

# Vocabulary of Commons



## For a common<sup>s</sup> cause

### **Initiative on Commons**

The Initiative on Commons, currently anchored by FES, aims to bring together practitioners, policy makers and academia, working on various domains of commons – physical commons such as forests, grazing resources, protected areas, water, fisheries, coasts, lagoons, irrigation systems as well as 'new commons' such as knowledge, digital and cultural commons, genetic resources, patents, climate, etc. It is an evolving platform to advance understanding, research and advocacy on the commons. The Initiative ultimately aims to influence public perception, policy environment and programmatic action in favour of the commons.

# Vocabulary of commons



Foundation for Ecological Security  
PB No. 29, Anand, Gujarat, INDIA-388001  
p: +91 (2692) 261239; f: +91 (2692) 262087  
e: [ed@fes.org.in](mailto:ed@fes.org.in) w: [fes.org.in](http://fes.org.in)

### **Vocabulary of commons**

Vocabulary of commons is a socio-linguistic enquiry into the legal and livelihood consequences the term 'commons'~a search for a vocabulary that reflects a commons approach to a life with dignity in harmony with Gaia and communitarian aspirations. It is to strengthen community articulation and make their voices heard in the ongoing efforts of dialogue between communities, academics, practitioners and decision makers. It was coordinated by OpenSpace (openSpace.org.in).

**First edition January 2011**

### **Illustrations**

K P Sasi. e: visualsearch1@gmail.com w: visualsearch.org  
CAPRI (CGIAR Systemwide Program on Collective Action and Property Rights). 2010.

**Cover design** Mumtaz Gonsalves, IMAGINE (Ideas & Execution)

**Printed at** WQ Judge Press, Bangalore, India. e: judgepress@gmail.com

**This book is not for sale.**

**Suggested contribution Rs 450; USD 45; Euro 35**

### **General licensing**

This book is licensed under the Creative Commons Attribution 3.0 license.



### **Disclaimer**

The views expressed in this document are solely that of the authors and do not necessarily reflect the views of FES.

### **Initiative on commons**

The Initiative on Commons, currently anchored by FES, aims to bring together practitioners, policy makers and academia, working on various domains of commons—physical commons such as forests, grazing resources, protected areas, water, fisheries, coasts, lagoons, irrigation systems as well as 'new commons' such as knowledge, digital and cultural commons, genetic resources, patents, climate, etc. It is an evolving platform to advance understanding, research and advocacy on the commons. The initiative ultimately aims to influence public perception, policy environment and programmatic action in favour of the commons.

### **Foundation for Ecological Security (FES)**

Registered under the Societies Registration Act XXI 1860, the Foundation for Ecological Security was set up in 2001 to reinforce the massive and critical task of ecological restoration in the country. The crux of our efforts lie in locating forests and other natural resources within the prevailing economic, social and ecological dynamics in rural landscapes and in intertwining principles of conservation and local self governance for the protection of the natural surroundings and improvement in the living conditions of the poor. By working on systemic issues that can bring about a multiplier change, we strive for a future where the local communities determine and move towards desirable land-use that is based on principles of conservation and social justice.

## Inside

Preface

Authorspeak

Glossary

### 1. Perspective

- 11 Towards a vocabulary of commons *Anita and Edwin* 1  
12 Primitive accumulation of capital and de-commoning  
*Ritajyothi Bandyopadhyay* 27

### 2. Natural commons

- 21 Commons to capital: With special reference to the  
Mundas of Jharkhand *S Bosu Mallick* 43  
22 Commons, communities and state appropriation  
*Ashok Chowdhury, Roma* 65  
23 Common resources, community management  
*Walter Fernandes, Gita Bharali and Melvil Pereira* 83  
24 Rural commons: A source of livelihood and sustainability  
*Prafulla Samantara* 107  
25 Water as commons *C R Neelakandan* 127  
26 Coastal commons *Gomathy Balasubramanian* 143

### 3. People and commons

- 31 Women and commons: Engaging with gender justice  
*Anungla Aier* 167  
32 Children and the right to commons *Enakshi Ganguly Thukral* 181  
33 Dalits and the commons *Yashoda* 199  
34 The transgender and commons *Anita and Edwin* 217  
35 Worker or fisher? *K P Sasi* 237

### 4. Urban commons

- 41 Streets as commons: What's happening to our streets?  
*Vinay Sreenivasa* 249  
42 Property in urban commons: Contested spaces and  
embedded claims *Bhuvanewari Raman* 267  
43 Commoning contests the 'Urban Commons': Some thoughts  
on the de-commoning of Bengaluru *Solomon Benjamin* 295  
44 Water for commons~disparity in Chennai *Geeta Lakshmi* 313

<b>5. Social commons</b>	
51 Resisting erosion: Dissent and the commons <i>Kinjal Sampat and Deepak Srinivasan</i>	331
52 Vocabulary of humanitarian commons <i>Mihir R Bhatt</i>	349
53 Social exclusion and the commons <i>Sukhadeo Thorat and Nidhi Sadana Sabharwal</i>	359
54 Public infrastructure: Building socially inclusive commons <i>Anita and Edwin</i>	387
55 Health, nutrition and the commons <i>Mira Shiva</i>	397
<b>6. Knowledge commons</b>	
61 The agro-biodiversity commons <i>Suman Sahai</i>	417
62 Knowledge and science as commons <i>Prabir Purkayastha</i>	445
63 The commons and IT: A paradigm shift in knowledge creation <i>Venkatesh Hariharan</i>	465
<b>7. The spiritual and sacred commons</b>	
71 The sacred commons: The use, misuse and abuse of religion and spirituality <i>Anita and Hrangthan Chhungi</i>	475
72 Cosmosity~Dalits and the spirituality of the commons <i>MC Raj</i>	493
<b>8. Summing up</b>	
81 Challenges of modernity and commons <i>Anita and Edwin</i>	515
82 Lets talk commons <i>Anita and Edwin</i>	535
<b>Contributors</b>	<b>539</b>

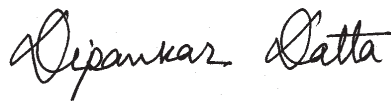
## Preface

There is now incontrovertible evidence from many studies that most people depend on the commons most of the time—and the smaller the per capita resource base, the greater this reliance. It is also seen that communities who live in marginal lands and whose livelihoods are highly dependent on natural resources are among the most vulnerable to climate change. Many indigenous and traditional communities, pushed to the least fertile and fragile lands as a consequence of historical, social, political and economic exclusion, are among those who are at a greater risk. *Concern Worldwide* works with such marginalised communities in different parts of the globe. For these communities, the commons are their lifeline—the bedrock of their survival and their only dependable security net.

For commons to be recognised and acknowledged as a legitimate space is the first step in legitimising the existence, survival and dignity of such communities. Only after acknowledgement can we move towards a better understanding systems as they exist, and strengthen the effort to restore, revive and rejuvenate the commons.

With the increasing rush towards privatisation and industrial development, their voices are being drowned out as a prelude to being pushed out and then erased. The lesson of globalisation is that there is no ‘one solution’ much less ‘one size fits all’. It is for this reason that *Concern Worldwide* believes that all voices must be heard and that the symphony of the commons should not be replaced by groupthink.

In partnering with the Foundation for Ecological Security in bring out this volume, we hope that these voices from the commons will be one of many steps to consolidate the uncommon wisdom of the commons. It can then be tested and socialised. It is our hope that this work is a stepping stone in that direction.



Dipankar Datta  
Country Director  
Concern Worldwide India



**CONCERN**  
worldwide

# Authorspeak

This book is the collaborative effort of many... a collective effort in the knowledge commons. When we set out to write the book, a process was designed that would help a collaborative creative effort. The authors met twice. In the first meeting, it was decided that the book would be co-authored, and not be a collection of papers with a couple of editors. The framework would be agreed upon collectively, and then each author would write chapters on the area of expertise. Some other authors were also identified, and the framework shared with them, requesting contributions. Some did, though it took considerable effort to look at our work through the commons lens. Then the authors met again, presented the chapters and got comments. Following this, the chapters were finalised with the discussions and comments incorporated. Not all who attended the authors' meeting could contribute chapters, either due to reasons of time or because the effort of looking at the work through the lens of the commons was simply too much. But all contributed to the process in various ways from helping to develop the framework to critiquing the chapters.

It is a practitioner perspective, of those who work with some of the most marginalised and excluded sections of society. As we moved further, we realised the truth of the saying 'commons need commons' and the need to thoroughly de-romanticise the commons while affirming that the commons are the source of life. It became obvious that the 'commons' could be as inaccessible as property. The discrimination and exclusion are too stark to wish away, and too blatant not to be visible but to the most blinkered. So we took a long hard look at the mechanisms of exclusion... the power which makes it possible—as Alvin Toffler put it in *Powershift*: the material, muscle and mind—which brought the state, culture and religion firmly in our sights. Since the entire superstructure of ideology determined this exclusion, we needed to look at the knowledge commons, including culture and religion, in its role of socio-economic control. The book therefore has a lot to do with social justice and exclusion, from the perspective of those who are excluded from the commons... for whom the commons were never their commons.

The non-physical and the new commons figured prominently in our discussions, since the concept of 'control over the commons' is fundamentally changed with development of new commons. However, there was a clear understanding of the role of power, and power relations, with respect to commons. Forcible



commoning—internal colonisation—is a potent and ever present threat, whether by ethnic swamping or by slow strangulation or through religion and patriotic nationalism. The objective of both sides—property and commons—is the maximum territory, and is akin to what Sun Tzu warns us of in his classic *The Art of War*. It was recognised that the institutions of property—of which the state, as the only instrument of legal violence, was key—was the greatest threat to the commons. Control of the state by corporations adds a disturbing new dimension to the threat. Addressing state and non-state power is an important factor in protecting the commons. Since the state has claimed the sole right to violence, neither it nor power can be ignored by any serious student or supporter of the commons. Though commons are the natural order and property an exception—even the law restricts copyright and patents to a finite time—the present institutions of the state are institutions to protect property. Therefore, it is not the ‘capture of the state’ or its present institutions that is important. These institutions can only protect property. To nurture the commons, a new kind of institution, social organisation, socialisation and reproduction of knowledge—a different way of life itself—is necessary. These are explored in different contexts, in different chapters throughout the book. Each chapter is self-contained. They are ordered so that similar topics are grouped together, but you can read them in any order, according to your interest. The glossary will guide you through the specific terms used. The list of authors is given at the end, as also their emails, if you would like to carry on this conversation to develop a vocabulary of the commons.

Come then, let us embark on our journey of discovery....

*Anungla Aier, Gomathy Balasubramanian, Ritajyoti Bandyopadhyay, Solomon Benjamin, Gita Bharali, Mihir R Bhatt, Anita Cheria, Hrangthan Chhungi, Ashok Chowdhury, Edwin, Walter Fernandes, Enakshi Ganguly Thukral, Venkatesh Hariharan, Geeta Lakshmi, Samar Bosu Mullick, C R Neelakandan, Roshni Nuggehalli, Melvil Pereira, Prabir Purkayasthsa, M C Raj, Bhuvanewari Raman, Kavita Ratna, Roma, Nidhi Sadana Sabharwal, Suman Sahai, Prafulla Samantara, Kinjal Sampat, K P Sasi, Mira Shiva, Deepak Srinivasan, Vinay Sreenivasa, Tom Thomas, Sukhadeo Thorat and Yashoda.*

Glossary	
Term	Explanation
ADB	Asian Development Bank.
Adivasi	Indigenous and tribal people. Literally 'first dweller'. Used as a term of political assertion since the government of India maintains that there are no indigenous people in India and that the Schedule Tribe list is only an administrative list from which communities can be taken off or added. This term is not used in the Northeast, where the terms 'indigenous and tribal people' or 'tribal' are preferred. In this book we have retained the preferences of the authors for each chapter—which leads to the terms being used interchangeably.
Anganwadi	Government terminology for day care centre for children. The centre is important since government schemes for children, especially health (immunisation) and nutrition are routed through these centres. It is a lifeline for those below poverty line, as most Dalit children are.
Azan	Islamic call to prayer.
Babu	Government official (Colloquial).
Bada	Fruit cultivation area.
Bada mahana dangu	Graveyard for elders.
Bagada	Area from which minor forest produced are collected.
Balwadi	Common term for anganwadi.
Baru	When soru panga is used as a village.
Basa	Place of shelter, social gathering or festival.
BBMP	Bruhat Bengaluru Mahanagara Palike (Greater Bengaluru Metropolitan Council)
Bengaluru	Formerly Bangalore.
BOD	Biological Oxygen Demand, a measure for water purity.
CBD	Convention on Biodiversity.
Chennai	Formerly Madras.
Chuana	Bank of river where from water is used.

<b>Glossary</b>	
<b>Term</b>	<b>Explanation</b>
COD	Chemical Oxygen Demand, a measure for water purity.
Common school system	One school system from village to nation in primary and high school education without any discrimination. It should be free from private management and commercialisation of education.
CPI	Communist Party of India.
CPI(M)	Communist Party of India (Marxist).
CPR	Common Pool Resources (In popular Indian usage commonly Common <i>Property</i> Resources).
Crore	10 million.
CRZ	Coastal Regulation Zone.
CZM	Coastal Zone Management.
Dalit	Former 'untouchables' outside the Hindu caste system. The government has classified some of them as Scheduled Castes. Dalit means 'broken' or 'oppressed' and is a term of assertion.
Dangar	Land used for millet cultivation.
Dharani penu	Earth god.
DPT	The Doctrine of Public Trust. It is a legal principle which asserts that certain natural resources are of such immense value to society as a whole then it is unjustifiable to assign those natural resources to any individual as property.
Elu basa	Individual house.
Elu gunjare	Village with humans, animals, kitchen gardens, livestock shelter.
Eyu penu/Gangi penu	Water deity.
FAO	Food and Agriculture Organisation of the UN.
FRA	Forest Rights Act, the common usage for The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
GATS	General Agreement on Trade and Services.
Gol	Government of India.

<b>Glossary</b>	
<b>Term</b>	<b>Explanation</b>
Gram sabha	Village assembly. Decision making authority consisting of all adult members of the village recognised by the Indian constitution and the Forest Rights Act.
Hata	Village fair and market.
IFA	Indian Forest Act.
IMF	International Monetary Fund.
INGO	International Non Government Organisation.
IPC	Indian Penal Code.
IPR	Intellectual Property Rights.
IT	Information Technology.
ITPGR	International Treaty on Plant Genetic Resources.
KSMTF	Kerala Swatantra Matsya Thozhilali Federation, the Kerala independent fish workers federation.
Kolkatta	Formerly Calcutta.
Lakh	100,000.
Mandiarani parba	A festival.
MDG	The United Nations Millennium Development Goals.
Melia parba	A festival.
MFP	Minor Forest Produce. The preferred term is NTFP, though the forest department keeps to this term. The terminology MFP hides the fact that these 'minor' products are substantial sources of patronage and income. In popular usage these two terms are used interchangeably.
Mila mahana dangu	Graveyard for children.
MLA	Member of Legislative Assembly.
MNC	Multinational Corporation.
MoEF	Ministry of Environment and Forests.
Mumbai	Formerly Bombay
Munda,kata,bandha	Traditional water preservation and irrigation method of tribals.

<b>Glossary</b>	
<b>Term</b>	<b>Explanation</b>
Naxalite	Extremist or Maoist in popular usage. They are a banned radical far Left Maoist Communist group in India. The name comes from the village of Naxalbari in the Indian state of West Bengal where the movement originated.
Naju basa	Village with humans, animals, kitchen gardens, livestock shelter.
Nella	When soru seed is used for cultivation.
NFF	National Fish Workers' Forum.
NGO	Non Government Organisation.
Niyam raja	God of law.
NTFP	Non Timber Forest Produce. More precise, but used interchangeably with MFP in common parlance.
Odisha	Eastern state of India, formerly Orissa.
Pano	One of the scheduled caste communities.
PDS	Public distribution system for sale of food grains and groceries through fair price shops commonly called ration shops.
Penu	Good.
PESA	Panchayats (Extension to the Scheduled Areas) Act 1996.
Pourakarmikas	Persons who clean roads, sewage pipes and storm water drains and collect garbage.
Sabha	Assembly.
Safaikarmacharis	People who clean human waste (night soil in dry toilets). Manual scavengers.
Salwa judum	Literally 'purification hunt', a militia armed by the Government of Chhatisgarh ostensibly to fight the Maoists, but in reality committed atrocities on the tribals and therefore ordered to be disbanded by the Supreme Court.
Santhe	Market (Kannada).
SC	Scheduled Castes. It is an administrative classification of the Government of India. (see also Dalit).

<b>Glossary</b>	
<b>Term</b>	<b>Explanation</b>
SEZ	Special Economic Zone.
Shifting cultivation	Tribals shift their cultivation to different places from time to time.
Sixth Schedule	The Sixth Schedule of the Indian Constitution provides for the creation of Autonomous District Councils (ADCs) in certain tribal areas of Northeast India. The ADCs have power to make laws over land, forest, water, agriculture, education, health and social issues. The primary purpose of the sixth schedule is to incorporate the predominantly tribal populations, as communities, into the Indian State. For further information on the Sixth Schedule refer: B. L. Hansaria. <i>The Sixth Schedule to the Constitution of India. A Study.</i> Gauhati: Ashok Publishers.
Soru jaka	Hill top.
Soru need	Lower hill slope.
Soru panga	Land at hill base.
Soru tude	Middle of the hill slope.
ST	Scheduled Tribes, the indigenous communities. ST is an administrative classification of the Government of India. (see also Adivasi).
Tedibasa	Place to sit and have conversations.
Thiruvananthapuram	Formerly Trivandrum, Capital of Kerala in South India.
TRIPS	Trade Related Intellectual Property Rights.
WTO	World Trade Organisation.
Yama	God of death.
Yamaloka	Literally Yama's world, but 'hell' in normal usage.

# Towards a vocabulary of commons

---

Anita Cheria and Edwin

There is a world of difference between the commons and common property. The blurring of this distinction, sometimes inadvertent but oftentimes deliberate, has led to many avoidable conflicts, the displacement and alienation of the commoner from the commons and the loss of the commons itself. There is an intimate linkage between language used to describe the commons and the perception and use of commons—how ‘the commons’ have been translated from practice to restrictive usage. The words used to describe often become the gateway to perception. Language is a good indicator of how we think, and how we define the physical, and psychosocial universe around us. Language not only expresses what we think, but to a large degree shapes our perceptions, self-perception and constructing how we think because languages are knowledge systems, not merely a collection of words.

Words reveal the nature of society, social relations and even offers clues to their physical environment. Languages of peoples in tropical lands seldom have words for snow, but the Eskimo have more than a dozen words for it. Similarly, warlike peoples, feudal societies have no words for democracy and consensual decision making or polity. Words and concepts such as ‘eminent domain’ and ‘terra nullius’ are carryovers from a feudal era.

There is a popular misconception that language determines thought, and we cannot go beyond the limits of language. The fallacious view is largely based on the work of Benjamin Lee Whorf. Though language influences how we think, it is not deterministic. Peoples do go beyond the limitations of language in countless ways—using old words creatively or by creating new words. Human beings can go beyond the limits of a particular language and draw on ideas embedded in other languages, sometimes by importing the words from another language. A person from a tropical land, with a mother tongue that does not have a word for snow, can know what snow is.

However, language does direct what we must think of when we use it and the richness of our perceptions.<sup>1</sup> Languages force us to think in ways depending on the information that must be conveyed and therefore what must be specified.<sup>2</sup> It is the linguistic equivalent of the management concept ‘what gets measured gets done’. While ‘you’ can be used indiscriminately in English, many languages have specific forms for male and female and a ‘respectful’ and non-respectful (which is often also the endearing) form. The use of age and sex encoded languages would instantaneously result in the recognition of the sex and age of the person. Though ‘hen’ and ‘chick’ refer to the same species, they embed age forcing the user to factor age into thought when formulating the idea into language and in selection of vocabulary. Similarly, both ‘girl’ and ‘woman’ embed age and sex, while ‘lady’ embeds social status in addition to age and sex, and ‘Queen’ also embeds a formal governance position. The same would hold good for boy, man, lord and King. The individual addressed by an honorific (Your Royal Highness) is more likely to feel respected than one addressed by a demeaning one (hey you). Used continuously, these descriptors are internalised as self worth and self image.

A quirk of language is that it is egocentric, privileging the powerful and demonising the weak. Since most of the language we use today has come from the city, the city privileges itself. So those who lived in the cities are called ‘citizens’ and the serfs from the village were called ‘villein’ becoming the modern ‘villain’. Being egocentric, languages are anthropocentric, often racist, sexist and ageist. This results in privileging human beings over animals, male over female and age over youth. It is insulting for a human to be compared to an animal, a man to a woman and so on. Directions are given as ‘left’, ‘front’ and ‘back’. But language does not have to be egocentric or even anthropocentric. There are ‘primitive’ languages such as the indigenous Australian *Kuuk Thaayorre*, that are geocentric and use the cardinal directions.<sup>3</sup>

The powerful privilege their language over others. The Romans, who considered themselves civilised, made the people they conquered as slaves (Latin *verna*, native slave), and called the language of their slaves as *vernaculus* from which we get ‘vernacular’. Though presently



understood as ‘local’ or ‘native’, vernacular literally means language of the slave. Their language, which they considered superior and ‘scientific’, was Latin. The privileging in language is often an accurate reflection of privileging in society. Just as citizen and villain in the rural urban privileging, the privileged Ahura of Iran becomes the vile Asura in Sanskrit. Contrariwise, the privileged Deva of Sanskrit becomes the reviled Daeva in Iran. The present privileging of languages and people is not so blatant, but still has gradation in terms of ‘national’ and ‘official’ language, and ‘dialects’—leading to the saying ‘language is a dialect with an army’. The languages of the less powerful have been pushed out of the commons and, along with them, have disappeared from the face of the earth. 90% of the 6000 languages are slated to disappear by the end of this century.

It also operates in more subtle ways. When words from languages of equals are used, they are used with the same pronunciation. Words of languages of weaker people’s are not so respected. The British have no problem pronouncing ‘rendezvous’ or Karl Marx but would change Catumaram to Catamaran and Sulnaan to Sul–ten. This is different from the process where Alexander becomes Sikander, Abraham becomes Ibrahim and Solomon becomes Suleiman, but similar to Constantinople becoming Istanbul.

The privileged claim the right to name the other. Once the right to name is established, it rapidly scales up to the right to regulate and to own. In patriarchies, the woman takes the name of the male—either as father or husband—even where not patrilocal. Oftentimes she takes the name of both the husband and the husband’s family. The colonial peoples always named the colonised and when the colonised got independence, there were a spate of renaming of countries from Zimbabwe to Myanmar to Sri Lanka. Indigenous and tribal people across the world are displaced from their homelands by terming them as reserve forests, national parks, protected areas and carbon sinks. This is deliberate distortion and a continuum of terra nullius, an extreme form of egocentric language.

If the language of a society embeds space with life, with animals, plants and the inanimate, then ‘development’ in the language of that

society would not cut through the migration paths of animals or fence their waterholes. Unfortunately, the dominant paradigm privileges industry and capital.

### **The dominant paradigm**

The industrial revolution gave rise to capitalism and democracy. The jurisprudence that developed at the time gave rise to its own vocabulary with industrial relations as the normative. The vocabulary of individual private property and individual rights developed co-terminus with science, industrialisation, capitalism and democracy. In a rather frank statement of its objectives, industry tells us that ‘development’ is to ‘exploit’ natural resources. Efficiency is to do it in the fastest time possible. The language of commons is to protect natural resources. Efficiency is to minimise the resource use footprint. Greenfield is very different from green field—spaces make a lot of difference in language too!

The present vocabulary developed as a vocabulary of private property since commons was the norm and implicit. Property was a subset of the commons. The King owned all else. (It is from the ‘royal’ or ‘regal’ estates that we have the term ‘real’ estate.) At the time ‘wastes’ meant any uninhabited land, and what are private fields today were called ‘closes’. There needed to be terms to distinguish property from the commons, since property was a subset of the commons. Unfortunately, the language of property has become so dominant that there is a role reversal, and in extreme cases there is even denial of commons due to absence of explicit definition or description. Land that did not produce tax was termed revenue wasteland. This shortened to become ‘wasteland’ and then alienated to the private industry—i.e. made into property—could be taxed and made ‘productive’. However, production for the manor is very different from production for the community. The latter is for consumption and the former for export. Earlier, ‘waste’ was where humans did not live which, though an anthropocentric definition, did not consider it empty and certainly not a vacuum.

The dominant usage in modern languages is steeped in property. It is property—whether industrial or capital—that is taken as the normative. In law, defence of property is normative. The word ‘development’

in modern usage implicitly refers to industrial development. In more traditional languages, development always means human development—of the individual and the community. In English however, human development must be specified. Similar usage is seen in such terms as ‘growth’, ‘profit’, ‘structural adjustment’ and ‘reforms’. While The Reformation was to de-institutionalise the church and make it more people centric, the present day ‘reforms’ are to make polity and society itself more market centric and therefore would more accurately be termed deform and deformation of society.

### **The industrial framework**

The industrial framework requires precision, and precise borders. The natural world has few boundaries that follow the lines on the map. Boundaries are fluid, flow and merge into one another. Conflict arises when they are made into the mechanical ‘on-off’ so beloved of the industrial society. There needs to be space without boundaries for peace, both for the physical and non-physical commons. The language of the present is the language determined by industrial society—one of precision and private property. It lacks the nuances that cushion the journey of life. It requires minimum tolerance, high fidelity, total quality management (TQM) and zero defects.

So we bring in these terms into human life. Instead of technology supporting life, life adjusts to support technology. Terms used to describe technology determine how life should be lived. Work is done in shifts to support the machines. From being masters of the tools (Ivan Illich uses the term ‘Conviviality’) we become slaves to machines. ‘Precision’ in machines becomes imposed precision in natural phenomenon and the descriptive rules become deterministic law. The distinction between rule and law is erased leading to avoidable confusion.

The consequence of the industrial framework is the necessity of industrial intervention as a prerequisite for a life pattern to be recognised, value to be assigned and to disregard the active commons. Air is considered empty and lifeless—so smoke can be let into it, no matter the bees and pollination that are vital for forests and agriculture apart from the insignificant detail of humans needing fresh air to breathe. The

rivers and seas are empty so pour all the sewage and toxic waste into them. Language is so influenced by the industrial paradigm that nature is considered empty until mechanical procedures are applied to it. Value comes only from such addition, and soon value is mistaken for price. Since the tools are to measure industrial production, all else is termed empty. Where there is no industrial intervention, it was considered terra nullius. It extended even to considering ‘the natives’ minds as empty and bereft of culture—terra nullius of the mindscape—if there was no industrial production. As Eric Fromm put it in ‘To Be or To Have,’

Industrial society has contempt for nature—as well as for all things that are not machine made and for all people who are not machine makers.

Instead the commons were considered ‘passive’ and the knowledge regarding them ‘unscientific’ because it is not encoded in the idiom accepted by science. This ‘recognition of life’ and the active role of the commons in production and sustenance of life is important since, without it, the resource base is considered terra nullius and can be occupied by the dominant at will.

The legal concept of terra nullius is reproduced in popular perception. There is no more ‘space’ for commons and the remotest places are vulnerable precisely due to their remoteness—first for adventure tourism, then eco-tourism and then exploit. The absence of industrial action on nature causes the perception of a property vacuum, and therefore the perception that all ‘unfenced’ commons are just waiting to be invaded and taken over. Nature abhors a vacuum. The portrayal of the commons as empty is one of the most insidious threats to its survival. Ideas of the ‘fullness of the commons’ are dismissed as romanticism despite several studies and documented evidence. Even cooperatives without formalisation are thought to be, and treated as, non-existent. The dominant culture cannot perceive, and what is not perceived is considered absent.

Branding non-polluting communities as uncivilised and barbaric is one consequence of the industrial framework. In its equally debilitating pre-industrial avatar, it led to the word for ‘the other’ and ‘the enemy’ being one. All instruments of power are then used to ensure banishment from the commons.

### The Gypsy Timeshare

The nomadic communities use the same plot of land at regular intervals. These intervals could range from a year to a decade or more. They have a well-developed sense of territorial rights and occupy the same area, only not continuously. Sometimes the period of return is a decade or so, though old timers know the periodicity, and the locations. They do not mind if others use the land when they are not around, but assert their right to it at specific periods. This, if one is unbiased, is the original 'timeshare'.

However, the dominant invaded this territory declaring it to be terra nullius and established their sole dominion over it, debarring access to the nomads and declaring them encroachers and trespassers in the bargain—when in reality it is the dominant who are the squatters and illegal occupiers of the space. The picture changes the moment there is industrial intervention. Then it is called 'timeshare' and is protected by property laws. The law and popular consciousness still refuse to accept that the nomads discovered and practice timeshare.

It shows, at a deeper level, how the slow strangulation process has worked to totally marginalise the community. With a little bit of imagination, one can picture the initial negotiations between the immigrant and the gypsy, with the immigrant promising to use the land only when the nomads were not there, and then progressively asserting their rights over the land. In the cities, where land is at a premium, they are no better than illegal squatters.

### Slow strangulation: The vocabulary of appropriation

Peoples' homelands, their commons, are not taken over at one go. To make the life of the people unviable the state resorts to a process of slow strangulation, a process of whittling away their rights and resources. The method used has four distinct stages.

The first stage is '*we are all one*'. This seemingly inclusive phrase is to exclude people from resources. The common idea is 'we are one' nation or religion, language or one family. Wealth of the marginalised is declared the property of the larger society.

In the second stage, there is a call to '*let us define your rights*'. The dominant define the rights of others. These rights are limiting. Now that the legitimacy to define and change rights has been gained, there is a steady whittling away of the rights of the dominated.

In stage three, it is made clear that *all residual rights are vested with the dominant—in most cases the state—as also the right to*

*modify these rights*. This is the most insidious. All residual rights should vest with the people, rather than the other way around.

Stage four slowly creeps in, almost without the community knowing what and how it happened. The rules are quietly changed, 'rationalised' till such time that all *rights become 'gifts'*. The justifications are many, but the core issue remains the same: the dominant have abrogated to themselves the power to suspend all rights of the dominated.

The larger society by commission and omission ensures that 'its' wealth, which it jealously guards as its own, remains off discussion. Global agreements, all drafted by the west, routinely talk of all biodiversity as 'global' heritage, while tightening controls in safeguarding their own property such as 'industrial' and 'intellectual' property. Within countries, since the cities are privileged over villages, water is stolen from the countryside and electricity exported to the cities from tribal areas, denying the local populations, using these tactics.

The marginalisation is sequential. First they lose their sovereign powers. Then they become advisors, lose the right to use the resources, become labour, illegal settlers, and finally slum dwellers. From being equals, they are slowly pushed towards being disturbances, as the World Bank and the Government of India say in their ecodevelopment project, to waste absorbers and finally to being waste. Being natives, they do not qualify for informed consent. The slow strangulation process is operative not in land or land-related issues alone. It covers every part of the life and livelihood spectrum including the abstract 'superstructure' such as religion and culture. Exploiting peoples first take over relatively unfilled spaces of the ones they want to subsume, and then claim sovereign powers over the entire community.

### **From description to determinism**

The casual visitor to some villages in the Nicobar Islands is in for a shock. The community there would quiz them first about why they want to come there, and tightly control the photography and the reports that are written about them. They have an instinctive understanding that the reporter may first describe them. But in the process of 'formalisation' anything that is not put in writing is considered absent. For instance,

though they do use the land—a prime stretch of coast in economic terms—that usage is implicit. Since it is not written down in most chronicles written about the fisherfolk, in the process of formalisation they are considered to be encroachers of the coast. The ‘descriptive’ writing becomes ‘deterministic’. When the state claims their property, what is not written down is space filled by the state. It is only for the rest that compensation can be negotiated.

The reduction of thought to ideas, ideas to concepts to language and then to words, speech and writing results in transmission loss at every stage. When translated into law which determines action, it results in linguistic deficiencies restricting action—a serious lacunae which impedes progress on protection, use and benefits of the commons.

The power of language in determining response is captured by the saying ‘call a dog mad and then kill it’. The entire advertising industry and the propaganda machinery of the state utilise this to the hilt. These professionals are called ‘spin doctors’ and they put a ‘positive spin’ to the benefit of their client. Torture becomes ‘enhanced interrogation techniques’ and killing civilians becomes ‘collateral damage’. Indigenous people become ‘encroachers’ in forests, their homeland for millennia before the present countries even came into existence, their rights become privileges, concessions and are then extinguished. They (the poor) tell lies, cheat and slander but we (the powerful) are economical with the truth, disingenuous and misspeak.

The words used to describe become words used to determine. The usage ‘my terrorist is your freedom fighter’ finds its expression in the wiki wars of terminology: what should be used, Palestine or Israel? It would determine the political persuasion of the user and the solutions that would be proposed. Similarly, using the language of property is a giveaway on the user’s position regarding commons.

This determinism becomes even more pronounced when translated into the written form of the language and then to law. Then what is written becomes the legal limit. The conflict between the law and those who break it is often the conflict between the deterministic nature of the written word and the descriptive intent. Most natural ‘laws’ are descriptions of practice rather than deterministic.

Fortunately, languages by themselves are not deterministic, though they do have a certain bias in that direction. Just as language has been used to bind, it can just as usefully be employed to liberate<sup>4</sup> the commons and return it to the commoners and the community.

### **Appropriation of vocabulary**

The appropriation of vocabulary is done by three methods: stuffing, stripping and slipping. Sometimes these are conscious, and just as equally these could be unconscious acts arising out of the normative value base itself. Either way, the result is the same and oftentimes equally injurious to the vulnerable commoner. Most times a combination of these methods are used.

#### **Stuff**

Stuffing is when an existing word is appropriated by distortion. The classic case is that of ‘Kamaiya’ and the Tharu of Nepal. They had a system of community labour among themselves where each used to help the whole community without pay. The non-Tharu immigrants to Tharuwan made use of this voluntary community labour to get the Tharu to do virtually anything for them, making the Tharu into bonded labour in less than a century. Ironically, the Tharu who were entrapped in this system of bonded labour were called ‘Kamaiya’.<sup>5</sup>

#### **Strip**

Stripping occurs when a word is stripped of everything but its most basic meaning. In most traditional languages, a ‘river’ would mean the flowing water, the river bed, the banks with the mangroves and the aquatic life. However, the term is slowly stripped to mean only the water. It is fragmented, commoditised and contracted out for exploitation. The riverbed is destroyed by sand-mining. The fish are contracted out to fisheries. The water is allotted for pollution to different industries. The banks are taken over by the ‘hospitality’ industry. The tourists on riverboats violate the privacy of the community invading their private spaces at private moments. There is talk of equitable use of resources by the community (who use the water and resources for life and livelihood) and the tourists (who use it as a commodity for leisure)—equating the residents and the invaders. The community is destroyed with the fragmentation and pushed out of their commons.



A dangerous part of this is seen in the slow stripping of the concept of 'home'. For an indigenous person, the 'home' would mean the forest. It would include the house, the courtyard, the kitchen garden, some fields and orchards and slowly merge into the forest. The indigenous and tribal people spend most of their time outdoors. What the state does when it wants to takeover the forest and evict them is to define the home as the house and then 'rehabilitate' them in match box like concrete structures saying that it is 'home'. The entire 'settlement'—monetary compensation, or equivalent—would be based on this standard, stripping away everything else but the 'market price' of the built structure. The human rights approach and standards become the minimum requirement for this reason.

### **Slip**

Slips are of two kinds: by referral and by function. In a referral slip, the frame of reference itself slips. The earlier example of turning a 'home' into 'house' is a referral slip. Similarly, English and American are different languages, though they share the same script and many words. Words similar in spelling and pronunciation have different and sometimes opposite meanings in English and American as, for instance, sanction, first floor and football. American, the 'default' language in word processors has facilitated an unconscious shift to American spellings.

Another example is the change from commons to common property. Though the commons has always been outside the property framework, when 'commons' becomes 'common property' it brings the commons firmly within the property framework, enabling the government to enforce the concept of 'terra nullius' and 'eminent domain'—disposable to the favourites by the government in power. The vocabulary of the state, the law, is the vocabulary of property. The introduction of property introduces 'trespasser' and the related term 'criminal'. Where there is no property, there cannot be trespass.

The slip is then rapid: from commons to common property to public property, government property, public private partnership (PPP), and finally private property. PPP itself has different levels: Build Own Transfer (BOT), Build Own Operate Transfer (BOOT) and joint ventures.

The state would like to blur the distinction between them, and use these terms interchangeably since that suits their purpose. Their distinct histories, and therefore the legal distinction, must always be kept in mind, because the key difference is in their treatment of ‘property’. ‘Commons’ is outside the property framework, while ‘public property’ is within the property framework—*islands within private property*. In legal terms, commons would be *res communes*, property that is public due to its very nature, while public property would be *res publicae* belonging and open to the public by virtue of law. This alertness is required due to the central role played by the state in alienating the commons from the commoner. The state would see this creeping acquisition as a right of the state. Naturally.

Slip by use is seen in the slow transition from being human centric to machine centric in the progression: path—street—road—highway—expressway. In a path humans are supreme. There is no mechanised transport. Human powered transport such as cycles and carts are rare. In a street too, humans are supreme. Mechanised transport is rare and of the smaller variety. In roads, the primary users—the human beings—are relegated to the sidewalks, and are decidedly second class. This marginalisation turns to exclusion in highways and expressways, where ‘slow moving transport’ is excluded and actively discouraged. They are often fenced off.

### **So what are ‘the commons’?**

Commons are the gifts of nature, managed and shared by a community, which the community is willing and able to defend. They are resources not commodities, possessed not property, managed not owned. Ivan Illich of ‘De-Schooling Society’ fame frames it differently in ‘Silence is a commons’. He prefers ‘environment as commons’ to ‘environment as a productive resource’ because ‘by definition, resources call for defence by police. Once they are defended, their recovery as commons becomes increasingly difficult’.<sup>6</sup>

In the mapping and subsequent fencing of natural resources, the powerful took over the best part and enclosed it for their exclusive use. The rest shared the commons and were the commoners who formed the

community. The powerful (the rich) have always had their 'private' resource base. It is only the powerless (the 'poor')<sup>7</sup> who were excluded from property, who use spaces 'in common' to ensure the minimum critical mass of space for viability to ensure their own survival. Commons are an attempt to have a viable resource base by collective usage where the laws of property (the 'formal legal system') breakdown.

The commons belong to the people who do not have 'private spaces' whether for livelihood or leisure. Thus just as the Scots belong to Scotland, the Kothas to Kothagiri and the Welsh to Wales, the commoners belong to the commons much like the geographical indicators of indigenous people. In short, they are indigenous to the commons. The commoners are equally protective of the commons as any other indigenous people. They do so with the instinctive knowledge that the health of the commons is intrinsically linked to the health of the community and the health of every commoner. As the indigenous people put it: the forest is densest where the customary law is strongest. This is such a tight correlation that one cannot exist without the other. Commons play a strategic role in maintaining ecological health, reducing poverty, and improving collective action. Those who want to destroy a community, destroy their commons and those who want to destroy the commons, destroy their community. One is virtually a prerequisite for the other. As long as there exists a community willing and able to defend its commons, that commons will survive.

Commons does not mean open, unrestricted access. The term 'commons' seems to imply that all have unrestricted access at all times. The reality is that the 'commons' were—and are—rigorously defined in access, benefits and control. Significant sections of society are kept out on the basis of caste, gender or age. Increasingly 'commons' are used by the dominant to claim the right to what are essentially the 'commons of the poor' for resource extraction and waste disposal. This after they have destroyed their 'property'. It is no coincidence that biodiversity is richest in 'underdeveloped' areas, with no 'property rights' and that 'developed' areas are monoculture deserts, despite the strongest property rights, law and enforcement.

‘Commons’ does not mean that there is no private space at all. On the contrary, private time and spaces are rigorously defined and regulated, only that these are temporary and are very clearly a subset of the commons. They do not pollute or otherwise interfere with the viability or health of the commons but enhance it. In villages, most of the space is commons, leading to many believing that private spaces do not exist. But when the door is closed, then it is rare for someone to violate privacy. This is especially for married couples. Requests to call them would be met with a very final ‘the door is closed’.

None of the commons are standalones, leading to the formulation ‘commons need commons’. The pastures need the land, air and water to survive. Privatising any would lead to the destruction of the other commons. The idea that ‘commons need commons’ covers not only the natural commons (also called the physical or environmental commons) such as land, air and water, but also the built commons. The built commons are two—the hardcoms and the softcoms.

The ‘hard’ commons, ‘hardcoms’, are the physical livelihood systems such as infrastructure built with public resources. Examples of these built commons would be the crèches, schools, roads, government buildings such as villages offices, post offices, public toilets and primary health centres. The hardcoms have a knowledge superstructure. Knowledge spans culture, religion, tradition and law on the one hand, and information, information technology (digital commons) and science on the other. These are the ‘soft’ part of the built commons, or the ‘softcoms’. This superstructure is the ‘software’ or the ‘softcoms’ that govern its use. The softcoms determine inclusion, exclusion, access, benefit and control.

### **The traditional commons**

The traditional commons were the spaces of the powerless. Intimately entwined with their life, these spaces abounded with life, culture and tradition. A sacred grove was not empty, but a place where their ancestral spirits still walked, had medicinal plants, and was inextricably intertwined with their knowledge, their identity and their very being. Each bit of the ‘empty’ space had a special resonance, each being sentient with the spirits of the trees, plants and the in-animate.

These are culturally appropriate knowledge reproduction systems that ensured sustainable use of the commons across generations based on stewardship. This embedding of cultural knowledge into territory—including heavenly bodies—provides a rich tapestry on which their life is played out. Dismissing these as ‘shamanism’ is to miss the richness of the knowledge embedded in a different idiom. The distinction between ‘work’ ‘life’ ‘leisure’ ‘time’ and ‘space’ is removed in a seamlessly intertwined flow. It is this unity that is implicit in their articulation, but needs to be made explicit with industrialisation and enclosure. In this unity, ‘holidays’ ‘exploit’ and ‘trespass’ are foreign concepts. The traditional commons existed outside the formal legal system. They had a range of activities that fell outside the ‘formal’ economic system—either in terms of the monetary and monetised system or the GDP based system. They certainly did not need unhealthy populations for a healthy balance sheet.

The case of the coastal commons is particularly striking since at no time was there ever a sea ‘patta’ or title deed. Even during colonial times, the right of the traditional fishers to unrestricted fishing was not hindered, though the British themselves were a seafaring nation, their empire was built on naval strength and the key instrument of power projection was the navy. Now the state claims everything under the seabed, just like it claims everything under the ground and in the air. The fishermen were able to fish wherever they wanted—there were no boundaries in the sea. The recent effort of the government is to give permission to the traditional fishers to fish only up to 12 miles from the coast. Where the government finds valuables under the sea, the fishers are prohibited from going there. Again, corporate interests get priority over traditional livelihood rights. The ‘salt satyagraha’<sup>8</sup> of Gandhi was to liberate the coastal commons when the British tried to enclose them.

The present Somali ‘pirates’ have been created precisely because the dumping of nuclear and medical waste off their coasts destroyed their livelihood. The demonising of the pirates and all those who resist the dominant state is relevant today, since the ‘African Pirates’ are being hunted by virtually every blue water navy. The image of the

pirate as a savage criminal was created by the British in the ‘golden age’ of piracy (1650 to 1730). Ordinary people did not believe the myth, and rescued many from the gallows.<sup>9</sup> Kidnapped from their homes and forced into virtual slavery on the royal ships, beaten by the captain and then cheated of their wages, the pirates were those who rebelled against the entire system. They mutinied and deposed their captains. But once they took control over the ship, they did not replace one captain with another. Nor did they let the same organisational structure continue. They did not like the oppressive structures on the land—the stratification and hierarchy—so they created an egalitarian community on the sea. They elected the captain. Everyone had to work, including the captain. The rewards of the work were shared by all. Pirates wanted to move out from oppressive structures and create more egalitarian social orders.<sup>10</sup> Decisions were collective. Their bounty was shared equitably. In short, they showed a new system to the world. Perhaps the most daring was to take in escaped African slaves and live with them as equals—demonstrating at one go a non-racist, non-authoritarian world where equality, fraternity and liberty was practiced.

The last word on piracy must go to Augustine of Hippo. A famous pirate was captured and brought to Alexander the Great who asked him: ‘Why do you infest the seas with so much audacity and freedom?’. The pirate answered: ‘For the same reason you infest the earth; but because I do it with a little ship, I’m called pirate; because you do it with a big fleet you’re called emperor’.<sup>11</sup> Of course, Alexander is ‘the Great’ because he invaded the east from the west. Ghengis Khan and the ‘savage Mongol hordes’ did so from east to the west.

### **Urban commons**

In nation building, there is a lot of literal construction of physical infrastructure. This infrastructure is also part of the ‘new’ or ‘built’ commons. The assumption is that in a democratic state, everyone would be able to use these without discrimination. The reality is that large parts of society are prevented from using these by design, location, law or custom.

The urban commons have a longer history of being formalised, since

the state was always more present in urban areas. Here the urban commons would more appropriately be ‘public spaces’ due to their formal nature. Urban commons have a much bigger role for ‘built physical commons’ such as infrastructure in addition to the traditional commons such as air and water. However, even the latter are formalised in terms of governance and maintenance since space is at a premium and the fast pace of life necessitates dedicated personnel for the maintenance and upkeep of these lakes and water bodies, parks and gardens in addition to streets and sidewalks, public transit, schools, hospitals and civic amenities due to the specialisation and fragmentation of urban life.

The urban commons are increasingly being fenced off and entry itself is gradually restricted. Even institutions created specifically to ensure environmental sustainability have failed in their primary responsibility of even straightforward actions such as preventing the cutting of trees. Laws are broken with impunity with the active connivance of those tasked with protecting and enforcing them. Parks, even neighbourhood parks, have entrance restrictions whether by time (entrance and use is permitted only at certain times of the day, presumably to prevent ‘unlawful activities’ but in reality for moral policing and corporate control) and by fees—effectively making them private haunts of the middle and upper classes who in any case have their private clubs and recreation spots. The poor who sorely need these spaces are kept out or have their access restricted.

The notion of roads being for the public—a ‘commons’—has also taken a beating in recent years. Footpaths are an essential part of roads, since that is the part of the road most used by the vendors, pedestrians and those who use public transport. This space is being severely restricted, and sometimes even absent, in cities—both in city centres and in residential neighbourhoods. Instead the roads are being broadened to make space for private vehicles. Land acquisition, environmental degradation, legal obfuscation all attain sanctity on this altar of ‘development’. Though most people travel by public transport, very little space is earmarked for bus lanes, bus stops/bus bays, passenger shelters at bus stops or footpaths. Cycle tracks are not only absent,

use of ‘slow moving’ transportation is prohibited on most flyovers and arterial roads, apart from footpaths being absent. This invasion of the street and conquest of the footpath is to have wider roads so that high-rises can be built with larger Floor Space Index (FSI).<sup>12</sup> The vendors have to be removed so that the malls can survive.

The language has also undergone significant change from the urban commons (‘public’) to that of urban enclosure. From gardens we have gone to parks (off limits to animals including pets), with manicured lawns (off limits to humans too), from markets to malls and plazas, from streets to flyovers and playgrounds to stadiums. New usage such as ‘gated communities’ have also invaded the vocabulary marking the success of enclosure movements and the disconnect of the elite from economic production, cultural vibrancy and democracy of the city.

### **Knowledge commons**

The definition of commons and its legal defence rests on the knowledge base—and the knowledge base rests on the language employed. The construction of knowledge and the architecture of language is therefore fundamental to the defence of the commons. The physical commons needs the support of knowledge commons such as culture, religion, tradition, law, science and technology. A fundamental and critical challenge of the knowledge commons is that only some knowledge is acknowledged as knowledge itself, the modern day version of ‘my superstition is scripture but your scriptures are myths’. This enables those of the ‘true knowledge’ to define what is the commons and what is private, who owns what and what is legitimate. The keepers of ‘true knowledge’ can then determine access, control, and exclusion from the commons.

Religion and culture are ways of organising knowledge. They are for enclosing the commons, and used as such by the powerful. Though claiming to be ‘universal’—and therefore the ‘commons’ of at least humanity—major religions of the world still are exclusivist not only towards others (calling them pagan, infidel, kafir, Asura, Daeva) but also to those within its fold. The duality enables forced inclusion for resource grab and exclusion for benefits.

Though knowledge was shared within the community, the ‘community’



was narrowly defined. It often meant only the male of a sub-sect of a sub-clan. Priesthood is a virtual male monopoly, with different levels of initiation over long periods of trial being a prerequisite for greater access. Knowledge was privatised and jealously guarded by making them 'sacred' and only for the 'chosen'. In extreme cases, even the knowledge of the 'sacred language' from Sanskrit to Latin was prohibited. Religion—supposed to be 'universal'—had even more gatekeepers. The defining of entire communities as untouchable, unseeable, unhearable and finally excluding them from the commons altogether is a singular contribution of the caste system in South Asia and areas with South Asian Diaspora. Racism contributed the same in different parts of the world.

One of the terms most laced with irony is 'pirate'—used for the buccaneers of the sea and those at the information technology vanguard. The present software freedom fighters are termed likewise by the present establishment who create the present intellectual property rights (IPR) regimes try to fence knowledge and the present pirates are combating it. Translated into the digital commons, they are against any kind of enclosure of knowledge—hardware or software. The Free and Open Source Software (FOSS) movement is an explicitly political movement to ensure digital commons. It has found resonance in the Swedish Pirate Party, which now has two members in the European Parliament. The Pirate Party even has a 'darknet'—an Internet service that lets anybody send and receive files and information over the Internet using an untraceable address where they cannot be personally identified—provided by the Swedish company Relakks ([www.relakks.com](http://www.relakks.com)). This ensures online privacy. The pirate party has three issues on its agenda: shared culture, free knowledge, and protected privacy. Their emphasis on privacy is because the new technology makes duplication very easy. So the only way to enforce copyright (and government control) is to monitor all private communications over the Internet. This goes against the basic tenets of an open society that guarantees the right to private communication.

—

Digital commons is often taken for granted, since the internet was created by the academic community as commons and not as a commercial or business enterprise. So it can be said that freedom and sharing are hardwired into its genes. Unfortunately, this is a highly contested area, where there are many attempts to ‘fence off’ certain parts. While mathematical algorithms, like life forms, were not allowed to be patented in a queer twist of logic, software programmes which are algorithms are allowed to be fenced off.

Ivan Illich goes even further when he warns<sup>13</sup> *of the need to counter the encroachment of new, electronic devices and systems upon commons that are more subtle and more intimate to our being than either grassland or roads—commons that are at least as valuable as silence. We could easily be made increasingly dependent on machines for speaking and for thinking, as we are already dependent on machines for moving.*

In the use of digital technology, software plays an important part. Here the terrain is highly contested between the proponents of open standards and FOSS on the one hand and the proponents of closed and proprietary standards on the other. Since data is stored and needs to be accessed for a long time, it has to be in a standard that enables access for a long time. It cannot be dependant on the whims and vicissitudes of a company. For instance, if a person’s data is stored from birth to death, it will have to be accessible for about 100 years. Few companies have that kind of longevity. So unless the standards are open, the data may not be accessible if the company goes bankrupt or closes down. Security and privacy concerns are another reason for adopting FOSS. There will be a lot more said about net neutrality and data portability in the coming days. The limited availability of ‘spectrum’ for the mobile phones, leading to an auctioning of the spectrum and the case of the electrical spectrum are other areas of increasing stress.

The ‘mass’ nature of the technology and business models, has opened up a lot of space. While a security and privacy threat, paradoxically, this very same medium offers privacy and a level playing field to some of the most excluded sections. Sexual minorities excluded from the physical commons have found a haven in the virtual anonymity of

cyberspace, though it must be noted that law enforcement and moral police turn the anonymity to their advantage by using fake IDs to flush out identities.

The very anti-thesis of the restrictive IPR regimes is the copyleft movement that has come up with the term 'creative commons' with its own standards and licensing. Over the long term, commons is the way to go. In the short term, capital needs the creativity of FOSS, leading to the paradox of multi-billion dollar companies financing the Free Software Foundation, implicitly acknowledging that they need the creativity of 'crowd computing' and that non-monetary incentives are superior creativity enablers. Wikipedia, built totally with free contributions, is way and above all other encyclopaedia both in terms of absolute volume and the breath of knowledge and matches them in accuracy despite being 'open'.<sup>14</sup> It is also the most up-to-date of them all, being online and being constantly updated.

As the world moves to being a knowledge society, knowledge is a disproportionately high factor of the 'value added', the adage 'knowledge is power' becomes even more important. At its more basic level, the use of jargon and slang are methods of fencing off the uninitiated. Gate keeping—and preventing gate-crashers—has entire armies of lawyers defending intellectual property, just as the priestly class defended their privileges, including prohibiting transfer of knowledge. Agreements under the World Trade Organisation (WTO), Trade Related Intellectual Property Rights (TRIPS) ensure that the knowledge of the industrial societies is kept private while opening up the traditional knowledge as global commons.

### **Governance and sustainability**

As people dependent on land are considered uncivilised, many a time their rights and livelihood needs are considered non issues which can be easily compromised. A majority of industrial or environmental projects target the already impoverished Adivasi, Dalit and fisher communities for displacement. Almost all the struggles are around the right to access and benefit from what we now call the 'commons'. The right to land, water and air never needed to be contested. While the kings fought

over territory, the right of the people to use the land and the water was never in dispute. There was some restriction—most of them after the advent of colonialism—on the use of the forests. This has expanded to eminent domain over all the natural resources of their entire territory of the nation. The general feeling of eminent domain is pervasive right across the ideological spectrum. While the people claim their right, the state wants to cling on to the concept of eminent domain, and claim all the natural resources as a property of the state. Not only does the state claim ownership of the natural resources, but they use brute power to takeaway the rights of the people—who have used this commons for as long as memory goes—and handover the commons to the corporate sector. The state thus becomes an enabler and representative of anti–people corporate interests. This is legitimised by various means, from the legal (the state power, including the coercive machinery) to the mass media (propaganda and soft power).

Sustainability of the commons rests on an equitable sharing of costs and benefits—meaning inclusive governance is a prerequisite. However, most often it is forcible inclusion, for resource extraction and waste absorption. It is best seen in the forcible commoning of the labour of the Dalits and their forced waste absorption role, and in the commoning of the land, forests and water of the indigenous peoples. This forcible inclusion for exclusion is ingrained and normative. The normative meme map is so internalised that those within these structures seldom comprehend the exclusion or inequity. It is only exposure to another framework that enables even the recognition of this injustice and inequity.

Even ostensibly inclusive structures in exclusive societies cannot include ‘the other’—for instance ‘all party meetings’ in patriarchies seldom include women or Dalits and never sexual minorities or children or disabled. They are all dominant caste men—yet they claim the mandate and legitimacy to represent and decide for all ages, castes and genders.

The subsidiarity principle that a larger and greater body should not exercise functions which can be carried out efficiently by one smaller and lesser is vital for the survival of the commons and the community. The larger body should support the latter and help coordinate its activity

with the activities of the whole community. It should perform only those tasks which cannot be performed effectively at a more immediate or local level. The norm is for the residuary rights to vest with the highest level of governance. This is a fundamental flaw. As we have seen, the description of usage is seldom complete. Therefore vesting residuary powers gives unfair advantage since those at the grassroots are seldom wordsmiths and rarely conversant in the legal domain which remains the preserve of those from the dominant, broader levels of governance. If the governance of commons is to support the commons, then residuary rights have to vest with the lowest level. It is only the rights that are explicitly ceded either as mandate or delegation that can be exercised at other levels. This would turn the concept of eminent domain on its head, and begin the long journey to restore the commons to the community.

### **A vocabulary of ‘commoning’**

The dominance of the idea that private property is integral to production and efficiency assumes that without private property, production will stop or at the very least be ‘inefficient’. But efficiency can be defined in many ways that are community centric. When measured in such parameters, then the concept of efficiency suddenly changes: Which is more efficient—a system that has more people in prisons than in farms with a quarter of the population unemployed and has private property or a system that has no one in prisons, has no unemployment but has low levels of mechanisation, a low GDP and little private property?

When other indicators such as the Human Development Index, Multidimensional Poverty Index, Index of Sustainable Economic Welfare (includes both pollution and income distribution), Genuine Progress Indicator, the Happy Planet Index and a Gross National Happiness measure are used then the picture of development and human well being drastically changes. When the environmental footprint is added to the picture, many assumptions are debunked. These are relatively new developments in a people and commons centric vocabulary.

The state appropriates the commons, displaces the people, destroys their livelihoods and then magnanimously returns a few crumbs as

charity cloaked in the language of rights, entitlements and security—the ‘right’ to education, employment scheme and food ‘security’. Rather than this dependency creating charity, restoration of the commons to the community, strengthening their sustainability and enhancing their carrying capacity is the true measure of rights and security. But the state, being an institution of property cannot do so, limited as it is by its inherent characteristics and design as an instrument for the protection and promotion of property.

It is for communities to retake the commons, and then refashion them to egalitarian ends. Retaking the commons needs a vocabulary of commons—in thought (attitude), speech, policy (intent), law (norms) and programmes (practice). The vocabulary of the commons cannot be a vocabulary of property. To define the commons as common property is to fall into the trap of property relations. Just as a gender just society needs gender inclusive and gender just vocabulary (human, spokesman, spokesperson, spokeswoman), defending the commons needs a vocabulary of commons. It may well be critical in ensuring the survival of the commons, and perhaps of humanity itself.

## Endnotes

- <sup>1</sup> Boroditsky Lera *How does our language shape the way we think?* In *What’s Next? Dispatches on the Future of Science*, Edited By Max Brockman.
- <sup>2</sup> *Languages differ essentially in what they must convey and not in what they may convey.* Jakobson, Roman ‘On linguistic aspects of translation.’ In Lawrence Venuti, (Ed) *The Translation Studies Reader*. London: Routledge 2000. pp. 116.
- <sup>3</sup> Boroditsky Lera, op cit.
- <sup>4</sup> This is the basis for Neuro-linguistic programming (NLP).
- <sup>5</sup> Anita Cheria and Edwin, *Liberation is not enough—the Kamaiya movement in Nepal*, ActionAid Nepal, 2005.
- <sup>6</sup> *The CoEvolution Quarterly*, Winter 1983, [http://ournature.org/~novembre/illich/1983\\_silence\\_commons.html](http://ournature.org/~novembre/illich/1983_silence_commons.html) (accessed September 2010).
- <sup>7</sup> Poverty is a factor of power, not production. For an analysis of the intimate links between poverty and power see M K Bhat, et al *Life Goes On...* 1999, and Anita Cheira et al *A Human Rights Approach to Development* 2004.
- <sup>8</sup> The salt satyagraha (civil disobedience movement) was started by M K Gandhi against the 1882 Salt Tax Act to take the campaign for Poorna Swaraj (total independence) from the British to the masses. The Act not only imposed a tax on salt but gave

the colonial government monopoly over it. The Salt Satyagraha, began with the march from Sabarmathi Ashram in Ahmedabad on 12 March, 1930 to the coastal village Dandi on 6 April, 1930. Satyagraha literally means the force of truth. Satya=Truth; Agraha=Force.

<sup>9</sup> Villains of All Nations, Atlantic Pirates in the Golden Age, Marcus Rediker, Beacon Press, 2004.

<sup>10</sup> Ibid.

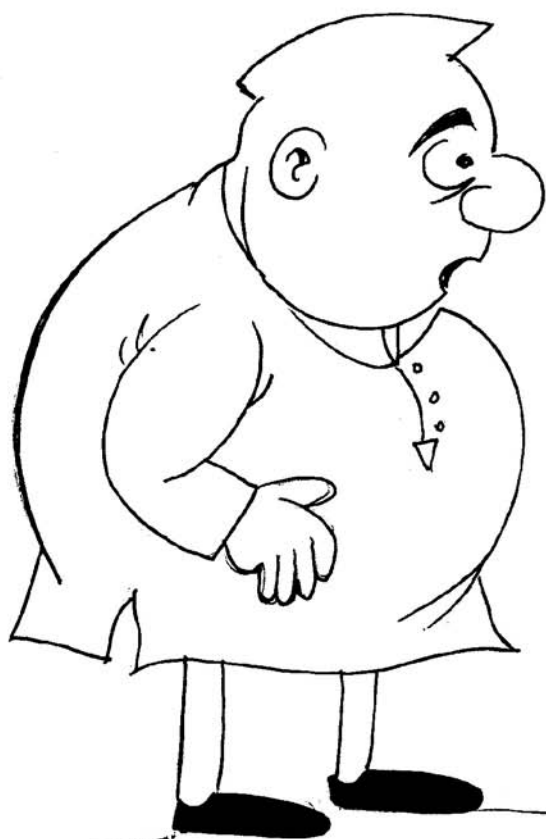
<sup>11</sup> Villains of all Nations: Atlantic Pirates in the Golden Age, Marcus Rediker, Beacon Press, 2004.

<sup>12</sup> Floor Space Index (FSI) is the ratio of the total floor area of buildings on a certain location to the size of the land of that location, or the limit imposed on such a ratio. As a formula: Floor Area Ratio = (Total covered area on all floors of all buildings on a certain plot)/(Area of the plot). Thus, an FSI of 2.0 would indicate that the total floor area of a building is two times the gross area of the plot on which it is constructed, as would be found in a multiple-story building.

<sup>13</sup> Ivan Illich 'Silence is a commons'. The CoEvolution Quarterly, Winter 1983, [http://ournature.org/~novembre/illich/1983\\_silence\\_commons.html](http://ournature.org/~novembre/illich/1983_silence_commons.html) (accessed September 2010).

<sup>14</sup> Jim Giles, 'Internet encyclopaedias go head to head', *Nature*, vol. 438 no. 531 (15 December 2005) [www.nature.com/news/2005/051212/full/438900a.html](http://www.nature.com/news/2005/051212/full/438900a.html), Note 4 Chapter 1 quoted by Tapscott D and Williams A D in *Wikinomics*.

**THE DISTANCE BETWEEN COMMONS  
AND THE STOCK EXCHANGE  
IS THAT BETWEEN THE  
INDIAN STATE AND THE CORPORATIONS!**



*Sasi*



# De-commoning

## Primitive accumulation of capital and de-commoning: Three moments in the history of capital

---

Ritajyothi Bandyopadhyay

This chapter is a commentary on the relationship between commons and industrial and postcolonial capitalism. It will argue that Marx used the term as a part of his critique of political economy at a time when industrial capitalism was at its peak. The chapter will then show how the appropriation of the very notion of commons has taken place in the development discourses of the trans-national governing organisations in the last four decades. Citing two very contradictory usages of the term in Marx and in World Bank, in critical moments in the history of capital, the chapter seeks to understand the properties and possibilities that the concept embodies that make it palatable to a range of ideological positions. It then argues that commons is a useful term in forming a radical critique not only of private property but also of *all* forms of property. The chapter proposes that a slippage between commons and common property makes the concept coterminous with the public in a bourgeois city. Rallying for commons is a historical project as it calls for a radical unlearning of the pedagogy of the property regime and modern law.

### **Primitive accumulation in the West and enclosure of commons**

Though it now strains credulity, there was once a time, roughly from the late fifteenth through the eighteenth centuries, before capital's spectacular self-imagining had fully colonised modern practices of knowledge, politics, and representation. Capital was then waxing, and capitalism's star was ascending. Its bid to totality remained, nonetheless, yet only an ideal and thus still tentative in its global reach. There had once been a time when capital could be figured as partial absence. Such was the time of what Karl Marx calls the primitive accumulation of capital, which refers to the initial centralisation and concentration of capital and the complementary expropriation of peasant or primitive masses, both equally prerequisite for capitalist political-economic relations: 'The

centralisation of capital is essential to the existence of capital as an independent power'. In many of the states in Europe, primitive accumulation transpires as the enclosure of feudal common lands, which 'freed' serfs from their ties to the lords' land but also forced them to exchange for the sake of survival the only commodity they possessed, labour power, since the common lands were no longer theirs for subsistence farming. 'So-called primitive accumulation', then, refers to 'nothing less than the historical process of divorcing the producer from the means of production', argued Marx.

Adam Smith's treatment of the notion of 'previous accumulation' as a precondition for 'division of labour' pushes it back to a mythical past, disconnected from the viciousness of the contemporary instances of accumulation. Marx, pointing out this weakness in Smith, emphasises on historicisation of the process through an 'extensive documentation of the subject'. However, one can easily locate some traces of confusion in Marx over the issue of *continuity* of primitive accumulation in the advanced stages of capitalist development. The source of this confusion, as Michael Perelman (2000) argues, resides in the Marxian conviction that the 'silent compulsions' of the laws of market are more brutal and effective than the crude forces of primitive accumulation.

What do commons and enclosure have to do with primitive accumulation of capital? In describing the logical condition for the origin of capitalism, 'accumulation by dispossession', as David Harvey would put it, Marx presented a vivid account of how the violence involved in the separation of the peasants from the means of subsistence was sanctioned and legitimised by the British Parliamentary Acts of enclosure of common lands (that Marx called the 'Parliamentary form of robbery') over nearly four centuries. To Marx, then, commons pertains to the moment of transition from pre-capital to capital. It is an initial condition which capital would transform into land and property. The persistence of commons even today is then the historical remainder of a still incomplete separation of the worker from the means of subsistence and hence a logical impediment to the totalisation of capitalist relations. It was also a 'historical prefiguration of another, non-commodified world where rational association and human solidarity would become the basis of social life' (Caffentzis 2010).

The states in Western Europe addressed the effect of primitive accumulation of capital (dispossession) in two ways. First, Marx provided a clear historical example of how British Parliamentary Acts, over the four centuries, legalised the violence associated with the enclosure of the commons. In this process, Marx tells us, commons and enclosure became well defined legal terms in England. Marx writes in *Capital Volume I*:

The parliamentary form of the robbery is that of Acts for enclosures of commons, in other words, decrees by which the landlords grant themselves the people's land as private property, decrees of expropriation of the people. Sir F. M. Eden refutes his own crafty special pleading, in which he tries to represent communal property as the private property of the great landlords who have taken the place of the feudal lords, when he, himself, demands a general Act of Parliament for the enclosure of commons (admitting thereby that a parliamentary *coup d'état* is necessary for its transformation into private property), and moreover calls on the legislature for the indemnification for the expropriated poor (Marx 1887: 506).

Marx further argues that in the nineteenth century the connection between agricultural labourer and the commons had vanished from the public memory. As a result, the peasants ceased to receive compensation for the series of enclosures taken place between 1801 and 1831. As Marx seems to suggest, the legalisation of violence associated with the primitive accumulation of capital by the parliament led to the erasure of a certain public memory. This was how, according to Marx, the English state politically handled dispossession. It is in this endeavour that the state received ideological as well as political support from the classical political economists. Perelman argues that while economists such as Smith and Ricardo were advocating *laissez-faire* on a theoretical level, on a political level, they championed state actions that actively impoverished the peasantry, rather than relying on the market mechanism. The creation of wage labour, far from being a natural outcome, was accomplished through an explicit *political* agenda that favoured the interests of the capitalists over smallholders. In this connection, Perelman picks up a particular instance of institutional arrangements to show how contrived statist interventions were brought into action to set the premise for *laissez-faire*. A stricter

than before enforcement of the Game Laws—laws ‘protecting’ the forests from the encroachments of the rural poor, prohibiting hunting, fishing, and collecting fruits for reasons other than feudal pleasure—guaranteed starvation for a large number of ‘indolent vagabonds’ and forced them to look for work in the factories.

Stricter enforcement of the laws served the interests of both capital and nobility: the lords could enjoy the pleasure of hunting without being interrupted by ‘unruly intruders’ and the capitalists could enjoy the fruits of labour of the people forbidden to have free access to animal protein. Apparently, the classical economists were dismissive of the question of the Game Laws as an ‘ugly residue of ancient feudalism’ (matter of a mythical past). Their interest in the subject was perversely related to the construction of a new ‘bourgeois vision of nature’, which, incidentally, facilitated a greater degree of primitive accumulation by appealing to the metropolitan desire for a *pristine elsewhere*. For example, Adam Smith’s *Lectures on Rhetoric and Belles Lettres* were quite influential in initiating a ‘craze for deer parks’, which were nothing more than ‘closely managed game reserves’. The eighteenth century longings for this pristine elsewhere persists even today in the environmentalist pleas for preservation of unadulterated urban spaces through evicting slums and prohibiting ‘lowly’ slum-dwellers from using lake-water for domestic purposes (see Solomon Benjamin’s chapter in this volume).

The second option for the Western European states to tackle the question of dispossession and social unrest and revolts caused by the dispossessed peasants had been to deport the surplus humanity (expropriated and not integrated into the factory working class) to penal colonies in Americas and Australia. In the seventeenth and much of the eighteenth century the British used North America as a penal colony through a system of indentured servitude. When that avenue closed in the 1780s after the American War of Independence, the British began to use parts of Australia as penal settlements. France sent criminals to Louisiana in the early eighteenth century and to French Guiana in the mid nineteenth century (Taylor 2001). In this connection one may remember a series of novels and short stories written mostly in the twentieth century (Franz Kafka’s short story, *In the Penal Colony*, Charles Nordhoff and James Norman

Hall's historical fiction *Botany Bay*, Henri Charriere's autobiographical novel, *Papillon*) depicting the process of deportation and the life of the people in the newly colonised land.

### **De-commoning and the colonial rule**

The pre-colonial Indian peasant economy was largely based on the subsistence ethic. The Mughal system broke down in the second half of the eighteenth century as surplus extraction became more vigorous and land became a commodity affecting the peasants' subsistence provisions and resulting in peasant revolts. Any standard textbook of modern India gives a fairly detailed account of such revolts culminating into the Great Revolt of 1857. The growth of property rights in land and consequently of a land market ultimately replaced customary production relations with contract and what Ranajit Guha has called the 'revitalisation of landlordism' (Guha 1994: 7). The standard textbook account would then say that due to changes in property relations, the actual farmers lost their occupancy rights and were turned into tenants-at-will. The high land revenue demand increased the peasants' need for credit. Growing indebtedness led to dispossession. As Guha puts it, the landlords, moneylenders and the state came to constitute 'a composite apparatus of dominance over the peasant' (Guha 1994: 8) leading to a dissociation between the peasant and the means of production.

Not until 1859 did the colonial state look at the tenancy issue and do anything to protect their right. Even after that, dispossession remained a burning issue. In the inter-war period the question of rural dispossession which was earlier represented only in the papers in the writings of the economic nationalists, came to be integrated in the Gandhian national movement and quite often in socialist and communist political mobilisations. In the nineteenth century the colonial state sought to address the question partially following the Western European tradition of sending people across the sea. Thus, between 1820 and 1890, millions of Indians were sent to South Africa, Trinidad, Surinam and Fiji as indentured labourers.

### **The heterogeneous world of postcolonial capital**

When postcolonial nation-states like India began to undertake massive industrialisation and urbanisation projects, they could not make use of

the deportation strategies that their erstwhile masters could do with much ease. With the proliferation of the notion of popular sovereignty along with electoral politics, the independent nation-state developed a compulsion to address the masses on the questions of dispossession and enclosure. Put differently, while the decolonisation of colonial law did not take place, the postcolonial state had to justify its succession by establishing its difference with the colonial state and colonial capital accumulation.

The 'drain theory' could not be held responsible for poverty. The difference was established by subsuming all interests to the paramount national interest, by justifying the state actions through the techno-scientific rationality of planning (Chatterjee 1997) and also to some extent by extending the state's pastoral function as a remedy to dispossession. It was also the time when transnational governing organisations such as the World Bank, IMF, etc began to influence the policy-making in the so-called third world. In the first two decades since decolonisation the problem of dispossession could have been kept at bay with the combination of a Rostowvian optimism and state repression.

But in the 1970s, the problem of dispossession began to pose a serious threat to states all over the third world. In such a complex moment of capital's hegemony, there had been the sudden recognition in the 'development discourse' that a sub-economy consisting of a variety of petty economic activities not only exists but stands out as 'a potential provider of employment and incomes to millions of people who would otherwise lack the means of survival' (Sanyal 2007). Already in the 1970s, the notion of development mutated from the focus on accumulation to a focus on promotion of welfare through direct intervention. Today, the goal is to constitute 'an economic space outside and alongside capital, for its castaways, rather than to create entitlements for them through distribution of income'. This is, as Kalyan Sanyal (2007) holds, governmentality in a more complex and effective form.

The most important aspect of the 'informal sector' is that its producers are estranged from the means of production as a result of primitive accumulation of capital. But they are unable to become the 'working

classes'. Sanyal conceptualises this 'dark space of classlessness' as a 'need economy'—an ensemble of economic activities undertaken for the purpose of meeting needs, as distinct from activities driven by an impersonal force of systemic accumulation.

This producer is not a petty producer in the historical sense for they have to purchase their means of production with the mediation of money from the market. Also, need–satisfaction as a goal of production does not rule out the existence of surplus in the need economy because 'consumption' includes present and future consumption. In Sanyal's conceptualisation, all production activities driven by need, outside the 'accumulation economy', irrespective of whether they use wage–labour or not, are constituents of the need economy.

The circuit of the 'accumulation economy' inevitably encroaches upon the need economy and usurps its space within capital's own domain. This is the ongoing process of primitive accumulation. Yet at the same time, in a simultaneous process, the dispossessed are rehabilitated through the 'pastoral functions' of the international organisations and the developmental state. Sanyal calls this a 'reversal of the effects of primitive accumulation'.

The relation of dominance continues to be operative in the 'complex case of hegemony': While capital acts on its own, the 'need economy' exists as population groups, as constituted objects on which the techniques of governance can be applied. The asymmetry is also reflected in the fact that while need–based production must conform to the logic of the market, and the rules of the market pertain to the system of capitalist production, the accumulation economy cannot be 'questioned from the perspective of consumption and need'. But the 'formal–informal' dualism hides this asymmetry by describing them as two autonomous and parallel spaces without any contradiction, thereby placing them on a 'non–political terrain'.

The development discourse, however, confines the need–based production to a space outside the world that is capital's own. Partha Chatterjee (2008) discerns in this twin process of the need economy being promoted and also quarantined, in its constitution through developmental intervention, the 'implosion of the two regimes of power described by Foucault: the

restrictive and the productive'. It is in this moment of the heterogeneous temporalities of capital that the transnational governing bodies have started re-appropriating the commons. The entire era of social forestry and then community forestry in 1980s and 1990s witnessed certain de-fencing of 'public' forests. These spaces were then imagined as the essential common property for the reproduction of the community—the community which would protect the common property, collect minor forest products freely and also market them taking financial assistance from microcredit institutions. For the microcredit institutions the poor who were once estranged from the means of production would now become the prime site for accumulation. Thus, commons has now been associated not only with the reproduction of subsistence economy but also with the accumulation of corporate capital. This is the reason why, in the 1990s there had been a cautious acceptance of the commons at the highest levels of international planning.

While in the early 1980s the neoliberal Berg Report called for a systematic privatisation of the communal land in Africa, the 1992 Human Development Report of the UNDP made a policy reversal saying that 'a compelling reason for supporting community resource management is its importance for the poor' (World Bank 1992: 142, quoted in Caffentzis 2004) and that 'governments need to recognise that smaller organisational units, such as villages or pastoral associations, are better equipped to manage their own resources than are large authorities and may be a more effective basis for rural development and rational resource management than institutions imposed from the outside' (World Bank 1992: 143, quoted in Caffentzis 2004).

In the new era of capitalist accumulation, the reunification of the dispossessed with the means of production has been the *primary means* to keep alive the circuits of capital accumulation. The poorest of the poor—the 'bottom billion' would serve as a frontier market opening up new horizons of capital accumulation. One should keep the fact in mind that microfinance institutions are not always non-profit organisations. They are after profit like commercial banks, investment vehicles and money-markets. The new accumulation economy mines the fortunes of the bottom



pyramid, first by re-associating them with the common property and other means of production and then by making profit out of this reunification seeking to ‘eradicate poverty through profit’ (Prahalad, 2004).

If this is the case, then the ‘need economy’ (as Sanyal conceptualises and Chatterjee largely agrees) is far from being a sphere *separate* from the accumulation economy only providing the *conditions* for the hegemony of the corporate capital. The present moment of capitalist development invests more on common property than on the notion of the public and private divide. As the example of community forestry in the 1990s shows, the current capitalist development can even be read as anti-public in nature. Any slippage from commons to common property in anti-capitalist scholarship runs the risk of accepting the recent capitalist purchase of the concept of commons.

### **Commons as a negation of property**

What does an anti-capitalist scholar or an activist do with the concept of commons? Michael Hardt’s (2010) reading of Marx that commons is a critique not only to the private property but also to *all* forms of property including the state ownership of resources (the grand Soviet model) is the most appropriate. Commons is then a part of the critique of political economy for, as Marx and Engels argued in *The Communist Manifesto*, the critique of political economy is, at its heart, a critique of *property*. ‘The theory of communists’, argued Marx and Engels in *The Communist Manifesto* may be summed up in a single sentence: ‘Abolition of private property’. A few lines before this famous declaration, Marx and Engels state that the ‘distinguishing feature’ of Communism is the ‘abolition of *bourgeois property*’ (emphasis is author’s). By seeking to abolish the bourgeois property relations Marx and Engels could specify the historic role of the Communists: abolition not only of private property but also of the entire archaeology of bourgeois property—the very separation between public and private property. It is in this sense that the present chapter uses commons as a challenge to all forms of property. Again, in *Economic and Philosophical Manuscripts*, as Hardt shows, Marx makes a distinction between crude or corrupt communism and its ‘positive expression’. The crude communism merely generalises private

property by extending it to the entire community, as *universal private property*. Hardt (2010) argues that by the oxymoron ‘universal private property’ Marx seems to tell us that for Communism, the withering away of private component of property is not enough; the positive communism should fight for the very abolition of the notion of property (read property *after* bourgeois revolution). To Marx, then, the essence of communism lies in the idea of commons, which is a paradigm to question the legitimacy of private property, public property and the state property.

### **Public/Commons**

Thinking of commons as a critique of property in the cities is essentially a historical project. The concept of the modern city builds itself in the systematic negation of the notion of commons and in the promotion of a separation and ordering of spaces in public and the private. The slippage between commons and common property makes commons yet another version of public property making it palatable to the liberal argument. Rallying for the notion of commons as a critique of public is a part of a historical activism as it seeks to fight the repression that the city and its public have imposed on commons—a fight against historical and discursive erasure of a certain set of ideas. This section will show how the history of public is also a history of the erasure of the memory of commons in Kolkata.

In the British legal tradition, good government referred to the protection of the ‘public good’ or ‘public interest’ from the depredation of sectarian and purely private interest. This is well represented in the promulgation of the Indian Penal Code (IPC) in 1862. The section 268 of the IPC defines a person guilty of public nuisance as ‘who does not act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, danger or annoyance to persons who may have any occasions to use public rights’. The colonial law in India sought to build public spaces in the cities emulating the European model. For instance, as Prashant Kidambi (2007) argues, the 1902 Police Act in Bombay empowered the police to ‘target those sections of the urban poor who made a precarious living on the

streets of the city: beggars, barbers, carriage drivers, cart-men, cobblers, hawkers, prostitutes, vagrants and the like' (Kidambi 2007:149).

Even before this, the Bombay Municipal Act of 1888 introduced by-laws that prohibited all usages that were deemed to be 'encroachments' upon 'public streets' (Kidambi 2007:150). The Kolkata police—according to its 1870 report—roped in all who were accused of acts such as unlawful gathering, sounding musical instruments on public streets without a pass, bathing on public streets, letting off fireworks on public streets, begging for alms on public streets, and even uttering obscene and abusive words. On this latter charge alone, at least 378 people were arrested in Kolkata in 1870, out of which 275 were convicted (West Bengal State Archive, Report of the Police of the town of Kolkata and its suburbs, 1870, by Stuart Hogg, Commissioner of Police, Kolkata. Home Department, Police B, 15 July 1871, No 5). Similar developments were also replicated elsewhere in the colonial world. Thus in the late nineteenth century, the colonial state in Singapore acted as the 'guardian of the public arena'. Moreover, a new kind of crime, the 'public nuisance', which, '[b]etween 1870 and 1920... absorbed the single largest fraction of police energies in most parts of India' (Anderson 1992:9), led to 'a massive intervention in the social use of the physical environment' (Anderson 1992:2), so that, for instance, '[r]oads that had been the stage for itinerant hawkers, occasional markets, and small-scale manufacturing fell under the prohibition on obstructions...[and] could be made the object of prosecution' (Anderson 1992:19). In addition to this, street demonstrations of religious festivals such as Muharram, *Nam Sankirtan*, *Charak*, etc., were designated as criminal acts and codified as 'miscellaneous offences' under the Indian Penal Code. The Kolkata elite began to keep themselves away from these popular cultural expressions. Following the establishment of the Society for the Suppression of Public Obscenity by the 'educated natives' at a meeting in the Kolkata Town Hall on 20 September 1873, resolved to 'aid the government in putting in force the sections of the Penal Code and the Printing Act which were meant to preserve public purity' (*Friend of India*, 25 September 1873, quoted in Banerjee 2003). The Kolkata police finally prohibited the *sawng* (pantomime) performances on the streets during the *Charak* festivities in 1874. The *sawng* performances were treated as 'indecent behaviour on public streets' in the list of offences

in the Indian Penal Code (*Friend of India*, 25 September 1873, cited in Banerjee 2003.).

There are at least three ways in which politics and claim-making on urban land have taken place in India. A history of the public, which is a negation of commons, is possible by looking at the three forms that urban politics on land has taken.

*First*, as scholars working on the history of public space in India have elaborated (Anderson 1992 and Glover 2007), much of the uniqueness of public owes to the *legal* distinction between ‘public’ and ‘private’ (Anjaria 2008). Historians agree that in Indian towns and cities there had been common spaces (Bayly 1983). But these were not organised by the public and private divide (Kaviraj 1997). Instead, as Sudipta Kaviraj (1997) tells us, rules concerning the social uses of these spaces entailed both obligations and responsibilities (Anjaria 2008). Yet at the same time, this is not to suggest that the colonial concept of ‘public space’ completely erased the traces of prior socio-spatial arrangements. Rather, one notices the ways in which the historical and legal development of the concept of ‘public space’ in India under colonialism partially reveals the heterogeneous and intersecting legal and political lineages that inform its contemporary fraught usage (Anjaria 2008). In this way, scholars see contemporary debates on urban space in India as what Kaviraj calls a ‘peculiar configuration of the modern’ (Kaviraj 1997:92). In this connection Kaviraj has made an interesting distinction between the bourgeois public and what he calls *pablik*—a vernacularised and proletarian appropriation of the term as well as a territorialised negotiability of public norms and meanings as a radical consequence of democratisation of democracy. Hawkers and pavement dwellers in Kolkata, for example, regularly use the English terms ‘public’ and ‘public space’ to advance their own political claims in the city. But, as one observes, the *pablik* also implicitly accepts the notion of the bourgeois public. Without the understanding of the public it is hardly possible to recognise the Indian vernacular genius that corrupts the public. This very way of interpreting the everyday quotidian practices contributes to the forgetting of the notion of commons.

*Second*, the separation between public and private in bourgeois legal institutions had given birth to modern subalterns who could make use of this distinction to form a legal argument with the colonial state. In this context, a case of ‘communal tension’ in Kolkata from the ‘Daily Notes’ of the Taltala Thana submitted to the Deputy Commissioner of Police (DC) of the ‘Special Branch’ between 12 January 1910 and 20 April 1910, recorded as the ‘SB Secret Report on Communal Groups and Muslim Affairs’ (SB/ SW/636/1910) is illustrative. It demonstrates both the interpretation and the process—the different interpretations of the term ‘public’ at play in defining the city space, and the process of translation from one domain of urban practice to another that the case entailed. The purpose of citing this case is to point to the connections between the colonial histories of the ‘public space’ and the more recent deployment of that term in struggles over space in the contemporary city. It is from the English translation of the original petition attached with the Daily Notes of the Taltala Thana and not the original papers of Baksh.

Khuda Baksh, a shopkeeper from Faizabad, migrated to the city in early 1898, built a mosque on the ‘public land, marginally encroaching the footpath of the Dharmatal Street, half-mile east to the Tipu Sultan Shahi Masjid’, in the vicinity of the Esplanade in Central Kolkata. Before the building was fully plastered in January 1910, Khuda Baksh was summoned to the Taltala Thana and asked by the police officer in-charge to stop construction. Some days later, however, Baksh and some of the fellow shopkeepers of the neighbourhood submitted a petition to the Municipal Committee of the Kolkata Corporation stating that the mosque would not be used for the ‘public prayer’ and would purely be ‘used for private accommodation and convenience of himself and his friends’. The officer in-charge reluctantly agreed to this restricted use until it became apparent several weeks later, that azans (Islamic calls to prayer) were regularly made from the mosque and ‘the public generally in the neighbourhood and bazaar’ was using the mosque. Baksh was reportedly summoned to the municipal authority and ordered to deposit a Rupee 1000 surety bond to ensure that he would not have the azan called in the mosque. He replied by submitting another petition that reversed his earlier claim in fundamental ways: ‘the *masjid* (mosque) is not my private property

but devoted to the pious uses. For this reason I object to give security....No Muslim law prohibits worship because of fear or other scruples. No *masjid* is a private property...nor do I invite anybody to pray in this *masjid*—and from this date I will not go there myself’.

Usage of the word ‘public’ in the English translation suggests that Baksh had acquired consummate skills to make use of bourgeois legal terms to defend his case. The case also shows that subjection constitutes a form of repressive and productive power; power subordinates the subject (and maintains each subject within a state of subordination) but it also produces the legal subject, rendering subjectivity, desire and agency possible. The subordinating power, argues Judith Butler, that precedes and exceeds the subject that it produces, may be appropriated by the subject in the form of opposition or resistance. In other words, power subjugates but it also ‘subjectifies’ enabling claims to empowering subjectivity and agency or reflexivity.

*Third*, one may use the logic of the legitimate use of the public as enshrined in law to corner and erase other existing and possible *pablik practices*. The streets can be strictly designated for automobiles and footpaths to the pedestrians. Such spaces can then be disciplined and mapped by grid, lines and fences. Mobilising this logic, the state may encircle an open field and transform it into a public park where morning-walkers are welcome if they agree to pay a maintenance fee. Mobilising the same logic of space management, the zoning laws can get implemented which would not only govern the space but also manage the groups who use that space. The National Policy on Urban Street Vendors in India is a classic example of such a mobilisation of the public. There are many activist groups who find the National Policy as providing *the* solution to *all* street problems.

All the three forms of the articulation of the public in claim-making *belong* to the narrative of property. When Baksh, in our second case, successfully subverted the public/private binary and explored the linkages between the two to justify his case, he did so without questioning the very sanctity of private and public property. His actions emboldened rather than debased the notion of property.

This precisely is the *disciplinary integration* process in which all forms of value production gets reduced to a singular form of value production. Disciplinary integration entails a double history: the history of legalisation of property and also the history of the negation of commons. An agenda for commons is a project to undo property and to unlearn the pedagogy of modern law. This might be an impossible project. But, it is impossibility that constitutes the very philosophy of activism.

## References

- Anderson, M. 1992. "Public Nuisance and Private Purpose: Policed Environments in British India, 1860–1947." SOAS Working Paper 1.
- Anjaria, J. S. 2008. *Unruly Streets: Everyday Practices and Promises of Globality in Mumbai*. PhD Dissertation, Department of Anthropology, University of California, Santa Cruz.
- Banerjee, S. 2003. "City of Dreadful Night: Crime and Punishment in Colonial Calcutta." *Economic and Political Weekly* 38 (21): 2045–2055.
- Caffentzis G. 2004. 'A Tale of Two Conferences: Globalization, the Crisis of Neoliberalism and Question of the Commons',  
URL = <http://www.globaljusticecenter.org/papers/caffentzis.htm>, retrieved on 10 November 2010.
- Chatterjee P. 1997. 'Development Planning and the Indian state' in Byers T. J. (ed). *The State, Development Planning and Liberalisation in India*, Delhi. Oxford University Press.
- 2008: "Democracy and Economic Transformation in India." *Economic and Political Weekly* 43 (16): 53–62.
- Glover, W. 2007. "Construing Urban Space as 'Public' in Colonial India: Some Notes from the Punjab." *The Journal of Punjab Studies* 15 (1): 2–14.
- Guha R. 1994. *Elementary Aspects of Peasant Insurgency in Colonial India*. Second impression. Delhi, Oxford University Press.
- Hardt M. 2010. 'The Common in Communism', *Rethinking Marxism*, 22(3): 346–356.
- Kaviraj, S. 1997. "Filth and the Public Sphere: Concepts and Practices about Space in Calcutta." *Public Culture* 10 (1): 83–113.
- Kidambi, P. 2007. *The Making of an Indian Metropolis: Colonial governance and Public Culture in Bombay, 1890–1920*. Burlington: Ashgate.

- Marx K. 1887. *Capital: A Critique of Political Economy, Volume I*. Tans. Moore and E Aveling, Progress Publishers, Moscow, USSR.
- 1975. *Economic and philosophical manuscripts*. In *Early writings*, trans. R. Livingstone and G. Benton. London: Penguin.
- Marx, K., and F. Engels. 1998. *The Communist Manifesto*. London: Verso.
- Perelman M. 2000. *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation*, Duke University Press.
- Prahalad, C.K. 2004. *The Fortune at the Bottom of the Pyramid: Eradicating Poverty through Profits*, Cambridge, MA: Wharton School Publishing.
- Sanyal, K. 2007. *Rethinking Capitalist Development: Primitive Accumulation, Governmentality and Post-Colonial Capitalism*. Routledge: New Delhi.
- Taylor A. 2001. *American Colonies*, Penguin, London.



# Commons to Capital

With special reference to the Mundas of Jharkhand

---

S Basu Mullick

**T**he tribal and ecological history of India has been the history of forced transformation of the natural commons into private property and the property of the state, euphemistically called public property. It has also been the history of the indigenous peoples' relentless struggle to resist such transformation. The colonial process of dividing the commons into public and private domains got completed in the postcolonial period of so called nation building. In the following period of structural adjustment programme during and after the 1990s the state has opened the public domain for privatisation by the trans-national corporations and Indian small and large companies. Natural commons are being treated as capital. State mechanisms overtly violate laws that came into being out of state processes to protect commons. For the indigenous peoples, privatisation of natural commons is not only loss of livelihood but the disintegration of their communal life, their egalitarian culture and bio-centric world outlook. Disintegration of natural commons also leads to shrinking of the communal knowledge commons. The knowledge of taming the animal kingdom, the medicinal values of vegetation and the climate disappear along with the denudation of forest and destruction of the animal kingdom.

Destruction of natural commons causes sharpening of gender struggles and results in the diminishing status of women in the tribal society as well. Commons have been the domain of women in the forest-based society. It has been the storehouse of their natural and ritual knowledge, a bastion of their economy and, more importantly, a source of their power and status. The loss of commons therefore, leads to the growth of patriarchy, which is otherwise stunted in their society.

With the disappearance of commons, the community has also internalised the dominant notion of privatisation of livelihood resources. Even where a little bit of commons survives legally the families divide them amongst themselves and treat them as private property. This has been leading

to disintegration of many a traditional institution that strengthens the commons and the communal mode of production. The destruction of the old commons of natural resources and communal labour is bringing forth a new commons of labour market and natural resource bank for capital to exploit and rich to enjoy while the commoners suffer. In the new commons of the urban centres the original inhabitants are either fully excluded or their access to them is severely limited.

The recent movements reclaiming the commons have been spreading very fast through out the country. The fact that the Adivasis are at the forefront of these movements reveal that the collective memory of their egalitarian social life has not fully disappeared and the urge to go back to the 'golden age' of commons is still alive.

### **Overview**

In recent times a section of Indian bureaucracy and politicians have been advising the government to consider the tribal land and forest as capital in the event of its acquisition for industrial purposes. The owners of the land would become shareholders in the company that takes over the land and would be entitled to receive dividends. In the recently drafted mining legislation that would be called Mines and Minerals (Development and Regulation) Act, 2010, the Government of India agreed in principle to provide 26% equity or pay out of profits to the local communities whose land would be mined. This is envisaged in the context of the best possible way of compensating the tribal people whose livelihoods are being disrupted by industrial projects, especially mining. Big trans-national companies like Arcelor Mittal and Tata Sons are all in favour of this idea of upholding the neo-classical view of land as another kind of capital.

This is a radical shift from the hitherto practiced state policy based on the colonial view of land as state property under the usage of the tenants that can be acquired in lieu of monetary compensation. It is also not entirely motivated by the view of conflating land into capital and allowing land rent to be hidden and diluted in ways so that the unearned interest arising from social improvements fell to speculators rather than being returned to society in rent. It is true that the companies acquire land much more than is needed for the declared purpose of

acquisition. When the market value of the land goes up owing to social improvements mostly done by the state they sell the surplus land or appropriate the higher value. Thus they cheat the state and the individual owners who would have otherwise benefited.

The phenomenon of land being treated as capital may be understood in the context of the ever-expanding character of capital. In the present era of neo liberalism, bringing the resource rich tribal areas into the fold of capital is a necessary factor for the survival of capitalist economy. Now in the context of neo classical or 'two factor economics' land has lost its independent meaning and position as one of the three factors of production, the land, labour and capital. Now it is only labour and capital where land as capital is to produce dividend and not rent, and the landowner is a shareholder in the company and not a producer.

The journey of land from being commons to capital provides a fascinating story of changing relationship between human and nature. Land that was held by society in common, as free as the air, water and climate, travelled a long way to become private property and then to commodity and finally to capital also entails a series of changes in its vocabulary. However, this transformation did not take place without resistance by the commoners and its violent suppression by the usurpers of the commons in the past, and the pattern is being perpetuated till the present day. Therefore every new coinage of terms that replaced the previous ones in the history of changing vocabulary of commons is the product of a violent means to define and redefine the relationship between human and land with a progressively shrinking access to land by the common folk.

The changing vocabulary of commons indicate a societal change, especially a change in the mode of production. Therefore, it parallels a corresponding change in the vocabulary of the commoners, as tribes, castes and class. The changing vocabulary of commons may be traced in four phases, the primordial, medieval, colonial and modern. This chapter looks at this change with a special reference to the Munda tribe of eastern India.

### **Primordial commons**

“*Atamata bir ko talare* (under the dense forest) our ancestors lived”, recollect the Mundas. It was a vast desolate forest, *seya sandi bir*, (Roy 1912:5). The collective remembrance of the Mundas in Jharkhand cultural region, comprising eastern part of the central tribal belt of India, corroborates the findings of the modern archeologists and historians. Even till the early medieval period it remained a part of a vast topography, known as the Great Central Indian Forest (Habib 1982). It occupied the whole of central India between the Gangetic plains in the north and the Deccan plateau in the south. The oral history of the Mundas describes the long wanderings of the tribe through out this jungle fastness over a long period of time in the olden days (*sida samay re*) till they finally reached the place they called the *Bir Kandara Disum*, the densely forested country (Singh 1978:31). Here they settled villages by clearing the virgin forests. In every settlement they left a small part of the virgin forest for the spirit of the land to dwell and to be propitiated by them. They called it the *jaer* (*Jaer, Santal*), the sacred grove. Later they named their habitat as the *Jaer Kandara* or *Jaer Kanda*, the land of the sacred groves. The present Hindustani word *Jharkhand*, literally means ‘forest land’, might have been derived from this original Mundari word.

‘The Supreme Being (*Sing Bonga*) and His ‘first love’ Mother Earth (*ote enga*) together created this world for all of us including the forest biodiversity and the animal kingdom’, thus goes the Munda belief (Munda and Manki 2009:51–2). The Supreme Being turned the Asura women to female spirits to protect every part of the Mother Earth (Asura legend. Hoffman 1950:240–50). The village tutelary spirits are to protect the community from diseases and dangers. The Munda belief system, unfolds before us a way of life based on egalitarian principles, a continuum of nature, ancestor and human, and a symbiosis between human and animal kingdom. It emerged from a lost world the whole of humanity shared once. It was the world of magic where the creator and the created lived together. It was a bio–centric world as opposed to anthropocentrism of the normative religions. The Supreme Being (*Sing Bonga*) created it for his own pleasure (*Asura dehavada*. Chattopadhyaya 1959:48–50). The cause of the variegated creations was, therefore,

not to please the human. The human was created along with others to fulfil the desire of the god to have companions. The scheme of the creation of world is such that it becomes the home of all the creations, the spirits, the life, the vegetation and the animated matter. It is a holistic creation of interdependent components. The earth was created truly as commons.

The land under the sun and under the trees (*sing suba, daru suba*) was a continuous topography for the Mundas, where their ancestors roamed, settled and resettled. Their association with the land is through the totems (usually animals and plants belonging to the local biodiversity) and the spirits of the animated material objects. Thus land for them is not an arbitrarily fenced piece of territory. The territories between the tribes and their settlements are demarcated naturally. This is why the Munda vocabulary has no word for 'country'.

The Mundas received the territorial identity from the aliens of the plains of the river valleys, the *diku* (literally 'the others'). The *dikus* came from all directions and formed states (primary) in their land and gave them names, such as, Chutia Nagupur, Padma, Singh Bhum, Shikhar Bhum, Jashpur, Sarguja and so on. Indigenous and tribal peoples all over the world call themselves as 'human beings'. But the others prefer to call them in different names that in most of the cases are derogatory. The *dikus* in Jharkhand also coined names for the tribes. The Mundas, for instance, call themselves the *hodoko*, meaning 'the human beings'. But the others who occupied their land called them Mura (*mudha* in Sanskrit) meaning 'foolish' (Roy 1912:24 footnote 10). Similarly, the *birhodoko* or simply *birhors*, a forest dwelling branch of the Mundas, are called as *mangkadias* in Odisha meaning 'monkey like people'.

### **Commons to property**

The history of transformation of commons into property is traced back to the epoch changing phenomenon of state formation out of the Aryan social matrix that began and matured between 500—200 BC in the eastern part of the vast Gangetic plains of the North India. The phenomenon preceded a long period of gradual social transformation that the early Aryans passed through.

During the rig vedic and atharva vedic period overlordship of the land, vesting in the tribal chief, the village–chief (*gramani*), or anyone else does not seem to have existed. There is the further possibility that ...some Aryan tribes (even) did agriculture in common ... during the time of Alexander (Habib 1995:61–2). The ‘equalitarian’ structure of the agrarian society of the Aryans must surely have been affected in the course of time by their struggle with the indigenous enemies (Habib 1995:62). With the help of the defeated enemies, the *dasa/shudras*, as they were categorised by the Aryans, and the discovery of iron in the upper Gangetic valley around 1000BC–800BC the Aryans, who were originally pastoral tribes, took thousand years to denude the forest commons of the indigenous tribes of the Gangetic valley (*gaanga* is a Mundari word for the river Ganges, Ganga in Sanskrit) and turned the land into the property of their clans (tribes), the *jana*. The root of the *jana* or *samgha* in the tribal social formation is proved by their names that are mostly totemic by origin (Chattopadhyaya 1959:1157). The territory under the control of the *jana* was known as the *janapada*, literally ‘the commons of the tribe’.

The availability of vast stretches of cultivable land along with a large number of enslaved human labour and cattle prepared the ground for the emergence of a new social formation. The Aryan tribes, the *janas*, changed into oligarchies and had helots, the *dasas*, to cultivate their common land. In other words, the Aryan commons survived but its character changed, the Aryan farmer became landowner cultivating his land by slaves (Habib 1995:64). At a later stage ‘the land and the produce changed from usage to property... cultivated land changed from clan ownership to ownership of the *gahapati* (*grihapati*) as the head of the household’ (Thapar 1984:158). The substitution of *gahapati* for *vaisya* points to the final disintegration of the original *vis* (Thapar 1984:88), the Aryan commoners. Fields were counted as an index of wealth for the first time, showing that large landed possessions becomes possible (Habib 1995:64). ‘There is no doubt that the presumably more advanced *samghas* were showing the early signs of class division...’ (Chattopadhyaya 1959:1157).

The historical law is that the states could emerge only on the ruins of the tribes (Chattopadhyaya 1959:142). The Aryan oligarchies started disintegrating owing to their internal developments or stratifications. The states of Magadha and Kosala emerged out of such disintegrations of oligarchies. Magadha is an example of a primary state, the earliest one, and it has been argued that the secondary states are formed by primary states conquering non-states. The Magadhan conquest of a large part of central and northern India included, besides some primary states, a vast territory that did not have a state system. The Magadhan state that became an empire under the Maurians (c.200BC—AD650) could not economically restructure these vast territories and integrate them into the state system (Thapar 1984:159). The question of restructuring the economy hinges on the wider question of landownership (ibid: 161). Therefore, the tribal land system with communal and equalitarian access survived on a large scale alongside the emerging state system where land lost its tribal character of being commons and transformed into private and public properties.

The common land, forest and water bodies thus brought under state control were put primarily in the public sector. Arable land was in both public (*sita*) and private sectors. The forests, however, remained as commons except for some identified as 'elephant forest' or 'forest for king's hunting of expeditions'. Even though Kautilya prepares a long list of forest produces in his Arthashastra and puts forests in the category of the property of the state, the large tract of forests even within the Maurian empire remained the domain of the free forest dwellers. A notion of 'common property' also emerged. Sheds, courtyards, latrines, fireplaces, places for pounding grain and all open spaces were to be used as common property (Rangarajan 1992:342).

Arthashastra recognises that the *samghas* (oligarchies) are characterised by the collective leadership of a council of leaders and that they were cohesive entities. Enemies could not break them easily (Rangarajan 1992:619). The emerging states, however, could not allow the survival of such oligarchies around them for two reasons. There is no prospect for the rising monarchs so long as the free *samghas* survived in the neighbourhood. Besides, the example of their democracy, (the political

commons), was dangerous for the monarchies. 'The destruction of *samghas* was thus inevitably a part of the policy of the rising state power' (Arthashastra, as quoted by Chattopadhyaya 1995:473). The other reason, that the same Arthashastra of Kautilya stresses may be the more important one: the importance of conquering the land of the tribal peoples for the prosperity of the state and its inhabitants (Rangarajan 1992:3).

The Mauryan state imposed its own rule and moral dictates (*dharma*) over the conquered territory by replacing the customary law of the defeated people (Rangarajan 1992:351). Customary laws are nothing but the knowledge commons of the concerned people of a particular locality. In the following period the state increasingly started making land grants to the Brahmins, the Monks (Buddhist), the temples and monasteries ostensibly to settle them in the countryside for the propagation and establishment of *dharma*, the law having religious sanction. The land thus provided was mostly the commons of the non-state people, called the 'wasteland', that the grantees were expected to bring under cultivation. This fact immensely contributed to the growth of 'feudalism from below' (Kosambi: 1975:295) during the post Mauryan period.

Conquest brought the Brahmins in the land of the *Atavikas* by land grants. The Brahmins brought many an agricultural technology to the hitherto swidden agriculturists. Plough agriculture began on a large scale. The ranks of shudras and panchamas started increasing rapidly. The self-sufficient Indian village emerged. All this happened at the cost of the forest and swidden commons. This process led to the state formation out of the indigenous (non Aryan) matrix as well. A large number of hitherto non state communities disintegrated, their chiefs became their kings who connected the territory of the community to the larger state system and introduced new institutions of tax and turned the people into peasants tilling their privately owned fields. The Varna system transformed into the caste system. The people who did not know agriculture, the hunting gathering ones, were forcibly brought under the new system as real proletariats, the Dalits. The



following empires of the Hindus, Buddhists and Muslims religiously followed the pattern of disintegrating the resource, political and cultural commons of the tribal society that the Maurian Empire set.

However, despite the emergence of empires and feudal relations on a large scale a larger section of Indian peoples remained outside the pale of this system. What Badden Powel (1972: 226) observed through his firsthand experience and what Marx gathered through his second hand sources about the dominant type of village society of India (Asiatic Mode of Production) was in fact the tribal model of social system—economically self-reliant and politically autonomous. The majority of the pre-British Indian villages was of that type. The Brahminical model of village society existed only around the politico-religious centres of the state. Though it was a politically powerful model, it was not the socially dominant one. Since the Muslim rulers did not disturb this model, the Indian village society remained predominantly tribal in nature till the advent of the British colonial rule. Now when we use the term tribal we basically refer to the sedentary communities of cultivators rather than the hunter-gatherers, though they shared the same social values.

The centralised feudal states under the Hindus and the Muslims had no serious stake in the low yielding rocky lands of the indigenous peoples and the primary states of the forestland had no strength to subjugate them completely. Both kinds of state were happy with irregular tribute made by the people. They did not disturb the indigenous social system to any considerable extent (Sinha, Surjit. 1987: xvii). Rather, the medieval state system sought to preserve tribal autonomy (Singh, K.S.1985: 124).

In Jharkhand the primary state formation began around the fifteenth century. The secondary state could not emerge owing to strong tribal resistance. The 'jungle states' followed the same Magadhan pattern of engagements with the tribes, the *koles* (the generic name given to all the tribes living in the region by the Aryans) in this case. Under the overall supremacy of the Muslim rule that did not deviate from the previous state system, much the territory of the *kols* was divided

into *Jagirs*, *Parganas* and *Maujas*. The *hatu/ ato* of the *kols* was not only rechristened as *mauja*, its nature was also changed radically. The commons of the Mundas in the area under the control of the state was made both crown land (*Majhihas*) and private land distributed among the Jagirdars and members of the royal family. The commons that the Mundas retained was termed as *khuntkatti* (*khunt* means lineage and *katti* means clearance), the clearance of the lineage of the Mundas. In the area where privatisation of land became the order of the day, due to the pressure of the state, the land was called the *bhinhari* and the holder as the *bhuinhar*. Forest generally continued to remain as commons.

The institutions that sustained the commons earlier either disintegrated or became highly corrupted to accommodate the change in the human land relationship in the *bhuinhari* areas. The political commons *patti* (the village council where decisions are taken collectively on the basis of consensus) in the *khuntkatti* areas enjoyed much more autonomy than its counterpart called *parha* in the *bhuinhari* areas. The labour commons (the institution of cooperation and collective action of labour), *denga* or *madaiti* (cooperation) was corrupted to become a free labour pool for the kings and the intermediaries. The common access to the fruits of labour of the individual families (comprising of agricultural surplus and gatherings and games) ensured by the institution of *kupul* or *mehmani* (becoming guests) gradually lost its social significance. The state became the harbinger of sanskritisation among these lineage societies. 'Aryan culture and Brahminical Hinduism contributed to their (a section of the Mundas) transformation into agricultural communities' (Singh 1985:29, Sachchidananda 1979:66). New knowledge of the agricultural operation and implements were introduced from the plains and the autochthonous chieftains acted as champions of Neo-Brahminism (Singh 1985:27).

Land grants to Brahmins brought from the neighbouring Bengal, Odisha and Bihar and construction of temples became a regular practice of the state. The ritual knowledge commons (*Sarna* belief system) of the 'animist' tribes faced gradual disintegration with the spread of

popular Hinduism and Brahmins usurping the ritual knowledge of the tribes. Many tribal shrines were converted to Hindu temples.

Mundas, like other communities, lost their language commons in and around the seat of political power. *Mundari* was either fully replaced by Sadri (*Nagpuri*), *Panchpargania* and *Khortha* or it was heavily corrupted by them. Consequently, the folk literature and dance forms, the commons of the community's performing arts, were transformed to a great extent in the exposed areas and accommodated alien elements in the core tribal areas. Munda and Zide (1969) observed the structural influence of the Bengal Vaishnava songs on the traditional Mundari folk-songs. And we know that Vaishnavism stood for a personal god as opposed to the Munda tradition of collective propitiation of the Supreme Being.

Another very important development took place within the tribal societies in the area of gender relations along with the process of state making in their midst. The transformation of commons to private property, first to the fraternity of the lineage brotherhood and then to the individual families, diminished the access of women to the resources drastically though their labour contributed the greater part of the community pool of labour. The Munda brotherhood (*hagako/ bhaiad*) kept the cultivable land as common property of the lineage in the *khuntkatti* area but in the *bhuinhari* region land became property of the family. With the transformation from 'hoe' to 'plough' agriculture along with the easy availability of cheaper iron tools that was made possible by the state, the society became progressively sedentary and economic dependence on forests started diminishing. Though the forest still remained the domain of the tribal women as commons, their role as the food suppliers reduced as the settled agriculture, now under the control of men, became more productive than foraging and the swidden. The state promoted the supremacy of men over the land and accentuated the division of labour between the genders. Several taboos debarred the women from the ownership of means of production like the plough.

Women were marginalised and then excluded from the knowledge commons. Where they could not be excluded, that part of the knowledge commons itself was delegitimised and demonised. Women's traditional

role as healers, *najom*, was challenged and male institution of *baid/deonra* was introduced to replace it. Women's knowledge of biodiversity was branded as their knowledge of poison and their ritual knowledge was branded as black magic (*jadu tona*). Branding of powerful women, or women in possession of land of her deceased husband, as witches and killing or harassing them by the lineage brotherhood was a form of gender or class struggle, which sought to remove land rights from women and confer them to men (Kelker, Govind. 2000: 2041–2).

### **Colonial transformation of commons to commodity**

British colonial rule shook the tribal model to its roots. The colonial state drastically changed all previous equations between the indigenous peoples and the state in terms of the preservation of commons. It not only changed the 'basic design' of the Indian caste based villages, it also initiated a radical change in the basic structure of the indigenous peoples' societies. This was not a question simply of a new type of land revenue administration. What was at issue was something far more fundamental—the basic value by which economic life in the village had been governed in the past (Béteille, André 1980: 109).

In the previous Mughal system, the state enjoyed only the right to collect the land revenue, which was in many places akin to only a voluntary contribution, *bali* or *chanda*, for instance, in Jharkhand. The peasant enjoyed communal rights over all the natural resources of the village, the land, forest and water. Now under the Permanent Settlement (1793) the British East India Company turned the commons as commodity (*zamindari*) and auctioned them to the Zamindars, a newly created class of landlords, as their permanent property. The alien Zamindars and the socially alienated local elites of the primary states destroyed the landownership pattern by turning the independent cultivators/peasants into tenants-at-will, the *raiyyat*, (a rent paying peasant who enjoys no permanent rights over the land that he tills) and dispossessed them of their ancestral rights over land, forest and water resources.

However, the cruelest aspect of the colonial state making was its policy of placing the environment in the public domain and agriculture in the private domain (Shivamkrishnan: 1999:4). Forced peasantisation

of the tribal people and alienation of the forest from them indicated the end of commons and the social values of the communal access to resources. Common natural resources of the indigenous peoples were declared as *terra nullius* and occupied by the colonial state as their eminent domain. 'Community managed forest land, which once existed over large parts of India, were steadily dismantled during the nineteenth century. The process of state usurpation was consolidated in the Indian Forest Act of 1878' (Gadgil and Guha 2000:40). For the first time the indigenous peoples' domains were brought under the state power with an alien legal and administrative system.

Now the vocabulary of the forest commons was changed from *bir-buru* (hills and forests) of the Mundas to reserve, protected and private forests. A regular army, police and prison implemented laws, unacceptable to the indigenous peoples. These regions were opened first to mercantile and then to industrial capitalistic exploitation. Commercialisation of forests, mining activities and industrialisation exposed the indigenous peoples to the most abhorring experience of displacement. Thousands of people were taken to far away places in the tea gardens of Assam and Bengal as indentured labourers. However, the colonial forest policies and practices of forest management could not succeed in the large part of the 'Bengal woodland' that included the eastern tribal belt of India. 'In part this was because woodland Bengal—its people, flora and fauna—clearly emerged as an agent able to confound foresters and resist their ambitious schemes' (Shivaramakrishnan 1999:3).

Tribal revolt throughout the nineteenth century forced the colonial state to adopt a policy euphemistically called 'paternalism'. It was actually a policy of drawing 'treaties' with the revolting tribes. Under this, the tribal habitat in Jharkhand was put under a simple administrative system (initially as South Western Frontier Agency and after 1935 as Partially Excluded Area) and land rights of the tribes were recognised. 'The British administrators had built up the theory of peasant proprietorship for Chotanagpur tribals, who were described as the original reclaimers of the land. This theory of peasant proprietorship was reiterated by the German missionaries who, with the agrarian background of their home country, pleaded for the restoration of the rights of the tribals

as peasants' (Singh: 1978:29). The Chotanagpur Tenancy Act (1908) was the outcome of this policy that made tribal land, both private and collective, inalienable. As a token recognition of the traditional commons of the Mundas, only 446 villages were identified that had been continuing to remain as the commons of the lineages. They were called the Mundari Khuntkatti villages that would enjoy the ownership rights of the Munda lineage brotherhood over the land, forest and water resources under the traditional boundary of the village. The Act did not accept the land rights of the tribal women. It upheld the Christian Missionary (Hoffmann, J.B. 1950:2388) and Hindu anthropologist (Roy, S.C. 1912) interpretation of the tribal society as patriarchal and women enjoy no land rights. As this interpretation ignored the internal gender conflict over the access to resources, both physical and knowledge, it failed to recognise forest and swidden fields as the source of the women's political power and economic stamina. Taking advantage of this omission of women's rights in the Act the rights of men started growing faster and, in many places, the Munda women lost their 'life interest' in paternal and husband's land and were forced to be happy with the right to 'maintenance' in case of widowhood or remaining spinster till death. The Act treated the Mundas as peasants.

However, this treaty was not respected in the following years. By 1930 the number of the Mundari Khuntkatti villages were reduced to 156 (Taylor 1930. Survey Settlement Report. Ranchi). Large scale forest felling was undertaken to meet the demand of shipbuilding, construction of railway tracks and mining. Plantation under the scheme of 'scientific forest management' began to replace natural forest and exotic trees replaced the local species. The Mundas objected to the construction of roads in their country. They said, 'we are happy with our *hora* (the village pathway), we do not want the *sandak* (roads) because *hora* takes us to the commons but the *sandak* takes it away from us'. Roads and railways brought more and more outsiders to the land of the Mundas who, in collaboration with the administration, kept alienating tribal land blatantly flouting the tenancy Act. Christian churches that entered into the region in the middle of the nineteenth century occupied large chunks of tribal land as did the Hindu temples and Muslim mosques. The government acquired large tracts of land

for administrative purposes and for the army. All this happened in the name of 'public purposes'.

### **Modern times: Commons to capital**

The hundred years of tribal revolt against the British colonial rule cannot be equated with the 'freedom struggle' of the Indian elites that wanted to replace the rulers not the content of the rule. Tribals rose against an alien civilisation that turned nature into private property and human into tenants and everything that nature offers and human produces taxable. Land that they revered as mother was turned into commodity and their egalitarian way of life was ridiculed and attacked as savagery. It was a conflict of civilisations. In the post colonial scenario the basic content of the tribal movement has not changed since the nation state that replaced the colonial state did not restore the lost value of the communal living on common resources. Tribals promised to create a new political commons of democracy hand in hand with the rest of the people of India and the state promised to respect tribal rights over land and forest commons (Saksena, H.S. 1981:Jaipal Sing and Pandit Nehru: Statements in the Constituent Assembly). However, whatever came out of the state process was taken away by the state mechanism of the Indian nation state.

A critical view of the Tribal Panchsheel (five principles) of the early years of independence reveals that 'development' is the key word of the panchsheel that was laid down as the tribal policy of the government under the aegis of Pandit J Nehru, the first Prime Minister of India. It was shelved before it could really take off because the so-called national development came into conflict with tribal development. The discourse of tribal development revolved only around the issue of state entitlements. Even that failed to benefit the tribal people as the tribal areas were progressively being treated as internal colonies. Half a century long bitter collective experience of the country's development turning into destruction for the tribal life, livelihood and commons prompted the tribal peoples to unanimously reject 'development' as the means of achieving better life. They are now looking for an alternative to development. Globally too the debate of tribal development has been clinched and development has been branded as another name of neo-

colonialism that has not only been adversely affecting the lives of the tribal people but also of all the marginalised and weaker sections of the society.

‘Development’ explains why legal measures that followed the Panchsheel taken to satisfy the tribal demand of restoring political commons at the village level through participatory democracy, and forest commons through collective management rights and ownership rights of NTFPs were so blatantly disregarded. The non-implementation of the Panchyati Raj Extension to the Schedule Areas Act 1996 (PESA) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 cannot be explained simply in terms of a corrupt and power hungry bureaucracy but in terms of the overwhelming demand of resources by the industrial capital.

The truth that the tribal folk singer’s lament, ‘*banali pardeshi nij ghare*’ (we have become strangers in our own home), reveals is enough to imagine how the ‘chariots of the foreign companies treading upon the chest of our homes’. More than 60% of the displaced families in Jharkhand has been the tribal peoples. The commons have always been the easy targets of ‘development’. The state converted large tracts of forestland into mines and doled out village commons (*gair majrua am* and *gair majrua khas*) to the mining and private companies whenever demanded. The folk poet’s determination, ‘*we will not part with our dancing ground, whatever may come*’ could not stop the march of development in the Munda country.

Destruction of tribal commons is partially caused by the internal developments of the tribal society itself. Tribal societies never remained isolated from the rest of the world. They survived on the periphery of the caste based peasant society of medieval feudalism but remained connected to it through trade and tribute. It is still alive in the hills and forestlands throughout the country but heavily exposed to the industrial mode of production. As jungle states emerged out of tribal matrix in the medieval period owing to the development of privatisation of agricultural land under the feudal mode of production, a new tribal elite class is emerging in the present time owing to the entry of the tribal people in the tertiary sector of the economy increasingly dominated



by the capitalist mode of production. A section of the tribal educated elite and politicians welcome industry considering it as inevitable and condemn the attachment of their people to the tribal mode of production as a curse in the path their progress.

In this context it is worth quoting the statement of the first chief minister of the Jharkhand state (province) who was himself a tribal person. “The era of development has started. Agriculture cannot sustain us. We have to enter into business and for that we need land and capital. Who would give us capital against our land under this non-transferable land tenure system? As long as the present tenancy laws are there both tribal and non-tribal people will remain backward. Let us demand the scrapping of these Acts that the British colonial rulers created to execute their policy of divide and rule” (Singh and Kumar: 2003:viii—ix). His view has been receiving unconditional support from the other tribal chief ministers who followed him. They were the architects of one hundred and one Memorandum of Understanding (MoUs) signed between the Government of Jharkhand and the trans-national and Indian industrial giants of the corporate world.

However, this fact cannot be cited as an indication of the inevitability of the disappearance of the tribal mode of production and the tribal values of an egalitarian way of life based on economic, political and cultural commons. This fact has to be seen as an outcome of a civilisation apparently dazzling with diabolic consumption, but unsustainable and ecologically criminal at its core. It is the capitalist civilisation which has been spreading its tentacles faster than ever before in the present era of globalisation. What is inevitable is nothing but the collapse of this civilisation.

This brings us to the debate of ‘socialism’ as an alternative to capitalism. Criticising the so-called socialist mode of production as it was practiced especially in the Soviet Union and as it is being implemented by an authoritarian state in China, Gadgil and Guha point out that, from an ecological point of view, the similarities in these two developmental paths (capitalism and socialism) are more significant than their differences. They are similar in terms of the scale and direction of natural resource flows, the patterns of energy use, the ideologies of human-nature

interaction, the specific resource management practices and ultimately, the cumulative impact on the living environment. Therefore they conclude that industrial socialism and industrial capitalism are simply variants of one industrial pattern of resource use (Gadgil and Guha: 1992:14). This conclusion, which is absolutely correct, however, may lead one to believe that there is no alternative to capitalism. The authors unfortunately see the root of the problem in the industrial mode of production and not so clearly in the very substance of capitalism as such.

Along with industrialisation growing population is also considered as a factor for the destruction of commons. Garrett Hardin's theory on the Tragedy of Commons (1968) leads many people to believe that privatisation of commons can only save them from their selfish use by the growing population and their ever growing need. The logic presented by the state in support of alienating forest commons from the tribal people and putting them under the state control emanates from the same theory.

The alarming rate of global warming and horrifying pace of the destruction of biodiversity bring us back to the question of what is the alternative to the capitalist mode of production. Socialism, the way it has been practiced so far, is certainly not the answer. But one has to recognise the fact that Marxism never subscribed to this form of socialism. In fact, twentieth century socialist projects mimicked the capitalism in their pursuit to compete with it and, in the end, authoritarian states emerged that "survived the deadly climate of the twentieth century imperialism by following capital in its exploitation of labour (and over exploitation of nature). They never achieved, therefore, the most elementary condition of socialism, as defined by Marx and Engels in the *Communist Manifesto*: that it be 'an association in which the free development of each is the condition for the free development of all'" (Kovel: 2003:xxiii).

Free development of all is truly the value of the commons.

## The changing vocabulary

### Changing vocabulary of human beings

*Pilchu hadam* and *pilchu pudhia* (the first man and woman) – *horo honko* (children of human beings) – *hatu kisan* (village cultivators) – *raiyat/poroja*

### Changing vocabulary of land

*Sing suba daru suba* (belongs to the supreme being)—*jaer kanda* (belongs to the tribe)—*ote hasa* (belongs to the lineage occupation but under the usage of the family)—*raiyati zamin* (private property of the individual).

### Changing vocabulary of the forest

*Birburu* (belongs to the Supreme Being)—*khuntkatti birbur* (belongs to the founding lineage of the village)—reserve forest and protected forest (belong to the state) and private forest (property of the zamindar)—national park and sanctuary (belong to the state).

No notion of country but space—topography as opposed to fencing of the space, drawing boundary between the states, kingdoms and empires, zamindari and private property.

### Changing vocabulary of political commons

*Patti/ Parha* (*Panch*—village council)—council of only lineage brotherhood/ fraternity (women are left alone), *Munda/Manki* head of the council/head of the confederation of councils) becomes tribute/tax collector under the state system, *gram sabha* replaces *patti/parha* under PESA. A government servant not belonging to the tribe/lineage is appointed as the secretary of the council in recent times by the state.

### Changing vocabulary of cultural commons

*Giti Ora* (youth dormitory) is branded as dens of promiscuity and was sought to be replaced by schools and hostels by the Christian missionaries.

