Common Property - Water
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.
The state of property rights on water in India is specific to India. CPR of India is not identical to CPR elsewhere.

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.

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

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 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
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
- 73rd 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

Privatisation Debate has undermined The larger struggle for water rights
Ask Water Rights