ and minor forest produce from areas reserved for JFM. Voluntary agencies or NGOs were envisaged as catalysts in the process; they would interface between the forest department and local village communities. JFM was largely project-driven in various parts of the country and in most places its simplistic approach to the complexities of the commons has resulted in its failure.

**Righting wrongs: The Forest Rights Act, 2006**

On December 29, 2006, the Indian Parliament promulgated a legislation to recognise and vest forest rights, to recognise the occupation of forest land by forest-dwelling adivasis and other traditional forest-dwellers, “who have been residing in forests for generations but whose rights could not be recorded”. The Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act (FRA), 2006 not only recognises individual land rights, which in principle must be jointly registered in the names of the spouses in case of married persons, it also recognises community rights to use, manage, and protect forest resources. Further, this Act stipulates the conditions for relocation and rehabilitation in “critical wildlife habitations” with the requirement of “free informed consent” from the displaced and the offer of alternative land. The Act, moreover, holds precedence over all other forest and wildlife-related laws. The passage of the Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Bill, 2006 is considered by campaign groups as a watershed event in the hard-fought and prolonged struggle by adivasis and other forest-dwellers of the country. This legislation is significant as an admission by the state that rights have been appropriated and denied to forest-dwelling people for long, and that a legislative process is required to right ‘historic injustices’ and give forest communities the primacy in forest management.

However, the FRA has been accused of ushering in an inordinate emphasis on individual rights of use and occupation of forest land. It is alleged that, except in cases where people’s movements have been spreading information and aiding in the application and approval process, beneficiaries are unaware of the full provisions of the Act, especially those pertaining to the community. In addition, there are certain administrative barriers against its implementation. Complaints range from unrealistic deadlines for completion of the recognition of rights; the continuation of forest land diversion without the approval of those affected, which is against the provisions of the Act; and initiatives for the notification of critical wildlife habitats in a manner contrary to the Act. The FRA represents a shift in control over land, and therefore a shift in power equations. This is naturally resisted by vested interest groups that fuel the disregard for the implementation of this law as reported from certain areas.

*(Reprinted from Common Voices 1, published by Foundation for Ecological Security)*

turns this historical Act into yet another paper tiger is the state’s aggressive industrial policy — passed off as ‘development’ — in which it has already committed to decimating vast areas of forest. It is an irony that Orissa’s huge expanse of primary forests has become the most favoured destination for global and national mining giants, and yet it is not clear what the government, both at the Centre and in the state, stands for. Do they want to implement FRA 2006 both in letter and spirit? Or displace and decimate them by pursuing a dangerously aggressive mining policy that even the West has abandoned? At one level, the Indian state is trumpeting the fact that it is rectifying a ‘historical injustice’ perpetrated over centuries on forest communities. At another, it sends in police and paramilitary forces to repress these same communities for demanding their rights over natural habitats, community resources, and livelihood avenues.

To top it all, the Union government has recently discovered a mouth-watering ‘treasury’ in the forests, as hinted in the Ministry of Environment and Forests (MoEF) document entitled *India: State of Forests Report 2009*. It states: “Putting a conservative value of USD 5 per tonne of carbon dioxide locked in our forests, this huge sink of carbon is worth Rs 6,000 billion (USD 120 billion)...” So now the millions are turning into billions, as international carbon traders knock on India’s doors. That is why the investment amount too has gone up — to attract ‘competing’ traders. Besides a whopping budgetary allocation of Rs 8,300 crore (USD 1.85 billion) of public money, the MoEF hopes to mobilise a mindboggling Rs 44,000 crore (USD 9.5 billion) for its ambitious and controversial Green India mission.

In this inane and ambiguous arrangement, one thing is clear: the investors are now going to be the new absentee landlords of India’s forests, but without upsetting the forest department’s ‘official’ zamindari (landlordism). In order for the investors to stake a claim, expenditure needs to be visible. That is why standing natural forests (even farmlands) have to be razed and replaced with commercial ‘plantations’, as is already happening in many districts of Orissa like Kendujhar and Deogarh. So, with a simple stroke, virtual ownership of a forest will change hands from the community to the company. ‘Unlocking’ this new-found ‘treasury’ will mean ‘locking up’ the provisions of FRA 2006!

Then perhaps forests will be renamed after companies. Niyamgiri may be called ‘Vedantagiri’ five years down the line; and Khandadhar mountain, ‘Posco peak’! Just as nobody today knows that there once existed quiet, idyllic, self-reliant forest villages called Kalimati and Sakchi; they lie buried under the incessant roar of engines on the sprawling urbane we know as Tatanagar in Jharkhand...

*Subrat Kumar Sahu is an independent filmmaker and journalist based in New Delhi. He was an Infochange Media Fellow for 2009*

# Only enlightened local communities can protect the global commons

The global whole has no existence without its local spaces, says A Damodaran, author of a new book on India, climate change and the global commons, in this interview with *Agenda*. Unless there is action from local communities, it is neither possible to prevent nor adapt to climate change. Local spaces also manage to conserve biodiversity better

*A Damodaran, currently professor at IIM-Bangalore, started his career as an official with the Government of India and worked with the Union Ministry of Environment and Forests. He was also part of district administration and rural development in Karnataka and got familiar with drought management systems. He went on to write about the economics of a semi-arid village ecosystem in Karnataka, and earned a PhD on the subject. He had the unusual experience of co-designing drought-proofing with villagers.*

