



## Common Property Resources (CPR) – Its allocation, pricing and reporting.

### KEYWORDS

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### ABSTRACT

The present paper makes an attempt to trace the nature and features of CPR. It focuses on analysing the legal angle of CPR. It also examines the allocation, pricing and reporting of CPR.

**Introduction:-** Common property resources (CPR) are a kind of natural assets gifted by Mother Nature to planet earth. Till date earth is the only planet which has been endowed with natural resources, common properties like land, water, web. Common property may be conceptualized as natural resources, natural endowment gifted to the planet earth by the Mother Nature for use of the common good for mankind and others. Common property or natural assets are used for human consumption and includes land, energy, marshy lands, rivers, grasses, wastelands, watershed, drainage, village ponds, water bodies, food, forest, soils, mines, fresh water, pastures, minerals, flora and fauna, air, oxygen, carbon, ground water, sand queries, stone quarry, coal mines, crude oil reserves, geo- stationery orbit, state property like national highway, babui grass which is grown in common place and used to make rope, solar energy, roads, schools, hospitals, public library, gas, energy, marine water, marine life, corals and the like. These resources ensure sustainability with a green economy where economic value creation (EVC), economic value added (EVA) is not coupled with environmental degradation.

**Features of CPR:-** Common property is either acquired or converted as a free gift of nature. Some of the important features relating to common property are as follows: -

(1) Gift of nature. (2) Scarcity of supply. (3) Control. (4) Leasable by all. (5) Compensation as user price.

Some other features of CPR are as follows:-

- Sufficiency of CPR is not ensured.
- Inadequacy of supply of CPR.
- Greater demands for its use by the general public.
- Limited use of the same.
- Reserved forest, government. controlled property is not a common property because right to exclusive use and the purpose of exclusivity has been enshrined through the approval of the legislative body.

While using CPR the marginal and poor people should have equitable rights and should have access to natural resources like water, land, gas, mines. To enhance the use of CPR several alternatives may be tested namely water harvesting, creation of ponds, water bodies, groves and small bushes should be developed.(Source: Arindam Banerjee, Sustainable Development issues and critics from Indian perspective, The Management Accountant, ICA, Kolkata, March 2012, volume 47, No.3, p. 286)

The international bodies and associations have also recognised food availability, health security, food access, food use, water, sanitation, bio-fuels, fossil fuels, bio-mass, and organic material, ethanol, bio-diesel as common property resources and these are to be preserved and promoted for use of common good.

**Objectives :-** In consonance with the magnitude of vast resource endowment it raises curiosity to conduct a kind of

research enquiry to see its distribution, pricing and reporting mechanism by the state as a custodian authority of such resources. In view of the above the objectives of the study have been framed as follows:-

- (1) To examine the nature and features of CPR.
- (2) To analyse the legal angle of CPR.
- (3) To examine the allocation, pricing and reporting of CPR.

**Methodology :** The present work is both descriptive as well as analytical. The work is based on secondary data collected from published books, research articles published in professional journals and other websites

**Legal position: -** We can visualize two kinds of property laws namely- De-facto property right and De-jure by law. In this regard there are some parameters which need to be considered for establishing the legitimate right over the use of common property. These are: -

- (1) Use. (2) Management. (3) Scarcity. (4) Distribution. (5) Pricing. (6) Protection. (7) Record and account of common property. (8) Transferability.

These issues are discussed in the respective and relevant places hereunder:-

Common Property Resources are governed by two tenets of law namely (a) rule of expression and (b) the rule of accession. From the legal tangle we can establish that CPR has some legality as under:

- It cannot be owned
- Cannot be sold or purchased.
- Cannot be transferred
- Can be used only for common good.

When acquired by the state or the government for public purpose there is no need to pay any compensation. A question arises as to self enjoyment whether leads to deprivation of others. It involves application of ensuring equal access to the rebel groups demanding its legitimate use for individual gain.

In a judgement in 2011, in relation to a dispute in CPR the Supreme Court of India has held that the declared transfer of village community land for private and commercial use as illegal and directed all the states of India to take immediate steps to evict encroachers from the common land ( Ref: - Abhijit Guha, the Invisibility of CPR in India, UGC sponsored National Seminar on CPR in India, Souvenir, March 15-16, 2012, Deptt. of Commerce, Panskura Banamali College, Midnapore, West Bengal, P-24)

**Nature of conflict over right to use of CPR:-** Having considered the features of CPR legal implication in its source and distribution, we frequently come across a conflict between Public property versus private use.

Ostrom argued several critical issues emerging out of use of CPR: -

- CPR is subtractable.
- Consumption of resource by one amounts to deprivation of others to use it.
- CPR is subject to be over used as against the public goods.
- CPRs are consumptive in nature.
- The users take little care for its sustainability; regeneration and replenishing it back to the nature.

