



*Cultural Heritage: An urgent need for
protection and preservation*

September 2022



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PREFACE

EAC-PM is pleased to bring out a report on the subject *Cultural Heritage-An urgent need for protection and preservation*.

The report makes an attempt to address various issues associated with India's diverse and ancient composite cultural heritage. India is a unique example of a nation with a living heritage which is more than 5000 years old. A heritage so old is always threatened by the vagaries of nature and various unscrupulous elements. If not protected with all our might, they are prone to decay and destruction and theft and plunder, till the precious few are lost and forgotten in time. Therefore, an urgent need of the hour is to recognize the threats, appreciate the irreplaceable treasure and make a conscious and dedicated effort to preserve and protect, showcase and popularize- the diverse art forms, ancient monuments, sculptures, age old handicrafts, languages etc.

This report also tries to address the issue of claiming and restitution of the cultural heritage stolen in the past. It dwells on the statutory provisions and international conventions and suggests ways to mould public opinion and provide a stance in assuming a leadership role in such pursuits.

It is heartening to note that several countries in recent times have come together to agree on various conventions and agreements to support the cause of cultural heritage, but such efforts are few and far between. A need is therefore to bolster such agreements and also to re-examine the extant heritage laws of the country which may still be plagued by vestiges of past laws. This will make the laws not only contemporary and relevant, but also effective and comprehensive.

This report touches upon various aspects of cultural heritage, so that a debate can be ignited to instill a sense of urgency, responsibility and accountability among all stakeholders, to contribute towards preservation and protection of our composite cultural heritage.

This report has been prepared by Sh. Shankar Prasad Sarma, IRS currently working with EAC-PM.

Bibek Debroy
(Bibek Debroy)







CHAPTER 1

CULTURAL HERITAGE: AN URGENT NEED TO POPULARIZE AND PROTECT

1.1 Plunder of Cultural heritage- a stark reality:

Gems and wrought gold, never sold; brought for me to behold them

Tales of far magic unrolled — to me only, he told them

With the light, easy laugh of dismissal, 'twixt story and story

As a man brushes sand from his hand, or the great dismiss glory.

— From Rudyard Kipling's A Song in the Desert

1.1.1 The story behind this verse, is a heart-rending saga of India's cultural heritage being uprooted from its origins; *root, shoot and trunk*, to adorn the dining rooms and fireplaces far away. The colonial plunder of the past and the continuing steady loss of invaluable and irreplaceable treasures post-independence, has not only threatened the longevity of such treasures, but has also threatened to weaken the link of this great nation to its glorious past. Perhaps, the first line of the verse is a stark giveaway to the true history of ownership of such heritage objects exhibited in various museums of the worlds,

"Gems and wrought gold, never sold..."

1.1.2 The heritage referred to in the above verse is the "Vrindavani Vastra¹", weaved under the guidance of Mahapurush Srimanta Sankardeva of Assam, a Vaishnavite saint, revered as a reincarnation of Lord Vishnu himself. He lived in the 16th century Assam and propagated Bhakti and Vaishnavism to the entire North East. Given the ancestry of this heritage, it's not only an invaluable and irreplaceable piece of heritage but also a religious relic which is now lost to the people of the region.

¹ Art N Soul: From Assam to London—Tracing the Journey of A Vrindavan Vastra, B.N. Goswamy



Vrindavani Vastra

This piece of drape is made of the finest muga silk woven skilfully depicting the Bhagavata, the life of Sri Krishna and the Dasa Avatars of Vishnu. Google image

1.1.3 This ancient Assamese textile is over nine meters long and is the *largest* surviving example of this type of textile anywhere in the world. Given its long length, it had to be cut into several pieces for facilitating its undetected flight from India. It was first discovered in a Monastery in Tibet and was claimed to be of indigenous origins! But thankfully its real origin was deciphered by experts later. Currently in the British museum, it has been exhibited from time to time under various titles such as– ‘Krishna in the Garden of Assam: The Cultural Context of an Indian Textile’. The beauty of this textile is the intricate weaving of the images of Lord Krishna in various poses depicting the stories of the Bhagavata, the Dasa Avatars and also has a portion of a poem written by Srimanta Sankardeva himself, woven on it.

1.1.4 The plunder of Indian heritage in the colonial period, is nowhere better described, than by the following quote, attributed to Robert Clive.

An opulent city lay at my mercy; its richest bankers bid against each other for my smiles; I walked through vaults which were thrown open to me alone, piled on either hand with gold and jewels...”

— Robert Clive.

1.1.5 The quote gives away the ferocity of the loot. At this point, perhaps, another anecdote would help place things in perspective.

The Regent Diamond.
Google Image



There are several stories associated with how the famous Regent diamond (also called Pitt Diamond) was acquired. Although the authenticity of

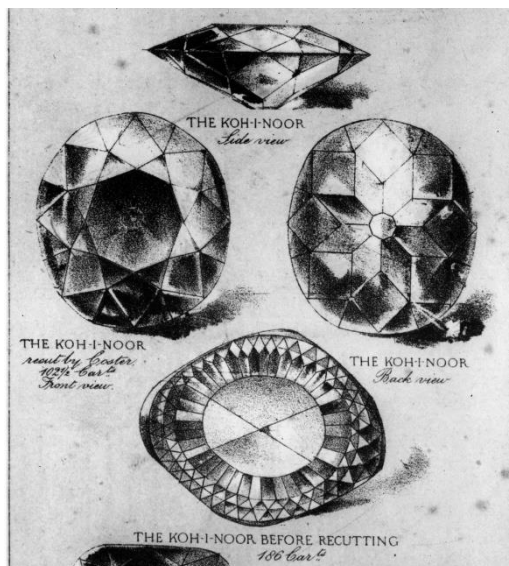


the stories is not independently verifiable, in some quarters it has been mentioned that Thomas Pitt, the then governor of Madras, “acquired” arguably the most beautiful diamond after it was gauged out of the eye socket of a temple deity and subsequently smuggled via a poor miner to evade detection². Years later, Pitt would sell this diamond to a Regent of France for a whooping £ 1, 35,000. However, *other sources mention* that the diamond was **bought** by Governor Thomas Pitt (grandfather of William Pitt) of Madras, which was then cut in London into a cushion shaped brilliant of 140.5 carats, which was reduced from its original weight of 410 carats.³ It was subsequently stolen, but resurfaced again, and presently the diamond is on display in *Louvre (France)* and is considered the ‘purest diamond’ in the world.

It is believed, that English poet and satirist, **Alexander Pope** wrote the following verse as a subtle hint to this ignominious episode in history⁴-

*"Asleep and naked as an INDIAN lay
An honest factor stole a gem away;
He pledged it to the Knight, the Knight had wit,
So kept the diamond, and the rogue was bit."*

1.1.6 Moreover, the event of acquiring the more famous, Koh-i-Noor, once the world’s largest diamond, weighing 105.6 carats (21.12 g) is also mired in contradictory claims and conjectures. In 2018, an Information officer of Archaeological Survey of India replied to an RTI query stating that the Kohinoor diamond was “surrendered” by the Maharaja of Lahore to the Queen of England and “not handed over” to the British nearly 170 years ago. However, the theory of the Kohinoor being given away by the successors of Maharajah Ranjit Singh as a compensation for help in the Sikh wars have been contested vigorously at various forums. Anita Anand, BBC broadcaster and co-author of *Koh-i-Noor: The History of the World's Most Infamous Diamond*, with William Dalrymple writes as follows⁵,



Drawings of the Koh-i-Noor diamond dating back

to circa 1860, BBC

“It was also wildly inaccurate. Maharajah Ranjit Singh, who once wore the uncut Koh-i-Noor on his bicep, died in 1839. Almost a decade later, the Koh-i-Noor was taken by the British, by force, from a frightened little boy, his son. Therefore, the diamond came to Britain thanks to dubious legality and very clear immorality.”

She also argues that, “Had the diamond truly been a gift, the Delhi Gazette, a British newspaper, would hardly have printed in May 1848:

² With Australia Returning Stolen Artefacts to India, It Is Time for Britain to Repatriate India’s Looted Heritage, Organizer, Voice of the nation

³ The Diamonds of India, Philip Scalisi Bridgewater State College, pscalisi@bridgew.edu

⁴ The Life of William Pitt, Volume 1: Earl of Chatham, By Basil Williams

⁵ Viewpoint: Koh-i-Noor - a gift at the point of a bayonet, BBC

"This famous diamond (the largest and most precious in the world) forfeited by the treachery of the sovereign at Lahore, and now under the security of British bayonets at the fortress of Goindghur, it is hoped ere long, as one of the splendid trophies of our military valour, be brought to England in attention of the glory of our arms in India"."



India has been the home of several other famous jewels. In various circumstances, a few other famous jewels like the Blue Hope, the Daria-I-Noor, the Dresden Green, the Orlov and the Nassak etc also found new owners far away from India.

The Orlov diamond is currently displayed in Moscow's Kremlin armoury. The diamond was found

in the 17th century in Golconda and initially served as an eye of a temple deity⁶ before it was gouged out and stolen. Google image



What remains now of the Cultural and sculptural heritage are the riders bereft of the majestic elephants. Google Image

Archaeological Survey of India Collections, image taken by Joseph David Beglar in the 1870s

1.1.7 Another example of lost historical treasure, which is untraceable till date, is the life-sized **black elephants of Red Fort**. In 1863, after the Sepoy Munity was well and truly over, the British found in the Red Fort of Delhi, remnants of two life size elephant statues and their riders. Experts concurred, that they were the same statues described by French traveller from the 17th Century *Francois Bernier*. The riders were none other than Jaimal Rathore and Patta Sisodia, who bravely defended the historic Chittor fort against Akbar in 1568. The majestic statues of the elephants were photographed after restoration in 1875. But now, India has the photographs only and the riders are without their rides!

1.1.8 It is not just the plunder and theft of cultural heritage that is the problem faced by the custodians. It is also the sheer neglect in preservation efforts which is eroding into oblivion the structures of the past. Despite the best efforts, a number of heritage structures do not

⁶ <https://www.britannica.com/topic/Orlov-Diamond>

come under any formal system ‘of preservation’ due to lack of infrastructure and funds.⁷ The number of such sites and monuments are aplenty, however, to make a point, a few in dire need to preservation are the following, the **Bhot Bagan Math** in Howrah, the first Tibetan monastery in the plains of India; the entire site of **Garh Panchakot**, a medieval city under **Manbhum**; Chandraketugarh, one of the early pre-historic urban coastal sites. These unprotected heritages, are not only extremely vulnerable to theft, destruction and looting but also are eroding due to their unprotected exposure to the vagaries of nature. To only reiterate, the pictures below show how vulnerable these structures are to the elements and also to unscrupulous elements who may remove any sculptures in them.

Moreover, several Centrally-protected monuments and sites, including World Heritage Sites, across the country are “under encroachment”, as also acknowledged by the relevant Departments.⁸



Garh Panchakot and Bhot Bagan Math Google Image

1.1.9 The vulnerable heritage, the unscrupulous elements, an archaic law and lack of concrete agreements with Countries and multilateral agencies has exacerbated the problem of safety and preservation of Cultural heritage manifold. It has been seen that the operational relationship of the nodal organization, the ASI, in gaining access to the databases of Interpol and others or collaboration with multinational civic bodies like the blue shield etc have been limited, if not absent, which has left the ASI high and dry in its efforts to track down stolen heritage and restitute them.



Statue of Shiva in Nataraja pose, Google Image

⁷ Working Group Report on Improving Heritage Management in India, NITI Aayog

⁸ 321 protected monuments, sites encroached upon, Rajya Sabha told, Damini Nath, The Hindu

1.1.10 Interestingly, the handful of heritage and art treasures, saved from the clutches of smugglers are showcased, in a recently inaugurated museum in Goa. In June 2022 Ministry of Finance refurbished and inaugurated *Dharohar*, a museum, on the bank of the Mandovi River in Goa, which is housed in a 400 years old historical building. The beautiful exhibits tell a poignant story of attempts made by unscrupulous elements to rob India's treasures to offer them to the highest bidders across the world. It will be intriguing to learn a bit of the histories behind the exhibits there. A few are told below.

1.1.11 A visitor to the Museum is greeted by the famous sculpture of Lord Shiva, delicately sculpted in the pose of Nataraja, in his cosmic dance. It is noteworthy that this posture of Nataraja showcases deep symbolism. Shiva performing the cosmic dance of Tandava represents his five actions, the Panchakritya- Shrishti (creation), sthiti (preservation), samhara (destruction), tirobhava (embodiment) and anugraha (salvation).⁹ This particular Nataraj sculpture belonged to a Royal family and was attempted to be smuggled out of the country in 1976 through the Dum Dum (Kolkata) Airport to USA, declaring the package as books. It was intercepted by the Customs Officials with meticulous precision, having detected the image concealed in the book case.

1.1.12 The museum also showcases the famous Amin pillars.¹⁰ They were part of the *Surajkund temple* in Amin Village near Kurukshetra, Haryana. This is the place where Abhimanyu, son of Arjun was killed. These well-preserved red sandstone pillars are dated to the Sunga period of the 2nd Century BCE. They are carved with yaksha-yakshi mithuna figures which are placed in the temple precincts as they are believed to be auspicious and symbolise fertility and abundance.

1.1.13 These two exquisite pillars were uprooted, and stolen in 1967 and transported to London. The value of the pillars, six decades ago, was estimated to be Rs. 40 Lakhs. The local police on being reported of the theft recovered the pillars and restored them to their original site. Two years later, however, Customs officials in Bombay seized a pair of pillars, identical to the Amin set, which on closer inspection were found to be fakes.

IC: CBIC

The hunt for the originals ended nine years later in London, with the help of Interpol, Scotland Yard and the CBI. At the



heart of the controversy were two brothers who had amassed a fortune dealing in antiques. The investigations indicated that they hired sculptors in Delhi to make three sets of fakes while the original antique pillars were exported illegally out of the country. The pillars were

⁹ CBIC booklet on Dharohar

¹⁰ Ibid

duly returned to India and found their new home at the National Museum in New Delhi.

1.1.14 One would also be surprised to note that even the manuscript of Ain-i-Akbari was attempted to be smuggled via Indo-Nepal border through Raxaul which is also currently in the museum.

1.2 Magnitude of Loot:

1.2.1 According to Singapore-based, Indian-origin shipping executive Sh. S. Vijay Kumar, who in his famous book “Idol Thief” narrated the life of crime of smuggler Subhash Kapoor, has estimated that at least a **thousand pieces of ancient artworks are stolen from Indian temples every year** and shipped to the international markets, with only a **meagre 5 percent** of the thefts being reported. According to him, every decade close to 10000 pieces of art if not more leave the shores of India undetected.¹¹

1.2.2 According to an audit by the Hindu Religious and Charitable Endowments Department, a Government of Tamil Nadu department, in 2018, 1,200 ancient idols were stolen between 1992 and 2017 from the temples of the southern Indian state of Tamil Nadu alone. Overall, 4,408 items were stolen from 3,676 protected monuments across India during the same period, but only 1,493 were intercepted by police. Of the remaining artefacts, around 2,913 items are feared to have been shipped to dealers and auction houses worldwide.¹² More glaringly there is an instance of **157** rare items being stolen from the heavily-guarded National Museum in New Delhi in 1968 and **1750** miniature paintings stolen from Jaipur Palace Museum. According to UNESCO, till 1989 alone, an estimated 50,000 antiques were stolen. The Noble medallion of Gurudev Rabindra Nath Tagore, stolen several years back, still remains untraceable.

1.3 Why is Cultural Heritage important?

1.3.1 Dr. A.L. Basham, in his authoritative work, "Cultural History of India", has emphasized the importance of the Indian civilization as follows,

"While there are four main cradles of civilization which, moving from East to West, are China, India, the Fertile Crescent and the Mediterranean, specially Greece and Italy, India deserves a larger share of credit because she has deeply affected the cultural life of most of Asia. She has also extended her influence, directly and indirectly, to other parts of the World."

However, before further appreciating the importance of Cultural heritage, it's important to understand what is Cultural Heritage, and why it should be preserved ...with all our might?

1.3.2 ¹³As written by Dr. Binod Bihari Satpathy, the English word '**Culture**' is derived

11 With Australia Returning Stolen Artefacts to India, It Is Time for Britain to Repatriate India's Looted Heritage, Organizer

12 India's Stolen Gods and Goddesses, Neeta Lal, The Diplomat

13 INDIAN CULTURE AND HERITAGE, Dr. Binod Bihari Satpathy

from the Latin term '*cult or cultus*' meaning tilling, or cultivating or refining and worship. In sum, it means cultivating and refining a thing to such an extent that its end product evokes our admiration and respect. This is practically the same as 'Sanskriti' of the Sanskrit language. 'Sanskriti' is derived from Sanskrit root 'Kri' meaning to do. Culture may be defined as the way an individual and especially a group live, think, feel and organize themselves, celebrate and share life.

1.3.3 He further notes that, ¹⁴Cultural development is a historical process. Our ancestors learnt many things from their predecessors. With the passage of time, they also added to it from their own experience and gave up those which they did not consider useful. We in turn have learnt many things from our ancestors. As time goes by, we continue to add new thoughts and new ideas to those already existing and sometimes we give up some which we don't consider useful any more. This is how culture is transmitted and carried forward from generation to next generation. The culture we inherit from our predecessors is called our cultural heritage.