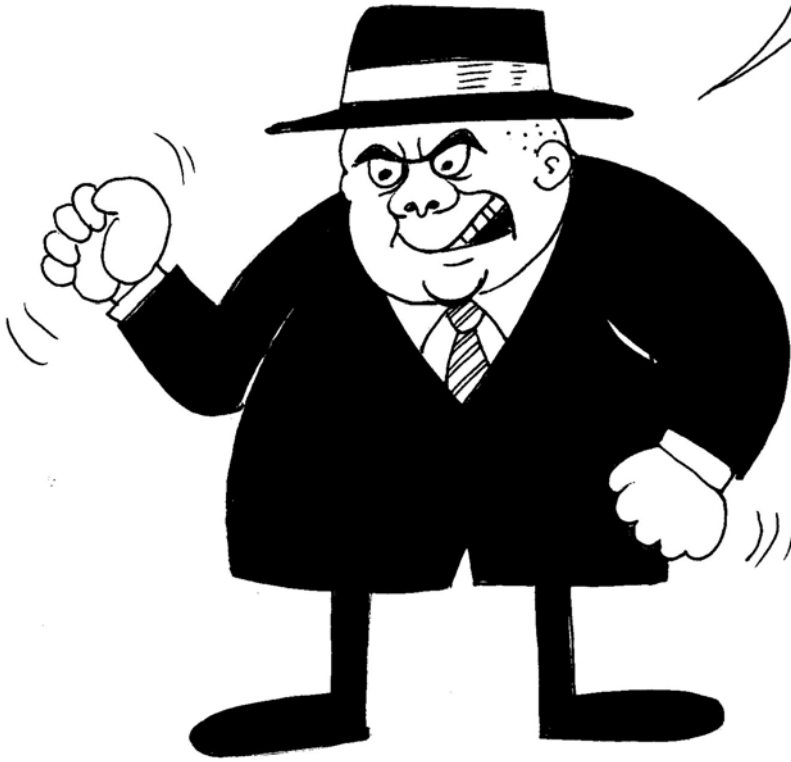
*Sarna* belief system was/is being replaced by Christianity and Hinduism.

*Mundari* (language of the Mundas) was being replaced by *Sadri/Panch Pargania/ Khortha* (language of the rulers) under the medieval state, by *Hindi* under the colonial and modern state.

## References

- Baden-Powell, B.H. 1972. *The Indian Village Community*. Cosmo Publication. Delhi.
- Béteille, André. 1980, *The Indian Village: Past and Present*, in *Peasants in History* edited by E.J. Hobsbawm et.al. Oxford University Press.
- Chattopadhyaya. 1959 *Lokayata*. Peoples Publishing House. Bombay.
- Gadgil, M. and Guha, R. 2000. *Ecology and Equity in Use and Abuse of Nature*. Oxford. New Delhi.
- Hoffman, J.B. and Emelen, A.V. 1950. *Encyclopaedia Mundarica*. Government Printing Press. Patna.
- Hardin, Garrett. 1968. *Tragedy of Commons*. Science.
- Habib, Irfan. 1982. *An Atlas of Mughal India*. Oxford. Delhi.
- Habib, Irfan. 1995. *Essays in Indian History: towards a Marxist perception*. Tulika Books. New Delhi.
- Kelker, Govind. 2000. *Witches: Asia*, in Kramarea, Chris and Spender, Dale (2000), edited Routledge *International Encyclopedia of Women*, Routledge, Newyork, Volume 4.
- Kosambi, D. D. 1975. *An Introduction to the Study of Indian History*. Popular Prakashan. Bombay.
- Kovel, Joel. 2003. *The Enemy of Nature*. Tulika Books. New Delhi.
- Munda, R. D and Manki R.S. 2009 *Adi Dharam*. Rajkamal. New Delhi.
- Munda, R. D and Zide, Norman. 1969. *Revolutionary Birsa and Mundari Folk Songs*. The Journal of Social Research, Vol. XII, No. 2.
- Rangarajan, L. N. 1992. *Kautilya: The Arthashastra*. Penguin.
- Roy, S. C. 1912. *The Mundas and Their Country*. Second Reprint, 1995, Catholic Press, Ranchi.
- Sachchidananda. 1979. *The Changing Munda*. Concept Publishing Company. New Delhi.
- Saksena, H.S. 1981. *Safeguards for Scheduled Caste and Tribes-Founding Father's View*, Uppal Publishing House. New Delhi.
- Shivaramakrishnan, K. 1999. *Modern Forests*. Oxford, New Delhi.
- Singh, K. S. 1978. *The Munda Land System* in P. Ponette (ed.) *The Munda World*. Catholic Press. Ranchi.
- Singh, K.S.1985. *Tribal Society in India*. Manohar, New Delhi.
- Singh, K.S.1987, *The Chotanagpur Raj: Mythology*, in Surajit Sinha, (ed) *Tribal Politics and State system in Pre-colonial Eastern and North Eastern India*. K.P.Bagchi and Company, Calcutta.
- Singh, Pankaj and Kumar, Niraj. 2003. *Santalpargana Bhumi Kanun: ek samiksha*. Sathee. Godda.
- Sinha, Surajit: 1987, ed. *Tribal Politics and State system in Pre-colonial Eastern and North Eastern India*. K.P.Bagchi and Company, Calcutta.
- Thapar: 1984. *From Lineage to State*. Oxford. Delhi.

**WE MUST LOVE AND RESPECT NATURE.  
RIVERS ARE LIKE MY BLOOD.  
FORESTS ARE MY BREATH....**



**....AND THE EARTH IS  
MY BANK ACCOUNT!**



*Sasi -*

**I TOLD YOU THAT YOU HAVE RIGHTS  
ON THE FORESTS....**



**SO LONG AS YOU DON'T ENTER!**



# Commons, communities and state appropriation

---

Ashok Choudhary and Roma

“Our ancestors protected this forest and land and this is our heritage. To protect the forest and land for our future generations. Then how come the British ruler has become the owner of our heritage? We cannot accept that.”

- Tilka Majhi from the Jabra Pahadiya Tribe of the Santhal Paraganas, to the collector of Bhagalpur during a trial when the government tried to reallocate land. Baba Tilka Majhi was first Santal leader who took up the arms against the British in the 1789. He was killed by the British.

In India the majority of the rural population has been dependent on natural resources for their livelihood. Traditionally, most of these natural resources—land, forest and water—were commons. But in the historical process, and especially during the colonial rule, many of these commons came under private and state ownership. The colonial powers’ quest to grab land for increasing agricultural revenue, supply of timber and other forest produce, for industrialisation and for accumulation of capital necessitated a total change in the pattern of social ownership to private and state ownership. In this process, the symbiotic relationship between society and common resources almost got destroyed.

Since then the ownership of forest resources has remained a critical issue, resulting in a series of conflicts between Adivasis and other forest dwellers on the one side and the Indian state and corporations on the other. It has become an important political issue now with the enactment of the Schedule Tribes and Other Forest Dwellers (Recognition of Rights) Act 2006, popularly known as the Forest Rights Act (FRA). With the growing awareness about the political rights, there is a class struggle now in many forest areas especially in the central, eastern and Himalayan regions.

It is pertinent to look into the history of these areas in the context of appropriation of forest land by the Indian state, against the basic principles

of Indian Constitution. Forest people had fought tooth and nail against the concept of eminent domain established by the colonial powers and forced the then colonial state to enact progressive laws in certain areas such as the Chotanagpur Tenancy Act (CTA) 1908, Santhal Parganas Tenancy Act (SPTA) 1912 and Van Panchayat Rules 1930 in Uttarakhand. Ironically, the government of independent India systematically accelerated the process of annexation of forest land. Thus national independence came as a curse to the forest people and forest dwellers.

So the struggle for community control over the forest resources still continues in different regions in different forms. Since the invasion on forest resource by the neo-liberal regime after 1991, the resistance by local people's organisations have also intensified and spread in the last two decades. In some places the resistance has taken militant forms. Given the role played by the Indian state as a facilitator for profiteering rather than a protector of constitutional and human rights of the affected communities, all these resistance movements are fundamentally for the defence of their constitutional rights, leading towards the demand for community governance of natural resources. The situation has compelled the ruling parties, and 'mainstream' politics in general, to formulate legislations which would recognise community rights fully or partly. FRA is an important milestone in this process.

Though FRA recognises community rights over forest land, produce and forest management, it does not fit into the dominant political economy of the Indian state or the present form of governance, which continues to be based on eminent domain. As a result, the conflict between the state and the people on the issue of forest governance is intensifying. This creates political space for the peoples' movements who are using FRA as a tool to empower themselves for decisive negotiations with the state, on a democratic premise.

Till now the state has not negotiated on these critical conflicting issues directly with the community representatives. Rather, it is doing so through its own representatives by forming various committees, through the National Advisory Council (NAC) or with the committee appointed to review implementation of FRA. But as the forest rights movements led by



people's organisations grow ever stronger the state will have to start the negotiation process with the community representatives.

### **Defining the commons, its defenders and destroyers**

The commons, according to the provisions of the Constitution of India and the Panchayati Raj Act, are that every village had a place in its jurisdiction that was kept for the community usage. They are called nistar, haqdari and bartandari rights—basically rights of villagers for grazing, fishing, collecting firewood, hunting, water and other necessities of life. A majority of the commons were encroached by the landed sections, corporations, projects, state controlled cooperative societies and government departments for forests, irrigation, railways and public works. Significantly, the commons appropriated by private citizens are not taken into consideration when accounting for alienation of the commons though they have taken away substantial areas of common resources. Only direct state appropriation is referred to in most of the cases.

The state has played a major role in appropriation by the private parties. The issue of commons is therefore directly related to the larger question of agrarian reforms in the country. The commons or the land used by the village community for the public purposes such as grazing, pastures, collection of fuel-wood, rights over territorial waters, fishing rights in the ponds, rivers, seasonal rivers, collection of non-timber forest produce (NTFP) from the village forests etc are issues of power and control in the rural hinterland. Perusal of the land records of any village from any state will show that the village today has very little commons or no commons at all. The common lands have been appropriated by the rich or dominant caste sections. In the case of forests, appropriation is by the forest department.

### **History of state appropriation and resistance**

The colonial state initiated an economic process for accumulation of capital by encroaching upon natural resources such as forests, land and water, in the nineteenth century. The imperial powers started annexing the forests in the eighteenth century. A powerful section of the Indian merchant class joined with the British in accumulating capital and thus became a partner

in the exploitation of natural resources, using Adivasis (first dwellers, indigenous people) and Moolnivasis (forest dwellers) as cheap labour to strengthen the colonial power. Many Indian corporations have actually grown in this process and still maintain the culture of appropriation.

The government expanded its own forest lands by taking over private forests of the landed classes and village commons. By doing so it came into direct conflict with those who worked in or lived in these forested areas. The approximately 75 million hectares of forest area that remained in the eminent domain of the forest department, which is 23% of the total land area of the country, awaits effective agrarian reforms. Forest dwelling communities have always had diverse dimensions in terms of population and activities. Each community has its own history of struggle for their rights against the state. But these struggles remained isolated from each other. It was only in the 1980s, when some social movement activists started political mobilisation in different areas and began to establish a linkage among these struggles that regional and national level forums and networks were created.

The National Forum of Forest People and Forest Workers (NFFPPFW) was formed in this process in 1998, with the primary objective of creating a national level struggle by linking the regional and local struggles. It was a difficult task to formulate an appropriate definition of forest based working people who are dependent on the forest for their livelihood. Finally it was decided that *'any worker who depends on forests for livelihood or is exploited in any manner by the forest department, forest corporation or contractors, or collects minor forest produce or cultivates the so-called forest land for a living, or is pastoralist depended on the forest, shall be called a forest worker'*. This definition was enriched by the indigenous people's concept of Adivasi society organised around labour. It is also built around the concept of community and collectivism and is interested neither in the exploitation of labour nor in selling its own labour.

With the enactment of FRA, a new legislation has opened up a debate and intensified struggles in various forest areas on the issue of land reforms inside the forest areas. This critical issue has not been addressed properly in the last six decades. In enabling an understanding, one needs to be

aware of the facts about the appropriation of common resources by the state for profiteering by feudalistic and capitalistic forces. In this context it will be relevant to discuss the background and examine some important case studies of some crucial areas where conflict is intensifying.

### **Land grab by the government**

Before an effective Land Reforms Act could be enacted in the country, vast tracts of forest vested with the erstwhile princely states, zamindars and talukdars were transferred to the forest department. These included huge tracts of commons which were annexed by the forest department without any process for settlement of rights. Those who lived in the forests were ignored and their activities and presence became 'illegal'.

These included the forest and forest land in the boundary of the gram sabha or revenue village. The example of Bihar and Uttar Pradesh, which then included Uttarakhand and Jharkhand, is illustrative. There the movement against Zamindari (landlord) system was very strong. So just before the Zamindari Abolition and Land Reform Act could be enacted, the forests of both these states were vested with the forest department by bringing new legislations. The Private Forest Act 1948 was enacted hurriedly in the respective legislative assemblies of Bihar and Uttar Pradesh to legalise this appropriation retroactively. This illegal invasion from the forest department on the village forest and commons continued in various forms even till recently. Since forests are in the central list in the Constitution of India from 1975, state governments became passive accomplices in this appropriation.

According to the study conducted by NFFPFW in Uttar Pradesh, an estimated three million acres of gram sabha land has been appropriated by the forest department between 1950 and 2000, apart from the land under the Land Ceiling Act. If estimates of the land appropriated by private people surpassing the land ceiling are included, it will be exorbitantly high.

In 1955 these lands were again notified as 'protected forests' according to Indian Forest Act 1927. The Land Reform Act came into existence

in 1952 but enforcement of this Act took another eight to ten years in these states. It might be noted that protected forests are those government forests where rights are recorded but not settled.

Even before the land reform legislation came into force, the government strengthened the forest department. It soon became a biggest landlord in the country, much against the spirit of the Constitution enshrined in Article 31-A, the object of which is to facilitate agrarian reforms providing for acquisition for any *'estate or any right therein, extinguishment or modification of any such rights, shall be deemed to be void on the ground that list is inconsistent with or takes away or abridges any of the rights conferred by Articles 14 to 19 of the Constitution.* Hence these were all illegal transfers of land, as they were not acquired under the Land Acquisition Act and also none of the state revenue laws has any provision of transfer of lands under the jurisdiction of the gram sabha to the forest department.

A glaring example could be seen in Khunti district of Jharkhand which is 'Khutkatti' area, where CTA is applicable since 1908. Around 450 villages had the control of forest land and forest according to this Act at that time. The land records, the khatiyans, are with the Munda tribe. But in 1955, the forest department demarcated its own boundary in this very area *without* going for verification of rights and demarcation.

The Revenue Department notification dated 1 July 1955 reads that, 'The forest and the waste lands comprised in this notification shall be called Protected Forests. The nature of extent of rights and government and of private person in and over the forest and waste lands comprised in this notification has not been enquired and recorded as laid down in sec 29 of the Indian Forest Act 1927, but as the State Government thinks that such enquiry and recording will occupy such length of time as in the mean time to endanger the rights of the government and as the enquiry and record-of-rights will hereafter be made, this notification is issued subject to all existing rights of individuals or communities'.

This happened in the area where communities were already in possession of lands. Despite the power of the CTA, the Indian Forest Act (IFA) 1927 was applied to acquire lands without settling the claims. This fraud

has been committed by Government of India in all the states where hundreds of thousands of hectares of land with the community and gram sabha and other common purposes were illegally transferred to the forest department after independence.

The similar process took place in Himachal Pradesh (HP). All government lands are forest land in HP after the new state came into existence in 1971. People of the state enjoyed rights from these forests well recorded in *Wajib-ul-urz*, which is a document of record of rights in Urdu that existed before the British period. This record of rights mentions the rights such as timber for house construction, grazing rights, timber for making agricultural implements, grass for thatched roof, fodder, fuel-wood, lopping trees for cattle, Chirgoza and Kail dry leaves for bedding of cattle, wood for ceremonies, dry wood for dead etc. These rights are known as '*Bartandari Rights*' in the local language.

In the 1927 settlement, 24 rights were recorded according to the IFA. Over the years these rights have been transformed into concessions. While entering into the twenty-first century, all these concessions were eliminated too. The landless and other poor communities who depended on forest and commons were termed as 'encroachers' in independent India. The Government of HP states that the record of rights has already been compiled since 1921, and rights have already been settled under the IFA. The state authorities say that the HP Land Revenue Act is also applicable. Chapter IV of the HP Land Revenue Act envisages that if there is any change in the record of rights, *there is a detailed procedure for making new entries*, variations, alterations, additions in the record of rights. Thus there is a complete code, statutory enactment and rules and regulations pertaining to these rights especially in three tribal districts on HP. The record of rights i.e. individual and community which were earlier recorded in *Wajib-ul-urz* were finally reduced in the shape of Forest Settlement Report.

The Timber Distribution Rights (TDR) that people enjoyed from the commons, was taken over by the forest department who controlled the TDR of the villages. The TDR policy made by the Government of HP

on April 2010 has been widely criticised by the forest dwelling communities. They have refused to accept the new TDR rules that have been formed under the colonial IFA, that is against the spirit and usufruct rights of the people, and despite the FRA being in existence since 2006 and the rules notified in December 2007.

Despite the FRA that strongly advocates community rights, the Act has not been implemented in non scheduled areas. The land that belongs to community is being diverted to big multinational companies and mega hydro projects without the requisite forest and environmental clearance. The cement factory in Majathal sanctuary in Mandi District, Renuka Dam in Sirmour District and hydropower projects in Kinnaur District, to name a few, are proposed to be halted by the various committee reports due to their non viability.

Similarly, in Uttarakhand (previously Uttar Pradesh Hills) 65% of the total land is forest and in the hilly region it is 84%. In the hilly regions, after historic struggles, two types of forest management were being practiced since the British Raj. Van Panchayats in British Garhwal areas used to manage the forest adjacent to the villages which would provide fuel, fodder and other NTFPs for daily use. Van Panchayats were under the revenue department and not under the forest department. Over the years, various amendments were done in the Van Panchayats rules and they were gradually taken over by the forest department. They became virtually non-functional except in some areas where women have taken some initiatives. For the interior forest there used to be Village Reserve Forest (VRF), managed by the communities which would provide other requirements. But in 1962 the forest department took control of these VRFs and made it reserve forests through a government order without any consultation with the communities or with the legislators. The area acquired from VRF in three districts (Pauri Garhwal, Rudraprayag and Chamoli) was 3.75 lakh hectare and only 50,000 hectares were left for Van Panchayats. This had a very adverse impact on the communities since large scale commercialisation of forest produces and commercial plantation was started. The famous Chipko movement started in the 1970s in the tribal areas of Nanda Devi to stop commercialisation of forests. The Van Panchayat rules were never converted into an Act despite a

strong movement by local residents. These rules still do not cover the reserve forests and national parks. Both the forest department and the Government of Uttarakhand oppose the implementation of FRA in the hilly region saying that the Act is not needed since Uttarakhand has Van Panchayat regulation, which is not even an Act and under the domain of the forest department.

In the name of scientific forestry the forest department in its ten year working plan included the commons and treated them as 'forest land', hence encroaching on public land since 1947. On the basis of the working plan, the forest department since then has been victimising the tribal and other poor sections who were already owners and dependent on these lands for centuries. The forest department also generated revenue from these lands included in working plans by the senior forest officials. A detailed study in Madhya Pradesh by Anil Garg reveals that the lands notified in the working plan under section 4(1) of IFA were treated as forest land without completing the procedure laid down from section 5 to 19 in IFA since 1960. Private lands were also not spared and were notified under section 4(1), without any land acquisition process and without paying any compensation to the tribals in forest areas.

Another injustice done by the forest department was that, in the Raiyatwari villages, the lands notified under *gair khata* (unrecorded land) and non forest land comprising of commons were not only notified as protected forest but were also taken over by the forest department to include in the working plan by notifying those under section 4(1) and continued to generate revenue, logging and to produce false data of 'forest land' in its records, when in reality these were actually revenue land.

The forest under Zamindari villages and Malguzari villages were notified as protected forest land under section 29 of IFA, but the non forest land under these systems (that were not transferred to revenue department) were also notified under section 4(1) of IFA and gazette notification was done. These lands were also included in working plan and the forest department took over its management without following the legal process.

In 1996 the declaration of 'orange area' by the forest department did another fraud on commons by appropriating around 9.8 million hectares

of people's land. The notification of orange area comprised of already notified reserve forest, land notified under section 4(1), renewal of land under 27 and 34(a) of IFA. All were notified as orange area, included in the working plan and false data were reproduced by the forest department in working plan. These lands have been identified as the revenue land by the legislative assembly and the order to transfer all these lands back to the revenue department has been issued. Yet the process has not been started till date.

In Madhya Pradesh, all lands for common purposes were acquired under section 29 of IFA and were notified as protected forests that extinguished the rights of the forest dwelling people. The record of rights were fully documented in the land record *Wajib-ul-arz*, called *nistar patrak* in Madhya Pradesh. In all such lands of the villages were acquired under section 4(1) of IFA, all rights recorded in the *nistar patrak* were extinguished. Such fraud has been done in other states also by the forest department, in connivance with the revenue department, to expand its territory.

### **Subverting the constitution in Sikkim**

The case of sixth schedule area is no different. Before the merger of Sikkim to India in 1975, the land holdings were divided into two categories. One was the land belonging to the Chogyal state and other was individual land holdings. Individual land holdings were less compared to the land belonging to the forest. The reserve forest were brought under IFA after the merger by a presidential notification under 371(f)(n). It is pertinent to note here that these lands were not surveyed and by a simple notification entire 80% of dense and cold dessert was transferred to forest department without any records of the land. Sikkim has never had any record system for land. The revenue records are still the same as those maintained during the King's rule. The records do not even have a column to record the area of the forests.

According to IFA it is essential to complete the land settlement procedure detailed from sections 4 to 20, IFA. But no such process took place and in fact no rights (community rights, rights of the pastoralist community or any other stakeholder) were settled. No settlement officer was appointed and no demarcation of the land has been done so far. During the Chogyal's rule also the community rights of the tribal and other



population were not recorded. So these records are totally oral and not recorded in writing anywhere. The chief secretary of the state has maintained that there has to be a settlement of the forest land between the Chogiyal estate and the GoI. No such settlement has been done so far. The common land is around 80% of the total land of which 40% is the cold dessert stretching across the Himalayan Kanchanjunga ranges.

Yet in various parts of the state various sanctuaries and national parks have been created where the rights of the people have been curtailed. They enjoyed certain rights such as collection of fuel wood, NTFP, herbs, fruits and vegetables, passages and other grazing rights and pastures for nomadic tribes during the Chogiyal regime. These rights have been restricted and many of the nomadic grazers have been evicted from their traditional seasonal makeshift houses. This was admitted by a senior official of the east district in a private conversation.

The state was under the rule of the Crown till Sikkim merged with India in 1975. The land and forest history of the state is very interesting. It is still governed by its own customary laws rather than laws framed by the Crown. Around 84% of the land is under the control of the forest department. All land management and forest management took place during Chogiyal regime. In 1909 the forest were declared as reserve forest by the Chogiyal regime and were vested with creation of the forest department by a Crown order. In all zones of Sikkim, Kazi and Thekedars were the landlords and had many forests under their control. In 1945 landlordism was abolished and the lands that were under the private ownership and occupied by the tribes and other inhabitants were regularised by the notification of the Crown and the rest of the forest areas were vested with the forest department by a notification.

During the Chogiyal regime three types of forests were recognised: the reserve forest, khasmal forest (in between villages to meet daily requirement of the village) and gocharan land (for grazing of the cattle of villagers). There were some private forests which were under the control of monasteries were known as Monastic Forests. Only reserve forests were under the control of the forest department.

The first cadastral survey took place in 1952. Prior to that there was no survey done of the total land of the state. It was during that time land titles were given to the people. The second survey was started in 1978 and completed in 1983. The irregularities in the previous survey were rectified in this survey and all have land. There is no landless in the state but there is no ceiling of land also. The holdings are continued according to the occupation of the land during the King's rule. The forest department argues that the community rights are not required to be recorded as the communities already enjoy certain rights without any restrictions. Moreover all these rights are being enjoyed from gaucharan and khasmal lands. Instead, the forest department is advocating joint forest management and other charity and welfare schemes to the communities rather than implementing FRA in its true spirit. It was quite evident that the forest department is more afraid of losing control of vast forest lands in the state and feels that FRA is not applicable in Sikkim as there are no forest dwellers.

Another crucial issue of conflict between the communities and the forest department is on the ownership of Minor Forest Produce (MFP). While more than 60% of forest revenue comes from MFP, a large majority of forest dwellers are dependent on various items of MFP for their daily needs and also for livelihood support. No forest law has quantified the list of produce specifically and the forest department arbitrarily used to decide which one was MFP and which one is not. Bamboo and cane are considered as *timber* and not as MFPs. Interestingly, in FRA the items of MFPs are specifically mentioned which includes bamboo, cane and tendu leaves. Both PESA and FRA has ensured ownership rights on MFP as community rights. But the forest department is not keen to loose the ownership of MFP since it is a profit making business for the department and its staff. MFPs are being managed for commercial purposes by state forest corporations and by state sponsored marketing federations.

As late as November 2010, this is what *Down To Earth* has to say about the position of the forest department:

The MFP economy is fragile but supports close to 275 million people in rural India, according a World Bank estimate. These people comprise the poorest, including 54 million tribals.

Jharkhand has 90,000 collectors of lac. Agriculture takes care of their food while MFP is the main source of cash income. The Planning Commission has put the annual trade of MFP at Rs 50,000 crore, but MoEF claims the trade is worth less at Rs 5,000 crore.

Very little of this money goes to forest communities. Take bamboo. It has about 1,500 documented uses. But communities do not have access to bamboo. Reason: the forest department treats it as timber; therefore, it cannot be felled. Madhya Pradesh, Chhattisgarh, Odisha, Andhra Pradesh and Maharashtra, which are among the worst Naxalite-affected states, account for 47% of the total area under bamboo cultivation. The forest departments of these states together earn up to Rs 82 crore a year from bamboo. Despite FRA, which says bamboo is MFP, government, not people, continues to be the sole owner of the produce.

A Supreme Court verdict of 2002 and arguments that bamboo is a grass, not tree, have not changed the forest department's thinking.<sup>1</sup>

Other government departments like railways, irrigation and the public works department have also appropriated huge tracts of land in the name of national interest. The Indian Railways has a land bank of 133,000 hectares of land according to the statement of the Minister for Railways in parliament. Besides this there is a huge amount of land in possession of the Department of Railways on both sides of the 63,000 km long railway tracks. All these lands have been appropriated from the village common land and forest land.

### **Disputes**

This issue of forest land is the most critical dispute inside the forest areas between people and the state. It is notable that in areas like Jharkhand, the forest department extended its control over land, forests and resources in new forest areas in the recent post-independence past.

After independence, non implementation of the constitutional provisions inside the forest areas has totally destroyed the community's relationship with the forest and with the land. All across the country, disputes arose between the *village and the forest department*, *village and revenue department* and the *forest and revenue departments*. This conflict started

right from the colonial times. The crisis has deepened in such a way that the entire forest belt of India is under turmoil where forest people and tribals are being treated as anti-national and as enemies of the forest.

There are primarily three kinds of disputes.

- The revenue lands that were spared after Zamindari abolition were vested with the forest department and were termed as 'forest land'. All the rights enjoyed by the people in these lands were extinguished by the forest department after independence.
- Both the forest and revenue departments have been doing separate actions in their respective land records relating to the same land (both common and private) for the last 50 years. As a result, the spirit of land reform in the country has been completely defeated.
- After independence serious disputes arose countrywide between the forest department and the village, revenue department and the village and the forest department and the revenue department.

### **Displacement**

Displacement is the most visible effect of the encroachment of public space by the state and the private companies. There has been direct and indirect displacement due to loss of livelihood. All these displacements are made in the name of development projects, which actually have promoted accumulation of capital both by the state and by the private companies. The types of projects which have caused major displacements, often involuntary, are

- Dams for irrigation, hydro energy and drinking water that create lakes on previously inhabited areas.
- Transportation corridors, railways, highways, airports, transmission lines, irrigation canals.
- New ports and towns.
- Urban infrastructure.
- New mines particularly open mines.
- Major industrial estates, Special Economic Zones.
- Forest reserves and national parks.
- Big farm houses.

The major cause of displacement, in intensity and extent, is due to dams and reservoirs which affects about 40 million people—62% of the total displaced. According to D Bandopadhaya there is no official database of persons displaced and affected by these ‘development’ processes. But a study conducted by Dr Walter Fernandes<sup>2</sup> shows that approximately 60 million persons were forcibly evicted from their land, livelihood and habitat from 1947 to 2004. It involved 25 million hectares of land, including seven million hectares of forests and six million hectares of commons. Thus around 12 million hectares of farmland were lost to development projects. The social impact is horrendous. While the tribals constitute 8.08% of the country’s population (Census of India 2001) they are 40% of the displaced/affected persons.

### **Conflict between the state and subalterns**

If it was the ‘Raj’ then, it is the ‘nation state’ now which is constantly impinging into the territory of human dignity by seizing the lives and livelihoods of the forest dwellers. There is ruthless invasion of the natural resources by the state, state sponsored corporations and private corporations—both national and multinational. It is very crucial to note that the concept of the ‘Modern Indian State’ was born and started growing in the colonial era and was highly influenced by the Raj. A new class, educated and trained by the then rulers to become future rulers, was grown to protect the landed and financial interests against the subaltern groups who became a real threat to the Raj by the mid-nineteenth century. A series of revolts by the indigenous groups which started in the eighteenth century against the colonial domination over natural resources forced the colonial rulers to take legal and political steps to:

- a) Make certain rules and regulations to control the social process.
- b) Create an intermediary class who would function as a buffer between the Raj and the revolting groups.
- c) Enact some progressive laws on social and economic issues.

In this process, the idea of ‘mainstream’ was promoted and two major ‘nationalist’ parties were formed—the Indian National Congress in 1885 and Indian Muslim League at the dawn of the twentieth century. Incidentally, both these political parties demanded economic concessions from the colonial rulers and not political freedom. With the support of

these parties the Indian merchant class, in collaboration with the colonial power, entered the industrialisation process, which was initiated by the British companies. The Indian bourgeoisie became partners of these companies in looting the natural resources—mining, forests and water. The inherent economic and political interest in this process was to oppress the indigenous groups who were dependent on these resources and on the land. Such plunder of resources and oppression of indigenous groups continued after the transfer of political power from the Raj to Indian rulers. This was continued in the name of ‘development’ and many new forces like progressive intelligentsia, industrial working class and technicians in the name of ‘nation building’ were drawn into this. Indigenous groups remained isolated and more commons were lost.

In the era of capitalist globalisation, liberalisation and privatisation, the situation has become more critical as the trinity of international financial institutions, (the World Bank, International Monetary Fund, Asian Development Bank etc), World Trade Organisation and multinationals have taken policymakers in their grip to gain control of these resources. The Kyoto Convention on Climate Change has become a new tool for the northern countries and corporations to gain free access over large natural resources in developing countries. In the neo-colonial era, global capital is applying a uniform policy for all the countries unlike the past where they had been pursuing policy separately for each colonised nation.

Steps towards establishing a capital regime even in forestry have not been accepted by the communities. There is a history of opposition and resistance to all this and Adivasis across regions have braved it all. The protests have not been merely a loud protest but a series of revolutionary movements and had defining results, which started as early as the eighteenth century and continued till the twentieth century. In India, these revolutionary movements started from Jharkhand and spread up to South Central and Western India. The central issue in all these movements was independence from the colonial rule. In essence it was absolute sovereign rights over the natural resources, which had been the source and symbol of social and cultural heritage. So the communities were involved totally in these struggles in their entirety.

## Resolving the conflict

In this context, the struggle for a secure livelihood and protection of resources have not remained a simple process. It is inevitably linked with the right to work, food, education, health and social security. Therefore the challenges before the movements are to develop an inclusive understanding of this key issue in building up long term and short term strategies collectively. In the given context, old forms of struggles need radical changes to face the aggression of powerful capital and its allies. New alliances and new forms of struggles have to be built up which can ensure community ownership of the resources, collectivism, democratic space and leadership of all the deprived sections in the organisational process. There is a need to promote alternative mechanisms that reverse the present trend and revalue land and its products so as to ensure an egalitarian society—and a new world order.

It is heartening to note that such a process has already being started by common and disempowered people in different regions in India and in other parts of South Asia—from north to south and from north–east to north–west. The struggle to live with dignity is essentially a struggle to '*reclaim the lost physical and political space*'. This is also a struggle between the *subalterns* and the *elitist Indian state*. Indian societies are on the threshold of a radical transformation—from the captivity of eminent domain to independent and sovereign societies, which would lead to the formation of a true egalitarian nation state. Intellectual and technical workers need to look at this transformation process objectively, so that they can find their appropriate and relevant role in this. Ironically, the majority of this section have till now remained within the state premise and in its development paradigm rather than seeing the changing process from the people's perspective. They need to look forward towards the emerging situation, and creatively engage with the new world being created.

## Endnotes

- <sup>1</sup> Down to Earth, 15 November 2010, page 35.  
<http://www.downtoearth.org.in/node/2189>
- <sup>2</sup> Fernandes, Walter. 2008. "Sixty Years of Development-Induced Displacement in India: Impacts and the Search for Alternatives," in Hari Mohan Mathus (ed). *India : Social Development Report 2008*. New Delhi. Council for Social Development and Oxford University Press, pp. 89–102.

# The commons are important to the livelihoods of the poor



**CAPRI**

CGIAR Program on Collective Action and Property Rights (CAPRI)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)



# Common resources, community management

## Common resources, community management and tribal customary laws in Northeast India

---

Walter Fernandes, Gita Bharali and Melvil Pereira<sup>1</sup>

One can identify three main community resources in Northeast India. The first of them is the material resource of land, forests and water sources. Linked to them is the community-based customary law. The third is the identity that these together provide to the tribal communities. All of them are linked to the commons that are often referred to as Common Property Resources (CPRs). The tangible and intangible benefits they provide are important sources of livelihood to rural households in general and to the tribal communities in particular. They are more important in the Northeast India than in mainland India because of its hilly terrain inhabited by some hundreds of tribes. So all three of them can be included among the commons.

This chapter is an attempt to understand the role the commons play in people's livelihood in the Northeast and the implications of modern inputs on these resources and on the communities depending on them. That requires a search for an alternative because the Northeastern economy is agrarian. 47.4% of its people call themselves cultivators and 11.41% are agricultural labourers. But because of the neglect of the secondary sector 70 to 75% of the workforce of the region depends on the primary sector against 66% in India as a whole. More than 20% depend on the tertiary sector. That shows the importance of the commons.

### **The commons in India and in the Northeast**

The common resources that provide both tangible and intangible livelihood to their dependants are often called CPRs. They include land, forests, water sources, panchayat and wasteland, rivers, ponds, watersheds, rivulets and other community assets used for cultivation, grazing, non timber forest

produce (NTFP) and the rest of people's sustenance. To those dependent on it, the commons give benefits such as staple food from *jhum* (shifting) or other forms of cultivation, NTFP like edible fruits, leaves and vegetables, small timber and medicinal herbs (Shyhendra 2002: 3291). Most include among them only the natural resources like land, forests and water sources. Others include the sustenance of all the subalterns such as marine fisheries (Menon and Vadivelu 2006).

The CPRs are thus defined by their ownership while the commons are based more on their use than ownership. Apart from common lands that are prominent in the CPRs the commons include also resources that belong to individuals but are managed by the community tradition. Basic to the commons is collective management but not necessarily open access (Nongkynrih 2009: 16–17). Thus, the central purpose of the commons is people's sustenance that includes their culture, economy, social systems and identity. It refers to all resources, whether individually owned or depending on co-ownership on which a community sustains itself. Their co-ownership is conferred by some type of membership of the community or group such as a village or a town.

That is true of the CPRs too. But the commons are defined by their management, not co-ownership which is basic to the CPRs. The commons may be owned by individuals or families or clans or the whole village but they are managed in common for the sustenance of the community. That is where tribal customary laws enter the picture. Most tribes have customary laws and rules for resource management that includes their protection and benefit-sharing. They also combine individual with community ownership. Specific to the commons is the fact that even individually owned resources are governed according to the community-based customary law to ensure their sustainable management. They apply whether the resources are owned by the community or individual families (Fernandes, Pereira and Khatso 2007: 29–38).

### **Commons in the Northeast**

Because of its complex classification of land the meaning of the CPRs and commons differs in the Northeast from that in mainland India. Each

state and even each community has its own classification. J. B. Ganguly (1978) mentions three main categories. Land owned by the:

- a) Village collectively.
- b) Chief who distributes it among individual families.
- c) Individual families.

The first two categories are common and the third is private according to the present formal law but even that changes from region to region. The non-scheduled areas of Assam, for example, have three types of land ownership—*patta* (individual), *Aksonia* (temporary) *patta* and *non-patta* or *khas land* that can be called common. A *patta* is permanent, *eksonia patta* is usually for one year and *khas land* is considered state property. In the sixth schedule areas<sup>2</sup> the village headman plays a role under the District Autonomous Council (DAC). That is supposed to be in accordance with their customary law. In reality, the land is under the direct control of the DAC. The DAC defines the power of the chief and the meaning of the commons according to the formal law, not the customary law. It may even contradict the customary law.

Because it considers commons as state property, the state treats their inhabitants as encroachers who deserve to be evicted though it was their habitat for centuries before the colonial individual-based land laws were enacted. For example, the study on development-induced displacement in Assam 1947–2000 showed that, according to official records, the state had used 3.9 lakh acres during these 53 years and had displaced 4.2 lakh persons from them. The study showed that the reality was not less than 14.1 lakh acres that displaced 19.1 lakh persons (Fernandes and Bharali 2006: 78 & 108). Since the inhabitants of the common lands were treated as encroachers, they were not even counted among the displaced when their land was taken over.

It is not merely the law but also the population and their customary laws that introduce diversity in the region. Arunachal Pradesh, Meghalaya, Mizoram and Nagaland are tribal majority states. The tribes are a minority in the remaining states. Nagaland and Mizoram run civil affairs according to their customary law under Articles 371A and 371G respectively of the Constitution of India. Though Arunachal Pradesh is nearly two thirds

tribal, it is not covered either by the customary law or by the fifth or sixth schedule. Manipur too does not have either schedule but land in its tribal majority hill areas is managed according to administrative rules that have evolved over three decades. Tripura did not have either schedule till the 1990s when a tribal majority district was formed under the sixth schedule as part of a peace accord (Borooah 2002).

### **Commons and the customary law**

Given above is the legal reality of the formal law. The social reality of the customary law may not be in accordance with it. An interface of the two systems can introduce new dimensions such as class formation and stronger patriarchy in their societies. One cannot conclude from it that all the customary laws are just or equally community-based. They change from tribe to tribe but have some commonalities. For example, most tribes manage all land collectively even when it is individually owned.

Common land is (Nongkynrih 2009: 18–19):

- a) Village forests,
- b) Streams, rivulets, and rivers (often shared with a neighbouring village),
- c) Village settlement area.
- d) Village ponds, roads, footpaths, and burial ground.
- e) Public open ground.

Individual families own the rest but manage it according to the community-based customary law.

Thus, the concept of the commons is considerably different from that of the CPRs. It includes only resources owned in common while commons refers to management, not ownership. The customary law is central to it. Land and other resources come under it whether they are owned by an individual, a family, a clan or a village, as long as they are managed according to the community-based customary law. The law itself changes from tribe to tribe but in all of them it determines the utilisation of the village land and forests, ensures that the common resources within a village are accessible to the whole community and that no individual gains exclusive property rights over them. The customary law also demarcates the territory and boundary of each village (Shimray 2006: 36). Most

importantly, the customary law confers an identity on the community. Because of it both the customary laws and the identity it confers can be included in the commons. That will be discussed in a later section.

Customary laws of different tribes have both commonalities and differences. For example, most Naga tribes of Manipur combined individual ownership with clan or village control. The village council or clan that had control over land permitted no alienation. All operations relating to land and forest come under the jurisdiction of the village chief and council who are bound by the customary laws of the community (Singh and Devi 1991: 55–56). The Tangkhul Nagas, for example, treat community land as an important component but ensure that individually owned land is not alienated. An individual is free to use community land for cultivation but after the season the plot reverts to the village automatically. If an individual makes permanent improvements on a plot of land for agricultural purposes, like converting it into terrace fields, eventually it comes to be treated as individual land (Shimray 2009: 248–249).

On the other side, traditionally the Kuki–Chin tribes of Manipur did not have individual ownership. The chief owned all land and each family paid him a tax for the land used for jhum cultivation. The tax varied from 3 to 5 tins of paddy.<sup>3</sup> The right enjoyed by the chief was neither proprietary nor hereditary. His office rotated from clan to clan. Some differences existed even within the Kuki–Chin family. For example, the Thadou chief had absolute control over all land. He owned it but could allocate it for jhum cultivation annually only in consultation with the *Semang Pachang* or council of ministers. It ensured that each family got an equal share. But in no tribe of this family could the individual or family claim ownership over the plots allotted to them. If a family was unhappy with the chief they had to leave the village (Rajkhowa 1986: 96).

The land of most Naga tribes is classified broadly into primary or agricultural and reserved. The reserved land is broadly divided into three categories (Tamuly 1985: 96–98):

- a) Village land, which is kept apart for public purposes. A portion of it is forests. This land is accessible only to the residents of the village under the control of the village council.

- b) Clan or *khel* land is used only by the members of a *khel*.
- c) Individual land is what has been inherited or acquired. Such land is privately owned and the owners can lease it out.

For example, traditionally the Ao of Nagaland had four types of land—what belonged to the village as a whole, to the clan, to an individual family and group or *morung* land. The village land that was managed by the village authority through the chief consisted of the house sites, woodlands and forests. Some large forest areas of the village were also split into individual holdings for cultivation and other purposes. The users had to pay a rent to the chief. The clan usually vested the *jhum* land with its members in perpetuity. Individual land was in the name of the head of the family. Group land was allotted to a specific group like boys staying in the *morung* (dormitory) to collect firewood from it. Also those who were ostracised from the community were allotted some group land for their sustenance (Das and Nath 1979: 125–126).

In the Mizo tradition, land was under the village council. The village chief controlled and allocated it to the families for *jhum* with the help of experts called *ramhual*. In return the family paid him *fathang* or a kind of tribute in baskets of paddy (Das 1990: 6). Among the Angami the individual family has absolute right over terraced land used for rice cultivation but forest land is owned by clans and village (D'Souza 2001: 30).

In Arunachal Pradesh too, the ownership pattern changed from tribe to tribe. The Nyishi demarcated the commons clearly by including uncultivated forests, rivers and natural resources in it. These resources were under the control of the village council and were used by the whole village. Among the Galo too the commons owned by the village included land used for residential purposes like houses (*nam*) and granaries (*nasu*) (Nongkynrih 2009: 23). The Adi chief allotted land to individual households only for cultivation and in theory its ownership was vested in the community (Agarwal 1991: 44). The Aka tradition lacked the very concept of individual ownership. Each family cultivated as much land as it needed in the *jhum* season after which it reverted to the community. A family could use wetlands on the river banks for settled agriculture but they continued to belong to the village (Fernandes and Bharali 2002: 22–23).

The Khasi of Meghalaya had three broad categories of land: (i) *Raid* (community land); (ii) *Rykynti* (privately owned land); and (iii) Clan land. *Raid* land belonged to the community and was within its jurisdiction. It was divided among the permanent residents of the village into residential land where houses and common facilities were built and land for economic purposes, mainly agriculture. The right to use it was based on the membership of the village. The *darbar* (village council) owned and managed it. The headman did not have the authority to permit non-Khasis to use it. Each clan owned its own land. Forest land was divided into sacred groves, village community forest, protected and individual forest. People could not use the sacred groves. The *darbar* controlled the community forest. People could collect leaves from the protected forest for domestic use but not for sale. The owner could use the individual forest (Dutta 2002: 59). Ri Bhoi district in the Khasi hills was unique because almost all its land was communally owned. It was managed by the chief representing a cluster of villages. Traditionally, among the Garo of Meghalaya clan land (*akhing*) was under the control of the *nokma*.<sup>4</sup> The homestead plots were owned not by individuals but by the community (Kar 1982: 29). In the tradition of the Jaintias of Meghalaya common land was owned by the *syiem*<sup>5</sup> (Nongkynrih 2009: 28).

The Tripura tribes present a different picture. Changes in their land laws began already under the monarchy in the colonial age. The king began to allot land to the people through the collectors appointed by him. The collectors took the help of a Choudhury from each village to distribute the jhum land. The village retained its customary right to select the jhum plot but had to get the Choudhury's approval after selecting it. Land was classified into Jhum, *Nal*, *Lunga*, *Chera*, *Bhiti* and *Bastu*. Jhum land belonged to the community and consisted of a house site, forest and jhum plots. It was managed by the village authority under the control of the Choudhury. *Nal* land situated in the plains or river banks with high fertility was individually owned by the villagers with permanent heritable rights but not of alienation. *Lunga* land lying between two hills was used for permanent cultivation. It was allotted to the people with an annual tax which differed from tribe to tribe. *Chora* land situated on both sides of the river was owned by the villagers. *Bhiti* and *Bastu* land was permanent

and heritable but not transferable (Roy 1986: 59–62). Thus, traditionally, tribal villages had some form of community ownership recognised by the King. The village chief enjoyed customary rights over land.

### **Customary laws and the commons**

The preceding sections show the centrality of the customary law to the commons. They were defined not by ownership but by the community-based management systems. The attack that came on them from the formal law was not merely on land but also on the customary law that ensured sustainable natural resource management. Any visitor travelling the hills of Northeast India would experience it in the impressive landscape and the thick green cover that drapes it. Despite the patches of balding hills resulting from the formal system, there is dense forest cover in much of the region. As early as 1914 the British administrator L. W. Shakespear (1914: 218–219) captured the rich greenery of the Angami region of Nagaland when he wrote:

To a stranger suddenly arriving in the Angami country nothing strikes him with greater surprise and admiration than the beautiful terraced cultivation that meets the eye everywhere, on gentle slopes, sides and bottom of the valley, in fact, wherever the land can be utilised in this way. In preparation, upkeep, and irrigation, the greatest care is taken far in excess of anything seen in the northwest Himalayas. The appearance of the countryside for miles south of Kohima, for instance, is such as to suggest the handiwork and labour of a far higher order of people than these wild Nagas. These terraced fields are often bordered with dwarf alder bushes, are carefully irrigated by an elaborate system of channels bringing water down from mountain streams, and luxuriant crops of rice are grown on them. To pass through the valley where stand the two powerful villages of Khonoma and Mezoma during late October when the grain are ripe is indeed a delight for the eye—a veritable golden valley.

Shakespear's fascinating description of the Angami region held good for all the hills of the Northeast though it might not be true today of some parts in its totality. Many changes that have occurred during the last century will be discussed later. Despite this, there are areas in Northeast India which have managed to keep their forests and hills safe from the



market and commercial forces. It is the customary law that has played an important role in preserving the forests and natural resources from the clutches of economic interests. The communities which have remained close to their age-old norms and practices of regulating lands, forests and other natural resources have succeeded in protecting their commons.

That makes the customary law central to tribal identity in the region. That is reason enough to treat the customary law and the identity linked to it as integral to the vocabulary of the commons. That also distinguishes the commons from the CPRs. The latter denotes only community property resources and gives importance to ownership. Commons, on the contrary, include all the resources managed under the community tradition or the customary law. Emphasis in it is on effective sustainable management and protection. This next section will examine such claims by looking at various situations in which customary laws play this role.

### **Significance of tribal customary laws**

Indigenous peoples the world over use the customary law for reasons as varied as natural resource management and protection and as a conflict resolution mechanism. In the recent past it has been used primarily as a means of asserting the ethnic identity of indigenous communities that are threatened by the forces of globalisation. They treat the customary law as a useful tool to protect the common resources, promote harmony in the community and maximise ethnic identity claims. Specific to it is its role as a social organisation mechanism. This role of the customary law is crucial for maintaining harmony in the community (Human Development Report 2004: 59). The preceding section has shown that it plays a significant role in determining the ownership of land and regulating the use of forests. It articulates the rules of access, extraction and use of the natural resources ensuring their sustainable management. The customary law is thus the repository of the values and ideals of a tribe and is central to its identity. The role it plays in managing and conserving forests is the main reason why the customary law is increasingly being studied by social scientists (Ostrom 1990; D'Souza 2001; Orebech 2005).

Most societies have their own customary laws. But the major difference of the tribal communities is that they are anchored in a specific place unlike the caste groups that live with all other castes. Because of it the tribes develop appropriate rules and regulations to suit that particular environment. Their social and political organisation is shaped round the management of their natural resources. Thus most customary laws originated in response to the needs of a particular group of people settled in a specific place at a given point of history. That makes them location specific, people specific and time specific (Krishnan 2004: 48) because most of them came into existence through the interaction of people who lived in a specific environment and a set of natural resources. So they contain guidelines for their ownership, use and protection.

Management and regulation of their forest and other natural resource based sustenance was in fact the primary need of the indigenous communities. They could not afford to harvest these resources as the industrial agents do. To industrial agents these resources are only a raw material and a source of profit so they do not think of their renewal (Guha and Gadgil 1996: 34–35). To the communities depending on them such wanton destruction would have meant starvation because of lack of food and other materials that they used obtained from these resources. Preservation for posterity and inter-generational equity are basic to the norms of the customary law that guides the management of these resources. Basic to the creation of such rules was interpersonal interaction and collective decision making mechanisms (Bjarup 2005: 151). In these rules and regulations, the customary laws kept the needs of the community above those of individuals.

Some criticise customary laws as being rigid and static or as getting caught up in age-old beliefs and traditions and not allowing the community to develop. This criticism can be levelled against all the formal or statutory laws. But one cannot ignore the fact that the customary laws originated in response to a specific need in a particular context. So they are subject to change according to the requirements of their practitioners (Sheleff 1999: 84–88). Referring to the Canadian Amerindians, Borrows (2002: 27) argues that 'First Nations legal traditions are strong and dynamic and can be interpreted flexibly to deal with the real issues in contemporary

Canadian law concerning Aboriginal communities'. He adds that the customary law, their living document, changes and evolves according to their needs and on their terms.

### **Customary law and the management of commons**

An area in which customary law-based resource management of the commons is seen more than in others is jhum or shifting cultivation which is practised widely in Northeast India. Against around 25% of the tribals in mainland India, some 90% of those in the Northeast practise it (Roy Burman 1993: 196–197, Gangwar and Ramakrishnan 1992: 101–102) argue that this traditional form of cultivation has been successful in this region because the tribes keep norms such as the number of years of fallow period for the land to reforest. The technology they use for it includes soil conservation techniques. Such practices are founded on their time-tested traditions. That is why studies have also highlighted the instrumentality of the customary laws in the sustainable management of the natural resources (Orebech 2005).

In the Northeast the customary laws of various tribal communities employ an intricate mix of land and forest management patterns like ownership by individuals, clans, khels and villages (Fernandes, Pereira and Khatso 2007: 28–38). It is also true, as discussed above, that due to the influence of the market and commercial forces, these management systems are at different stages of transition from communal to individual ownership (Buragohain 1990: 10). However, in most tribes of the Northeast communal ownership of land continues to be intertwined intricately with private ownership. Experience shows that such a mix has a positive impact on the management and conservation of the natural resources. For example, as the quote from Shakespear shows, the Angami customary law ensures the maintenance of a balance between individual and communal ownership. It does not give a free hand to any individual to accumulate land but ensures that the requirements of each and every family are met. This combination of ownership by individuals and the community also maintains a balance between fields and forests. That balance is essential for successful cultivation of their fields (D'Souza 2001: 56). Such mechanisms are not unique to the Angami of Nagaland. They exist also among the Tangkhuls of Manipur and others too follow a similar pattern.

### **The commons, customary law and women**

The three key features of the customary law based commons management are intra-generational equity, inter-generational equity and a relatively high women's status. One speaks here of a relatively high status of tribal women, not of equality. In no tribe is the woman equal to men. Even matrilineal tribes are patriarchal. In these tribes too the village is exclusively male controlled. Even when inheritance is through the woman, decisions on alienation of land are taken by men. What conferred a relatively high status on tribal women is the gender-based division of work and of control between the family and social spheres. In most tribes, the village council made up of men alone controlled the resource. But women were in charge of the family economy, production and decision making.

Jhum cultivation is representative of such management. The village council made up of men alone took the decision about the plot to cultivate that year, the area to be allotted to each family according to the number of mouths to feed and which family with an excess of adults would assist which one with a deficit of workers. At this stage the man of the house took over, chose the plot his family would cultivate that year and performed the religious rites to mark the beginning of cultivation. After it the woman took charge of cultivation and organised work in the field (Fernandes and Menon 1987: 77–82). From a gender perspective, work was more equitable than in settled agriculture because of this division. In the latter, the man owns land, takes decisions on the type of crops to grow and decides the division of work. Men do what is considered difficult work and allocate to women tasks that involve standing in wet fields and bending for a long time (Misra 2000: 74–77). It shows women's lack of control over the resource.

One does not claim that the woman had full control over community-managed resources. She only took charge of production, not of the resource but community management gave her greater control over their sustenance than her counterparts in caste societies had. She was not in charge of the resource but, inasmuch as she controlled the family economy and production, she had control over a part of the economy. Work on that resource turned her into an economic asset and that was the basis of her relatively high status. She was not equal to men but had

greater control over its production and economy than her counterparts in other societies did. Around these resources she met other women and exchanged information. There she gained access to resources required for her own sustenance and that of her family (Menon 1995: 101).

Since she controlled the family economy, her dependence on the commons was greater than that of men. So she had a bigger vested interest in treating them as renewable. Due to her greater dependence on the resource and control over the family economy because her social status depended on abundant resources (Pathy 1988: 26), alienation of the commons has serious implications for her economic as well as social status. However, the formal land laws that replace the customary laws alienate the commons from them by recognising only individual ownership which is invariably in favour of men. That has serious implications both for equity and women's status. One does not state that the customary law was unblemished. The communities run under it had a hierarchy and did not treat women as equal. But they ensured intra and inter-generational equity, not necessarily equality. Because of the role of equity they played, the customary laws are included among the commons.

### **Customary law and identity**

Within these limitations of exclusive power and patriarchy the myths of origin of each tribe legitimised its social system and resource management. On this count the middle India tribes differed substantially from those of the Northeast. The myths of middle India linked the resource to the origin of the tribe or clan. Based on it their customary laws attached sacredness to some economically important species. Through the totem that symbolised their origin the tribes built their identity around their commons understood as material resources. In the Northeast, on the contrary, most myths are centred on the village, its forest and gate, not the sacred groves. It is because they are relatively recent immigrants to the region while those of middle India were in their present habitat when they began to develop their clan-related identity. That explains why the sacred groves of *sarna*, *akhra* and *sasan* were of very great importance in middle India. The *sarna*, the forest where teenagers were trained into adulthood represented the present generation. The *akhra* or

dancing ground where young men and women met and formed marital alliances symbolised the future generation. The *sasan*, the burial ground represented the past. The tombstone of an ancestor in the *sasan* was the only 'document' a family required to claim its right to cultivate land in that village. No axe or sickle could be used in the sacred groves. These tribes conferred sacredness also on some economically important trees such as *sal* and *mahua* and some other plants and animals that were represented by the totem. Their fruits could be eaten but the trees could not be cut till they grew old. Some less economic species like mangoes and jack fruit were treated as sacred but at a lower level than *sal* and *mahua* (Deeney and Fernandes 1992).

Their customary law ensured the protection of sacred species and regulated the use of ones that were not sacred. Their myths of origin were around the resources that were their sustenance i.e. the centre of their economy, culture and identity. Since their renewal was basic to the tribe's continuity they linked the present resources to the past and future generations. Through these systems they declared that the resource was a gift from the past, to be used according to present needs and preserved for posterity. Their customary law ensured that the tribe adhered to this norm of sustainable use and preservation for posterity. That ensured inter-generational equity just as *jhum* ensured intra-generation equity (Fernandes, Menon and Viegas 1988: 163–167).

In the Northeast too the resources were tribal sustenance but their identity was linked more to the village than to the resource. Their clan identity had already been formed before their arrival in the region so they could not create a new one after they reached the region. That explains the absence of myths of origin and of sacred groves among the tribes. That also turned the village and not the clan into the centre of their life. So their oral histories are centred round the spirits of the village and forests (D'Souza 2001: 52–53). The Khasi are probably the only tribe in the region to have a myth of origin and sacred groves. They claim to have originated from the seven huts that broke away from the sixteen huts in heaven and landed in the Khasi Hills. The sacred groves symbolise their origin and continuity in the region (Bhattacharyya 1995: 22–23).

Because the village and the forests around it were crucial for their identity, the customary law meant to manage the resources attained greater importance in the Northeast while in middle India the sacred groves and other natural resources were the centre of identity. The totem and the myths of origin legitimised the customary law. Even today, these tribes link their identity to the resource. Most of their struggles are for *jal, jungle, jameen, jusbath* i.e. water resource, forest, land and identity. They mention the resource and not the customary law as basic to it. The state too accepts this thinking, for example, in the Panchayats (Extension to the Scheduled Areas) Act 1996 that was enacted after a struggle and much discussion with their leaders. It speaks of their right to govern themselves according to their traditional political systems. But its thrust is protection of their livelihood. It stipulates that the *gram sabha*, their basic political unit should be consulted before land acquisition for a development project under the Land Acquisition Act 1894. The customary law continues to be subordinate to the resource (Krishnan 2000).

In the Northeast also the customary law governed resources. But in the absence of myths of origin and of sacred groves the law, not the resources it governed, became the centre of identity. The law of each tribe fixed norms for forest and land management and ensured inter and intra-generational equity by regulating forest and land ownership and use (Fernandes, Pereira and Khatso 2007: 24–25). It is true that in the context of shortages caused by land alienation and immigration most ethnic conflicts today are around land. But their nationalist political struggles are around autonomy with the customary law as its centrepiece. The Naga and Mizo peace accords recognise them as intrinsic to their identity, culture and tradition. The Constitution was amended in 1963 to add Article 371A to recognise the right of the Nagas to run their civil affairs according to their customary law. It was amended once again in 1986 to add Article 371G to accord the same right to the Mizos. Also the sixth schedule that resulted from many struggles confers on the tribes greater autonomy than the fifth schedule does. It treats their traditions as important but does not mention the customary law explicitly (Fernandes 2005).

In other words, both in the Northeast and in middle India the resources were managed as renewable. But in the Northeast the customary law

was central to the management of the commons. Focus on the customary law was necessitated also by the fact that around 90% of them practise jhum cultivation which is based on common land. Legal provisions in the region respect this aspect while much of the land legislation in middle India concentrates on individual land and only secondarily on common land (Narwani 2004: 130). Thus, in both the regions the customary law managed tribal sustenance. In middle India it was subordinate to the resource while the Northeastern tribes linked their identity and continuity to it. That is reason enough to add both the customary law and tribal identity attached to it to the vocabulary of the commons.

### **Legal changes and the commons**

Attack on the commons is a major factor in most legal changes that are around land. The most blatant attack came through the Tripura Land Reforms and Land Revenue Act of 1960 and the Manipur Land Reforms and Land Revenue Act of 1960. These laws recognised only individual pattas and turned all commonly owned resources into state property. The Manipur Act could not be imposed on its Naga majority hill areas because of resistance from the tribes who continue to run their affairs according to their customary law (Shimray 2009: 109–111). But the Tripura Act was imposed effectively on the tribes of that state because they were powerless. Very little of their land remains with them because the tribes have been reduced to a minority and the law has been changed to recognise only individual land (Debbarma 2009: 120–121).

Though the traditional system of land ownership has not been abolished among the Khasi, in many cases the power of the darbar has been reduced (Dutta 2002: 2). Moreover, in many villages the members of the darbar use their power to transfer common land to their individual names. That deprives their dependants of their sustenance and also transfers power over the commons from women to men (Ningkinrih 2009: 35–36). At present, the land in the Garo hills is broadly divided into hilly, under the customary law, and the plain land governed by the provisions of the *Assam Land and Revenue Regulation Act of 1886*, and adopted by the Garo Hills Autonomous District Council in 1952. The former comprises almost 95% of the total land (Phira 1991). The British regime took away



the power of the Jaintia syiem to distribute common land, conferred the right of its ownership on the state and converted all the rajhali (private land of the syiem) into government land. The users of the land were made to pay taxes and were given pattas for a limited period of ten years. Thus, the community land in the Jaintia hills was turned into government land and subjected to land revenue (Pyal 2002: 24).

At present terrace fields and the greater part of Angami jhum lands are owned by individuals and so is some area of forests. But a considerable amount of jhum land and forests continue to be owned by the clans, and some more by the village as a whole. While individual ownership of terrace fields is treated as absolute, ownership of jhum fields and forests is usually not absolute because under certain circumstances others have access to such fields and land (D'Souza 2001: 44). Similar changes have been introduced also by other tribes.

By introducing the Rules for Administration of Justice in 1906 and in 1935 the British rulers curbed some powers of the Mizo chief such as judicial, right to give permission for head hunting and protection of criminals. But their power over land and in the social sphere was not touched (Das 1990: 6). The post-independence Government of Assam went beyond the colonial measures, abolished the chieftainship through The Assam Lushai Hills District (Acquisition of Chief's Rights) Act 1954 (Assam Act XXI of 1954), and brought land under the direct control of the state. At present, there are four categories of land in Mizoram. The first is the district forest over which the state exercises full control. Agricultural operations are prohibited in it. The second type called 'safety supply reserve forests' are owned by the district council and are beyond the reach of the village councils and individuals. Agricultural practices are not allowed here too. The third category of forests managed by the village council is for the benefit of the whole village. The villagers are entitled to fuel wood from them for their household needs but not for sale or trade. The fourth category is unclassified forest under the village council. It can be allotted to individuals on patta or garden passes for homestead and cultivation (Mahajan 1991: 81–82).

The land owning pattern of the Arunachal tribes changed with the Balipara Frontier Jhum Land Regulation, 1947 promulgated by the Government

of Assam. It gives customary rights to the tribal population over their jhum land, both of the village and of the community provided that they have enjoyed the right to cultivate or utilise it for not less than five years prior to the regulation. The government accepts ownership by the village or clan or individual only in respect of what is under permanent or semi-permanent cultivation or is attached to a dwelling house. All other land including jhum land vests with the state (Nongkynrih 2009: 23–34). Assam had 35 tribal blocks from which land could not be alienated to outsiders. Their number has come down to 25 and the size of the remaining one has been reduced (Shimray 2006: 18).

### **Privatising the knowledge commons**

Colonialism and the dominant class intrusion into their areas were a threat to tribal common land, customary law and identity. With globalisation the threat extends to their traditional knowledge. Basic to it is the World Trade Organisation (GATT Agreement) of 1994, particularly the Trade Related Intellectual Property Rights (TRIPS). At the 1992 Rio de Janeiro United Nations Conference on Environment and Development (UNCED), the rich countries with biotechnology owning companies tried to monopolise biodiversity. That was prevented through the Convention on Biodiversity which acknowledges that tribal and farming communities have preserved biodiversity for centuries but adds that control over it rests with the sovereign state. Thus, it protects biodiversity from the biotechnology owning companies but does not give the communities rights over what they have preserved or over the medicinal and other knowledge that they have developed around it (Rao 1992: 331).

Thus, UNCED was unfair to their communities but it would have been possible to get over it by negotiating benefit-sharing systems with the sovereign state. TRIPS subverts that possibility by putting traditional knowledge in the public domain. None owns it so anyone who wants it can use it with no benefits accruing to their communities (Rao and Guru 2003: 128–132). Like the land laws that turned their sustenance into state property, TRIPS turns tribal knowledge commons into a public asset in order to facilitate its privatisation for profit. What they have developed over centuries can be pirated by the biotechnology owning companies and they have no legal recourse since TRIPS legalises such piracy.

With climate change comes another threat to their forests particularly in Northeast India which is one of the world's 25 mega-biodiversity zones. Though rarely mentioned in public, suggestions are made every now and then that the region should be turned into a carbon sink to protect Europe from the effects of overuse of synthetic fuel. A carbon sink needs greenery not biodiversity and that can be done by growing commercial forests. The Government of India has even treated it as a clean development mechanism, for example when the Bhadrachalam Paper Mill in Andhra Pradesh grew eucalyptus on common land taken over from the tribes (Fernandes 2009). One does not oppose all commercial species. One only states that imposition of purely commercial species will deprive the people of their sustenance, impoverish them, weaken their link with the forests and turn the region into a biodiversity hotspot.

### **Conclusion**

Tribal communities the world over are governed by some norms in the use of land, forest, water and other resources. Traditional customary practices in their use shaped these ground rules for the sustainable use of the commons. Since these practices had emerged out of specific natural environments, they supported local livelihoods. For example, in Northeast India, most tribes follow shifting cultivation while terrace cultivation of rice is not an exception. In the varied land ownership and management patterns of the tribes of the Northeast one notices an intricate mix of communal and individual land holding patterns. The customary laws played a vital role in maintaining this balance between individual and communal holdings. They also played an important role in ensuring that the resources were treated as renewable. Such management turned the resources, customary laws and the identity attached to them into commons.

However, the management of the commons is conditioned by power relations in an area. That has had an adverse impact on the communities whose sustenance they are. Legal changes overtook the Tripura tribes easily but the tribes of Manipur have been able to resist them. In most tribes the customary law has been interpreted according to the formal law and that has resulted in class formation and stronger patriarchy than in the past. It is, therefore, important to find alternatives that do not

romanticise either the past or the present. The value system on which the customary law and resource management are based continue to be relevant even today. One may be able to find a solution to the alienation that most tribes of the region experience by beginning with the value system and rebuilding their commons around it to suit present needs.

### References

- Agarwal, A.K. 1991. 'Towards Land Reforms in Arunachal Pradesh' in Malabika Das Gupta (ed) *The Impact of Land Reforms in North East India*. Guwahati and New Delhi: Omsons Publications, pp.43-50.
- Barooah, Jeuti. 2002. 'Property and Women's Inheritance Rights in the Tribal Areas of the Northeast', in Walter Fernandes and Sanjay Barbora (eds). *Changing Women's Status in India: Focus on the Northeast*. Guwahati: North Eastern Social Research Centre, pp. 99-113.
- Bhattacharyya, N. N. 1995. *Religions of North-Eastern India*. New Delhi: Manohar Publications.
- Bjarup, Jes. 2005. 'Social Interaction: the foundation of Customary Law', in Peter Orebech et al. 2005. *The Role of Customary Law in Sustainable Development*. Cambridge: Cambridge University Press, pp. 89-157.
- Borrows, John. 2002. *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto.
- Buragohain, S. N. 1990. 'Institutional Factors Affecting Economic Development in the Hill Regions of North-East India', in Jayanta Sarkar & B. Datta Ray (eds), *Social and Political Institutions of the Hill People of North East India*. Calcutta: Anthropological Survey of India, pp. 8-14.
- Das, J.N. 1990. *A Study Of The Land System of Mizoram*. Guwahati. The Law Research Institute.
- Das, A.R. and A.C. Nath. 1979. *The Customary Laws and Practices of the Ao of Nagaland*. Guwahati. The Law Research Institute.
- Debbarma, Sukhendu. 2009. 'Refugee Rehabilitation and Land Alienation in Tripura' in Walter Fernandes and Sanjay Barbora (ed). *Land, Peace and Politics: Contest Over Tribal Land in North east India*. Guwahati: North Eastern Social Research Centre & IWGIA, pp. 113-127.
- Deeny, John and Walter Fernandes. 1992. 'Tribals: Their Dependence on Forests, Their Traditions and Management Systems', in Walter Fernandes (ed). *National Development and Tribal Deprivation*. New Delhi: Indian Social Institute, pp. 49-75.
- D'Souza, Alphonsus. 2001. *Traditional systems of Forest Conservation in North East India: The Angami Tribe of Nagaland*. Guwahati: North Eastern Social Research Centre.

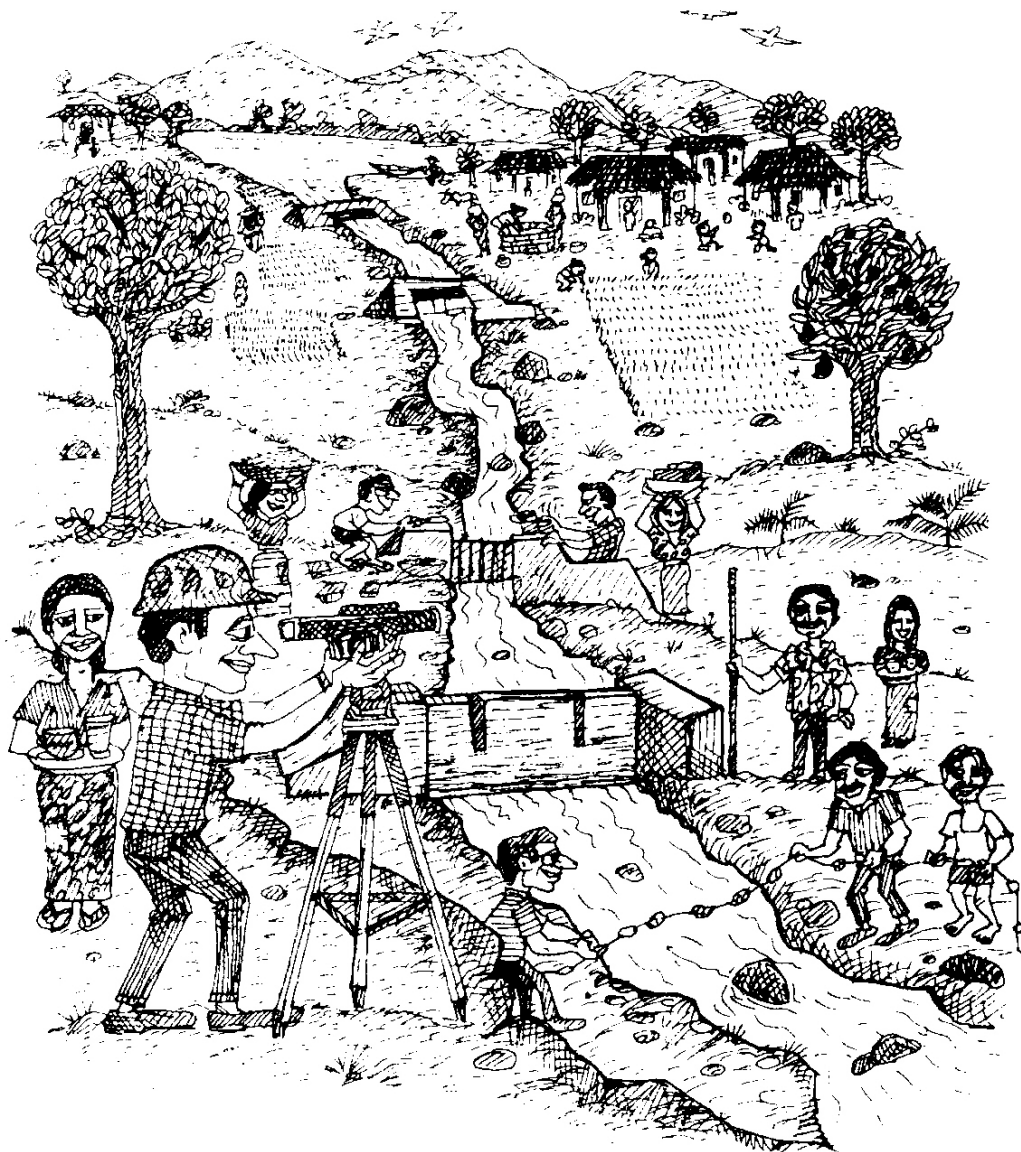
- Dutta, Sujit Kumar. 2002. *Functioning of Autonomous District Councils in Meghalaya*. New Delhi: Akansha Publishing House.
- Fernandes, Walter. 2005. 'Reservations and Social Change: The Case of the Northeast', in Stephanie Tawa Lama-Rewal (ed). *Electoral Reservations, Political Representation and Social Change in India A Comparative Perspective*. Delhi: Manohar Book Centre and Centre de Sciences Humaines, pp. 83-104.
- Fernandes, Walter. 2009. 'Climate Justice for the Northeast', *The Assam Tribune*, December 6.
- Fernandes, Walter and Geeta Menon. 1987. *Tribal Women and Forest Economy: Deforestation, Exploitation and Status Change*. New Delhi: Indian Social Institute.
- Fernandes, Walter, Geeta Menon and Philip Viegas. 1988. *Forests, Environment and Tribal Economy: Deforestation, Impoverishment and Marginalisation in Orissa*. New Delhi: Indian Social Institute.
- Fernandes, Walter and Gita Bharali. 2002. *The Socio-Economic Situation of Some Tribes of Bishnupur and Palizi*. Guwahati: North Eastern Social Research Centre (mimeo).
- Fernandes, Walter and Gita Bharali. 2006. *Development-Induced Displacement in Assam 1947-2000: A Quantitative and Qualitative Study of Its Extent and Nature*. Guwahati: North Eastern Social Research Centre (mimeo).
- Fernandes, Walter, Melville Pereira and Vizalenu Khatso. 2007. *Customary Laws in North East India: Impact on Women*. New Delhi: National Commission for Women.
- Ganguly, J.B. 1978. 'Socio-Economic Transition of Shifting to Sedantary Cultivation in North East India' in NEICSSR (ed) *Shifting Cultivation in North East India*. Shillong. NEICSSR.
- Guha, Ramachandra and Madhav Gadgil. 1996. 'What are Forests For?' in Walter Fernandes (ed.), *Drafting a People's Forest Bill: The Forest Dweller-Social Activist Alternative*. New Delhi: Indian Social Institute, pp. 33-67.
- Human Development Report. 2004. *Cultural Liberty in today's Diverse World*.
- Jodha, N. S. 1986. 'Common Property Resources and the Rural Poor', *Economic and Political Weekly*, Vol. 21, pp. 1169-81.
- Kar, Parimal Chandra. 1982. *The Garos in Transition*. New Delhi: Cosmo Publications.
- Krishnan, B. J. 2000. 'Customary Law', *Seminar*, No 492. August, pp. 46-50.
- Mahajan, V.S. 1991. 'Land Distribution in Mizoram' in Malabika Das Gupta (ed) *Op cit.* pp. 79-86.
- Menon, Ajit and Ananda Vadivelu 2006. 'Common Property Resources in Different Agro-Climatic Landscapes in India' in *Conservation and Society*. Vol (4, n 1). pp. 132-154.
- Narwani, G.S. 2004. *Tribal Law in India*, New Delhi: Rawat Publications.

- Nongkynrih, A.K. 2009. 'Privatization of Communal Land of the Tribes of North East India: A Sociological Viewpoint,' in Walter Fernandes and Sanjay Barbora (ed). Op. cit. pp. 16-37.
- Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.
- Orebech, Peter and Fred Bosselman. 2005. 'The Linkage between Sustainable Development and Customary Law', in Peter Orebech et al. op.cit., pp. 12-42.
- Pathy, Jagannath. 1988. *Ethnic Minorities in the Process of Development*. Jaipur: Rawat Publications.
- Phira, J.M. 1991. *U Khasi Mynta Bad Ki Riti Tynrai*. Shillong: Government Press of Meghalaya.
- Pyal, Gita. 2002. 'Land system in Jaintia Hills' in Dr P.M. Passah and Dr S. Sarma (eds) *Jaintia Hills: A Meghalaya Tribe-Its Environment, Land and People*. New Delhi: Reliance Publishing House. pp. 23-28.
- Rajkhowa, Alok Chandra. 1986. *The Customary Laws and Practices of the Thadou Kukis of Manipur*. Guwahati. The Law Research Institute.
- Rao, Sam. 1992. 'Spinning out of Control: The Earth at UNCED', *Social Action* 42 (n. 3, July-September), pp. 328-336.
- Rao, M. B. And Manjula Guru. 2003. *Understanding TRIPS: Managing Knowledge in Developing Countries*. New Delhi: Response Books.
- Roy, Tapash Kumar. 1986. *The Customary Laws of The Tripuri of Tripura*. Guwahati. The Law Research Institute.
- Roy Burman, B. K. 1993. 'Tribal Population: Interface of Historical Ecology and Political Economy', in Mrinal Miri (ed). *Continuity and Change in Tribal Society*. Shimla: Indian Institute of Advanced Study. pp. 175-216.
- Shakespeare, L. W. 1914. *History of Upper Assam, Upper Burmah and North-Eastern Frontier*. London,:
- Sheleff, Leon. 2000. *The Future of Tradition, Customary Law, Common Law and Legal Pluralism*. London: Frank Cass Publishers.
- Shimray, U. A. 2006. *Tribal Land Alienation in North East India: Laws and Land Relations*. Guwahati: North Eastern Social Research Centre and Indigenous Women's Forum of Northeast India.
- Shimray, U. A. 'Land Use System in Manipur Hills: A Case Study of the Tangkhul Naga,' in Walter Fernandes and Sanjay Barbora (ed). Op cit. Pp. 88-112.
- Shylendra, H.S. 2002. 'Environmental Rehabilitation and Livelihood Impact: Emerging Trends From Ethiopia and Gujarat,' *Economic and Political Weekly*. 37 (n 31, July-August 3-9), Pp. 3286-3292.
- Singh, R.P. and Ch Sobhabati Devi. 1991. 'Land Reforms and Economic Development in Manipur Hills' in Malabika Das Gupta (ed) Op cit. Pp.51-58.
- Tamuly, Naba Kumar. 1985. *The Customary Laws and Practices of The Angami Nagas of Nagaland*. Guwahati: The Law Research Institute.

## Endnotes

- <sup>1</sup> Dr Walter Fernandes is Director, Dr Gita Bharali is Director of Research and Dr Melvil Pereira is Administrator and Research Associate at North Eastern Social Research Centre, 110 Kharghuli Road (1<sup>st</sup> floor), Guwahati 781004, Assam, India. Tel. (+91-361) 2602819. email: nesrcghy@gmail.com; homepage: www.creighton.edu/CollaborativeMinistry/NESRC
- <sup>2</sup> The Sixth Schedule of the Indian Constitution provides for the creation of Autonomous District Councils (ADCs) in certain tribal areas of North East India. The ADCs have power to make laws over land, forest, water, agriculture, education, health, and social issues. The primary purpose of the Sixth Schedule is to incorporate the predominantly tribal populations, as communities, into the Indian State . For further information on the Sixth Schedule please refer: B. L. Hansaria.1983. *The Sixth Schedule to the Constitution of India. A Study*. Gauhati: Ashok Publishers.
- <sup>3</sup> A tin is around five kilograms.
- <sup>4</sup> The Nokma is the husband of the heiress of a group of villages called *A.king*. He is the village head and custodian of the village land. He plays a leading role in village administration, especially in resolving disputes and allotting the land to individual families for cultivation.
- <sup>5</sup> Chief of the traditional state.

# Helping the poor to protect and expand their access to and control over resources can make a powerful contribution to poverty reduction



**CAPRI**

CGIAR Program on Collective Action and Property Rights (CAPRI)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)



# Rural Commons: A Source of Livelihood and Sustainability

---

Prafulla Samantara

You, ministers, collector and babus, did not create these mountains, water flowing in the streams or the cultivated lands which have been giving us life and livelihood from generation to generation... and it will also nurture our future generations. These are given to us by the god of nature. Who are you to snatch away the gifts of nature from us? Can you answer? You have killed three of my sons. We shall not allow you to destroy our resources. Many more of us are prepared to die.

**T**hese words of Mukta Jhodia, an old tribal woman, were spoken on 30 January 2001 at Kashipur, Rayagada district, Odisha. It was in her very brief maiden public speech in a rally of tribals and was addressed to the government, the policy makers the intellectuals. The tribals were protesting against the police firing which killed three tribals on 16 December 2000 at Maikanch. They had been struggling to protect their land, water and mountain from the onslaught of an alumina project and mining of bauxite by Utkal Alumina Ltd. a joint venture of Hydro of Norway, Alcan of Canada and Hindalco of India.

This question has its eternal answer within it—that the tribals have faith in natural resources as their saviours and it is the source of human existence. Neither the government, a private company nor an individual has the right to destroy it or to convert it into personal property. This is the position of indigenous communities everywhere. The resources are for sustainable subsistence of millions of people on the earth. The same idea was expressed in the words attributed to Chief Seattle of the Dwamish Tribe in America when he said words to the effect: ‘Who are you to buy and who are we to sell the sacred river and mother earth?’

Participating in various people’s struggles to resist displacement from natural commons for over 15 years, it is evident that where there is resistance by the people of the soil to protect natural resources and their habitats, they never claim that these are their ‘private property’. Rather they are

prepared to protect and preserve these resources, as well as their cultural and social identity, at the cost of their lives because these commons are sustainable. From 1999 to 2010 in the eastern Indian state of Odisha 38 tribals and fisher folk have been shot dead by the police when they tried to protect their right over land, forest and water. This is nothing but state-terrorism unleashed on people to exploit the commons for the corporations. These commons have sustained their life and livelihood along with community existence and socio-cultural identity.

Sumani Jhodia another old tribal lady rejected Rs 50,000 from the Chief Minister of Odisha seven years after the police firing in Kashipur. Her bold question before the august gathering in the capital Bhubaneswar was:

“why should I receive this money from those who have killed our boys?  
We have been agitating to keep our hills, river and land, but we get bullets. If you take bauxite by digging our hills, the water will dry up and our land that you acquire will be destroyed forever. Who will feed us?  
How can you people get free air and sweet water?”

These natural resources are not their personal property, it is for all. These are to be preserved and protected for the right to livelihood. To be with nature and believe these commons are sustainable and meant for all but not for profit is not a question of emotion or romanticism. To be with these commons is a source of pride for tribals who are custodians of their commons as the gifts of nature but not as property. They do not believe in accumulation of assets from these resources. They use only for subsistence and worship it as god to be with them forever.

### **Commons: Concept and definition**

The concept of commons has its origin in nature, which has various spaces being used as commons. From the very beginning of human history, there was one common i.e. the earth. In the real sense of commons, it has no boundaries of class, race, culture or physical boundaries of nations or specific communities. Commons have given birth to different living patterns, ways of life and ultimately different cultural entities with community based co-existence with nature. These commons, the forests, land, air and water, are usually known as natural commons. From these natural commons many physical commons have come to being as holy places, lives and livelihoods of millions of human beings.

In the historical perspective of indigenous people of the world, there are different geographical commons which had given them a sense of belonging to the soil, water and air as the spirit of human lives. From generation to generation, these indigenous communities never believed in the concept of personal ownership of anything that they get from these commons. They treat these sources as the gifts of nature for which, not only are they grateful, but have a duty to protect and preserve for the future. From this concept of generosity has emerged multiple community ethics, based on the principle of common uses of resources collectively and cooperatively. This is the basic foundation of community life in natural physical commons. Whether it is the North or South or anywhere in the globe, indigenous communities worship the Earth as their mother. For many tribal communities in India, especially in Odisha, they believe the entire natural environment is one common, which they revere as Mother Earth.

#### **Niyamgiri hills as a common for tribal Odisha**

In Niyamgiri hills of Eastern Ghats in Odisha, indigenous communities such as the Danguria Kandh, Kutia Kandh and Jharania Kandh worship the earth as Dharani Penu (earth god). Niyamgiri hill is worshiped as Niyam Raja (God of Law). In this mountain, the tribes use water for agriculture and domestic purposes. They treat different natural water springs as deities in different names according to their different uses. While a stream is regarded as a constituent of a hill, they both are also considered separate entities. Water represents the goddess Eyu Penu (water deity) which has many names, because of its different origins from the same hill. The most common synonym for Eyu Penu is Gangi Penu.

Sangria and Katie tribals believe in community ownership. They have lived in harmony with the forest for centuries. Sangrias live on the hilltop and Kutias live on the foothills. They collect minor forest products (MFP) for their daily consumption. They sell the MFP in the local market for buying other materials like cloth, salt and kerosene. Shifting cultivation was the main form of agriculture. That proves they did not believe in ownership of a particular piece of land or forest. Shifting cultivation was necessary for the growth of big trees. When the British took over the forests, the trading community seized the opportunity to misuse the shifting cultivation practice of tribals for feeding their timber business.

The tribals in Niyamgiri define their commons in a village and region. The bank of river where they use water is called as 'chuana', the land where millets are produced is called as 'dangar', graveyards for elders are known as 'bada mahana dangu' and for children is called 'mila mahana dangu'. Where fruits are grown the area is known as 'bada', for example haladi bada and sapuri bada etc. The market place is called as 'hata' and festivals known as melia parba and mandiarani parba. In the plains near the Niyamgiri hills villagers use to call the land as bagada, from where they collect different kinds of MFP.

The many different characteristics of the physical environment of Kutia tribals are sharply defined. A hill, for example, is divided in to four basic regions: the soru jaka (hilltop), soru tude (mid-hill slope), soru nede (lower-hill slope) and soru panga (foothills). When the hill is the place of settlement, some of these terms change. The soru nede is referred to as nella, once the area has been converted from forest to cultivated plots. The soru panga is known as baru when used as location for a village.

The spiritual dimensions of the natural habitat and religious code of conduct demonstrate their respect for environment and regulates the use of the region's resources. Their relationship with nature is manifold. Ecologic, organic and spiritual aspects emanate from nature as a unified whole. They use the term 'basa' to denote the place of shelter, social gathering or festival, which is used as a common for ordinary human beings. 'Basa' means environment in their understanding. It has many components like elu basa (individual house), naju basa or elu gunjare (village with human beings, animals, kitchen gardens, livestock shelters) and tedi basa as a recreational place (to sit and converse, exchange thoughts over a drink).

Over time, coexistence of tribals with Panos (Dalits) was established in many forest areas. Panos were invited to be with the tribals as their communicator to the outside world. In many villages, tribals were considered kings and Panos as ministers. Both communities enjoyed the benefits of common resources, though the tribals were dominant.

### **Niyamgiri hills as a global common**

The Niyamgiri hills are of global importance as an ecological heritage. It has given birth to two rivers Vansadhara and Nagabali and 36 perennial

streams. It is not only culturally and socially important but also sacred. This is a place of wild animals like elephants, tigers and some rare species. An indigenous variety of paddy is found there.

These hills have rich deposits of bauxite, known as war diamonds, as a primary raw material for the strategic metal aluminium. But bauxite, a gift of nature, is not to be used only as weapons to destroy human civilisation but as a mineral in the soil that nourishes the plants. In nature, aluminium's metallic form is always hidden through bonding with oxygen and other elements. With frequent fusion with water, it plays a vital role in retaining moisture in the soil by which fertility is maintained.

Global capital as an agent of imperialist globalisation has come to rape the sacred soil and exploit the heart of the living commons like Niyamgiri by mining, for monetary profit over people. The local to global human chain (tribals from Niyamgiri to human rights activists of Norway to the concerned people of England) could raise the voice of protest against the destruction of nature's sustainable water system and forest diversities. The combined effort of the global people's opinion and the laws to protect the rights of the forest dwellers could prevent Vedanta from mining in the Niyamgiri hills. Saving Niyamgiri as a natural common is the result of the global campaign against global warming. Although it took a long time, ultimately the campaign is a success.

In Odhisa the mountains with bauxite are called 'mali'—Baplimali, Kuturumali, Sijimali, Kodingamali, Deomali and Panchapatmali—and are considered commons. These commons having minerals underground are under threat from the global market. Some have already been plundered by global capital. And, like the tribals of Niyamgiri or Baplimali, people living in various natural commons in the world have been engaged in resistance to protect their habitat from the terrorism of polluting industries. The tribal's relationship between nature and their socio-economic life indicates that nature as a common has many commons, which are used, protected and preserved by the tribals. These commons are the source of community development and socio-cultural identities.

### **Forests: The mother common**

The forest as a common is losing its space for use as resources of sustainable human existence with dignity. They have not only been the source of forest products gathered by the tribals but also for millets and other nutritious food cultivated by them. Indigenous communities did not aspire for personal property nor use the language of ownership—‘my’ forest, ‘my’ river or ‘my’ land. Rather they always speak ‘our’ forest, ‘our’ streams and ‘our’ land. ‘Our’ includes the plants, animals and spirits too. Treating them as deities, indigenous people neither believe nor claim ownership over them either as individuals, clans or tribes. On the contrary, they emphatically assert that they belong to these commons which are protectors of the present and guarantor of the future generations.

In the process of industrialisation and mining, the market economy treats forests as the major source of economic development. Forest resources are being converted as raw materials to be used as commodities for the market. Since the colonial rule, forests are treated just as an asset of the government. Consequently, tribals who protect the forests as custodians became subservient to the rules and regulations that are meant for forests. Even after independence the Indian government behaved not as a trustee of people’s resources but as the owner. As a result of the development paradigm chosen, and the assumption of ownership, forests are being sacrificed for mega industrial projects. Due to mining, the green vegetation is destroyed, the perennial water flows are being dried up, and ultimately the rich biodiversity along with the food basket of tribals are being depleted. In this process of destruction the right to commons has become restricted and controlled by the dominant. With increasing assertion of government ownership and restrictive controls, many commons have become extinct.

When the state as the trustee of commons behaves as owner of property, the tribal communities have to stake their claim to the common resources for sustainable subsistence at least to ensure the existence of commons. The Forest Rights Act, is the product of such claims through continuous struggles to establish both the individual right to livelihood and the community right over resources.

### **Rivers as the natural commons**

The rivers flowing from the womb of the hills are also commons from which the tribal and non-tribal agricultural communities use water as the main input for agriculture and domestic purposes. The fishing communities are dependent on the rivers for their traditional livelihood. But modern development projects with their infinite appetite for water have made pure water scarce and rivers a source of dispute. The different stakeholders are forced to fight for a share of water. The market led polity has converted water from being a common to a commodity, a property that can be owned opening the gates for privatisation. In the name of development not only are rivers being diverted, but they are reduced to being sources of big dams. The water in the dam is commercialised to benefit the industrial houses at the cost of farmers who treat the water in dams and reservoirs as commons. In the era of market led globalisation, these dams and parts of rivers have been handed over to corporations who can invest capital to use water as raw material either in sole or semi-exclusive contracts.

In many parts of India the new built commons such as dams, reservoirs and canal systems have been converted into assets of private companies. In Odisha, the Hirakud Dam on the Mahanadi was built for irrigation and flood control in the downstream and to produce electricity which was essential for the households of the state. It was hailed as a 'temple of modern India' by then Prime Minister Jawaharlal Nehru. Subsequently, it is used almost solely by corporations, depriving the farmers of water for agriculture, essential for food security. The commons—the water and the river—have effectively been privatised though the proclaimed agenda was to enhance their use. Enhancement or, to use the more favoured term today, 'development' is most times to turn the commons into private property. Similarly, when communities use the rivers to ensure sustainable physical commons, they are taken over as dumping places of hazardous wastes of polluting industries, which are located on the banks of rivers. This misconduct destroys the very existence of commons.

The system of traditional irrigation in tribal areas demonstrates indigenous knowledge of irrigation. The water flowing from the hilltop is blocked by stones at various places and diverted to the slopes where millets are

grown. They store the water to use in other seasons. This system is called '*Munda, Kata, Bandha*'. Chilika, the biggest lake in Asia, is used as common being a gift of nature. Over 100,000 fishers use it for traditional fishing. It is home to rare species of fishes and a rare ecological shelter for migratory birds from the coldest regions of the world. But the market forces have brought in chemical aquaculture to replace natural fishing displacing the traditional fishing community and poisoning life. To protect a sustainable, ecologically balanced Chilika chemical pisciculture should be banned. Access of the traditional fishing community to the lake for their livelihood must be ensured by law.

Due to the conditionality of the World Bank, the water policies of the nation states have paved the way for private investments and corporate management of water resources. For example, 26 kms of Sivanath River in Chhattisgarh was given to a Delhi Company to sell water as a commodity. The company asserted that this right meant they had ownership of all the water in the area—including the groundwater. As a result, not only was the fishing community was deprived of its right to fish, there was even restriction in the farmers using the groundwater on either side of the river. When the affected people revolted against privatisation, the government was forced to withdraw the company's license. Some companies in different parts of the globe have even asserted their right to all water, including rainwater, in the command area.

The river systems of the world are living natural commons. They have given birth to many civilisations and cultures. But because of ecological disasters, many rivers have died, some dried up and many are polluted. Rivers traversing multiple countries have been overused by the powerful nations. The Mekong river starts from Tibet and goes through Indonesia, Cambodia, Thailand and Vietnam. But the seven big dams constructed by China on this river deprive the tail-end countries from equal river-water sharing. Similarly for the Brahmaputra. The glaciers of the world from Iceland to the Himalayas are very important natural commons which are key to human existence. If these melt, a part of the earth would be submerged as the sea levels rise. To keep this and the downstream commons unharmed, the global warming caused by human activities has



to be curbed. The biodiversity of river systems across the world should be protected, making it a global agenda.

### **Food, commons and the village economy**

Natural commons cumulatively satisfy the minimum needs of common people. When these commons are under threat by market forces through technological hegemony, we should recognise agriculture and the fields as a new common to be developed organically. Agriculture and water bodies such as the seas, lakes, rivers and reservoirs should be considered as centers of food basins and be accepted as commons. This explicit recognition is a prerequisite to ensure the right to food. The right to food can only be ensured if there is sustainable agriculture. To ensure sustainable agriculture, the natural requirements for it—for instance cultivated and cultivable lands, rivers and underground water—should not be diverted to non-agricultural use. Agriculture has to be liberated from the onslaught of chemical and industrial farming and corporatisation. This sustainability has to be reinforced by law and ensured by restoring agricultural land to the tillers and the forests to tribals coupled with sufficient incentives for organic farming. No industrial ventures should be allowed to displace farmers or tribals at the cost of food security.

In agriculture, farmers have the right over their indigenous seeds along with natural manure. But monoculture and genetically modified seeds of corporations have trespassed into the field of farmers and destroy the fertility and sustainability of seed and soil, endangering the very existence of food diversity. Indigenous paddy varieties are the best of selection through traditional farming from generation to generation. Farmers all over India use and exchange varieties of indigenous seeds, in the firm practice of sharing knowledge, expertise and nature in keeping with the best values of the commons and community. These seeds have been developed according to soil and climate. These seeds have different names at different places depending upon local vocabulary, climate and socio-cultural nomenclature.

In Odisha, the different varieties of paddy are called Hazira, Kanaka Patia, Kalasura and Kedaragouri. In uplands these are called as Biali. A variety of paddy harvested in sixty days is named Sathika (Sath means

60 days). Similarly a variety harvested in 120 days called Laghu. A tasty variety used daily is called Vojani (Voj means eating). Kakudi manji (literally cucumber seed) is the name of a variety of paddy that resembles the seeds of cucumber. Mayur Kanthia (kantha means neck) resembles the spots on the neck of peacock. Thus there are numerous varieties representing the diversity of seeds in just 'paddy' or 'rice'. In the green revolution juggernaut, these varieties have vanished due to mechanised corporate farming with high technology invading traditional agricultural sector to impose monocultures and monopolising food production. In traditional agriculture, exchange of seeds was common. The present system of patents have not only destroyed these natural seeds but also prevents sharing and improvement by the farmers. The WTO and other multilateral inter-government bodies are working to bring agriculture under corporate control globally. In various countries, governments are prevented from giving any protection to traditional farming as a condition for being in various treaty bodies.

Genetically modified seeds are a new threat which could lead to disaster in food security. Where agriculture land has been taken from tillers, used for non-food purposes and enjoyed by the corporations, as is the case in entire Latin American countries, there has been perpetuation of chronic poverty. Some of these countries like Venezuela, Bolivia and Brazil are trying to return the agricultural lands from the corporate to the farmers in the changed political set up.

### **Sea coast: a global common**

The seas and the coasts are very important not only because various communities get food from the sea but because traditional fishing communities depend upon the sea for their sustainable livelihood. The coast with rich mangroves is the home for many species of fish. It is the first line of defence in natural calamities like cyclone to save the coastal populations. People also need to enjoy nature's bounty. Salt, the most needed food ingredient of the human being is the natural product of sea. Therefore the seashore remaining a common is vital for the health of both the coastal and inland communities.

Coastal ecology is an important component of climate and environment. When there is a sea or coast related natural disaster, disaster capitalists successfully invade the coasts with money bags to alienate the coasts from the traditional communities in the name of disaster mitigation. Once they establish themselves as 'stakeholders' then they move on to 'marine development' which would severely restrict, and many times displace, coastal communities. Commercial activities like hotel and recreation centres along with corporate owned ports fragment the commons and turn it into restricted access enclaves of private property. The ecology is disturbed, the beauty is disfigured and the sea becomes private property of capitalists who see it as a investment vehicle for generation of profit.

El-Niño is a threat to the seas of the world. If there is El-Niño in one part of the sea the other parts will also to suffer. There will be loss of sea species. The behaviour of the sea would change, resulting in natural disasters in many parts of the globe. The protection of this natural common as the key to climatic justice demands formulation of a charter of basic principles which would not allow polluting human activities in the name of development, commerce or war by any country. These should be agreed upon by the member countries of the United Nations Organisation. It is essential to have an effective mechanism that is strictly followed.

There should be national and international policies to prevent the destruction of water resources and ensure the right to these commons by the communities and preserve biodiversity. Natural commons which provide access to water, medicinal plants, and food should be declared inviolable and cannot be sacrificed for any project or institution. This can empower the communities to take care of these commons in their interest of socio-economic-cultural security and identity.

### **Village fairs and common markets**

Rural weekly hatas in different localities of our country and the vending zones in the streets and cities have space for buyers and sellers without class discrimination. In tribal areas these weekly hatas are not only places of exchange and selling of commodities but include socio-cultural and socio-religious functions, cultural expressions, entertainment, religious obligations and social gathering. Hatas are festive spaces, and a lot of

the entertainment is free. They dance, drink, trade and make merry in hatas. The closest approximation of hata in English would be weekly village fair. Normally it is translated as weekly market reducing it to only a commercial hub, stripping away the very many socio-cultural and socio-religious functions that give it vibrancy. Foreign investment in retail shops ruin village hatas and urban vending zones. The street vendors' livelihoods are being lost in this process.

In these 'common markets' everybody from poor farmers to rich consumers have free access to sell or buy according to their choice. Various items produced in the villages are available here. These vendors have a social relationship with the customers, the produce and products on sale. The market is based upon community needs as well as social harmony. The mega investment malls are a place for rich consumers. They displace thousands of vendors from common spaces—right from village hatas, to the mom-and-pop stores to the pavement hawker. There should be restriction in organised retail. Social protection should be given to the common markets through infrastructural facilities. Of course there are dark sides to the hatas. Some hatas have been invaded and have become places for exploitation. The non-tribal traders exploit the innocent tribals and practice unfair means in the business, due to asymmetric knowledge and power relations. A self-regulating mechanism should be in place to maintain these commons and keep them free from exploitation.

Rural roads were well maintained as commons in the past. People planted trees which gave fruits and shelter to the travellers, who most often walked. But when these roads are 'developed'—meaning widened to connect the city to the village and national highways—the commons became the property of a construction company to the exclusion of the community. A fundamental contributor of this appropriation and alienation by design is that these roads are meant to connect the city to the village and not the village to the city. It is part of the continuing appropriation of the resources of the village (the weak) by the city (the strong). People have to pay tax to use these newly developed roads. Some highways and all express ways are fenced off from the surrounding countryside. As a result people, even those who live on the villages by the roadside,

are alienated from these roads. The new rules make it virtually illegal for the people to take care of them or plant roadside trees ever again.

### **Threats to the commons**

The commons communities have developed an ethic and framed laws on the governance and maintenance of these commons without claiming them as property. They have developed cultures and social identities which have given birth to nations. In contrast, the present political structure of the nation–state is subservient to the capitalist system and imperialism, which is designed to destroy the commons through liberalisation, privatisation and globalisation. It does not believe in social equilibrium or in the community right over resources. The concepts of private property and individual ownership have become basic principles, making everything commodities for sale and purchase. Profit as the guiding principle is the destroyer of the commons.

Physical natural commons have been used and sustained as the common wealth of communities. It gives identity to many communities as the center of their cultures and socio–economic growth. The service commons like agriculture (food sector), rivers, lakes, dams are interlinked and these have origin in natural commons. Plundering of resources by global capital has resulted in the common people losing their right to access these resources. Indiscriminate use of technology for resource extraction in the name of ‘development’, but in reality for accumulation of capital, is a threat to the existence of physical commons. As a result, crisis in the service–commons is inevitable. Though the global economy claims ‘growth’, and there are many billionaires created, hunger, deprivation and chronic poverty are abundantly visible in many parts of the world after technological exploitation of natural resources. The food sector is most vulnerable because of indiscriminate industrialisation and mining on agriculture and forest lands.

The paradigms of development through the process of globalisation, especially after the inception of the World Trade Organisation (WTO) are destructive in nature and affect the sustainable resources by making them vulnerable as a consequence of big global corporate investment like the Korean Pohang Iron and Steel Company, POSCO, in Odisha. This

kind of capital investment destroys the sustainability of very viable commons as well as the vocabularies used by the locals. The biggest threat to this commons of food grains (both the physical grain and the knowledge embedded in its socialisation) and complementary commons like water emerges from the state's invitation to and facilitation of corporations in acquiring and grabbing these commons. POSCO, the South Korean Company having American investment, has come to Odisha to acquire 6000 acres of multi-cropped land for a steel plant and a captive port. This steel plant will destroy multi-cropped paddy fields, betel vines, fishing ponds and water bodies.

The villagers of Dhinkia, Govindpur, Gadakujanga and Nuagaon have used the sea coast and forest as commons for food production, firewood, grazing grounds and traditional fishing activities. More than 20,000 people will lose their right to life and livelihood after these agricultural land, coastal forests and grazing fields called Jhaun Bana, Balitikira and Jhatajungal, fishing ponds (Gadia) and a small river (Mahanganai) are converted to concrete jungles. Similarly, a captive port at the mouth of Jatadhari river needs 2000 acres of agricultural land. The port will create floods every rainy season destroying crops in thousands of acres of land because the flow of water to the sea has been obstructed. The effluents of the steel plant will be discharged into the sea adversely affecting the livelihood of the fishing community.

POSCO's investment is partly in mining iron ore in Khandadhara mountain of Sundergarh district of Odisha. Mining will destroy the rich biodiversity and a tributary of Bramhani, including a picturesque waterfall, which is the primary source of water for agriculture. Thousands of indigenous Paudibhuiyan tribals will lose their right to life and livelihood. Their cultural identity will be considerably destroyed since Khandadhar is a spiritual and sacred place for them. This destructive investment is responsible for taking away livelihoods of more than 50,000 people at the plant and mining sites, both tribal and non-tribal, in exchange for a few lucrative jobs to a limited number of the upper middle class.

Where there are bauxite deposits, there are perennial streams. Mining bauxite will end the source of water. To save the commons the law should

proscribe such mining, which is the cause of depletion of water sources and destruction of green vegetation.

### **Endangered commons: A global phenomenon**

The present globalised market economy is the biggest threat to these commons, which have become targets for profit over people by the corporate regimes of the world. The lust for money and over consumption drives economic globalisation to exploit natural resources. Through global investment, the market invades and fences the very core of natural and service commons, displaces locals from the natural habitats, destroys their vocabularies together with the destruction of the commons. This deprives the forest dwellers, farmers and workers of their right to livelihood. With the loss of their commons, these marginalised common people are on the verge of losing their identity, resource base and their way of life.

This global investment is a threat to community life and fundamental democratic human rights everywhere in the world. This is an invasion into the socio-economic and cultural heritage of the community. Whether it is POSCO, Tata, ArcelorMittal, Rio-Tinto, Vedanta, Monsanto or Cargil, they squeeze the blood of the communities and the commons to convert it into profits by luxury goods and war equipment. This is the root cause of global warming—the consequence of deliberate destruction of natural commons through technology and capital which move globally as the weapons of the imperialists.

The destruction of commons by the market forces is not an isolated phenomenon in India, but a global phenomenon affecting all countries. Mining of bauxite in Guinea and Jamaica, copper in Chile, Peru and Zambia, Manganese in Pakistan has caused all round devastation in these countries. In Vietnam in the year 2009 there was fierce resistance against plans to exploit mineral resources basing upon local entitlement and environmental causes. People's resistance to mining in Guatemala is increasing by the day. Protest against mining in SaMarcos has many allies all over Latin America. Eighteen Maya Mam communities in Guatemala have been resisting gold and silver mining, since the mining has resulted in irreparable harm to the life, personal integrity, environment and common resources of indigenous communities. Natural commons like the Tzla River

and its tributaries, their only sources of water, have been polluted. A number of springs and wells have dried up. The company Gold Corp, which operates in San Migul community and Sipa Capa, is extending its mining activities to exploit land and mountains.

The people of 30 communities in San Pablo also fight against the private hydroelectric power plant. Resistance has been growing to ecologically devastating Chinese mining invasion of Medang in Papua New Guinea. China Metallurgical Corporation exploits the Ramu Nickel mine in Medang province. As a result it is poisoning fish stocks, marine life and the rain forest. This is an assault on the sovereignty of the people through deprivation of their right to natural commons.

Africa is heading for ecological disaster. The green and gene revolutions are threatening the richness of traditional agriculture. In South Africa a staggering 96% of the area under cotton and 88% under soya beans are genetically modified varieties controlled and monitored by Monsanto. Farmers are forced to quit traditional farming of food grains. In South Africa mining by the trans-national companies is causing untold misery, breaking communities and commons at breakneck speed putting the very survival of the indigenous communities at risk.

The crisis over water intensified when it was privatised and treated as a commodity. In 2000 in Bolivia, the water supply in Cochabamba city was privatised and water tax was increased. But the people resisted and succeeded in taking back water management from the company and restored it to community management. It inspired a worldwide movement for water as a basic right and as a common to be preserved for the community.

The global scenario shows that where there is depletion, exploitation and destruction of natural commons there is abject poverty and deprivation. Because 75% of the resources of the South are enjoyed by the rich minority of the North, the majority of the South (Latin America, Africa and Asia) are gravely poverty-stricken. After exhausting all its oil reserves Myanmar (Burma) is left the poorest country in the world. Similarly, in India the most mined states like Odisha, Chhattisgarh and Jharkhand are also the poorest.



### **The remedial and way ahead**

There is hope in the commons for socio-economic justice when it gives enough for sustainable subsistence. In the course of human civilisation, from indigenous community to modern society, the physical commons has emerged as part and parcel of nature as the mother of common resources. From these physical commons, many new commons have come into being. Though many commons are being used as the common resources available to all for all time to come, there is dominance of some community or tribe and restricted access to others. Even so, because of the availability of the commons sustained for generations by communities who never claimed ownership, there is hope to restructure the relationship between the human being and the nature as the mother of commons.

In villages, there are various commons ranging from village ponds, tanks, grazing fields, graveyards and spiritual places. Due to the caste system, these commons are being used by the dominant community and others, specifically Dalits, are discriminated against and even excluded. The concept of commons has no place of hegemony of any individual or any dominant community. It works on the doctrine of equity and equality. To establish egalitarian rights of everyone, with equal responsibility for protecting these commons and equal right to the benefits and control, the law against caste-based discrimination should be amended to be effective and be implemented impartially.

Simultaneously, new laws to protect and maintain these physical rural commons need to be enacted. A small mountain near a village is the source of stones for building houses, a place for grazing, a location for firewood and many more uses for the life and livelihood of the community. These need to be retained and protected as the common resource of all the surrounding villages. The law needs to regulate their use for meeting the needs of the community without allowing big players to over consume for their profits.

If the commons can be more viable, well protected and equitably accessed, then communities will be more organised and strengthened with flourishing human civilisation. The commons are not meant only for the particular communities who have territorial presence and use them

frequently for traditional occupations. However, the existence of commons mainly depends on how and to what extent the traditional dwellers use it. Therefore for the present as well as the future, their community rights should be legally ensured. Then their belongingness will continue to protect and preserve the commons, so that the commons can serve many beyond these communities. Alienation of these communities from the commons that they have preserved and nurtured through centuries, if not millennia, has led to the destruction of these commons and communities. Their exclusion from management and stewardship has resulted in almost permanent degradation within a short time.

To protect and preserve the commons, there need to be institutional mechanisms backed by constitutional provisions to promote a community based social life, along with community based management of commons through cooperatives. Natural laws should be honoured where commons have natural existence. To respond to the global climate crisis, there should be effective operational institutions free from hegemony of the imperial nations, to prevent the countries from framing laws that are a threat to the commons. Global institutions like WTO, World Bank, IMF should be barred from interfering with any matter related to common resources. In India, the infamous colonial Land Acquisition Act 1894 and its recent amendments should be abolished. There should be a national policy on the use, uses and users of the natural resources to secure ecological balance, socio-economic equity and justice.

Sustainable development is dependent on, and therefore should promote, service-based commons like food production and distribution, common school education and health. Developing physical natural commons together with reformed social organisation and structure of communities is a prerequisite. Though there is discrimination by caste and clan hierarchies in the traditional use and access to commons, the commons are the pillars of community based human society. With the commons the future can see a human society with equitable justice to the ecology and human needs where there would be no place for greed. The prophetic warning of Mahatma Gandhi was that the earth can provide everyone's need but not their greed. Consumption should be limited so that the commons will be freed from corporate hunting.

The preamble of the Indian Constitution speaks of socialism. The fifth and sixth schedules of the constitution provide partial protection to natural commons in tribal areas. But when it comes to implementation there are several lacunae, gaps and outright obstruction. The Forest Rights Act is a first step to protect the right of forest dwellers. It is essential to prevent corporatisation of commons. But it pushes the tribal community to aspire for individual ownership and so, in the long run, it will fail. There should be legal protection to ensure access to the commons including pasture, forests and water for all for life and livelihood and for the basic needs but not as consumers with unlimited wants.

The natural habitats of wild animals in forest and domestic animals in villages, including their migratory paths, need to be safeguarded so that there will be no human–animal conflict. These natural commons are not safe under government officials. Tribal communities should be empowered to maintain the ecological balance between tree, wildlife and human existence in a forest. They have indigenous knowledge which is not patented. This indigenous knowledge should be protected from piracy and fraudulent patenting by others.

A comprehensive right to food law needs to be in place together with an integrated policy to ensure mass production of food, sustainable forests and community sovereignty over water bodies. This needs to be protected through a common school system of education which would empower traditional communities to use commons in efficient ways with scientific know–how along with their indigenous knowledge system.

Democratic institutions, from the local to global levels, are needed to monitor the democratic functioning of the nation states to prevent them from corporatising the commons. When commons are destroyed, communities die. People lose faith in the law of the land. The nation has not created communities, it is communities that have created the nation. If the communities disintegrate due to the destruction of commons through the state policy, then the state will lose its legitimacy. The natural commons are the pillars of a democratic society which is the base of the sovereign welfare state. Capitalism is the enemy of the commons. Democratic–socialism, without state hegemony, is required for the safety, security and sustainability of the commons in India and in other developing countries.

Judicious use of the commons with equity and sustainability will lead human beings towards universalism across the national boundaries. Therefore, the commons must be sustained without ownership or hegemony of an individual, corporation or state. For sustainability of the commons there should be limits to consumerism. Vulnerable commons as the primary source of lives and livelihood should be identified at different levels (from local to global) and be given legal protection.

Social–democratic ideals should be used to create a community, nation and universe along horizontal engagement levels and not use vertical trickle down models. We have to build a development model based upon the social concept of the commons through an inclusive and participatory decision making system. The gram sabha or local communes as the grassroots unit without state dominance is the ideal. A new value system in the process of alternative development, not to destroy traditional culture but to reconstruct it. There should be a process to review the relationship between the environment and the economy for sustainable development. The effort should be to democratise the access, utilisation and relation to the natural resources on the basis of equality. Conspicuous consumption should be shunned. Transforming the wealth of the commons into commodities and property should be resisted. A simple lifestyle with dignity and ensured access to the protected resources will make the commons sustainable and viable for the present and the future.

## References

- Forest tribes of Orissa (The Dongaria Kkondh), vol. 1, Man and Forest series, No. 2, General Editors, Klaus Seeland and Franz Schmithusen, D. K. Printworld (P) Ltd. New Delhi, 2002.
- Forest tribes of Orissa (the Kutia Kondh), vol. 2, Man and Forest series, No. 6, General Editors, Klaus Seeland and Franz Schmithusen, D. K. Printworld (P) Ltd. New Delhi, 2006.
- Indigenous paddy resources from Sri Natabar Sarangi, village Narisha, District Khurda, Odisha.
- Sustainable futures, Edited by Marko Ulvila and Jarna Pasanen, published by the Ministry for Foreign Affairs, Finland, 2009.

# Water as commons

---

C R Neelakantan

**T**he concept of water as commons can be explained through a simple analogy. Water for the Earth (as a continuous single life system—interconnected and interdependent) is analogous to blood in the human body. Both are essential for the survival of life. Both are limited in quantity. Both flow continuously. If blocked, both get polluted. Blood flows from one organ to the next. It cannot stop there. Similarly for water, no single user has the right to hold it for more time. The flow of blood (and water) is necessary for many biological functions in the body (Earth). No user has priority over the other since all parts are interconnected and interdependent. Since both are limited in quantity, and a minimum is required to sustain life, any loss above a threshold will be disastrous. The shortage has to be replenished in the shortest possible time.

Blood has to flow through its natural paths as far as possible, otherwise it is considered a malfunction or a disease. Similarly, allowing water to follow its natural path is the most sustainable method. Unnecessary diversions of water from its natural path may lead to many disasters. Human understanding is very limited regarding the complexity of the biological functions of the network of water and blood flow. In a healthy ecosystem, water flow should be in consonance with the biological requirements of the system. Otherwise it will affect some other life forms. It may take time to get information regarding the damage, but it is taking place. There will be slow damage though we are unable to recognise it. Any irreversible damage to the water flow paths may lead to disastrous consequences. Since water is so essential for the survival of life, all life forms have the right to water, for the right to life is the birthright of any organism. If they are denied water in sufficient quantity and quality, their basic right to life is denied.

## **Basic principles**

The basic principles<sup>1</sup> regarding water as commons were listed in the consultation document ‘Key Principles for an International Treaty on Right to Water’<sup>2</sup> and then elaborated further.

- Water is a fundamental human right and states must be willing and able to implement their respective obligations to respect, protect and fulfil the right to adequate water and sanitation.
- As part of their obligations to fulfil the right to water, states have obligations to provide adequate, safe, accessible and affordable water and sanitation for all people within their jurisdiction who currently do not have such access, with preferential treatment and positive action for the poor and marginalised.
- States must ensure that water is allocated in a manner that prioritises people's basic needs and livelihoods.
- Water is a public trust and not a commodity and belongs to all humanity and the earth. As such, water should remain in the public domain.
- States have the responsibility to ensure the conservation of freshwater ecosystems, to prevent over consumption of water, the degradation of water systems and to protect watersheds.
- Sufficient clean water is necessary to protect ecosystems and all kinds of species. Healthy ecosystems will ensure the right to water for future generations.
- States have obligations to guarantee the human rights principles of participation and transparency, including that water services must be under democratic public control, in which members of the public fully participate in decisions on water management and the allocation of water resources.

These principles are accepted by everybody. In practice they are being violated everywhere. These bare facts say it all:<sup>3</sup>

- 3.575 million people die every year from water-related diseases.
- 1.4 million children die every year from diarrhoea.
- A typical five-minute shower in a developed country or a bath consumes more water than the average person living in a third world marginalised community uses in a week.
- Discrepancies in the consumption of water between different sections and strata of society is very high, for instance between rural and urban or between rich and poor.

- Many poor people from marginalised communities pay five to ten times more per litre of water than wealthy people living nearby.
- Less than two thirds of the world has improved sanitation—a sanitation facility that ensures hygienic separation of human excreta from human contact.
- Worldwide, 2.5 billion people lack improved sanitation, including 1.2 billion people with no facilities at all.
- At any point of time, more than half of the poor in the third world are ill from causes related to hygiene, sanitation and water supply.
- Millions of women and children spend several hours a day collecting water from distant, often polluted, sources.

This situation is getting worse by the moment. In contrast, if the sanitation condition is improved and the availability of drinking water is ensured multiple advantages will be there all among the world countries. Some benefits are shown below:

- 272 million more school attendance days a year.
- 1.5 billion more healthy days for children under five years of age.
- Health-care savings of billions of Rupees a year for the government health agencies and for individuals.

### **Functions of water**

In addition to basic domestic functions (like cooking food, sanitation etc), water is used on a large scale for irrigation, industries, ecological functions and entertainment. The requirements are increasing day by day. Water is becoming a serious issue mainly because of its scarcity. Why is this resource so scarce? The general theory is that any item will become scarce if its availability is less than the requirement. Increase in the number of consumers or increase in per capita consumption will definitely lead to scarcity. Drastic changes in lifestyle will increase consumption. The skewed distribution of water across regions (North to South of the globe, city to village, rich to poor) is obvious. Pollution of fresh water (slow or no purification of the system) including salination is a major problem. Diversion of water for different purposes also lead to scarcity at some point. Multiple requirements compete among themselves and the priority in the system will decide the distribution pattern. As Mahatma Gandhi

opined, priority is the politics of a system. What are the major factors which decide the priorities? In normal conditions, the state has the authority to decide. But at present in our capitalist society it is the market that controls even the state.

### **Development: What is it?**

What are the basic principles of a capitalist market? With the advent of modern capitalism, things have changed drastically. Now capital can acquire and utilise any amount of the natural resources for amassing wealth and profit. 'Survival of the fittest' is the principle. The growth of science and technology had enhanced the rates of production, consumption, and hence acquisition. The efficiency of a system is measured by the rate at which it can exploit the natural resources and process the same to sell in the market. Hence natural resources themselves became a tradable commodity in the market. The faster and competitive exploitation lead to their depletion. This is because the rate of exploitation of these resources is much higher than their replenishment rates. Natural cycles of renewables and perennials can no longer keep up with consumption rates. The key word 'development' has only a unidimensional meaning.

The issues related to "development" were not considered as crises mainly because of the paradigm created by science and technology in the society, which assumed that:

- Natural resources such as land, water, air, forest, sea, minerals, petroleum are unlimited.
- The faster the exploitation, better the system.
- They are 'freely' available.

People began to think that science and technology has a magic wand to solve all problems. In the 'unlikely case' of any resource becoming limited or scarce, science and technology held out the promise that it would be able to find alternatives. This was attempted and explained in many ways. In the case of fuel, the replacements developed by science were from firewood to coal to petroleum to nuclear energy. Similarly, in place of wood we 'found' alternatives like plastics. For increasing fertility of land due to scarcity of micronutrients, chemical fertilisers, pesticides etc were invented.



After decades of experience, we now realise that none of the above was sustainable and most of them had created more problems than those which they were meant to solve. They affected many other apparently unconnected natural systems like air, land and water. This is by no means an exhaustive list. There can be many more such examples. But the real crisis came later. Those resources which were thought to be unending or infinite, such as air, water, sea, forests etc., were also affected badly. The destruction of these resources had affected a large section of people who did not at all benefit by industrialisation or by the so-called 'development'. Nobody could predict in 1980 that water will be sold for a price which is comparable to that of milk. But within 20 years everybody had to accept it as a *truth*. Similarly air (oxygen), the most abundant natural resource, is becoming a tradable commodity slowly.

The basis of the conflict is the concept of 'development' which is already iniquitous, aggravating the existing gap between the haves and have-nots. This development paradigm is acceptable even for the have-nots. We all agree to the classification of societies as *developed*, *developing* and *underdeveloped*. We consider our country India is *developing* and countries like USA, Western Europe etc. are *developed*. What indices are generated for development by the above definition? In short, India has to be like USA if it is to be considered as a developed country and hence the target and direction of development of India is already fixed by this. That means India has to increase its production and consumption to the level of USA. Is this possible—physically, economically, politically, socially, culturally and above all ecologically? In 1970 itself the so-called technical experts from these developed countries realised that there are some limits of growth. The discussions held at Copenhagen on climate change advised 'growth reduction'.

### **Can the market solve this problem by itself?**

The above path of development had created various conflicts in the society. The major reasons for these conflicts are scarcity and commercialisation of these natural commons in the name of (economic) growth and (industrial) development. With the advent of the neo-liberal regimes, the crisis deepened manifold. LPG (liberalisation, privatisation and globalisation) policies of the national, provincial and local governments

based on the diktats from international financial institutions (IFIs) like the World Bank, Asian Development Bank, World Trade Organisation etc is not a point of dispute. Almost all the governments are competing to become more 'investor friendly'. This policy had led to GDP (economic growth) oriented development. Investors or capital can amass any resources to any extent. If these resources are essential for the survival of some sections of the society then the conflict starts. Those who are powerful get the upper hand and their requirement get priority. The government will have to take a stand in this issue.

Then comes the political question. It is not a situation of scarcity in the real sense. More money can buy more natural resources like water. More water to somebody necessarily means that much less to some others. This is what Mahatma Gandhi had explained when he was washing his hands in the river Yamuna. All others were consuming large amount of water and Gandhi was measuring the water he used. The others asked him why he couldn't use more water since the river was full. In reply Gandhi explained that as a human being there was an amount entitled to him by the nature. If he took more, that would reduce the water availability for some life forms downstream. That, he believed, is violence. This is the correct understanding of the interconnectivity of Nature. But the competitive market can never understand this. Hence the market cannot sustainably control a biological system.

This is why the privatisation of water is a failure and is leading to many conflicts all over the world. If water can be considered as a commodity in the market, there is every possibility that capital will try to amass and control as much water as possible. If a major chunk of fresh water is controlled by humans (whatever may be the technology and however democratic the authority may be) what will be the priority in which it is released or distributed? The general tendency will be to utilise the resource in the most 'efficient' and 'profitable' way. Avoiding *waste* is one prerequisite. Any water flow should be prioritised based on its benefit. Hence supplying water to many plants, birds, animals etc will be a 'waste' because it may not give any tangible 'benefit'. But even a primary school child knows that these 'unwanted' life systems are necessary for our

survival. But market forces will never allow ‘sacrificing’ their profit for this type of public cause. This was seen in the issue of global warming and climate change. This is the basic political question regarding water. It should be seen within the political framework and principles under which it operates. It is not just the selling of water. It is not just ecological. Ecology, like economics and culture, is just one tool to understand the politics. Hence to deal with this biological or ecological crisis, we need a totally different paradigm including the one about development itself.