Another study has indicated that tragedies do occur- meaning "tragedy of commons" when an open access system supplants (over exploits) a pre-existing CPR management system. (Ref: - Raul, R.K. Common Property Resources: - Conflicts and Resolution, UGC sponsored National Seminar on CPR in India, Souvenir, March 15-16, 2012, Deptt. of Commerce, Panskura Banamali College, Midnapore, West Bengal, P-25).

Encroachment upon the common property is a legal problem. On the other hand, community management of forest resource is a manifestation over the right to accession to CPR. The forest resources are again conceived as the stock and flow concept. Rainforest, mangroves, are common resources useful for regeneration and preservation of eco-system. Under this concept forest and land covered under forest is a stock. On the other hand leaves of Shegui timber used for making bowls, fruits and other derivatives from plants are treated as flow. The affect of the stock and flow of the forest resource on the eco-system on the common property was focused by Elinor Ostrom, the noble laureate in economics in 2009. Land administration under sixth schedule area of the constitution, common and community ownership, community management of forest land, by the tribal ensures the common property rights of a particular clan or community over their forest land. This right emphasis that land belongs to the inhabitants. It offers community right to land, right to inherit and right to transfer only among the members of the particular clan. There is restrictivity of transfer of property Act.

Common property versus private property:- Common properties are available for general use in order to achieve common good for all. When such common property is made available for common use perhaps the matter is simple on the other hand when such property is restricted to private use for deriving commercial gain the concept of commonality is lost. It gives rise to the problem of common property versus private property and private use. We discuss hereunder the dichotomy between common property versus private property.

Since 1960, the tragedy of common arises. Village grazing lands, water bodies, are examples of common property. But, when such common property is acquired by the government or a private corporate entity nobody is paid any compensation. The users of the common pool of resources are then excluded from using the resource. Common property often causes disaster in the shape of carbon emission, reduction in biosphere level, automobile effluent discharges. Who will bear such disastrous consequence? Who will pay the price for it?

Allocation, pricing and reporting of CPR:-In this section the present authors examine the allocation, pricing of CPR and its reporting which are discussed in the following sub-sections: -

Land as Common Property :- The Land Acquisition Act 1894 has given rise to the conflicting interest over land acquisition, between owner of land and acquirer of land. Owner of land enjoys the right of inheritance, and right to transfer at his own will against the payment of a consideration, right to use for his personal gain. State intervention into land acquisition infringes into those individual personal rights. The acquisition, however, is permissible for public purpose.

Establishing control over land with the help of the Land Acquisition (Amendment) Act 1894 generates social tension,

land-public purpose conflict, conflict over forested heartland of the country, bauxite-rich areas of Orissa, farmland of West Bengal, Gurgaon, for setting up of SEZ.

The Land Acquisition Act of 1894 of Lord William Bentinck allowed acquisition of private land for public purpose. The recent trouble over land takeover raises the following conflictual issues:

- how to define public purpose, whether the state government acquiring land on behalf of companies for setting up factories, refineries, ports, SEZ for commercial gain, be treated as public purpose.
- what is the quality of farm land taken over;
- whether the land owner is sacrificing their right over land willingly or out of coercion;
- what is the amount of compensation, whether it is fair and reasonable, compensating the real worth of land.
- how is the land valued, what is the monetary or price yardstick adopted for valuation,
- whether non-monetary compensation such as an assurance of absorption in the job of a company be treated as compensation.
- the manner of discharge of compensation in cheque in a number of installment or a lump sum payment at a time.
- rehabilitation and resettlement of the land owners displaced by land acquisition
- if the land is farmland acquired for non-farm activities how to estimate the alternative revenue derived from land.
- the definition of affected people is open to interpretation.

In 1996, the Supreme Court observed, "Publication of declaration by the government under section 6 is conclusive evidence of public purpose". However, in 2011 the Supreme Court remarked that "the application of the concept of public purpose must be consistent with the constitutional ethos and especially with the Fundamental Rights and Directive Principles of Indian Constitution".

The Land Acquisition Act 1894 was brought to review by a proposed Land Bill 2011 on the following issues:

- (a) determining a clear definition of fair compensation;
- (b) defining the scope and limits of public purpose for acquisition;
- and (c) acquiring land litigation in proposed project site.

The Land Bill proposes the following:

- (a) the option of employment to losers of land without a qualifying clause like minimum land area for eligibility.
- (b) 80 p.c. of the affected families in a project area have to agree to any proposal to acquire their land.
- (c) the distinction between private industry interest and public purpose for public good, public interest, description of public purpose is in the use of eminent domain.

