

## PROPERTY RIGHTS AND DEVELOPMENT

(Privatisation Process of Rural Common Property Resources in Dry Regions of India)<sup>1</sup>

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### 1. Introduction

This paper deals with the changes associated with the process of rural development in the dry tropical regions of India, which have adversely affected the communities' control and management of their common property resources (CPRs) or rather customary arrangements relating to community resources i.e. Common Property Regimes (Bromley and Chapagain 1984). The collective rights and obligations are central to the management and sustainable use of local natural resources represented by CPRs (Schlager and Ostrom 1991). In the dry regions of India (and most other parts of dry tropics as well), such rights and obligations in the past had been in the form of conventions, as well as customary rules and practices, with very little formal codification in legal documents. This is so because the CPRs represent a part of the institutional adaptations, evolved and inherited by village communities, against the strains and stresses generated by agro-climatic conditions (Berkes 1989) in the dry tropics. Due to the absence of formal, legal codification and de-jure rather than de-facto nature of community rights vis a vis CPRs, it is much easier for the modern state to disregard them while extending its authority to the areas and spheres which traditionally formed the mandate of local communities. This seems to have happened in the case of CPRs and the community rights, in the dry region in India. This paper illustrates the situation by commenting on the state interventions which have disrupted the community management of CPRs and have made them open access resources with all the resource degradation and associated consequences.

The process had the following key elements. The introduction of land reforms in early 1950s that recognised the need for village commons and gave them legal status, but also created possibilities for their privatisation through the provision relating to land distribution. Replacement of traditional community arrangements by formal institutions (i.e. village Panchayats) in the 1950s as custodians of CPRs was another step. This has

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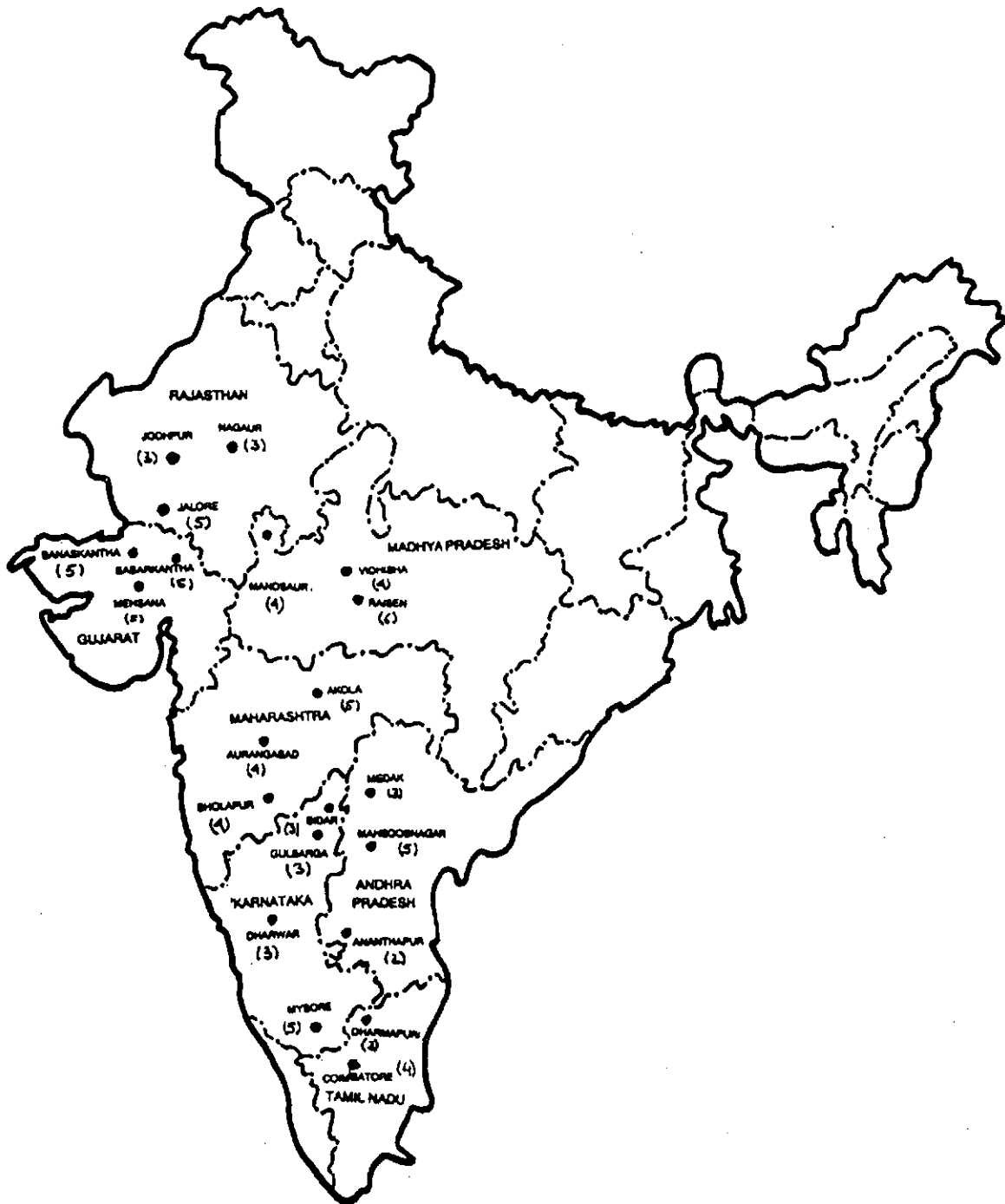


