

Where are the Commons?

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From land to creative spaces, our commons are being fenced by encroachers and even the state

The tension between ownership to tangible and intangible property and the enjoyment of the commons by all is not a new phenomenon. Fences could not have been there when land came into existence. Fences came later, encumbrances came later and so did title deeds and *patta*. Kuthambai, one of the ancient learned Siddhars, sang songs seemingly simple but layered with philosophical and metaphysical subtexts. One goes like this: “*Vetta veli thannil meyyenrirupporkku pattayam edukkadi?* (What would the one who has realised Infinite Space do with certificates of ownership?)” He was of course singing about a different space, not about tangible property like land. Even after man felt that there was need for fences and certificates of ownership, he still recognised that some lands must be kept in common for use by all or for the sake of all. In medieval England they were called commons, a resource to be enjoyed by all. These lands and the non-arable lands were classified in Tamil as “poramboke”. The protest song “Porambokku enakku illai porambokku unakku illai porambokku oorukku porambokku bhoomikku” is about this commons and how the commons are diminishing. The words “mandai veli” and “maattuthaavani” are poignant echoes to a time when cattle had access to grazing grounds. Not now, those areas are covered by concrete structures. If we could divine the thoughts of our cattle, we would know they are wondering why their lives are protected with such violence and vehemence when all they want is grass.

Encroachment all around Shifting gear to bring the Siddhar’s query to lands on hand, how can *patta* be granted to the commons? But commons are being fenced with grim determination not just by private encroachers but even by the state with its irresistible might. The porambokesong is really a protest against the encroachment by state in the Ennore creek which must be kept in the commons. The approved coastal map of the creek shows that no development can be permitted in the water-spread area which covers about 8,000 acres. But already there are thermal plants, oil companies and other such constructions on 1,090 acres of the 8,000 acres which are protected as per the Wetlands (Conservation and Management) Rules, 2010. And helplessly we ask like Juvenal, “*Quis custodiet ipsos custodes?* (Who guards the guard?)” The rules begin with a preamble about how wetlands are a vital part of the hydrological cycle, how they are seriously threatened by landfills, and overexploitation, and how it is necessary to maintain and conserve the wetlands and aim for ecological balance consistent with the Ramsar Convention (an international treaty on wetlands signed in 1971). Oh yes. Our beaches in Chennai are open to the public, we think. But last year we read that the Chennai Corporation refused permission to underprivileged children who wanted to play a soccer tournament. This was no permanent construction or encroachment, just few hours of robust and joyous play, for children who had been practising for it. The reason given for refusal was that Olive Ridley turtles would be disturbed by this activity. The tournament was scheduled in September. It was scrapped. Experts said that Olive Ridelys would be thousands of miles away in September, so the alleged disturbance was plainly illusory. Let us now read Article 39(f) of the Constitution which directs the state to ensure that children “are given opportunities and facilities to develop in a healthy manner”. But those children, who are stuck in spirit-sapping residences, who want to spend their energy in a space that is common to all, were frustrated in their attempt. Then we have reports of growing juvenile delinquency, blind to the reality that a childhood spent without the freedom of playing in open spaces could warp the young minds. Where are the commons for our children who do not hold a *patta*, where are the *poramboke* areas open to all in the world? A creative commons In the other-worldly world of intellectual property too, shrinking open spaces harm the public well-being. Creative Commons is a concept which enables and facilitates sharing of knowledge and creativity to build a more equitable, accessible, and innovative world within the framework of law. The use of Creative Commons licence for copyright is based on a philosophy of openness and sharing and not on monetising strategies and restrictive ‘fences’. As SpicyIP, a repository on Indian intellectual property law, commented in its blog, the entire exercise of this endeavour is “to place a book in the hands of every child”. In like manner, the soccer tournament in Marina and Besant Nagar was intended to place a ball of joy in the hands of the child. The 2006 WHO Report on Intellectual Property Rights, Innovation and Public Health found that increasing IP enforcement does not necessarily increase innovation especially in developing countries where the technology expertise has still not reached the optimum level. On the other hand, it is positively detrimental because it restricts access to its consumers, the majority of whom are poor. The price stranglehold, which is the equivalent of fencing and refusing permission to play soccer, causes rippling harm. Now I come to another space where diminishing commons are positively

harmful: access to justice. Section 327 of the Criminal Procedure Code says, "The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them." The place of justice is meant to be common to all and easily accessible. This too is becoming a luxury not freely accessible, and that is not compatible with the Idea of Democracy. I will end with the story of a wise woman of Tamil Nadu as I began with a wise man. This woman is barely into her teens. She lives in a small tribal village close to Bandipur. I owe this story to Spicy IP founder Prof. Shamnad Basheer. She had created a new step in her dance. This is an extract of the dialogue between Prof. Basheer and her. "Do you know that it is something new you have created?" 'Yes.' "Do you want to be known as the one who created the step?" 'It is ok.' (She does not care either way.) "If your classmate passes it off as her innovation, would you mind?" 'No.' "Would you fight with her?" 'Why should I?' "If she had created a new step, would you pass it off as yours?" 'Why should I?' She obviously had a strong ethical core and possessed the wisdom to understand that some spaces must be common to all and unfenced —Vetta veli thannil meyyenirupporkku pattayam edukkadi. We are losing this Truth. First published by

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