### **Paradigm shift**

There are many examples of human interference with the water flow and water cycle leading to unforeseen and unintended consequences. Building a dam for diverting water from a river for irrigation, power generation and destroying the river affects the humans, flora and fauna in the basin for many kilometres—sometimes even the backwaters and the sea itself. This may affect the drinking water and irrigation systems downstream. Power generation is always given priority by many governments and even by the public because power is considered the basis of development. But if it is affecting drinking water and livelihoods of many underprivileged sections then the conflict sharpens. This is applicable to industries where water is the major raw material or where water is polluted by them. Mining, real estate development, water theme parks, golf clubs, ports and many other infrastructure and construction work come in the list. In these cases the used water, often polluted, will not come back to the hydrological cycle.

For the resolution of these conflicts, the political, economic and ecological paradigms needs to be changed. Old economics never considered the cost of water, air or similar natural resources in their accounting. They considered them as a freely available commodity, or as an ‘externality’. A company extracting one million litres of water and polluting it should be held accountable for the loss occurring to the ecological system and to the human beings downstream. The loss should be ascertained, and compensation paid to those whose life and livelihood are affected. Humans are buying water at very high prices. If the company has to pay the same rates for the water they use, then that industry will not be economically

viable. Similarly the general concept that *hydropower is the cheapest* can be exposed if the damages caused by it is added to its cost. That is, the profit of a factory or the power generation firm is the loss of the public. This type of new *organic economics* needs to be developed.

But the most important issue in the present situation is that the states are highly undemocratic. As explained earlier, since the policies are designed and decided outside the democratic systems, most parts of the states are only implementing agencies. This is the reason why our political parties are becoming *apolitical*. They do not need to take any policy decision. The struggling people are at a loss because they are not able to influence the policy decisions of their democratic governments. We think that the right to information (RTI) is a powerful tool. But nowadays we can get information regarding the implementation of the policies but not the policy making process itself. Transparency is only in the implementation. In the present system we don't have citizens in the real sense that can intervene in the democratic system. But all are only consumers who have no choice in the production systems. They can choose from the products available in the market. All rulers support the market system or privatisation.

### **Effects of privatisation of water systems**

The tall claims that privatisation will increase efficiency, reduce losses and prices need to be re-examined and challenged from the experiences all over the world.<sup>4</sup>

- *High rates.* Private water costs upto 80% more than public water. Private sewer service costs up to twice as much as public service.
- *Bad service.* Many multinational water corporations cut corners to increase profits at the public's expense.
- *Expensive financing.* Private financing is more expensive than public financing. Even the best-rated corporate bonds are 25% costlier than municipal bonds and 2.5 times costlier than State Revolving Fund loans.
- *Inefficiency.* Private utilities are not more efficient than public utilities, according to several academic studies.
- *Profits and taxes.* In total, corporate profits, dividends and income taxes add 20% to 30% to operation and maintenance costs.

- *Cost inflation.* The profit motive can further drive up costs. A study of the construction of 35 wastewater treatment plants found that ‘choosing the privatisation option is more costly than going with the traditional municipally owned and operated facility’.
- *Contracting expenses.* In total, contract monitoring and administration, conversion costs, charges for extra work and the contractor’s use of public equipment and facilities can add up to 25% to the price of a contract.
- *Limited competition and consolidation.* The public has little room to negotiate with private water suppliers and can get stuck with bad and expensive contracts.
- *Lost public benefits.* Municipal operations often have several additional benefits that cities lose when they privatise.
- *Lack of accountability.* Multinational water corporations are primarily accountable to their stockholders, not to the people they serve.

### **The business of bottled water**

In addition to controlling water distribution systems, corporations make huge profits through the sale of bottled water. Coca Cola drains water from some of the poorest communities in India. In places like Mehdiganj, water levels have dropped by as much as 40 feet, leaving families and farmers without enough water to meet their basic needs.

Bottled water corporations are changing the way people think about water.<sup>5</sup> Today, three of four Americans drink bottled water, and one in five drink only bottled water, believing the market principle that the costlier product will be better in quality. Bottled water is one of the least regulated industries in the most of the countries. Tap water and bottled water use similar standards, but tap water is tested far more frequently and its standards are more rigorously monitored and enforced in many countries.

Scientific studies have shown that bottled water is no safer than tap water. Sometimes it is less safe, containing elevated levels of pesticides, bromate, arsenic, bacteria, and other contaminants. Yet, more than one-quarter of bottled water is basically tap water. Leading brands like Coke’s Dasani, Pepsi’s Aquafina and Nestlé’s Pure Life are basically tap water, but they are often sold for more than the cost of petroleum.

Worldwide, people spent \$100 billion on bottled water in 2005. That's almost enough to fund the \$110 billion annual investment—approximately one-fifth of the world's annual military expenditure—needed to assure that everyone on earth has access to water and adequate sanitation.

### **UN interventions**

Human rights have been a powerful platform for advancing the agenda of social justice and ecological sustainability throughout the world. However, intentions and declarations are continually compromised by the lack of political will, grassroots power to force that will, and the underdeveloped capacity to enforce and realise the rights as described on paper. This is aggravated by the willingness of would-be water privatisers to co-opt the discourse of human rights for their own ends. Some have suggested that focusing on water as a human right is an error, while others see it at least as a stepping stone to working toward access and sustainability for all. They would like to change the words *human rights* to *human needs*. This is tricky suggestion. In a market based society need is not just the physical need but it is linked with the buying capacity. Hence for those who have no buying capacity, their needs are not counted. Many organisations had worked hard in past years to advance the idea of a binding, new covenant enshrining water as a fundamental human right. Despite its challenges—including the compromise with corporations over voluntary statements of social and environmental standards in the Global Compact and the lack of a consistent means of enforcing and realising human rights—the UN remains the sole international political organisation with the capability to bring a new force of international law, deriving from custom and practice rather than written treaty law, into being. Such mechanisms can and have been integrated into national legal frameworks, though not consistently.

Since the players in the water trade are trans-national corporations and institutions like World Bank, Asian Development Bank (ADB), the British Department for International Development (DfID) and WTO who are above the nation states, the struggle for protecting the commons has acquired an international dimension. Struggles erupted in many countries

and the United Nations was forced to intervene in the debate by passing a resolution, after spirited lobbying and grassroots mobilisation. After more than a decade of grassroots organising and lobbying, the global water justice movement achieved a significant victory when the United Nations General Assembly voted overwhelmingly to affirm ‘the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights’. David Moss elaborates on the dilemma faced by the governments in balancing what is right, with their obeisance to the corporate lobby.<sup>6</sup>

The resolution—put forward by Bolivia and co-sponsored by 35 countries—passed overwhelmingly with 122 states voting in favour and 41 abstaining. It is a non-binding statement, meaning that no nation will be forced to follow it, but nonetheless marks a significant advance for human and environmental rights. The decision by the UN General Assembly supports current organising effort for a future resolution recognising water as a common resource, to be creatively managed for the needs of future generations—of all species.

Embarrassed to go on record against the right to a life-giving resource, not one country voted against it. The Universal Declaration on Human Rights, approved in 1948, did not specifically recognise a right to water. But in recent decades, worsening water scarcity and contamination, aggravated by global climate change made a resolution on water rights more urgent.

Though the resolution was non-binding, some country delegations said they abstained because they did not get instructions from their capitals in time to confirm their positions. Others said they were afraid of the resolution’s implications for water they share with other nations, known as trans-boundary water.

Pressures to weaken the resolution were considerable. One proposal was to insert the word ‘access’ to water and sanitation so that the resolution would read, ‘right to access to water and sanitation’. For UN delegates, this would mean their governments need only guarantee access, not the water itself. It would be adequate in that case to merely assure water for purchase, rather than guaranteeing that it is a fundamental right, even for those who can’t afford it.

That the resolution did not stop at ‘access’ makes it more powerful. It means governments have to provide the water even if people cannot pay for it. It is an important distinction. The final resolution ‘calls upon states and international organisations to provide financial resources,

capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all'.

### **A new management order**

A UN declaration alone will not be enough to solve the complex problems or unravel the web of vested interests created by powerful corporations. The last decade had shown us that only peoples struggles can protect their rights over commons. The case of Cochabamba is path-breaking, and is a case study for all those who wish to keep water as commons.<sup>7</sup>

This is how Our Water Commons describes the campaign.

In April 2000, thousands of citizens of Cochabamba, Bolivia's third largest city, blocked roads to protest the privatisation of the city's local water system, rallying around the central battle cry, 'water is life!' The government cancelled the concession contract and returned water to municipal control under the watchful eye of the La Coordinadora, the Coalition in Defence of Water and Life, the social movement that emerged to coordinate the protests. Community leaders set about the task of elaborating a new way to provide water services that would build upon the experiences with non-hierarchical forms of decision making that emerged during, what was often described as, a 'water war'. One thing was clear: while privatisation was not the answer, no one wanted to return to the former model of 'public' utility, which was widely considered to be inefficient and corrupt.

Based on experiences with previous episodes of nationalisation in Bolivian history, water justice activists in Bolivia insist that public (read state) forms of management are not a true alternative to privatisation because they simply replace one form of hierarchical management with another. Instead, the opposite of privatisation is the 'social re-appropriation of wealth', which entails the collectivisation of property and the self-organisation of water users. As Oscar Olivera, a spokesperson from La Coordinadora explains, this difference between water justice activists in Bolivia and elsewhere is crucial: 'Activists in the North tend to focus on issues related to management, while we (in Bolivia) are primarily concerned with the struggle for property rights'.

The notions of collective property that have emerged in the struggle for water are inspired by the experiences with communal water management of two key participants in the Cochabamba 'water war': small irrigating farmers' associations, and community-run water systems.



Utterly neglected by state authorities and lacking basic services, most of the communities in the poor barrios of the southern zone of the city of Cochabamba have built their own independent water systems provisioned by wells that are managed by independent cooperatives, informal committees, or neighbourhood councils elected by the residents. Since 2004, many of these community-run water systems have been organised in the Association of Community Water Systems of the South (ASICA-Sur), which has given a collective voice to the citizens who lack public water services.

More recently, ASICA-Sur has secured financing from the European Union to build independent water systems in Districts 7 and 14. These independent systems will buy water in bulk from the public water company, but will be managed by the users. As the President of ASICA-Sur Abraham Grendydie explains, it has taken the public water company too long to respond to their demands so they have decided to take matters into their own hands. While the construction of independent water systems risks further fracturing the urban water network, in the long term it may be the only way to meet the goal of 'water for all'. Demands for communal ownership and management have also translated into the demand for 'social control' within the re-municipalised water company, SEMAPA. While former boards of directors were staffed exclusively by professionals and politicians, between April 2002 and October 2005, three members of the seven-member board have been elected from the macro-districts of the city. Many of the problems that have historically plagued the public utility, however, have remained unresolved by the limited degree of social control. While the public water company has performed better than would have been expected under private control, coverage rates remain low (46% in 2005), and services are intermittent. Opinion is divided on the reasons for the perceived failure of social control to improve the utility's performance. For some, it is the fact that the mayor controls the budget. Others highlight the lack of capacity of the citizen directors, the over-politicisation of the public utility, or the problem of corruption. Yet others blame the conditions attached to a loan by the Inter-American Development Bank that have stymied attempts to democratise the utility because they prioritised administrative reform and repairs to the existing network instead of making visible improvements to water services. Nearly all agree, however, that Cochabamba's water problems are linked to the lack of public investment. Efforts to outline alternatives and debate the future of the local water company continue.

## Defending our water

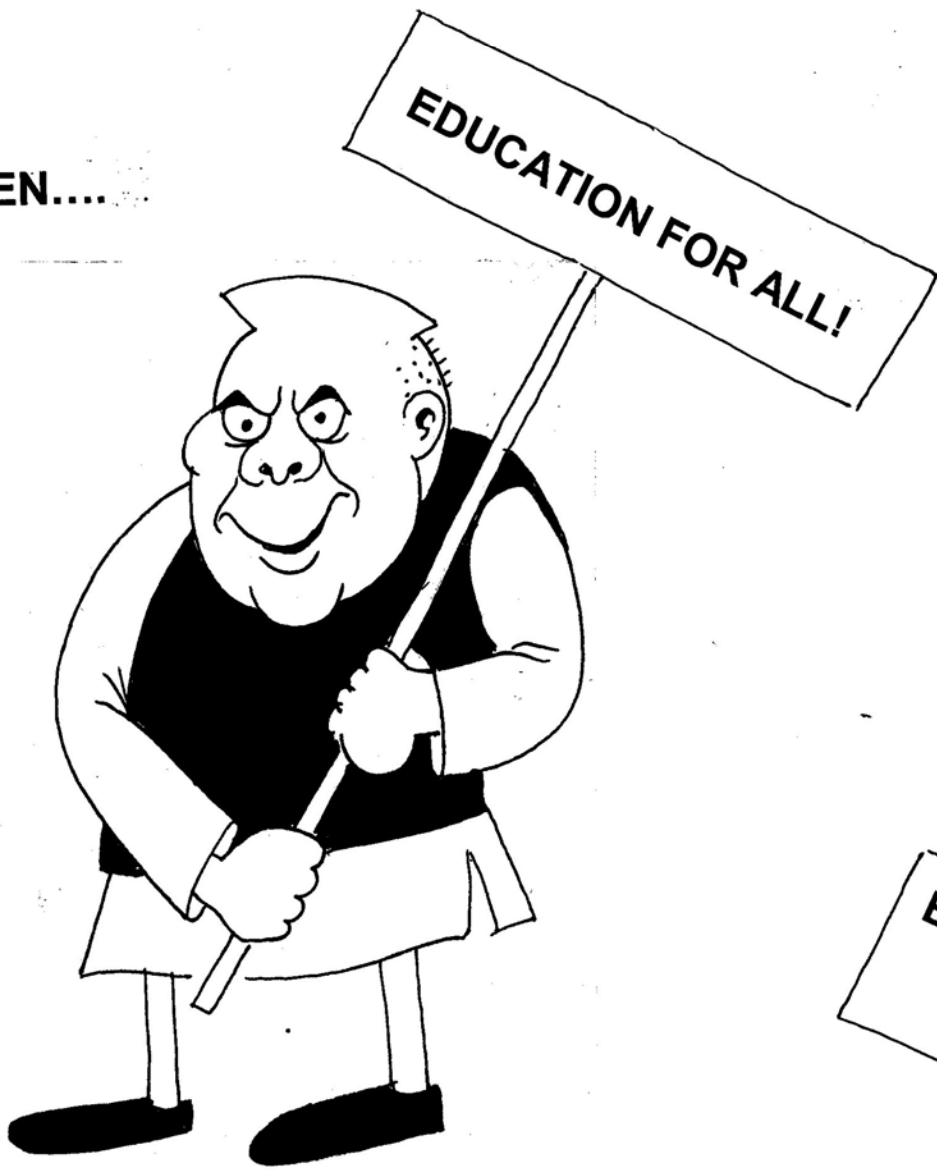
The need for water to be a common is recognised as a right from the UN to the village. People all over the world are mobilising to defend their water. Struggles similar to Cochabamba have been, and are still being, fought all over the world—from Argentina, Bolivia (El Alto), Brazil (Porto Alegre) to Colombia, France (Paris and Grenoble), Ghana (Savelugu), Italy (Abruzzo), Peru (Huancayo), South Africa, Spain (Córdoba), Ukraine and Uruguay.

In India too there are many examples right from the capital Delhi to Kaladera in Rajasthan to Kerala in the south. In the Plachimada struggle, a totally illiterate tribal community taught the totally literate people of Kerala about water and the commons principle. The struggle against the privatisation of river or other water bodies are going on everywhere. People's struggles to protect the watersheds and wetlands against the polluting firms and urban councils are also part of this. Societies should recognise the commons and try to protect them. That is the only solution to the crisis. The people who are directly affected need to be in the forefront of the struggle.

## Endnotes

- <sup>1</sup> Water Solutions Case 1: The Push for a UN Covenant on the Right to Water <http://www.ourwatercommons.org/water-solutions/case-1-push-un-covenant-right-water>
- <sup>2</sup> The Friends of the Right to Water [http://www.blueplanetproject.net/documents/Key\\_Principals\\_Treaty\\_RTW\\_140405.pdf](http://www.blueplanetproject.net/documents/Key_Principals_Treaty_RTW_140405.pdf)
- <sup>3</sup> <http://www.ourwatercommons.org/statistical-glimpse-global-water-crisis>
- <sup>4</sup> Money down the drain. How private control of water wastes public resources. Food and Water Watch, 2009.
- <sup>5</sup> Bottled Water and Corporate Control of Water. Adapted from Corporate Accountability International <http://www.ourwatercommons.org/statistical-glimpse-global-water-crisis>
- <sup>6</sup> The rest of this section is an edited version of Historic Expansion of Human Rights: The UN declares the right to clean drinking water and sanitation by Daniel Moss (<http://onthecommons.org/historic-expansion-human-rights>)
- <sup>7</sup> This section draws from Water Solutions: Case 5: “Social Control” and Public-Collective Partnerships with Community-Run Systems in Cochabamba Bolivia <http://www.ourwatercommons.org/water-solutions/case-5-%E2%80%9Csocial-control%E2%80%9D-and-public-collective-partnerships-community-run-systems-coc>

THEN.....



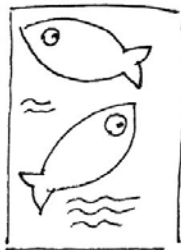
NOW....



*Sari*

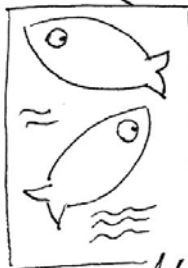
OUR PROFITS ARE SHRINKING.

WHY?

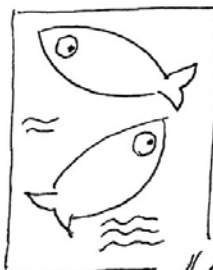


BECAUSE THE OCEAN'S FISH RESOURCES ARE SHRINKING.

WHY?



BECAUSE WE HAVE CAPTURED MOST OF IT!



# Coastal commons

## Culture and governance: Learning from the Pattinavar Podhu Gramam

---

Gomathy Balasubramaniam<sup>1</sup>

**T**he commons as part of community culture and identity is complex. This is for several reasons. One is the nature of life itself. The second is the nature of human beings and the societies they form. The third is the understanding of what is commons, who is doing the understanding and what does reductionism do to the idea of commons.

Fishing in the Indian context, by and large, has been the entire occupation of a single caste dominating either villages or stretches/regions geographically, unlike agrarian multi-caste structures. The single caste demography meant considerable autonomy and self governance and the communities thus are highly organised and controlled internally. The traditional community institutions are responsible for maintaining village discipline by organising/presiding over social and religious events, dispensing justice, maintaining accounts and serving as a bridge to the outside world. It resolves conflicts both within a village as well as between villages. They are also instrumental in governing (commons social, cultural and economic). It is quite clear that the fishing communities and their traditional governance institutions (especially in Nagapattinam) have shown remarkable resilience during the December 2004 tsunami relief and the subsequent rehabilitation.

Marine fisher communities down the Coromandel stretch of the east coast of India have a very sophisticated understanding of commons, both symbolically and materially. This understanding is coded into their very nature as people and communities. This understanding has evolved as a result of several reasons, primarily because the sea itself could not be bounded into parcels that could be owned. The idea of any one person or community owning the sea was ridiculous. Their entire way of life, individual, workwise and community was based on this idea.

The fishing communities of Nagapattinam have come under particular pressure in the aftermath of the tsunami of December 2004. They have shown remarkable resilience in not merely coping with the tragedy unleashed by the disaster but also in negotiating with the several actors of the rehabilitation scenario. A critical cause for this resilience is the strong internal cohesion and equity of power distribution found in these villages. This internal cohesion has arisen from the intertwining of values and governance institutions with daily cultural and spiritual practices.

For the purpose of this chapter, while many of the findings of the studies on coastal communities are restricted to the Pattinavar villages in the Nagapattinam and Karaikal coasts, some of the insights about community commons, identity and culture are also relevant to the entire coast line from Chennai to Kanyakumari.

### **The Pattinavar Podhu Gramam (Common Village)**

The Pattinavar fishing communities of Nagapattinam and Karaikal District came under critical pressure during and in the aftermath of the tsunami of December 2004. They have shown remarkable resilience in not merely coping with the tragedy unleashed by the disaster itself, but also in negotiating with the several modern actors of the rehabilitation scenario, such as the government and the great influx of development organisations.

A critical reason for this resilience is the highly sophisticated and egalitarian nature of their indigenous governance institutions and practices. These institutions are characterised by strong internal cohesion and concern for the overall community well-being. These governance systems have evolved historically and arise from the intertwining of individual values, the environment that fishers live in, indigenous symbols evolved over time to make meaning of their existence and purpose, the egalitarian distribution of coastal resources centrally focussing on commons and sophisticated and detailed methods of gathering the views of the community and conflict resolution. Many of these traditional principles and structures are still evident, though badly corroded in some stretches of the coast.

These ancient governance structures are most evident in the stretch along the Nagapattinam and Karaikal coasts.

The Nagapattinam and Karaikal coastal stretch are single caste communities comprised of Pattinavars (also Chettiars), with households of other communities in the village restricted to certain functions (such as running shops). This homogeneity is unlike agrarian multi-caste structures with significant differences in rank and privilege and enables egalitarian decision making and governance. Further, Pattinavar households and communities are organised through patriarchal and patrilocal kinship groupings. All the male members of the village are *pangalis* (kin shareholders), sharing both livelihood and community responsibility and privilege. Conflicts between individual members are often conflicts within families and clans and therefore these fisher communities act quickly and clearly to resolve such conflicts.

Traditional governance institutions both within and between villages reflect a high degree of sophistication in their design and functioning. Each Pattinavar village in the Nagapattinam coastal stretch has considerable autonomy in self governance, and each is linked to its adjoining ones by a common fisher village chain that runs down the entire coastline. Within each village, there is a traditional caste panchayat that is responsible for governing all aspects of internal community life: cultural, economic and social; and it is this community institution that was responsible for mediating the relief and rehabilitation process in the aftermath of the tsunami.

Each village is connected to a coastal collective comprised of 64 villages that is capable of acting as a single chain when called for. Both the traditional caste panchayats and the chain of 64 villages have come under considerable pressure under the influence of modernisation.

### **The traditional caste panchayat**

The fisher panchayat currently has a certain number of people (usually 8–10) *selected* as panchayat members through a process of nomination by the members of the fishing village to govern it for a fixed period of time—usually a year. All the male members of the village have

a right to participate in the nomination process as well as in any subsequent action that the panchayat undertakes. The actual standards for eligibility and the selection and composition of the panchayat varies from village to village. In some villages the outgoing panchayat nominates a new panchayat. Some villages also formed committees of people, usually considered elders in the village, who went out of the village gram sabha meeting to make lists of possible *panchayatars*—the members of the panchayat. These lists are read and collectively reviewed in the larger meeting. In one village, there is a standard rule that the ten members of the panchayat are to be selected on the same day. At the completion of their term, a new panchayat with fresh members is selected. The village could have prohibitions on selecting the same member or even members from the same family in subsequent terms, and may specify a period for which they are not to be re-selected.

Most fishing villages have clearly defined qualities that they expect the panchayatar to have. One is to be devoted to community well being over and above personal considerations and to be willing to work hard for this. The work of the panchayatar is often very demanding without any tangible benefits and even loss since the time that he uses to carry out his responsibilities is time taken from fishing and loss of income for the family. For instance, a panchayatar nominated in one village at the age of 18 for his good conduct, stepped down from his position once he married, since he had to focus on earning his livelihood for his family. Equanimity and impartiality was also highly valued. Restraint and propriety in dealing with conflict is considered an essential quality while dealing with short-tempered men who often drink. Other related qualities that were enumerated included humility in relating, emotional balance, temperance in actions and non-reactivity in charged confrontations. Good conduct was also emphasised: being truthful, having a strong ethical character, coming from a good family in the village, maturity, etc.

The internal role of the panchayat is to maintain *grama kattupadu*<sup>2</sup> (bonding for village discipline), critical for community cohesiveness. This bonding was through many methods, and served specific purposes—organising/presiding over community rituals and ceremonies (religious



and social) and conferring membership, dispensing justice, resource sharing, including maintenance of financial records, as well as the sustainable distribution of the marine coastal resources and fishing, to ensure equity and food security for all its members and interfacing with all external actors including the police and electoral parties.

Conferring membership and dispensing justice is a critical function of the panchayat. The panchayat had the power to pass judgements as and when required to resolve conflicts within the village and between villages. Two broad categories of transgressions and conflicts exist. The first is *impropriety of action within family and community*—rude/aggressive conduct in the community, conflict within families, romantic liaisons not approved by the family/community, sexual misconduct and sexual harassment and failure to respect public property or to adhere to community rules and rituals. The second was *conflict in sharing of resources, particularly at sea* (damage to nets or equipment, right to fishing at a particular spot, mechanised vs artisanal conflict of interests, sharing of catch, contribution to community funds). These fights could occur within the village and between villages.

The severity of sentencing depends on the nature of transgression, and the willingness of the member to own his error. When dispensing justice, depending on the gravity of misdemeanour, a series of greater intensity of punishment is evolved: private counselling, where the issue is sorted out within the conflicting parties as quietly as possible (particularly those related to the personal domain), public counselling, community reprimands, fines for compensation of damage and severing ties with the community (the less severe economic ostracism followed by the more severe social and economic ostracism and public humiliation).

The fishing economy is based on shares and individual autonomy and the structure of village membership and entitlements is also well evolved. There are clear, detailed procedures to divide common resources within the village. The panchayat plays a critical role in managing village resources. It collects money, maintains accounts and distributes common resources for various purposes (money from auctioning catch, catch shares from boatloads, village collections, taxes for inclusion in membership) across all the villagers equitably. These systems of resource generation

and use are commonly evolved. In addition to regular community expenses, the panchayats also use these common community resources to help its members tide over times of crises. In this division of resources, the panchayat includes the vulnerable (the elderly and widows) who cannot fish for their livelihoods. The shore seine is an important part of this social welfare function, where the entire village is involved in the casting of the nets, and all members are eligible for a share in the catch, in spite of their personal capacity. As one fisher stated, 'even the very old and women have to just hold the net for them to get a share'.

The village panchayat also mediated/bridged relationships with all other *external* institutions and structures (including other Pattinavar villages) except during times of serious conflict requiring external intervention, and in relation to state matters like revenue, police and justice systems, conflicts with neighbouring villages of other castes and dealings with agencies of electoral politics. For instance, government schemes have to be routed through the panchayat. Again, the permission of the caste panchayat had to be sought before filing a case. When the police wanted to arrest a member of the fisher village, they had to contact the caste panchayat. All political parties are restricted from campaigning in the village, because this can cause internal rifts.

In turn, the members of the panchayat are themselves accountable to the entire gram sabha (village assembly), both ethically and financially through regular meetings. Transparency in governance is highly valued. Panchayats are required to maintain detailed records of village accounts that are open to public scrutiny, and people can question the panchayat about how the money was generated and used. Most panchayats have to show accounts at least once a year, after organising the temple festival. After the tsunami, more regular meetings have been needed, often as frequent as once a month, and after every consignment of relief/compensation.

A critical outcome of the change to the selected panchayat is the accountability of its panchayat members to the people. In one of the most united villages studied, the panchayat members comment that their work is so consistently good because their actions are closely scrutinised

for errors. Their position does not spare them from being extensively questioned. A second critical emphasis is on financial transparency. The panchayat has to present accounts as and when required, as well as at regular intervals ranging from a year (before the tsunami) to once a month. At the completion of their term they are expected to show the entire accounts of income and expenses incurred during their term. These are scrutinised in a village meeting.

### **The geography of collective governance**

Fishing communities have not only internal systems of governance, but also governance across the entire chain of villages. This governance is closely linked to the fact that for fishing communities proximity to the sea and the coast is critical. Fishing communities are oriented towards the shore line and are linearly organised along it. Unlike agrarian communities that are organised more as clusters, fishing communities are linear. Within a fishing village, households are organised grid wise into streets that run parallel to the sea shore. Also, fishing villages communicate with each other along the coast, either by landing boats or by walking long the shoreline.

Fisher villages are also linearly organised with relationships with each other. It is believed that an integrated chain of 64 original kinship villages that extended the entire Coromandel stretch from Chennai to Kanyakumari existed. These villages were bound by continuous communication and exchange up and down the sea coast, and could respond like a unit when required. Historically, this chain of membership sprang into action to preserve unity and security in times of crisis, when threatened by external agents or during internal conflicts. This chain of fishermen's villages evolved over the centuries, and is the spine of the fisher communities down the coast.

Over the years, the number of villages has increased down the coastline, and there is no such contiguous chain recognised down the entire coast. The longest remnant of this contiguous chain is present in the Nagapattinam and Karaikal, incidentally also comprised of 64 villages. The governance of this entire village chain is both decentralised and integrated. Each village was a member of a group of eight villages

that are proximal to it, and then part of clusters of increasing size: the 8, the 16, the 32 and finally the 64.

Each village had the prerogative to take critical governance decisions, like whether they permit boats from other villages to fish in their waters. For instance, while some villages completely ban such fishing, others allow each boat opportunity to fish for one day in their waters on the belief that the boat has drifted into them. This is true in determining the composition of the village panchayat also. The larger panchs (like the head village) cannot rule in this matter.

The typical procedure of seeking justice within the village is as follows: if the decision of the village panchayat was contested, the person approaches the head village of the eight village chain. The head village can also be called to settle disputes between two different villages, for example, conflict in the sea while fishing. This head village will then write letters inviting panchayat members from all eight villages and the justice will be dispensed in a common meeting. Villages are also free to choose a village in the chain to rule over internal conflicts. In this, it is not necessary to go only to the head village, though the head village maybe involved in settling the dispute. If the person still wishes to contest the decision of the eight village chain, he can approach the next higher cluster of 16, and then 32 and finally invoking the entire chain of 64 villages.

The entire chain was governed by a head village. In addition to the head village, there were three other historically designated villages in the collective governance structure, with specific functions. One was the chettiar (finance) village in charge of all the accounts of the village chain. The second was a sabha (secretary) village that was in charge of calling all the meetings of the entire community that the head village presided. Once the head village resolved to call a community meeting to sort an issue, they would inform the sabha village, who in turn will issue all the invitations. They would also act in cases filed against the head village.

The third was the podhu gramam. In moral authority, the podhu gramam was higher than the head village. This village is considered common,

neutral ground to the entire fisher community. If the head village itself was caught in the dispute, or if the ruling of the head village is seen as partisan, then the person could approach the podhu gramam for justice. In many senses, it is like the Supreme Court. Cases that have not been solved elsewhere can be resolved here and its ruling is final.

In cases of dispute, the common village will call for a meeting of the contesting parties to be held within its grounds. The panchayatar of the common village act as witnesses, as the representatives of the common fishers and ensure neutrality. While they themselves do not actually rule in the matter concerned, their very presence is seen as indication of fair judgement. When in its boundaries, contesting parties are expected to conduct themselves peaceably. The customary common village itself claims that there has been no history of conflict within it for the last 50 years, and the caste panchayat is known for their exemplary character and conduct.

### **Principled governance**

The evolution of the extraordinary Pattinavar governance systems is based on the values held by the members of this community, their livelihoods, their entwining with the coastal habitat and the importance of communities. The very nature of their occupation and their communities has forefronted certain individual and collective values in the Pattinavar fishers.

The foremost amongst them is the choice of marine fishing for Pattinavars as an occupation as the purpose of their lives. 'The main duty of a fisherman is to go between land and sea'. Hence proximity to the sea is critical in their understanding of themselves.

The second is the fisher community understanding of the sea itself. This is determined by the nature of the coast and the sea itself and therefore the marine resources that they harvested from it for their livelihoods. In defining their purpose of life, fisher communities often characterised themselves as stewards of the coast and the sea, held in trust for generations of peoples. The sea itself was viewed as part of the larger nature and environment that they lived in and depended upon, an entity (rather than just the source of their resources) that

they encountered every day, worthy of respect because it fundamentally supported their lives. This understanding of nature and the sea itself determined their meaning-making and actions. Historically, fisher communities did not perceive nature as something that can be owned, either coastal land or marine resources.

One aspect about the nature of the sea is its indivisibility, unlike land that can be bounded. This makes it difficult, if not impossible, to determine individual ownership and boundaries. Ownership is only restricted to the technology—the means for production—boats and nets. As a result, these fisher communities were more horizontal in their organising compared to, say, agrarian communities that are clearly delineated on the basis of ownership of land, and are closer in their nature, perspective and structure to indigenous peoples.

This perception of community ownership restricted to usufruct rights used for the sea was extended to coastal land and also perceived as part of the indivisible commons of nature. This perception of collective ownership was often used adversely against fisher community interests as, for example, when in the 1960s the revenue administration established the gram panchayat systems. With the establishment of these revenue administration units, these coastal land commons was converted into public property delineated and administered by the revenue administration, and often sold without community consent to individual land owners, or market interests.

Fishing is a hazardous livelihood, where fishers risk and lose their lives. Fishing communities living on the shore and fishing in the open sea confront danger on a regular basis and value courage highly. As one fisher said, 'Fisherfolk (men, women and children) are the only ones who run to the seashore to watch a storm. Running away from the sea does not cross our minds'. Staying out on the sea longer and braving difficult seas are marks of bravery. In one village, a significant number of men died because they ran to the shore without understanding the magnitude of the wave in the December 2004 tsunami.

Further, given that fishers encounter danger to their lives regularly on the sea, they have to depend on each other to ensure their safety,

and trust between the crew of the fishing boats is critical. As a result, harmony is a critical element in the nature of their communities, and there are some instances along the coast of villages with exemplary records of unity and collective support. One of the Pattinavar villages undertakes all medical expenses incurred because of accidents and illness for all members of the village, extending up to about Rupees one lakh (Rs 100,000) in one instance. Post-tsunami, all the members of another village decided to stay together in the temporary sheds in a gesture of unity, especially to support people who had lost dear ones. By staying together, their hearts would be lightened by interaction.

Because harmony is such a critical element to the success of their endeavours, fisher communities have evolved clear and egalitarian methods of conflict resolution, to enable community unity. Considerable energy is devoted by fishers to maintain peace. During conflict between its members, the entire village acts to resolve it, restore balance and compensate damages incurred. A critical aspect of this conflict resolution is the free voicing of dissent and discussion while making decisions that are relevant to the community. Because of the relatively horizontal structures of the community organisations, individual fishers actively participate in collective decision making, and openly dissent and question community governance structures. Dissension itself is not seen as threatening, but rather a matter of normal life.

Fisher communities pride themselves on their unity and harmony. Communities are central to the Pattinavars right down the coast from Nagapattinam to Chennai. For instance, members in one Pattinavar village recounted that there has been no history of conflict in their village to date. The people of the village argue vigorously in the meeting, but all animosity is left behind at the boundaries of the village meeting hall. This pride in their community harmony and the efficacy of their conflict resolution measures might be one reason why they characterise themselves as being short-tempered and given to fits of passion, but also quick to forgive.

A related critical value that fishers cherish is honesty. For instance, one fisher narrates that getting credit is never difficult for fishermen from villages in the merku (west, referring to non-fishing villages),

where their word alone serves as guarantee. This emphasis on honesty also enables an atmosphere of transparency and accountability within the community institutions. This is one reason why the actions of many community institutions in distributing the relief and rehabilitation resources post tsunami came under common community scrutiny and these institutions were held accountable to the entire community.

Fishers hold their autonomy and self-sufficiency dear. The unbounded nature of the sea and the economy of abundance determined the way that marine resources were distributed in the communities. Till the depletion caused by modern development practices in the nature of fishing in this region in the 1970s and 1980s, fishers recount that the catch in the sea was abundant enough to guarantee their basic nutrition and subsistence needs, if a fisher went out to fish. Labour, more than capital, determined community and individual income. Hence if a fisher could own a small, indigenous canoe, the harvest from his labour was enough to sustain his requirements, and that of his family and community.

Fishing as a livelihood has a certain degree of unpredictability encoded into its nature. Fishers can go for days without sufficient catch during lean times and occasionally earn a fortune in a day or a week. It is a livelihood involving considerable enterprise, risks and profits. Because income is erratic, determining individual and common entitlement becomes critical. Failure to do so can, and has, led to severe conflicts over sharing resources, escalating into blood feuds that extend over several decades. Several fishers take pride in their self-sufficiency in this enterprise, and characterise themselves as independent, and not amongst those who tie their hands in servitude to earn wages. All members of the village are equal, and only depend on the sea for their lives. To ensure this autonomy and prevent internal conflicts, fishing communities have evolved complex methods to divide the risks and profits of their labour. These methods are characterised by their egalitarian nature. Each member is answerable only to himself and is not bound by hierarchical wage relations. Each member of the crew bears a portion of the risk and is entitled to a share in the catch. The owner of the boat and nets is paid a share of the total catch for the use of his tools. Further, a share is also set aside for the village and becomes



part of the village income, and can be given to the vulnerable (old people) in the village, used for community purposes such as organising festivals, pooled to buffer individual distress or community requirements during lean times.

Along with this emphasis on autonomy and self-sufficiency, fishers also emphasise generosity as integral to their nature. One of the outcomes of the nature of their livelihoods is the lack of greed. Since fishers customarily lived on daily catch and their requirements were few, they did not hoard their resources. Fishers fish and then give away that portion of the catch that they did not use or sell. Community leadership was marked by practices of generosity, building temples for the village and sharing periya valai catch, ensuring safety nets for the vulnerable persons in the community. The principle of generosity engenders sharing both to create common community resources, as well as social security measures for the weaker members of the community.

### **Cultural symbols and governance**

Till date, many of the common resources (including land, catch and fishing gear) of the fishing communities are governed using common cultural norms and values, for the most part, in a participatory and equitable manner. These governance systems of the commons were linked historically with the temples that abound in these villages. The temple is the central community space and the collective values of the communities are embodied in the temple. For instance, it is considered incorrect to speak the untruth in the temple. Therefore the accounts and minute books of the caste panchayats are stored in the temple. During relief distribution, all the relief material that arrived in the village was stored in the temple and distributed from there.

Temples are also central in determining membership wherein the birth, marriage and death ceremonies are marked by temple rituals. Individuals of the village indicate their membership by contributing to the temple festivals, its construction and maintenance. Incomplete temple constructions are treated as symbols of irreconcilable conflicts within the village and signs of shame within the community. Even villages with serious conflicts and fractures still organise the annual thiruvizha (festival)

where the deity often goes out of the temple around the village, and sometimes plays in the waters of the sea. These annual festivals are believed to be critical for the community well being, and failure to organise these festivals is a failure of governance of the community.

Till date, in many of the Pattinavar villages, the temple land is held collectively by the customary panchayat, and its administration is a function of the village governance. In some instances, temples also own community land bestowed upon them. In many instances temple and village community land are interchangeable. The very origin of the fisher community coastal governance was through the bestowal of stewardship of the goddess temple associated with marine fishing.

The narrative on how the head village of the 64 villages was chosen is very telling about this intertwining of cultural identity, values and the commons. It is said that the Chola king had built a large temple for Neelaatchiamman, one of the Shakti incarnations, who is particularly generous to fishers. At that time, there were 64 fishing villages along the coast. The king felt that the maintenance of the temple and its property—the coastal land, and the governance of all the villages—should be vested in a village that showed selflessness, courage and unity. The king had a big puja (prayer ceremony) and called the heads of all the 64 villages to it.

In this meeting, he announced that he was seeking to appoint one village as the head of the coastal villages, and that this village would be responsible to take care of the Shakti temple as well as the governance of the entire fishing community chain. Four villages came forward in this meeting: Karaikalmedu, Kilinjalmedu, Nambiar Nagar and Aryanattuturai. To select one amongst the four, the king laid down a severe test of faith. One member from each village had to descend into a boiling vat of oil. Whoever survived this through divine grace would then qualify for the custody of the temple. The heads of the village returned to their villages to consult the other members, hesitant to ask any of their village members to undergo this terrifying test.

In Nambiar Nagar, one of the villagers was renowned for his devotion to Siva. He came to hear about the king's test and volunteered to

undergo it. His only concern was for his three unmarried daughters. Recognising he was the one most likely to pass the test, the grateful village promised that they would take care of all his daughters. When the date for the test came, he was the only one to appear before the king. When the vat of boiling oil was brought before him, he remained completely serene and prepared to immerse himself in the oil. At this point, the king stopped him stating that he had shown adequate evidence of courage and faith to pass the test and that there was no reason for him to actually immerse himself in the oil. Thus the custody of the temple was given to the village and it became the thalai (head) village of the 64 fishing villages.

Along this coastal stretch, some of the most evolved, spiritual philosophies have co-existed side by side in people's lives, including the Aurobindo Ashram in Pondicherry besides ancient Hindu temples, mosques and churches. One reason for this cosmopolitan world view is that unlike their tribal counterparts who often live in remote natural environments, the marine fishers have continuously interacted with others, particularly for trade—to sell their fish and buy other essentials. For instance, the sufi saint Nagoor Andavan invoked by all Pattinavars in times of danger for protection in spite of their religious identity. All fishers pray to Mother Mary as the Cosmic Mother. Again, conversion to other religions is tolerated, though not encouraged. Along the coast in every Pattinavar village, there are three to four families who have changed to Christianity for several reasons material and emotional, and on a lighter note, because one can eat fish on all days of the week rather than having to fast on certain days.

### **Threats to the governance institutions**

Even while the sophistication of the Pattinavar governance system is to be lauded, this system is under serious threat, both from internal fractures and external challenges arising from modernisation. Modern democracy, with its emphasis on numerical equality and disregard to indigenous people's institutions and wisdom has eroded existing hierarchical and autocratic power relations embedded in traditional systems. For most part, development research and action concerns have highlighted and worked with these inequities. For instance, the Pattinavar governance

systems completely exclude women from public decision making spaces other than those related to marketing of catch. This in turn has created opportunities for new ways of gender relating that is more equitable.

Most caste panchayats do not entertain women in their hearings, leave alone include them in their membership. In recent times, there has been some significant change in the decision making of the communities, partly because of the SHG movements, wherein women can come together to discuss collective matters. One instance of this gender discrimination was evident in the tsunami relief and rehabilitation when old women, particularly widows, were completely left out of the village member enumeration in the beginning. Traditionally, only families with sea-going males are included in the membership of the village, its decision making and entitlements to village shares. In some villages, widowed women are included and receive a portion that a village member is entitled to. For the most part, these women earn their livelihood by selling dried, salted fish that they buy from the fishers and had lost all their wares in the tsunami leading to abject poverty.

Another internal stress engendered by modernisation is the conflict between trawler owners and artisanal fishers arising from mechanisation of fishing technology supported indiscriminately by the modern state. The introduction of mechanisation in the villages has also forefronted economic inequity in villages, particularly amongst those who can afford to buy a trawler and those who cannot, transforming the more egalitarian share system economy into a more hierarchical economy. Mechanisation radically changes the fishing technology used, making it more capital intensive (requiring heavy investment in stock storage and fuel), as well as depletes marine environments drastically with its indiscriminate and intensive fishing. Trawlers usually stay out on the sea longer, sometimes for a week, requiring higher capital investment compared to a canoe and use large nets that drags on the ocean bottom to draw in schools of fish from deeper seas. They not only sweep the sea clean of fishing shoals, but also destroy fish breeding seabed, and destroy fingerlings caught in the nets. Mechanisation also concentrates wealth, increasing economic power of some people within the community. This in turn has posed serious challenge to the existing traditional

governance system. For instance, Nambiar Nagar has been replaced by Akkrampettai, a village that has a significant trawler owner lobby with financial power, as the head village of the 64 village system. Within villages, this conflict of interest has adversely affected governance where, in highly mechanised villages,<sup>3</sup> the panchayats often represent trawlers rather than artisanal fisher interests.

Development approaches based on the modern emphasis on professed objectivity to intervene in this context lacks complete sensitivity to the indigenous worldviews, resulting in suppressing and distorting indigenous wisdom. They have little knowledge about the complexities of the institutions and cultural practices of these communities. While addressing some of the challenges of the Pattinavar communities face, such as the differences between mechanisation and artisanal fishers, or gender discrimination, they often apply standard frameworks, developed in agrarian or other contexts.

Such insensitive modern development interventions to remedy these internal fractures often aggravate the challenges faced by these communities rather than rejuvenate them. For instance, any understanding of the gender discrimination within Pattinavar villages has to be contextualised in the peculiar and stringent gender division of productive roles that exists amongst fisher folk. Fishing in the sea, all over the world, is a male occupation and traditionally the fisherman when he returns from the sea to the shore considers his duty to his family done. Fisherwomen are in charge of auctioning/marketing the catch and processing it. They also manage the household income, including handing out expense money to their menfolk. Women have their own market and shop organisations run on the same membership principles as the caste panchayat. Traditionally, Pattinavar fisherwomen enjoy greater mobility and financial authority than women in agrarian communities. The real threat to fisherwomen's position in the Pattinavar community is likely to arise from mechanisation, when the fishing economy shifted from village shorelines where women had control, to distant harbours for trawler fleets. Women in these new contexts, where the capital investment in fishing operations is much higher, are no longer in charge of auctioning and marketing fish.

Again, the lack of sensitivity to the peculiar perspectives that Pattinavars have towards fishing and to other fishers has aggravated the conflict that exists between mechanised and artisanal fishing interests. For instance, one of the important foci of rehabilitation work that emerged in the post tsunami context was organising artisanal fishers into labour associations. However the term 'labour' can be misconstrued in the Pattinavar fisher context. The assumption made was that artisanal fishers and trawler owners were bound by only economic transactions, particularly wages, similar to other agrarian or factory contexts. In reality, Pattinavars see fishing as an enterprise where every crew member has a share in the profit or loss of the enterprise, rather than that of an employer / wage earner relation. Further, both trawler and canoe owners were related through complex kin and cultural networks, and the same fisher who fished as part of a canoe crew could fish as part of a trawler crew. In both instances, he was entitled to a share of the profit and had to incur a share of the risk. The critical determining element in this system was that each fisher retained the autonomy to go as a crew member in artisanal fishing boats as well as mechanised fishing. The real source of the conflict lay not in the individual fisher alone, whether artisanal or trawler, but in the larger systemic issues endangered by exploitative and competitive interests and challenges of sustainability.

The core challenge that the Pattinavar fishers face is the dismissal of their vigorous and live intelligence about themselves and their occupation, as well as the environment that they depend on, by modern development paradigms. At the heart of this dismissal and contempt is the premise that empirical scientific knowledge based on 'objective' truth is all that is required for meeting the challenges that they now face. People who hold this indigenous knowledge have been rendered powerless passive recipients of knowledge rather than active contributors in dialogues. Clearly there are critical links between cultural-religious symbols, governance of commons and property rights, including land, and the egalitarian, democratic and inclusive functioning of the community governance institutions themselves to people's well being. These links are often forged by living stories and myths to inform individual values and action

that personalise knowledge through emotions and experiential learning to create meaning and wisdom about human existence and purpose.

For instance, values of selflessness and generosity, essential for social security and sustainable use of the coastal environment, are coded in myths and legends of the community. The value of selflessness is exemplified through the legend of one of the Nayyanar saints hailing from the fishing community. It is said that Adipattanayyanar—one of the 63 Nayyanars of Tamil tradition—was a fisherman who lived in Nambiar Nagar (the traditional head village of the Nagapattinam and Karaikal fishing communities). This saint loved Lord Siva so much, that he would offer the first share of the catch to the god and release it back in the sea. He continued this practice both during good and bad times. A time arrived when there was no fish in the sea, and his family went hungry. The saint still continued in his practice of giving the first share to the god. Then, Lord Siva decided to test him, and sent a gold fish to his net as his first catch. He wanted to see if adversity and greed would make the saint forget his practice. However, Adipattanayyanar remained unaffected by the gold fish and returned this too to the sea invoking the name of the god. Pleased by this unwavering devotion, Lord Siva appeared to him and blessed him, whereby he became one of the Nayyanars.

Modern development paradigms do not recognise the importance such living stories have in enabling the spirit of generosity and lack of greed within Pattinavar fishers. Instead, they often punish those who display such behaviour. One of the consequences of the arbitrary distribution of relief and rehabilitation entitlements by varying agencies resulted in punishing honesty displayed by fishing communities. For example, one villager recounts that his village had suffered significant damage during the tsunami but no one had died in it. When relief and enumeration agencies reached them, they redirected to the relief to their neighbouring village, where people had lost lives. This act of generosity backfired on them, since subsequent enumerations and relief did not reach them at all because they were no longer considered eligible. Again, after the tsunami, some panchayats changed their members to include those

who were willing to prepare incorrect enumeration to get additional compensation. Even though honesty was a highly valued quality in leadership of the community, this was seen as being ineffectual while dealing with the rehabilitation actors and shrewdness in acquiring compensation became an eligibility criteria.

### **Self reflexivity and relevance**

What continues to be remarkable about the Pattinavar governance systems is their spontaneous responsiveness to the demand of modern development and their resilience in adapting to the modern context repeatedly, by reflecting on their own nature and transforming themselves to address current challenges. One of the most remarkable internal transformations in the governance systems of the Pattinavars is the shift from the earlier chieftain governance structure that was authoritarian to that of a democratic panchayat that is nominated, transparent and is accountable to the community when confronted with the equalisation engendered by modernisation. Another significant transformation was the restructuring of individual panchayats to include those who are literate to interface with the effects of tsunami and the relief and rehabilitation agencies, including the government. For the most part, this responsiveness attempts to preserve the egalitarian and cohesive nature of the communities.

The transition from nattamayi is one instance. Traditionally, the caste panchayat was a nattamayi structure based on patriarchal and patrilocal kinship and governance of the village was through a chieftan. The nattar (chieftan) was often the head of the most respected/oldest/most powerful family in the community, and the position was passed on from father to son. The selection of the nattar was usually a private family affair where pangali (kin group) families decided amongst themselves, behind closed doors, who will be most appropriate as the village nattar. The nattar was also the owner of the nattu padagu (the large boat needed for casting shore seines) as well as the maintenance of the shore seine itself. Till the 1970s, these boats and nets were seen as heavily resource intensive, and their use was dependent on cooperative labour from the entire kinship community.



The nattar in some villages was also assisted by karyadarsis (secretaries) and dharmakartas (temple custodian), who could preside as chieftain in his absence. The dharmakartas attend particularly to the administration of the temple, its rituals and property. In villages that were comprised of more than one clan, all the nattars together formed the caste panchayat of the village. These nattars and dharmakarthis then chose other additional members of respectable standing within the village, as panchayat members to assist them in their work. These additional members could counsel the nattar but did not have authority to take decisions. Marking respect and meting out humiliation were cornerstones of the nattamayi authority. For instance, villagers stand with folded hands before the nattar.

The nattamayi came under severe criticism since it was increasingly seen as authoritarian and oppressive in modern eyes characterised by violation of human rights and humiliation of village members. Some of the other criticisms levelled against this system by its own members were the lack of transparency and accountability, particularly around community finance records, lack of attention to civic service (electricity, water) and unwillingness to negotiate with the government administration to obtain these amenities. Modernisation was characterised by greater access to technology for fishing and production, such as the availability of nylon nets that caused changes in community relations (nature of labour, elections, state programmes) and acted as the context within which this reformation could take place.

The nattamayi structure was reformed as early as half a decade ago in a few coastal villages, particularly those close to Chennai. However the process of consistent transformation was first seen two decades ago, where neighbouring villages spontaneously transformed the nattamayi structure to democratic panchayat triggered by changes in neighbouring villages. This reformation was not just in the Nagapattinam and Karaikal coastal stretch, but spread down the entire coastal region from Chennai to Nagapattinam. It was triggered by collective meetings organized by different internal fisher community leaders to educate/sensitize people about the oppressive nature of hereditary governance and the need to change to a more democratic structure.

In this reformation process, two ideas were pivotal. One was the right to express one's views in the public space and the other was the right to inclusive and transparent decision making in the entire village rather than within the family. The critical focus was on participation—inclusion of all the people within discussions and decision making about the village. Thus the panchayatars were nominated in open yearly meetings where every member of the village had a right to be heard. The nominated panchayatars then selected the thalaivar (the leader) rather than the panchayatars assisting the nattar. These open yearly meetings were also instituted to ensure transparency wherein the panchayat members are required to report on their previous year's performance and disclose accounts of the community. This reformation was not always hostile. Depending on the quality of the nattamayi in specific villages, these communities integrated or replaced the nattars or diminished their powers accordingly. Thus if the nattar of a village was considered a good leader, he was often integrated into the new panchayat along with other members while the annual meetings were universally adopted.

This reformation to the democratic panchayat is not the only time that these governance institutions have shown resilience. Post tsunami, more than half the panchayats and panchayatars were replaced by the villages to ensure that the new panchayats were competent to negotiate the enormous number of development actors including government relief and rehabilitation efforts and were fair in their distribution of the entitlements that the tsunami victims received. Thus at this point, all the panchayats in Nagapattinam and Karaikal transformed to include younger and more literate members.

### **Rejuvenating the pattinavar governance systems**

The interpretation of our reality through patterns not our own, serves only to make us ever more unknown, ever less free, ever more solitary.

—Gabriel Garcia Marquez

Marine fisher communities in the Nagapattinam district have a very sophisticated understanding of community commons, both symbolically and materially. This understanding is coded into their very nature, both existence and practice, as people and communities. They are clear about the importance of their commons to human and community

well being and have evolved sophisticated, indigenous institutions, perspectives and methods that governed these resources over centuries based on strong human values. In its conception, the podhu gramam of the Pattinavars embodies the spirit of the commons within the Pattinavar community. It arises from an understanding of an 'active commons': characterised by 'neutral' territory, with a body of witnesses to their compact. This space provides the opportunity for peaceful resolution of conflict and for collaboration. This highly sophisticated mechanism of enforcing collective authority is symbolic of the complex understanding that Pattinavar fishing communities have about commons and the detailed structures and processes that they have created that is both equitable and egalitarian over centuries.

Modernisation has posed several challenges to these governance systems, highlighting internal fractures such as the systematic exclusion of women from community decision making and governance; or the authoritarian nature of the traditional chieftain system. For the most part, it has reinterpreted the reality of Pattinavar fishers in new ways and in the process denied the merits of their systems such as the emphasis on principled governance and ensuring individual autonomy and community sovereignty. This neglect has weakened these systems leading to increase in conflict within these communities and their fragmentation, rendering them vulnerable to powerful, exploitative and divisive forces. Along with this weakening, there is also a corresponding weakening of community rights over the coastal environment, and enables the enclosure of their commons. For instance, privatisation of shore land for industry not only prevents Pattinavar fishers access to their customary entitlements but also makes available these natural resources for exploitation without consideration of their sustainability.

For these communities to continue to enjoy their entitlements and live a life of dignity, it is essential that their governance systems are rejuvenated. Such a rejuvenation process at its very core has to honour their heritage, both wisdom and practice, as well as their self-reflexivity and resilience shown in modern times. Such a process will restore pride in Pattinavar fishers about their origins and will help support their search for relevance in a globalising world. For this restoration of dignity, such a process

must engage in honest conversation about the relevance of these traditions in the current context as well as confront internal disharmony through transparent self-examination, particularly around issues of gender and mechanisation. Pattinavar fisher communities, like other oral cultures, code their wisdom about values, principles and technology in stories. In the post-tsunami scenario, where coastal land and communities are coming under increasing pressures of development and threat, facilitating the exchange of these stories and codes that reflect cultural norms and institutions is particularly significant. Such a rejuvenation process will ensure that the Pattinavar governance systems remain vigorous, self-reliant and just.

In conclusion, the real challenge ahead of us is whether we can see through the glasses of the Pattinavar Podhu Gramam while considering the issue of community commons. At the core of this challenge is our ability to listen to the communities we work with, to witness their challenges and to freely enable them to come to their own decisions

## Endnotes

- <sup>1</sup> The author acknowledges the support of Edwin in completing this chapter.
- <sup>2</sup> One way to understand this complex word could be as the willingness to bind individual actions to collective will.
- <sup>3</sup> Village O: O lies at the junction of a river and the sea and therefore has both rich fishing grounds and fertile land. It is the last village lying to the north in the cluster. In 1983, a harbour was constructed and the number of mechanised boats in the village increased. Large numbers of people migrated into the village in the last two decades as crew on these boats. In the village, there is a hamlet of Vanniachis who work as crew on the trawlers and fish in the inland river. However a significant number of members from the same Pattinavar community also work as crew. They are usually poorer and have no boats.

At that time, many of the people working as crew formed a sangam (labour union) and asked for a 2% raise in their share of the catch. This was violently suppressed by the boat owner association in the village. The community of labourers did not have the organising capacity required to hold firm. The labour association maintains that the nature of the village panchayat has changed considerably in the last two decades, with increased domination by boat owners and those with money. This is the only panchayat that is elected and follows electoral party factions.

# Women and commons

## Engaging with gender justice

---

Anungla Aier

Commons are not simply resources we share—conceptualising the commons involves three things at the same time. First, all commons involve some sort of common pool of resources, understood as non-commodified means of fulfilling peoples’ needs. Second, the commons are necessarily created and sustained by communities—this of course is a very problematic term and topic, but nonetheless we have to think about it. Communities are sets of commoners who share these resources and who define for themselves the rules according to which they are accessed and used. They also need not be understood as ‘homogeneous’ in their cultural and material features. In addition to these two elements—the pool of resources and the set of communities—the third and most important element in terms of conceptualising the commons is the verb ‘to common’—the social process that creates and reproduces the commons.<sup>1</sup> In general, the concept of a ‘commons’ is often defined and understood to denote having a ‘shared ownership’ and responsibility over the said resources, be it natural resources such as land, human resources and knowledge, social capital and cultural wealth of a community.

In being drawn to the idea of ‘common and shared ownership and responsibility’, it is important to remind ourselves that the ‘sharing of the commons’ takes place within the social and cultural confines of a community. Therefore, the cultural denomination ascribed to key social groups such as gender categories and their strategic positions in the social hierarchy of the community is critical since it often determines the access and control over the resources. Among the indigenous ethnic communities of the hill states of northeast India, common land based resources, has been the tradition over the generations. This is gradually changing primarily due to change in lifestyles and a moving away from the rural to urban setting.

A community is not homogenous in the real sense, as it essentially consists of and is structured along gendered categories. It is therefore critical to look beyond the 'community concept' and gain insight on how the 'commons' of the group is projected, its usage regulated and the how the intuitions are structured. This chapter revisits some of its aspects from a gender perspective to identify the existing issues of exclusion and discrimination that hinders the purpose of the commons. The discussions focus on issues of land rights, power and decision making, and knowledge.

Drawing on examples from several tribal communities who are indigenous inhabitants of Nagaland state, this is a gendered critique of the underlying values and practice of the various commons among the indigenous communities. It takes a stand that the traditional framework has been working against the interest of women even in the post-development scenario and have perpetuated the continued discrimination of women, displacing them within their own community.

### **Land rights and women**

As Fernandes stated,<sup>2</sup> *'to understand the role of land and of other natural resources in people's lives and the thinking behind their use and management, one has first to study the difference of stakeholders'*. Making a distinction between the urban middle class and the indigenous communities as two categories of major stakeholders in the discourse on land, culture and modernisation in India, he further commented and rightly so, that whereas the urban middle class view land and the natural resources either as a commodity to be protected or exploited; the indigenous communities view land as the centre of their identity, economy and social systems.

Though the instances in this chapter are drawn primarily from the Naga communities, many of the basic conceptual principles of land holding systems are roughly similar among all shifting cultivators of the Northeast. The specific procedures that characterise the operation of particular systems may vary considerably from tribe to tribe and even within the same tribe. There exist local variations between different villages. But in general they all follow similar patriarchal principles. The basis for decision making

regarding landholding, usage, management and inheritance of land is closely linked not only with the social and kinship structure but also with the history of the groups, which in effect take the strength of civil law under the aegis of the customary laws of the particular community.

Among the indigenous communities of the Northeast, land and its management is intricately linked to the organisation of the society and the use of land underlie the fundamental premise of various cultural practices. In general, land is classified into two types of landholding based on the nature of use to which it is put: (a) *jhum* or fallow lands which are used for cultivation; extraction of minerals and forest products, and (b) residential or *non-jhum* lands. Both types of land are recognised under three forms of landownership, i.e., *village land* which is owned and managed by the village council or chief on behalf of the community; *clan land*, owned and managed by particular clan(s); and *individual land* owned and managed by the individual(s). Whereas privately owned lands are individually acquired and passed down from father to son, it also has more chances of changing ownership over the generation whereas ownership of village and clan lands do not change easily as its ownership is tied up with traditions of migration of the first settlers and eventual establishment of the village (Aier & Changkija 1997).

In this context, mention is made here that though the history of a people is a common, among the Naga communities it is quite commonplace to find that women are not featured in the oral history and traditions of origin, migration and the first settling of the village. Almost always, each village has been established only by men (women's names are customarily deleted from such accounts). It is therefore not surprising to also find that important landmarks, boundaries, water bodies and all other stories connected to the land are also associated with heroes who are men and are even called by their names thereby immortalising their claim of ownership and control over it. It is not possible to divorce such oral tradition from the management of land resources among the indigenous people. The cultural practices such as rules of inheritance, land rights as well as any form of contestations such as ownership and boundary issues are grounded and decided on the basis of such traditions. From a patriarchal and patrilineal vantage, the arrangement may seem logical but from a

gender perspective it permanently wipes out any possibility for women to find a space in the overall arrangement of power sharing structures of the society or control over the land as a common necessity for their livelihood and survival.

In reality, women are the 'true managers' of the resources—they are the tillers, gatherers, seeders and harvesters of the land. Yet they have no right to own, sell and inherit any portion of the land they tend. The Naga customary law makes unambiguous statements pertaining to customary laws of inheritance and women's rights to land and property.

A few instances are given below (Aier & P.Khuvung 2009):

- a) Daughters and wives are not allowed to inherit land (land also includes house). If there are no sons, in the event of death the closest male relative on the paternal side will be the legal heir. Daughters may be gifted land at the time of marriage if the father is wealthy and possess several plots of land. This practice is not the norm but depends on individual circumstances and it is completely at the disposal of the father to give such gifts. In most communities, such gifted land is re-claimed by the father or his family in the event of her death. But in some communities such as among the Pochury, the gift is permanent (Pochury Public Forum 2006).
- b) Unmarried women and spinsters are allowed to live in the parental house and sustain on the land that belongs to her father and brothers for as long as she lives. But she can neither sell nor claim ownership over it.
- c) Divorced women lose all rights of access to her husband's land and resources. If the divorce had occurred due to the husband's infidelity, she can claim certain portions of moveable properties such as grains, livestock, cash but not the land. In some communities, she can claim the right to continue living in the house if they have children and she is given the custody. Whether widowed or divorced, if a woman who has been granted rights over the house wants to remarry, she must relinquish all rights over the house as well as custodial rights over the children and go to the new husband's house.



- d) If a man dies leaving only daughters, customarily the deceased man's father, brothers, and other male members of his family and clan inherits the house as well as any other plots of land. The wife and daughters stand to face eviction from their homes just for being women.

The various customary laws regarding land rights and women clearly marginalise women as they have no control over the resources. Their rights to access land is also through the men in their lives—father, brother, husband or sons.

Globally, it is recognised that land rights is critical for improving women's social security, livelihoods and their social status. It is estimated that globally, *'though women constitute the majority of the agricultural workforce (70 to 80% in some regions) their access to and control over land is globally estimated at 5%, although there are variations in regions. Most rural families in Sub-Saharan Africa live under customary regimes—access to land is determined by customary practices, with land use and the proceeds from land owned by male kin. Women's relationship with land is therefore through husbands, fathers, brothers or sons.'*<sup>3</sup>

Information such as this emerging out of communities from across the continents reinforces the understanding that across the cultures, patriarchal values depends on the marginalisation of women. For rural and indigenous communities, whether in Africa, India or elsewhere, land is a crucial economic resource and source of livelihood and the communities have always viewed land as the fundamental element of their economic well-being as well as part of their social and cultural identity.<sup>4</sup> Reasoning such as this coalescing with conflict situations, at least in the context of the Nagas, may have contributed to the land ownership and control in the men's domain who were also considered as the protectors of the community. The resultant gender impact of such traditional negotiations with conflict, land rights, natural resources and livelihood however resulted in the creation of unequal gendered stratification where women occupied a much lower rung in the social strata. Though indigenous societies, particularly the Naga society, have been projected as an egalitarian society in colonial writing (eg Mills 1922, 1926, Hutton 1921), there is a strong

gender inequality which is nowhere more distinct than in the control and management of land resources.

In the case of the indigenous communities, particularly the indigenous communities of Northeast India, starting from the mid 20th century the entire gamut of the social process have been experiencing drastic changes. The religious, economic, political, education system have been transformed from the traditional base to a newer system of belief and mode of operation. Transition of the society from a rural based agrarian economy to urban based monetised economy took place introducing multiple economic options such as trade and education that opens avenues for jobs in the public as well as private sectors. The new priority and agenda of the various institutional structures underwent a paradigm shift where the focus was on development and the changing lifestyles. In this emerging paradigm of change and development, the issues of traditional land rights became all the more crucial from a gender perspective. Whereas the conditions remained more or less unchanged in the rural areas, particularly in the more remote and inaccessible regions, the issues of land rights in the urban and semi urban areas become critical due to the interface of traditions and modernity.

In the new settings, modern legal systems and constitutional provisions and regulations of land acquisition are becoming an inherent part of lives side by side with the traditional system. For instance, land in the villages are traditionally acquired which as mentioned is based on the kinship structure as well as on the historical background of the community. However, in the urban context, people who have moved out of villages and resettled in the towns were acquiring land by purchasing. In many such cases, both men and women contribute according to their earning. Nonetheless, where ownership and control of the land is concerned, the customary laws prevail. Despite the changes, women finds themselves fighting the same battle of getting access to these lands as it continues to be controlled by men only.

In the case of the Nagas, the special constitutional provision recognising the traditional customary practices and traditional control over the land vide Article 371(A) further strengthens the inherent discriminations that already exist. Many see the legal option of deeding the land in favour

of daughters and wives by writing a will. But there are instances where, despite the existence of legal documents, women and daughters are denied control of such land by citing the customary laws and the constitutional recognition of the customary laws.

### **Power and decision making**

That woman mainly gain access to land through marriage, although they have access to use land as daughters or sisters is already highlighted in the foregoing discussion. This brings us to the decision making processes and gendered power equations that control not only the use of resources but also secure the social well being of the community as a commons. Traditionally, the position of the village chief or the council of village elders is occupied by men only since appointment to all such positions are customarily made on the basis of kinship and clan representations and also on the tradition of village establishment.

For instance, among the Sumi Nagas only the son or direct descendant of the founder of the village can become the chief. Under no circumstances a woman is allowed to become the chief. With regard to appointment as clan representatives in the council of elders, women are not permitted to represent the clan in any official capacity. The bar on accepting women as representative of the clan disfranchises them from exercising their civil rights as citizens of the community on equal terms with men.

The consequences of such customary practices effectively disempowered women in participating in all decision making processes of the community (Aier 2008: 91). Thus all powers of decision making were vested on men only. Naga men through the operation of such mechanisms select and allot plot for jhum fields. A woman has no active part in the selection of land for cultivation or for that matter in any discussions relating to land. She may, however, let her opinion be known to her husband and if she is not satisfied with the choice of land she may also try to convince other clansmen. The final decision however is taken by men though she plays the major role in working the land (Aier 2008: 123).

Despite the major contribution of women to agricultural production in rural areas (women contribute 60 to 80% of the labour used to produce food

both for household consumption and for sale) women's access and control over their source of livelihood remains only through men. Gender relations is one of the most important detrimental factors that contributes to the disparities between men and women. Women's access to and control over the commons in this respect is therefore dependent on negotiating these usually unequal power relationships, rather than as a general entitlement as is in the case for men.

Apart from the traditional institutions, even in the modern state institutions the social processes that creates and sustains the concept of commons remains very traditional which create a gender disparity in the proportion of gender representation. Once again, the Naga experience is very revealing in this regard. The state of Nagaland came into existence in 1963 and in the entire 47 years of its existence, not a single women has ever been elected to the state assembly. As recently as 2007, the 'community' protested against reservation of seats for women in the municipalities despite strong protest from women. Women were not permitted to file nomination papers and the election was kept on hold. Till today the issue is not resolved. The justification given against the entry of women to occupy seat of power and decision making in the society are based on the oral tradition and customary practices in which women were never accredited with such positions (Aier 2008: 92).

### **Knowledge**

This section focuses on the biodiversity based traditional knowledge as a common and women. Until relatively recently, the conceptions of knowledge was bound by the philosophy and methods of western sciences. Few outside recognised that there are myriad 'sciences' embedded in the culture of indigenous peoples and civilisations throughout the world. Today, there is an increasing recognition of the importance of various local or culture-based knowledge systems, generally referred as 'Indigenous Knowledge' (IK) in addressing the problems of development and the environment. Knowledge is a fundamental component of culture, and must be considered and understood in terms of both its sacred and secular dimensions. To indigenous peoples, knowledge is not considered independently from its products and expressions, or from actions. These all form part of a closely integrated cultural system where the physical

products and expressions of indigenous cultures are intimately connected to the knowledge from which they derive, or with which they are associated. Protecting all such systems of knowledge, and their products and expressions are vital to benefit environmental conservation and sustainable management efforts and to ensure equitable development of the community (Aier 2005: 60–61).

In indigenous communities, traditional knowledge about the management of crops, forests, land and the application of these knowledge have always been held as a common resource. Such knowledge is unwritten and remains mostly at the practice level. Biodiversity and natural resource based traditional knowledge permeates every aspect of the indigenous people's lives. They depend on such knowledge for meeting their need for food and food supplements, traditional healing purposes, artworks and crafts as well as for various daily practical needs. As an inherent part of such knowledge, there exist a host of prescriptions instructions regarding the usage of the materials and objects involved. It also contains information on the system and the order of things in their environs.

An important element of such knowledge systems is that it is essentially treated as a heritage to be used for the good of all and not as commodity for economic benefit. Perhaps, elements of traditional knowledge such as this qualify it as a common in the true sense. For the indigenous people, knowledge such as these are a part of their history and cultural heritage. The knowledge is who they are, a part of their identity. Therefore such knowledge normally resides in the realm of the collective community.

Having said this, it must be mentioned here that gender roles being culturally determined, the field of activities, nature of work and responsibility of men and women differ and at times takes place in different social spaces. Consequently, their knowledge base and experiences also differ.

In general, knowledge is a common to both men and women but considering their different field of expertise in managing the resources as well as responsibilities within their homes and society, there are different areas of the knowledge which are gender specific.

Among the Nagas the women are not only responsible for tending the crops but also for selecting and preserving seeds for the next season. As women frequent the fields more often, they know the standing crops

much better than men and therefore are more knowledgeable to select the plants for future seeds. There is no formal training but the knowledge of seed selection, treatment, storage and preservation is normally passed down from mother to daughter while they work alongside in the field and at home. The knowledge is thus passed down from one generation of women to the next, orally and practically. Sons normally do not take part in this process (Aier 2008: 128). They engage in other activities alongside the father and a similar process takes place there between father and son. Thus, knowledge in spite of it being a common, due to the social processes that create and sustain it, tends to have a gendered quality.

The international discourse about the need to protect biodiversity based traditional knowledge is enshrined in a host of international conventions and treaties most notably Article 8(j) of the Convention on Biological Diversity (CBD). The overarching discourse at the international level has been to recognise the importance of traditional knowledge systems and the contribution made by traditional/indigenous people. The importance of women's role in the conservation of biodiversity is highlighted in the preamble to the CBD. However at the regional and local level, the discourse has been of a very paternalistic acknowledgement of the importance of women's traditional knowledge in the field of biodiversity management. The emerging formal legal structures have not tended to take into consideration the complex linkages between the transmission of oral knowledge and the specialised role played by women in this regard. The discourse in terms of non-formal systems of law and knowledge has always been hegemonistically patriarchal. The acknowledgement of the roles played by women as custodians of knowledge has only been acknowledged in passing and do not get the recognition and the protective benefits it justly deserves. In the process, much of the knowledge repository which lies with women gets lost.

### **The invisibility of women**

The invisibility of women in the oral tradition is only a reflection of the tenuous right over the commons. Men control the resource but women manage production. But all rights flow only through the male. The norms of a society are always dynamic and changing to adapt to the changing external world. However, when it comes to the inclusion of women, even

in the newly emerging spaces, they are prevented by invoking 'tradition' and 'culture'. However, for opportunities and power relations to the advantage of men, the discourse is in terms of 'politics' and 'rights'. The former invokes 'permanence' and discourages change while the latter invokes 'justice' and encourages change. When these are codified into law, those who do the codification are men and they codify tradition to the detriment of women, carefully stripping away and erasing those traditions advantageous to women.

Though in tradition there were no problems of access or management, the changes in social structuring have thrown up new challenges. One of the most important challenge is to retain the relatively egalitarian access in the face of misuse of these practices by others. Those not of the clan often marry women from the clan and then claim the right to alienate the commons. They use the language of gender justice against the very existence of the commons. In certain parts of Central India, there is a practice of calculated marrying of widows by non-tribals so that the tribal land can be acquired. Since the land is immovable, this is a challenge for patri-local societies. One way in which the communities are facing this challenge is to allow non-ancestral land to be owned by women. Changing the vocabulary is only the first step. Unless power relations are addressed, gender justice cannot be attained.

### **Conclusion**

The purpose of this chapter was to explore the notions of commons from a gender perspective as experienced among the indigenous community. Although almost all the instances have been drawn from among the Nagas, the issues that has been discussed are relevant to all other similarly placed indigenous communities, especially in the Northeast of India. Within the understanding of commons as common pool resources that can be accessed by one and all, what is seen here is that the processes that create, sustain, maintain and regulate the usage of the commons depends on the community. The community in turn consists of men and women, who are positioned socially unequal terms. Therefore, the social and cultural mechanisms that operates the channel of access to the commons also favours one against the other where women finds themselves at a disadvantage and discriminated. Further, in changing situations induced

by development and modernisation or globalisation processes, when the contents of customary regimes are subjected to new negotiations under new institutional arenas, usually men fare better because the scale is already tilted in their favour. It is therefore crucial that the discourse on the commons engage with issues of gender justice.

### References

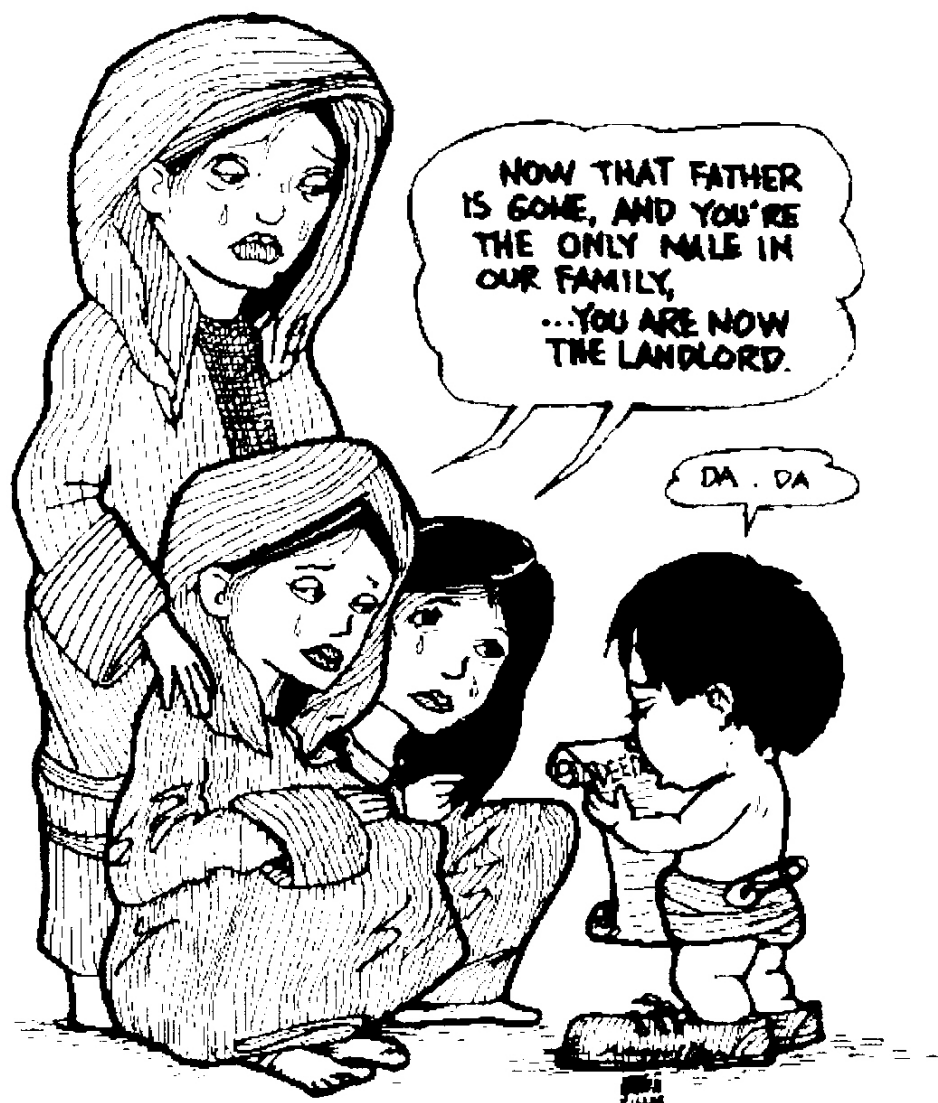
- Aier Anungla, 2008. "Folklore, Folk Ideas and gender among the Nagas" in *Eastern Quarterly*, vol.5, Issue II & III pp87–93.
- , 2008 "Agricultural Cycle, Associated Rituals and the Role of Women" in Richard Kunz Vibha Joshi (Eds), *Naga—A Forgotten Mountain Region Rediscovered*, Musum der kulturen, Basel, Christoph Merian Verlag, Switzerland.
- , 2005 "The Intangible Cultural Heritage of the North–East of India: Emerging Issues and Problems" in *Interpreting the Heritage of the Northeast*. INTACH, New Delhi.
- Aier. A & P.Khuvung, 2009. Status of Naga women with reference to customary Laws. Women Study Centre, Unpublished Research Report.
- Aier & Changkija, 1993. *The Anthropology of North–East India: A Textbook*.
- Anon. A Gender perspective on Land Rights;  
Source: <http://www.fao.org/docrep/X0250E/x0250e03.htm>
- Land Policy in Africa: A framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods. Framework and Guidelines on Land Policy in Africa, May 2009. AU, AfDB, and UNECA. Source: [www.fao.org](http://www.fao.org)
- Yngstrom I. 2002. "Women, Wives and Land Rights in Africa: Situating Gender Beyond The Household" in the *Debate over Land Policy and Changing Tenure Systems*. Oxford Development Studies, Vol 30 No.1, Carfax Publishing. Source: [www.uneca.org](http://www.uneca.org)
- Pochury Public Forum, 2006. *Pochury Customary Laws & Traditional Practices (Codified References of Unwritten Laws)*, Pub by Author, Dimapur, Nagaland.
- Fernandes, Walter. *Land, Cultures, Modernization and Conflicts in India*.

### Endnotes

- <sup>1</sup> Massimo De Angelis, Professor of Political Economy at the University of East London in conversation with Stavros Stavrides; source: <http://www.e.flux.com/journal/view/150> Accessed September 2010
- <sup>2</sup> Land, Cultures, Modernisation and Conflicts in India.
- <sup>3</sup> Massimo De Angelis, Professor of Political Economy at the University of East London in conversation with Stavros Stavrides;  
source: <http://www.e.flux.com/journal/view/150> Accessed September 2010
- <sup>4</sup> Land, Cultures, Modernisation and Conflicts in India.



It is important to make it explicit that women have rights to resources. It's not enough to assume that they have full use of "household" or husband's resources.



**CAPRI**

CGIAR Program on Collective Action and Property Rights (CAPRI)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)

**YOU CAN TALK ABOUT YOUR RIGHTS  
WHEN YOU GROW UP!**



## Children and the right to commons

---

Enakshi Ganguly Thukral

A few months ago a lady arrived in our office with a huge pile of legal papers. She wanted our help because her neighbour had filed a case in the courts to stop children in his colony from playing in the park next to his house and to our surprise, the honourable court had decreed that the children were *'restrained from using the park No. Block 2 of Vijay Mandal Enclave, Kale Sarai from playing foot ball/cricket or such other game or using it for any other purpose which is prohibited by law'* (Order 39 RI & 2CPC) and *the Station House Officer (SHO) of the local police station was directed 'to personally ensure no such nuisance was created by the defendants and to file a weekly report in the court after continuously monitoring the site'*.

This case has now been going on for over a year and reams and reams of papers and documents have been generated. Precious time of courts which already has a huge backlog of judicial matters to contend with, has been lost. Time and energy of the SHO—the head of a police station—who should be using it maintain law and order, have been spent; not to even account for the money spent on fighting a legal battle. And all because children have claimed what is rightfully theirs—a colony park which is part of the 'commons' in an urban setting. And clearly this is not the only case.

The children's right to play and access to these common spaces is being pitted against the requirements of elderly people to the same space, aesthetic concerns of maintaining 'pretty' green spaces and, of course, the demands of corporations who have invested in setting up training institutes and sports facilities, and hence need children to be using them.

Ishan is a young boy of about 14 years living next to a huge glitzy mall in Delhi. He is one of the boys that HAQ<sup>1</sup> has been working with. One day while talking to him, we asked him if he had ever entered the mall. With a wistful look he said 'never'. Would he like to—

of course! A few days later the HAQ team took Ishan and his sisters to the mall. The security guard at the gate would not let them in. ‘We have orders not to let *such* children in’, they said. ‘You can go in, but not *these* children, others who come to the mall do not like it and will complain...’ Yet another common space, this time the global market space, that ‘some’ children do not have access to.

The study conducted by the National Campaign on Dalit Human Rights—Dalit Arthik Adhikar Andolan (NCDHR—DAAA) found that Dalit girl children in school were seldom allowed to use toilets and Dalit children were kept out of even functions like Independence Day. Dalit children in schools of Uttar Pradesh were also assigned menial caste-based tasks like cleaning the yard, filling up water buckets and cleaning the toilets, leading to other children treating them badly and considering them inferior. The morning assembly was invariably always conducted by dominant caste children. In the class, Dalit children were made to sit at the back and in some schools of Bihar on the barren floor while mats were given to dominant caste children. Even the notebooks and homework of the Dalit children were not checked by teachers. In secondary and higher secondary school, the survey found that teachers promote private coaching. But many Dalit children dropped out<sup>2</sup> as they could not afford private classes.<sup>3</sup> As if that is not enough, it is not unknown for Dalit children to have to sit outside the class room, not be touched or even served mid-day meals by dominant caste or even OBC cooks and not allowed to drink water from the school tap. The list of ‘commons’ inaccessible to them is endless.

Physically handicapped children are unable to access basic facilities like schools, public transport, play grounds and other common spaces such as theatres, cinemas etc. because of their disability and because these spaces are not designed to be accessible to the disabled.

In the modern day context along with what has been interpreted as common property resources such as grazing lands, forests, ponds etc. newer spaces need to be included. These would include schools, hospitals, markets, religious and cultural spaces, and any other such spaces that children need and use. This chapter will discuss access to commons in the context of this wider definition of ‘commons’.

### **Schools as commons**

Children dropout of school, or find themselves squeezed out of the education system because of the situation of the schools as well as because their own socio-economic status. Analysis of available data clearly indicates that it is some groups of children who are excluded or pushed-out more than others. Many others are unable to make in-roads into schools because they are poor.

Hence, despite its goal of ensuring every child was in school by 2007, 7.6 million children continue to be out of school, according to the Ministry for Human Resource Development.<sup>4</sup> According to some other estimates, almost 21 million children, that is, close to 17% of all children of primary school age (6–10 years), continue to be out of school. Of those in primary school, 52% are boys and 48% are girls. About one quarter of all children of primary school age live in urban areas and the remaining three quarters in rural areas.<sup>5</sup>

As the District Information System for Education (DISE report)<sup>6</sup> states, while almost 94% of habitations have got access to primary and 89% to upper-primary schools, it is important to see the *retaining* capacity of the education system. In other words, how many children are able to go through with their education without having to dropout?<sup>7</sup> While the apparent survival rate has improved, more boys than girls survived up to class V, and the children enrolled in schools in urban areas were more likely to survive in school than their rural counterparts. A retention rate of 71% indicates that about 29% of children dropped out of schools before reaching grade V.<sup>8</sup> The average promotion rate is 83.76% and about 9.99 million children repeated elementary grades in 2005–06.

With the poor standard of many government schools, there is an increasing dependence on market forces to fill the educational deficit.<sup>9</sup> This is leading to a situation, described by P. Sainath, the acclaimed journalist, as one where ‘your educational attainment has very little to do with your quality as a student and everything to do with your ability to pay’.<sup>10</sup> According to the CABE Committee, almost 25% of secondary schools in India are now private, unaided schools, with students coming only from the privileged sections of society.<sup>11</sup> A huge 46% of all secondary school students are attending private schools.<sup>12</sup>

It was to 'right' this imbalance that in January 2004, the Delhi High Court passed an order saying that all schools should reserve 25% of the seats for poor and the Supreme Court passed an order in April 2004 directing schools that had received land from the government at concessional rates to admit 25% students from the economically underprivileged groups. Drawing from these, the Right to Education Act included the provision 25% reservation of seats for poor children in private schools (referred to in India as Public Schools).

**Children of primary school age out of school (million),  
India 2000 and 2006**

	<b>2000</b>	<b>2006</b>	<b>Change 2000 to 2006</b>
Male	13.0	9.5	-3.5
Female	16.4	11.2	-5.2
Urban	5.0	3.7	-1.3
Rural	24.5	17.0	-7.5
Poorest 20%	9.4	9.8	0.5
Second 20%	8.5	5.3	-3.2
Middle 20%	5.2	3.1	-2.1
Fourth 20%	4.3	1.7	-2.6
Richest 20%	2.0	0.8	-1.3
Total	29.5	20.7	-8.7

*Data sources: India MICS 2000, India DHS 2005-06 in International Education Statistics, Analysis by Friedrich Huebler*

Exclusion is faced on the basis of gender, caste and ethnicity as well as religion. Even more important is the fact that the design of the Sarva Shiksha Abhiyaan (SSA), the flagship programme of the government is itself flawed and designed to exclude children from 'equal opportunity to quality education', as is the Right to Education Act that accommodates in law different streams of schooling for different students, thereby going

against the very tenets of equality and equal opportunity based on same quality and availability. Hence even while promoting right to education for all, these are not designed to provide *equal* education for all. Much-advertised programmes, such as the Education Guarantee Scheme, promote parallel systems of education in which less qualified, under paid, local *para* teachers are replacing trained professional teachers. Also the practice of multi grade teaching, in which one teacher is responsible for teaching many classes, each of them overcrowded, continues, leading to children dropping out or more pertinently being pushed out of the schools by the system.

The differential access to the 'school commons' is manifested in education statistics in the country.

- In rural areas 7.80% of children are out of school against 4.34% in urban areas;
- The proportion of children out of school is relatively higher among those in the age category 11–13 years (8.56%) compared to those in the 6–10 years age category (6.1%);
- Percentages of out of school boys and girls in the age group 6–10 years are 5.51% and 6.87% respectively. For the age group 11–13 years, the percentage of out of school children is relatively higher among girls (10.03%) than boys (6.46%);
- Amongst social groups, 9.97% of Muslim, 9.54% of ST, 8.17% of SC and 6.9% of OBC children are out of school;
- 69% of the children out of school: Bihar (23.6%), U.P. (22.2%), West Bengal (9%), M.P. (8%) and Rajasthan (5.9%);
- Bihar (3.18 million), U.P. (almost 3 million), West Bengal (1.2 million), M.P. (1.08 million) and Rajasthan (795,000) have the highest number of out of school children.

*Ministry of Human Resource Development, Chapter on Elementary Education (SSA and Girls Education) for the XIth Plan Working Group Report, 2007, pp. 12.*

Despite a recent increase in the number of girls attending school, gender discrimination is still evident in education in India. The traditional place of the woman is in the home and so many parents and children consider education for girls to be a waste of time, especially when the child can instead be working or performing domestic chores.<sup>13</sup> Only 38% of Indian women are literate and, at 64% for men, the gender parity in literacy rates amongst Indian women and men is one of the most unequal in the world.<sup>14</sup> The number of girls enrolled into

schools, both at the primary and the upper primary level is less than boys. The average of 604 districts in 2005–06 indicates the Gender Parity Index (GPI) of 0.91 in primary school and 0.83 in the upper primary stage. Getting girls into school is only the first hurdle; once they are there, greater efforts need to be made to retain them through systematic monitoring of education quality.<sup>15</sup> But lack of toilets and distance from the home are other major reasons, particularly in the light of increasing levels of crimes against girls, sexual abuse and assault cases within the schools. According to information collected by DISE, not a single state has provided common toilets and toilets for girls to all of its schools. In 2005–06, 52% schools covered under DISE across 604 districts had common toilets in school, whilst only 37.40% schools had separate toilets for girls.<sup>16</sup>

Dropout rates too remain high amongst Scheduled Castes (SC) and Scheduled Tribes (ST)—59.42% for SC and 70.05 for ST in 2003–04 for classes I to VIII.<sup>17</sup> The proportion of SC and ST girls dropping out of school is even higher. Recognising the gravity of the situation, in 2007, the Comptroller and Auditor General of India (CAG) came out with a Performance Audit of Educational Development of Scheduled Castes (SC) and Scheduled Tribes (ST) in India (Report No.14 of 2007). Examining two indicators of educational development, i.e. gross enrolment rate (GER) and gross dropout rate (GDR),<sup>18</sup> the audit report highlighted, among other things, alarming gaps in policy implementation in the Universalisation of Elementary Education (UEE) for the SC and ST children. The CAG report found that the gap in GDR between general candidates and Scheduled Caste and Scheduled Tribe candidates, which was 6.7% and 15.1% in 2001–02, deteriorated to 10.4% and 16.6% in 2003–04 respectively. The range across states was between 0.04 to 28.98% in 2003–04 among SC children. Similarly, the dropout rate for ST boys & girls also increased in 2003–04 in several states with reference to 2001–02.<sup>19</sup>

In 2001–02, the government made education a fundamental right for children through the 86<sup>th</sup> Amendment to the Constitution, in which it put the onus of a child's education on the parents as their fundamental duty to ensure that their children are in school. In a country like India,



where a large section of the population lacks the means to send their children to school, the government's dilution of its own responsibility towards providing education is a big blow. For the disabled children, who anyway face exclusion, it becomes even more difficult,<sup>20</sup> especially when the parents are poor and have no means. The Third Joint Review Mission of Sarva Shiksha Abhiyan states that out of the total population of out of school children, the disabled were the largest in number, constituting nearly 38.11% of the total population.<sup>21</sup> On the basis of the survey, a child with disabilities would therefore appear to be twelve times as likely to be out of school as a child in the general population.<sup>22</sup> Girls with disabilities face double disadvantage and double discrimination.

### **Health facilities as commons**

Right to health is not recognized as a fundamental right in our constitution. However, it has been recognized as one in all international human rights instruments that India has ratified. As with any right, the right to health is also about equal access to health care services. However, an examination of the disease burden clearly shows that some groups are more vulnerable than others. There is an uneven distribution of the disease burden as well as access to health services across regions and socio-economic and religious categories. Clearly, discrimination and exclusion continues to affect children's health status.

Children's health has never really found a space in the government's efforts at improving health care in India. Usually subsumed in the government's population control and family planning efforts, child health continues to be an extension of reproductive health care programmes. In the 1960s when the Family Planning Programme was at its peak, child health primarily implied immunisation. This continued till the mid-1970s as sterilisation was the main focus of the National Family Planning Programme. In 1979, when the Family Planning Programme was renamed the 'Family Welfare Programme', a number of initiatives were taken to improve the health and nutritional status of women and children. However, the child continued to be part of efforts directed towards ensuring safe birth and population control.

While there are a few paediatric hospitals, better known as children's hospitals like the Kalawati Saran Children's Hospital in Delhi, most

are part of the facilities for family welfare or mother and child welfare. Most big hospitals of course have paediatric wards for their young patients. These are what we could refer to as the '*health commons*'.

India's health care system at present is predominantly catered to by the private sector contributing 78.05% of the total health expenditure, while public sector accounts for 19.67% and external flows, 2.28%. Health expenditure formed 4.25% of the Gross Domestic Product (GDP).<sup>23</sup> Out of pocket expenditure, a huge burden that the people of India have to bear, constituted more than two third of total health expenditure in India during 2004–05. Component wise, about 66.10% was spent on out-patient care, followed by 23.48% on in-patient care, 3.43% on delivery and 2.83% on family planning services. In per capita terms Rs. 564 was spent on out-patient care which was highest among all the services.<sup>24</sup>

When costs are so high and availability is scarce, discriminatory practices set in. The already marginalised find themselves pushed back even further. The problems of gender disparity manifest in various forms—declining female to male population ratio, social stereotyping, violence at the domestic and social levels, and continuing open discrimination against the girl child, adolescent girls and women in access to health care and nutrition. A strong gender bias in care seeking against female newborns is conspicuous at all levels of the health system. For example, for every two sick male newborns admitted to a facility, only one female infant was admitted.<sup>25</sup> Like in the case of education, the situation of children and the differential situation by socio-economic status reveals how accessible the health commons are to children.

Infant and child mortality rates still remain cause for alarm. The rates are much higher in rural than urban areas across the country. Each year, 26 million children are born in India. They constitute 20% of the world's infants. Of them, 1.2 million die within four weeks of being born. This figure comprises a huge 30% of the 3.9 million global neonatal deaths. According to the report *State of India's Newborns*,<sup>26</sup> India has the highest number of births as well as neo-natal deaths of any country of the world.

The geographical, socio-economic and gender differentials show the unequal access to what must be equal access to 'common services'. The rate of neonatal mortality varies widely among the different states, ranging from 10 per 1,000 live births in Kerala to around 60 in Odisha and Madhya Pradesh. The undivided states of Madhya Pradesh, Uttar Pradesh and Bihar together contributed over half of all new-born deaths in India in 2000, or roughly 15% of the entire global burden. The disease burdens too differ across states.<sup>27</sup>

SC and ST children have higher mortality rates. It is also higher among females. According to the National Family Health Survey-3, the under-five mortality rate is 88.1 for SC children and 95.7 for ST children, as compared to 59.2 for other children, revealing how continued caste and tribal-based discrimination still plays a key role in child survival.<sup>28</sup>

Unequal access to food is reflected in the high levels of malnutrition that persist despite India's booming economy, being home to one in three malnourished children in the world. Severe malnutrition has claimed the lives of around 125 children under six years of age in four districts of Madhya Pradesh since May 2008. According to a petition filed recently in the Supreme Court by Right to Food Campaign, 64 Bhil tribal children have died of malnutrition in Satna district within the past four months. Similarly, Spandan, which works among the Korku tribe in Khalwa block of Khandwa district, has reported the deaths of 39 children in the past 45 days. The Saharia Mukti Morcha, which works with the impoverished Saharia tribe in Shivpuri and Sheopur districts, said 16 children had succumbed to malaria in Shivpuri and five in Sheopur over a few days in September 2010, because their immunity was destroyed by severe malnutrition. Most children belong to abysmally poor tribal families whose daily earnings—when they are able to find work as labourers—rarely cross Rs 50—70.<sup>29</sup> This is not the first time that children have been starving and dying in Madhya Pradesh. In 2006, UNICEF officials have claimed that the biggest reason for malnutrition is not a lack of food, but instead social aspects such as the low social status of women, early marriage and little gap between the birth of children.<sup>30</sup>

A similar picture can be seen in terms of households belonging to 90% of rural ST households in Assam, 79% in Arunachal Pradesh and 68% in Chhattisgarh being excluded from the PDS.<sup>31</sup> In striving for ‘efficiency’ by developing a narrow targeting system, the scheme has resulted in the exclusion of households that should be entitled to basic food security<sup>32</sup>—an issue which is becoming ever more serious in the wake of the current food crisis.

### Displacement and loss of commons

Displacement and inadequate resettlement has not only resulted in a decrease in land holding among the evicted families but the loss of access to forest produce whether for consumption, as food, income generation, or for medicinal purposes. This has had severe impact on the very survival of the children. Reduced incomes due to displacement have meant lack of access to timely health care, loss of access to education and even results increasingly in children being forced out of school and into work.

Communities have depended on forests for their daily life for generations. With forests being declared reserved forests and sanctuaries tribals and others who depended on the forests lost access. This had an impact not only on the life and livelihood of the community as a whole, but children in particular. For example, children lost their homes, and subsequently their lives, to save the tiger and conserve forest cover in Melghat, which became a part of ‘Project Tiger’ in 1974 displacing

Malnutrition Statistics by Caste/Tribe-India-NFHS 3				
In percent Children under 3 years				
	Scheduled Caste	Scheduled Tribe	Other Backward Classes	Others
Stunted	44.1	44.3	39.2	31.1
Wasted	20.5	25.7	18.9	16.4
Underweight	52.2	56.7	46.4	37.3

Source: NFHS-3 2007

and restricting access of the Korku Adivasi community to the forest and minor forest produce. Although the government would like us to believe that the cause of malnutrition and mortality among Korku children is poverty and ignorance, it is clear that forced displacement, apart from loss of livelihood and forest produce, is one of the main causes. Close to 5000 Korku Adivasi children were reported to have died of malnutrition in the years 1992-1997. In 2004 NGO estimates pointed to a 1000 deaths while government figures totalled to 59.

A survey by the Punarvasan Sangharsh Samiti<sup>33</sup> in 22 villages and two resettlement sites of the Sardar Sarovar Project on the Narmada river, had brought to light some shocking findings, that further corroborate that forced evictions and loss of access to commons have huge negative impact on children.

In April, May and June 2005, 98 children died in the Akkalkuwa block alone. Of these, 71 children were malnourished. Of the malnourished children, 45 were found to be malnourished in the second stage. Obviously, the government has not accepted that the children died due to malnourishment. The cause of their death would be lost in the long list of such causes. The figures quoted here are obtained from the government under Right to Information. And yet, the study team found the government is unaware of the scale of malnutrition in the area. The government records only 10% of the malnourished children.

Not only are the children malnourished, but so were their mothers. The range of weights of fully-grown mothers has been found to be between 40-45 kgs. The number of girls is half the total, indicating the precarious condition in which the 'future mothers' are nurtured.

According to the Samiti, the root of this malady is deprivation from natural resources, i.e. resources of livelihood. The measures in fields like health, education, employment and supply do not create resources of livelihood and therefore these cannot be the decisive remedy of the situation. These would have to be supplemented with the measures in the sector of resources of livelihood, otherwise these peripheral communities face the danger of extinction.<sup>34</sup>

**Child Death and Malnutrition in Resettlement Sites**

Month	No. of Child Death			Malnutrition Grade				
	Male	Female	Total	Grade I	Grade II	Grade III	Grade IV	Total
April	24	19	43	11	16	0	3	30
May	11	15	26	5	13	1	0	19
June	15	14	29	5	16	0	1	22
Total	50	48	98	21	45	1	4	71

The forced eviction also impacted the children's right to education. Around 6000 children used to study in government schools and private schools in Harsud, the town submerged by Indira Sagar Dam in Madhya Pradesh. In addition to the government college, there were eight government primary schools, three government middle schools, three higher secondary schools and six private schools in Harsud. These 14 government schools in Harsud have now been accommodated in two school buildings and a few tin sheds in New Harsud and a nearby village. Since the school buildings are not yet constructed, eight schools are held in the two school buildings in shifts. Seven other schools are being held in tin sheds. Surveys of 299 families living in the five sectors of New Harsud show that 25% of the children studying hitherto have dropped out from schools forever after displacement.<sup>35</sup>

**Weight range of the mothers (village-wise)**

Range	30 kg	30-35	36-40	41-45	46-50	50-55	> 56	Total
Andharbari	3	4	9	8	5	0	0	29
Khai	0	5	7	8	3	0	1	24
Dahel	0	9	31	29	12	0	0	81
Rojkund	4	16	36	22	7	2	3	90
Dab	0	4	8	18	9	3	0	42
Gorjabari	0	9	14	18	7	1	1	50
Ohwa	0	7	11	9	5	1	0	33
Narmadanagar	0	13	33	46	21	2	2	117
Rewanagar	0	21	63	68	18	6	1	177
TOTAL	7	88	212	226	87	15	8	643

The last few years has seen some very large scale and brutal urban evictions. From December 2004 to March 2005, close to 4,00,000 people were forcibly evicted from various parts of Mumbai to ‘clean up’ or ‘beautify’ the city. A lesser noted fact is that among those evicted and made homeless overnight were close to 1,80,000 children as estimated by YUVA, a group working on housing and children’s issues in Mumbai.<sup>36</sup> Most of these children belong to Dalit, Adivasi and nomadic communities regarded as some of the most marginalised communities in the country. With no resettlement for a large section of those evicted, many families along with their children were forced to live in the open. Two children are reported to have died due to exposure to the harsh climatic and living conditions.

What better example of urban dislocation than what was witnessed in the wake of the Commonwealth Games when thousands of families have been evicted. The South Asia Regional Programme of the Housing and Land Rights network, Delhi has estimated that nearly 2,50,000 people in the city lost their homes as a direct result of the Games since 2004. The preliminary findings of the ongoing study<sup>37</sup> suggest that due process for demolition of homes in various parts of the city was not followed, in addition to police presence and use of force, injury and adverse health effects, loss and destruction of possessions, adverse effects on children, death, loss of livelihood and income and no compensation or resettlement offered to the evictees. The children have lost their rights to common resources. The press release notes, the psychological impacts on children who lose their homes and witness a demolition, are severe and long-lasting. Several children have been forced to dropout of school. Many have lost a year because the demolitions happened immediately before or during examination time. Pyarelal’s son lost an entire school year as the Dargah Bhure Shah Camp demolition took place on 14 May 2007, during school exams.

It is worth noting that 27,000 families displaced from Yammuna Pushta had come in as workers in 1980s for construction of the Games Village and stadiums when Delhi was to host the Asiad Games, and are now

being ushered away in the follow-up to the Commonwealth Games in 2010.<sup>38</sup> Thus not only do they face loss of commons in the homes they have left in the villages, but once again where they had created a new access.

Inadequate and inappropriate resettlement which seems to have become the norm rather than an aberration, does nothing to restore the rights of these children to the ‘commons’ they are entitled to.

### **Basic facilities as commons**

Water, sanitation, roads and basic infrastructure is integral to every child’s right to adequate housing and standard of living.<sup>39</sup> Water is the most basic of needs. And yet it is one common facility that divides any urban setting between those who have and those who don’t. Conflict over water at an urban water tap or a tanker, in which children and women are main contenders for the scarce resource, is an almost common sight in any city in India. Children, especially girls, spend hours standing in queues to fetch water when it ‘comes’, often having to miss schooling for this.

According to a United Nations survey, while over half a billion cell phones are active in India, enough to serve about 45% of the population, only 366 million people have access to a toilet, or only 31% of the population had access to improved sanitation in 2008.<sup>40</sup> When toilets are scarce, it is the children who have the least access—forced to defecate and urinate wherever they can find the space—on pavements, road sides, railway tracks, parks and open spaces in urban areas; and fields or forested areas etc in the rural areas. Needless to say this makes them vulnerable to abuse and violence, as also accidents and injury. As they grow older, girls find it harder and harder to find ‘private and safe spaces’, both in the rural as well as the urban areas.

Roads in India are child unfriendly, disabled unfriendly and old people unfriendly. Public transport is not designed for children. That is the reality. Footpaths if they at all exist, are too high, have no ramps or slopes. Hence yet another set of urban ‘commons’ that children find difficult to use.



### **Deciding for the commons**

The dilemma of children and the commons is much more fundamental than just a matter of access to services. It arises out of treating children as ‘citizens of tomorrow’ when in reality they are citizens today, and as miniature adults, which they are not. Though the rallying cry of societies has been ‘women and children first’, and most people believe they are creating a better world for children—at least their children—the reality is that children’s rights and spaces are the first to be violated for adult needs.

Adults have traditionally determined usage, access and control over children’s spaces. It is assumed that children do not have the capacity to make a choice and hence little or no effort is made to determine what they may wish or want. In the aftermath of the December 2004 tsunami, the schools and playgrounds of the children were taken over for mortuaries. The village community centres were spared because keeping cadavers there would defile the building. The schools of the children routinely double up as bunkers and forward posts in armed conflict. In conflict areas such as the North Cachar Hills were either being used as camps or given to the Security Forces to house their troops.<sup>41</sup> In Dantewada District of Chhatisgarh, children had lost access to schools caught in the crossfire between the state and the naxalites and the salwa judum. Police and security forces occupy them, and naxalites target them because they are government buildings.<sup>42</sup>

Children who live on common spaces in urban areas—streets, platforms, under flyovers and bridges find themselves vulnerable to abuse and exploitation on a daily basis. This is by other adults, older children and even their peers. What is the most dehumanising is the treatment meted out to them by the police that is meant to protect them. Homeless and vulnerable they may find themselves in institutions. But our experience of visiting homes for children, both government and non government and reports that appear in the media remind us again and again that these institutions set up for their safety are in fact unsafe and violent. The choice between the street and these homes is the proverbial choice between the devil and the deep water.<sup>43</sup>

The exclusion of children from decision making has led to their access to commons becoming even more tenuous. The standard argument has been that ‘when a community itself does not have rights, then how will the children have rights?’ This reflects the truth only partially. Children can and do have better insights and in some cases even better management skills than adults. They are socialised into the roles that they later exercise in life. Therefore the institutions of decision making can be made more democratic starting with children. In the traditional panchayats of the fishing community along the eastern coast of India, only the seagoing males from a particular community were included. There was stiff resistance to change. The children’s panchayat promoted by some NGOs had girls and boys of all communities. These children not only consider inclusion to be the norm, but were extremely successful in decision making even the aftermath of the December 2004 tsunami. They could decide on the reconstruction and rehabilitation to a larger degree than in the traditionally governed villages, and even mediate with the local administration. Democratic structures can be built bottom up by including children.

### **Conclusion**

For decades, commons and common property resources have signified natural resources and areas within villages such as pasture lands, forests, ponds, waste lands and other designated common resources. It has seldom, indeed never, been in the context of all children, wherever they are. This chapter has attempted to redefine common spaces and examine children’s rights in that context. It has examined only a few examples of what else could be defined as commons in today’s context, and is by no means comprehensive in its listing or interpretation. If we were to pick each basic service or facility and analyse its ‘child friendly quotient’, we will come up with a number of deficits leading to exclusions. The idea is to move towards redefining spaces and examining their accessibility to children as a right.

## Endnotes

- <sup>1</sup> HAQ: Centre for Child Rights is a not-for-profit organisation, started in October 1998 and formally registered in June 1999. HAQ seeks to recognise, protect and promote child rights, and believes that there is a need for realisation of human rights of children through policy, law and action. The recognition, protection and promotion of three rights form the cornerstone of HAQ's work: the right to survival, the right to childhood and the right to equal opportunity.
- <sup>2</sup> Children who 'dropout' are in fact pushed out by the system.
- <sup>3</sup> Dalit kids cannot use school loo but have to clean them—India—The Times of India <http://timesofindia.indiatimes.com/india/Dalit-kids-cannot-use-school-loo-but-have-to-clean-hem/articleshow/4699387.cms#ixzz0ym39oMJ5> Accessed on September 6, 2010
- <sup>4</sup> This information was given by the Minister of State for Human Resource Development, Shri M.A.A. Fatmi in reply to a question in Lok Sabha, Tuesday, April 29 2008.
- <sup>5</sup> International Education Statistics, Analysis by Friedrich Huebler, Tuesday, November 13 2007. <http://huebler.blogspot.com/2007/11/india-has-21-million-children-out-of.html>. Accessed on September 7 2010,
- <sup>6</sup> Arun Mehta, Elementary Education in India, Progress Towards UEE, Analytical Report 2005–06, Published in 2007, pp. 152 also see [www.dise.in](http://www.dise.in)
- <sup>7</sup> Ibid
- <sup>8</sup> Ibid, pp. 156
- <sup>9</sup> Richa Nigam, Inequality in India: Income, access to health care and education for the poor. <http://infochangeindia.org/200501086156/Other/Development-Dictionary/Inequality-in-India-Income-access-to-healthcare-and-education-for-the-poor.html>.
- <sup>10</sup> Ibid.
- <sup>11</sup> Report of the CABE Committee, Universalisation of Secondary Education, 27 June 2005.
- <sup>12</sup> Ibid.
- <sup>13</sup> i-india. Gender discrimination. [http://www.i-indiaonline.com/sc\\_crisis\\_theproblem.htm#gender](http://www.i-indiaonline.com/sc_crisis_theproblem.htm#gender).
- <sup>14</sup> Ibid.
- <sup>15</sup> Ministry of Human Resource Development. Chapter on Elementary Education (SSA and Girls Education) for the XIth Plan Working Group Report. pp. 39.
- <sup>16</sup> Education Statistics from DISE, 2005–2006.
- <sup>17</sup> Ibid. pp. 14.
- <sup>18</sup> Gross enrolment ratio is the percentage of the estimated child population in the age group 6 to 14 years enrolled in classes I–VIII. Since the enrolment in these stages may also include underage and overage children, the total percentage may be more than 100% in some cases. The GER of both SC and ST boys and girls in 2003–04 decreased with reference to 2001–02 in several states. <http://www.nsa.org.in/Policybrief/27072008GERGDRforSCST.htm>. Accessed on 13 August 2008.
- <sup>19</sup> <http://www.cag.gov.in/html/reports/civil/2007> and <http://www.nsa.org.in/Policybrief/27072008GERGDRforSCST.htm>. Accessed on 13 August 2008.

- <sup>20</sup> See Ghai, Anita (2006), Education in a globalising era: Implications for disabled girls, *Social Change*, Vol. 36, No.3. pp. 161–176.
- <sup>21</sup> Source: <http://ssa.nic.in/monitoring/mainjrm03.asp>.
- <sup>22</sup> Ibid.
- <sup>23</sup> National Health Accounts: India 2004–05, Ministry of Health and Family Welfare.
- <sup>24</sup> Ibid
- <sup>25</sup> *State of India's Newborn 2004s*, National Neonatology Forum, Ministry of Health and Family Welfare Govt of India, World Health Organisation (South East Asia Region), UNICEF India, the World Bank, Saving Newborn Lives, Save the Children–US.
- <sup>26</sup> ibid.
- <sup>27</sup> Health Chapters in Children in India.Inc. 2005. and Still Out of Focus–Status of Children in India, 2008 . 2009. HAQ: Centre for Child Rights, New Delhi.
- <sup>28</sup> National Family Health Survey, Chapter 7, 2007, pp 183.
- <sup>29</sup> NGOs allege 125 malnutrition deaths in MP. Infochange. *The Economic Times*, September 14, 2008. Hindustan Times, September 13, 2008. IANS, September 2008. <http://infochangeindia.org/200809167341/Poverty/News/NGOs-allege-125-malnutrition-deaths-in-MP.html>
- <sup>30</sup> Geeta Pandey. Spotlight on India's malnourished children. BBC News. 2 May 2006, [http://news.bbc.co.uk/2/hi/south\\_asia/4962880.stm](http://news.bbc.co.uk/2/hi/south_asia/4962880.stm)
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid.
- <sup>33</sup> Punarvasan Sangharsh Samiti undertook the survey in 22 villages and has prepared the report, titled 'Maranatach He Jag Jagate', based on the outcome of the survey and information obtained through Right to Information.
- <sup>34</sup> Status of Children in India.Inc. HAQ:Centre for Child Rights. 2005. pp 100-101.
- <sup>35</sup> Savaging a civilization: NHPC and Madhya Pradesh government at Indira Sagar dam. A Report on the violations of the human and legal rights of Indira Sagar dam oustees, Madhya Pradesh. August 2004. Jan Sangharsh Morcha, Madhya Pradesh, Chattisgarh, SANDRP, Delhi, Manthan, Badwani, Sandarbh, Indore, Abhivyakti, Nasik.
- <sup>36</sup> YUVA report 'Mumbai Evictions (December 2004–March 2005) An Analysis of Impact in Twenty Eight Communities', YUVA, Mumbai 2005.
- <sup>37</sup> Press Release. New Delhi, October 13, 2010 .Forced Evictions due to Commonwealth Games Violate Human Rights, Contribute to a Permanent Negative Social Legacy. Housing and Land Rights Network.
- <sup>38</sup> <http://www.ccsindia.org/ccsindia/downloads/intern-papers-09/cwg-2010-displacement-of-persons-213.pdf>
- <sup>39</sup> Article 27 of the UN Convention on the Rights of the Child.
- <sup>40</sup> <http://economictimes.indiatimes.com/news/news-by-industry/et-cetera/India-has-more-mobile-telephones-than-toilets-UN-report/articleshow/5808824.cms>
- <sup>41</sup> [http://www.ncpcr.gov.in/ReportsSummary\\_of\\_Report\\_of\\_Visit\\_to\\_Relief\\_campus\\_in\\_NC\\_Hills.pdf](http://www.ncpcr.gov.in/ReportsSummary_of_Report_of_Visit_to_Relief_campus_in_NC_Hills.pdf)
- <sup>42</sup> Human Rights Watch. India. Dangerous Duty. Children and the Chhatisgarh Conflict.July 2008. Human Rights Watch New York. pp 50-55.
- <sup>43</sup> See Blind Alley: Juvenile Justice in India. HAQ Centre for Child Rights 2009.

# Dalits and the commons

---

Yashodha<sup>1</sup>

It is over 60 years since India gained political independence and framed a constitution guaranteeing equality of all her citizens and zero tolerance to discrimination of any kind. However, the ‘practice of untouchability’, specifically abolished by Article 17 of the Indian constitution, and exclusion in the public domain towards Dalits or Scheduled Castes (SC) continues unabated in many parts of the country. Most people belonging to this group are economically marginalised<sup>2</sup> and have been victims of frequent and brutal atrocities primarily due to parochial mindsets. The blatantly poor implementation of the SC/ST (Prevention of Atrocities) Act, 1989 aggravates their problems. In reality Dalits continue to experience discrimination, exclusion and violence on the basis of their caste especially while using common resources and entitlements or simply being there.

Dalits view lands, public places like roads, wells, parks, bus stands, banks, government offices, courts, police stations, hospitals, schools, temples as commons. For Dalits, water, electricity, money are resources for survival that are available and accessible from shared spaces. Networks and forums of Dalits offer a space to discuss ideas, their realities and share experience as well as support each other. Dalits experience many problems in accessing and utilising common spaces and resources. They encounter discrimination from dominant castes. This is despite the government not viewing Dalits as an excluded community in the context of commons. In spite of relevant laws which guarantee equality, specific social entitlements and punishment of exclusionary practices,<sup>3</sup> the government does not seem to care about Dalits much. It would be quite correct to state that the Dalits are excluded from the overarching commons—the nation itself.

## Dalits and the legal commons

The constitution of a country lays out the cultural and legal territory, the shared values, aspirations and legal architecture. It is the critical built commons of any nation—the core around which everything else is built. In building a new national identity—a national cultural commons—

many conflicting claims will need to be balanced. The victory of one Indian kingdom was oftentimes the defeat of the other. So in building this national common, which aspects should be highlighted is a fundamental choice, for it determines who owns the cultural commons, and indeed the very nation itself. The dominant castes assert their view and only their view as the 'national' view. Consequently, in defining the 'nation', the prism was always the non-Dalit perspective. The non-Dalit perspective made the Dalit way of life illegitimate, and made even their names derogatory. As far back as 1911, it was recognised that eating beef was an intrinsic part of their food.<sup>4</sup> But that was proclaimed un-Indian and the constitution declared banning cow-slaughter a desirable objective of the Indian state.<sup>5</sup>

The constitution of India declares that all its citizens are equal in the eyes of the law. There are many laws to protect the Dalits. But reality is far from this. If a Dalit has to get access to government welfare schemes, then they have to declare themselves legally Hindu. Those who do not cannot avail of the affirmative action or social welfare provisions Dalits are entitled to. This was done by administrative fiat—the President's Constitution (Scheduled Caste) Order 1950. It took a full 40 years for Buddhists to be included.

There is gross failure on the part of the central and state governments in the implementation of the SC/ST (Prevention of Atrocities) Act, 1989. This happens even though there is an increase in the number of incidents of extreme violence and abuse on Dalits.<sup>6</sup> The very low conviction rate and punishment of the guilty encourages them and others to commit heinous crimes. There are places where such discrimination continues unabated usually with the consent of the government and law enforcement authorities. Complaints to them are therefore not heeded. Instead, Dalits face dire repercussions and are compelled to remain silent. Even if they are courageous enough to seek legal recourse, they rarely get justice. The highly publicised case of Bhaiyalal Bhotmange and his family in Khairlanji in Bhandara district of Maharashtra is a classic example of this.

Another instance of collusion of the state and law enforcement agencies was evident from their delayed, insensitive and minimal response to

violent attacks by fundamentalist Hindutva mobs against Dalit and Adivasi Christians in Kandhamal<sup>7</sup> district of Orissa. As a consequence of this, over a hundred young, old, differently-abled, women and children lost their lives. Three women were brutally raped. More than fifteen thousand of the aggrieved are still living in crowded camps and tents and not able to return to their homes and villages. Children are unable to go to school, young girls are being trafficked and families have broken down. This has resulted not only in displacement but a loss of livelihood, physical, mental and emotional trauma and an insecure and uncertain future. In spite of being well aware of the situation, the state government of Odisha has hardly done anything to compensate, reassure the victims and bring the perpetrators to justice. From among more than three thousand complaints filed with the police, just over eight hundred First Information Reports (FIRs) have been registered. Inquiry and investigation is pending for many of these. In the few cases which have been taken up, biases against minorities have led to minimal or lack of punitive action against the criminals and sometimes their acquittal. This has only increased the vulnerability of Dalit and Adivasi Christians in the area.

Even legislation meant for Dalits are impractical and discriminatory. Further, they are often framed by persons from the dominant caste who are not aware of the realities of Dalits. Most of them lack concern for Dalits and their advancement. For example, a law states that Dalits with two acres of land will get subsidised seeds, loans, borewells, electricity supply, etc. from the government. But in reality, they do not have land or at the most half an acre. Even if they do, they face many problems in securing the titles. As a result they do not get any benefits although as per the law it is supposed to be for the good of everyone. This negatively affects their lives and livelihood and instils fear in them.

### **Dalits and the state institutions**

The state is a very important component in the commons framework since it is the only institution permitted the legitimate use of force. Yet the total alienation of the Dalits from this public funded common security infrastructure, a 'security commons' as it were, is stark especially

when unconsciously expressed through their idiomatic usage. The police claim to be for the security of all, and hopefully for their well being too. But the Dalits refer to the police as Yama—the god of death. Its usage is casual and matter-of-fact. When the ‘saviour’ becomes the ‘god of death’ then how ‘common’ the ‘commons’ are, and who the ‘community’ is become self-evident.

Police personnel across the country do not easily register cases of harassment against Dalits. Instead they imprison and torture innocents through bogus cases. They file false reports, prolong the investigation procedure and thereby delay the indictment of guilty. Owing to this, Dalits consider the police as Yama, the God of death. They view a visit to the police station as sinful and often bathe and clean themselves after going home. If an employee of the police department appears in the dream of a Dalit, it is treated as a bad omen. In contrast to the above, people from dominant castes view the police as helpful, respectable and dependable. This is may be because they tend to use the police to their advantage and that the latter giving their due consideration to the power of wealth and position.

The state institutions, including prisons, are a source of employment and patronage for the dominant caste ‘citizens’ while for the Dalits the non-citizen ‘tenants’ of the nation they are black holes where the constitution does not exist. Even seemingly benign state welfare institutions such as the beggars home follows the same principle, and is seldom more than an open air prison. Most of the inmates are Dalits. Since the rations are allotted on the basis of the number of inmates, vulnerable people are picked up from the streets and bus stands (especially first time migrants) to fulfil the quota. Since the jobs are often disbursed as patronage, a large part of the rations are diverted. If those picked up do not know the language, they are classified as ‘dumb’ and as Dalit. Then the government diverts the funds meant for Dalit development to these institutions from where it goes into the administrative black hole. Though shown as a Dalit share of the common pie, in reality it is administration of patronage.

Discriminatory attitudes against Dalits prevail in government hospitals which are supposed to provide free health care to the financially excluded.



The nurses and other support staff treat them rudely and demand money. They ignore them and their needs. Owing to this, Dalits consider a visit or stay in a government hospital as having been to Yamaloka or hell. In rural areas, doctors, paramedical staff and basic amenities in government primary health centres (PHCs) are frequently not present. As Dalits tend to utilise these services more, they lose out and tend to suffer from serious ailments and early loss of life.

Such discriminatory attitudes against Dalits prevail in universities, banks, government offices, fair price shops of the public distribution system (PDS) and in private institutions and organisations. All this adversely impacts Dalits in obtaining loans, food grain and groceries such as sugar and oil obtained through the PDS. In many villages, Dalits are denied access to crematoriums and are forced to segregated burial grounds. Dalits face many difficulties in obtaining caste certificates which are mandatory for securing their social entitlements. These are critical for availing scholarships, waivers and discounts and reservations for Dalits in educational institutions, government jobs, contesting for political office, etc. In the experience of many Dalits, people belonging to other castes obtain false certificates as Dalits to avail benefits and entitlements.

Dalits regularly face hurdles in availing basic benefits and other specific entitlements. A part of the problem is that many of them lack awareness about their fundamental rights and the government does not do much to change this situation. Instead, government funds and grants that are allotted for their welfare are under utilised or redirected to other programmes or elsewhere. A recent report<sup>8</sup> revealed that Rupees 67.8 billion specially earmarked for persons in the SC/ST category were being routed for organising the 2010 Commonwealth Games in New Delhi—when at the same time the government was evicting the Dalits there in the name of beautification. RTI applications filed in Karnataka have revealed that grants worth a few hundred crores of rupees meant for the benefit of the SC/ST community were lying unused.

### **Dalits and land**

One of the crucial aspects that contributes to the poor economic status of Dalits is ownership of land. For generations, Dalits have been underpaid,

exploited and frequently, bonded labourers on agricultural land that dominant caste persons have claimed as their own typically by forced occupation and false titles (patta). Studies on land ownership patterns of Dalits<sup>9</sup> have shown that the few of them that own small pieces of barely fertile land lack proper titles. Sometimes they are threatened to surrender their land or face terrible consequences when they resist. The government plays a major role in this. It supposedly grants lands to Dalits through legislations but snatches it away under the guise of development for Special Economic Zones (SEZs), infrastructure projects such as road widening, bridge or flyover construction.

