



RECLAIMING THE COMMONS

Biodiversity,
Indigenous Knowledge, and the
Rights of Mother Earth

VANDANA SHIVA

Foreword by Ronnie Cummins

PRAISE FOR RECLAIMING THE COMMONS

If you ever wondered what a Saint would look like in our modern era, search no further. Vandana Shiva has emerged as one of the globe's most effective advocate for family farmers, the poor, safe, nutritious food, dignified communities, humane working conditions, democracy, and biodiversity. Her profound spiritual dimension forms the platform for her ideals, and gives her the resilience to withstand daily slanders, vilification, and censure from the global power centers. She risks her life, safety, and freedom in a fierce struggle against the Chemical Cartel; tyrannical governments and the homicidal corporations conspiring in tandem to privatize the commons, commoditize the planet, subjugate its people and to censor dissent. In her new book, *Reclaiming the Commons*, Vandana argues that “the commons,” the shared assets of community—air, water, wildlife—form a social safety net for the poor, and provide the essential foundation stone for dignified, democratized, communities. Vandana brilliantly and pragmatically lays out the philosophical and logistical underpinnings of her battle to preserve the commons as public asset, and to protect them from privatization by the wealthy, authoritarian elite.

Robert F. Kennedy, Jr.



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with the Navdanya Team

Anugrah Bhatt • Prerna Anilkumar • Neha Raj Singh

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regenerating people and planet

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DEDICATION

TO THE INDIGENOUS AND TRADITIONAL COMMUNITIES who are dependent upon biodiversity and are jointly experts in the crucial biodiversity knowledge that we need for the future of humanity and all species. Who live in the commons through commoning; who have freely shared their innovation and creativity with others; who have engaged in a struggle to protect this culture of caring, sharing, and who resist the enclosure of the biodiversity and Intellectual commons, and to our small farmers who have been seed savers, breeders, and conservers of millennia, keeping alive the Seeds of Life, the Seeds of Hope, and the Seeds of Freedom.

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To CHAKRAVARTY RAGHAVAN, editor of SUNS, earlier head of PTI, who woke me up to GATT in 1987; To Shri SP Shukla who as GATT Ambassador defended India's sovereignty, and continued to lead the People's campaign on WTO after retirement; To the late Shri Keayala who created the National working on Patent Laws and worked tirelessly with the Government and Parliament to ensure TRIPS implementation put India and her civilization values first; To the late Shri Chaturan Mishra, then Agriculture Minister, who invited me to be part of the Expert group on Plant Variety Protection and Farmers' Rights Act as a *sui generis* alternative UPOV; To Shri Suresh Prabhu who as Environment Minister, and Shri BP Singh, Secretary of Environment, invited me as an expert to draft The Biodiversity Act of India; To the late Justice Krishna Iyer who guided us at every step on earth jurisprudence and the commons; To the all-party parliamentary group who ensured that Article 3, including 3(j), clearly defined what are not inventions; and to all colleagues who have continued to defend India's sovereignty with creativity, consistency, and clarity.

This book is a product of a collective and cumulative effort.

It was first published in 1997 as *The Enclosure and Recovery of the Commons* and was used widely in the national and international debates on biodiversity and Intellectual Property Rights (IPRs). The new edition is being published in 2020. Much has happened in twenty years, many laws we were working towards to protect our biodiversity and were proposing in 1997 are now in place.

The Navdanya team has also changed over the last two decades. However, our dedication to resist the enclosures of the commons and creatively recover the commons has remained unchanged. To build and strengthen the struggle of our people to live peacefully and sustainably, with true abundance that comes from biodiversity.

*One man robbing another of food,
Can this custom last?
One man watching another suffer,
Can such life survive?
Survive before our eyes,
Survive here in our midst?
Lovely gardens, spacious fields,
Innumerable enrich this land,
Fruits and tubers, and grains in plenty,
Immeasurably it yields,
Forever and ever it yields!
(Long live Bharat Commonwealth)*

– Subramania Bharati

FOREWORD BY RONNIE CUMMINS

IT IS NO EXAGGERATION to place Vandana Shiva as one of the most important visionaries, authors, public speakers, and activists of our era. Once ‘profit at any cost’ agriculture and globalization is finally defeated, once we turn around the climate crisis and the crisis of democracy, and join hands together across borders and continents to celebrate; we need Vandana Shiva, the traditional farmers, rural villagers of India, and the indigenous world to sit at the head of the table.

