SESSION 10

Tenure and Property Rights Regimes, Access to Natural Resources

CONTENTS

1. Property Rights

1.1. Property

Property designates those things commonly recognized as the entities in respect of which a person or group has exclusive rights.

In the strict legal sense, property is an aggregate of rights which are guaranteed and protected by the government. The term property "includes not only ownership and possession but also the right of use and enjoyment for lawful purposes."[1]

Property may be classified into movable property that is, goods, articles, etc., and immovable property, that comprises of land and/or building. Another kind of property is the Intellectual Property which reflects the idea that its subject matter is the product of the mind or the intellect. These could be in the form of Patents, Trademarks, Geographical Indications, Industrial Designs, Layout-Designs (Topographies) of Integrated Circuits, Plant Variety Protection and Copyright.

1.2. Property Rights

Property Rights are defined as the rights that pertain to the permissible use of resources, goods and services in relation to a property. A property right is the exclusive authority to determine how a property is to be used, whether that property is owned by government or by individuals.

In simple terms, property rights nothing more than different degrees of legitimized control over the property. These degrees of legitimized control are reflected by three different types of property rights, namely,

1. Ownership rights – Ownership is a bundle of rights. It usually consists of right to use the property, right to change its form or substance, right to transfer all or partial rights over the property in favor of another person and the right to dispose off the property.

2. Usage rights – Right to usage of a property may arise due to an absolute right over the property or because of a partial right. It includes right to possess or use the property.

3. Developmental rights – Right alter, change or modify the property is included in the developmental rights over the property.

[1] Black's Law Dictionary, 5th edition, 1979

Ownership right is the most effective right. A property ownership is said to be most effective in three cases:

1. Where the concept of private ownership is politically and socially acceptable.

2. Where the resource to be conserved is easy to demarcate and defend, such as in case of local level conservation of land, soil, forests, marine resources or water.

3. Where the use of resource within the demarcated boundary does not generate significant spillover effects on others. [2]

A resource is a component that can be used for subsistence, sustenance or help. It acts as a reserve of supply or support. However, it is difficult to divide a resource as in the case of wildlife, critical watershed and ecologically significant habitats. In such cases it would be appropriate to use communal property rights instead of ownership.

With respect to the degree of ownership, a property may be further subdivided into three types, common, government and private.

Common property belongs to all people in common; it is that which all have an equal right to use and enjoy.

Government property belongs to the state and is subject to the direction of the government.

Private property is that which a person or group of persons, natural or artificial, have the exclusive right to own, profit from and dispose of as they see fit. However, private property is also subject to limitations imposed by the government.

Common property is not the same as government property. Common property may be generally recognized but not belong to any government. For instance, a common portion in an ocean may constitute a common property but not belong to any government. However, the term Public Property refers to a property that is owned by a particular community or a government and normally refers to government property. Common property is also different from private property. Common property permits of private use, but implies an obligation to the community since the rights of others must be recognized.

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[2] Wants, Needs and Rights: Economic Instruments and Biodiversity Conservation – A dialogue, WWF, 2000, p. 32.

2. Land and Resource Tenure Systems

2.1. Introduction

Tenure is the act, right, manner or term of holding something. In terms of property it refers to the way in which a property is owned. It is not just ownership but a collection of rights and responsibilities to a range of renewable and non-renewable resources. Tenure systems pertaining to a property may range from a farmland, forest, grazing land, river, wildlife, fishery, or any other resource. Each resource has a particular physical quality and a technical constraint on its use.

- **Land Tenure**

Land Tenure is a political, economic social and legal institutional structure that determines:

- How individuals and groups secure access to land and associated manage land resources. The resources include trees, minerals, pasture, and water.
- Who can hold and use these resources, for how long and under what conditions. Land tenure may also have both spatial and temporal dimensions and are typically defined through statutory or customary law.

Normally, the soverign holds the land in its own right. All private owners are either its tenants or sub-tenants, but their rights are as good as ownership rights. This system is prevailent in India as well. The term "tenure" is used to signify the relationship between tenant and lord, not the relationship between tenant and land.

- **Land policy**

Land Policy is the tool employed to outline a set of goals and measures for meeting objectives related to land: tenure, use, management, property rights and administration, and administrative structures.