(Source: Jayanta Bandyopadhyay, Tapas Roy, Political challenge of an intensifying conflict over land, the Economic & Political Weekly, Mumbai, February 18, 2012, Vol XLVII No. 7, pp 22-55)

**Tribal Land :-** The tribals once the original owners of their own land have not been responsible custodians of land. With the passage of time, common property resources have become private property. Even water bodies and forestlands are not spared. Large tracts of thick forests have been cleared to make way unsustainable mining practices and for setting up extractive industries. Often the woods and forest products are brought out by way of wanton destruction of forest land. With the increase in population there has been pressure on forest land for non-forest purposes.

Several rivers of Jaintia Hills are now poisoned and no longer support any form of life. There is thus need to save those rivers and allow them to regenerate by stopping further mining in those areas. (Ref: Patricia Mukhim, Much ado about Meghalaya Land, The Telegraph dated 26 March 2012)

**Regulation of prices of Cement :-** A Supreme Court order dated November 12, 2002 indicated, "while according to transfer under the Forest (Conservation) Act, 1980, for change in user-agency from all non-forest purposes, the user agency shall also pay into the said fund the net present value (NPV) of the forest land diverted for non-forest purposes". NPV is the monetary worth of forest land diverted for non-forest purposes. Section 2 of the Forest (Conservation) Act 1980 mandates that proposals for diversion of forest land for any non-forest purpose would require the approval of the centre. The Government in 2009 had revised the rates of net present value taking into consideration the ecological role and the value of the forests into six ecological classes

**Regulation of prices of coal:-** The 2010-11 annual report of coal ministry has mentioned: "A need was felt for evolving an objective and transparent system of allocation of coal blocks. Accordingly the Mines and Minerals (Development and Regulation) Act has been amended to provide for introduction of competitive bidding system for allocation of coal blocks for captive use".

In the earlier practice coal blocks were nominated to projects keeping in mind fuel requirement and its location. Allocation of coal blocks was done to industries like steel and power which are eligible for captive mines. Now from April 2012 onwards the Coal ministry has made a policy initiative to ensure transparency in coal blocks. The earlier practice has been discontinued and the government will now give blocks on captive basis only through the auction route.

The Comptroller and Auditor General (CAG) had reportedly alleged that private companies, who had been allotted coal blocks without bidding, might have made windfall gains at the cost of government owned Coal India Ltd.

An amendment to the Coal Mines Nationalization Act, 1973 may be necessary for setting a just, fair, equitable allocation policy of national asset like coal, mineral resource and hence domestic coal production, efficient use of coal for generation of electricity and power.

#### **Allocation and Pricing of Spectrum and web :-**

Auction for 2G airwaves - Severe criticism was labeled against the state in respect of allocation of 2G spectrum and airwaves. While canceling 122 2G mobile permits the Supreme Court had on February 2, 2012 ordered the government to hold fresh auctions within four months to redistribute the permits and airways.

The Supreme Court has laid down broad guidelines in respect of allocation of CPR in the shape of spectrum and wave

- Completions of auction, payment and assignment of frequencies; and allocation of spectrum to successful parties have to be considered.
- Auctions have to be done in such a manner so that operators are able to bid with complete clarity.
- The government will take a decision on pricing on the basis of :
  - the availability of spectrum;
  - the manner of pricing;
  - the policy of charging

This will allow operators, manufacturers and others involved to work out plans

for bidding. The final approval for the National Telecom Policy will offer more clarity.

(Ref: The Economic Times dated 2nd March 2012)

Separating Spectrum from license is a long awaited move. An alternative pricing policy can be to fix licence fee at same level for national long distance (NLD); international long distance (ILD) and pan India licence UASL like a National Unified Licence, uniform for all service providers.

The Supreme Court Judgement (SCJ) refers to the context of "transferring or alienating the natural resources, the state is duty-bound to adopt the method of auction by giving wide publicity....."

Conditions for a valid auction and valuation web:

- to design a mechanism of auction properly;
- to create a well designed structure, an environment in which auction can be carried through.
- auction values reflect their true and fair values to businesses.
- auction value should be reasonable one so that the state can generate adequate, fair and reasonable revenue for the exchequer.
- it does not discriminate among the bidders.
- all the bidders get an equal opportunity in the publicly conducted auction.
- the auction value arrived in an auction should not yield undue advantage, benefit to any particular bidder.
- The auction value should be non-discriminatory to all.

To provide information in the public domain as to who owes how much part of the spectrum.