I have worked with, and been inspired by, Vandana for almost three decades starting with a solidarity picket line and press event that I helped organize on October 2, 1993 (Gandhi’s birthday) in Boca Raton, Florida. Together, we protested the W.R. Grace Company’s attempt to patent India’s neem tree with a simultaneous protest against Cargill, Monsanto, and ‘Patents on Life’ in front of the Minneapolis Grain Exchange.

In October of 1994, the network that I helped coordinate, The Pure Food Campaign, joined forces with Navdanya, Vandana’s India-based organization, and activists in over two dozen nations to launch the Global Days of Action Against Genetically Engineered Foods. This was the beginning of a global grassroots movement *against* GMOs and *for* organic and regenerative agriculture that has persevered until this day, nurturing not only resistance, but a healthy and organic alternative to what Vandana aptly calls ‘the Poison Cartel’. At the close of the twentieth century, Vandana and our growing global movement helped organize the teach-ins and protests at the ‘Battle of Seattle’, successfully blocking Monsanto and the Gene Giants from extending their monopoly patents and control over seeds and agriculture across the entire world. More recently, in 2015, Vandana and I, along with a network of food and climate activists, met in Costa Rica and formed Regeneration International, dedicated to reversing global warming through regenerative food, farming, and land-use. Vandana and I currently serve together on RI’s international steering committee.

The so-called ‘Green Revolution’ of industrialized, energy and chemical-intensive agriculture, GMO foods, and seed patents have not only degraded our health, our biodiversity, our environment, and driven hundreds of millions of small farmers and rural villagers into poverty, forced migration, and desperation—they now threaten our very existence. As world scientists and our own everyday experience points out, we are facing nothing less than a climate catastrophe and a Sixth Great Extinction of biodiversity that will unravel the fragile life-support systems of our planet. Along with the continued burning fossil fuels, our current degenerative food, farming, and land-use practices are pumping billions of tons of climate-destabilizing greenhouse gases into the atmosphere and our oceans every year.

Fortunately, people all over the world are turning against the fossil fuel corporations, Bayer-Monsanto, and all the other multinational corporations and indentured politicians that threaten our well-being and the future of humankind and turning back to nature and taking back control over their health, diets, and political destinies. As we move forward out of these dark times, let’s remember and celebrate the history of our struggles for seed and food sovereignty, the preservation of indigenous knowledge, and our precious biodiversity. *Reclaiming the Commons* is a strong reminder of this history and of how the forces of life and biodiversity, inspired by Mother Earth and indigenous tradition, have managed to hold back the forces of corporate greed and monopoly control, not only in India, but at many of the front lines of grassroots struggle throughout the world. Long live Mother Earth and inspired visionaries such as Vandana Shiva!

INTRODUCTION

My Thirty-Year Journey on Biodiversity, Biopiracy and Intellectual Property

IN 1987 I WAS INVITED TO A MEETING in Bogeve, France and the United Nations in Geneva on Laws of life and emerging Biotechnologies.¹ Agrichemical corporations were present at this meeting. There, it was stated, that at the turn of the century (2000) there would be only five corporations controlling food and health, and those who would ‘win the race’ would have the largest number of mergers, acquisitions, and patents on seeds. Additionally, it was said that new biotechnologies based on recombinant DNA—which allowed moving genes across species boundaries to make GMOs—were going to be the basis of these patents on seeds.

Today, with the merger of Bayer with Monsanto, Dow with Dupont, and Syngenta with ChemChina, there are precisely three megacorporations controlling global food and health through seeds, agrichemicals, pharmaceuticals, as well as large scale biopiracy from nature and indigenous communities.