Another important and relevant issue is that of the associated inflation in prices of land, transport, food grains and all items essential for daily living. Due to all these reasons, Dalits consider the government as their enemy and harbinger of misfortune. To them, it is a destroyer of their lives and existence. This creates fear and despondency in them. To be fair, the Indian state has been quite catholic about this. The Adivasi not only have to suffer the destruction and displacement by an 'elephant proof trench' in the name of 'conservation' that studiously avoids the tea and coffee plantations of the encroachers while cutting right through the heart of their villages, wide swaths of their fields, cutting off access of the village to their fields and orchards<sup>10</sup> but in addition suffer the ignominy of having their beloved homeland being named after a corruption ridden ex-prime minister in one state and just across the border after a scandal ridden ex-chief minister.

The Dalits are asserting the right to name their commons, and the larger national commons, after the Dalit leaders. It is one way of asserting that they are also citizens, a part of the national 'community' and therefore have a right to access its resources. The assertion of the right to the produce of the commons—such as the fruits of the roadside trees and the fish in the common village ponds—is simultaneous to such linguistic assertion.

To Dalits, land is everything and they revere it wholeheartedly. It symbolises mother, God, livelihood and much more. It is part of them and they belong to it.

### **Dalits and built commons**

The actual contribution of the Dalits in nation building—especially the tough manual labour that goes into infrastructure creation—is unsurpassed by anyone. It is so all pervasive that it is a given. Yet once these ‘new commons’ are built, they are systematically excluded from their very creation. The normative makes it so innocuous—they cannot afford the toll or the fees—that nobody questions the logic of their lowly salaries that ensure that they remain barred across generations. Not very different from prohibition to even see the idol that they carved, in a temple they built for fear of pollution since they did not have the right caste or language skills. The same story is repeated in the offices, schools and hospitals they build, the streets, gardens and playgrounds they create, beautify, clean and maintain and virtually all the fruits of their labour. It is ironic that those who created and preserve the commons are still systematically excluded when it comes to the use and benefits.

When the state comes up with ‘development’ what the Dalits hear is destruction (of their livelihoods) and displacement (from their homelands). The infrastructure projects such as the Bangalore Metro and the Bangalore International Airport assiduously avoid the residences and land of the ‘citizens’ but deliberately mow down the dwellings of the Dalits. When the Bangalore Mysore Infrastructure Corridor was being built, the adjoining lands were acquired. In addition, the footpath was lessened or completely removed. As a result the lives and livelihoods of hawkers and vendors, most of whom were Dalits who used the space for selling their wares and housing their stalls, were almost completely uprooted. They did not receive any sort of compensation as they were not recognised as organised labour.

The agricultural land in Devanahalli near the new Bangalore International Airport is another example. Most of it was owned by dominant castes. Dalits were employed as labourers. When the land was acquired for the construction of the international airport, the owners of the land were given huge monetary benefits in exchange. But very little was given to the Dalits. Apart from this, the latter lost their livelihood. They did not have an idea as to how to use the money as they did

not have much exposure or experience in dealing with such a situation. They had never viewed the land as something of commercial value. Rather, they regarded it as something to be looked upon as venerable.

Major roads and highways are supposed to be common to all. But Dalits are excluded from using these and think that they are meant only for the wealthy and powerful. This is because they do not possess vehicles like private cars, etc. Further, these are constructed by displacing Dalits from their homes. This in turn impacts their livelihoods and very survival adversely and often destroys their lives. Children cannot go to school or play and employment in the surrounding locations sometimes disappears. There is no place for them to graze or feed the few animals that they may own like cows which give milk or hens that lay eggs. To Dalits, land is like their mother whom they worship and honour. They feel hurt when they find that the government does not respect their sentiments especially when it offers money in exchange for their homes and their lands. According to the government, this is supposed to deliver development for all. However, only the dominant caste, rich and mighty benefit from this as they get good roads and money in compensation for the land that they lose. In contrast, the situation of Dalits only tends to become worse.

In many towns and villages of India, Dalits are offered food and drink in specific utensils and seated separately in tea stalls, weddings, other public places and social gatherings. This is in spite of the fact that such an exclusionary practice is a punishable offence under law. Dalits are often denied access to common spaces such as temples and village roads. They are thrown out of temples and tortured when they resist. The Dalit labour is considered a 'common' when it comes to building the temple. But when it comes to entry, they are considered untouchable. The Dalits are quite accommodating of Hindu gods. They want to enter the temple not because they are Hindus—they are not, as proved by Ambedkar—but because it was built with our labour. When Dalits try to access public utilities like drinking water from village wells and tanks, electricity, etc they are prevented from doing so. This is in

spite of the fact that they are meant for everyone. Experiences such as these drive Dalits to believe that it is their fate and that their situation will never improve.

Even in the present day, dominant caste residents of villages in India refuse to mingle with Dalits or let them integrate with the rest of the villagers. Dalits are confined to 'colonies' almost 5 to 6 kms from the dominant caste village. These spaces have minimal infrastructure like roads, wells, public transport, schools and hospitals. Even if they exist, most of them are in a bad condition. Sometimes, schools do not function due to lack of teachers. Commuting from such neighbourhoods is tough due to long distances, roundabout routes, bad roads and minimal public transport. Such problems make Dalits interaction with persons from other castes difficult and enforces segregation.

The brunt of the above problems are borne by women and children. To sustain the existence of their families and children, women are forced to seek jobs in factories and industries where the working conditions are unhygienic. In addition to this salary and benefits are minimal and often delayed. Many of the men in these households who had lost their means of occupation hardly sought or got any alternatives. They ended up lazing around and took to alcohol abuse. These infrastructure projects have adverse effects on the environment. The increased levels of pollution during construction and the additional traffic after completion impact the health of people, animals, trees and other life forms.

### **Dalits and the knowledge commons**

The knowledge that the Dalits had was systematically destroyed. Not being allowed to be literate, they were denied the huge resource base of knowledge that was being built up. When the Dalits go to school, they and their leaders are absent in the syllabus, or portrayed as uncivilised and insulted. This is apart from the discrimination faced by Dalit children who, alone of all students, have to clean the school toilets. They are denied admission into science and technical courses right from eight standard because 'anyway you are only going to be sweepers and scavengers' while dominant caste children are encouraged to excel,

especially if they lag because the ‘destiny of the nation lies in your hands’. This active discouragement of some sections (especially if they excel) and active encouragement of others (especially if they lag) shows the true ‘ownership’ of the nation.

In the hoary epic Mahabharatha, Eklavya a tribal archer’s thumb is cut off because he became the best archer, better than the best, even without a guru. The notional guru Drona not only had not taught Eklavya but had also refused to teach him when Eklavya approached him. When it was found that Eklavya was the best, Drona then demanded, and got, Eklavya’s thumb—without which archery is not possible—to safeguard the predominance of his favourite Arjuna. Drona was able to demand this tribute (called the ‘guru dakshina’) because the hapless Eklavya practiced in front of an image of Dronacharya. Nothing has changed much in the ownership, access or benefits of the commons.

In the so called modern day too, Dalits begin to experience segregation right from childhood in the public domain. Dalit children in some anganwadis, balwadis and government schools are made to sit separately from children of other castes while eating their noon meal that is provided free of cost by the government. They are often served the food in utensils which are kept apart from those that children of other castes use. In some places, the hot meal is served from a height so that the serving utensils do not touch the plates of these children. The food then splashes on the children causing burns and injury. The school staff entrusted with the responsibility of cleaning the vessels, particularly of the younger children, sometimes refuse to touch those that Dalit children use. Dalit children are beaten more and seated away from the rest of the kids.

As a result, children view the school as a place which inflicts pain on them and they refuse to go. Their parents tend to discourage them from attending school. Hence, the pushout rate is high among Dalits and literacy is low. This directly reduces their opportunities for employment which is formal, lucrative and supposed to be dignified. This leads to Dalits having to seek employment in the unorganised sector like construction labour, domestic work and inhuman and unsafe jobs like that of safaikarmacharis and pourakarmikas. Further, children who

are not in school end up being in bonded labour although there is a ban on it in the country as per law. Here they are held captive in exploitative and unsafe conditions by their employers and creditors. They are often subjected to physical and emotional abuse and violence. This usually happens in brick kilns or match, firecracker and hazardous chemical factories, garages, hotels, restaurants and tea stalls, etc. The dominant society calls this push-out as dropout conveniently putting the blame on the hapless Dalits.

The government runs hostels for students many of whom are Dalit. But they are often being discriminated against at meal times and others. Some of them were forced to leave the hostel. Similarly, the operation and standard of government colleges is deteriorating. But these are crucial as marginalised youth, usually Dalits are enrolled in it as they frequently do not have an affordable and recognised college within accessible distance. This is a forced exclusion deliberately done by the government to deny education, and therefore any space in the emerging opportunities, to the Dalits who cannot afford the high fees of private institutions.

The marginalisation of the Dalits from the knowledge commons is felt deeply in the emerging digital commons. The Dalits, due to historical reasons of literacy and access, are among the last to have any significant presence on the internet. This space has allowed the early web literature to present and define India as a 'vedic' civilisation and perpetuate many myths of the dominant in cyberspace, including anti-Dalit propaganda. Since Dalits are fewer in number there, and have a weaker presence due to the continuing costs of historical denial of education, the Dalit view is often eclipsed. Dalits are slowly awakening to the potential of the internet, and a few high quality websites of present Dalit reality and the Dalit perspective are slowly becoming visible.

### **Employment**

Typically, most *safaikarmacharis*, i.e. people who clean human waste, tend to be Dalit women. In spite of laws like the The Employment of Manual Scavenging and construction of Dry Latrines (Prohibition) Act, 1993<sup>11</sup> banning the construction of dry toilets (which requires

people to do this inhuman and unhealthy occupation), it continues to prevail in some parts of India. The women are paid poorly and are compelled to do this back breaking and unsafe work for many hours everyday with little regard for their own health and hygiene. As they are not permitted to enter houses of people of dominant castes, and not provided with other employment opportunities, this often passes from one generation to the next.

Similar to the above situation, most *pourakarmikas*, i.e., persons who clean roads, sewage pipes and storm water drains and collect garbage in towns and cities are mostly Dalits. Although they seem to be employees of the state government, many of them are contract labourers who lack job security, medical and other benefits, etc. They are overworked and underpaid.

The extensive delay and loopholes in the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is impacting Dalits adversely. As Dalits in rural areas are typically landless and economically marginalised, they engage in agricultural labour which is seasonal. Schemes like MGNREGA are hence absolutely essential for them. However, in reality, many of them lack awareness of this entitlement. Even those who know about it hardly benefit from it to the extent they ought to except perhaps in some parts of Rajasthan, Andhra Pradesh, and Kerala. This is owing to the rampant corruption at the Gram Panchayat level in issuing job cards, assigning work for hundred days or paying adequate compensation in its place, maintaining muster rolls, distributing wages, etc.

Employers in the private sector boast of an equal opportunity policy and do not require disclosure of caste. However, when they learn of the caste of a Dalit employee (usually in a discreet manner), some co-workers and management tend to discriminate in subtle forms.

Dalits from rural areas in Odisha and Andhra Pradesh whose meagre land has been forcibly taken in the name of development are compelled to migrate to cities like Bangalore in search of employment. The government promises them compensation but hardly gives them anything in reality. Such people only find exploitative daily wage labour like



building construction, head load bearing (coolies), etc. They lack safety and security and proper housing and often live in sheds. They do not have proper sanitation facilities or access to water. Women and adolescent girls are impacted by this as they have to wait until dark to answer nature's call. This affects their health adversely. Also, they are treated like outsiders due to the difference in their dialect and accent. They do not get voter ID's and ration cards as they do belong to a different state. Children do not get admission in schools. To get adequate treatment in hospitals is not easy. Further, when they suffer injuries or fatalities at the work place they receive very little or no compensation. Such incidents are hushed up by the contractor, government and police nexus and rarely known or reported by the news media. Police cases are also not registered as mandated.

A few people may manage to find space to live in slums but are not easily accepted due to socio-cultural differences and local politics. They do not easily get work like household helpers, security guards, etc.

### **Cultural commons**

The central and various state governments of India declare many festival days as public holidays. However, this frequently turns out to be insensitive to Dalits for the days happen to be those when Dalits were killed. Cultural traditions of dominant castes celebrate these festivals as the victory of good over the bad. But the fact is that religious myths and literature portray the evil doers and ferocious demons as Dalits. The days of importance to the Dalits are deliberately defiled. The Buddha poornima—a day of special significance to Dalits, and commemorating the apostle of peace—was deliberately chosen by the Indian state to explode Atom Bombs.

Among the most disgusting practices in the world that particularly impacts poor rural women is the Devadasi system. Devadasi<sup>12</sup> literally means god's (deva) servant (dasi). Under this, economically marginalised Dalit women are forced into sex work under the pretext of serving god is prohibited legally. However, it continues to exist in parts of Karnataka, Andhra Pradesh and Madhya Pradesh in Southern India.

Young girls are dedicated to the village deity on attaining puberty under this abhorrent tradition. She is then compelled to provide sexual services to dominant caste men—her sexuality becoming a culturally constructed commons. Curiously, untouchability does not apply here. Historically, women in this system were treated with respect and were skilled in the performing arts such as dance and music. But as many women opted out of the practice, young and landless Dalit women were forced into it and exploited. Barred from marrying, women frequently pass this to the next generation of young women for want of an alternative and due to pressure from men of the dominant caste. Therefore, the young daughter of a Devadasi is often at risk of having to become a Devadasi, especially if she lives with her mother.

The minority Karnataka state government, which came to power on less than one third of the votes cast, has banned cow slaughter in the state. This is not for any scientific reason, but solely an assertion of the dominant caste prejudice on the rest of the state. This will deny many people their source of livelihood. Apart from this, beef is also the main and affordable source of protein for many. Dalit activists and other human rights workers have been opposing this but there does not seem to be a change in the stand of the government thus far. Dalits see this as an attack on their culture. Interestingly, history shows that dominant caste persons have eaten beef which they now not only want to deny, but want to impose their newfound beliefs on others also.

The Dalit assertion of identity in the south Indian state of Karnataka was triggered off by a linguistic slight. A Dalit minister in the state government called Kannada literature ‘boosa’—cattle feed—and asked the Dalits to learn English if they wanted to progress and take advantage of the emerging opportunities, rather than Kannada the official state language. The government schools are used mainly by the Dalit children, while the private ones—which were used by the elite and dominant castes—would teach English right from the beginning giving those children a nearly unsurpassable lifelong advantage.

Little wonder then that the slogan of the Dalits was ‘no Sanskrit before, no English now’ alluding to the casteist Hindu law that prohibited any learning for the Dalits—prescribing pouring molten lead into the ears of any Dalit hearing Sanskrit, and cutting off the tongue of any Dalit reciting Sanskrit. The dominant caste government had to back down in 2009. The attempt to fence off the commons citing a love for the dominant language in the state is a common ploy of revivalist forces to keep the access to present and emerging global opportunities restricted. When the state government decreed that Kannada, the regional language, would be the sole medium of education till the fifth standard in government schools, the Dalits immediately saw it for what it was: a crude attempt to fence them off the emerging opportunities in the international knowledge commons.

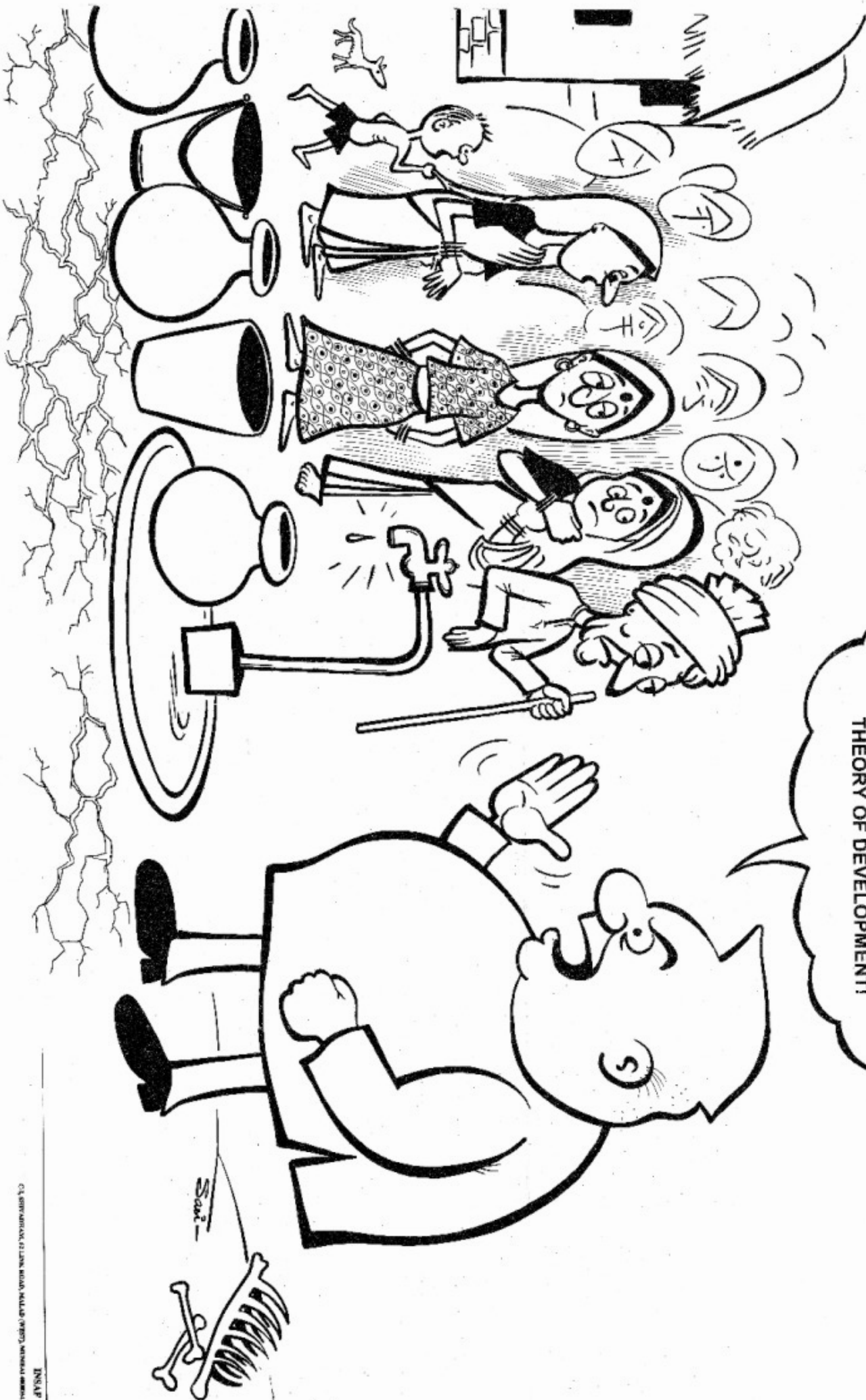
Language has been an important component in the assertion of their right to be part of the commons and yet remain different. In intensity, it is equivalent to their assertion of the right to eat beef. The assertion of the right to be different and yet be part of the collective—which anyway uses them and their resources—is one of the unique contributions of Dalits to the commons debate: the path of dissent and diversity in the global commons.

In spite of the affirmative action in many spheres, Dalits continue to be strongly discriminated against in the public domain and are excluded from the ‘commons’. The reference to police as ‘yama’ and hospitals as ‘Yamaloka’ reveals the depth of alienation of the Dalit from the nation comparable to the one felt by Ambedkar who demanded separate electorates in 1929 itself. From labour to sexuality, there is forced commoning of what Dalits have, while at the same time excluding them from the benefits of such commoning. India has to go a long way before Dalits feel that they are being treated justly and humanely by society. Their past and present is akin to the victims of apartheid in South Africa, the struggles of African Americans and the Roma of Europe.

## Endnotes

- <sup>1</sup> This chapter is based on the experience of Yashodha as told to Pushpa Achanta, a freelance writer, and incorporates discussions at the authors meetings.
- <sup>2</sup> National Campaign for Dalit Human Rights (NCDHR) [www.ncdhr.org.in](http://www.ncdhr.org.in)
- <sup>3</sup> Specifically the SC/ST (Prevention of Atrocities) Act, 1989, the Protection of Civil Rights Act 1955; see also NCDHR [www.ncdhr.org.in](http://www.ncdhr.org.in)
- <sup>4</sup> They 'Eat beef and do no reverence to the cow' the tenth criteria for declaring depressed classes in Census of India (1911). Part 1. p. 117 quoted by B R Ambedkar, footnote 4, chapter 9 of *The Untouchables Who Were They And Why They Became Untouchables?* The ten criteria are: Among those who were not hundred percent Hindus were included castes and tribes which :- (1) Deny the supremacy of the Brahmins. (2) Do not receive the Mantra from a Brahmin or other recognized Hindu Guru. (3) Deny the authority of the Vedas. (4) Do not worship the Hindu gods. (5) Are not served by good Brahmins as family priests. (6) Have no Brahmin priests at all. (7) Are denied access to the interior of the Hindu temples. (8) Cause pollution (a) by touch, or (b) within a certain distance. (9) Bury their dead. (10) Eat beef and do no reverence to the cow. Interestingly, the present government documents quote only the first nine!
- <sup>5</sup> Indian Constitution, Directive Principles, Article 48 Organisation of agriculture and animal husbandry: The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.
- <sup>6</sup> In 2006, there were 26,665 cases of atrocities of SCs and STs registered across the country, 29,825 in 2007 and 33,365 in 2008. The conviction rate is about 30%—28% in 2006, 31.4% in 2007 and 32 in 2008. Pendency of cases is around 80%, Minister for Home Affairs P Chidambaram in the Lok Sabha, 30 August 2010.
- <sup>7</sup> <http://orissaconcerns.net>
- <sup>8</sup> Press release *Diversion of Social Sector Funds to Commonwealth Games Reveals Corruption and Financial Mismanagement* National Campaign for Dalit Human Rights (NCDHR, [www.ncdhr.org.in](http://www.ncdhr.org.in)) and Housing and Land Rights Network, 3 August 2010 and confirmed by the Union Minister for Home P Chidambaram in a statement to the Rajya Sabha on 31 August 2010.
- <sup>9</sup> National Federation of Dalit Land Rights Movements (NFDLRM) <http://www.ncdhr.org.in/nfdlrm/about-nfdlrm>
- <sup>10</sup> Cheria Anita, Why Does Nagarhole Burn.
- <sup>11</sup> Safai Karmachari Andolan <http://safaikarmachariandolan.org/>
- <sup>12</sup> Dasi=Feminine; Dasa=Masculine

BUT WHY DO YOU EXPECT WATER  
TO COME OUT FORCEFULLY?  
WE BELIEVE IN 'TRICKLE DOWN'  
THEORY OF DEVELOPMENT!



# 5 TYPES OF HOMOPHOBIA

THOSE WHO INDULGE  
IN SAME SEX  
RELATIONSHIPS HAVE  
CLINICAL DISORDERS.  
THEY HAVE TO BE  
CURED.



DOCTOR

THEY HAVE  
PSYCHIATRIC  
DISORDERS. THEY  
HAVE TO BE GIVEN  
ELECTRIC SHOCKS.



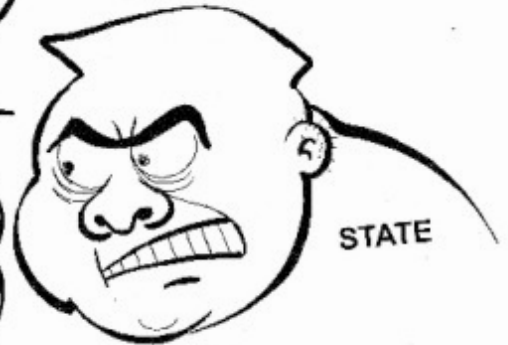
PSYCHIATRIST

THEY HAVE SPIRITUAL  
DISORDERS. THEY  
NEED TO REPENT AND  
PRAY OR GO TO HELL.

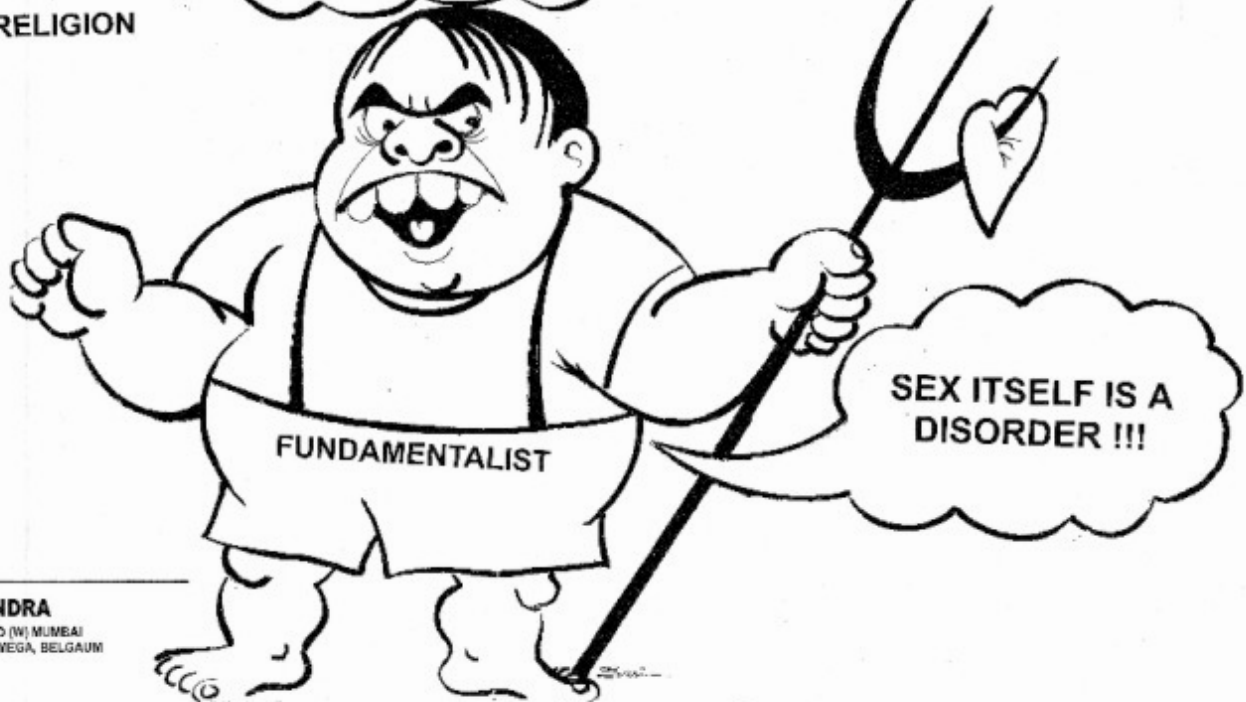


RELIGION

THEY  
CREATE A POLITICAL  
DISORDER. THEY  
SHOULD BE LOCKED UP  
UNDER SECTION 377



STATE



SEX ITSELF IS A  
DISORDER !!!

FUNDAMENTALIST

# Transgender and commons

## Re-entering the commons: An effort by the transgender community in Karnataka

---

Anita Cheria and Edwin<sup>1</sup>

Indian society is deeply stratified along the axes of class, caste, religion, language, education (among others), which intersect with sexuality to create deeper oppressions. Although hijras<sup>2</sup> (transgenders) have a sanctioned and visible place in Hindu society (especially in weddings, births, and festivals), it has always been on the margins. Though a few traditional practices of social interaction and support existed they always lacked in quantity and quality, and were a far cry from providing social and financial security. In the contemporary context in addition to the sexual discrimination, it is the class dimension of the transgender community that impedes their access to education, employment as well as on the violence they suffer on a daily basis.

For the last ten years or more the effort of the transgender community of the state of Karnataka has been to create a new space where they can interact with dignity with the non-transgender community, be it the government, human rights agencies, their neighbourhoods or family. These efforts have been actualised because of some pioneering work done by people from the transgender community with strong alliances from other sexual minority groups, the lesbians, gays, bisexuals, transsexuals (LGBT) and the much stigmatised sex workers unions.

In the process they have succeeded in getting themselves included within the ambit of the nation—the ‘national commons’—at least in a formal, legal sense. It is in some sense to reclaim some of their spaces that were being whittled away due to increasing formalisation and their absence in the systems of formalisation (there is not one openly LGBT judge or MP in the whole of India, and just one MLA). They have managed to stem the process of being pushed out of the commons. The Delhi high court judgement, the government’s decision not to challenge it and the assurance that all laws will be gender neutral

by 2014 have managed to secure their space within the commons to a degree.

In this chapter we will look at the process of exclusion of the transgenders from the commons and the attempts to bring them back into the commons. The case in Karnataka is important because they realised, consciously or otherwise, that they need to have power to be included within the commons—and that this power would come only from a combination of people (so they formed collectives and alliances), material (the funds pouring in for HIV/AIDS ‘work’) and mind (so they worked on changing the law and attitudes of society). It will also explore the ways in which traditional Indian society has dealt with this phenomenon in its typical deification of the different, and the consequences thereof.

### **The transgenders in tradition**

Indian society has always tried to deify the different. The prime example of course is the deification of Buddha and all the other saints who fought against the caste system. The sexual minorities are no different. Most communities did not violently oppose or condemn it. In one of the nine avatars of Vishnu (the mohini avathar) he becomes a woman. As mohini (s)he even has sexual relationship with Sivan, and has a son Ayappan whose shrine in Sabari Hills is the richest seasonal shrine in India. In the Mahabharatham Krishnan (another avatar of Vishnu) turns himself into a woman and gets married to Aravanan so that the teenager could enjoy the pleasures of the marital bed before he was sacrificed.<sup>3</sup> Arjunan, the warrior par excellence of the Mahabharatam—at par with Achilles of the Trojan war—was a eunuch for a year, living with women. The transgenders themselves claim a special relationship with both Krishnan (as mohini) and Shivan (in his Ardhanari, Shiva-Shakti avatar).

They are mentioned in hoary literature as third sex by nature (birth) and were not expected to behave like ordinary men and women. They kept to their own societies or town quarters, performed specific occupations (such as masseurs, hairdressers, flower-sellers, domestic servants, etc.) and are generally attributed a semi-divine status. Their participation in religious ceremonies, especially as cross dressing dancers and devotees



of certain temple gods/goddesses, is considered auspicious in traditional Hinduism. Some believe that third–sex people have special powers allowing them to bless or curse others. The power to bless is based on the legend in Ramayanam and is a direct gift of Raman.<sup>4</sup>

#### **Hijras and kothis: The Indian context**

Among transgenders there are many differences, in their emotional needs and physiology and external appearances. All these impact their levels of vulnerability and the amount of external violence and discrimination they face. Among them those who take up dressing as males face less discrimination as compared to those dressed as women.

#### **The hijra culture**

The hijras in India trace their origins to foundational myths in Ramayanam and Mahabharatham and other legends. Most hijras in India live in groups that link back to seven houses ('gharanas') situated mainly in Hyderabad, Pune and Mumbai. Each house is headed by a 'nayak' who appoints gurus, spiritual leaders who train their wards ('chelas') in 'badhai' (dancing, singing, and blessing), and protect them within and outside the community. It is a system that replicates matriarchy, creating interdependence between the ageing guru and the 'chela' who has been cast out of her family. Disputes among hijras are decided within the community by the 'nayak' and senior gurus acting as law makers, and administering punishment such as imposing fines and expulsion from the community.

Often there are a host of prohibitions and taboos. Thus, any person who wishes to become a hijra has to live in 'satla' (female attire) in the community for at least a year and observe the rituals and obligations of the community, such as earning money for running the household and for the guru. If she is unable to adjust to the requirements of community life, she will not be allowed to go for 'nirvan' (castration). 'Nirvan kothis' are often favoured over those who don't undergo castration ('akwa'/ 'zenana'). The ceremony of castration in the hijra community involves both penectomy and orchietomy (removal of penis and testicles). Most hijras are biologically born as male although a very small percentage are born hermaphrodites/ intersexed.

### **The 'kothi' culture**

'Kothi' is a term that is used across South Asia with local variations. Kothis often see themselves as non-English speaking, with a feminine homosexual identity distinct from the gay/ bisexual identity which tends to be the expression of English speaking homosexual/ bisexual males. Kothis largely belong to non-English speaking lower middle-class and feel their marginalisation (due to lack of access to resources/ information/ employment etc.) in terms of language, education, socio-economic status as well as sexuality. Kothis express their feminine identity by wearing make-up, women's clothing, cooking and dancing.

The symbiotic relationship between kothis and hijras has been strengthened due to the lack of support systems for kothis in urban spaces and mofussil towns. Kothis to depend upon hijra subcultures for both support and succour. Hence there is a constant interchange of languages, symbols and mythologies of alternative sexualities/ genders between the hijra and the non-English speaking homosexual subcultures.

The traditional occupations of the transgenders were dancing and singing. They were called and honoured at the time of births, marriages and housewarmings since their occult power was said to be potent for both blessing and cursing. In many places they were considered a 'good omen' (possibly because of their association with the auspicious occasions). They have always sought the safety and security of numbers, and therefore are more visible in the cities and large towns, where they congregate with others of the LGBT community.

The earlier traditional support enjoyed by the transgender community, provided them some support to survive on the margins of society. The 'badhai' culture in north India and ritual roles as *jogappas*, *jogammas*, *Shivshakthis*, in south India provide some social and financial support for transgenders. They practice badhai, or blessing on auspicious occasions and participating in religious festivals like *karaga* processions and various *jatra*, or religious rallies along with men who cross-dress as women. This provided them a source of small and occasional income. Even this is in a state of total disarray due to breakdown of their networks, their neighbourhoods and reducing acceptance for their traditional roles within the rest of society.

A lesser-known third-gender sect in India is the *jogappa* of South India (Karnataka and Andhra Pradesh), a group similarly associated with prostitution. The jogappa are connected with Yellamma-devi, a version of the popular Hindu deity Durga, and include both transwomen as well as transmen. Both serve as dancers and prostitutes and they are usually in charge of the temple *devadasis* (maidservants of the goddess who similarly serve as dancers and female courtesans). Large festivals are celebrated at these temples wherein hundreds of scantily-clad devadasis and jogappas parade through the streets. The jogappa do not practice castration.<sup>5</sup>

### **Transgenders in practice**

Despite the rather laidback position of tradition and scriptures regarding homosexuality and transgenders, the reality is that the Indian society does not have a culture that will accept transgenders with any level of dignity.

### **The early years**

While there are significant differences based on class (and as usual those from the upper classes have it easier), there is little discrimination against the sexual minorities till puberty. The discrimination starts when their sexuality and sexual orientation becomes known at or about puberty. The shell-shocked parents, who were often in denial, then try to 'straighten' out the hapless child through crude, torturous procedures recommended to them by quacks and trained health practitioners alike. The reaction of the larger society is vicious, with no one knowing how to cope with this different person. At the frontier of this assault are the uncaring peers with their special brand of pre-teen cruelty, when they find that bullying their peer does not have any cost nor fear of rebuke from the adult. With the cruel and often violent backlash against them, the sexual minorities are physically hurt and degraded. Most of them are forced out of school and also leave their parental home by the age of thirteen or fourteen. Though well known, these are not issues taken up by the keepers of our mighty traditions, within the family, religious institutions or state.

The family as a social institution polices gender non-conformity in terms of attitudes, identity, behaviour and thereby reinforces the heterosexist

regime. Instead of protecting their child from the violence inflicted by the wider society the family mirrors, and provides an arena to act out, the intolerances of the wider society. Those who violate the existing social codes which prescribe how a man is to behave are subject to daily humiliation, beatings and expulsion from the family itself.

### **The new community**

The children, barely in their teens, are forced out of the community and the commons, into a lifelong path of migration, homelessness and destitution. Their entire existence is from then on criminalised to some degree or the other. With low literacy levels—being pushed out of school—they are forced into sex work and later, when that is no longer feasible, into begging.

The shifts and displacements are multiple and severe, from losing their name, their family, school and neighbourhood....to moving to a life of anonymity, changed names, from villages to cities or from one city to another, in search of new friends, livelihood and a place to live. This kind of brutalised orphaning, associated with conditions of war, famine and disasters are part of growing up and coming of age for transgenders in India. Most often it entails association with, and dependence on, sex work and criminal gangs. They seek the traditional support systems within the transgender community.

Despite some instances of care and support in the traditional system, most often transgenders are forced into begging and sex work—both of which are criminal in India—as the only means to survive. Forced and restricted into the criminalised, illegitimate spaces they are brutalised by both their immediate family and law enforcement machinery of the state. This gross violation of child rights has not been a major issue for child rights campaigns, be it local child rights organisations, national forums working for child rights, or international agencies like the UNICEF.

Most agencies do not have the capacity to even acknowledge this reality, evolving the wisdom and developing effective programmes and systems to deal with it can come only later. This problem is not limited to individuals, societies or institutions in India but is a global phenomenon.

Even in countries like the US, known to have been active on the rights of sexual minorities for much longer, the situation is no different.<sup>6</sup>

### **Violence and the transgender**

Violence of the most brutal kind is endemic to their life. Most of them finally are forced to take up sex work as their main source of income, either by soliciting customers on the streets or by joining *hamams*, or bath houses. It is a dangerous profession, as they are often subjected to contemptuous and violent treatment by customers and the police.

They cannot get what others would take for granted: a house on rent, a loan to build their house or admission to school. In a country where vast sections are denied housing based on an innocuous ‘vegetarians only’—both for buying or renting—the transgenders face an additional discrimination, virtually forcing them to ghettos. Those who do agree to rent or sell a house to them often do so at a premium. Even so, neighbours complain. Access becomes difficult.

The reasons for this violence are varied. To quote from the PUCL report on violations against the hijras the transgender community

*‘The reason why the sexuality of hijras incites such gratuitous violence could be two-fold. First, since sexuality is often the most intimate part of a person, sexual abuse and violence can be seen as the most systematic tool of dehumanising an individual. Second, the sexual nature of the violation can be understood as an apt punishment for a transgressive sexuality. Since this non-conformative and highly visible sexuality of hijras is so deeply threatening to the conventional social order, a punishment centring on a targeting of sexuality is deemed most effective.*

Apart from the sexual nature of the violence, another feature of the violence against kothis and hijras is its pervasiveness as an everyday reality. No space in which the hijras move is free from violence or the threat of violence. The violence itself owes something to a systemic pattern of police harassment and violence, extortion and the manifestly illegal and even criminal wrong-doing of the police’.

The violence meted out to the transgender community often leads to it destroying them from within. Fourteen transgenders have committed

suicide in the last 18 months in ‘cosmopolitan’ Bengaluru<sup>7</sup>—the technology capital of India and one of its fastest growing cities. Of the many reasons for sexual minorities, especially transgenders, to take the extreme step is stigma, non-acceptance by their own families and severe discrimination in accessing basic services, and social support. The rate of suicides among transgenders is a very sad reflection of the stress they face from society and state, both of whom claim to be champions of human rights and eager for modernisation.

### **AIDS: an invitation to the commons**

For a group that is marginalised and socially ostracised by their own families, identifying and meeting as a community itself was beyond their means, and a very big challenge. Out of the blue came an opening: the identification of HIV virus and the fear of contagion. Identified as a ‘high risk group’ and with the reputation for sex work, there was a general fear that this ‘homosexual disease’ would pass on and infect the ‘general population’.

This fear and the follow up strategies to combat the disease, along with a substantial allocation of resources to deal with it resulted in a multitude of interventions by agencies both within and outside the government. This has helped bring or has brought sexual minority groups and the transgender population together in a very functional manner, as staff and vulnerable populations. The fact that almost all sexual minority groups—transgenders, gays, lesbians, bisexuals and sex workers were being targeted by the HIV AIDS programmes as potential carriers of the disease helped bring them together on a single platform and helped in forging this larger identity as a community. The stigma and stress they face due to their identities and work, has aided them in forming stronger bonds and common goals, as just coming together on a platform does not necessarily lead to a strong coalition.

This opportunity created a space that has been tapped strategically by groups working with the community and community leaders as well. This has also provided an opportunity to form linkages within the community and with those addressing human rights issues. Thus the sexual minority rights campaigners have made significant inroads into the human rights

networks, and the government social welfare institutions, while some in these institutions have attempted to reach out to the sexual minority groups too. This two way process of learning and sharing has significantly raised awareness and strengthened the human rights discourse and priorities. The organised transgender community and sex workers have been generous in supporting such forums and campaigns. Their experience and support has been two ways, solidarity in sheer numbers and in giving new insights and strength to the respond to a variety of human rights violations on issues regarding labour, gender or health. They have been active members in supporting struggles on many issues. Many of them have been victims of violations to the extent that their very existence is ignored except as factor of disturbance. Such personal experiences of facing marginalisation and violence, make them extremely sensitive and perceptive to the survivors of similar violence.

**... but only as instruments**

The fear of spreading HIV, the popular perception of transgenders as sex workers—and especially the carrot of generous national and international financial support—have prodded the state to address one aspect of the transgender population: their vulnerability to AIDS due to occupational hazards. But being potential ‘high risk’ transmitters of HIV is the only aspect of transgender life that concerns the state departments and is being actively addressed. Keeping the stigma of sex work and sexual discrimination intact, they are the community to meet targets of the HIV programme. So even when the state ‘invites them into the commons’ it is for the survival of the dominant communities that the state represents, and not necessarily for the welfare of the transgender population or other sexual minorities. Their inclusion is only as foot soldiers who need to survive to perform the task assigned to them.

According to the National AIDS Control Organisation, NACO, the objective of drop in centres for People Living With HIV (PLWH) are to:<sup>8</sup>

- a) Promote positive living among PLWHs and improve the quality of life of the infected.
- b) Build the capacity and skills of PLWHs to cope with the infection.

- c) Create an enabling environment for the PLWHs.
- d) Establish linkages with PLWHs with the existing health services, NGOs, CBOs and other welfare and development programmes.
- e) To protect and promote the rights of the infected.

Though drop in centres are run by the community based organizations they are now meagrely funded, it has visibly shrunk and does not provide the space for such interaction nor is it conducive for any kind of enabling process. The outreach staff are designated as part time, as far as remuneration is concerned. They are paid Rs 2000—2500 (USD40 to 50) a month to meet the targets of the programme, basically to bring in potential patients for testing. These targets must be met as they are linked to their salaries, which already is very low. Many a times this pushes the staff to forging identities by taking the same people to different centres. The agencies response to the problem as expected is to strengthen the identification and coding of the patients instead of ensuring better working conditions and dignity at work for the field staff. Thus line listing technique is adopted which records a large amount of personal data, sometimes more to track the person than the spread of the disease. While even a criminal has a right to remain silent it seems a PLWH does not. In the name of efficiency and precision a lot of personal information needs to be shared and privacy of already vulnerable individuals is violated. The identification and coding procedure to follow for providing or availing HIV AIDS treatment parallels the precision and detailing of a military operation.

The interest of AIDS control authorities played an important role in bringing vulnerable communities together. This did not support their building a strong community of the transgenders. As it was only their ‘occupational hazard’ of vulnerability to sexually transmitted diseases that was being addressed by this project. Even in addressing this, the stigma and non acceptance attached to their normal sexual attitudes and practices was retained and reinforced in many cases. There is no attempt to provide them security through legal recognition or protection through labour laws or health policies. There is no space to discuss their survival needs be it education, health or economic issues.



These issues that impact the day to day lives of the transgender community have not been acknowledged as a serious issue of public interest. Just like the child rights of sexual minority groups don't find a special mention in most child rights documents, similar is the case with their health and employment problems. Despite severe violations and omissions in support, these are not the priority agenda of either the government policy or campaign documents of human rights networks focused on these issues.

The HIV programme is target driven, with clearly defined objectives and targets. The standards for the programme have a number of priorities for efficiency but dignity of PLWH does not seem to be high on this list. The fact that these marginalised communities might look for some pride and dignity in the 'office work' is not a concern or priority.

The transgender community thus has a long way to go to move this new found space towards some dignity for themselves as individuals and as a community. Though a window of interaction is always better than having none, and the first is the most difficult step, this is a long and complex process and will take time to bear results. But that in no way reduces the significance of this new commons in the making, a commons towards a more just and human friendly world. The first step of commoning, often the most difficult bridge to build for marginalised and stigmatised groups has strong roots and a foundation strong enough to take up future challenges.

### **A complex community, claiming commons**

As 'transmitters of AIDS' they formed a new community as defined by HIV/AIDS controlling institutions to manage and control the disease from getting into the 'mainstream' population. The constructed and imposed identity did not deter the different constituents. They embraced this chance to forge a new identity and move beyond their traditional limitations. These communities ensured that they found some dignity in this interaction.

Among the transgender community there are many complexities to consider while planning to support them. Their new found identity as a community is not a universal reality. They are organised as unions

in only some pockets. There is no detailed survey about their numbers, their places of residence or on the other human development indicators reflecting their present status.

### **The strategy**

The efforts are multiple and consistent, and most importantly, led by the community itself. The support from networking within and beyond has been extensive and strategic. They have been formal, structured and progressive, through the active participation of certain NGOs, like Sangama<sup>9</sup> taking the lead in Karnataka. Supportive networks have also been created to bring in the synergies with groups working on law, gender, information and labour. The first strategy was to build a strong community network. This has primarily taken the form of establishing links within the community so that the violations of basic rights are reported.

The second strategy has involved following up on the community-based networking by intervening actively when members of the queer community come to Sangama for legal help. Whenever the organisation found out about instances of violence and abuse, the matter was taken up in court. This intervention on a case-by-case basis had a positive impact in instilling confidence among community members. This effort by individuals and organisations was also complemented by a larger support base with the formation of the 'Coalition for Sexuality Minority Rights' (CSMR) in 2002, a solidarity network of individuals and organisations to support such efforts.

The legal interventions were always followed with a systematic campaign which reached to the media, the public and state actors at appropriate levels. This included regular press conferences, protests, rallies, celebrations and meeting with and representations to police officials, the Chief Minister and the NHRC. The increasing participation of sexual minority groups, most visibly the transgender community, in other human rights programmes, also went a long way in their gaining larger acceptance from other civil society organisations. Technology was used quite well to support this process. For support from NGOs and the media, the internet was a powerful and economical too. With community members it was consistent personal interaction, through meetings and phone calls.

These strategies can thus be summarised as:

- a) Formation of a collective by the hijra/kothi community, in effect creating a new ‘community’.
- b) Crisis intervention in cases of violence, demanding recognition as human and as citizens with rights.
- c) Visibility in the mass media.
- d) Engaging with other human rights issues in support and solidarity.

They were clear that they wanted to move ahead and beyond their ‘traditional’ roles and spaces. If they were to hark back to ‘tradition’ they would also need to acknowledge and stay within the old boundaries of power (hamams) and patronage (bribing the police and living on charity) which would restrict their ability to interact with the state and the larger world. Choosing to work on the human rights based approach and on the labour class identities enabled them to demand solidarity and forge larger alliances. As a demonstration of their wider human rights consciousness, they expressed their solidarity with others first. Then solidarity began to flow towards them. When they were obstructed from using their office—not by their landlord, but by an other tenant in the block who had political connections—this larger human rights body and the media came to their support. The human rights framework and the human rights based approach enhanced their perspective and widened their reach.

### **Appropriate technology and technique**

This multi-pronged strategy seems simple and easy to replicate, but mentioning just this would be a gross understatement of the effort and process. The strength of this process came from a deeply committed team from within the community; those with a deep understanding of their problems; who stood by the community, when they were voiceless, regularly abused and weak. This was the most critical factor in the converting these new commons into an empowering dynamic and growing commons, reaching out to and bringing the community together.

Use of appropriate technology too helped in the process, coupled with high levels of commitment and skill. Among all other technology computers, the internet and the use of mobile phones, needs special mention as they have played a significant role.<sup>10</sup> In a combination of messaging,

missed calls and calls. The help-lines in this campaign differed from most other help-lines, in that they provided instant and personalised support. The help-lines were not just accessible, but those taking the calls responded with immediate action.

The situation could differ—the police station where their community member is harassed, tortured or sexually abused or, their homes where they face abuse, or sudden violence on a lonely road. The call would be picked up, the gravity of the matter discussed, and the people required mobilised from the closest point.

For the community, the fact that they had someone to reach out to, to trust and depend on was a new and liberating experience. This trust building was the basis of the community coming together. The strategies stated in the earlier section could be supported by a variety of projects, but this part is difficult to replicate. Such an intervention can become a reality only if the conviction about the change is strong and commitment to do so blurs boundaries of project cycles and reaches much beyond to achieve the goal. A similar effort is required to change the mindsets of people and agencies—from individual to the transnational—in order to create an awareness about gender complexities and genuine respect for every person that is not biased according to sexual orientation.

### **The legal conundrum**

If one takes the position of hijras and kothis, it is clear that gender non-conformity does make a difference to one's ability to access basic civil rights available to all other citizens. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. These identification documents like a birth certificate, passport or ration card are a prerequisite to enter into a variety of relationships in civil and official society—for obtaining driver's licenses, for accessing legal service, employment opportunities, university admissions and essential services including health care.

Identification on the basis of sex within the binaries of male and female, is thus a crucial component of civil identity as required by the Indian state. The Indian state's policy of recognising only two sexes and

refusing to recognise hijras as women, or as a third sex (if a hijra wants it), has deprived them at a stroke of several rights that Indian citizens take for granted.

These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. (Nevertheless, some hijras through personal effort have managed to obtain a ration card, a driving license or a passport by declaring themselves as women.) Such deprivation secludes hijras from the very fabric of Indian civil society. In north India there are instances of hijras standing for election and winning elections as MLA, Mayors and Councillors. These elections however become vulnerable to legal challenge precisely because of the difference between the sex at birth (male) and the assumed gender identity (female).

What is important to note is that it is not only gender that is regulated by law, but also sex. A person, once born into one sex, is legally forced to live within the same sex. Sex changes are not yet legally recognised in India. Thus the binary classification of gender into male and female which does not recognise a third gender category makes the transgender status of hijras a legal nonentity. The rigidity of the law is further exemplified in the fixing of sex at birth as the sex for all subsequent legal transactions. Thus a hijra who wishes to claim her legal sex as female while being born a male is unable to do so.

In a cruel paradox, while the transgender identity of hijras poses no problems to the operation of criminal law and its role in criminalising hijra existence itself, the transgender identity becomes a stumbling block as far as accessing rights under civil law are concerned.

### **Empowering the commons**

While dealing with the state and while trying to organise internally as a community, the hierarchies and differences within what is collectively referred to as sexual minority communities should also be recognised. Different identities and levels of marginalisation need to be considered and acknowledged. Welfare policies should take into account the vulnerabilities to make the law more affective and supportive to the empowerment of the most marginalised among them.

The basic need is to create a set of modern cultural practices, physical space and legal support systems that will allow and promote life with dignity for the transgender population, not making it a necessity that they have to continuously fight as a community. A state policy that will entitle them to basic rights in terms of right to family life, parental care, health, housing, and education till the age of 18—in accordance with the Child Rights Convention should be one of the immediate priorities. An Act that prohibits discrimination against sexual minorities, similar to the one that prohibits untouchability based on caste could be another step in the right direction.

According to Revati a senior member of the community, a writer, artist and community organiser, there is a need to set up systems of identifying genuinely needy persons within the sexual minority groups. Mental attitudes are more of a defining factor than physiology when it comes to transgenders. Medical assessment based on psychology and mental health by health institutions, like the National Institute of Mental Health and Neuro Sciences (NIMHANS),<sup>11</sup> can play a critical role along with the active participation of the community. The active role of the community, community leaders, and activists is the only way to ensure that the changing dynamics of the issues being addressed are fed into policy.

Organisations in Karnataka have made a special effort to make the sexual minority programmes more oriented to those from an economically and socially marginalised background. Thus in addition to their basic right of expressing their sexual orientation without fear, a number of other dimensions got added to the agenda. Dealing with police atrocities, family abuse, access to education, work, pension schemes, access to the public distribution system PDS, getting voter identity cards, housing and health facilities are some issues taken up.

Organisations that have taken up HIV prevention programmes with a human rights perspective have played an active role in spreading an understanding about these issues in the larger society. Their active involvement with the community both at the individual and the community level in a scale never attempted earlier has played a critical role in the creation and defining of a new community bound together through evolving organic linkages and shared aspirations. They have supported

efforts of creating a discourse on sexual minority rights by making a space for such discussions and forums. An additional factor, however indirect and insignificant, is supporting community members through employment options in these projects.

The third gender and other sexual minorities need the creation of multiple commons—social, economic and physical and legal—to ensure that they are acknowledged with respect without being forced to hide their identities and then given the support to develop individually or as a community without being forced into repressive practices either traditional or modern. The times are changing and so are individual aspirations and thus they should have the freedom to explore and evolve the best way forward.

### **Some victories and the road ahead**

In 2008, Tamil Nadu, in Southern India recognised the ‘third gender’ with its civil supplies department giving in the ration card a provision for a new sex column as ‘T’, distinct from the usual ‘M’ and ‘F’ for males and females respectively. This was the first time that authorities anywhere in India officially recognised the third gender.

In July 2009, the Delhi high court decriminalised gay sex, and in November, transgenders won the right to be listed as ‘other’ rather than ‘male’ or ‘female’ on electoral rolls and voter identity cards.

In Karnataka the rights based approach to claim rights rather than favours has led to some significant developments. The Karnataka State Backward Classes Commission<sup>12</sup> recommended the inclusion of LGBT, sex workers and children of HIV positive parents in the Backward Classes Category. This is as monumental a move as the recent law that decriminalised sexual minorities. The recommendations were the outcome of a public hearing that the commission held across the state following a petition filed by transgender groups like the Karnataka State Sexual Minorities Forum.

The state government has also promised to extend the pension scheme applicable to widows and senior citizens, to all from the transgender community above the age of forty. It will be another fight to get government approved documental proof for age and gender. Nevertheless these are actions that herald the new commons.

Another space that bears witness to these developments are media reports. We now have media coverage in mainstream newspapers about a public hearing on the Millennium Development Goals, MDGs and transgender.<sup>13</sup>

There is more to be done and a long way ahead in creating a better world. There are experiences from across the world that can help us in this direction. On the legal side it could include:

- a) Mobilising existing legal frameworks.
- b) Challenging the existing legal frameworks.
- b) Using progressive international legal developments.

So far there has been no UN Declaration or Convention which covers the rights of transgender people internationally. Fundamentalist states—from the mid-eastern Arab to the Vatican—have fought to ensure that the reference to sex and gender will always be only male and female. This vacuum has been sought to be filled by global civil society interventions. Hence it is important to note the passing of the International Bill Of Gender Rights<sup>14</sup> which provides a model for progressive legislative change. Similarly the Equal Opportunity (Gender Identity and Sexual orientation) Bill shows how legislations have sought to incorporate the concerns of transgender and homosexual people.

Sexual identity is an essential component of human expression, and inherent in the fundamental right to freedom of expression guaranteed under the Indian Constitution. An understanding of the complexities of human life need to evolve in the Indian judiciary and legislation in recognising the rights of eunuchs, transgender and transsexuals as equal citizens of India. That would be the first step in enabling the transgender to reenter the commons.

## References

- Human rights violations against sexuality minorities in India: A PUCL–K fact-finding report about Bangalore, 2002.
- Human rights of minority and women, transgender human rights, part of a four volume series by Indrani Sengupta, published 2005, Isha books, New Delhi.



## Endnotes

- <sup>1</sup> This chapter is based on the authors insights from interaction with members of the sexual minorities, their leaders and campaign. The starting point of this chapter was a detailed discussion with Ms. Revati, a human rights activist, author and the past director of Sangama, a sexuality minorities human rights organisation. Revati, a transgender herself, has worked hard to empower herself and her community. This chapter also draws and builds on some of the findings of the PUCL report in 2002 on human rights violations against the transgender community.
- <sup>2</sup> The word hijra is Urdu, derived from the Arabic root hjr in its sense of 'leaving one's tribe', and has been borrowed into Hindi. The Indian usage has traditionally been translated into English as 'eunuch' or 'transgender', where 'the irregularity of the male genitalia is central to the definition'. However, in general hijras are born with typically male physiology, only a few having been born with male intersex variations. ([http://en.wikipedia.org/wiki/Hijra\\_\(South\\_Asia\)#cite\\_note-4](http://en.wikipedia.org/wiki/Hijra_(South_Asia)#cite_note-4))
- <sup>3</sup> Aravanan, the son of Arjuna and the tribal princess Kannigai offered to sacrifice himself to Kali so that the Pandava side would win in the Mahabharatam war. According to prophecy they needed to sacrifice a 'perfect' man to win. His only request was that he spend one night as a married man. Krishnan assumed the female form and married Aravanan. After a conjugal night, Aravanan was beheaded. This is re-enacted annually on the first full moon of the Tamil month of Chittirai (April-May) at the temple in Koovagam, Tamil Nadu when the transgenders ritually marry Aravanan. At dawn an effigy of Aravanan is ceremonially beheaded and set to flames. They mourn his death with intense passion and demonstrativeness including breaking the bangles, cutting off the mangalsutra, tearing of hair and loud moaning.
- <sup>4</sup> When Rama had to go on exile, the entire population of Ayodhya followed him. At the gates he told all the men and women to go back. On his return after this 14 year exile, he found the transgenders still standing there. Impressed, he gave them the power of blessing.
- <sup>5</sup> [http://en.wikipedia.org/wiki/LGBT\\_topics\\_and\\_Hinduism](http://en.wikipedia.org/wiki/LGBT_topics_and_Hinduism)
- <sup>6</sup> A recent report from advocacy group Campus Pride found that many LGBT individuals feel uncomfortable on campus. Approximately 25 percent of lesbian, gay and bisexual students and university employees have been harassed due to their sexual orientation, as well as a third of those who identify as transgender, according to the study and reported by the Chronicle of Higher Education. The study asked 5,150 people at about 100 colleges about their experiences last year. [http://www.huffingtonpost.com/2010/09/15/lgbt-students-harassed-at\\_n\\_717992.html](http://www.huffingtonpost.com/2010/09/15/lgbt-students-harassed-at_n_717992.html)  
A U.S. government study, titled Report of the Secretary's Task Force on Youth Suicide, published in 1989, found that LGBT youth are four times more likely to attempt suicide than other young people. [http://en.wikipedia.org/wiki/Suicide\\_among\\_LGBT\\_youth#cite\\_note-1](http://en.wikipedia.org/wiki/Suicide_among_LGBT_youth#cite_note-1)
- <sup>7</sup> As reported in Express Buzz on 22nd November 2010.

- <sup>8</sup> [http://delhisacs.org/naco\\_pdf/guideline\\_15.pdf](http://delhisacs.org/naco_pdf/guideline_15.pdf)
- <sup>9</sup> Sangama ([sangama.org](http://sangama.org)) is a sexuality minorities human rights organisation for individuals oppressed due to their sexual preference. Sangama focuses on the concerns of sexuality minorities from poor and/or non-English speaking backgrounds and sexuality minority sex workers, who otherwise have little access to information and resources.
- <sup>10</sup> The introduction of mobile phones in India has played a significant role in bridging the class divide in easy communication. From street vendors and the most lowly paid migrant labourer in the unorganised sector, to the chief operating officers in the corporate sector, all have adopted this technology.
- <sup>11</sup> A multidisciplinary academic, research, and patient care institute in Bangalore, India. <http://www.nimhans.kar.nic.in>
- <sup>12</sup> <http://www.backwardclasses.kar.nic.in>
- <sup>13</sup> Transgenders press for more rights - The Times of India 25 August 2010. <http://timesofindia.indiatimes.com/city/bangalore/Transgenders-press-for-more-rights/articleshow/6435242.cms>
- <sup>14</sup> The International Bill of Gender Rights (IBGR), as adopted on 17 June 1995 strives to express human and civil rights from a gender perspective. All ten sections of IBGR are universal rights which can be claimed and exercised by every human being.

# Worker or fisher?

## The concept of class and community among the coastal commons in Kerala

---

K P Sasi

**H**istory of all existing societies hitherto, is the history of class struggles', wrote Karl Marx in the Communist Manifesto in 1858. Most of Marx's writings reflected this class analysis. The class struggle according to Marx was a conflict between the proletariat and the bourgeoisie. The proletariat was defined as a section which sells their labour power to the owners of means of production, for their survival.

Marx has certainly inspired many great thinkers, revolutionaries and numerous people's movements all over the world. The quality of his critique of capital and the analysis on surplus value can never be replaced by any. The inspiration initiated by Marx has infected a large section of activists in the communist parties and outside the party system in India. However, many activists within the people's movements are today finding it difficult to take the words of Marx in the 19<sup>th</sup> century in their original form in today's context in India. They feel that the conflicts of caste, gender, sexuality, Adivasis, fisher folk, environment, nationality, race, colour, communalism and many other conflicts pose serious challenges apart from class for any realistic social analysis. It is also felt that these conflicts cannot be reduced to class analysis, though there may be a dimension of class in most of these issues.

The fundamental question in this debate is: Is it just the working class struggle which is designed to make history or do Dalits, women, Adivasis, fisher folks, blacks, sexuality minorities, nationality struggles and anti-communal struggles have a role in creating history? The second significant theoretical question among the concerned activists is: In a society like India where people are facing conflicts of multiple identities and multiple oppression systems, what common political analysis can be used to link all the marginalised sections together? At a time when most of the struggles have started projecting their own analytical tools to understand society, is there a possibility of using an analysis based on one contradiction to understand rest of the contradictions in history?

### **Working class and the Left parties**

It is interesting that no communist party in India has a programme for a working-class led socialist revolution. The Communist Party of India (CPI) calls for a National Democratic Revolution, the Communist Party of India (Marxist), CPI(M), calls for a People's Democratic Revolution and the naxalites call for a New Democratic Revolution. It is a moot question how many in this country know the difference between these three revolutions and the difference in the character of the Indian state after these three revolutions. There are reasons to presume that very few within the party system really believe in the concept of revolution itself. However, the intelligentsia within the Left parties and outside still use class analysis to look at history as well as the contemporary situation. But, when it comes to elections, both the Left and the Right parties find caste, community and religion more important than class. There is no doubt that class is one of the most fundamental contradictions. But this analysis has been disturbing many other analytical interventions of other marginalised sections.

The Communist movement in Kerala historically did not focus much on the rights of the Adivasis or fishing community or any other communities related to commons. The only possible reason could be the limitations of the class analysis. It was only during 1970s that the fishing community was getting known as fish workers. Perhaps, the rights of the communities related to commons need a totally fresh outlook on class analysis.

If the Left had a proper understanding on the concept of development and the commons, perhaps there was a major chance of them to be celebrated as the defenders of the marginalised in this country. Unfortunately, most of them were driven by a notion that capitalist development facilitated working class movement in many ways. Technically speaking, it could be argued that this notion is true to a large extent. Otherwise, how do we analyse the working class organisations in Plachimada supporting the multinational giant Coca Cola, when the local Adivasis, Dalits and farmers were on a stiff battle against the company? How do we understand the organisations of the working class supporting Birla, when the local villagers and activists all over Kerala were struggling for the rights of the commons of the affected

villagers? How do we see the support of the trade union movements for the infamous Silent Valley Project? The list goes on! Significantly, in all these cases, the struggle for the commons surpassed the strength of the organised working class.

If the organised Left had an understanding on the commons, perhaps serious historical blunders like Nandigram and Singur might not have happened. Instead of fighting for the marginalised, they would not have been forced to defend Tatas or Salim Company—a multinational corporation infamous for their role in the killings of thousands of Communists in Indonesia. The organised church often took a few centuries to understand reality in history. The Left parties however seem to be much better. In a recent statement, Prakash Karat, the General Secretary of the CPI(M) said that the left parties are still living in the 1940s!

### **Class, community and coastal commons in Kerala**

The fisher folk in Kerala lived as a community for generations near the coast, depending on the sea for their survival. They do not sell their labour power as per the definition of proletariat by Marx in the Communist Manifesto. The traditional fisher folk, which happens to be the largest section involved in fishing, believe in sharing their catch. Thus, instead of labour, they sell their products of labour like Adivasis selling forest produce. In fact, the relationship of the fisher folk with the sea is similar to the relationship between Adivasis and forests. In the case of fisheries in Kerala, the traditional fisher folk own their means of production also—ie: the net, boat and the engine. The person who owns the net gets an additional share of the catch and similarly additional shares are there for other areas of means of production. There is no question of appropriation of surplus value by the owners of means of production or sale of labour power. There is a small section of fisher people who are wage labourers in trawlers or purse seiners. From the definition of Marx, technically speaking, they are the only working class. However, the people's movement to protect the commons is led by the Kerala Swatantra Matsya Thozhilali Federation (the Kerala independent fish workers federation, KSMTF) which works with the majority of the traditional fishing community and it comprises of men

who go to the sea, women who sell fish and old men and children who indirectly help the process from the shore and teenagers who are yet to start working.

Traditionally, the fishing community was called 'Mukkuva' or 'Araya' community in Kerala. Though there was a sense of community in both these terms, there was also value attached to these terms. There was a clear stigma or prejudice from the caste ridden Kerala society to these words. The term 'matsya thozhilali' or 'fish worker' came obviously with the influence of Marxism as well as liberation theology which was a strong social and ideological current in Kerala during the 1980s. Union activists in the fisheries sector feel that the transition of identity to the term 'fish worker' has provided more respect. Such a respect is certainly due to the long history of working class struggles in Kerala. The Adivasis in Jharkhand enjoy better respect in being called by the term 'Adivasi' than in other parts of India because of the history of Adivasi struggle in Jharkhand. But it is clear that the power of collective bargaining of the working class in Kerala has helped the status of the fishing community.

In English, the term used for a long time was 'fishermen'. The National Fish Workers' Forum was known as 'National Fishermen's Forum' for a long time. It required a debate and pressure from outside as well as from inside the organisation to change its name. But it appears that the term 'fish worker' is also incomplete and limits the identity of the community. In the activities related to fishing, the entire community is involved. The relationship of the fishing community with the sea is very similar to the relationship of the Adivasis with the forests. Both depend upon nature for their survival and both are bound by community laws irrespective of divisions of class or religion. In that sense the relationship of the rights of the commons in the coast is very similar to that in the forest. Some international analysts have described the traditional fishing communities as sea tribes. At the same time, some middle class activists fear that if the community identity is utilised politically, the social activism in the fisheries sector can become communal. But this argument may not hold in reality, considering the fact that the Christian, Hindu and Muslim fisher folk have similar

spirituality and culture in their relationship to the commons. 'Mother Sea' is the common goddess for all among the community irrespective of their religion. The unifying factors of spirituality, tradition, culture and wisdom which unite the fisher folk have more political strength than the divisions of organised religions. The vast heritage of wisdom from the experiences with the commons unite the fisher folk as a community. While the organised institutions of the mainstream have tried to divide the community, it is unfortunate that activists have still not been able to make use of the cultural and spiritual common grounds effectively to unite the fishing community effectively against the large scale invasion of the commons today.

### **Liberation theology and the struggle of the fishing community**

Many priests and nuns were quite committed to the struggle of the fisher folk during the 1980s in Kerala. Many were inspired by liberation theologians like Sebastian Kappen and the liberation theology movement in Latin America. It may be interesting to analyse what went wrong with the relationship between liberation theology movement and the fisher folk's struggle in Kerala. The participation of the priests and nuns had a powerful impact not just among the fisher folk but also among the middle class in Kerala during the 1980s. Today, their involvement has more or less vanished. It is therefore time to analyse the positive and negative aspects of such participation in any people's movement related to commons.

Perhaps one of the reasons for such a decline of participation was that there was a genuine confusion about priorities, due to their commitment to the fisher folk as well as to the church. While the concept of liberation theology stressed liberation of the poor, some of its torch bearers in practice were not very clear on a central question: 'Whether to liberate the church or to liberate the people first'. The power of the position for many within the church was a delicate matter. The committed missionary zeal for the oppressed also restricted the possibilities of playing a supportive role to the leaders of the fishing community, rather than directly representing the community themselves in the struggle for the rights of the coastal commons. While this unarticulated confusion remained for many, the organised church could effectively handle the radicalisation of the clergy over a period of time.

The organised church has been the largest bureaucracy in the world, which has handled internal dissent effectively throughout history, much better than even some of the nation states. This included both suppression of dissent as well as appropriation of dissent. While almost all the radical clergy who entered the struggle favoured 'political action' for their direction more than the usual 'charitable action' of the church groups, perhaps because of their own Christian sense of 'sacrifice' for the poor or because of the public attention of the 'heroic' involvement of the clergy, deep inside, the political action itself became a charity for the poor. This experience is also real for many middle class activists who indulge in similar committed activism among the communities related to commons, without realising that ultimately they are not the real representatives of the community.

### **Struggles for commons: People's movements outside the working class framework**

Today, most of the struggles which challenge the system in a major way remain outside the analytical notion of 'class'. Among these struggles, the struggles of the local communities for the right to commons are playing a historic role. These struggles are for the right to forests, land, rivers, lakes, sea and the hills. The organisations of the working class, the trade unions have more or less ceased to play a revolutionary role and limit their actions to specific immediate economic gains. Though there are many exceptions to this observation, any serious student of political history in India can tell that the working class today is not prepared for any revolution. At the same time, significant struggles on the commons are taking place. The Adivasis, fisher folk, small and traditional farmers and Dalits are on major struggles against an aggressive invasion of the commons, by the State as well as corporations. These invasions are backed with an international agenda, supported by agencies like the World Bank and the Asian Development Bank (ADB). Laws are being changed without sufficient national debate or even debate in the parliament to suit the interests of the corporations to control the commons. The stiff resistance of the local people for their right to resources are confronted heavily by police repression, mafia or by manipulation. However, some struggles have been successful



despite heavy odds, inspiring many other people's movements on the road to liberate the commons.

### **The struggle for the regulation of trawlers and purse-seiners**

For more than three decades, the fisher people's movement has survived in Kerala—a state where struggles outside political party system were not tolerated. KSMTF led significant struggles on the right to commons in Kerala. The fishing community in Kerala also can claim many success stories related to commons.

One of the most significant struggles of the fishing community in recent history has been the struggle to regulate trawlers and purse-seiners. The fishing community argued that the trawlers rake the seabed, destroyed fish eggs and larvae and thus threatened their livelihood. The scientific community retaliated to this notion saying that there was no 'scientific evidence' for the destruction of fish eggs and larvae. The struggle against trawlers started originally in Goa during the nineteen seventies, led by leaders like Matanhy Saldanha. The struggle in Kerala became intense during the early nineteen eighties, led by many dedicated priests and nuns inspired by liberation theology.

The struggle for the regulation of trawlers and purse-seiners however was successful to a great extent. The state government implemented the ban on these technologies for 45 days every year during the monsoon season, which happens to be the breeding season for many varieties of fish, especially for prawns. The scientific community which initially argued that trawlers do not destroy fish eggs and larvae, finally had to accept the logic of the fishing community. The real working class in the sea, i.e. the labour force of trawlers and purse-seiners, were opposed to the ban and their positions were similar to the capitalists, the owners of their boats.

### **Fisher women's struggle for the right to sell fish**

Fisher women play an active role in the fisheries sector. Though they play a number of roles connected with fisheries, their main role in Kerala, especially southern Kerala, is in selling the fish. Though this activity is also being defined as 'labour', in terms of class relations it comes under small trade. The commons of the fisher women are

not related to the coast. They also express a right over the fish markets in the city. While the small traders and hawkers in Thiruvananthapuram city were getting removed forcefully by the authorities, bowing down to the interests of the interests of the large traders, the fisher women put up a stiff battle against their displacement from the fish markets. This struggle can also said to be successful to a large extent.

### **Climate change and the coastal commons**

It is common scientific understanding today that the sea levels are rising due to climate change. Sea walls are built on around two thirds of the 590 kilometre coastal line of Kerala. Most of the sea walls are already eaten by the sea and therefore they cannot even be seen. The stones dropped by the government need to be searched for under the sand. This process has only helped the corruption of the state bureaucracy and the contractors. In most of the places, the fisher people complain against the sea walls since they are a direct hindrance to their fishing activities. In spite of these constructions, the houses damaged by the invasion of the sea are increasing every monsoon. There is an increasing number of climate refugees on the coast.

The traditional prediction models of the community acquired through generations of community wisdom are affected today. The traditional fishing community depends on their daily catches for survival based on the calculations of their wisdom moulded by thousands of years. These calculations of collective wisdom of the community are being upset today. There was a traditional knowledge about when to fish, where to fish and what to fish in which season. The indicators that form the basis of these predictions are destroyed because of the changes in wind, sea currents and changes in the temperature of the sea. The slightest change in the sea temperature affects many fish varieties. Rains do not come when they are supposed to. When it does not rain, there is drought and when it rains, there are floods. Fish species are either vanishing or changing their habitat.

Though the fishing communities are the first to be hit among the victims of climate change, they are not represented in any of the national or international discussions of climate change. It needs an active role of supportive groups in India and abroad to generate proper representation

for the climate refugees in India. The contribution of the traditional fishing community to carbon emissions is minimum. However, the community is being victimised for somebody else's emissions.

Sometimes, simple solutions are made complex by middle class intellectual interests. The struggle for the commons was active all over India during the last three decades. The demands of the local communities affected by the state and corporate invasions on the commons were mainly three: socially and environmentally sustainable energy, sustainable industry and sustainable agriculture. This is the only ultimate solution to the problem of climate change.

### **Cancellation of licenses for the foreign vessels**

Unlike the problem posed by small trawlers and purse-seiners owned by Indian capital, the large investment of foreign vessels have become a much bigger threat to the coastal commons. KSMTF and the National Fish Workers Federation (NFF) organised massive agitations against the decision of the Government of India (GoI) to grant permission to foreign trawlers to fish in Indian waters. Thousands of fisher folk participated in the protests. GoI responded to this by appointing the Murari Commission to study the issue. Revoking the licences issued to foreign fishing vessels was one among the 21 recommendations of this commission. Though this was an achievement in securing the rights of the fishing community on the commons, the recommendations are not implemented till today. The destruction by the foreign vessels is severe and the rights of the fishing community over the sea is disrupted beyond imagination.

### **Struggle against sand mining and 'reclamation'**

The sea is eroding the coastline not just due to climate change. In some of the places where sand mining is active, it has come inside for more than two kilometres. The combination of climate change and sand mining pose a much bigger threat to the community. Houses, roads, shops, coconut trees and the common spaces of the community are being taken away by the sea. However, the struggle against sand mining is also active in Kerala and in some places, the local communities could also stop sand mining.

The main problem of the commons lie in the fact that both the state and the corporations believe that they can do anything with the commons so long as profits are acquired. A proposal to 'reclaim' the sea on an area of 5000 hectares from the sea off the Veli-Thumba stretch of the coast in Thiruvananthapuram, was resisted by the fishing community in Kerala on environmental and social grounds. The state government had to back out in the end. This struggle is seen as a major achievement of the fishing community and the right to commons in southern Kerala in the recent period.

### **The struggle on CRZ/CZM and the coastal commons**

The Coastal Regulation Zone Notification (CRZ) 1991 in India was to a certain extent a legal space to restrict the invasion of capital on the coastal commons. Though the CRZ did not articulate the rights of community on the commons fully, there were different restrictions on the developmental activities in the coast. While the activists could use this notification to prevent some of these invasions in different parts of the country, thousands of violations on this notification continued. The violators were never caught under the law. Instead, this notification was diluted several times due to pressure from the industrial and tourism lobby till the Dr. M.S. Swaminathan committee was appointed to restructure the notification completely as Coastal Zone Management (CZM) Notification, which denied the rights of the fishing community in many ways.

The fishing community protested against the recommendations of the committee throughout the coastal belt in India and even burnt the report publicly in Thiruvananthapuram. KSMTF which spearheaded the struggle in Kerala even pressurised the Government of Kerala to take a stand against the CZM Notification. As a result of struggles in Kerala, Tamil Nadu and other places, the Ministry of Environment and Forests (MoEF) initiated a public consultation on this issue in many places. Though the public representing the commons strongly articulated their case against the official move in all the consultations, the opinions of the community are still not taken into account. The move today is to initiate a new CRZ Notification with minor adjustments, preventing the rights of the community. The pressure on GoI to facilitate the invasion of

global and national capital on the coastal commons through foreign vessels, tourism and other industries, is going on. On the other side, the struggle of the fishing community to protect the commons in Kerala is getting intensified.

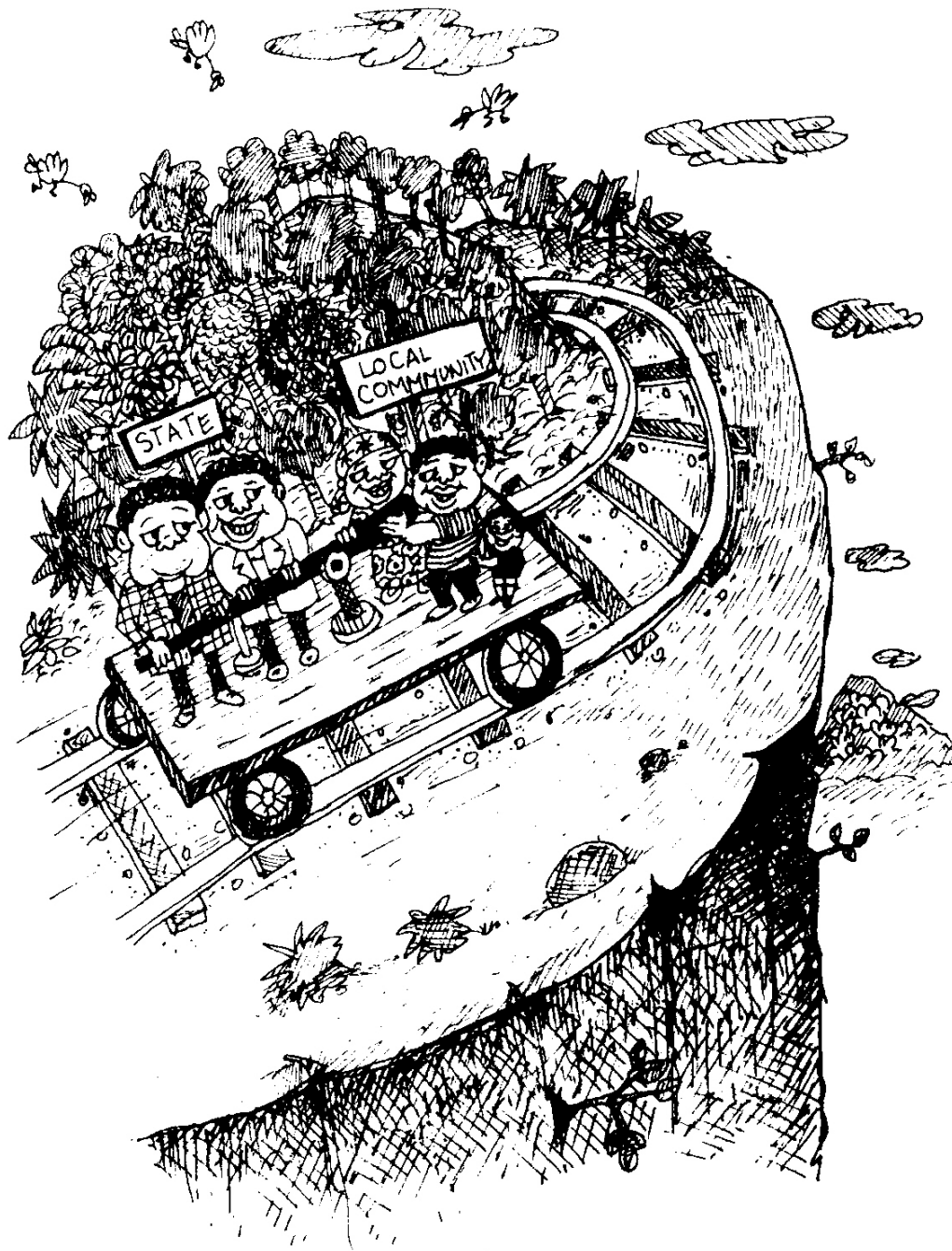
### **Other struggles**

These are only some of the struggles on the coastal commons in Kerala. There are others like the invasion by the tourism industry, real estate and hazardous industries. Ultimately, all pollution ends up in the sea and the fishing communities have to bear the brunt. It has come to a stage that the struggle for protecting the coastal commons has become multiple since the invasion on the sea and the coast is taking place through multiple means. It certainly requires a much wider network to preserve and protect the coastal commons and the fishing community. In the end, if the commons are not protected, the victims are not just the local communities but the entire humanity.

Ultimately, all the struggles in the coastal Kerala can be summed up in one major classification: the struggle to protect the sea and the coast. Before the term ‘commons’ became popular in India, activists used the term ‘natural resource’ to express the rights of the fishing community and Adivasis. But neither the fisher folk nor the Adivasis perceive nature as a ‘resource’ though they are dependent on nature for their survival. The spirituality towards nature limits the possibility of depleting ecology for their ‘private profits’. Nature is thus a ‘source of life’ for these communities and not a ‘resource’.

Like the Adivasis, the fishing community knows that if the commons are not protected, they will not live long. Their millennia old wisdom tells them that the resources of the ocean are not endless and therefore they have to be dealt with care. The main challenge is how to make the state and corporations listen to this wisdom of the fishing community. But how will they understand, when they do not understand the language or idiom? How will they, who are steeped in commercial interests and utilitarianism, recognise this wisdom when it is encoded in a different paradigm—a paradigm of the sacredness of the source of life upon which the existence of all species on this planet depend upon? But understand they must, for the very survival of the human race depends on it.

# Partnerships between local communities and the state make all the difference



**CAPri**

CGIAR Program on Collective Action and Property Rights (CAPri)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)

# Streets as commons

## What's happening to our streets?

---

Vinay Sreenivasa

Streets and their sidewalks are the main public places of a city; they are its most vital organs. Think of the city and what comes to the mind? Its streets.

—Jane Jacobs, 1961.

Irrespective of how we define the word street and understand it, we all know that the space between two rows of buildings in a city—the space containing the road, the tree, the pani-puri stand, the street-light—is changing. For this chapter, we shall take the street to mean that space defined above. The street is the tarred road and the footpaths together. It contains the trees and the light-poles, car and the cart, sleeping places and walking places, street-side benches and buses. In Indian cities today, streets serve various purposes—transport, market spaces to earn livelihoods, to source goods, to sleep (for the homeless), as socialising spaces in the form of street-side benches, and as urban forestry locations. Streets which are meant to be shared by all are a form of urban commons.

This chapter takes a look to the changes happening in Bengaluru's streets and why it may be happening. It is probably similar to what is happening in the rest of the Indian cities. Rapid urbanisation within the context of liberalisation is changing the traditional relationship between people and the space around them. The fundamental change is that access to streets is becoming easier for an advantaged few, at the expense of the majority. In occupying more space on the streets, the advantaged are reducing the amount of space for the rest.

Here is a quick look at a few significant projects and developments in Bengaluru and the impact it is having on Bengaluru's streets. The majority of sources are drawn from newspaper accounts, interviews, and personal experience. Drawing this into, and placing this within, a more academic approach will be done as follow-up work. This chapter documents the changes wracking the city in recent years.

### **Licensing and Controlling of Assemblies and Processions (Bengaluru City) Order, 2009**

In March 2009, the Commissioner of Police of Bengaluru City, with the approval of the Ministry of Home Affairs, Government of Karnataka (GoK) brought out an order to ‘control and regulate assemblies and processions’. This was issued because ‘it was observed that smooth flow of traffic in Bengaluru City is being affected due to the processions and assemblies of persons that are organised by political, religious and social groups’. This order states that no procession<sup>1</sup> or assembly<sup>2</sup> will be allowed in Bengaluru without obtaining a license under this order. In spite of opposition to this order from political parties<sup>3</sup> and civil society, this order has been brought into force.

The impact of this order has been that even for a marriage procession or any religious procession with more than 25 people, a license from the police is required. For a protest march with more than 25 people or to organise a gathering of more than 250 people, a seven day notice is required. This appears to be a clear attempt not just to impose a certain ‘order’ to the streets but also to stifle dissent. As a result of this order, any social event on streets now needs a license from the law and order machinery.

The local police stations seem to have taken this up with gusto. Although the order says that a seven day notice and license is required for gatherings of more than 250 people (if they are stationary), police stations try to press for a license for even the smaller protests. On more than three occasions in 2009 and 2010, local police stations have tried to prevent us (as members of Hasiru Usiru and other groups) from carrying out protests because we did not inform them seven days in advance. On two of the occasions, making a call to the higher-ups in the police department helped us carry out the protest. On one occasion, an inspector allowed us to protest but not on the footpath (which on that road was very wide) but away from the road and footpath, inside a large bus depot on a side where there are hardly any people. This order is leading to a stifling of dissent within the city.

Streets are not just meant to be a passage for vehicles but also spaces for celebrations, social gatherings and dissent. India has a long tradition



of displays of joy, anger, sorrow, and political expression in the street. The order mentioned above is dangerous for the impact it has on streets and the practice of democracy, and indeed life, in Bangalore. It clearly states that it gives priority to vehicular traffic over all other purposes at all times. Not only is this an attempt to reserve the streets for vehicular traffic and little else, but it also hands over sole control of the commons to the law and order machinery. This reduces access to the streets for a variety of uses and makes the street less of an urban commons.

### **Eviction of street vendors in Shivajinagar**

Since July 2010, the street hawkers of Bengaluru have been the victims of forcible eviction by the Bruhat Bengaluru Mahanagara Palike (BBMP, Greater Bengaluru Metropolitan Council), the police and Muzrai departments who have undertaken an aggressive and continuous exercise to ‘clear’ the streets and pavements of Shivajinagar without giving any prior notice or allocation of any alternate location.

In March 2010 the Urban Development Department (UDD), GoK passed an order to all urban local bodies in the state stating that the Karnataka high court, through its order in WP14607/2008<sup>4</sup> has directed GoK to comply with the judgment reported in AIR 2004 SC 416 of the Maharashtra Ekta Hawkers Union and another vs Maharashtra Municipal Corporation, Greater Mumbai and Others. This order by the UDD, GoK also asks the local bodies to implement the conditions mentioned in the above mentioned order. These conditions included among others the following—

There should not be any hawking

- Within 100 metres of any place of worship, holy shrine, educational institutions and hospitals.
- Within 150 metres from any municipal or other markets or from any railway station.
- On foot-bridges and over-bridges.

Following this order, on 6 July 2010, the BBMP evicted around 350 vendors from their place of business in the area surrounding Shivajinagar bus-stand. The vendors had been conducting business for the last

5—20 years on these streets. Around 120 of them were given an alternate location for their business at a lane close-by in which there is hardly any pedestrian movement. As a result there has hardly been any business. The remaining 230 people have been left with no place to run their business and so have no incomes since July. After the evictions, the vendors met the local police station inspector and visited the local corporation office several times but have not been allowed to resume their business again. When they did try and sit there again, the police chased them away and confiscated their goods.

The vendors along with other progressive organisations and groups have had two protests in October and November 2010 at the BBMP head office demanding that they be allowed to resume business at their original place of business. After two protests, the mayor has finally agreed to meet them. It is still unclear as to whether they will be allowed to go back.

The police and the BBMP have been saying that they evicted the vendors because it was inconveniencing pedestrians. They are not, however, open to looking at mechanisms where both can be accommodated. For instance in Shivajinagar, the footpaths are eight feet wide in some cases, and if three feet is given to vendors and the rest for pedestrians, both groups can use the footpaths. The state likes to make it an either—or case, pitting the pedestrians against the hawkers. They try to push through the argument that pedestrians are inconvenienced by hawkers. As the cars increase, roads get bigger and footpaths narrower, pedestrians (most of whom are walking since they cannot afford anything else) and the hawkers are forced to fight for the shrinking footpath.

This particular eviction drive, where the vendors have not been able to come back even after four months, has been only in the Shivajinagar area of Bengaluru (for now). While other areas of Bengaluru have been facing increased threats to vendors, there have been no such long term eviction drives yet. However, it is easy to imagine that other such drives are likely to appear in the future.

### **The case of free parking**

Bengaluru city has free parking for its two-wheelers and four-wheelers. As a result of this policy, private vehicles can park for as long as

they want on the streets, without paying for the space. Not only do they park on the tarred portion, reducing space for other vehicles, they sometimes park on footpaths also, obstructing pedestrians. While parking space on streets may be spoken of as commons too, the fact remains that private vehicle owners, facing no charges for using the commons, tend to over-exploit it and reduce the space available on the streets for the other users. Ironically while free private parking increases more private vehicle usage and abuse of the commons, the state's transport minister is supportive of this policy.<sup>5</sup>

### **Making the poor 'invisible' on city streets—Anti beggary drive and urban homeless census**

The social welfare department of Karnataka recently launched a beggary eradication drive to 'remove' the beggars from the city.<sup>6</sup> People found begging were rounded up and taken away to the beggars' homes.<sup>7</sup> People who have nothing and have taken recourse to begging are being denied that too. In a country where the informal sector has no provisions of pensions or any other social security, many people are forced to beg when they cannot work due to old age, ill-health or other vulnerabilities. However, the state views the people who are begging as a problem and as 'something that needs to be cleared off'. Begging on the streets should ideally be a legitimate right of anyone residing in the city. Acts like the Bombay (Prevention of Beggary) Act<sup>8</sup> which criminalise begging have been around for a long time but people have managed to continue begging. However in recent times, the state seems to be determined to make them 'invisible' and is mobilising the law for that purpose.

As for the urban homeless, they have no option but to use the streets as living spaces in spite of facing sexual harassment, torture from the police or criminals.<sup>9</sup> They mostly do not exist in any government records and barely have any documentation.<sup>10</sup> The state does not recognise their existence. And in some ways, this probably is better than what is happening currently. Based on an order by the Supreme Court in a public interest litigation (PIL) filed by the Peoples Union for Civil liberties (PUCL), GoK recently conducted a census of the urban homeless. After the census, the government declared that Bengaluru had only

3500 people who were homeless.<sup>11</sup> However a recent initiative by a group of NGOs in Bengaluru had identified 17,141 people who were homeless in a survey of just two nights.<sup>12</sup> If these organisations could identify seventeen thousand people in just two nights, one fails to understand how the government identified only 3500 people after such a census! Earlier, the homeless were not there on any records, but at least had the possibility of being counted. Now with a official census saying there are only 3500 people, the state has effectively made the rest of the homeless in the streets permanently invisible.

It is shocking that a city which provides free parking to cars on its streets, constructs flyovers for cars to move well, that does not permit the homeless or people who are begging to use the streets as living spaces.

### **Street trees**

Street trees in Bengaluru face multiple threats. Around ten thousand street trees have made way for road widening, the Bengaluru Metro and other projects in Bengaluru recently. Transport projects like the metro and road widening are essentially a response to the congestion crisis created by cars. However, by cutting trees to implement these projects, the state is depriving the whole population of the benefits of street trees. Recent research<sup>13</sup> has shown that street trees in Bengaluru have a huge role to play in keeping the city cool and reducing pollution, something that clearly benefits all city dwellers. Trees on the streets make it easier for people to walk, to cycle and for vendors to run their business under shade. In spite of the fact that this indiscriminate tree cutting benefits some users at the cost of all others, this seems to be an accepted practice in the city.

The other issue is that the BBMP has decided to plant trees with smaller canopies only<sup>14</sup> and ignore trees with larger canopies. In addition, the BBMP in its recent moves to improve footpaths has concretised every inch without leaving any space around the tree for water percolation, leading to their imminent fall. If this was not enough, BBMP has designed its newer roads in such a way that even if some one wants to plant a tree on the road, there will be no space.

## **Transport and the streets**

Much has already been written about the issue of how transport is dominating the streets. In this section we will have a brief look at the major transport projects in Bangalore and their likely impact.

### **Bengaluru Metro, Monorail and High Speed Rail Link**

Bengaluru is building a metro rail at a cost of more than 25,000 crores (Phase 1 and 2 put together at present cost).<sup>15</sup> A lot has been written earlier about the impact the metro on the local economy,<sup>16</sup> livelihoods<sup>17</sup> and street trees.<sup>18</sup> CASSUM's work<sup>19</sup> also shows how metros lead to gentrification of the corridors along which the metro will run. In spite of these known socio-economic and ecological impacts, Bangalore also plans to have a mono-rail and a high speed rail link to the airport. This decision has been taken by the Industries Department<sup>20</sup> GoK. These three projects will create a total length of 200km of trains systems on the city's streets with most if it being overground.

### **Signal-free corridors**

In BBMP's budget speech of 2009–2010, the commissioner of the BBMP announced a project to make seven corridors in Bengaluru signal-free.<sup>21</sup> He mentioned that this was being done as directed by an extra-constitutional body ABIDe. The total plan involved grade separator projects and road widening across the 12 arterial corridors in the city.<sup>22</sup> For just seven of these corridors 60 underpasses/flyovers will be constructed to provide motorists a 'signal-free' corridor so that they travel faster. Signal-free corridors make life that much more difficult for pedestrians since there is now no signal to cross the road. Not only pedestrians, but cyclists too get impacted as they need to go up and down many underpasses and flyovers.

The resulting high speeds on the roads will drive pedestrians and street vendors away from the road, changing the very nature of the road. While transport is edging out all other uses of our streets, it is critical to note that it is only private motorised transport which is benefiting and not non-motorised transport like cycling and walking.

### **Road widening**

Bengaluru had 1.6 lakh cars in 1998 and 5.1 lakh cars in 2008. The number of people who walk in Bengaluru reduced by half from 2006

to 2008, and the number of cyclists reduced by half too. Traffic congestion in Bengaluru has increased rapidly. From the data it is clear that the increase in private transport, especially cars, is one of the main causes for the congestion. However, between 2005 and 2007, the Bengaluru Mahanagar Palike (BMP)<sup>23</sup> and the BBMP issued notifications for widening 91 roads. These notifications were issued based on an order passed by UDD, GoK. BBMP wants to widen these roads to reduce traffic congestion in Bengaluru city. The plan involved widening of roads by acquiring private property (homes and shops), and cutting thousands of trees. BBMP however did not (and still does not) have enough money to acquire private property, so they instead offered a toll called Transfer of Development Rights (TDR)<sup>24</sup> which property owners can sell to others or use that to build extra floors. However, barely any property owners have accepted this offer.

This coupled with the fact that a campaign against road widening was launched and a PIL<sup>25</sup> was filed against this project by Environment Support Group and others delayed the project. (The campaign itself is elaborated in the section on decision making).

In spite of the fact that such projects would only be adding more capacity, encourages private transport like cars and makes travel more difficult for pedestrians and cyclists, the corporation has not abandoned this project. What is of interest is that while BBMP has not been able to widen roads where private property is involved, it has widened roads where no acquisition of private property was involved. BBMP has widened six of the 91 roads—Mysore Road, Sheshadri Road, Racecourse Road, Palace Road, Hosur Road and Magadi Road. In most of these roads, huge rain trees and other old trees have made way for wider roads. In Hosur road, portions of a cemetery adjoining the road have also been dug up. That portion of the street which was the commons (trees) has been removed to make way for private transport. The situation in Racecourse road best illustrates it. Trees were cut on this road to widen it. Now cars are parked on both sides of the roads. Public assets (trees) made way for private resources (parking). The Assistant Commissioner of Police (Traffic) who is the chief bureaucrat in charge of traffic in the city admitted that widened roads are becoming parking lots.<sup>26</sup>

While one concern is that the road is being widened and trees are being sacrificed to encourage private transport, there are other serious issues with this project. This project seeks to reduce the loss of private property owners who lose out, but does nothing to compensate for the loss of tenants who have shops on the roads or for street vendors who might lose out on space to carry on with their business. There is no talk of compensation for these groups. This project seeks to change a commons in a way that will make life difficult for pedestrians, who will find it tougher to cross and cyclists who will find it difficult to ride. Street vendors will have a treeless road with high traffic and lower pedestrian movement. In addition in case the project is executed as per plan, then a lot of the smaller shops in the older areas of Bangalore will be demolished, hitting the informal economy very hard. One is not saying there should never be a rearranging of the road space. Rather, when there is a rearrangement, it must happen after statutory consultations with the users of the space. This rearrangement must also allow for better transportation by giving priority to walking, cycling and buses.

### **Decision making**

People have had absolutely no formal role in the decision making of all of these projects which impacted the streets. People have had to wrest the decision making power through their actions.

For instance, after the road widening project was announced a spirited campaign led by Environment Support Group (ESG), Alternate Law forum (ALF), CIVIC under the banner Hasiru Usiru ensured that the Chief Secretary, GoK declared that road widening would be done after consulting the public, in particular Hasiru Usiru.<sup>43</sup> The Karnataka high court also passed an order asking ESG and Hasiru Usiru to be consulted on issues of road widening. However when this did not happen, ESG and others went to court again in 2008 '*challenging the legality of the road widening schemes and the fact that the interests of pedestrians, senior citizens, school children, differently abled, and other road users have been ignored*'.<sup>44</sup> This PIL brought out clearly how the road was supposed to be used as a commons and how road widening would ensure that the road would serve only a few.

Decision	Agency which took the decision	Implementing agency	Party in power *State #BBMP	Year in which the decision was taken	People's role in the process
Road widening	GoK-UDD, BBMP, High court of Karnataka	BBMP	*Congress (I) #Congress (I)	2005	<ul style="list-style-type: none"> <li>• Campaigns<sup>1,2</sup> Public Interest Litigation<sup>3</sup> and protests<sup>4 5</sup> stalled road widening in most roads</li> <li>• Court appointed committee<sup>6</sup> of experts to look into issue. Committee allowed for public participation only after court directs it to.</li> <li>• No formal role offered to people from BBMP.</li> </ul> <p>For chronology of campaign from 2007 to 2009 see: <a href="http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/current_09.html">http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/current_09.html</a>)</p>
Metro	High court of Karnataka; GoK, Gol	Bangalore Metro Rail Corporation Limited	*Congress (I)- JD(S) #Congress (I)	2004 - 2006 <sup>7</sup>	<ul style="list-style-type: none"> <li>• Some Resident Welfare Associations<sup>8</sup> and civil society groups supported the Metro</li> <li>• Tenants and some property owners<sup>9 10</sup>, and some civil society groups protested against the Metro on issue of land acquisition, alignment, ecology<sup>11</sup> and the decision making process<sup>12</sup></li> <li>• Court appoints committee to look into grievances of people in one road<sup>13</sup>. People of CMH road petitioned the committee.</li> <li>• No formal role in governance process</li> </ul>
Signal-free corridors	ABIDE, BBMP	BBMP, BDA	*BJP #No elected government	2009 <sup>14</sup>	<ul style="list-style-type: none"> <li>• Property owners against the project</li> <li>• Some organisations protesting against the project</li> <li>• No formal role in government process</li> </ul>
Vendor evictions	Bangalore City Police, BBMP, GoK- UDD, High court of Karnataka	Bangalore City Police	*BJP #BJP	2010 <sup>15</sup>	<ul style="list-style-type: none"> <li>• Vendors and organisations protesting against the evictions</li> <li>• No formal role in govt. Process</li> </ul>
Rules for public processions	Bangalore City Police	Bangalore City Police	*BJP #No elected Government	2009	<ul style="list-style-type: none"> <li>• Civil Society and opposition parties protested the move</li> <li>• No formal role in government process</li> </ul>
Free Parking (this decision was taken by an elected BMP council in 2005 and has not been reversed since)	BBMP— unelected, elected	BBMP	*Congress (I), *BJP *Congress (I), #No elected Government	2005 <sup>16</sup>	<ul style="list-style-type: none"> <li>• Some organisations demand ban on free parking</li> <li>• No formal role in government process</li> </ul>
Anti-Beggary Drive	GoK	GoK—Social Welfare Department	*BJP #BJP	2010	<ul style="list-style-type: none"> <li>• Not much organised protests</li> <li>• No formal role in government process</li> </ul>
Urban Homeless Census	GoK, Supreme Court of India	GoK— Directorate of Municipal Administration	*BJP #BJP	2009–2010	<ul style="list-style-type: none"> <li>• Urban Homeless played no role</li> <li>• Some NGOs worked with the government on the census</li> </ul>
Wall Paintings	BBMP	BBMP	*BJP #No elected Government	2009	<ul style="list-style-type: none"> <li>• BBMP open to suggestions and volunteers, no formal role</li> <li>• No organised move for or against</li> </ul>

Source: Compiled by author



Along with the PIL, there was a vigorous campaign which involved many workshops, protests and community meetings to highlight the issue with road widening. The court appointed a committee of experts to review road widening and other infrastructure projects and take peoples opinion before passing orders which would be binding on authorities. The committee initially did not allow public participation and relented only after the court intervened again. The committee meanwhile functioned in an arbitrary manner and allowed two roads to be widened. The court passed a final order in the case<sup>45</sup> saying BBMP could proceed only if they strictly follow the Karnataka Town and Country Planning Act and Karnataka Tree Preservation Act.

In 2010, the BBMP again started speaking of road widening and began issuing notices for TDR. Resident's Associations<sup>46</sup> and Hasiru Usiru once again started protests.<sup>47</sup> Later a huge protest was organised by the Save Bangalore Committee, where around a 1000 people from more than 60 roads came to protest the move.<sup>48</sup> These protests along with the fact that people refused TDR ensured that roads which had private property at stake were not widened, However BBMP continued to widen roads where public property was at stake or the rare case where TDR was accepted, for instance on Jayamahhal road. In this case, as this chapter is being written, a campaign<sup>49</sup> is going on to save this road. In fact for the first time after the new council was elected, Hasiru Usiru arranged for a public meeting with elected corporators to discuss this issue.<sup>50</sup> It is all these public actions which have saved the roads of the city from the state itself.

From the table, it is also clear that most decisions concerning the streets of the city have taken place outside the city government. Decisions have been taken at a higher level or by agencies at the city level, which are outside of the ambit of the city corporation. If even the city corporation is not involved in these decisions, how do people of the city even indirectly participate in the decision making? Even in the decisions taken by the city corporation, these have not been discussed or put through ward committees, the constitutionally mandated ward level decision making body. In fact for the last four years, Bengaluru has not even had ward level committees.

Informally people may have managed to influence smaller decisions. For instance, it is rumoured that people managed to change the route of the metro in exchange for money. Formal approaches have not helped to change the route of the metro or the decision to have the metro itself. If we are to really work to establish the discourse that streets are urban commons and have it looked at that way, we need to be able to think of a way of altering the formal or informal decision making structures in such a way that decisions impacting streets are taken at a local level, involving people who are impacted by the project. It is clear also that these projects which have negatively impacted access to the streets to a majority have been taken by parties at opposite ends of the political spectrum. When it comes to the impact on streets, irrespective of political affiliation it looks like the decision making impacts the streets and the people negatively.

Another crucial aspect to be noted is that the courts have stepped in on decision making on some of these big projects. It is also important to note that the judgments of the courts have been in line with the argument of the state and their judgments have had a role in restricting access to the streets. In a PIL filed by ESG and others on the metro case, (WP13241/2009)<sup>51</sup> the judgement was delivered more than a year after the PIL was filed and much after the metro destroyed entire parks and roads. While the judgement is path-breaking in terms of mandating public planning in infrastructure development, it must also be noted that even as the judgement recognises mistakes have been made in the way the project is implemented, it does nothing to restore the destroyed streets and parks and chooses not to interfere since the project is at an advanced stage.<sup>52</sup>

### **Reclaiming the streets**

Streets are increasingly serving only as transport corridors and little else. Even in terms of transport, they are serving the advantaged (private vehicles, metro users) more than the others. These changes are making the streets lose their vibrancy and in turn affecting social life in the cities. There is an urgent need to reclaim the streets as vibrant social corridors and make them work equitably for all users. Or in the least, this is how many activists feel. However, the perception of the majority

in the city might be different. There have been a significant number of people who feel that the trees belong to all and that they must be saved. But one sees that more people have come out on protests to save their properties from being acquired than the number of people who come out to save trees. Even with the evictions of the vendors, it is the vendors who lost their rights who have come out strongly in protest. There have not been many voices of protest otherwise. However, at least some do feel the need to reclaim the streets.

One way of reclaiming the streets would be to make sure that streets are indeed regarded as commons and are governed that way. However it is difficult to say if urban areas, especially built areas like streets, should be considered public spaces or commons. As Dr. Solomon Benjamin has said in another chapter in the same issue, we can look at processes of commoning to reclaim our streets. There can however be no one strategy to reclaim our streets. Multiple strategies are required.

The first task would be to deal with the depoliticisation of the city. In a depoliticised environment, talk of equitable and just use of streets does not really cut much ice with the people. Although projects like the metro and road widening lead to a certain gentrification of the city and change the local economy, the way the city works, these changes do not get recognised in a depoliticised environment. Some of the decisions on the streets needed to have been taken through a political process but instead have been at the behest of technocrats and corporate interests. If we did have a politicised city, a political environment and the resulting processes might have ensured that projects like the Bengaluru Metro or the Licensing of Protests and Assemblies Order might not have been pushed through. There needs to be a politicisation process—a mobilisation process which engages minds in the city. Along with the politicisation, we need to be able to deepen the democratic processes in the city. We should be pushing for a greater role for the elected representatives of the city corporations in decision making of the city. Corporators are more easily accessible to people than are MLAs or bureaucrats. In addition, there is a need to push for elected ward committees in each ward. Other than the ward committees, which will be part of the formal governance structure,

informal structures and processes also need to be conceived. For instance, every time a major change to a street is proposed, the socio-economic impact assessment of the changes should be made mandatory. This assessment needs to be done by involving users of the street. This is one way of getting control of the streets back to the street-users.

Another aspect which needs to be further researched is the role of the judiciary and recent jurisprudence affecting city streets. We cannot escape the fact that some of these issues will be taken to court and that decisions taken by courts will impact our streets. The vendor evictions in Bangalore actually were triggered off by a PIL in the Karnataka high court asking for an order of the Maharashtra high court (related to street vendors) to be implemented. Further research also needs to be conducted on the recent jurisprudence related to city streets.

Then there is of course a need to look at the technical solutions to transportation problems for streets to be reclaimed. Unless the dominance of the car is uprooted, we cannot save our streets. There is a need to push for policies which will make the city safer for cyclists and pedestrians, will increase the share of buses and reduce those of cars in the city. There is much written elsewhere on what is to be done on urban transport.

As for street trees, there is a need to evolve a street tree policy from bottom up. We need to speak to the traditional gardening communities in the city,<sup>53</sup> urban ecologists, people who depend on trees (pedestrians, vendors and cyclists) and several others and work on a street tree policy which will look at the trees as an integral part of the street.

How we achieve the above changes also need to be thought through. Looking only at a narrative of justice/injustice or exploitation might not work by itself. We need to focus on cultural narratives, need to bring back memories of streets as social spaces. The narrative also needs to shift from streets as transport corridors to streets as urban commons which support a variety of uses. Employing art is also something we need to do, for art can reach out in ways that other forms of communication cannot.

Going ahead, we first need more research on the changing nature of the streets in India, how this is changing and what impacts it has. We need to use this research and initiate dialogues with various groups in the cities on how they perceive the streets—as commons or otherwise. These dialogues then need to be taken ahead to form a larger campaign to reclaim our streets.

### Acknowledgments

Much of what I have learnt on this issue is due to my involvement with the network Hasiru Usiru in Bangalore . This network has been fighting for the last five years to ensure the urban commons remain so. I want to thank all the members of the network. I would also like to thank other people whose inputs over the last few years have helped me gain the knowledge to put together this brief chapter (in no particular order): Sheshadri Ramaswamy, Clifton D'Rozario, Isaac Arul Selva, Sunil Dutt Yadav, Deepak Srinivasan, Vinay Baidur, Leo Saldhana, Roshni Nuggeshalli, Divya Ravindranath, Jahnavi Pai, Rohan DSouza, Dr.Harini Nagendra, Dr.Sudhira H.S, Dr. Robin King, Dr.Solomon Benjamin

### Endnotes

- <sup>1</sup> Defined in this order as a congregation with a common object consisting of more than 25 people passing in a group on any public road in the city.
- <sup>2</sup> Defined in this order as a congregation of more than 250 people assembling at one place with the intention of conducting a meeting, protest or to hear a public speech.
- <sup>3</sup> [http://www.dnaindia.com/bangalore/report\\_parties-rally-against-govt-order-on-rallies\\_1239517](http://www.dnaindia.com/bangalore/report_parties-rally-against-govt-order-on-rallies_1239517)
- <sup>4</sup> A PIL 14607/2008 was filed by K.Ranganath, S/o Sitaram asking for action against hawkers and vendors, setting up of hawking zones through a committee. This PIL was based on the decision of the apex court in AIR 2004 SC 416 of the Maharashtra Ekta Hawkers Union and another vs Maharashtra Municipal Corporation, greater Mumbai and Others.
- <sup>5</sup> [http://www.dnaindia.com/bangalore/report\\_no-more-paid-parking-in-bangalore-city\\_1325502](http://www.dnaindia.com/bangalore/report_no-more-paid-parking-in-bangalore-city_1325502)
- <sup>6</sup> <http://expressbuzz.com/Cities/Bangalore/anti-begging-drive-in-bangalore-mysore/150784.html>
- <sup>7</sup> [http://www.dnaindia.com/bangalore/interview\\_you-ll-see-no-more-begging-bowls-in-bangalore\\_1382880](http://www.dnaindia.com/bangalore/interview_you-ll-see-no-more-begging-bowls-in-bangalore_1382880)
- <sup>8</sup> <http://www.delhi.gov.in/wps/wcm/connect/f2214e0043383b63b2d1f3cf71a315bd/THE+BOMBAY+PREVENTION+OF.pdf?MOD=AJPERES&CACHEID=f2214e0043383b63b2d1f3cf71a315bd>
- <sup>9</sup> [http://www.dnaindia.com/bangalore/report\\_for-bangalore-s-thousands-of-homeless-life-s-a-nightmare-every-waking-hour\\_1463171](http://www.dnaindia.com/bangalore/report_for-bangalore-s-thousands-of-homeless-life-s-a-nightmare-every-waking-hour_1463171)

- <sup>10</sup> <http://www.indiatogether.org/2008/jun/pov-homeless.htm>
- <sup>11</sup> <http://www.hindu.com/2010/11/28/stories/2010112853660400.htm>
- <sup>12</sup> <http://www.thehindu.com/news/cities/Bangalore/article245170.ece>
- <sup>13</sup> <http://www.deccanherald.com/content/49877/trees-help-temperature-reduction-pollutants.html>
- <sup>14</sup> <http://www.deccanherald.com/content/34488/vanishing-canopies-affect-air-quality.html>
- <sup>15</sup> [http://www.dnaindia.com/bangalore/report\\_cabinet-approves-metro-phase-ii-at-rs14727-crore\\_1464584](http://www.dnaindia.com/bangalore/report_cabinet-approves-metro-phase-ii-at-rs14727-crore_1464584)
- <sup>16</sup> <http://bangalore.citizenmatters.in/articles/view/237-metro-mkk-bmrc>
- <sup>17</sup> <http://yaarametro.wordpress.com/resources/>
- <sup>18</sup> [http://www.dnaindia.com/bangalore/report\\_road-will-grow-wider-only-by-gobbling-up-40000-trees-in-bangalore\\_1393332](http://www.dnaindia.com/bangalore/report_road-will-grow-wider-only-by-gobbling-up-40000-trees-in-bangalore_1393332)
- <sup>19</sup> <http://casumm.files.wordpress.com/2008/02/metro-booklet-dec-2007-16-2-08.pdf>
- <sup>20</sup> <http://www.idd.kar.nic.in/hsrl.html>
- <sup>21</sup> ABIDE has directed BBMP to develop these roads as signal free corridors over the next 24 months. pg 14, 2009-10 Budget speech by the BBMP Commissioner
- <sup>22</sup> <http://bangalore.citizenmatters.in/articles/view/1574-grade-separator-projects-bengaluru>
- <sup>23</sup> The City Corporation of Bangalore was called Bangalore Mahanagara Palike (BMP) till 2006. In 2006, the area under the corporation was increased and it was renamed as Bruhat Bangalore Mahanagara Palike (BBMP)
- <sup>24</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/FAQ\\_road\\_widening.html](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/FAQ_road_widening.html)
- <sup>25</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL\\_ESG\\_RoadWidening\\_Indexed\\_Final\\_HC\\_2008.pdf](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL_ESG_RoadWidening_Indexed_Final_HC_2008.pdf)
- <sup>26</sup> See page section III.1 , pg 5 in <http://www.abidebengaluru.in/proceedings/5-Sept-2009.pdf>
- <sup>27</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/other.docs/NammaRaste\\_newsletter.html](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/other.docs/NammaRaste_newsletter.html)
- <sup>28</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/Namma\\_Raste\\_Workshop\\_report\\_190708.pdf](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/Namma_Raste_Workshop_report_190708.pdf)
- <sup>29</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL\\_ESG\\_RoadWidening\\_Indexed\\_Final\\_HC\\_2008.pdf](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL_ESG_RoadWidening_Indexed_Final_HC_2008.pdf)
- <sup>30</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/NammaRaste\\_Walk\\_09Nov2008.html](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/NammaRaste_Walk_09Nov2008.html)
- <sup>31</sup> [http://www.dnaindia.com/bangalore/report\\_bangalore-comes-out-to-save-bangalore\\_1421818](http://www.dnaindia.com/bangalore/report_bangalore-comes-out-to-save-bangalore_1421818)
- <sup>32</sup> <http://bangalore.citizenmatters.in/articles/print/271-green-committee>
- <sup>33</sup> <http://www.indianexpress.com/news/bangalore-metro-gets-centre-green-signal/33290>
- <sup>34</sup> <http://bangalore.citizenmatters.in/articles/print/1101-bengaluru-metro-alignment-nanda-road>
- <sup>35</sup> <http://bangalorebuzz.blogspot.com/2006/03/kuvempu-road-traders-too-shun-metro.html>

- <sup>36</sup> <http://bangalore.citizenmatters.in/articles/view/81-infrastructure-roads-and-transport-cmh-road-no-to-metro-clash-of-local-economies>
- <sup>37</sup> <http://www.hindu.com/2009/04/18/stories/2009041860670400.htm>
- <sup>38</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/Metro\\_Rebuttal\\_PressRelease\\_220409.pdf](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/Metro_Rebuttal_PressRelease_220409.pdf)
- <sup>39</sup> <http://bangalorebuzz.blogspot.com/2006/08/its-official-metro-is-on.html>
- <sup>40</sup> ABIDE has directed BBMP to develop these roads as signal free corridors over the next 24 months. pg 14, 2009–10 Budget speech by the BBMP Commissioner
- <sup>41</sup> <http://www.hindu.com/2010/10/22/stories/2010102261780700.htm>
- <sup>42</sup> <http://www.hindu.com/2006/04/24/stories/2006042421540300.htm>
- <sup>43</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/other.docs/Report\\_public\\_cons.html](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/other.docs/Report_public_cons.html)
- <sup>44</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/Namma\\_Raste\\_Workshop\\_report\\_190708.html](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/action/Namma_Raste_Workshop_report_190708.html)
- <sup>45</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/PressRel\\_ESG\\_HC\\_KTCPapliestoRoadWidening\\_020409.pdf](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/press/PressRel_ESG_HC_KTCPapliestoRoadWidening_020409.pdf)
- <sup>46</sup> <http://bangalore.citizenmatters.in/articles/view/1739-tannery-road-widening-protests>
- <sup>47</sup> [http://www.dnaindia.com/bangalore/report\\_bangalore-s-sankey-road-astir-over-move-to-massacre-trees\\_1381252](http://www.dnaindia.com/bangalore/report_bangalore-s-sankey-road-astir-over-move-to-massacre-trees_1381252)
- <sup>48</sup> [http://in.mc363.mail.yahoo.com/mc/welcome?.gx=1&.tm=1292781743&.and=bgdgihk02rjhj#\\_pg=showFolder;\\_ylc=X3oDMTBucWZvMXBkBF9TAzM5ODMyMTA0M\\_QRhYwNjaGtNYWls&.rand=1930696981&order=down&pSize=25&tt=7965&clean&hash=01ac9a63a9b4dde2284ec7a9788520fb&.jsrand=6195953](http://in.mc363.mail.yahoo.com/mc/welcome?.gx=1&.tm=1292781743&.and=bgdgihk02rjhj#_pg=showFolder;_ylc=X3oDMTBucWZvMXBkBF9TAzM5ODMyMTA0M_QRhYwNjaGtNYWls&.rand=1930696981&order=down&pSize=25&tt=7965&clean&hash=01ac9a63a9b4dde2284ec7a9788520fb&.jsrand=6195953)
- <sup>49</sup> [http://bangalore.citizenmatters.in/blogs/show\\_entry/2588-demanding-smarter-roads](http://bangalore.citizenmatters.in/blogs/show_entry/2588-demanding-smarter-roads)
- <sup>50</sup> [http://www.dnaindia.com/bangalore/report\\_bangalore-corporation-answers-tough-questions-from-citizens\\_1469762](http://www.dnaindia.com/bangalore/report_bangalore-corporation-answers-tough-questions-from-citizens_1469762)
- <sup>51</sup> [http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL\\_Lalbagh\\_Metro\\_May09.doc](http://www.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/PIL_Lalbagh_Metro_May09.doc)
- <sup>52</sup> [http://www.thesouthasian.org/archives/2010/public\\_consultation\\_mandatory.html](http://www.thesouthasian.org/archives/2010/public_consultation_mandatory.html)
- <sup>53</sup> Suggested by members of the network Hasiru Usiru.

# Property in urban commons

## Contested spaces and embedded claims

---

Bhuvanewari Raman

**U**rban commons are defined as a form of new common and encompass a wide variety of territorial and social common pool resources including, streets, public roads, recreation areas (parks and lakes), networked infrastructure, markets and communities (Bravo & de Moor, 2008; Frischmann, 2005, 2007; Hess 2008). These spaces are coming under increased contestations in contemporary cities.

Conflict over the use of streets and open spaces is a common phenomenon that we witness in Indian cities as elsewhere.<sup>1</sup> Diverse groups of poor, among others, rely upon territorial commons including streets and a variety of other public places for both productive and reproductive purposes. Although contestations over urban space have been covered extensively in the literature on street commerce, collective actions in cities, it is rarely viewed from the perspective of commons. Similarly, while there is a vast body of knowledge about the dynamics of commons in rural settings, very little is known about the politics surrounding the claims on urban commons (Blomley 2008). This chapter seeks to contribute towards this growing literature through a focus on the contestations that emerge in Indian cities to claim streets and open spaces and the practices surround the control of these spaces in everyday life.

Diverse range of themes is covered in the emerging literature on urban commons. Some of these themes are:

- Enclosure of public spaces and infrastructure (Ahlers 2010; Bollier 2003; Lee and Webster 2006; Low 2000).
- Management of networked infrastructure (Anand 2000; Ruet 2002; Linn 2007; McShane 2010).
- Commoning practices particularly the contestations between the state and the community (Assadourian 2003; Blomley 2008; Lee 1998; Rogers 1995; Rosin 1998) and the dynamics of commons particularly



the use of streets, parks and parking spaces (Anjaria 2006; Epstein 2002; Kettles 2004).

- Local security (Jenny et.al 2007 quoted in Hess 2008).

These have enriched our understanding of trends towards enclosing common spaces and the management of infrastructure commons. With the exception of a few studies, many are based on contexts outside India. Moreover, the dynamics of the commons has predominantly been analysed using economic lens or institutionalism and rational choice theory (Blomley 2010). In contrast, this chapter focuses on the political dynamics underpinning the making of commons. It draws on the theoretical approaches of ‘practice–force field’ (Nuitjen 2003), with a focus on everyday practices around the use, and control, of territorial commons within a wider socio–political fabric (Nuitjen and Lorenzo 2006). The dynamics described suggests a need to review some of the prevailing assumptions about community and property relations in commons.

Commons is viewed by some scholars as an alternative paradigm to that of property (see Bandhopadhyay in this volume). In this view, the paradigm of commons is not the same as that of public, private or communal property. It implies an association between commons and open access to resources. This chapter does not reject the concept of property but suggests that controversies surrounding the conception of commons using the lens of property are linked to many complex and contradictory views of property (see Brenda von Beckmann et.al 2006; Mukhija 2005).

As Bromley (1992) points out the terms commons, property and property regimes varies in the literature and are very often collapsed into one category. Hence, it is useful to clarify the definitions. Commons are understood as resources shared by many users. Property is understood as social relations which define the ‘bundle of rights and obligations’ associating the property object (territory / land), relating to the claims of property holders (see also, Bromley, 1992, Blomley 2008, Benda Beckmann 2007). Property is associated with an ‘object’ or with a specific type of regime in the literature (Blomley 2008; Bromley 1992). As Bromley (1992) argues, ‘property is not an object’ nor is it a specific type of

regime. Resources may be controlled by the private, collective or the state. It is critical to understand that the claims of competing agents is on the property in commons i.e., bundle of rights and obligations to use streets or other types of public spaces and not the object of property (streets or parks). Thus, property in commons refers to a bundle of rights—collective or individual—relating to its shared interest and use. Property regimes ensure the compliance of the bundle of rights and obligations in the use of a variety of resources (Bromley 1992).

Claims on urban commons are contested as collectives seeking to establish their claims on streets and open spaces have diverse interests relating to the use and image of such territories.

Defining the boundaries of a community is intrinsic to the struggles for controlling commons. Community is not a homogenous entity with similar interests and consequently, claims to property in general and in territorial commons in particular, are reliant upon political process (Blomley 2008). This process is underpinned by the competition and contestations to shape property—specifically, ideas about the use of space, rights and obligations, social relations, social practices and regimes (Franz and Keebet Benda-Beckmann 2007). In situations where there is an intense competition to control resources, the dynamics turn over narrowing the definition of belonging (Peters 2006). Further, interests of groups seeking to control commons are diverse and those of members within a group may also change in time, which influences the fluidity of this politics. The boundaries of communities may shift due to shifting political alliances, changes in interest, and a shift in the wider political and economic fabric.

The politics at a particular time and space may open up opportunities to claim property in commons for some groups, while at the same time destabilising the claims of other groups. This dynamics is influenced by the wider political-economy and is characterised by flux and change. Here property is not absent but different types of opportunities and closures are generated for competing groups, depending on the politics at a particular time and space. The distinction between ‘property in commons’ from its regimes or compliance mechanisms (Bromley 1992)

is crucial in this context. Hence, it is suggested that urban territorial commons are conceptualised as ‘force fields’, which is defined as “a field of power and struggles between different social actors with respect to dominance, contention and resistance as well as certain regulations and forms of ordering. These forms of ordering refer to ‘many rules of game’ experienced in everyday life but which are not formalised. Here the patterning of rules or organising practices are not necessarily a result of normative agreement but of the forces of play within the field” (Nutijen and Lorenzo 2006:219–220).

