
RIGHT TO CULTURE: AN OVERVIEW

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ABSTRACT

The word 'culture' is many-a-times loosely used to explain ones tradition, value system or even their clothing. Culture is an all encompassing term which one specific piece of legislation cannot contain. Culture, tradition and value system form the foundation of laws that govern us and culture finds a notable mention, either directly or indirectly in our Constitution and other intellectual property legislations.

Culture is such a curious term. What ‘culture’ means is a matter of opinion; it differs from person to person, from community to community. Ironically, It would be safe to say that the term is elusive at best especially in legal context be there is no definite legal definition for the term ‘culture’.

So, does that mean that there is no connection between law and culture? Is there no legal regime that governs culture - national or international? For that we will have to understand what culture means.

Websites like Google and Wikipedia define culture as, “the arts and other manifestations of human intellectual achievement regarded collectively”, “the ideas, customs, and social behaviour of a particular people or society”, “is an umbrella term which encompasses the social behaviour and norms found in human societies, as well as the knowledge, beliefs, arts, laws, customs, capabilities, and habits of the individuals in these groups”¹.

One of my personal favourite definitions comes from Clifford Geertz, Professor of Social Science at Princeton University; according to him, culture is simply an ensemble of stories we tell ourselves about ourselves!

But, it does not end here; culture is such a vast, inclusive term, an umbrella term as mentioned above that cannot be accurately characterised. Yet, if we were to simplify it for our understanding and compartmentalise it, it would incontrovertibly include, fine art, literature (probably in the form of scriptures, etc.), classical music and dance, cuisine, clothing, architecture and values imparted from generation to generation.

Thus, the above analysis indicates that for something to become a part of a ‘culture’ should be practiced for years and possibly passed on from generation to generation.

For something to be protected under the law, it should find a place in the Constitution. Let’s see where we find culture related articles in the Indian Constitution:

1. Article 29

Protection of interest of minorities.

¹ Sir E. B. Taylor, Primitive Cultures (1871)

Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

2. Article 30

Right of minorities to establish and administer educational institution.

All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

3. Article 49

Protection of monuments and places and objects of national importance.

It shall be the obligation of the state to protect every monument or place or object of artistic or historic interest, declared by or under law made Parliament to be of national importance, for spoliation, disfigurement, destruction, removal, disposal or export, as the case may be".

4. Article 51A

Fundamental Duties

(f) to value and preserve the rich heritage of our composite culture.

And, not to forget, the very Preamble of the Indian Constitution reiterates liberal and tolerant spirit of our nation's culture.

5. Preamble

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a sovereign socialist secular democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity: and to promote among them all Fraternity assuring the dignity of the individual and the Unity and integrity of the Nation".

To summarise the abovementioned Articles, it can be said that the framers of the Constitution wanted to earnestly support and uplift the minorities - their right to education, preservation of their language, monuments and culture. Though, I'd (probably successfully) argue that monument and language - among others - form a culture. The term "composite culture" used

in Art. 51 A (f)² (fundamental duties) is interesting because it reflects the diverse melting pot of cultures India actually is. But, what is even more interesting is the fact that culture is, in fact, nowhere defined.

Perhaps, the courts can interpret it the way it deems fit?

Let's take a look at an interesting case, famously known as the *Jallikattu case*³ where the age old practice of bull-taming after it is released into the crowd was defended under the Tamil Nadu Amendment to Prevention of Cruelty to Animals Act, 1960 and the Tamil Nadu Regulation of Jallikattu Act, 2009 as *protection of ancient culture*. This issue is, as the Supreme Court said, of seminal importance because the practices of bull-taming and bullock-cart racing go roughly 400 years back, undisputedly making it a part of 'culture'. And this was fighting against the need to protect animals and stop the cruelty against them. Of course, the Apex Court passed a fitting judgement in the favour of the petitioners (Animal Welfare Board of India) and declared that bulls cannot be used as "performing animals" for any such activities, tradition or not.

Even though in the abovementioned case animal rights won over cultural rights (and rightly so, in my opinion), the main reason to discuss this case was to highlight *how* a practice comes under the purview of 'culture'. Facts such as bull-taming being over 400 years old, being practiced as a show of reverence and to worship the bulls because they are believed to be the vehicle of Lord Shiva, in some parts this practice is also linked to marriage, and many more.

