**Folklore, Copyright and Media: The First Page of My Field diary**

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Laura Honko (2001) narrated the story of the song ‘El Condor Pasa’ sung by Paul Simon that was later identified as a Bolivian song and how the song’s success triggered an international debate on the question of copyright and folklore. He discussed the issue of copyright to the individual performer and the role of the community. These two issues depend on context and are very complicated. In this paper I report on a research being conducted by Folklore Research Department, Gauhati University concerning issues of copyright, commodification of folklore and its use by media among the Tiwa tribe of Assam. Fieldwork will be carried out among other communities of Assam as a part of this project.

The UNESCO-WIPO model provisions for “Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions” was adopted by WIPO and UNESCO in 1982. Till date different issues like protection of traditional cultural expressions and expressions of folklore and direct involvement of the stake holder(s) for the need of legal protection of their needs have been felt. It is realized that there is a relationship between expressions of folklore and the cultural and social identity, belief, spirituality and values of the communities (WIPO Outline for intergovernmental Policy on Protection of traditional Expressions and Expressions of Folklore 2004).

In many counties of the world the issue of folklore and copyright have been publicly debated. For example, Ghana in 1970s and 1980s faced economic and legal problems when tape recording machines and videocassette recorders were used for the production of indigenous music that reached the audience in the country and abroad. “Yet the musicians, artists, producers, and others involved in the legitimate production of music — and the music industry as a whole — had never been poorer due to the impact of these new recording technologies and their encouragement of piracy” (Mould-Iddrisu 2004).

The music industry in Ghana earned a bad reputation for careless reproduction of music and genuine artists suffered. It has also been observed “At the same time, Ghanaian music suffered a reversal since the pirated foreign imported music was able to capture the market” (ibid). The issue of community /national authorship, national culture, or national creativity were at stake. Betty Mould-Iddrisu, Chief State Attorney, International Law Division, Ministry of Justice, Ghana adds “The government of Ghana, through the Copyright Office, was thus compelled to take the initiative in the fight against piracy. The Copyright Office, in close cooperation with the various organs of the music industry and with the technical cooperation of the International Federation of the Phonographic Industry (IFPI) in London and its national group in Ghana, the Association of Recording Industries of Ghana — ARIGh — instituted the “banderol” system. The system was modelled along the lines of the Portuguese system, because after Portugal introduced this system, it achieved a near-zero rate of piracy.”

The WIPO model provision was adopted in Geneva in 1982 and intergovernmental committees welcomed it. According to Section 1 of the Model Provisions certain uses of folklore for commercial purposes require authorization. “It distinguishes between cases where copies of expressions are involved and cases where copies of expressions are not necessarily involved. In the first category of cases, the acts requiring authorization are publication, reproduction and distribution; in the second category of cases, the acts requiring authorization are public recitation, public performance, and transmission by wireless means or by wire and “any other form of communication to the public.” WIPO Document Intellectual Property Protection of the Expressions of Folklore: Attempts at the International level 1989]

The Model Provisions do not hinder the use of expressions of folklore without gainful intent for legitimate purposes outside their traditional or customary context. Thus, for instance, the making of copies for the purpose of conservation, research or archiving is not hindered by the Model Provisions (WIPO Document Intellectual Property Protection of the Expressions of Folklore: Attempts at the International level 1989). According to the provision it is an offence if, in the case of public uses, expressions of folklore are distorted in any direct or indirect manner “prejudicial to the cultural interests of the community concerned.” Provisions alternatively refer to “competent authority” and “community concerned” for protection of folklore and
other related purposes. In the model provision the concept of ownership was avoided because in different countries different systems prevail. It recognizes that in some countries “expressions of folklore may be regarded as the property of the nation, while in other countries, a sense of ownership of the traditional artistic heritage may have developed in the communities concerned.” It was felt the if a community is well organised it may act as authorizing agency, the question of individual performers also came up. It was recognised that at the international level it is very difficult to go beyond recommendations. It was accepted that folklore items are subjects of a copyright-type—but sui generis— protection. However, folk art cannot enjoy indirect protection by means of “neighboring rights” or “related rights.” Nevertheless, it was felt that for some items of folklore “related rights” may be used as a means of indirect protection. It was resolved that folk tales, folk poetry, folk songs, instrumental folk music, folk dances, folk plays and similar expressions actually live in the form of regular performances. Thus, if the protection of performers is extended to the performers of such expressions of folklore—which is the case in many countries—the performances of such expressions of folklore will also enjoy protection.