Figure 1. Districts and Number of Villages Covered by the Study on Common Property Resources in Dry Regions of India

disrupted the traditional management system without providing an effective substitute. Increased social and economic differentiation in the rural community resulting from the general pattern of rural development adversely affected the extent of group action at village level. CPRs became a major victim of this change.

In the following discussion, in section 2 we list the common property resources in the villages of dry regions in India and describe the communities' customary rules and rights (de facto rights), as reflected by the past management practices and associated processes. This is followed (in section 3) by a discussion of public interventions as a part of development and welfare programmes of the government since 1950s, which directly or indirectly influenced the CPRs, particularly the community's management of these resources and its consequences.

## 2. CPRs in the Dry Regions of India

By putting together, the relevant elements from various definitions of the term, Common Property Resources (CPRs) could be broadly described as those resources in which a group of people have a co-equal use right, especially rights that exclude use of those resources by other people. Corresponding to the rights there are obligations, which are enforced by the collective authority of the group exercised through the whole group or its agency (McKean 1992, Ostrom 1988, Runge 1986, Bromley and Cernea 1989, Magrath 1986, McCay and Acheson 1987).

In the dry tropical regions of India CPRs include community pastures, community forests, village wastelands, watershed drainages, river/rivulet beds and banks, village ponds and their catchment, common dumping and threshing grounds etc. Despite inter village differences in their area and importance to the village economy, the first five (area wise) are most important parts of the common lands. To this, we may add that even the private croplands owned by individual households are used as common property resources during the non-crop season. We call them seasonal CPRs. Within the aforementioned CPRs, some may have legal ownership of other agencies. For example, village wastelands legally belong to the revenue department of the government. In some cases water ponds and its catchment may have private ownership. Similarly, some forest pieces may belong to the temple authority in the village. However, as per the customary practices, they are used and managed as other CPRs. Thus traditionally, it is the gradually evolved customary practices (rules) and conventions on the one hand and the community's status as a de-facto decision maker on the issues relating to protection, development and usage regulation of these resources on the other, which represent the local community's rights vis a vis CPRs (Schlager and Ostrom 1991, McCay and Acheson 1987, Berkes 1989). Table 1, illustrates the same with the help of village level information collected from over 80 villages in 20 districts of 6 states belonging to dry tropical parts of India. The methodological details and other information on status and productivity of CPRs are presented elsewhere. (Jodha 1985a, b, 1986, 1989, 1990a, 1990b, 1992).

A few of the interesting examples of customary rules/practices may be mentioned. In Telangana area of Andhra Pradesh there used to be an "Axe rule", according which wood collected from the CPRs was judged by axe. If it was found wet (not dry, deadwood) the offender was punished. Some villages of Rajasthan, wood fuel gatherer was punished if his mundana (collected stock) contained any root of tree or shrub. Similarly, in villages of Rajasthan, Gujarat and Madhya Pradesh, the drought - migrates had to follow specific conditions before entering CPR lands of other villages.

Depending on the nature of violation and attitude of the violators of the community rules and decisions, had to pay penalty, face social boycott or face costly litigation. The litigation involved repeated hearings within the village. The concerned party had to feed the whole group during such occasions. In some cases physical assault on the offender also took place. More than fifty cases were recorded indicating different aspects of access control. To meet any specific problems curtailment in CPR area or cutting of bio-mass sources (e.g. trees) was allowed after collective decision of the villagers through village elders.