*In the 1990s, Damodaran moved back to the Government of India where he handled multilateral environmental agreements during the heady days of the Rio negotiations. He drafted India's Environment Action Programme. In 1994, he was offered a US-AEP Environmental Fellowship that involved association with the US-EPA on transfer of clean technologies. Later, he moved to the Indian Institute of Plantation Management in Bangalore. He has worked closely with coffee farmers in Karnataka and Kerala, tribal coffee farmers in Kerala's Wayanad district, and tea planters in Darjeeling and Assam on biodiversity conservation. In 2004, he moved to the Indian Institute of Management-Bangalore, and has been focusing on trade and environment, commodity trading, IPR issues, and climate change.*

*It is these multi-faceted experiences that he has attempted to put into his book *Encircling the Seamless — India, Climate Change, and the Global Commons*, published by Oxford University Press*

**We know the term 'global commons' refers to areas like deep sea beds, outer space, and lands such as Antarctica that are not owned by any one country. Do global commons also include cultural and local areas? If yes, what are they? How can cultural commons be acknowledged?**

In fact, culture is community-specific and so are local spaces. It is neither desirable nor feasible to treat them as global commons. However, the global community can treat them as a global concern and work towards preventing their erosion or loss.

**In the past, the commons were public goods not subject to market laws or private exploitation. Over a period of time, private ownership and market pressures have**

**affected the commons. The United Nations lists three major impacts on the global commons: increasing levels of carbon dioxide, massive use of fertilisers, and exploitation of marine fisheries. How do we regulate and protect the global commons, and are international or national laws the only way?**

Markets without regulation are a licence to exploit. We certainly need international and national regulations to prevent markets from becoming exploitative for primary stakeholders. This has worked reasonably well for biodiversity. However, even a modest play of markets in the case of transboundary movement of hazardous wastes can be tricky as it is the rural and urban poor without access to land and water resources who suffer from the import of such wastes.

**One suggested method of protecting the global commons from greenhouse gas emissions is through multilateral environmental agreements. A second option is using trade measures to achieve environmental objectives. Recently, the United Nations called for more research into the ecosystems of various regions. A global movement like 'Reclaim the Street' is working to "reclaim the commons" through community ownership of public spaces that are overrun by advertising and corporate ownership. How important is public knowledge that recognises that everything need not be divided, individually owned, and commodified? How do we educate and inform the public about the commons?**

Multilateral environmental assessments (MEAs) like the Montreal Protocol and the Basel Convention have trade provisions. And it is well known that they are not consistent with WTO 'most favoured nation' regimes. The present effort is to go beyond the MEA framework and introduce carbon standards to clear traded products. This goes against the WTO as well as FCCC provisions that deal with common but differentiated responsibilities.

On community takeover of commons, I feel that it is desirable to facilitate an ordered market. For this, communities need to be market-literate. I see a big role for capacity-building here.

**Your book *Encircling the Seamless — India, Climate Change, and the Global Commons* explores global**

**environmental negotiations, complex political relations, climate change conventions, and multilateral environmental assessments, and puts forward an important proposition: global commons are, in the first place, local commons. Can you elaborate?**

My main thesis is that the global whole has no existence without its local spaces. Unless there is action from local communities, it is neither possible to prevent nor adapt to climate change. Local spaces manage to conserve biodiversity better. The most effective form of resistance to hazardous wastes can come only from enlightened local spaces. The task is to sensitise local communities to global environmental problems.

**You argue that global commons can be better conserved if they are linked to the fight for local commons, and suggest an alternative approach that calls for strengthening local communities and getting policymakers to look at larger issues of diversity, equity and justice towards sustainable economic development of the global commons. How vital are local communities when it comes to global warming/climate change?**

As I mention in my book, the best lessons on the tsunami have to be learnt from the affected fisher communities. Similarly, the best lessons in biodiversity conservation come from traditional communities. The most enduring lessons on adaptation to climate change can only come from local communities. Paradoxically, it is traditional farming systems that hold the key to adaptation to climate change in fragile, arid and semi-arid environments.

**You seem to believe that there is much that the world can learn about pluralism and diversity from India. Your narratives on the desert terrains of Rajasthan, the hills of Darjeeling, and the Western Ghats reach across borders to the industrial complexes in the North that produce and spew chemicals for disposal and re-use in the South, suggesting a fundamental shift in their search for a solution to the climate change problem. Do you think the North is prepared to learn its lessons?**

How can a political apparatus steeped in modernity and its grand theories accept diversity? India's diversity comes from our tolerance for traditions and postmodern adaptations. We do not equate traditional with 'backwardness', as they do in the West.

**At the Copenhagen Summit, while India and China bargained hard on issues close to their heart — common and differentiated responsibilities, and demands for fair, non-commercial flows of finances and low-carbon technologies — the North, barring a few countries in Europe, was clear that it would not unduly pain itself by accepting tough mitigation targets.**

Yes, without doubt. The North has been trying to avoid taking upfront and unilateral steps. At the same time, I am not

opposed to carbon markets provided they are bottom-up and do not entail social costs by providing developed countries with cheap offsets.

**How effective will the Copenhagen Accord be considering that it is not a legally binding instrument with concrete targets on emission reduction commitments? Besides, you concede in the book that a truly federalised structure of global environment governance is not easy to realise.**

For the Copenhagen commitments to have force, the introduction of other pressure points — notably trade restrictions on carbon-intensive measures — is called for. This is the reason why trade in carbon-intensive goods is being discussed in a big way by governments of the North. A federalised system that recognises nation-specific approaches to climate change is ideal, provided governments are sincere about resolving global environmental issues. This is not the case at present.