It was this very meeting in Bogeve that started me on the journey to protect biodiversity and seeds with local communities, working both with our government and parliament to evolve laws to protect biodiversity, people’s traditional knowledge, as well as protecting national sovereignty in our laws.

As a scientist I have worked for more than thirty-five years on conservation and the sustainable utilization of seeds and biodiversity, on defending Farmers’ Rights, and on IPRs related to seeds.

This book marks the long legal journey to protect our biodiversity and indigenous knowledge from the unscientific, unethical frameworks that corporations try to impose on us in order to own life on Earth and collect rents from farmers as seed royalties. I felt then, and feel even now,

that the claim that Monsanto ‘invented’ the seed and has a ‘right’ to collect royalties from our farmers, and farmers all over the world, is both epistemologically and ethically wrong. Seeds are not ‘machines’ ‘invented’ by corporations. Indian laws and international laws were fortunately shaped, not by Monsanto’s bullying and false claims, but by the scientific fact that the biodiversity and living organisms are self-organized, highly complex, and constantly make and renew themselves. Indigenous communities, including traditional farmers, co-create and co-evolve biodiversity with nature. This book is about the common creativity of the earth, her biodiversity, and people’s knowledge. It is also about the scientific, legal, political and cultural struggle to defend the sovereignty of biodiversity, indigenous cultures, and national systems.

Since the beginning of this journey, I have worked with our government on the negotiations on the Convention on Biodiversity (which was signed in Rio at the Earth Summit in 1992). I have worked on TRIPS/GATT/WTO, as well as serving as an expert involved in drafting India’s Plant Variety Protection, Farmers’ Rights Acts, and the National Biodiversity Act. I have also worked closely with the National Working group on Patent Law and the all-party group in Parliament on the Amendment of the Patent Act to implement TRIPS which resulted in Article 3(j) that excludes plants, animals, and seeds from patentability.

In addition to the work I’ve done to help protect our national sovereignty and public interests; I have also served as an expert in monitoring the epidemic of biopiracy of indigenous biodiversity and knowledge, challenging and winning cases against the biopiracy of neem and wheat in the European Patent Office. Our research on biopiracy monitoring and the resulting victories are also summarized in this book.

Further, I have intervened in the High Court Karnataka case on Monsanto’s challenge to the Seed Price Control Order of the Government, as well as the Delhi High Court case related to 3(j), whose decision Monsanto has repeatedly challenged in the Supreme Court.

Monsanto has further attempted to challenge the Competition Commission of India’s (CCI) investigation into its *prima facie* monopoly

on Bt cotton, with the false claim that it has a patent on Bt cotton. It is in cases such as this, and other such false claims in the context of the Bayer–Monsanto merger, for which I have been a representative to the CCI.²

Monsanto's refutation of article 3(j) of India's Patent Act through the commercial case no. 132/2016 was dismissed by the High Courts. Monsanto subsequently appealed to the Supreme Court to overturn the High Court ruling but failed on May 7, 2018.

Reclaiming the Commons first written in 1997 as part of the public debate taking place across the country in the context of the implementation of the Convention on Biodiversity (CBD) and the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the WTO. Its objective was to protect our sovereign rights and community rights to biodiversity in the Biodiversity Act and our Amended Patent Act.

The CBD is an international, legally binding agreement, which recognizes the sovereign rights of countries to their biological resources. It also acknowledges ecological innovation within indigenous communities. The CBD gave us an opportunity to change the regime of biopiracy at the global level and replace it with a sustainable and just system in which biodiversity, diverse knowledge systems, and the rights of communities—whose survival depends on this biodiversity and knowledge—are simultaneously protected.

Two decades ago, in the heyday of globalization, there was an attempt by global corporations and some countries representing corporate interest, to privatize and enclose our biological and intellectual commons. The expansion of 'Intellectual Property Rights' into the domain of life forms and biodiversity, and the globalization of this regime through the TRIPS Agreements of GATT/WTO, were direct attempts at the enclosure the biological and intellectual commons. We were successful in our laws to prevent these enclosures and protect our rights in our national laws, adopting the sovereign path and avoiding recolonization of our biodiversity and living wealth.

