

GLOBAL ART AND HERITAGE LAW SERIES

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Editor of Global Art and Heritage Law Series: Kate Fitz Gibbon

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Cover photo: Taj Mahal, Agra, India, photo by Diego Delso, 3 December 2009, license CC BY-SA. The Taj Mahal's gleaming exterior is shrouded by pollution that eliminates the distant vistas.

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Shiva as Lord of the Dance, Nataraja from Tamil Nadu, India. Chola Dynasty, Los Angeles County Museum of Art: online database: entry 240893, public domain.

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PART I

INTRODUCTION — CULTURAL PROPERTY POLICY AND LAW IN INDIA

This report on the protection of Indian cultural heritage must be seen within the context of a historical time range that spans thousands of years. India is so rich in archaeological sites that it is literally layered with evidence of the rise and fall of civilizations, religions, polities, and peoples.

In modern India, the development of concepts of national cultural heritage and national cultural identity has often been guided by dramatic political processes. The idea of a consolidated Indian nation is itself a constructed concept. Prior to the colonial period, the South Asian subcontinent was made up of many independent and semi-independent kingdoms, some linked by similarities of language, customs, economy, and history – others diplomatically through political alliances – but there was no unified polity known as “India.”



Interior of the Moti Masjid, Agra, India, photo by Samuel Bourne no. 1229, 1867. The J. Paul Getty Museum, Los Angeles.

The concept of an Indian identity shared by a united people with common interests, despite their religious, social, and economic differences, drew on predominantly Western concepts of nationhood. The establishment of a unified Indian administration came only after protracted conflicts that involved British, French, and Portuguese encroachments on Indian territory and numerous alliances and proxy wars between local rulers and colonial forces. After Britain’s superseding of other European powers, the development of a vast trading economy under the British East India Company resulted eventually in India’s first unified economic and political administration as a British colony. The foundations of India’s modern cultural administrative apparatus were shaped by British precedents and priorities.

While the earliest Indian laws related to cultural heritage were passed in Bengal in 1810 and 1817, these simply ordered the protection of historic, publicly-owned buildings as “monuments.” The first sweeping Indian laws on cultural heritage paralleled archaeological discoveries and research conducted by British academics and amateur historians. Buildings of historical interest, even if privately

owned, were protected by statute in 1863. The same year, the Religious Endowments Act, 1863, invested British government officials with powers of adjudication over properties owned by Muslim trust organizations, *waqfs*¹, but decisions by colonial courts attempted to follow existing interpretations of Islamic law. The Indian Treasure Trove Act of 1878 was modeled on British domestic laws granting “found” objects of precious metal to the Crown, but in the case of Indian treasure, to the colonial administration.

The Archaeological Survey of India (ASI)² was founded in 1861, and the National Archives of India (NAI) were established as the Imperial Record Department in 1891. These two entities were tasked with archaeological excavation, academic research, and the preservation and curation of India’s monuments, cultural objects, and historical records. Both agencies now form part of India’s Ministry of Culture. In many aspects, they retain administrative structures and responsibilities that date to the colonial period, which ended with Indian independence in 1947.

The ASI was originally focused on supervising excavations of ancient Buddhist sites, and on epigraphical and scholarly studies illuminating this forgotten period of Indian history. In the early 20th century, the ASI, under its Director John Marshall, uncovered the archaeological remains of the ancient Indus Valley Civilization at Harappa and Mohenjo-Daro. From the 1930s, both Indian and British Directors led the ASI at various times, and numerous important archaeological discoveries were made under their leadership.

By 1904, there was a well-established government department supervising archaeological excavation, research, and documentation, as well as a general Ancient Monuments Preservation Act that placed preservation and control in government hands.

¹ A waqf is essentially a dedication of property for purposes of religious, charitable, or public utility. A deed of Wakf-alal-aulad can document the donation of any kind of property for Muslim charitable purposes.

² *Archaeological Survey of India*, MINISTRY OF CULTURE, [HTTP://ASI.NIC.IN/](http://asi.nic.in/).



Ruin of Quwwat-ul-Islam mosque in Delhi, India, photographer unknown, about 1860, Leiden University Library, Royal Netherlands Institute of Southeast Asian and Caribbean Studies. Public domain. Wikimedia Commons.

The majority of India's ancient and historic sites are associated with religious practice. Additionally, in the case of India, where partition also affects access to monuments of a divided people, almost all of the great Muslim monuments of the Indian subcontinent are located in present day India, not Pakistan or Bangladesh.

Although sites and structures of essentially political and historical importance, such as forts and government buildings, were included among protected monuments, the vast majority of structures defined as 'monuments' under colonial period and later Indian national laws were associated with religious communities, that is, they were shrines, temples, tombs, cemeteries, and mosques. Nonetheless, the legal frameworks protecting Indian monuments from the colonial period onwards were essentially secular and the approach to conservation of historic sites was based upon consciously impartial 'scientific' procedures. Administration of monuments became divided according to categories of monuments and their usage: the degree and scope of government management of sites differed between those deemed remnants of past religions including Buddhist, Jain and

Hindu structures, which were managed by the secular state and those held under 'waqf' endowments and deemed to belong to functioning religious communities that used them for religious activities.

Often, the dominant secular perspective resulted in religious communities not being granted management authority over ancient or older buildings. This policy was generally understood as keeping the state out of religious matters and ensuring that communal tensions between religious communities would not "distort the unity of the country."³

The Indian Archaeological Policy, 1915:18-9, states, in part, in clause 19 that: "...in the case of monuments which are still serving the purpose for which they were built, whether they be Hindu temples or Muhammadan mosques or tombs or palaces where ceremonial function are still performed, there are frequently valid reasons for restoring to more extensive measures of repair than would be desirable, if the buildings in question were maintained merely as antiquarian relics... [T]he object which Government set before themselves is not to reproduce what has been defaced or destroyed, but to save what is left from further injury or decay, and to preserve it as a national heir-loom for posterity."⁴

Thus, early 20th century cultural heritage policies not only recognized the need for preservation of sites and monuments, but also accepted that many 'monuments' would require an adaptive approach to preservation that accommodated continuing religious usage.

The *Conservation Manual* of 1923 defined three categories of ancient monuments (1) monuments whose present condition or historical or archaeological values merited maintenance in permanent good repair, (2) monuments desirable to save from further decay by basic measures such as removing groundwater or vegetation, and (3) monuments whose comparative unimportance or damaged state did not merit conservation.⁵ Only monuments in the first category were listed as 'protected monuments.' Responsibility for these protected monuments could lie with the state, with waqf organizations or private persons, or under combined management.

On achieving independence in 1947, laws governing exports continued to follow secular lines. The new Indian government took official control of exports of art and antiquities in the Antiquities Export Control Act (as well as establishing regulations for all other exports). Museums were established as national or state-level governmental entities, most often tied to specific historical monuments or sites. Princely art collections were also treated as forming part of the historical past; aside from the National Museum at New Delhi, which served primarily as a holding place

³ However, religiously-based constructs such as 'waqf' endowments which held property dedicated perpetually to Muslim communities conflicted with this purely secular approach. Hilal Ahmed, *Conservation of Indo-Islamic Historic Buildings in India: An Evaluation of the Postcolonial Conservation Policy and Legal Framework*, https://www.academia.edu/29578707/Conservation_of_Indo-Islamic_Historic_Buildings_in_India_An_Evaluation_of_the_Postcolonial_Conservation_Policy_and_Legal_Framework, 1-2, 9-10.

⁴ *Id.* at 11

⁵ Sir John Marshall, Sir, Archaeological Survey of India, *Conservation manual. A handbook for the use of archaeological officers and others entrusted with the care of ancient monuments*, Superintendent government printing, 1923.

for art organized in a historical didactic program, there was little interest in developing a national museum culture for the study and exhibition of artworks as ‘art.’ Art museums and art history have not been prioritized by the ASI or by India’s Ministry of Culture.⁶

After independence, archaeological exploration at ASI continued to be based upon modern-scientific principles. At partition, India’s sites and archaeological surveys were divided between India and the newly created state of Pakistan. There are currently 24 geographic divisions of the Archeological Survey of India; its headquarters is in Delhi.

Indian cultural heritage laws and regulations, such as the 1951 Ancient and Historical Monuments and Archaeological Sites and Remains Act, effectively reiterated colonial period legal protections while expanding the type and number of monuments covered. Conservation policies under the ASI followed the Indian Constitution’s explicit secularism. There was not significant impetus to develop official heritage policies to recognize community religious interests, especially in regard to less famous or publicly known Indo-Islamic monuments. In addition, the continued existence of religious endowments, waqfs, provided an alternative source of funding for conservation and preservation of building used for Islamic worship.



Harappa excavations, pre-Partition India, present-day Pakistan, photographer unknown. Private collection.

The 1958 Ancient Monuments and Archaeological Sites and Remains Act gave the Union government both the power to select monuments of national importance and to “denationalize” monuments given national status, to acquire historic buildings for preservation, and also to “decide the religious identity of a monument of national importance and the nature of religious observance inside it.”⁷

Management of modern ‘Indian heritage’

Research into India’s past by its own scholars has filled an important role beyond the archaeological and scientific world. Only with independence could there be an “official history” uncolored by colonial perspectives. The development of cultural policy on the preservation and use of monuments have run in tandem with the development of a public narrative of Indian history – in which historical and religious monuments remain the most visible symbols of national culture and identity. Attention

to cultural heritage in India has had increasingly greater public and political importance as the decades have passed. Nonetheless, government commitment to meet the goals of research and conservation of Indian heritage is often lacking.