1.3.4 Cultural heritage can be understood as:

- i. tangible cultural heritage:
- ii. immovable cultural heritage (monuments, archaeological sites, etc.)
- iii. movable cultural heritage (paintings, coins, archaeological objects, etc.)
- iv. underwater cultural heritage (shipwrecks, underwater cities, etc.)
- v. intangible cultural heritage (oral traditions, performing arts, rituals, etc.)
- vi. natural heritage (natural sites, physical, biological or geological formations, etc.).

1.3.5 UNESCO defines cultural heritage as:

a) monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features which are of outstanding value from the point of view of history, art or science;

b) groups of buildings: groups of separate or connected buildings, which because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;



c) sites: works of man or the combined works of nature and man, and areas including archaeological sites, which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view.

¹⁴ Ibid

1.3.6 ¹⁵ Indian culture is ancient. Most of the contemporary cultures and civilizations have disappeared in the sands of time. But for India cultural elements are not only visible and vibrant but also their diverse nature still permeates different groups of people as one travels across the vast landscape. The fundamental principles haven't undergone much change. One can see village panchayats, caste systems and joint family system. People not only worship the Buddha, Mahavira and Krishna but their teachings are also alive today as they may have been in the thousands of years since they lived. Some intricacies and constituents of India's rich cultural heritage like tenets of spirituality, karma, reincarnation, non-violence, truth, etc still permeate all spheres of life of an Indian.

1.3.7 Long before the renaissance of Europe, Indians have made incredible strides in science and spirituality. They have fused the knowledge of both to sculpt exquisite and impossible sculptures, meticulous in details and evocative in feelings. It can be safely noted that the history of Indian architecture and sculpture is as old as the civilization of Indus Valley. Architecture holds the key to the understanding of the cultural diversity of any part of India as it is influenced by the cultural traditions and religious practices of different times. Buddhism and Jainism helped in the development of early architectural style of India in building stupas, viharas and chaityas. The architectural evolution have been influenced by various factors as noted above, but at no time in the last five thousand years the dexterity of the skilled hands of the architects have diminished.¹⁶

1.3.8 During the time of Gupta, Pallavas and Cholas temple architecture flourished. Delhi Sultanate and Mughals brought with them Persian influence and we witness an Indo Persian style of architecture. The Britishers and other colonial powers brought the European impact on Indian architecture and effected a synthesis of those with indigenous styles and also instituted

1.3.9 Starting from the Harappa civilization, India has had a very long history of town planning, which can be traced back to 2350 B.C. Several towns came up since then. There



were 2,837 towns in 1594. By the beginning of the 20th century, Bombay (now Mumbai), Calcutta (now Kolkata) and Madras (now Chennai) had become well known important cities for administration, commerce as well as industries. Delhi became the capital of British India in 1911. However, Delhi has a history much older than that. It is believed that there are at least seven

important old cities that have come together to form Delhi. These are probably Indraprastha, Lal Kot, Mehrauli, Siri, Tughlaqabad, Firozabad and Shahjahanabad.¹⁷

¹⁵ INDIAN CULTURE AND HERITAGE, Dr. Binod Bihari Satpathy

¹⁶ INDIAN CULTURE AND HERITAGE, Dr. Binod Bihari Satpathy

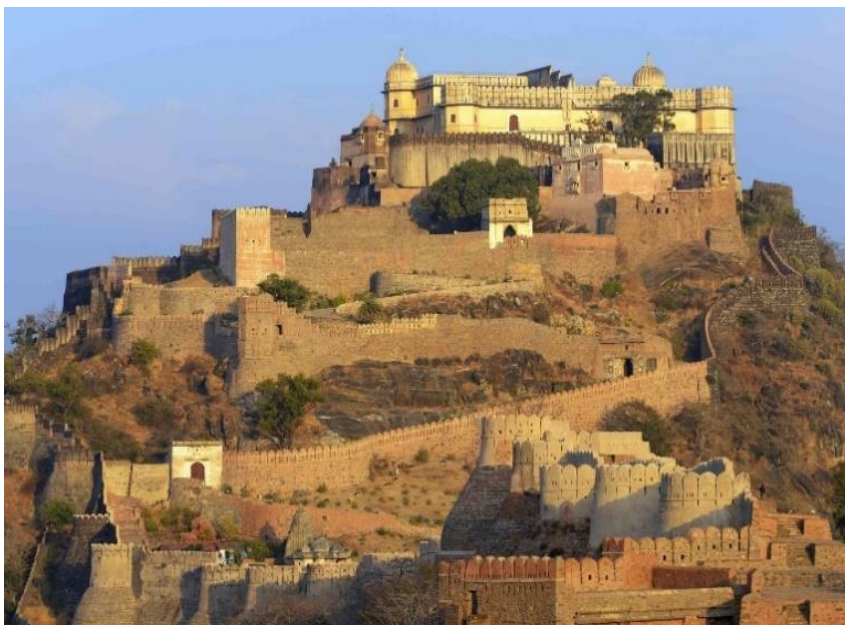
¹⁷ ibid

¹⁸1.3.10 In ancient India various school of art flourished. Most important among them are the Mauryan Art, Sunga Art, Amaravati School of Art, Gandhara School of Art and Mathura School of Art.

1.3.11 The earliest specimens of creative painting in India can be traced to the prehistoric times. References to paintings of various types and their techniques are available in both Brahminical and Buddhist literature. Buddhist rock-cut caves of Ajanta in the western Deccan are famous for their wall paintings. The Mughals began a new era in painting by synthesizing Indian painting with the Persian tradition. The Rajasthani and Pahari schools of painting have contributed significantly in the enrichment of Indian painting. The styles of painting across India are incredible. Each one has survived even after hundreds if not thousands of years of evolution.

1.3.12 Various folk-art forms like Mithila paintings (Madhubani), Kalamkari painting, Warli painting and Kalighat painting took Indian painting to new heights by adding new dimensions to it. Odisha is a land of rich and diverse artistic achievements, Odisha's art and culture are the products of a long historical process in which the spiritual, philosophical and the human dimensions have merged to yield the finest effects of a cultured and civilized life. The cultural heritage of Odisha is reflected in its vibrant art forms. Odisha has distinct tradition of painting, architecture, sculpture, handicrafts, music and dance. Odisha boasts of a long and rich cultural heritage. Due to the reigns of many different rulers in the past, the culture, arts and crafts of the state underwent many changes, imitations, assimilations and new creations, from time to time. The artistic skill of the Odishan artists is unsurpassable in the world. The important art form of Odisha includes the Patta painting, Wall painting and Palm Leaf painting traditions.¹⁹

Kumbhalgarh fort in Rajasthan



1.4 Are Indians aware of their Cultural Heritage?

1.4.1 According to a study by Mahindra holidays, a majority of Indians are ***unaware of the Country's culture, history, destination, nature and food.*** Many are unaware of the Gir being a natural habitat of the Asiatic lions and Khajuraho being in Madhya Pradesh.²⁰

¹⁸ Kalamkari and Patta paintings

¹⁹ Ibid

²⁰ Most Indians don't know much about country's history, cultural diversity, finds Survey, New Indian Express

1.4.2 The study named the Indian quotient research found that 60 percent of the respondents admitted that they didn't know much about India's history and cultural heritage.

1.4.3 As per the study, 55 percent of the respondents didn't know that Aipan is the signature folk art of Uttarakhand and 32 percent didn't know that Maharashtra is the best place to purchase Paithani saree.

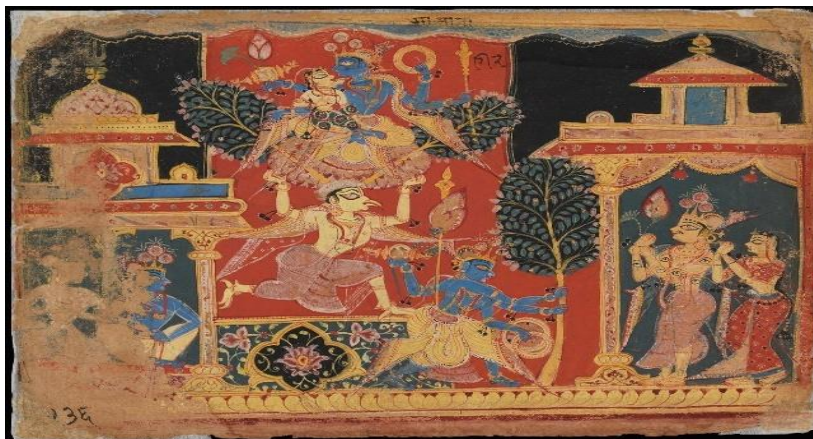
1.4.4 Nearly a third didn't know that the second longest wall in the world after the Great wall of China is the wall at Kumbhalgarh fort in Rajasthan.

1.4.5 Further a study namely, A Study of Awareness of Cultural Heritage among the Teachers at University Level published in Universal Journal of Educational Research *concluded that male and female teachers do have awareness regarding Cultural Heritage.*²¹

1.4.5 The lack of awareness of India's history and geography from Kashmir to Kanyakumari and Gujarat to Assam may be attributed to the vast diversity of India's composite culture. No other Country can leverage this potential to become the most favoured nation in terms of tourism than India. But this potential is untapped. If Indians don't know about their Country, it's understandable that the rest of the world also knows very little. It seems the time is now to spread the word aggressively to give a big boost to tourism and also encourage small artisans popularize and sell their age-old traditions across the world.

1.5 Recent initiatives to protect and popularize Cultural heritage:

1.5.1 The government has decided to set up 'Indian Institute of Heritage' at Noida to focus on conservation and research in India's rich tangible heritage. Besides improving the quality of higher education in History of Arts, Conservation, Museology, Archival Studies and



Archaeology, the institute will also provide conservation training facilities to in-service employees and the students of the Indian Institute of Heritage. The new campus of the National Museum Institute was inaugurated in 2019, adding four new courses such as,

Krishna Uprooting the Parijata Tree from a Bhagavata Purana manuscript, 1525–50, made in Delhi region or Rajasthan, India. Opaque watercolor and ink on paper, 7 1/4 × 9 1/2 in. Los Angeles County Museum of Art, from the Nasli and Alice Heeramaneck Collection, Museum Associates Purchase, M.72.1.26. Photo © Museum Associates/LACMA

Palaeography, Epigraphy and Numismatics; Structural Conservation and Cultural & Heritage Management.

²¹ Universal Journal of Educational Research 3(5): 336-344, 2015

²²1.5.2 Efforts have been made to Preserve Himalayan and Buddhist Cultural Heritage. Centre administers ‘Scheme of Financial Assistance for the Preservation and Development of Cultural Heritage of the Himalayas’ that provides 10 lakh per year to schools or colleges to study and research on Himalayan cultural heritage. The scheme also supports preservation of old manuscripts, literature, art and crafts; and also, documentation of music and dance of the region. The government also runs a ‘Scheme of Financial Assistance for the Development of Buddhist/ Tibetan Culture and Art’ to give financial assistance to the voluntary Buddhist or Tibetan organisations engaged in the propagation and scientific development of Buddhist or Tibetan culture, tradition and research in related fields.

1.5.3 The Government has also shown keen interest in creating great monuments as cultural hubs. The Hon’ble Prime Minister, Narendra Modi said, during the inauguration of the new Circuit House near Somnath Temple, Gujarat that,

“Today, the development of tourist centres is not just a part of the government scheme, but a campaign of public participation. The development of our cultural heritage is a great example,”



1.5.4 ²³The government of India has built many monuments of national Importance across the country in last few years, setting new avenues for Indian heritage and its popularity across the globe. The government built the National War Memorial in New Delhi, the Statue of Unity in Gujarat, APJ Abdul Kalam memorial in Rameswaram, etc. Similarly, the places associated with Netaji Subhash Chandra Bose and Shyamji Krishna Varma have

been given grandeur. Adivasi museums are also being built across the country to bring forth the glorious history of Indian tribal society.

1.6 Recommendations to popularize Cultural Heritage:

1.6.1 Its imperative to have a holistic dissemination of cultural and cultural heritage

²³ World Heritage Day: Government’s efforts to promote India’s rich cultural heritage, NewsOnAir



information to the Citizens. A national campaign like the Swachh Bharat Abhiyan should be started to leverage behavioral economics in changing the perception of citizens and instilling a sense of pride towards our precious composite heritage.

1.6.2 A lot of focus should be given to the indigenous forms of dance, music, painting, handicrafts etc.

1.6.3 Schools should be encouraged to expose students to different indigenous forms of art to inculcate from a very beginning knowledge and appreciation of art and to ensure a well-rounded development of a child.

1.6.4 National level, State level, District level competitions focusing on culture should be promoted regularly. Private sector can also be encouraged to promote culture through their CSR programs.

1.6.5 All districts and village should be directed to identify places and artefacts of historical importance and to suitably try to inculcate such knowledge with the local populace associating them with a sense of pride.

1.6.6 Social media and news media should be mandated, if possible, to showcase specially created videos on culture in the form of advertisement.

1.6.7 A narrative should be created to show the loss of cultural heritage so as to encourage the participation of citizens in being vigilant.

1.6.8 More platforms for showcase of art and culture like painting, dance, drama, oral traditions should be created at district, state and National levels with a linkage to monetize the artefacts so that practitioners are encouraged to pursue the art forms.

1.6.9 Artisans and artists should be incentivized to integrate their wares into the system of ecommerce platforms to reach a wider market.

1.6.10 Culture Ministry should create curated videos to showcase the menace of theft and plunder so that the common citizens are sensitized.

1.6.11 Art and culture should be popularized and supported so that practitioners have wide acceptance and respect and can leverage their talent for earning a living.

1.6.12 An intense effort should be made to identify heritage and cultural areas and nuances fit for protection under intellectual property rights.

CHAPTER 2

THEFTS OF CULTURAL HERITAGE: PREVENTION AND RESTITUTION

2.1 The scourge of thefts:

2.1.1 UNESCO started a video campaign to sensitize people on the scourge of thefts of cultural heritage with the following theme line,

"Heritage is Identity - Don't Steal It".

The world at large has taken cognizance of the issue of thefts of cultural heritage. But the issue is not just of losing identity, as it is also about losing self-respect and losing a connect with history, when objects of reverence are mercilessly mutilated to avoid detection while being smuggled, or their identities altered to preclude their owners from staking claim over them.



Photo: UNESCO

2.1.2 India has suffered over the ages, with its heritage not only plundered but also destroyed irrevocably, many a times, by foreign invaders and mercenaries. Such was the riches and such was the ferocity of the loot that the sobriquet of India being a “golden bird” or “sone ke chidiya”

is still etched onto its identity after all these years. Even after independence, the menace of theft goes on unabated. The depth and riches of its 5000-year-old civilization, scattered over its vast landmass in the form of ancient monuments, inherited objects, ancient relics and sculptures in various conditions of upkeep and safety, are vulnerable to decay due to exposure to natural elements and to theft. Among the lakhs of such heritage structures only a few thousand are being looked after by the Archaeological survey of India. Such structures

are variously under the State archaeology departments, trusts, CPWD, privately held etc. Lack of knowledge and lack of usage of technology has rendered such objects vulnerable to wear and tear and have exposed them to unscrupulous elements who want to cater such objects illegally to collectors and museums across the world.

2.1.3 In India, the spirit of antiquarianism or the quest of knowing and preserving heritage started in right earnest only in the later 19th century when it was felt that a lot of heritage objects were unaccounted for or were being looted from unprotected properties. Over the years, laws have been drafted to tackle this problem but the continued instances of theft and the ever-growing market of illegal antiques has necessitated a reassessment of the efficacy of such laws.

2.1.4 To understand the gravity of thefts some examples are worth mentioning. As recent as



August, 2022, the Tamil Nadu Idol Wing CID (Crime Investigation Department) recovered nine stolen idols from a house in Broadway in Chennai. The idols are believed to be nearly 300 years old and the police seized them after the family could not provide valid documentation for them. The house belonged to Pamela Emanuel, wife

of the late Manuel R Pineiro, who was reportedly an idol smuggler. A press release by the Idol Wing, stated that after the death of Manuel Pinerio, some of the idols he had stolen could not be smuggled abroad and were hidden away in Pamela's house. During the search, the first

idol to be recovered was one of *Dakshina Moorthy*. Eventually, eight other statues were recovered including idols of four male deities, three female deities and two sculptures on plinths of stone. Some of these statues have an extension at the bottom, which indicates that the idols may have been broken off from temple pillars.²⁴



2.1.5 As per the official website of US law enforcement agencies the idol smuggling haul of prolific smuggler Subhash Kapoor would

24 Nine sculptures worth crores recovered from deceased smuggler's house in Chennai, The news minute

25 Kalady Emerald Shivalinga, Google image

be in excess of \$100 million. He worked closely with several other Indian smugglers like Sanjeevi Asokan, who gained notoriety for stealing among others the famous Emerald Shivalingas, which however have not been traced till date.

2.1.2 To emphasize the gravity, it's reiterated again that an estimated 1,000 pieces of ancient artworks are stolen from Indian temples every year and shipped to the international market, with only 5 percent of the thefts being reported. Besides, it's estimated that every decade close to 10000 pieces of art, if not more, leave the shores of India undetected.²⁶

2.1.3 Further an audit by the Hindu Religious and Charitable Endowments Department, a Government of Tamil Nadu department, in 2018, 1,200 ancient idols were stolen between 1992 and 2017 from the temples of the southern Indian state of Tamil Nadu alone. Overall, 4,408 items were stolen from 3,676 protected monuments across India during the same period, but only 1,493 were intercepted by police. Of the remaining artefacts, around 2,913 items are feared to have been shipped to dealers and auction houses worldwide.²⁷ More glaringly there is an instance of **157** rare items being stolen from the heavily-guarded National Museum in New Delhi in 1968 and **1750** miniature paintings stolen from Jaipur Palace Museum. According to UNESCO, till 1989 alone, an estimated 50,000 antiques were stolen.