Claims on property in common territories can be legitimated in different ways, either socially or legally. For many groups, particularly poorer groups such as street traders and transport carriers who compete with relatively powerful residents and/or economic agents, social relations in everyday life is important in staking their claims. Their practices are based on a complex set of regulations and obligations embedded in a wider socio–political fabric. Another prevalent view is that commons are spaces that are (or to be) outside the influence of state/non–state and non–proprietary in nature. In contrast, studies on urban infrastructure commons (Anand 2000; McShane 2010) show the influence of state and non–state in the production and management of infrastructure commons. The political processes surrounding the claims to property in commons illustrates the complex alliances between different parts of the state and society.

A force field approach with its focus on ‘practices’ surrounding the use and claims on resources allow us to capture this dynamics. Conceptualising property in commons via a force field approach is also useful to conceptualise property relations in commons. Bromley (1992) differentiates between four types of property regimes—namely state, private, common, and open access. Streets and public spaces in cities are not open access territories as a group controlling a space seek to exclude others from its use. Controlling groups build enclosures to protect their claims. The bundle of rights and obligations of competing groups as well as those within each group are clearly defined, though these may not be easily visible. Rights of members to use this space

are closely related to obligations towards the groups in terms of solidarity in everyday life. Neither can they be accurately described as common property regimes. A closer look at the dynamics shows that property relations in commons are much more characterised by flux and change. Community boundaries are shifting and the bundles of rights and obligations are continuously renegotiated between groups and within a group. A practice–force field approach (Nuitjen 2003) allows us to conceptualise this fluid and complex dynamics and allows us to assess the relative power and influence of different kinds of socio–political networks, their influence on the law and the state.

This chapter is organised in six sections. The first explores the dynamics of contestations over common territories in Indian cities drawing on the force–field approach. It engages critically with the notions of community and their interest in controlling the commons. Focussing on the ways in which different groups attempt to control urban streets, the following section lays out competing logics, perceptions about rightful claims and interests at work. The section ‘discursive everyday practices’ elaborates on the process by which communities establish their claims on commons. It illustrates embeddedness of claims of many, particularly poorer groups, in everyday life and their underpinning property relations. Drawing on the experience of small traders, this section shows the fluid politics of claiming property in streets and public spaces. This politics is characterised by a diversity of strategies, flexible alliances between competing agents with various scales of state. Further it illustrates societal embeddedness of claims and the ways in which agents’ embeddedness in different locales affect the claims of different groups. Focussing on property in territories is a useful way to understand the inter–related influence of ideas, practices, social relations and law in practice on the dynamics of urban commons. The property regimes in urban territorial commons are described in the next section.

The final section ‘the political praxis of commons’ concludes with a discussion on the political opportunities opened by the commons concept to strengthen the claims on cities, of relatively less powerful economic and social groups.

## **The force field of commons: Communities, conflicting interests and logics**

This section describes the contestations that emerge in cities to claim territorial commons, specifically the streets and open spaces. It illustrates that commons is a field where differing interests of social actors and groups, their associated logics, and power and resistance are at play. These struggles are about defining or, more accurately, limiting the boundaries of communities. Their outcomes are influenced by the ‘forces of play within the field’ (Nutijen and Lorenzo 2006:220).

Blomley’s (2008) article on ‘enclosure, common rights and property of the poor’ maps the dynamics of contestations surrounding urban commons, between a private developer, state and community. The private property rights of the developer worked to the disadvantage of the poor. However, in subverting the workings of private property, affected groups invoked community claims on property in land. The counter posing of property claims that are collective in nature is a key weapon for affected groups to frame their demand in this conflict. The interest is ‘collective one’ and so is the claim of the ‘collective’ (community) to the contested resource. Here, collective interest and community are counter posed against private property interests. The community appears to be a homogenous space in this description.

### **Whose commons and which community?**

Another phenomenon increasingly witnessed in urban areas is the contestation between collectives and groups to establish their claims on property in commons. A specific feature of urban areas is characterised by diversity. What is assumed as ‘local’ or ‘community’, is often a space where divergent and at times contradictory interests may coexist or collide. Box 1 below summarises an ongoing conflict in my residential neighbourhood. The setting of this conflict is an old neighbourhood named T Nagar in South Chennai, characterised by mixed land use. The conflict over the use of streets in this setting revolves around the conflicting interest between residents, traders and transport users.

#### **Box 1: Reclaiming the street**

Theyagaraja Nagar in South Chennai, is a locality with a mixed land use, characterised by dense commercial activity interlaced with residences.

Currently, one of the major commercial nodes in the city, and its history goes back to the early 1920s. Residential layouts characterised by individual bungalows dominated the landscape until the late 1980s. The plots then were owned predominantly by dominant caste/class professionals. Many of these plots are converted into multi-storeyed apartments. More recently, properties were taken over for business purposes. The expansion of commerce, together with densification of residential property, has contributed to a dense congregation in many streets of this neighbourhood. While initially the business was owned by members of the Muslim community, traders from a Hindu sub-caste currently dominate trade in this area.

The dense congregation in this locality together with commerce makes this setting an ideal location for poorer groups both to find employment and/or to consume services. Street traders and transport carriers—autorickshaw drivers—jostle with clientele of various commercial establishments and residents to occupy every inch of space in this locality. Transport carriers occupy the entrance to streets and share their space along with customers of various business premises. With the increase in residential population together with the expansion of trade activities of property owners—residents or business—spilled their activities onto the street. They compete with transport carriers and visiting customers to park their vehicles.

On 26 September 2010, some residents living on M street took to the streets. The incident was reported in a major English daily in the city. To quote a newspaper, 'The group blocked the road and sat down waving placards reading, "Don't convert our street into a urinal", "Re-lay proper roads", "Don't dump garbage on our street" and "Remove unauthorised vehicles from the street"' (Deccan Chronicle, 27 September 2010). After protesting for an hour, the group met with the assistant commissioner of police (ACP). Since then they have been meeting the deputy commissioner of police regularly. Residents mobilised an old association.

Following the meetings, there was an eviction drive which targeted the autorickshaw stands on either entrance to the streets. The removal of the right to park in these spaces was signified by announcements on the wall. Traffic flow through the street was also curtailed. Autorickshaw drivers affected by the moves appealed to the local political leader. They also aligned with the traffic police to monitor the movement of vehicles through the street. Differentiation between 'insiders'—stand auto drivers—and 'outsiders' appeared overnight.

During the third meeting held on 8 November 2010, the ACP has promised again to remove 'unauthorised' parking spaces and to discipline 'unauthorised' autorickshaw drivers at one end of the street. On the other hand, the traffic cop who attended the meeting pointed out that residents also park on both sides of the road and implied that a part of the parking problem stems from their actions. The conflict is far from over...

Contests over commons operate at different levels in the street. At one level, is the conflict described above, which is perhaps a common phenomenon that is visible in busy neighbourhoods in many cities. Interests of different collectives congregating within urban streets, let alone neighbourhoods, differ. It manifests as conflicts over the use of streets for productive use, or as spaces of circulation as well as the density of congregation. There are contrasting ideas on the aesthetics of immediate environment. Their images of place making and their interests in controlling commons may thus vary.

Residents perceived street spaces as their 'lost' commons that needs to be reclaimed from 'illegal' encroachers. They argued that their movements are hindered by 'outsiders'—the customers of retail business and transport carriers—who have appropriated 'their' streets. Their rationale is that by virtue of their claims on private property in the street, they are the 'rightful' claimant to spaces in front of their properties, i.e., streets. The same logic of property ownership was extended by business owners, for whom parking for their customers is a duty of the state. Thus, their movements—both human and vehicular—are to be prioritised. The transport carriers argued that their claims to space are based on occupancy and everyday use for over three decades, and that they depend on this space for their livelihoods.

Perhaps, a more subtle, invisible dynamic was at work which catalysed mobilisation of a group of residents in the street. This relates to perceptions about takeover of their 'locality' by other communities whom they feared and described as 'predators'. Everyday conversations with residents, most of whom are Hindus revolved around the quiet construction of a mosque and individual investment in properties by members of the Muslim community. The 'unauthorised' parking refers to the parking space in front of the mosque and clientele's vehicles parked in the street. According to members of the Muslim community, they were the 'original residents' and 'business agents' in the neighbourhood and that they are reclaiming their lost space. The group's description of the occupancy of streets by autorickshaw drivers is not so much about parking but about their 'undisciplined' behaviour towards the residents. This got translated into authorised and unauthorised parking. Of the two stands in the street, one was targeted.

In a city laced with anti-Brahmin caste ideology and dominance of perceived anti-Brahmin political parties, middle and upper class residents perceived themselves as victims of an apathetic bureaucracy, who pay no attention to their plight. Although social 'identity' of groups and perceptions about their situation in wider politics influenced the politics in the neighbourhood, these issues are often pushed to the subterranean. Residents from dominant castes frame their claims to commons under the rubric of the 'rule of law'. Their struggles to claim commons are thus linked to claiming their lost territory, disciplining the unruly actors.

While the traders, street traders and autorickshaw drivers seek density and diversity of congregation for their trade, residents' interests are to erase the density of activities on the street for a variety of movements. To many autorickshaw drivers, the actions of the resident association are driven by caste and class bias and view it is an attack on their livelihoods. Autorickshaw drivers mentioned in a conversation with the author that they belonged to the street, and identified themselves as 'stand autos', meaning they 'belonged' to the autorickshaw stands at both ends of the street. They too have a claim on the street but not the outside autos, who were the trouble makers. Autorickshaw drivers at both end of the street identify themselves as two groups. One of the groups actively assisted the traffic police in monitoring the 'outside' vehicles. The differing interests and competition sets in process additional enclosures between groups and consequently there is a struggle to be included as insiders. Both groups' alliances with residents differ. One group maintains relations with some residents who are their clientele. However, both groups rely on their loyalty to political parties and channel their demands relating to the claims on streets via the political parties. It also spilled onto the struggle to be identified as members of the community. Similarly, other forms of enclosures have been erected by residents. Landscaping of public pathways and open space immediately in front of their plots is a common tactic adopted by residents. Contestations over parks have played out when residents of a locality seek to create enclosures restricting the groups that can use and their terms of use.



To what extent do the dynamics of urban commons fit the template provided for commons in the literature? Who constitutes the community in the case described above? Commons are described as resources held by a community of inter-dependent users who exclude outsiders and regulate internal use by community members (Blomley, 2008; Ostrom, 1990). Blomley argues (2008:319) ‘the commons depends upon and are produced in relation to a constitutive outside... then it is also imperative that we consider the dynamics of enclosures’. Competing social actors described in this section too cooperated with one another to exclude others from the use of resources. The communities described above are not unified group with similar interest in contesting the forces of privatisation or interested in a harmonious management of commons unlike in many studies on commons (see Blomley 2008; Lee 2006). The struggles over urban territorial commons are not only about confronting the forces of privatisation but more related to intra-community conflicts. Threats to groups’ claims to commons can emerge from other groups congregating in a territory. This stems from the specificity of urban commons where agents with diverse and often contradictory interests congregate in a territory.

Thus, urban territorial commons are spaces where different groups with diverse interests compete to establish their claims to use, or to control the use, of commons. Not only do interests between groups vary but also among members of a group. For example, street traders while sharing a common interest in controlling public spaces for their activity may have different visions of how these settings are to be shaped depending on the type, scale and social identity (Raman 2010). It affects the manner in which community boundaries are negotiated. The definition of community is fluid in the contestations described in box 1. Consequently, urban territorial commons can be described as ‘force fields’ of power and struggles between different social actors and its outcome is shaped by the politics in a particular place and time.

### **Embedded claims and the politics of claiming urban commons**

The making of commons in many of our cities is reliant upon an intense political process and claims on it are staked on moral, legal, and political basis. This section illustrates the discursive aspect of this politics,

drawing on everyday practices among street traders to establish claims to streets and open spaces in an Indian city.

It shows that communities have to continuously negotiate their claims to urban territorial commons (Raman 2010).

### **Discursive everyday practices surrounding claims**

The following example illustrates the experience of street traders in establishing their claims on property in land in a peripheral locality in Bangalore. Traders here occupy a specific type of land allotted for 'markets' or locally known as 'santhes'. 'Santhes' can be described as a form of communal property, which was allotted for village markets. The practices of allocating village commons for santhes were traced to pre-colonial times, and which was continued by post colonial governments. With the annexation of these spaces into urban areas together with the political-economy of real estate markets in contemporary times, different layers of conflicts have emerged over claims to santhe spaces. At one level, there is an ongoing conflict between farmers, various groups of traders, non-state agents and the state relating to the allocation of specific location and area to different groups. Unlike traders on other types of public land, the local state and residents perceive the legitimate use of santhes for trade but the conflict is over the definition of 'rightful claimants'. At another level, there is a demand to evict traders occupying santhe land in order to reclaim land for other 'profitable' uses including the sale of land or allocation to private spaces.

Figure 1 traces the evolution and development of trade in a santhe in the peripheral locality in Bengaluru metropolis in India. Although santhes existed prior to 1971, we start the narrative from 1971, when the locality started to get urbanised. What started as a small market organised on one day of a week, predominantly by farmers, developed as one of the main distribution nodes in the city. At present, trading is organised in three cycles and in different scales.

When the market started to develop, members of traders' families from the surrounding village occupied spaces in the santhe. Even today, each of these groups defines their identity according to the place of

residence. They travel to santhes as a group and socialise predominantly with their group at the santhe location. Many of these traders initially traded during the early mornings for a limited time until the 1980s. In the early 1980s (column A), a local political organisation organised poorer households from a socially and economically disadvantaged community, i.e., the Dalits to occupy vacant land adjoining the santhe. The santhe was located in vacant land, owned by the state. Unlike markets on streets in other parts of Bengaluru, large tracts of land are allotted for santhes. There is an ambiguity over the boundaries of santhes.

Availability of space and perception of land as public or government land were seized by the Dalit organisation to capture the place for its constituency. Various other groups too made use of the opportunity that opens when any particular group occupy a space. Market labourers who used to work for traders in the early morning erected rudimentary structures for their residence and also captured land for their friends and relatives. The local state evicted both traders and squatters in 1983 but both groups reoccupied the space with the help of the same political organisation, albeit on a reduced area. Subsequently, land was acquired for the construction of a district court and the offices of the district administration. This resulted in displacement of a group of traders and reorganisation of claims between traders within the santhe. Following this event, the occupiers consolidated their structures. Those with plots along the main thoroughfare constructed temporary sheds for their own business or for renting it out as petty shops. Market labourers occupied the vacant land adjoining the petty shop and traded everyday for a limited time in the early mornings and in the late evenings.

Between 1985 and 1995, as can be seen in the above figure, the number of traders in the two cycles increased rapidly and second cycle traders consolidated their business. Traders were evicted in 1991 along with squatter dwellers and were resettled in an outlying village, 12 kms away from the santhe location. However, many market labourer-traders returned and occupied the place vacated by squatters and supported their networks to enter trade in the agglomeration. Thus, by 1993, the number of traders trading during the second cycle increased from

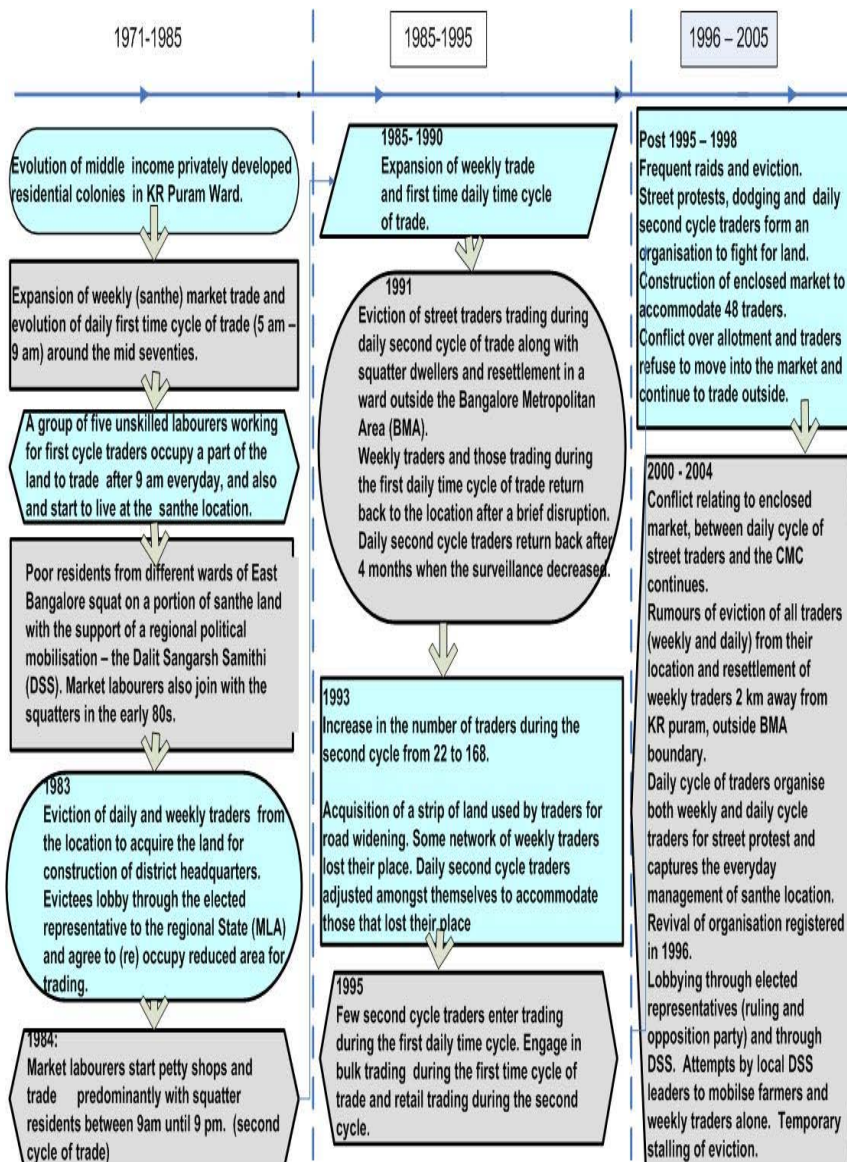


Figure 1<sup>2</sup> Trajectory of Claiming Common Land for Trade

22 to 165 and more than 500<sup>3</sup> in the first cycle. Some second cycle traders expanded their business through entering different cycles.

Post 1995 (Column C), increase in the number of traders and the concomitant competition for space together with the high real estate value of the land generated several conflicts among street traders and between street traders and the City Municipal Corporation (CMC). Rumours of eviction of both weekly and daily traders started to circulate since early 2001. While the CMC's commissioner was willing to find an alternative location for weekly traders, he argued that the daily traders' demand for a place is unreasonable as they refuse to move into an enclosed market constructed for them on the land. Daily traders on the other hand contend that they moved out of the market to occupy a smaller area since not all of them can be accommodated, the move inside increased their cost of trade and that the design was faulty. Reduction in the area led to conflicts between vegetable traders and fruit traders. Pressure on daily traders to move inside the complex increased and weekly traders are still negotiating for relocation within 5 kms along a public thoroughfare. In 2004, a group of youth traders involved in both trading cycles revived an old organisation, mobilised farmers and traders across different time-cycles, tapping the grievances relating to location and the daily fee levied to trade on the land and organised a traffic blockade. The MLA intervened and the land administration was handed over to the youth leaders, who view this as an opportunity to strengthen their ties with the CMC's senior bureaucrats to lobby against the eviction. Although street traders managed to stall the eviction until the end of 2010, the conflict is far from over.

As the above experience of traders show, the pressure of globalisation together with the changes in politics, particularly the demand from a section of middle and upper class citizens, has generated additional pressures on erasing traders' claims on property in the shanties. The outcome of these conflicts is shaped by political alliances—including but not restricted to political parties, non-party political mobilisations and other types of local agents. Social relations between these agents and the traders have a significant influence on the outcome of these conflicts.

The location of santhes and the processes of claiming it cannot be located entirely outside the state. The high real estate value in the peripheries of the city set in process contestations over the 'perceived' state ownership of the santhe land. Private agents claimed ownership to it. Competition to control productive locations within the santhe influenced the flexible alliances between different agents and varied groupings, each drawing on different sources in justifying their claims. However, in countering the threat from outside, competing groups of traders aligned to counter what they perceived as an 'external threat'. Relationship between these groups is shaped by the dialectics of 'cooperative conflicts'. A focus on everyday practices at the santhe is useful to unpack this dynamics.

### **Embedded claims**

Property in common spaces is influenced by diverse range of agents, one of which is the state. A study<sup>4</sup> on street traders in Bangalore found that there is a 'plurality of control' (Razzaz 1994), in relation to the use of places in everyday life in each ward. Fig.2, illustrates the various controllers found in a centre city locality in Bengaluru, and their influence in terms of regulating the everyday use and development of public spaces at different locations.

As can be inferred from the figure, controllers include agents embedded in the everyday state (Fuller and Harris 2001), other users, land owners, and state institutions who intervene in land development at certain moments. Their characteristics and their influence over regulating claims among different users differed across place and time. They derive their power to influence everyday use of space from a variety of sources including historical conventions, law and contemporary politics. In establishing their claims on property in streets and other types of public places, street traders entered into negotiation not only amongst themselves but also with other agents in the city.

In staking their claims on commons, agents such as santhe traders described above, resort to a diverse range of collective strategies including spontaneous protests, negotiations through networks and organised efforts. The process is discursive and occurs in a variety of political

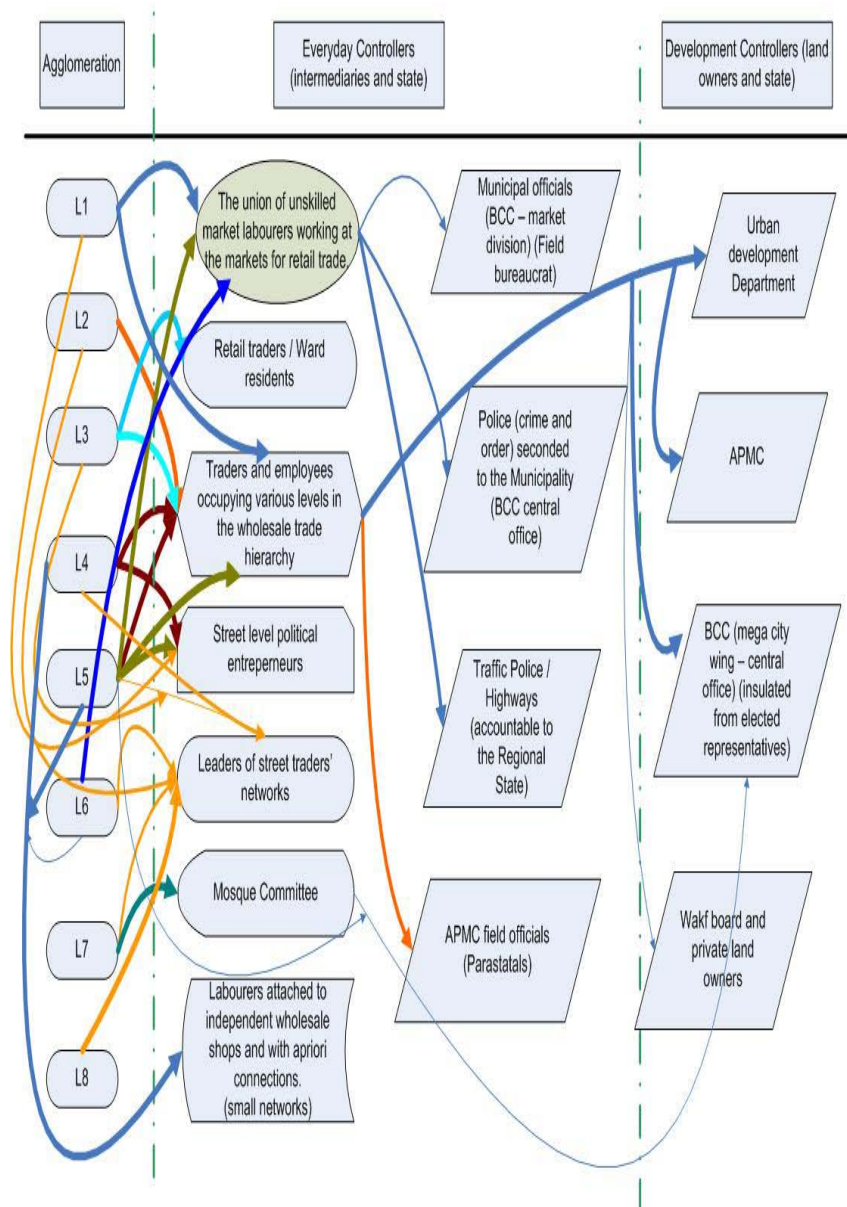


Fig 2<sup>5</sup> Common Property Regime in City Centre Locality

and social spaces (Raman 2010). Here, competing agents engage with different parts and scales of the state (Benjamin 2000; Raman 2008) and also form flexible alliances with one another. In the box described above, residents predominantly engaged with bureaucrats, while their opponents relied on the political connections. Transport carriers affected by the conflict, as other associations elsewhere, maintain close links with party politics.

Such alliances may change during the course of the conflict depending on the interests and changing political dynamics (Raman 2010). For example, in a centre city locality in Chennai in India, retail traders who supported the street traders claim to property in an open space in the locality during a conflict between the latter, a property owner and traffic police, to locate in another business district at one time, shifted their alliance following a murder of a member of their group. While on an earlier occasion traders argued that presence of street traders was important for their business and security, they subsequently invoked security as their rationale for demanding the removal of street traders.<sup>6</sup>

Social networks provided the organisational context for these negotiations. The high level of competition for places, and surveillance by other street traders and users, compelled street traders to function as a group. The relationship between everyday controllers and the state influenced the ability to claim various economic and political spaces. This in turn is mediated by the ways in which groups are embedded in the political and economic processes specific to the locality influences the interdependencies and transactions among these agents. It is a point we return to in the next section on strategies to strengthen rights on urban commons.

Changes in institutional arrangements for urban governance together with new laws have altered the dynamics of this conflict. With globalisation and the increased real estate value, the state sought to evict traders. Where evictions were subverted, they adopted a strategy of acquiring a small area of land in stages.



### **Property relations in streets and public spaces**

The dynamics of territorial commons—in terms of its control and internal rules for its use—share many similarities with force fields with a great diversity of practices. These are not open access territories but places where claims in property are regulated. Scholars of common property regimes note the existence of internal rules and principles that govern access to and control of resources and broader principle of risk pooling (Oakerson 1992; Bromley 1992). Rights and obligations in property are clearly defined in common property regimes, where it departs from open access. Boundaries of the group are clearly defined. There is a socially sanctioned ability to exclude certain users and those in control can force others to go elsewhere. The need to counter competition over space from outside a group compels members of a group not only to cooperate with one another. However, they may restrict the membership to each group but may enter into negotiation with other groups. This dynamics is shaped by the incompleteness of property claims in any resource as the experience of santhe traders show (see also fig 1). Therefore any claim is open to contestation by members within and outside the group. This dialectic may erode the boundaries of enclosures between groups and the tendencies of free riding among members of a group.<sup>7</sup>

Street traders and transport carriers control public spaces as a group, both at the time of establishing their claims in property to that space and subsequently, to protect their claims (Raman 2010). To these occupational groups, operating as a group is critical to claim and control property in public spaces. Consequently, members of a group ‘mutually adjust’ (Razzaz 1994) with one another and also, cement their relationship with other competing users.

As the narrative in box 1 indicates, autorickshaw drivers in cities make a distinction between ‘stand autos’, and ‘strangers’/ ‘outsider’. The distinction made not only refers to perception of claim relating to property in streets, or about control of the physical space but is also related to economic and political opportunities. Conflicts between those identifying as ‘stand’ autorickshaw drivers and ‘outsiders’ is a common phenomenon we witness in everyday life. These conflicts are as much about claiming

parking spaces and capture of clients (or markets). Membership in these group is based on willingness to cooperate with the groups in terms of pricing, sharing clientele, and participating in political or social activities. In turn, members expect the group and the group leader to support them in times of individual or collective crisis.

The threat of losing their property in space motivates autorickshaw drivers to regulate the ways in which they use space in everyday life and to restrict the number of vehicles. We return to the conflict described in box 1. Following the conflict, policing of streets increased. However, different patterns of alliances emerged. Those who identified themselves as 'stand autos' aligned with everyday state agents (Fuller and Harris 2001) and are active in regulating the movement of traffic, particularly autorickshaws, in the streets. Many of them are also connected to the residents because of everyday interaction. Retailers agreed to move back their activities. These crisis are temporal nodes where tacit norms relating to the use of street and claims are renegotiated.

Under conditions of resource scarcity tendencies to erect enclosures differ. While the normal tendency is to erect enclosures, interdependencies between groups may limit such tendencies. Traders belonging to different groups closely guard the property in relation to the extent of physical territories. That does not preclude a group to enter into sharing arrangements with other groups. For example, property in streets is distributed between different groups of traders in commercial nodes including the city centre and periphery, characterised by different types of trade. The centre city locality in Bangalore is influenced by economic cycles. Trade on public places and streets is organised in different cycles. Here groups enter into negotiation with one another. Group identity is defined by their place of origin or the type of trade. Support to groups is based on future expectations at another place, while in times of non-scarcity, there were less hesitancy to erect enclosures, these got more defined as space became scarce and accommodating more traders meant loss of trade.

Within common property regimes, property in territories is not compatible with individual use of one or another segment of a resource (Bromley 1992). Their functioning shares several similarities with state or private

property regimes. Although claims to property in each street are negotiated predominantly in groups, members of a group have evolved specific arrangements to share their spots with their close ties (Raman 2010). Each trader is allowed to occupy a space of 1.5mx1m or 1mx1m at KR Market; 1mx2m in the inner periphery; and 1mx1m to a maximum of 1.5mx 2m in the outer peripheral wards. In return, group members are expected to participate in social functions and in political activities.

There is also a market for the sale and purchase of these spots. Renting, leasing, and sale of street trading spots were found in different contexts (Raman 2010; Brown 2005). While both buyers and sellers have an obligation to inform the group about the transactions, the buyer has to ensure that potential sellers will cooperate with the rest of the group (Raman 2010). The manner in which these transactions are protected are not very different from the processes observed in private property regimes. These transactions are mediated by social networks and there are contractual obligations both on the part of buyers and sellers. Sellers have to ensure the buyer's—a new trader's—stability at the agglomeration. A similar contractual obligation has been observed in the land transaction processes related to private plots for housing (Razzaz 1994; Nkurunziza 2005). Another example is the ways in which people transact in relocation colonies in Chennai. A study of the relocation colonies in Chennai city (Raman forthcoming) showed that although residents register the sale of individual housing units, they rely on community members to protect their transactions. Buyers therefore invest in mobilising influential members of the community.

Thus, unlike in open access, property in streets and other types of public spaces are governed by social regulations. Moreover, property in common territories may comprise of different bundles of rights and obligations (Peter 2006), which are both de-facto and de-jure (Blomley 2008; Feeny et al. 1990; Rose 1998). For example, the land tenure and regulation of common territories occupied by groups categorised under the label 'street traders' differ. In Bangalore, street traders occupied a specific type of land referred to locally as the 'santhes', state owned or regulated spaces and private land (Raman 2010). Moreover, tenure forms in which trading spots are held by members of a group

may also vary. Groups may form organisations or remain as a loose alliance, where social networks mediate the transactions within and between groups (Singer, 1995; Raman 2010). All these aspects influence the different constellations of property in urban commons. Thus, these resources are not only governed by common property regimes but its forms also differ.

### **The political praxis of commons**

It is suggested conceptualising territorial commons as a ‘force–field’ opens up a useful tactical space to mobilise commons on behalf of those groups who are disadvantaged by the ideologies and practices of modernist planning.

The project of making cities attractive for global investments has resulted in a variety of new forms of enclosure. Various categories of land collapsed under the rubric of public land are either being privatised or acquired for implementation of urban renewal programmes, allocation of designated territories for corporate economies through the creation of SEZ and IT corridors and gated communities. Here, planning goals are oriented primarily to regulate the interests of globally connected economies, much to the detriment of small economies and communities that depend upon them.

Modernist planning ideologies not only prioritise private property rights but it also influences in subtle ways ideas about commons and the rightful claimants to spaces like streets and parks in everyday life. Claims of relatively weaker economic groups such as street vendors and transport carriers continue to be interpreted through the lens of illegal/ legal or informal/ formal, which in turn affirms the claims of some groups—often the property owners—on streets and other types of common land. It is in this light commons viewed as force–fields (Nuitjens 2003), provides a useful vocabulary to reframe these contests and to create spaces for strengthening the bargaining power of groups whose claims are eschewed at present.

Nevertheless, care should be taken not to fall into the trap of situating ‘commons’ within the framework of master planning and rehearsing the argument for individualised rights. The language of rights translates

into demand for legal rights, which further gets reduced to identifying individualised rights to property in commons. An example is the current interpretation of hawking zones and the demand for issuing individual licences. Driven by the logic of inclusion, the language of collective rights and claims is missing in this debate. Paradoxically, it is here that the demands of interests seeking to protect common and globally connected economies meet in terms of defining individual rights to a specific spot of land or location.

In enhancing the bargaining power of relatively weaker groups, some scholars associate commons with movements as it provides a basis for connecting disparate interests and conflicts opposed to globalisation (Hardt and Negri 2004) and to counter these ‘new waves of enclosures’ (Harvey 2003). Although, everyday politics and ‘local’ space influences significantly the claims on commons of different groups, it is often neglected. Movements are prioritised as the only way out to reclaim the commons.

As the conflicts elaborated in this section show, commons are turbulent spaces comprising of conflicting yet shifting interests and flexible alliances. The outcome of occupancy politics (Benjamin 2008) is influenced by both conflicts and negotiations that are mediated by everyday relations (Raman 2010). Groups competing for commons may form different alliances with what is posed as ‘corporate economies’. For example, interests of residents in an upper income locality in Bengaluru and environmentalists to reclaim ‘lakes’ may contradict with the interests of poorer groups among others depending on it for their housing or livelihoods. Local space in this context refers to both the political space and place (i.e. neighbourhood) where mediation of these conflicts occurs.

Demands and strategies for protecting poorer groups’ interests in commons need to be situated in a political–economic context, where there is a demand from privatised interests—specifically, large developers and corporate economic—for identifying and marking individual interest to a plot of land. What is also missed out from this perspective of commons as a movement are the strategies of the state in creating these new enclosures. These are underpinned by new institutional

and legal mechanisms that cannot be countered easily through collective action at any particular scale.

The notion of force-fields is based on the prevalence of a great diversity of strategies—some of which are organised but many are practices that are invisible quiet, strategies enacted through ‘networks of everyday relations’ (Singer 1995). These negotiations and subversions relating to claims to use commons or to control its use happens in everyday practices, wherein the role of the everyday state (Fuller and Harris 2001) or Benjamin’s (1996) ‘porous bureaucracy’ and porous legality (Liang 2005) are important.

The point is that any strategy should support the creation of multiple weapons that relatively weaker groups can draw upon to strengthen their claims on commons. It is in this context, what Massey (1998) terms as the political place of local/localities becomes significant. Implicated in this issue are both the ideology and practice of urban planning. Rather than affirming existing practices and the present ideology of planning, commons can serve as an analytical concept to reframe urban contestations.

## **Conclusion**

This chapter explored the political dynamics surrounding the claims on, and control of, property in commons. It illustrated the contested nature of claims on commons and further suggested that a focus on property is useful to unpack the variety of agents holding rights on commons. The politics of urban commons is an aspect about which there is limited documentation (Johnson 2004; Blomley 2008). Exploring the contestations to claims on commons, the first section highlighted the fluid definition of community and argued for conceptualising commoning processes as a political process. Claims on commons are an outcome of contestations between different social and economic groups in cities to shape property relations and regimes. Contestations over city spaces in contemporary times is not only related to the dynamics of controlling resources including urban space either collectively (public/community) or individually but also about defining the boundaries of community.

Commoning practices documented and the available literature throw light on organised actions by a community (Lee and Webster 2006;

Anand 2000). In contrast, this chapter elaborated on the ways in which everyday relations influences the politics of claiming. It illustrated the diversity of strategies used by members of a group to claim their property. It showed the flexible alliances and the fact that the community may shift their interests over time, and described the regimes for governing property in streets and other common spaces. Finally, it was argued that the political potential of the commons vocabulary in the urban context lies in the possibility to of a new framework to re-conceptualise city spaces, beyond the narrow frame of private property.

## References

- Ahlers, R. 2010. Fixing and Nixing: The Politics of Water Privatization. *Review of Radical Political Economics*, 42, 213-230.
- Anand, P. B. 2000. Co-operation and the Urban Environment: An Exploration. *Journal of Development Studies*, 36, 30-58.
- Anjaria, J. S. 2006. Street Hawkers and Public Space in Mumbai. *Economic and Political Weekly* 41, 2140-2146.
- Arvanitakis, J. 2006. Education as Commons: Or Why We Should all Share in the Picnic of Knowledge. Available: <http://www.mercury.org.au/Education>.
- Assadourian, E. 2003. Cultivating the Butterfly Effect: The Growing Value of Gardens. *World Watch*, 16, 28-35.
- Benda-Beckmann, F. V. & Benda-Beckmann, K. V. 2006. How Communal is Communal? Whose Communal is It? In: Benda-Beckmann, F. V., Benda-Beckmann, K. V. & Wiber, M. G. (eds.) *Changing Properties of Property*. New York Berghan Books.
- Benjamin, S. 2008. Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs. *International Journal of Urban and Regional Research (IJURR)* 32(3):719-729.
- Benjamin, S. 2000. Governance, Economic Settings and Poverty in Bangalore, India. *Environment and Urbanization* Vol. 12 No. 1 (April):35-56
- Benjamin, S. 1996. *Neighbourhood as Factory: The influence of land development and civic politics on an industrial cluster in Delhi, India* MIT, Cambridge Massachusetts PhD dissertation.
- Blomley, N. 2007. Making Private Property: Enclosure, Common Right and the Work of Hedges. *Rural History*, 18, 1-21.
- Blomley, N. 2008. Enclosure, Common Right and the Property of the Poor. *Social & Legal Studies* 17, 311-331.

- Bollier, D. 2003. *Silent Theft—The Private Plunder of Our Common Wealth*. London and New York: Routledge.
- Bravo, G. & Moor, T. D. 2008. The Commons in Europe—from past to future *International Journal of the Commons*, 2, 155–161.
- Bromley 1992. The Commons, Common Property and Environmental Policy. *Environmental and Resource Economics* 2, 1-17.
- Brown, A. 2005. Contested Space, Public Space and Sustainable Livelihoods. A paper presented at 'Connecting People and Places: Challenges and Opportunities for Development', Development Studies Association Annual Conference Open University, Milton Keynes.
- Corbridge, S. 2005. *Seeing the state : governance and governmentality in India*, Cambridge ; New York, Cambridge University Press.
- Epstein, R. A. 2002. The Allocation of the Commons: Parking on Public Roads. *Journal of Legal Studies*, 31, S515–S544.
- Feeney, D. F., Berkes, B. J. & Acheson, J. M. 1990. The Tragedy of the Commons: Twenty Two Years Later *Human Ecology*, 18, 1–19.
- Frischmann, B. M. 2005. Infrastructure Commons *Michigan State Law Review*, 89, 121–136.
- Frischmann, B. M. 2007. Infrastructure Commons in Economic Perspective. *First Monday* [Online], 12. Available: [http://firstmonday.org/issues/issue12\\_6/frischmann/index.html](http://firstmonday.org/issues/issue12_6/frischmann/index.html).
- Fuller, C. J. & Hariss, J. 2001. For an anthropology of Indian State. In: Fuller, C. J. & Veronique, B. (eds.) *The Everyday State and Society in Modern India*. London: Hurst & Company.
- Garett, H. 1968. The Tragedy of Commons. *Science*, 162, 1243–1248.
- Hess, C. 2008. Mapping the New Commons Governing Shared Resources: Connecting Local Experiences to Global Challenges. 12th Biennial Conference at the International Association for the Study of Commons. University of Gloucestershire, Cheltenham.
- Jenny, A, Fuentes, F. H. & Mosler, H.J. 2007. Psychological Factors Determining Individual Compliance with Rules for Common Pool Resource Management: The Case of a Cuban Community Sharing a Solar Energy System *Human Ecology*, 35, 239-250.
- Johnson, C. 2004. Uncommon Ground: The “Poverty of History” in Common Property Discourse *Development and Change*, 35, 407–33.
- Kettles, G. W. 2004. Regulating Vending in the Sidewalk Commons. *Temple Law Review*, 77, 1–46.
- Lee, I.-J. 1998. *Collective Action and Institutions in Self-Governing Residential Communities in Seoul, Korea*. Ph.D. Dissertation, University of Southern California.



- Lee, S. & Webster, C. 2006. Enclosure of the Urban Commons *GeoJournal* 66, 27–42.
- Liang, L. 2005. Porous Legalities and Avenues of Participation. In: *Sarai Reader 2005: Bare Acts*. [http://www.sarai.net/publications/readers/05-bare-acts/02\\_lawrence.pdf](http://www.sarai.net/publications/readers/05-bare-acts/02_lawrence.pdf) (accessed 12 November 2010)
- Linn, K. 2007. *Building Commons and Community*, New York, New Village Press.
- Low, S. M. 2000. *On the Plaza: The Politics of Public Space and Culture*, Austin, TX, University of Texas Press.
- Massey, D. 1991. The political place of locality studies *Environment and Planning A*, 23, 267–281.
- Massey, D. 1993. Power Geometry and a Progressive Sense of Place In: Bird, J., Curtis, B., Putnam, T., Robertson, G. & Tickner, L. (eds.) *Mapping the Futures : Local Culture, Global Change*. London: Routledge.
- Mukhija, V. 2005. Collective Action and Property Rights: A Planner's Critical Look at the Dogma of Private Property. *International Journal of Urban and Regional Research* 29, 972-983.
- Nuijten, M. & Lorenzo, D. 2006. Moving Borders and Invisible Boundaries: A force field approach to property relations in the commons of a Mexican Ejido. In: Beckmann, F. V. B., Benda-Beckmann, K. V. & Wiber, M. (eds.) *Changing Properties of Property* New York Berghen Books.
- Nuitjen, M. 2003. *Power Community and the State; the Political Anthropology of Organization in Mexico*, London Pluto Press.
- Oakerson, R. J. 1992. Analyzing the Commons: A Framework In: (ed.), D. W. B. (ed.) *Making the Commons Work: Theory, Practice, and Policy*. San Francisco: San Francisco: Institute for Contemporary Studies.
- Ostrom, E. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action* New York, Cambridge University Press.
- Peters, P. E. 2006. Beyond Embeddedness: a Challenge Raised by a Comparison of Struggles Over Land in African and Post-Socialist Countries. In: Benda-Beckmann, F. V., Benda-Beckmann, K. V. & Wiber, M. G. (eds.) *Changing Properties of Property*. New York: Berghen Books.
- Raman, B. 2010. *Street traders, place and Politics: A case study of Bangalore*. PhD Dissertation, London School of Economics and Political Science.
- Raman, B. (Forthcoming). *Relocation and Livelihoods: The Case of Chennai*.
- Razaaz, O. M. 1994. Contestation and Mutual Adjustment: The Process of Controlling Land in Yajouz, Jordan. *Law & Society Review*, 28, 7–39.
- Rogers, N. B. 1995. *Modern Commons: Place, Nature, and Revolution at the Strathcona Community Gardens* Ph.D. Dissertation, Simon Fraser University.

- Rose, C. 1998. The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems. *Minnesota Law Review*, 83.
- Rosin, T. 1998. The Street as Public Commons: A Cross-Cultural Comparative Framework for Studying Waste and Traffic in India Crossing Boundaries. A paper presented at Crossing Boundaries: the Seventh Biennial Conference of the International Association for the Study of Common Property. Vancouver, British Columbia: IASC. <http://hdl.handle.net/10535/1769> accessed on 18 November 2010.
- Ruet, J. 2002. Water supply & sanitation as 'Urban Commons' in Indian Metropolis: How redefining State/Municipalities Relationships should combine global and local de-facto commoners In: A paper presented at the Ninth conference of the International Association for the Study of Common Property held on June 17–21 2002 Victoria Falls, Zimbabwe. Singermen, D. 1995. *Avenues of participation* University of California press

## Endnotes

- <sup>1</sup> There exists a vast body of literature on contestations surrounding the use of public land and streets between diverse occupational groups such as street traders, transport workers and other economic and social groups although these are not covered in the literature on urban commons.
- <sup>2</sup> Raman (2010 :105). *Street traders, Place and Politics. A case study of Bangalore.* PhD Dissertation, London School of Economics and Political Science.
- <sup>3</sup> This estimate is based on the tokens issued to traders by the land managers every day.
- <sup>4</sup> Raman (2010), *Street traders Place and Politics: A case study of Bangalore.* PhD Dissertation, London School of Economics and Political Science.
- <sup>5</sup> Raman (2010:233). *Street traders Place and Politics: A case study of Bangalore.* PhD Dissertation, London School of Economics and Political Science.
- <sup>6</sup> Interview with street traders and retailers in Parrys corner in Chennai, dated September 2010.
- <sup>7</sup> See also Mukhija 2005.

# Cosmosity

## Dalits and the spirituality of the commons

---

M C Raj

**D**alit spirituality is the same as the spirituality in indigenous communities of the world in terms of categorisation. It can be called indigenous spirituality. However, the term spirituality is problematic in its conception and conceptualisation. Indigenous spirituality existed prior to the evolution of the discourses of spirit and soul in dominant religions. The categorisation did not yield itself to formal manifestations as there was no organised religion with scriptures and symbols of authority as in dominant religions. In India it can be said to be pre-Aryan though it is impossible to fix a time for its origin. It is problematic to name it as spirituality now as, in its original orientation, it was not the same as the discourses of spirituality encapsulated in dominant religions. Therefore, we name it Cosmosity. Even Cosmosity is not the original name given to indigenous spirituality. It is a name that is given now to the realities identified as elements of what is understood as spirituality.

### **Dichotomy between matter and spirit, body and spirit**

With the development of dogmas and doctrines in dominant religions and schools of thought came the dichotomy between matter and spirit. The dichotomy is the delineation of spirit from matter and the ascription of superiority to spirit over matter. This ascription and dichotomy is very non-indigenous. As dominant religions and systems of governance had all possible access to communication, unlike the indigenous communities, it was possible to spread such a dichotomy all over the world. Spirit and spirituality became the ultimate pursuit and refuge of the human being. Indigenous spirituality is very much based on the cosmos, which is essentially material. Even spirit is material in the indigenous worldview. Without a matter base there can be no spirit. This explains why the indigenous ancestors even developed the capacity to speak and communicate to the dead ancestors. Shamanic Cosmism was perhaps the first major effort to bring the indigenous spirituality to a formal shape

in ancient time. However, many dominant religions ascribed negative qualities to Shamans and instructed their followers even to kill the Shamans. Charvaka or Lokayata philosophy of materialism is a natural derivative of Cosmism. Today there are some efforts to bring back to life Shamanic Cosmism as a formal spiritual discipline.

### **Spiritual trajectory of settled culture is earth centric**

The basic character of indigenous spirituality is the enormous level of security that it enjoys among its people. Nomadic cultures were developed by people who were under incessant and unforeseen threats to their existence and safety. They needed directions in territories that they did not know. They had to look up. They were not sure of the regions in which they settled down temporarily or were traversing. They faced threats from the environs in which they lived as they did not know the nature of the geography that surrounded them. They had to develop weapons and be constantly aggressive even to intruders who had intentions of helping them. Everyone was a suspect because of the insecurity they suffered in their psyche. Their clan members went in different directions in search of livelihood and when they returned, after a few weeks or months, they had their own way of living and did not feel obliged to follow a common worldview. This necessitated revealed doctrines from an authority that surpassed human authority. It had to be divine. Eternal punishment and reward became a dire need to make people live with common discipline. Indigenous peoples settled in the lap of Mother Earth did not generally suffer from such insecurities and they did not need directions, did not face threats from the environs and knew the positives and negatives of the behaviour of nature. They did not have to be aggressive in reference to others. They just lived in the cyclic rhythm of the earth. Being secure in the lap of Mother Earth, indigenous psyche is not in need of aggressive postures to other communities of people. All are welcome to be on the face of the earth. Indigenous spirituality is essentially inclusive. We belong to the earth and it is not the other way round.

### **Spiritual tradition of indigenous people is woman centric**

Earth has a life cycle and Dalit spirituality moves freely with the life giving cycle of the earth. Earth produces new life, she nurtures her

people, she provides and protects and therefore, evokes deep veneration from all her people. Her lifecycle is akin to the lifecycle of the woman. Therefore it is appropriate to symbolise earth as woman and as mother. This generated the fertility culture of the indigenous people in their spirituality. It leads to celebration of the life giving nature of Mother Earth. Fertility is a cause for celebration. Celebration of life goes inseparably with celebration of womanhood. Dalit spirituality is celebratory. Even after 3000 years of sustained oppression and exploitation, the Dalit people take their drum in their hands, have a little arrack and begin to play the drum and dance. This can go on through the night and the next morning they are still very fresh to go for work in the farms. Dalit women also represent a power that is not common in the women of all communities. They hold the community together not only at difficult times but also in their day-to-day life.

### **Non-violence**

Violence has not been part of Dalit psyche and consequently not of Dalit spirituality. Being an earth dependent people they had no need to take up to violent ways, as they had no agenda of establishing their hegemony over any other community. They had to only defend themselves when intruders began to attack them. They themselves were in no mood to travel to different places and occupy the land of other people. Dalit spirituality is the origin of non-violence. It is not a dogmatic need as in dominant communities. It is way of life. The inner being of Dalit community as in other indigenous communities cannot accept pain and suffering of other people. Examples of aberration on this count cannot be quoted as the norm of life in Dalit life. It is not our mission here to prove that all dominant religions have glorified violence in their history and some religions have essentialised violence as a necessary karma (duty) to go to swarga (heaven).

Most dominant religions have glorified violence in their history and some religions have essentialised violence as a necessary karma to go to swarga. The killing of every first born male child of the Egyptians by Yahweh, the god of the Jews has been integrated into the Bible as god's intervention in human history. It is problematic for Dalits to recognise any god who can not only legitimise but also indulge in

such violence. In the battle of Kurukshetra, when Arjun lays down his arms refusing to kill his own brothers, cousins and teachers Krishna gives him a long discourse in order to convince him that he should indeed indulge in blind killing. He manages to convince Arjun that as someone born in Kshatriya caste it is his karma to kill. When questioned about the death of his near and dear ones he further explicates that if someone dies in the war it is the consequence of the karma of that person and not a consequence of the karma of Arjun. His karma is only to shoot to kill. But death itself does not emanate from his karma. Death emanates from the bad karma of the victims. Such discourses can establish subconscious legitimisation of absolute violence. If it is a conscious legitimisation people can still hope that one or other would be critical. But when it is subtle and subconscious the consequence for humanity can be very tragic. Dalit spirituality does not have anything to do with legitimisation and promotion of violence on other people.

History bears ample evidence that Dalits and most indigenous peoples have not taken up to violence as a path of life. One would shudder to even imagine the consequence of Dalits taking up to violence ways. Dalits are the highest in number as community with a common identity. If Dalits opted to join hands with those who believe in violence this country can never be governed at all. This country owes a lot to Dalits for believing in non-violence much before any religious doctrine of non-violence and any ideology of non-violence came into existence.

### **Cosmo-centric: harmony with cosmic movement and change**

Mastering the universe has been a common paradigm in dominant spiritualities. This has led to mindless violence on the cosmos over millennia especially by 'male' men and has brought the human race to the brink of inevitable destruction. Humanity is finding it difficult now to repair the damages caused by its own mistakes in terms of environmental degradation. Dalit people, like all other indigenous people, have moved with the movement and change of the cosmos without trying to subvert cosmic order. Dalit spirituality believes that it has to be in harmony with nature and not overpower nature through its machinations. The integrity of the cosmos cannot be violated by human

folly as it is happening today in the dominant world. Dalit people have not contributed to the dangerous levels of global warming that humanity is facing today. They are a cause of delaying the punishment of nature on the lunacy of dominant human nature.

### **Cosmosity is ancestor centric**

In Dalit spirituality we are born once and we die once. With death all communications with our body stops. We cannot even turn back and realise that we are dead. This is the law of nature. We do not transpire into another eternal world. It is the arrogance of human race that it has invented a way of perpetuating itself into eternity. Dalit spirituality has no such compulsive need to perpetuate itself. Dalit community is marked by its simplicity and humility with regard to the end of life. With death we merge with Mother Earth. It symbolises our union with the cosmos. Being part of the cosmos we become cosmic being in the forms of waves. While alive all that we thought and felt, all our rationality and emotions have left our body and merged with the cosmos as waves. They go through a process of entropy and keep on producing new cosmic waves.

Our bodies develop the capacity to receive such waves in as much as we are in tune with the cosmos and with ancestors of our community. Thus our ancestors come back to live in us in the form of waves. Such cosmic communication takes place in our body without necessarily rising to the level of consciousness. In Dalit spirituality there is a celebration of death, especially of elderly persons. The implying faith is that they come back to the community in form of waves and replenish us with much energy. While living they belonged to particular families and clans because of the limitations of their body and identity. But after death they transcend such limitations and belong to entire humanity, to all those whose bodies are tuned to received their waves transmitted through cosmic movement.

### **Cosmosity is body centric**

Dalit spirituality lays stress on the centrality of human body. The essence of existence is in the body. There is no soul. It is a compulsive need for dominant spiritualities to create the soul to perpetuate themselves.

Dominant religions have created soul and then have decried bodily existence as misery. Hinduism even says that all that we see in this cosmos is only an illusion. What is true is Brahma. Thus Hinduism has transformed realities into illusion and illusion into truth. In ancient times there was a serious conflict between the body centric school of thought and the soul centric school of thought. The resurrection and ascension of Jesus with his human body is the victory of the body centric school of thought. Around the same time there is a story in Ramayana where King Trishanku wanted to ascend to heaven with his body. He approached Vasishtha who was not there. His sons met Trishanku. When he placed his request to send him to heaven with his body, they kick him and curse him to become black, ugly and untouchable. It is a sort of victory for the soul centric school of thought.

Dalit spirituality essentialises body and bodily existence. This has its material implications. We need good food, good clothing, good shelter and all that is needed to be happy in this existence. We cannot accept misery and penury and virtues disillusioning ourselves on the existence of eternal happiness for those who are poor on this earth. The formulation that material poverty is evil is a consequence of man's avarice and arrogance. Untouchability imposed on the body of Dalits is an essential evil of dominant spiritualities. Touch is a source of energy. We need to touch the body of others and let our bodies to be touched to replenish ourselves. Half the problems of humanity can be solved if there is adequate respect for one's own and others' bodies. It is this magnanimity of Dalit spirituality that it respects the bodies of all human beings.

### **Cosmosity is community centric**

This dimension of Dalit spirituality gels well with its communitarian worldview. However, Dalit spirituality has deep respect for the individual without whom there is no possibility of constituting a community. The essence of communitarianism is the individual. Community draws its life from individual members in as much as an individual draws her life from the community. These are mutually inclusive. When an individual loses her roots in the community it brings the person to the centre stage of a fragile human existence.



Cosmosity is ecocentric and not egocentric. In the lives of Dalits, this was the origin of their oppression by dominant caste forces. As depicted in Hindu myths, it was because Dalit kings and queens refused to allow the Aryan rishis to perform their yaga and yagna that Vishnu had to incarnate as Ram to kill them, take away their land and give it in the hands of Brahmins. Their yaga and yagna implied destruction of forests for firewood and killing of thousands of animals as sacrifice. This was against the ethos of the indigenous Dalit kings and queens in their kingdoms. They intervened to prevent such cruelty and destruction of nature. They were branded as Rakshasas and Asuras to legitimise their killing. If only Dalit spirituality was respected, humanity would not be knocking at the door of hopelessness that it is doing today.

### **Inevitable consequences**

#### **Resilience~the dialectic between the external and the internal**

The internal is that the inner being of every human is essentially good and positive. There is the inner being in the Dalit which is very good and keeps all people in an incessant movement of self actualisation. The concept of original sin and re-birth is anathema in Dalit spirituality. The external is the society that ascribes all sorts of evil character to human communities that it wants to hegemonise. It is the strategies of dominant societies that are geared to subjugate cosmic communities. This necessarily establishes an inferiority complex that has a negative bearing on the inner being, in the sense that such a complex does not allow the inner being to live in its totality. But Dalit spirituality brings back Dalits into life again and again. No power on earth has till now succeeded to decimate Dalit communities.

#### **Inherent inclusiveness**

Dalit spirituality does not distinguish between the good and the evil in terms of acceptance. All those who come in contact with Dalit communities are good and have a place in their lives. There is no criminalisation, no capital punishment, no excommunication, no violent punishment in Dalit communities, though in modern times some Dalit leaders have borrowed these evil designs from dominant religions and castes.

**Magnanimous sharing**

Poverty is no measure of the limitations of Dalit magnanimity. Even if there is penury in our homes we have the capacity to move into the community and prepare a meal for any number of people who come to our village as our guests.

**Unlimited space to all people**

Dalit spirituality discriminates against no one. It provides space even to those who are traditional exploiters of its people. The Dalit heart is as broad and as high as the blue sky and as deep as the blue ocean. Anybody can enter the Dalit space at any time and there will be always a space for even the most unknown being on earth. This can be easily understood if one sees how dominant religions have evangelically strived towards establishing their exclusive space within the divine.

Revelation of divine truths are only for those who 'believe' in the divinity of the particular god of one religion. Knowledge is restricted to those who accept doctrines in faith. Following the precepts given from above makes one worthy of eternal reward. If the precepts are violated one becomes a pagan and will be condemned to eternal damnation and hell fire. Eternal exclusion of the common and ordinary people—an exclusive privilege of hegemonic religions!

**Peace with freedom, both within and without**

Dalit spirituality brings peace and freedom to all human beings. It ensures an inner freedom that is inexplicable and an inner peace that is beyond ordinary human reach.

**Problematic in the praxis of cosmosity****Dominant spiritual traditions**

Institutional religions have established their spiritual traditions and have spread them with an evangelical zeal. The necessary resources for spreading their spirituality were available to them. The widespread rooting of spirituality from dominant religions do pose some problematic for the praxis of indigenous and Dalit spirituality.

**God in the heavens**

Dalit spirituality in its essence is not heaven centric. It is earth centric. Mother Earth is venerated for her qualities but not worshipped as

a person who showers her munificence on devotees. Patriarchy and Matriarchy are in conflict at the foundations. Being ancestor centric, it is not in Dalit spiritual traditions to perch their gods in the heavens.

#### **One god, one truth, one way**

Dominant spiritualities have asserted that there is only one god and the only god is theirs. World history has seen horribly destructive wars and crusades based on this belief. Each religion has been vying with the others to prove the superiority of their god over others and the falsehood of existence of gods of other communities. In Dalit spirituality any such attempt is a camouflaging endeavour. Establishment of one truth leads to de-recognition of the truths of other people. Dalit spirituality recognises and respects multiplicity of truths and multiplicity of ways.

#### **Invocations and propitiations**

Prayers are seen as supplications to the divine for protection and prosperity in dominant spiritualities. Animal sacrifices, fasting and self-abnegations are advocated for gaining virtues. In Dalit and indigenous spirituality, prayer is gaining strength in the body to be free from fear. Ancestors are venerated in order to speak to them and get their guidance for life. The different elements of nature are invoked to send their energies into human bodies so that there can be better harmony of human beings with nature.

#### **Shamanism as paganism**

The capacity for drawing energy and guidance from nature and ancestors assumed the formal name Shamanism. Dominant religions have developed practices of casting out devil from possessed human beings, ceremonies for casting out evil spirits and also occult practices for causing irreparable damage on 'enemies'. However, Shamanism was ascribed the qualities of paganism and dominant religions even sought to kill Shamans at different phases of human history. Strangely enough this was called animism and looked down upon with disdain.

#### **Knowledge as liberation**

Dominant religions and spiritualities have expended their energy and resources on accumulating knowledge as they see knowledge as an essential path of liberation. Accumulation of such knowledge has been

centred around 'revealed' truths from above. Doctrines and dogmas are created as if they are handed down directly by god. Such knowledge can only be abstraction. One's faith is an essential condition for reconciling oneself to the untenability of some of these 'revealed' truths. If one does not believe and behave, one is punished or excommunicated from the community and religion. Such trajectories are unimaginable in Dalit spirituality. There are no revealed truths. Truth and knowledge are derived from one's experiences in life within the context of community. Knowledge is body centric and intuitive. There is no salvation of soul through knowledge. Liberation is essentially from human bondage of the body. Truths belong to the illiterate masses of people. Dalit spirituality invokes deep respect for those who are dominantly considered as unworthy of knowing.

#### **Reality and illusion**

Dominant religions and spiritualities have proposed intangible dogmas and beings as real whereas all realities of the world are proposed as illusionary. Brahma for example is said to be real and the world is said to be illusion. What cannot be seen, touched and experienced are proposed as truths while all that can be seen and touched are shown as illusions. In Dalit spirituality there is a simple assumption that truth is what we experience, see and touch. Imagination is illusion. Human life cannot be based on such illusions. There is the dimension of the womb of the material cosmos. Deep inside of every planet there is an unfathomable mysterious source of life. It is so unfathomable that no intelligence of any type will be able to unfold the mysteries that lay buried beneath each planet. This is generally referred to as the nether world. Dominant philosophies describe this spring of energy and life as the darker side of the universe.

Many of our ancestral philosophies have described this cosmos as the one where our ancestors go. In the Hindu Epic Ramayana, Sita the wife of Rama, pleads with Mother Earth to take her back. Mother Earth listens to her plea and opens up to welcome Sita. She descends into the womb of the Mother Earth alive. This is a reflection of the ancient belief of Dalit ancestors that beneath the Earth there is yet another world which can provide space to people who belong to Mother Earth. The writer of Ramayana is an ancient Dalit. In the Jewish

tradition there is a poem in the New Testament which describes Jesus Christ as not only incarnating to reveal God the Father but also describes him as the humble servant of god who descended into the underworld on his volition. Semblances of the cosmic philosophies of Dalit ancestors are to be found all over the world.

### **The supernatural**

The supernatural is a manifestation of human limitations. It is the confession of the human race of its inability to be natural. It is a manifestation of the reluctance of humanity to be a natural part of the cosmic order. It is the illusion of human race to have created an order of its own. Being unable to be a natural part of the cosmic order, the supernatural is a blatant attempt by human race to escape from humility into a world of arrogance. The supernatural has a foundation only in matter. It is just another wave within the cosmos that is generated by human energy. It is human imagination. It is within the cosmos that such imagination of the supernatural takes place.

Though women may have followed the ways of men they are not the creators of the self that dwells in the world of illusions. In the Brahminic school of philosophy the self is identified with soul. The self assumes an extraordinary supremacy. It is the ultimate in the subconscious as well as conscious realms of Brahminic school. The self in the Brahminic school is the equivalent of the soul in all religions. For David Hume, the self is only a group of sensations from the body and description of personality requires only a series of experiences for its explanatory framework. However, Brahminism attaches an absolute value to the self. It calls it the reality and it terms the body as an illusion. What it firmly believes is that whatever exists is an illusion of Brahma and that only Brahma is real. The self of each individual is real, whereas the body of each individual is an illusion. This is incompetent communication at its worst. The Brahminic school says that the self is in need of liberation as it is caged in the body which, according to it, is an evil illusion. That is why Trishanku was not allowed into heaven with his body. The essence of liberation, in the Brahminic as well as in all other dominant schools of philosophy, is that the self should be liberated from the physical body.

Such propositions pose serious problems to the Dalit school of spirituality. Now, the bodies of organic beings are constructed of cell systems. Even the best of the Brahminic school will not dispute this. For the Dalit school of philosophy, the body is the ultimate. The problem posed is because of the proposition that the body is different from the self or the soul and that the body is evil. Liberation is seen essentially as liberation from the body.

In that case there are a few questions that are placed before the Dalit school of philosophy. The first question is where in the body is the soul located. Is it in all the cell systems? If it is in all the cell systems it makes matter as its base. This proposition is untenable to the Brahminic school as matter is opposed to soul, the spirit. The second question is in which part of the body then is the soul located? Obviously no one will know the answer as the soul cannot be found in any part of organic bodies. The Brahminic school also proposes that the soul can dwell in the bodies of organic beings other than humans. The third question is obvious for the Dalit school of philosophy. If soul has to be liberated from human body and if soul is part of Brahma why should the soul come into the body of organic beings at all?

### **What is the word?**

The word that all the Vedas disclose;  
The word that all the austerities proclaim;  
Seeking which people live student lives;  
That word now I will tell you in brief -  
It is OM!

For this alone is the syllable that's *Brahman!*  
For this alone is the syllable that is supreme!  
When, indeed, one knows this syllable,  
He obtains his every wish.

This is the support that's best!  
This is the supreme support!  
And when one knows this support,  
He rejoices in *Brahman's* world.<sup>1</sup>

We in the Dalit world know not 'the one word' but millions of words that are capable of saving people from many woes. Any word that replenishes people with energy is good. What is good cannot be limited by a category of 'only' and 'one'. This is problematic in Dalit spirituality as it essentially is an accommodation of multiplicity.

The hegemonic categorisation of word becomes evident in both these schools of thought. While the Brahminic Vedas and subsequent exponents of the Brahmin philosophy are out to establish that OM the word is Brahma, the Christian school of thought goes a step further to assert that the word which is god became flesh. For both these schools the Being, later Becoming in time is a necessity to insert a non-existent, highly imaginative idea as incarnated in flesh. Two contradictory paradigms are established here for the firm evolution of gradual hegemony that was maliciously designed from inception. One is that the material world as we see it becomes from the Being, which is the word. The other is that word itself becomes flesh. Thus the word not only intervenes and integrates itself into the world of matter but becomes matter itself. Christianity follows this surreptitiously hegemonic design till today. It is by the power of the word of the Christian priest that a piece of bread is supposed to become the flesh of Christ. If the priest does not utter the words "Hoc Est Corpurs Christi" the bread remains only a bread. Deciphering the surreal mystery that surrounds the word is not anymore such an arduous task for the Dalit world. The owner of the word also becomes the owner of the world as word causes the world. When all races of humanity realises that the word cannot cause the world the entire edifice of the hegemonic order will crumble under its own feet.

### **Dalit word**

Dalit spirituality is based on the natural consciousness that the genesis of world is from matter, from organic bodies in the cosmos. Greek, Jewish, Brahminic and later Christian philosophies are based on the designed consciousness that the genesis of matter, of body is the word, the Absolute Word. The dialectic movement of Dalit thesis and dominant anti-thesis never reaches a synthesis. There is no possibility of a synthesis as there is an incompetent communication and an attempt

to disrupt the cosmic order on the part of the dominant philosophies mentioned above.

The Dalit proposition is further strengthened with reality. The same word that is supposed to be the genesis of matter in the cosmos assumes different authority and power in different groups of people. The 'Absolute Word' is defied as soon as it is born from the matter of the cosmos by the internecine quarrels among all the dominant philosophies. Each one claims its word as the absolute word, thus ridiculing the very consciousness of what is absolute. Absolute is the anti-thesis what is relative. Absolute signifies what is complete in itself. When many schools and religions claim their god and their truth to be absolute then the absolute itself is pushed to the realm of the relative. Thus by their own internecine conflicts of interest the dominant orders within the hegemonic order reduces its own creation. Immanuel Kant of German Idealism poses The Absolute as what is unconditionally valid. The question before the Dalit world is how many unconditionally valid truths can there be? There can be only one according to the dominant schools. It is in this struggle to arrive at a sort of solution to this very perplexing question that Brahminism and the Christian world of Enlightenment have become bed fellows.

Francis Herbert Bradley, a nineteenth century British idealist philosopher, asserts, just as Brahminism does, that the differences one sees are only illusions. Only the whole is real. But then whose assumption of the whole is the real whole will never be answered in history as there is no whole at all. The category of the Absolute is a convenient invention of dominant consciousness. This is borne out by the fact that each dominant group of consciousness claims to have the Absolute in its possession. This leads to the categorisation of different Absolutes, which is a contradiction in terms. Each group tries to trace its genesis to the Absolute that it has created and also attribute the genesis of the world, especially of its clan, to its Absolute. It is also characterised as divine as opposed to what is understood as human. Divine is a product of human limitation. The inability of the human consciousness to unravel the manifold mysteries of cosmos ends up with the invention of the divine. The unfathomable mysteries of the cosmos are dumped



into the realm of the divine as divine mysteries with no authority for the human consciousness to dare into the mysterious territories. It is on the one hand an attempt to hide the inability of human consciousness to accept its limitation in humility. On the other hand, it is an atrocious attempt at incompetent communication. The divine is created to assume a stamp of authority for the human word.

Human consciousness creates its word and thirsts for widespread recognition and acceptance of its word. Word is a communicable energy. It is a wave that originates from organic bodies and spreads out into the cosmos. In their search for wider reception of communication of the word, some dominant groups have invented the divine authority of revelation. All doctrines of religions that have sprung from schools of thoughts in different phases of history have claimed to have in their possession sets of revealed doctrines. The Vedas are said to be revealed from above. But human consciousness knows very well that there are many lies in these supposedly revealed documents. Communicative interaction presupposes the existence of matter. Word cannot be the genesis of word. Only matter can be the genesis of word. However, those who attribute the origin of word to the divine also simultaneously make it a matter of faith and belief, thus precluding a critical consciousness of what is revealed. Revelation then is limited to naïve consciousness as it has to be received without allowing it into the cell systems that have the capacity for analysis. We call this incompetent communication because the intention of the one who communicates is hidden behind the stamp of divine authority. Human consciousness knows deep within that its own word cannot have the required reception in human organic cell systems unless it is camouflaged under the sugar coating of divine revelation. It knows both in its conscious and in its subconscious that unless there is wider reception, its hegemony cannot be established in collective consciousness. Therefore, it stamps its word with divine authority.

The divine is supposed to be the opposite of what is known as human. It has a stamp of authority because it is supposed to be beyond the human. Its origin is supposed to be in the contrary direction of the origin of what can be described as human. The divine in Greek philosophy

is not different from the human. It is contrary to the human. The divine is supposed to be condescending to the realm of the human and the human is expected to transcend to the realm of the divine. Yet the divine is described as the transcendent being. The contradiction between condescension and transcendence seems to be inextricable. Condescension is described as a consequence of the divine love for the human and transcendence is described as a consequence of the human love for the divine. Condescension of the divine results in the assuming of a human body and transcendence of the human results in the shedding of the human body. One love assumes exactly what is characterised as evil and non-divine and the other love sheds exactly the same human body. It is such reversal of orders in contradictory directions that paves the way for the establishment of a dominantly crafted hegemony. The hegemonic order has let loose an endless interplay of immanence and transcendence in order to achieve its hidden end.

Dalit spirituality on the other hand does not share a dualistic vision of the cosmos. It does not also share the materialistic monism, which developed later in history. Materialistic monism is an assertion that only matter matters and nothing else is important. We must not be guided by the idea that there is only matter in the cosmos. That will be a travesty of truth. There are waves and energies that cannot be strictly classified as matter. One must however know that even these energies and waves emanate from matter. Without a material substance nothing can emerge. Vacuum produces nothing. In fact there is nothing called vacuum. It does not exist. Vacuum is once again the product of human imagination. It is equivalent to nothingness. By its very definition nothingness cannot exist. If it exists it cannot be nothing. It has to be something. All cosmic beings are immersed in an ocean of cosmic waves that are invisible to the naked eye of organic beings.

### **Pleasures**

Pleasures are in the realm of feeling too. Since they start and end with the body, pleasures are marked as evil in dominant spiritualities. Pursuit of pleasures related to the body is marked as evil and a sure way to doom. But meaning can be a pleasure. Finding meaning can be a feeling of pleasure. Unattainability of meaning in suffering and

death has lead human consciousness to despise the body and create an alternative pleasure that will not end with the body. The impossibility of extending pleasure beyond the body, beyond matter, has created the possibility of extending pleasure to another realm that will have no end, that will go beyond the end of the body. The frustration of dying in this body has created the feeling of pleasure at the thought of living in eternity. The frustration of leaving this world has extended the imagination of human consciousness to the existence of another world. That world, that life has to be in contrast to what is experienced and lived in this world. It has to be the opposite of frustration.

Pleasure in the body is contrasted with pleasure of the soul. Feeling in the body is contrasted with feeling in the spirit. Experience is contrasted with thought. Emotion is contrasted with cognition. Feeling itself is contrasted with thinking. Body is contrasted with soul. Physical function is contrasted with mental function. World is contrasted with heaven. This life is contrasted with next life. Temporary existence is contrasted with eternal existence. Man is contrasted with god. The inability to understand and accept the reality of cosmos has resulted in the creation of someone who is above the cosmos. The inability to understand and accept the here and now has resulted in imagining the then and there that is beyond this existence. Whatever is related to body and to the material world is proposed as base and mean pursuit. Whatever is related to mind and abstract world is proposed as noble pursuit.

In the Dalit spirituality, pleasure constitutes an essential ingredient of organic life in the cosmos. It is only the human species that has developed the dichotic discourse that pleasure is bad and leads to sin. This comes out as the direct consequence of the hegemonic order to subvert the cosmic order. Pleasure is an exulting ripple impact created in the cell systems of organic bodies because of communicative interaction with cosmic stimuli. All organic bodies have what is known as pleasure. If pleasure is a bad thing and is equated with sin, it becomes logical that animals also must be brought under this dichotic discourse. There lies the problem. The dichotic discourse on pleasure is one of the cleverest manipulations of the hegemonic world as it wants to keep an exclusive intellectual right over this physical phenomenon. A very

casual perusal of what is taking place around the world in different epochs will reveal that pleasure, immense pleasure and unlimited pleasure have been the exclusive prerogative of those who have expropriated the right to condemn pleasure as sinful. This expropriation of the right to enjoy a life full of pleasure is only one side of the coin. The other side of the coin is that if ordinary and simple people of the cosmos take the time to lead a life full of pleasure then there will be no time for them to render their subjugated labour to the hegemonic order. If the cosmic people also take the right to indulge in all sorts of pleasurable enterprise, it implicitly means a responsibility to share the material and spiritual resources of the world.

In reality, pleasure is an inseparable component of cosmic movement and change. If organic movement were not accompanied by the ripple impact of pleasure, cosmic movement and progress would have come to a grinding halt. Any attempt to detach oneself from pleasure will be a clear signal of the choice to be against the cosmic order and consequently be part of the hegemonic order. It is also an irony of the human species that many of them actually take pleasure in despising pleasure. The intensity and the realm of such pleasure are generally different in the human body. Ananda is pleasure. Ananda is something that guides the Dalit people all throughout their lives. It is Ananda that enhances and strengthens the cosmic movement of cyclic change. This movement never stops in the cosmos. Ananda will never end. Pleasure belongs to all. Pleasure brings fulfilment in the cell systems of organic beings. Pleasure leads to the emergence of new forms of life. It also fills existing forms of life with energy.

### **Historical experiences and accumulated anger**

The Dalit community has a historical experience of anger that can be termed as compulsive. From childhood every Dalit child is bound to accumulate anger in the subconscious without realising the same at the conscious. This is because of the external society that keeps on a barrage of insult and humiliation on the Dalit community. The growing Dalit does not know how to deal with such accumulation of anger. There is generally no way of dealing with the source of anger as it is the caste lord or the caste society that can easily ring

the death knell of the Dalit if she opts to protest or deal with it on equal terms. Therefore, the Dalit generally swallows pain and anger. More undealt anger brings more compulsiveness. Such accumulated compulsive anger can lead the Dalit to take it out on targets that have directly nothing to do with the origin of anger but may symbolise the source of anger in one way or other. This phenomenon is not exclusive to Dalits. It can be true of any other human being. But generally this is true of most oppressed communities.

One cannot imagine practicing Cosmosity under compulsive anger. There needs to be an accompaniment to help Dalits to deal with historical anger by bringing it to the conscious and recognise the existence of compulsion. It must be noted however, that despite grave provocation, the Dalits have not taken to the gun or extremism as some other sections of Indian and global society have done. It is to the credit of the innate strength of Cosmosity that such restraint is still possible, despite grave provocation.

### **Loss of visible traditions in Cosmosity**

Dalit spirituality, also known as Cosmosity, has been forcefully denied any opportunity to develop its institutional forms within the community. Since there are no visible traditions of spirituality in formal structures co-optation into dominant spirituality has become much easier. Those who endeavour to give institutional forms of latent spirituality face enormous difficulties and even derision as such attempts are seen as tendency towards fascism even by co-opted Dalits. However, there is a dire need to institutionalise Cosmosity in the postmodern period.

### **Issues in accompaniment**

Dalit existence is conditioned by inhuman deprivations, which are both material and spiritual. Material deprivations have been plundering of Dalit land and material resources of survival and sustenance. It has led to serious deprivations of even basic amenities of life.

Spiritual deprivation has taken the Dalits to the loss of their own traditions, knowledge systems, culture and philosophy. This in turn has not allowed Dalit communities to govern themselves as communities of people. Instead it has compelled Dalits to live according to the norms dictated

by dominant caste society, which have been always enslaving. Dominant societies have consistently denied any space to Dalit communities in the instruments and mechanisms of governance. Occasionally, dominant societies have provided marginal or 'reserved' space to Dalits, which space is generally under their control. Such space in governance is not born out of a right but largely as a necessary investment by the caste society to safeguard itself against any form of protest and subsequent establishment of their 'own' space by Dalit communities.

Dominant and Dalit spiritualities have bottlenecks that may not be removed as there are some fundamental differences in worldview and value systems. However, the roadblocks have to be recognised and both need to decide to live accepting differences. Dalit spirituality includes material well-being. They cannot be denied their material rights. They need to live well on this earth and cannot be led to believe in an illusionary life after death. Accompaniment will necessarily imply restoration of the following

- Restoration of Land – Land is spiritual – Booshakthi.
- Restoration of dignity – Free Caste Labour, Untouchability to stop.
- Restoring Dalit Culture – Dalit Festivals and Symbols.
- Dalit Religion – Primacy of women & Ancestral Guidance.
- Internal governance – Dalit Panchayats to be established all over India.
- National Governance – Electoral Reforms for Proportionate Electoral System in India.
- Overarching Approach – Latent Strength and Values.
- Transforming compulsion into commitment – Dalit Psyche.

### **Need for support systems**

- The government is obliged to build creative institutions for counselling caste groups and Dalits.
- Dominant religions have to formally share their expertise without hidden agendas of conversion and without being deterministic about Dalit culture and spirituality.
- International solidarity for developing institutional support for transformation of compulsions in dominant groups and in Dalits.

## **Conclusion**

Dalit spirituality can be said to be a new arrival in postmodern era and needs a lot of understanding before entering into conclusions from points of view that the world is used to till now. The dominant world has generally ignored the existence of spirituality in the indigenous communities. When it recognised such existence it has cast ascriptions of demeaning categories to such spiritualities leading to a blockade of any dialectic movement. Hope this will change soon. Recognising the non-hierarchical, egalitarian and cosmic centeredness of indigenous and Dalit spirituality should lead to the practice of Cosmocity, a living faith and ideology that life, the body and the world around us is simultaneously good, functional and sacred. It is an essential path for the restoration of the commons, for the health of Mother Earth, and perhaps the very survival of the human race.

This country will do well to establish formal Schools of Dalit Spirituality (Cosmosity) as India's contribution to the world to move towards peace and freedom. Dalit leaders and intellectuals of other communities may be trained academically in this science and it can develop in the world as a secular path of life.

## **Endnote**

<sup>1</sup> As translated in the Essential Vedanta, Ed. Eliot Deutsch and Rohit Dalvi, p.29-30

GET MOVING FAST!  
THIS PLACE IS ALL  
DEVELOPED!





# Commoning contests Urban Commons

## Commoning contests the 'Urban Commons' Some thoughts on the de-commoning of Bengaluru

---

Solomon Benjamin

When we think of 'commons' in the context of the Indian city, what comes to mind are places like bazaars, 'open' grounds where youth and others can congregate and play football. In and especially in Bengaluru, a city developed around and on wetlands (kere), we would also think of water bodies that compliment public gardens. At the back of our minds, the term 'commons' evokes a sense of not just 'public' use, but also of a 'pristine' character (especially when considering wetlands). This chapter argues that thinking the 'pristine' can lead to a conceptual slippage in turn, emphasise the centrality of singular forms of property to result in 'un-commoning'. In this narrative to 'preserve the pristine', there lies a notion of 'fixity' around the idea to define such territorilisation via fenced off boundaries., With this, there is an underlying desire and anxiety that the city's growth will undermine this ideal. In this form of thinking, the main progressive agenda would be to ensure, via the 'plan' and the 'rule of law', that city management and policy—driven by progressive technical rationales—ensure 'urban commons'. Here lies a conceptual catch. While we could consider the above mentioned places as having a significant 'commons' to them, ironically it is this very same anxiety to protect and manage them via city management policy, planning instruments and institutions and 'the law' that 'un-commons' such places into exclusive spaces.

For instance, the heart of South Bengaluru's exclusive Koramangala had, till recently, a huge open space that was intensively used by the larger neighbourhood district's youth of mostly lower income and of castes / ethnic groups that contrast the surrounding 3<sup>rd</sup> Block. This also included school children from the nearby—again mostly of the lower income groups. Over the last couple of years, persistent efforts by the 3<sup>rd</sup> Block Resident Welfare Association (RWA) to lobby the

BBMP administration<sup>1</sup> (pressured in turn by high level political and administrative circuits) paid off. The ground was divided into half by a chain link fence, with one section converted into a ‘park’ for mostly senior citizens to walk dutifully along the paved part that encircles a ‘touch me not’ landscaped green.

The remaining ground, the size of a football field, witnesses every Sunday, even in the rain, between nine and twelve teams playing an adaptive form of cricket and occasionally football all together. Smaller children remain pushed out, due to the severe pressure on space. If this was not enough, the last couple of months, has witnessed the RWAs moving towards landscaping the remaining part too. The neat architectural plans show this to include a swimming pool, tennis and badminton courts. As per the current fetish over ‘security’, uniformed guards are likely to chase out children who don’t seem well dressed—as witnessed in other such ‘pristine makeovers’.

Not too long ago the same RWA was responsible in getting the BBMP’s administration to evict the few remaining hawkers. If landscaped neighbourhood parks are the latest desire of elite RWAs to evoke pristine nature, it is then hardly surprising that both the 3<sup>rd</sup> and adjoining 4<sup>th</sup> Block RWAs in Koramangala move their sights towards what they see as a dangerous wild: The Maistrypalya wetland ‘kere’ that was associated with it’s village. This territory too is sought to be framed as a ‘urban common’—projectified as a ‘natural lake’. And just as the 3<sup>rd</sup> Block open ground was converted via a plan, the plan here includes a ‘public private partnership’ (PPP) with the Bangalore Development Authority (the city’s de-politized planning authority), the ‘Lake Development Authority’, and of course a range of technical experts and lawyers. Interestingly, in this ‘public process’ the documentation mobilised include a map from the Geological Survey of India whose representational categories hide earlier histories of land claims and especially those of the Maistrypalya village. This survey map, like many colonial projects, is convenient to morph into a modern zoning plan that includes a lake, an ‘eco’ zone, a sunbird corner. When instrumentalised via a PPP governance model, these zones are in effect the first steps towards a ‘public private commons’. Such trends towards

landscaping, are evident in other parts of Koramangala, and shaped by anxieties, as a key member of First Block RWA voiced, ‘to keep out the ‘riff raff’.

At a more literal level, one can view the above cases as the issue of creating exclusive boundaries. That is useful but not enough. If we only considered the issue in that narrower sense, it would point to a techno-managerial solution—a PPP that allows for diverse groups to enter, and use perhaps, a space that is created by another on their behalf. Instead, it is more important to consider the core of the above mentioned ‘public private commons’ is the notion of ‘property’ that underpins most of such ‘un-commoning’ as Bandyopadhyay in this volume theorises on. One of the key issues of concern in the politics of commoning (un-commoning) is that of property. Consider for instance, a quote from a recent news report:<sup>2</sup>

The operational guidelines for the implementation of World Heritage Convention states as follows: ‘World Heritage *properties* may support a variety of ongoing and proposed uses that are ecologically and culturally sustainable. The State Party and partners must ensure that such sustainable use does not adversely impact the outstanding *universal value, integrity and/or authenticity of the property*. Furthermore, any uses should be ecologically and culturally sustainable. *For some properties, human use would not be appropriate... Such sites would lose the heritage spot tag if they fail to meet the standards,*’ Excerpt from ‘A storm brews in the Coffee Cup’ by Shivaram Kodagu, (emphasis by author).

The above quote highlights the central argument of this chapter. This considers the politics of a fracture between the mobilisation and usage of the term ‘urban commons’ whose rational and materialisation is predicated and reinforces the concept of property, and processes of ‘city commoning’<sup>3</sup> mobilised by ‘popular’ groups that disrupt singular forms of property.

Somewhat paradoxically most of the city spaces we refer to, as having some ‘commons’, are also places of city commoning. These are not techno-managerial in genealogy. Rather they are deeply politicised via day-to-day actions that disrupt singular forms of property. In that

sense, we could see, that our efforts towards a utopia is not ‘fixed’ in the pristine landscapes we seek in our minds eye. Rather city commoning lies in what looks like the fluidity, ‘messiness’ of bazaars, the non-master planned settlements that senior administration planners and the elite term as ‘slums’, the complicated terrain of wetlands which include small time fishing, ‘traditional’ rituals, and areas of intense contestations. If we consider these as evidences of city commoning then we could also consider their political realms that materialise these as places, as also a form of commoning. If so, then we have to take municipal politics more seriously—not in the context of it’s legal and constitutional mandates, but rather as a level of government that is embedded in such ‘popular’ forms of commoning. The chapter by Raman is a case in point, but also some critically useful theoretical entries. This becomes even more central as an argument when the spaces of city commoning have a genealogy located in ‘master plans’, development schemes or programmes. The latter set of institutions falsely essentialise municipal government disciplined within an administrative apparatus rather than view it as a fluid political and administrative realm—something that is transformed by processes, and as a result, also plays a transformative part.

### **The problem with the narrative of the ‘urban commons’**

These concerns come from problems with the conventional ‘progressive’ way of writing on the issue of Bengaluru’s ‘urban commons’. At first glance, this seems well intentioned. Much of this writing would frame the issue around the loss of ‘community’ spaces such as the city’s greens, and moan the loss of the erstwhile village commons swallowed by the city’s rapid expansion. Perhaps, this would underline the need for the globally connected IT culture to include more space for ‘participatory planning’, discussion and debate. It could also pose the decline of the ‘urban commons’ to the lack of planning which allows ‘land sharks’ supported by ‘patron—client politics’ to encroach on land, and promote speculative development. The intent of such a narrative would be to list elements to make policy ‘more progressive’. In specific, this would aim for: the city’s wetlands framed as ‘eco-sensitive zones’ designated as protected ecologically sensitive greens for ‘public use’.

One could, from this rationale, extend this argument to the city's economy. If for instance, the city's bazaar's are seen as a form of economy common, than from the conceptual logic of this argument, these should be materially shaped into 'hawking zones'. Here, following a progressive vision, beneficiaries can avail of not just rightful places but other benefits such as insurance, credit via self help groups—saving them from corrupt police constables and exploitative moneylenders alike.<sup>4</sup> In line with such argumentation, it would fall very much in that logic, that the 'urban commons' could include 'heritage' commons. Just as commoning the bazaar would be framed around 'hawking zones', a heritage commons policy and plan would designate these as professionally certified 'heritage districts' emphasising these as 'properties'.<sup>5</sup> With such tagging comes a 'projectification' and in this logic, instruments such as 'public private partnerships' (PPPs).<sup>6</sup>

One could develop such a perspective of the 'urban commons' to it's 'governance'—a subset of a larger agenda of constitutionally mandated 'ward committees', and following recent trends of even greater decentralisation, citizen managed 'area sabhas' who would be empowered to manage wetlands and other public parks. Such a 'good governance' approach that would include for instance, an informed citizen's 'eco-committee, under an international donor funded programme of 'community policing' to 'protect the urban commons.' This could also be seen as part of efforts over the last decade to bring local bodies under new forms of disciplinary governmentalities. Changes, since November 2010, have been new 'project management units' and a citizen's 'Bengaluru patrol' co-funded by a 'civil society' organisation and India's most important English newspaper and media house. Such 'eco-governance', following such argumentation, would oversee the functioning of the now super large municipal body, the BBMP,<sup>7</sup> and to ensure that this elected body works in a 'transparent and accountable' way, in particular to rid the system of patron client 'vote bank' politics that is viewed as disruptive to policy and facilitating the entry of mafia elements that encroach public land especially in the city's periphery. This extension of argument is not totally speculative. Since 1998, in efforts to make Bengaluru a Singapore, a vigilant 'urban reforms agenda' has been

promoted that disciplines elected councils.<sup>8</sup> (Benjamin 2010). One would not be surprised if several of the recently established urban educational and policy institutes and centres, following the spurge in interest in ‘India’s urban’, would include quite centrally as part of their programmes on ‘sustainable’ urban management, courses on the application of ‘Public Private Partnerships’ for the ‘the urban commons’—funded under a rapidly expanding anxiety of climate change. All of these efforts, including the last, would compliment Bengaluru’s global standing as India’s Silicon Valley—a showcase where economic productivity goes hand in hand with a ‘rights based’ protection of public spaces. Indeed, a smart management graduate could advice the senior—most administrators on how the IT can in fact fund the commons, and as a ‘best practice’ also win international acclaim if not further funds.

The above paragraphs materialise the narrative of ‘urban commons’ to consider the politics of its opposition with ‘city commoning’. Consider the conceptual and material aspects of *City Commoning*. These processes fall outside and at times appropriate and subvert what Blomley (2003) refers as to the ‘grid and survey’ and it’s associated ‘geography of violence’.<sup>9</sup> At the core, while shaping most of the territorial production of Indian cities, city commoning unsettles singular forms of private property that form the foundation of planning practice, their associated institutions—like Bengaluru’s Development Authority (BDA) and newer forms of mega institutions such as the Bangalore Metropolitan Regional Development Authority (BMRDA), Bangalore International Airport Limited (BIAL), Bangalore–Mysore Infrastructure Corridor (BMIC) and associated regulation like the recently proposed Bengaluru Metro Planning Authority, the land titling bill at the national level—that form key elements of the ‘grid and survey’.

City commoning then, disrupts ‘urban commons’. In doing so, this chapter also places on line well meaning progressive academics and activists mobilising around the notion of ‘progressive policy’ framed within a ‘rights based’ discourse. It points to the contradictions, for instance, when these activists lay faith to restore ‘the commons’ by actions initiated from high level policy makers who are also pressured by the elite posed as ‘civil society’. But the issue is not just of access

to decision making. What a careful consideration of city commoning also does is that exposes its tacit acceptance of private property—a slippage from the seemingly progressive term ‘public property’ as Bandyopadhyay argues (see Ritajothi B. this volume).

Perhaps this ‘slippage’ spurs an evangelical rescue of space from ‘the market’, ‘urban commons’—a situation where efforts towards the ‘urban commons’ are sought to be instrumentalised via the vision of participatory planning to organise ‘neighbourhoods zoning’ and include ‘natural pristine places’. This logic could be linked to policy interventions projectified around ‘hawking zones’ intended to discipline city economies viewed as unplanned and exploitative of the poor. It could also be extended to elite’s fear of ‘vote bank’ politics resulting in their visions of electoral reform, mobilisation of ‘middle class’ into civic politics, but also institutional disciplining of the lower level municipal elected and bureaucratic realms via the ‘urban reforms agenda’. Much of city development policy of ‘urban commons’ is mobilised via ‘participatory planning’, ‘transparency and accountability,’ and ‘debate and dissent’. Not surprising, these also fall within a development agenda of being made ‘slum free’. These efforts falls within the grid of ‘The Plan’, ‘The Law’ that forms the basis for a deceptive vision of ‘inclusive’ cities.

Dennis makes another useful observation that framing the ‘commons’ is not a façade to hide the intention of exclusive property.<sup>10</sup> Rather, it is the possibility of a disciplined ‘common’ that enhances the value of its spatially and otherwise associated private property. The posh houses of Koramangala’s 3<sup>rd</sup> Block, have enhanced value by being locationally close to the created private public of the Maistripalya now constructed as a ‘natural lake’. This value enhancement is especially if the management of the resource allows for particular forms of access to a specific ‘community’. One could also argue that hawking zones, when created out of a lobby of relatively large shopkeepers to influence the allocation of hawking spaces to sub-retailers who are disciplined via being their direct sub-contractors or via credit arrangements, they would in fact be enhancing their own surpluses. But here, it is useful to consider the counter which may lie not in opposition but rather on a political plane that is posed very differently. To understand this

more effectively, we look towards a literature that moves beyond just being framed in opposition to the grid and the survey—reducing our discussion to that of ‘alternatives’ via the evangelism of ‘participatory planning’. The fear to private property and its creation of the market in its own image, may not be in the creation of an anti-market that enhances the former. Rather, its fearful disruption, more hydralike, may lie in framing politics within the market in a logic that refuses the categories that manufacture private property. If for instance, the vision of Mastripalya as a ‘lake’ witnesses a perhaps not so unexpected erosion by existing occupants, Tamil Thigalas.<sup>11</sup> Possibly located on the kere’s southeast border and operating a nursery, we could visualise a situation where they retain their claims via growing flowers and plants, and also mobilising karaga rituals around the waterbody.<sup>12</sup> With this, and over time, to enlarge their territory via their lower and midlevel bureaucratic and political contacts. The logic of ritual here escapes the discipline of the plan, and its easy counter, participatory planning seeking to demarcate, like a hawking zone, a narrower politics. Such acts are also not necessarily ‘resistance’ but rather a politics of being and, if so, move and materialise in very different planes.

### **Some theoretical starting points**

There is a useful literature to consider if we have to move away from such evangelism. Blomley’s critique of the assumption of the hegemony of the ‘grid’, finds an extension of a much older literature from legal anthropology—looking at the formative processes of law as a ‘semi-autonomous social field’ in works by Moore (1972). Moore’s argumentation suggests the way conventions of claiming space to rework regulations happens not in a binary of a grassroots upward transformation, or top down via constitutional declarations. Instead, these are outcomes of collisions, which is amplified in works by Razzaz<sup>13</sup> researching the issue of ‘non-compliance’ and contestations over politicised administrations around territorial occupation. Elsewhere, Rao (forthcoming) historicises this politics in looking at colonial planning regimes set out to ‘plan’ Bombay’s suburbs, and the way these collide with an increasing politicisation of authority via the city municipal body, who contest the plan. Both Razzaz and Rao’s work are significant as these, much in the line of



Santos (2001), reveal multiple registers of claiming that fall beyond the 'grid' and the 'survey' and in fact posed as legal porosities around contested territory created during the processes of urbanisation.

An important point to note is that city commoning is not a 'normative' and thus represents uneven and conflictual spaces with unexpected turns. However, as Ranchiere (2007) has argued, it is such spaces that open up political possibilities, and one can argue, that defy/bypass/contest the grid and survey.<sup>14</sup> Here we find work on the complexity and construction of legal spaces drawing on legal pluralism particularly useful—as argued by several authors in the issue of *Law Text Culture*<sup>15</sup> (Manderson 2005:2). Actions create law and also disrupt existing readings of it. The important issue here, in the context of the counter argumentation of urban commons, is that the logic defies that of 'grid and survey' (Johns F E, *Law Text Culture* 2005: 60). Thus, we are interested in the possibility of multiple rationalities that contest those posed by city planning (Butler 2005:20–21), including logics that defy Cartesian logics (Butler 2005:20–21). A vivid illustration of the latter is found in Anker's 'The truth in painting' (2005:91) which poses Australian native groups mobilise not a map but rather elements, which collide with rationalities of a colonial genealogy. The issue is not to essentialise these possibilities within the narrow confines of the 'aboriginal' tribal society contesting mainstream western foundations. Rather, the opening of political possibility represented here applies equally to Omar Razzaz's detailed description of the 'Hujja' documents that contest official Jordanian land law, and in effect, transform it. Not all is 'transparent' but, as Ho illustrates in the context of China, the political has uses of this deliberate institutional ambiguity.<sup>16</sup> A much clearer expressing of the fluidity of ambiguity is found in Von Benda-Beckmann's analysis of conflicts involving NGOs, government agencies, and village chiefs over natural resources in Western Sumatra.<sup>17</sup> These authors and others like Hann (1998) discuss at length how property is embedded to take forward concepts of it being a 'bundle of rights'. To this, we also focus on how this 'bundle of rights' is mobilised. Rather than go the liberal way, shaped by 'rational choice' we prefer to consider actions by groups whose actions may be kept illegible, and dynamic.

Drawing from Laclau<sup>18</sup> it is more accurate to consider ‘demands’ that binds particular groups. As Laclau argues, this avoids the problem of assuming a hegemonic structure that irreversibly shapes identity.

Thus he argues:

..the impossibility of fixing the unity of a social formation in any *conceptually* graspable object leads to the centrality of *naming* in constituting that unity, while the need for a social cement to assemble the heterogeneous elements once their logic of articulation (functionalist or structuralist) no longer gives this affect its centrality in social explanation. (2005:Pg.x; Emphasis in original)

Thus, we are interested in a politics that may be necessarily opaque and dynamic. If so, the point here is to reject the inevitability of ‘city commoning’ being disciplined by the ‘grid’ instituted by planning institutions and processes.

### Looking beyond the ‘grid’ and into the ‘present’

‘..For most contemporary thinkers on the Left, democracy is anticipated or lost, but never present. When one looks at the present, all one sees is a gap, perhaps manifest by multiple attempts to fill it—as in the various definitions of democracy as resistance, governance, or ambient milieu. There can be past democratic ideals—nostalgic fantasies of Athens, town meetings, our days in the resistance—or there can be hope for the future, justification of present acts in terms of this future; but there isn’t responsibility now. Or so it seems in contemporary Left fantasies of democracy, fantasies that inspire Left rejections of law, regulation, and the state...’ J. Ranciere in *Disagreement*

In the literature we have listed above, most illustrations of the urban setting of ‘the commons’ fall within a context of ‘native’ claims of Australia, Africa, or in parts of Canada, but in a rather tempered way, when located in ‘western’ cities of Vancouver or Toronto.<sup>19</sup> The argument is that of ‘history’ set within a possible future. Also, there seems a particular focused territoriality to the arguments—particular locations where native groups stake claims, or as in the Australian Mabo case, a particular ‘landmark’ judicial ruling. In contrast, we could consider that the property issue is far less ‘settled’ in cities that we are familiar with—Bengaluru, Delhi or Mumbai. What may be very specific territorial

issues in the Global North (say for example, raised in contestation in the context of native/ aboriginal claims), are mainstream here in Indian cities. Finally, we are not just discussing ‘customary’ practices revealed as remnants, but rather co-existing, contesting the Grid of Master Planning, and in fact expanding political space.

To fully appreciate this, there are a various forms of territorialisation beyond the structure of the master plan—whose specific spacialisation lies in the context of Bengaluru’s metro area, between 3 to 6% of its metro territory.<sup>20</sup> (Benjamin 2008). At first glance, one may assume that the master plan territorialisation are characterised by a ‘settling’ of property. However, this is hardly true. Apart from squatter settlements and other forms of (urban villages) private land subdivisions<sup>21</sup> (Benjamin 2004), even master planned areas confront an ‘occupancy urbanism’. Rather than view diverse land settings from the frame of the ‘grid’, relatively more open ended political categories would draw from the literature around legal pluralism, specifically Moore (1973) and Razzaz (1998) drawing on Moore (1973) providing the concept of ‘non-compliant semi-autonomous social fields’.

City commoning intertwines groups of people bound in fluid ways via a variety of issues and concerns, and whose actions disrupt singular forms of singular property. These actions are not beyond the market, as shown below. Rather, it suggests an inherent crisis in capitalism whose underpinning element of property is constantly reconstructed.

Looking closely at Bengaluru as context for ‘city commoning’, three spaces can be considered.

First, spaces of *territorialisation* that is inherently beyond the discipline set by the master plan. These spaces are constituted around the settlement of land, shelter consolidation and infrastructure development. Part of the argument lies in the way ambiguous land titles allow for political autonomy and also an economy that is deeply threatening to centralised authorities—that of the national government, transnational corporations and their legal consultants, and also institutions like the World Bank and the IMF.<sup>22</sup> Another way to view this ‘distortion’ is as a reflection of the multiple tenures that subvert the official land price planning

rationale. If the ‘occupants’ of these settlements—not as individuals but as village collectives—materially benefit from what Tian (2008: 296)<sup>23</sup> terms as the ‘incompleteness’ of legal property rights even when notional and locational economic values are identical to planned areas, then, in effect, this is revenue drawn away from higher level government planners. This is also not very different from the case of East Delhi’s industrialised neighbourhoods. In those areas, residents play the municipal system to access higher electricity loads via diverse procedures around ‘non-conforming uses’ to be ‘regularised’ evolved outside policy (Benjamin 2004). Delhi’s ‘urban villages’, which, in the 1960s and 1970s, and especially in the industrial expansion times of the mid 1980s, negotiated a non-applicability of by-laws and regulation—this spurred extensive small scale industrialisation (Benjamin 1996).

The second realm, linked to the above, pertains to *institutional politics embeddings* beyond the givens of rational institutional ‘design’ and organisational layouts shaped around technocratic managerial concerns. ‘Group actions’ pressure local government into a politicised ‘porous’ bureaucracy whose institutional politics embed social practices around the settlement and regulation of land. Such an ‘everyday state’ as an institutional realm of mostly (though not exclusively) municipal and lower–middle bureaucratic politicised interface between administrative procedures and real estate markets disrupt singular forms of property reflected in diverse tenure regimes. Of course, other societal groups, large industrial, commercial lobbies, and very large real estate developers also re–work administrative structures mobilising political clout. My pointer is to the working of popular society (sometimes referred to as ‘the poor’) as being active agents re–working institutional territories.

The third is the space of *economy*—materialised in the numerous bazaars, wholesale markets, hawkers, but also vast territories dominated by small firms industrialised settings. Many of these are interspaced with residential uses—clouding conventional narratives of rigid zoning and planned development. While such complexities of land use shape the politics of territorialisation, there is another key factor. Economy here is usually constituted via interconnected small firms of manufacturing and trades rather than atomised individuals. This material world of

the mainstream products defy the term ‘commodity’—that faceless item replicated endlessly by docile servitudes. It is this interconnectedness that bridges categories of workers and management to make possible extensive ‘reengineering’ and in effect, to disrupt singular forms of property that underpin notions of patents and brands.

The world of the reengineered (inaccurately termed pirate in opposition to the original), now witnesses material reworking across borders set up by the nation state to rework concepts such as ‘original–pirate/ piracy’ and reject such oppositions for instance, the material world of smart phones, and my earlier work on cables and conductors (Benjamin 2006). What is significant, is the political space that is very different from the common narrative of economy (trajectory) in the city: The decline of mass manufacturing into small firms, the narrative of loss, not just of worker organised politics but also culture, and in effect, the possibility of a reconciliation project that accepts as dominant, an economy of property. Instead, the commoning narratives of economy are unruly—of city spaces where they locate, of the singular forms of property sought to be imposed on them, on the credit and finance that seek their surpluses, and incorporation into the grid and the law. This disruption of property is implied in political spaces that engage not with an emancipatory history, or a projected future, but rather within the ongoing dynamic of land tenure and its’ associated space of city politics introduced previously.

Thus, a key issue of ‘city commoning’, while disrupting property (and rejecting the binary of ‘private—public’ is that this does not fit into the utopian of rejecting ‘the market’. Instead, it points to a politicised embedding in a ‘locality’ that creates and unsettles capitalism in its very core element of property. Such a locality is not one posed as (an ‘anthropological’ bind of) assuming the binary of local–global. Rather, the politicised embedding in territorial formation where land settings are not a docile plane for societal forces to play out, forms a locality, which can include very global forces. For instance, a previous ethnographic research on East Bengaluru’s IT dominated locality revealed how the intensity of local politics of the ‘Singapore Technology Park’ implicated trans–global funds and associated institutions.

Approaches that visualise ‘the commons’, within a binary of a market—commodity process set in opposition to the need for a ‘community’ controlled space that lies beyond the market—economic logic. The intent is to counter a liberal argumentation of the ‘tragedy of the commons’. This progressive politics, at the heart of many progressive academics and activists, is materialised within several realms: of social movements to help raise the consciousness and organise the masses, press for policy that includes a space for ‘participation’ via spaces for ‘debate and dissent’, to effect ‘transparency and accountability’. Broadly, the idea is to illuminate a conflictual territory to be able to effect a ‘rights based development. In effect, what is set out in real terms is not a rejection per se of the dominant mode of the market in, say, land, infrastructure, economy, but rather via policy (backed by ‘organised’ political constituencies to press for this) to also maintain a space beyond the market.

The other issue is that ‘the city’ remains a passive backdrop—a location with passive and predictable social groups. In effect, this effort is to create a utopia with the developmental project. But there are several questions that we could raise:

- a) Is this utopia then bounded by the ‘uncommon’?
- b) Is this anxiety implicated in the frame in what Blomley has usefully termed as the violence of ‘the grid and law’, that it lies ‘projectified’ and hence symbolic?
- c) Does the very act of ‘community organisation/consciousness building/participation’, run the risk of cooption, of disciplining an unruly democracy into ‘agency of the poor’ within the programme and project mode?
- d) Is the project of ‘transparency and accountability’ an entry to, for example, the land titling programmes envisioned by Hernando Desoto, the darling of the World Bank and now large financial institutions, to rework their instrumentisation into micro-credit and more?
- e) Is ‘transparency and accountability’ an agenda of the elite who fear democracy and in forms that necessarily question, if not disrupt, singular forms of property?

- f) Is the political realm that allows for, and manufactures, debate and dissent only one of the many realms, and one where, as Ranchier<sup>24</sup> and Dikec<sup>25</sup> argue, policy is in effect a form of policing?
- g) The politics within which dissent and debate is being framed today within progressive activists and academic circles, seems much like Zizek's argument about 'short circuit'.<sup>26</sup> Particularly relevant here is his argument (referring to Oscar Wilde) about the contradiction of private property used to alleviate the evils that result from the institution of private property (6:53) and 'lets make the evil work for the good' (7:26). Dissent and debate is important but, in the way of David Harvey's call for new categories of analysis, with notions of politics and power at the center of analysis.<sup>27</sup>
- h) Does the kind of city politics and realms where the notion of debate and dissent fit into remain one of 'illuminating' the city, suffering from the anxiety to make the 'poor and marginalised' aware—but set within a wider 'policy imperative' to make cities 'inclusive'.

Perhaps the emancipatory possibility of 'city commoning' may lie precisely in its politics that rejects the logic of grid, resists easy surveys, subverts and reformulates/ politicises law, shows the complicity of 'dissent–debate' in reinforcing (private) property and the disconnect of it's proponents with the everyday materiality of the city. Mainstream city processes need to be viewed beyond the confines of the survey and the grid, and ways in which law is socialised and politicised to unsettle property. It is hardly surprising that the urban elite, including progressive activists and some academics, feel deeply threatened by mainstream urbanisms that show contesting political realms to those of 'manufactured debate and dissent'. In rejecting such disciplining set within the logic of 'the plan and the grid', an approach to city commoning the embeddedness of market in a radical perspective around the disruption / reconfiguration of singular forms of property is suggested: land as real estate evolved around diverse and necessarily fluid tenure forms, economy beyond the property of patents and 'the brand', and finally administrative and political realms that operate in different planes to organised party politics.

## Endnotes

- <sup>1</sup> What is referred here is the Bruhat Bengaluru Mahanagara Palike (Greater Bengaluru Metropolitan Council), but also specifically it's senior administration rather than it's elected council—a distinction that is central to understand the politics.
- <sup>2</sup> Nov 14 Deccan Herald (Bengaluru edition) <http://www.deccanherald.com/content/112881/a-storm-breeds-coffee-cup.html>
- <sup>3</sup> I use this term inspired from a discussion around practices of 'commoning' discussed in a workshop on urban commons recently held in Bengaluru.
- <sup>4</sup> Indeed, if not in Bengaluru, but the work of some vigilant NGOs, with almost an evangelist zeal, make a similar argumentation in the context of Delhi with controversial impacts See: a) Madhu Kishwar, the MCD, the 'mafia' and the media <http://mail.sarai.net/pipermail/reader-list/2008-May/012772.html> b) Social activist beaten for helping street vendors <http://ibnlive.in.com/news/social-activist-beaten-for-helping-street-vendors/55721-3.html> ; (See video at: <http://in.news.yahoo.com/080105/211/6p9wk.html>)
- <sup>5</sup> Also see: *Planters picket international team in Madikeri* Madikeri(KTK), Oct 19 <http://www.deccanherald.com/content/105912/planters-picket-international-team-madikeri.html>
- <sup>6</sup> See for instance: a) Supporting Sustainable Development in Historic Cities and Cultural Heritage Sites The World Bank [http://www.coe.int/t/dg4/cultureheritage/heritage/ehd/3eforum/PresentationGuidoLicciardi\\_E\\_Forum2010.pdf](http://www.coe.int/t/dg4/cultureheritage/heritage/ehd/3eforum/PresentationGuidoLicciardi_E_Forum2010.pdf) b) The investments of the Pécs World Heritage and the Reconstruction of PMMK <http://www.ineer.org/Events/ICEE2007/papers/658.pdf>
- <sup>7</sup> Bruhat Bengaluru Mahanagara Palike (Greater Bengaluru Metropolitan Council).
- <sup>8</sup> Benjamin 2010 *Manufacturing Neoliberalism: Lifestyling Indian Urbanity* Chapter-4 in *Accumulation by Dispossession: Transformative Cities in the New Global Order* Edited by Swapna Banerjee-Guha Sage, New Delhi, India.
- <sup>9</sup> Blomley N. 2003 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid' *Annals of the Association of American Geographers*, Vol. 93, No.1, March pp 121-141.
- <sup>10</sup> Personal communication with Eric Dennis, Nov. 20<sup>th</sup> 2010.
- <sup>11</sup> Smriti Srinivas: *Landscapes of Urban Memory: The Sacred and the Civic in India's High-Tech City*. Comparative Studies in Society and History, Minneapolis: University of Minnesota Press, 2001Pg. 45: 642-642 Cambridge University Press.
- <sup>12</sup> See for instance, *An example of communal amity* <http://www.hindu.com/2005/04/23/stories/2005042315950300.htm>
- <sup>13</sup> Razzaz Omar (1994) 'Contestation and Mutual Adjustment: The Process of Controlling Land in Yajouz, Jordan' *Law & Society Review*, Vol. 28, No. 1 (pp. 740).
- <sup>14</sup> "... In Disagreement (2007), Ranciere considers the beginnings of politics in terms of "an original twist that short-circuits the natural logic of 'properties'" (Pg. 13). This twist, torsion, or interrupted current, he argues, is the wrong of a fundamental dispute that causes politics to occur. Politics comes about through interruption. The smooth space of the natural order confronts a gap or hole. So there is not a natural order but a twisted one. There is a not a smooth flow or set of natural relations and identities; there is a hole distorting the whole, belying the fiction or fantasy of



- the whole thing or order. Ranciere J. (1998) *Disagreement: Politics and Philosophy* University of Minnesota Press, Also see an essay by (Jodi Dean on March 24, 2008 in <http://ranciere.blogspot.com/2008/03/zizek-rancire-democracy.html> )
- <sup>15</sup> See Manderson Law Text 2005:2 & Johns F E, 2005: 60.
- <sup>16</sup> Ho however, sees such ambiguous creation in opposition to 'Nation State derived structures. In our argumentation, although we contest the notion of the 'Urban Commons', the mobilisation of ambiguity is not necessarily disciplined by the 'grid'. See Ho P 'Who Owns China's Land? Property Rights and Deliberate Institutional Ambiguity' *The China Quarterly* (2001) 166: 394-421 Cambridge University Press
- <sup>17</sup> von Benda-Beckmann F, & von Benda-Beckmann K., *Multiple Embeddedness and Systemic Implications: struggles over Natural Resources in Minangkabau since the Reformasi* *Asian Journal of Social Sciences* 38 (2010) 172-186.
- <sup>18</sup> Laclau Ernesto *On Popular Reason Verso Books* London, New York 2005.
- <sup>19</sup> For a vivid illustration of the collision of planned grids and those posed by popular 'community' actions in Vancouver, see Blomley N., 2004 'Property And The Landscapes of Gentrification' Ch. 3 (29-74) In *Unsettling the City: Urban Land and the Politics of Property* Routledge NY & London. Also see Blomley 2008 for an extension of the arguments in this chapter. For the case of Toronto, see Valverde M., 2005 'Taking 'land use' seriously: towards an ontology of municipal law' in *Law Text Culture* Vol. 9, (34-59).
- <sup>20</sup> Benjamin S. 2008 'Occupancy Urbanism: Radicalizing Politics and Economy beyond Policy and Programs' *Int. Journal of Urban and Regional Research (IJURR)* Vol. 32, Issue 3 September 2008.
- <sup>21</sup> Benjamin S. 2004 'Urban land transformation for pro-poor economies' *Geoforum*, Volume 35, Issue 2, March (pp. 177-187) 2004.
- <sup>22</sup> For instance, the case of Pearl River New Town, the master planned township demarcated with clear property rights, that has, after 14 years since the plan, only 30% of the planned new construction (Tian 2008: Fig. 6 on Pg. 293,294). Tian points to multiple reasons, including the 1997 Asian financial crises, but notes that Guangzhou planners point to the 'distorted' price mechanism as one of the main reasons for the failure of planning implementation.
- <sup>23</sup> Tian L. *The Chengzhongcun Land Market in China: Boon or Bane?—A Perspective on Property Rights* *International Journal of Urban and Regional Research* Vol. 32.2, June 2008: 282-304.
- <sup>24</sup> Ranciere Jacques *Disagreement: Politics and Philosophy* Univ of Minnesota Press 1998.
- <sup>25</sup> Dikec Mustafa 'Voices into Noises: Revolts as unarticulated Justice Movements' Ch. 7 (152-169) in *Badlands of the Republic: Space, Politics, and Urban Policy* Blackwell Publishing 2007.
- <sup>26</sup> Zizek (4:43) "...But you know, it makes you feel warm: that I am doing something for mother earth.." (in *RSA Animate—First as Tragedy, Then as Farce*). <http://www.youtube.com/watch?v=hpAMbpQ8J7g&feature=channel>
- <sup>27</sup> *RSA Animate—Crises of Capitalism* David Harvey [http://www.youtube.com/watch?v=qOP2V\\_np2c0&feature=player\\_embedded](http://www.youtube.com/watch?v=qOP2V_np2c0&feature=player_embedded)



**WOW!  
BEAUTIFUL!  
HOW MANY BOTTLES OF  
MINERAL WATER  
WOULD IT MAKE?**

# Water for commons disparity in Chennai

---

Dr Geeta Lakshmi, Chennai

**T**he commons is a new way to express a very old idea, the idea that dates back with the origin of human race: this says that some forms of wealth belong to all of us. These community resources would be actively protected and managed for the good of all having a common and shared ownership. The commons are the things that we inherit and create jointly, and that will (hopefully) last for generations to come. The commons consists of gifts of nature such as air, water (oceans and other freshwater resources) and wildlife anything that involves some kind of common pool of resources, be it natural or be it shared social creations. This could be identified by four central elements.<sup>1</sup>

- Belonging—to something bigger than ourselves.
- Relationships—as the starting point for collaborative work.
- Benefits—those go to all, not just a privileged few.
- Governance—not just government, but a whole set of ways to manage commons for the greater good of everyone.

The subtle monopolisation of the global commons began in the middle ages when the rights to land were claimed by the aristocracy and feudalism. The common people and their resources were thus exploited by those who owned the land. Over time, this accumulation of power through resource acquisition allowed cities to plunder the country, taking control of yet more land and resources and thereby establishing ever larger empires. The same principle of monopolisation currently threatens countless resources, common to the global public, which we hold in trust for future generations. Apart from our global ecological system, our shared resources include all creations of nature and society; all are coming under the control of few. Added to this monopolisation, our governments have neglected their responsibility to protect these common resources and make them equally available for all. They have given a free hand to the private sector to control and exploit these

resources to their benefit. This leads to private corporations seizing the resources. As the harshest result of the privatisation, in many regions across the globe, communities are forced to pay an exorbitant price for privatised essentials such as water.<sup>2</sup>

Of the many essential elements for human existence, water is of the greatest importance. Over two-thirds of the human body is constituted of water. Be it any form of life, plant, animal or human, it cannot exist without water. Civilisations have evolved and developed around water bodies, as most human activities, including agriculture and industry, depend on water. History has witnessed that the development of the human race from nomads to settled life and then inventions and discoveries to better their life and society have always revolved around water. Many a time it is a source of conflict and problems. Though all human inventions and creations are not towards the development of the human race and society, water has been an integral part of the journey from the pre-historic to present times. This life-giving resource rightfully belongs to all of humanity as well as animals.

### **Water: A resource for commons**

Over 70% of the Earth is covered with water. Nearly 97% of the world's water is salty or otherwise undrinkable. Another 2% is locked up in ice caps and glaciers. That leaves just 1% for all humanity's needs—all its agricultural, residential, manufacturing, community and personal needs. But even this 1% is not available for the society's use nor use for the entire human race uniformly. This source of life without which life is nonexistent has grown to be branded as a commodity and property, access to which is subject to many restrictions 'to common people, especially poor and that 80% of population which swing around the poverty line'.

With present consumption patterns about one-fifth of the world's population lacks access to safe drinking water. The prediction is that two out of every three persons on the earth will live in water-stressed conditions by 2025. Pollution, scarcity of water resources and climate change will be the major emerging issues in the next century. Water pollution adds enormously to existing problems of water scarcity by removing

large volumes of water from the available supply to cater towards the city water supply, corporate and industrial purpose. The pollution threat is particularly serious when it affects groundwater supplies, where contamination is slow to dilute and purification measures are costly. This trend has started in the big industrial cities like Chennai, Bengaluru, Mysore, Delhi, Kolkata. Despite this water consumption and utilisation patterns have not changed. The result—the life source has literally turned to be a costly commodity. This has given rise to water stress. The stress gets built up mainly due to failure of conventional water management strategies for resolving emerging challenges and conflicts.

Water management is a big challenge in a transforming agro-economic and social setting. The penetration of markets into the countryside, fast urbanisation, rapid industrial expansion and open entry of global markets (globalisation) cause new dimensions of water management problems across many parts of the world, especially the Third World nations and more so in South Asia. All these complexities pose renewed threat of water management concerns. One of the manifestations of this emerging complexity is the growing conflict between different sets of water users: the traditional and the conventional ones. For traditional users water is a natural resource and access to it is free and equal for all. On the other hand the conventional users not only consider water as a resource but also as a commodity which can be bought, controlled and manipulated to personal advantage.

Conflicts over usage of water occur for many reasons such as over-use, competing demand for water, declining water quality, taking water out of agriculture land and sell it to agencies; an emerging rural—urban water trade and so on. Existing legal measures are unhelpful not because laws are particularly ineffective but the law enforcement mechanisms are minimal and non-mandatory. Though there were some expectant relief witnessed in a few historic judgments delivered by the highest judicial authorities of India, it could not also travel too far due to faulty monitoring mechanism and corrupt governance. All these are inter-related and complex set of factors, which trigger off conflicting and real explosive situations.

## **Water scenario in India**

With the rapid population growth since independence, water is becoming an increasingly scarce resource in the country. Despite this, water continues to be used inefficiently on a daily basis in all sectors. At independence, the population was less than 400 million and per capita water availability was over 5,000 cubic meters per year (m<sup>3</sup>/cap/yr). Today, in 2010, the population has grown to 1 billion and water availability has fallen to just about 2,000 (m<sup>3</sup>/cap/yr). India's finite and fragile water resources are stressed and depleting, while sector demands (including drinking water, industry, agriculture, and others) are growing rapidly in line with urbanisation, population increase, rising incomes and industrial growth. This has resulted in declining per capita availability and deteriorating quality of water. Inter-sector allocations, planning, and management of increasingly fragile water resources have thus emerged as a major challenge before the nation.

## **The situation in Chennai**

Chennai is the capital of the southern Indian state of Tamil Nadu, and is on the eastern coast of India. In recent years, the inhabitants of the city of Chennai and the surrounding metropolitan area have been facing increasingly severe water shortages. Many programmes of work and large amounts of money have been directed at solving these water shortages but with limited success. In fact, as both competition for water and demand continues to rise sharply, it can be argued that the water challenges facing Chennai are becoming more severe and more difficult to handle or solve. It is also clear that the escalating demand for water in Chennai metropolitan area is putting more pressure on the peri-urban and more distant rural area that are the main sources of Chennai's water supply.

This chapter discusses the nature and scale of water scarcity in the city and the approaches taken by the government to tackle the situation. This paper also discusses how the state government's approaches to water service delivery in the city caters to the water needs of city dwellers and industries outside city on the one hand but on the other hand, deprives the entire population (the commoners) of the peri-urban areas and more distant rural areas of their water rights.

It is argued that this leads to an imbalance of water equity between urban areas and the areas that are the sources of Chennai's water supply. Finally, it analyses how legislation, which has been formed to protect ground and surface water exploitation, has been blatantly violated and how this has led to a deprivation among the urban and peri-urban commons.