Indian archaeologists made major discoveries during the 20th century that have dramatically altered how the world understands the development of civilization and society in the subcontinent. Indian scholarship has bettered our understanding of ancient epigraphy, numismatics, climatology, and many other fields of research. The contributions of M.G. Majumdar, D.K. Chakrabarti, K.N. Dikshit, H.D. Sankalia, S.P. Gupta, K. Devi, A. Gosh, and many others have brought deserved fame and international respect to the fields of Indian prehistory and history.

Regrettably, the administrative structure in which these noted researchers worked failed to advance along with Indian scholarship. Despite the passage of new laws and regulations, neither the Archaeological Survey of India,⁸ nor the National Archives of India has been truly modernized since independence. Policies and provisions suited to the responsibilities of the Archaeological Survey of India, as it was originally established more than one hundred and fifty years ago, have not evolved to ensure the agency’s ability to meet the contemporary challenges posed by urban development and rural stagnation. The resultant shortcomings are exacerbated by a lack of adequate staff and training, and chronic shortage of funds.

In 1972, a new legal approach was undertaken which paralleled developments in international heritage agreements. India’s Antiquities and Art Treasures Act 1972 reflected international discussions surrounding the 1970 UNESCO

⁶ Many important Indian art historians and experts traveled to work in museums and universities in the West.

⁷ *Id.* at 15

⁸ *Id.*

Figure of a nobleman, Mohenjo-daro excavations, pre-Partition India, present-day Pakistan, photographer unknown. Private collection.



Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property and its espousal of national identity-building through national ownership laws and state control of cultural property.

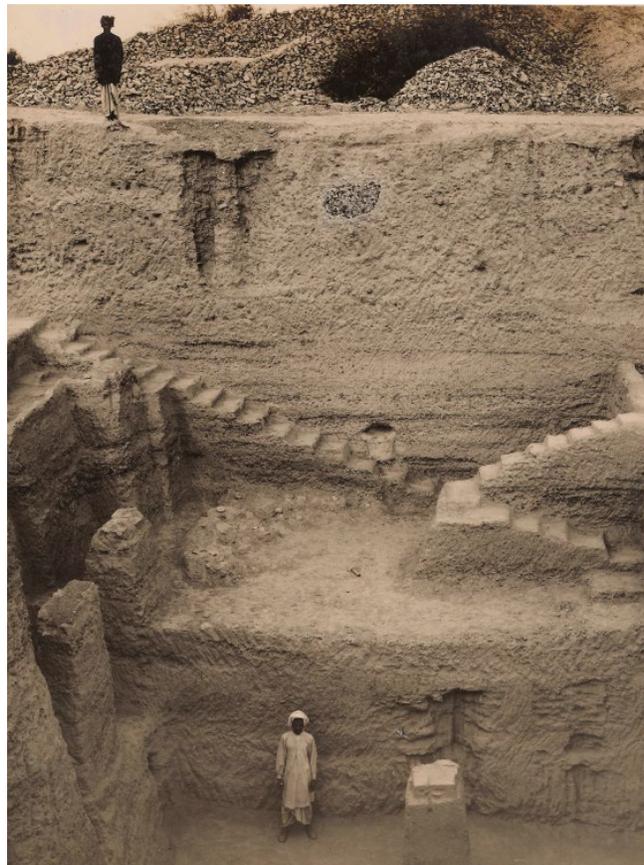
As did other formerly colonized areas, India embraced a policy of exclusive government control of all art and artifacts. “Cultural property” was very broadly defined to encompass virtually all man-made objects of historical or aesthetic interest. These included all examples of fine arts, books and manuscripts, ethnographic art and objects of historical and scientific interest over seventy-five years old, in addition to movable antiquities, antique artworks, and monuments. The Antiquities and Art Treasures Act 1972 (No. 52 of 1972) remains India’s foundational national heritage law today.

At independence, Indian academics and professionally trained archaeologists were already high in the ranks of the Archaeological Survey of India, but these researchers and scientists were understandably overwhelmed by the practical difficulties of managing and policing even a few thousand of India’s hundreds of thousands of sites, which were often located in rapidly changing urban environments – nor were they equipped to promote their own goals to politicians and professional bureaucrats with completely different interests. Complicating the ASI’s duties, it is widely acknowledged that the Indian police, customs officers, and other government authorities have been largely ineffective in enforcing the laws on the books, and in providing necessary enforcement support.⁹

Changes in the 1990s took the management of the ASI away from its traditionally archaeologist-dominated leadership, placing control of the department largely in the hands of bureaucrats. The ASI’s original archaeological, scientific, and research-oriented activities were expected to conform with central government policy initiatives. At about the same time, politics and political influence on state and federal levels became more of a factor in cultural heritage management and funding.

The situation has been further complicated by the increasing sensitivity of government officials to political pressures arising from cultural conflict between India’s Hindus, Muslims, Sikhs, and many smaller religious minorities and ethnicities. The Constitution of India, its most fundamental law, is secular, but it is also founded on respect for the religious and cultural diversity of India’s population. The politicization of cultural heritage¹⁰ in India is an additional factor that now places even major monuments, especially those of non-Hindu cultures, at risk. The tendency to make the preservation and protection of specific monuments contingent upon the approval of national, regional, and local political powers¹¹ also limits the opportunities for undertaking pragmatic reform.

Yet, as will be seen, there are hopeful signs of increased funding for preservation and public involvement through independent, non-governmental, non-profit organizations that are willing to take on conservation and educational projects. India’s business community is also reaping certain benefits, such as brand recognition and public approval, through its involvement in heritage projects. The major remaining challenge, if adequate funding can be provided and protective laws actually enforced, is to ensure that there is quality control in conservation and preservation activities.



Harappa excavations, pre-Partition India, present-day Pakistan, photographer unknown. Private collection.

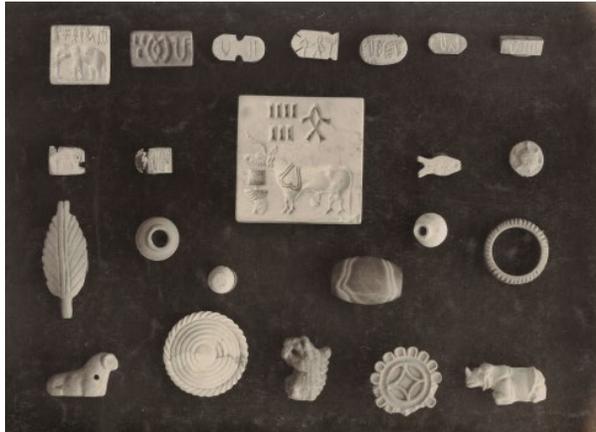
⁹ Maria Thomas, *An Unlikely Detective is Fighting to Bring Back India’s Stolen Gods*, QUARTZ INDIA, Aug. 23, 2018, <https://qz.com/india/1366136/the-unlikely-force-behind-indias-efforts-to-trace-its-stolen-idols/>.

¹⁰ Vikas Pandey, *Reality Check: Whose Taj Mahal is it Anyway?*, BBC NEWS, Nov. 2, 2017, <https://www.bbc.com/news/world-asia-india-41813339>.

¹¹ Annie Gowen, *Is India Neglecting the Taj Mahal Because it was Built by Muslims?*, WASHINGTON POST, Oct. 3, 2017, https://www.washingtonpost.com/world/is-india-neglecting-its-iconic-taj-mahal-because-it-was-built-by-muslims/2017/10/03/61bd142e-fd2a-408f-b56b-b58916f0b290_story.html?utm_term=.ef954c08d293.

Cultural Heritage Management Systems

India's vast cultural wealth and its hundreds of thousands of ancient and historic sites are managed under multiple, many-layered bureaucratic systems. The Parliamentary papers that are a major source for this report often cite a lack of coordination between the federal system under the Ministry of Culture and state-level cultural offices. There is also little apparent coordination between the cultural bureaucracy and police and customs officials, which hampers enforcement of laws protecting cultural heritage.



Beads and seals, Harappa excavations, pre-Partition India, present-day Pakistan, photographer unknown. Private collection.

Cultural management and cultural policy development takes place largely within a centralized federal system. The Ministry of Culture is the government entity tasked with the development of cultural policy and has oversight of the preservation of cultural heritage, the promotion of contemporary and historical Indian culture both domestically and abroad, the management of national museums and their collections, and domestic policies on cultural education.

In addition to the federal Union Ministry of Culture and the ASI, there are cultural administrations in every Indian state, and twenty-five state archaeological departments, which have responsibility for monuments that are not under ASI purview.

documentation of heritage. INTACH in many ways supplements and supersedes the work of the ASI, filling in with conservation work and organizing local and national communities in heritage projects. For example, INTACH is said to have recorded over seventy thousand monuments, of which sixty thousand are not under any governmental supervision. INTACH is also concerned with preserving India's living artistic heritage and has listed fifty-four thousand contemporary heritage resources in one hundred and fifty cities and towns across India.¹³

In addition, India's National Cultural Fund¹⁴ includes civil society interests, India's corporate sector and India's government in a deliberate attempt to stimulate national and international investment to fund cultural preservation activities within India.