2.2 Proliferation of fakes and forged documentation:

²⁸2.2.1 Although laws are in place, but the expertise of fraudsters in creating fakes and forged documents have rendered the laws ineffective. Further, perhaps, it's time to look at the nature of certifications which has a secure and authentic way of verification from a common data



source. Examples of fakes are galore. An example that stands out in this regard is the theft of a Chola period Nataraja statue, **Sivapuram Nataraja**. In 1951 six metal antiques dating back to the 10th Century were unearthed from the field of a farmer in Sivapuram village in the Thanjavur District of Tamil Nadu. The temple authorities then sent these antiques to a sculptor for repairs. The sculptor, under the influence of two others, replaced five of these artefacts (including the Nataraja) with counterfeits and sold the originals to an art collector in Bombay. These artefacts eventually found their way out of the country. It was only in the 1960s that this deceit was discovered. In a book on early Chola bronze artefacts by Douglas E. Barrett, first published in 1965, it was claimed that the Sivapuram idols were fake. Barrett was a specialist in Indian art and looked after the antiquities from India at the British Museum. After much effort, the Nataraja

²⁶ With Australia Returning Stolen Artefacts to India, It Is Time for Britain to Repatriate India's Looted Heritage, Organizer

²⁷ India's Stolen Gods and Goddesses, Neeta Lal, The Diplomat

²⁸ Sivapuram Nataraja ,Madras musings

idol was traced to the ownership of the Norton Simon Foundation in California.

2.2.2 The Foundation had no knowledge about the theft when it purchased the idol in 1973, and had sent it to the British Museum for repairs. Here, the idol was identified and subsequently, the information reached the Indian authorities. Lawsuits were filed by the Indian authorities against the Foundation in both the United States and England in order to recover the idol. After a long-drawn legal battle, the issue was resolved and the Sivapuram Nataraja was brought back to India in 1986.²⁹

2.3 Key aspects of theft of Cultural heritage:

It's imperative to analyze step by step the ways and the modus, followed by fraudsters in stealing artefacts, to be able to address the shortcomings in laws and procedures. In this analysis the various aspects of such thefts are easily discernible,

- i. Prevalence of fakes: It is seen that antiques in the form of figurines or sculptors sold or smuggled have often been replaced with fakes in connivance with people closely associated with the objects. This is to avoid detection of the theft. By the time thefts are detected the smuggled objects would be far away or even reach their final destinations and hereinafter it will become difficult to trace them.
- ii. Untraceability: Objects stolen instantaneously become untraceable. They are misdeclared or concealed securely to siphon them away from the country. In an age of cutting-edge technology, it's difficult to comprehend that object of such rare nature cannot be geo tagged or barcoded or GPS encrypted. Since technology has empowered far less valuable goods to also be tracked, its imperative to consider such technological pivots in the case of heritage structures and artefacts also.
- iii. Prevalence of forged documents: Often, it's seen that objects smuggled out are invariably accompanied by forged or fake documents proving the provenance of such objects. It is alarming to note that there is no mechanism to cross check all such documents from a comprehensive data base. This gives the reason to have such a data base which is unfortunately nonexistent as of now.
- iv. Money and market: The flourishing trade of antiques is propelled by a booming market and the benefits appear to be much more than the costs. The antiques are worth an exorbitant price in the international markets where the buyers are private collectors and international museums. The price that a smuggler may pay, if apprehended, is a protracted legal dispute and in very few cases a small period of incarceration. But history shows that conviction and apprehension is very rare in cases of antique theft. Even period of incarceration is conspicuously less to instill any fear in the fraudsters.
- v. Lack of knowledge of enforcement agencies: It appears that the agency at the cutting edge of detection of smuggling, the Indian Customs, is woefully lacking in the knowledge of identification of antiques. They are mostly assisted by the experts of the ASI in the form of a certification. It's important to re-channel focus towards capacity building and actively profile antique smugglers by way of hundred percent examination of their export consignments.
- vi. Lack of empowered taskforce: It's seen that there is no dedicated task force or institution to lodge complaint and track and trace any event of theft.

²⁹ LOOTED, RECOVERED, AND AWAITED: STORIES OF INDIA'S STOLEN ANTIQUES, Culture Ministry, Govt. of India

- vii. Lack of SOP: Every state has different approach to dealing with thefts of antiques and there being no standard SOP all possible actions are not undertaken to make a strong case for tracking stolen antiques or staking claim in case such antiques are traced.
- viii. Non registration of antiques: It is seen that antique objects irrespective of them being in public or private possession have not been duly registered. But it's important to point out that mere registrations are also not adequate to address the issue of theft. As, along with registration it's important to have adequate identification papers along with the objects in the form of high-definition multiple photographs, 3 D scans, certificates of antiquity etc.
- ix. A grey area of age: The statutes of India provide protection for antiques. But antique classification is a dynamic process. With age and time, all objects become antiques! Most importantly, it's felt that dating antiques accurately may be a bigger challenge than it can be admitted, mostly, due to non-reliance on cutting edge technology for such process and over reliance on human discretion! In these circumstances it's imperative to have an umbrella law for all works of art which clearly lays down guidelines and mandates to harness minimum technological intervention for the purpose of identification and preservation. Its pertinent that all pieces of art of a certain vintage, including 10 to 20 years old should also be mandated to be accompanied by verifiable documents with adequate certification. The main objective is to be inclusive in the preservation and protection efforts and minimize errors of exclusion.
- x. Unregulated ancient structures and monuments: The bulk of the monuments and ancient temples are being managed by private trusts and private persons which have kept them out of the purview of audits. Lack of security also makes them vulnerable to theft and plunder.

2.4 International cooperation on restitution:



2.4.1 India is standing at a cross road in terms of claiming its stolen heritage. On the one hand history is clamouring the tragic circumstances in which its invaluable cultural heritages were stolen and on the other, the legal challenges faced in claiming them back is extremely daunting. Britain the biggest beneficiary of India's stolen heritage is the most reluctant to give up on the stolen loot. A justification that is often given is, objects that were removed from India and taken to Britain in the colonial period cannot be considered stolen or illegally exported. As India was a part of the British Empire then, the transfer of artefacts to England was only considered a matter of relocation.³⁰

2.4.2 However India is not alone. As a result of the rising and often scathing

³⁰ <https://indianculture.gov.in/stories/looted-recovered-and-awaited-stories-indias-stolen-antiques>

public opinion formed, in 1978, UNESCO had constituted the Intergovernmental Committee for Promoting the Return of Cultural Property (ICPRCP) with the purpose of encouraging discussions and agreements between countries for the restitution of such properties.



2.4.3 In spite of this some countries particularly, Britain came up with strict laws that prevented the removal of antiques and artefacts that are a part of public collections. A famous story is told of the **Sultanganj Buddha** or the Birmingham Buddha. Back in 1860s when a railway line was being constructed, in the town of Sultanganj in Bihar, labourers, working under the supervision of E.B. Harris, dug out a complete life sized bronze sculpture of Buddha.

2.4.4 It was 2.3 metres in height and weighed around 500 kg. The Buddha was found under a pile of very old mud bricks, believed to be ruins of Buddhist viharas. The statue has been broadly dated to the 6th-8th centuries and Harris was of the view that it had been

buried intentionally for safekeeping. The bronze Buddha stands tall with one hand in a posture of 'fearlessness' and the other with palm upwards, signifying a posture of giving. This statue was taken to the Birmingham Museum in 1864 with the persuasion of a former mayor of Birmingham, Samuel Thornton. Today it stands there for public viewing, as an object of awe and grandeur. The museum says that it was one of the first objects that entered the museum collections, and remains one of the most important objects on display.



2.5 Would Great Britain follow other Countries in respect of restitution?

2.5.1 Its heartening to note a recent decision of the London Museum, namely Horniman Museum that it will return 72 artefacts to Nigeria that

British troops looted in the 19th century. It's important from the point of view of restitution, as this is the first time a government-funded institution in Britain has agreed to relinquish treasures that were looted in 1897.

2.5.2 It's also important to note that this restitution was made possible by a formal request by Nigeria along with an intense shaping of public opinion to say that the artefacts were taken forcibly.

2.5.3 The British Museum Act 1963, under Section 5 provides for disposal of objects held by museums as follows,

Disposal of objects.

(1) *The Trustees of the British Museum may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collections if—*

- a) the object is a duplicate of another such object, or*
- b) the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or*
- c) in the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students:*

Provided that where an object has become vested in the Trustees by virtue of a gift or bequest the powers conferred by this subsection shall not be exercisable as respects that object in a manner inconsistent with any condition attached to the gift or bequest.

(2) *The Trustees may destroy or otherwise dispose of any object vested in them and comprised in their collections if satisfied that it has become useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organisms.*

2.5.4 On plain reading of the relevant provisions as highlighted above it appears that disposal of cultural heritage or any object can be effected by a Museums if a case can be made out that such an object is unfit to be retained by the museum. It is a matter of conjecture here, that this provision may have been applied in the case of the artefacts of Nigerian origin recently restituted by Britain!



2.5.5 It's also pertinent to mention that the law holds true for the pre 1973 period as well the period before that. A case made for the subsequent period would also hold true for the past period. When a public opinion is being shaped, India should stake its rightful claim for even the past heritages which were famously looted so that when a change of law is enacted, we should not be caught in a situation of not claiming our ancient heritage, forcibly taken, like the Benin bronzes of Nigeria.

BBC news

2.5.6 In a very recent development, a Museums in Glasgow has signed an agreement with the Indian government after a protracted series of deliberations to restitute seven stolen artefacts to India, which were stolen nearly 200 years ago. Six of the items include several



14th Century carvings and 11th Century stone door jams. They were stolen from shrines and temples in the 19th Century. The seventh object is a ceremonial sword and was stolen in 1905 from the collection of the Nizam of Hyderabad by his prime minister.

2.6 Recommendations:

2.6.1 Registration of artefacts should be made mandatory under a revamped comprehensive law, with more stringent regulation whenever artefacts are offered for sell, trade, exchange etc.

2.6.2 The definition of antiquity should be reassessed to have a more inclusive repertoire of artefacts under strict regulation.

2.6.3 There should be a robust and freely accessible database of all artefacts. All stolen artefacts should be widely published and shared with international enforcement organizations.

2.6.4 All artefacts should be accompanied by certificates of origin and antiquity (time) which should be easily verifiable from the database.

2.6.5 A dedicated taskforce should be established by each State with adequate presentation of the Centre to be a one-point interface for all crimes related to cultural heritage.

2.6.6 SOPs should be clearly and comprehensively drafted to quickly execute all relevant actions in the event of any crime.

2.6.7 There should be clear provision of absolute confiscation of artefacts which are attempted to be smuggled. The property should vest subsequently with the Government and a decision can be taken for its restoration etc.

2.6.8 Separate tribunal should be created or existing tribunals should be empowered to deal expeditiously cases related to Cultural heritage.

2.6.9 Stringent punishment should be incorporated in law for prosecution of cultural heritage related offenders as such crimes involve huge pecuniary gains and such money flowing into terrorist and other anti-national activities cannot be ruled out.

2.6.10 India should stake claim of all cultural heritage which were plundered unethically and forcefully. It's our duty as a nation to recover what was rightfully ours. Public opinion is always powerful and can even change perceptions and laws. There is no harm in diplomatically trying.

CHAPTER 3

HISTORY AND EFFICACY OF HERITAGE LAWS: A WAY FORWARD

3.1 Constitutional mandate:

3.1.1 The Indian Constitution casts a responsibility on both the Centre and the States for the preservation and protection of Ancient and Historical Monuments and Archaeological sites. As ordained in the Constitution the legal structure is enshrined in the seventh schedule as follows,

Union List (Entry 67)	State List (Entry 12)	Concurrent list (Entry 40)
Ancient and Historical Monuments and Archaeological sites and remains, declared by Parliament, by law to be of national importance.	Ancient and Historical Monuments other than those declared by Parliament to be of national importance.	Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.



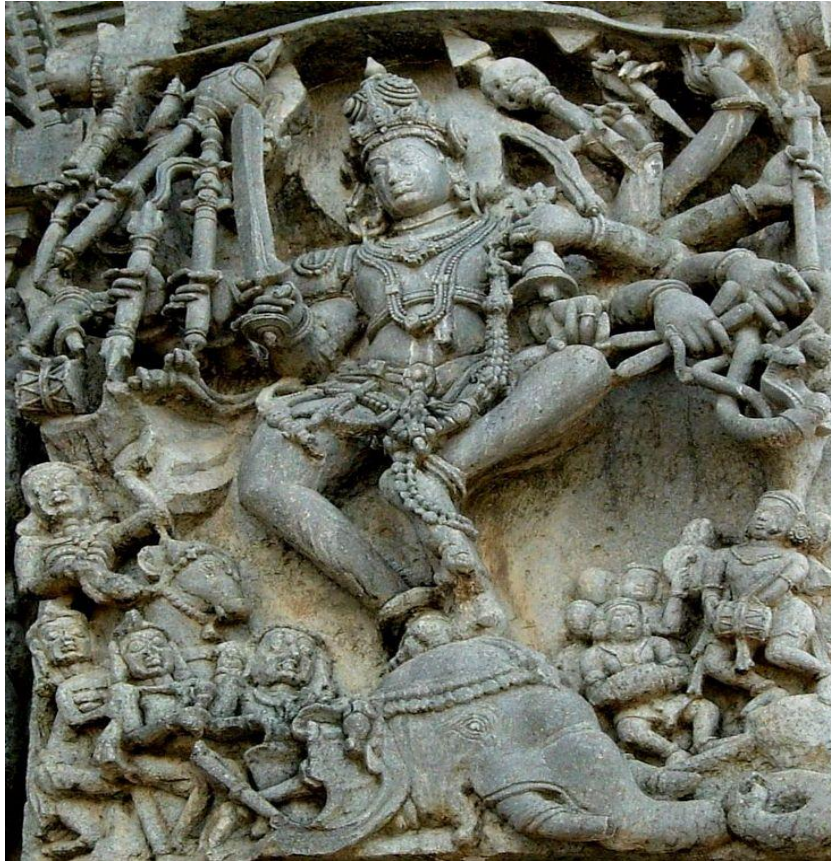
Rakhigarhi or Rakhi Garhi is a village and an archaeological site belonging to the Indus Valley civilisation in Hisar District of the northern Indian state of Haryana, situated about 150 km northwest of Delhi. It was part of the mature phase of the Indus Valley Civilisation, dating to 2600-1900 BCE. It was among the largest settlements of the ancient civilisation, though most of it remains unexcavated. The site is located in the Ghaggar-Hakra River plain

3.1.2 The Constitution of India has also provided for the protection of monuments under Article 49 of the Constitution, as follows—

'It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be

of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be'.³¹

3.1.3 The phrase, 'Under law made by Parliament' was inserted by the Constitution (Seventh Amendment Act), 1956. In the Constitutional debate leading to the drafting of this



provision, while preservation of history was deemed extremely significant in general, the only debate was on whether the parliament should have the power to make these declarations. This power was finally provided in the Constitution and subsequently this power has been expanded.

Chennakeshava Temple, Belur

3.1.4 The Constitution also casts a responsibility on Citizens as a fundamental duty under Article 51A to value and preserve the rich heritage of our composite culture,

to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures, to safeguard public property and to abjure violence.

3.2 Historical Evolution of Heritage laws- Pre Independence:

3.2.1 In India the spirit of antiquarianism was best represented by the Asiatic Society of Bengal, founded in 1784 by William Jones³². Likewise, the beginnings of systematic interest in ancient Indian monuments and sites can be traced back to the middle of the eighteenth century. With the passage of time, management and research in antiquarianism and built heritage witnessed a number of need-based initiatives.

3.2.2 At this point in time the Bengal Regulation XIX of 1810 was enacted with a view to intervene whenever any public edifice was exposed to the risk of misuse. These provisions were repeated in Madras Regulations VII of 1817. It was further strengthened by Regulations XX of 1863. However, both the Acts were silent on the buildings under private ownership. The Act XX of 1863, was therefore enacted to empower the Government to prevent injury to and preserve buildings remarkable for their antiquity or for their historical or architectural

³¹ Article 49, The Constitution of India, 1950.

³² National Mission on Monuments and Antiquities, ASI

value.

3.2.3 In 1861, the Archaeological Survey of India was established and Alexander Cunningham was made its head. He started working towards the cause of protection, preservation and conservation of built heritage and antiquarian remains of India as a mission. During this period, with promulgation of the Indian Treasure Trove Act, 1878 leading museums of India were able to acquire hordes of antiquities.

3.2.4 ³³The era of Sir John Marshall, witnessed codification of conservation manual, followed by major excavation of archaeological sites for the study of antiquarian remains. In 1900, the Government of Bengal drafted a bill, which was circulated amongst all the local officers for comments. This exercise resulted in enactment of the Ancient Monuments Preservation Act, 1904 with the aim 'to provide for the preservation of ancient monuments, for the exercise of control of over traffic in antiquities and over excavation in certain places and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical or artistic interest'. The concept of archaeological site museums was evolved during this period. This was enacted to provide for the preservation of ancient monuments and of objects of archaeological, historical or artistic interest. AMPA is applied to ancient monuments other than those of national importance. But many states have their own legislations on similar lines and in such states AMPA is either declared repealed or not applicable.