**While the world can learn from India's diversity, we still have much to achieve on the equity and justice fronts. For example in agriculture, where the debate on whether to ensure food security for our citizens or have stockpiles of food continues in a country of hungry millions. How does India achieve competitiveness in the global market without permanently destroying her natural capital?**

I agree. The Food Corporation of India (FCI) is not the panacea for our food security problems. We need decentralised food or grain banks at the mandal level. This means procurement should also happen at the mandal level. Allocation of foodgrain should be a mandal panchayat responsibility. Likewise, the need for strategic reserve stocks at the mandal panchayat level. Of course, these ideas can be better tried out in rural areas.

**What future do you see for the commons in India which increasingly appears to be a country determined to go on a downward spiral of social and ecological self-destruction? A downward spiral where our rulers, while refusing to address the concerns of people at the grassroots, also hope that somehow the poor and marginalised majority of this country will be taken care of by the growing market economy.**

Sometimes I feel that talk about the commons in India is no longer relevant as all the so-called commons are with government departments. Poverty eradication as a goal does exist on paper. There are some good schemes like the National Rural Employment Guarantee Scheme (NREGS). They need to be implemented well. The poor need to be educated to take on the market. That is the only way. Departmental control over natural resources should end. Small enterprises should be set up based on resources from forests and grazing lands. Rather than oppose fair trade and organic movements, we should look at them from the point of these bio-enterprises. This has worked well with spice-growing farmers of the Western Ghats, in Kerala. I see no reason why it should not work elsewhere.

# Privatising Bangalore's lakes

In 2002, 60 tanks in Bangalore were sought to be leased out in public-private partnerships that would turn these traditional commons into amusement parks and commercial spaces with closed access. A people's movement that culminated in a 2008 high court order managed to prevent the enclosure of these commons

ROHAN D'SOUZA

BANGALORE'S TANK SYSTEM, which harks back over 1,000 years and is the result of human intervention and innovation, is going through a crisis due to urbanisation. Many tank beds have been converted into built-up areas, and suffer high levels of pollution, especially from untreated sewerage.

Tanks have historically been maintained by communities through a unique tenure system, which later gave way to maintenance by government departments like the minor irrigation department, the Bangalore City Corporation (BCC) and the Bangalore Development Authority (BDA).

## Tanks become lakes

The authorities have attempted several responses for the protection and maintenance of Bangalore's tank system. In the early-1980s, the government of Karnataka set up a committee under the chairmanship of ex-bureaucrat Lakshman Rao, to study the state of the tanks and offer recommendations on their development and maintenance. This paved the way for the forest department to play a role in managing the tanks. With this, the discourse around tanks underwent a shift as the focus of the forest department was on the ecology of these spaces, not so much on the socio-cultural implications. Thus Bangalore's tanks, or *keres*, began to be referred to as 'lakes'.



## Lake Development Authority and privatisation

The Lake Development Authority (LDA) was set up in 2002 through a government order mandated to develop and maintain the lakes of Bangalore. It devised a public-private partnership (PPP) scheme that invited private bodies to develop and maintain the lakes on a develop-operate-transfer (DOT) basis. This entailed the leasing of lakes to private bodies for a period of 15 years, renewable at the end of that period. The lessee was required to pay an annual lease amount and a deposit, and in return, could use the lake for commercial activities such as amusement rides, water sports, setting up of food courts, restaurants, etc. The lessees were also required to build water treatment plants, de-silt and dredge the lake periodically, landscape the foreshore area, and carry out other maintenance tasks. And they were allowed to charge an entry fee to the lake.

Bangalore's tanks thus entered another stage of their existence, transiting from the traditional *kere*, located in the commons sphere, to ecological spaces or lakes as envisioned by the forest department, to amusement and commercial private spaces as desired by the Lake Development Authority. The logic given for this latest avatar was the need to generate funds for their survival. It followed the neo-liberal stance of viewing the environment as a resource for maximising profits.

And so, in 2005 and 2006, four lakes in Bangalore — Hebbal, Nagavara, Venkanayakere and Agara — were leased out to private bodies including those belonging to the hospitality and real estate sectors. The LDA announced its list of lakes to be privatised under the scheme. Initially, seven lakes were involved but this was modified to 11, then to 36, and finally to 60. The lakes were leased out for amounts ranging from Rs 40 lakh to Rs 60 lakh per annum. Fences were erected around them and an entry fee charged, thereby controlling access to a common property resource. This completed the enclosure of the commons.

## Impacts

The scheme to privatise Bangalore's lakes was conceived and implemented almost in stealth by the Lake Development Authority. There were no announcements or public

## The fuzzy logic of urban commons

*Dr Bhuvanewari Raman is a researcher who has studied common spaces such as markets in places like Bangalore. She has recently completed her doctorate from the London School of Economics*

A generic definition of commons and community is difficult to formulate because the shared interests and values that underpin the production of commons themselves are in flux, often generating fluid and flexible groupings of people and different interpretations of histories and, therefore, claims. This brings up questions like, on whose behalf commons are mobilised, and by whom.

I view the commons as a contested space or a field where local populations compete among themselves and with actors outside their territorial boundary over the use, control and protection of valuable resources such as land, water and other types of physical infrastructure. As Laurens Bakker, Gerben Nooteboom and Rosanne Rutten (2010) succinctly argue in their article 'Localities of Value: Ambiguous Access to Land and Water in Southeast Asia', the various resources that are grouped under the rubric of the commons can be viewed as 'localities of value', control over which is shaped through a process of 'fuzzy logic'.

Contests over resources are intensifying both in urban and rural areas. In my view, the strength of conceptualising the commons is as a field, which in Pierre Bourdieu's words, is a "social arena in which people manoeuvre and struggle in pursuit of desirable resources". In contrast, the concept of the commons as a resource, and generating different categories of commons, is limited because it obscures the political dynamics surrounding the commons.