Archaeological Survey of India

The Archaeological Survey of India (ASI) implements public policy on cultural heritage. In its first century, both British colonial and Indian scholars at ASI made enormous contributions to the world's understanding of the history of the subcontinent. Distinguished Indian archaeologists and scholars continue to contribute to this knowledge. But the ASI was never sufficiently funded and staffed. Even before independence in 1947, the agency was expected not only to perform its original tasks of archaeological excavation and research, but also to physically manage, conserve, protect and maintain more than three thousand of India's estimated hundreds of thousands of monuments as well as numerous local site museums. The task was overwhelming decades ago, and appears almost impossible today, after many years of underfunding, neglect, site encroachment, bureaucratic indifference, and the pressures of increasing population and industrial development.

A Critical Report on ASI in the 21st Century

The Report of the Comptroller and Auditor General of India on Performance Audit of Preservation and Conservation of Monuments and Antiquities (Report No 18 of 2013),¹⁵ (hereafter CAG Performance Audit of ASI or "the audit") was a major study analyzing the ASI's capacities and performance. It is a primary resource for this India report.

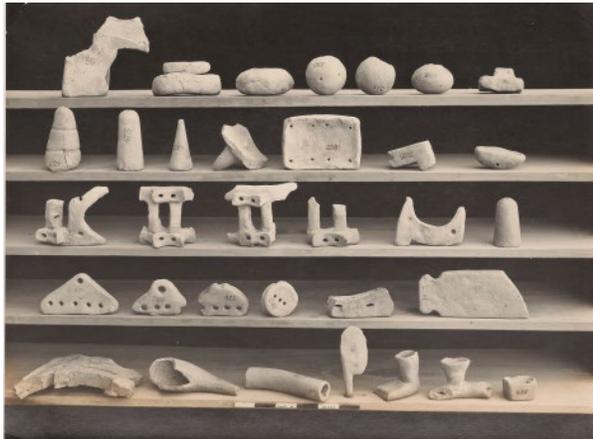
¹² INDIAN NAT'L TRUST FOR ART & CULTURAL HERITAGE, <http://www.intach.org/>.

¹³ INTACH Listing Cell, INDIAN NAT'L TRUST FOR ART & CULTURAL HERITAGE, <http://chapter.intach.org/chapter-listing-cell.php>.

¹⁴ INDIAN NATIONAL CULTURAL FUND, <http://ncf.nic.in/>.

¹⁵ MINISTRY OF CULTURE, REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON PERFORMANCE AUDIT OF PRESERVATION AND CONSERVATION OF MONUMENTS AND ANTIQUITIES (Report No, 18 of 2013), https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Ministry_Cultures_Monuments_Antiquities_18_2013.pdf. (hereinafter CAG PERFORMANCE AUDIT OF ASI).

The CAG Performance Audit of ASI was undertaken on the ASI's 150th anniversary in 2011. It was the first time that a thorough analysis of the performance of the ASI had been carried out since independence in 1947. This three hundred page survey, available online, identified serious problems in the ASI's physical management of monuments and artifacts, documentation of sites and objects under its protection, management of archaeological projects, operation of ASI site museums, recordkeeping in all phases, and coordination with the ASI's supervisory government agency, the Ministry of Culture, and with law enforcement.



Clay artifacts, Harappa excavations, pre-Partition India, present-day Pakistan, photographer unknown. Private collection.

The audit confirmed many of the Indian press and public's perceptions of the Archaeological Survey of India's failings. The ASI was already widely viewed in India as unable to cope with the protection of the more than three thousand monuments it supervises. The audit showed that for decades, despite internal awareness of its shortcomings, ASI had been incapable of taking action to improve its performance under its own standards, or of initiating new systems of management to replace its moribund bureaucratic structure. The problems found in the audit extended well beyond the ASI itself, pointing to negligence at higher bureaucratic levels at the Ministry of Culture, of which the ASI is a sub-agency. The audit found, in fact, that the Ministry of Culture did little to supervise or monitor the ASI with respect to "adequacy of policy and legislation, financial management, monitoring of conservation projects and provision of human resources to these organizations."¹⁶

Key issues were the shortage of staff to fulfill the ASI's workload, and the serious lack of funding available to meet its obligations to properly manage the most important monuments and objects related to India's cultural heritage.

In the summary prefacing the published report, the CAG Performance Audit of ASI notes among issues related to documentation that:

- There has been no comprehensive survey to identify monuments of national importance and include them in the list of centrally protected monuments, or review of monuments which have lost the status of national importance. Notices naming monuments for protection were often decades out of date or had never been issued.
- There is no ASI database listing the correct number of the monuments protected by it.
- During the joint physical inspection of the monuments, ninety-two monuments out of the 1,655 inspected could not be traced.
- ASI did not have a database of the total number of antiquities in its possession or plans for upgrading any records. 95% of objects had never been displayed. The audit team found that 131 antiquities had been stolen from various monuments and sites and that thirty-seven antiquities had been stolen from site museums. ASI efforts to retrieve these artefacts was ineffective.
- Many "World Heritage" sites were subject to encroachments and unauthorized constructions; there was no system for removing encroachments and District authorities and police were not cooperative. There was no assessment of required preservation or conservation works.
- The ASI has no approved conservation policy. Conservation policies in practice were based on a 1915 document. Monuments were arbitrarily selected for conservation, and nothing was done in many requiring structural conservation. "Inspection Notes" on monuments were not prepared.
- Less than 1% of the ASI budget is spent on a 'primary' ASI activity: exploration and excavation of archaeological sites.
- There is not a single full-time guard at 2,500 of the 3,650 protected national monuments. State, local, and temple authorities are supposed to be responsible for security, but the vast majority of the 80,000-500,000 other monuments in India have no protection whatsoever.
- The ASI Headquarters, Delhi, could not provide the status of 458 excavation proposals sanctioned in the last five years. No data was available regarding the status of pending excavation reports, and numerous cases of

¹⁶ *Id.* at x.

excavation proposals were not undertaken or left incomplete.¹⁷

Museum Management

A number of national museums are managed by the Ministry of Culture. These include the National Gallery of Modern Art and the National Museum, both at Delhi. Regional museums, including historical collections and archives originating in the colonial period are often now under the direction of boards that include local and state officials.

The Archaeological Survey of India also presently manages forty-four site museums, located at important historic monuments and archaeological sites around the country, with nine more museums proposed as of 2013. The policy of establishing smaller museums with collections related to the specific ancient and antique sites was inaugurated in 1904 by John Marshall, the first Director of ASI. Director Mortimer Wheeler established a separate Museums Branch of ASI in 1946. While advanced for their time, core museum guidelines have not been updated since 1915, and uniform policies for ASI museums for acquisition of art objects, conservation, storage, moving of objects, and security were still in the drafting stage in 2015.

The CAG Performance Audit of ASI states:

We observed significant shortcomings in the functioning of the museums. The museums did not have any benchmarks or standards for acquisition, conservation or documentation of the art objects possessed by them. The mechanism for evaluation of acquired objects to verify their genuineness was absent in all the museums audited by us. There was no mechanism to assess the genuineness of artifacts. Poor documentation of the acquired artifacts and the failure to introduce the digital technology for documentation coupled with the absence of physical verification made the artifacts vulnerable to loss. The security system at the museums provided a grim picture in the absence of effective surveillance systems at the sites.¹⁸

A joint initiative to establish guidelines for and improve the operation of ASI museums was undertaken in 2013 by the Archaeological Survey of India, the J. Paul Getty Trust, the British Museum and the National Culture Fund.¹⁹ A capacity-building workshop to develop best practices for archaeological museums was held at Sarnath that year and attended by ASI museum staff from across India. The program developed a simple, but comprehensive checklist of museum management, including: integrating ongoing research and documentation at the museum site, archival and educational activities, securing and digitizing collections, site conservation, working with visitors, having appropriate signage and restrooms. If implemented, these basic guidelines could help to transform site museums into functional institutions and involve local communities in their activities.

While there are now a number of Indian museums independent of government management, they are few, and neither Indian government policy nor Indian laws encourage their establishment or growth. Although there are major collections of both modern and ancient art held by wealthy Indian nationals, the U.S. concept of the museum operated by independent philanthropists and managed by trustees that include academics, business-people and wealthy art donors has not been welcomed as a model by India's government. Important collections privately owned by Indian citizens (usually purchased overseas from older colonial collections) *remain* overseas due to their owners' concerns over possible seizure, burdensome customs laws, and unresolved tax issues in India.

Failures of Governance at the Ministry of Culture and the ASI

The CAG Performance Audit of ASI states that the Parliamentary Standing Committee on Transport, Tourism and Culture, the Comptroller and Auditor General, the Supreme Court and High Courts of India have all "pointed out severe

¹⁷ *Id.* at viii-xi, 103; RAJYA SABHA, DEP'T-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE, REPORT No. 261, DEMANDS FOR GRANTS (2018-19) OF THE MINISTRY OF TOURISM 61 (2018) <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Transport,%20Tourism%20and%20Culture/261.pdf>.