- Disclose the duration of allocation.
- Disclose the amount of fees charged.
- To ensure effective utilization of the allocated spectrum.
- To conduct spectrum audits that measure which of the user is using what parts of spectrum at particular time should be conducted by the regulator as TRAI.
- The prerequisite of a good auction design is the sharing information by the auctioneer i.e., govt with all potential bidders; the different cost associated with the bid. This information would help them to decide which bands to bid for and how much to value them.

(Ref: Rekha Jain, Getting Spectrum auctions right, The Economic Times dated 16th February 2012).

Accounting and reporting of land and real estate :- Keeping parity with the objective stated above we now venture into the deliberation pertaining to reporting of land and real estate for transaction purposes discussed hereunder

- The revenue recognition principle as per AS-9 ( 4.2) is usually identified when the following conditions are satisfied:
  - (a) The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;
  - (b) The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;
  - (c) No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and
  - (d) It is not unreasonable to expect ultimate collection of revenue from buyers
- As per AS-9 (4.3) Where transfer of legal title is a condition precedent to the buyer taking on the significant risks and rewards of ownership and accepting significant completion of the seller's obligation, revenue should not be recognised till such time legal title is validly transferred to the buyer.
- Sale of plots of land without any development: - Revenue from sale of land or plots should be recognised when all the conditions in paragraph 4.2 above are met. The relevant accounting standards (AS) considered for the purpose are:

AS- 7 = Construction contracts;

AS- 9 = Revenue recognition

AS 10 = Accounting for fixed assets

AS 12 = Accounting for government grants  
 AS 19 = Leases  
 AS 26 = Intangible assets

As per section 32 (ii) of the Income Tax Act, Intangible asset includes along with other things, any other business or commercial rights of similar nature.

Commercial rights are rights for effectively carrying on business and commerce and therefore any such right is an intangible asset, and so as goodwill which has intangible assets i.e., know-how, patents, etc embedded within it. This was decided by Delhi High Court in the case of CIT versus Hindustan Coca Cola Beverages Pvt Ltd. It is therefore recognised that goodwill is a right purchased from others for generating commercial gain by its usage and such right has the power to earn commercial gain in future.

Goodwill was recognised as eligible for depreciation for the first time by the Finance Act 1998. Accordingly sec 32 (ii) was inserted in the Income Tax Act which provides that: Know-how, patents, copyrights trade marks, licenses franchises or any other business or commercial rights of similar nature, acquired by the assessee on or after 1-4-98 shall be eligible for depreciation allowance with effect from the assessment year 1999-2000. (Ref: Namita Kedia, Is Goodwill an intangible asset eligible for tax depreciation? The Chartered Accountant, Volume 60, No.4, October 2011, New Delhi, pp. 85-86.)

**Conclusion :-** Everybody's property is nobody's property is a common belief that happens to be the real truth. Exclusive right to own, to use and to transfer is restricted in order to make it available for common good. The challenge before the custodian of the resource generally the state, is to ensure whether such CPA can be put to common use, if so then how to allocate and distribute the same, to ensure common accession to such resource for all, to ensure a fair and reasonable distribution of it, how to assign a fair equitable and just price to such CPA. This matter remains in the domain of economic issue.

While solution to the contentious economic issue of CPA often requires political, collective and reciprocal responsive gesture from the concerned stakeholders to address the issue. Be that as it may, the impasse has to be solved by the doctrine of impartiality, neutrality through open bid and auction system with wider participation for all stakeholders over the CPR. Distributive justice gets precedence over possession and holding, this is a sufficient and essential condition.

**REFERENCE** Banerjee Arindam, "Sustainable Development issues and critics from Indian perspective," The Management Accountant, ICA, Kolkata, March 2012, volume 47, No.3, p. 286 | Bandyopadhyay Jayanta, Roy Tapas, "Political challenge of an intensifying conflict over land," the Economic & Political Weekly, Mumbai, February 18, 2012, Vol XLVII No. 7, pp 22-55) | Guha Abhijit, "the Invisibility of CPR in India," UGC sponsored National Seminar on CPR in India, Souvenir, March 15-16, 2012, Deptt. of Commerce, Panskura Banamali College, Midnapore, West Bengal, P-24) | Jain Rekha, "Getting Spectrum auctions right," The Economic Times dated 16th February 2012). | Kedia Namita, "Is Goodwill an intangible asset eligible for tax depreciation?" The Chartered Accountant, Volume 60, No.4, October 2011, New Delhi, pp. 85-8 | Mukhim Patricia, "Much ado about Meghalaya Land," The Telegraph dated 26 March 2012) | R.K Raul, "Common Property Resources: - Conflicts and Resolution," UGC sponsored National Seminar on CPR in India, Souvenir, March 15-16, 2012, Deptt. of Commerce, Panskura Banamali College, Midnapore, West Bengal, P-25). | The Economic Times dated 2nd March 2012).