The case is more complex when it comes to the protection of the rights of producers of phonograms and broadcasting organizations in respect of their phonograms and broadcasts, respectively, embodying such performances. Such a protection is indirect because what is protected is not the expressions of folklore proper. “Related rights” do not protect expressions of folklore against unauthorized performance, fixation in phonograms, reproduction, broadcasting or other communication to the public. Therefore, the Rome Phonograms and Satellites Conventions do not offer protection against national folklore being performed, recorded or broadcast by foreigners. It was reassuring to the members that when community members perform then their copyrights are protected. The issue of protecting and safeguarding folklore in the media or market has not been completely resolved. Moreover, there is a concern among many that a legal monopoly may be created through various legislations and artistic or poetic creations of communities may in the process may become equated with private ownership. These issues deserve sensitive understanding. In the WIPO document Performances and Phonograms Treaty adopted in Geneva on December 20, 1996 various aspects were included. Committees approved the idea of cooperation between WIPO and UNESCO in that field. Later, on the basis of a proposal of the Government of Thailand in the World

Forum held in Phuket from April 8 to 10, 1997 the necessity of broader examination of the intellectual property aspects for the protection of traditional knowledge, innovations and culture was stressed. These issues are also of importance in India and I discuss below some observations from my research.

Our Research Objective
We at the Folklore Research Department, Gauhati University have just initiated the process of creating a depository of folklore materials of Assam so that we can document the items, which require intellectual property rights protection, or more precisely, to initiate a discussion among the communities as to how those items could be protected from the invasion of the market. Particularly, how people could protect their rights and what is their opinion about benefit sharing. Do they consider giving prior informed consent as acceptable? Such questions are to be asked during fieldwork among different communities of Assam. We also intend to discuss the issue of authorization. For that field studies are being undertaken and review of the existing sources has been almost completed. We decided to undertake a pilot survey of one day to decide the fieldwork plan for future and sharpen the questions that we have.

The Beginning
The purpose of this visit was to identify the items of folklore that are being produced for the market. Furthermore, how performing arts, textiles and artefacts are entering media and market? We wanted to discuss with the community members and leaders what is their view about benefit sharing and community IPR. We wanted to understand how we would discuss the issues with the community members in our future extensive fieldwork? We also wanted to find out what is the viewpoint of the community about folklore in the market and what they feel about the use of their tradition by the outsiders in novel ways and in the process we wanted to learn about the cultural significance of the selected folklore items.

With the community leaders
We decided to start our work among the Tiwas whose items have been brought to media and market to a lesser degree. We wanted to start from there and then go on to work among the communities where the pervasive influence of marketing and reproducing folklore in the media has already been witnessed. We thought that on the one hand, we will be able to take the issue to the people who have been less affected and therefore, what would they feel when we discuss the issue of copyright with them and their participation in our work; on the other hand, we would learn more about dealing with a complex situation. Moreover, vested interest has not yet solidified among them.

We started early in the morning from Guwahati and our destination was Jagiroad, 75 Kilometres away from
Guwahati city, the capital of Assam. My colleagues were Dr. Anil Boro, lecturer in Folklore Research Department of the University and two members of our research team Ranga Ranjan Das and Karuna Kanta Kakati.

The Tiwa tribe live around a small town and mainly in the plains of Assam. Their main concentration is in Morigaon and Nagon districts. Earlier they were known as the Lalungs. They have very close relationship with the Karbi tribe of Assam and with Khasi and Jaintias of Meghalaya. There is a considerable intercultural relationship with the Hindu society. The Tiwas still maintain a political structure of small chiefdoms and call the chief ‘Raja’. The Tiwa territory is divided into number of such kingdoms. Rajas have some social responsibilities and enjoy certain privileges (Das and Shyamchoudhury 1973). Their population is 61,315 according to 1961 census, however the ethnic organisations of Tiwas claim that at present their population is around two hundred thousand. Most of the Tiwas have speak Assamese and according to most enthusiastic estimation of the community leaders there are 32,000 speakers of Tiwa language, while others speak Assamese.

We went to the house of Tulsi Bordoloi who was the president of the Tiwa Sahitya Sabha (literally, Tiwa Literature Society, however, in Assam community ethnic Literary Societies are modelled like the Asom Sahitya Sabha which was established in 1917 by the Assamese cultural leaders and writers for the development of language, society and for articulating the community identity). Tulsi Bordoloi also teaches history in Jagiroad college.

We discussed the issue of marketing of folklore items of the Tiwas. He said it is happening at a much smaller scale as compared to other tribal groups of Assam and that he supports the idea that community should get some thing back if its items are marketed. When we asked him who should be the stakeholders - artists or those who reproduce, that is, the businessmen who take the design and style and market traditional items or the community, he replied that it should be the community. But when we asked who represents the community: political parties or cultural organizations like the Tiwa Sahitya Sabha, he asserted that latter represents the community. The question was closed ended because we are familiar with the role of the Sahitya Sabhas among the tribes of Assam. Sahitya Sabhas have become mass organizations of the communities. However, if we take a close up view there are internal differences and divisions within the societies. Notwithstanding the fact these organisations are representing the communities. He also said that prior informed consent for registration of an item for IPR protection may also be taken from the community in this way through organizations like Tiwa Shiya Sabha.