¹⁸ CAG PERFORMANCE AUDIT OF ASI, *supra* n.8, at 222.

¹⁹ THE SARNATH INITIATIVE, ET AL., GUIDELINES FOR ASI MUSEUMS (2013) http://asi.nic.in/wp-content/uploads/2018/01/Guidelines_ASI_Museums_14.pdf.

shortcomings in the functioning of the ASI and museums.”²⁰ The report states that the Ministry of Culture has ignored the criticisms and concerns of administrative and judicial officials outside of the ministry for decades and that, “No major corrective actions or change in approach was noticed to rectify the deficiencies. Even where some action was initiated, it lacked the organizational will to be completed in a time bound manner.”²¹

The CAG Performance Audit of ASI found instructions from the Ministry of Culture to the ASI to be “random and conflicting,” and said that there was no guidance at all on “many crucial aspects of functioning.”²² Projects were unmonitored, “some lying incomplete for decades.” When corrections were made, they were to a particular project and did not address systemic issues.²³

Staff shortages and unqualified personnel

The chronic lack of funding and staff shortages at ASI have virtually guaranteed that it cannot function as it was tasked to do, much less undertake reforms.

In 1984, a Parliamentary committee established to review the ASI’s performance, the Ram Niwas Mirdha Committee, recommended that there be significant increases in staff for the ASI to enable supervision by nine thousand attendants at five thousand monuments and to establish a trained ASI security force.²⁴ Today, most site security is still outsourced to private companies. The Mirdha Committee also proposed that the ASI should not continue as an administrative body but be reorganized as a specialized scientific and technical institution that could contribute expertise to a separate cultural management entity. Although the government agreed in principle, the Ministry of Culture never acted on their recommendations.

In 2005, twenty years after the review by the Mirdha Committee, a Parliamentary Standing Committee brought up many of the same issues that it had raised. The Standing Committee was concerned that since 2002, the government had filled the post of Director General of the ASI (and other top posts) with generalist bureaucratic administrators. “The Committee is of the view that a person who has no basic qualification or knowledge of archaeology cannot handle the apex responsibility of a Scientific Institution like Archaeological Survey of India.”²⁵ They noted that the hiring of bureaucrats from other sectors discouraged experienced staff at ASI from continuing to work in an agency where they could not advance their careers.

However, instead of increasing their hiring requirements, the government recently reduced them; it lowered the requirement that a candidate hold a history or archaeology-related PhD to simply having several years’ experience in any government bureaucratic post, thus paving the way for functionaries to take the place of knowledgeable professionals in the fields of art and archaeology.²⁶

Scientists or Bureaucrats?

The Parliamentary Standing Committee also addressed the Ministry of Culture’s failure to make any effort to restructure the ASI to conform to its original archaeological responsibilities, in accordance with recommendations made by the Mirdha Committee and agreed to by the government decades before.

The Committee is constrained to note that even after a lapse of fifteen years from the date of issue of the notification in this regard no concrete action was taken by Ministry of Culture and Archaeological Survey of India for developing Archaeological Survey of India as a Scientific and Technical Department, which amply indicates the administrative apathy towards the whole issue.²⁷

²⁰ CAG PERFORMANCE AUDIT OF ASI, *supra* n. 8, at 206.

²¹ *Id.* at 205.

²² *Id.* at 208.

²³ *Id.* at 207.

²⁴ Shekher Phadnis, *Making a Mess of Our National Treasures*, DECCAN HERALD, May 23, 2009, <https://www.deccanherald.com/content/4121/making-mess-our-national-treasures.html>.

²⁵ RAJYA SABHA, DEP’T-RELATED PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM & CULTURE, 107TH REPORT ON ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE CONTAINED IN ITS NINETY-FIRST REPORT ON FUNCTIONING OF THE ARCHAEOLOGICAL SURVEY OF INDIA ¶ 10 (2006) http://164.100.47.5/rs/book2/reports/t_and_t/107threport.htm.

²⁶ In a glaring example, May 2015, Venu Vasudevan, highly acclaimed Director General of the National Museum in Delhi was removed from his post and transferred to the Sports Ministry. Vasudevan, who had been credited with doing much to reinvigorate the moribund institution, had been promised the museum post until December 2016. The government has failed to fill posts or has put general administration bureaucrats in place in numerous other cultural institutions. See Shailaja Tripathi, *Killing it softly?* THE HINDU, May 7, 2015, <https://www.thehindu.com/todays-paper/tp-features/tp-metroplus/killing-it-softly/article7177992.ece>.

²⁷ Sabha, *supra* n. 18, at ¶ 11.

The Parliamentary Standing Committee also noted the failure of ASI to produce and publish archaeological reports (many archaeologists had retired before completing them) and expressed serious concerns about illegal building and encroachment on monuments.²⁸

Funding Shortages

Perhaps the greatest challenge facing Indian cultural heritage today is a lack of will in India's government to provide the funding necessary to address systemic problems in cultural heritage management and to enable the administrative reorganization of the ASI.²⁹ Funding of ASI has been minimal for many years and is not increasing substantially. In 2007-2008, the ASI estimated Rs. 1,770,000,000 as its annual budget.³⁰ This includes the revenue generated by the ASI through tourism and ticket collection. The one hundred and seventeen ticketed monuments generate about Rs. 600,000,000. However, three quarters of the ticket revenue is redirected to the Ministry of Culture rather than specifically to the ASI.

For purposes of conservation, security and maintenance, the ASI does not differentiate between plans pertaining to World Heritage Sites and other sites. World Heritage Sites do generate greater revenues, however. With respect to World Heritage Sites, total revenue collected was Rs. 320.03 crores (one crore = 100 lakh = ten million rupees) and expenditures of Rs. 243.96 crore were incurred between 2007-12.³¹

According to the CAG Performance Audit of ASI, the expenditures by ASI from 2007-2012 were 56% Administrative/ Establishment, 41% Conservation Projects (including building site amenities), 1% Excavation Projects, and 2% Site Museums.³²

In crore rupees the available ASI budget numbers showing both specifically planned and general expenditures are as follows:

YEAR	BUDGET ESTIMATE		ACTUAL EXPENDITURE	
	PLAN	NON-PLAN	PLAN	NON-PLAN
2007-08	98.00	185.5	90.88	185.87
2008-09	111.00	201.00	106.93	232.89
2009-10	111.00	268.70	126.31	286.39
2010-11	121.00	260.00	154.24	267.71
2011-12	152.00	287.00	171.58	275.26

According to the CAG Performance Audit of ASI, the budget plans proposed by the ASI in the years 2007-2012 were reduced by the Ministry of Culture by 26-44%.³³ The excess of expenditure with reference to the original allotment ranged from 13-27% and was higher especially during the last three years measured by the audit (2009-10 to 2011-12).³⁴

According to the audit, the Culture Ministry allocated funds without apparent reference to planning, funds requirement or absorptive capacity and ASI failed to use due diligence to assessing funding needs:

“As a result, the ASI ignored the conservation needs of several valuable monuments due to paucity of funds. For example, in case of 110 Kos Minars³⁵ the expenditures incurred during the last five years was only Rs. 38.33 lakh

²⁸ *Id.* at ¶¶ 20, 25.

²⁹ CAG PERFORMANCE AUDIT OF ASI, *supra* n.8, at 206.

³⁰ Phadnis, *supra* n. 17.

³¹ CAG PERFORMANCE AUDIT OF ASI, *supra* n.8, at 42.

³² *Id.* at 158.

³³ *Id.* at 159.

³⁴ *Id.*

³⁵ Kos Minars are medieval period milestones along the Grand Trunk Road in northern India, made by the 16th-century Pashtun ruler Sher Shah Suri. *Kos Minar*, WIKIPEDIA (last edited May 27, 2019, 17:50 UTC) https://en.wikipedia.org/wiki/Kos_Minor.



Hawa Mahal or Wind Palace, Jaipur, India, photo by Diego Delso, 4 December 2009, license CC BY-SA

[Ed. Equal to about \$45,000 dollars U.S.]. On many other sites/monuments no money was spent despite dire need of conservation.”³⁶

According to the audit, the Circles/Branches of the ASI did not exercise due diligence while assessing their funding requirements, preparing estimates in only a few cases. As a result, the ASI ignored the conservation needs of several important monuments due to lack of funds.³⁷ The ASI generated a total revenue of Rs. 422.46 crore [Ed. almost \$59 million dollars U.S.] during the period from 2007-08 to 2011-12.³⁸

New Legislation Needed

The 2015-2016 Thirty-Ninth Report of the Public Accounts Committee on the Protection and Conservation of Monuments and Antiquities of the Ministry of Culture presents in detail and comments upon the response of the Ministry of Culture to the CAG Performance Audit of ASI.³⁹ Among many other statements critical of the Ministry of Culture’s management, the Public Accounts Committee expressed its

“extreme displeasure over the absence of an appropriate and effective mechanism for acquisition of antiquities in the country so far, as also the delay in bringing about amendments to the Antiquities and Treasures Act 1972, leading to the development of an illegal domestic and export market for such items, some of which are of great heritage value to the nation. The Committee note with serious concern that the Ministry is yet to bring amendments to the Act even after a lapse of nearly two decades, though the process to amend the Act was initiated in 1997. The Committee, therefore desire that the Ministry expedite the finalization of the draft Antiquities and Art Treasures Amendment Bill.”⁴⁰

Call for Return of Objects: Will Domestic Collecting Discourage Smuggling?