- (b) Regarding the usage regulation, enforcement mechanisms were similar to those described above for protection and access control of CPRs. A few of the actual practices included the following. For preventing over-exploitation of grazing of CPRs, rotational grazing was enforced through physical location of watering points, seasonal closure of specific grazing areas; some types of animals e.g. sheep-goat were periodically banned from some areas, especially catchment of village ponds (to prevent rapid silting of ponds); periodic ban on dung collection from CPRs to keep up the soil fertility was enforced. Watchmen played more important role in enforcing usage regulation. Nearly ninety cases of enforcement through punishment to violators were recorded during the filed studies. Usage regulation also involved decision on the dates when private lands after the crops were declared open to be used as seasonal CPRs. Complementarity of community rights and private rights in resources use was reflected by this practice (Jodha 1993).
- (c) Development of CPRs included physical measures such as fencing, planting, trenching in forest and pasture area, desilting of ponds etc. This required resources. Village community mobilised them through obligatory contributions by CPRs users in cash and kind, voluntary labour input, collections from penalties and revenue generation from auction of CPR products such as timber, gum from the forest; dung collection rights from pond area etc. The investment needs of CPRs and deployment of collected resources were also decided by the community, largely on the basis of observed and felt needs, such as trenching in a piece of pasture land to raise productivity, desilting of pond or other collective activities such as the maintenance of village bull. During the field studies over sixty cases of such activities were recorded.

#### 4. Development Interventions and Customary Rights of Communities

The above discussion (and Table 1) gives some idea of customary rules and rights of the community to undertake multiple activities involving CPRs. How these rights to protect and manage CPRs have been affected by recent development process is discussed below (Table 2).

- (a) General development patterns in rural areas have released several new opportunities (and constraints), which tend to change the people's approach and attitude to each other as well as to their common natural resources. In the dry tropical regional of India, historically, environmental stresses created circumstance which offered neither enough incentives (e.g. in terms of high land prices, alternative private uses of land etc) nor strong compulsions (due to low population and physical and market wise isolation) which could induce privatisation of CPRs (Jodha 1993). The CPRs became part of the collective strategies to manage natural resources and share risks. The communities evolved norms and practices to operationalise such strategies, which involved a variety of group actions for protection, upkeep and regulated use of CPRs.

However, as elaborated elsewhere (Jodha 1990c, 1993), of late the above circumstances have rapidly changed. The rapid population growth, the increased physical and market integration of dry regions with the mainstream economy, and the increased extent of commercialisation, the introduction of irrigation, new crop technologies, and tractorisation etc. are the key elements of the process of change (Jodha 1985a, b, 1990b). These changes have marginalised the role of group action and customary practices that guided the community's actions against bio-physical stresses in the past. CPRs have been a key victim of this change.

Furthermore, increased economic differentiation of the rural communities as a product of both the above developments as well as political processes, has radically changed the people's attitudes towards group actions and collective strategies. This has further reduced the resilience of customary rules and practices against other circumstances generated by the rural development processes. This general process of change has been greatly accentuated by some other development interventions which are more directly focussed on CPRs and customary rights of communities. These interventions are (a) introduction of land reforms and (b) introduction of panchayat systems for village administration.

**Table 2: Development interventions affecting community's customary rights and their consequences for CPRs<sup>a)</sup>**