He took us to a cultural organization known as Tiwa Kristi Vikash Sangha (literally, Tiwa Cultural Development Club) that often performs in public programmes in the modern context of stage performance. They represent the community in the interethnic world of modernity where boundaries have become confusing - a predicament described poignantly by James Clifford (1988). We met an important office bearer of the organisation whose name was Nadiram Deuri. It was revealed to us they are compelled to pay bribe to perform in the audiovisual media. There are some more cultural organizations, which perform in the media, but even an organization close to Guwahati does not get their remuneration properly. In this situation the question of copyright looks like a furthest dream. Deuri showed us certain textile designs and taught us how to recognise Tiwa textile.

Tulsi Bordoloi has informed us that a woman from Guwahati came to them and showed interest in producing their textiles for a wider market. I asked them if they have cooperative societies among them as such societies can fulfil the demand and community members will be direct beneficiaries. He said no such societies have been formed yet. He took us to a museum he has developed in his college focusing the Tiwa traditions. It was gratifying for us to observe that a local college is playing a role for protection and continuity of local culture. We asked Tulsi Bordoloi to suggest a name of a village where we can go for simple observation and scouting creativity of the local Tiwas. He suggested a village about 35-40 km from Jagiroad and located in the fringe of a hill area. The Tiwas live in two habitats and usually a distinction is made in the anthropological literature between hills and plains Tiwas. The said village is situated in this sense in the geographical centre and in Bordoloi’s unstated assertion about the location being something like a cultural centre was a hidden notion: that it is in a far place ‘culture is pure’. Is this sense of purity not also a sense of hybridty? The place was far for one day’s pilot survey. We were concerned that the trip will curtail our actual time for fieldwork. We followed him although we were unsure whether we would be able to go back to Guwahati before it gets too late for us in the night.

Among the people

The village Marjong is located near the Amsoi forest, next to a road which goes to Karbi-Anglong District of Assam. Villagers can speak Tiwa language. There is a traditional community house, which in the ethnographic literature has been described as dormitory. Tulsi Bordoloi said dormitory does not convey the sense of cultural significance of the institution. It is more community-centered place and male members assemble there for festivals when they narrate their history and for many other purposes. There are wooden reliefs of female breasts now explained and narrated in an intercultural narrative related to Hindu deities Siva and Parvati. These points need more reflection and time, yet for finalising field work strategy for a project on community Intellectual Property Rights these also open our mind and show how even traditional institutions are wrongly understood. If in the marketplace or in media a replica of it is produced...
even by protecting community rights then what will be
the nomenclature in the context of cultural translation?

We realised that where there are contacts and an
identity of the fieldworker is known or a researcher is
acceptable there the data collection could be started easily
and copy book style of rapport establishment is not
necessary; general human concerns and respect for the
people is enough. Tulsi Bordloi sent us to Moheswar
Pator - a resident of the village. Pator teaches in a school
in Karbi Anglong. Luckily he was in the village, but at
the time of our sudden arrival he had gone to the market,
perhaps to spend some leisurely time with his friends
there, where people gather. I immediately went there
and met him. It was around 4 pm and he readily came
back with me to the village. He has published a book on
myths and legends connected with Tiwa festivals in
Assamese and a collection of Tiwa songs in Tiwa
language. This also showed us that as many as available
printed texts may be collected and in a single day we
collected many. The popular collections and locally
printed books are usually possible to collect in such a
visit.

There are thirty peasant households in the village
and most of the houses have corrugated iron roofs. They
consume a few varieties of rice; prepare a rice beer known
as jo. The tradition of rice beer and distilled liquors of
the people of the northeast is very rich and needs
extensive documentation, registration and promotion. We
observed their knowledge of their environment and felt
that it is our discussion about trees, hill, flood, birds
was a way to identify traditional knowledge. We made a
plan to document some of this knowledge during future
field trips in the area. We went to the community House
Samadi and started our discussion with a number of
people who gathered there. We asked them to sing some
mythological songs; the elders who knew them said they
cannot sing them just any time. This brought a question
to my mind: then how do the cultural clubs perform for
media, during Sahitya Sabha programmes, and All India
festivals in Guwahati. Even at the time of our visit a
rehearsal was going on. The two parts - elders and
younger - of the society view it differently. Cultural
capsules for the media and community context of
performance are probably two parts of a continuum. Why
and how the people like to present their item in media
and in the context of intercultural interactions? These
will be pressing questions in the coming days of our
research.

At the end of the day while coming back it got dark.
I was thinking what needed to be collected and
documented in future: local knowledge, material culture,
oral literature, and performing arts. And also understand
the important process of abridging and editing tradition
for presenting them in media. Moreover, what media
does with them and what are the feelings of community
clubs who make those performances? There is an
enthusiasm among the younger of the community
members to perform in the media and use folklore for
intercultural communication. The questions of
presenting folklore in media and community festivals
like Sahitya Sabha or Youth festivals deserve sensitive
study and participatory research.

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