It is Indian government’s policy to seek the return of important heritage objects that have left the country, but it has not actively pursued independent investigations; rather, the government is the grateful recipient of returns initiated by foreign nations. These concerns are also expressed by Parliament. The Public Accounts Committee did not find the incapacity of India’s cultural property management, or the lack of a competent museum system a bar to seeking the return of Indian antiquities abroad. It directed that:

They [the Committee] also recommend that the Ministry should explore and take necessary steps to recover or procure antiquities which are of cultural significance to our country but have been sold to buyers abroad and also to bring back the artifacts/antiquities and or Cultural Property of Indian origin that were taken away outside the country during Colonial rule by initiating dialog at the diplomatic level as well as through appropriate legal mechanism.⁴¹

In response to the Committee’s question regarding the measures taken “to prevent valuable antiquities and artifacts from landing in foreign shores,” a Ministry of Culture representative testified that:

³⁶ CAG PERFORMANCE AUDIT OF ASI, *supra* n.8, at 159.

³⁷ *Id.*

³⁸ *Id.* at 160.

³⁹ PUB. ACCT. COMMITTEE, PROTECTION AND CONSERVATION OF MONUMENTS AND ANTIQUITIES (Report No. 39) (2016) http://164.100.47.193/isscommittee/Public%20Accounts/16_Public_Accounts_39.pdf.

⁴⁰ *Id.* at 46.

⁴¹ *Id.*



Powder Flask, 18th – 1st half 19th C. (late Mughal), hippopotamus ivory, amber, steel, copper alloy, and silver, Acquired by Henry Walters in 1925; by bequest by Henry Walters to Walters Art Museum, 1931. Creative Commons license.

One of the reasons for smuggling is that antiquity prices are very depressed in India. One of the reasons for depressed process is that under the law you have to register and take permission. Every one year, the last 100 years becomes antiquity. So, it is very difficult for people though modern art sells at a very high cost in India. We are re-drafting the [Antiquities and Art Treasures Act of 1972]. One of the objectives is to make trade in antiquities within the country free. Otherwise, even if a person wants to buy and donate to a museum a lot of issues are there.⁴²

Attempts to Update Cultural Property Legislation

According to the CAG Performance Audit of ASI, the ASI has been aware of the need to completely overhaul and update India's current law on cultural property, the Antiquities and Art Treasures Act of 1972 (hereafter "AAT Act"), since 1987.⁴³

There have been several recent attempts to pass new laws to reorganize the administration of cultural property in India. However, according to the CAG Performance Audit of ASI, "No note has been taken by the concerned authorities of

⁴² *Id.* at 6.

⁴³ CAG PERFORMANCE AUDIT OF ASI, *supra* n.8, at 132.



Ruined Pancharatna Temple at Garh Panchakot, Purulia district, West Bengal, India, photo by Bodhisattwa, 5 October 2014, Creative Commons Attribution-Share Alike 4.0 International license.

the many previously constituted expert and Parliamentary Committees on the functioning of the ASI and museums.”⁴⁴

On March 14, 2016, the Ministry of Culture formally announced the abandonment of a project which had been pending since 2009, articulated in the National Commission For Heritage Sites Bill, 2009.⁴⁵ The proposal to establish a National Heritage Sites Commission was intended as a step towards protecting the large number of “*sites and monuments*” lying in a state of neglect. This legislation referred directly to India’s signing in 1977 of the 1972 UNESCO Convention and called for implementation of “the decisions to take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of cultural and natural heritages.”

Failed Legislative Reform in 2017

An Antiquities and Art Treasures Regulation, Export and Import Control Bill to amend the 1972 Antiquities and Art Treasures Act was finally proposed in 2017.⁴⁶ A major goal of the bill was to modernize the domestic sale, import and export of antiques and to make trade procedures more transparent, in part to track cultural objects and in part to help build a broader base of domestic cultural institutions. Instead of issuing licenses to sell antiquities, the bill would require dealers to upload their inventory into a computer database of goods for sale. Unfortunately, long-standing wariness of inconsistent government treatment of private collecting practices may diminish Indian dealers’ and collectors’ readiness to participate in the scheme.

Even after passage of a 2009 regulation⁴⁷ ending duties on imports of “books and antiquities” over one hundred years old, vague laws, erratic enforcement, and the threat that unregistered antiquities might be seized have deterred Indian citizens from collecting Indian art and from developing a philanthropic culture that would support world-class museums for the public benefit.⁴⁸

Today, the threat of seizure by the Indian government of unregistered, privately owned ancient and antique Indian art has discouraged reimport of antiquities into the country. Antiquated Indian laws that assert state control of artefacts without providing the means for preservation and museum display of state-owned collections of Indian art have also encouraged major Indian collectors to hold their artworks in Europe, the U.S. and other foreign countries.

Under the draft bill, the importation of antiquities would have required prior uploading of a detailed description of the imported objects to a Web portal and approval of the import. The ASI would assist in processing any imported or exported article. The Indian Government would be enabled to relax import duties under certain unspecified conditions, which might have facilitated the return of major collections of ancient Indian art. The bill also would have granted the ASI the power to raid any residence to seek wrongfully held antiquities.

However, the proposed 2017 bill, like other attempted reforms of India’s heritage management systems, failed to pass.

Adopt a Heritage and Other Cultural and Heritage Projects

Funding for a broad range of cultural projects also comes through the National Culture Fund⁴⁹ (NCF) established in 1996 by the Ministry of Culture. The National Culture Fund solicits contributions from State Governments, the private sector and individuals.⁵⁰ The Ministry’s NCF website describes its financial assistance as “given to Government or Non-Government Organizations to foster India’s contemporary culture as well as cultural heritage and to bring both within the reach of the largest possible number of its citizens. Assistance is, however, not provided to those organizations who are already in receipt of financial assistance from attached/subordinate offices or autonomous organizations under the Ministry of Culture or under any scheme of the Ministry.”⁵¹

The ASI’s failures in managing heritage sites has prompted the Indian government to seek alternative means of caring

⁴⁴ Kate Fitz Gibbon, *New Art Law for India?*, CULTURAL PROPERTY NEWS, Oct. 27, 2017, <https://culturalpropertynews.org/new-art-law-for-india/> (citing *id.* at xi).

⁴⁵ The National Commission for Heritage Sites Bill, Bill No. VII of 2009 (2009) https://www.prsindia.org/sites/default/files/bill_files/1237548287_National_Heritage_Bill_2009_0.pdf.

⁴⁶ *Draft Antiquities and Art Treasures Regulation, Export and Import Bill, 2017*, GK TODAY, Oct. 19, 2017, <https://www.gktoday.in/gk/draft-antiquities-and-art-treasures-regulation-export-and-import-bill-2017/>.

⁴⁷ Notification No. 97 of March 17, 2009.

⁴⁸ Pramod Kumar, K.G., *Time to Hew a New Antiquities Law*, THE HINDU, Oct. 22, 2018, <https://www.thehindu.com/opinion/op-ed/time-to-hew-a-new-antiquities-law/article25280429.ece>.

⁴⁹ *National Culture Fund*, GOVERNMENT OF INDIA: PRESS INFORMATION BUREAU, June 21, 2011, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=72795>.

⁵⁰ *Id.* Donations/contributions to NCF deductible under Section 80G(2)(iii hh) of the Income Tax Act, 1961.

⁵¹ *Id.*

for specific sites. The government recently launched a scheme inviting private companies and other entities to assist in the development of tourist facilities at major Indian monuments.⁵² The Adopt A Heritage scheme was announced in 2017 to allow corporate control of certain monuments and heritage sites, so that their maintenance and operations could be handled more professionally. The program's aims are to "entrust heritage sites/monuments and other tourist sites to private sector companies, public sector companies and individuals for the development of tourist amenities." Initial plans are to delegate management of ninety-three ticketed ASI monuments to corporate entities.