(A) Interventions involving CPRs	(B) Customary rules/practices affected by (A)	(C) Consequences of (A, B) for CPRs
<p>1. <b>Land reforms in the 1950s</b> (Relevant provision):</p> <ul style="list-style-type: none"> <li>- Undeclared policy of privatisation of CPRs</li> <li>- Distribution of CPRs lands for private cultivation</li> <li>- Government acquiring CPR land for public purposes</li> <li>- Regularisation of illegal encroachments</li> </ul>	<ul style="list-style-type: none"> <li>- Erosion of social sanctions and community authority to protect CPR area regulate their use and develop them</li> <li>- Legal status to CPRs without effective enforcement mechanism due to de-recognition of customary communal arrangement</li> </ul>	<ul style="list-style-type: none"> <li>- Decline of CPR area, their overcrowding, over exploitation and physical degradation</li> <li>- Village Panchayats failed to ensure people's participation for CPR management</li> <li>- CPRs became open access resources</li> </ul>
<p>2. <b>Introduction of Panchayat system and other measures for CPRs</b></p> <ul style="list-style-type: none"> <li>- Provision of village panchayats (elected councils) as custodians of CPRs</li> <li>- Government grants/subsidy to manage/develop community lands</li> <li>- External, formal, administrative/legal measures extended to village affairs</li> </ul>	<ul style="list-style-type: none"> <li>- As a village level replica of the "government" the Panchayats replaced the traditional arrangements (e.g. village elders' group) for CPRs</li> <li>- Participatory management, local resource mobilisation, group action for CPRs ceased</li> <li>- Authority and knowledge of local community ignored</li> <li>- Panchayats failed to implement CPR-related legal provisions</li> </ul>	<ul style="list-style-type: none"> <li>- Little village level initiatives for CPRs</li> <li>- Default on the part of Panchayats</li> <li>- CPRs became open access resources with expected degradation/depletion</li> <li>- CPRs became legal entities instead of a collective asset with no effective mechanisms to operationalise legal provisions</li> </ul>
<p>3. <b>Formal production/resource upgrading programmes:</b></p> <ul style="list-style-type: none"> <li>- Research/technology application on pilot scale</li> <li>- Pasture/forestry/watershed development projects</li> <li>- All conceived from outside, sustained by government subsidy, characterised by "technique dominance"</li> </ul>	<ul style="list-style-type: none"> <li>- Disregard of : local know how and institutional factors, user needs and perceptions</li> <li>- Marginalisation of participatory approach, local resource mobilisation, and collective action.</li> <li>- Alienation of community from its resources</li> </ul>	<ul style="list-style-type: none"> <li>- Area decline due to acquisition of CPR lands for pilot projects</li> <li>- Reduced access to CPR users</li> <li>- CPR development as part of development projects decided by state agencies</li> </ul>
<p>4. <b>Other developments with negative side effects</b></p> <ul style="list-style-type: none"> <li>- Tractorisation with state subsidy</li> <li>- New agricultural technologies with anti-biomass bias</li> <li>- Market integration/commercialisation promoting individualistic approach and reducing group action, collective approaches</li> </ul>	<ul style="list-style-type: none"> <li>- Weakened appeal of social sanctions/norms favouring group action/collective resource management as: tractorisation made it easy to cultivate vast CPR areas; anti-biomass approach of technologies reduced needs for CPRs; market forces gave low priority to collective concern and group action</li> </ul>	<ul style="list-style-type: none"> <li>- Role and importance of CPRs as source of biomass and a form of collective strategies to manage fragile resources got marginalised</li> <li>- Tendency to acquire CPRs as private property rather than use them collectively</li> </ul>

a) Source: Table based on the author's field studies (Jodha 1985a, b, 1986, 1989, 1990b)

(a) Impact of Land Reforms

The introduction of land reforms in the early 1950s was a major development cum welfare intervention in different parts of the country. Land reforms (despite some inter-state variations) focussed on abolition of intermediaries (between state and the farmer) such as absentee landlords/feudal landlord; tenurial security to peasants; ceiling on land holding size; and land to the landless. Without belittling its their positive impacts, the purpose of this discussion is to high light their negative side effects on CPRs.

Having failed to acquire surplus land though effective implementation of land ceiling laws (Ladejinsky 1972), the state's land distribution to the landless took place mainly through privatisation of CPR area. Both through legalisation of illegal encroachments into CPR lands and formal distribution of private land rights, the state opened the attractive opportunities for privatisation of CPRs. During the early 1950s to the early 1980s, 31 to 55 percent of CPR area was privatised in different villages studied (Jodha 1992). The conventional provisions regarding protection of CPR area and community's customary rights in this regard were simply by passed in the process.

The key consequence of undeclared policy of privatisation of CPRs, not only reduced the area of CPRs leading to increased pressure on CPRs and their over exploitation and degradation, but it encouraged the transfer of these largely fragile and sub-marginal lands to crop farming, for which they were unsuited (Iyenger 1988, Chen 1988, Blaikie et. al. 1985). Very low crop yields (at the cost of potential natural biomass) was the final consequence. Furthermore, the intended objective of helping the landless poor was hardly achieved, as the bulk of the privatised CPRs went to the households who already had relatively more land (Jodha 1986, 1990b). Thus what the land less people collectively lost through privatisation of CPRs (on which they depend most) was not compensated by their total gains as land owners of ex-CPRs lands.