Land policy is formulated keeping in mind the development goals. It is linked to various other policies such as agriculture policy, housing policy, urban policy, rural policy, forest policy, etc. It concerns itself with sustainable and optimum use of resources.

- **Land management**

Land Management is the process of managing the use and development of land resources in a sustainable way, in urban, suburban, rural as well as other lands. Land resources are used for a variety of purposes which interact and may compete

with one another; therefore, it is desirable to plan and manage all uses in an integrated manner.

2.2. Land Rights and Resource Tenure System

In India, more than 600 million people amounting to about 70% of the population depend directly on the land and environment for survival. Land is the life resource of the majority of people whose subsistence directly depends on the water, forests and the soil.

The urban poor on the other hand, live in communities that have been settled for a substantial period of time. Development of the community includes access to a means of livelihood, to education, to health care, all of which stand to be disrupted in cases of eviction.

Certain land and resource tenure systems have been identified so as to secure land rights of the underprivileged sections of the society. Some rights have been recognized for the sustainable and optimum use of the limited resources such as land. They are:

1. Customary and recorded rights

Customary rights are the treditional rights that have been exercised by a local community for subsistence, cultural and religious purposes. These rights may not formally be recognized by any statute or legislation but may have been exercised for generations by the members of a local community.

An example of a customary property right is the rights vested in tribals to carry out forest activities such as grazing, native cultivation, vegetation, etc. the National Forest Policy of 1988 recognizes certain customary rights of local communities and proposes that holders of the customary rights must be motivated ti identify themselves with the protection and development of forests from which they derive benefits.

Recorded rights, on the other hand, are formally recognized statutory rights vested in individuals or communities over a property. They are formally recorded rights documented in statutory instruments and have a legal backing.

2. Individual and community rights

Individual rights pertain to a situation where rights over a property are vested exclusively over an individual or a group of individuals who have come together voluntarily. When an individual or a group of individuals hold absolute rights

over a property (if such absolute right is recognised by the law of the land) or if such right is not recognized (e.g. in India where the soverign holds absolute rights over land) then, limited rights that are exclusive in nature and vested only upon such an individual or group of individuals).

In case of community rights, the members of a community collectively own a local resource. The decisions of the use of the resource are made through a community institution. Though individual members do have their own private rights, but such rights are regulated by a community institution for the well being of the community as a whole.

Private Property right regimes are believed to create incentives fore the management of resources. However, they could also encourage erosion of the resources. Many a times if property regimes are flawed or are not implimented properly, they may fail miserably to provide solutions to preserve resource erosion. Some experts also argue that if propety laws are more favorable towards the State or individuals, neglecting the community ownership rights, then erosion of natural resources is inevitable.

3. Easements and Concessions

Easement is a right to access a property for a specific use. Common forms of easement are for utilities and similar required access. Easement is defined under Section 4 of the Indian Easement Act, 1882. Section 4 of the Act provides as follows:

Section 4. `Easement' defined. — An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own.

Dominant and servient heritages and owners. — The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation. — In the first and second clauses of this section the, expression “land” includes also things permanently attached to the earth; the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the

dominant heritage, or any part of the soil of the servant heritage, or anything growing or subsisting thereon.

Illustrations

(a) *A*, as the owner of a certain house, has a right of way thither over his neighbour *B's* land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) *A*, as the owner of a certain house, has the right to go on his neighbour *B's* land, and to take water for the purposes of his household, out of a spring therein. This is an easement.

(c) *A*, as the owner of a certain house, has the right to conduct water from *B's* stream to supply the fountain in the garden attached to the house. This is an easement.

(d) *A*, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on *B's* field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of *C's* tank, or timber out of *D's* wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees in *E's* land. These are easements.

(e) *A* dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) *A* is bound to cleanse a watercourse running through his land and kept it free from obstruction for the benefit of *B*, a lower riparian owner. This is not easement

Concession is a contractual right to carry out a certain activity in an area, not being one’s own, such as to explore or develop its natural resources. They are different from easements since in easements the right to use or access a property is not a contractual right.