3.3 Post Independence laws:

3.3.1 Post Independence saw the promulgation of The Antiquities Export Control Act, 1947 and Rules thereto which provided a regulation over the export of antiquities under a license issued by the Director General and empowering him to decide whether any article, object or thing is or is not an antiquity for the purpose of the act and his decision was final.

3.3.2 In 1951, The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 was enacted. Consequently, all the ancient and historical monuments and archaeological sites and remains protected earlier under 'The Ancient Monuments Preservation Act, 1904 were re-declared as monuments and archaeological sites of national importance under this Act. Some more monuments and archaeological sites were also declared as of national importance under Section 126 of the States Reorganization Act, 1956.

3.3.3 In order to bring the Act at par with constitutional provisions and provide for better and effective preservation of the archaeological wealth of the country, the Ancient Monuments and Archaeological Sites and Remains Act 1958 was enacted on 28th August 1958. The Act provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. The Act was followed by AMASR Rules, 1959.

Section 14 *ibid* mandates the Central Government to maintain every monument acquired under the Act and every monument where guardianship is acquired.

³³ *Ibid*

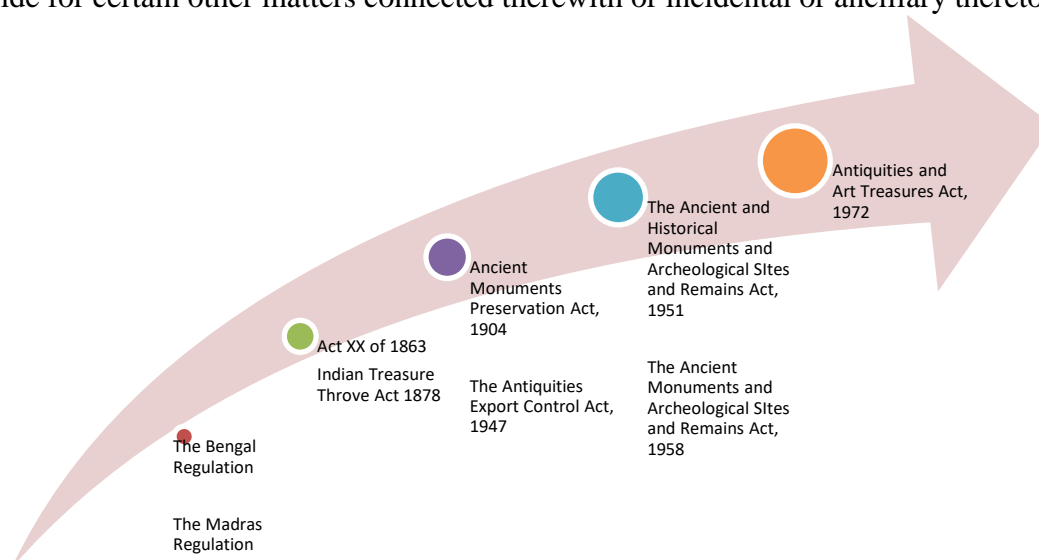
Under the Act, the following acts are punishable with a fine-

- (i) *Removal, injury, alteration, defacement, destruction, imperils or misuse of a protected monument.*
- (ii) *Contravention of order by owner or occupier*
- (iii) *Removal from protected monument any sculpture, carving, image, bas relief, inscription or other like object.*

3.3.4 In the year 2010 the following amendment was passed, namely, The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (AMASRA) The Act prescribes the limits of regulated and prohibited area around a monument by amending Section 20 of AMASRA, 1958. It also provided for creation of National Monument Authority.

3.3.6 The Antiquities and Art Treasures Act 1972 was enacted for effective control over the moveable cultural property consisting of antiquities and art treasures. This act repealed the 1947 act.

3.3.7 The Act regulates the export trade in antiquities and art treasures, to provide for the prevention of smuggling of, and fraudulent dealings in, antiquities, to provide for the compulsory acquisition of antiquities and art treasures for preservation in public places and to provide for certain other matters connected therewith or incidental or ancillary thereto.



3.4 State laws related to Heritage:

3.4.1 Several Indian states with rich architectural and built heritage have enacted local legislations and state heritage laws to protect their monuments and preserve history, some of which are as follows,

State	Legislations
West Bengal	The Heritage Commission Act, 2001 of West Bengal provides for the “establishment of a Heritage Commission in the State of West Bengal for the purpose of identifying heritage buildings, monuments, precincts and sites and for measures for their restoration

	and preservation.” Victoria Memorial Act, 1903
Uttar Pradesh	The Ancient and Historical Monuments and Archaeological Sites and Remains Preservation Act, 1956 of Uttar Pradesh provides for the “preservation of ancient and historical monuments and archaeological sites and remains in (the state) other than those declared by Parliament by law to be of national importance.”
Tamil Nadu	Ancient Monuments and Archaeological Sites and Remains Act, 1966
Rajasthan	Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961
Orissa	Orissa Ancient Monuments and Preservation Act, 1956
Karnataka	Hampi World Heritage Area Management Authority Act, 2002
	Jammu and Kashmir Heritage Conservation and Preservation Act, 2010
Andhra Pradesh	Salar Jung Museum Act, 1961
Madhya Pradesh	The Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Act, 1964

Most of the States have enacted similar Acts at various times. The above list is not comprehensive, only indicative.

3.4.2 Central Government proposed a National Commission for Heritage Sites Bill in 2009 to comply with the World Heritage Convention. The Bill was subsequently withdrawn. Present bill was withdrawn in 2015 after recommendations of various committees and stakeholders.

3.5 Judicial intervention and important rulings:

3.5.1 In independent India, judicial activism mostly facilitated by Public Interest Litigations (PILs) has also gone a long way in giving shape to heritage laws and their interpretations. Some important judgments are as follows,

S.No.	Case	Details
1	M C Mehta v Union of India (Taj Trapezium Case)	The Court directed that all the industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation/Government before for allotment of alternative plots in the industrial estates outside



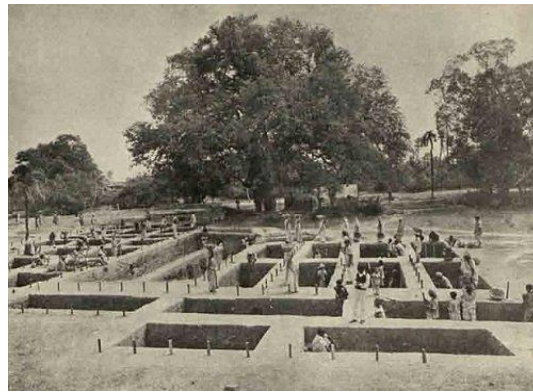
		Taj Trapezium Zone. The court ordered 292 industries to operate using safe fuels like propane instead of coke/coal, otherwise they would have to relocate.
2	Rajeev Mankotia v. Secretary to the President of India	<p>Supreme Court declared Vice Regal Lodge at Shimla and appurtenant land as historical heritage and directed the Government of India to notify the entire area as protected area and ensure proper maintenance of this and all other national monuments. The government neglected to consider the Lodge, a harbinger of Colonial past with architectural grandeur and beauty of Elizabethan Era, as a historical monument standing as the witness to the transition of independence to the Indians. The Lodge is now a historical monument fait accompli by the order of the Court. But for the Public Interest Litigation, the Lodge would have become another five star hotel.</p> <p>The Hon'ble Court famously wrote,</p> <p>“FROM THIS PERSPECTIVE, THE PETITIONER HAS SERVED A GREAT CAUSE OF NATIONAL IMPORTANCE AND WE PLACE ON RECORD HIS EFFORT TO HAVE THE VICEREGAL LODGE PRESERVED AND MAINTAINED; BUT FOR HIS PAINSTAKING EFFORTS, IT WOULD HAVE BEEN DESECRATED INTO A FIVE STAR HOTEL AND IN NO TIME "WE, THE PEOPLE OF INDIA" WOULD HAVE LOST OUR ANCIENT HISTORICAL HERITAGE.”</p>
3	Vishwanath Pratap Singh v Union of India	<p>The High Court of Delhi decided a Public Interest Litigation filed against the construction of Delhi Development Authority officers club in the land within 100 meters of Siri Fort Wall in Vishwanath Pratap Singh v Union of India. Siri Fort Wall signifies the only place in the whole of Asia and Europe where Mongols were actually defeated and their armies turned back in total humiliation. The epic story of the triumph of our country is engraved in the stones of the wall. Considering Article 49, Schedule VII division of powers and AMASRA & AMPA, the Court entertained the Public Interest Litigation and held that the construction was in violation of the 1992 notification prohibiting construction activity in 100 meters area and regulating 200-meter area of protected monuments.</p> <p>The Hon'ble Court noted,</p>



		<p>“THE FOLLOWING REMARKS OF MR. N.A. PALKHIWALA FROM HIS BOOK "WE THE PEOPLE" IMMEDIATELY FLASH ACROSS THE MIND:</p> <p>"IT HAS BEEN SAID THE NATURE IS A WONDERFUL HANDICAPPER: TO SOME WOMEN IT GIVES THE BEAUTY OF MADONNA AND THE BRAINS OF A LINNET. I AM PREPARED TO BELIEVE THAT THIS IS NOT TRUE OF THE FAIR SEX, BUT I AM NOT PREPARED TO BELIEVE THAT THIS IS NOT TRUE OF NATIONALS. TO A COUNTRY LIKE JAPAN NATURE GIVES THE HANDICAP OF ALMOST TOTAL ABSENCE OF NATURAL RESOURCES BUT GIVES IT A SENSE OF NATIONAL DEVOTION WHICH ENABLES THE COUNTRY TO BE ONE OF THE MOST PROSPEROUS AND POWERFUL IN THE WORLD. TO SOME OTHER COUNTRIES IT GIVES THE GIFT OF OIL BUT WITHOUT UPGRADED HUMAN RESOURCES. TO INDIA NATURE HAS GIVEN IMMENSE INTELLIGENCE AND SKILLS BUT NO SENSE OF PUBLIC DUTY, DISCIPLINE OR DEDICATION".”</p>
4	Dr. Chandrika Prasad Yadav v. Union of India	<p>The ancient site and archaeological remains at Kumrahar, which dates back to the Mauryan Empire is a site in Patna. The other is the recently-excavated site which is unfolding archaeological treasures known as the Mira Bigha site, Jahanabad. The Mira Bigha site is witnessing an onslaught of thievery and pilferage by the idol seekers. Under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 such areas of historic heritage are to be cordoned off without let or hindrance, with determination, and the areas adjacent and contiguous to these sites have to be declared as a regulated, prohibited, protected area. These areas are to be cleared so that ancient monuments and historical sites are protected. Every District Magistrate within whose area such archaeological sites lie, owes a personal moral and Constitutional obligation for efforts to preserve these sites, so does the Archaeological Officer, under the 1958 Act.</p>
5	K. Guruprasad Rao v. State of Karnataka and Ors	<p>The protection of ancient monuments has necessarily to be kept in mind while carrying out development activities. The need for ensuring protection and preservation of the ancient monuments for</p>



		<p>the benefit of future generations has to be balanced with the benefits which may accrue from mining and other development related activities. While mining activity is sure to create financial wealth for the leaseholders and also the State, the immense cultural and historic wealth, not to mention the wealth of information which the temple provides cannot be ignored and every effort has to be made to protect the heritage. The Government of India shall also appoint an expert committee/group to examine the impact of mining on the monuments declared as protected monuments under the 1958 Act and take necessary remedial measures.</p>
6	Subhas Datta v. Union of India and Ors	<p>The petitioner filed Public Interest litigation in the Supreme Court on the issue of protection of historical objects preserved in various museums across the country. He pleaded direction from Supreme Court for adequate security arrangements and for proper investigation into the incidents of thefts and damages to several historical objects and also for making an inventory of available articles for future reference. The Court asked the museums and the Ministry of Culture to take necessary which are to be reviewed from time to time to consider further course of action.</p>
7	July 2020 judgment by the Supreme Court upholding the rights of the Travancore royal family to administer and manage the property at Sree Padmanabhaswamy Temple in Thiruvananthapuram	<p>The Apex Court judgment reversed the Kerala High Court's 2011 order that had directed the state government to set up a trust to take control of management and assets of the temple. The top court also directed preparation of a detailed inventory of the valuables, ornaments and articles in the temple's vaults (kallaras). Former chairman of the Supreme Court Committee on Sree Padmanabhaswamy Temple treasures, C V Ananda Bose, applauded the Apex Court judgment and described it as, "A game changer which will value faith and religion, rituals and will respect heritage."</p>



Taj Mahal in Agra and Archaeological Excavation In Kumhrar , Pataliputra (Patna)

3.6 Issues with the present legal framework:

Areas of improvement highlighted by C &AG report, 2013:

- i. Registration of Antiquities: The AAT Act, 1972, provided that the Central Government may specify those antiquities which should be registered under the Act.



As per the extant provisions, registration of the artefacts was not mandatory. The Act further provided that the Central Government may appoint Registering Officers for the purpose of the Act. *As per the National Mission for Monument and Antiquities, the country has approximately 70 lakh antiquities.* There were no targets and no timeframe for the completion of this work.

The sculpture of the revered Tamil poet-saint was apparently stolen from a temple in the 1960s. Photograph: Tang Jo-hung/Ashmolean Museum

There was no monitoring of the progress of work by either the ASI or the Ministry. Further, the registration process was not based on scientific testing but relied on discretion. Hence, its accuracy may be ambiguous and subject to

disputes. It was suggested by the Report that "The Ministry should expedite the work of registering antiquities and devise procedures for ensuring the genuineness of the registered antiquities in a time-bound manner. The electronic format may be

considered for the purpose³⁴".

- ii. Digitisation and documentation of Art objects.: Documentation of art heritage is a gaping hole in efforts to preserve and safeguard heritage. It appears for antiquities and art objects lost by India prior to independence is undocumented at the official level. It presents a stiff legal challenge for restitution when such objects are discovered in museums abroad. Same is the case for art objects taken before 1972. ***The ASI stated (October 2012) that the restitution of the objects which were taken out of the country prior to the enforcement of the Act was not within its control.*** Hence they had to depend on the goodwill of other countries for their restitution.
- iii. Lack of Database on Antiquities: Old art objects are highly vulnerable to wear and tear on exposure to elements when such objects are not properly stored. ASI appears to be severely challenged in this respect. The ASI collected and stored antiquities in Sculpture Sheds, Circles, stores, Excavation Branches and 44 Site Museums. It is recorded in the Report that, as in the case of protected monuments, the ASI was unaware of the total number of antiquities in its possession as the ASI had prepared no database or inventory of antiquities. Branch-wise lists were also unavailable with the antiquity Branch at the ASI HQ. In the absence of any centralised information, there was a high risk of losing antiquities. The Ministry stated (May 2013) that the centralised data of antiquities would follow only after the completion of the digitisation process, which is underway. The Report recommended that the ASI should develop a centralised and digitised database of antiquities to document all details of antiquities stored at different locations.

Idol of Goddess Annapurna (University of Regina)



- iv. Stolen and seized Antiquities: The Report observed that during the joint physical inspections, they found that 131 antiquities were stolen from monuments/sites and 37 antiquities from Site Museums from 1981 to 2012. The ASI informed the CAG that FIRs had been lodged for all missing antiquities. Immediately after the Report of the theft of antiquity, lookout notices were also issued to all the enforcing agencies, custom exit channels and

³⁴https://cag.gov.in/uploads/download_audit_report/2013/Union_Performance_Ministry_Cultures_Monuments_Antiquities_18_2013_chapter_3_exe-sum.pdf

CBI-Interpol. However, the Report recorded that in similar situations worldwide, organisations took many more effective steps, including checking catalogues of international auction houses, "posting news of such theft on websites, posting information about a theft in the International Art Loss Registry, sending photographs of stolen objects electronically to dealers and auction houses and intimate scholars in the field.³⁵".



v. It was found that the ASI had never participated in or collected information on Indian antiquities put on sale at well-known international auction houses, viz. Sotheby's, Christie's, etc., as there was no explicit provision in the AAT Act, 1972 for doing so. It was noticed that several antiquities of national importance were sold and displayed abroad.

- vi. However, between 1976 to 2001, only 19 antiquities were retrieved by the ASI from foreign countries either through legal means, indemnity agreement, voluntary action or through out of case settlement. But after 2001, the ASI had not been able to achieve any success. On this, the CAG recommended that there is a need for a more concerted approach to the retrieval of Indian art objects stolen or illegally exported to other countries. The ASI, as the nodal agency for this purpose, needs to be more proactive and vigilant in its efforts, and the Ministry needs to develop an aggressive strategy for the same.
- vii. Grant of Non-Antiquity Certificate: Every Circle, through an Expert Advisory Committee (with outside experts) headed by Superintending Archaeologist, issued a Non-Antiquity Certificate (NAC) to objects meant for export. The Appellate Committee, headed by the DG ASI, decides on applications that dispute the action of the Expert Advisory Committee. The Report noted that in the ASI circles, this certificate was given without any fee after mere inspection of the object without stamping to avoid tampering before export. Besides, the ASI did not maintain any centralised information on the grant of these certificates. In the absence of these controls, the entire procedure for the grant of the non-antiquity certificate was completely open to the risk of malpractice.
- viii. For example, in 2003, two art objects were declared antiquity by the "expert committee". However, when challenged in court, the objects were re-examined by

³⁵ Bibek Debroy writes: Solving India's idol theft problem. <https://indianexpress.com/article/opinion/columns/india-idols-theft-asi-monuments-7868290/>



another expert committee, which concluded that only one out of two objects was antiquity. This case highlighted the need for undertaking detailed tests before granting non-antiquity certificates.