### Limitations in the concept of urban commons

There are two problems with the dominant conception of the commons. There is the tendency to romanticise the commons, particularly among civil society actors. At one end of the spectrum is the tendency to 'museumise' the commons, viewing them as pristine terrains, with efforts to conserve them. A classic example is the view of lakes as a space located outside human influence/interaction. At the other end of the spectrum is the belief that enshrining particular groups' rights to the commons in law will automatically strengthen their claims, often drawing on history and culture. But there is no single history, rather many histories. And law is a social construct and its violence is reflected, in the words of Nicholas Blomley (Professor of Geography at Simon Fraser University), through (limited) processes and mechanisms such as the "survey, grid, and plan". These attempts may prove counterproductive.

Both problems can be traced to the conceptual prism through which the commons is constructed, which brings us back to the problematic assumptions of 'community', 'neutrality of law' and 'pristine history and culture'.

Missing from many debates on the commons, particularly

the one that took place at the National Institute of Advanced Studies in Bangalore recently, is the political dynamics of the commons, or viewing the political dynamics as an outcome of structural forces. While civil society groups assume a utopian community with a fixed boundary and harmonious interests striving to control the commons and protect it, the Marxist, for whom the commons reflects a space of dispossession and marginality, attributes it to the role of capitalism. I think there is a problem with both these concepts.

Production of the commons is shaped by a political process whose trajectory is indeterministic and fluid. The forms in which this competition manifest reflect an ambiguity over the control of resources, where groups with diverse interests compete, form flexible alliances, negotiate, as well as protest to establish their claims over the resources. But its trajectory is shaped by the forces at play at a particular place and time. We come across numerous instances of struggle over street spaces, water, and land in cities. Perhaps we too are part of some of these struggles.

### Actors involved in maintaining commons

There is a tendency to categorise actors who participate in the struggle on the basis of their social or institutional location — for example state and non-state, civil society or political activists. To me this too is a problem, as individuals who form part of a group are embedded in multiple locations and draw flexibly from different identities in the contest to claim resources. Therefore, rather than drawing rigid boundaries for actors based on any one of their locations it is useful to focus on the production of the commons as a process, and explore ways in which they mobilise identity — social or institutional — and forge alliances across different spaces to realise their interests.

### Challenges facing urban commons

Competing groups mobilise different institutions and conventions to establish their control over resources. In contemporary times, one of the ways in which this competition plays out is in terms of restructuring power relations by enacting changes in law, institutional structure (state) and the role of agents inside and outside the state domain. In short, the political space to manoeuvre claims is shrinking for some groups that often already have relatively little social or economic power. One way forward is to revitalise political institutions, particularly the state, at the lower levels.

### Role of government and civil society

Government and civil society should strive to realign the levers of the political realm. The tendency to assume bureaucratic politics and civil society above that of electoral or other non-party politics has led to the undermining of political institutions particularly at the local level. I feel it is important to realign the levers of the political realm.

— As told to Rohan D'Souza

## The Kaikondrahalli lake initiative

*Dr Harini Nagendra, Adjunct Fellow, Ashoka Trust for Research in Ecology and the Environment (ATREE), Bangalore, and Asia Research Coordinator, Centre for the Study of Institutions and Environmental Change, Indiana University, Bloomington, talks to Rohan D'Souza about Bangalore's tank system and a unique community-based initiative to maintain Kaikondrahalli tank located south of the city. Dr Nagendra has worked extensively on the commons in India and Nepal and is currently focusing on Bangalore's tank system*

The tank system in Bangalore is formed by a network of small and large check-dams, originally charged by rainwater and used for irrigation, drinking and domestic purposes. This network of tanks was linked through a web of canals, connected to the surrounding agricultural wetlands. There were numerous small and medium seasonal tanks, and a few large perennial tanks which collected water from the smaller tanks. Since most lakes were seasonal, and pollution levels low, siltation was easy to control; the silt was extracted every few years. The wetland agricultural grazing orchard landscape surrounding the lake acted as a natural watershed basin, recharging the lake with fresh water. During the rains, the water overflowed into adjacent agricultural lands; during the dry season, cattle grazed on these wetlands which were largely designated as *gomala* or common property wetlands where community grazing took place.

The lakes supported activities such as fishing, and constituted important sacred spaces for local communities, acting as sites for important religious festivals, temples, and idol immersion at specific times of the year. Some lakes, like Agara lake, have inscriptions that document their maintenance as far back as several centuries. The lakes also formed important green spaces and lung spaces in the city, supporting a rich diversity of birds, insects and wildlife.

With urbanisation, much of the landscape around the lakes has been covered by impervious surfaces. A number of lakes were converted to urban land use, and most of the connecting canals encroached upon. Instead of rainwater, sewage and effluents fill the lakes, changing them from seasonal to perennial ecosystems and drastically altering their biodiversity. In low-rainfall years, the lakes are dry and choked with sewage; in high-rainfall years they overflow into blocked canals causing floods in the city.

There has also been a change in lake management and administration, from lakes managed by village communities living in their vicinity to formal governance structures imposed by city municipal authorities. This abruptly disengaged and alienated local communities whose lives were intertwined with the lake for generations.

Bangalore's lakes have changed considerably over the past few decades, transforming from community-managed spaces used primarily for livelihood activities to urban ecosystems managed and governed by the state, largely for purposes of conservation and urban recreation.

In recent years there have been efforts to implement the public-private-partnership approach to lake management. The attempt to enclose and privatise common spaces was an extremely controversial one and was met with widespread resistance from civil society, environmentalists and activist groups, resulting in several public interest litigations that halted the move. The Bruhat Bengaluru Mahanagara Palike (BBMP) and the Bangalore Development Authority have taken over management of most of the city's lakes.

