

COMMON PROPERTY RESOURCES: CONTRIBUTION AND TRAGEDY

*Abhay Kumar Sinha**

INTRODUCTION

With world attention recently being focussed towards environment restoration and sustainable development, concern for the sustenance of rural resource system has also grown. This has inevitably led to the increase in concern for common property resources¹ like village pastures, minor forests, wastelands, irrigation systems and such other commodities over which a community as a whole has traditional access and depends upon for their survival and subsistence.

In this article, an attempt has been made to understand the concept of CPRs, its utility, cause for concern and the legislative and the judicial response to the concern.

CONCEPTUAL ISSUES

Common property resources can broadly and residually be treated as that which is not private property. It connotes those non-exclusive resources in which a group of people have co-equal right to use. They are "resources accessible to the whole community of a village and to which no individual has exclusive property rights".² In the context of Indian villages the resources falling in this category include community pastures, community forests, waste lands, common dumping and threshing grounds, watershed drainage, village ponds, rivers, rivulets, as well as their banks and beds.³ The ownership of these resources need not be vested with the village panchayat or local village community. Even if it is legally a government property, it is a CPR for the local community if it enjoys access to it traditionally. Secondly, such an access to the local community is exclusive in the sense that only the identified community has access to it and no others.⁴ This would mean that the management of such resources would be carried out by the community by developing certain norms in this regards.

* V Year B.A., LL.B. (Hons), NLSIU.

1 Common Property Resources hereinafter referred to as CPRs.

2 N.S. Jodha, "Common Property Resources and Rural Poor in Dry Regions in India", 21 Economic and Political Weekly, 1169 (July 5, 1986)

3 Sudarshan Iyengar, "Common Property Land Resources in Gujarat: Some findings about their Size, Status and Use", 24 Economic and Political Weekly, A-67 (June 24, 1989).

4 G. K. Karanth, "Privatization of Common Property Resources: Lessons from Rural Karnataka", 27 Economic and Political Weekly, 1690 (Aug 1, 1992).

Thus a fundamental principle of CPRs is that they use non-exclusiveness as a character of property implies a free and equal access to all the people of a specified community, while indivisibility implying that the benefits are for collective consumption of a community.

While this nation has some of the more extensive CPR situations in the world, in terms of the accepted definitions of CPRs their number in the country is very limited.⁵ This is because, in many instances, the de jure and de facto ownership of these resources are not at the same point.⁶ However still there is a range and diversity of CPR situations in the country.⁷

SIGNIFICANCE OF CPRs

A number of micro-level studies had highlighted the significance of CPRs for the rural people, particularly poor. The importance of CPRs lies in their potential to meet the needs of the rural masses through physical supply of products like fodder,⁸ fuel,⁹ food,¹⁰ water, manure¹¹ and other raw materials. And also in their ability to maintain the sustainability of the rural agro-ecological systems. Through supply of fodder and grazing space some CPRs help individuals in saving their land for crops. These CPRs help in sustenance of farm animals which otherwise would have meant diversion of a substantial proportion of crop lands from food and cash

5 J.E.M. Arnold & W.C Stewart, *Common Property Resource Management in India*, 3 (1991).

6 *Supra* n. 4.

7 *Supra* n. 5. If only land is taken into consideration, then six main types of CPRs can be identified in the country, namely:

1. Communal use on private property;
2. Private usufructuary rights on state property;
3. Communal management on state property;
4. Joint management of state property: Villagers as partners access, control and produce;
5. State property: constrained individual rights;
6. Open access on state property with few controls on access.

Supra n. 5.

8 The total demand of fodder has to be met from uncultivated lands etc. (i.e. PRS). Otherwise it would increase pressure on the land available for cultivation with the peasant and thereby reduce its productivity. This would force the small farmers to maintain less livestock than required.

9 For subsistence it is imperative that the rural people get fuelwood at low cost mainly outside the market framework. The urban population, industries had commercial establishments like hotels and restaurants also need fuelwood but they afford to purchase them at a proper price. The rural poor who try to meet their demand mainly from self-produced or self-collected fuelwood biomass rather than purchase from market are desperately short of meeting their need. In such a situation CPRs come to their rescue and provide them with necessary fuelwood.

