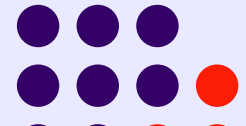




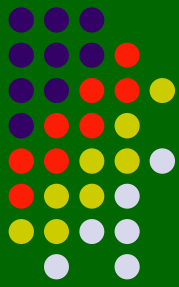
Common Property - Water

a comparative perspective



Nirmal Sengupta

Types of property



State Property



Private Property



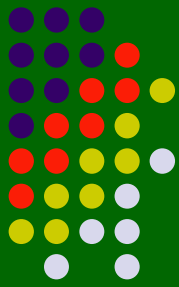
Common Property



Not Property (not yet defined)

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

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).

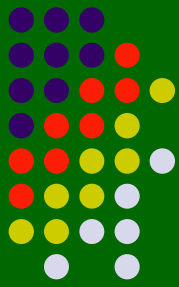
**The bundle of right here
is specific to India.**

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



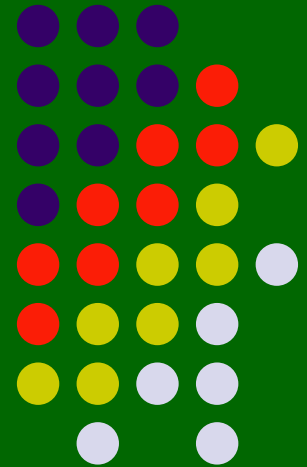
REGULATING ACTS

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

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.



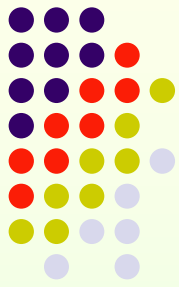
Hence a new approach for later settlements:

Ryotwari Settlement (1800)

Enabling regular revision of land revenue.

Ryotwari Land Settlement

(the root of the current system)



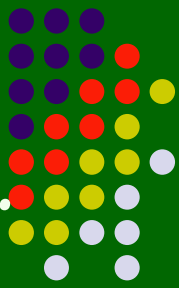
Revenue-yielding land - Settled as private property of farmers

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

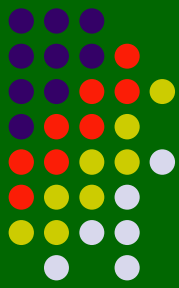
But not ‘ Waste Land ‘ to be settled later

Left for use as such till State find some use.

(Pre-eminence of State)

Later Modifications :

- Customary Rights
- Panchayat Act
- Administrative Reforms

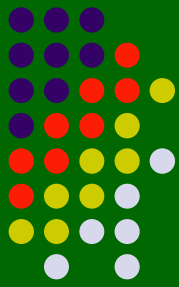


IMPLICATIONS --

ambiguities and inconsistent judicial interpretations

But no change in fundamentals.

India – surface water

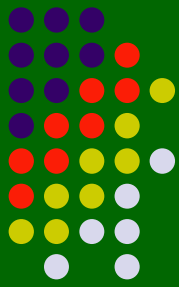


the bundle of rights

The people enjoy some appropriation and use rights.

But the state right is paramount

and can be exerted at will.

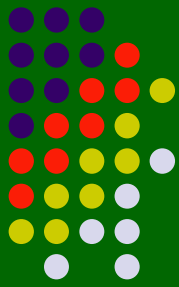


Consequent features (1) :

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

– as is for land.

Features (2) :

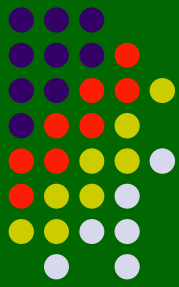


No formal *attenuation* of surface water rights needed.

-- compare with recent groundwater regulation.

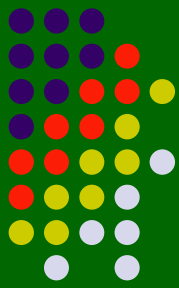
Private right on groundwater recognised by Easement Act.

Features (3) :



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

-- not as rights of users, locals.



Accompanying

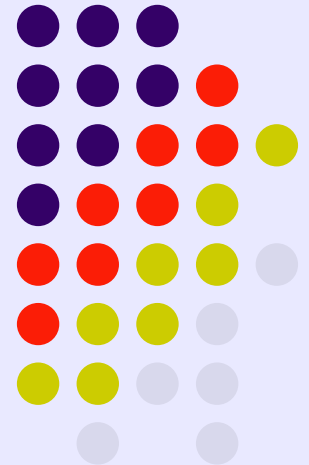
Responsibilities

Ryotwari area:

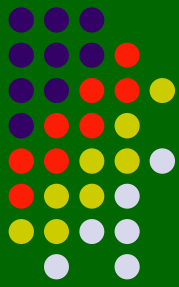
Irrigation increases land revenue earnings

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



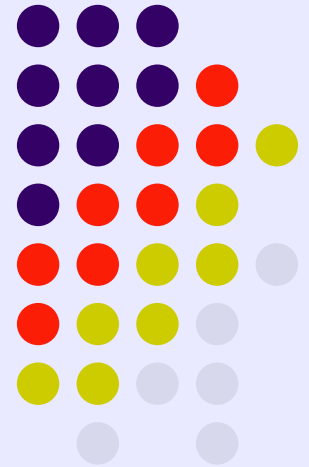
73rd Amendment



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.



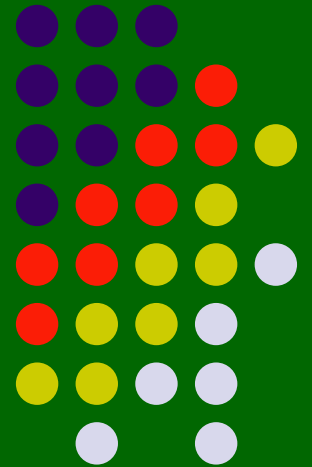
Privatisation --

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