- ix. **Non-Signing of Conventions:** The Report found that in 1977, India had ratified the Convention on the Means of Prohibiting and Preventing Illicit Export, Import and Transfer of Ownership of Cultural Property, Paris, 1970. Subsequently, no other multilateral or bilateral instrument had been signed or ratified to facilitate the restoration of stolen art objects. The CAG recommended that the Ministry should frame a comprehensive policy for the Management of Antiquities owned by the Organization.

3.7 Other issues pertaining to legal framework:

3.7.1 **Archaic definition of Antiquity:** Under the Antiquities and Art Treasure Act, 1972 which regulates the export trade in antiquities and art treasures, defines antiquity as,

“antiquity” includes— (I)

- (i) any coin, sculpture, painting, epigraph or other work of art or craftsmanship;*
- (ii) any article, object or thing detached from a building or cave;*
- (iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;*
- (iv) any article, object or thing of historical interest;*
- (v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years; and*
- (II) any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years;*

(b) “art treasure” means any human work of art, not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure for the purposes of this Act having regard to its artistic or aesthetic value: Provided that no declaration under this clause shall be made in respect of any such work of art so long as the author thereof is alive;

It appears pertinent to redefine the protected cultural heritage in the Act. The definition of antiquity which means more than 100 years of existence for an artifact and more than 75 years for manuscripts has been in existence since a very long time and requires a re look from the point of view of integrating more parameters in the definition of cultural heritage. It's ironical that a ninety year old artifact is not covered under this Act irrespective of its artistic value.

3.7.2 Since the powers to intercept export/import consignments under Customs Act, 1962 has been integrated in the Act of 1972, there is very little sensitization among Custom officers in identifying Antiques. It's imperative that Customs law should be reinforced and a separate unit of officers trained in Cultural heritage identification should be deployed in important ports.

3.7.3 **No protective or legal provision for non-antiquity:** The Act of 1972 is silent on old artefacts and manuscripts which do not fall in the definition of Antiques. What is not an

antique would be an antique in the near future but an undefined law makes them vulnerable to loot and plunder or prone to transactions not regulated under the said Act.

3.7.4 No statutory compliance for dealers: A dealer in antique is required to obtain a license under the Act of 1972. But there being no statutory compliance with regard to furnishing returns of transactions there is no monitoring mechanism of any transactions carried out.

3.7.5 Non antique dealer are out of Act: Only dealers who are involved in trade of antiques are required to be a license holder but art dealer as such are out of purview of license. This created a huge regulatory loophole as there is a chance of misuse of businesses of such dealers who are not under the obligation of any license.

3.7.6 Compulsory furnishing of records, photographs and registers: Under the Act of 1972, every license holder should maintain such records, photographs and registers, in such manner and containing such particulars, as may be prescribed. Every record, photograph and register maintained under sub-section shall, at all reasonable times, be open to inspection by the licensing officer or by any other gazetted officer of Government authorised in writing by the licensing officer in this behalf. To make the regulation more full proof it should be mandated that all such details should be furnished every quarter or such periodicity as is felt effective for close monitoring.

3.7.7 Power to determine whether or not an article, etc., is antiquity or art treasure.—The Act provides that if any question arises whether any article, object or thing or manuscript, record or other document is or is not an antiquity or is or is not an art treasure for the purposes of this Act, it shall be referred to the Director General, Archaeological Survey of India, or to an officer not below the rank of a Director in the Archaeological Survey of India authorized by the Director General, Archaeological Survey of India and the decision of the Director General, Archaeological Survey of India or such officer, as the case may be, on such question shall be final. In the time of technology its felt imperative that such assessment should be carried out scientifically under the support of a certificate like in the case of Gems and Jewellery.

3.8 Recommendations:

3.8.1 Antiquity definition requires a relook. Firstly, because for most of the artefacts it's based on discretion as for most artefacts the exact age of creation cannot be established and is based on a discretionary assessment. All sculptures or work of art before 2000 should qualify for mandatory inventory before trade.

3.8.2 There should preferably be a contemporary model Act which is required to be adopted by all States. This Act should cover the entire gamut of Cultural Heritage and not just the illicit trade aspect. It should frame rules for uniform conservation efforts by all kinds of Custodians. At district level effort should be made to identify and make a protection plan for monuments and heritage.

3.8.3 Museums should be created to exhibit local art, handicraft and the rich heritage of a local place at a decentralised level, preferably there should be a museum for every few districts.

3.8.4 Such museums should also showcase local art, handicraft so that local artisans can



find a platform to sell their wares.

3.8.5 Such museums should be preferably with a public private participation so that there is a ownership of the artefacts of the museum and appropriate security arrangements can be made for their safety.

3.8.6 Every antique dealer should be registered under a revamped Antiquity or Cultural heritage law and should be mandated to file a quarterly return of the details of sale or purchase of antiques. The details of the seller and purchaser of artefacts should be comprehensively recorded in terms of Aadhar, Bank details, PAN etc.

3.8.7 A state-of-the-art laboratory or research centre should be instituted for research on historical objects. The same laboratory should be empowered to issue certificates of authenticity and age of artefacts. Present system of a single person certifying has been seen to have issues of accuracy.

CHAPTER 4

CHANGING WORLD VIEW OF CULTURAL HERITAGE

4.1 Restitution of Indian Cultural Heritage:



4.1.1 India has witnessed destruction and loot of its cultural heritage over the years. The multiple attacks and pillaging of the Somnath temple and Kashi Vishwanath temple are etched in the memories of all Indians. During the pre-colonial and the colonial period, India witnessed unabated theft and looting of treasures and cultural

heritage, most of which have never been accounted for. Some famous objects, among such loots have been internalized in the cultures of the Countries which had taken them away. In fact, it was not just India which saw such destruction of its cultural heritage as most African nations and other Colonies of European powers also witnessed such drain. But it's heartening to see all such nations are rising up to the occasion and demanding the treasures which were rightfully theirs.

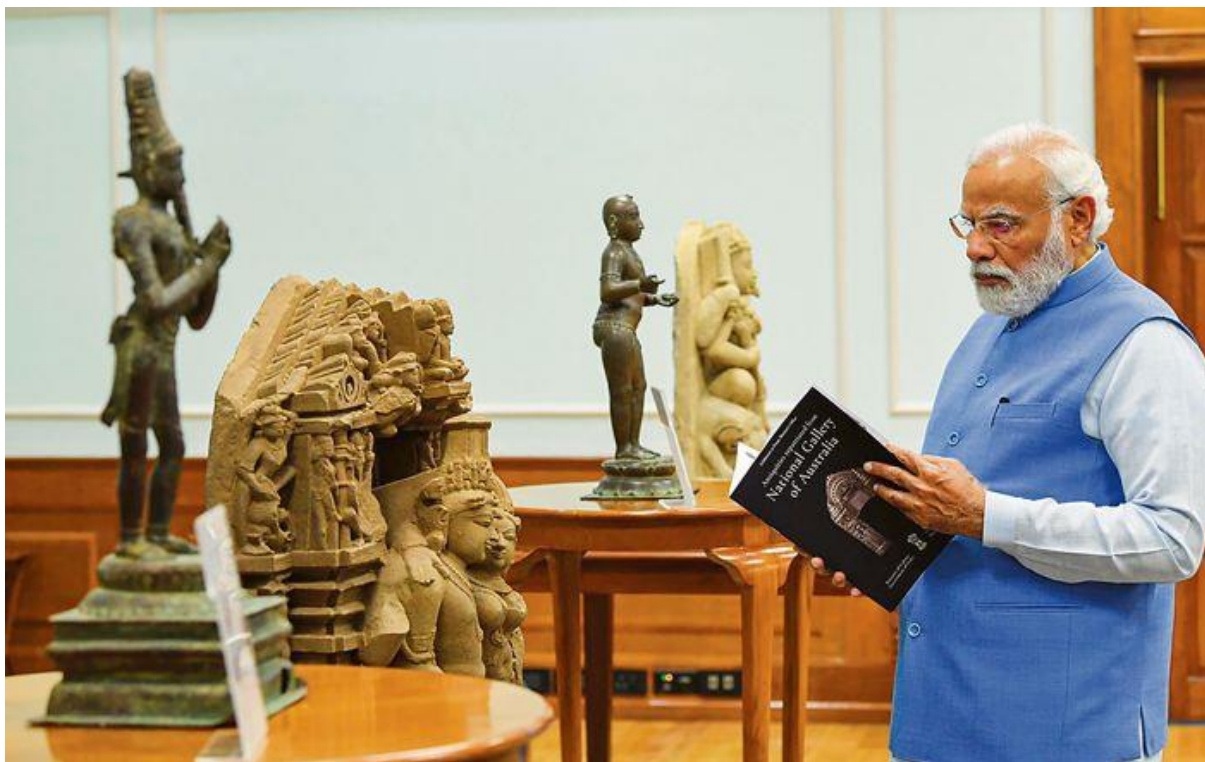
4.1.2 Even after Independence the theft and the loot of Cultural heritage has continued unabated. The restitution and recovery measures over the years have been few and far between and naturally have yielded very negligible results.

4.1.3 However, the Government under the leadership of Prime Minister Narendra Modi has not only shown keen interest in the further exploration of cultural treasures but has also taken great strides in bringing back heritage stolen from India. Over the past decade India has seen several Countries returning India's stolen treasures, as a good will gesture.

4.1.4 The ***Koh-i-Noor*** or the Mountain of Light which has been the vortex in the drain of heritage from India, is the single most important symbol of a ruthless and cruel colonial subjugation of more than three centuries. The diamond originated in the Golconda mines, in what is now the state of Andhra Pradesh. It passed through the hands of Mughal, Persian and Afghan rulers before landing with Maharajah Ranjit Singh, the ruler of the Sikh kingdom in Punjab, who died in 1839. His death led to a struggle and, in 1843, culminated in the installation of his 5-year-old son to the throne. Taking advantage of this political turmoil, the East India Company rapidly extended its control over the once-powerful kingdom, annexing it in 1849, after its victory in the Second Anglo-Sikh War. The jewel was then surrendered, as

part of an agreement ending the war and signed by the boy king.³⁶ It is perhaps time, to sit up and ponder that such a change of ownership of India's famous heritage was facilitated by not only an unethical war but more importantly deceit and greed, a circumstance of trade vociferously condemned by the UNESCO and the world at large in today's time.

4.1.5 Most analysts say there is little chance that Britain will part with the Koh-i-Noor, which is embedded in a crown, crafted in 1937, that was most recently used by the Queen Mother, who died in 2002 at 101. Mr. Cameron, the former premier of Britain, noted, during a to India in 2010 that if one request of restitution of looted cultural heritage was yielded to, *"you suddenly find the British Museum would be empty."*



IC Tribuneindia.com

4.1.6 However, the same view is not echoed by other world leaders. It was a moment of great achievement and pride when on 5 September 2014, the then Prime Minister of Australia Tony Abbott returned to the Prime Minister Sh. Narendra Modi the Sripuranthan Nataraja Idol and the famous sculpture of Ardhanariswara. Interestingly this beautiful sculpture was sourced from Subhash Kapoor for more than US\$ 300,000 by the Art Gallery of New South Wales.

4.1.7 The United States recently returned a staggering haul of 248 Indian antiquities, worth an estimated \$150 million, to India, the largest single repatriation of artworks smuggled out from the country. This followed close on the heels of President Joe Biden's administration handing over a cache of 157 artefacts to Prime Minister Narendra Modi during his visit to the United States in September, following both nations' commitment to "combat theft, illicit

³⁶ India Says It Wants One of the Crown Jewels Back From Britain, Nida Najar, New York Times

trade, and trafficking of cultural objects.”

The U.S. deportation of antiques was the result of a meticulous probe by the Manhattan district attorney’s office and U.S. Immigration and Customs Enforcement. The investigation focused on tens of thousands of antiquities allegedly smuggled into the United States by notorious Indian antique dealer Subhash Kapoor, who has denied the allegations even though some antiquities were recovered from his own storage units in New York.

4.1.8 Among these was a statue of Saint Manikkavichavakar, a Hindu mystic and poet from the Chola period (circa 850 AD to 1250 AD) stolen from the Sivan Temple in Chennai, and a bronze sculpture of Lord Ganesh estimated to be 1,000 years old.



kapoor-charged

4.11 The majority of the antiquities repatriated in the ceremony were seizures made during Operation Hidden Idol, an investigation that was launched in 2007 after the Homeland Security Investigations (HSI) special agents in the US received a tipoff about illegal shipments being made to the US disguised as “marble garden tables” imported by Subhash Kapoor, owner of Art of the Past Gallery.

IC: <https://en.thevalue.com/articles/former-art-dealer->

4.1.9 In September 2018, two antique statues worth hundreds of thousands of dollars in the international market, stolen from India and displayed at two American museums, were handed over to the Consul General of India in New York by the Manhattan District Attorney Cyrus Vance Jr. These were ‘Lingodhbhavamurti’, a 12th century (Chola dynasty) granite sculpture depicting Lord Shiva from the Birmingham Museum in Alabama, and Manjusri, a phyllite Bodhisattva sculpture of the same vintage.

4.2 Changing narrative of the World

4.2.1 There has been a clamour for the return of Cultural Heritage from across the world, mainly African countries, who have seen the worst plunder along with India over the ages.



The Museum of Black Civilization in Dakar have been able to create of wave of sympathetic understanding by borrowing from the European Countries for exhibiting artefacts which once belonged to them.

The Museum of Black



4.2.2 In November 2017 President Emmanuel Macron of France famously said when he was addressing an audience at the University of Ouagadougou in Burkina Faso,³⁷

“I cannot accept that a large share of several African countries’ cultural heritage be kept in France... Within five years I want the conditions to exist for temporary or permanent returns of African heritage to Africa.”

4.2.3 This was a monumental deviation from self-established norms of refusing to return artworks which were seized, plundered during the colonial periods. As a norm, publicly held artefacts, even of remote origin are held to be “inalienable”, meaning that they belong to the State. However in the case of the British Museum, they are held by its trustees on behalf of Parliament.

4.2.4 Mr Macron subsequently commissioned two academics—Felwine Sarr, a radical Senegalese scholar and essayist, and Bénédicte Savoy, a French art historian specialising in the restitution of art looted by Napoleon—to advise the government on how to share the art in its possession more widely. The authors concluded that 95% of Africa’s cultural heritage is held outside the continent. Most of it was looted, stolen, bought under duress or borrowed and never returned, they said. They argued that objects should go back, starting with those that were carried off as booty during raids.³⁸

4.2.5 Although countries of Europe have become open of late of making right the past wrongs in terms of returning looted cultural heritage, but the Museums of Britain have not acceded to such demands of returning. In a very old dispute Britain and Greece over the



marble statuary that was removed from the Parthenon in Athens by Lord Elgin and sold to the British government in 1816 to become the centerpiece of the British Museum several efforts of Greece of reclaiming the artifact proved futile.

The Parthenon Marbles on display at the British Museum London. Photograph: Dylan Martinez/Reuters

4.2.6 Even the Smithsonian museums in America have repatriated thousands of funerary

³⁷ The clamour to return artefacts taken by colonialists, BAMAKO, DAKAR AND KINSHASA, The Economist

³⁸ ibid



and sacred objects to Native American tribes. Human remains have been returned to Australia, New Zealand and Polynesia. Yet, with the exception of Sara “Saartjie” Baartman, who was brought from South Africa to Europe in the early 19th century and exhibited in a freak show as the “Hottentot Venus” and whose remains were returned for burial in 2002, few objects have been given back to African countries.

4.2.7 More importantly even art and literature and films have increasingly showcased the travesty of justice of hapless colonies losing their cultural heritage and a present agonizing legal battle to restitute them. The latest *documenta*, a contemporary art show held every five years, most recently in Kassel and Athens as restitution of heritage as an underlying theme. “Le Silence du Totem”, a novel of 2018 by the Senegalese writer Fatoumata Sissi Ngom, is about the discovery of a sculpture in a Paris museum. In the blockbuster film “Black Panther”, an artifact looted from the fictional kingdom of Wakanda is stolen back from the “Museum of Great Britain”.³⁹

4.3 International Laws uniting Nations:

4.3.1 Protection and preservation of heritage has been a cause for concern for all countries and private institutions alike.

4.3.2 Henry Cleere, in his monumental work titled, Preserving Archaeological Sites and Monuments, World Heritage Coordinator, International Council on Monuments and Sites, Paris and Visiting Professor, Institute of Archaeology UCL, London has mentioned that the first law on the subject was enacted in Sweden in 1666 and professional agencies were set up to implement the same.⁴⁰

4.3.3⁴¹ Several other countries enacted similar legislative instruments in 17th and 18th centuries. The United Kingdom enacted first Ancient Monuments Protection Act in 1882. France did so in 1913. The earliest Japanese legislation, the Law for the Preservation of Ancient Temples and Shrines, was enacted in 1897 and the United States waited until 1906 before its Federal Antiquities Act came into force. Their pre- hispanic civilizations were highly symbolic for the cultural identities of the countries that emerged after the independence struggles in Latin America during the first half of the nineteenth century, just as its Hellenic past grandeur was the material expression of Greek national identity. It is therefore not surprising that preservation of the remains of these cultures was given a high priority by the new nations. In 1821, Mexico passed the first law to preserve and protect the country's archaeological heritage. In the same year Peru shook itself free from Spanish rule and in 1822 a Supreme Decree was published, forbidding any trade in ancient relics.