10 CPRs greatly contribute to the poor man's nutrition by facilitating his food gathering from forests, ponds, and other sources.

11 Chemical manures are costly at the same time its continual use leads to loss of soil fertility. Green manure is both cheap and ecologically safer, provided it is available on a sustainable basis from uncultivated land particularly the CPRs.

crops to fodder crops. The alternative option, i.e., reducing animal numbers to level sustainable by our own fodder resources would have implied loss of own farm inputs.¹²

CPRs like dry beds of river/tanks used for off season cropping and rivulets, tanks used to collect irrigation water play an important role - augmenting the private property resource based farming system.¹³

It is the rural poor who mainly depend on the CPRs. It meets basic needs outside the market framework without adding to direct costs of cultivation, animal husbandry and personal consumption. This goes a long way in reducing the rural inequalities generated by the private property resource based farming system as the CPRs significantly supplement the income of the rural poor.

DEPLETION OF CPRs

Notwithstanding the CPRs valuable contribution to the rural economy, CPRs are at present among the most neglected areas in the development planning arena. This has resulted in depletion both in terms of areas and of productivity.

The factors which have led to the decline of CPRs are population growth,¹⁴ increasing commercialization,¹⁵ privatization,¹⁶ public policies,¹⁷ technological changes,¹⁸ and environmental stress like droughts or floods. The degradation of CPRs is also an outcome of their over-exploitation and poor up-keeping, brought on by a slackening or complete abolition of traditional formal and informal management practices and thereby limiting local control over the resources.

12 N.S. Jodha, "Rural Common Property Resources: Contributions and Crisis" 25 *Economic and Political Weekly*, A-65, 66 (June 30, 1990).

13 *Supra* n. 2 at 1171.

14 Population pressure has resulted in demand for more area under plough and hence even inferior CPR land is being encroached. *See supra* no 2 at A-70.

15 The increased extent of monetisation and commercialisation of rural areas, a part of the transformation process, has adversely affected people's attitudes to CPRs. The improved accessibility and market integration of hitherto isolated, fragile areas into the mainstream economy, has also led to over-exploitation of CPRs. *See, supra* n. 12 at A-71. *See also*, Kansur Satyagraham "Commercialisation of Common Property Resources" 21 *Economic and Political Weekly*, 73 (April 12, 1986).

16 Privatization of CPRs have been initially initiated because of administration zeal and economic characteristic of colonial rule to bring more land under cultivation. The process of privatization further got a boost due to land reforms. Further there also has been increased instance of encroachment of CPRs. The laxity on the part of the revenue administration in monitoring, recording and acting on encroachments has been to a large extent encouraging encroachments. *See, supra* n. 4 at 1681.

17 The Government in order to carry out certain welfare programmes, e.g., town planning and development has been taking over these lands.

18 *See, supra* n. 12 at A-73.

The rural rich and the poor have contributed differently to the decline of CPRs. The main tendency among the rural rich is - to withdraw from CPRs as product-users since the labour costs for appropriating and using them is higher than the value of the products appropriated. They rely more on alternative options like own supplies of biomass and a switch from using renewable CPR products to non-renewable and/or outside products.¹⁹ They also tend to grab CPR lands for private use. The poor households, on the other hand, utilize the CPRs as a vital source of sustenance; over-exploiting them due to non-availability of alternative options.²⁰

The legislature and judiciary too have accentuated the situation. Through their various enactments and pronouncement. This can be brought out by the illustration that follows:

The Land Acquisition Act 1984, confers powers on the appropriate government to acquire land for public purpose.²¹ The land so acquired is vested absolutely in government free from all encumbrances even if they come into existence only at the time of acquisition.²² Customary rights are also embraced within the term "encumbrances" used in section of the said Act. *The George High School v. Abdul Marim*,²³ Allop. J., has observed that:

"It is difficult to see why a customary right of way or a similar right should not come within the meaning of the word 'encumbrances'. The whole object of the Land Acquisition Act is to enable the government acquiring land for public purposes and to use such land in any which may be convenient or necessary for the public in general. If the rights of way and other customary rights were not destroyed by acquisition, it would often be impossible for the government to acquire and use land in such a way as might be necessary."²⁴

This shows that the acquisition of CPRs is very much possible. This in fact has been happening. Public purpose has not been exhaustively defined in the said enactment. As per *State of Gujarat v. M.I. Haider Bux*,²⁵ it is the government which is the best authority to determine whether the purpose in question is a public purpose or not. Thus, CPRs can be acquired for purposes which the government considers to be public purposes.