### Kaikondrahalli lake and the maintenance initiative

Kaikondrahalli lake is a unique example where a range of citizens including original inhabitants of villages around the lake and resident welfare associations from wealthier apartment complexes have worked with the BBMP to design an ecologically meaningful, socially sustainable lake-restoration programme. The lake has been excellently restored, with clean water flowing in and over 1,000 trees planted. Around 37 bird species, including migrant birds, have been spotted at the lake.

Kaikondrahalli lake was restored using a socially inclusive model. Provision was made for local residents to wash cattle, and a play area and facilities are being planned in such a way that they can be used by visitors to the lake as well as schoolchildren at a nearby low-income government-aided school.

### Challenges in implementing the scheme

The approach was an extremely challenging one, and took time to implement. In Kaikondrahalli lake, it worked because of the dedication of a few talented and committed individuals. Also, sustained efforts were made to engage with the administrative and political setup. One of the biggest challenges in the urban context is getting diverse groups of people together, getting them to talk to and listen to each other, and working to solve common problems. Citizens' groups, resident welfare associations, organisations working with vulnerable sections of society, corporate groups, activist groups, green organisations, political organisations, educational institutions, government agencies — all have very different ideologies, agendas, and issues that they consider important. Also, in a busy city, people do not have much time to devote to common challenges. But when they do come together, a strong sense of community is built and a lot can be achieved.

consultations before it was rolled out. Fishermen, collectors of fodder, commercial washermen, recreational and leisure users, and naturalists — all felt its impact. In terms of magnitude, the worst-affected were people who used the waters to earn a livelihood. Fodder collectors and commercial washermen were banned from using the lakes. Initially, fishermen were also refused access to Hebbal and Nagavara in spite of the lease agreement between the LDA and the lessees containing a clause that mandated recognition of traditional use of the lakes. Because they were organised into cooperatives, the fishermen managed to politicise the issue and regain access, though the process dragged on for over a year.

Nagavara lake, which was leased out to Lumbini Developers for an annual fee of Rs 40,23,000, was transformed into an amusement park with food courts, amusement rides, boating, etc. Its southern shore was paved and made into a footpath. This entertainment bubble, carved out of a living commons, started catering to a new set of users who flocked to the area for their daily fix of outdoor amusement.

Apart from the social impact on various user groups, the makeover also impacted the flora and fauna of these spaces. Till then, the lakes provided a habitat and shelter, albeit somewhat polluted, to various species of birds as well as a variety of plant life. With the changes witnessed at Nagavara lake, where the water has been cleaned to the point of it being sanitised, bird as well as plant life began to get affected. There was now no natural shoreline to nest, all the weeds had been removed, and increased activity and noise pollution added to the already existing water pollution.

### Civil society response

Once news of the lake privatisation spread, civil society reacted strongly. Campaigns began around the issue, and protests were launched at various lakes like Hebbal and Agara. The media picked up the story and ran with it for a while. The vocal middle class was split over the move. Debates raged on e-groups and other fora on the pros and cons of the model. All this led to a local NGO, Environment Support Group, filing a public interest litigation against the PPP in 2008. In response the high court stayed the scheme, directing the government not to lease any more lakes under it and not to renew leases already entered into. As a consequence, the EIH or Oberoi Group halted its development plans for Hebbal lake which initially included a floating restaurant. The group had plans for a 223-room hotel overlooking Hebbal lake. It was clear that they intended to convert the lake into a private waterbody for hotel guests. Likewise, Biota Natura Systems was forced to stop development at Agara lake.

### Post-privatisation and the current situation

The 2008 Karnataka High Court ruling offered a fresh lease of life to Bangalore's lakes, preventing a virtual 'takeover'



of these commons. Faced with a lot of criticism about the functioning of the LDA, the government decided to hand over maintenance of the city's lakes to the Bangalore City Corporation or the Bruhat Bengaluru Mahanagara Palike (BBMP). A number of lakes were also handed over for development to the Bangalore Development Authority (BDA), the planning agency for the city; these would later be given over to the BBMP.

With this, the possibility of user group participation in the lakes' development appeared brighter. However, the way in which the BDA and BBMP took forward development of the lakes suggested they were simply continuing with the LDA model, albeit without charging an entry fee. This meant that the lakes were being developed in line with the 'civil engineering' approach that involved huge engineering intervention, construction of several structures including a ring bund that circled the lake and was reinforced with cement and granite, creation of artificial islands, a path on the ring bund, parks, etc.

All this suggested that the focus remained on recreation and leisure activities at the expense of people who used the lakes to earn a livelihood. Re-work and dredging, and the creation of a ring bund, meant tampering with the lake's structure. This has led to what is critically referred to as a 'water bowl' structure, where lakes are seen as round structures holding water. It negates their regulatory role of directing rainwater from one lake to another, through a series of lakes. The 'water bowl' meant that the deepest point of the lake shifted from near the bund to the centre of the lake. This reduced the lake's overflow causing stagnant waterbodies and impacting water quality as well as ecology. The spirit behind the LDA's privatisation model appears to be driving the current development models of the BDA and the BBMP. Can the lakes not be developed and maintained by adopting a community-based approach, reflecting changed patterns of use due to urbanisation and the varied needs of different user groups?