4.3.4 The Hon’ble Supreme Court in K.Guruprasad Rao vs State Of Karnataka & Ors on 1 July, 2013 notes that by the outbreak of World War I in 1914 almost every European country (with the notable exception of Belgium) and most of the major countries around the world had some form of antiquities protection and preservation legislation. Legislation had also been introduced by European colonial powers in many of their overseas territories; in some cases, such as France, the metropolitan statutes were enforced in their colonies.

³⁹ ibid

⁴⁰ K.Guruprasad Rao vs State Of Karnataka & Ors on 1 July, 2013

⁴¹ Ibid

4.3.5 The inter-war period saw legislative protection being progressively amended and expanded in many parts of the world. New antiquities laws were enacted in Denmark, Greece, and the United Kingdom in the 1930s. Two major statutes, covering the protection of the cultural and natural heritage respectively, were promulgated in Italy by the Fascist regime just before the outbreak of World War II; interestingly, both are still force in 2001.⁴²

4.3.6 The 1897 Japanese law was extended to all "national treasures" in 1929. The current legislation relating to the cultural heritage in Peru stems from a basic law passed in 1929, and a 1927 law covers the cultural heritage of Bolivia.



UNESCO the red dots are sites in danger, the green are natural sites, yellow cultural and the mixed are both natural and cultural sites.

4.3.7 The creation of the USSR and the introduction of a socialist constitution led to state ownership of all cultural property being declared in a fundamental law of October 1918. (Unlike the laws of countries emerging from colonial domination, this was motivated for ideological reasons rather than in the interests of cultural identity.) The antiquities legislation of all the countries of the post-World War II socialist bloc of central and eastern Europe, as well as that of other socialist countries such as the People's Republic of China, North Korea, Vietnam, and Cuba, were modelled on the basic Soviet legislation.⁴³

4.3.8 The former colonial territories of Africa and Asia introduced protective legislation, often modelled on that of their former overlords, as soon as they achieved independence. The former British colonies in particular adopted similar laws, based on what became known as the "Westminster Model" constitution. The legislation of the British Raj was retained until improved legislative protection of the cultural heritage of India was introduced.

4.3.9 ⁴⁴The second half of the twentieth century witnessed a continuous process of extending and improving heritage legislation across the globe. New or amended laws have been adopted by national legislatures of at least one country each year. At the international level work began between the two World Wars by the League of Nations which resulted in organization by the United Nations Educational, Scientific and Cultural Organization (UNESCO) of two important international conventions designed to protect and preserve the

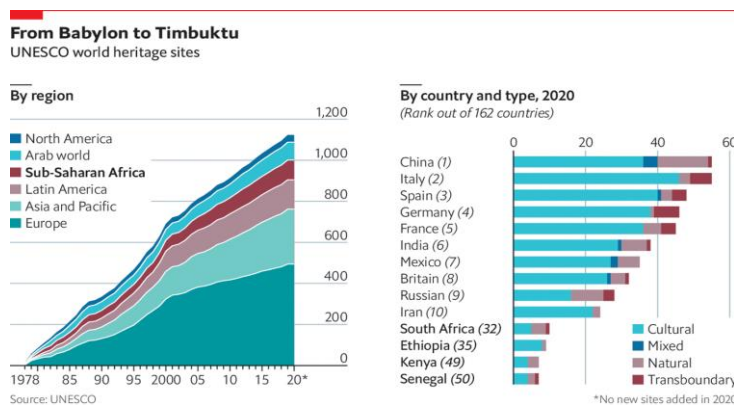
⁴² K. Guruprasad Rao vs State Of Karnataka & Ors on 1 July, 2013

⁴³ Ibid

⁴⁴ Ibid

cultural heritage, whether cultural, natural, or portable. Regional bodies such as the Council of Europe prepared similar conventions.

4.3.10 Cultural heritage has become a very important area of mutual cooperation between



nations under the Umbrella of multilateral organizations. Such is the importance that United Nations (UN) highlighted its preservation of World Heritage Sites in more than 162 countries in a list of achievements that also included “help 8.4 million Iraqis get to the polls; provide food aid to 2 million tsunami-affected people; maintain peacekeeping operations in 16 countries; vaccinate millions of

children around the world; inspect nuclear and related facilities in over 140 countries” (Foreign Policy, November-December 2005, p. 7)⁴⁵

4.3.2 World Heritage sites coverage:

4.3.3 UNESCO, a UN body, has since 1978 listed and honored the world’s cultural and natural heritage of “outstanding universal value”. More than 1,100 sites now adorn the list, from the Taj Mahal to Stonehenge and the Great Barrier Reef. Nearly half of the sites are in Europe and about a quarter are in Asia and the Pacific. But sub-Saharan Africa is home to just 96 such sites—a miserly 9% of the total—despite accounting for 15% of the world’s population, 18% of its land mass and an immense amount of its heritage and history.

Properties inscribed on the World Heritage List



- There are 40 World heritage sites in India
- India is among the few countries that has 40 or more World heritage sites
- Several sites are under submission for inclusion in the list
- Although India has several World heritage sites, but given the size and history of India the number of recognized World heritage sites are very few.

4.3.11 The UN was created in 1945 after the WW II ended wreaking havoc across the world. Among other issues, widespread destruction of Cultural heritage was witnessed in the long and brutal war. This gave rise to UNESCO (the United Nations Educational, Scientific and Cultural Organization), one of the UN’s subsidiary organizations, constituted to bolster the

⁴⁵ Cultural Heritage: Opportunities and Conundrums, Helaine Silverman, Center for Global Studies

“intellectual and moral solidarity of mankind” (UNESCO Constitution).

4.3.12 In 1954, UNESCO promulgated the Convention for the Protection of Cultural Property in the Event of Armed Conflict. Adopted in The Hague and known as The Hague Convention, the document clearly enunciated the concept of “cultural heritage of all mankind,” what today is called world heritage.

4.3.13 In 1970 UNESCO promulgated a Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. It tried to reinforce its responsibility in building a global consensus towards cultural heritage: It noted,

“it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations...”

4.3.14 The World Heritage Convention (Convention Concerning the Protection of the World Cultural and Natural Heritage), adopted in 1972 by UNESCO, argued that “parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole.” The principle of outstanding universal value (OUV) was foregrounded as a fundamental criterion in UNESCO’s creation of the World Heritage List.

4.3.15 To further check the menace of the thriving market of stolen artefacts the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) was promulgated. It is the international treaty on the subject of cultural property protection. It attempts to strengthen the main weaknesses of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The UNIDROIT Convention seeks to fight the illicit trafficking of cultural property by modifying the buyer's behaviour, obliging him/her to check the legitimacy of their purchase.

4.3.16 The Convention states that if a cultural property was stolen it must be returned (Chapter II, Art. 3.1). Any possessor of a stolen cultural object required to return it might be compensated only if he/she can prove due diligence at the time of the purchase and that he/she neither knew nor ought reasonably to have known that the objects were stolen (Chapter II, Art. 4.1). To assess the legitimacy of the object's origin, art market players can use international and national databases dedicated to cultural property protection, for instance, the INTERPOL Stolen Works of Art Database collects information about stolen cultural property and issues identification numbers to cultural objects.

4.4 Active role of Civil Society:

4.4.1 In India, the India Pride Project (IPP) has worked and collaborated with various Government agencies to not only sensitize citizens on cultural heritage but also make efforts in the identification of the looted artefacts so that they can be successfully restituted. The Pride project is a group of art enthusiasts who uses social media to identify stolen religious

artefacts from Indian temples and secure their return. They have been behind the slew of recent restitutions.

4.4.2 The Blue Shield, formerly the International Committee of the Blue Shield, is an international organization founded in 1996 to protect the world's cultural heritage from threats such as armed conflict and natural disasters. Originally intended as the "cultural equivalent of the Red Cross, its name derives from the blue shield symbol designed by Jan Zachwatowicz, used to signify cultural sites protected by the 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict.

4.4.3 The Blue Shield's mission statement is in their statutes. It is a network of committees of dedicated individuals across the world that is "committed to the protection of the world's cultural property, and is concerned with the protection of cultural and natural heritage, tangible and intangible, in the event of armed conflict, natural- or human-made disaster."

Blue Shield is a close partner organization with the UN, United Nations peacekeeping and UNESCO and in cooperation with the International Committee of the Red Cross

4.4.4 International Alliance for the Protection of Heritage in Conflict Areas (ALIPH): Another organization, ALIPH, focuses on providing grants for "preventive protection to limit the risks of destruction, emergency measures to ensure the security of heritage, and post-conflict actions to enable local populations to once again enjoy their cultural heritage."

4.4.5 ICCROM (International Centre for the Preservation and Restoration of Cultural Property): A third organization, ICCROM (International Centre for the Preservation and Restoration of Cultural Property), provides training, information, research, cooperation, and advocacy for those working in the cultural heritage field. Recently, they have begun workshops for architects and engineers in Mosul, Iraq on the subject of heritage recovery. Working with UNESCO and The University of Mosul, this workshop series operates under the "Revive the Spirit of Mosul" initiative led by UNESCO.

4.5 Recommendation

4.5.1 For pre-colonial loot and plunder a narrative should be widely circulated and published to request countries to consider returning the artefacts which were looted and plundered in different points in time. It is seen that artefacts which were integral to the Cultural history of Countries are being asked for. India being the worst sufferer should take the lead and through diplomatic efforts should create a narrative and stake a claim for cultural heritage integral to its history.

4.5.2 The embassies and high commissions should try and educate people of the countries about the stories behind the artefacts. Every heritage would have a story and that story should be said to make a connection of such heritage with their original owners. Also, a story of pillage and plunder would help create a public opinion.

4.5.3 Also, coffee table books on each form of culture should be widely distributed to disseminate the various aspect of India's cultural aspects.

4.5.4 To effectively monitor and seek cooperation from Countries for thefts of artefacts



there should be effective MoUs with Countries clearly defining objectives and process of restitution.

4.5.5 In any case of theft of artefacts the onus of proving genuineness of purchase should be on the purchaser.

4.5.6 For proven cases of theft there should be harsh penalty and incarceration for the offender.

4.5.7 There should be clear provision of confiscation of the artifact by the Government so that under a good will gesture such artefacts can be transferred to the originator nation.

4.5.8 India's G 20 Presidency should be leveraged to *inter alia* make preservation, protection and restitution of Cultural heritage a focal point of discussion so that concrete strategies are worked out.

CHAPTER 5

THREATS TO CULTURAL HERITAGE

5.1 Cultural heritage needs protection:

5.1.1 A focused attention to unravel and understand the Cultural history of India was not undertaken systematically till the mid of the 19th century during which period the Archaeological Survey of India was established and several legislations came up. It was mostly intended to keep an account of the treasures excavated during the period and not to let such objects fall into the hands of unscrupulous elements. As seen in the evolution of the legislative history the changes in the legislations have been incremental. Some of the definitions have not undergone any change in many years and the focus has mostly been on aspects of illegal trade of Cultural heritage. Since the 1970s the legislations have tried to imbibe the broad contours of international conventions also mostly pertaining to illicit trade.

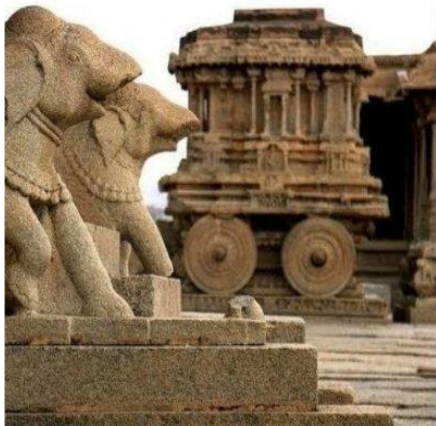
5.1.2 At this point it's imperative to appreciate the fact that still a substantial proportion of Cultural heritage is yet to be discovered and the ones discovered are vulnerable to various kinds of wear and tear. India, an ancient civilization, has given to this world among other streams of knowledge-Yoga, intricacies of astronomy, astrology and mathematical knowledge and it would not be wrong perhaps, to presume that there may be many more overwhelming and original ideas and knowledge streams hidden in the bulk of untranslated literature which are in dire need of preservation and focused research and translation. Such unraveling of the rich knowledge and cultural heritage is a work in progress but to let the process continue, it's imperative to preserve the heritage this great nation has inherited.

5.1.3 Its contended that more than 90 percent of the ancient texts and literature is yet to be translated. It is a travesty that India has not been able to preserve and popularize its ancient languages. According to the 2011 census, a mere 24821 people have registered Sanskrit as their mother tongue. The ancient language speaking population is just 0.00198 per cent of India's total population during the period. Similarly, the cultural heritage excavated is a fraction which remains to be discovered.

5.1.4 The destruction and defacing of cultural heritage can take various forms. Sriram V, a historian and writer in Tamil Nadu, says that in several places, people go beyond scribbling their names – they inscribe them using sharp objects, especially where there is plaster work. “It's sad we don't value the history that we have. What they don't realise is that something valuable that we should have left for posterity is being destroyed,” he states.⁴⁶ Milan Chauley, Superintending Archaeologist, Archaeological Survey of India (ASI) in Telangana, says that he has even seen scribbblings in places which are difficult to reach without external support. “At the Golconda Fort, we have found that people have a habit of picking up the big stones and throwing them, perhaps to show their strength. Cannons from the bastion have been displaced or are missing due to vandalism,” he adds.⁴⁷

⁴⁶ 'Raju was here': Why in the world do Indians vandalise heritage monuments? Geetika Mantri, The newsminute

⁴⁷ ibid



Vandals in Hampi,
Karnataka

5.1.5 The Bagh caves in Dhar district of Madhya Pradesh are an example of such damage, according to ASI experts. Etching and scribbling have damaged the precious wall paintings of the caves. "People don't

realise the kind of damage they are doing to the monuments when scribble on them. In the Bagh caves, people had scratched off portions of paintings on the ceiling and the walls. Though ASI has undertaken conservation work for restoring the caves, severely damaged paintings are a tough thing to restore," said K S Rana, Director of ASI (Science).⁴⁸



5.1.6 There are many ways our composite Cultural heritage are threatened. It's necessary to recognize each of them so that strategies can be adopted to

effectively preserve them. Destruction of such heritage would erase forever the knowledge of a rich culture before us. Such apathy of common citizens encourages antisocial elements and antique dealers to steal heritage lying unattended and cater to the burgeoning market of art objects.

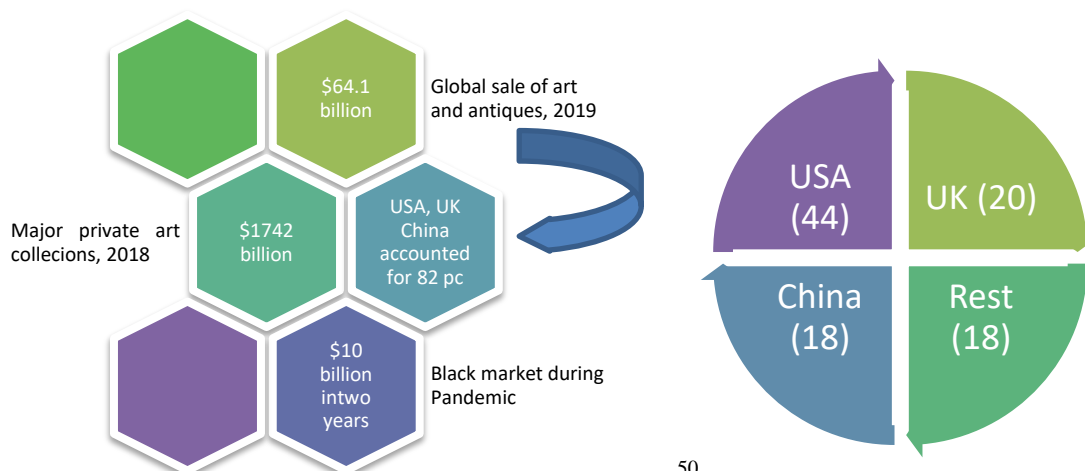


⁴⁹ Smoke rises from the detonation of the 2,000-year-old temple of Baal Shamin in Syria's ancient city of Palmyra, August 25, 2015.

⁴⁸ Think twice before scribbling on monuments, The Indian Express

⁴⁹ UN warns destroying cultural heritage may be war crime, The Times of Israel

5.2 Global Market of heritage trade:



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5.2.1 The global art market, both legal and illegal are astronomical in value. And over the years they have increased in size and scale steadily. They mostly comprise of rich collectors whose identities are mostly hidden. It appears that a lot of heritage objects go through the process of auctions conducted by well-known auction houses and invariably land up in Museums of Europe and USA riding on fake provenance and fake documentation. In the year 2019 alone the global sale of art and antiques was as high as \$64 billion. Over the last decade the figure has been upward of a staggering \$50 billion adjusted by inflation.

5.2.2 The USA, UK and China account for the bulk of sale of such objects. The percentage is as high as 82 percent. The rest of the world, account for only 18 percent.