3. Land Acquisition Act, 1894

3.1. Introduction

The Land Acquisition Act was enacted in the year 1894. This Act passed by the British Government still continues with some amendments in 1967 and 1984. The Act sought to set out the circumstances and the purposes for which private land can be acquired by the Central/State Government. The procedure to be followed in making an acquisition under the Act is briefly as follows:

STAGE I

- Publication of a preliminary notification by the Government that !and in a particular locality is needed or may be needed for a public purpose or for a company. S. 4(1).
- Entry of authorised officers on such land for the purpose of survey and ascertaining whether it is suitable for the purpose in view S. 4 (2).
- Filing of objections to the acquisition by persons interested and enquiry by Collector. S. 5-A.

STAGE II

- Declaration of intended acquisition by Government. S 6(1)
- Publication of declaration as required by the Act. S.6(2)
- Collector to take order from the Government for acquisition and land to be marked out, measured and planned. Sections 7 & 8.

STAGE III

- Public notice and individual notices to persons interested to file their claims for compensation. S. 9.
- Enquiry into claims by Collector. S. 11
- Award of Collector. S. 11-15
- Reference to Court. S. 18-28.

STAGE IV

- Taking of possession of the land by the Collector. S.16.

- Payment of Compensation. S. 31-34.

Prior to 1984, the Land Acquisition Act, 1894 was not applicable to the States of Jammu and Kashmir and Rajasthan, Kerala and Nagaland which had their own self-contained Land Acquisition Acts. These Acts differed in some respects from the Act of 1894 but the broad scheme was generally the same. In 1984 the Land Acquisition (Amendment) Act was passed which made the Land Acquisition Act, 1894 applicable to the whole of India except Jammu and Kashmir which enjoys a special position under the Constitution and still continues to be governed by the States (Jammu and Kashmir) Land Acquisition Act, 1990.

Apart from the Land Acquisition Act, 1894, which is directly and exclusively concerned with the acquisition of land by the Government there are a large number of other laws (Central as well as States) which permit the Government to acquire land for specific purposes such as planned development of industries, slum clearance, town planning/improvements, implementation of municipal housing schemes etc. Instances of such Acts are:

- The Forest Act, 1927 (see Appendix 3);
- The Coal Bearing Areas (Acquisition & Development) Act, 1957;
- The Slum Areas (Improvement & Clearance) Act, 1956;
- The Delhi Development Act, 1957;
- The Maharashtra Industrial Development Act, 1961.

State Amendments

This Act has been enacted by the Central Government. However, the state Governments have the power to amend its provisions. (Article 246 of the Constitution read with item 42 of List III in the Seventh Schedule to the Constitution). This means that within the territory of each State the Act will be applicable in the amended form.

The State Government can make any amendments they want as long as such changes are not opposed to the provisions as they stand in the Act. For example, the Act requires that the award of the Collector must be made within a specified time limit. Now, suppose a State Government amended this provision so that there was no such time limit and the Collector could take as long as he liked, such an amendment would be ineffective because it would be opposed to and defeat the object that the Central Government had in mind viz. to ensure that each stage of the acquisition proceedings is completed within a reasonable time-frame. Therefore, the Central provision would continue to be operative. (Article 254(1) of the Constitution).

Under certain circumstances an amendment which is inconsistent with the provisions of the Central Act may still be a valid one (Article 254 (2) of the Constitution). However, the Central Government has the power to modify such an amendment or to declare it as invalid (provision to Article 254 (2) of the Constitution).

Though the procedure for acquiring property in each stage is broadly that prescribed by the Act, there are regional variations with regard to matters such as: the authority who has the power to set in motion the acquisition proceedings, the manner in which notices must be publicised, persons on whom notices must be served etc.

3.2. The Land Acquisition (Amendment) Act, 1984

After amendment of 1967, the Act was drastically amended in 1984 by the Central Government with the objective of minimizing the undue delays that characterize acquisition proceedings and to provide for payment of compensation on a realistic scale. The Amendment Act of 1984 has resulted in:

- The setting down of a time limit for the completion of all formalities between the issue of the preliminary notices u/s 4(1) and the issues the declaration of acquisition u/s 6(1). First proviso to S. 6(1).
- The setting down of a time limit within which the Collector must make hi; award. S. 11-A.
- Payment of 12 p.a. interest for the period commencing from the date(of the notice u/s 4(1) and ending with the date of the Collector's award S 23(1-A).
- Payment of solatium (i.e. compensation for loss, suffering or injuret feelings) at an increased rate of 30 of the market value of the acquire! land, S. 23(2). Prior to this amendment solatium was payable at the rat(of 15 of the market value awarded
- The provision of an opportunity to those dissatisfied with the Collector' award to apply to him for a redetermination of the compensation payabli to them on the basis of an order for higher compensation obtained by an one of them from the Reference Court S. 28-A.