The ‘enclosure of biodiversity and biodiversity related knowledge through patents and intellectual property rights’ is the final step in the series of enclosures of the common that began with the rise of colonialism. Therefore, biodiversity and biodiversity related knowledge needs to be adequately protected in light of the continued attempt at making ‘private property’ out of long-held traditional knowledge and life forms.

Juridical innovation was required to recognize and protect biodiversity and the cultural integrity of indigenous communities from piracy and privatization, allowing them to continue to use their resources freely, as they have done since time immemorial.

The global context is driven by two forces—the commitment of the international community to protect the conditions of life on earth through the Convention on Biodiversity on the one hand, and the pressure from global corporations for limitless markets, profits, and privatization of the earth’s resources on the other.

Thus, the new context since the 1990s required that:

- Under CBD, India implemented laws to conserve biodiversity and ensure its sustainable and equitable utilization
- Under the Leipzig Global Plan of Action, India evolved and implemented laws to conserve plant genetic resources for agriculture
- India implements the TRIPS Agreement, taking into account the full range of options available

The legal changes are being made in the context of the existing reality of:

- A rich biodiversity wealth in spite of massive erosion
- A rich and ancient heritage of indigenous knowledge for the utilization of biodiversity
- An epidemic of biopiracy which includes the piracy of our biological resources and indigenous knowledge

The three most significant legal changes that have been made in Indian law to protect our biodiversity and indigenous knowledge are:

- Implementation of the Biodiversity Act 2002
- Introduction of the Plant Variety and Farmers' Rights Act 2002
- Amendments to the Indian Patents Act 1970 which was made in 2005

Within this context of existing realities and emergent challenges, over the last two decades India chose the sovereign route to implement national laws. Sovereignty over biological resources and indigenous knowledge has been recognized by the CBD, specifically in Articles 3 and 15. This recognition has changed the open access regime that was prevalent under colonial systems in which Third World genetic resources were treated as the 'common heritage of mankind' available to use freely, while plant varieties and products developed from this rich biodiversity were treated as intellectual property of northern corporations.

The Colonial Option

Treats indigenous knowledge and Third World biodiversity as open access systems and 'common heritage of mankind.' But the products developed from this knowledge and biodiversity require intellectual property protection.

Adopts western style IPR systems blindly and makes the protection of private property in life forms the only objective of the legal systems, thus promoting the monopoly of TNCs over knowledge and biodiversity.

The Sovereign Option

Recognizes the sovereign rights over the biological and intellectual heritage. Therefore, evolves a jurisprudence and legal framework appropriate to the protection of our biological and cultural diversity and the

protection of biological and intellectual commons; and creates the balance of public and private interest as the main objective of our legal system.

The recovery of the commons is different from the open access system of 'common heritage of mankind.' Commons are based on community control and community management and are not open access systems. In fact, community control over common resources is the only real mechanism for ensuring sovereign control over natural resources.

Again, India chose the sovereign issue to frame her laws to implement CBD and the TRIPS Agreement. However, the forces that wanted to use both CBD and TRIPS to colonize our biological and intellectual heritage by having unregulated access to our rich biodiversity, taking patents on biodiversity, living resources and seeds, are still trying to undermine the legal framework we have evolved. Both the colonial option as well as the sovereign option recognize the value of biodiversity and the value of indigenous knowledge systems. However, they differ in the fact that in the colonial option, India's biological and intellectual heritage will not serve the economic interests of India's people as it is based on corporate values. In the sovereign option, the biodiversity and knowledge that has evolved in India will continue to meet the economic needs of India's people, and continue to evolve on the basis of the value on which it has been sustained over centuries.

The sovereign option and colonial option emerge from two different paradigms and worldviews, leading to two conflicting ownership systems: an age-old system based on community rights, still the dominant one in rural and indigenous communities, combined with national sovereignty, and the ownership system of corporate defined IPRs based on individual private property and enclosures of the commons. The sovereign option in the context of traditional knowledge and biodiversity requires the reinvention of sovereignty to be centered on people since local communities are the conservers of both the resources and knowledge.