*Rohan D'Souza is a researcher who has been studying the tank system in Bangalore with a focus on the social practices and processes around it*

## Guardians of the forest

The Bhimashankar forests in the Western Ghats are an excellent example of common pool resources used, safeguarded and governed by the Mahadeo Koli tribals who have lived here for centuries. Outside each tribal village is a deorai or sacred grove that has a particular species composition and so functions according to a different set of rules and laws that are strictly observed

KUSUM KARNIK

THERE ARE FEW FOREST AREAS in India today that remain beautiful and pristine. Bhimashankar is one. The forest is located on the remote, high-rainfall hill slopes of the Western Ghats in Ambegaon block, Pune district, Maharashtra. These are virgin, evergreen, four-tiered, cloud forests that have existed despite the shallow soil depth and hard rock beneath. There is no water table, which makes it difficult for the forest to regenerate if it is cut. The forest takes care of the heavy precipitation as well as the gusty winds which are prevalent here. The tall trees, medium-sized trees, bushes, and grasses/leaf litter, together with climbers, take good care of the soil by absorbing the rainwater. It is sad that today the forest cover is confined only to the top of the ghats (hills), while the eastern area of the hills is mostly denuded and barren, with some patches of forest. This area was well-wooded up until four decades ago.

The Mahadeo Koli tribe has lived here for centuries. They have adopted a lifestyle and a philosophy that is ideally suited to the environment. They depend on the forest for most of their needs. But even as they use the forest they are particular that they do not exploit it in an unsustainable manner. Their well-knit community life, based on the principle of cooperation, is their strength.

Tribal life is based on the concept of common property resources (CPR) — land, forests, water. This concept is not recognised by non-tribal societies, nations or corporations. Their philosophy of ‘caring and sharing’ is not for themselves alone, but for future generations as well. They firmly believe that “together we survive”, so taking care of the ecosystem is important to them. It’s all about cooperation, not competition. They consider common property resources as a sacred heritage and reject private property as an institution.

The tribals collect food, fodder, fuel and fibre for their daily needs. Their food includes flowers, buds, leaves, fruits, tubers/roots, honey, mushrooms, etc. They also hunt animals for nutrition and to keep wildlife populations in check. For hunting they use traditional weapons, with both hunter and hunted on the same level of vulnerability. They catch fish and crabs to supplement their diet.

In 1985, the government declared that there would be a wildlife sanctuary in the area. The tribals were not consulted;

it was only through word of mouth that they got to know that eight villages, said to be inside the sanctuary area, would be cleared. They began raising questions about the validity of a law that did not have any respect for the rights of local people or take them into confidence.

Negotiations with the government were soon underway. The tribals realised that they had to establish their ownership and so started studying the forest with the help of Shashwat Trust, a voluntary organisation that has been working in the area for a number of years. Since 2000, both tribals and the Trust have been documenting local knowledge of flora, fauna and the interdependence of forests and forest-dwellers. They are studying forest produce — what is used, how, when and why — and agricultural practices. They are also documenting the Mahadeo Koli’s socio-cultural practices which form the backbone of their economic and cultural existence. The People’s Forest Research Institute (PFRI) was set up, bringing together a group of resourcepersons from Pune, including scientists and forest officials.

At PFRI, the local tribals are the leaders. ‘Study groups’ have been organised in each village and plans are afoot to start a nursery for indigenous plants. PFRI also organises advocacy programmes in other tribal areas as well as in cities.

Working with tribal communities teaches you to appreciate their “community wisdom”. Bhimashankar’s tribals follow a low-expenditure lifestyle where everything is used sparingly. The houses are made of stone and mud-mortar; the people possess only a few essential things. They live in well-knit communities where cooperation is a way of life. They plan and work together, selecting sites for jhum cultivation, sowing and transplanting paddy and other hill millets, guarding crops against wild animals, harvesting their crops, and hunting and fishing. Most decisions are taken collectively by the community, and the responsibility shared. It’s this lifestyle that has allowed them to live in the forests for years. For in a forest you cannot be careless, go it alone, or take undue risks.

The tradition of ‘deorai’ or temple/sacred groves is at the centre of their culture. Every village around Bhimashankar has one or more such deorais. These are forests set aside in the name of god, and well protected. Each deorai has a



particular species composition and so functions according to a different set of rules and laws that are strictly observed. The deorais are the 'gene pools' of the area from where seeds can be dispersed by animals and birds. The people consider the forest their mother and say they subsist on her milk, not on her blood.

Our government, wildlife lovers, scientists and others must understand and respect the relationship between the forest and the forest-dwellers, and their rights. Our laws regarding forests are based on the erroneous assumption that the forest-dwellers are the enemies of the forest. The laws have not taken into consideration that the areas where forests exist also happen to be tribal areas.

In 1984, we saved a deorai in Ahupe village from the clutches of a contractor. Later, we invited a renowned research institution in Pune to survey and evaluate the deorai. They reported that the climber *kombhal* in the deorai was possibly around 800-1,000 years old, which meant that the sacred grove and the tribal villages also dated that far back!

The tribals regard the tiger as a god. They may not use words like 'apex species' but they understand the importance of a species like the tiger in keeping the ecosystem in check. There is a temple in Bhimashankar devoted to the tiger god.

Before the British came to India, the forests belonged to local communities that were largely tribal. These tribal communities looked after the forests and used them for their sustenance. During colonial times, however, forests became state property and began to be treated as timber depots. Sturdy trees were chopped down to make ships, build railways, etc. The two world wars used up a lot of wood, as did development projects like dams, mines, factories, cities, highways, etc. Many non-timber trees too were cut down for charcoal, plywood, etc, and sent to big and expanding cities. Natural forests were felled for large commercial plantations. This changed the very composition of the forests, affecting the lives of local communities as well as wildlife. It also made the forests unstable and vulnerable. Although forests have been shrinking since the beginning of the agricultural era, in the last two centuries the pace has accelerated at an unprecedented rate.