5.2.3 As of 2018 an estimate of the major private art collection stands at a staggering \$1742 billion.

5.2.4 Such is the lucrative nature of the market that its estimated that even during the pandemic when most of world businesses came to a standstill the art black market had a turnover of around \$10 billion.⁵¹

5.2.5 Its seen that freeports are the main gateways of the cross-country travel of art objects. Numerous pieces are kept in several dozen freeports around the world. In these warehouses, exempt from taxes and customs duties, they can be resold anonymously, without leaving the premises after the transaction. Investigations have shown that these free zones can be used to store works of art acquired illegally.⁵²

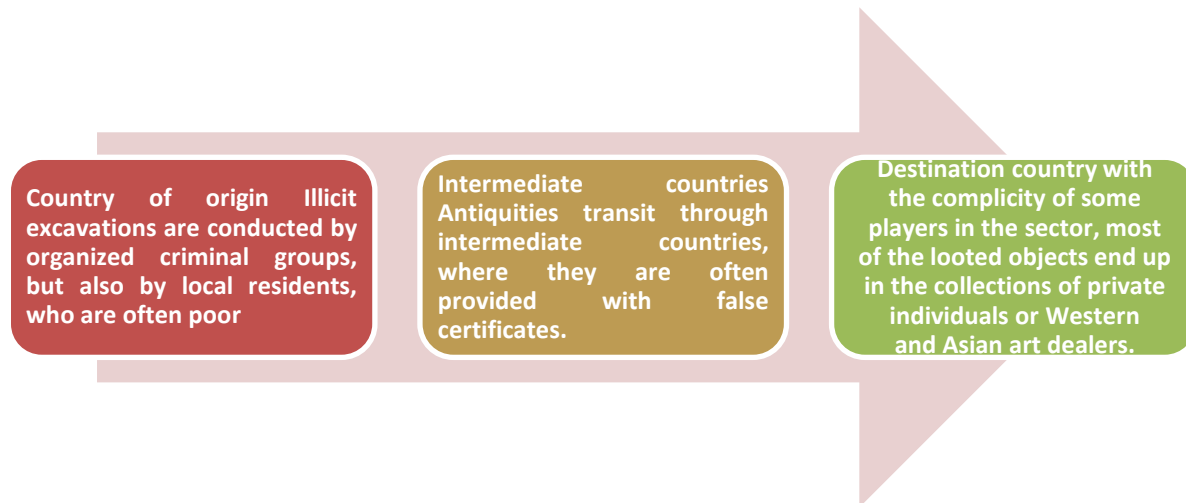
5.2.6 The increase in demand in the art market has encouraged illicit trafficking

50 Source: The Deloitte and ArtTactic Art & Finance Report 2019

51 Art and crime - the dark side of the antiquities trade, euronews.next

52 ibid

after unofficial excavations in several heritage rich countries.



5.2.7 Of late, traffickers have used social networks to make a large part of their sales. Taking cognizance and after a hue and cry in June 2020, Facebook banned such trade from its platform. 120 groups were deciphered selling antiquities on Facebook, with hundreds of thousands of collective members in September 2020.

5.3 Threats to Cultural Heritage:

5.3.1 Violence/ Mass protests/ Conflicts:

- i. Its seen worldwide that a violent protest or issues pertaining to law and order has dire ramifications on heritage. Public properties and monuments are targeted by protesters to vent their ire against the Government or against any group of people. Worldwide such instances have damaged beyond resurrection precious ancient relics. Some examples are the deliberate destruction of the Buddhas in Bamiyan, Afghanistan by the Taliban in 2001 to the systematic and intentional destruction of successive World Heritage sites in Syria and Iraq in 2014-2015.
- ii. Its pertinent to note that the Security Council adopted resolution 2199 of 12 February 2015 which condemned ‘the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects’. The resolution was adopted pursuant to Chapter VII of the UN Charter and is therefore binding on UN Member States and takes precedence over any conflicting treaty obligations.
- iii. Further, on 4 September 2015, the Committee for the Protection of Cultural Property in the Event of Armed Conflict condemned the destruction of the temples of Baal Shamin and Bel, in Palmyra built almost 2,000 years ago, and part of a World Heritage site.⁵⁴
- iv. Although India has not witnessed such large-scale destruction of its monuments in

⁵³ Ibid

⁵⁴ The Criminalisation of the Intentional Destruction of Cultural Heritage, Ana Filipa Vrdoljak, University of Technology, Sydney

recent times, but historically India has been the worst sufferer of such scourge of foreign invaders which laid to waste several architectural beauties. At this moment, it's important to recognize this aspect of preservation of heritage and frame laws criminalizing this aspect and taking adequate measures to avoid such attempted destruction, if any in the future.

5.3.2 Lack of integrated planning:



- i. Cultural heritage is often threatened by the lack of integrated planning. With urbanization and space planning spreading and encompassing every inch of land it's imperative to preserve historical monuments and structures around them without damaging them. Urban planning should be done in such a way that the landscape integrates the past and present beautifully and gives a rich look to the ambience.
- ii. The Hawa Mahal of Jaipur has held on its own inspite of the urbanization around it. Several transgressions in the name of development have landed the offenders in the Courts for lack of clear rules and legislations around them.
- iii. Further, it is essential for the heritage sector to do everything in its own power to plan for disaster risk reduction through, for example: making sure catalogues and inventories are up-to-date and digitized; carrying out regular risk assessments; having, and regularly testing, clear disaster and evacuation plans (including safeguarding the heritage from possible post-disaster damage – for example, from secondary environmental disaster or looting); having good relations and effective communications with emergency organizations and the military; and ensuring all heritage staff are well-trained regarding disaster risk reduction.

5.3.3 Natural Disasters:



should be carried out to lengthen the life of the structures and make them safe for

- i. Natural disasters present another big risk to heritage structures. Of all the structures in an area, the most ancient are the most vulnerable. It could be flash floods or earthquakes and every time we cannot rely on a divine intervention for their safe keep. Regular structural audit and reinforcement of structure



- ii. During conflict and following environmental disaster, staff may not be able to access archives, historic buildings, libraries, museums, or sites, disrupting essential routine maintenance. Historic documents, books, objects, buildings, and sites need constant maintenance and without such care can rapidly deteriorate. Delicate archives, books, and museum objects also need to be kept in precise environmental conditions that are frequently interrupted by conflict or environmental disaster. Others require treatment by chemicals that are often impossible to obtain. Emergency storage or refuges for objects often lack the needed environmental conditions.
- iii. Internationally, some of the museum collections in Lebanon experienced significant damage as a result of the humidity in the emergency storage; this problem has also affected the National Museum of Aleppo, as seen in these pictures. In some places, cultural property is not seen as important, or the staff lack relevant training, so its maintenance, conservation, and cataloging may have been neglected in peacetime, compounding the problems experienced during armed conflict or environmental disaster.⁵⁵

5.3.4 Development:

- i. With urbanization and population increase shrinking land, it has become difficult to excavate new sites. One big challenge can be the location of a prospective dig on private land. In 2020, evidence of the Ochre Coloured Pottery (OCP) culture (about 2100-1900 BCE) was found in Chandayan, near Bharwana, Uttar Pradesh, but with the land still under cultivation, the Archaeological Survey of India team has not been able to begin excavation⁵⁶.
- ii. However, a way out can be to make the locals stakeholders in heritage conservation.



A large engraving of an elephant in Ukshi village in north Ratnagiri, where a circular viewing gallery has been constructed, along with an inscription that explains the art work's significance. Photo Credit: Prashant Nakwe

For example, the Ratnagiri survey by the directorate of archaeology and museums, Maharashtra, sets an example of how locals can be made stakeholders in heritage conservation. Many of

⁵⁵ The Blue shield website

⁵⁶ Why is saving history so difficult in India?, Avantika Bhuyan, Mint



the 1,200 petroglyphs [rock art created by chiseling or carving, which bridge a huge gap in Konkan history—acting as a link between the Stone Age and the advanced use of fused iron] have been found on privately-owned land. The proposal is to declare the landholder the guardian of the monument under a monument adoption scheme⁵⁷.

5.3.5 Looting and pillage and theft:

- i. Looting and pillaging are side effects of conflicts and environmental disasters and theft is the effect of greed exacerbated by lack of cultural heritage appreciation of the general public and also a high illegal remuneration for such theft.
- ii. History has many examples of victorious armies removing the cultural property of the enemy they have just defeated as the ‘spoils of war’, which is known today as pillage (that is, looting by armies, rather than looting by civilians). At one time, it was common practice for armies to pay their troops in this way. One of the oldest examples is from the 8th century BC, recording how Tiglath-Pileser III, an Assyrian King, took the statues of gods from enemy cities (seen on this relief in the British Museum).
- iii. In the late 1960s and early 1970s, thefts were increasing both in museums and at archeological sites. India has suffered intensively because of theft of its heritage. However, India has not been alone and unlike India some countries have given focused attention towards this menace. In this context, it is pertinent to note the first national response was the formation, in Italy, of the Carabinieri TPC, the world’s first police force specialized in the protection of cultural property. India presently do not have a specialized force or body for this task.

5.4 Recommendation:

5.4.1 A concerted effort in the form of regular advertisements and media should be aired to create public awareness towards the perils of losing heritage to defacement.

5.4.2 A vibrant tourist centre should be created to monetize such properties. There should be a ticket price which dissuades miscreants from entering such properties for the purpose of creating a nuisance. A reasonable ticket price would only encourage interested tourist to visit such heritage properties.

5.4.3 A high fine should be considered for any act of defacement or destruction by tourist.

5.4.4 A safe distance by barricading should be considered so that tourist view such exhibits or natural views from distance. Guards should be employed to ensure discipline in this regard.

5.4.5 Online ticketing should be made mandatory with minimum KYC so that miscreants can be identified for imposition of fines, which can be delivered to their addresses.

5.4.6 Two-pronged approach of sensitization and penalties would be effective to control miscreants from damaging public properties.

⁵⁷ Ibid



5.4.7 Structural audit of heritage structures should be carried out regularly.

5.4.8 Legislation should clearly define development around heritage structure so that there is no dispute that leads to a protracted legal battle.

5.4.9 There should be a clear legislation on excavation plans of ASI vis-a-vis private properties where such excavations are planned. Although the Treasure Throve Act provides clarity on certain aspects but it appears that the law itself is archaic and needs to be redrawn keeping in mind the complexities of present day.

5.4.10 Precious cultural heritage should be considered for GPS encryption or bar coding, may be in their pedestals etc. so that technology is leveraged to track such objects.

5.4.11 Antiques or heritage objects which are certified should have a hallmark in the form of a certificate or an encryption so that its authenticity can be ascertained. Similar encryptions are embedded in precious jewelry also. If encryption is not possible a certificate of authenticity should always be accompanied by such objects.

5.4.12 Cultural heritage and objects should be 3 D scanned with a high-resolution scanner. Besides high-resolution photographs should also be catalogued by the custodian.

5.4.13 Every heritage site or Museum should keep inventories of all artefacts by way of details and high-resolution photographs from various angles. Such details should be in the form of a compact booklet or posters freely available for sale.

5.4.14 India should also include mandatory community work as a form of punishment for any act of violation noticed among citizens towards cultural heritage. It can be guard duty for a specified period, painting of walls, cleaning areas or any community work deemed fit. This will not only inculcate a sense of responsibility but will also make one conscious of being accountable and responsible towards our fundamental duties. This can bring about a behavioral change.

CHAPTER 6

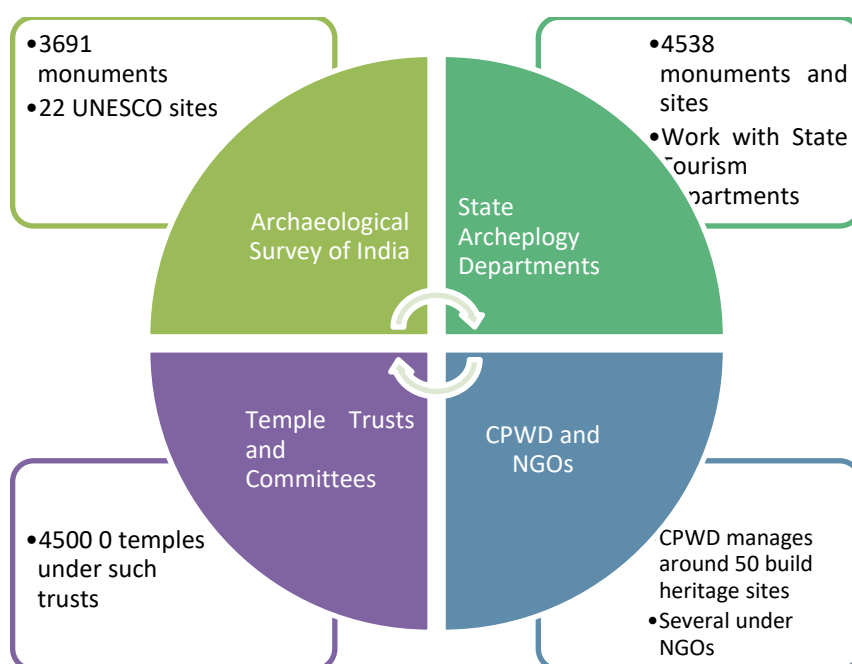
STAKEHOLDERS OF HERITAGE MANAGEMENT: A WAY FORWARD

6.1 Categories of heritage on the basis of management:

6.1.1 There are lakhs of monuments and ancient structures in India. Only forty among them have been recognized as World Heritage sites by UNESCO. Further only a few thousand are under the control of the Archaeological Survey of India. On the basis of their custodians, the monuments and structures are divided into broadly four categories. But, before delving into examining their custodianship, it's appears pertinent to understand the meaning attributed to **“monuments”**. National Conservation Policy adopted by ASI in 2014 gives an understanding of a better and wider definition of **‘Monuments’** which is not reflected in the original AMASR Act. The word, Monument, has been defined as,

“Monuments” comprise a vast array of human-built edifices, either standing or underground or still buried, and these reflect tangible manifestation of India’s rich past. Monuments include archaeological sites and remains, caves and rock shelters, rockcut temples, monoliths, sculptures and bas-relief panels, underground structures and architectural heritage representing various categories, e.g., religious, secular, defensive, funerary, landscapes, etc. The monuments may be ‘functional’ or ‘non-functional’ depending upon whether or not these are functioning as per their original intended use.

6.1.2 On the basis of custodianship the monuments are classifiable as under,



6.2 Archaeological Survey of India:

- i. ASI is the custodian of 3691 monuments and archaeological sites and remains, all declared nationally protected monuments, under its AMASR Act, 1958. These include, 22 monuments and complexes declared as world heritage properties by UNESCO.
- ii. A unique concept of *Adarsh Smarak* has also been popularized. Pursuing a holistic approach towards conservation, development of centrally protected monuments, ASI has identified 100 monuments as Adarsh Smaraks throughout the country to be conserved and developed as model monuments in the first phase. These monuments will be equipped with all basic amenities such as washrooms, drinking water, signage, cafeteria, interpretation centers, wi-fi facility, etc.

6.3 State Department of Archaeology:

- i. Other than ASI, which has been entrusted with the role of discharging its responsibility, as the custodian of centrally protected monuments and a central guiding body for archaeology and conservation, several states across India have their own Departments of Archaeology for the State Protected Monuments and Museums.⁵⁸
- ii. A number of these State Archaeology Department were constituted prior to independence in line with the ASI for undertaking work of conservation of cultural heritage at state level, mostly by the Princely States. After Independence, the earlier State Departments of Archaeology were recognized under the various newly formed State Governments along with establishment of new departments of state archaeology across the country. These departments have adapted and adopted the AMASR Act to translate as a State Archaeology Act for maintenance, preservation and protection of monuments under the State/ UT.
- iii. These State Acts for Archaeology were adopted in different years post-independence by various states.



Chittor Fort, a UNESCO site

- iv. As noted by a report of NITI Aayog, most of the State Archaeology Departments are short of staff and lack a vision for overall works in archaeology and conservation. Only a few notably Rajasthan and Karnataka have been very active since their initiation.

⁵⁸ Improving heritage management in India, Niti Aayog

Rajasthan is the only State Archaeology Department which has 3 of its own state protected sites on World Heritage List. However, with financial resources allocated to several State Archaeology Departments under the 13th Finance Commission, a number of other State Departments such as MP, Punjab, Tamil Nadu, Kerala etc. have endeavored to scale up their respective departments with state-of-the-art equipment for conservation of cultural heritage.

- v. However, a comprehensive data base and requisite identifying documentation of cultural heritage is still an elusive dream. Such efforts or the lack of it towards documentation or building a basic database of monuments under the custodianship of States has faced several infrastructure and resource related challenges. It's heartening to note that some States like Rajasthan has some edge in this, where DoIT, GoR has completed LiDAR survey of its 22 sites, forts and others with complete walkthroughs including its use for interpretation and games etc. Similarly, Telangana has linked with AKTC for the Qutb Shahi Tombs to showcase a role model for holistic conservation approach. More such models may be available with various states after such approaches are popularized and persuaded among States.



This is the Rudra pad temple, which is more than 1000 years old, right on the bank of Brahmaputra in Tezpur, Assam. It's believed that the right foot imprint of Lord Shiva is preserved on a stone slab inside the temple. The temple however, is in a dilapidated condition.