The Parliamentary Standing Committee on Transport, Tourism and Culture announced on March 6, 2018 that:

The committee recommends that under the corporate social responsibility, major corporate (houses) may be compelled to adopt heritage sites...The committee also recommends that the detailed plans for improvement of infrastructure and basic amenities have to be laid down by the ministry/govt agencies and it [sic] should not be left [to] the discretion of the organisation(s) which are adopting the heritage sites. Experience and experimentation in the initial two or three projects will make all the difference in planning for other future projects that the ministry will take up for development.⁵³

Memoranda of understanding to manage and develop tourism for a five year period at one of India's most popular tourist attractions, Delhi's Red Fort, were signed with Dalmia Bharat,⁵⁴ a major cement and sugar company, on April 9, 2018.⁵⁵ Under the Adopt A Heritage program, Dalmia Bharat will develop the Red Fort by providing drinking water kiosks, benches, signage, and maps, upgrading toilets, lighting the pathways and bollards, performing restoration work and landscaping, building a 1,000-square-foot visitor facility center, creating 3-D projection mapping of the Red Fort's interior and exterior, installing battery-operated vehicles, and operating a cafeteria with a Red Fort theme.⁵⁶

Indian Nationalism and Cultural Heritage

Heritage policies are at times constrained by political considerations. Official Indian government policy on cultural heritage was both nationalist and secular by design: when the ASI was established in the colonial period and reorganized after independence it focused on issues of preservation and scientific exploration. More recently, policies on cultural property, monuments, and cultural heritage have become entangled with local and national political tensions.⁵⁷ India's present administration asserts that it follows a balanced, secularly oriented path. However, there are documented instances in which Muslim monuments are no longer given economic or restoration priority, in which the official narrative has changed to express perspectives allied to Hindi nationalist goals, and there are concerns that access by religious adherents is increasingly restricted or denied to religious sites that have become tourist centers.⁵⁸

Conflicts over religious primacy have resulted in the destruction of several important religious edifices, such as the 1992 demolition of the Babri mosque by a mob, backed by politicians and ignored by police.⁵⁹ The role of politics and religion in cultural policy is openly acknowledged in the public discourse about India's heritage. There are concerns

⁵² In Italy, corporate donor Tod's has restored Rome's Colosseum, and Fendi is responsible for restoration of its Trevi Fountain. Gaia Pianigiani & Jim Yardley, *Corporate Medicis to the Rescue*, N.Y. TIMES, July 15, 2017, <https://www.nytimes.com/2014/07/16/arts/design/to-some-dismay-italy-enlists-donors-to-repair-monuments.html>.

⁵³ Sabha, *supra* n. 10, at 61.

⁵⁴ Pheroze L. Vincent, *When MPs Adopted Heritage Plan as 'Welcome Step'*, THE TELEGRAPH, Apr. 30, 2018, <https://www.telegraphindia.com/india/when-mps-adopted-heritage-plan-as-welcome-step/cid/1343489>.

⁵⁵ ADOPT A HERITAGE, <https://www.adoptaheritage.in/>.

⁵⁶ Sai Manish, *Dalmia Bharat Group to Adopt Delhi's Iconic Red Fort for Five Years*, BUSINESS STANDARD, May 29, 2018, https://www.business-standard.com/article/companies/shah-jahan-s-iconic-red-fort-in-delhi-is-now-dalmia-group-s-red-fort-118042700414_1.html.

⁵⁷ Robert W. Worth, *The Billionaire Yogi Behind Modi's Rise*, N.Y. TIMES, July 26, 2018, <https://www.nytimes.com/2018/07/26/magazine/the-billionaire-yogi-behind-modis-rise.html> (noting broad calls for Hindu nationalist reforms of the government, the courts, cultural institutions and education).

⁵⁸ For example, the ASI-installed information for tourists carved in stone at the Masjid-i-Jami and Qutub complex in Delhi, a World Heritage site and arguably one of the most important historical monuments in India, states that 27 Hindu and Jain temples were demolished by Muslim rulers to build the mosque. *Supra*, n. 3 at 18.

⁵⁹ In December 1992, the 16th century Babri Mosque in Ayodhya was attacked and reduced to rubble by a crowd of 150,000 people. The local Muslim community had not been able to obtain recognition as the legal owner of the mosque, or to gain the status of a protected monument as a result of the dispute over its religious character. The demolition was encouraged by Hindu party activists who claimed that an ancient Hindu temple marking the birthplace of the god Rama lay beneath the mosque. An investigation found local authorities, including Bharatiya Janata Party (BJP) and Vishva Hindu Parishad (VHP) politicians were responsible. Police at the scene made no effort to stop the destruction. *Demolition of the Babri Masjid*, WIKIPEDIA, (last updated Aug. 20, 2019 at 14:51 UTC) https://en.wikipedia.org/wiki/Demolition_of_the_Babri_Masjid.



Vendor of souvenir shells at seashore, Kanyakumari, India. Photo by Adam Jones Adam63 July 2008. Creative Commons Attribution-Share Alike 3.0 Unported license.

that religious bias has been a factor in the priority given to preservation of certain Hindu monuments and in government backing for scientifically questionable archaeological exploration, such as the Modi government-backed efforts since 2014 to find the missing Saraswati “Mother River”.⁶⁰ Recent press reports on the neglect and even endangerment of major Muslim monuments – including the world famous Taj Mahal – have blamed politico-religious interests.⁶¹ There have also been efforts by politicians to redefine Indian archaeological history, including that of the Indus Valley Civilization, as exclusively developed within the subcontinent, dismissing substantial archaeological evidence for cultural connections and influences from outside the region.⁶²

Still, especially in northern India, where there are numerous Muslim mosques, tombs, cemeteries and other sacred

⁶⁰ Kunal Anand, *Saraswati River Was Lost Over 4,000 Years Ago, But Now Haryana Government Is Reviving It. 100 Cusecs At A Time!*, INDIA TIMES, Aug. 7, 2016, <https://www.indiatimes.com/news/india/saraswati-river-was-lost-over-4-000-years-ago-but-now-haryana-government-is-reviving-it-100-cusecs-at-a-time-259568.html>.

⁶¹ Vikas Pandi, *Reality Check: Whose Taj Mahal is it Anyway?*, BBC NEWS, Nov. 2, 2017, <https://www.bbc.com/news/world-asia-india-41813339>.

⁶² Akhilesh Pillalamarri, *When History Gets Political: India's Grand 'Aryan' Debate and the Indus Valley Civilization*, THE DIPLOMAT, Aug. 18, 2016, <https://thediplomat.com/2016/08/when-history-gets-political-indias-grand-aryan-debate-and-the-indus-valley-civilization/>.



Folk dancers awaiting their turn at Surajkund Crafts Fair, photo by Koshy Koshy, 6 February 2011, Creative Commons Attribution 2.0 Generic license.

sites that have been incorporated for centuries into mixed communities, there has been a common reverence for monuments that often transcends the religious identity of the community's members. This phenomenon is not limited to agrarian communities. The Sultan Ghari Ka Marbara is a tomb and attached mosque in New Delhi of purely Muslim origin, but local Hindu devotees regard it as the tomb of a holy man and leave sweets there as offerings, *prasad*.⁶³ The tensions between Hindu and Muslim communities over such jointly-used monuments have most often been encouraged, if not incited, for political reasons. Despite this tension, in many parts of India, the complex communal relationship of people of different religions with sites considered holy continues.

The Future of Cultural Heritage in India

Schoolchildren around the globe now read about the Harappan civilization along with that of Egypt and Sumer in their first textbooks on world history. In popular culture, there are few sites better known or more revered than the Taj Mahal, Bodhi Gaya, Hampi, the Ajanta and Ellora caves, or the Harmandir Sahib, the Golden Temple. Yet as official government reports such as the CAG Performance Audit of ASI make clear, the vast majority of India's monuments are at serious risk.

The lack of effective management and funding in the cultural sphere has effects far broader than limiting public access to India's own history. Without adequate facilities for public exhibitions, the Indian public's access to international art and heritage is severely impeded. India is a country of immense wealth without a single 'global' museum showcasing the art of the world, or even a national museum with the security and environmental controls necessary to host traveling exhibitions of great art from other nations.

This report's purpose is not only to present the laws governing art and antiquities and the legal structure for cultural heritage management in India. It also highlights the challenges outlined by official Indian parliamentary studies and analyses. It identifies the difficulties that India's government faces in living up to its own laws, and the realities that must be addressed. Like all reports in this series, its goal is to help to ensure that the past will have a future.

PART II

1. Cultural heritage in the Constitution of India.

The Constitution of India, adopted January 26, 1950, includes Article 49, 29 and 51(A), which specifically stress the importance of India's diverse and lengthy cultural heritage:

Article 29 – Protection of Interests of Minorities - Cultural and Educational Rights – (1) “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.”

Article 49 - Falls within the Directive Principles of State policy (meaning what the 'State' shall try to do). The article elucidates the protection of monuments and places and objects of national importance.

“It shall be the obligation of the State to protect every monument or place or object of artistic or historic 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.”

Article 51(A) – Pertains to Fundamental Duties (meaning what shall be a duty of a citizen of India). It states that - It shall be the duty of every citizen of India :

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

2. Colonial period laws for the protection of cultural property.

Bengal Regulation XIX of 1810 and the Madras Regulation VII of 1817

The Bengal Regulation XIX was the first enactment of a law for the conservation and preservation of Indian monuments in pre-independence India. The subsequent Madras Regulation VII of 1817 was passed with the same aim of preserving Indian monuments. Both these regulations vested the Government with the power to intervene whenever public buildings were under threat of misuse. Although the regulations protected public buildings from damage, there

⁶³ *Supra*, note 4, at 9.

were also numerous privately owned buildings within the country that had historical relevance. Both of these legal enactments were silent regarding protection of buildings under private ownership, thus preventing ruling authorities from acting with respect to them.