It may be noted that the land reforms programme recognised the importance of village commons and gave them legal status. They also provided for rules and laws to govern them, to be implemented by village Panchayats and the land revenue authorities of the state at the village/district level. However, at the operational level, they could not enforce any mechanisms to replace the custormay community arrangements to take care of CPRs. Moreover, in practice the policy of land distribution got priority over the legal concerns about CPRs.

In fact, introduction of new form of village administration through village Panchayats (to be discussed shortly) further led to the marginalisation of the informal authority of the community, which maintained CPRs in the past. The group action and the system of collective rights/obligations disappeared in the process.

(b) Panchayats : New Formal Agency for Village Administration

As already indicated, the second major intervention that affected the community's customary rules, rights, and practices vis a vis CPRs was introduction of Panchayat system or elected village councils as custodians of village affairs including the management of CPRs. They replaced the traditional informal leadership of village elders (and feudal rulers in some villages) (Jodha 1985a). However, this step towards formal democratisation of village administration could not acquire legitimacy, genuine approval and effective involvement of the people, which were the strong points of earlier informal agencies such as village elders' councils, caste panchayats etc. This was because the formally elected councils were in a way treated by the villagers more as state agencies, created to implement programmes conceived by the state, and supported by state grants. In most cases these councils covered more than one village and this led to the neglect of the concerns of the smaller villages. The new arrangements gave space to government bureaucracy to interfere in the matters relating to local communities. In due course, Panchayats acquired political culture with associated features like factionalism, patronage, wooing the voters etc. Finally, in most areas election to these bodies were postponed repeated which further disillusioned the people about these Institutions. The impact of these development, in addition to marginalisation of customary rights and practices of the village communities, included the following.

Being the formal bodies, Panchayats did not (or could not) favour, all the informal arrangements, group action, collective concern etc. which characterised the traditional systems. Governed by calculations such as pleasing the voters, they more easily approved any request for privatisation of CPRs and could not enforce any regulatory measure on CPR use. In practice, all these changes made the CPRs open access resources leading to over exploitation and degradation. The people's participation, obligatory and voluntary contributions for CPR development and maintenance were replaced by periodical grants or subsidies from the government, which again were rarely invested in CPRs (Jodha 1985a, 1990a, 1990c, 1992).

Thus the customary rights of the communities in a way got legal existence through Panchayat laws and land reforms laws. But at the operational level in the absence of the genuinely participatory arrangements, the legal provisions did not mean genuine rights to the people.

## **5. Impacts of Change**

Though already alluded to in indifferent contexts, we may summarise the impacts of replacement of customary management systems by formal systems for CPRs. As indicated by Table 3, the situation under two arrangements could be contrasted with reference to the specific aspects of CPR management and its impacts.



**Table 3: Replacement of Customary Management by Formal System and Its Impacts on CPRs<sup>a)</sup>**

Variables	Situation Under	
	Customary Management (with community involvement)	Formal Management (with involvement of state through village panchayats)
<b>1. Control of access and protection of CPR area</b>	Effective prevention of encroachment and, curtailment in area	Deliberate encouragement to privatisation, rapid area decline
<b>2. Usage regulation</b>	Collective rights/obligation; regulations enforced through different devices/social sanction/physical measures	CPRs as open access resource, little enforcement of regulatory provisions
<b>3. Development, productivity promotion</b>	Group action, obligatory/voluntary contributions for CPR maintenance/investment	Periodic activities depending on government grants, little people's participation
<b>4. Miscellaneous items:</b>		
a. Group action/collective sharing	Functional and high extent of group activities, participatory	Periodical, formal, state-patronised activity, involving local labour
b. Autonomy/flexibility	High degree of flexibility, location and ethnic group-specificity	Generalised, uniform patterns imposed from above, insensitive to local conditions
c. Local needs and perceptions	People's needs/means key guiding factors	Perception of outsiders (e.g. government agencies) a key element
d. Opportunities for grabbing CPRs	Very little encroachment	Privatisation of CPR lands encouraged
e. "Free rider" problem	Non-existent	New type of non-contributing beneficiaries on the increase <sup>b)</sup>
f. Practice of "exclusion"	Only outside villagers had no access	On political consideration even local villagers can be prevented <sup>b)</sup>
g. CPR productivity regeneration, and biodiversity	Sufficient regrowth, biodiversity as permitted by the nature	Reduced regeneration and biodiversity due to depletion and use of narrowly focussed technologies
i. Resource mobilisation/self help	Participatory activities a key factor in sustainability of CPRs	Increased external dependence, cost free use/misuse

a) Source: Table based on the author's field studies (Jodha, 1985a, b, 1986, 1989, 1990b)

b) See text for explanation.

