

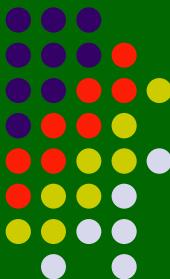
# **Common Property - Water**

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## a comparative perspective



*Nirmal Sengupta*

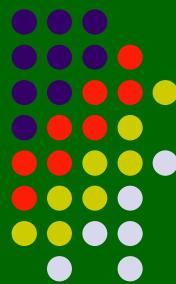


# Types of property

- ◆ State Property
- ◆ Private Property
- ◆ Common Property
- ◆ Not Property (not yet defined)

*I will discuss the state of CPR – the less understood.  
However, that would relate to the other forms.*

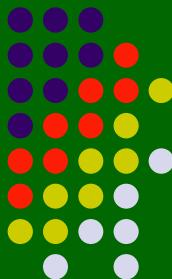
# Issue: THE STATE OF PROPERTY RIGHTS ON WATER IN INDIA



Property is not full-fledged ownership, with complete rights of exclusion, transfer and use. It is a fine **bundle of rights** (and responsibilities).

**The bundle of right here  
is specific to India.**

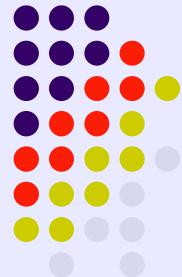
CPR of India is not identical to CPR elsewhere.



Apart from their use as law,  
the property rights  
structure the belief systems  
of the people.

They are powerful

**BOTH PROPERTY LAW & BELIEFS**  
**facilitate privatisation in India.**  
**What are their special features?**



# Evolution of Property Rights in India

## REGULATING ACTS

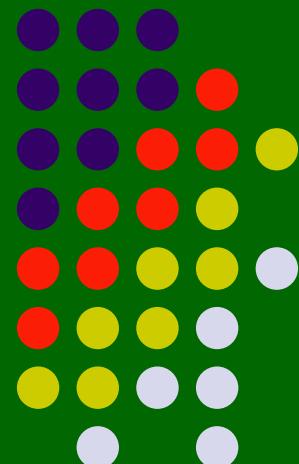
by British Parliament

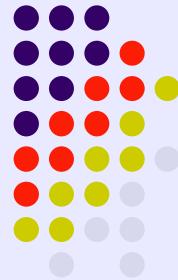
Led primarily to development of  
**private property**  
in modern India

But the *incentives*  
of Trading Company were different  
from that of normal State

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Result was  
Distinctive development  
of Private Property in India  
and distinct common  
property relations





# *Incentives* of the East India Company

trade

land revenue

*Early experiments settled to --*

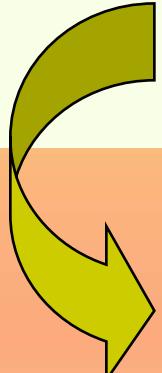
# Permanent Settlement (1793)

Due to asset specificity

- long-term contract worked better.

Economy prospered.

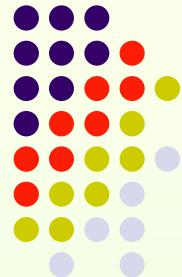
*But Trader State gained no share of prosperity.*



Hence a new approach for later settlements:

# Ryotwari Settlement (1800)

*Enabling regular revision of land revenue.*



# Ryotwari Land Settlement

## (the root of the current system)

**Revenue-  
yielding land**

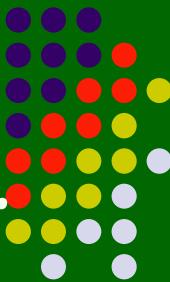
-      **Settled as private  
property of farmers**

**Non-revenue land**

-      **‘Waste Land’**  
**waste – till settled.**

*i.e. pre-eminence of State right*

**Non-revenue land – water, forests,  
grazing grounds, fishing grounds**



## ‘Waste Land’

*Left for use as such till State find some use.*

In course of time --

Forests: settled for agriculture & commercial use

Grazing grounds: settled for reclamation.

Fishing patches: Open access.

