

CULTURAL HERITAGE AND THE COMMONS: SOME VIGNETTES

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§ Introduction

India has a rich heritage of composite culture. This is summarily recited in Article 51A(f) of the Constitution of India¹ which makes it every citizen's *fundamental duty* to value and preserve our composite culture. Thus, when Indians speak of culture, it would seem we have little choice, other than being tamely co-opted into the language of individual riches and inheritance; of (exchange) value and conservation - property.

In this article, I will examine the relevance of commons-based approaches to two kinds of crises facing our cultural heritage. First, I would look into the invisibility of cultural heritage due to loss of patronage, or irrelevance due to the evolution of new techniques or technologies. Second, I would examine the misappropriation of cultural artifacts for commercial interests, without compensation to the communities from which these artifacts are retrieved.

For each, I provide anecdotal accounts that perform the twin functions of animating each of these crises and their responses, as well as providing a tapestry view of our cultural heritage.

I would like to begin, by asserting that the term cultural heritage in this article is not limited to material culture (handicrafts, monuments and sites) but includes, equally importantly, our rich heritage of immaterial culture in the form of the performing arts or the healing arts etc. Another important non-distinction I would like to draw attention to here is that cultural heritage is not restricted to its aesthetic component such as artifacts, folklore, etc. but also to those anthropological (agricultural knowledge etc). This clarification is necessary in order to ascertain the context of this enquiry, and particularly to avoid the seductive appeal of solutions that are effective because of their subject's easy amenability to the Internet. Networks predate the Internet. I will proceed on the problematic assumption that we, in fact, have a clear notion of what constitutes our cultural heritage.

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¹ Fundamental Duties: Part IVA of the Constitution of India, <http://lawmin.nic.in/coi.htm>, (Last visited on June 18, 2008).

In the following sections I deal serially with two crises that our cultural heritage faces with the help of recorded anecdotes.

§ Invisibility/Irrelevance

Anokhi

My first anecdote relates to the revival of the traditional block printing industry in the state of Rajasthan through the efforts of a private enterprise called *Anokhi* (translated as “unique”). Started in 1970, at a time when, by the founder, Faith Singh’s own account², “*the craft was dying in the region*”, the organisation has been instrumental in its revival and prosperity in the following three decades. It is imperative to highlight *Anokhi*’s three strategic features.

First, *Anokhi* appears to be a federation of craftsmen rather than an employer itself. In the words of its founder, “*the work was decentralised as a matter of policy, interdependence and loyalty, each to the other, was an unwritten understanding between us.*”³ Elsewhere, he states that the core mode of *Anokhi* is “*the commitment to support the needs and aspirations of the craftspeople and their preferred choices for life, then use design, innovation and marketing so successfully that a steady demand for their skills is sustained from season to season.*”⁴

Second, the organisation’s continued success may be attributed to its improved marketing techniques and its adaptation to market conditions by drawing on a diverse pool of aesthetic resources.

Furthermore, the positive impact that the rejuvenation of the craft has had on the region. To quote from the words of the founder: “*Those of us who have been with the company from the beginning have witnessed its benefits: cultural pride, revitalised traditional skills, social cohesion through reducing the need to leave home for employment; the affirmation of cultural diversity and respect for cross-community productivity; the possibility to choose continuity, or change, with respect to lifestyle.*”⁵

² Faith Singh, “Anokhi”, <http://www.india-seminar.com/2005/553/553%20faith%20singh.htm>, (Last visited on June 18, 2008).

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Pochampally

Pochampally is a village in South India that is famous for its handloom industry which produces *ikat* textiles with geometrical designs. About 5,000 weavers are said to inhabit this village and depend on the industry for their livelihood. In the past, the industry has suffered due to the replication of these designs through power looms by industrialists. This has had the effect of making handlooms unfeasible as a source of income as it is more expensive to produce the textiles compared to the identical power loom products. As many as half of the weavers traditionally engaged in this craft are said to have shifted to other occupations.

One of Government's responses has been to finance the community's efforts to obtain a Geographical Indication (referred to as GI) protection for the *Pochampally Ikat* mark. An expert committee assured the weavers that their problems would vanish once they obtained GI protection, and this was undertaken with much fanfare in 2005. However, no significant improvement in the condition of the weavers appears to have resulted from this protection. One of the prime reasons for this failure, other than its irrelevance to the problem at hand, is that enforcement of this property interest is prohibitively expensive. For example, the Tea Board of India reportedly spent Rs 90 lakhs (\$200,000) in one year to prevent infringement of the *Darjeeling Tea* mark. The government however, continues to congratulate itself⁶ on the Pochampally GI registration and has been touting this as a model remedy for other beleaguered craftsmen communities.