The reinvention of sovereignty has to be based on the reinvention of the state so that the state becomes a partner of the people and is thus not reduced to a corporate state. Sovereignty cannot only reside in the

centralized state structures, nor does it disappear when the protective functions of the state, with respect to its people, start to wither away. The partnership for national sovereignty needs empowered communities which assign and set the duties and obligations on which the state structures itself. On the other hand, TNCs and international agencies promote not only the separation of community interests from state interest, but also the fragmentation and divisiveness of communities.

The sovereign option adopted by India for its legal systems for biodiversity, conservation, and protection of traditional knowledge, recognize the sovereign rights of the country as well as the rights of communities, and not merely the rights of corporations. In the IPRs context, we have evolved articles that recognize real inventions and do not reward biopiracy and patents of living resources which are not inventions.

As we look back over the last thirty years, we feel grateful that we have been of service to the earth, our country, our farmers, and our tribals. We feel satisfied that the laws we were struggling to put in place when we first wrote *The Enclosure and Recovery of the Commons* are now the law of the land. I was personally part of the expert groups that drafted our Biodiversity Act, our Plant Variety Protection and Farmers' Rights Act, and our Tribals, and Forests Dwellers Rights Act.

Today, there is a renewed attempt by the privateers to own life on earth by eroding the sovereign laws of India. The arguments they use are the same tired arguments of two decades ago—of presenting biopiracy as 'invention,' with the assumption of colonial superiority. We are therefore bringing out a new edition, highlighting the uniqueness of India's biodiversity related laws to protect our unique natural heritage, our civilization, revisiting the timeless debates about the commons and their enclosures, sovereignty vs colonialism, and sustainability vs non-sustainability.

As the 'miracle' of globalization and of new GMO technologies fades, the limits of the greed driven global market and the mechanistic paradigm of the dominant stream of Western corporate science are recognized, the potential of biodiversity, biodiversity-based knowledge

systems, and of biodiversity-based economies to the common good become signposts for the future.

Reclaiming the Commons is about the thirty-year journey on the recovery of the biological and intellectual commons. Commons for communities are not the same as the open access unregulated systems industry has been trying to create. The commons as managed by communities and defended through laws of national sovereignty are vital to protect the common good, to protect the web of life, hence protecting life itself. They are vital in protecting our humanity, and to help us remember we are part of one earth family. Especially for the two-thirds of India who live outside the livelihood provided by the state, and the market, in what is referred to as the biodiversity-based economy. The biodiversity-based economy of India represents the poorest communities in marginalized regions, their access to biodiversity and use of their indigenous knowledge and skills is their primary means of livelihood security.

Additionally, this book touches on the evolution of Navdanya's efforts in protecting our biological and intellectual commons over the last three decades, our contribution to the legal framework for the protection of biodiversity; as well as the foundation of our civilization, our culture, our economies, and our knowledge systems.

The main contributions we have made are:

- Conservation of biodiversity and creation of community seed banks to defend seed as a commons
- Strengthening of Farmers' Rights in the area of agricultural biodiversity
- Strengthening Rights of traditional medical practitioners in the area of medical plants
- Strengthening Rights of craft communities using biodiversity
- Providing alternatives to the western industrial corporate model of IPRs as experts in drafting the Biodiversity Act, the Plant Variety Protection Act, and working with Parliamentarians on amendments to the Patent Act, specially the introduction of Art 3(j)

- Monitoring cases of biopiracy, legally challenging and winning the cases of biopiracy of our neem, basmati, and wheat

The IPR system as it has evolved in western industrial societies is, in effect, a denial of the collective innovation our people that has been developed over thousands of years. The expansion of such narrowly defined IPRs to biodiversity and knowledge of its utilization results in enclosures of the biological and intellectual commons which have supported local communities and indigenous cultures over millennia. Biopiracy becomes the inevitable outcome of such a regime.