1861 – Archaeological Survey of India (hereinafter “ASI”) was founded in the year 1861. ASI plays a pivotal role in the preservation and conservation of cultural heritage. India has hundreds of thousands of monuments and archaeological sites; the ASI has responsibility for a small fraction of these, about 3650 monuments and archaeological sites. These include both excavated and unexcavated archaeological sites, temples, mosques, tombs, churches, cemeteries, forts and sites of historical importance.⁶⁴ Today, the ASI functions under the direction of the Ministry of Culture, Government of India.

The Act XX of 1863

The Act XX of 1863, was enacted to restate and fill gaps in previous colonial period laws. It empowered the British Indian Government to prevent damage and preserve buildings noted for their antiquity or their historical or architectural value.

The Indian Treasure Trove Act, 1878 (Act No. VI of 1878)

The Indian Treasure Trove Act, 1878 (Act No. VI of 1878) was promulgated to protect and preserve accidentally found or unearthed treasures that had archaeological and historical significance. “Treasure” is described under the Act as anything of any value hidden in the soil, or in anything affixed thereto. The Treasure Trove Act protected and preserved such treasures and directed their lawful disposal. Anyone finding “treasure” worth over ten rupees was required to notify a local official, a Collector, in writing. The find would be published, and if the owner who had hidden the treasure could not be identified, it would be divided between the finder and the owner of the property. Only if a treasure failed to be declared would it “vest in her Majesty.” In a landmark development in 1886, James Burgess, the then Director General of ASI, succeeded in prevailing upon the Government to issue rules forbidding any person or agency to undertake excavation without prior consent of the ASI and debarring officers from disposing of antiquities found or acquired without the permission of the Government.⁶⁵

The Ancient Monuments Preservation Act, 1904 (Act No. VII of 1904)

The Ancient Monuments Preservation Act (Act No. VII of 1904) was promulgated on 18th March, 1904, when George Curzon was viceroy of India (1898–1905). The enactment specifically defined what constituted an ancient monument.⁶⁶ Sections 4 to 16 of the Act deal with the power of a government official, whose functions included maintaining law and order, collecting revenue, acting as criminal magistrate and general administrative functions in a District.

The Collector was empowered to declare a site a protected monument, accept the monument as a gift to the government, act as its guardian, to enter into an agreement with the owner of a protected monument to provide for its maintenance, to arrange for a watchman, and to prohibit the owner from destroying, removing, altering or defacing it, or from allowing anyone to build too close to it. The enactment allowed for effective preservation and authority over the monument under individual or other private ownership so long as it was properly maintained. The Act provided a means for compulsory purchase of a monument by the government if it was in danger of damage or destruction.

The Act did not nationalize ownership of antiquities. If antiquities were sold or exported “to the detriment of India or any other country,” the government could prohibit export by publishing a notice in the official Gazette of India. Sculptures, carvings, bas-reliefs or similar items in danger of being moved or damaged could be subject to compulsory purchase by government authorities at a fair market price. However, the right of government authorities to compulsory purchase did not extend to any religious object currently in use, or to any thing which the owner reasonably desired that was personal to himself or his family.

The Act also established rules for archaeological excavations, identifying which officials had the right to issue licenses for excavation and prescribing the manner in which antiquities found by a licensee would be divided between the excavator and the government.

This 1904 Act has not been repealed and is deemed to still be in force.

The Antiquities Export Control Act, 1947 (Act No. XXXI of 1947) (repealed)

⁶⁴ ARCHAEOLOGICAL SURVEY OF INDIA, http://asi.nic.in/asi_monuments.asp.

⁶⁵ *Legislation*, ARCHAEOLOGICAL SURVEY OF INDIA, http://asi.nic.in/asi_legislations.asp.

⁶⁶ Section 2(1) - “ancient monument” means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes— (a) the site of an ancient monument; (b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and (c) the means of access to and convenient inspection of an ancient monument.



Sikh priest reading scripture, Delhi, India, photo Jorge Royan, 2005, Creative Commons Attribution-Share Alike 3.0 Unported license.

The Antiquities Export Control Act, 1947 (Act No. XXXI of 1947) and Rules regulated the export of antiquities “from British India by sea, land, or air.” “Antiquities” were defined as:

- i. any coin, sculpture, manuscript, 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, craft literature, religion, customs, morals or politics in bygone ages,
- iv. 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.

Export was permitted only through issuance of a license by the Central Government. Export was prohibited for all goods listed under Section 19 of the Sea Customs Act, 1878,⁶⁷ and all provisions of that Act were reiterated in this 1947 Act, except with respect to provision 183 on confiscation of the Sea Customs Act, 1878. Under the 1947 Act a Customs officer would no longer have discretion to impose a fine in lieu of seizure or confiscation. In the 1947 Act, only the Central Government could direct that a fine could be paid in lieu of seizure.⁶⁸ Export of prohibited items was punished by up to one-month imprisonment and a fine of 5,000 rupees, or both. The Act limited action to complaints by an officer appointed by the Central Government and placed jurisdiction under Presidency Magistrate or Magistrate First Class courts only. The Director General of Archaeology in India would determine if an object was an antiquity. The powers of the Central Government included the power to prescribe the procedure for granting licenses for the export of antiquities, and to fix the fees payable on applications for licenses. The Act did not replace but was in addition to the Ancient Monuments Preservation Act, 1904 (VII of 1904).

⁶⁷ Article 19 of the Sea Customs Act provided that, “The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.”

⁶⁸ Article 183 of the Sea Customs Act provided that, “Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.”

3. Indian national laws for the protection of cultural property.

The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (repealed)

Under the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (No. LXXI of 1951), all the ancient and historical monuments and archaeological sites and remains protected earlier under the Ancient Monuments Preservation Act, 1904 (No. VII of 1904) were re-declared as monuments and archaeological sites of national importance. Another four hundred and fifty monuments and sites organized by States were also added. Additional monuments and archaeological sites were declared to be of national importance under Section 126 of the States Reorganization Act, 1956.

1958 Ancient Monuments, Sites and Remains Act 1958 (AMSAR) (revised 2010)

The Central Government may declare a monument to be of national importance by issuing a gazette notification. A National Monument Authority⁶⁹ (under the Ministry of Culture, Government of India) was established to oversee all construction-related work in and around protected monuments. No building, mining, quarrying, excavating, blasting or any operation may take place within 100 meters of a monument without government permission. Violation of the Act was punishable with imprisonment not exceeding two years or with fine up to Rs. 100,000.⁷⁰

The Antiquities and Art Treasures Act 1972 (No. 52 of 1972)

The Antiquities and Art Treasures Act 1972, as amended, is still the primary cultural property law in effect in India today. The Act was enacted on September 9, 1972 and came into force on April 5, 1976. A primary goal of the Act was to establish control over moveable cultural property consisting of antiquities and art treasures. The Act regulated the export trade in antiquities and art treasures, provided for the prevention of smuggling and fraudulent dealings in antiquities, and enabled the compulsory acquisition of antiquities and art treasures for preservation in public places. This Act was supplemented with the Antiquities and Art Treasure Rules 1973, also in effect from April 5, 1976. The 1972 legislation repealed The Antiquities Export Control Act, 1947 (Act No. XXXI of 1947).

The Antiquities and Art Treasures Act of 1972 created two categories of cultural property subject to regulation. It covered relatively modern art by well-known Indian artists under the category of “art treasures,” which could be “any human work of art, not being an antiquity, and 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.” An “art treasure” must be more than 75 years old and created by a deceased artist.

The category of “antiquities” included (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,⁷¹ of one hundred years of age or more. The types of antiquities covered would be declared by the Central Government and published in the Official Gazette.

Section 18 of the Antiques and Art Treasures Act, 1972 provides for exemptions to educational institutions pertaining to the registration for antiquities under the Act; there is no penal prosecution for failure to register antiquities and art treasures in scientific and educational institutions.⁷² There are also exemptions for the temporary export of art treasures and antiquities for educational purposes, exhibitions, and restoration.

The Antiquities and Art Treasure Rules of 1973, last amended 2005

These rules provide guidance on implementation of the Antiquities and Art Treasures Act 1972 as follows:

1. It establishes a Committee of at least 3 persons to consider and submit a report on the artistic and aesthetic value of “any human work or art” to be declared an “art treasure.”
2. Includes a process for attempting to ascertain whether the author of a work of art is alive by asking any person who has seen him in 30 years to respond to publication of a Notice in the Official Gazette.
3. Declares the Director General, ASI, as the only authority competent to issue export permits.
4. Identified licensing officers for each region by position.

⁶⁹ NATIONAL MONUMENTS AUTHORITY, <http://www.nma.gov.in/>

⁷⁰ *Heritage Bye-laws*, NATIONAL MONUMENTS AUTHORITY, <http://www.nma.gov.in/heritage-bye-laws/>

⁷¹ The Antiquities and Art Treasures Act, No. 52 of 1972 (1972), <https://www.wipo.int/edocs/lexdocs/laws/en/in/in090en.pdf>.

⁷² Antiques and Art Treasures Act §18:

Nothing in section 14 or section 16 or section 17 shall apply to any antiquity kept — (i) in a museum; or (ii) in an office; or, (iii) in an archive; or, (iv) in an educational or cultural institution, owned, controlled or managed by the Government [or by any local authority or by any such body as the Central Government may, for reasons to be recorded in writing approve for the purpose of this section by general or special order.]