6.4 Temple Trusts and Committees:

- i. There are lakhs of monuments and ancient religious places. Only a handful of such ancient monuments are under the custodianship of ASI. The bulk of such heritage structures are being looked after by private temple trusts and committees. In the nineteenth and mid twentieth century such trusts were legally recognized by different laws such as, the Societies Registration Act of 1860, The Religious Endowments Act of 1863, The Indian Trusts Act of 1882 and the Charitable Endowments Act of 1890⁵⁹. Such institutions gave legal sanctity to such custodianship but the archaic laws have provided very little in terms of regulation and accountability towards the safety and upkeep of such monuments and ancient heritage.
- ii. In the early 20th century, the colonial rulers included two more enactments namely, the Charitable and Religious Trusts Act, 1920 and the Trade Unions Act, 1926. There are approximately 4,50,000 temples under the control of trusts. This is the largest

⁵⁹ Ibid

segment of India's Heritage and managed through Private Trusts with minimal intervention from the Governments, Centre and States.

- iii. Private conservation without adequate regulation may make such structures prone to irreversible damage if the new generations or the people concerned fail to appreciate



the need for quality conservation. An example is the Pullamangai Brahmapurisvarar in Thanjavur. This early Chola temple, with its incredible wall reliefs, is looked after by an old woman living nearby⁶⁰! In Kozhikode, Kerala, the medieval Mishkal Mosque, with its carved wooden doors, pillars and mimbars⁶¹, is managed by a private trust.

Brahmapurisvara Temple is one of earliest Chola temple near Thanjavur

- iv. Most of the Temple Trusts, Buddhist Monasteries, Waqf Boards and others such as SGPC for Gurudwaras are managing their religious institutions quite well. However, a more formal and scientific approach towards conservation have been imbibed only recently. But the same may not be true across all such monuments as lack of regulatory framework, audit, accountability perforced by paucity of funds and resources have exacerbated efforts of conservation.

Mishkal Mosque, IC Alamy



However, the understanding of the intrinsic value of the cultural heritage is being inculcated gradually and perhaps more spontaneously with instances of theft and destruction of heritage being given due cognizance in recent times.

⁶⁰ Should the Archaeological Survey of India be the only gatekeeper of India's art and culture?, The Hindu

⁶¹ a short flight of steps used as a platform by a preacher in a mosque.

- v. As such, a few institutions⁶² have shown a way of conservation by engaging professionals and monetizing such heritage. Besides efforts have also been made to keep alive the traditions associated with such structures so that this aspect becomes an attraction for tourists. However, it's imperative to note that the ASI or the Governments at the Centre and States should support these initiatives by not only aiding bridging the knowledge gap but also by extending resources and universalizing guidelines in respect of conservation and facilitation of tourism.

Buddhist Monastery in Tawang, Arunachal



6.5 CPWD and other Unprotected Heritage –

- i. CPWD⁶³ has 50 Built Heritage monuments under its jurisdiction including the Rashtrapati Bhawan, North and South Block and even fewer sites protected by (not owned) by ASI such as Viceregal Lodge.



- ii. Besides CPWD, State PWDs and Urban local bodies or Panchayats also have significant heritage buildings which are unprotected heritage. All such government bodies require sensitization and training to value and conserve this heritage while continuing its use/ adaptive reuse as the case may be.
- iii. Its pertinent to mention that INTACH, as an all-India level NGO has played an important role in last 30 years in providing guidance for listing and conservation of unprotected heritage.

⁶² Improving heritage management in India, Niti Aayog

⁶³ Ibid

6.6 NGOs in Heritage Conservation and Management in India

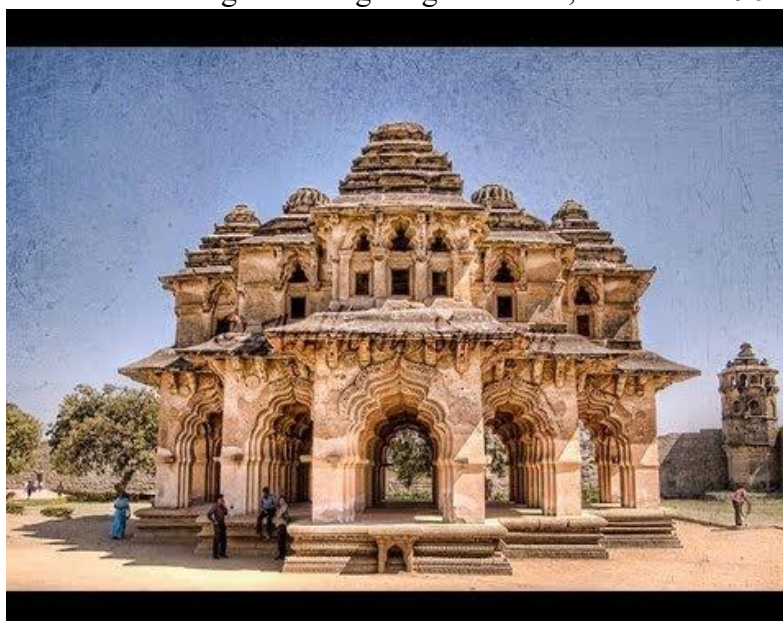
- i. It is seen that several NGOs have historically been managing cultural heritage structures very successfully. Such efforts have not only harnessed the best practices in the field of conservation but financially they have been self-sustaining. It's essential to replicate such best practices in other conservation efforts after surveying and comprehensively auditing all ancient structures. Some of the examples for such conservation are given below.
- ii. **Aga Khan Trust for Culture:** The Aga Khan Trust for Culture (AKTC) focuses on the physical, social, cultural and economic revitalisation of communities in the developing world. It includes the Aga Khan Award for Architecture, the Aga Khan Historic Cities Programme, the Aga Khan Music Initiative, the Aga Khan Museum etc. The largest cultural project to date has been the restoration and revitalisation of Humayun's Tomb, including its gardens. In Hyderabad, a project to restore the Qutb Shahi tombs is also underway.



*Qutb Shahi Heritage Park
AKTC*

iii. **Indian National Trust for Art and Cultural Heritage** The Indian National Trust for Art and Cultural Heritage (INTACH) was founded in 1984 in New Delhi with the vision to spearhead heritage awareness and conservation in India. Today INTACH is recognized as one of the

world's largest heritage organizations, with over 190 Chapters across the Country. In the past 31 years INTACH has pioneered the conservation and preservation of not just our natural and built heritage but intangible heritage as well.



*Krishnadevaraya temple
Google image*

iv. **International Council on Monuments and Sites:** ICOMOS works for the conservation and protection of cultural heritage places. It



is a non-governmental organization with experts from the field of history, art, geographers, architects etc.

- v. World Monuments Fund World Monuments Fund is a private nonprofit organization founded in 1965 by individuals concerned about the accelerating destruction of important artistic treasures throughout the world. Today, with affiliate organizations established in Britain, India, Peru, Portugal, and Spain — World Monuments Fund sponsors an ongoing program for the conservation of cultural heritage worldwide. Established in 2015, WMF India serves as a local representative for WMF, assisting with project management and outreach. World Monuments Fund has had a significant presence in India for over 20 years since the inception of the Watch. Its earliest project was the study and stabilisation of Jaisalmer Fort. Work continued here for over 15 years until the site was deemed in a good enough condition to close our involvement. Many other sites across India have received funding and technical support over the years. These include: Pardesi Synagogue in Kochi, Taj Mahal, the Krishnadevaraya Temple in the World Heritage site of Hampi, and the Dwarkadeesh Temple in Ahmedabad following extensive earthquake damage. WMF India was set up to partner with international and national organizations as well as donors to focus on heritage conservation projects and awareness programmes in India.

6.7 Issues faced by the management and custodians⁶⁴

6.7.1 Lack of human resource:

- i. Trained human resources or the lack of it can be critical in efforts to conserve cultural heritage. Across the board, all agencies entrusted with conservation work are faced with severe lack of adequately skilled manpower. Even the Ministry of Culture has often admitted that its agencies are faced with lack of sufficient number of skilled professionals as the existing staff don't possess expertise and skills to efficiently manage the given task.⁶⁵
- ii. Considering the shortage of Human Resources in the heritage sector, a Central Institute, namely the Indian Institute of Heritage is being set up by the Development of Museums and Cultural Spaces (DMCS) under the Ministry of Culture with the mandate to develop Human Resources in Museology and other disciplines. This Central Institute will provide avenues for advanced research and education, evolve research advanced approaches for preserving and managing India's rich tangible heritage besides creating skilled human resources. The Institute aimed after post graduate degrees, Ph.D., Diploma and Certificate courses. Digital outreach shall also be offered. It is a step in the right direction. But it's also necessary to ponder if it is adequate. Would it be prudent to craft a department, more empowered and comprehensive, in each university also, with specialized courses and subsequent gainful placements where they can be employed in conservation work.
- iii. The most basic work of cataloguing the antiques or artefacts in general is easier said than done. Such works are of very specialized nature and have to be done meticulously. All artefacts have to be accompanied by necessary identifying

⁶⁴ India facing multiple challenges in protecting its monuments, Harish Rao

⁶⁵ ibid



photographs and documents. It goes without saying that this work is not cut out for the inexperienced but have to be accomplished by a trained hand. Do we have such adequate numbers of experts? That is a question we need to ask and to come to a figure of the optimum size and thereafter go about building capacity. It may be a time taking process but a beginning has to be made now.

- iv. It's important to take stock of the number of vacancies in ASI. The following tables provides the figures as on April, 2020.

No of vacancies in ASI (as on 1/4/2020)

Category	Sanctioned Strength	Filled	Vacant
Group A	233	137	96
Group B Gazetted	141	122	19
Group B Non-gazetted	703	444	259
Group C	1197	829	368
MTS	6152	4452	1700
Total	8426	5984	2442

6.7.2 Natural calamities and pollution:

- Natural heritage is always vulnerable to the vagaries of nature. All such structures are exposed to the elements and the changing climate and natural disasters threaten their safety and often existence. Therefore, there is hardly any doubt that apart from skilled manpower, utilization of the best-known conservation and preservation practices play a pivotal role in maintaining and preserving the heritage sites and the artefacts of a museum.
- India being a tropical country, fluctuating environmental conditions like extremely hot or cold weather, relative humidity, light levels and contaminants are main challenges. Pollution is another problem faced by our heritage sites and we are still struggling to save the world-famous Taj Mahal from the pollution. Of late, we are seeing spate of floods during Monsoon in various parts of the country including in those locations where heritage sites are located. Puri in Odisha and Hampi in Karnataka are some of the latest examples of heritage sites getting damaged due to natural calamities which in turn is said to be the result of global warming.
- While the significant archaeological sites have been protected by the Central or State Governments the ones which are of lesser importance are under the care of private individuals and in some cases ...none! In fact, it is this category of the monuments whose very existence is threatened. The CAG report 18 of 2013 had pointed out

untraceable monuments! If accounted for monuments are not to be found in plain sight, the ones not accounted for are in dire straits.

- iv. However, of late, the local bodies have also started taking interest in their protection, preservation and development. But still, a lot needs to be done for the protection and preservation of this class of the monuments considering that these are parts of our rich cultural tradition and heritage.

6.7.3 Absence of specifications of conservation works:

- i. It's worth noting that in the realm of specifying nuances of conservation work, ASI may be lagging. It's often seen that ASI relies on the specification laid down by CPWD which, because of the nature of monuments under CPWD may not be focused towards conservation. Therefore, it's not only important to have a detailed guidelines or specifications but such documents should incorporate the best practices and knowhow followed by other successful countries in respect of success in conservation of heritage.
- ii. Its rather lamentable to note that ASI had notified a revised national policy for conservation in 2014, the same have not been internalized in terms of dissemination and implementation. So, there is urgent need to disseminate the policy, hold workshops and discussions regarding the policy both within the ASI and with officials of State Governments.

6.7.4 Lack of funds:

- i. India being a developing Country has limited resources to allocate for heritage conservation. Therefore, lack of funds is palpable and is also plaguing the ASI as it struggles to carry out the task of maintenance and management of 3692 sites with its limited funds. The situation has only worsened during the pandemic spread as the government cut drastically the funds allocation for heritage conservation. ASI could spend only Rs 5.25 crore during 2020-21 on conservation work of centrally protected monuments in the country. It may be noted that ASI had spent Rs 9.6 crore on similar works in the previous year. It shows that conservation works have been reduced during the last financial year considerably. What is even more concerning is the fact that this year's allocation of Rs 5 crore for the purpose is even less than the amount spent last year. Having noted the lack of funds, its also important to underline the need for monetizing the heritage sites by showcasing them widely to increase tourist footfalls. Easy accessibility, ancillary engaging activities, sound and light shows, memorabilia shops, handicraft shops, carnivals or melas around such sites etc should be brain stormed to increase popularity of such sites and thereby increase footfalls.
- ii. The Ministry of Tourism's flag ship scheme of adopting a heritage has shown tangible results by opening the path for corporates to be a stakeholder in protection of heritage. An example is the Red fort which has been redone beautifully and even has the first restaurant for such a heritage site. This may be a way forward in terms of making responsible organizations, stakeholders, and in the process creating an urban and attractive ambience to increase footfall for giving an impetus to learning about India's rich culture and also increasing tourism.



*Cafe Delhi Heights in Red fort
IC Financial Express*

6.7.5 Technological support:

i. Technology is ever encompassing and very empowering. India is uniquely placed in the world as a fountain head of new technology ideas. Such strides and achievements should be capitalized to

leverage technology in a cost-effective way in conserving our heritage. It is more so as India's historical sites and monuments are located in varied geo-climatic regions and thus need very well considered conservation strategy. Its high time that the ASI reviews the functioning of its Science and R & D wing, provide it with better funding and ensure that all the conservation processes employed at the Centrally protected monuments are backed by well-documented scientific research. Modern technology such as photogrammetry, 3D laser scanning, blockchain technology etc. may be explored and utilized, wherever possible, to improve the documentation of the monuments since quality documentation at present would allow quality scientific research in the coming future.

ii. Experts should be exchange ideas of conservation.

6.7.6 Lack of regulation over custodians other than ASI:

i. It is seen that the upkeep of the Monuments and heritage managed by Custodians other than ASI are out of purview of any regulatory framework. With events surfacing which may be challenging for the conservation of heritage it's imperative to have a uniform strategy in conservation efforts in the form of a common law covering all heritage and artefacts and all institutions and custodians.

6.7.7 Need of uniform law:

i. The various trusts and Custodians have been created based on various laws. For the sake of uniformity in practice and avoid legal disputes in legal trade of heritage its pertinent to have a uniform enabling law in place.

6.7.8 Collaboration among Custodians not seen:

i. Although there is a proliferation of Custodians but a synergy and a spirit of working together towards a single goal has not been seen. Although it's not incumbent upon different custodians to work together but it can do a lot of good in sharing latest knowhows and technology and sharing best practices in pursuit of the common goal of conservation of cultural heritage.

6.8 Recommendation:

6.8.1 Tremendous effort should be made to give recognition to many more heritage sites as World heritage sites under UNESCO.

6.8.2 India should showcase its own list of heritage sites with a comprehensive write up on their history and importance and why they should be considered as invaluable asset not only of India but of the entire mankind. Such writeups should be freely distributed or showcased through Indian Embassies worldwide.

6.8.3 Ancient Indian heritage should be widely publicized in the form of contemporary media capsules to attract both domestic and international tourists. This will give an impetus to ancillary services sector. But the focus initially should be propagation of the intrinsic beauty of the heritage sites and the safety and comfort of travelers.

6.8.4 Indian Melas should be organized in the form of carnivals around such heritage sites wherever possible. This will attract investments and help in engaging the locals in gainful employment.

6.8.5 Modern technology can create reproductions of antiquities that visually appear identical to the original. The “fake” can then be displayed to the public while the original is kept in a more secure location. Factum Arte is a well-known company specializing in creating detailed museum quality reproduction of objects. This can include reproducing the entire interior of a Pharaoh's tomb! The original tomb is spared ongoing damage from thousands of tourists. It's believed that visitors create mold on pigmented surfaces simply by raising the tomb humidity with their breath.

6.8.6 Like in several well protected temples like Tirupati, sufficient distance should be enforced of tourist from the artefacts on display. For cave paintings, a durable and scientifically proven layer of protective layer should be considered. The caves should also be inspected for wear and tear and efforts should be made to reinforce the strength of the structure.

6.8.7 Virtual museums should be created which should be easily accessible and visually appealing to encourage people to appreciate their cultural history and at the same time visit such places from the comfort of their homes.

6.8.8 There should be increased reliance on technologies like Photogrammetry - laser scanners which can record both small objects as well as large temple complexes in digital models. Creating a digital record allows a wider audience to see the past even from the comfort of their homes.

6.8.9 To address the issue of funds a public private model of conservancy may be the need of the hour. Such models should be well monetized and the accountability of custodianship should be clearly defined so that heritage is protected and conserved and it induces a healthy income flow.

6.8.10 The several archaic statutes governing custodianship of heritage by trusts etc should be brought under a contemporary law with clear provisions of preservation and safety and



accountability thereabout. There should be a clear provision of regulation.

6.8.11 Conservancy as a field of study and employment should be popularized and incentivized. There is a huge vacuum of such centres of learning and expertise. Such gaps should be filled with encouragement to States and private institutes to establish more centres of learning and Research and Development.

6.8.12 Civil society like India Pride project should be encouraged to spread the word and take more volunteers under its wing. Such civil societies should be appropriately honoured for their efforts.

6.8.13 Its imperative to have a dedicated force in each State who are well trained for a single point window for addressing cases of theft. Such a task force can have representatives from State police, Customs, Archaeology department and civilian experts.

6.8.14 For cases of theft a comprehensive SOP should be drafted which would be followed by all States.