### **State of the city's water resources: Saline intrusion**

Groundwater levels in the Chennai metropolitan area in 2003–04 had fallen to alarmingly low levels and, in many places, intrusion of seawater into coastal aquifers has been reported. A national study conducted by the Central Groundwater Board stated that Tamil Nadu, Puduchery, Daman and Diu, and Lakshadweep topped the list for saline intrusion into coastal aquifers caused by excessive groundwater extraction. The C.P.R. Environment Education Centre conducted a six-year survey of groundwater in coastal areas around Chennai from Injambakkam in the south to Ennore in the north. The main finding of this survey, which was based on monitoring 150 wells, was that the Total Dissolved Solid (TDS) and chloride content of water samples registered a significant increase during the six-year period. In other words, salt-water intrusion into Chennai's groundwater sources is steadily increasing. Of the three zones in the city, namely south, central and north, central Chennai is the most severely affected. In Mandavellipakkam and Mylapore, TDS has doubled in the last four years. While 85% of water sources in Central Chennai have shown an increase in TDS levels during the last three years, 50% of water sources in north Chennai have shown an increase in the last four years and 66% of all monitored water sources have registered increase in TDS levels during the last six years. Heavy withdrawal of groundwater by industries and increasing number of high-rise apartments have aggravated the situation. Unavailability of potable water in the metropolitan area and lack of proper water management has left the Chennai Metro Water Supply and Sewerage Board (CMWSSB) with no alternatives but to look outside the metropolitan limits for good-quality water resources.

Since 2005 Chennai has been receiving considerably good amount of rain and, as per the government and other sources, it is noted that

the groundwater quality and quantity has improved. But on the other hand the industrialisation, population and the subsequent demand for water have increased manifold. The maddening industrialisation and the increasing density of population in the city have increased the groundwater withdrawal.

### **Efforts to supply water to the city**

In 2003, Chennai received only 280 mm of rain from the northeast monsoon against the normal of 580 mm. Consequently, storage levels in the city's reservoirs, namely Red Hills, Chambarambakkam, Cholavaram and Poondi fell to the lowest in 55 years. If the Tamil Nadu government and CMWSSB officials pinned their hopes on the Telugu Ganga Project to combat the resultant water supply problems, the project flattered to deceive. The Krishna river water released from the Kandaleru reservoir in Andhra Pradesh reached the zero point near Uthukottai in Tamil Nadu, after covering a distance of 152 km. The plan had been for this water to be conveyed to Poondi and then to the Red Hills reservoir before being treated and ferried to the city in tankers. But such hopes evaporated on 18 February 2004 with the Poondi canal remaining dry. Illegal tapping of water by farmers and the withdrawal of water to meet the demands of Tirupati town in Andhra Pradesh were offered as the reasons for the non-arrival of the Krishna water in the Poondi canal.

For the last decade, CMWSSB has depended heavily on peri-urban water resources as a source of supply. This water has been extracted from agricultural and domestic-supply wells and transported to the metropolitan areas on a daily basis using 10,000, 12,000 and 20,000 litre capacity tankers. In 2004, improved rainfall meant that some parts of the city received water through corporation pipes and as a result the number of tanker lorries supplying water in the City was reduced as compared to 2003.

Apart from transporting by tanker from peri-urban areas and requesting Andhra Pradesh for more water, Tamil Nadu government has come up with a few so-called long-term strategies. Foremost amongst these schemes was the one named as the 'Revised Chennai Veeranam Project'. This hugely expensive project aimed to bring 0.18 Mcum of water



per day to Chennai by pipeline from 235 kms away. In 2004, it was anticipated that this project would supply about one third of Chennai's daily water requirement. However, the viability of this scheme is under question given that it depends on diminishing flows in the Cauvery River. The fact that, to date, the project pipelines have been used to convey groundwater rather than surface water only heightens concerns over the viability of the project. Other schemes that were considered included bringing water from Tirunelveli dams (Papanasam dam in extreme Southern Tamilnadu) to Chennai by rail.

In 2008 the Chennai Metropolitan area has been upgraded to the Greater Chennai Metropolitan Area, which has now has increased to 780 sq km from a mere 170 sq km. Even in the CMA, a large number of individual houses have been either converted into commercial complexes or multiple residential units. Due to this the pressure on groundwater resources and piped water supply has increased multifold. Sensing this pressure, World Bank has sanctioned a huge loan to upgrade the water supply infrastructure. In 2008 the state government sanctioned setting up of a desalination plant at Ponneri at a cost of Rs 2,300 crores. The supply is expected to start from October 2010. The government, since 2009 March has started monitoring the groundwater level and quality in certain pockets. But, it is yet to come up to a systematic level.

### **Cost of water**

In the summer of 2003, 2,000 privately-owned water tankers were in operation daily in addition to those hired by the Chennai Metropolitan Water Board. At the peak, a 12,000 litre tanker of water would cost as much as Rs 1,500 to Rs 2,000. Even though a number of apartment buildings were prepared to pay this amount, the quality of water was not assured. The informed view was that a number of fly-by-night operators, most of them with just one tanker, became involved in the tanker business sensing good fast money. According to industry sources, the cost of a 12,000-litre tanker of water fell to around Rs 450 to Rs 600 in 2004 depending upon the area of supply and the periodicity with which water was required.<sup>3</sup> In 2003, a well owner was paid Rs 3.30 per 1000 lts of water by the CMWSSB whereas water consumers

paid as much as Rs 80 per 1000 litres to CMWSSB and even more to the private lorry owners. For purified mineral water, the amount charged was as high as Rs.50 per 25 litres or Rs.2000 per 1000 litres of water. Rs 5 was being charged for 250 ml water sachets. This price is uniform for all, the rich and the poor slum dwellers. During 2003–2004, the CMWSSB was spending around Rs 500 million to buy 3.7 billion litres of water each month. During summer months the figures were even higher.

### **Wastewater treatment in the city**

In the present system of water governance, CMWSSB is responsible for water supplies and domestic sewage treatment and management. It is believed that the amount of sewage generated in the city surpasses the amount of water supplied by the board. Around 220 Mcum of wastewater is generated every year as compared to 85 Mcum of water supplied by the board. As per the sewage water treatment and management system of the board, the sewage is supposed to be treated up to the permitted level and then discharged into the waterways and sea. The wastewater system in the city has evolved over the past century and, although upgraded, much of the old system is still in use. The existing wastewater system consists of five independent zones. However this system is undergoing modification to a recently formulated comprehensive plan. Wastewater in all areas is collected in pumping stations in the respective regions. The sewage is then pumped to treatment plants. There are at present five treatment plants in the city: 2 treatment plants in Kodaingayur, one each in Koyambedu, Nesapakkam, Perungudi and Villivakkam. But out of these five plants, only three are functioning. Four new treatment plants have been constructed one each in Kodaingayur, Koyambedu, Nesapakkam and Perungudi. The city generates around 220 Mcum of waste water every year but, according to the CMWSSB, the total capacity of treatment plants does not exceed 80 Mcum per year. So the big question is where does the rest of untreated sewage go? Into the sea? Moreover the board also confirms that during treatment, only Biochemical oxygen demand and Chemical oxygen demand (BOD, COD) and suspended solids are brought down to permitted levels. TDS (Total Dissolved Solid) is not tackled. All sewage, whether treated

or not, is discharged into the Bay of Bengal directly or via the Adayar River, Coovam River and Buckingham canal with obvious consequences for the ecology and the environment. The board has now come up with a proposal to plug all the outlets that drain into Adayar and Coovam River with the result that all the sewage generated in the city would be discharged directly into the sea.

### **Impact on environment and livelihood**

There are laws to tackle these water and wastewater issues but in the sharply polarised political arena that characterises water-related decision making in Chennai, they are rarely implemented. For their utter political benefit, the ruling party always tends to overrule the existing laws. To recharge the depleted aquifers the government has made rainwater harvesting mandatory in all residential and industrial complexes and, according to the board, around 98% of all houses and complexes have now installed rainwater harvesting systems. But the irony is that the government has not prepared plans to harvest floodwater. Each year large volumes of urban runoff discharges directly into the sea via storm water drains. The existing water supply and sewage systems are essentially the result of crisis management and not part of a long-term sustainable water management strategy. The result is that:

- Insufficient attention has been given to ensuring the water rights of each of every inhabitant of Chennai;
- Many agricultural and domestic wells have been depleted to the point of failure; and,
- Livelihoods and the environment in peri-urban areas are being badly affected as Chennai's water footprint grows in size.

In most parts of the city, pipelines have been laid and crores of rupees have been spent to bring water from Veeranam as an additional source of supply. But is the supply from Veeranam sustainable? It is highly dependent on nature's vagaries as it is not a perennial source. The indications are already that once the sources in Veeranam have been exploited, the government will have to switch to some other area as a source of supply. Of course, no one can altogether deny the considerable challenges faced in meeting Chennai's increasing demand or the efforts

made by the state government to provide drinking water to the people. But, given the lack of success to date, important questions that have to be asked include:

- Why has the state failed to provide drinking water facilities to its entire population?
- What are the main constraints on providing drinking water when the city lacks neither money nor technology?

The answer is quite simple. Tamil Nadu has an annual ritual of money allocated, money spent and areas covered. Each year money is allocated for the water crisis and spent to address the crisis on a temporary basis. The following year brings on the same water crisis and money is again allocated. The government continues to look at this issue solely in terms of money spent. However, everyone knows that increasing expenditure will not solve the problem unless the state takes a more strategic long-term approach to tackling the problem of escalating demand and increasing competition for available water resources.

### **Rise of conflicts on water sharing**

Compared to India's four other mega-cities, Chennai is alone in suffering from a lack of a reliable perennial source of water. Delhi and Kolkata have access to the Yamuna and Ganges rivers (or rather Hoogly River in Kolkata) and heavily-populated Mumbai is fortunate to get copious rains from southwest monsoon via a well-organised system of storage reservoirs. Chennai is unfortunate in that there is no perennial water source and the monsoon rains are both unpredictable and hugely variable.

Extracting water from one place to supply it to another has given rise to many inter and intra state water conflicts. There is an ongoing dispute between Karnataka and Tamil Nadu on the issue of sharing of Cauvery River water. Conflicts have also erupted within Tamil Nadu on the issue of sharing water between different areas of the state. Peri-urban areas and more distant rural villages feel deprived of their water rights when water is extracted from their area and supplied to the urban areas. When some suggestions were made to draw water from Madhurantakam Lake some 80 km away from Chennai, there was stiff opposition and people demonstrated on the roads. Similar

resistance was prompted by the proposal to draw water from the Veeranam Lake. The lake generally gets its supply from the Cauvery river system. However, in the last couple of years, it has dried up as a result of poor flow in the Cauvery. Now under the New Veeranam Project, as there is no water in Veeranam Lake, the government is drawing water from bore wells that have been constructed by the government. Since 2004, Chennai residents have been getting Veeranam groundwater in their pipelines but all these processes have irked people of Veeranam region. They feel deprived of their share of water and their water rights. The same scenario can be seen in many parts of the Kancheepuram and Chenglepet regions. People, especially farmers, have come on to the roads protesting against the heavy withdrawal of water from their domestic and agricultural wells by CMWSSB and also by private tanker owners. In many areas, the people, after giving an ultimatum to the CMWSSB authorities, have gone on to ransack pump sets and pipelines laid to draw water from bore wells. Since 2005 due to good rains the storage situation in Veeranam lake has improved thus reducing the pressure on the groundwater.

Reasons for conflicts can be summarised as follows:

- There is a huge and escalating demand for water from all sectors.
- Lack of a water pricing policy between and within sectors is further driving demand. In particular, industries, who can afford to, buy huge amount of groundwater for industrial purposes.
- Policies and institutions, which are supposed to solve conflicts, are to some extent contributing to further conflicts.
- Drinking water, which is hardly 2–5% of the total water consumed, and this ostensibly gets priority.
- Conflicts have given rise to many questions that include
- How can the state government secure this 2–5% of available water for drinking and domestic use without imbalancing equity between regions?
- Are the state government and the state–engaged organisation (e.g. CMWSSB) the appropriate institutions to manage water resources? Would vesting power to manage water to village panchayats be more appropriate and sustainable?

- What kind of regulations are needed to prevent groundwater exploitation without pushing peri-urban regions into a tighter corner?
- How can industries be forced to pay the true cost of water and of cleaning up waste?

The basic problem with the state government and the CMWSSB is that they lack appropriate long-term strategies to tackle the ever more serious water scarcity in the city. This is no easy task given that the challenge also has to be to maintain some kind of equilibrium between the metropolitan, suburban, peri-urban and more distant rural areas given the level of interdependency between the areas. Clearly the city's needs should be given priority over the needs of other areas; however, one region's benefit need not be the loss of another region (conflict between urban commons and peri-urban commons). Moreover no policy or strategy should ignore the specific needs of the environment and poorer and more disadvantaged social groups.

The Constitution of India, National Water Policy (NWP, published once in five years since 1987) and the Tamil Nadu State Water Policy (TNWP), have given the highest priority to drinking water in the country. In fact, the latest version of NWP not only talks about the access and quantity needed but also the quality aspect of drinking water. The silver lining of NWP is that the irrigation and the multipurpose projects should include a drinking water component wherever there is no alternative source of drinking water. In other words, NWP unambiguously states that water for drinking *cannot be a competing a claim* with other uses.

### **Tamil Nadu state water policy**

TNWP was formulated in the year 1994 within the framework of NWP, 1987. The TNWP 1994 was revised in 2003 to keep it in line with the revised NWP and to suit the present scenario. The revised policy claims to have included all the features of the NWP—including giving utmost priority to drinking water quality.

Tamil Nadu Water Supply and Drainage Board (TWAD Board) and CMWSSB are the major governmental agencies which are responsible for providing drinking water and sanitation facilities to the rural and urban areas of the state. TWAD Board, which came into being on

14 April 1971, is vested with the responsibility of investigation, formulation and execution of water supply and sewerage schemes in the entire State of Tamil Nadu except Chennai Metropolitan area. For Chennai Metropolitan area the responsible authority is the CMWSSB.

The Tamil Nadu Water Supply and Drainage Board Act, 1970 opened the door for establishing the Water Supply and Drainage Board and the regulation and development of drinking water and drainage in the State of Tamil Nadu except the Chennai Metropolitan Area. This Act empowers the TWAD Board to take up the responsibility to ensure drinking water and drainage facilities all over the state.

Besides, there are a series of legislations and Government Orders (GOs) enacted/executed to facilitate groundwater governance in the state. Important among them are the Tamil Nadu Groundwater (Control and Regulation) Bill 1977 which aimed to regulate and control the development of groundwater in Tamil Nadu and The Tamil Nadu Groundwater (Development and Management) Act, 2003. There is also a special Act called Chennai Metropolitan Area Groundwater (Regulation) Act, 1987 to manage and regulate the unmindful extraction of groundwater around the peri-urban areas of Chennai city. This Act was to regulate and check over-extraction and unmindful transport of groundwater from peri-urban villages into the city of Chennai.

There was always an emphasis on drinking water in the water policy of Tamil Nadu. With all these legal interventions, the city of Chennai depends upon groundwater for over 60% of domestic needs. The seawater intrusion has taken place already to an extent 9 km. The entire coastal freshwater has turned saline. Despite these legal interventions and transport of water from one part of the state to another, drinking water scarcity remains a pressing problem in the state. In Chennai, the state government has already spent over Rs.40 billion during the last three decades to augment the city's water supply. But the water stress continues to frighten the people of this city, in particular poor and lower middle class population.

In recent times, the governments (both the state and centre) have decided to install a series of desalination plants along the coast of

Tamilnadu to augment the city's water supply and to supply drinking water to coastal villages. Chennai receives an average annual rainfall of 1250 mm which is quite substantial by any standard. Why then does the city need a desalination plant worth Rs.10 billion to generate 150 mld of water. Why do the poor pay for the basic life source, which is also their fundamental right to life? Is there anything seriously wrong with our water policy? Or does our water governance call for more proactive, transparent and eco-friendly interventions?

### **The disastrous effects of privatisation**

Basic water rights generally amount to a very small percentage of overall water resources, whereas water resources allocated for municipal, industrial, or irrigation uses are generally far larger. Water is being taken from aquifers or watersheds either by virtual trade in water or by pipeline or by mass irrigation, (all these types are prevalent in Chennai). Whatever the method, the consequence is that water is vanishing from where nature put it. In the process, we are actually losing water from the hydrologic cycle. The global freshwater crisis is the ground level equivalent to greenhouse gas emissions from the top. Water is being more and more controlled by corporations. Now we all know about the delivery of water by these big utility corporations like, Suez, Vivendi, or Veolia, and that continues with renewed pace every year. Bottled water is an enormous industry.<sup>4</sup>

The creation of a massive new water reuse technology which is being heavily funded by governments, particularly by US, European and Indian governments and international financial apex bodies like the World Bank and The Asian Development Bank, is going to be a hindrance to enact or to enforce water protection laws since there exists a massive international industry to clean up the water sources. So in a bizarre logic of development and GDP, since cleaning up water technology is available and cleaning up will add to the GDP, clean water practices are actively discouraged. As usual, there is going to be trade and environmental services through the WTO and GATS (General Agreement on Trade and Services) around water technology cleanup.<sup>5</sup>

With the growing demand of fresh water, governments have started plundering the oceans. Modern technology has facilitated in setting



up of massive desalination plants, drawing the sea and ocean water. This is terribly polluting, and an energy intensive industry. Rich people buy bottled water, while millions of commoners die of thirst, denied access to safe water. This is not only an ecological crisis but a human rights crisis, and corporate control can be one of the reasons.

### **Efforts to common water**

The human rights approach to water puts the peoples' need first, regarding water use and promotes human-centred water resource development based on a coherent framework of binding legal norms and accountability. It aims to empower individuals to achieve their full potential, and the freedom, to take up opportunities in using water. Agencies, both national and international, NGOs and INGOs, environmentalists and the numerous global communities have joined hands to de-commodify water and to ensure water as a common.

In 2000, 147 Heads of State committed to achieving eight goals to halve global poverty by 2015 in the UN Millennium Development Goals (MDGs). These targets include decreasing hunger and disease, *increasing access to water* and basic shelter; closing the gap on gender inequality, education, and human rights; and environmental sustainability. In terms of water alone, achieving these goals would mean 350 million more people would have access to safe drinking water and 650 million would benefit from basic sanitation. The vision is one of shared responsibility to bring about positive change in the developing world.<sup>6</sup>

If some Asian countries face a water crisis in the future, it will not be because of physical scarcity of water, but because of inadequate or inappropriate water governance, including management practices, institutional arrangements, and socio-political conditions, which leave much to be desired. A report by World Wide Fund for Nature (WWF) 2007, considered water an entitlement, which confers on the holder the right to withdraw water. This report focuses on 'basic water right' that people have as a consequence of primary legislation, which is permanent and not subject to any administrative process.<sup>7</sup>

The International Union for Conservation of Nature (IUCN) reviewed 60 national constitutions and found that only South Africa's 1996

Constitution, in article 27, expressly enshrined a fundamental right of access to sufficient water. Priorities for domestic consumption appear in water legislation of other countries, but South African legislation has definitely made the right of access for basic human needs (water commons) so explicit. Indonesia's Water Resources Law (Law No. 7/2004) is close to defining water for basic needs as a basic water right by establishing the state's responsibility to guarantee water for rudimentary needs. In article 48 of the National Water Law of the People's Republic of China (2002), domestic consumption by households is exempt from licensing requirements as well as drinking water for scattered or penned livestock and poultry. This approach is important but stops short of including water as common for basic human needs. It implies a more passive approach to providing water for commons.

With the adoption of the MDGs, the target of halving the population without sustainable access to safe drinking water and improved sanitation by 2015 has taken center stage in countries around the world. At the 3<sup>rd</sup> World Water Forum in Japan in 2003, the Asian Development Bank (ADB) and its partners showed that water and poverty are connected in both vicious and virtuous cycles, and targeted water investments to reducing poverty. At the 4th World Water Forum in Mexico in 2006, this understanding was reconfirmed in a multi-agency paper by the Poverty and Environment Partnership (Stockholm Environment Institute and United Nations Development Programme 2006). The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to an adequate standard of living, including adequate food, freedom from hunger (art. 11), and the right to enjoy the highest standard of physical health. The UN Committee on Economic, Social and Cultural Rights offered further interpretation of the role that the ICESCR gave to water. In its General Comment in 2002, the committee stated:<sup>8</sup>

- The human right to water is indispensable for leading a life in human dignity. It is a pre-requisite for the realisation of other human rights.
- The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

- The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.

Why is retaining water as commons and a de-corporatisation of water allocation important? The answer is for security. Security for the rural and urban poor, as with other users, water rights relate to the security of having a basic supply necessary for a healthy and dignified life. Beyond water for domestic use, the livelihood security of commons. There is security in survival of agriculture through water for cultivating basic crops and rearing livestock on which village commons depend. For those with more land, water provides the security to invest labour and money into development. For urban dwellers, the security of a more advanced lifestyle inevitably involves higher rates of water use. For industrial and commercial users, it relates to a secure investment climate for business development plans. In the absence of clearly articulated water rights, there is a risk that the security of water for these purposes will be compromised, and lives and livelihoods of commons be adversely affected. Water rights and water de-corporatisation systems play a significant role in providing these kinds of security and addressing real challenges.

### **The way forward**

With population growth in many parts of the world, especially in urban areas, freshwater resources are affected by increasing pollution and overuse of existing natural resources. It has resulted in growing scarcity in quality and quantity of water. A raising competition among the different users and uses of water is the consequence. Climate change and profound social injustices make sharing water among the world's people an urgent challenge for our generation.

Communities, local groups, NGOs and many more from all around the globe have vehemently opposed water privatisation. They have resisted this basic life source, which is nature given for all, being turned into a commodity to be controlled by few. One of the definitions of commons is that it should be available to all without discrimination. The global tragedy is that though water belongs to the commons, the

poor and marginalised suffer from a denial of water almost on the lines of a 'water apartheid'. This water apartheid will not end unless we declare water as a 'common' available to all. All over the globe, different campaigns for water justice demands that water be declared a fundamental human right. This right can not be denied to anyone just because of their inability to pay for the water.

### Endnotes

- <sup>1</sup> A Rousing Day of Commons, A People's Assembly and International Workshop focus on what we share By Jay Walljasper ; <http://onthecommons.org/rousing-day-commons>.
- <sup>2</sup> <http://www.stwr.org/land-energy-water/the-global-commons-our-shared-resources.html>
- <sup>3</sup> Geeta Lakshmi and S. Janakarajan; "Intricacies of Chennai Metropolitan Water Laws"; The ICFAI Journal of Urban Policy, Vol. 2, No. 1, pp. 29-41, April 2007.
- <sup>4</sup> <http://www.globalissues.org/video/739/maude-barlow-water-stress>
- <sup>5</sup> Ibid.
- <sup>6</sup> <http://www.globalwaterfund.com/Government.html>
- <sup>7</sup> <http://www.adb.org/Documents/books/Water-Rights/Water-Rights.pdf>
- <sup>8</sup> <http://www.globalwaterfund.com/Government.html>

# Resisting erosion

## Dissent and the commons

---

Kinjal Sampat, Deepak Srinivasan

**D**issent as a term stands out as a possible political tool that helps indicate democracy in action. Minority or majority, perhaps defined as ‘freedom fighters’ or insurgents, activists or grassroots citizens, the diverse dissenting collective has been of interest for the politician as the site of possible feedback and support (or lack of support) and for academicians as the site of producing understandings of socio-economic ground realities. Dissenting voices have played a crucial role within any democratic set up that involves interplay between the public and the politic. In this context, democracy should be viewed as it emerges in human socio-political history as a modernising force that civilises and presents a supposedly egalitarian proposition. A contract if you will, between a newly forming ‘equal’ public and elected leaders who ‘serve’, where older orders of monarchy, oligarchy, aristocracy, and theo-politics are challenged and ‘inverted’, dissent in its various forms has brought in this new order, democracy; this being achieved through constant violent or non-violent negotiation. Aspects of this power inversion are important to probe and re-examine so we can understand, within this framework of supposed egalitarian sharing, the transition of control of resources. If understanding modern nations and their construction aids in understanding the nature of control of resources and their transition, examining the vibrancy of a culture of dissent presents the possibilities of a dynamic negotiation, chosen to be kept alive in a breathing democracy.

So what are these resources that we refer to and how are these shared? And in the democracy that we constantly refer to like our own, the grand new 60 odd year old Indian one, how have these resources been defined?

### **‘Common’ concepts**

There has been a rather poor conceptualisation of the notion of common resources within the discourse of national development. In fact, there

has been a near absent debate in ‘mainstream’ consciousness on issues concerning sharing of resources and cost–benefit analysis of this for governing bodies and ‘users’. Increasingly, one also witnesses big moves toward non–protection by the state of crucial renewable and non–renewable natural resources, more since the neoliberal phase operationalised (around 20 years now). How does one link up people’s politics with consumption, sharing and allocation of resources? This is one area that is not very openly discussed or understood well.

Amongst these resources, land has turned into a rather contentious ‘resource’ which is neither viewed as renewable or non–renewable, nor discussed conceptually as shared, not owned or community owned, but is rather blatantly assumed to only swing in status between the duality of private and public (except forest lands, which are at least, constitutionally protected<sup>1</sup>). Here, ‘public’ is a rather ambiguous misnomer because, public is used for state owned land with the assumption that within a democracy the political rises from and is dependently dialogical with its compositional junta. Far from being a representative overseer of public land and public resources, the state is seen to instead initiate brokerage of public land, construing it’s constitutional sovereignty as ownership.<sup>2</sup> The paradoxical relationship here is that, a feigning of democracy takes place with an absence of democratic processes that should facilitate dialogue on usage of land, offer adequate and qualitative (not just perfunctory economic) compensation and address grievances effectively (not as vestigial function). Land as non–perishable, commercially mobilised capital offers a ripe site for the legal and illegal, corrupt and strategic, totally cognisant activities of the state. A rather radical demonstrative dissenting needs to emerge to help challenge and re–envision land utility for community purposes.

Another problem with conceptualisation of the commons lies in the articulation of the notion of commons, as well as the categorisation of diverse common holdings, whether material or mental (intellectual). These various embodiments of commons—ranging from physical–geological, essential resources to socio–cultural commons (shared spaces, habitats, both rural and urban as well as virtual media and communication technologies and platforms)—have not been very closely defined in terms of access, rights, roles and meanings for the users. In fact,

there has been a denial of rights to access commons as well as lack of transparency in status of commons in this free market era of the Indian economy.

Given such desperate and shambled state of commons in this South Asian region, one would expect to see massive dissenting and uprisings, and this is exactly the situation as it stands. Yet, we see a crisis within this culture of dissent. A growing chasm, both strategic and situational, separates these critiques of state action and class politics from reaching mainstream public discourse. Media spaces are increasingly impoverished and corporatised and the role for communities to participate in this digital era is minuscule. The state on the other hand shows signs of pseudo democratic, totalitarian governance and quashes these voices of intolerance and critique by using strategic violence. Illegal citizenship discourses are instrumentalised against its delegitimised citizens in various parts of the country (peasant, indigenous, gender groups; forest clearings, urban tree felling, non-transparent, unfair SEZ sanctions, massive road and rail infrastructural projects, unauthorised industrial sanctions, etc).

On the other hand, the culture of dissent has been co-opted the world over in many segments either through strategic CSR–corporate (culprit) funding, or through civil society interventions and the presence of NGOs.<sup>3</sup> Furthermore, a deeper malaise, an increasingly intolerant middle class with morals that reflect merciless apathy towards any culture of dissent has emerged.

#### **Law, media and their neoliberal puppeteers**

This chapter tries to locate dissent strategically, in the present socio-economic order. First, it looks critically at the spaces of dissent which are rather shrinking one would argue in the present times and secondly it pitches it as one of the most important tools today to be used for a more democratic appropriation of commons. The 1990s represent a very different time for India. The initiation of processes of liberalisation and globalisation had far too many direct influences on the social sphere but what it has done at another level is to give a new cultural identity to the minority Indian middle classes. This class was the one that stood to gain the most from the liberalising of the economy.

A process of de-politicisation of the middle class by creating a cleft from everyday political affairs and simultaneously engaging its energies in becoming a homogenised ideal societal model began, through strategic media and educational programming. On the other hand the so-called free market economy was neither free nor independent of political structures, forming in fact, a venn diagram. Hence what we see here is a slight shift from C Wright Mills' (1956) elite theory.<sup>4</sup> For one, the tools and mechanisms of acquiring this power has changed: the military as Mills pointed out is still used, but the importance of supra national laws and media in creating an under layer of hegemonic middle class ideology is something that requires due attention. Secondly while one sees a sort of retreat of middle class from active day to day politics and a lower caste assertion in day to day (as well as electoral) politics, it is the overlapping of political and new economic structures, their embeddedness and their farcical independent image that now works to the advantage of this class.

The apparent distancing of this new middle class from everyday politics is complemented by their overarching presence in forms of media that speak to the masses—namely mainstream news or entertainment media. The hero of Hindi films has changed.<sup>5</sup> A farmer in a far away village or a construction worker in the city does not figure in any 'mainstream' narrative, the hero now owns it all. He is urbane, well educated and works in a multinational corporate establishment. On the other hand in a news-obsessed society another transformation of a similar kind is under way—what Satish Deshpande calls 'from proxy to portrait'.<sup>6</sup> Until the 1970s and 80s middle class journalists who claimed to talk / represent the 'mass' of India's poor now claims that '*aam admi*' category for themselves. The middle class though statistically a small segment, in popular discourse most well represents Indian societal aspirations, aesthetics and dominant pervasive economics. The interests of the lower class/ subaltern groups are partially represented; their dissent ignored (auto sector workers strike Gurgaon)<sup>7</sup> and also systematically acted against.

If media is an arm that controls and orchestrates mass psycho-politics, the other middle class controlled operative that helps sustain loops



of dominance by regulating behaviour is legal discourse. In general, the perception of arbitration in popular democracies the world over is that it occupies space outside politics. This image may be attributed to a certain level of expertise required in interpreting constitutional language that often gets conflated with attributes of impartiality connoted as an essence to 'reasonable and rationale' functioning. The positioning of the judiciary in the Indian federal system also contributes in a major way to this image. Judiciary consists of 'experts' rather than representatives, is independent of the parliament and has its own detailed structural hierarchy. In principle, it is to be accessible by all 'citizens' it ensures the dispensing of justice on certain egalitarian fundamental principles enshrined in the constitution.

However legal anthropologists/sociologists have been urging us to consider the court as not just an institution for impartial arbitration but as one that is deeply entrenched in political processes. The political and legal are (connected) interspersed with each other. Sociologists like Kannibiran<sup>8</sup> argue that the constitution in itself is a political document. While talking about law, class and commons we may need to also hark back and analyse the introduction of law as a way to protect private property. In a sense then, this has a lineage to marking and appropriating commons to serve certain class/ownership interests. It is no surprise that most market fundamentalist, free market proponents urge for the legal to limit its function to its original imagination—that of protecting private property. This history of legally marking out the commons, defining their legal and illegal use and criminalising traditional practices that were centred around these naturally available commons can be traced through the colonial period, like for example, as seen in the history of Bastar (Chhattisgarh).

Gopinath Mohanty's novel *Paraja*<sup>9</sup> based on a story of a family belonging to the 'Paraja' tribe is a nuanced account addressing the issues of exploitation of tribal communities. Ever colonial laws were introduced, commons were marked and appropriated in a non democratic fashion, illegalising and alienating communities, making them illegal in their own land and finally pitting laws of community against trans-regional laws or national laws.

In the context of a city this relationship is even more complex. The 'proper/ legal citizens' are the ones who have a rightful access to these commons and in turn the citizenship of an individual is accorded. Hence what one sees here is a somewhat inverted process, where an individual's legality is decided upon assessment of her usage of commons. To state an example, squatting is a crime only in context of the city where a 'proper' urban citizen is defined by an address. The state can withdraw from all its responsibilities of providing sanitation, water, schooling to all penumbral citizens sans address documents.

Thus, a tripartite nexus can be established between the law, the media and the neoliberal economy in restricting discursive critique on the current status of commons. The aspect being argued for here is that these instruments of modern democracy might need to be reevaluated, realigned, creative, radical, conceptual and operative frameworks.

#### **Capitalist India?**

India's case is interesting to analyse for it further complicates the above-mentioned matrix. India does not, at least in principle position itself as a capitalist country. Also neoliberal policies are only selectively applied. While a few sectors have absolutely no government control, the government wholly owns some others.<sup>10</sup> However, privatisation of public utilities is carried on unhindered in this not so capitalist society. What happens as a consequence is that the state turns an active actor ushering in neo liberal policies. This leads to an inherent contradiction: the privatisation process leads to the retreat of state. Hence at one end the state has complete monopoly over appropriating the commons and on the other, while doing so, it systematically retreats from the public sphere and positions itself as unaccountable to ground effects of such privatisation.

Ideas of inclusive growth or development are thus replaced by rhetoric like better efficiency and value derived through market competition. This absolution of responsibility of the state would also result in heavy monitoring and surveillance of the commons and public realms, increased investment in crime control coupled with usage of 'extreme intolerance' rhetoric and demands for harsher forms of punishment. These symptoms are reminiscent of what writer, researcher Philomena Mariani describes

in her account of neoliberal emergence in American governance.<sup>11</sup> One is thus left with narrow definitions of permissible citizenship and democratic participation, as well as access to the commons and participation in crucial resource utility and management decisions.

#### **From fuzziness to fullness: Illegality**

Partha Chatterjee, in his work on Indian cities<sup>12</sup> lingers on this idea/premise observing the transformation in imagination of spaces. He points out the early ideological stances in forms of city planning, which considered the poor as integral to portraying reality. Chatterjee sites this example: in the 1960s and 70s the railway ministry took into account the sections of population that will travel ticketless while formulating budget projections, whereas officially, ticketless travelling was an offence. There seemed to exist this other layer of accommodation within structural legal, official fronts. In the neoliberal state of today, however, population groups are banished from the imagination of spaces that are now tagged 'Shanghai–Mumbai' or 'Bangalore, India's Singapore'. Complimenting their absence in planning is the fact that the last decade has seen massive demolitions and clean up drives in almost all metropolitan cities in the country. These drives began in the late 1980s alongside relaxation of various laws related to land like the Urban Land Ceiling and Coastal Regulation. These regulations had hitherto disallowed land that was the commons to be monopolised by a few rich in the city.

This phenomenon is not only restricted at governmental/administrative and legal levels. A whole lot of 'citizen groups' since the 1990s have tried to reclaim spaces in cities, mobilising aware middle class citizens around the green agenda. The inherent contradiction in this kind of reclamation is that the population group which exploits the environment the most, mobilises itself for the benefit of the city by reclaiming its green spaces. This, they do by ridding themselves of the squalor. (For a detailed account of middle class mobilisations read Janaki Nair on protests of citizen groups in Bengaluru at Cubbon Park). This sort of non-inclusive ecological activism has also had detrimental effects and violation of rights for many 'fringe' communities inhabiting the city. With little means to register a protest, often, urban communities outside the purview of the urban middle class (despite maintaining

relations of economic and service centric transactions, like street vendors<sup>13</sup>) are deprived of their right to occupy and utilise urban space.

## **Reflections on dissent**

### **Delegitimising dissent**

Similar contestations are experienced for all forms of common property/ resources outside city spaces. While the administration stance is that of harnessing the resources for a planned and sustained development of the country, similar population groups always face the brunt of this development. There is a process of ‘othering’ that happens, those who want development and those who are against the national interests. A George Bush or a Lenin who would say, ‘If you are not with us then you are with the enemy’. This phenomenon is common to all movements/ people’s struggles in India whatever be their nature, violent or non-violent. Not only are the leaders of these movements brandished as those against national interests but any form of association with dissenting groups is suspect. Dr. Binayak Sen’s<sup>14</sup> arrest and branding as maoist sympathiser by the state, media and police is an example that reveals the future of dissent. This psycho political drama has continued in similar contexts in the past decade by using armed forces and the police that uses retention, interrogation and booking methods that are inherently unlawful and unconstitutional.<sup>15</sup>

One needs to take a moment to identify two simultaneous processes are operant. One is the implication that ‘national interest’ is not the sum total of the interest of all communities but it is rather like in synecdoche where the interests of one group take over and represent larger categorical general interest. By then juxtaposing this ‘othering’ process with the control of the minority middle class over media and law, this image of the other is constantly echoed and internalised. The voice of the other is systematically then overlooked, silenced and often criminalised so as to promote this homogeneity in the idea of development. Again this process takes place at various levels. While one will discuss at length the overt ways of silencing these dissenting voices but it is their absence from pedagogical practices, mainstream media and the overarching legal—philosophical ideology that penetrates the subconscious of the society.

Denoting an exclusive space for dissent, the creation of Azad Maidan in Mumbai is a good example for overt ways of silencing dissent. Here is a case where foremost, dissent gets spatially limited and a process of alienation from this ‘disruption’ can be achieved. Any form of protest was seen as disrupting regular life of the citizens. This in a way differentiated the protesters from normal citizens, made reclamation of any other public space for dissenting illegal, and in a sense helped the entire administrative machinery ignore such dissent as they were now spatially confined. The other more covert silencing of protests has been against the allocation of land to TATA motors in Singur by the Left wing ruling party. The violent strategies and methods used in this case demonstrate the media–law–and–political–power nexus used to criminalise an entire geographic village/settlement/community.<sup>16</sup> That is to say that the structures that exclude a whole lot of population, be it Right wing or Left will move towards a certain military form of authority against democratic principles.

#### **Stigma of dissenting publics**

What is a dissenting voice? Is it the non–agreeable component in a dialogue gone awry, or is it a voice that raises issues of critical politics when no equal and fair dialogue has been established? Also, is dissent critique, or voice for justice, or attention seeking and troublemaking? It depends on who tells the story. Perhaps then, to define dissent, one might need to get specifically to cases where dissent was expressed as well as to closely look at forms of dissent, which might be beyond the scope of this chapter.

With brevity, if one were to scale the breath of locations for dissent, from political lobbying to non–violent protests, from ‘violent’ insurgencies to passive–aggressive civil disobedience movements, this region continues to see it all. From ‘subaltern groups’ to middle class ‘citizens’, from political leaders to trade and labour union leaders, from journalists to academics, there have been many historic processes and events of dissent. And the sites of dissent have been as important as the context. Is it an ongoing movement in the middle of the Narmada valley, or in caste or oppressive feudalism ridden regions of Bihar, Bengal or Andhra Pradesh, or is the dissent of women from village

of Mandal in the upper Alakananda valley (of the then Uttar Pradesh region), locally mobilised to hug trees, and yet others—activists with slogans on urban city streets?

Sites of action thus seem to hint at this interdependent relationship between dissent and the commons. When the commons belonging to a community is threatened using invasive economic or political forces, the resultant cultural, geographic loss would prompt the interdependent community to resist. In a world where older contexts and interactions of community have been replaced through urbanisation, isolation, re-grouping and alienation, the presence of these common sites, like streets, public spaces, parks and other non-private social spaces and virtual forums (increasingly tending towards the internet) allow for a dissenting public to re-connect and reform their sense of communities in flux. Ultimately, a coming together of the sites of dissent, whether for preservation of commons, or as assertion of commonality, would determine an emergence of a larger resistance that would be heeded to. These resistances would lead to dialogue on the evidently ecological and intangible contexts, like culture and gender, to emerge and challenge the prevalent, one-track political and economic discourse.

### **Contesting the culture of dissent**

The aesthetics of the dissenting groups also seems to indicate how mobilisation happens, who participates and if the media will pick it up; these perceptions and permissibilities being shaped within an emblematic element of our pedagogic system, the school history lesson. Subliminal messages on the aesthetics of dissent are presented in sub-textual tone—alluding to dissent as ‘pre-modern’ while references and study of Indian independence and ‘modern Indian history’ are dealt with in the classroom. These judgments/contexts of approval of dissent acquire imprecise cultural connotations and stay embedded. For example, Gandhi’s quite modern ‘quit foreign economy’ call—the *swadesi* movement—is distorted through reinterpretation of *swadesi* as an apolitical, simplified act of cultural loyalty and traditionalist morality.

These undertones for struggle seem to suggest quite subtly, that the nation and its democratic modernity would grant, by virtue of its constitutional contract, everything that is wise and seen as required

by the ‘father/patriarch’, the Indian state. What would result in a democracy as a critical, questioning and participative publics is reduced to mute obedient and subservient subjects—*praja* or mindless messy masses—*junta*.

Using the aesthetic to reinterpret his dissent (loin cloth, nude aging masculinity, stick, *charka*, benevolent smile), a dissenting Gandhi is presented as an apolitical saint devoid of materialism and is reduced to a relic of the past, with no context or relevance in modern events. Similarly, the categorisation and empty eulogising of ‘extremists’ like Subash Chandra Bose or Bhaghat Singh also order to mind, different fictionalised aesthetics—fetishising a coat and the hat in the case of Bhagat Singh for example—as providing ‘legitimate lineage’ for the post-independent State to justify demands of hyper-patriotism from the civilian and legitimisation of building forces of militarised defence. The state co-opts such lineages to legitimise its problematic military and militant rule in ‘problem areas’ of the country and region (Kashmir, the North East, Sri Lanka, etc) and impinges on the middle class, militancy or nationalist extremism as guardian of nationality.

This partial ‘making myths’ of Indian history within split tonal narratives of pre-modern and modern (the modernising nation being placed squarely within a latter ‘golden’ period of nation building and opportunity access) has resulted in meticulous splitting in the ‘publicness’. Citizenry of the nation’s many socio-economic fragments is slotted into oversimplified triads of civilian, peasant, soldier (with differential citizenship rights). These are further classified and declassified and granted or denied citizenship through the *aamadmi* discourse, using media as a site of instrumentation of this rhetoric (radio and TV). Thus, post-independent, modern day dissent is delegitimised within the dominant public narrative. The Indian state triumphs in the fact that it has its middle classes interpret dissent in the public sphere as pre-modern and non-contextual (activism led by idealist *jholawalas*) or illegal and illegitimate (peasant, adivasi and other subaltern group struggles).

Formally, the nation and the publics eulogise the largest dissent in our conscious memory—the Indian independence movement led by Gandhi—but the formation of nation seems to have delegitimised the

existent contexts to express dissatisfaction with government systems, with justice and with constitutional limitations. A systematic alienation from the culture and context of dissent has been achieved, particularly through mainstream middle class that seems to grow in size and, more importantly, exerts economic muscle. Pedagogical spaces and documentation and communication of history also seem culpable in this process. Dissent fetishised as the Indian independence movement alone in the school space secures legitimacy only when a pre-independent India fights for *swaraj*. Under British rule, these ‘illegal’ public dissenting acts are dubbed as acts of fighting for freedom. A vacuum then exists post Indian independence in terms of stating, documenting and acknowledging reasons for dissent, the struggles for dialogue, successes and fallouts while working towards an Indian union, the consequent economic crises of the 1960s, Nehruvian development plans and their violence and other threats to Indian democratic expression.

#### **Protest and campaign**

Political expression in urban metropolis has turned ritualised *morcha* or *dharna*, (to use local terms for protests), terms loaded with derisive and derogatory connotations for nuisance causing or disruptive agents. The middle class tends to deride and ignore nonconformist dissenters. Politicians tend to isolate and place out of context, dissenting publics, away from any political site of action. In New Delhi, the country’s capital, for example, protestors have been moved out and away from the parliament houses and from view of politicians two decades ago.

Some recent alarming developments like sanctification drives in cities that rid us of ‘undesirable Indianness’ are somewhat strategic and haphazard operations to weed out occupants of all sorts—protestors, walkers, hawkers, beggars, playing children, lovers. These drives have been underway with intent to squash expression by attacking and criminalising mere public presence.<sup>17</sup>

In Bengaluru, similar drives to control and make citizenship and access exclusive<sup>18</sup> and public presence into a serviced existence have cropped up since governing bodies set about sprucing up and moulding the city into a ‘city clone’—‘Bangalore to Singapore’.<sup>19</sup> Singapore, as many know, has moved towards banning all forms of public acts of



dissent<sup>20</sup> and it looks like Bengaluru would be pushed into such a space as well. The ‘modern day’ south Asian/Indian pavement/street thus becomes a contested and political site for public expression and protest calling for a mix of conventional and creative reclamation of space.

‘Campaign’ on the other hand, is a term operating within activism, politics, journalism and advertising providing unique angles through which to process its operant connotations. As terminology, it requires wise subjective examination if one were to arrive at a campaign’s located intent. A longer multipronged process involving public protests, dialogue with diverse stakeholders (state and public), lobbying, sensitisation drives and digital activism, processes that can intersect with research, excavating information and mobilising legal processes, allow a campaign to operate with longer vision and to produce tangible outcomes. However, an independent and critical approach to the term campaign needs to be underway. Studying campaigns that have been instrumental in redefining commons discourse can be useful in understanding dissent as short term voicing out of public discontentment along with following up and anchoring the discontentment within processes that might facilitate a substantial addressing of problems/critique.

### **Digital promises**

Massive proliferation of communications technology due to decreasing production costs and affordability coupled with a lack of regulation policies have allowed creative community usage in the past. Over the years, technologies like radio, TV, cable transmission technology and the internet have emerged and been appropriated by both the state and the publics. Media policy has not been far behind. ‘Progressive’ policies such as Ministry of Information and Broadcasting’s Community Radio Guidelines<sup>21</sup> emerged in 2006 following a strategic and long drawn nationwide contestation for community air space. This was a nationwide NGO and media practitioner led movement towards acquiring community participation in radio media production and management since the Supreme Court ruled that radio waves are public property in 1995.<sup>22</sup> Yet, there are multiple hurdles set in place by articulation and demonstration of ‘community’, processes for acquiring licenses and securing clearance. Media for social change is imagined as only

pertaining to ‘rural’ populations and various other segments and sectors cannot access policy benefits even if they did manage to transcend technological and digital divides. The ministry is also eyeing control of analog TV, strategic elimination of cable TV networks in the coming years and putting in place telecom related new media regulations. Free and open software movements, (their philosophies more than their products) might have given rise to direct unregulated community affordability and access<sup>23</sup> to new media hardware like mobile phones, with potential for expression expanding. Despite this euphoria, very few campaigns and dissenting critiques have mobilised and operationalised through new media tools and often fall short of generating enough ‘motility’ to participate and radicalise.

**Acquiring agency: Vandal visual art**

North America in the 1970s, New York city especially, saw youth gang members (comprising black youth) painting slogans, figures and symbols on city subway trains and downtown city walls. While quite a few graffiti messages carried radical political ideas, most youth gangs perceived the activity as not expression of content alone, but as self produced as well. The act itself aimed at reclaiming downtown urban spaces. People against such graffiti i.e. the administration and certain white citizen groups, viewed this act very differently. That graffiti later came to be celebrated by art magazines and in pop art exhibitions did not in any way contribute towards changing the attitude of administration towards it. ‘Vandalism’, the very legal term used, under which graffiti art gets criminalised. The state, on the other hand, commissioned public art murals—the graffiti and the murals were in a sense, similar competing mediums in public spheres, yet the legitimacy of one outdid the other.

However, graffiti art has captured the imaginations of Europe and the Americas with the youth and artists from various segments of society, participating in representing their articulation of the city. Graffiti art in India has been seen as wall slogans and art and political posters of the Left or of popular entertainment cinema. Of late, the Indian state has also come down heavily on poster art and film posters, using precisely the same argument—that of vandalism. In the light of global city envisioning and with questions of permissible aesthetics, the state

now hopes to control and propagate rhetoric it pleases by cutting off access to common spaces like walls that formed the pulse of urban cross class dialogue and as political reclamation.

### **Performance as communication: Street theatre**

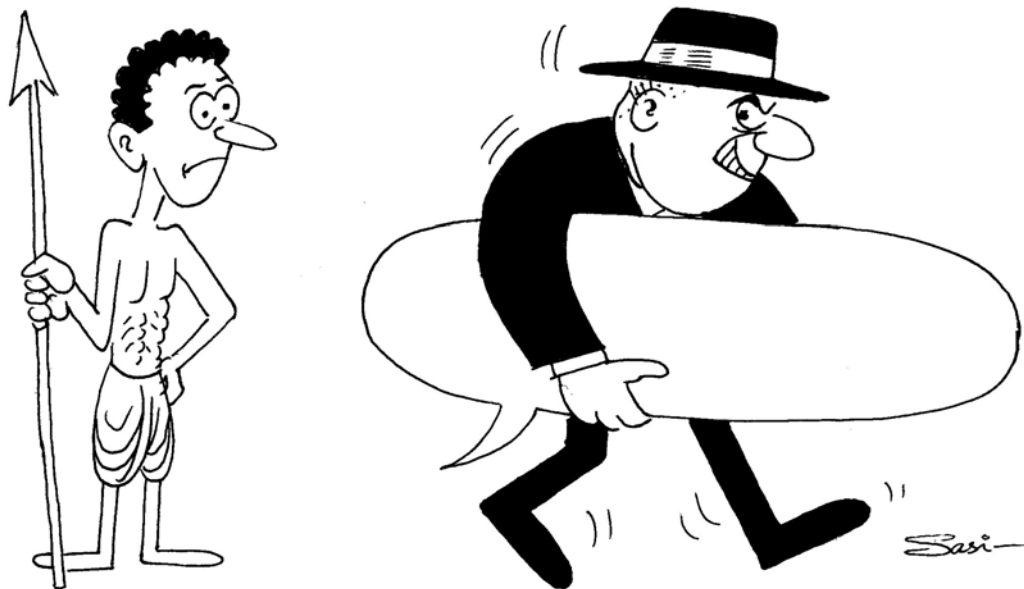
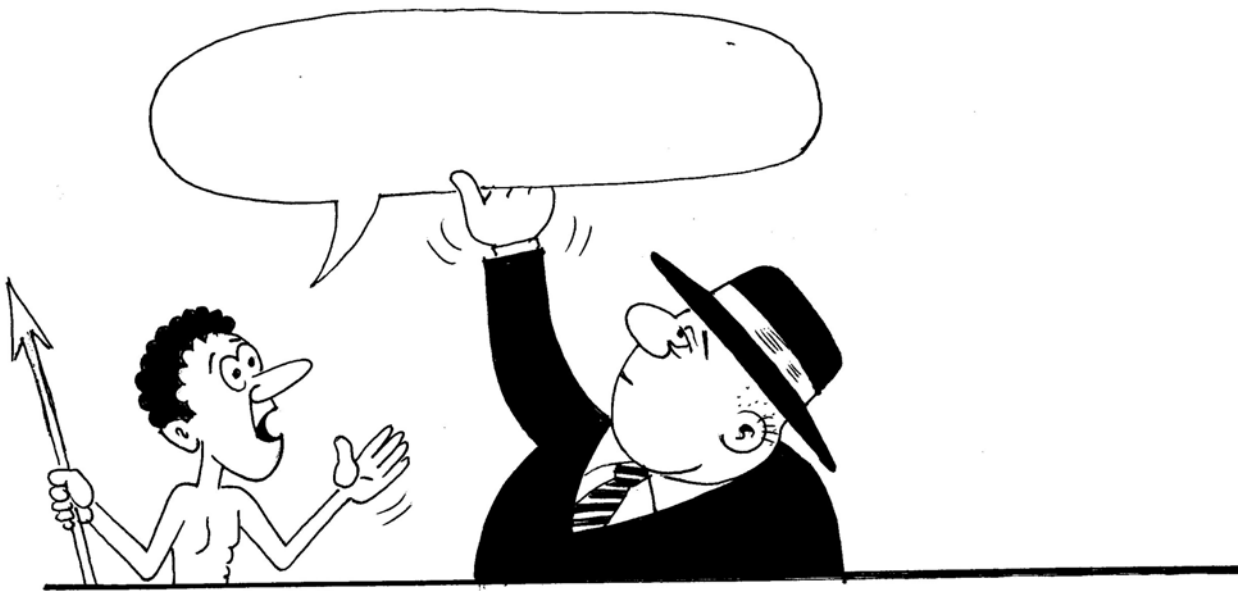
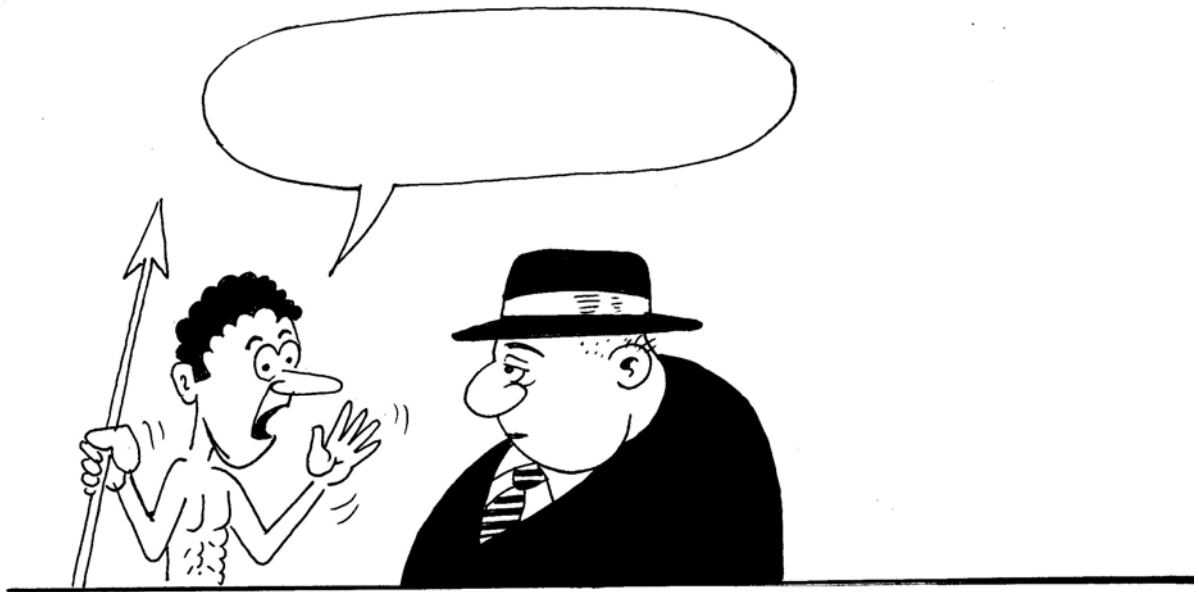
Street theatre as a medium in India has been used for communicating political messages by many groups that were Left leaning. Theatre artists and thinkers like Safdar Hashmi,<sup>24</sup> with communist convictions but no apparent political affiliations also took up to the form to communicate and dialogue about contentious contemporary political issues. Today, street theatre has become a medium of communication for NGOs and the form is seeing a decline in the spontaneous nature of community expression, uprising and dissent. The medium presents a lot of potential for reclaiming public communication and dialogue, as well as exchange of political views through expression. Many groups, some like the Bengaluru based Maraa<sup>25</sup> (a media and arts collective) have begun to ask questions of aesthetics in forms of protest that could lead to a more dialogical and participative dissenting. By reinventing performance for the public space, the forums and collectives hope to connect back to longer processes of dialogue and to create a context for understanding dissent.

This becomes a political act in the face of increased policing and governmental control of protests and gatherings. Performance thus brings to the fore a reclamation of both spaces and reinterpretation of rights in the hyper-regulated nationalised state.

### **Endnotes**

- <sup>1</sup> Forest Rights Act, (FRA) (2006).
- <sup>2</sup> Ramanathan, Usha, A Word on Eminent Domain. Published in Lyla Mehta ed., *Displaced by Development—Confronting Marginalisation and Gender Injustice*, (2009), p. 133.
- <sup>3</sup> Chossudovsky, Michael, Manufacturing Dissent': the Anti-globalization Movement is Funded by the Corporate Elites. *The People's Movement has been Hijacked*. Globalresearch, (Sept 20, 2010) <http://www.globalresearch.ca/index.php?context=va&aid=21110>
- <sup>4</sup> Mills, Wright C, *The Power Elite*, New York, Oxford University Press 1956.
- <sup>5</sup> Srinivas, Alam, Horizon In The Middle. A playful reverie about the changing faces of the Indian middle class, as reflected by Bollywood. *Outlook Magazine*. (21 May 2007) <http://www.outlookindia.com/printarticle.aspx?234684>

- <sup>6</sup> Deshpande, Satish, *After Culture: Renewed Agendas for the Political Economy of India Cultural Dynamics*, (July 1998) 10: p 147–169.
- <sup>7</sup> Gurgaon auto unions' strike turns violent. *Zee News*, (October 20, 2009). <http://www.zeenews.com/news571977.html>
- <sup>8</sup> Kannabiran K G, *The wages of impunity, power justice and human rights*, Delhi, Orient Longman 2003.
- <sup>9</sup> Mohanty, Gopinath, *Paraja* (English translation by B.K.Das from original Oriya novel Paraja, 1945) Oxford University Press, Delhi 1987.
- <sup>10</sup> Public Enterprises Survey, (2005–06) .<http://dpe.nic.in/survey0506/vol1/vol1ch6.pdf>
- <sup>11</sup> Mariani, Philomena, 'Overview: Law, Order, and Neoliberalism.' *Social Justice* 28:3 (2001): 2–4. <http://www.socialjusticejournal.org/SJEdits/85Edit.html>
- <sup>12</sup> Chatterjee, Partha, 'Are Indian Cities Becoming Bourgeois at Last?'. *Indira Chandrasekhar and Peter C. Seel ed., Body.City: Siting Contemporary Culture in India*, Berlin and New Delhi, 2003 p 172.
- <sup>13</sup> Street vendors plan protest against eviction. *The Hindu* (Bangalore, 10/09/2009) <http://www.hindu.com/2009/09/10/stories/2009091060550400.htm>
- <sup>14</sup> Wikipedia.org. Dr Binayak Sen. [http://en.wikipedia.org/wiki/Binayak\\_Sen](http://en.wikipedia.org/wiki/Binayak_Sen)
- <sup>15</sup> Mehta, Swati. Commonwealth Human Rights Initiative Report, 'Feudal Forces, Democratic Nations: Police accountability in Commonwealth South Asia 2007. [www.humanrightsinitiative.org/.../feudal\\_forces\\_democratic\\_nations\\_police\\_acctability\\_in\\_cw\\_south\\_asia.pdf](http://www.humanrightsinitiative.org/.../feudal_forces_democratic_nations_police_acctability_in_cw_south_asia.pdf)
- <sup>16</sup> CNN–IBN, (Jan 10, 2008) Nano rules Autoexpo India, amid Singur protests. <http://ibnlive.in.com/news/nano-rules-autoexpo-india-amid-singur-protests/56189-3.html>
- <sup>17</sup> Menon, Nivedita *Levelling the playing field before the Commonwealth Games*, (Mar 21, 2010). <http://kafila.org/2010/03/21/levelling-the-playing-field-before-the-commonwealth-games/>
- <sup>18</sup> Protest over government park ID cards, Press Coverage Report, Environment Support Group, ESG.ORG. Bangalore 2009. [http://www.esgindia.org/campaigns/commons/press/Protest\\_Coverage.pdf](http://www.esgindia.org/campaigns/commons/press/Protest_Coverage.pdf)
- <sup>19</sup> Nair, Janaki. Singapore Is Not Bangalore's Destiny. *Economic and Political Weekly*, (Apr. 29—May 5, 2000). Vol. 35, No. 18 pp. 1512–1514; <http://www.jstor.org/pss/4409222>
- <sup>20</sup> Qing, KohGui, Singapore bans Myanmar protest at ASEAN summit. *Reuters.com*. (Sat Nov 17, 2007). <http://www.reuters.com/article/idUSSIN377820071117>
- <sup>21</sup> Community Radio Guidelines. Ministry of Information and Broadcasting,GoI 2006. <http://www.mib.nic.in/ShowContent.aspx?uid1=2&uid2=3&uid3=0&uid4=0&uid5=0&uid6=0&uid7>
- <sup>22</sup> The airwaves are the people's property The Supreme Court ruling of 1995. *India Together* (July 2001). <http://www.indiatogether.org/campaigns/freeinfo/sc95.htm>
- <sup>23</sup> Though many hurdles to access–affordability still remain.
- <sup>24</sup> Wikipedia.org. SafdarHashmi. [http://en.wikipedia.org/wiki/Safdar\\_Hashmi](http://en.wikipedia.org/wiki/Safdar_Hashmi)
- <sup>25</sup> Maraa website. [www.maraa.in](http://www.maraa.in)



The uncertainties of climate change will make it more important for people to work together at all levels, from local to global



**CAPRI**

CGIAR Program on Collective Action and Property Rights (CAPRI)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)

# Vocabulary of Humanitarian Commons

---

Mihir R Bhatt<sup>1</sup>

Commons are key to protect communities from disaster risks and provide resources to draw on when a crisis strikes. It is the village pond that irrigates drought-affected fields and step wells that offer drinking water to people migrating from drought-hit areas in search of work. It is the wetlands that absorb river swells or delay droughts, acting as mitigation measures of nature. The commons are even more important to the poor, to protect themselves from disasters and rebuild after disasters. In drought areas, the poor feed from roots, vegetables from riverbeds and drink water from holes made in riverbeds.

This chapter looks at the interplay of the concept—Vocabulary of Humanitarian Commons—from the bottom up. It is for those who are interested in reflecting on vocabulary and humanitarian commons, or both. Vocabulary is defined as ‘a list or collection of the words or phrases of a language, technical field’ used to communicate.<sup>2</sup> Humanitarianism is defined as ‘concern for human welfare’ and, in times of crisis, it may refer to the willingness to reach out to a fellow human being.<sup>3</sup> Commons is defined as ‘of or relating to the community as a whole, public’ and may refer to the shared ownership, use, and production of physical or non-physical goods, services, or ideas.<sup>4</sup>

## **The need for a vocabulary of humanitarian commons**

Based on ongoing field visits in six disaster affected states in India and in Indonesia, Solomon Islands and Fiji, it is becoming evident to me that vocabulary is impoverished in terms of richness of humanitarian words or words representing the concept of the commons. The English vocabulary just does not have enough words to describe and explain the concepts of humanitarianism and commons or their interplay. Vocabulary is dominated by top-down ‘charity’ words such as ‘relief’, ‘rehabilitation’, ‘humanitarian intervention’ or ‘humanitarian victims or beneficiaries’.

These concepts grew out of the experience of the West going to 'poor' and 'helpless' countries to save their lives and help them recover from loss. Certainly this started out as a humane act which, once institutionalised and well-funded, attracted other interests. The past century and a half of international humanitarian experience of the West, say since the founding of the Red Cross movement in 1863, to pick a random but important landmark, has added mostly certain kinds of words in terms of humanitarian vocabulary. The vocabulary has evolved from the outside in a top-down way. Similar limitations may be found in other languages of the East, but there are no studies yet to say so. Vocabulary of humanitarianism is understudied in English, and other languages. I find this odd.

### **Individualised not community approach**

The vocabulary of humanitarian work is dominated by individualised responses, including those with a focus on victims, and not on his or her community. Moreover, responses often do not address what two individuals may have or do have in common. The individual is seen primarily as a victim, isolated and distant from others. It is assumed that victims do not help each other, while I find that victims are the first and most substantial responders in a humanitarian crisis. The focus of vocabulary is on structures and less on social change concepts or ideas. Commons of humanitarian action such as coastal forests or wetlands, activities such as needs assessment, tools such as early warning signals, or activities such as the dissemination of evacuation warning are broken into individual commodities or commandeered by the state or institutions. Coastal forests of mangroves are cleared to build individual homes for victims. This, in turn, makes the coast and victims more vulnerable to the next tsunami while removing a common source of fuel, fresh air, and greenery for human beings and entire eco-system for other living beings. Low-level wetlands are 'reclaimed' by filling in sand or stones to build community centres or cyclone shelters causing severe flooding each monsoon and wiping out a colony of coastal frogs or visiting birds. Cities are made safer by embanking riverbeds which provide fresh air and water to all and source of livelihoods to vegetable growers and washer women, among others. River's own capacity to swell or shrink is taken away.



Furthermore, individual response agencies conduct needs assessments of food and water or shelter. Rarely are these assessments completely shared in order to maintain individual control over information instead of for common use for provision of relief. Relief needs information. Common or shared information on relief needs makes relief more effective and less costly. But information collection agencies, though humanitarian, do not always or fully share the information with other agencies, authorities, or even local actors or communities. As if information is colonised. The irony of colonising humanitarian commons is often missed in what is called strategic positioning of humanitarian agencies. Existing lateral warning signals across communities that are commonly shared for centuries are disregarded to build top-down, distant, often space technology-dependent electricity-powered warning signals that still do not reduce the risk of those vulnerable who are not reached in the last mile. The words that are leading our thoughts and actions are top-down 'targeting' or 'deliver relief', away from humanitarian spirit to humanitarian business trying to achieve 'humanitarian results', away from common recovery to individual interests. Sure, humanitarian response has many players with many motives but it seems that recently common interest is being colonised for individual or institutional gains.

### **Erasure in law and standards**

Key humanitarian documents, such as the Sphere Handbook jointly created by INGOs and the UN system which provides very useful and well-meaning guidance on the provision of water, shelter, health, and many more relief services to humanitarian workers, have little or nothing to say about not using village grazing commons for building shelter or common village ponds or wells for exclusive use of certain disaster victims or certain response activities. The handbook, does, however state: 'Shelter solutions should be planned to retain existing trees and other vegetation to maintain the soil stabilisation' (Sphere handbook 228).<sup>5</sup> Similarly, in the *Guidance Notes* section, the handbook states: 'where the need to provide shelter for affected populations has a significant adverse impact on the environment, e.g. through the depletion of local natural resources, efforts should be made to minimise the long-term effects through complementary environmental management and rehabilitation activities' (Sphere Handbook 228). Additionally, the

handbook mentions that impacts on the environment should be taken into account when conducting needs assessments and planning for disaster response (Sphere Handbook 123). However, loss or damage to humanitarian commons is not mentioned. Nor the need to rebuild or reconstruct such commons as a part of relief to recovery process.

The Hyogo Framework for Action (HFA), agreed to and adopted by 138 countries, though not a purely humanitarian framework document, makes no direct reference to commons—physical or social or economic—to reduce disaster risk. It makes a passing reference in stating that vulnerability to natural hazards is increased by ‘Destroying forests and wetlands, thereby harming the capacity of the environment to withstand hazards’.<sup>6</sup> It then goes on to recommend the sustainable management of ecosystems. Furthermore, under *Social and economic development practices*, it refers to the need to protect ‘critical public facilities and physical infrastructure, particularly schools, clinics, hospitals, water and power plants, communications and transport lifelines, disaster warning and management centres, and culturally important lands and structures through proper design, retrofitting and re-building, in order to render them adequately resilient to hazards’ (Hyogo Framework for Action 2005, 11).<sup>7</sup> Still, the handbook omits explicit discussion of the communal value of these resources particularly the ways in which communities can contribute to and benefit from protecting and strengthening them. The contribution of such commons, say wetlands, grazing fields, river banks, common water ponds, community forest, and more in balancing risks of droughts and floods is not directly addressed.

Moreover, the role of commons in preparedness and risk reduction and the threats to commons are overlooked or bypassed. And we know that, for example, it is the common tree forest on the coastal areas that reduce the risks of tsunami which coastal communities face in Tamil Nadu or Kerala on the Indian coast. Furthermore, we know that it is the common groves of coastal coconut forests that slow down advancing cyclones in coastal areas in Andhra and Odhisa in India. We know that step wells in Gujarat acted as the last source of drinking water in arid areas. The 2005 National Disaster Management Act of the Government of India does not say a word about humanitarian commons. As a result, the enabling policy environment that it promotes

such as a series of guidelines on floods and droughts and others are without direct reference to commons. The same applies for institutions—village disaster committee or district mitigation fund—that this Act creates. Reducing risk has been a common effort for flood or cyclone vulnerable communities for centuries. Community commons are the source and resource for these efforts. The Act weakens these efforts of citizens, especially the poor.

The two key Acts at the state level, Gujarat State Disaster Management Act No. 20 of 2003 and Orissa State Disaster Management Policy 2005, do not address commons. Sri Lanka Disaster Management Act, No. 13 of 2005, is evading commons. Instead, it mentions protecting the environment from the consequences of disaster (Sri Lanka Disaster Management Act 2005, 1).<sup>8</sup> Under ‘disaster counter-measures’ it includes: ‘to mitigate the effect of such disaster on [any] property belonging to an individual or the State’ (Sri Lanka Disaster Management Act 2005, 17). Thus no mention is made to mitigating the effects of disaster on common or communal property nor means of recovering commons once they are damaged or lost. Less evasively, under its definition of ‘resources’, it mentions equipment and property ‘considered essential for the life of the community’ (Sri Lanka Disaster Management Act 2005, 18). However, again, it makes no direct reference to the concept of commons.

This is odd. Because if we go to Gujarat and look at the most vibrantly recovered five families affected by 2001 earthquake, at least three in rural areas would attribute support of village commons—physical and social—as one of the two main reasons for their robust recovery. Similarly, if we go to the families who are still struggling to recover—Dalits or disabled or women headed households—in rural areas or slums of Bhuj or other towns in 2001 earthquake affected Gujarat, they have survived and struggled drawing from, again, commons—physical, social, or economic—around them. The picture in East coast of Sri Lanka after the tsunami of 2004 is not much different.

The Indonesia Disaster Management Law No. 24/2007<sup>9</sup> is also evading the word and therefore the concept of commons. It does refer to the environment, public or community services, and management of natural resources, community social facilities, and community housing

repair.<sup>10</sup> But it does not draw on a long Indonesian tradition of natural, social, and economic commons that sustain life on thousands of islands. In Aceh, the *Adat* law that is traditional to local communities starts with commons and moves to individuals in its approach to life, and also to crisis. The key actor, *mukim*, aims at protecting common property, common tradition, common interest, and so on both during crisis and non-crisis periods. Far more efforts are needed, I found, to integrate the Act with this tradition to make humanitarian response in Indonesia nurture its traditions of commons.

There is so much talk about community-based disaster risk reduction (DRR) but hardly any mention of community commons in most tsunami recovery documents. Some of the largest projects such as UNDP's Disaster Risk Management (DRM) programme, did not directly address issues related to the use of commons in 169 districts and 38 cities in India.<sup>11</sup> It does, however, mention a few initiatives to developing different types of commons. First, a Government of India report on the UNDP programme mentions setting up IT centres at the district level to enable the community to access information on DRM (GoI n.d., 12).<sup>12</sup> Second, in a guideline for repairing buildings in earthquake-affected areas in Jammu & Kashmir, rebuilding community facilities and ensuring the long-term safety of community buildings is highlighted (National Disaster Management Division, Ministry of Home Affairs 2007, 14).<sup>13</sup> These initiatives are important and must be built on at a larger scale with more investment in them so that commons do not appear as an accident but as a rule in most DRR efforts within preparedness and recovery. The World Bank project to rebuild Gujarat after the 2001 earthquake provided funding for, *inter alia*, reconstruction in agriculture, education, and transport but had limited direct emphasis on commons (ADB 2008,1).<sup>14</sup>

### **The humanitarian deficit: Victims not citizens**

It is as a result of these disaster responses and others that I often wonder if our vocabulary of humanitarian commons is so limited and almost useless—for our policies, institutions and local actions—because we have not given due importance to liberal arts in humanitarian response and studies? Engineering and economics, management and administration, applied sciences and statistics push aside languages, history or the

arts. Earthquake engineering dominates DRR or risk financing leads the recovery process. Discussions on humanitarian complexities are rare, humanitarian philosophy and worldview even rarer. Contradictions of inhuman acts of humanitarianism—such as providing repeated relief to flood victims but not reducing risk of flood itself—are underplayed.

To me it seems that the humanities are closest, if not central, to humanitarianism, not only as words but also as ideas and the meanings the two words suggest. Each time I meet a victim, or a survivor, in India or Indonesia or Sri Lanka this closeness is reinforced in my mind. Each time I read a report or an evaluation of the humanitarian system from the affected country or responding country, from the international NGOs or local actors, or even the UN system the separation of humanities from humanitarian is shocking. Humanities help humanitarian response create not just a beneficiary but a competent democratic citizen who has personal interests and common concerns, both. Humanitarianism is about a person as a whole including what is and held in common between two or more persons and not just about being a victim. Beneficiaries are expected to receive relief with thanks, and at the most, under recent human rights approaches they have the right to relief. But they remain recipients, not owners, or autonomous or free citizens, capable of thinking beyond self interest to public good for all.

### **Consequences of the deficit**

Recently, as I have shown above, the thinking and actions about the aims of humanitarianism have gone too far, both in the global North (i.e. the donor countries) and in the global South (i.e. the recipient countries). More and more ‘Northern’ countries are advancing the idea of victims as recipients, even in most human rights debates, and not a citizens. Agencies ‘give’ the victims rights. The rights are not inherent to victims as citizens or human beings. In fact, countries that increasingly fall into both categories—such as India, China, or Indonesia—have yet to show the connectedness between humanities and humanitarianism in their recent remarkable recoveries after 2001 and 2008 earthquakes and the 2004 tsunami. India is borrowing Acts, standards and accountability frameworks that are developed in the West for the South without due thought or fundamental questioning. Good ideas must be borrowed and used, but also enriched with reflection.

These humanitarian recoveries, not only the humanitarian response, are anxiously focused on economic growth, first national, and later, with mixed results, on the economic growth of individuals and communities but not on the protection, preservation, or growth of community commons. Money from the World Bank is borrowed to protect ‘growth’ and not the well being of citizens and their eco-systems. Not that economic growth is not important after a disaster for a country or a community—the economy must recover—but perhaps we somewhat thoughtlessly treat humanitarianism—response and recovery—as though its primary goal were to help victims to be economically productive and contribute to the national GDP rather than to think critically about rebuilding communities and countries as citizens see fit. Victims do not have to recover as less poor or vulnerable but can in fact become active citizens if given a chance. And it is such citizens who create and protect commons, not victims or recipients of humanitarian system. In fact the opportunity to rebuild and expand commons damaged and destroyed by development is being missed in preparedness for and recovery humanitarian crisis.

I wonder if this short-sighted and narrow focus on humanitarian skills for fast-growing GDP or top-down charity has eroded our ability to hold authorities and ourselves accountable for violating humanitarian commons; reduced our sympathy for the victims and vulnerable, poor among them, who build, protect, and use humanitarian commons; and damaged our competence to deal with complex global humanitarian crisis. The loss of these basic capacities jeopardises the well being of citizens and the hope of a better world where commons are built and protected and not plundered, traded or sold after a humanitarian crisis.

### **The way ahead**

Humanitarian workers must enrich the vocabulary with their experience of commons with the poor and excluded communities that face disasters. Humanitarian agencies and workers have paid more attention to fitting in their nuanced experience to existing categories that humanitarian system sets up, often well meaningly. The agencies and institutions will not often enrich the vocabulary by contesting existing words and their meanings as they survive on the use of these concepts.

It is the communities that have the experience and insight that can change the vocabulary. In order to enrich the vocabulary of concepts such as humanitarian commons humanitarian workers must address the growing distance of humanitarianism from humanities by far more direct, honest, thoughtful reflective, and self critical writing of their own work. In fact what is even better is inviting 'victims' themselves writing their experience in their own words and vocabulary.

So what shall we do? In response to these hopeless situations we must resist efforts to reduce humanitarianism to a tool of economic growth alone or economic activities of buying, selling, trading and damaging humanitarian commons. Rather, we must work to creatively reconnect humanitarianism to the humanities to give them a chance to develop their capacities to be vibrant citizens of their communities and of their country and to pursue self interest as well as common concerns. Perhaps the time has come to develop a worldview that should demand stronger and deeper bonds between humanities and humanitarianism if both vocabulary and commons are to be enriched after, before, during or between a humanitarian crisis. And in this process the victims should have first say, in their own words.

## Endnotes

- <sup>1</sup> The author, with All India Disaster Mitigation Institute (mihir@aidmi.org), is currently reviewing UNDP's global contribution to disaster preparedness and early recovery.
- <sup>2</sup> <http://dictionary.reference.com/browse/vocabulary>
- <sup>3</sup> [www.thefreedictionary.com/humanitarianism](http://www.thefreedictionary.com/humanitarianism)
- <sup>4</sup> <http://www.thefreedictionary.com/Commons>
- <sup>5</sup> [http://www.sphereproject.org/component/option,com\\_docman/task,cat\\_view/gid,17/Itemid,203/lang,english/](http://www.sphereproject.org/component/option,com_docman/task,cat_view/gid,17/Itemid,203/lang,english/)
- <sup>6</sup> <http://www.unisdr.org/eng/hfa/docs/HFA-brochure-English.pdf>
- <sup>7</sup> <http://www.unisdr.org/eng/hfa/docs/Hyogo-framework-for-action-english.pdf>
- <sup>8</sup> [http://dmhr.gov.lk/dm\\_act\\_english.pdf](http://dmhr.gov.lk/dm_act_english.pdf)
- <sup>9</sup> [http://www.searo.who.int/LinkFiles/EHA\\_CP\\_Indonesia.pdf](http://www.searo.who.int/LinkFiles/EHA_CP_Indonesia.pdf)
- <sup>10</sup> [http://www.jointokyo.org/files/cms/news/pdf/ DISASTER\\_ MANAGEMENT\\_ LAWS\\_ AND\\_ ITS\\_ ANCILLARY\\_ REGULATIONS.pdf](http://www.jointokyo.org/files/cms/news/pdf/ DISASTER_ MANAGEMENT_ LAWS_ AND_ ITS_ ANCILLARY_ REGULATIONS.pdf)
- <sup>11</sup> <http://saarc-sdmc.nic.in/pdf/india/file5.pdf>
- <sup>12</sup> [www.ndmindia.nic.in/EQProjects/goiundp2.0.pdf](http://www.ndmindia.nic.in/EQProjects/goiundp2.0.pdf)
- <sup>13</sup> <http://www.ndmindia.nic.in/techAdvGroup/DevCurri/SummaryOfTAG.pdf>
- <sup>14</sup> [www.adb.org/Documents/PCRs/IND/35068-IND-PCR.pdf](http://www.adb.org/Documents/PCRs/IND/35068-IND-PCR.pdf)



**CAPRI**



# Social exclusion and commons

---

Sukhadeo Thorat and Nidhi Sadana Sabharwal

It is well-established that scheduled caste (SC) groups in India—comprising 16% of total population—have significantly below-average ownership of capital assets, including agricultural land, which negatively affects income levels. SC groups have high unemployment rates, low daily-wage earnings and poor literacy/education rates. In such a scenario, their dependence on common pool resources becomes more acute than ever: a majority of SC groups rely on cattle-grazing, fishing and other such activities utilising public resources for their livelihood.

## **Dalits and access to common pool resources**

Common pool resources (CPR) are particularly important for the SCs because a majority of them are landless and these CPRs provide them with an alternative livelihood support and a subsistence base. While there are a number of problems related to the access, use and management of CPRs, Dalit groups face additional problems of unequal and discriminatory access to commons across villages. Rivalrous commons resources are naturally prone to unequal distribution, with SCs receiving the short end of the stick when it comes to access to fishing ponds, food security and water resources.

This discriminatory access to common resources across social groups extends even to non-rivalrous commons, such as knowledge and health, with caste being the primary driver for differential access. Such unequal access exacerbates and perpetuates the lopsided development of various 'groups' of people. Subsequent paragraphs present evidence to demonstrate unequal access to commons resources based on social backgrounds of individuals.

The practice of untouchability, which is at the root of much discriminatory access to CPRs, continues in India even though the government has passed legislation banning the practice, through the Anti-Untouchability Act 1955 (renamed the Civil Rights Act). The annual reports of the

Commission for SCs and STs provide data on the registered cases of untouchability. It emerged that average annual cases registered under the Anti-Untouchability Act numbered 480 during the 1950s; 1,903 during the 1960s; 3,240 during the 1970s; 3,875 during the 1980s; and 1,672 during the first half of the 1990s. In general, cases which are registered with the police are of a serious nature and therefore get public attention. A large number of cases, however, go unreported. The studies, based on village surveys, bring out the actual magnitude of the practice of untouchability and other atrocities.

### **Evidence based on regional studies: Micro level**

This section draws evidence on caste-discrimination from primary studies on practice of untouchability and other atrocities faced by SC social group in access to various commons. These include a survey of 550 villages in 11 states (Untouchability in Rural India, Action Aid, 2001) and survey of mid-day meal scheme and public distribution system in 550 villages in 5 states (Indian Institute of Dalit Studies, IIDS, 2004).

Based on the information from these studies, we got insight into the nature of discrimination and the widespread prevalence of untouchability in various spheres of public life. Within the scope of the 'secular public sphere', the practice of untouchability has been categorised into residential segregation, denial of access and discriminatory treatment in basic public services and discriminatory restrictions on public behaviour. Thus, the sphere includes access to water sources, public thoroughfares, transport and other village-level services and amenities like tea shops, barbers' or water person's services and so on.

### **Evidence of discriminatory access to CPR**

The study on Untouchability in Rural India (2001), indicates that in most of the cases, the dominant 'upper' castes have developed a stranglehold on the CPRs. The data also indicates that the SCs faced exclusion and discriminatory treatment in access to village-level CPRs like grazing lands and fishing ponds to a significant degree.

The study found that in about one-fifth of the sample villages (21%), the SCs were being denied access to CPRs like grazing lands and

fishing ponds. The percentage of such villages was more than the national average in Andhra Pradesh (48%), Tamil Nadu (40%), Odisha (34%) and Bihar (32%). In some cases, the CPRs in the SC-dominated settlements had been encroached on by the non-SCs/STs. Efforts to regain such lands or to access the village CPRs by the SCs led to severe punitive measures by the dominant castes. Numerous instances of violence between SCs and non-SCs/STs have been documented in this regard.

The problem of the SCs is further compounded by the fact that, one, they lack access to CPRs; two, due to the lack of access, they have to use their own fields for grazing cattle; three, since most of them comprise the landless and the near-landless, they have restricted or no access to village grazing lands; four, as a result, their capacity to rear animals is considerably reduced. The consequences of exclusion and discrimination in the fishing ponds in villages are much the same. Exclusionary and discriminatory access of the SCs to fishing ponds also deprives them of a source of livelihood in the villages.

Further, Table 1 provides an overview of the different forms of untouchability that deny the SCs access to basic public services. Out of the total villages surveyed, complicit denial to the SC persons was observed in little less than half of villages (48.4%) in terms of access to public water/drinking places, 36% in terms of access to shops, 26% in terms of the use of restaurants/hotels, 21% in terms of entry to health centres/clinics, 9.2% in terms of public transport and 3.2% in terms of entry to cinema halls/recreation facilities. In the case of services provided by individual service providers also, the denial of access was apparent. Of the villages surveyed, denial was reported in access to the services of barbers in 46% of villages, in access to washer person's services in 46% of villages, carpenters' services in 26% of the villages and of potters in about 20% of the villages.

While complete denial of access to particular water sources (well, tank, tube well, etc.), village shops, health clinics, public transport, services offered by the washer person, carpenter, tailor, potter, etc. are the most clear forms of social exclusion, what is even more common is the imposition

of differential treatment in access to these and other public services, which takes various forms. It is observed that in about one-third of the villages such discrimination was followed by making separate seating arrangements, or by giving separate cups to the 'untouchables'. Similar forms of discrimination were observed in purchases from shops, entry into public transport and treatment in private health clinics.

The study observed discriminatory treatment against SC persons in access to irrigation water, as well as public and private services. In a little more than one-third of the villages, the SCs were denied access to irrigation water for agriculture. In the case of agricultural land, selective evidence from some states reveals restrictions imposed by the dominant castes on the SCs in the purchase of private agricultural land and use of public land for agriculture and housing.

This empirical overview, based on macro level official data and micro level primary evidence revealed the extent of discrimination faced by the members of the 'untouchable' community in civil, cultural, political and economic spheres. Given the qualitative nature of data, generalisations about the magnitude and trend are always risky. However it is reasonable to say that the 'untouchables' face considerable caste-related restrictions, which reduce their capacity to access civil, political and economic rights and opportunities. This results in lack of access to resources, opportunities for employment, education and other social needs and participation in public institutions. The restriction assumes various forms, ranging from social and economic boycott to physical violence. The official Report of the Commission of the Scheduled Castes/Scheduled Tribes 1998 observed,

'Some of the major causes of atrocities and other offences against SCs and STs are related to issues of land and property, access to water, wage payments, indebtedness and bonded or forced labour. Issues of human dignity, including compulsion to perform distasteful tasks traditionally forced on SCs and molestation and exploitation of Dalit women are also involved. Caste related tension is exacerbated by economic factors, which contribute to violence. It is the assertion of their rights, be they economic, social or political, by the SCs and STs and their development, which often invite the wrath of the vested interests. Land

and water is another sensitive issue. Accessibility of drinking water and water for irrigation and disposal of water removed from water logged areas become issues that can trigger off atrocities on SCs. Caste fervour during religious and social ceremonies, disputes arising during sowing and harvesting operations and removal of crops from the granary after harvesting, have also been known to cause tension. Increasing awareness and empowerment of SCs, manifested in resistance to suppression, also result in clashes’.

### **Caste discrimination and the right to food**

Empirical studies also show evidence of denial of access or access with differential treatment in food security programmes like the midday meal schemes (MMS) and public distribution system (PDS). A study on MMS for Rajasthan reported the exclusion of SCs as cooks and helpers in almost 60% of the sample villages (Dreze and Goyal, 2003).

Another study based on a sample of about 550 villages from five states (Uttar Pradesh, Bihar, Andhra Pradesh, Tamil Nadu and Rajasthan), also reported exclusion and discriminatory treatment in operation of MMS and PDS (Thorat and Lee, 2004). The practice of discriminatory and exclusive behaviour towards SCs remains widespread. Caste discrimination afflicts more than one out of three fair price shops (FPS) and more than one out of three government schools serving midday meals (averages for five states of 35.5% and 37%, respectively). In terms of geographical spread, it is unquestionably a nationwide problem—from 24% in Andhra Pradesh to 52% in Rajasthan, to the vast majority in Uttar Pradesh and Bihar—respondent villages from every state report problems of caste discrimination and exclusion in the MMS. Likewise with the PDS, no state is free of patterns of discrimination—from 17% in Andhra Pradesh to 86% in Bihar.

Every state reports a substantial percentage of dominant caste PDS dealers practicing caste-based discrimination in the distribution of PDS goods, e.g. preferential order of service by caste, or hierarchically segregated timings for dominant caste and Dalit customers. While the problem is nationwide, the degree varies considerably from state to state. Where a higher percentage of MMS cooks and organisers are Dalit and where a higher percentage of midday meals are held

in Dalit localities, lower incidence of caste discrimination in the MMS is reported.

In Andhra Pradesh, where indicators of Dalit participatory empowerment and access are relatively high (49% of respondent villages have Dalit cooks, 45% have Dalit organisers and 46% are held in Dalit localities), reported caste discrimination in the MMS stands at 24%. In Tamil Nadu, where the same empowerment and access indicators are lower (31%, 27% and 19% respectively), reported discrimination stands at 36%. Rajasthan, where indicators are alarmingly low (8% Dalit cooks, 0% Dalit organisers, 12% held in Dalit localities), reported discrimination stands extremely high at 52%.

A similar pattern emerges in access to fair price shops, where higher proportions of Dalit PDS dealers and fair price shops in localities correspond with lower proportions of reported discrimination and untouchability practices.

### **Discrimination and schools**

The IIDS sponsored another study to capture the discrimination in the school experienced by the Dalit children. This study was conducted in Rajasthan of 234 Dalit households to explore whether Dalit respondents experienced/perceived unequal or differential treatment vis-à-vis their non-Dalit peers in school.

The study reported discrimination in various spheres within school and in the classroom. The most important sphere where discrimination was being practiced was access to drinking water and food. Dalit children were not allowed to take water themselves where 'running water' is not available in schools through taps (and hand pumps) and drinking water is 'stored' in earthen pots, jars or served in glasses. In the sphere of participation in the classroom, Dalit children faced discriminatory treatment in the form of not being allowed to sit in the front row, being made fun of by peers because of their parents occupation especially from the Valmiki community, teachers calling children by their 'caste names', or 'son of a caste' and being asked to sweep the classrooms. The study also reported instances of Dalit

children not being asked to light the incense stick or participate in the rituals during assembly time.

The study also reported discriminatory practices in the mid-day meal being served in schools under study. Dalits were not being allowed as cooks nor Dalit children allowed to enter the kitchen while it was possible for other caste children to do so.

### **Discrimination in access to public health services**

Although there are limited studies on this theme, some studies do provide evidence in highlighting unequal access by SCs to public health services. A study conducted by IIDS and UNICEF for Gujarat and Rajasthan brings out the forms and nature of discrimination faced by the SC women and children in accessing health services from public institutions. On a scale of 1 to 5 for the degree of discrimination, the study found that the highest degree of discrimination was reported in the treatment during dispensing of medicine, followed by diagnostic visit to the doctor (in Rajasthan)/conduct of pathological tests (Gujarat) whereas consulting care providers for referral treatment was reported as the area of least discrimination.

The study indicated that access to information is an area of discrimination where Dalits do not receive information and hence influences their health seeking behaviour and their health status. The study reported that health personnel discriminate by not visiting SC habitations and families. When they do visit, they express discomfort and disrespect for the clients. Further, most health care camps are held in the dominant caste habitations and hence the use by Dalit communities is restricted. Responses from the SC children, in the study, indicate that they would like the health care provider to speak gently using respectful words, considering them equals, spending adequate time and treating them based on the severity of the illness as desirable behaviours.<sup>1</sup>

### **Evidence on caste-based discrimination faced by Dalit women**

This section presents studies which bring out the discrimination wherein Dalit women are the focus and the sphere of their activities. We will present instances of discrimination which have been faced by Dalit

women in multiple spheres. As a part of caste discrimination we separately look at the violence and atrocities suffered by the Dalit women as a 'low caste' person.

#### **Wage employment in rural areas**

Women from the vulnerable groups face barriers and difficulties while seeking employment in the labour market due to their group identity. There are very few studies which have been conducted to analyse the nature and form of caste-based discrimination which Dalit women face.

A micro level study (2005) of three villages across Haryana, Gujarat and Odisha undertaken by Indian Institute of Dalit Studies, observed significant inter-social group differences in female employment. Dominant caste females managed to get much higher employment in non-farm sector compared to female from SC groups. For instance, the yearly employment for this group varies from a minimum of 148 days for SC as compared to a very high level of 290 days for dominant caste women. In the non-farm sector as well, there were differences in the level of employment between SC and other caste female. The study found that, although all females suffered from lower level of participation in non-farm employment, females from different groups do not suffer in same degree. SC women suffered more from lack of employment in the non-farm sector.

Women from the vulnerable groups face barriers and difficulties while seeking employment in the labour market due to their group identity. Evidence from pilot studies indicate that Dalit women face discrimination and exclusion from participation in certain categories of job. Because of their association with their occupation (manual scavenging) Dalit woman face discrimination in social relation and also in employment. The woman belonging to sweeper community is hardly employed for cooking and other household job because of the notion of purity and pollution of occupations, perceived to be unclean occupations.<sup>2</sup>

Evidence from pilot studies are presented in Panel 1. This table indicates the sphere where Dalit women face discrimination such as in hiring, in wages and in work relations.<sup>3</sup> SC women in this survey reported



**Panel 1: Caste-based Discrimination in Wage Labour–Farm**

Sphere of Exclusion	Nature & Form of Discrimination (Identifier)	Consequences of Discrimination
1. Hiring: Employment	Complete denial in hiring, exclusion from certain types of jobs, selective inclusion with unequal hiring terms and conditions with respect to hours of works and other terms, hiring for work which is outside the house, denied work inside the house, Compulsive and forced work governed by traditional caste related obligations involving loss of freedom.	Less employment days, loss of freedom leading to bondage, attachment of family and child labour, income loss, high poverty.
2. Wages	Complete denial (wages not paid), Unfair Inclusion: unequal treatment reflected in lower wages (lower than market wages), irregular interval of payment	Low wages, inequality in wages, income loss, high poverty.
3. Work Conditions (Employer–Labour/ Between labourers)	Discriminatory or differential behaviour towards SC in the work place.	Loss of dignity, human rights and high poverty.

*Source: Compiled by the authors from various studies undertaken by IIDS*

discrimination in hiring due to their caste background which is reflected in denial in employment. Further, discrimination in payment of wages was not as severe as in case of denial of certain tasks or being prone to harassment. Discrimination through exclusion in certain types of work that women do, however, was reported to be quite prominent and widespread. Denial of work inside the house of dominant castes was more widespread. The SC women also face exclusion in work related to fetching of drinking water in dominant caste households.

These are the forms of discriminations which are not faced by dominant caste females and therefore they are likely to enjoy higher employment in household work. Thus for SC women, besides facing exclusion due to the preferential treatment for non SCs/STs, their exclusion also occurs due to the continuing belief of dominant castes in the notions of pollution. The Untouchability in Rural India study (2001) based on the information

from about 550 villages in eleven states reported as well that SC women were rarely employed for cooking, cleaning of food grains and other eatables in Bihar, for instance. The same study also provided evidence on discrimination in the market place in the form of receiving lower price for their goods as sellers and, as consumers, paying higher cost for their purchases.

#### **Access to public healthcare services**

We provide the experience and insights from primary level studies conducted by the All India Dalit Mahila Adhikar Manch (AIDMAM) and IIDS on caste related discrimination faced by Dalit women and children in accessing public health services. The evidence is based on a study conducted in 17 districts of Andhra Pradesh, Bihar, Tamil Nadu and Uttar Pradesh indicate discrimination faced by Dalit women in health services in government hospitals. Five hundred Dalit women were interviewed who were willing to speak about their experiences of discrimination in the public sphere.

Panel 2 captures discrimination that Dalit women and their family faced from doctors, nurses and village health nurses when they entered government hospital or when they contacted medical staff outside the medical premises. This panel also provides consequences of discriminatory treatment in access to health services on Dalit women and their families. It is evident that Dalit women face discriminatory treatment in form of rude verbal responses and refusal of medical treatment in public health services. This leads to their dependence on expensive private medical attention for which they have to take debt.

Another study conducted by IIDS and UNICEF where 200 Dalit and 65 non-Dalit children were interviewed from 12 selected villages in Gujarat and Rajasthan brings out the forms and nature of discrimination faced by SC women and children in accessing the health services from public institutions. The study found that the highest degree of discrimination was the one at grassroots level—namely ANM workers in the public health providers and the traditional healer in the private health providers. The higher-order providers such as doctors were the least discriminating in their behaviour.

**Panel 2: Spheres and Indicators of Discrimination faced  
by Dalit Women in Public Health Services**

Spheres	Identifiers	Consequences
Treatment at the time of ante-natal check-up	Face rude verbal response from health worker, without check up the nurse gave medicines and sent away.	Lack of care. Requirement of private medical attention.
Treatment by ANM for family planning operations	Indifferent verbal response and coerced into taking decisions, e.g. prospect of ration card being withdrawn if refused tubectomy, do not receive appropriate post-operative care.	Lack of post-operative care leading to requirement of private medical attention.
Treatment at the time of delivery	Ignored and kept waiting for long, the staff directs them to a distant district headquarters hospital for the delivery.	The delay complicates delivery leading to requirement to private medical attention. Take loan for delivery in private hospital.
Treatment after assault by men in authority (police and dominant caste landlord-employer)	Refusal of treatment by doctors in the local government hospital in order to avoid becoming involved in a police case.	Lack of care leading to requirement of private medical attention.

*Source: Compiled by the Author drawing from various health studies undertaken by IIDS, AIDMAM and NCDHR*

### **Access to drinking water**

Dalit women also face caste-based discrimination while accessing drinking water. The study in Gujarat<sup>1</sup> conducted in 1971, is based on a survey of 69 villages. A repeat survey of these villages was done in 1996 to see changes in practice of untouchability. The study looked into the practice of untouchability in 17 spheres of village life, which include the private and public domain. In 1971, 44 villages had separate water facility for SCs near their localities. Two villages had been added to this list in 25 years. Untouchability is not experienced

**Panel 3: Selected Variables for Discrimination (Health)**

Sphere	Form	Provider
Visit to/by provider (diagnostic)	Duration of interaction with the care provider	Doctor
Counseling	Touch (without offending)	Lab technician
Dispensing of medicine	Manner of speaking (gently or otherwise)	Pharmacist
Pathological test	Use of demeaning words/Phrases	ANM/ VHW/ LHV
Seeking referral	Wait to give chance to to the dominant caste person(s)	Anganwadi worker

*Source: IIDS—UNICEF sponsored study on Access to Health services in Gujarat and Rajasthan, 2006.*

in normal times, but when water is scarce, SCs experience difficulty and discrimination in taking water from dominant caste localities. In the remaining 23 villages where water is taken from a common source, untouchability is practiced in 61% of the villages. In most such villages SC women take water after the dominant caste women, or their tap or position on the well is separately marked. In seven villages (11% of the sample villages) SC women are not allowed to fetch water from the well. They have to wait till the dominant caste women pour water into their pots. The dominant caste women who shout at them constantly humiliate SC women: ‘Keep distance, do not pollute us!’

### **Developing an understanding of caste-based exclusion/ discrimination and its impact on poverty**

The main purpose of this section is to develop an understanding of caste-based exclusion/discrimination and its impact on lack of access to sources of income and poverty. Drawing from the theoretical interpretation we discuss the governing principles of the caste system that involve exclusion and discrimination, develop some insights on the concept of exclusion/discrimination, the way it has evolved in the

modern economic literature and the consequences of exclusion on poverty and economic growth.

### **Interpreting caste and its consequences—Insights from theories**

In its essential form caste as system of the production organisation and distribution is governed by certain customary rules and norms which are unique and distinct. In general the caste based economy is one in which occupations (or property rights) are hereditary, compulsory and endogamous. The organisational scheme of the caste system is based on division of people in social groups (or castes) in which the occupations and property rights of each individual caste are predetermined by birth and are hereditary. The assignment or division of occupations and property rights across castes is unequal and hierarchal. Some occupations are also considered socially inferior (or polluting) with low social status for those engaged in them. And lastly the caste economy is maintained or enforced through the instruments of social ostracism (system of social and economic penalties) with justification and support from philosophical elements in Hindu religion (Ambedkar 1936, Akerlof, 1976, Scoville, 1991, Romer, 1984, Lal, 1984).

In this systemic framework, the concept of ‘human rights’ assumes a specific meaning. Unlike many other societies, the caste system does not recognise the individual nor their distinctiveness as the centre of the social purpose. In fact for the purpose of rights and duties the unit of the Hindu society is not the individual. Even the family is not regarded as a unit of society except for the purposes of marriages and inheritance. The primary unit is caste and hence the rights and privileges (or lack of rights) of individuals are on account of them being members of a particular caste.

The caste system is based on a graded hierarchy. Various castes are artfully interlined with each other (in their rights and duties) in a manner that the rights and privileges of the ‘higher’ castes become the disadvantages of the ‘lower’ castes, particularly the ‘untouchables’. In this sense a caste in a single number cannot exist but only in plural numbers. Castes exist as a system of endogenous groups, which are interlinked with each other in unequal measure of rights and relations

in all walks of life. Castes at the top of the order enjoy more rights, at the expense of those located at the bottom; untouchables at the bottom of caste hierarchy have much less economic and social rights. This is also due to a particular concept (or perspective) of 'human hood' involved in the caste system, under which the 'untouchables' are considered 'inferior human beings' and therefore not entitled to any individual social, religious, political and economic rights, while the 'high' caste Brahmins are considered as 'superior human beings' and entitled to more rights and privileges (Ambedkar, 1936).

#### **Concept of caste-based exclusion and discrimination**

Since the occupation and property rights of each caste are fixed and compulsory it necessarily involves forced exclusion of one caste from the occupations of other castes. Determination of occupation by birth obviously restricts the freedom of occupation but does not necessarily lead to deprivation and poverty, provided there are reasonable sources of livelihood for each caste. In the case of 'untouchables' however, exclusion leads to deprivations insofar as they are excluded from access to all sources of livelihood, except manual labour and service to castes above them. Their exclusion is multiple, comprehensive and complete.

The concept of 'exclusion and economic discrimination' in modern economic literature has been developed with respect to race, ethnicity and gender. At a general level, social exclusion is considered as a process through which individuals are wholly or partially excluded from full participation in the society in which they live. As De Haan (1998), points out, social exclusion is opposite to social integration. Sen (2000) also draws a distinction between the situation where some people are being kept out (at least left out) and where some people are being included—may even be forced to be included—in deeply unfavourable terms and described the two situations as unfavourable exclusion and unfavourable inclusion. The 'unfavourable inclusion' particularly those with unequal treatment or unacceptable arrangement may carry the same adverse effects as the unfavourable exclusion does. This concept is quite close to the concept of 'economic discrimination' developed separately in recent economic literature related to race

and gender, which recognised participation or access but with unequal treatment in the labour and other markets.

Discrimination in labour markets, for instance refers to a situation of unequal treatment of the workers possessing same productivity in hiring or in wage payment due to non economic group characteristics, such as race, colour or gender or caste. The real relevance of an exclusionary perspective is thus conditional on the nature of the process of deprivation.

Banerjee and Knight (1985), among others, have applied the concept of labour market and occupation discrimination to caste. While applying the concept developed in context of race and gender to the caste, it is necessary to recognise the uniqueness of caste discrimination. The normative framework of the caste system involves exclusion and discrimination in multiple market and non-market transactions and social relations. Some SCs also suffer from social exclusion due to the practice of untouchability, which brings an additional dimension to their discrimination and exclusion. Thus, exclusion and discrimination may involve:

- Denial of some groups in hiring for jobs or in sale and purchase of factors of production (like agriculture land, non land capital assets and various factors inputs), consumers goods, social service like education, housing and health including CPRs (such as water bodies and land).
- Differences between price charged or received and the market prices. This can include price of factor inputs and consumer's goods, price of factors of productions such as wages for labour, price of land or rent on land, interest on capital, rent on residential houses, charges or fees on services such as water and, electricity.
- Participation in certain categories of jobs (the sweeper being excluded from inside household jobs such as cooking or others) and sale of certain consumer goods (such as vegetable or milk and similar items) because their occupation and physical touch is considered to be polluting.
- Use of public services like road, temples, water bodies and other public services.

Due to the physical (or residential) segregation and social exclusion due to the notion of untouchability, they suffer from a general exclusion in what Sen (2000) would describe as ‘constitutive relevance’ of exclusion, in which exclusion or deprivation has an intrinsic importance of its own—for instance not being able to relate to others and to take part in the life of the community—and can directly impoverish a person’s life, in addition to the further deprivation it may generate.

### **Likely adverse consequences and impact of social exclusion and discrimination on poverty**

Another issue that needs consideration is estimating the consequences of various types of exclusions and differential treatment of access to CPRs, education, access to health services and food security schemes and channels through which social exclusion and discrimination aggravate poverty for excluded groups. In 2004—2005 about 36.8% of SC persons were below the poverty line in rural areas as compared to 22.7% among others. In urban areas the gap was slightly larger at 39.8% of SC and only 22.6% among others.

Economists maintain that efficient functioning of markets is of central importance in the development process and can have a profound impact on economic growth and the distribution of income. Since in a private economy markets are the place where people get access to factors of production, employment, consumers goods and service, the exclusion and discrimination of some groups in the market transactions on the basic group characteristic is a serious case of market failure. Market discrimination adversely affects both economic efficiency and income distribution. Discrimination thus is an issue not only of equity but also of economic growth (Birdsall and Sabot, 1991).

The consequences of the caste system are pronounced in income distribution and poverty of the excluded groups. Since the property rights are assigned unequally across the castes the income distribution is generally skewed on caste lines. The impact on the SC group is far more serious as they are excluded from property rights including education. Restriction on mobility of labour also leads to unemployment



among this group. By not permitting readjustment of employment, caste becomes a direct cause of much of involuntary unemployment among the 'low' castes (Ambedkar, 1936; Akerlof, 1976).

Labour market discrimination slows down economic growth due to less than optimal allocation of labour among firms and economy, by reducing job commitment and efforts of workers who perceive themselves to be victims of discrimination and by reducing the magnitude of investment in human capital by discriminated groups and return on this investment (Birdsall and Sabot, 1991).

Further, the occupations of some castes are considered polluting and socially degrading. Forced into these occupations on account of their caste origin, people do not derive job satisfaction. In fact such occupations constantly provoke them to aversion, ill will and desire to evade which also affect their efficiency. Finally, exacerbating current inequality between groups and by contributing to its perpetuation across generations, discrimination and exclusion may foster conflict. Caste-based discrimination in access to sources of income, human development and in civil and political arenas thus has potential for conflict.

#### **Common Pool Resources**

The denial of access to CPRs at the village level such as water tanks, grazing land and forest resources will affect the fodder and drinking water for animals and the less income group because of reduced access to forest resources. In case of fodder, the reduced access to grazing land may compel the discriminated group to buy fodder from the market which will increase their cost and reduce income. Similarly, reduced access to forest resources will reduce their income and also for their other needs such as fuel.

#### **Publicly supplied social needs and services**

The social exclusion through non-market channels will take effect if there is complete denial of access to services offered by government and government supported public institutions or access with differential terms and conditions.

Non-market transactions include goods and services supplied by the government and/or state supported public organisations and agents at fixed prices. These publicly supplied services include:

- Education.
- Health facilities.
- Drinking water and other civic amenities like public roads, electricity, public housing, etc.
- Village level CPRs like canals, tank water, grazing lands, forests, etc.

#### **School education**

Discrimination in schools in villages may take the form of denial of access to education and skill development and/or discriminatory treatment in school. This may reduce the quality of human resource and reduce the employability for quality jobs and force them to fallback on low earning manual wage labour in farming and non farming activities. Specifically, denial of access to education leads to high illiteracy, low functional literacy and high dropout rates, limited skill development and low human capital. Impact of limited skill development and low human capital due to discrimination in education may cause high representation in menial jobs, low wages, low income and ultimately high poverty.

#### **Public and private health services**

Discrimination in the sphere of public health and private health by service providers may operate through the denial of admission and /or through discriminatory access to primary health centres and private health service providers which may take the following forms:

- Separate standing lines.
- Being ignored and kept waiting for long periods.
- Discrimination in health check-up and treatment, including the avoidance of physical touch.
- Discrimination in the delivery of medicine.
- Avoidance of visit to houses by public and private doctors and medical practitioners.

Lower access to public and private health services affect the health status, increase the number of days fallen ill, lower the days of employment

and ultimately affect the income levels negatively. Denial of access to public health services or improper services leads to the dependence on private health services providers with expensive medical treatment. This results in borrowing money for treatment and high debt, ultimately affecting income levels.

### **Summary**

Micro level studies have shown that the SCs have experienced caste-based discrimination in accessing basic public services. Despite continuous contribution to the goods and services market, the Dalits in general and SCs in particular have been discriminated against and excluded in various markets—labour, input and consumer—as well as in use of CPRs. The government social welfare programmes of providing food such as mid-day meals for school children and food grains through fair price shops have not been spared from discrimination. The failure of entitlements due to caste-based exclusion is significant. From the empirical evidence it becomes apparent that, among other reasons, caste/untouchability-based exclusion and discrimination of the SCs, in the past and present (through residual traditional attitudes) continue to be the main reasons for their lower human development and higher deprivations.

Given the adverse consequences of economic and social discrimination on human poverty, reducing discrimination is necessary, as it is likely to enhance access to economic and educational rights and help reduce poverty and inter-group inequalities. This calls for corrective measures, preferably through legal procedures, to bring about equality across social groups in all spheres.

### **Policy suggestions**

The high order of continuing ‘exclusion induced deprivation’ of disadvantaged groups of SCs indicates that addressing social exclusion is often a far more difficult challenge than material poverty. Social and cultural sources of exclusion in economic, civil and political spheres—including stigma, discrimination and denial of citizenship—are rooted in informal social structures and the institution of caste

and untouchability not only in the private domain but also in the public domain governed by the state. In this context, the inclusion of excluded groups becomes somewhat different from the social inclusion of only materially deprived people.

Poverty, even when broadly defined as exclusion from means, necessary for full participation in normal activities of society, is largely a question of access to resources and services. Exclusion of groups, or individuals within those groups, is first of all a denial of equal opportunity, respect and recognition of right to development. Group exclusion is 'horizontal' in that it may affect even relatively better off members of excluded groups.

Fighting discrimination therefore calls for additional policies complementing anti-poverty and economic development programmes. But there is also considerable overlap and therefore there is need to combine and complement (and not separate), programmes against poverty and economic deprivation from policies for equal rights and social inclusion of disadvantaged groups. 'Inclusive Policy' must include interventions and positive steps to overcome social exclusion and discrimination in various market and non-market institutions from where persons access sources of livelihood and social needs like education and health services. In view of this we suggest the following steps as part of inclusive policy.

**Non-discriminatory access to CPR at the village level**

Inclusive policy will involve rules providing equal access to all members from the discriminated groups and necessary legal safeguard against the denial and discrimination in accessing the CPR. The positive action on the part of the government will involve priority in giving permits for grazing land and similar permissions to use forest resources.

**Non-discriminatory access to civic amenities at the village level**

Inclusive steps in the spheres of civic amenities include equal access to public sources of water, drainage in the localities of the discriminated groups and provision of electricity and other village level amenities. Inclusive policy will involve rules providing equal access to all members

from the discriminated groups and necessary legal safeguard against the denial and discrimination in accessing civic amenities.

**Government and government sponsored foods security schemes**

There is also a need to ensure non-discriminatory access to food security schemes operated by government and government agencies. These may include mid-day meal schemes, nutritional food related schemes in agawanwadi centres, fair price shops and others.

**Non-discriminatory access to education**

Discrimination in education may occur inside the school which may operate in various spheres such as discriminatory behaviour of teacher toward the students in various manners, relation between the students, participation in the cultural and corporate life in the school, seating arrangements inside the classroom and discriminatory access to the facilities in the school such as mid-day meal, drinking water, supply of books and uniforms, scholarship provided by the government and occasional health services. This discrimination in multiple spheres and forms not only affect the social psychology of the discriminated students but also poor academic performance, withdrawal attitude and ultimately in the heavy dropout from schools.

The inclusive non-discriminatory policy would require a number of measures including rules and guidelines against the discriminatory practices in the school by the teacher, students and administrative staff towards the students belonging to discriminated groups in any form.

Rules and guidelines for a non-discriminatory behaviour between:

- Teacher and students.
- Between student from discriminated groups with rest of the students.

Rules and guidelines for non-discriminatory access to the services provided in the school such as

- Drinking water.
- Mid-day meal.
- Supply of books and uniforms.
- Scholarship provided by the government.
- Occasional health services.

Rules and guidelines for equal and non-discriminatory participation in

- Sports and games.
- Cultural events, social events.
- Life in school.

All will require sensitisation programmes and even training for the teachers, administrative staff and students from the non discriminated groups to increase their awareness of the practices of discrimination in school and to overcome them.

#### **Public and private health services**

As mentioned above, discrimination in health may occur inside the public health centres and private hospitals in rural areas which may operate in various spheres. The inclusive non-discriminatory policy would require number of measures. This will include rules and guidelines against the discriminatory practices in the primary health centres and private health providers in the villages. Guidelines related to non-discriminatory behaviour may be in the following spheres:

- One single queue for all patients.
- Providing non-discriminatory treatment and health check-up by the doctors.

In conclusion, developing social inclusion policies requires information on the forms, nature and mechanism of exclusion in social, political and economic spheres and their consequences on human development. Studies on exclusion in economic spheres and access to CPRs have received much less attention. In order to bring more insight on the forms and nature of discrimination experienced by the SC in accessing various categories of commons, more research is necessary. This will enable us to understand the economic processes of exclusion and help to develop policies of inclusion which are so essential in Indian society that is characterised by a high degree of exclusion based inequalities, deprivation and poverty of a vast section of the population.

**Table 1: Denial of Access to Basic Public Services**  
(Forms/sites arranged in decreasing order of incidence; pooled data from 11 states)

Public Spheres	% of villages practiced		% of villages not practiced	Villages surveyed
Water facilities	48.4	(255)	43.5	527
Barbers' services	46.6	(229)	41.3	491
Waterman's services	45.8	(194)	43.2	424
Carpenter's services	25.7	(117)	68.1	455
Potter will not sell pots	20.5	(75)	68.2	365
Entry into village shops	35.8	(186)	57.0	519
Entry into restaurants /hotels	25.6	(92)	64.9	359
Entry into private/public health centre/clinic	21.3	(74)	72.4	348
Entry into public transport	9.2	(41)	87.0	447
Entry/Seating in cinema halls	3.2	(6)	93.0	187

*Source: Shah, Ghanshyam, Harsh Mander, Thorat Sukhdeo, Satish Deshpande and Amita Baviskar. 2006. Untouchability in Rural India. New Delhi: Sage Publications. Note: Figures in brackets are number of villages where form is practiced. Villages where status of practice is ambiguous are excluded from both 'practiced' and 'not practiced' categories. Total surveyed villages exclude villages where relevant institution/site is absent.*

**Table 2: Discriminatory Treatment in Public Services**  
(Forms/sites arranged in decreasing order of incidence; pooled data from 11 states)

Denial and/or discrimination	% of villages practiced		% of villages not practiced	Villages surveyed
Water facilities	48.4	(255)	43.5	527
Barbers' services	46.6	(229)	41.3	491
Waterman's services	45.8	(194)	43.2	424
Carpenter's services	25.7	(117)	68.1	455
Potter will not sell pots	20.5	(75)	68.2	365
Entry into village shops	35.8	(186)	57.0	519
Entry into restaurants /hotels	25.6	(92)	64.9	359
Entry into private/public health centre/clinic	21.3	(74)	72.4	348
Entry into public transport	9.2	(41)	87.0	447
Entry/Seating in cinema halls	3.2	(6)	93.0	187

*Source and note as above.*

**Table 3: Market Discrimination – Access to Work & Resources  
(Forms/sites; pooled data from 11 states)**

	% of village practiced		% of village not practiced	Villages surveyed
<b>Forms of Untouchability</b>				
<b>(a) Labour Market</b>				
Denied work as agricultural labour	35.5	(158)	60.0	445
No touching when paying wages	37.1	(174)	59.7	469
Paid lower wages for the same work	24.5	(119)	70.8	486
SC not employed in house construction	28.7	(152)	62.0	529
<b>(b ) Input Market</b>				
Denied access to irrigation facilities	32.6	(152)	59.4	466
<b>(c) Common Pool Resources</b>				
Denied access to grazing/fishing grounds	20.9	(76)	71.7	364
<b>(d) Consumer Market - Sale &amp; Purchase</b>				
Not allowed to sell milk to cooperatives	46.7	(162)	48.1	347
Prevented from selling in local markets	35.4	(165)	54.9	466
Not allowed to buy from milk cooperatives	27.8	(100)	59.2	360

*Source and note as above.*

## References

- Akerlof, George. 'The Economics of Caste, The Rat Race and Other Woeful Tales' Quarterly Journal of Economics, XC.4. Nov. 1976.
- Ambedkar B.R. 'Philosophy of Hinduism' Vasant Moon (Ed) Dr. Babasaheb Ambedkar: Writings and Speeches, Vol.3: 1-94, 1987 (first published in 1936).
- Ambedkar, B.R. (1936), 'Annihilation of Caste', Bhim Partrica, Jallaunder, (1987a)
- Acharya Sangamitra (2009), 'Public Health Care Services and Caste Discrimination: A Case of Dalit Children' Working Paper, IIDS, Delhi.
- Banerjee, Biswjit and J.B. Knight,1985. 'Caste Discrimination in Indian Urban Labour Market' Journal of Developing Economics, Vol 88, Issue 2, p 292-300.



- Buvinic, Mayra. 'Social Inclusion in Latin America', in *Social Exclusion and Economic Development*. Mayra Buvinici and Jacqueline Mazza, Eds. Pp. 3–32. Baltimore: Johns Hopkins University Press. 2005.
- Connelly, Dalton. *Being Black, Living in the Red: Race, Wealth and Social Policy in America*. Berkeley: University of California Press. 1999.
- De Haan, A. 1998. 'Social Exclusion': An Alternative Concept for the Study of Deprivation? *IDS Bulletin* 29 (1): 10–19.
- De Haan, A. 1999. *Social Exclusion: Towards an Holistic Understanding of Deprivation*. Background paper prepared for the World Development Report 2001 Forum on 'Inclusion, Justice and Poverty Reduction': 1–19.
- De Haan, A. and Maxwell, S. 1998. Editorial—Poverty and Social Exclusion in North and South. *IDS Bulletin* 29 (1): 1–9.
- Deshi, A.K. and Singh H. (1995), 'Education, Labour Market Distortions and Relative Earning of Different Religious—Caste Categories in India', *Canadian Journal of Development of Studies*.
- Geetha Nambissan (2007) 'Exclusion and Discrimination in Schools—Experiences of Dalit Children, IIDS study.
- Government of India, 1997–98, 1998–99, 1999–2000 & 2000–2001, 2004, 'Annual Report of National Commission for Scheduled Castes and Scheduled Tribes', Government Of India, Ministry of Social Justice and Empowerment. New Delhi: Annual Report.
- Khan, Mumtaz Ali. 1995. *Human Rights and Dalits*. New Delhi: Uppal Publishers.
- Lal, Deepak, 1984, 'Hindu Equilibrium', *Cultural Stability and Economic Stagnation*, Vol. I Carendor, 1988 Oxford.
- Parvathama, C. 1984. *Scheduled Castes and Tribes—Social Economic Survey*. New Delhi: Ashish Publication.
- Nancy Birdsall and Richard Sabot, 1991, *Unfair Advantage: Labour Market Discrimination in Developing Countries*. Washington DC: World Bank Sectoral and Regional Studies.
- Romer, David, (1984), 'The Theory of Social Custom: A Modification and some Extension'. *Quarterly Journal of Economics*, Vol 8, Issue 5, p45–56.
- Scoville, James G. L, 1991. 'Towards a Model of Caste Economy'. *Status Influences in Third World Labour Markets, Caste, Gender and Custom*. Ed. James G. Scoville. Prentice, New York, p70–89.
- Sen, Amartya, 2000, 'Social Exclusion: Concept, Application and Scrutiny', *Working Paper, Social Development Paper No 1*, June, Asian Development Bank, Bangkok.

- Shah, G. 1998. 'Caste and Untouchability: Theory and Practice'. Paper presented at the seminar 'Ambedkar in Retrospect', Jawaharlal Nehru University, New Delhi.
- Shah G., H. Mander, S. Thorat, S. Deshpande and A. Baviskar. 2006. Untouchability in Rural India. New Delhi: Sage Publications.
- Subrahmanian, Ramya (2003): 'Exploring Processes of Marginalisation and Inclusion in Education, in Education Inclusion and Exclusion: India and South Africa Perspectives', IDS Bulletin, Vol 34 (1), January.
- Thorat Sukhadeo, Aryama and Prashant Negi 2005: Reservations and Private Sector, India. Delhi: Rawat.
- Thorat, S.K. Government of India Ministry of Welfare, New Delhi, Report of the working Groups on Development and Welfare of Scheduled Castes During Eighth Five-year plan, 1990-95. 1996-97.
- Tripathi, R.B. 1994. Dalits-A Subhuman Society. New Delhi: Ashish Publications.
- Venkateshwarlu, D. 1990. Harijan-Upper Class Conflict. New Delhi: Discovery India.

## Reports

- Acharya S. Experience of Discrimination and Social Exclusion in Health Care Utilization among Dalit Children, Vol I. No. 02, IIDS-UNICEF Working Paper Series, 2010.
- All India Dalit Mahila Adhikar Manch, 6 Months Activity Report, April-September 2009.
- Amhi Maitarini, Dalit Mahila Special Issue, January-February-March 1997.
- Amhi Maitarini, Seventh Year, Issue 26th, April-September 1988.
- Borooah R. et al. (eds). Capturing Complexity: An Interdisciplinary Look at Women, Households and Development. New Delhi: Sage, 1994.
- Census of India (2001), Various CD's on Economic Data.
- Dalit Women Speak Out: Violence against Dalit Women in India, AIDMAM and NCDHR, New Delhi, 2004.
- Dalit Student's Solidarity Movement, New Delhi.
- Human Rights and Dignity of Dalit Women: Report of the Conference in the Hague, 20-25 November 2006.
- Letter written by an unmarried Dalit girl before her gang rape and murder on 31st December 2009 (Typed version).
- National Crime Records Bureau (NCRB), Crimes in India, Ministry of Home Affairs, GOI, New Delhi, 2000.

National Family Health Survey, Ministry of Health and Family (MOHFW) GOI, New Delhi, 2003.

National Sample Survey Organisation, 61st Round, Employment and Unemployment 2004-05.

Pamphlet released by Akhil Bharatiya Dalit Mahila Adhikar Manch, All India Dalit Women's Rights Forum for the 'National Conference on Violence against Dalit Women' organised by NCDHR on 7-8 March 2006, Delhi.

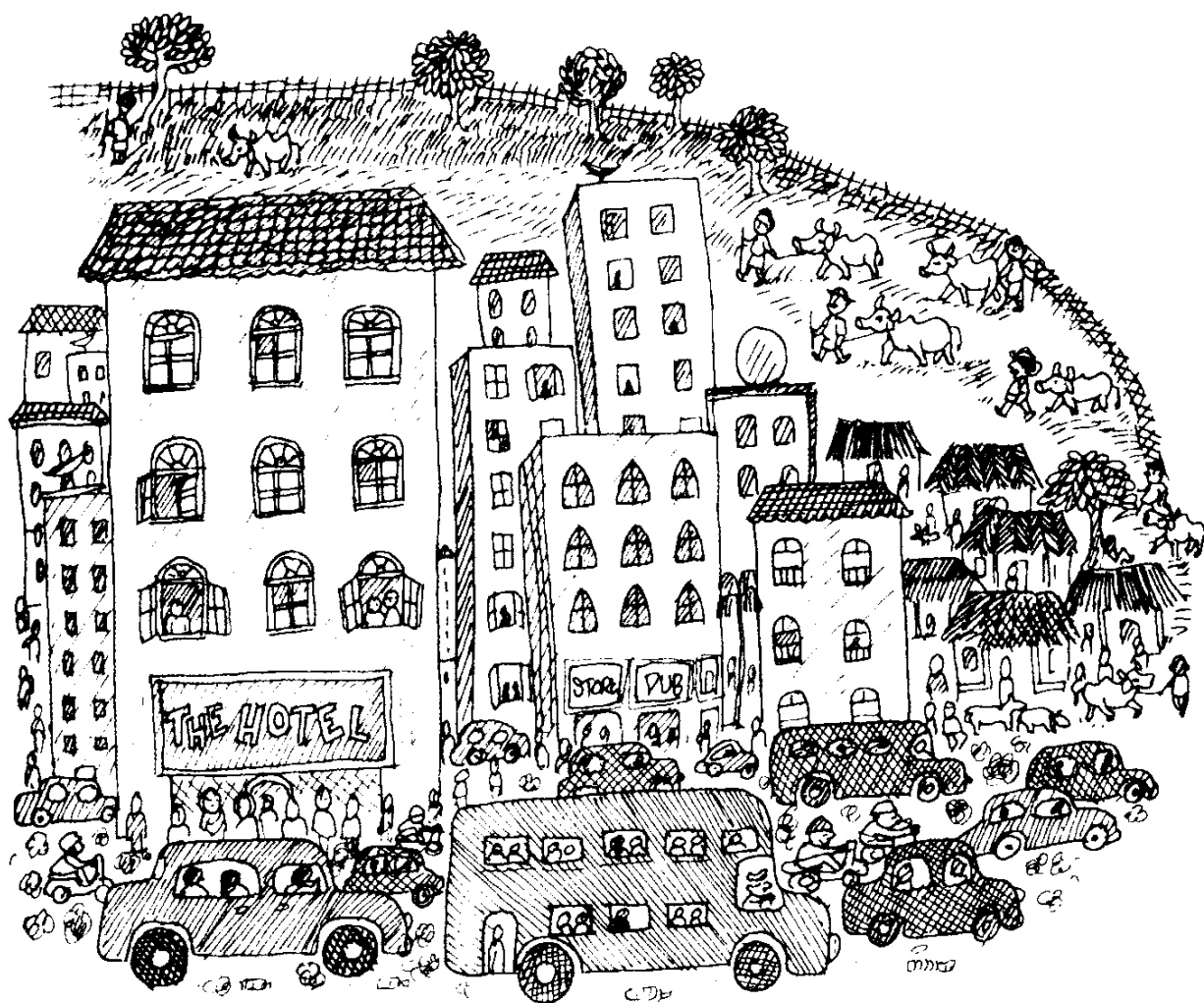
Press Conference for the 'Formation of the National Federation of Dalit Women', held on 24 November 2002.