The *Anokhi* story is special for its demonstration that diversity in the public domain rather than protection is a better guarantee for the sustenance of our cultural heritage, and that any efforts at conservation must leverage the skills and aspirations of the community of craftsmen, making them active participants in the process. This is in stark contrast to the approach of the government in the Pochampally case, which appears to proceed from a misdiagnosis of the problem afflicting the community.

What I would like to highlight with both these anecdotes is that there are indeed serious dangers of crafts dying out in India, but the intellectual property based measures that are being promoted as solutions merely ends up masking the question. By contrast, other approaches that

⁶ "Pochampally handloom cluster receives IPR protection", <http://textilescommittee.nic.in/pochampally-GI.pdf>, (Last visited on June 18, 2008).

focus on the craftsmen themselves and on cultivating the pool of artistic resources present more realistic, though more challenging, alternatives.

§ Misappropriation

Although bootlegging of ancient cultural artifacts remains a concern⁷ in India, this section deals with an altogether different kind of misappropriation – the canning of traditional knowledge into tradeable property by third parties.

To quote one example⁸, in a 2004 article Vandana Shiva describes what she terms *biopiracy of wheat* by the company Monsanto. In 2003, the European Patent Office granted Monsanto a patent on a wheat variety that was derived from native Indian wheat. Offering various sources of evidence both to establish the variety's Indian origins as well as to disprove Monsanto's stated origin-claims, Shiva concludes that "*the variety referred to as NapHal was pirated, not collected... The patent is a blatant example of biopiracy as it is tantamount to the theft of the result of endeavours in cultivation made by Indian farmers.*"

What is curious here, as Lawrence Liang has observed, is that "*it responds to a crisis of property, and seeks a strengthening of property rights within a nationalist model.*" In 2001, the Indian Parliament enacted a law titled the Protection Of Plant Varieties And Farmers' Rights Act, 2001⁹, ostensibly in order to comply with Article 27(3) of the TRIPs Agreement¹⁰ which permits *sui generis* protection for plant varieties, but also "*to recognize and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant*

⁷ Sudha Anantharaman, "Stolen artefacts, lost heritage", July 29, 2007, The Hindu, <http://www.hindu.com/mag/2007/07/29/stories/2007072950040200.htm>. (Last visited on June 18, 2008).

⁸ <http://www.zmag.org/zspace/commentaries/1921>. (Last visited on June 18, 2008).

⁹ <http://agricoop.nic.in/PPV&FR%20Act.%202001.pdf>. (Last visited on June 18, 2008).

¹⁰ Article 27(3): Patentable Subject Matter: Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
 (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement, http://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm#5, (Last visited on June 18, 2008).

varieties.” In 2006¹¹, a Plant Varieties Registry was installed as envisaged by the Act, and a period of three years was stipulated within which all existent varieties of 12 specified crops, already in the public domain would have to be registered. Effectively the portion of the public domain that is not registered within this period will be deemed to be absent.

Simultaneously, the Act preserves the rights of farmers to “*save, use, sow, re-sow, exchange, share or sell (without branding) his farm produce including seed of a variety protected under this Act*”¹². In other words, the practices that sustain the public domain have been left unharmed.

This anecdote illustrates the government’s reaction in requiring mandatory registration of public domain varieties within three years, and forces us to wonder how much of our heritage is currently being propagated by people to whom registration is at least as valuable as the practice itself. Registration of plant varieties by registration-minded Indians (as opposed to the community of cultivators) surely contributes as little to the conservation of Indian heritage as does biopiracy.

Unfortunately, Article 51A(f) with which I began this article, does not discuss *from whom* or to *what end* or *in what manner* this composite rich cultural heritage of ours is to be *preserved*.

¹¹ “Farmers and plant breeders get special registry for IPRs”, Financial Express, http://www.financialexpress.com/old/print.php?content_id=146714, (Last visited on June 18, 2008).

¹² Section 39(1) (iv)- The Protection Of Plant Varieties And Farmers' Rights Act, 2001, <http://agricoop.nic.in/PPV&FR%20Act,%202001.pdf>, (Last visited on June 18, 2008).