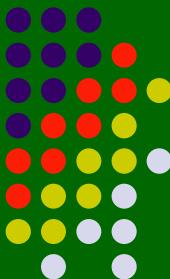
Land for Irrigation works

Was not revenue producing

But not ‘Waste Land’ to be settled later

*Left for use as such till State find some use.*

(Pre-eminence of State)



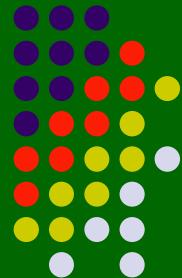
## Later Modifications :

- Customary Rights
- Panchayat Act
- Administrative Reforms

IMPLICATIONS --

**ambiguities and inconsistent judicial interpretations**

**But no change in fundamentals.**



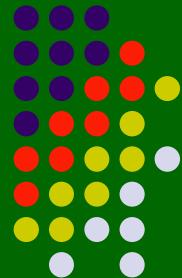
# India – surface water

## the bundle of rights

The people enjoy some appropriation and use rights.

But the state right is paramount

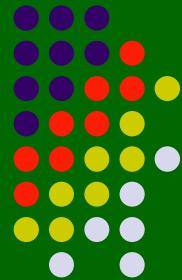
and can be exerted at will.



## Consequent features (1) :

For *acquisition* of natural and local water sources, no eminent domain argument is required.

– as is for land.

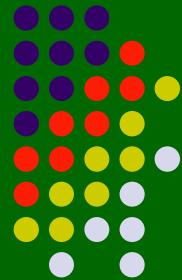


## Features (2) :

No formal *attenuation* of surface water rights needed.

– compare with recent groundwater regulation.

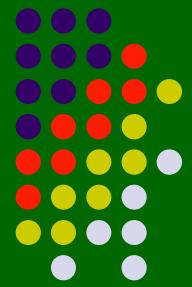
Private right on groundwater recognised by Easement Act.



## Features (3) :

Rights on surface water discussed as –  
division of rights between hierarchies  
(and departments) of government.

-- not as rights of users, locals.



# Accompanying Responsibilities

Responsibilities

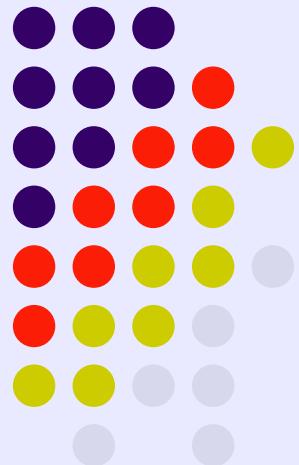
Ryotwari area:

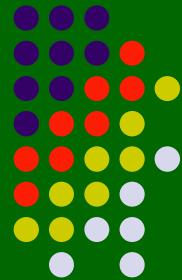
Irrigation increases land revenue earnings

State as Provider of Irrigation

Formation of PWD (1850)

But private initiative  
absent and discouraged





# Irrigation Dept. / PWD

- Assigned responsibilities to panchayats etc. But gave no rights.
- Irrigation & Drainage Acts too assigned responsibilities but gave no rights.

# **Reform Efforts**

**three sources**



**Farmers' demands**



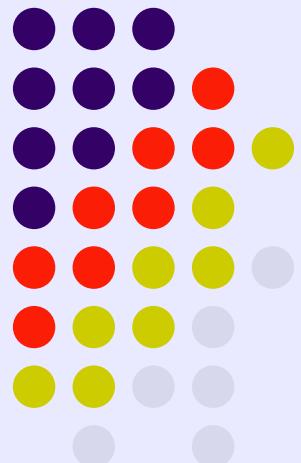
**73<sup>rd</sup> Amendment**

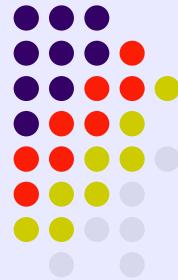


**International Agencies**

(a) **Participatory programmes**

(b) **Privatisation**

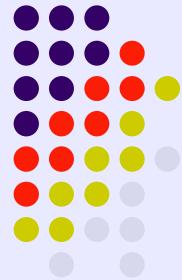




## PRI, Turn-over Programmes --

State has not relinquished rights,  
or granted limited right.

These organizations are facing pressure  
from different government bodies.



## Privatisation --

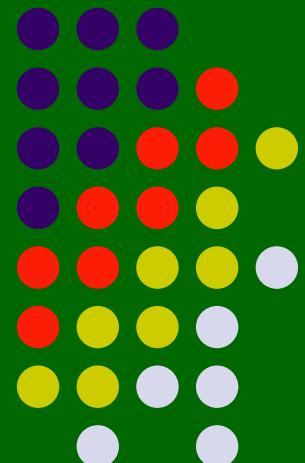
State has systematically transferred  
water right to private corporations.

These organizations are **not** facing any  
pressure from government bodies.

# An unfinished agenda

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Privatisation Debate  
has undermined  
The larger struggle  
for water rights





Ask Water Rights