19 *See, supra* n. 2 at 1179.

20 *See, supra* n. 5 at 38.

21 *See*, S. 6 of the aforesaid Act.

22 S. 16 of the Land Acquisition Act, 1894 reads as follows:

"When the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances". *See also, George v. State*, AIR 1972 Ker. 181.

23 AIR 1935 All 895.

24 *Ibid. See also, Sidhe Nath v. Prem Club*, AIR 1972 All 324.

25 AIR 1977 SC 594.

Section 3(f) of the aforesaid Act gives an inclusive definition of public purpose. One of the purposes enumerated in it is the "the provision of land for town or rural planning". This provision read with Section 6 of the said Act gives power to acquire land for town planning. This may be incorporated in the State Planning Acts. For instance, the West Bengal Town and Country (Planning and Development) Act, 1979, enables the Planning and Development Authority to acquire land.²⁶

To study the approach of the judiciary in this regard it is necessary to examine and analyse *Banwasi Seva Ashram v. State of U.P.*²⁷ In this case a forest inhabited by adivasis and backward people was declared to be a reserve forest by the State Government. The people residing there depend on the forest for their livelihood, fruits, fodder, fuelwood etc. The claims of these people were ignored by the State, thus a writ was filed by the petitioners alleging violation of the fundamental right of life and that they were evicted without settlement of their claims.

Although the court recognised forests as being much wanted national assets, it held that:

"At the same time, we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in this country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof in particular, have suffered a tremendous set back in industrial activity for want of energy. A scheme to generate electricity, therefore, is equally of national importance and cannot be deferred."²⁸

Thus on account of the aforesaid logic the Court allowed acquisition of land despite the earlier order preventing dispossession of occupants. The Court while doing so did not address to two major issues. Firstly, whether the inhabitants/petitioners could assert a claim to be made on the forest on the ground that they derive their livelihood from there and thus the act of the State would be violative of Art. 21. Secondly, the Court ordered for a mechanism which would protect the legally established rights of the claimants. However, it did not address the question as to how the rights of those be established whose claims are based on customs and usages.

Thus it is quite evident from the above case that the claim of the traditional rights of the people has been defeated and it is only the commercial interest which has been predominantly taken into account by the Court.

26 S. 43 of the said enactment states that: "A land required, reserved or designated in a Department Plan or a Development Scheme under Chapter III shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 and may be acquired under the said Act".

27 AIR 1987 SC 374.

28 *Ibid.* p. 376.

The effects of depletion of CPRs are many fold. Firstly, in the larger ecological and social context, the use of CPR land for crop cultivation would imply a long term unsustainability of land based activities especially in dry regions. Secondly, decline of CPRs would result in fall of its products and this would greatly affect those who depend on it. Thirdly, as the poor rural mass continue to depend on CPRs, its depletion would certainly increase the rural poverty.²⁹ Lastly, the degeneration of CPRs has also been due to large scale deforestation etc., which has affected the ecological balance in the country. Hence afforestation programmes have become imperative.

CONCLUSION

An important factor which has been completely disregarded by development policies and programmes in India is the role of common property resources in the economy of the rural people. Notwithstanding significant contributions made by these resources in the life of the rural poor not enough attention has been paid to understanding its importance with regard to the survival of the poor.

It can be found that a gamut of laws in one way or the other are facilitating depletion of CPRs and curtailing the traditional rights of the people over it. To name a few of these statutes are the Land Acquisition Act, 1894, Karnataka Irrigation Act, 1965, and Forest Act, 1927. Even the judiciary has not come to the rescue of poor and the needy. It has till date not laid down any law in concrete terms which could be invoked to protect, preserve and defend the traditional rights.

²⁹ See, *supra* n. 12 at A-69.