However, this Amendment Act has created far more disadvantage for the people; it has conferred greater discretionary powers on the Government for acquiring land under S.17.

3.3. Proposed Amendments to the Act

The Land Acquisition Act was sought to be amended in the year 1999. The bill was scheduled to be introduced in Lok Sabha in 1999 itself. However, due to severe opposition the bill could not see the light of the day. Later on in 2007, another attempt was made to amend the said Act.

A new amendment bill was drafted by the Rural Development Ministry in the year 2007. The Land Acquisition (Amendment) Bill, 2007, was introduced in the Lok Sabha and was later on referred to the Parliamentary Standing Committee on Rural Development, headed by Lok Sabha Member Of Parliament Mr. Kalyan Singh.The Standing Committee reviewed the bill as well as invited suggestions on the proposed amendments in the land acquisition bill.

The main feature of the bill is that it seeks to broaden the definition of 'public purpose' to balance the concerns of land-losers with what "is useful for the general public." In the proposed Land Acquisition Amendment Bill 2007, "public purpose" has been classified into three categories:

- Strategic purposes, relating to the defence forces or work "vital to the state"
- Public infrastructure: Electricity, communication, water supply, mining,"public facilities"
- Projects "useful for the general public".

While the draft of the Bill does away with the earlier clause that put restrictions on the government from acquiring land for companies, it has introduced a new element in the definition of "public purpose" to cover cases of "persons" that will include "any company or association or body of individuals whether incorporated or not where land is required for purposes useful for the general public." The Rural Development Ministry has suggested that this be restricted to those cases where at least 90% of the land has already been purchased.

On the issue of compensation, the draft Bill says that the rate should not be less than the price fixed by the state government or average of higher prices paid in 50% of land sale cases during the previous three years, whichever is higher. The draft also provides that conversion of land to intended category of use should be factored in while fixing the prices. The Land Acquisition (Amendment) Bill, 2007 provides for a fair compensation at a market value as well as the alternative mechanisms for disposal of land compensation disputes in a time-bound manner.

This bill has also attracted a lot of opposition. Those who are against the bill say that though the bill seeks to omit compulsory land acquisition for projects such as those of Special Economic Zones (SEZs), and enhance compensation for the land,

the bill would make it difficult for those who acquire land for a particular purpose and use it for something else making huge commercial gains in the bargain. The outcome of the proposed bill is yet to be seen.

4. The Urban Land (Ceiling and Regulation) Act, 1976

The Urban Land (Ceiling and Regulation) Act was enacted on February 17, 1976 [known as **The Urban Land (Ceiling and Regulation) Act, 1976**]. Initially States of Andhra Pradesh, Haryana, Gujarat, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal adopted the Act. Thereafter, it was adopted by six more states namely Assam, Bihar, Madhya Pradesh, Manipur, Meghalaya and Rajasthan.

However, after review of the matter in totality, the Urban Land (Ceiling & Regulation) Act, 1976 was repealed through an Ordinance on 11.01.99 which was followed by **Urban Land (Ceiling & Regulation) Repeal Act, 1999** in replacement of the Ordinance. The Urban Land (Ceiling & Regulation) Repeal Act, 1999 was notified in the Gazette on 22.3.1999. The Repeal Act is in force in the States of Haryana, Punjab, Uttar Pradesh, Gujarat, Karnataka, Madhya Pradesh, Rajasthan, Orissa and all the Union Territories. The State Government of Andhra Pradesh, Assam, Bihar, Maharashtra and West Bengal have not adopted the Urban Land (Ceiling and Repeal) Repeal Act, 1999 so far. The 1999 Act took effect prospectively. Therefore, pending litigations under the old Act were settled as per the provisions of that Act only.

