people's claims can be dealt with greater clarity only after we have probed the questions concerning the status rights and the people's rights in more detail. Let us, therefore, now turn to first document the existing law from these two perspectives, before entering into the policy questions. In each case the legal framework can be discussed in terms of four types of rights, depending upon the sources from which they arise: customs, legislations, courts and learned opinions on interpretations (incohate rights). These distinctions are for convenience of understanding. In actual practice there is a great deal of overlapping between what may follow from statuates and what from customs or court decisions.

II.0.0. The Rights of the People

II.1.0. Customary Rights

In India, even before the coming of the Limitation Act and the Easement Act, various species of servitudes and easements were known, both in the Hindu and the Muhamadan Law.[6] The earlier English Law as applied to India, distinguished between servitudes of, two types: easements and '*profits a pendre*', In *profits a pendre* the rights were to be exercised along with certain duties. Those in which there were only rights but no duty to be performed were called easements. It also meant that no special profits were to be gained by the exercise of such rights, it was only a matter of gaining certain conveniences. Economic benefits were to be made only through *profits*

a pendre.

The Easement Act, 1882, legitimizes customary rights of the people, and provides two rules for recognition:

i) by long use or prescription (Sec.15)

ii) by local customs. (Sec.18)

Section 2(6) of the Act recognizes customary rights in or over immovable property which any person, the public or even the government may possess, irrespective of other immovable property. Thus, a right may exist by custom in which some people are entitled to take water from another's land. Such a right may be enjoyed by a fluctuating body of persons or even indefined classes. This includes rights for water issuing from a well, spring, spout or flowing water in government or public places. According to the Easement Act a person, however, has no natural or customary right over groundwater, whether collected in a well, or passing through springs or flowing in undefined course. Any dimunition of such water by neighbours, hence, gives no ground for action under the Easement Act.[7]

II.2.0. Rights Created by Juristic Acts

II.2.1. Limitation: (Juristic).

In the earlier period the court judgments mostly followed the common law tradition of regognizing the customary practices. This situation continued during the earlier phases of the Easement Act, where both the authority of precedents, such of as Race v. Ward, as well

as that of Easement Act itself (which too recognized the customary practices) were in use. However, after the enforcement of the legislations, such as the Bengal Irrigation Act, 1876 and the Land Acquisition Act, 1894, became more prevalent, the court decisions tended to limit themselves more and more to interpretation of the statutes for substantive matters and looked less towards the prevailing customs.

In the earlier phase, that is between 1850-1890, the fact that the courts drew their inspiration from customs and the common law tradition can be seen, for example, in the manner in which the issue of limitations was handled by the courts. The Limitation Act of 1859, Section 1 C1(12), provided twelve years as the period of uninterrupted enjoyment to establish and easement. Following Race v. Ward and the customs, in Jov Prakash Singh v. Aneer Ally (1868)[8] the Bengal High Court recognised this principle, which was soon followed by Ponnuswami v. Collector of Madura (1869)[9], by the Madras High Court. But in Narotam v. Ganpatray (1871)[10], the Bombay High Court declined to accept this rule on the ground that the established custom in Bombay required a period of twenty years. The Limitation Act was consequently amended in 1871, to provide the acquisition of easement, whether affirmative or negative, by its enjoyment over twenty years. (Section 27). The differences in limitation were attempted to be regularized through statutory provisions.

II.2.2. Limitation : (Statutory)

As noted before, the earlier forms of the Limitation Acts (1859-71) of various states depended upon customs in establishing the length of time a use had to be enjoyed to become a right. But as laws began to be more stringently codified the dependency on customs began to lessen. The Limitation Act, IX of 1908, provided for the acquisition of an easement by prescription against the government in a period of sixty years. (Section 26). The Limitation Act of 1908 has now be repealed and replaced by the Limitation Act of 1963. This Act reduces be sixty years period to thirty years, although in Section 2.C1(1) it carries over the definition of easement from the 1908 Act.