Accordingly, under the customary arrangements' the area of CPRs and their bio-mass producing sources were better protected, while the new arrangements largely by default encouraged their curtailment. Regarding usage regulation, the collective rights and obligation as well as mechanisms to enforce the same under customary arrangements were eliminated by new system. The latter (despite provision for regulated use) has virtually converted CPRs into open access resources leading to their over extraction and depletion. The development and productivity promotion through people's group actions, obligatory and voluntary resource contributions, for CPRs under the traditional systems, is a thing of the past. Under the current formal arrangements CPR development is a rather casual activity involving government grants but little people's participation in terms of community control (instead of community's wage labour). People rely more on own resources rather than collective arrangement for withstanding problems caused by drought and seasonality (Jodha 1990c, 1993). A few NGO-supported initiatives in the recent years are an exception (Oza 1989, Shah 1987).

The other feature of the two arrangements can be summarised as follows. Group action and local resource mobilisation of the past has been replaced by state-patronised activities with little people's participation; autonomy, flexibility and location specificity of arrangements in the past, is now replaced by more generalised, formal set of provisions imposed from the above; local needs and perceptions so important in the past are replaced by the perception of outsiders especially the law makers and government's field agencies; absence of opportunities for grabbing CPRs in the past is replaced by new attractive opportunities to privatise them; scope for maintaining bio-diversity, productivity and regeneration of CPRs under the customary management is hardly possible under new arrangements, which directly or indirectly encourage depletion of CPRs and introduction of only limited species in pilot project areas as suggested by government R & D agencies (Gupta 1987, Chambers et. al. 1989).

On conceptual level the well know problems of the common pool goods or CPRs have acquired new dimensions. Under the customary arrangements, provision of various collective rights/obligations and preventive measures helped to avoid the problem of "free rider", and facilitated "exclusion" of non members. Under the new arrangement, various forms of patronage (involving use of CPRs or CPR-related benefits in terms of government subsidy and relief etc) are purposely extended to non member/non-users of CPRs including outsiders. This has created battalions of 'free riders' of different types. Similarly, on factional/political grounds "exclusion" is implemented even for the genuine member of the same community (Jodha 1989).

## **6. Resilience of the Indigenous Systems**

As stated in the beginning, the modern state (especially in the developing countries) has strong tendencies to usurp peoples' mandates and initiatives in the name of development and betterment of people's life. Its

job becomes all the more easy, when people's mandate is in the form of customary provisions with little formal codification in the country's legal system. Rapid erosion of community's informal authority vis a vis CPRs in the dry region of India illustrates this. However, the general picture presented above have certain exceptions.

Detailed investigations during the field studies of CPRs (Jodha 1986, 1989, 1990a), it was found that despite common legal, administrative, and fiscal interventions, the actual current status of both CPRs and people's customary rights may vary between different villages even within the same district. Despite the provision of formal and legal arrangements, in some villages customary rules and management systems still prevail. Depending on the level of community consciousness and group solidarity, the villagers are able to maintain the past arrangements (Brara 1987, Kaul 1987, Shah 1987, Iyengar 1988, Jodha 1989, 1990a). This resilience could be explained in terms of several ecological, ethnic, and economic factors. For instance, ecologically marginal and isolated villages, with homogenous ethnic groups with very little external interventions by the government or market are still able of maintain customary rules and practices. Viewed, differently, such villages are still not strongly touched by the present pattern of development. Their future will depend on the pace and pattern of development and rural transformation.

On the other hand, there is yet another pattern that is slowly emerging. In here, either by fully making use of formal arrangements (e.g. panchayat power, state subsidies, new technologies etc) or by ignoring them, some local NGO-supported initiatives are rehabilitating both the CPRs as well as the control of the user groups on the same. The recorded cases (Oza 1989, Chambers et. al. 1989, Shah 1987, Jodha 1989) were too small, but they do represent a new possibility of the local people acquiring control over local resources and their management. The state's approval of such NGO supported initiatives, indicates the possibility of such change that is more conducive to stability and productivity of natural resource of the village communities (Shah 1987, Oza 1989, Brara 1987, Arnold and Stewart 1990, Chambers et. al. 1989, Agarwal and Narain 1990, Mishra and Sarin 1987).

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