The 1976 Act was criticized for failing to provide a mechanism to force the entry of vacant urban land into the market. This had resulted extremely low supply of urban land for housing and developmental needs being choked, sending land prices skyrocketing, particularly in metropolitan cities. The Act also vested too many discretionary powers in the State Governments for granting exemptions, which inevitably led to corruption in the exercise of these powers. Further, the government had the power to acquire the entire ceiling-surplus vacant land at a nominal price, which often led to lengthy litigation disputes.

5. Draft National Development, Displacement and Rehabilitation Policy, 2006

Displacement due to 'Development' in India is not new, though resettlement and rehabilitation as a policy measure certainly is. The colonial period has produced a vast segment of displaced people. The forest resources, river systems and mineral base that attract the 'developmental projects' have displaced a large segment of people in the Indian society. In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by various small nationalities, otherwise called tribals. These segments, with the enactment of land settlement laws, forest laws and commercialization of forest products and minerals, have undergone a metamorphosis, where legally the access to the various natural resources are denied and these segments are treated as hostages within their environment. Another productive segment was also a part of displacement due to the process of de-industrialization and forced commercialization of agriculture.[3] Any resistance to the displacement was treated as a 'law and order' problem, so no question of Rehabilitation and Resettlement policy. Land was acquired by the draconian provisions of Land Acquisition Act 1894 to be a weapon in hand of independent Indian state for acquiring land from its citizens. The situation just after independence was not much different. It was only during mid eighties that the policies for rehabilitation were drafted for the first time.

In 2006, a draft policy for National Development, Displacement and Rehabilitation was prepared with the following objectives:

1. To minimize development induced displacement of people by promoting non-displacing or least displacing alternatives for meeting development objectives.

2. To minimize the direct and indirect adverse social impacts of land use changes due to development and commercial projects, activities or policy changes (on land, shelter, livelihood, access).

3. In those rare cases where non-displacing alternatives are not available, to shift from the earlier practice of forced displacement to displacement after prior informed consent.

4. Where displacement is inevitable, to ensure a fair and humane compensation package and process, and timely implementation of rehabilitation.

5. To ensure full transparency and justice in the processes of displacement and land acquisition.

[3] Bharati and Rao, 1999.

6. To ensure that all those who are displaced are brought above the poverty line and made significantly better off than they were prior to displacement, not just in economic terms, but also in terms of human development and security, in a reasonable time frame, and in accordance with their aspirations.

7. To ensure that benefits to the displaced people are not less, as a ratio to the costs being paid by them, than those that accrue to the people benefiting from that specific project or from the developmental process in general.

8. To integrate rehabilitation concerns into the development planning and implementation process.

9. To ensure that special care is taken for protecting the rights of, and ensuring affirmative state action for, the weaker segments of society, especially members of scheduled castes and scheduled tribes, and to create legal obligations on the state to ensure that they are treated with special concern and sensitivity.

The draft policy is yet to be notified.

6. National Rehabilitation and Resettlement Policy, 2007

The National Rehabilitation and Resettlement Policy of 2007 was notified in the Gazette on October 31, 2007. It replaced the National Policy on Rehabilitation and Resettlement, 2003.

The policy aimed at striking a balance between the need for land for developmental activities and, at the same time, protecting the interests of the land owners, and others, such as the tenants, the landless, the agricultural and non-agricultural labourers, artisans, and others whose livelihood depends on the land involved.

The benefits of the policy were aimed to be available to all affected persons and families whose land, property or livelihood is adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason, such as natural calamities. The benefits are available to all affected persons and families whose land, property or livelihood is adversely affected by land acquisition or by involuntary displacement of a permanent nature due to any other reason, such as natural calamities.

The benefits under the new policy to the affected families include; land-for-land, preference for employment in the project to at least one person from each nuclear family, subject to the availability of vacancies and suitability of the affected person; training and capacity building for taking up suitable jobs and for self-employment; scholarships for education of the eligible persons from the affected families; preference to groups of cooperatives of the affected persons in the allotment of contracts and other economic opportunities in or around the project site; wage employment to the willing affected persons in the construction work in the project; housing benefits including houses to the landless affected families in both rural and urban areas; and other benefits.