The piracy of the indigenous innovation through patents on nature and the diversion of their biological resources to global markets without regulation through laws like our Biodiversity Act have prevented the undermining of the livelihood of two-thirds of India: women, tribals, peasants, pastoralists, and fisher folk. It also threatens the biodiversity base which they have protected because their survival depends on it.

The defense of the rights of traditional communities to their biodiversity and traditional knowledge is based on recognition by the state that communities have their own rights, knowledge, and values, needing protection by the state. This recognition by the formal legal systems does not give the state the right to intrude in local biodiversity utilization patterns based on community rights, but it creates an obligation on the state to prevent external actors from “pirating local resources and indigenous knowledge, and from imposing property rights regimes that counter community rights, and cultural values.” This is precisely what our national Biodiversity Act has ensured.

This rectification is necessary because in the absence of strong community rights protection, the state is merely an instrument of the protection of foreign investment and a promoter of the predation of biodiversity and indigenous knowledge.

The implementation of the Panchayati Raj Act in scheduled areas (the provision of the Panchayats {extension to the scheduled areas} Act 1996), has already set precedent for the recognition of communities as

their own competent authority for decision making on resource use, cultural values, traditions, and community rights to common resources as the building blocks of a decentralized democracy.

Global corporations are still trying to establish an unfair regime in which biological and intellectual resources flow freely from poor countries to rich countries, without regulation, and from the poorest communities to the richest corporations. Biological resources come back in patented form resulting in a double loss for poor countries and their communities; the first through the theft of their intellectual and biological wealth, and second through royalty payments for what has been derived from their collective, cumulative innovation and biodiversity.

Two decades ago, they tried to prevent regulation for the fair, equitable, sustainable, and just use of biodiversity. Today the laws for equity and sustainability are in place both nationally and internationally. The attempt now is to dilute and subvert them. Our work today, as thirty years ago when we started Navdanya, is to protect our biodiversity, our sovereignty, our commons.

We are at a new watershed. In the 1990s we were defining a new partnership between the sovereignty of the country and the sovereignty of local communities. Today—with strong laws that exclude the false claim to invention of life forms, laws for Biodiversity Conservation, and regulation for access and benefit sharing—we can take the next quantum leap in the form of a new partnership between the creativity of nature and her diverse species, the innovation of traditional communities, and our sovereignty as a nation.

During the next thirty years of India's formal independence, it is appropriate to expand our policies to reflect our civilizational philosophy of *Vasudhaiva Kutumbkam*, that the Earth is one family, one community in diversity. Living as one family in a diverse, complex, fragile world requires the evolution of living democracies and living economies. Navdanya has catalyzed the living democracy, and living economy movement by creating community seed banks, community biodiversity registers, and local living biodiversity economies. India's true democratic spirit rests on deepening

movements for decentralized democracy throughout the country by recognizing the knowledge, innovation, and biodiversity that have evolved through community rights and community responsibility. What is more, the recognition of community rights is a precondition for both the protection of biodiversity and the protection of people's rights. This recognition is also the only means for protecting our natural wealth in the form of our biological and intellectual heritage and our national sovereignty.

Species are disappearing at more than 10,000 times the normal rate. Scientists are now talking of the sixth mass extinction, including the imminent threat to the survival of our own species. Conserving biodiversity and cultures that conserve biodiversity is not an issue we can ignore or devalue. It has become imperative to our very survival.

We dedicate this book to the human potential and human will to cultivate the possibility of a better future.

– Dr. Vandana Shiva

WHERE THE MIND IS WITHOUT FEAR . . .

Where the mind is without fear and the head is held high;

Where knowledge is free;

*Where the world has not been broken up into fragments by narrow
domestic walls;*

Where words come out from the depths of truth;

Where tireless striving stretches its arms towards perfection;

*Where the clear stream of reason has not lost, it's way into the
dreary desert sand of dead habit;*

*Where the mind is led forward by thee into ever-widening thought
and action—*

Into that heaven of freedom, my Father, let my country awake.

– Rabindranath Tagore