Proceedings of the Third session of All India Depressed Classes Conference held at Nagpur on July 18 and 19, 1942.

## Endnotes

- <sup>1</sup> Acharya Sangamitra (2009), 'Public Health Care Services and Caste Discrimination: A Case of Dalit Children' in Thorat S.K. (ed), *Blocked by Caste-Economic Discrimination and Social Exclusion in Modern India*, OUP, New Delhi.
- <sup>2</sup> Shah G, Mander H, Thorat S, Deshpande S, Baviskar A. *Untouchability in Rural India*. New Delhi: Sage Publications, 2006.
- <sup>3</sup> Thorat Sukhadeo, Mahamallik Motilal and Sadana Nidhi (2009), *Caste System and Patterns of Discrimination* in Thorat Sukhadeo and Newman Katherine S. (ed), *'Blocked by Caste: Economic discrimination in Modern India'*, Oxford, New Delhi.
- <sup>4</sup> Shah, G, 1998. 'Caste and Untouchability : Theory and Practice'. Paper presented in Seminar 'Ambedkar in Retrospect', JNU, New Delhi, 1998.

# Shrinking commons deprive the poor of livelihood opportunities, making them more vulnerable



**CAPRI**

CGIAR Program on Collective Action and Property Rights (CAPRI)  
International Food Policy Research Institute (IFPRI.org)  
2033 K Street NW, Washington, DC 20006 USA  
[www.capri.cgiar.org](http://www.capri.cgiar.org)

# Public infrastructure: Building socially inclusive commons

---

Anita Cheria and Edwin

**N**ature or ‘the environment’ in itself belongs to all and is owned by none. It would therefore be common to all—the primordial commons. On this base is built many other ‘commons’. There are different types of built commons—from the physical systems and structures (the hardcoms) like the panchayat and post office to the knowledge commons such as culture and religion (the softcoms). The current situation in terms of access, benefit and control (the ABCs of commons) is mediated by the state and non-state institutions. Control could be direct because of physical location or it could be, proxy control through service provider supervisor, governance structures, or religio-cultural indoctrination.<sup>1</sup>

Nation building has always been contentious in India, with the vulnerable sections of the population—the Scheduled Castes (SC) and the Scheduled Tribes (ST)—paying disproportionately the costs, from pollution to displacement and the dominant sections reaping the benefits disproportionately. This is a carry over from the old model where the Dalits were not allowed into the village (now the fruits of development) but had to pay the cost for it.

By definition, the village commons should be accessible to those in the village. At least the built commons of the democratic state, built with public money should be free access without discrimination. However, the state has clearly taken a position that is far more insidious than just the defence of property over commons. Through various means, it has clearly showed itself to be on the side of perpetuation of the hierarchical, exploitative system by various means, and has come down actively on the side of the destruction of the commons. This is despite the constitutional responsibility of the state to build a more democratic, egalitarian social and economic system with distributive justice. Till

now, that is not the case. Experience shows that discrimination starts right with the definition of 'village' itself. That needs to change.

### **Gandhigram or Ambedkargram: Which village?**

There are two main ideological streams in India when it comes to the 'village'—the Gandhian and the Ambedkarite. This is rather ironic since one of the main platforms on which India fought for independence was gram swaraj—free village republics. But these two visions are not only diametrically opposite in their perception of the village, but also in conflict with each other.

There has been a long standing myth that the village in India was analogous to the Arcadia of the west. This was the view held by M K Gandhi, who called it Ram Rajya, and his successors in the Congress. In this view—the predominant in the Indian intellectual stream—once power is handed over to the people in the villages, all will be honky dory. The Gandhian vision was to create 'self governing village republics' with a strong khadhi/village industries base. The guiding principle would be ownership of property based on the 'trusteeship' concept and the philosophy would be ahimsa, non-violence.<sup>2</sup>

Yet there has been a persistent subaltern stream that holds that it is not an unmixed blessing that it is portrayed as. While many laud the decentralisation of power, one must keep in mind that no less a person than B R Ambedkar opposed it. He totally rejected the Gandhian idealised picture of the Indian village and saw it for what it really is—an oppressive caste-slave system. He argued forcefully against the concept and dared his opponents to prove that a Brahmin and a Dalit could sit and decide as equals in a village panchayat. He even believed that the destruction of village-India was essential for the liberation of Dalits. The experience at the grassroots, as to the monopolising of decision making at the village level by the caste-Hindus, and how the panchayat 'justice' works against Dalits to the point of being inhuman, reinforces his view.

In his later years, Gandhi did realise that the caste system was a form of violence, and even said that if the only way to do away with the caste system was to do away with Hinduism, then Hinduism must

go.<sup>3</sup> But the ideological evolution of Gandhism did not even keep pace with its originator. The proponents of an Arcadian, romanticised Gandhian stream of thought, have carried the day.

### **The no-name villages**

The dominant vocabulary has perfected a means to include the Dalit villages in vocabulary and exclude the Dalits in practice—include for expropriation and exclude for benefits. This is accomplished with élan by the phenomenon of ‘no-name’ villages that the Dalits live in. This phenomenon results in all the infrastructure being located where it is inaccessible for the Dalits. So what is this ‘no-name villages’? India, it is said, is a land of 600,000 villages—638,365 according to the census of India 2001. The curious fact is that these do not count the Dalit villages. Instead, the Dalit villages are recorded as Dalit ‘colonies’ ‘Toli’ or ‘Dalit-para’ of the ‘main village’. Therefore a Dalit village near a dominant caste village called Belur would be called Belur Dalit colony. Dalit villages are called ‘colonies’ because they are the colonies of the dominant caste village. It is a continuation of the social construct that the Dalit cannot ‘own anything’<sup>4</sup>—so lowly as to be even without caste<sup>5</sup>—even the village where a Dalit lives cannot ‘own’ a name or an identity.<sup>6</sup>

The consequences of this ‘no-name’ status are well known to those in the women’s movement, where many of the issues facing women were ‘problems with no names’. No-name villages are identified and treated as a colony of the ‘main village’ (the Gandhigram) where the dominant live, and for whom those from the ‘Dalit colony’ (the Ambedkargram) have to compulsorily provide free or subsidised ‘services’. Just as any colonised people, the Dalits are virtually slaves of the dominant caste village. They are forbidden entry into the villages (since they would pollute it) except for performing ‘unclean tasks’ that would ‘pollute’ the dominant. The dominant village (the Gandhigram) has the first right to all the resources (natural and human) of the colony (the Ambedkargram). It is only after fulfilling the labour requirements of the Gandhigram that the denizens of Ambedkargram can venture out.

Providing free labour as a caste function is mandatory. These include beating the drums for festivals, marriages and funerals. It results in the Dalit building many of the common spaces and infrastructure of the 'village' yet being excluded from these commons due to notions of ritual pollution: the temples—including the idol in the sanctum sanctorum, 'common' cultural spaces such as the marriages where their labour is considered a community common resource, yet inter-dining is prohibited and they are made to eat the leftovers separately.

### **The built commons: Hardcoms and softcoms**

The pattern of discrimination, marginalisation and exclusion is visible in rural India for Dalits collectively. There is certainly an urban/rural divide, and a regional bias in development. However, even where basic services exist, they are invariably in the 'Gandhigram' part of the village and seldom in the 'Ambedkargram'. It would do well to remember that the Dalits (who have to stay in Ambedkargram) are allowed extremely restricted access, if at all, to the main village (Gandhigram). In very many places they are not only segregated, but also walled off.

All the infrastructure is cornered only by the dominant village. Since the Dalit village does not have a separate existence, even when government records show that the village has all infrastructure (schools, primary health centres, telephones, community centres, primary health centres, child care centre, water supply, electricity....), in reality, all these are only in the dominant caste village (the Gandhigram) which the Dalits are forbidden to enter or to use. The Dalit village (the Ambedkargram) does not get any of these. So the Dalits are denied all these facilities, while the government statistics show that the 'village' has all the infrastructure. In older infrastructure (water, burial grounds, land) there is discrimination.<sup>7</sup> In the newer technology and infrastructure there is exclusion and denial of service (roads, electricity, community halls).<sup>8</sup> They are forbidden from the 'modern' government financed burial grounds and crematoria, built on 'public' property. So whether it is 100% electrification or the 100% broadband connections promised by 2012,<sup>9</sup> the Dalit village will be excluded.

That this exclusion is systemic discrimination is proved by the fact that the location of infrastructure not used by the dominant castes—



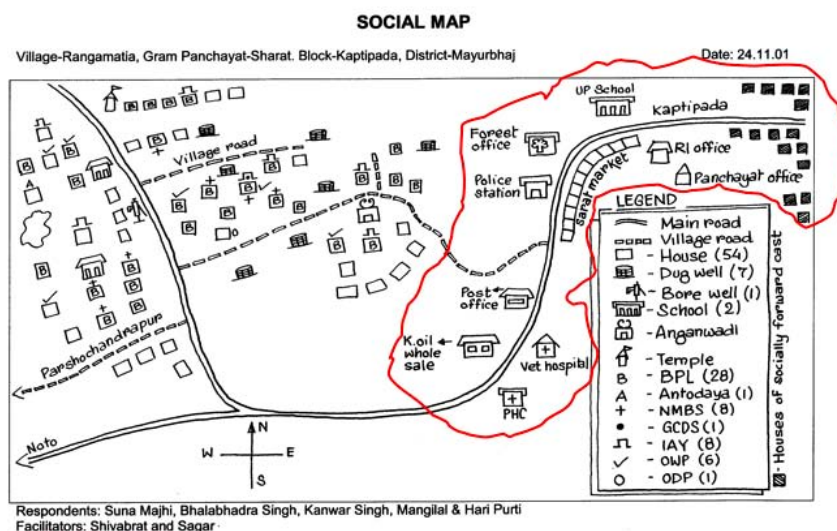
such as government child care centres used almost exclusively by the Dalits since the dominant caste children go to private ‘convents’—are also located in the dominant caste locality. Since the Supreme Court has ordered cooked meals to all students, there is insistence that the cook not be a Dalit since that would make the food impure. Of course, meat is banned in the diet for ritual reasons.

An attempt to build the ‘software’ of these commons is in making the village council democratic. Unfortunately, the democratic local government has followed the terminology of the local language, and calls these local government institutions as ‘panchayats’. This terminology colours the composition and functioning of these bodies, since traditionally ‘panchayats’ were all male, and each caste had its own ‘panchayat’. The ‘village panchayat’ was the panchayat of the dominant caste. In the attempt to make it democratic, the Indian state has made it compulsory in most cases to have half the representatives and presidents as women (some states have only a third as women), and made it mandatory to have a certain percentage of vulnerable sections—Dalit and Adivasi—in its membership and as presidents.<sup>10</sup> Dalits are not allowed into the ‘new commons’ of the village council. In the physical building—made with public funds—that is in the dominant caste village, the Dalit representative is already in ‘hostile territory’, and needs permission to enter, even if president. Even when forced by law to be inclusive, the Dalit President is often made to sit on the floor while the others sit on chairs. Dalit and other women are specifically excluded from these meetings, except when they are to be reprimanded or punished, leading to the saying that ‘Dalits don’t go to the panchayat, they are summoned by the panchayat’. The ‘all party meetings’ called for peacemaking after caste conflicts seldom have any Dalit. Yet their verdicts are binding on the Dalits.

### **The physical evidence**

Tracking basic services in villages and where they are physically located brings out the practical, physical infrastructural consequences of vulnerability rather graphically. The basic services could be random, covering the ones most likely to be present in a village. It must be kept in mind that the ‘village’ is not one cluster of houses, but a cluster of clusters.

## Village infrastructure: Proximity to dominant caste locations



THE ACCOUNTABLE STATE  
A REPORT PREPARED BY PRAXISINDIA

The physical location of ‘public’ infrastructure—drinking water bore well/hand pump, electricity, Primary Health Centre, PDS Outlet, Community Hall, Balwadi, Anganwadi, Primary School, High School, Post office, Panchayat office, Bank/cooperative society, Police station, Polling booth, Bus stop, place of worship (Temple, Mosque, Church etc)—is an accurate reflection of power and dominance. Control is an obvious corollary.

Data available shows irrefutably which sections of India are privileged which are excluded.<sup>11</sup> It is valid even within communities, where data shows who are the ‘Dalits among Dalits’, the age, sex and regional composition of such exclusion. This provides a good starting point for reflection of how much of the infrastructure, both government and government supported, has been to reinforce this apartheid.

### The need for ‘inclusive’ commons: Stratification in prosperity

Stratification in prosperity is a well known phenomenon. When all people are poor, then there is not so much of a difference in opportunity

or wealth. However, as the community moves up in standard and quality of life, the powerful invariably corner most of the benefits. Studies show that the gap between the rich and the poor actually got wider in the periods of economic growth,<sup>12</sup> though there is some debate whether the poor got poorer and the rich got richer. The new opportunities and spaces created by knowledge, technology and economic growth need to be seen as the new commons where all must have an equal opportunity. Else the same inequality and discrimination will be carried forward with more stringent enforcement there. Since the Dalits are the more vulnerable section, the opportunities will open up the divide between the rural Dalit and the dominant castes.

This loss of opportunity will lead to further handicap in the job market. Marginalisation in the job market will delay the formation of a critical mass of the Dalit middle class. The same can be said of virtually every vulnerable section—from sexual minorities to women, children, senior citizens to the mentally and physically disadvantaged to the diverse ethnic, linguistic and religious groups.

For inclusive development, areas of such vulnerability need to be identified before they become formalised or crystallised. The 10% variance in gap results in insurmountable barriers as society becomes stratified. The consequences of such disparity are detrimental to the growth and development of society and its constituent individuals. Creating a society based on equity and justice thus is a key factor in ensuring sustained progress.

### **Democracy by design: Planning for equity, not concretising prejudice**

Social inclusion does not ‘just happen’. It has to be carefully planned, comprehensively designed and sensitively executed. It needs to be an intrinsic part of the programme, not an optional add-on. ‘Development’, without a careful embedding of democracy and equity, results in the consolidation of prejudice, stratification and social exclusion rather than the reverse. Instead of consolidating bias, there must be constant vigilance to ensure delivery of services, that the poorest are included and their needs are fulfilled on a priority (first call on resources).

Rather than making them pawns in the dominant master plan of ‘development’ they should be enabled to set their own equity goals (both positive and negative) where they will stop or dilute discrimination, and where they will practice inclusion.

In urban areas too this becomes important. ‘Unfenced space’ is rare in urban areas. There are no fields, only parks in upmarket enclaves that are fast becoming ‘gated communities’—another way of making sure that the vulnerable are excluded through economic means. Shorn of the means of livelihood and spaces for recreation, the youth then take to crime... yet ‘common spaces’ are becoming increasingly scarce.

### **A distinct vocabulary for inclusion: A name to start with**

In the softcoms, the change in terminology could be to rename the governance bodies as councils, so that they are liberated from the carryover caste and gender baggage of ‘panchayat’. As for the Dalits, if they are serious about their development and in the share of national progress, they could first ensure that their villages get named. Else they will continue to see a drain of investment made in their name go to the dominant.

A campaign for locating these modern instruments of liberation in Dalit villages—or at the very least in commonly accessible places—is an essential first step. This is a non-negotiable and others can only build on this. Another is to ensure the visibility of these ‘gaps’. For this a simple linguistic change is sufficient. Dalits should make the naming of their village, and getting a unique PIN Code for it, a priority political demand. Once that is done, India will have not 600,000 villages, but 1.2 million. The temptation to name all the villages as ‘Ambedkar’ villages will be strong, but must be resisted. If there are too many Ambedkar villages, then they will again be Belur Ambedkar Village etc, defeating the purpose of capturing mindspace and attitudinal change.

Choice of the development paradigm is crucial. Will it be ‘separate but equal’ or ‘integrated’ or will it be ‘integrated’ with some autonomous spaces? The location of the commons becomes critical either way. Location of new infrastructure in Dalit areas will not automatically benefit the excluded. It could just as easily result in large scale displacement

with no benefits to them, as the Adivasi have found to their dismay for centuries. Unless the Dalits are strong enough to defend their commons, it could be counterproductive. If they can defend their commons, then the assertion of their distinct identity as a separate village will have liberative consequences. Just as name change from harijan to Dalit, and upper caste to dominant caste makes a difference, this renaming will also make a significant difference.

A nation cannot always have citizens and tenants. While modernisation is the way to go, there needs to be conscious social re-engineering with the state being arbitrator with a bias toward the voiceless. Acknowledging that there were large sections of society that were excluded from the community and the commons, it is necessary for public infrastructure to be inclusive in access, benefit and control. The fluid boundaries of natural topography literally get concretised with modern infrastructure. Therefore it is imperative to make them as democratic and inclusive as possible—literally building an inclusive commons.

## Endnotes

- <sup>1</sup> The authors acknowledge the input given by Tom Thomas in sharpening this chapter.
- <sup>2</sup> Harijan, 25–10–1952
- <sup>3</sup> I would far rather that Hinduism died than that untouchability lived. Round Table Conference 1931. Tendulkar, D G Mahatma Vol 3 p128. 1960.
- <sup>4</sup> Manusmriti (8: 417) A priest may with confidence take away any possession from a servant; for since nothing at all can belong to him as his own, his property can be taken away by his master and (10:129) A servant should not amass wealth, even if he has the ability, for a servant who has amassed wealth annoys priests.
- <sup>5</sup> Manusmriti 10:4
- <sup>6</sup> The Manusmriti has this to say about names (2:31): (The name) of a priest should have (a word for) auspiciousness, of a ruler strength, of a commoner property and (the name) of a servant should breed disgust.
- <sup>7</sup> Shah, Ghanshyam, Harsh Mander, Thorat Sukhadeo, Satish Deshpande and Amita Baviskar. 2006. Untouchability in Rural India. New Delhi: Sage Publications.
- <sup>8</sup> *ibid.*
- <sup>9</sup> <http://pib.nic.in/release/release.asp?relid=44464&kwd=broadband,%204–Nov–2008> (accessed 20 October 2010)
- <sup>10</sup> 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Indian Constitution.
- <sup>11</sup> Country Profile India; Multidimensional Poverty Index (MPI) At a Glance; July 2010 p5. <http://www.ophi.org.uk/wp-content/uploads/Country-Brief-India.pdf>
- <sup>12</sup> Growing Unequal? Income Distribution and Poverty in OECD Countries; 2008.

THEN....



NOW....



*Sain*

# Health, nutrition and the commons

---

Dr Mira Shiva M.D

**H**ealth promotion is the process of enabling people to increase control over, and to improve, their health. To reach a state of complete physical, mental and social well being, an individual or group must be able to identify and to realise aspirations to satisfy needs, and to change or cope with the environment. Health is, therefore, seen as a resource for everyday life, not the objective of living. Health is a positive concept emphasising social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy lifestyles to well being.

The fundamental conditions and resources for health are: peace, shelter, education, food, income, a stable eco-system, sustainable resources, social justice, and equity. Improvement in health requires a secure foundation in these basic prerequisites. Good health is a major resource for social, economic and personal development and an important dimension of quality of life. Political, economic, social, cultural, environmental, behavioural and biological factors can all favour health or be harmful to it. Health promotion action aims at making these conditions favourable through advocacy for health'.<sup>1</sup>

With a high economic growth rate of 8%, the health and nutritional status in India was expected to improve significantly as the country was seen as a rapidly prospering nation. However, the poor nutritional status of children, which actually worsened in some places, clearly showed that to improve the nutritional and health status it requires measures which gave priority to *public health and nutritional security* rather than trade interests. Economic growth that is accompanied by an increase in inequities does not translate into a better situation for all and worse so if it is at the cost of the poor.

The rapid policy thrust at privatisation of the commons is a matter of concern. It is not merely recognition of the air as commons, water

as commons, biodiversity, ecosystems as commons but also the public health systems as common goods whether it is public health services, public distribution system, providing food, or public education system. The privatisation, commercialisation and corporatisation of the public good and commons under all encompassing neoliberal policies at national as well as international levels are posing a major threat to public health, public interest and even sustainable survival of millions.

The inexorable links between people and their environment constitutes the basis for a socio ecological approach to health. The conservation of natural resources throughout the world should be emphasised as a global responsibility. The protection of the natural and the built environments and the conservation of natural resources must be addressed by many as health promotion strategy.

The right to health is just not a right to basic essential health care services and a functioning referral system to deal with more serious medical and health services. It is based on comprehensive understanding of health which recognises the right to health in all its dimensions: physical, mental, social, spiritual and ecological. The health of a small section of society, who have the purchasing power or political clout to access determinants of health and health care services cannot ensure health of the community and society.

### **State of our health**

We are amongst the most malnourished countries when it need not be so. According to the Human Development Report (HDR),<sup>2</sup> India's Human Development Index ranking was 128 in 2007, 126 in 2006 and 127 in 2003, 2004 and 2005. In 2010 it is 119.<sup>3</sup> Where the Global Hunger Index is concerned, India ranked 94th in 2007, according to the International Food Policy Research Institute (IFPRI).<sup>4</sup>

According to the National Family Health Survey (NFHS) 3 report<sup>5,6</sup> 21.5% infants born in India are Low Birth Weight (LBW) babies even though HDR 2007 gives a figure of 30%. If children in such large numbers do not have the right to survival, food and health care, it is a cause for deep concern regarding continuing national and state priorities that devalues the health and lives of the citizens. Even though



India's Infant Mortality Rate (IMR) has shown a 1% annual decline between 1998–99 and 2005–06, it is unacceptably high compared to many other nations, *even when some have worse socio-economic situations*. Neonatal mortality continues to be high and reflects the neglect of maternal health and nutrition, safe child birth and post child birth services.

There are several causes of IMR, but a 61.3%<sup>7</sup> IMR is considered to be directly or indirectly related to maternal and infant malnutrition. Denial of basic determinants of health, food and safe drinking water, often results in malnutrition, acute repeated and prolonged untreated infections. 70% of the deaths are known to be water related. This is compounded by poor access to health care services, health illiteracy and overall lack of awareness about health, hygiene and sanitation along with poor transport facilities and low purchasing power of services. Together this leads to high mortality rates for children under the age of 5. Access to safe water is critical for health and survival and for decreasing infant mortality. This is a public good and ensuring its access is important.

Forty percent of the malnourished children of the world live in India. Malnutrition in Indian children is worse than in Sub-Saharan Africa. The NFHS 3 data shows that 46% of children under the age of 3 are underweight, (i.e., deficit in weight for age), 38% are stunted, (i.e., deficit in height for age), and 19% are wasted, (i.e., deficit in weight for height). Early childhood malnutrition has serious long-term consequences because it impedes motor, sensory, cognitive, social and emotional development. Malnourished children are less likely to perform well in school and more likely to grow into malnourished adults and

Causes	Percentage
Premature birth	30%
Pneumonia	14.5%
Respiratory Infection	11%
Anaemia	2.9%
Diarrhoea	2.9%

are at greater risk of disease and early death. Knowing well that malnutrition affects not merely physical growth, but also cognitive potential, and that it increases vulnerability to infection resulting in poor health throughout life, the neglect of the child's nutrition and that of the mother is tragic. The development of a child's brain and cognitive functions taken place within the first two years of life. Comprehensive efforts are needed for ensuring better nutritional status of communities in general.

As stated succinctly in *India's Undernourished Children: A Call for Reform and Action, HNP Discussion Paper, 2005*:

... [t]he prevalence of underweight among children in India is amongst the highest in the world, and nearly double that of Sub-Saharan Africa. Most growth retardation occurs by the age of two, in part because around 30% of Indian children are born with low birth weight, and is largely irreversible. In 1998/99, 47% of children under three were underweight or severely underweight, and a further 26% were mildly underweight such that, in total, underweight afflicted almost three-quarters of India's children.

Eighty percent of children in the age group 6–35 months are anaemic.<sup>8</sup> NFHS 3 has shown worsening of childhood anemia which affects 79.1%. There is significant wasting and stunting of the children. One in three newborn babies are Low Birth Weight (LBW) babies, 36% of women have a very low Body Mass Index (BMI < 18.5), indicating an inter-generational nutrition gap due to poor nutritional status of mothers.

Percentage of young children who are underweight

Region	Percentage
World	27%
Developing Countries	27%
Sub-Saharan Africa	29%
South Asia	46%
India	47%

Source: UNICEF Mapping India's Children UNICEF in Action p. 24–25, 2004.

India is home to 40% of all LBW babies in the world. Not only are these children at higher risk of dying early in life, but the survivors are liable to have an impaired immune system. These surviving children may suffer a higher incidence of chronic illness such as diabetes and heart disease. There exists a National Nutrition Policy of 1993, a National Plan of Action for Nutrition 1995 and a National Nutrition Mission was set up in 2003. The National Food Security Act 2010 continues to be debated. While universalisation of PDS is denied, poor identification of BPL families continues to deny millions of those below the official poverty line their basic entitlements. Worse is the rotting of food in godowns even as the children of the nation starve.

### **Discrimination and disparity**

In an era where both health care services and food are being treated as tradable commodities with the aim of profit maximisation, when determinants of health are being systematically eroded whether access to safe and adequate water, adequate and nutritive food, education, shelter or security, it is the poor majority that is affected the most. The fact is that 77% of our people are earning less than Rs 20 a day according to the Arjun Sengupta Committee Report<sup>10</sup> where prices

**Child morbidity in the FOCUS village<sup>9</sup>**

<b>Proportion (%) of sample children who had the following symptoms during the two weeks preceding the survey</b>	
Fever	32
Diarrhoea	21
Persistent cough	17
Extreme weakness	11
Skin rash	5
Eye infection	2
None of the above	50
Any of the above	50

*Source: FOCUS Survey 2004 (Focus on Children under Six) published by Citizens' Initiative for the Rights of Children under Six.*

of food have spiralled, the impact on the poor and the vulnerable is most intense. With the health budget being less than 1.2% of GDP and 80% being out of pocket (OOP) expenditure, the high health care costs result in either non access of the desperately needed health services or deep indebtedness.<sup>11</sup>

These averages, however, do not reflect the dramatic differences between people of different regions and socio-economic status. Worst affected are the scheduled castes, scheduled tribes, migrants, rural and tribal areas and where maternal illiteracy is high and social exclusion higher. The disparities between rich/poor and rural/urban and amongst people of different castes and religions are significant and contribute to the nutritional status of the children in these areas. In view of poor birth and death registration and the seasonality of certain diseases, such as diarrhoea and acute respiratory infection, many deaths of the vulnerable sections in unreached areas are not even reported.

Gross gender disparities amongst children who are underweight are not seen anywhere in the world except in South Asia, where 47% girls compared to 44% boys are malnourished and in India worse so in certain states like Punjab, Haryana and Delhi where the sex ratio at birth continues to be skewed reflecting gender discrimination and gender violence. The malnutrition levels amongst schedule caste and schedule tribe children are much higher even as the nutritional status of the rich children is in keeping with western standards. The need for disaggregated data where gender, social and economic inequalities exist becomes extremely important to identify vulnerable and affected sections, to be able to take action to prioritise their health needs.

*Bridging the Gap*, the World Health Report 1995,<sup>12</sup> had for the first time included a new International Classification of Diseases Z59.5 which stands for extreme poverty. The report said there was an increase in extreme poverty and diseases of extreme poverty increasing disparity between rich and poor countries and rich and poor within the countries. There has been an increase in water and vector borne diseases, nutritional deficiencies, sexually transmitted and non communicable diseases, mental health problems, environment related health, occupational health diseases. The links between socio economic status and health status are well

known, as are the links between literacy and health. Poverty, health and illiteracy have been worsened by forced displacement, migration and violence whether it is communal, social or gender violence. Unfortunately there is more and more of it.

### **The state of our health system**

Public health is a common good. Costly curative care cannot replace comprehensive primary health care nor adequate food and nutrition. Strong public health infrastructure and services are needed to deal with public health problems such as communicable diseases, whether they are water or vector borne. Outbreaks and deaths from Malaria in Assam, Chattisgarh, Jharkhand, Bihar and Orissa, Japanese Encephalitis in Gorakhpur, Saharanpur and Cholera in Orissa, reflect the unmet public health need and the need for environmental measures at the local level. As preventive public health, there is an immediate need for trained and adequate health personnel, for affordable accessible rapid diagnostic tests to diagnose the health problems, to manage them rationally, with adequate, quality safe affordable essential medicines, vaccines and health education about preventive measures as well as rational care.

Shortages of health personnel are significant for primary health centres. There have been shortages of trained health personnel at multiple levels. According to the latest data on rural health statistics, huge numbers of posts have been lying vacant. Considering the case of primary health centres,<sup>13</sup> the details are given below:

Doctors	5,224
Nurses	10,089
HHHealth workers	7,243
Health assistants	1,701
Pharmacists	5,000
Specialists	4,026
Lab technicians	5,591

With 80% health care in private hands and poor quality of care from unregulated, unqualified and even qualified providers, diarrhoea deaths occur even on reaching health care facilities. 80% of medical care sought in slums is from unqualified medical care providers. However,

their services continue to be sought as they are accessible, affordable and often actually do provide relief without a long wait and in a more congenial environment though they often also create complications.

While the number of private hospitals and nursing homes has increased, efforts are also being made under the National Rural Health Mission (NRHM) launched on 12 April 2005, by government health functionaries, ANMs, Anganwadi workers and ASHA (Accredited Social Health Activists), to address child health issues. The National Urban Health Mission is being planned, how much of efficacy, rationality, safety and equity it can ensure in provision of health care is to be seen.

A large number of poor migrate to cities and other urban areas in search of work, living in jhuggi jhompris that are periodically razed to the ground. Constantly moving in search of work, these migrants have no permanent address and are unable to obtain the BPL card and the few basic entitlements. There is no access to essential medicines, as medicines for many are unaffordable, highlighting the need to make essential medicines available, at affordable prices, and also ensuring availability of paediatric doses for diseases that afflict little children, also ensuring, rational use of medicines. Non availability of urgently needed medicines to a child, where life ebbs in front of eyes of the mother even on reaching a medical facility is tragic.

### **The food crisis and corporate-friendly solutions**

Citizens have a right to food so that there is no hunger, starvation or nutritional deficiencies. They also have a right to livelihood and fair wages to be able to purchase food which is accessible, affordable and balanced. Chronic hunger and malnutrition are unacceptable. Using village commons and diversion of agricultural land, calling it wasteland, to grow biofuels like *Jatropha* instead of food crops or grazing land for animals has and will impact food availability.<sup>14</sup>

Alongside the worsening access to safe drinking water, access to food for the poor has also worsened. Spiralling food prices, loss of traditional and other livelihoods, decreased purchasing power and climate change, have together resulted in droughts and floods and forced migration that have increased vulnerability to malnutrition and infection.

The report of the expert committee set up under chairmanship of NC Saxena by the Ministry of Rural Development has said that over 50% of Indians are below the poverty line on the Caloric Consumption Criteria. The report also demonstrates that where caloric intake is concerned, especially intake of cereals, there has been a steady decline from 1972–73 to 1999–2000. The need for Universal PDS has been argued for by members of the committee as well as organisations and networks involved with the Right to Food Campaign and others.<sup>15</sup> The per capita pulse consumption has declined since the 1950s.

As the world is undergoing a serious food crisis, corporate solutions to this crisis are being aggressively pursued. One such solution, the Global Alliance for Improved Nutrition, clearly states as its objectives ‘expanding markets in developing countries’ and ‘creating regulatory friendly environment’, the focus remaining on markets rather than on substantive issues of health and nutrition. It does not address the root cause of the present food crisis—unjust agricultural and trade policies. The crisis has been further compounded by factors caused as often by manmade interventions as by natural causes.

### **Letting the gen(i)e out**

The diverse genetic pool is part of common heritage, its privatisation, commercialisation and genetic pollution is a violence against nature, a common good. Apart from the question of who determines health priorities and the nature and control of research is the issue of the use of genes, how will the adverse effects of genetic pollution when released into the environment be monitored when their full dimensions of biosafety are not even adequately known? When the adverse effects present themselves—as they did in the case of thalidomide, Diethylstilboestrol (DES) only in the next generation, and high dose oestrogen–progesterone, fixed dose combination drugs presented as congenital malformation and other adverse effects—who pays the price in terms of suffering, disability and death? There was a time when it was said that the use of antibiotics in veterinary practice would not affect humans adversely, but very soon the emergence of drug resistance was noticed. When hormones such as oestrogen were

used in poultry and animals to make them bigger and to increase profits, the public was told there was no danger—until men consuming poultry that had been given hormones (oestrogen) developed gynaecomastia, i.e. growth of breasts.

Additionally, genetically modified (GM) crops (eg. Bt Cotton) are being actively promoted by states across the country allegedly for higher yields, while reports of decline in consecutive crops as well as deaths of animals who had grazed on post packing Bt Common fields are not highlighted. A large number of GM trials are being undertaken of vegetables such as Bt brinjal, cauliflower, potatoes and ladies finger. Bt Brinjal is on the verge of being released in spite of protests against it, borne out of concerns about public health. The concerns are serious. First the bio-safety studies that have been conducted by the company (Mayhco to Monsanto) are inadequate and very short. These studies fail to show impact on progeny as well as a long term impact. Various studies of animals fed GM corn and potatoes in Austria, Scotland, Russia and Italy by independent researchers have shown increased allergenicity and tumourogenicity effect on the immune system, various organs involving pancreas, liver, kidneys, reproductive organs and effect on offspring having higher mortality, poor growth and infertility. The concern about genetic pollution is the most serious, as this could result in horizontal gene transfer to the existing virus, bacteria in the gut or soil resulting in mutation, creation or increase of virulence of pathological virus bacteria in the gut including pass on of antibiotic resistance as antibiotic resistance marker genes are used besides Bt gene and cauliflower mosaic virus gene.

Implications for children already malnourished, vulnerable to infection are tremendous.<sup>16,17</sup> Many groups have also raised concerns about the presence of Bt soya and maize, as well as fructose corn syrup from GM corn, in imported processed foods. A large array of processed foods such as breakfast cereals, juices, chips, etc. are targeted specifically at children. Aggressive marketing of such foods has shown a clear increase in consumption, brainwashing of parents as much as young children.



### **Creating markets, erasing the commons knowledge**

Trials have been undertaken of ‘Probiotics’, on children under 6 months of age. Where exclusive breastfeeding for 6 months has been recommended there is little justification for clearance given to such a process which is violative of the IMS Act (The Infant Milk Substitutes, Feeding Bottles and Infant Food, [Regulation of Production, Supply and Distribution] Amendment Act, 2003).<sup>18</sup> Probiotic is being sold commercially (on the pattern of Amway Cosmetics), by aggressively creating buyers. The rationale for promoting this is the presence of the scientific-sounding ‘Lactobacillus’, despite it being found *naturally* in yogurt, alleging a higher concentration in the commercial version but sold at high cost. This is similar to the aggressive sale of glucose with Vitamin D while Vitamin D is freely available in abundant sunlight.

The pursuance of food-related policies in the direction of processed foods is both subtle and not so subtle. The aggressive promotion and entry of processed foods for children manufactured by food corporate eyeing the child food market through supermarkets has been taking place. Imported processed food contains ingredients around which public health concerns have been raised. There is a concern that commercially processed foods will gain entry rather than hot cooked meals, in the name of child nutrition. As bilateral free trade agreements are being signed, entry into this huge market as government procurement is being aggressively sought. Imports of processed food are increasing and aggressively sold in the urban market with the contents not known, nor their health implication recognised. Doritos, a Pepsi product containing chips made from GM corn was exposed by Greenpeace.

While there has been an extremely aggressive sales push for fortified foods and micronutrients there has been a conspicuous absence in attention given to locally available nutritive food options. This includes the need for education about the nutritive value of foods such as *Ragi Mandua* (finger millet), which is rich in calcium at 344 mg per 100 gms; *Amaranth (Ram dana)*, which is rich in calcium at 397 mg per 100 gms and protein at 4 gms per 100 gms; and drumstick leaves, fenugreek, *chaulai*, and *bathua*, all rich in iron.<sup>19,20,21</sup>

Growing these nutritive foods and the incorporation of this nutritive value should have been given high priority as part of school health education, and even as part of medical education. Pharmaceuticalisation of nutrition and aggressive promotion of nutraceuticals has taken place. This is obvious from seeing the growth of the sales of vitamins, tonics, health energy process of foods and drinks. The nutritive richness of 'Satthu' is long forgotten.

The predatory IPR regime, patenting traditional drought flood and saline resistant seeds through biopiracy is a major food security threat.<sup>22, 23</sup> 'Current intellectual property rights regime is suboptimal for global food security' is the warning by the UN Special Rapporteur on Food in his report on the right to food.<sup>24</sup>

### **Mines, minerals and people**

The threat of large scale mining in mineral rich tribal areas of Chattisgarh, Jharkhand, Orissa, Bihar involving deforestation of natural prime forests in areas which are sources of food and water for the tribal people is severe. Concern is not merely for the effect on the lives of the original forest dwellers, but also the impact of the deforestation on the rainfall, hydrological cycle, carbon absorption as carbon sinks, erosion of rich biodiversity of plants of therapeutic, nutritive value.

The threat to Nyamgiri hills in Odisha is a case in point. Home to tribals living in the natural forests for thousands of years, existing preventive measures are on the verge of being destroyed. Unless stopped we will be witnessing open mining, destroying water sources, polluting water resources, contributing to negative climate change, with all the expected health hazards and irreversible ecological destruction.

The presence of indigenous people living in India for millennia, their being wiped out as community and as citizens with rights and entitlements, will happen unless resisted. The right of corporations to bauxite mining at the cost of total destruction over and above the right of poor to their hearth, home, livelihoods and right of survival as community is not constitutionally acceptable. Forests are natural carbon sinks, more effective than many overpriced technologies being sold tied to an unjust intellectual property regime.

‘The imbalance between human activity and the ecological system looks more and more ominous’.<sup>25</sup> Population growth, the energy intensiveness of lifestyles in developed countries and the misuse of non renewable resources are greatly affecting our planet and its capacity to sustain human life. There is a need to understand the magnitude and the complexity of the threats of climate change. According to Tim Flannery, James Lovelock’s Gaia framework to describe the ‘dynamic’ and ‘systems’ nature of the atmosphere is more useful than the more conventional scientifically reductionist approach.

### **Energy use, climate change and health**

Natural environment is a public good as well as commons. Fossil fuel burning appears to be the underlying cause of global warming as about *6 billion tons* of carbon are released in the air annually. The oil based energy lifestyle culture of the west is not only producing far more greenhouse gases than is possible for forests and trees to absorb, but this unsustainable lifestyle is being exported to developing countries, especially to their rich people who are embracing it with open arms, further jeopardising the survival of the people and the planet. The complexity and inter–relationships of the biosphere is not understood, nor are the laws of nature and consequence of violating them. ‘Conquering’ nature for short term benefit is seen as an ‘achievement’. The market and economic growth priority accelerates the ecological disaster as consequence of the environmental degradation and violation of the laws of nature. The price paid is by the poor. Most vulnerable are the poor living in ecofragile areas.

The industrial world accounts for 21% of the world population, consumes 75% of the world energy and is most responsible for the world’s build up of greenhouse gases. The US with a global population share of 4.1% (2003) contributes 24.4% of the world production of carbon dioxide (2000).

### **Air as commons**

People have a right to safe air for breathing. Cutting down trees and forests which provide oxygen and act as carbon sinks are inimical to this balance. The pollution of the air with toxic fumes which are

hazardous to health violates people's right to health. Giving of priority to corporate profits over public health and the rights of the affected majority is unjust. Asthma, bronchitis and allergies of skin are known to occur with gases in the air that corrode the respiratory tract and corrode the skin as in the case of Bhopal. The Bhopal Gas Tragedy highlighted the violation of peoples' right to clean air and water which are amongst the most important recognised commons.

### **Water as commons**

Since 70% of the health problems are related to water, access to safe and adequate water is closely linked to public health. Subsoil water and rivers as commons were accepted concepts. Providing drinking water to the thirsty travellers was a philanthropic act. There was a royal decree to this effect by King Ashoka.

Acute diarrhoea continues to kill a large number of children. The number is estimated to be much higher than the official figures. Bundelkhand has faced a drought for the past 4–5 years and there have been a significant number of farmer suicides in Vidarbha, Andhra Pradesh, Karnataka and Punjab. As water sources have dried up and water levels have fallen, with monsoons being delayed and inadequate because of climate change, access to safe drinking water has worsened and people have been forced to consume contaminated water. In places where contamination of water by sewage has occurred, it has spread diarrhoea and/or faecal infections, such as typhoid, paratyphoid, cholera, hepatitis (A&E), Amoebiasis giardiasis, and helminthiasis, besides polio. It is the poor, who are heavily dependent on public water supply, who are amongst the worst affected.

Wells and hand pumps while providing water for drinking, cleaning etc. was a great service but is associated in some places with the social exclusion of the Dalits. The caste factor played a negative role and was deeply resented and resisted by many, yet tragically continues in some places. The digging of numerous tube-wells during the green revolution period in Punjab, Haryana and other places, and growing of water intensive crops resulted in overuse of ground water and consequent fall in water levels. As water levels fell, worsened by poor recharging of water because of poor rainfall, or loss of the seasonal

rainwater because of inability to conserve when needed, it increased the burden on women to obtain water for the families. They had to fetch it from long distances or draw it manually from wells, where water levels continuously fall.

Added to this is the toxic pollution and poisoning of drinking water besides its overuse for industrial purposes seen in Niyamigiri by POSCO for bauxite mining, Plachimada of overuse and pollution of water in Kerala by Coca Cola, Patencheru in Andhra Pradesh, poisoning subsoil and water. Aluminum production uses bauxite from mines for which forest land of the tribals has been, and is being, taken away. The rights of the poor majority, the tribals to their land, their forests, their air, water are being violated as are their rights to health and nutrition, for which they have depended on their forests and the natural resources. High levels of malnutrition, presence of Falciparum Malaria, Tuberculosis, other water and vector borne diseases in these tribal areas are reflected in the high neonatal, infant, child and maternal mortality. The absence of liability of the polluters is the most offensive aspect of this. Denial of access of water to the community on one hand with overuse and, worse still, poisoning the precious water resources by the corporation involved is truly unjust. The denuding of forests would definitely negatively affect rainfall, worsen soil erosion and make matters worse.

Removal of water pitchers along roads in Delhi in the name of safety and health, where taps are dry for most parts of the day, aggressive promotion of bottled water, has made water out of reach of the workers, labourers and travellers. The Trans Yamuna Cholera outbreak in 1988, outbreaks of Typhoid, para typhoid, hepatitis—I reflect the breakdown of public services of sewage treatment on the one hand and provision of safe water on the other. We needed to recognise all that needs to be done at several levels, through different steps, to ensure health of our citizens, not just of those who have the purchasing power, but also for those who do not have the purchasing power, to sanitary services, adequate safe water, and health and medical services.

While the higher-than-acceptable level of pesticides in colas was highlighted by Centre for Science and Environment (CSE), not only

was this issue downplayed, but an alternative study was organised by Tata Energy and Research Institute (TERI, now The Energy and Research Institute) to rubbish the legitimate concerns raised by CSE. To top it all, the head of PepsiCo International was given the Padma Shri Award from the Government of India. Recently she was included in the panel regarding NRI issues by the Prime Minister even as she has consistently espoused the US corporate commercial interest as part of Indo–US Business Alliance. The message that is clearly being sent out to the public is the importance of corporate interests that bring with them Foreign Direct Investment (FDI), among other things, over the health of children in particular and public health in general.

### **The Third World as toxic waste dumps**

With more stringent environmental pollution controls in the US and Europe, many polluting industries are moving into the Third World. There is a proliferation of pesticide units in India in Gujarat, Maharashtra and Uttar Pradesh, and in last few years in Himachal Pradesh and Uttaranchal, discharging their effluents into the river Ganges. The Bhopal leak was a disaster not only because it caused the death and disability of thousands, but because it made obvious the fact that neither the government nor the state authorities, nor the scientific and medical professionals had a clue regarding the toxicity of the chemicals being used or produced as intermediates and final products. They were completely ignorant of their hazardous effects and of how to manage poisoning if it occurred, and fairly ineffective in preventing and managing such toxic hazards.

The 1988 H acid (chemical used in making of dyes) poisoning case of Bichri (Udaipur) in drought-prone Rajasthan is another case in point. Five companies making this chemical were discharging their toxic effluents into Udaisagar canal. Sixty wells were polluted, making the water undrinkable for a five kilometre radius up to a depth of 200 feet. Over 500 acres of land were made uncultivable.

The extensive use of pesticides, many of which are banned in their country of origin, has made cultivation more capital-intensive and also have adverse effects on the food chain. Pesticide resistance is beginning to appear, failed crops made livelihoods perilous and the consequent

indebtedness has led to some tragic fall-outs. In 1987 over 60 cotton farmers in India's prime cotton-growing district of Prakasam (Andhra Pradesh) committed suicide by consuming pesticides.<sup>26</sup>

Over 200,000 farmers have committed suicide since 1995 because of the high costs of pesticides, seeds and input costs with decrease of output costs, indebtedness and humiliation by the moneylenders.<sup>27</sup> Pesticide poisoning cases have also been reported when highly toxic pesticide pellets have been ground with grain for making flour. Thousands of fish in Kuttanad developed sores on their bodies. Similar reports have come in from Malaysia and are related to the presence of industrial chemical effluents in rivers.

### **Creating dependency, legitimising biopiracy**

There is a growing collaboration with corporate interests in decision making. Self reliant options are being systematically destroyed and dependencies created. Basic needs are denied making the future of the poor, especially children, more vulnerable be it in their right to food, water, medicines, medical care, surviving shelter or peace.<sup>28</sup>

The food crisis is closely linked with policies and agreements pursued by international institutions such as the World Bank and the World Trade Organisation (WTO). A shift to non-food crops for the purpose of exports following recommendations by the World Bank and as part of its Structural Adjustment Programme (SAP) has accentuated the crisis. The increasing trend of appropriation of multi-crop fertile land for SEZs and other industrial projects backed by corporate friendly policies has put greater pressure on land available for agriculture. Trade Related Intellectual Property Rights (TRIPS) is recognised as one of the most unjust International Trade Regimes.

The patenting of seeds, traditional medicine, and traditional knowledge is a matter of concern. The cases of Basmati, neem and turmeric are well known. The most recent acts of biopiracy involve patenting of traditionally used drought resistant, flood resistant and salt resistant seeds. The WTO Agreement on Agriculture (AoA), considered extremely unjust, may now be pushed through to keep the Doha Round alive.

Major policy shifts that have repercussions for nutrition by influencing food availability and affordability at the national level are given below. Many of these are corporate friendly policy shifts.

- Introduction of the Seed Act, 1988 which allowed entry of multinational corporations (Monsanto, Cargill) in the seed sector.
- Introduction of the Food Safety and Standard Act, 2006 (FSS Act 2006)<sup>29,30</sup> which is a corporate-friendly Act formulated by the Food Processing Industry Ministry. The Act attempted to repeal the Infant Milk Substitute, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution) Amendment Act 2003, formulated by MWCD (then under Ministry of Human Resource Development). However, the IMS Act was retained following protests by child health and child rights groups in 2005. The expert committee of FSSA includes ‘experts’ directly or indirectly promoting interest of food corporations such as Nestle, Pepsi and Hindustan Lever.
- Introduction of the National Biotechnology Regulatory Authority Act, which is in the process of being finalised. This Act, while promoting the growth of the biotechnology industry, would ironically also be responsible for ‘safety’ and ‘regulatory’ aspects while penalising those ‘misguiding’ the public against biotechnology with heavy penalties in terms of fines and jail terms basically to muffle criticisms.

### **The way forward**

Food and nutrition as a major determinant of health is well known for decades, yet it has failed to receive the attention it urgently and consistently deserves.<sup>31</sup> The National Food Security Act 2010 Draft is basically about distribution. It is not about ensuring food security. It is basically cereal based, even when the nutritional need for oil, pulses, vegetable, and fruits is well recognised and more so the pitiful nutritional status of our children and women.

Absence of distributive justice is reflected not just in the area of food and water, but health care, education, shelter and livelihoods. The National Health Act is also on the anvil. It recognises the health needs and attempts to show up an Act which has a legal status and some health entitlements. The concern is that with a move towards rapid privatisation of health services, medical education and health insurance,



who will provide the preventive health measures which may not be so remunerative, with erosion of basic determinants of health.

Good intentions with an inadequate health budget and non universalisation of health rights, food rights, a neglected public health system targeting only the ‘diagnosed’ poor, while neglecting the ‘undiagnosed’ poor because of poor diagnostic parameters measures and personnel, access to health care and nutrition rights for many would continue to be denied. We had a National Health Policy 1983, which we failed to implement. We have several Acts—which remain unimplemented or mal-implemented, specially if they are pro-poor, or public health, public interest oriented or in any way seen as interfering with commercial or vested interest.

Adequate, safe, nutritious food, encouraging local food production that protects livelihoods of millions is needed. Ensuring that national and international policies of food, nutrition and health are ‘*health and nutrition promotive*’ as common public good, should be a collective goal and collective effort.<sup>32,33</sup> 200,000 farmers have already committed suicide, 600,000 tons of food has rotted in government godowns, millions have died of hunger, starvation or illness linked to malnutrition. The issue of food as a basic need, as a fundamental right and food and nutritional security as a common good cannot be emphasised more, demanded more, struggled for more as a right as well as duty.

## Endnotes

- <sup>1</sup> The Ottawa Charter for Health Promotion WHO, 1986.
- <sup>2</sup> Human Development Report, 2003, 2004, 2005, 2006, 2007.
- <sup>3</sup> Human Development Report 2010.
- <sup>4</sup> International Food Policy Research Institute 2007.
- <sup>5</sup> NFHS 2 National Family Health Survey, Ministry of Health, 1998–99.
- <sup>6</sup> NFHS 3 National Family Health Survey, Ministry of Health, 2005–06.
- <sup>6</sup> Save the Children Fund, Campaign for New Born and Child Survival.
- <sup>7</sup> Rao Veena S. Malnutrition, an emergency what it costs the Nation? CAPART—Council for Advancement of Peoples Action and Rural Technology, Feb. 2008.
- <sup>8</sup> FOCUS (Focus On Children Under Six) Citizens’ Initiative for the Rights of Children Under Six. Survey 2004.
- <sup>9</sup> Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, National Commission for Enterprises in the Unorganised Sector 2007.
- <sup>10</sup> National Council of Applied Economic Research, India Policy Forum 2006/07.

- <sup>11</sup> Bridging the Gap – The World Health Report 1995.
- <sup>12</sup> Rural Health Statistics, Ministry of Health & Family Welfare 2009.
- <sup>13</sup> Soil Not Oil: Securing Our Food in Times of Climate Change by Vandana Shiva, 2007.
- <sup>14</sup> Peoples Charter for Food&Nutrition Security IBFAN, BPNI, Navdanya, IHES, 2009.
- <sup>15</sup> Genetic Roulette: The documented health risks of genetically engineered foods by Jeffrey M Smith 2007.
- <sup>16</sup> Health Hazards Related To Genetically Modified Food With Reference To Bt Brinjal by Doctors for Food and Biosafety. submitted to Dr. Jairam Ramesh, Hon'ble Minister of State Ministry of Environment & Forests (MoEF), GoI 2010.
- <sup>17</sup> The Infant Milk Substitutes, Feeding Bottles and Infant Food, (Regulation of Production, Supply and Distribution) Act, 1992, Amended in 2003.
- <sup>18</sup> Nutritive Value of Indian Foods by C. Gopalan, B.V.Rama Sastri & S.C. Balasubramanian revised and updated by B.S. Narashinga Rao, Y G Deosthale and K C Pant, National Institute of Nutrition, 2007.
- <sup>19</sup> Amazing Amaranth, Navdanya, 2005.
- <sup>20</sup> Bhoole Bisre Anaj, Forgotten Foods, Navdanya, 2006 reprint 2010.
- <sup>21</sup> Biopiracy of Climate Resilient Crops Gene Giants Steal Farmers Innovation of Drought Resistant, Flood Resistant & Salt Resistant Varieties. Vandana Shiva, Navdanya 2009.
- <sup>22</sup> Biopiracy: The Plunder of Nature and Knowledge; Vandana Shiva, 1998.
- <sup>23</sup> Seed policies and the right to food: Enhancing agro biodiversity and encouraging innovation A/64/170 for Sixty Fourth Session item 71(b) UN General Assembly 2009. McMichael 1993, 2001.
- <sup>24</sup> Mira Shiva, Environmental Degradation and Subversion of Health, Women, Ecology and Health–Rebuilding Connections–Development Dialogue, Dag Hammarskjold Foundation, 1992;1–2.
- <sup>25</sup> Vandana Shiva, Kunwar Jalees, Farmers Suicides in India, Navdanya, 2003.
- <sup>26</sup> Health and Nutrition of Children Under Six—Dr. Mira Shiva: Undoing Our Future—A Report on the Status of the Young Child in India, FORCES, 2009.
- <sup>27</sup> Food Safety and Standard Act, 2006 (FSS Act 2006).
- <sup>28</sup> National Biotechnology Regulatory Authority Bill (NBRA), 2008.
- <sup>29</sup> At a meeting of the Central Council for Health, the former health minister was asked why the health ministry was focusing only on micronutrients such as iron, folic acid and vitamin A when the problem of malnutrition and anaemia in children and women was unacceptably high and why nutritional issues were not being addressed by the health ministry. The Honourable Minister responded by stating that nutrition was under another ministry.
- <sup>30</sup> Peoples Charter for Health, PHM Global Health Watch 2, 2008.
- <sup>31</sup> National Profile on Women, Health and Development edited by Dr Sarala Gopalan, Dr. Mira Shiva by Voluntary Health Association of India & WHO, April 2000.
- <sup>32</sup> Baum Fran Ch 14 Global Physical Threats to the Environments and Public Health.

# The agro-biodiversity commons

---

Suman Sahai

**T**he Earth's genetic resources are a common inheritance of all people. They must be shared and held in trust for the human race and for the animals, birds, insects and other living creatures that live with us. In many developing countries, as in Africa and many parts of Asia, nearly 70 to 80% of the people depend on natural resources like biodiversity for their food and livelihoods. As human beings discovered the many properties of the biodiversity around them, they learnt to use this biodiversity in wide-ranging ways. An important kind of biodiversity emerged out of this process of human interaction—agricultural biodiversity or 'agro-biodiversity'. This agro-biodiversity, along with the knowledge associated with it, is a key component of the global genetic commons.

Agro-biodiversity of all food species is a vital sub-set of general biodiversity. It provides the foundation for the food and livelihood security of billions of people, not just for local communities but also for industrial agriculture. Agro-biodiversity is the first link in the food chain, developed and safeguarded by farmers, herders and fishers throughout the world. It is the result of the innovation, careful selection and scientific development undertaken by farmers, herders and fishers over millennia. The sustained management of these diverse biological resources, and the passing to successive generations of the indigenous knowledge of its properties, resulted in an ecologically balanced system that served communities across the world for centuries. It is now coming under threat.

Agro-biodiversity includes:

- Crop varieties, livestock breeds, fish species and undomesticated (wild) resources within field, forest, and rangeland and including tree products, wild animals hunted for food and plants and animals in aquatic ecosystems.
- Natural undomesticated species involved with production ecosystems that support food cultivators including soil micro-biota, pollinators, bees, butterflies, earthworms, and natural predators of pests.

- Undomesticated species in the larger environment that are part of ecosystems that support food production. These could be agricultural, pastoral, forest and aquatic ecosystems.

Agro-biodiversity results from the interaction between the environment, genetic resources and the management systems and practices used by culturally diverse peoples resulting in the different ways land and water resources are used for food production and income generation. It includes the variety of animals, plants and micro-organisms which are necessary to sustain key functions of the agro-ecosystem, the structure and processes that enable it to support agriculture and food production and foster the food security of diverse people across the world. Agro-biodiversity has spatial, temporal and scale dimensions especially at agro-ecosystem levels. Almost all agro-ecosystems in the world are 'man-made' and most have been to some extent modified or cultivated by human activity for the production of food, for income and for livelihood security.

Agro-ecosystems may be identified at different levels, for instance, a field, crop, herd, pond, a farming system, a land-use system or a watershed. These can be aggregated to form a hierarchy of agro-ecosystems. Ecological processes can also be identified at different levels. Valuable ecological processes that result from the interactions between species and between species and the environment include, inter alia, biological processes like the microbial breakdown of biomass and those which maintain soil organic matter and fertility. Water quality and climate regulation are also influenced by ecological processes, for instance, the micro-climates created in different forests with varying canopy types.

Very importantly, the interaction between the environment, genetic resources and management practices may guide the evolutionary process. This could involve such processes as introgression from wild relatives, hybridisation between cultivars, mutations, and natural and human selections. These result in genetic material like crop varieties and animal breeds that are well adapted to local conditions and adapted to withstand the likely abiotic and biotic variation to occur there. Agro-biodiversity

is therefore not only the result of human activity. Human life per se is dependent on it not just for the immediate provision of food and other goods, but for the biological health of land that will sustain food production and for the maintenance of the wider environment.

Agro-ecosystems are extremely diverse. They comprise polycultures, monocultures, and mixed farming systems, including crop-crop (rice-wheat); crop-livestock systems (rice-fish), agro-forestry, agro-silvo-pastoral systems, aquaculture as well as grasslands, pastures and fallow lands. Some of the key functions needed to maintain stable, robust, productive and sustainable agro-ecosystems include the following:

- Biological processing of organic matter and recycling of nutrients to maintain soil fertility and sustain plant and consequently animal growth.
- Filtering and breaking down pollutants to enable clean and healthy air and water.
- Protection and conservation of soil and water resources.
- Moderation of climatic effects such as maintaining rainfall patterns and modulation of the water cycle.
- Sequestration of CO<sub>2</sub> by plants to reduce global warming.
- Absorption of solar energy by the land and its subsequent release.
- Maintenance of productive plant, fish and animal populations.
- Maintenance of landscapes and habitats.

Rural communities in environments where intensive agriculture cannot be practiced rely on a wide range of crop and livestock types. This helps them maintain their livelihoods in the face of sub optimal soils, biotic and abiotic stress like disease and uncertain rainfall, fluctuation in the price of cash crops and socio-political upheaval. Many minor or underutilised crops are frequently found in proximity to the main staple or cash crops. Yet they are neglected and little effort is made to either conserve them or mainstream them for domestic use or the market. During times of stress like drought or flood, such under utilised plants can play a very important role in food production systems at the local level. Plants that will grow in infertile or degraded soils, and livestock that will survive on little fodder are crucial to the survival strategies of communities.

Indigenous knowledge and culture are an integral part of agro-biodiversity, because it is the human activity in agriculture that shapes and conserves this biodiversity. Biodiversity has been protected over generations because the cultural diversity associated with it was retained. Utilising indigenous knowledge systems, cultures in many parts of the world have built production and life support systems that use and conserve biodiversity. Monocultures, by contrast, have severed links with any cultural context of the biodiversity they use. Their production systems consume and exploit biodiversity. They do not conserve it.

---

#### **Agro-biodiversity and Indigenous Knowledge**

Indigenous knowledge is the information that people in a given community have developed over time. It is based on experience and adapted to the local culture and environment and is continuously evolving. It is embedded in social structures. Different groups of people, ethnic groups and clans hold different knowledge. Women and men often possess very different skills and knowledge of local flora and fauna.

Indigenous knowledge, and gender differences within that knowledge, are key factors that shape and influence plant and animal diversity. Such knowledge can help increase the relevance and efficiency of agro-biodiversity management and conservation efforts at different levels.

Indigenous knowledge continues to be an important asset for resource poor people to sustain their livelihoods.

#### **The value of the agro-biodiversity commons to agriculture and food security**

It is increasingly recognised that the traditional practice of maintaining genetic diversity in the field, within the community, is the key to long-term sustainable food production. In agriculture and forestry, genetic diversity can enhance production in all agricultural and ecosystem zones. Several varieties can be planted in the same field to minimise crop failure, and new varieties can be bred to maximise production or adapt to adverse or changing conditions.

Newer strategies for stabilising production involve the use of varietal blends (a mix of strains sharing similar traits but based on different parents) or multilines (varieties containing several different sources

of resistance). In each case, the crop represents a genetically diverse array that can better withstand disease and pests. Despite these efforts, genetic uniformity still places some crops at risk of disease outbreaks and in some regions that risk is considerable. Some 62% of rice varieties in Bangladesh, 74% in Indonesia, and 75% in Sri Lanka are derived from one maternal parent.

In the United States from 1930 to 1980, the use of genetic diversity by plant breeders, accounted for at least half of the doubling in yields of rice, barley, soybeans, wheat, cotton, and sugarcane; a threefold increase in tomato yields; and a fourfold increase in yields of corn, sorghum and potato.

As important as genetic diversity is to increasing yields, it is at least as important in maintaining existing productivity. Introducing genetic resistance to certain insect pests can increase crop yields, but since natural selection often helps insects quickly overcome this resistance, new genetic resistance has to be periodically introduced into the crop just to sustain the higher productivity. Pesticides are also overcome by evolution, so another important agricultural use of genetic diversity is to offset productivity losses from pesticide resistance.

Wild relatives of crops have contributed significantly to agriculture, particularly in disease resistance. Thanks to wild wheat varieties, domesticated wheat now resists fungal diseases, drought, winter cold, and heat. Rice gets its resistance to two of Asia's four main rice diseases from a single sample of rice from central India, *Oryza Nivara*.

### **Genetic diversity and livestock breeding**

Genetic diversity is becoming increasingly important in forestry and fisheries, and the use of genetic resources in livestock breeding has markedly increased yields. The average milk yield of cows in the United States has doubled over the past 30 years, and genetic improvement accounts for more than 25% of this gain in at least one breed. Although not as dramatic, Asia has also seen a rise in milk output due to the improved genetic stock of dairy cattle.

For a variety of reasons, genetic diversity has been less useful in livestock breeding than in crop breeding. This is partly because maintaining

livestock germplasm is tougher logistically than maintaining the genetic material of plants. An additional problem is that many of the closest relatives of domesticated animals are extinct, endangered, or rare, and thus unavailable for breeding. Their conservation should be a priority area for germplasm conservation.

#### **Genetic improvement of forest species**

Genetic improvement of forest species has also received less attention than crop improvement. Until recently, most timber was harvested from the wild and little attention was paid to breeding programmes. In addition, because trees are so long-lived, the rate of genetic improvement of tree species is quite slow. Tests and measurements of growth characteristics have been made for some 500 species (primarily conifers) over the years, but less than 40 tree species are being bred. Yet, impressive gains have been made with these species. In intensive breeding programmes, a 15 to 25% gain in productivity per generation has been attained for trees growing on high-quality sites without inputs of fertilizer, water, or pesticides.

#### **Aquaculture**

Fish breeding has not been widely utilised to enhance yields because most of the fish eaten is caught from the wild. An exception is aquaculture. In one case, the domestic carp (*Cyprinus carpio*) was bred with a wild carp in the Soviet Union to enhance the cold resistance of the domestic species and allow a range extension to the north.

#### **Maintaining and enhancing soil biodiversity for increased agricultural production**

Improvement in agricultural sustainability will require the optimal use and management of soil fertility and soil physical properties. Both rely on soil biological process and soil biodiversity. This implies management practices that enhance soil biological activity and thereby build up long-term soil productivity and health. Such practices are of major importance in marginal lands to avoid degradation, and in degraded lands in need of restoration. Certain ecological principles are needed to enhance soil biological diversity and thereby increase agricultural production. These include supply of organic matter, distributing crop



varieties to create a greater diversity of niches and resources that stimulate soil biodiversity and protecting the habitat of soil organisms.

---

#### **Genetic diversity and food security**

Genetic diversity gives species the ability to adapt to changing environments, and combat biotic and abiotic stress like pests and diseases, drought and salinity. This diversity is the raw material for breeding new varieties of crops, which provide the basis for more productive and resilient production systems that are better able to cope with such stresses as drought or overgrazing and can reduce the potential for soil erosion.

Subsistence farmers, particularly in marginal areas, are well aware of the relationship between the stability and sustainability of their production systems and the diversity of crops and crop varieties on their lands. This diversity is their greatest insurance against risk. Their management and use of a diverse range of varieties has helped them to survive under the most difficult conditions. Across Asia farmers have classically planted a mix of varieties in the same field so that if some fell victim to pest and disease, others would survive, ensuring that at least some grain could be harvested. Under monoculture conditions, the entire crop would be wiped out in the face of pest and disease, leaving the farmer nothing to take home.

By growing a range of different crops, farmers have a better chance of meeting their needs and reducing their risk. These might be crops that mature at different times or mixed cropping, when two or more crops are cultivated in the same field. Crop varieties can also be selected for foods with long shelf life to help to ensure a stable food supply throughout the year. Multiple varieties in the field provide a nutritionally balanced diet for farm families and diversify their income sources.

#### **Gender and agro-biodiversity**

Men and women play important, but different, roles in the management and conservation of agro-biodiversity. There is a gender differentiation in the roles and responsibilities in agriculture. Gender relations are also affected by the upheavals in the management and conservation of agro-biodiversity and local knowledge.

Cultural values continue to be the driving force of biodiversity management and conservation. Changing food culture and dietary habits can lead to the erosion of women's knowledge of processing, preparation and storage. This ultimately leads to the erosion of plant diversity and family food security and health. Commercialized agriculture, modern

technologies and innovations have created high external-input dependent systems. These often rely on introduced species and varieties, which have introduced changes in gender roles. Changes within the household composition affect available labour resources and have a profound impact upon agricultural management practices and agro-biodiversity. Shocks, such as HIV-AIDS, have an impact on gender relations and the interaction with other livelihood assets.

A gendered long-term strategy for the conservation, utilisation, improvement and management of genetic resources will require:

- Acknowledgement that there are gender-based differences in the roles, responsibilities and contributions of different socio-economic groups in farming communities.
- Recognition of the value of men's and women's knowledge, skills and practices and their right to benefit from the fruits of their labour.
- Equity in agricultural policies and implementation strategies to provide incentives for the sustainable use of genetic resources, especially through in situ conservation and improved linkages with ex situ conservation.
- Appropriate national legislation to uphold the principles of equity and protect 'threatened' genetic resources for food and livelihoods, guarantee their continued use and management by local communities.
- Ensuring that any benefits accrued from the commercial exploitation of genetic diversity is dedicated for the use of the local community.
- Incorporating gender issues in legal instruments that regulate the management and use of biodiversity, at national and international levels.
- Increasing the access of farm men and women to land and water resources, to education, extension, training, credit and appropriate technology.
- Participation of rural women and men in decision making.

### **Challenges to agro-biodiversity from diverse sources**

#### **Expansion of industrial and green revolution agriculture**

This includes intensive livestock production, industrial fisheries and aquaculture. Some production systems use genetically modified varieties

and breeds. Moreover, relatively few crop varieties are cultivated in monocultures and a limited number of domestic animal breeds, or fish, are reared.

Till the nineteenth and early twentieth century, the agriculture sector had a sufficiently high autonomy vis-a-vis the other economic sectors. Today, the food industry which processes the raw foodstuff industrially is a highly concentrated trade sector and holds a dominating position. It demands standardised agricultural products that can be easily treated by machines.

With the industrialisation and intensification of agriculture, investments have escalated and pressure has increased to compensate these costs by means of higher productivity. This is being achieved through intensive land use systems, mechanisation, higher inputs of fertilisers and pesticides, monocultural cultivation and the breeding of high yielding crops and high performing livestock. These processes have caused massive ecological effects and unsustainable production and consumption patterns with impact, among others, on agro-biodiversity.

#### **Globalisation of the food system and marketing**

The extension of industrial patenting and other intellectual property systems to living organisms has led to the widespread cultivation and rearing of fewer varieties and breeds. This results in a more uniform, less diverse, but more competitive global product. As a consequence, there have been changes in farmers' and consumers' perceptions and preferences, marginalisation of small-scale, diverse food production systems that conserve farmer varieties of crops and breeds of domestic animals; reduced integration of livestock in arable production, which reduces the diversity of uses for which livestock are needed; and reduced use of 'nurture' fisheries techniques that conserve and develop aquatic biodiversity.

#### **The replacement of local varieties by improved or exotic varieties and species**

Nearly all countries confirm genetic erosion is taking place and that it is a serious problem. Genetic erosion usually occurs as old varieties in farmers' fields are replaced by newer ones. Genes and gene complexes

found in farmers' varieties are not found in the new varieties. The total number of varieties is reduced when commercial varieties are introduced into traditional farming systems. Few systematic studies of the genetic erosion of crop genetic diversity have been done so far.

#### **Challenges to local knowledge**

Local knowledge and local institutions managing this knowledge are particularly challenged by rapid socio-economic and environmental changes. Areas of very rapid population growth, or a concomitant reduction in resources by external pressures, may require particular adaptations of new agricultural technologies to increase food production and the diversification of livelihoods, leading to irrelevance of local knowledge. Immigration can mean that the repertoires of knowledge, for agricultural/pastoral production and environmental conservation, are out of focus with the new set of opportunities and constraints. Gradual environmental changes, such as climate change, widespread deforestation, or land degradation, challenge the resilience and adaptability of local knowledge systems. Rapid commercialisation and economic shocks can also undermine local knowledge.

#### **Population increase in developing countries and agribusiness in the developed world**

With the vertical integration of the food chain and the linking of farmers' fields to retail stores, companies began to standardise products, leaving no room for the banana that failed to measure to prescribed norms, the french beans that were too long or too short or wheat which did not have the prescribed gluten content. This led to severe genetic loss since such crop varieties gradually displaced from farmers' fields.

Monocultures of crops to produce standardised fruit and grain and a few animal breeds with optimal food-product conversion efficiency have starkly reduced genetic diversity. This has resulted in the neglect and marginalisation of small-scale, diversified food production systems that are based on a diversity of farmers' varieties and breeds of domestic animals, which may have low milk yields but can survive pests and disease and have a high ratio of fodder convertibility. These diverse gene pools varied with the eco-geography even within the same region and helped to maintain a broad genetic support base for agriculture.

**Catastrophes and climate variation**

One need look no further than the recent devastation caused by the Kosi river shifting course in Bihar. Apart from the loss of human life and assets, the crops of the area have been swept away and along with them, the traditional varieties that were cultivated there. In the coming days of global warming and climate change, cyclones and hurricanes will increase and with that will increase the probability of loss of genetic diversity. Whereas stocks of seed of the high yielding varieties (HYV) and parental lines of hybrids are carefully maintained, these can be restored but government agencies and the Indian Council for Agricultural Research (ICAR) have no provisions for conserving seed of traditional varieties, therefore, many traditional varieties could be lost forever.

**Flawed policies**

Genetic diversity in animal breeds was starkly reduced in the 1960s and 1970s when the livestock improvement programme started in India. This consisted of importing cattle to cross with indigenous breeds and a large scale programme of artificial insemination using the imported cattle as one parent. During the artificial insemination programme, large numbers of bulls of indigenous breeds were culled or castrated to prevent them from impregnating the animals meant to be inseminated. This resulted in substantial loss of genes of less productive animal breeds, which had other traits like the ability to withstand extreme temperatures, resist diseases and survive in fodder scarce times.

In developing countries, loss of diversity has been reinforced by a donor policy that has promoted the import of exotic breeds and crossbreeding that threatens the survival of local breeds. Both the markets for agricultural inputs and for agricultural outputs have been increasing in size, thus feeding into a globalising food market that demands goods in huge consignments. In order to process them industrially, those agricultural goods need to be homogenous. Therefore, apart from the yields, it is the requirements of industrial cultivation, husbandry and processing (and to some extent consumer demand) that determine the breeding objectives rather than nutritional value, taste, improved stress resistance or adaptation to natural conditions.

### **Agro-biodiversity loss through new technology and IPR**

Modern, highly selective breeding methods contribute to diversity loss making possible dangerous degrees of homogenisation. In livestock breeding artificial insemination, multiple ovulation and embryo transfer are applied to reproduce only a few top performers; a huge number of other individuals are thus excluded from breeding and the genetic distance within populations is correspondingly reduced. Hybrid breeding, with both animals (e.g. poultry, pigs) and plants (e.g. corn, rice), and cloning are methods used to reproduce genetically homogenous and high performing livestock and plant varieties. In the case of animals, impacts on the genetic pool are expected when traditional breeding gets replaced by the modern methods. Also, since hybrid breeding produces infertile breeds and seed, farmers cannot use the material to continue breeding/growing according to their own selection preferences. They are forced to rely on commercially bred/grown homogenous livestock and seeds, which they have to buy again every year. In plant breeding, ‘Genetic Use Restriction Technologies’ (GURTs) have the same effect.

The economic and technological developments detrimental to agro-biodiversity were partly supported by policies and governance structures such as intellectual property rights and sovereignty regimes that regulate access to genetic resources as well as seed and livestock breeding laws. These have encouraged high output and homogenisation, thus affecting the choice of plants and livestock.

At the coming into force of the World Trade Organisation (WTO), Trade Related Intellectual Property Rights (TRIPs), Intellectual Property Rights (IPR) laws had to be enacted over biological resources in all countries. Patents and stringent Breeders Rights restricted the free flow of germplasm and contain it in compartments that are increasingly privately owned. Two major IPR regimes can be distinguished that impact on agro-biodiversity in varying degrees. The first is patents, the other is Plant Variety Protection (PVP), applying only to plants. PVP systems based on International Union for the Protection of New Varieties of Plants (UPOV) are designed to diminish agro-biodiversity.

The criteria for variety protection—the so called ‘DUS requirements’ (for Distinct, Uniform i.e. homogenous and Stable), impacts on plant

variability. Secondly, Plant Breeders' Rights, like other IPRs have indirect effects on agro-biodiversity by restricting access to genetic resources. The uniformity criterion aims at minimising genetic diversity within a plant variety, because to qualify for a Plant Breeder's Right the variety must be distinguishable from other varieties. This physical distinctiveness and uniformity, comes at the expense of genetic variability. In the field, uniform varieties are less able to withstand biotic and abiotic stress. At the same time, the uniformity criterion puts genetically diverse land races out of the purview of protection. The DUS criteria inclines breeders to develop varieties that have low adaptability and are highly adjusted to mono cultural production systems for large markets.

### **Fencing the commons**

#### **Intellectual property right (IPR)**

For rural and tribal communities across the world, biodiversity has always been a local, commonly shared resource on which food and livelihood security depends. The process that began with the Uruguay GATT Round in 1986 to introduce new intellectual property laws was in effect, an effort to encircle the commons and move them from a domain of collective stewardship to a regime of private property, through enforcing patents.

Biodiversity has always been a common resource with societies developing a series of practices which fostered conservation and sustainable use. In the spirit of commons, local communities share seeds, medicinal and other economically useful plants with anyone who wishes to have them. The notion of 'owning' these resources or excluding anyone from its use, is alien to communities that have nurtured biodiversity and agro-biodiversity.

Innovation, which has constantly added value to the biodiversity commons, has always been collectively owned, even if there was a single innovator (rarely) and always shared. When conducting awareness programmes with communities about the dangers of biopiracy, the community tradition of sharing the resource prevents them from denying outsiders on collection trips. According to them, grazing lands, forests... belong to everyone... as do seeds, plants, butterflies, beetles, water bodies and their fish, reeds and aquatic life. In the concept of commons, no one is excluded.

The ideal approach to maintaining the commons of seed/biodiversity/ agro-biodiversity, is to have no IPR on any kind of genetic resources. But if governments have given in to IPR regimes, the struggle to maintain the commons must at least insist on a sui generis law that India has framed, incorporating farmers rights, in place of patents.

In colonial times the commons were captured and community power usurped by the state as it appropriated for itself the forests, water and other common resources. Independent India embraced the Doctrine of Public Trust according to which individual property rights cannot be accorded on natural resources like rivers and forests but the era of globalisation is threatening to close the circle and an effort is on to privatise the commons again. Biodiversity is particularly hard hit as the biotechnology sector develops into a juggernaut. Industrial countries have technologies but they do not have access to the biological diversity, the diversity of genes to convert these technologies into products. The GATT/WTO process began the circling of the biodiversity commons with the proposed IPR regimes and the push to patent plants and genes that were embedded in the biodiversity commons. Turmeric, Aayahuasca, Neem, Basmati rice, Enola beans and hundreds of products belonging to local communities in different parts of the world were sought to be privatised by patents sanctioned under the WTO/TRIPS.

Countries must challenge the designs of corporations sneaking in through TRIPS to privatise the commons and ensure that IPR regimes do not allow the patenting of biological resources, plants seeds, gene or, microorganisms. India spurned patents on biodiversity and enacted a unique and progressive legislation called the Protection of Plant Varieties and Farmers Rights Act, 2001. This legislation empowers farmers by giving them rights that allow them to exercise full rights over their seeds. Empowering the community with such rights would enable their recovery of the commons.

Mahatma Gandhi encapsulated the philosophy of the commons in his advice that resource use should be restrained and based on equity. He said that '*The earth provides enough for everyone's need, but not for everyone's greed*'. In rural and indigenous communities across the world, the 'ownership' of resources is in the form of common



entitlements and usufruct rights. This contrasts with the ownership of rights practiced in the European system, which are based on the concept of private property, which excludes everyone except the owner. The IPR regime proposed through the GATT/WTO is a European concept of exclusive property ownership as against the collective ownership practiced by local communities.

### **TRIPS and biodiversity**

In the last decades there has been a distinct shift in the way biological resources are being treated. What was a 'natural' resource, accessible to all, has now become an 'economic' resource, to be privatised. In this process, resources jointly held and nurtured by communities, is converted to a private property owned by a few and withheld increasingly from the local communities.

This shift has been negotiated in recent international and national developments. Two major international agreements, the Agreement on TRIPS of the WTO and the United Nations Convention on Biological Diversity (CBD), with mutually conflicting approaches, are now shaping the domestic regimes of member states with respect to biological resources and associated indigenous knowledge. The agreement on TRIPS engenders privatisation of biological resources by allowing patents to be granted on biological materials and associated indigenous knowledge. On the other hand, the CBD acknowledges that local communities have rights over bio-resources and indigenous knowledge.

Article 27.3(b) of TRIPS has brought biological resources under the purview of IPR, hence providing for private ownership over bio-resources with exclusive commercial rights. Biological diversity has become the much sought after raw material of the life sciences industry. Whilst corporations in the developed world have mastered the techniques of recombinant DNA technology, the raw matter is located principally in the tropical and semi-tropical countries of the developing South. Not only the resources, but the associated knowledge of their properties are located within indigenous communities.

To gain access to biological resources, the life science corporations, through their governments, have extended the scope of IPR to biological

materials at the global level. This development took place in the 'Uruguay GATT Round' that began in 1986 and concluded in Marrakesh in 1994. During this round, life forms and genetic resources were brought into the ambit of one system for IPR.

#### **IPR over biological materials**

The key element of the TRIPS agreements related to agricultural genetic resources is the requirement for WTO members to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination. One reason for greater interest in patents is the rapid development of biotechnology in agriculture.

There are four options within Article 27.3(b). The first is to allow patents on everything. This would include all materials and all forms of technology. Secondly, to exclude plants, animals and biological processes, but not plant varieties. This means that whereas naturally found plants, animals and the natural biological process by which they are created, could be excluded from patents, crop varieties could not. The third option is to exclude plants, animals and biological processes from patenting and to introduce a special *sui generis* for the protection of plant varieties. A *sui generis* system allows the country to create a system of their choice that would enable the minimum protection agreed to in the WTO. The final option is to exclude plants, animals and essentially biological processes from patenting but not plant varieties, and to provide a *sui generis* right. This last would mean that plant varieties could be patented or protected by an independently created *sui generis* system. Most developing countries have chosen option 3. A *sui generis* system of protection is one adapted to particular subject matter, and allows countries to make their own rules for protection of new plant varieties.

Article 27.3(b) of TRIPS is perhaps the most controversial clause of the entire WTO agreement. It requires members to provide for the patenting of micro-organisms and genetically engineered organisms ('non-biological and microbiological processes') and WTO members are now in the process of defining their positions regarding the future of the provisions. There are indications that a few members like the

US would like the *sui generis* option to be eliminated altogether, while most developing countries are preparing national legislation to implement it. There are proposals to treat UPOV as the only *sui generis* option for plant varieties. UPOV is not in the interest of developing countries since it does not have any rights for farmers. There is only one right, that granted to the breeder, which in today's context is increasingly 'the company'. Patents on seeds would severely restrict the farmers' access to them, since they would have to buy fresh seed for every sowing. Women would be particularly disadvantaged under UPOV since their access to their own seeds ensures that they can contribute to food and nutrition for the household.

#### **UPOV**

When the Uruguay GATT Round started in 1986, the US proposed broad coverage of patentable subject matter, including plants and living organisms. The developing nations not surprisingly, proposed the exclusion of plants from patent protection. At that time, the Europeans supported patents on plants but changed their position later since the European Patent Convention does not allow plant varieties to be patented. Plant varieties in Europe were protected by Plant Breeders Rights but the situation seems to be changing in favour of admitting patents as well.

The US introduced the Plant Patent Act in 1930. Under this Act, the breeder of any new and distinct variety of asexually reproduced plants may apply for a plant patent. Although the US encouraged plant breeders in other countries to seek similar protection for plant varieties, the United Kingdom did not follow suit, largely because commercial interests at the time were not strong enough to push for patents on plants. This changed in the 1950s. In 1956, the French government invited the governments of Western Europe to a diplomatic conference on the protection of new plant varieties. An international convention was finalised and signed by the member states, which ultimately led to the framing and adoption of the UPOV Convention in 1961.

The UPOV system started as a flexible system of protecting plant varieties with a Breeders Right. Farmers were granted exemptions from the Breeders Rights and could save seed from their harvest to plant the next crop. Scientists and researchers too enjoyed exemptions

that allowed them to use breeder protected material to breed other varieties. However, through repeated reviews in 1972 and then 1978, the flexibilities granted to farmers and researchers were whittled away. Finally the 1991 UPOV convention has become like the patent system—a monopoly granting right which excludes farmers and refuses to acknowledge the role they have played in the creation of new plant varieties.

#### **CoFaB as developing country alternative to UPOV**

The UPOV model is both against farmers and against biodiversity. As an alternative to it, Gene Campaign and Centre for Environment and Development (CEAD) in 1998 drafted an alternative for developing countries to implement their Farmers and Breeders Rights. This treaty called the *Convention of Farmers and Breeders, (CoFaB)* seeks to fulfil the following goals:

- Maintain genetic diversity in the field.
- Provide for breeders of new varieties to have protection for their varieties in the market, without prejudice to public interest.
- Acknowledge the enormous contribution of farmers to the identification, maintenance and refinement of germplasm.
- Acknowledge the role of farmers as creators of land races and traditional varieties which form the foundation of agriculture and modern plant breeding.
- Emphasise that the countries of the tropics are germplasm owning countries and the primary source of agricultural varieties.
- Develop a system wherein farmers and breeders have recognition and rights accruing from their respective contribution to the creation of new varieties.

The UNDP Human Development Report (1999) commended CoFaB as an alternative to UPOV. Describing CoFaB as a '*strong and coordinated international proposal*' which '*offers developing countries an alternative to following European legislation by focusing legislation on needs to protect farmers' rights to save and reuse seed and to fulfil the food and nutritional security goals of their people*'.

### **UPOV is against developing country interests**

There are potential conflicts between TRIPS patenting regime, CBD and the International Treaty on Plant Genetic Resources (ITPGR) of the FAO. These conflicts are widely seen as more political than legal in nature, and the US government has made early implementation of TRIPS a top priority of its foreign policy. These matters are likely to emerge as matters of dispute under the WTO's dispute settlement system in the coming years.

UPOV 1991 conditions will significantly diminish the farming community's capacity to be self-sufficient in seed and self-reliant as agricultural producers. It promotes the interests of commercial plant breeders in the North rather than the farming communities. UPOV requires plant varieties to be 'distinct' from other varieties, produce genetically 'uniform' progeny, and remain genetically 'stable' over generations. After the 1991 UPOV amendment, a new quality 'novelty' has been added to the minimal characteristics required. The uniformity requirement has potential to contribute to genetic erosion. In addition, the cost of maintaining UPOV certification is beyond the means of most farmer-breeders. Although peasant farmers have also cultivated plant varieties expressing desirable traits over time, their varieties rarely meet the UPOV requirements list. These conditions for a 'Plant Breeders' Right certificate' under UPOV go contrary to the goal of enhancing genetic diversity. Furthermore, the kind of protection it grants is an exclusive monopoly right. This contrasts sharply with the broader goals of collective remuneration and benefit-sharing expressed in a number of other global agreements.

A number of influential bodies, including the WTO itself, are pushing for a narrowing of the *sui generis* option to one legislative model provided by the UPOV. UPOV is not mentioned in the TRIPS Agreement. Independent legal and economic experts have reiterated that UPOV should not be accepted as an effective *sui generis* system for TRIPS and that there is ample scope for manoeuvre, flexibility and national discretion in interpreting the *sui generis* option. The UPOV system promotes commercially bred plant varieties for industrial agricultural systems at the expense of more sustainable biodiverse systems. Since

‘Plant Breeders’ Rights’ (PBRs) are only given for a variety that is genetically uniform, UPOV automatically discourages genetically diverse and locally adapted seeds.

Applying the TRIPS framework to bio-resources is against the interests of indigenous and farming women and men. Women are the most skilled in the use of bio-resources for food, medicine and other uses, and use these resources to improve the health and nutrition status of their families, as well as to earn some income. The TRIPS Agreement does not recognise that local communities have any rights over bio-resources and associated knowledge. It fails to acknowledge or protect farmers’ rights, explicitly recognised in the CBD and ITPGR. In addition, the TRIPS Agreement, unlike CBD or ITPGR, does not acknowledge the essential role of women in rural communities in conserving biodiversity. It does not make any provision to ensure benefit sharing from technology and innovation, or require any prior informed consent of the people (primarily women) whose knowledge is tapped for technological innovation.

#### **TRIPS plus**

Audacious as it is in its attempt to privatise biodiversity, TRIPS lays down only minimum standards of IPR protection. These standards were never really accepted by the industrialised countries and the trans national corporations who have been the real drivers of IPRs on biodiversity. The effort to bypass the multilateral process of the WTO and force stronger levels of IPR on developing countries who are the owners of biodiversity has taken the shape of Free Trade Agreements (FTAs) which are deals done bilaterally. Developed countries are negotiating special closed deals with governments of the South that establish much stronger requirements for IPRs on biological resources, than those agreed under WTO/TRIPS. These ‘TRIPS-plus’ standards are being introduced through a range of bilateral, regional and sub regional agreements.

The main elements of these bilateral treaties that make them TRIPS-plus are the following.

a) No exclusions to patents

TRIPS allows members to exclude plants and animals from their patent laws. But under bilateral agreements with industrialised countries, Jordan,

Mongolia, Nicaragua, Sri Lanka and Vietnam have been asked to provide patent protection on plants and animals.

b) Reference to UPO

TRIPS makes no reference to UPOV, nor does it define ‘effective *sui generis* system’ granting some flexibility to member countries in choosing their IPR option. Requiring countries to sign onto UPOV 1991 in FTAs, is clearly TRIPS-plus.

**Impact on biodiversity and communities**

IPR regimes on bio-resources and the commercialisation of these for markets will result in resource depletion. Commercial interests that target bio-resources on a large scale for the market will threaten the resource base, and with it, the knowledge base developed around the bio-resources. The impact on women and through them, families, will be immediate. There is a steady depletion of rare medicinal flora from the hill regions because of collections being conducted by pharmaceutical companies. A subspecies of *Taxus baccata*, the *Himalayan Yew* tree in the Himalayan region is facing near extinction thanks to over exploitation for its the cancer curing properties. Large areas of the Kumaon and Garhwal Himalayas in India have been stripped of medicinal plants by head loaders collecting for foreign and Indian companies. This devastation of flora means that women lose the resources they need for use in home remedies to treat their families and their livestock.

Patents on seeds would take away the women’s ability to breed new, locally adapted varieties for food, healing and rituals. This would strike at food and nutritional security of families and also at the socio-cultural identity of communities. Women have bred varieties for special uses integral to local food habits and cultural and religious practices. Some varieties are offered to the gods at certain festivals. Still others play a role in rituals during marriage and death ceremonies.

When patents are permitted, there is currently no requirement for disclosing the source of the plant material, nor the key information lead for the claimed ‘invention’, that is the indigenous knowledge of the characteristics, say of the particular medicinal plant. Biopiracy

is a misappropriation of the intellectual property of local communities. In the case of the patent on *turmeric*, or *neem*, the knowledge of the wound healing property or the bactericidal property of the respective plants was the basis of the 'invention' that was granted a patent by the US Patent and Trademark Office. The consequences could be twofold. Exercise of the patent in India could lead to corporate control over wound healing or antiseptic products derived from *turmeric* and *neem*. On the other hand if such products had export potential to the US, such an opportunity could be denied because the existing US patent could be used to block any imports.

Whether in the field of medicinal plants or in agriculture, it seems clear that women will be excluded from the decision making process. They will have less say in what will be planted in the field because seed availability will increasingly shift to crops with a single dominant trait. Women are likely to have fewer options and less flexibility to use bio-resources for multiple uses. Since participation in the cash economy to make up the loss in these sectors will either not be possible for women or place additional burdens on them, it is more likely that the ensuing deprivations will become permanent.

#### **Primacy of CBD over TRIPS**

There is a large body of opinion held by academia, politicians, and civil society groups all over the world, that IPRs should not be regulated under WTO at all. Refining the jurisdiction of TRIPS would be part of a more fundamental reassessment of whether trade policy instruments governing market access should determine national intellectual property regimes. In recent times, several platforms have demanded granting primacy to CBD over TRIPS. More and more nations should support this move and place this as a demand at the TRIPS review. The official Indian position has asked for a CBD-TRIPS linkage.

Demanding primacy for the CBD is justified and supported by Article 22 of the CBD which says: The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, *except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity*



It is clear that the implementation of TRIPs is detrimental to the health of biological diversity and therefore its implementation must be made subservient to the conditions of the CBD.

### **Biofuels and the commons in India**

The biofuel policy is yet another attempt to commandeer the commons for private interests. The Indian government has a National Policy for Biofuels. According to this, India is investing in *Jatropha* plantations to produce biodiesel as a supposedly clean fuel. It is argued that *Jatropha* will be cultivated only on wastelands, as though wastelands were barren lands where nothing grew and where miraculously *Jatropha* would. There is no such thing as wasted land in India. 'Wasteland' is a land classification referring to land that is not suited for traditional cultivation. These are common lands which the village community uses. Uncultivated land is used as grazing pastures on which the livestock depends for fodder. Wastelands are typically biodiversity rich and provide a range of useful plants and services (like water) to the village community. Among other things, wastelands provide fodder, leafy greens and wild foods, and most importantly, medicinal plants on which the rural community depends for its health and veterinary care needs.

The Biofuel Policy usurps the commons, taking away critical spaces and resources from the community to provide a resource to the elite. Diverting the biodiversity rich commons to produce fuel for the automobiles of the rich is unethical.

### **Legal support for the commons**

#### **Doctrine of Public Trust**

The Doctrine of Public Trust (DPT) is a legal principle which asserts that certain natural resources are of such immense value to society as a whole that individual property rights to them is unjustifiable. DPT has its roots in the Roman Empire where it was deemed these resources, which included forests, seashores, rivers and air were gifts of nature and meant to benefit all of society regardless of wealth or stature. It was also decreed and that it was the state's duty to preserve these commonly shared resources. British Common Law continued this legacy with the adoption of elements of DPT into the Magna Carta, but changed

the principle of ownership, allowing the state to own these resources to a limited extent. The state however could not grant ownership to private entities if this was detrimental to the public. Indian Law is largely based upon English Common law and thus DPT has been carried over into Indian jurisprudence.

This was reaffirmed by the Supreme Court of India in the landmark case in Indian environmental law, *M.C. Mehta v. Kamal Nath (M.C. Mehta v. Kamal Nath and others (Span Motels Case) 1997 (1) SCC 388)*. The court ruled that state owned lands which were leased out for the development of private enterprise must be returned to their natural ecological state if environmental damage had resulted from the said development. In their judgment the justices stated that ‘the doctrine of public trust is a part of the law of the land’ in India. The court held that the government’s role is not to act as the absolute owner of natural resources but merely to hold the land in trust for the public good. Therefore in the absence of any further legislation, the executor acting under DPT cannot relinquish the natural resources or transfer them into private ownership.

Under DPT, the state is entrusted with the duty to protect the resources on behalf of its constituents and to make certain that it is not given for private ownership, thereby denying the rights of the public to freely enjoy these resources. Thus the state has to ensure that the benefits derived from the resources which the people have been utilising as a historical commons remain undisturbed. Since society as a whole is the beneficiary, it would be inappropriate and ultimately criminal for a private entity to be allowed to put these resources to their private and commercial use. DPT provides ample legal space to insist that it is the state’s responsibility to ensure that Indian biodiversity is conserved and kept available for the use of the people who have historically enjoyed access to it and freely derived benefits from it. In the case of IPR regimes, under DPT, the Indian state cannot allow the alienation of common resources like biodiversity and agro-biodiversity through patents and hence allow (limited) ownership to pass into the hands of private entities.

### **PESA and FRA**

The rights of the tribal people of India to access and utilise the genetic resources, which they have used for millennia, presents a challenge and an opportunity for the Government of India to protect the nation's rich biodiversity as a commons. Forest management under British colonial rule in India as well as post-colonial independence rule was marked by its disregard for the rights of tribal peoples to utilise the products of the forest as they had for centuries. Most unjust and inequitable was the law which placed 'forest' lands under government control through eminent domain whereas tribal peoples living on their ancestral lands were said to be 'encroaching' on government land and needed to be removed.

These gross injustices were the target of a sustained campaign to rectify the situation. During the 1990s, the eminent domain of the government was challenged by civil society who argued that the rights of the tribal people over local resources were sacrosanct and therefore non-negotiable. They insisted that nothing short of constitutional recognition for these rights would suffice. This pressure resulted in the 73rd amendment to the constitution which advocated decentralised governance in rural areas. Based on the recommendations of the Bhuria Committee, the parliament passed a separate legislation in 1996 as an annexure to the 73rd Amendment which delineated special provisions for panchayats in the fifth schedule areas.

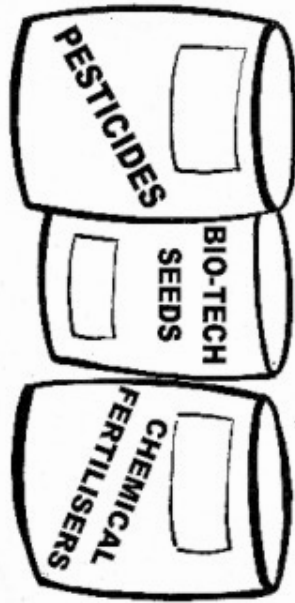
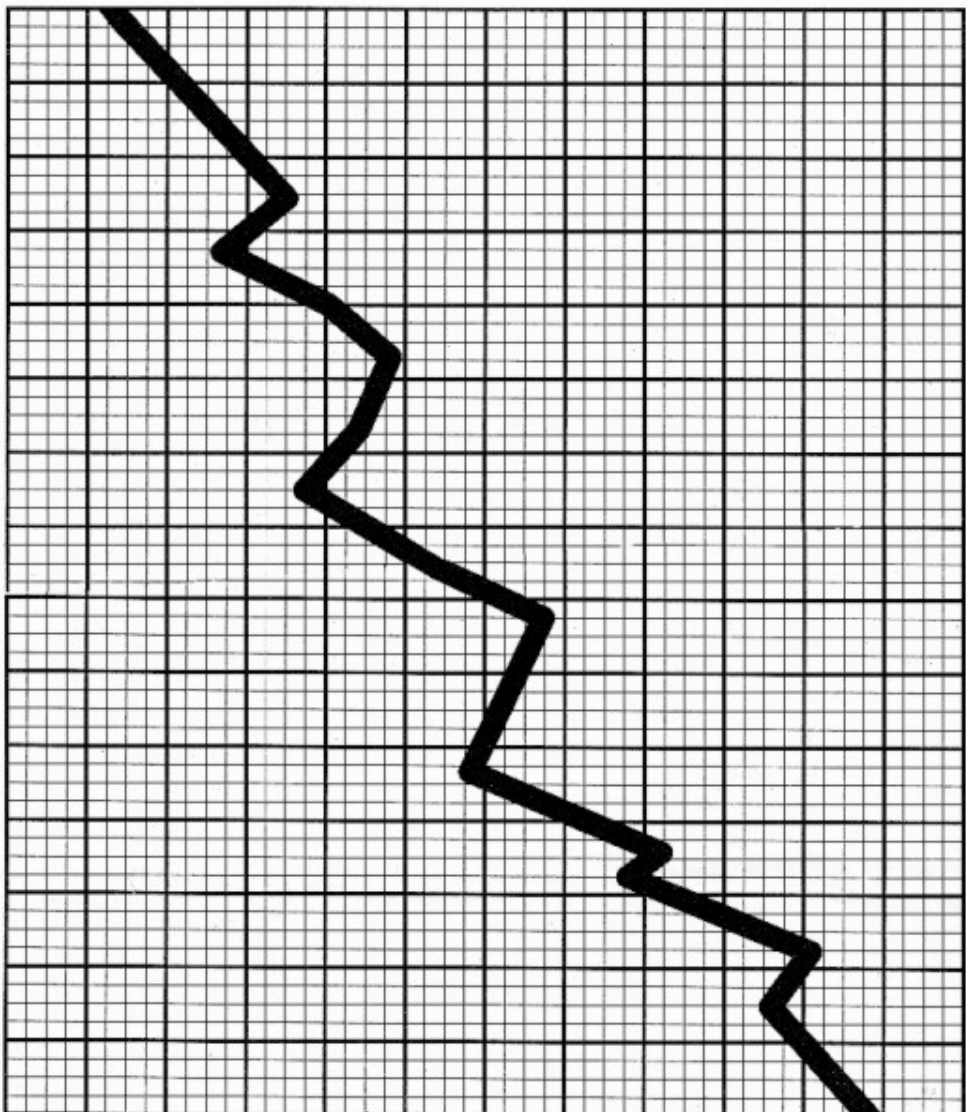
This is the Panchayats (Extension to Schedule Areas) Act, 1996, PESA. It decentralised existing approaches to forest governance by recognising the traditional rights of tribal communities over 'community resources' which were deemed to include land, water, and forests. At the time of its inception, PESA was significant not just because it provided for a wide range of rights and privileges, but also because it provided the principle of local authority which acted as a basis for future law making concerning the tribal people.

While PESA showed great promise in preserving forest and tribal areas as a commons for the ancestral peoples of that land, it has been marked by difficulties and controversies in implementation. These

issues of implementation must be resolved by stronger action on the part of the government to continue with the devolution of power to village authorities.

The Scheduled Tribes (Recognition of Forest Rights) Act of 2005, was more effective in the realisation of rights. The Act has defined forest land as land of any description falling within any forest area and includes most types of forests. The law provides for recognition and vesting of forest rights to Scheduled Tribes in occupation of forest land prior to 13 December 2005 and to other traditional forest dwellers who are in occupation of forest land for at least three generations, which is 75 years, up to a maximum of 4 hectares. These rights are heritable but not alienable or transferable. Forest rights include, among other things, the right to hold and live in the forest land under individual or common occupation for habitation, self cultivation for livelihood, etc. Moreover, the Act recognises the rights over 'community forest resource' which it defines as customary common forest land within the traditional or customary boundaries of the village including protected areas. This legislation has more potential for preserving biodiversity as a commons for the tribal people and forest dwellers of India and for them to continue to use these bio-resources in ways in which they always have.

# GROWTH RATE IN INDIAN AGRICULTURE



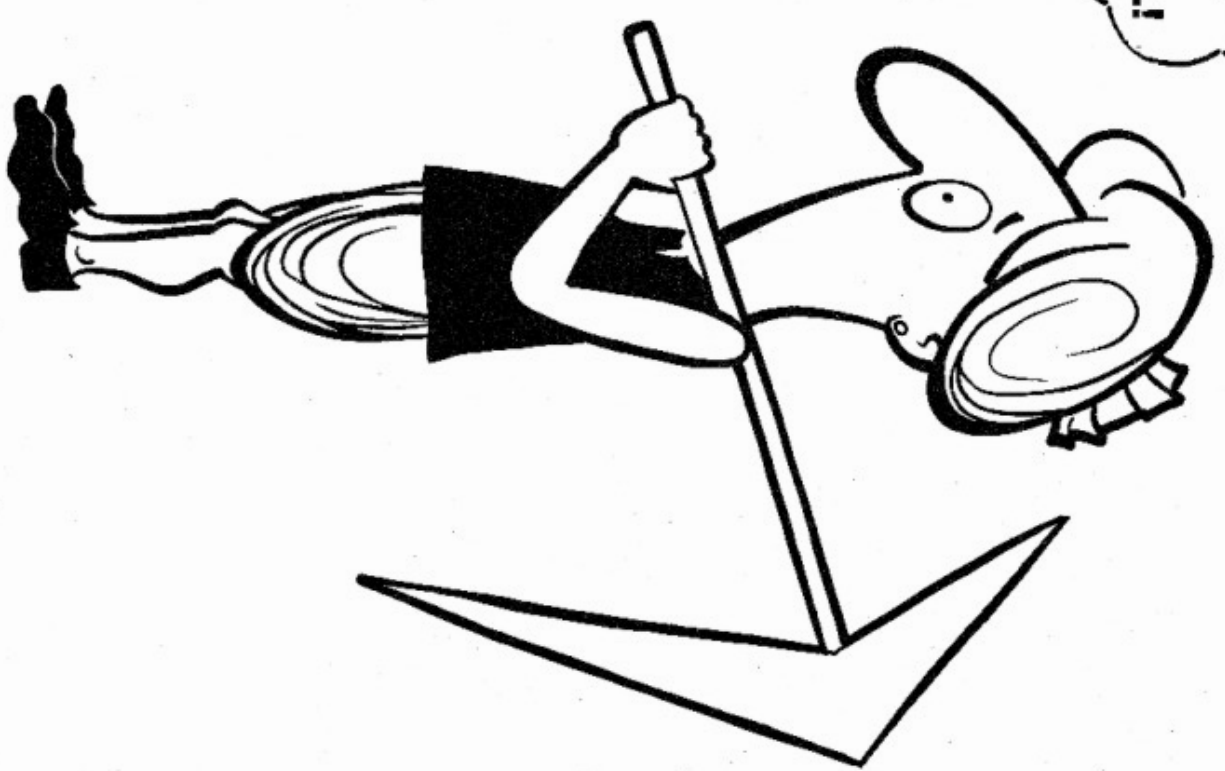
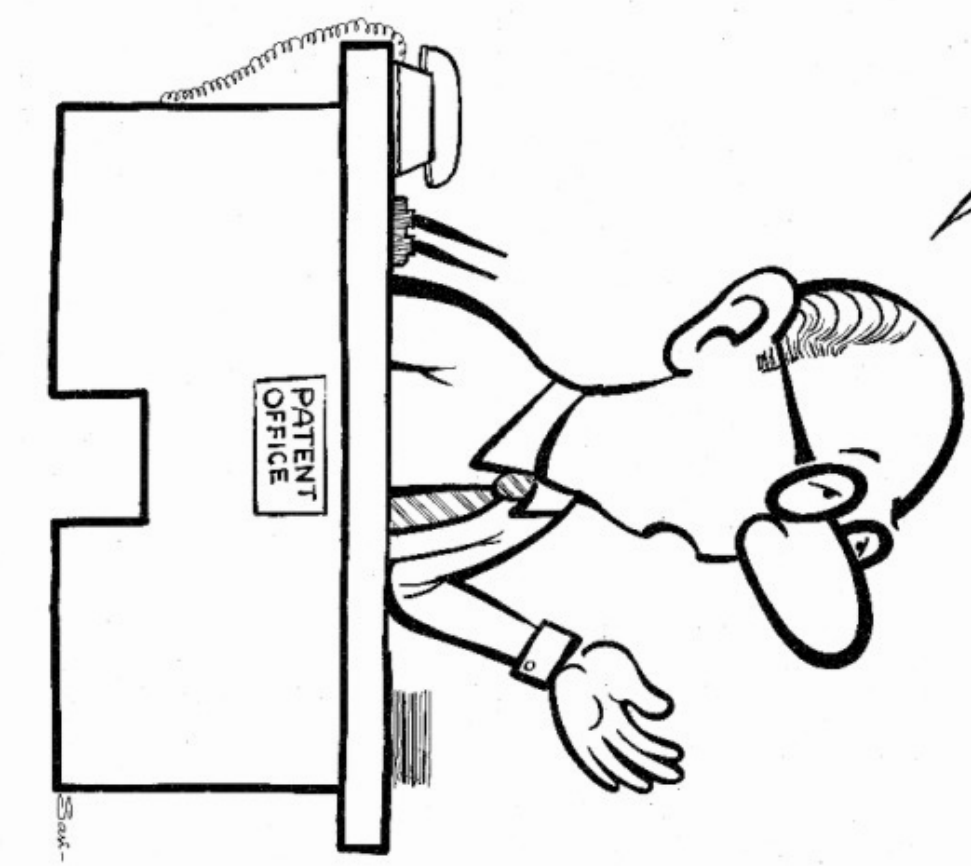
POSTER JOURNAL

SERIES NO: 4, 2001

VIKAS ADHYAYAN KENDRA

D/1, SHIVDHAM, 62, LINK ROAD, MALAD (W), MUMBAI - 400 064  
DESIGN BY : K.P. SASI PRINTED AT : OMEGA, BELGAUM

I AM SORRY, SIR. YOU CANNOT  
PATENT YOUR LIFE. IT IS ALREADY  
PATENTED BY A US MULTINATIONAL!



# Knowledge and science as commons

---

Prabir Purkayastha

They hang the man  
And flog the woman  
That steals the goose from the commons  
But let the greater villain loose  
That steals the commons from the goose  
*(English folk poem, circa 1764<sup>1</sup>)*

One of the key determinants of today's world is the speed with which innovation<sup>2</sup> takes place and is brought within the sphere of production. The growth of technology is a continuous driver of the economy. While a lot of discussions have taken place on the monopoly created through the 'reproduction' of the innovation via patents, relatively less attention has been focussed in the way innovation takes place and the structures within which innovation is either facilitated or retarded. Does the networked world of today carry new possibilities for alternate structures of creating knowledge and innovation that are currently being impeded by the patent model of incentivising innovation? Is it possible to expand the notion of 'commons' for developing these possibilities?

The technology model of generating innovation was conceived to be 'private' from the beginning. The patenting system originated in the days of the lone inventor and the need to protect his/her invention. Historically, the lone inventor has given way to large corporate or state funded research laboratories in the early twentieth century. Increasingly, science institutions have been also looking at producing knowledge in profit-oriented ways similar to those used by global corporations in creating new technologies. With the Bayh-Dole legislation<sup>3</sup> in the US, this model has come to dominate publicly funded science in the US. In India, as elsewhere, the belief the direction that the US has moved in is a good way to go is gaining ground.

Interestingly, this is also a time in which alternate models of generating knowledge and innovation<sup>4</sup> have gained ground. The Free Software Movement has shown that networked and open collaborations of ‘hackers’ can produce software of far better quality than what the best of well-heeled corporations working in isolation can manage. The power of open, collaborative structures, working without so-called material incentives is visible in this model. The Free Software Movement has thus resurrected older models that have played key roles in successful innovation in technology development, such as the cases of the steam engine development in Cornish mines<sup>5</sup> and the blast furnace developments<sup>6</sup> in Great Britain and the US.

The question we explore in this chapter is: if we accept the concept of a knowledge economy, what are the instruments most appropriate for the expansion of the knowledge economy, especially for developing countries such as India? Is there evidence to believe that incentives for innovation require a strong patenting regime or is this one of these claims made into truth through repetition?

### **Reproduction of innovation: Patents and copyrights**

A number of recent cases in the US Supreme Court<sup>7</sup> and in the US Federal Court dealing with patents have shown that companies investing heavily in advanced technologies are moving away from the patent model. A major exception to this is the big pharmaceutical company sector.

The current developments in software—the free and open source software (FOSS) movement—has forcefully counter posed the concept of ‘commons’ to that of intellectual property rights. Intellectual property rights, in this view of the world, is nothing but an attempt to exclude people from the domain of knowledge by enclosing it, similar to the enclosing of commons carried out over the last 500 years: it is simply using a legal artifice to privatise knowledge which is publicly held. The struggle *against intellectual property rights* of various kinds is then converted in a battle *for preserving the global commons*, specifically knowledge in its various forms.



The last few decades have seen the creation of a new category of private property rights called Intellectual Property Rights (IPR), bringing under one umbrella what were earlier disparate rights. Thus different kinds of private property rights—creative rights of authors under copyright and industrial property rights such as patents, trademark, trade secrets and industrial designs—has been brought under the common rubric of (IPR). The objective of this exercise of renaming was two fold. First, it sought to give a cover of individual creativity to legitimise essentially corporate rights. The second was to expand enormously the scope of these rights.

The impact of this new IPR regime, coupled with the global trading regime under WTO, has led to the private appropriation, on a grand scale, of commonly held biological and knowledge resources of society. The patents regime today has expanded to patenting of life forms, genetic resources, genetic information in life sciences, patenting methods and algorithms in computational sciences and even patenting of how business is done. Not only are methods and algorithms being patented, the copyright has been extended to software and all forms of electronically held information. Traditional knowledge and biological resources held and nurtured by different communities are being pirated by global corporations. Increasingly, the enterprise of science as a collaborative and open activity for creating knowledge is being subverted into a corporate exercise of creating monopolies and milking super profits from the consumers.

The impact of such appropriation is now visible. The HIV/AIDS epidemic has shown that what stands between life and death of the victims is the profit of big pharma. It is impossible for the vast majority of the people in the globe today to pay the costs of new life saving drugs which are patent protected.

If the IPR regime has been damaging to the life of those suffering from disease, what lies in store for agriculture is even worse. With biotechnology and bioinformatics, corporate seed companies and corporate plant breeders will control global agriculture and food production. With food prices already sky-rocketing, the impact of such a monopoly on the vast sections of the people can well be imagined.

Earlier, copyright was used to create monopolies in software. With changing interpretations of patenting, software is now also being patented in many countries. As the information technology spreads to all our activities, every sphere of such activities will be controlled by patents or copyrights.

Proponents of a strong IPR regime claim that even if patents have the above social costs, they are great for promoting innovations required by society. Even if we focus narrowly on the question of costs of patenting against the benefit it gives in terms of revenue, figures indicate otherwise: the bang is not worth the buck involved in patenting.

In a recent book, two researchers Bessen and Meurer<sup>8</sup> have analysed the numbers in terms of revenues generated from patents as against cost of filing, maintaining and defending patents in courts. In their view, the data shows that except in the case of pharmaceuticals, patents generate far more litigation costs than revenue. The numbers are clear: domestic litigation costs—16 billion dollars in 1999 alone—was about twice the revenue for patents. Even in this, almost two thirds of the revenue was from pharmaceuticals and chemicals. Worse, the more innovative the company, more was the likelihood of it being sued.

The software and business method patents fared the worst, with costs far outstripping the benefits of patenting. Even if we examine, not the broader question of whether societies benefit due to greater innovation, but the very narrow one of whether companies that are innovative, benefit from patenting, the answer is that they do not. This answer that Bessen and Merurer come to is no different from what others have discovered in the past: if patents did not already exist, it would be a poor way of rewarding innovation.

Research of Bessen and Meurer, Boldrin and Levine also show that patents do not promote innovation in societies either. Most of the historical data from countries that had different forms of patent protection do not show significantly different rates of innovation. Neither are current data any different.

### **Historical look at patents: Cornish mines and blast furnaces in Cleveland Area**

The need for patents has always been articulated as a necessary social evil. The US Constitution allows the Congress, 'To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries'. Thus even in the US, this exclusive or monopoly rights is given not because the inventor somehow owns the idea embodied in the patent but to promote science and technology, therefore larger societal goals.

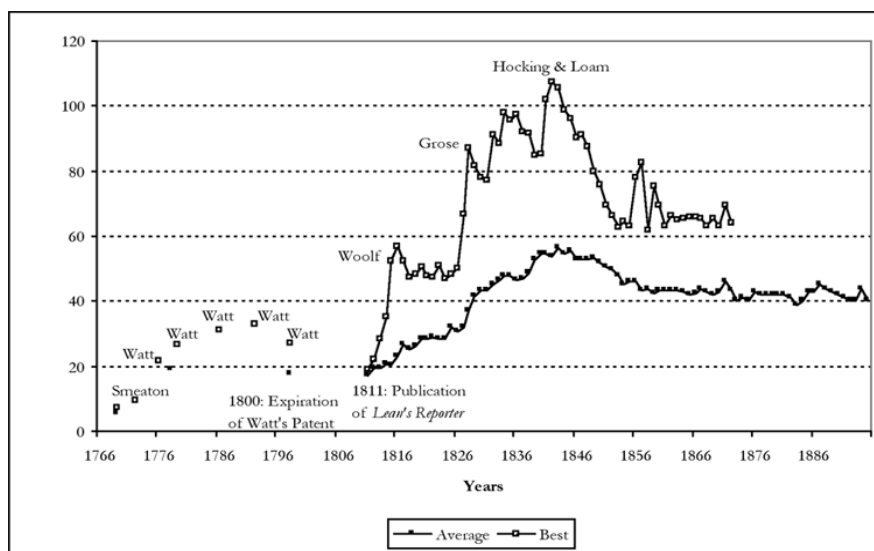
Patent as an incentive, gives a monopoly to the inventor for a certain period in lieu of which he/she makes the invention public. In economic terms, this monopoly allows the patent holder to extract rent from all users of the patents: it is the state allowing the patent holder the right to levy a private tax. Therefore, the question arises whether patents (or monopolies) are the best form of providing such incentives?

Even if we accept that material incentives need to be given to the inventors, patent monopolies however are not the only form of incentives. Others could be a royalty for the inventor from any producer who wanted to work the patent, but not a monopoly over all reproduction of the invention. This is what in patent literature would be referred to as an automatic license of right. Or it could be the state offering prizes from its kitty for socially useful inventions, a policy that a number of states have followed in the past for encouraging inventors.

The question is whether the monopoly patent regime has helped in promoting innovation. For this, let us start with the most celebrated innovation, which in all text books is stated to be one of the key elements of Industrial Revolution: the steam engine. James Watt perfected his version of the steam engine for which he secured a patent in 1769. In 1775, using the influence of Mathew Boulton, his rich and influential business partner, he succeeded in getting the parliament to pass an Act extending his patent till 1800.

This gives us an opportunity to examine the developments in steam engines and deciding whether the Watts patent helped in promoting

innovation or did it actually stifle development. The major beneficiary of the advances in steam engines would have been the mining industry in Cornwall. Watt spent his entire time suing the Cornish miners if they tried to make any advances over his design. The firm of Boulton and Watts did not even manufacture steam engines then, they only allowed others to construct the engines based on Watt's designs for which they claimed huge royalties. If we examine the increased efficiencies of steam engines and plot it against time, we find that after the initial Watts breakthrough, during the period that Watt had monopoly, all further improvements virtually stopped, starting again only after the expiry of his patents (figure below). During the period of Watt's patents the UK added about 750 horsepower of steam engines per year. 'In the thirty years following Watt's patents, additional horsepower was added at a rate of more than 4,000 per year. Moreover, the fuel efficiency of steam engines changed little during the period of Watt's patent; while between 1810 and 1835 it is estimated to have increased by a factor of five'.<sup>9</sup> The major advance in steam engine efficiency took place not because of Watt's invention but afterwards.



Interestingly, all those who made further advances, such as Trevithick, did not file patents. Instead, they worked on a collaborative model in which all advances were published in a journal collectively maintained by the mine engineers, called the 'Lean's Engine Reporter'. This journal published best practices as well as all advances that were being made. This was the period that saw the fastest growth of engine efficiency.

If we look at the research on increased patent protection helping innovation, very little concrete evidence has ever been found for this thesis. In fact, the evidence not only of Cornish mines but also in UK and the US of blast furnaces in the 19th Century, show that collective innovation settings<sup>10</sup> lead to a faster diffusion of technology and more innovation as opposed to the closed, patent based monopolies. Thus, the advances in the two key elements of industrial revolution—steam engines and steel—both came out of a non-patented and open, sharing environment. The recent advances of FOSS is not an anomaly but merely the reflection that an open model of developing knowledge is a faster and surer way to innovation than conferring state monopolies.

### **Nature of knowledge commons**

The nature of commons is obviously different if it refers to something that is finite from than if it is potentially infinite. Most of the earlier commons literature originated from goods which though considered as public goods,<sup>11</sup>example air, are actually finite. If we do dump increasing pollutants in air, at some point its capacity will saturate. The same is not true of knowledge. The use of a Law of Nature—Theory of Gravitation—does not subtract anything from that theory by virtue of repeated use. Therefore, any enclosure of knowledge is doubly pernicious—it not only reduces access by others, it also puts a price on access to something which is infinitely duplicable.

If we consider only private and public property, only two forms of property are recognised. However, a whole range of ownership exist which are essentially held by groups or communities. Commons therefore allow the expansion from private to public through different forms of community ownership—it provides a variety of shades between private and public property before merging into public domain.

Software, a specifically 20th century creation, used an 18th century legal form—copyright—to impose restrictive access. The problems of this restrictive access is that it does not address the specificity of software—its' generally short lifespan, the nature of the work and so on. The free software community has used the same legal means—copyrighting—to subvert the copyright regime. However, while in software, *copyleft* or use of a specific copyright license which allows others to use it under same conditions, this may be adequate, this alone is not enough to combat intellectual property rights enclosures, particularly the patenting regime. There, either public disclosure or patenting and offering the patents under license conditions similar to free software's Gnu Public License (GPL) are both being tried.

Traditionally, music or books are not considered knowledge. They would be considered artefacts, which therefore could have ownership. Copyright—the dominant form of ownership of these artefacts—originate from the concept of authorship which is protected through copyright. Copyright has two aspects, one is that it confers permanent right against distortion and appropriation through plagiarism on the author, the other is the right to make copies. The second is a temporary monopoly which can also be bought and sold. However, the digital age brings out the possibility of infinite number of copies without any transmission loss. Books, films and books and music can be distributed freely at virtually no costs. How then do we consider copyright—the right of the author to recover money from his or her creative work through a monopoly, which produces artificial exclusions today? If technology makes reproduction a trivial exercise, should society artificially impose monopoly of the author? If not, how do we compensate the creativity of the artist or the writer? The creative commons license, which traces itself to the Gnu Public License, attempts to address some of these widening considerably the ambit of commons.

The enclosure of the knowledge commons is not only for areas such as science and arts, but also in traditional knowledge. As has been repeatedly pointed out, community based knowledge is appropriated by pharmaceutical and other companies and privatised in various forms. This pertains to biological resources nurtured by communities

or specific knowledge and practices. The struggle for protecting the rights of such communities is also a struggle for protecting the traditional knowledge as commons. These commons are not public domain, but the common property of a group and therefore allows for community rights as opposed to private property of individuals and corporations. Recently, the commons license approach<sup>12</sup> has been considered for protecting traditional knowledge also.

The impact of privatisation of knowledge and science is also changing the way science is being done. Science is no longer the collaborative and open activity aimed at creating new knowledge about nature. It has become a secretive exercise where a patent is filed before a paper is published. Ideas are not shared as they now have commercial value. This is occurring at a point of time where the internet and other forms of communications have multiplied the possibility of open, collaborative work enormously.

### **Production of knowledge: The institutional structure of science**

The monopoly exercised over knowledge translates into the ability to extract super profits by using this monopoly to sell either software or a medicine or a seed. However, the potential of a commons approach lies in not only preventing such monopolies, but also in production of knowledge itself. The commons licenses are only one aspect of the larger struggle of production and reproduction of knowledge. The Free Software Movement has shown the power of the new networked structures in the creation of new knowledge and new artefacts. Never before has society had the ability to bring together different communities and resources. What stands in the way of liberating this enormous power of the collective for production of new knowledge and designing new artefacts is the monopoly rights and private appropriation inherent in the neoliberal IPR order.

The earlier system of development of scientific knowledge resided primarily within the structures of higher education. The universities, colleges and other institutions of higher learning were the centres where new advances in science were located. As these centres of education were relatively autonomous of both the state and the market,

the system of generating new knowledge was not closely bound by immediate class needs of society. This is what produced within the university system a sense of independence and self-regulation—the education given to the students had larger purpose than merely serving capital or the needs of the state.