II.2.3. Riparian Rights

All rights of the people have not depended upon grant or ownership of land or stream. Riparian owners have had a natural right - jure naturale, incident to the ownership of the land abutting upon the stream. In fact, the establishment and recognition of riparian rights, in the earlier phase as well as in the latter phase post 1890 till modern times, has occured mainly through the common law method of recognizing customary law and natural rights. The existence of the fact that riparian rights are natural rights was accepted by the Privy Council in 1932, in Secretary of State v. Sannidhiraju.[11] The fact was recognised and established even after Independence by the Patna Court in 1954 in Ram Segak Kazi. v. Ramgir Choudhary.[12]

The details of the riparian rights, as established by the courts, are as follows. A riparian owner has a right to use the water of the stream which flows past his land equally with other riparian owners, and to have the water come to him undiminished in flow, quantity or quality and to go beyond his land without obstruction. All these norms were recognized and reaffirmed by the Allahabad Court in 1935, in Hanuman Prasad. v. Mendwa,[13] But the condition for the exercise of these rights was specified by the Privy Council in 1931, in Dawood Hahimi v. Tuck Shein,[14] which laid down that it is essential to the existence of this right that the owner's land should be in contact with the flow of the stream at least at the time of ordinary high tides. This rights of the riparian owner is subject to the right of the lower riparian for water to flow in the customary manner down to him. In Vippalapati v. Raja of Vizionagarm,[15] it was also laid down that interference with such flow is an actionable wrong, specially when the flow is totally cut off. It is to be noted that the fact that no riparian owner is entitled to obstruct a public river with a dam, was not only reasserted in Jaganath v. Chandrika,[16] 1919, but is a part of our Code of Criminal Procedure of 1898, (Sec.133). Riparian owners are permitted to obstruct the water only in emergency conditions, such as to protect themselves from flood. But here too, the Lankanpara Tea Co. v. Gopalpur Tea Co.Ltd.[17] asserts that no riparian is permitted to turn the flood water

into his neighbour's property.

As regards the rights of the upper and the lower riparians, the courts recognize the custom that the upper riparian has the right to use as much water ad as convenient for irrigation, without materially diminishing the amount for the lower riparian. However, the authority of Setharamalingam v. Ananda Padayachi[18], of Madras High Court, asserts that in case the lower riparian feels that there has been an actual material decrease in the supply of water to him them he has a cause for action. It is significant to note in this context that as the case made law of the land stands, the lower riparian owner does not have a right to inundate or submerge the land of the upper riparian by obstructing or building a dam on the river. This was established by the Privy Council way back in 1925, in Maung Bya v. Maung Kevi Nyo.[19] (see also Debi Prasad v. Joynath.[20])

As regards drainage, the Melepat Madhethil v. Neelamane[21] case lays down that the upper riparian has a right to drain off access water through channels, but in a manner which may be injurious to the lower riparian. The judgment also provides that all such rights are available only in natural streams or rivers, and not in artifician canals or water courses. Legal rights in

such courses can be claimed only by grant, contract or prescription. The Alluvion and Diluvion Regulation of 1825 (Section 5), however, states that even where easement rights are available in this manner, the permission to obstruct or drain the channel cannot be granted.

This is a brief account of the court made law. Let us turn now to see what rights are available to the people under statutory provisions.

II.3.0. Statutory Rights

II.3.1. Properitary Rights

The first legislative act which explicitly provides for rights of the people (bearers of rights and duties), is the Easement Act of 1882. According to this Act there are at least three ways in which the state can provide rights to the people:

i) by express grant (Sections : 8-11).

ii) by transfer of property (Section 13).

iii) by prescription (Section 15).

Besides these, as mentioned earlier, this Act also recognizes the customary rights of the people (Sections 2(6), 15, 18).

Prior to the Easement Act the earlier laws recognized (or provided) rights implicitly (by implication). They did this by protecting the violation of the natural rights they presumed already to be in existence. The laws which protected the rights in this way are : the Limitation Acts (1859-71); the Northern India Canal and Drainage Act,