Our consumerist lifestyle is eating away our natural resources and we are being forced to deal with the devastating effects. Now finally we are realising that tribals have a wealth of important knowledge to share with us. Finally the concept of community wellbeing as against private property and personal gain is gaining acceptance.

---

*Kusum Karnik is an Advisor to People's Forest Research Institute (PFRI)*

# Commons manifesto

*“Commons are institutional spaces in which we are free.”*  
— Yochai Benkler

## *How the crisis reveals the fabric of our commons*

Over the last 200 years, the explosion of knowledge, technology, and productivity has enabled an unprecedented increase of private wealth. This has improved our quality of life in numerous ways. At the same time, however, we have permitted the depletion of resources and the dwindling of societal wealth. This is brought to our attention by current, interrelated crises in finance, the economy, nutrition, energy, and in the fundamental ecological systems of life. These crises are sharpening our awareness of the existence and importance of the commons. Natural commons are necessary for our survival, while social commons ensure social cohesion, and cultural commons enable us to evolve as individuals. It is imperative that we focus our personal creativity, talents, and enthusiasm on protecting and increasing our social wealth and natural commons. This will require a change in some basic structures of politics, economics, and society.

**More social prosperity instead of more Gross Domestic Product!** When the economic growth curve drops and the GDP sinks, it seems threatening to us. Yet appearances deceive. The GDP merely maps production figures and monetary flows without regard for their ecological or social value; such numbers do not measure the things we truly need to live — they may simply count their destruction. Social prosperity cannot be measured through such means. A reduction in the GDP does not necessarily signal a reduction in the real wealth of a society. Recognising this fact widens our perspective and opens doors for new types of solutions.

**The commons can help us overcome the crisis, but it requires systematic advocacy.** This is our contribution — to give the commons a voice.

## *What are the commons and why are they significant?*

**Commons are diverse. They are the fundamental building blocks and precondition of our life and social wealth.** They include knowledge and water, seeds and software, cultural works and the atmosphere. Commons are not just ‘things’, however. They are living, dynamic systems of life. They form the social fabric of a free society.

**Commons do not belong to anyone individually, nor do they belong to no one.** Different communities, from the family to global society, always create, maintain,

cultivate, and redefine commons. When this does not happen, commons dwindle away — and in the process, our personal and social security diminishes. Commons ensure that people can live and evolve. The diversity of the commons helps secure our future.

**Commons are the foundation of every economic activity.** Thus, they must also be the result of what we do. We have to constantly revitalise our commons, because everything we produce relies upon the knowledge we inherit, the natural resources that the earth gives us, and cooperation with our fellow citizens. The activity known as ‘the economy’ is embedded in our social fabric. Depletion of resources, failures in education, needless barriers to creativity, and weak social bonds compromise the generativity of the whole. Without vital commons, production is impossible. Without commons, companies cannot earn money.

**Commons are often destroyed and thus driven from our consciousness.** One reason that commons are threatened is because many individuals claim a limitless right to use things. But where fair usage rights to water and seeds are curtailed by economic calculation or through governmental policies, where resource exploitation destroys our natural inheritance, where breach upon breach is inflicted on public spaces, where patenting software limits creativity and impedes economic progress, where reliable networks are lacking, there dependency and uncertainty will increase.

## *There’s something new afoot — a movement to reclaim the commons!*

**Commons are being rediscovered and defended.** People all over the world are defending themselves against attacks on the web of life that sustains them — against dams and mining projects that destroy life and land. Against a wasteful economy that fuels climate change. Against efforts to turn education and health into profit-oriented thinking. Against the re-engineering of our genetic heritage and overzealous restrictions on access to knowledge and culture. The commoners seek only to reclaim that which belongs to them, whether they are communities struggling to win back control over water utilities, indigenous communities seeking to protect their land in the Amazon basin, or the worldwide movements for climate justice and an open Internet.

**Commons are newly created and built upon.** Countless people are creating new things for all, and meaningful social and physical spaces for themselves. They invest energy in community gardens, carry out sustainable and ecological agriculture, and design inter-generational living and working spaces. They produce free software and free knowledge, and create films, music, and images to be shared. Thus emerges a treasure of free culture available to all. It is maintained and enhanced by many,

and it has become as indispensable as Wikipedia. Taken together, scientists and activists, citizens and politicians are developing a robust and innovative commons sphere — everywhere.

**Commons are maintained and cultivated.** People are fostering neighbourhood institutions, looking after playgrounds, running citizen foundations, and creating and sharing stories, culture, and our collective memories. They are engaging themselves, personally and directly, with the common wealth and are pushing the state to carry out its duties to protect the commons. For that they gain something in return, because to live in a culture of commons means both giving and taking. This culture establishes rights and duties equally. The commitment to our common wealth is born from the awareness that the current economic model endangers our livelihoods — and fails to satisfy us at deeper levels.

**Commons inspire and connect.** To take them into account requires a fundamentally different approach in

The commons helps us confront one of the major social justice issues of our time: no one may extract more from the commons than what he gives back to the commons. This applies to market players as well as the state. Whoever replenishes and expands the commons, rather than just drawing from them, deserves social recognition and praise. In the interest of this and future generations, market players, the state, and each individual must align their behaviour and thinking with the commons

perception and action. Commons are based on communities that set their own rules and cultivate their skills and values. Based on these always-evolving, conflict-ridden processes, communities integrate themselves into the bigger picture. In a culture of commons, inclusion is more important than exclusion, cooperation more important than competition, autonomy more important than control. Rejecting the monopolisation of information, wealth, and power gives rise to diversity again and again. Nature appears as a common wealth that must be carefully stewarded, and not an ever-available property to be exploited.