Adequate provisions have also been made for financial support to the affected families for construction of cattle sheds, shops, and working sheds; transportation costs, temporary and transitional accommodation, and comprehensive infrastructural facilities and amenities in the resettlement area including education, health care, drinking water, roads, electricity, sanitation, religious activities, cattle grazing, and other community resources.

A special provision has been made for providing lifetime monthly pension to the vulnerable persons, such as the disabled, destitute, orphans, widows, unmarried girls, abandoned women, or persons above 50 years of age.

Special provision for the Scheduled Tribes (ST) and Scheduled Castes (SC) include preference in land-for-land for STs followed by SCs; a Tribal

Development Plan which will also include a programme for development for alternate fuel which will also include a programme for development for alternate fuel and non-timber forest produce resources, consultations with the Gram Sabhas and the Tribal Advisory Councils, protection of fishing rights, land free-of-cost for community and religious gatherings, and continuation of reservation benefits in resettlement areas, among others.

A strong grievance redressal mechanism has been prescribed, which includes standing rehabilitation and resettlement (R and R) Committees at the district level, R and R Committees at the project level, and an Ombudsman duly empowered in this regard. The R and R Committees shall have representatives from the affected families including women, voluntary organisations, Panchayats, local elected representatives and others. Provision has also been made for post-implementation social audits of the rehabilitation and resettlement schemes and plans. For effective monitoring of the progress of implementation of R and R plans, provisions have been made for a National Monitoring Committee, a National Monitoring Cell, mandatory information sharing by the States and Union Territories (UT) with the National Monitoring Cell, and Oversight Committees in the Ministries and Departments concerned for each major project.

Under the Policy, no project involving displacement of families beyond defined thresholds can be undertaken without a detailed Social Impact Assessment (SIA), which among other things, shall also take into account the impact that the project will have on public and community properties, assets and infrastructure; and the concerned Government shall have to specify that the ameliorative measures for addressing the said impact, may not be less than what is provided under any scheme or programme of the Central or State Government in operation in the area. The SIA report shall be examined by an independent multi-disciplinary expert group, which will also include social science and rehabilitation experts. Following the conditions of the SIA clearance shall be mandatory for all projects displacing people beyond the defined thresholds.

However, some experts who have reviewed the policy state that it fails to address the key issues relating to the booming of conflicts, i.e. forcible acquisition of lands. It is said that the 2007 Policy was supposed to be an improvement of the Draft National Rehabilitation Policy of 2006, which was drafted to address the admitted failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. However, the Policy fails to effectively overcome the shortcoming of the 2004 Policy.

7. Access/Tenure Regimes governing Forest Areas, Protected Areas and Sanctuaries

In many parts of the developing world, the rural poor increasingly depend on shared resources for their livelihoods. In such a scenario, there is an increase tenure systems and access to land and resources via common property regimes. The common property regimes are the most desirable of the land tenure systems so as to govern the Forest Areas, Protected Areas and Sanctuaries.

The common property regimes are defined primarily in terms of collective rights. They may also represent a range of different rights for both individuals and groups such as access, withdrawal, management, exclusion, alienation[4]. These multiple rights to the same resource may also be exercised differently at different times.

A Common-pool resources (CPRs) refer to natural resources where one person's use subtracts from another's use and where it is often necessary, but difficult and costly, to exclude other users outside the group from using the resource. CPRs refer to the attributes or characteristics of a resource. Common property is a formal or informal property regime that allocates a bundle of rights to a group. Such rights may include ownership, management, use, exclusion, access of a shared resource. The term common property regime represents a set of institutions, regulations and management practices subject to collective decision-making. In this sense, the term refers to the kind of tenure institutions that exist, not the resources themselves. Common property regimes also contribute to more environmentally-sustainable use of natural resources. Environmental degradation, such as deforestation, may take place where common pool resources are not adequately managed. Collective action, and supportive legal or policy frameworks, may contribute to more sustainable use of the resources from the commons.

Customary law and practice forms the basis of group tenure and collective resource management in many parts of the world. Customary systems generally have a collective element to resource management, e.g., forms of group decision-making that determine access and use, or joint use and management of resources in common areas. These are the most widely applicable tenure regimes in the forest areas, protected areas and the Sanctuaries.

[4] Schlager and Ostrom, 1992