Hence, we may deduct that a practice which is centuries old, finds its place in local customs (like marriage) and is linked with a religious entity (Lord Shiva, in this case) would form the basis of culture.

We can go on dissecting 'culture' and might still not reach the end of it. Though, having listed a few things that do form a part of it, and getting the Constitutional Articles out of the way, legislations that closely affects 'culture' would be the Acts on Copyright and the Geographical Indication.

² Article 51A (f), The Constitution of India.

³ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547

The former deals with the protection given to the author of a particular creative literary, artistic, and musical work, and, most importantly, his innate moral right, i. e. his right to paternity and right to integrity for his creations.

Right to paternity means the creators right to claim authorship of his works, while the right to integrity gives the authors the right to restrain or claim damages in the event of any distortion, mutilation, modification or any other untoward act done to his work⁴.

The connection between these moral rights of authors undertake copyright act and culture might seem elusive, but it isn't. Why, you ask? Because, as mentioned earlier culture covered everything from fine arts, to literature, to classical music and dance, to ethnic clothing design and patterns. And all these creative works have an author(s); authors that need said moral rights to guarantee the perpetuity of their works, in turn guaranteeing the perpetuity of culture.

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production⁵.

The term “geographical indication” in itself explains its correlation with culture. Kolhapuri chappals from Kolhapur in Maharashtra are leather footwear and came into existence as early as the 13th century⁶ and received a GI tag in 2018⁷. This footwear, that is now worn across India and have become a fashion statement, represent the culture and pride of Kolhapuris. Revenue from the export variety is estimated to be around INR 2 crores⁸, this doesn't only indicate a great revenue made but also the proliferation of the Kolhapuri tradition.

A connection that might be rather obvious and is widely interpreted is the cultural connection to ‘freedom of speech’. Article 19, the second of the ‘golden triangle’ that are Articles 14, 19

⁴ India: Moral Rights Under Copyright Law by Senthil Kumar, 20th October, 2016 - mondaq.com

⁵ Geographical Indications - wipo.int

⁶ The History of Kolhapuri Chappal, Bhushan Kamble, 16th July, 2019 - vahaan.in

⁷ Application Details - ipindiaservices.gov.in

⁸ 6 ibid

and 21, deals with “protection of certain rights regarding freedom of speech”⁹. Article 19(1)(a)¹⁰ provides for the freedom of speech and expression. So, one is free to express their ethnicity with flare, provided their expression of the same is in consonance with the existing laws of the land.

The famous Carnatic singer T. M. Krishna recently moved the Madras High Court by challenging the new Information Technology (Guidelines For Intermediaries And Digital Media Ethics Code) Rules, 2021 (IT Rules 2021) and argued that the said Rules affect his rights as an artist and a *cultural commentator* “by both imposing a chilling effect on free speech and by impinging on my right to privacy”¹¹. This is especially interesting to note because the New IT Rules 2021 imposes the new Intermediary Guidelines and Digital Media Ethics Code wherein an intermediary (social media, OTT and other broadcasting platforms) is now supposed to take down content within 36 hours upon receiving orders from the Government. This deprives the intermediary of a fair recourse in the event that it disagrees with the Government’s order due to a strict timeline. Also, the Rules place shackles upon freedom of speech since the Government will be the ultimate adjudicator of objectionable speech online. This is where the free speech debate ensued. Corporate giants like Twitter, and news platforms like The Wire have also filed cases against the said Rules.

The question here is if culture can propagate in such tightly knit set of rules. There is a reason why freedom of speech and expression and right to culture go hand-in-hand. Such freedom gives a culture space to grow; such rules make culture fester.

Conclusively, it can be said that culture forms a large part of “self”, one’s identity. And the laws of the land govern nearly every strata of our identity. Therefore, there is an innate nexus between law and culture, and it has both - pros and cons to it. It is our job to educate ourselves and tread carefully to mitigate any adversities that might hamper the growth or the very existence of “culture”.

⁹ Article 19, The Constitution of India

¹⁰ Article 19 (1) (a), The Constitution of India

¹¹ Musician T.M. Krishna Moves Madras High Court Against IT Rules: Krishna believes the rules violate his rights as a cultural commentator and artist, 10th June, 2021 - thewire.in