This is also why the educational system also provided a place for contestation—it was the place where new ideas arose not only in the various disciplines but also about society itself. The humanist view of science and technology fitted itself very well into this overall structure. Science was supposed to produce new knowledge, which could then be mined by technology to produce artefacts. The role of innovation was to convert ideas into artefacts—therefore the patenting system that provides protection to useful ideas embodied in the artefacts.

The transformation of this system that existed for more than a hundred years has come from two different sources. One is that science and technology are far more closely integrated than before, making the distinction between scientific knowledge and technological advance more difficult to distinguish. An advance in genetics can translate to the market place much more quickly than earlier. Computers and communications have a similar pace of development, drawing some of the sciences much closer to the systems of production than earlier. The second is the conversion of the university systems to what are essentially profit making commercial enterprises<sup>13</sup> under the current neoliberal order. The dwindling public financing of education and the rise of corporate funding has emerged as a major threat to scientific research.

Market fundamentalism is today profoundly altering how education itself is taking place. Students are regarded as consumers and the university-education system is structured like any other commercial enterprise that looks primarily at its bottom line. A deeper analysis of nature, which has no immediate commercial market, is now being downgraded in favour of what the industry considers as ‘lucrative’ research. Not only does it distort the larger system in which long term knowledge is devalued in favour of immediate and short term gain, it also shifts research priorities away from what society needs



as a whole to the needs of those who can pay. As university research is increasingly being funded by private corporations, a wholesale shifting of research priorities is taking place. Science is no longer for advancing knowledge and the well being of society but almost entirely for generating profits for the educational enterprise itself.

The impact of this can be seen from earlier if we compare science as it existed decades ago and now. Let us take two examples. The green revolution came out of public domain science—there was no price to be paid by the farmer for utilising its advances. Today, the gene revolution is controlled by a few private corporations—Monsantos and various pharma companies. The second example is when Salk was asked about who owned the patent to his polio vaccine, he said the people. An answer a scientist is unlikely to give today.

The Bayh Dole Act in the US is the one that converted publicly funded research into privatised knowledge. It has had very adverse impact in the US. Fortune Magazine held the Bayh Dole Act responsible for pushing up the cost of medicine in the US. ‘Americans spent \$179 billion on prescription drugs in 2003. That’s up from ... wait for it ... \$12 billion in 1980’. The same article also stated that the Bayh Dole Act had actually retarded the progress in science instead of helping it. Discovery of new molecules, a measure of innovation in pharmaceutical industry, has actually come down. It has however helped a few companies, universities and scientists become fabulously rich, but at the expense of scientific development and the common people. Unfortunately, the market fundamentalists world-over are pushing ideas similar to the Bayh Dole Act and other measures to convert the educational systems to University Industrial Complexes.

### **Science and open models**

Today, the information technology sector<sup>14</sup> has shown that new technologies and methodologies can be developed by cooperative communities. It may be argued that this sector is unique in that the ‘reproduction costs’ of the ‘artefacts’—the software— are relatively low. However, the question needs to be posed whether it is possible to design such approaches for other areas such as, say, the life sciences? Is it possible to have similar cooperative communities that work together to produce new

products? Is it possible to envisage ways by which artefacts can be reproduced and reach the community without high costs of such ‘reproduction’? For this, we need to examine what are the structures of knowledge production that are in consonance with the needs of producing new knowledge and innovation in specific sectors. Two such examples are given below.

### **Agribiotechnology**

There is little doubt that genetically engineered plants are going to create an enormous impact on agriculture in the future. That it has not done so till date is due to various reasons. One of course is that genetically modified organisms are in their infancy. The second, and perhaps even more important, is that unlike the Green Revolution that came out of public domain science, the Gene revolution is coming from private domain science. The prospect of agriculture of any country passing into the hands of a few multinational companies is not a reassuring one. It is compounded by the fact that most of the successful biotech seed companies are either chemical companies such as Monsanto, Du Pont etc., while others are pharmaceutical companies—Novartis, Bayer, etc. The track record of both regarding public good has been rather poor. Therefore the discomfort that people have regarding their countries’ agriculture passing into multinational hands is not unjustified.

Greg Traxler, in his paper for FAO shows the rapid increase of transgenic crops in some countries and for specific crops. ‘In 1996, approximately 2.8 million hectares were planted to transgenic crops or genetically modified organisms (GMO) in six countries (James, 1998). Adoption has been rapid in those areas where the crops address important production problems, and by 2003 global area had risen to 67.7 million hectares in 18 countries (James, 2003)... Six countries (the USA, Argentina, Canada, Brazil, China and South Africa), four crops (soybean, cotton, maize and canola) and two traits (herbicide tolerance and insect resistance) account for more than 99 percent of global transgenic area’.<sup>15</sup>

In order to explore such possibilities, a possible example would be the development of useful crop varieties in the agribiotech sector. The bulk of ‘innovative technology’ in this arena currently appears

focussed in making genetically modified crops (GMOs, so to say), a technology that is patent-protected by the MNC sector. An interesting step away from this corporate model of agribiotech development has been the establishment of an 'open source biology'<sup>16</sup> platform, centred around new microbes useful for making transgenic plants. The most advanced initiative of this kind is the Australia-based CAMBIA/BIOS. While the first acronym refers to the broader scope of promoting biological innovation for agriculture (Centre for the Application of Modern Biology to International Agriculture), the second refers to the Biological Innovation for Open Society, the specific arm of CAMBIA dedicated to open source biology. This particularly focuses on freeing the basic technological tools of biotech for general use, so that innovation at the application level is not restricted, particularly by the biggest multinationals in the biotech sector. It promotes a protected commons license for use in this regard. It also operates a web portal BioForge, similar to the SourceForge of the open source software movement. While the BIOS initiative is not identical to the free software idea, it appears to be the most developed initiative of this kind so far.<sup>17</sup>

However, such a knowledge commons approach may still depend on the conventional manufacturing sector for delivery of the products—for example, the seeds—to the market. Also, it still involves making transgenic crops, which has already run into serious criticism.

One alternate possibility that is being discussed globally is to take advantage of the growing ability to sequence the entire genetic sequence of individual organisms at much lower costs. Such a step in traditional plant breeding for advantageous traits will allow the breeding programmes to overcome some of the major obstacles to creating crop varieties with advantageous traits that breed true so that seeds can be re-used. It would then allow the identification of combinations of genes that confer a particular trait and thus allow reliable selection of varieties with combinations of many advantageous traits. It would even allow the creation of carefully engineered crops in which the introduced gene form providing advantage is not from some other species but from the host crop itself. Such a programme would be of little interest to the profit-sector since farmers can re-use seed. It would require

little by way of a manufacturing intermediary, since experimentally generated seed can simply be handed out to be bred by farmers themselves. And it is a programme that would demand a large-scale cooperative global effort between breeders and scientists. Breeders would need to collect and maintain source varieties and carry out careful breeding. Scientists must, on the other hand, generate new ways of handling and interpreting the large mass of data that sequencing-assisted breeding would yield—essentially, cutting-edge science would result from the enterprise as well.

### **Open source drug discovery**

A similar possibility exists in the area of drug discovery. In 1995 the TRIPS agreement introduced a uniform and higher level of patent protection across the globe. The promise that this would lead to higher levels of innovation remains a mirage. Globally, the number of New Chemical Entities (NCEs) have progressively gone down over the past decade. Further, of NCEs approved for marketing, a very small fraction—less than 3%—constitute a significant advance over prevailing therapies. An overwhelming majority of new products address needs of the wealthy populations in the global North, while the disease burden is largely in the global South. While the industry researches drugs for lifestyle conditions of the affluent—obesity, erectile dysfunction, baldness, etc—conditions such as tuberculosis, kala azar, Sleeping Sickness, have to make do with decade old therapies. The last drug developed specifically for tuberculosis, was introduced some three decades back.

Can open source drug research and development, using principles pioneered by the highly successful Free Software Movement, help revive the industry? As the cost of genome sequencing drops and the speed at which the sequencing can be done increases exponentially, it is possible to harness this power to solve the problems of health in radically different ways. An open source model to promote innovation is not a new model and is used extensively in the software sector today. It organises research around researchers across the globe, which draw from a pooled source of information to which they contribute, and to which they pledge to plough back the new developments that accrue. A decade back

such a model might have appeared a utopia. Not so today<sup>18</sup> when very powerful tools are available that can create virtual models that can sequence genetic codes of humans that can identify potential targets for interventions in the genetic code. It is possible to process genomic information and on a much larger scale, create public databases of genomic information and protein structures, identify promising protein targets, and deliver such compounds for clinical trials. It would be based on a collaborative, transparent process of biomedical development to take on health challenges that big pharmaceutical corporations have neglected in favour of what they perceive as ‘block-buster drugs’. A number of interesting initiatives are currently under way, from tuberculosis to malaria.

There are interesting initiatives being taken in this particular area. Central Scientific and Industrial Laboratories (CSIR) in India has taken a highly ambitious program of generating the next generation of TB drugs,<sup>19</sup> still the number one killer in India, using an open source model of drug discovery. Malaria is again another area in which a similar initiative is under way since 1999. The Medicines for Malaria Venture has 19 projects which are in the Phase III of drug development.

Such a model can identify new candidates at a fraction of the cost that Big Pharma claims to spend on drug discovery. It has been argued that the major cost in drug development relates to clinical trials that need to satisfy drug regulatory agencies. Today, Big Pharma outsources clinical trials to a dispersed set of Contract Research Organisations. A collaborative open source model could use the same route, with the difference that the entire endeavour—from selection of promising candidates to marketing approval—is organised and overseen by a publicly funded entity or group that promises to place such research in public domain, without insisting on patent monopolies. It is an idea whose time has come and has the potential to revolutionise the way research is done.

A variant of this approach are the various Public Private Partnerships initiatives underway. All of them share the open source nature of drug discovery but may not subscribe to putting such drugs in public domain.

Nevertheless, they have shown that it is possible to bring down the cost of drug discovery from the 500 million dollars claimed by Big Pharma to less than 50 million<sup>20</sup>—an order of magnitude drop. It is this price advantage in developing drugs that has now forced the use of such models for what are termed as the ‘neglected diseases’ or the diseases of the poor.

Clearly the IPR based model for innovation is just not working. Strong IP protection is encouraging protectionism and is harming the way science is done. Many more patents are taken out to stop others from working than to protect one’s own research. It is premised on very high costs of development, that are sought to be recovered through high monopoly pricing of products, thereby closing the door for research that targets conditions of the global poor who do not have pockets deep enough to afford the high prices.

This brings out the power today of using the open source or a commons approach to that of the proprietary systems in vogue today. This is not to say that there are no difficulties with the approach. Rather, it is to suggest a possible example of ways in which the framework of present-day science and technology can be re-cast and used in innovative ways for cooperative generation of useful knowledge. Obviously, each of these areas would have their own specificities as well as demand creating new structures to protect the knowledge commons.

It is clear from the above that the commons approach has emerged not as a marginal view but a rapidly emerging alternative to the current patent ridden approach to science. It is time that the developing economies base themselves not on a stronger (more restrictive) form of intellectual property rights regime but on a ‘commons’ approach. This is the direction that is not only in consonance with the well being of their people but also the direction that science increasingly will take. The issue is no longer whether such a model works in developing new science and technology but how soon will it displace the older model.

## Endnotes

- 1 David Bollier, *Silent Theft: The Private Plunder of Our Common Wealth*, Routledge, 2002.
- 2 See discussions on technology and the pace of innovation in Prabir Purkayastha, *Technology: Breaking the Cycle*, Academic Seminar, Brasilia, IBSA Summit on 12 September, 2006.
- 3 An easily accessible critique of Bayh Dole Act is Clifton Leaf, *The Law of Unintended Consequences*, *Fortune*, September 19, 2005. A more detailed analysis of this is in David C. Mowery, Richard R. Nelson, Bhaven N. Sampat, and Arvids A. Ziedonis, *Ivory Tower and Industrial Innovation University—Industry Technology Transfer Before and After the Bayh—Dole Act*, Stanford University Press, 2004.
- 4 Prabir Purkayastha, Satyajit Rath, Amit Sengupta, *Looking at Knowledge and Science as Commons*, Background Paper, Workshop on Science Commons, Delhi, 18th January, 2008.
- 5 Alessandro Nuvolari, *Collective Invention during the British Industrial Revolution: The Case of the Cornish Pumping Engine*, Eindhoven Centre for Innovation Studies, The Netherlands, Working Paper 01.04, May 2001.
- 6 Robert C. Allen, *Collective Invention*, *Journal of Economic Behavior and Organization* 4, 1983.
- 7 One of the important cases is *KSR Vs Telefax*. In this case a number of hi—tech companies, who are regarded to be innovative, sided against easy granting of patents. The exception was of course the pharma companies who were on the other side. The judgement raised the bar on patents. ‘We build and create by bringing to the tangible and palpable reality around us new works based on instinct, simple logic, ordinary inferences, extraordinary ideas, and sometimes even genius. These advances, once part of our shared knowledge, define a new threshold from which innovation starts once more. And as progress beginning from higher levels of achievement is expected in the normal course, the results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U. S. Const., Art. I, §8, cl. 8. These premises led to the bar on patents claiming obvious subject matter established in *Hotchkiss* and codified in §103. Application of the bar must not be confined within a test or formulation too constrained to serve its purpose.’ *KSR International v Telefax* US Supreme Court.
- 8 James Bessen and Michael J. Meurer, *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk*, Princeton University Press, 2008.
- 9 Michele Boldrin and David K. Levine, *Against Intellectual Monopoly*, Cambridge University Press, 2008. The e—version: <http://levine.sscnet.ucla.edu/general/intellectual/againstfinal.htm>

- 10 Robert Allen, *op cit*.
- 11 A discussion on the nature of commons can be found in Charlotte Hess and Elinor Ostrom, *Ideas, Artifacts and Facilities: Information as a Common Pool Resource*, <http://www.law.duke.edu/journals/66LCPHess> . Also Charlotte Hess and Elinor Ostrom (ed), *Understanding Knowledge as a Commons*, MIT Press, 2008. However, the focus of these works is more on looking at information commons and open access to information.
- 12 The Kerala Government has recently released an Intellectual Property Rights Policy for Kerala where traditional knowledge is sought to be protected using a variant of a 'commons' license.
- 13 'Academic administrators increasingly refer to students as consumers and to education and research as products. They talk about branding and marketing and now spend more on lobbying in Washington than defense contractors do.' Jennifer Washburn, *University, Inc.: The Corporate Corruption of Higher Education*, Basic Books, 2005.
- 14 John Willinsky, 2005. The unacknowledged convergence of open source, open access, and open science, *First Monday*, volume 10, Number 8, at [http://www.firstmonday.org/issues/issue10\\_8/willinsky/](http://www.firstmonday.org/issues/issue10_8/willinsky/)
- 15 The Economic Impacts of Biotechnology—Based Technological Innovations, May 2004, ESA Working Paper No. 04—08, Food and Agriculture Organization, Greg Traxler.
- 16 Wim Broothaerts, Heidi J. Mitchell, Brian Weir, Sarah Kaines, Leon M. A. Smith, Wei Yang, Jorge E. Mayer, Carolina Roa—Rodríguez & Richard A. Jefferson, Gene transfer to plants by diverse species of bacteria, *Nature* 433: 583—4. Feb. 10 2005.
- 17 T Jayaraman, Note on Promotion of Open—Source Biology in India, Private Circulation.
- 18 Bernard Munos, Can open—source R&D reinvigorate drug research? *Nature Reviews Drug Discovery* | AOP, published online 18 August 2006; doi:10.1038/nrd2131
- 19 The details of this initiative can be found in <http://mtbsysborg.igib.res.in/>
- 20 See Munos *op cit*.



**WE HAVE COME TO RECOGNISE YOUR KNOWLEDGE  
BY MAKING PROFITS OUT OF IT.**





F O N W G R  
P X N  
M G R  
J  
R E T  
V P S  
I N P S  
J Y M Q  
X Y P Q R M P  
P P S  
T C  
M P Q S  
O D A C  
D P S  
Q  
V X T R N  
V T R N  
D R G P L Y  
I P Q  
O R N  
H O G R L M  
X O G P U W  
S

Sasi-

# The commons and information technology

## A paradigm shift in knowledge creation

---

Venkatesh Hariharan

**T**he knowledge commons is an increasingly important part of our networked information society and the growth of the global Free and Open Source Software (FOSS) movement and the related, open standards movement, are the biggest examples of this trend. For policy makers, Civil Society Organisations (CSOs), and for those involved in innovation, it is important to understand the emerging paradigm shift.

The growth of Linux, one of the best known examples of FOSS, illustrates this paradigm shift. In September 1991, when Linus Torvalds, a student at the University of Helsinki in Finland, released 10,000 lines of code on the internet, nobody could have believed that it would spark off a revolution. In the fifteen years since then, the size of an average Linux distribution has grown to 204 million lines of code that runs on tiny embedded computers to supercomputers and everything in-between. It is estimated that the value of these 204 million lines of code would be approximately \$10.8 billion.<sup>1</sup> What is astonishing is that this enormous pool of knowledge has been created not by a private corporation but by a distributed team of volunteers scattered across the globe, voluntarily contributing their time to a project that resides in the commons.

Linux was released under the General Public License (GPL) created by the Free Software Foundation (FSF) which gives users four freedoms.

The freedom to:

- Run the programme, for any purpose.
- Study how the programme works, and adapt it to your needs.
- Redistribute copies and share it with others and the freedom to improve the programme.

- Release your improvements to the public, so that the whole community benefits.

A precondition to these four freedoms is that the source code for the software is freely available. It is this liberal licensing system (called the share-and-share-alike license), combined with the growth of the internet that now connects 1.4 billion people, that led to the growth of Linux, FOSS and open knowledge artefacts like Wikipedia, the open source encyclopedia.

It is therefore no exaggeration to say that the FOSS principles of community, collaboration and the shared ownership of knowledge have led to a transformation in the way knowledge is created and distributed. This has profound implications for India and other developing countries. For example, linguistic groups in India have used the freedom provided by the GPL and other FOSS licenses to create Indian language user interfaces to FOSS. These initiatives take computing beyond the small English speaking elite to the vast majority of Indians, in an attempt to bridge the digital divide. The liberal licensing schemes of FOSS ensure that FOSS firmly belongs to the knowledge commons. In turn, this has enabled many public spirited individuals to build Indian language interfaces on top of FOSS, because they know that this work will remain in the commons, where it can be freely accessed by all.

If these public spirited individuals had built the Indian language interfaces on top of proprietary software, their goals would not have been served because the benefits of these efforts would have gone to the software vendor, instead of the commons. It is for this reason that researchers like Prof. Eric Von Hippel, Professor of Innovation at the Sloan School of Management, Massachusetts Institute of Technology, conclude that the FOSS model, based on open collaborative innovation, 'is desirable in terms of social welfare, and so worthy of support by policymakers'.<sup>2</sup> In the context of FOSS and the knowledge commons, it is important to talk of two related issues that have implications for the commons—the growing trend of patenting software, and the growing open standards movement.

## Software patents

A patent is a state-granted monopoly on an invention, in return for disclosure of the idea. The original intent of the patent system was to encourage disclosure by the inventor in exchange for exclusive rights for a limited period of time to the invention. This ensured that inventors did not take their inventions to the grave and that society could build on existing knowledge rather than re-invent the wheel. The regime of software patents began its major expansion in the 1980s in the US. Since then, software developers have been consistently arguing that software is better protected through copyrights than patents.

Under copyright law, if software developers write code that is similar to that of another, they can defend themselves on the grounds of independent invention because copyright protects the expression of an idea. However, the same defense is not possible under a software patent regime because a patent is a monopoly on the idea itself. Thus, even if software developers independently create a programme, they may be liable for infringement of one of the more than 200,000 software patents in existence in the U.S. Even end-users who use software for routine, everyday activities may be liable for infringement. For example, McDonalds and 400 other entities were served notices for violating DataCard's patent on 'Method for processing debit purchase transactions using a counter-top terminal system'. In another case, a company (ironically) called Beneficial Innovations, sued the New York Times, YouTube and many other media organisations for allegedly violating its patent on 'Method and system for playing games on a network'. Therefore the problem of software patents is not one that is confined to the software development industry alone and ends up increasing the cost of software for society as a whole. In other words, software patents have lead to the privatisation of ideas that should have been freely available in the commons.

The problem is compounded by the fact that litigation is an expensive process. Dan Ravicher of the Public Patent Foundation points out that for a patent holder to send a cease-and-desist notice, all it takes is a post card. However, that inexpensive post card sets off an expensive chain of events for the defendant who will typically pay a lawyer

USD 40,000 to get a legal opinion, around USD 2–4 million in attorney’s fees if the case goes to court and many millions more if the defendant loses the case in court and is required to pay damages.

The argument in favor of software patents is that patents promote innovation. The social contract between an inventor and society was that the inventor disclosed details of the invention in return for the patent, and this disclosure would lead to future inventions. However, the history of the software industry shows that innovation flourished long before software patents came into force during the 1980s. Some of the fundamental inventions of the computer age—the internet, compilers, spreadsheets etc—were created despite the lack of patent protection. It is therefore clear that patent protection is not necessary for innovation in the software industry.

In their book, *‘Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk’*, Boston University professors, James Bessen & Michael J. Meurer, show that Murphy’s Law (‘If anything can go wrong, it will’) has been working overtime in the area of software. The authors dedicate an entire chapter to software and business method patents, which are particularly problematic because they account for almost 38% of all patent litigation.

The authors find that in the US, software patents are twice as likely to be litigated as other patents while business method patents (which act as a proxy for software patents) are seven times as likely to be litigated. The authors say, ‘Our reading of the case law convinces us that patent law tolerates too many software claims untethered to any real invention or structure; in such a world clear boundaries are unattainable’. They point out that patent on abstract ideas are often subject to multiple interpretations and are therefore more ambiguous. An example of this ambiguity is the e–data patent on ‘point of sale location’. In the IT industry, this is jargon for the cash register or location where the customer pays the cashier. When the US Federal Circuit interpreted this claim, they decided that it referred to any location where an e–commerce transaction might take place. Thus, a patent filed 17 years ago when e–commerce did not exist, ended up causing several lawsuits.

The lack of clear boundaries in software means that even law-abiding software developers who intend not to violate another's patent have no clear means of avoiding it. The authors point out that there are around 4000 patents on e-commerce and around 11,000 patents on online shopping. Add to this the fact that getting legal opinion on each software patent can cost around USD 5,000 and we have a vexatious, if not impossible, task at hand. For most software developers, doing a patent search in connection with their work is simply not economically feasible. Even leaving aside the cost of a search, the results are seldom conclusive. Thus it really is not possible to eliminate the risk of a patent infringement lawsuit.

It is well known that the US has the most permissive patent system in the world. However, even in the US, there are signs that the pendulum may be swinging the other way. In the recent *Bilski* case, which dealt with a method of hedging risks in commodities, the US courts ruled that abstract ideas which are not tethered to a device cannot be patented. The decision reversed the 1998 *State Street* decision that opened the floodgates for software patents.

As with any other monopoly, a patent must be treated with great discretion, especially since this particular monopoly is bestowed by the state itself. The act of granting a 20 year exclusive right to profit from an idea to a private entity needs to be weighed against the cost that it imposes on society. Since software and business method patents prevent independent invention, do not function well as a system of property, lead to increased litigation, and reduce social welfare by detracting from the commons, India must comprehensively reject it.

In the European union, a move to patent, 'computer implemented inventions' was thrown out in 2005. In India, section 3(k) of the Indian Patent Act says that, 'A mathematical or business method or a computer programme per se or algorithms are not patentable'. In the discussions around India's Draft Patent Manual, the interpretation of the term, 'per se' has been the most contentious one. Given the lessons of history and considering the amount of litigation that software patents have

created in the US, India must amend its Patent Act, drop the term 'per se' and clearly state that 'A mathematical or business method or a computer programme or algorithms are not patentable.'

### **Open standards**

As the French revolution swirled around them, French scientists set out on an arduous seven year long journey to measure the earth in an effort to define the meter as 'one ten-millionth of the distance between the pole and the equator.' Despite the stupendous efforts involved in defining the meter, the French scientists involved in the project were clear that the standard thus derived would be placed in the commons 'for all people, for all time'. They were driven by a conviction that standards are common protocols among people and should therefore belong to everyone and should not be treated as private property. This conviction helped establish the meter as a global standard.

It was a similar nobility of thought that drove Tim Berners-Lee to ensure that the standard he invented that enabled the explosive growth of the World Wide Web, HTML, was royalty-free and freely implementable by anyone. The purpose of open standards is to include and not exclude. As we have seen from the growth of the internet, open standards bring tremendous benefits with them. Today the internet has more than a billion people who use it as a platform to socialise, communicate and transact. Common, unified standards like HTML have enabled the internet to grow rapidly. Since the specifications for HTML are freely available in the commons, anyone can create tools that create (encode) HTML and tools that read (decode) HTML. Software developers, website designers, internet portals, social networking sites, bloggers, photo sharing sites and many others use HTML as a global means of reaching out to others.

This would have not been possible with proprietary standards because that data is accessible only through a specific software to the exclusion of other software. For example, on the website of the Ministry of Company Affairs ([www.mca21.gov.in](http://www.mca21.gov.in)), you can transact your business (registering your company, submitting information to the government etc.) only if you use a proprietary browser manufactured by a well



known proprietary software company. The website has been built using proprietary software development tools and proprietary standards. If users try to access this website using, say the Mozilla Firefox browser, that is rapidly gaining popularity, they cannot transact any business with the government through the MCA 21 website. This reduces choices for users and forces users to use expensive proprietary software programmes. Indirectly, this amounts to endorsing the business of a proprietary software company. A better alternative would be to create websites using royalty-free open standards like those specified by the World Wide Web (W3C) Consortium, that users accessed through browsers of their choice.

One of the unintended consequences of the digital revolution is that users have often found their data locked up in proprietary file formats, which deprive them of the right to encode and decode their own data. For example, users of a popular proprietary word processing programme are dependent on the software vendor's programmes to access their own data which is encoded in a secret format known only to the vendor. In other words, you own the data, but the keys to unlock it belong to your software vendor! Software vendors have often exploited this lock-in situation by changing file formats from one version to another and thus forcing users to keep upgrading their software. Clearly this is an untenable situation.

It is a fact that the life of the data is often much longer than the life of the software which creates it. Twenty years ago Unix ruled, today it is Windows, tomorrow it may be Linux and day after it may be a software that has not even been imagined today. If data is tied to software platforms, we will need to recreate the data every time the software changes. This is neither practical nor desirable. For example, land records last for over four hundred years. If we take the average lifespan of a software programme as four years, this means that the data locked in proprietary file formats might have to be ported or recreated a hundred times for it to be available to future users. The only practical solution therefore is to clinically separate the data from the software that created it. This what the open standards movement

seeks to achieve by giving users the freedom to encode and decode their own data.

Patents and standards are related issues because most vendors control standards by filing patents around these standards, and charging royalties for the usage of these patents. The other method of controlling standards is through trade secrets. The indiscriminate manner in which software patents are granted hang like the proverbial Damocles sword over open standards. Tim Berners-Lee, inventor of the World Wide Web and a great champion of open standards told *Wired* magazine in an interview on web services that, 'My fear is that significant standards will be covered with patents, and if so it'll just kill development. A lot of these [proposed] vendor patents are ridiculous, but the fear and uncertainty over them is there.'

The World Wide Web Consortium (W3C) that Berners-Lee leads, says that, 'In order for the web to reach its full potential, the most fundamental web technologies must be compatible with one another and allow any hardware and software used to access the web to work together. W3C refers to this goal as 'web interoperability.' By publishing open (non-proprietary) standards for web languages and protocols, W3C seeks to avoid market fragmentation and thus web fragmentation'. Imagine where the web would be without open standards!

Open standards are the foundation of our IT infrastructure and it is therefore important that these standards should be free of encumbrances and freely available to all—now and well into the future. It is therefore a wonderful development that India's Department of Information Technology has clearly specified in its Policy on Open Standards for e-Governance that a single, royalty free standard will be used for storing India's e-governance data.

Governments have a higher level of accountability because they hold citizens' data in trust. Apart from the governance of data, the government also has the larger responsibility of advancing public interest through its actions and policies. The purpose of an open standard is be inclusive. A proprietary format does the exact opposite: by excluding users unless they (or their device manufacturer or software developer or system

integrator) pay a royalty using that proprietary standard. Therefore India's public interest lies in the advancement of open standards and the rejection of closed, proprietary formats. This is a historic development, and one that demonstrates India's leadership in the ICT field.

While Indian policy-makers have taken some of the right policy steps in areas like software patents and open standards, one hopes that they will now accord positive recognition to the knowledge commons (and the collaborative innovation enabled by the commons) by giving FOSS the status of a public good. That would be appropriate for a country, where a hymn to Saraswati, the Goddess of Knowledge, says,

Wonderful is your gift of knowledge  
The more we share, the more it grows  
The more we hoard it, the more it diminishes

## Endnotes

- <sup>1</sup> Estimating the Total Development Cost of a Linux Distribution.  
See <http://www.linuxfoundation.org/sites/main/files/publications/estimatinglinux.html>
- <sup>2</sup> Modelling a Paradigm Shift: From Producer Innovation to User and Open Collaborative Innovation.  
See [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1502864](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1502864)

MAY GOD BLESS THE COMMONS.  
SO FROM NOW ON,  
THIS LAND BELONGS TO THE CHURCH.



# The sacred commons

## The use, misuse and abuse of religion and spirituality

---

Anita Cheria and Hrangthan Chhungi

**I**n the secular world, religion belongs in the private sphere, away from governance and science. However, religion reaches from behind the walls to privatise the commons and even lay claims on the best of them. While religion was inextricably intertwined in the life and environment of the community in its earlier days—with language, science, dance, drama and governance, conquest and legitimacy all tied to it—there has been considerable movement to a secular, non-religious (non-faith based) approach in the ‘age of reason’. However, the resilience of religion (helped in no small measure by some missteps in science and secular society) ensures the continuance of superstition which has even led to the ‘science of creationism’ being taught and large parts of the world being ruled according to religious dictates either formally or in practice. The intrusion into secular life is pronounced in many ways, not least of which are the conquest of the commons. Being ‘faith-based’, religion is one of only two institutions of modern society still beyond questioning, the other being ‘national security’. Both religion and national security have appropriated to themselves a large part of the commons demanding the best, unquestioning acceptance and leaving behind collateral damage for lesser mortals to clean up.

There are two types of commons we are basically going to deal with in this chapter. At first, we will look at religion and religious institutions as commons, a space for all without exception. The second is the interaction of religion and religious institutions with the common space for all citizens within a certain locality—public places such as a playground for children, parks, outdoor spaces for common people to come together for social gatherings and meetings. As the concept of religious institutions can be different from country to country, it is therefore necessary to limit our study within the Indian context as we explore the religious institutions as ‘commons’ and the relationship of religion and the commons.

What Arun Shourie says about Hinduism is applicable for all religions, wherever they are dominant: *The purposes of the Hindu tradition as well as its consequences are very much of this world... The ideological superstructure of ancient India represents one of the most highly articulated, one of the best worked out hegemonic systems.*<sup>1</sup> At the same time, religion enjoins us to treat everything as sacred—either because it is god or created by god as this couplet does. It is meant to be recited by every devout Hindu every morning:

samudravasane devi parvata sthanamandale  
vishhnupatni namastubhyam paadasparsham kshamasvame  
(Oh! Mother Earth, who has the ocean as clothes and mountains and  
forests on her body,  
who is the wife of Lord Vishnu, I bow to you. Please forgive me for  
touching you with my feet).

### **Religion as commons**

All religions of the world have their roots in a particular locality, in a particular ecosystem for a particular community and is administered by the powerful in that community. They have a series of 'initiation rites' that are exclusivist in nature. These initiation rites are not only for the priesthood, who anyway occupy a privileged position, but for other powerful people and sections within the adherents. Not only do they keep out adherents of other religions—each claiming to be universal—but also the less powerful within their own communities, such as women and children. Sexual minorities such as gays and lesbians if at all tolerated are kept firmly at the fringes. Despite practicing exclusivity, all religions claim to be 'universal'. This dichotomy is normative and most within a particular religion cannot see it. Yet this peculiarity of religion qualifies it as a constructed common, with its exclusivity and the claim by the powerful to be 'universal' for forced inclusion. Islam defines the community (Ummah) as only Moslems Dar al Islam (themselves) and Dar al Harb (the rest of the world). This is the case for virtually all religions though they claim to be 'universal' and that their god is the 'god of all creation'.

As the wise elder Ram Dayal Munda wryly notes

All the organised religions—Christianity, Islam and Hinduism—have persistently hijacked the indigenous communities. At the heart of these

religions lies an instinctual intolerance towards the 'other'. That is the driving force for proselytisation. These religions are not sustainable. This world too will not survive for long if dog-eats-dog dogmatism continues.

Before the secular era, the slogan 'One god, one country, one language, one flag and one people' was touted as the norm. There was a state religion. The monarch was the direct descendent of god or the living god (the Pharaohs of Egypt, the King of Nepal was considered to be an avatar of Vishnu), the chief priest or the first devotee. The monarch of England is the head of the Anglican Church. The King of Saudi Arabia is 'The Custodian of the Two Holy Mosques' to emphasise that their authority stems from god rather than secular authority. Even atheistic religions such as Buddhism have the Dalai Lama as the 'living Buddha', and venerated as an incarnation. The people were also the chosen people and god gave the land to them.

The privileging of religion has some unintended consequences. The building of the religion had to be the one with most prominence in the village. The church steeple is one example. The temple roof is another. No other building was to be higher than it. In the temporal world, this translates into privileging in architecture within society. In the *vaastu sastra*—the science of house building—of India, this discrimination is seen clearly. This is what Varahamihira's *Brihat Samhita* (53:12,13) has to say<sup>2</sup>

The width of the houses of Brahmanas and other four classes ranges from 32 cubits to 16 cubits, each being reduced by four cubits; i.e Brahmanas have five houses with 32 cubits and below; Ksatriyas have four with 28 cubits, 24, 20 and 16 cubits for their width; Vaishyas three with 24, 20 and 16 cubits; and Sudras two with 20 and 16 cubits. The lowest class of men (like Chandala and Svapaka) will have houses with much smaller dimensions than these. The length of the houses for the four classes should exceed the breadth by a tenth, sixth and fourth respectively.

He goes on to state that (53:40)<sup>3</sup>

The houses of Brahmanas and other classes should be located in the northern, eastern, southern and western parts respectively of villages and towns.

The authority is drawn from the sacred since (53:1)<sup>4</sup>  
the science of house building has come down from Brahma (the creator) through an unbroken succession of sages.

And therefore (53:15)<sup>5</sup>  
It is inauspicious for all people to have houses which either exceed or fall short of the fixed measurements.

The best had to be given to god—meaning the priests—and the sacrifices took a heavy toll on society. The priests could decide what god wanted, and the rest had to comply. The priesthood—early gatekeepers of esoteric knowledge—could decide what was knowledge. The privileging of some knowledge over others has led to the dualities of formal acceptance and legitimising of one form of knowledge and the disparaging of another such as religion–cult, language–dialect, scripture–myth. Each of these are dependent on power relations, and not a reflection on inherent value. Terming mythology as scripture is to keep them beyond the pale of rational enquiry. The language is then declared to be ‘holy’ and others were forbidden to even learn it (Sanskrit and Latin). This injunction practically excluded others from access to the commons—which religious institutions laid claim to since ‘all nature is created by god’.

Being patriarchal, they extended control over the body of the women and extended more control over the women’s sexuality. The ‘temple prostitutes’ (devdasis in India) come from the forcible commoning of the sexuality of women from powerless communities. While a liberal religion would allow a woman to retain her religion after marriage, the children are forced to belong to the religion of the father. Priesthood is practically forbidden. Charismatic individuals are accommodated as saints or prophetesses.

However, this is not always the case. In many indigenous communities the god is their ancestor. Even when god is their creator, they quarrel and abuse god. Prayer is a regular conversation since they believe that their ancestors are always with them. In some communities in Bastar, central India, the communities can and do depose their gods. They pray to their god and, if there is no response for a while, they



finally give the god an ultimatum: either you deliver or you will be deposed. If they still do not get a favourable outcome, they depose their god oftentimes temporarily, and sometimes permanently.

### **Race and caste: exclusion using religion**

Faith based systems such as religion and patriotism often lend legitimacy to what would otherwise not be acceptable. Untouchability, degrading of women, large scale killing in ‘holy wars’, teaching plainly unscientific matter to little children are all made possible through the selective use of ‘scriptures’ and invoking god. The claim to being ‘of god’ allows religious institutions to perpetuate inequitable social relations, most famously articulated by the Roman Catholic Pope John Paul II when he declared that ‘the church is not a democracy’. Being ‘faith-based’ conveniently puts it out of purview of reason. There are many privileges for religious institutions that keep them beyond the pale of secular law, virtually exempting them from responsible use of the commons.

The use of religion to privatise the commons is perhaps best seen in the caste and race systems. Those outside the ‘chosen’ were declared to be less than human, and denied the right of possession. In the case of caste, inclusion for exclusion is very evident. The latest concerted attempts at forcible inclusion of the Dalits into Hinduism started in the mid-1800s. In the attempt to talk for all during the Indian independence movement, there was an attempt to bring the ‘outcaste’ into the Hindu fold. So they were called ‘panchama’ meaning ‘fifth caste,’ though the Manusmriti 10:4, the Laws of Manu, is quite specific that *‘there is no fifth’*.

The ongoing subsuming process is to deny the Dalits their special identity, and include them into the Hindu fold, though Hindu scriptures themselves admit to only four castes, and assert that the Dalits are ‘outcastes’. This inclusion into the identity is to exclude them in every other realm possible—social, economic, cultural... The idea that Dalits should follow Hindu rules or take the Hindu identity is as absurd as Christianity claiming that pagans are also Christians, Islam claiming infidels are Moslem, or Jews claiming that gentiles are Jewish and then imposing their rules of exclusion on the unfortunates.

The success of Brahminism is in indoctrinating many Dalits to believe that they are Hindus. The Dalits are kept out of the commons by invoking religious rules of purity and pollution. Their labour is collectivised using the 'common' religion, the 'we are one' construct, and once the temple is built they are excluded using the scriptures of the same 'common' religion, but using the 'graded access' construct. This is repeated on a daily basis regarding their offerings and free ritual services. The ritual services include the compulsory beating the drums for festivals, marriages and funerals. But when it comes to them getting the benefits they are no longer part of the 'community'. They are excluded, and quite deliberately at that. Inter-dining, intermarriage and even common burial or cremation are taboo.

Though excluded, the dominant castes claim the exclusive right to speak on behalf of the excluded even in matters exclusively in their domain—sexuality and labour for instance. This is legitimised using religion, custom and tradition, all supposedly immutable. Translated into the lived experience, it means that Dalits cannot be on temple committees or trusts, cannot get the fruit of the vast temple lands (the privatised commons)—though they must provide the labour, cannot enter the temple though they must construct it and must acquiesce to the religiously appointed castes to decide on their behalf.

And speak on their behalf they do. The resources of the village—the fruits from the land, the fish of the ponds and rivers—are often auctioned off. Drawing on custom and tradition, the Dalits are made ineligible to participate in the auction. When the Dalit and indigenous children go to school, their names are changed to make them more Hindu. Their gods are always subsumed as minor deities.

### **Religion displacing the nation**

Even supposedly 'secular' states often have a reference religion. The European countries stress their Christian roots and, when feeling guilty about their anti-Semitism, their Judeo-Christian roots. In India, Hinduism is considered the religion of all those who do not profess Islam or Christianity. There is considerable ambiguity over what exactly qualifies a Hindu as such, since Hinduism is defined in India as 'a way of

life' (much like Islam is defined in Muslim countries, or football in the soccer mad countries) as any self-respecting religion would be. However, 'Hindu' is also defined as a 'civilisation', a geographical marker (resident of Hindustan) and language (Hindi/Sanskrit). Each of these is used interchangeably, depending on the advantage of context. In its hegemonic avatar, it is a mask for supremacists and termed as 'Vedic' or 'Brahminic'. For this reason, the 'idea of India' is very different from the 'idea of Hindustan' propagated by the fundamentalists. They then claim that all Indians (including Muslims and Christians) are Hindus (the geographic construct) and then progress to claiming that only they can talk for Hindus (the religious construct) and want the Indian constitution to be 'Hindu'—based on the Manusmriti—effectively gutting it.

This blurring is encouraged, just as the vocabulary of Hinduism is used by Hindutva, the vocabulary of Christianity by Christendom, the vocabulary of Islam by Jihadis and the vocabulary of human rights by imperialists and war criminals (most recently by US and UK for the illegal invasion of Iraq and Afghanistan). The Pantheon becomes 'All Saints Church' and all religions in India become 'Hindu'. First the ambiguity is used to stuff meaning. Hindu as a geographic indicator or a civilisation is slowly turned into a specific religion (but a 'unique' one), with socio-linguistic implications and consequences for the political economy of the excluded.

The symbols of the Indian state are explicitly Hindu and exclusivist—the lotus, tiger, peacock, saffron on the flag, the temple in the official logo of some states—these 'national' symbols clearly define the nation as a 'Hindu' nation. Hindi-Hindu-Hindustan was a rallying cry, after the attempt to impose Sanskrit failed. Interestingly, those from the dominant castes use 'jai hind' meaning victory to Hindustan. The Dalits use 'jai Bharath' instead, echoing the secular Indian constitution which says 'India, that is Bharath...' harking back to the ancient tradition of Bharathvarsh, meaning land of Bharath. Leaders of other castes are considered 'national' leaders, any demand by anyone to recognise the contribution of Ambedkar or Mahatma Phule are considered casteist. The contribution of the indigenous people some of which predate the

‘first war of Indian Independence’, by over half a century—whether Birsa Munda or the Great Andamanese—have been erased from official history. The ‘gate-keeping’ on what is the nation and who are its ‘citizens’, as opposed to the ‘tenants’, is quite clear in the effects.

The caste system is among the most horrendous socio-religious systems, rivalling racism in its extent, intensity and impact. If a Dalit tries some social or economic mobility, then it is termed adharmic, quoting Krishna’s words to Arjun in the Gita 3:35 to enforce the unjust caste rule

Better do your own caste duty poorly, than another’s well.

This injunction is not to protect the livelihoods of the weak but for protecting one’s caste position. Krishna’s words are a paraphrase of Manusmriti 10:97. To quote the full verse:

One’s own duty, (even) without any good qualities, is better than someone else’s well done; for a man who makes his living by someone else’s duty immediately falls from (his own) caste.

The consequences of falling from the caste are graphically explained later (12:71,72):

The priest who has slipped from his duty becomes a ‘comet mouthed ghost’ who eats vomit; a ruler becomes a ‘false-stinking ghost’ who eats impure things and corpses.

A commoner who has slipped from his own duty becomes a ghost ‘who sees by an eye in his anus’, eating pus; a servant becomes a ‘moth-eater’ (ghost).

The caste system intrudes into the very basic Indian constitutional fundamental right of religious freedom. In 1950, the President of India issued the Constitution (Scheduled Castes) Order, 1950 specifying the castes to be recognised as the Scheduled Castes by exercising the authority conferred on him under the article 341(1) of the Constitution of India. It makes religious discrimination very clear in the third paragraph:

‘notwithstanding anything contained in para 2, no person who professes a religion different from Hinduism shall be deemed to be a member of the Scheduled Castes.’

Amendments in 1956 and 1990 provided for the inclusion of Sikhs and Buddhists respectively within the Scheduled Caste (SC) category to avail the benefits of affirmative action for centuries old discrimination to a share in the national pie. The Presidential Constitution (Scheduled

Caste) Order 1950 paragraph 3 precludes SC converts to Islam and Christianity from eligibility for benefits of affirmative action. The denial of SC status to Dalit Christians and Dalit Muslims constitutes a violation of Articles 14 (equality before the law); 15 (prohibition of discrimination on grounds of religion); and 25 (freedom to profess and practice any religion) of the Constitution of India.

Constitutionally India is a secular state wherein every citizen has the freedom to uphold or proclaim any religion as their own. In theory, this constitutional religious freedom has given citizens a space to freely express their faith without necessarily compromising their right. The exercise of this Freedom of Religion is the foundation to consider the nation state as 'commons'. Most individuals are located in one religious institution or the other. This constitutional right therefore gives a platform for the religious institutions to form their own communities. India, being a birth place of many religions, has many religious institutions. The larger the number of the community members in a religious institution, the stronger the voice of the institution. The prohibition of conversion through sharp disincentives is to claim their numbers as Hindu for majority formation. This formulation enables the oppressors to talk on behalf of the oppressed and to claim that India is 80% Hindu.

As each religious institution has their own personal laws for administrative purposes, the influence and control it commands over the members becomes so strong and even unquestionable at times. This often leads to particular religious institutions having absolute power and authority over the community of adherents (adherents often for the only reason of accident of birth) even in a secular state like India.

The constraints and conditions put against Dalit and some tribal/Adivasi communities in their freedom to choose their own religion is one such instance where the deeply ingrained Hindu-as-the-norm becomes explicit. This condition against Dalit and tribal communities is against the fundamental right of religious freedom but since it has come from the Hindu Caste System it has very strong roots in the socio-religious context of India. It is a clear instance of religion proscribing a vast section of the people from being part of the constructed commons

that is India and benefit from its progress. The cost of such exclusion by religion from the commons is high, even in the presence of a formal constitution based on justice: tribals have a poverty rate of 81.4%, Dalits 65.8% versus 33.% for ‘general’.<sup>6</sup>

### **Spirituality as protector of commons**

Religion did play a major role in regulating the use of the commons. In the case of the indigenous communities, it still does. Faith gave many struggles to protect the commons strength to sustain, the Niyamgiri struggle being just one. Religion encoded significant amounts of law and science that enabled the sustainable use of the commons. The spiritual articulation hides fundamentally sound science and practice. Rather ironically, indigenous spirituality—dismissed as ‘unscientific’—has a better record in protecting the commons than science.

The indigenous spirituality has a continuum of the animate and inanimate. The commons need to be protected and preserved not only for the humans but also for the plants and animals, birds and yes, even the rocks and the streams. Their ‘nation’ had many communities, including animal communities. Though quaint, ‘brother lion’ and ‘sister river’, does resonate in a harmonious rhythm. It is not uncommon for indigenous people to leave water in a pool for wildlife during the worst droughts—where others would take their fill and fence the source citing scarcity.

Common usage such as Bhoomidevi (earth goddess) and Kadalamma (sea mother) ensure that the earth and all therein are treated with respect and gluttony of all kinds is avoided. Forests are protected designating them ‘sacred groves’ or other ‘superstitious’ but ecofriendly beliefs, and by restricting access to themselves and outsiders. These are dismissed as superstition. When the tribals want to protect biodiversity, it is because they are primitive and do not understand the economic importance of commercial mono-culture plantations. When the dominant want to do so, the terms are different.

### **Gods major and minor**

Sequential appropriation is the norm even in the religious sphere, where the tribal gods are subsumed into the Hindu pantheon, often as a minor deity, and the tribals are slowly forbidden to worship the god directly, since only a Brahmin can do so. The expropriation at ‘Sita devi’ temple

in Kerala, and the transformation of the tribal god Neelamahadev into Lord Jaganath of Puri are prominent examples of this kind. The Shabra, even today, intrinsically mistrust outsiders—more so those with proclaimed good intentions. In brief, it is because outsiders from Puri came and stole their god Neelamahadev, by befriending them, marrying the daughter of their chief and then deceiving her. This god was later installed in the famous temple at Puri, Odisha, as Lord Jaganath. This is admitted by the Hindus, who commemorate this in myth, and also by depicting the tale of this treachery in the temple museum even today. To add insult to injury, the Shabra are now forbidden to enter the sanctum sanctorum of the temple to worship their own god.

Once their god is under the control of others, the people and the commons soon follow in a ‘bloodless coup’. Once the gods are lost, it is a symbolic defeat of far reaching consequences. Their identity is controlled by others, and they lose their resource base—the commons—in quick succession. The community that controlled its gods is now controlled by those who control their gods.

For the unfortunate tribals and indigenous people this means that their gods are taken away. When the tribal god becomes a minor deity in the Hindu pantheon, along comes the Brahmin to educate the tribal on how to worship god. This begins a slow process of alienation of the tribal from their gods. The tribal god comes under the ‘protection’ of the Brahmin. He now interprets the will of god and the right way to worship. The tribal, who till then worshiped the god freely, are told of the ‘right’ way to worship.

The god then has to be housed in a building. Then the god can be approached only by the Brahmin. The tribals are now told that the god must be worshipped only in Sanskrit. This obviously only the Brahmin can do, for the tribal seldom know the language.

Then it is slowly made clear that only the Brahmin can recite the prayers, and the attempt by anyone else to learn Sanskrit or the prayers will result in their punishment. The ritually prescribed punishment for the offence is pouring molten lead into the mouth and ears. Together with this comes the recreation of history of tribal origins that often has to do with incest or other such unclean, socially taboo, relationships.

The struggle to retain their identity is an intrinsic part of this battle against absorption, since the expropriation of their gods results in the destruction of their distinct identity also. The saga of the imposition of Vaishnavism in Manipur in the latter half of the eighteenth century to the end of the twentieth, grafting of the Brahmins from Uttar Pradesh and Odisha, the reaction of the people and its consequences—when the people were declared ‘polluted’ by the Brahmins, Sanskrit began to be imposed, and the people had to pay the Brahmins to get back the goods the Brahmins stole from them—is detailed by R K Saha.<sup>7</sup>

This process was done by the Christian Church in appropriating the land of the tribals and the fishers in numerous places. The appropriation is captured by an insightful African saying about the missionaries ‘when you came, you had the bible and we had the land; now we have the bible and you have the land’. In the Coromandel Coast, the church has taken away many functions of the traditional leadership and split communities. Whenever the community got to be strong and opposed over-exploitation of the seas by mechanised fishing (including trawlers) the church used religion and rituals to split the community. In Marianad a greenfield fishing village set up to be a model in Tiruvananthapuram, Kerala, church bells were rung to call people to prayer at exactly the same time as the community meetings so that the interests of the trawler owners—on whose money the Church was dependent—was not curtailed by united community effort. This destruction of the formal women’s association, together with the control of the women over their money, was accomplished in under a decade (1977–1985) by the parish priest: by introducing religious nuns, destroying the unity the women and splitting the women’s association.

### **Competing claims to commons**

The ethereal ‘spiritual’ commons have a great sustaining power for the human race. It is the spiritual commons of the Jews that gave them the strength (‘next year in Jerusalem’) to remain a community despite multiple exiles, the latest being almost 1900 years without a ‘physical commons’ of a territorial nation state.

Though the competing ‘spiritual commons’ could in theory co-exist, the reality is that they are so fully rooted in the material world that



conflict is all but certain. The competing, conflicting and conflict ridden claim to the same plot of land, venerated as the sanctum sanctorum of King Solomon's temple by the Jews and as the Al Aqsa masjid by the Moslems is one example.

Competing claims need not always be over land. The Jews were given limited access to the Qumran scrolls by the Christians who claimed the same spiritual space and were more powerful at the time. It took almost half a century for the Jews to establish the first claim to their heritage as rightful owners. Similar is the case of the Mahabodhi temple at Bodh Gaya, with both Buddhists and Hindus claiming what is essentially a Buddhist site, since it is the place where the Buddha got enlightenment. At its extreme, the religious identity can be used for ethnic cleansing when it is rooted in notions of purity and pollution.

The legality of competing claims of citizens to the public spaces is short-circuited by encroachment in the name of religion. In many cities in India, there are many small temples, churches, mosques and other shrines built on the corner of the street or on even on the footpath and in public parks. These are built after the road has been made to capture the space. When encroachment is done for a 'religious' purpose, then their chances of eviction are virtually nil. If encroachment is done 'secularly' then they have a higher chance of eviction. Uncritically religious pious citizens offer prayers in these shrines without even knowing how quickly the temples are established and how they have occupied public space.

With the increasing disposable income, pilgrim tourism has become a lucrative avenue for income for operators. Formerly syncretic shrines have been declared to be 'common' heritage. What was 'common' heritage has been invaded and monopolised by the dominant. The demolition and then court sanctioned privatisation of Babri Mosque in Ayodhya, Uttar Pradesh is one such example. It is a repeat of the theft of the Shabra gods and monopolising them in the Jaganath temple at Puri. There are parallels in the 'joint management' of the Buddha temple in Gaya by both Brahmins and Buddhists with the deciding vote being the Hindu district collector as a legal requirement.

### **Worshipping place Vs Community space**

Occupation of the community space by the religious institutions for the worshipping place is considered as a non-issue by the society. The community is taken for granted by the religious institution. In the prehistoric stage, the community considered the entire environment sacred. At times this was formalised, and at others this was simply accepted as implicit. As formalisation progressed, community institutions were formed. In this formalisation, even when religious institutions were formed, they were not of an exclusivist nature. The religious festival was also the fair—where culture, commerce, recreation and religion, where fun, family, friends and the sacred came together in time and space.

Religious complexes were equally community centres and commercial hubs. The children could play there and the community centres were cultural spaces too. As formalisation gained traction, everything else was excluded—so much so that piety now means to be devoid of happiness. In these formal religious institutions, children have no space but as honorary adults—dressed in their best clothes and in solemn demeanour, making every encounter with the sacred a funereal experience. It is often forgotten that the religious institution is built on the commons. Religious institutions use and abuse power by intruding into the community commons.

#### **A sacred invasion**

Mizoram being one of three Christian majority states in India, Nagaland and Meghalaya being the others, Christian religious institutions—primarily the Church—have a great say and influence in the society. The Church is the most powerful institution.

Aizawl, the capital of Mizoram is the centre of all development activities of the Mizoram government. About half of Mizoram's population is concentrated in Aizawl. The fast growing population in Aizawl has its own implications at various levels in the state.

To accommodate the fast growing congregation members in Aizawl, the Church therefore needs to expand in terms of space.

To meet this pressure, community land—the commons—was acquired to build churches. With the whole community being members of one particular church or the other nobody would dare raise an objection against building a church as it is the holy place for the Christian community. The Mizoram Presbyterian

Church can be taken as an example to understand the growth. In 2000 the number of Presbyterian churches in Mizoram was 624. It is 714 in 2009.

This uncritical acceptance of expansion of building churches in public spaces resulted in the loss of public living and activities space. In most cases, the loss is a school premises, the community playground or the best space in the locality. This loss of public space often results in a heavy cost for the children and youth. The children and youth now do not have a space to play or spend their leisure time in the locality. The society and the Church do not understand this vacuum created in the life of the children and the youth. Though in some places the community may build a community hall for indoor games, it often comes with sophisticated rules and regulations—including dress codes and restricted usage—where many common people cannot even enter.

Where there is no common space for children and youth, frustration, stress, tensions find a way into their life. Many become entangled in less than healthy environments resulting in the rise of misused cyberspace and computer games. Some would even indulge in drugs, alcohol and un-protected sex due to peer group pressure. A steep rise in HIV/AIDS infection in Mizoram is a great concern.

All these social problems in Mizoram may not be because of the uncritical approach of the Church to the social space. However, it is necessary to have a critical re-look to preserve common living space for the society at large.

### **Religion for mobility**

Being a constructed common, religions give scope for solidarity and liberation from ossified social structures. While the traditional religions gave opportunity to enjoy the fruits of the commons only by birth, the new religions give more emphasis on ‘merit’ and ‘following the way’, at least till such time as they develop their own vested interests. Christianity, as also Islam and Buddhism, provide social mobility from the rigid Hindu structure in India. Sikhism was created explicitly for the purpose. In the USA it is Islam that fulfils that role, especially among the blacks and helps them ‘take back the streets’ from the predominantly Christian drug runners (whom the law enforcement officials, themselves Christians, are unable or unwilling to control). For the rebellious Whites (the Beatles) it is Hinduism, and for some Buddhism.

Dr Ambedkar urged the Dalits to embrace Buddhism for their liberation. The Dalit movement has mass conversions on 14 October every year. This is an attempt to create their own commons, which is outside

the domain of the Hindu orthodoxy, where they would be equals not 'untouchables'. This conversion is for a very practical reason—it liberates them from the shackles imposed on the excluded by the dominant religion, and permits them to take part in the common wealth. Dalits who were denied the use of the village pond are able to access it after becoming Buddhists primarily due to the unshackling of the mind.

Religion also provides comfort and solace for geographic mobility. If religious institutions truly are a commons for all the believers, then moving from one place to another would be a cinch if the same religious community existed elsewhere. So the key social reproductive constructs—birth, death, marriage—could be 'within the fold'. But different communities have different practices and different places to conduct them. For this reason, even those who call themselves 'Christians' have separate graveyards and Churches depending on their sect. Similarly for Hindus who have different graveyards and cremation grounds that are virtually segregated caste-wise. One exception is in Mizoram where the graveyard is common for all, in part because of the strong Young Mizo Association who are considered to be the guardians of Mizo cultural and traditional practices of commons.

### **The sacred in progress**

In some villages all women must have bath on Saturdays. The logic is convoluted. Saturday is considered to be ruled by the 'malevolent' planet Saturn, who is also worshiped as a god. We know that Saturn does not own or rule any day, nor does any planet. The theory of mass attraction is used to justify astrology. The reality is that Saturn—the largest malefic planet in astrology—has as much influence on individual human life as a car parked about 200 meters away. However, that does not prevent a whole 'science' being built around it.

Once we consider the cultural packing, the implications of this become clear. Wrapping it up in a religious (Saturn is considered a god) and cultural package ensures obedience. It enables the overworked women to have bath at least once a week. On that day, by custom, the men have to leave the pond for the use of the women at least for some dedicated time since it is a religious requirement. It gives the women some much needed privacy. So while the application of astrology—or even astronomy—is plainly unscientific in this case, the social ends to which it is put lends some legitimacy to its use. It is not perhaps the right solution, but the best possible in that location in time and space.

With the progress of knowledge, some of the knowledge that was formerly wrapped around different forms of social reproduction, can be unpacked. This unpacking needs to be done with sensitivity, and not throw out the entire corpus of knowledge.

Shamanism and astrology must be acknowledged as repositories of knowledge that can hold some truths, just as a two dimensional representation of reality (such as a map) can be useful for travel at slower speeds. Three dimensional maps are needed only for air travel, and space travel needs time to be factored in as well. To always factor in four dimensional thinking is a needless complication. It is this insistence on and existence of complexity that makes people yearn for the 'simple utopias of the unremembered past'.

To understand this form of socialisation of knowledge is not to accept or even condone its usage. That every system, even a false one, will have parts that are true needs to be acknowledged. The revivalists use these embedded truths to sell a larger lie or an escapist ideology as opiates for those who cannot handle the complexities of life and seek solace in simplistic, reductionist paradigms. They use advances in knowledge to reinforce their prejudices. The scientists err by dismissing it altogether. The medical elements can be drawn out from shamanism and astrology. By total rejection, they leave the field clear to revivalists to point to the partial truths and claim the full truth to perpetuate their exclusive hold on the commons.

When the leisure space was dominated by a few people, these people—the 'elders', the 'wise' who then became the 'priests'—had the monopoly over the construction of mindscape: over knowledge, language, science, drama, poetry, literature... Most of these were closely linked to the places of worship, because the 'community centres' became the market, the town hall and yes, the temple or church. The natural fallout was that they were literally attached to religion, and therefore above question. Now-a-days, no one believes in Thor or Isis or the 'historical reality' of Juno's exploits. Yet Vikings, Egyptians, Greeks and Romans took their religions and gods very seriously. Conquests were done in their name. Sacred groves were preserved for their sake. Knowledge flowed

from the ‘revelation’ of god or its messenger. Now that is no longer so. Many of these are now out of the realm of religion. Rational inquiry is possible. The opening of more and more fields to rational inquiry is the true separation of the religious and the secular. It is then that astronomy—where everything is open for questioning—can grow and separate out from astrology—a mixture of science and faith.

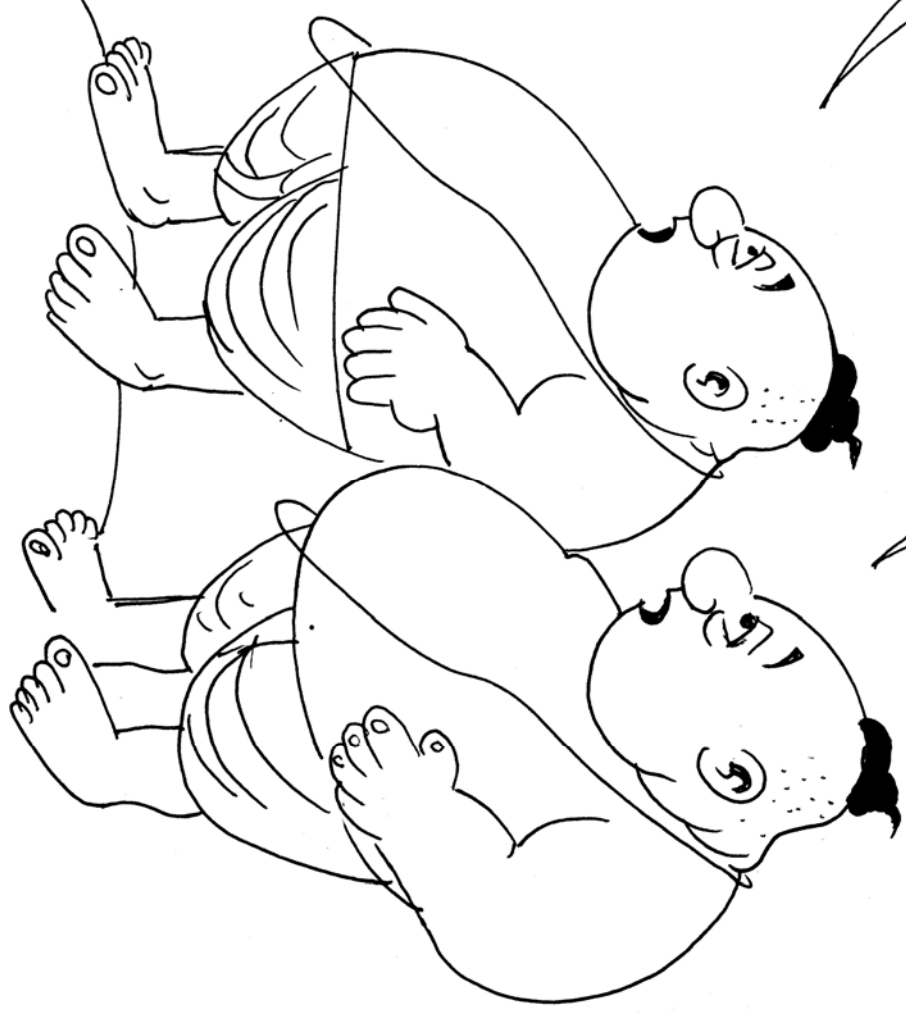
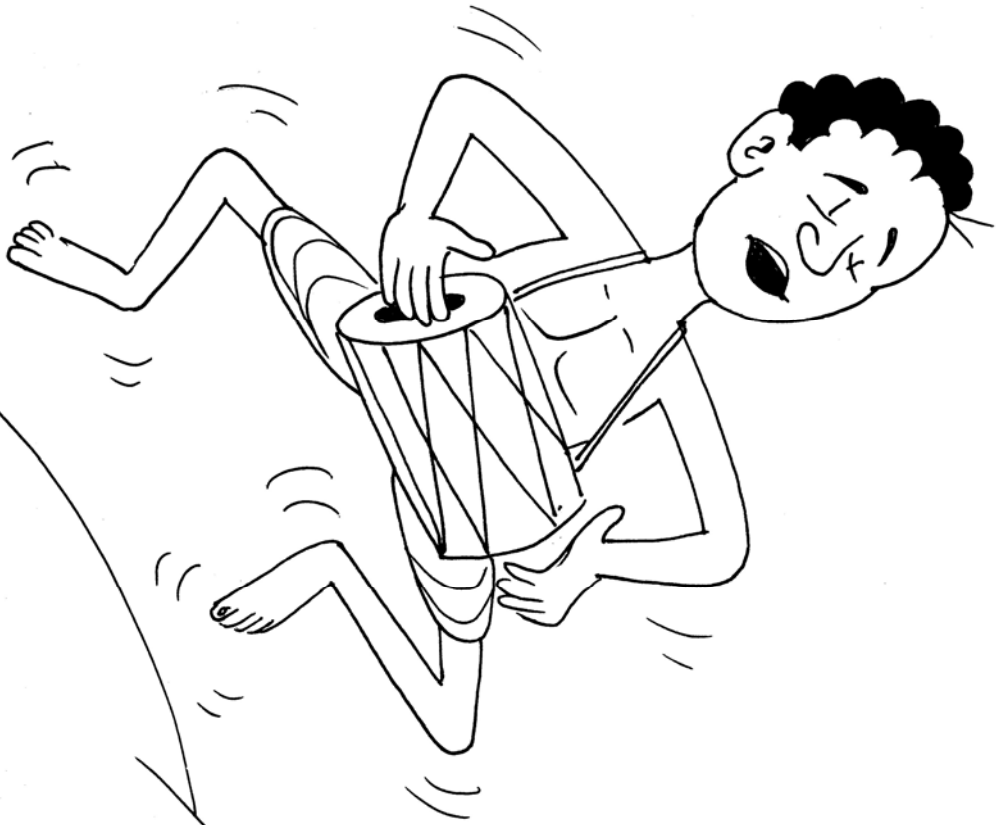
Religion and spirituality did play a major role in sustaining the commons. However, faith-based systems are no longer sufficient to ensure compliance. Faith based systems claim to be ‘universally’ applicable and unchanging from ‘time immemorial’. The combination makes it difficult to take to scale, especially in a rapidly globalising village and an interconnected world, where the codified local ‘best practices’ are not applicable nor adaptable in another area in toto. It was needed when the literacy and comprehension levels of the people were low. When blind belief was required, and when archetypes had to be invoked, then perhaps it was required. However, given the potential for misuse, and the global experience with authority, faith-based systems are poor substitutes for open, democratic governance. The knowledge embedded in them needs to be secularised—from alchemy to chemistry and from astrology to astronomy—so that they can meet the needs of the contemporary world. Practices cannot remain ossified in the distant past. Throwing the baby out with the bathwater is not the solution. The respect and reverence for nature needs to be carried forward. The sacred needs to be separated from religion and superstition.

### Endnotes

- <sup>1</sup> Arun Shourie, *Hinduism: Essence and Consequence; A study of the Upanishads, the Brahma-Sutras and the Gita* (p1,2)
- <sup>2</sup> Varahamihira’s *Brihat Samhita* 53:12,13. Translated by M Ramakrishna Bhat, p454. Motilal Banarasidass 1986.
- <sup>3</sup> *Ibid* 53:40, p476.
- <sup>4</sup> *Ibid* 53:01, p450.
- <sup>5</sup> *Ibid* 53:15, p455.
- <sup>6</sup> Country Profile India; Multidimensional Poverty Index (MPI) At a Glance; July 2010 p5. <http://www.ophi.org.uk/wp-content/uploads/Country-Brief-India.pdf>
- <sup>7</sup> *An Ethnic Movement in Manipur Valley. Tribal Movements in India*, K S Singh [ed.] Manohar; 1991; pp 97—113.

IF WE INCORPORATE A BIT OF WHAT HE IS  
DOING IN OUR CULTURE, OUR SPIRITUALITY  
MAY BE SAVED!

..AND OUR BODIES!



Sarav

# Challenges of modernity

---

Anita Cheria and Edwin

An appropriate vocabulary and language of the commons are essential for the health of the surviving commons. At present the dominant paradigm is so pervasive, that the language of property is used to describe and regulate the commons. In many cases, there is no vocabulary to describe and therefore the language of property is imported and deployed. Even those with legitimate constitutional backing term restoration of commons as encroachment or, in the case of MST Brazil, as ‘invasions’. These should instead be seen and named as land restoration and liberation. It is only then that the legitimacy of restoring the commons for commoners is affirmed with the empowering knowledge of legitimacy. This is the required ‘vocabulary of commoning’, needed for the active process of returning the resources to the commons and the commons to the community of commoners.

The process and vocabulary of commoning needs to be distinguished from the adjustments that the private property dependent state does to ensure its survival. Sometimes it is erroneously termed land ‘reform’. Land reform is only a redistribution of property and is well within the property and privatisation framework. Only land restoration comes within the framework of commons and the vocabulary of commoning. Newer frameworks such as the models developed for carbon trading under the clean development mechanism too fall under the property and financial capital framework.

The law and policy has only the vocabulary of property. This needs to be changed into a language of commons. The mindset that seeks to smoothen the road, sometimes literally, for the rich while laying obstacles for the poor, the mindset that sees the poor and the marginalised as an embarrassment needs to give way to a more democratic framework which seeks and makes access for all, and ‘a level playing field’ a reality. These are equally important in the traditional commons, built environment and in the new and emerging commons. Laws, institutions and infrastructure that make it possible must be created. Those excluded



from the commons by terming them pagans or demons ('asura') need to be brought in with dignity through a concerted attempt of commoning. Terms such as freecycle may need to be popularised so that popular consciousness, and the formal systems, can catch up with common practice. Millennia long wait should not be necessary, as was the case for the nomads and timeshare.

### **Precision and ambiguity**

Modern life needs precision, yet life itself needs to be fluid. This duality needs to be addressed. On the one hand, the fluidity enables others to stuff themselves into the commons. In others precision keeps the commoners out. In each of this, the response is diametrically opposite depending on power relations, and needs to be so, to ensure that the commons will always be accessible to, benefit and be in the control of the community.

The fluid 'fishing community' or even 'farmer' will need to be defined more precisely. The language of labour has enabled 'landlords' (a term related to property) to term themselves as 'farmers' (a term related to occupation) and the actual farmers being termed 'agricultural labourers'. The use of sexist language has also meant that 'farmers'—of the landowning or labourer variety—are imagined as men, and policies written and programmes designed for them. In reality, most farmers are women,<sup>5</sup> especially the ones now called agricultural labourers.

The fishing community raises several different levels of difficulty in definition and usage.

- a) Initially it was very clearly patriarchal and labour related—a 'fisherman's' village and community. It was only the sea-going fishermen who were allowed into administrative structures (the caste panchayat). There was a long and sustained effort to include the women and the needs of women, at least in the vocabulary and the benefits of campaigns. Slowly the terminology of fish-workers, fishing community, fisher folk and fisher began to be used. Yet these words do not even now describe the relationship of the community with the environment.
- b) In the usage 'fishing community' by the people, it would mean the traditional fishing community, using traditional fishing methods,

- in their traditional fishing grounds for livelihood. Those who use mechanised tools would be excluded from this 'community'.
- c) The traditional fishercastes themselves would only define the dominant castes among them as 'fishing' communities. Due to the influence of money, those who engage in trawling and mechanised fishing would also be included. Not included would be those from other castes and communities who also fish and are sea-dependent.
  - d) In marine fishing communities, the 'citizens' of the community would only be the adult seagoing males. It is from these 'citizens' that the governing councils, the 'panchayats', are chosen. Those in backwater fishing or allied trades are not considered part of the 'community' and, in the case of the December 2004 Tsunami, not eligible for relief, though families without seagoing males from the 'community' were considered eligible.

Within daily social interaction in normal times, there is little discrimination though the roles are distinct. So the lines are rather blurred. But with description and then formal codification even the more egalitarian societies become stratified, and the dynamic flux gets written in stone. The earlier 'community' becomes the 'citizen' and all others become tenants.

The striving for precision is with a blunt instrument. Language itself is rarely precise, and is almost always contextual. That the same word means different things in different languages is known. What is less known is that even the written language is very different from the oral. Even within a language, the same word can mean very many different things. The many commonly used words have very different meanings,<sup>1</sup> sometimes diametrically opposite.<sup>2</sup> The twin principles of subsidiarity and residual powers vesting with the individual and community become key in such a situation. The challenge is to revert to this formulation, since the reverse is presently the norm.

### **Romanticising the commons**

There is a need to be alert to the tendency of romanticising the commons, and somehow casting it as some form of Utopia that existed and needs to be restored. The reality is that that the traditional commons were

very exclusivist, if only for the reason that ‘the community’ was narrowly defined. They were for the able bodied male in most cases. Women and children were excluded from decision making. Other castes and communities were barred from both the physical and the knowledge commons. With the fast integrating global village, it becomes imperative to ensure that the commons are egalitarian, equitable and have equal opportunity for all those dependent on it for livelihood.

The vocabulary of community and the idiom of the commons is handy for, and used most effectively by, the revivalists, religious fundamentalists, racists, supremacists of various hues and assorted feudal forces—the very same people who were (and still are) against equality in terms of gender, race or caste—to further their agendas of unremembered history and utopianism. In their hands, the vocabulary of commons and community becomes indistinguishable from the vocabulary of communalism.

To restore the commons is not to restore the inequity that we know were part of the commons. It is not to romanticise the past or build Arcadian illusions. It is not to go back but to move forward by retaining the best of the past and reconstructing based on the insights of history. There is no reason why commons cannot make use of knowledge learnt elsewhere.

### **Citizenship and the state**

A different hue of revivalists use the ‘nationality’ vocabulary. They use the vocabulary of progress and inclusion to ensure that the iniquitous status quo of society with its permanently privileged will be perpetuated. Their appeal is for ‘national development’ and some sacrifice from the same sections of society who, coincidentally, never get any benefit in any of this ‘development’. Here the use of inclusive language camouflages the exclusive nature of the endeavour. They deny that the ‘nation’ is made of many communities.

Though all are called ‘citizens’ those analogous to the Roman class of patricians become the citizens and the plebes become the ‘tenants’ of the nation. It is very clear in the flow of benefits that the older privileged community (the patricians) have now become the citizens

to whom the benefits flow, and the previously excluded (the plebes) remain excluded tenants and inhabitants who pay the price. The Dalits and Adivasis are the 'tenants' who pay the cost in ecological destruction, unviable livelihoods and displacement for the 'citizens' to get electricity from the dams built across the 'national resource' rivers. Yet they are the last to get electricity, though the high tension wires pass over their villages. In this model too, the 'national property' is used for private profit.

In Tamil (Tamizh for the purist), virtually all the terms of citizenship arise from caste.<sup>3</sup> The village (kudi) consists of those who 'have caste'. Old villages (some now no more villages) retain the name kudi such as Karaikudi and Kunnakkudi. The outcasts don't 'have' caste and live in a cheri or colony (in this sense, colony has now become a Tamil word). Those families who live in the village are called kudiavunga. Those in the cheri don't have caste, family or marriage. By extension, they are considered without morals. Kudi is also the root word for citizen (kudimagan) and democratic (kudiarasu). In a reflection of the English phrase 'drunk as a lord' in Tamil a drunkard is a kudikaran (though, to be fair, kudi in this context comes from the verb 'to drink').

Kudimagan is masculine, an accurate reflection of citizenship in a patriarchal society where women are considered tenants. In patrilocal societies, women are literally considered tenants in their paternal homes, and go to their 'real' homes after marriage where too they face discrimination. The use of the language of citizenship blurs the contradictions that were more visible when the terms of lord and serfs or were used, and makes the challenges of mobilisation for liberation that much more difficult.

### **Gender and commons**

The 'commons' were traditionally the commons for the men including the seemingly 'inclusive' decision making bodies such as 'all party' meetings. This has significant impact on the relationship between the women and the commons, and their use of 'common' spaces. Where there was traditionally 'undefined' use, and therefore some degree of flexibility, 'formalisation' and 'legal definition' has often restricted the women from spaces they otherwise had access to, especially in

the case of women from indigenous and tribal peoples. The sexual minorities have been pushed into ghettos. It is only where the women were consciously part of decision making that they have retained or increased their access to commons.

The women were barred from many functions within the traditional commons. The village 'chaupal' the platform that was literally the seat of decision making was, and is, off limits for women. Even in relatively egalitarian communities where there was a division of roles, contact with the outside and mimicking the dominant society has resulted in stratification within these communities too. Moreover, when the emerging spaces are monopolised by the men, then the community undergoes a traumatic restructuring. When these emerging spaces are legislative, and they 'codify' traditional practices into law, then the whole codification works to the disadvantage of the women. It leads to the destruction of the commons and the community, with egalitarianism being a victim.

Modernity's assault on the Ima Keithel in Imphal is a study in the multiple challenges of modernity. The traditional market Ima Keithel is located in the heart of Imphal city, the capital of Manipur in North East India. Ima Keithel means the 'Market (Keithel) of the Mothers (Ima)'. Run exclusively by women from different parts of Manipur for as long as human memory, it is one of the oldest market places in the whole region. Under cover of the Keithel 'modernisation' project, the Government of Manipur systematically attacked the traditional women run business and trade to force the women out of business.

The community of women were not as powerful in their capacity to defend their commons as those who had the desire to invade their high commercial value real estate. Though they were willing to defend, their capacity to defend was severely diminished due to the increase in the capacity of the others. The gender aspect is significant since the proportion of men in the decision making positions in the modern institutions of governance is far higher than their position in traditional arenas. They are made stronger by their links with the dominant Indian state, ironically a subject of social derision. Their mandate now encompasses the traditional decision making sphere of the women,

and they have the instruments of enforcement at their sole disposal. The traditional law and traditional instruments are no longer strong enough to come to the rescue of these unfortunate women, let alone prevent an assault on their rights.

Creatively constructed identities provide a space for moving beyond limitations. The conflict over the physical resources has led to violence in most parts of the world. It is the emphasis on a constructed identity such as ‘mother of the victim’ (which does not remain a sole preserve of mothers or even women) that has been able to find common ground for peace and reconciliation beyond boundaries right from Argentina (Mothers of the Disappeared Asociación Madres de Plaza de Mayo) to Kashmir, (Association of Parents of Disappeared Persons in Kashmir, APDP) to Palestine and Israel (Voices of Eden). If this common ground is large enough, then accommodation can be found.

The traditional physical commons nor the built commons gave much space for sexual minorities. Their low level of literacy was because they were pushed out of schools at the time of puberty when their sexuality and sexual orientation became obvious. The cultural commons did give some amount of space, with an avatar of Krishna even becoming a transgender in the story of Aravanan in Mahabharatham—a story still commemorated by hijras annually by ritually becoming Krishna and marriage to Aravanan. Similarly, the digital commons and the blogosphere give comparatively more space to the sexual minorities, though that has become compromised with the same privacy being used against them. The Indian state has tried to be inclusive by promising that all laws will be gender neutral by 2014. Many countries have become, or are on the road to becoming, more inclusive. This would partially dismantle the social fence around the commons and allow sexual minorities equitable access.

### **Convergence of information and technology**

The convergence of information, technology and ideology makes even the hinterland accessible and vulnerable. The information technology, especially the electronic mass media, has a reach unparalleled in history and is as yet growing in geometric progression. It helps propagate

the dominant notions of individualism and property with subtle messages, completely disintegrating the community and influencing susceptible minds. These messages are often wrapped in idealised notions of protection, while destroying the lived ideal. They deploy the language of development, civilisation and national interest while portraying anyone who opposes them as extremists. Technology amplifies both the ideological machinery of the state (education, propaganda) and the coercive machinery (devastating firepower, surveillance).

Technology enables less arduous physical labour, is more efficient in meeting the ends but is a lot less discerning. The traditional law regulated usage to ensure sustainability and equity. The new technology not only upsets the regenerative balance, but also comes with the 'get rich quick' and 'development as exploitation' ideology that is disguised as efficiency: appropriation of the maximum resources, in the minimum time, paying the least amount of money. The costs are 'externalities' to be paid for by others. This has a tremendous attraction, especially to the youth, who do not know the costs. They think that the promised prosperity is in addition to their present status which will not be degraded. The glossy images keep the costs off frame. The advances in technology puts tremendous power in the hands of a few so that they can enter, exploit and exit the commons extracting everything of value before counter measures can be deployed.

Larger scale is often possible on the back of technology. But it needs larger commons for the resource use cycle to be complete. This larger scale needs larger administrative mechanisms and institutions. The human knowledge for managing the larger scale develops simultaneously. The knowledge to manage at a larger scale has been codified to support property rather than commons. Yet it is possible to consolidate, codify and socialise knowledge to manage large scale commons. Just because it does not exist in ready form today, does not mean it does not exist at all, nor that it cannot be developed.

The deployment of technology is a double edged sword. Precision in documentation—especially digitising data—is seen as the way forward. However, it is not an unmitigated blessing. In digitising, the richness of diversity—of personal relationships, naming, land records, vocabulary—

all get standardised. Digitising land records has made it easier for those with access to appropriate. Ivan Illich<sup>4</sup> warns us about the problems of the digital divide and indeed all technology. Technology allows some voices to be amplified, drowning out the others.

Delivering unimaginable amounts of information can be an opiate or the most potent mobilisation tool. Projecting a semblance of control and participation in reality shows and instant polls, it keeps the subjects to the frivolous. While new technology should be adopted, it should be rooted in the values of the commons—sustainability across generations being a non-negotiable in addition to inclusion and equity. For new technologies, even when used by traditional communities in their traditional commons, new laws might need to be developed to ensure that their use does not conflict with the non-negotiable. One solution should not conflict with another—or create greater problems. The model should be internally coherent, informed by the best available contemporary knowledge base and practice, within the capacity to risk of the community, at the sustenance and regenerative levels of the biotic carrying capacity of the environment.

### **Costs of historical use and misuse**

Where there is very little use of a particular resource, there is very little restriction on its use. It is always considered a ‘perennial’ resource and treated as an infinite commodity. Till such time usage does not reach the threshold of unacceptable degradation of quality, increased use is possible. Regulation becomes necessary when there are competing claims beyond this threshold. With mass use these seemingly limitless resources suddenly have to be rationed. The explosion in mobile telephony has resulted in the spectrum having to be rationed. Once broadband reaches the critical threshold, even the electrical spectrum could be keenly contested. Silence as a common is already being protected with the various noise pollution laws. The inability of some to use some commons has led to de facto monopolies. When others attain the capacity to use these commons, there is conflict or at least overt and covert attempts at fencing. This fencing is comparatively easy since the property framework is the norm. The challenge is to common it, so that better efficiency and equity is possible.



For millennia, the air and water has been used as an unlimited resource with virtually all the externalities of industrial development—the pollution and the toxic waste—being dumped into it. The rivers and seas are literally the septic tanks and toxic waste dumps of the globe. This has reached a threshold where the rapid climate changes indicate that the air can no longer absorb the pollution. However, those who have been using the atmosphere as their junkyard now want to fence it in different ways—by restricting the others from using it, by refusing to cut down their own pollution, refusing to pay for the clean up, and refusing to move to clean technology. This has very nearly ended up at the tipping point, with the survival of the human race at stake. The saga of refuse could well lead to the human race itself becoming refuse. The law of ‘might is right’ still holds good in most relationships of any scale, and it is unclear if and how this commons will be returned to the global community at anytime in the future.

### **Risk and reward, dissent and democracy**

Innovation, risk, dissent and reward are intimately connected. More than being two sides of a coin, innovation and dissent are actually the same phenomenon called by different names. A successful dissent becomes an innovation.<sup>6</sup> Societies on the edge of survival have to conform to the ‘tried and tested’ to survive. It is only when they get some surplus that they can innovate. Innovation carries with it the threat (risk) of failure. The capacity to innovate is determined by the capacity of the surplus (the buffer) to absorb the costs of failure in case the innovation does not succeed. The capacity to risk follows roughly the same trajectory: the individual initiative and innovation needs to be within the capacity of the community to bear the cost of failure and the biotic carrying capacity of the environment.

Technological progress has ensured that humans have the means to banish poverty. As a race, we are no longer under threat of extinction due to the lack of resources. The margin for error was minute when the community was on the edge of survival. Then innovation was a risk and the risk unacceptable. Now with sufficient buffer, the intellectual commons can afford to have innovation—in other words, dissent. Progress needs dissent and innovation, and mature societies encourage them

through a system of incentives (for success), disincentives (to protect against recklessness and keep risk taking within the absorption capacity) and limitation of liability (so that the entire cost of failure does not fall on the innovator).

There are two issues concerning commons and dissent. The first is how the shrinking of commons has affected dissent and the second, how dissent would be treated in the commons.

The shrinking of commons has adversely affected dissent and innovation. The fencing of commons is now justified since property is so pervasive and the commons has become 'property in the making' rather than the reverse. Innovation needs to be demonstrated and ideas need to be tested in the commons for validation. With the increase in property, the commons has diminished to an extent where the space for dissent has become minuscule and at times non-existent. Dissent itself has become highly ritualised, sanitised, controlled and managed. The spaces for dissent, now seen as disturbance, are kept away from the bustle of life and the dissenters corralled so as not to disturb the rhythm of life. This disconnect from the life of the community enables the dissenters to be labelled different, and in a slippery slope, the different becomes the other and then is demonised. Dissenters are banished either vertically (become saints and 'mahatmas') or horizontally (put in prison). Being threats to the present order, they have no place at all in the small commons remaining, though with some imagination state institutions can be called the new commons, and dissenters do have a place in one of them—the prisons. From the diversity of the commons where difference is celebrated, the industrial world needs standardised, sanitised monocultures of the mind. Dissent is an existential threat to the 'orderly' industrial world.

How the commons framework deals with dissent is a test of its maturity. Obviously the feudal one that treats every dissent as treason (including from 'Her Majesty's Loyal Opposition') will not suffice. Yet how would the commons community treat the 'dissenters'—those who would like to turn the commons into property? All systems allow for some amount of dissent, at least verbal, the stronger ones more than the weak.

A challenge for the commons is a system of incentives and rewards for innovation and risk. The modern system of incentive is based on copyright and patent, which has plainly outlived its utility if at all there was one. Yet the notion of lifelong payback from ones intellectual labour is attractive in some quarters. On the one hand is the comparison with physical property and complaints of intellectual property being discriminated against. Physical property such as a house can be bequeathed in perpetuity to ones descendents. Yet this protection is only for a hundred years for intellectual property. On the other hand, property once sold can be resold or shared by the buyer—which is prohibited for intellectual property. This circular argument is a chicken and egg situation precisely because it is based on the untenable property framework. Once the ‘creative commons’ framework is applied, this seemingly intractable problem vanishes. Motivation does not need to be monetary, nor rewards ownership—the race to the moon had different motivators.

### **Rebuilding inclusive and democratic communities**

The commons and community need to be reclaimed to refashion it for a democratic society, retaining the existing democratic components, revitalising the dead or dying components but fearlessly rejecting the undemocratic parts of the old society. The iniquitous structures of the old need to be acknowledged, and more democratic ones fashioned. Equity across gender, age and communities would be a non-negotiable.

Reconstruction of the commons within an egalitarian framework is attempted by MST (Landless Workers’ Movement. In Portuguese: Movimento dos Trabalhadores Rurais Sem Terra. [www.mstbrazil.org](http://www.mstbrazil.org)). While the landless farmers live on the shoulders of highways, they are encouraged to unlearn the coping methods and violent habits of their past where they were serfs. Serfdom does take a terrible toll on individuals and communities—the oppressed communities across the world have human development rankings a full 20 to 50% less than their peers in other communities. India’s indigenous communities have a deprivation rate of over 80% compared to 33% for the general population and 55% overall (multidimensional poverty index, MPI, <http://www.ohpi.org.uk>). MST does not want these debilitating habits—

which include alcoholism, domestic violence, illiteracy—to be carried over to the new communities that they build after land restoration. Every camp and settlement has a library. While in the camps itself behavioural changes are effected through peer support. The individualism of their serfdom is replaced with a democratic egalitarianism in action that includes a global consciousness and solidarity.

The MST model of making a community and the commons is worthy of emulation. Though many are part of the land restoration movement, not all get to live on the land restored. The restored land is assessed for its carrying capacity. It is then divided among that number of households. Each household gets to support the continuing restoration programme with one member of the household being a cadre or by materially supporting one cadre. The community is built before the restoration and once the physical restoration is done, they continue to be active in the restoration process. They see their role as building up an international community having set up the international farmers' movement Via Campesina.

A sign of hope is that the governed people are becoming more aware of their democratic rights, understanding the potency of the rights, and are negotiating with the government, the politicians, bureaucracy and the executive. The Forest Rights Act, rehabilitation efforts and land acquisition processes are now being questioned and certain standards and procedures are demanded. The one significant development in these negotiations is the voices of women and their aspirations. While men usually demand individual compensation of cash and land, the women are negotiating for collective rights of the community, compensation in cultivable land or access to forests.

### **The state and the commons**

The greatest threat to the commons is the state, since it is the institution created for property. The state sees the commons as empty spaces awaiting privatisation to property. The interaction of these commons with the dominant state structure has been one of the state trying to appropriate the commons and dump its waste into the commons as 'landfills' and 'carbon sinks'. The contestation becomes acute when

the resource footprint of the dominant becomes larger and it encroaches on the space of other communities. Since the commons fall outside the formal legal system, the dominant state considers the commons as terra nullius. This is bitterly contested by the community, leading to the very many conflicts across the globe. Even when the state tries to have a human face, and gives compensation to the people, it does so by stripping the resource base to its base minimum market value—valuing the trees at Re 1, not valuing access to natural resources such as water and air at all, measuring the lifespace as only the hut and totally discounting their geo-specific knowledge base.

In the post appropriation stage, the state has institutions and mechanisms for tax collection, enforcement and punishment—but none for direct people's participation. Being an institution of the dominant, it takes from the weak (the 'tenants') and gives to the dominant (the citizens). The language of property provides comparative benefits for those who agree to fall within its framework, in exchange for a loss of sovereignty. For those who do not accept this framework, it means a heavy opportunity cost. They are excluded from institutional support in myriad ways.

The indigenous people of Nicobar islands had firsthand experience of this after the tsunami of December 2004. The Government of India had a lot of money for the rehabilitation of orphans. But the indigenous people there do not have a concept of orphans. Despite explaining it to them they could not understand it and, those who could, found the very idea repugnant. In a degree of maturity perhaps unique to indigenous communities, they consider all children belong to the whole community, though their biological parents are known since the community is monogamous. So despite the government dangling the carrot of vast sums of money available, they opted to keep their cultural commons intact, and their culture survived another attack to live another day.

The inability of communities to be within the letter of the property law excludes them in many other ways too. Loans are virtually impossible since the law—based on the property framework—demands proof of ownership of land for a housing loan, which the commons communities seldom have.

The sexual minorities are ‘collateral damage’, being unintended victims of ‘marriage’ being defined within the property framework. Though the position of the sexual minorities had been for sexual liberation (with the explicit ideological position of being against property and commoditisation of women) they were forced to campaign for same-sex marriage since institutional funding for livelihood support (such as housing) was available only to married couples. This is a climb down from the initial position of sexual liberation, but one necessary for survival. Their exclusion from the commons was being accelerated without the institutional support afforded by such recognition.

The present system of representative politics has proved to be woefully inadequate. Though the commons needs a community and systems for governance, despite lip service to the sovereignty of the people, in reality the institutions of local governance are systematically stripped of their power. They are the only institutions of state and governance that commoners have a realistic chance of entering. They are called ‘urban local bodies’ (ULBs) and treated as sub-contractors of state governments, though they are elected and are as sovereign in their own sphere as any other including the parliament and therefore should be called the City Parliament. Instead we have a hierarchy that goes from national parliament, to state assemblies, district councils, municipalities, gram panchayats<sup>7</sup> and gram sabha.<sup>8</sup> The term ‘sabha’ (assembly) is used by the parliament too, as the Lok Sabha (council of people, same as House of Commons in Britain) and Rajya Sabha (council of states)—appropriated to mask its character and gain some legitimacy.

Commons are required for the exercise of most rights. Though more and more rights are getting recognised in law and formal language, faster is the pace of enclosing the commons. Urban spaces see rapid fencing of space, making dissent virtually impossible. Though the ‘right to food’ is recognised, the gutting of land ceiling laws, the proliferation of special economic zones and appropriation of land using colonial laws such as the Land Acquisition Act leads to the enclosure of farms ensuring that food becomes charity, a gift of the state rather than a right of the people. Food sovereignty is very different from food

security. Lack of understanding this basic principle has led to India being a food exporting nation with one in two of its children being malnourished and over half its population living in poverty. This model is replicated from health to education, knowledge, technology to water, land, air and forests.

Property is not the natural state and despite the attempts to normalise it as the ‘natural order’ (just as race and gender were not too long ago), the commons remains an extremely vibrant contributor to global health. The state is for the defence of property, and all its instruments are developed for the purpose. The state has positioned itself as the only legitimate instrument for the use of force and therefore has a monopoly on legitimate violence. This violence is most often used against disarmed<sup>9</sup> peoples and communities. Disarming is both physical and ideological. Changing the nature of the state is of critical importance, and the only ‘right way’ to do it is through state sanctioned methods. This places tremendous limitations on the scope of action, but is an incentive for innovation for a task that must be done.

### **Defending the commons**

At the height of the enclosure movement in seventeenth century England, there was a popular ditty (quoted earlier by Purkayasthsa):

They hang the man, and flog the woman,  
That steals the goose from off the common;  
But let the greater villain loose,  
That steals the common from the goose.

But for the sophistication of indoctrination, subtlety of language and finesse in execution, not much has changed. The continued popularity of the verse in the twenty first century is testimony to its contemporary relevance. The socialisation process of the state is institutionalised in schools and children are brought up to believe in property as the ‘natural order’ and normative. While schooling is an essential component for the transfer of knowledge, the present school system teaches the rich to command and consume, the middle class to manage and save, and the poor to obey and sacrifice. It glorifies exploit—of natural resources and sentient beings—and is to prepare the impressionable

children for a property framework. A more egalitarian system in content and methodology in harmony with the management of commons would be required to protect the commons. A language that includes nutrition (food, water), exercise (games) and pure air—all of which require unfenced commons—in health would liberate the present health system from industry and private property. Apart from teaching the poor to sacrifice and serve and the rich to consume and command, the schools also teach individualism and competition rather than community and cooperation. It's only at school that collaboration is called cheating.<sup>10</sup> There is subtle disdain for the tradition and practices that ensure the protection and regulation in the use of the environment, or treat the environment as 'a gift from the past, to be used according to present needs and preserved for posterity' ensuring inter-generational equity.

The resistance of the commoners to privatising the commons has led to unprecedented militarisation and internal wars by states. The channels of communication and the means of production are privatised. The present systems and structures cannot be wished away. In such a scenario, for engagement with the state, even if for deconstruction and resistance, the language of property needs to be used. Using the language and instruments of property to defend the commons is a challenge. Though necessary in the short term, developing and using the language of commons is important in the long term. Continuous usage of the language of property will sap the vitality from the movement for restoration of the commons. The prolonged use of the present state institutions will result in permanent damage to the commons. The institutions and infrastructure to be developed for defending and nurturing the commons will be very different from institutional arrangements for protecting property.

To defend the commons an alliance of communities is necessary. The World Social Forum is one such being constructed at the global level. It is not monolithic and its organising principles are very different from the traditional structures. Several regional and national level bodies exist or are in the process of being created. The freecycle economy and the wiki knowledge systems see rapid growth.



It is important to note that commons is plural. There is a vast diversity within commons, their use and regulation. What we therefore inherit is a multi-verse of commons across generations: a gift from the past, to be used for present needs and preserved for posterity. Alienation is not an option. If the vocabulary—formal or colloquial, written and oral—does not support it, then the vocabulary must be grown to support it rather than restrict human endeavour due to linguistic limitations.

The key challenge of modernity to the commons is of building inclusive, equitable communities with equal access, benefits and control, capable of defending the commons. It means building inclusive and representative institutions of production, governance and distribution in a manner that encourages and embraces diversity, difference and dissent. It is relatively easy in small homogenous communities in a small, exclusive geo-political area over which it exercises sovereignty. It becomes more challenging for complex social systems as we move from the micro level towards a ‘global village’ where ‘the community’ includes the richness of diversity. It is a tall order, but well within human capacity and reach.

### **Towards a new normal**

For at least the past half century, we have seen vast surpluses in some parts of the globe coexisting with abject poverty in others. The vast butter mountains, milk lakes and fruit that were dumped into the oceans is still fresh in memory, as is the continuing practice of paying farmers to leave farmland fallow. The consequences are there for all to see: a third of the world living on the edges of survival, increasing social and political conflicts over resources, a fundamental crisis of environmental sustainability, agrarian production and livelihood. In India alone the era of economic ‘reforms’ and ‘growth’ has seen suicides of farmers at the rate of about one every 30 minutes (National Crime Records Bureau 2010), land ownership concentrated in the hands of the top 5%, and increased crime and aggression, as rest and recreation spaces are commandeered for private use.

The present crisis offers an opportunity for a radical shift, if we can move beyond the paralysis of fear and a mindset firmly stuck in an

economy of scarcity and stratification—resulting in the hoarding of everything from food to knowledge, of rats eating grain in government godowns when over half the population goes hungry and denial is based on caste, gender, language or religion. They are incongruous in the present era. These are consequences of fear, privatisation and the fencing of the commons—whether by executive fiat, parliamentary expropriation, ‘development’ imperatives or by the very character of the Indian state which, as an institution of property, only exists to further property interests. These are no longer necessary in an era of abundant resources, where a new normal is eminently possible—of cooperation of collectives engendered by the commons approach of ‘the earth has enough for everyone’s needs’. The solution lies not within the present system of privatisation nor in tinkering and inconsequential ‘reforms’, but in a new paradigm, a language of the commons.

## Endnotes

- <sup>1</sup> ‘Board’ could mean a surface (a plank of wood), group of people (a board of directors), institution (board of education) food (board and lodge), or embark (board a ship); Occupation could mean by an invading army or a job; habit could mean a dress or a repeated behavioural pattern.
- <sup>2</sup> Appropriate could mean to take away unlawfully and correct, right, suitable. Sanction means both permit (English) and prohibit (American).
- <sup>3</sup> B S Vanarajan, Manitham Trust, Tamil Nadu, India.
- <sup>4</sup> Ivan Illich ‘Silence is a commons’. The CoEvolution Quarterly, Winter 1983, [http://ournature.org/~novembre/illich/1983\\_silence\\_commons.html](http://ournature.org/~novembre/illich/1983_silence_commons.html) (accessed September 2010)
- <sup>5</sup> The OXFAM handbook of development and relief, vol 1, p204, OXFAM 1995
- <sup>6</sup> Summed up wryly by Publius Ovidius Naso (Ovid) in the first century BC: *Treason doth never prosper: what’s the reason? Why if it prosper, none dare call it treason.* If treason succeeds, it becomes the law and the traitor becomes king.
- <sup>7</sup> Gram = village, panchayat=council.
- <sup>8</sup> Sabha = assembly.
- <sup>9</sup> We use the word ‘disarmed’ rather than ‘unarmed’ since disarmed more accurately describes the active, deliberate and conscious role of the state in removing the right and ability of the people to defend themselves.
- <sup>10</sup> Walter Bender, [sugarlabs.org](http://www.jnd.org). See also Don Norman in [jnd.org](http://www.jnd.org) *In defense of cheating* ‘in many ways, the behavior we call cheating in schools is exactly the behavior we desire in the real world.’ ([http://www.jnd.org/dn.mss/in\\_defense\\_of\\_cheating.html](http://www.jnd.org/dn.mss/in_defense_of_cheating.html))



Sasi

## Let's talk commons...

---

Anita Cheria & Edwin

**T**racing the vocabulary of commons has been an exercise in listing, analysing and drawing attention to the changing relationships between commoners and commons, the destruction of traditional commons on one hand and the growth of new commons on the other. It was interesting to analyse the use of the word 'commons', the language and culture it came from, where the commons were invaded and captured by the state displacing the commoners and their communities. The physical commons which form the basis and sustenance of communities have seen drastic degrading. Even with sustained attack and enclosure over centuries, they still provide the majority of the world's life with their sustenance.

The commons created and defined by each community is different. Those who live off others, for example imperialist powers and large corporations, create a 'commons' based on exploitation. Indigenous communities on the other hand live on a principal of minimising physical needs with the least generation of waste and stockpiling. Creating commons is the first step to building communities and also the first step in resolving conflicts between peoples, communities, regions and nations. From a single cell, to the human body, the rivers and hills, everything has spaces to interface with its environment. Without this kind of an interface most life forms cannot exist, let alone grow and flourish.

There are new and emerging commons in the Indian context in a series of policy changes that have come as a response to community struggles for survival and dignity. They are an attempt to recognise and ensure certain basic rights for marginalised communities as well as more responsive state functioning. The Right to Information Act 2005, which provides transparency in the use of public resources, the National Rural Employment Guarantee Act 2005, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, recognising the rights of the forest communities over forests, and the Right to Education Act 2010 which provides for free and compulsory education to all children aged six to fourteen form a strong foundation for the new commons. These new commons

are quite distinct from the digital commons which occupies the 'new commons' space in the commons discourse.

The digital commons has been a vehicle of exponential growth in the creation and commoning of knowledge. It has created a platform for participation, sharing and commoning of information in a scale unheard of before. This has been possible due to extensive networking and the capacity of digital commons to constantly upgrade technologies for extensive use. The digital commons have redefined the word 'community' itself. The number of virtual 'communities' today outnumbers the real. The globalised world with its modern technology has thus carved the space for a new generation of commons and communities. The distance between the real and virtual communities is also changing and dynamic. In many cases there is a growing synergy and at times even an overlap between real and virtual communities, with many virtual communities created to support the real ones and vice versa. What distinguishes the popular 'new commons', the digital commons of the techno-savvy, from the natural physical commons preserved largely by indigenous communities is its dependence on a technology that is polluting both by its intrinsic character and scale of its use. Therefore the purpose of this technology and its use must constantly be monitored to ensure that it is truly inclusive and commoning and not disregard the digital divide nor be oblivious of the dangers of illusionary instant gratification.

The millennium has brought with it several opportunities to move beyond the old frameworks of fear and scarcity. The explosion in information and technology and the demographic shift places the present time at an exciting crossroad of human history where we live in a world of plenty, with the means to ensure that all have sufficient resources to live with dignity. We have the knowledge and means to use fewer resources to provide better services to more people at less cost.

Strengthening commons institutions lie at the centre of any political and ecological solutions. Traditional institutional mechanisms and practices provide a starting point but a communitarian solution should be developed based on the contemporary situation. New commons are constantly emerging which need to be recognised and promoted. These need to be developed at many spaces, in micro level village communities, at the meso- and macro-scale. Building equitable, inclusive communities ensures that all are a part of the commons. There is a perceptible

and progressive trend in creating new commons for women and other excluded sections. We now have laws and policies to promote and ensure their survival, personal growth, social and economic independence and political leadership. All these welcome and include the previously excluded as true citizens in the commons.

In this world of abundance, it is possible to have a paradigm of cooperation rather than competition, of sharing rather than hoarding. Commoning offers simple ways of solving the complex needs of survival. If certain ground rules are followed, it provides the resource base for multiple users with multiple needs to draw from it at sustainable levels. The commons make for economies of scale that find an organic balance between consumption and production cycles of multiple users, in a scale that no enclosed resource or space can match. It does away with the need for intrinsically unproductive phases of the economy. The users of commons could be diverse, since natural commons are naturally complex. It can support a complex user base of non competing users, whose use patterns often are symbiotic and complement the sustenance of a natural ecosystem.

This book is not about commons as an ancient culture to be preserved and promoted as a stagnant tradition or a set of rituals. It is an attempt to understand, recognise and acknowledge the commons for its true worth and complexities. It is to help develop a commons culture that is dynamic, taking the best from the commons cultures across time and space, developing them to suit our needs as an 'earth community'.

Changing the vocabulary alone will not suffice, but it is a start. Change of power relations is the true benchmark of success. We will need to understand the paradigm of nature as commons in contrast to nature as property, the crucial distinction of nature as source and nature as resource and the vital contradiction of nature as life and nature as commodity. And build our capacity to defend the commons.

Collaboration and commons are the way to the future. It is not even a matter of if or when. The change is already underway

The law still hangs the man or woman  
Who stop those who steal the goose, from off the common  
They can and do, take a lot of flak,  
Yet they will go and take it back.

WHAT A BEAUTIFUL RIVER!!  
WE CAN CONSTRUCT A BIG DAM HERE!



AND THIS IS CALLED BIO-DIVERSITY!  
IDEAL PLACE FOR ECO-TOURISM!!



LOOK AT THIS MAGNIFICENT TREE!!  
DO YOU KNOW THE PRICE OF TIMBER  
THESE DAYS?



...IF ONLY THE ADVISASIS  
ALLOW US TO DEVELOP!!



# POSTER MAGAZINE

SERIES NO.1 - 1997

INSAP  
C-1,SHIVDIAM, 62 LINK ROAD, MALAD (WEST), MUMBAI 400064.

Printed at: Omega Offset, Newada Colony, Thane, Dist. - 401103. Tel.: 424141, 138073-97

## Contributors

Anungla **Aier** (anunglaaier@gmail.com), Associate professor of Anthropology in Kohima Science College Kohima, Nagaland, Formerly worked as Director of Women's Studies Centre in Nagaland University, Kohima. She has been actively working among the tribes of Nagaland for many years. Her main research areas are in the fields of folklore, cultural analysis, customary laws and gender relations among the Nagas. She has also worked in the area of indigenous knowledge and crafts of some tribes of Nagaland.

Gomathy **Balasubramanian** (gomathynb@gmail.com) is an Assistant Professor at the Tata Institute of Social Sciences. She has been an Independent Researcher at the International Collective for the Support of Fishworkers, ATREE, FLAME-TAO Knoware Pvt. Ltd and ActionAid Asia, Programme Manager at Junior Achievement India, Learning Historian at Bhavishya Alliance and Change Management Consultant at Oxfam India.

Ritajyoti **Bandyopadhyay** (ritajyoti1981@yahoo.com) is a Urban Historian who studied in Jadavpur University, Centre for Studies in Social Sciences, Kolkatta, El Colegio de Mexico, Mexico and University of California, Berkeley. He is currently associated with the National Institute of Advanced Studies, Bengaluru. He has worked on urban activism, urban space and urban retail. His work has been published in journals like Dialectical Anthropology, Sociological Research Online, Estudios de Asia y Africa and Economic and Political Weekly.

Dr Solomon **Benjamin** (Solly.benjamin@gmail.com) is an Associate Professor at the National Institute of Advanced Studies (NIAS) and co-chairs their Urban Research and Policy Program (URPP). Benjamin's research over the last decade looks at cities and towns under globalisation, issues of urban poverty, politics and economy and a particular interest in land development. His recent work looks at Indian and Chinese urbanism, while at NIAS he coordinates a research on Bengaluru's wetlands, their local governance and economy.

Dr Gita **Bharali** (gitabharali09@gmail.com) is Director of Research, North Eastern Social Research Centre, Guwahati, Assam, India.

Mihir R **Bhatt** (mihir@aidmi.org) works on community based disaster risk management research and pilots in six states of India with All India Disaster Mitigation Institute (aidmi.org) since 1995. Currently he is reviewing UNDP's contribution to disaster preparedness and recovery.

Anita **Cheria** (office@openspace.org.in) Director, OpenSpace Bengaluru. Is a writer-activist, working on issues of human rights and development.



Dr. Hrangthan **Chhungi** (chhungiecc@gmail.com) Executive Secretary, Commission on Tribal and Adivasi, National Council of Churches in India (NCCI); Executive Member as Honorary Treasurer of the Society for Biblical Studies of India (SBSI); A Biblical theologian and Church leader with concern for the uplift and empowerment of the tribals, Dalits, women and those who are socially ostracised and oppressed.

Ashok **Chowdhury** (ashok.chowdhury@gmail.com) is a veteran in the field of social development, involved in unorganized sector labour movements and organizing forest workers. In the 1980s he initiated the forest workers cooperative along the Shivalik ranges, off Sahranpur in UP. In the 1990s he was key member in the foundation and formation of the National Centre for Labour. He is the founding member of the National Forum of Forest People and Forest Dwellers. With the Uttar Pradesh land rights network since 1997; Vice president of the New Trade Union Initiative (NTUI) since inception in 2001; Participated in the formation of Sangarsh since 2007 a common platform for campaigns working on community rights over common resources.

**Edwin** (office@openspace.org.in) Director, OpenSpace Bengaluru. Is a writer, working on issues of human rights and development.

Dr Walter **Fernandes** (walter.nesrc@gmail.com) is Director, North Eastern Social Research Centre, Guwahati, Assam, India.

Enakshi **Ganguly Thukral** (enakshi.ganguly@gmail.com) is the Founder and Co-director of HAQ Centre for Child Rights. She is a development researcher and a human rights activist having worked on socio-legal issues related to development related to displacement, women and children.

Venkatesh **Hariharan** (venkyh@gmail.com) has been involved with open source software since 1999 when he co-founded IndiaLinux.org, a non-profit that localised Linux and related software to the Hindi language. He maintains a blog on open source and open standards at [www.osindia.blogspot.com](http://www.osindia.blogspot.com). Hariharan is a former Executive Editor of Express Computer and the first Indian to be selected for the prestigious Knight Science Journalism Fellowship (1998-99) at Massachusetts Institute of Technology. At Express Computer, Hariharan interviewed some of the leading figures in the world of technology including Microsoft's Bill Gates, John Gage of Sun Microsystems and many others. He has written for leading Indian and international publications including MIT Technology Review, Upside, Slashdot, Economic Times, Times of India and many others. He currently works for a leading open source software company on public policy issues like open standards and software patents.

Dr Geeta **Lakshmi** (geetavenkatesh@yahoo.co.in) is a Ph.D in Political Science. After completing her doctorate in 2001 she has worked in couple of NGOs and Research Associate in Madras Institute of Developmental Studies from 2005 to 2009. Her area of interest is environmental issues, especially, water, coastal environment, climate change and related issues. She has authored many research papers reflecting these issues. Presently she works as a freelance researcher.

Samar Bosu **Mullick** (sanjay\_samar@hotmail.com) (also known as Sanjay) was involved in the Left political movement from 1968 to 1975; the Jharkhand separate state movement in 1976 and held a leading position till 1995; National consultant of the Indian Confederation of Indigenous and Tribal Peoples (ICITP) since its inception in 1987 till 1995. Founder member of the Jharkhand Jangal Bachao Andolan; a convener of the National Forum of the Forest People and Forest Workers (NFFPFW); Taught in Xavier Institute of Social Service, Ranchi, Jharkhand from 1986 to 2004; Senior Fellow at the Anthropological Survey of India, Eastern Region, Government of India (1991 to 1992). Head of the department of study and research with the William Carey Study and Research Centre (1986 to 2004). Presently associate director of the Bindrai Institute for Research Study and Action, Ranchi; director of Institute of Community Forest Governance, Ranchi.

C R **Neelakandan** (crneelakandan@gmail.com) has been involved in various struggles like Silent Valley, Plachimada (against Coca Cola factory), Enron (proposed at Kannur), Express Highway, Smart City, Various Hydel Projects, Mineral Sand Mining and many other small and large destructive Development projects and supports various struggle groups in forming the strategies to interact with the so called 'Main Stream'. He writes in various periodicals and dailies on LPG policies and their effects on society. Was awarded the Oorja Kerala Award for the best article in a year on the Power situation in Kerala instituted by KSEB Officers Association.(2000) and the Evurath Krishnan Nair Award for the Social Activist of the year (2003).

Roshni **Nuggehalli** (roshni.cwc@gmail.com) works with The Concerned for Working Children on issues of child rights, migrants' rights and decentralised governance. She is a member of Hasiru Usiru, a network of citizens and NGOs working on conservation of public commons, open spaces and greenery in Bengaluru.

Dr Melvil **Pereira** (melvillesj@gmail.com) is Administrator and Research Associate at North Eastern Social Research Centre, Guwahati, India.

Prabir **Purkayastha** (prabirp@gmail.com) is the President, Centre of Technology and Development; Chairperson, Knowledge Commons; Vice-President, Delhi Science Forum and a consultant on technology and research development for the power sector. He writes extensively on policy issues with regard to science, technology, power and telecommunications; regular contributions over the years to magazines and journals such as *Frontline* and *Economic and Political Weekly*; Co-author, *Uncle Sam's Nuclear Cabin* (Leftword, 2007) and *Enron Blowout: Corporate Capitalism and Theft of the Global Commons* (Leftword, 2002).

M C **Raj** (mcraj.reds@gmail.com) hails from an unseeable community in South India and has self-actualised himself as an international opinion leader through also timely external support. He has written 15 books and heads a Dalit Movement in Karnataka. He has initiated a Campaign for Electoral Reforms in India (CERI) to bring about Proportionate Electoral System and has convened the first ever Round Table of the World Parliament of Indigenous Peoples in Tumkur.

Dr Bhuvaneswari **Raman**, (raman.bhuvaneswari@gmail.com) is an independent researcher based in India. She holds a PhD in Social Policy from the London School of Economic and Political Science. Her research interests are in the areas of urban poverty, governance and property.

Kavita **Ratna** (kavitaratna@gmail.com) is the Director Communications of the Concerned for Working Children ([www.workingchild.org](http://www.workingchild.org)). For two decades she has been working on issues related to child labour, children's rights, developmental communication, civil society participation and political decentralisation.

**Roma** (romasnb@gmail.com) has been working as a social activist on the issue of forest /land /wages/gender with Dalit, Adivasi and minority sections for the last 18 years. Presently working in Uttar Pradesh, on the issue of land/forest/tribal/displacement, strengthening the local initiative, people's organisation and helping to form strong women's leadership and leadership from Dalits and tribals/Adivasi. Associated with the Uttar Pradesh Land Reform and Labour Rights Campaign Committee (UPLRCC) and New Trade Union Initiative (NTUI). Nominated as people's organisation representative in the State Level Monitoring Committee constituted under Forest Rights Act, Uttar Pradesh; Steering committee member of National Forum of Forest People and Forest Workers (NFFPFW) and Specialist Member, Joint Review Committee, constituted by MoEF and MoTa Gol on Forest Rights Act to review the implementation of the Forest Rights Act in the country.

Dr Nidhi Sadana **Sabharwal**, (nidhi@dalitstudies.org.in) currently works at the Indian Institute of Dalit Studies, New Delhi. She has a PhD from Jawaharlal Nehru University, New Delhi, with a specialisation in economic geography, and has significant experience in social development and inclusion, caste and economic discrimination, rural poverty and the incidence of child labour. She has extensive experience in data collection and analysis and in advocacy/influencing policy actions. Nidhi has published several articles on socioeconomic issues in rural India, many focusing on the vulnerable sections of society and has actively worked on key issues affecting the poor and vulnerable in India, through organisations based in India and the UK.

Dr. Suman **Sahai** (mail@genecampaign.org) has had a distinguished scientific career in the field of genetics and was honoured with the 2004 Borlaug Award for her outstanding contribution to agriculture and the environment. Dr. Sahai has served on the faculty at the Universities of Alberta and Chicago and the University of Heidelberg. She returned to India to organise the Gene Campaign, an NGO dedicated to protecting farmers' rights and food and livelihood security. She was appointed Knight of the Golden Ark (Netherlands) in 2001. She has published extensively on science policy and food security issues, Intellectual Property Rights (IPR) and Ag biotechnology, and has been working both at the grassroots and policy levels, with considerable impact. She is a member of several national policy forums on international trade, biodiversity and environment, biotechnology and bioethics, intellectual property rights and research and education. Dr Sahai chaired the Planning Commission Task Force on 'Agro biodiversity and Genetically Engineered Organisms', for the Eleventh Plan.

Prafulla **Samantara** (psamantara@rediffmail.com) has been an active participant in democratic movements since his student days. He was in the 'Total Revolution' movement led by Loknayak Jayaprakash Narayan in the 1970s and was imprisoned for one year during national emergency in 1975-77. Currently, he is the president of Lokshakti Abhiyan of Odisha, campaigning against globalisation and for alternative development. He is one of the convenors of National Alliance of Peoples' Movements. He is columnist and editing fortnightly Odiya journal 'Swabhiman'. He has written books on peoples' right over resources and displacement. Now he is actively involved in various peoples' movements against displacement in Odisha.

Kinjal **Sampat** (kinjalsampat@gmail.com) is a researcher currently working with CSTEP (Centre for Science, Technology, Environment and Policy) and on a research commissioned by the Knowledge Commission Karnataka. Her research interests are sociology of law, political economy and people's

movements in India. She has an MA (sociology) from Delhi School of Economics and has worked with Lokniti, a political think-tank at the Centre for Study of Developing Societies (CSDS) and associated with the National Alliance for People's Movements (NAPM).

K P **Sasi** (kpsasi36@gmail.com) is an award winning film director and social activist. He promotes socially relevant communication through the visual medium. Using films and documentaries, he attempts to support and strengthen struggles related to Adivasis, fisherfolk, Dalits, women, sexuality minorities and ethnic minorities, and struggles against communalism and corporate crime. He has won several awards for his documentaries, some of which are Best Documentary Award, 3rd Swaralaya International Film Festival; Best Film Award, International Rural Film Festival, France; Special Jury Prize, International Environment Film Festival, Turkey; Bronze Award, Global Video Festival, Copenhagen and Best film Award, Enfest.

Dr. Mira **Shiva** (mirashiva@gmail.com) is a physician (MD Medicine, Christian Medical College, Ludhiana) working on issues related to health. She is Coordinator, Initiative for Health Equity and Society/Third World Network, Founder Member & Steering Committee member of Diverse Women for Diversity, Peoples' Health Movement, Health Action International-Asia Pacific, South Asian Focal Point-International Peoples' Health Council. She was member Central Council for Health, Govt., Chairperson Consumer Education Taskforce on Safety of Food & Medicine (MOH), Member Health Committee National Human Rights Commission, was Member Central Ethical Committee on Biomedical Research (ICMR); Director-Women & Health, Rational Drug Policy Head Public Policy in VHA; Founder Coordinator All India Drug Action Network. She is steering Committee Member of FORCES, Right To Food Campaign, Doctors for Food & Bio-safety; She has authored, edited co-edited several books National Profile on Women Health & Development, Towards Comprehensive women's Health Policy & Programmes, Banned & Bannable Drugs, Darkness at Noon, Rational TB care, training & educational material on women's health, gender justice etc. She is recipient of Dr Olle Hansson Award 1986 for her contribution nationally & globally in rational drug use & showing moral courage, also Women Scientist Award on International Women's day from Dept of Science & Technology 2005 for her work against Misuse of Medicines & Medical Technology; Recipient of the Genova; Una donna fuori dal coro award (Genoa: A woman standing out from the Crowd) for playing 'a key role in the fight for the right to health and standing up for the weak and protecting them from the pharmaceutical lobbies'.

Deepak **Srinivasan** (deep.srin@gmail.com) Artist, media practitioner, researcher, facilitator. As researcher, artist and media practitioner Deepak

is currently a member of Maraa, a media & arts collective based in Bengaluru and faculty at Srishti School of Art, Design and Technology, Bengaluru. After a Bachelor's degree in environmental sciences and a Master's degree in neurobiology, his interests shifted to arts and education and the role of expression and art in creative human development. Since 2005, he has been training in performing arts and community theatre and has worked modestly with radio/audio media. Community art and media have become an emerging focus and through this inquiry Deepak has been trying to juxtapose the social, cultural and psychological development to better understand emerging political negotiations and identities.

Vinay **Sreenivasa** (vinay.sreenivasa@yahoo.com) is a member of Hasiru Usiru and has been part of the campaigns on road widening and metro projects. He is also a member of the Bengaluru Janara Vedike, a city wide platform which brought out a People's Manifesto for the Bruhat Bengaluru Mahanagara Palike (city corporation) elections. He also works on issues related to the digital commons.

Tom **Thomas** (tomt@praxisindia.org) has been a development worker for the past 25 years in various capacities—as a student activist, development manager, participatory practitioner/researcher/trainer. Currently based in Chennai, heading Praxis–Institute for Participatory Practices.

Dr Sukhadeo **Thorat** (thoratsukhadeo@yahoo.co.in) is Chairman, University Grants Commission and Professor of Economics, Jawaharlal Nehru University. He has a BA (Milind College of Arts, Aurangabad, Maharashtra), MA Economics (Dr Babasaheb Ambedkar Marathwada University, Aurangabad), MPhil/PhD Economics (Jawaharlal Nehru University, New Delhi) and Diploma in Economic Planning (Main School of Planning, Warsaw, Poland). His research areas include agricultural development, rural poverty, institution and economic growth, problems of marginalised groups, economics of caste system, caste discrimination and poverty. He was Director of the Indian Institute of Dalit Studies, New Delhi 2003–06 and Research Associate of International Food Policy Research Institute, Washington DC, USA, since 1992.

**Yashoda** (sanchayanele@yahoo.com) Director, Sancheya Nele an organisation working for securing human rights for Dalits in Bengaluru and the convener of Karnataka Dalit Mahilla Vedike, a network of young Dalit women leaders in Karnataka.



**FES**

FOUNDATION FOR ECOLOGICAL SECURITY

Registered under the Societies Registration Act XXI 1860, the Foundation for Ecological Security was set up in 2001 to reinforce the massive and critical task of ecological restoration in the country.

The crux of our efforts lies in locating forests and other natural resources within the prevailing economic, social and ecological dynamics in rural landscapes and in intertwining principles of conservation and local self governance for the protection of the natural surroundings and improvement in the living conditions of the poor. By working on systemic issues that can bring about a multiplier change, we strive for a future where the local communities determine and move towards desirable land use that is based on principles of conservation and social justice.

[www.fes.org.in](http://www.fes.org.in)

**Foundation for Ecological Security**

PB No. 29, Anand - 388001, Gujarat, INDIA.

Phone: +91 (2692) 261402, 261238, 261239

Fax: +91 (2692) 262087, 262196

The criticality of the commons in everyday life is often taken for granted. It needs to be better appreciated so that appropriate institutional mechanisms to ensure the health of the commons are created, and their survival ensured. The multiple crisis of the globe – agrarian, financial, social and ecological – are evidence of the neglect of the commons and the community. It is in the commons and cooperation that the way forward lies.

This book looks at the commons through the lens of those excluded, yet have some of the richest practices of cooperation and a relationship with the commons as a way of life – a relationship that the dominant society idealises, yearns for and even romanticises but is unable to practise. It provides glimpses of working practices, some popular, some dying, but all analysed for their relevance and role in sustaining the commons. These experiences are rooted in a variety of landscapes traversing through the rural, urban, indigenous, agrarian and coastal communities, and trace the shift from commons to capitalism. It also elaborates on commons of different genre from knowledge, religion and cultural commons to the natural, physical commons and built commons. These are experiences based in India but with a global relevance and a foundation that can contribute to understanding and strengthening of commons and communities.

The Initiative on Commons  
*For a common cause*

**CONCERN**  
worldwide

 **FES**  
FOUNDATION FOR ECOLOGICAL SECURITY