**To live in a culture of the commons means** to assume shared, long-term responsibility rather than the pursuit of an ethics of dominance. A culture of the commons honours fairness over unilateral benefit optimisation, and interdependence rather than extreme individualism.

**The commons helps us confront one of the major social justice issues of our time:** no one may extract more from the commons than what he gives back to the commons. This applies to market players as well as the state. Whoever replenishes and expands the commons, rather than just drawing from them, deserves social recognition and praise. In the interest of this and future generations, market players, the state, and each individual must align their behaviour and thinking with the commons. This must become a fundamental element in any calculation of economic, political, or personal success.

### *Neither no man's land nor boundless property*

**The commons is not only about the legal forms of ownership.** What matters most is whether and how community-based rights to the commons are enforced and secured. 'Property entails obligations. Its use shall also serve the public good' (German Constitution). This limitation, anchored in the basic law, designates the boundaries of the availability of common pool resources to individuals. This principle helps us recognise that each single use has implications for resources that belong to us all. My car pollutes our shared air. My work may contain a novel thought, but I also depend upon the commons of culture and knowledge to inform it. The usage rights of fellow commoners are the stop signs for individual usage rights.

**Absolute and exclusive private property rights in the commons therefore cannot be allowed.** This principle applies regardless of whether the things are of a tangible or intangible nature, or whether they are associated with natural, cultural, or social spheres. In order to avoid overuse and under-utilisation — the dramatic plundering of fish or the 'orphaning' of creative works, for example — any form of property (itself a creation of the state) has to now, more than ever, be measured by two conditions:

- Each use must ensure that the common pool resources are

not destroyed or over-consumed.

- No one may be excluded who is entitled to access and use the shared resource or who depends on it for basic needs. Access and usage rights must therefore be designed to assure that the commons can be preserved, maintained, and further developed. **These are the principles of fair participation and sustainability.**

**What is public or publicly funded must remain publicly accessible.** Public research, for example, must be available to everyone. There is no overwhelming reason to grant publishers and pharmaceutical corporations excessive and exclusive copyrights and patents over publicly funded research. Legislatures, at the behest of business, have nevertheless done so, making scientific journals inaccessible and vital medicines overly expensive. Alternatives arise from the commons movement. This is demonstrated by numerous projects for fairer licensing and alternative incentive models in science and culture.

**The commons help us re-conceptualise the prevailing concept of property rights.** The exploitation of our commons has grave drawbacks for the majority of people living today and tomorrow. This is demonstrated by climate change and the exhaustion of many natural resources, as well as by the financial sector whose private profit motives have become, to the detriment of the commoners, ends in themselves. Our shared quality of life is also limited by knowledge that is excessively commercialised and made artificially scarce. In this manner, our cultural heritage becomes an inventory of lifeless commodities, and advertising dominates our public spaces.

**Commons are the basis of life in a double sense. Without natural commons, there's no survival. Without cultural commons, no human development.** Everyone is directly affected by the issues raised here. Even businesses need the commons in order to earn money now and in the future. We all need the commons to survive and thrive. This is a key principle, and it establishes why commoners' usage rights should always be given a higher priority than corporations' property rights. Here the state has a duty to protect the commons, a duty which it cannot abandon. However, this does not mean that the state is necessarily the best steward for the commoners' interests. The challenge is for the commoners themselves to develop complementary institutions and organisational forms, as well as innovative access and usage rules, to protect the commons. The commoners must create their own commons sector, beyond the realm of market and state, to serve the public good in their own distinctive manner.

*For a society in which the commons may thrive*

**Just as commons and people are different, so are the organisational forms of user communities.** We encounter these forms everywhere and with many

faces: as self-organising groups, civil organisations, private agencies or networks, as cooperatives or custodial organisations, as small neighbourhood communities or the international Free Software movement. The rules and ethics of each commons arise from the needs and processes of the commoners directly involved. Whoever is directly connected to a commons must participate in the debate and implementation of its rules.

**Agents of the commons do not have one but many centres.** We need them locally, regionally, and globally. Conflicts can be resolved directly in well-arranged communities and their commons. But the global commons is an almost unsolvable challenge, because where does the 'world community' really come together and define itself as such? How should it agree upon the sustainable usage of its shared resources? The more complex the system, the more important it is that there is an institutional and transparent framework for the careful management of the commons. When the state achieves this and protects the commons, government action will be supported by society.

**Commons need more than just rules.** We must realise that rules require the art of proper application. Commons are driven by a specific ethos, as well as by the desire to acquire and transfer a myriad skills. Our society therefore needs to honour the special skills and values that enable the commons to work well. A culture of the commons publicly recognises any initiative or project that enhances the commons, and it provides active financial and institutional support to enhance the commons sector.

**Conflicts are part of the diversity and constant reproduction of the commons.** In addition to the rule of law, commons in the future will require innovative institutional structures, conciliation and mediation bodies, networks, and interdisciplinary stewards for the commons. These institutions will be constructed again and again from the areas of needs and conflict. Each has a common goal: to raise a strong voice to preserve the commons!

**Awareness of the commons means** being conscious of our living conditions and exploring on all levels how much productivity and wealth we create directly from the commons. It requires a fundamental shift in thinking about the foundations of society. It means using, sharing, and multiplying our common wealth in a free and self-determined way. This challenge requires a lot of work, but it is also a great source of personal satisfaction and enrichment. **Our society needs a great debate and a worldwide movement for the commons. Now!**

*(The thesis paper was developed in collective authorship in the context of the interdisciplinary political salons of the Heinrich Böll Foundation's 'Time for Commons', 2008/2009)*