Thiruvavur temple, where an idol storage warehouse is located, photo by Kasiarunachalam at English Wikipedia, 13 February 2008, Creative Commons Attribution-Share Alike 3.0 Unported license.

5. Sets a form and a fee (2,000 rupees) for a license to sell antiquities good for two years, and bi-annual renewals (1,000 rupees).
6. Prescribes record keeping requirements for inventory, sales and transfers by authorized antiquities dealers, including three photographs or more of each item. (Home address of buyers and passport numbers of foreign buyers also required).
7. Identifies the articles covered by the Act under a Schedule (amended in 1980) as follows:
 - (i) Sculptures in stone, terracotta, metals, ivory and bone;
 - (ii) Paintings (including miniatures and tanks) in all media, that is to say, paper, wood, cloth, silk and the like;
 - (iii) Manuscripts, where such manuscripts contain paintings, illustrations or illuminations;
 - (iv) Sculptured figures in wood (both in relief and the round).
8. (Previous Schedules varied slightly, including different articles, so, under Notification No. G.S.R. 280(E) of Apr. 5, 1976, the Schedule of antiquities to be registered listed the following:
Antiquities which have been in existence for not less than one hundred years, namely:
 - (i) Sculpture in all media, that is to say, stone, terracotta, metals, ivory, wood and the like;
 - (i)[sic] Painting (including miniatures and tanks) in all media, that is to say, paper, wood, cloth, silk and the like;
 - (ii)[sic] Coins;
 - (iii)[sic] Arms, armour, medals, furniture, textiles and jewellery of historical interest)
9. Adds works by famous Indian artists as “art treasures,” as below:
10. Declared, pursuant to the Antiquities and Art Treasures Act, 1972, that the paintings (including drawing, sketches, diagrams and the like) and objects of plastic art by Rabindranath Tagore, Amrita Sher-Gil, Jamini Roy, and Nandalal Bose are Art Treasures under the terms of the 1972 Act and their export trade is regulated. This classification is

reiterated in the Antiquities and Art Treasure Rules of 1973, last amended 2005.⁷³

Declared, pursuant to the Antiquities and Art Treasures Act, 1972, that the paintings (including drawing, sketches, diagrams and the like) and objects of plastic art by Ravi Verma, Gaganendra Nath Tagore, Abanindra Nath Tagore, Sailoz Mookerjee, and N. Roerich are Art Treasures under the terms of the 1972 Act, and their export trade is regulated. This classification is reiterated in the Antiquities and Art Treasure Rules of 1973, last amended 2005.⁷⁴

Ancient Monuments and Archaeological Sites and Remains Amendment and Validation Act (Act No. 10 of 2010) (“Remains Amendment”)

The Ancient Monuments and Archaeological Sites and Remains Amendment and Validation Act (Act No. 10 of 2010) established a National Monuments Authority whose members would have experience and expertise in the fields of archaeology, country and town planning, architecture, heritage, conservation-architecture or law. The National Monuments Authority would make recommendations to the Central Government for grading and classifying protected monuments and protected areas declared of national importance. It would oversee the work of competent authorities, and consider the impact of large-scale developmental projects, including public projects and projects essential to the public which may be proposed in the regulated areas and make recommendations regarding them. The Central Government could suspend and take over the functions of the National Monuments Authority if it found that that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of its duties.

The Act imposed punishments for violations of rules such as construction restrictions in prohibited area, with imprisonment not exceeding two years or a fine of up to 100,000 rupees or both. The Act also required the Government to survey all such forbidden construction and encroachments on monuments.

The Act permitted government authorities to prohibit construction and other disturbance, except by archaeological officers, of the site within 100 meters of a protected monument. It did not retroactively invalidate permits for construction issued under a notice from the Department of Culture (Archaeological Survey of India) number S.O. 1764, such as were issued under the prior Ancient Monuments and Archaeological Sites and Remains Rules, 1959. The 2010 Act allowed government authorities to prohibit construction up to 200 meters from the site under certain circumstances. It required permission from authorities for undertaking repairs or renovation of construction within the 100-meter area. It required authorities to create heritage bylaws setting rules for structures and surrounding areas encompassing elevations, facades, drainage systems, roads and service infrastructure (including electric poles, water and sewer pipelines for each site).

Miscellaneous National Legislation

Notification No. 97 of March 17, 2009

Duties for import for Antiques of an age exceeding hundred years and antiquarian books reduced to zero. However, the importer must abide by the rules/laws relating to export of such item, of the country from where imports are sought to be made.

4. Recent proposed national legislation.⁷⁵

National Commission for Heritage Sites Bill, 2009

The bill was floated to comply with the World Heritage Convention. The commission putting forth the bill was to recommend short and long term policies to the State and Central Government in India, conduct and publish research studies and maps, make periodic reports, etc. The bill was withdrawn in the year 2015.

The Antiquities and Art Treasures Regulation, Export and Import Control Bill, 2017

A long-heralded bill to amend the 1972 Antiquities and Art Treasures Act, the 2017 Antiquities and Art Treasures Regulation, Export and Import Control Bill (“2017 Antiquities Bill”),⁷⁶ lapsed without passage in 2018. However, the acknowledged dysfunctionality of current antiquities law raises strong possibilities that a similar bill will eventually achieve passage so a description of its provisions are included here.

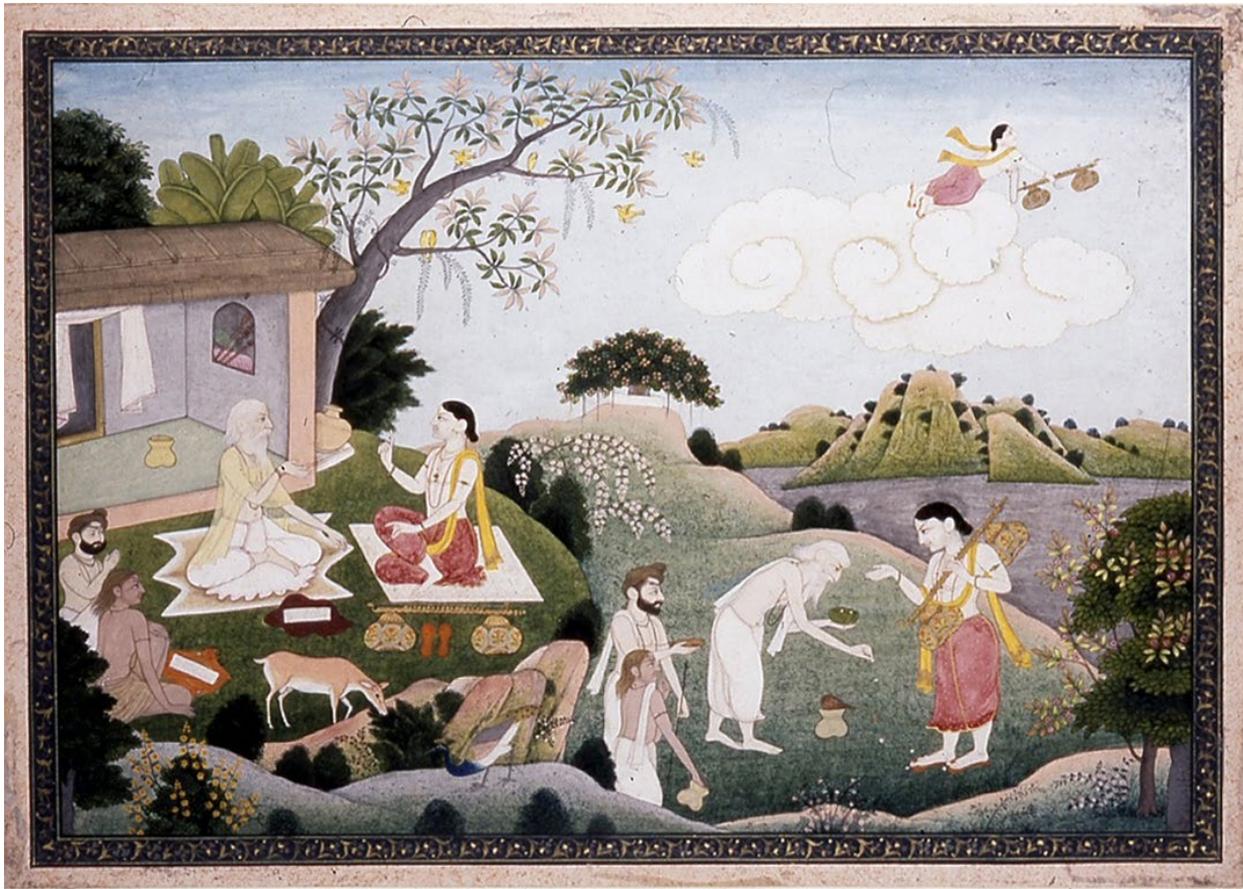
The 2017 Antiquities Bill would have continued to restrict virtually all exports, but would have made lawful trade within

⁷³ Notification No. G.S.R. 904(E) of Dec. 1, 1976.

⁷⁴ Notification No. G.S.R. 477(E) of Aug. 10, 1979

⁷⁵ *Bills Pending*, PARLIAMENT OF INDIA, <http://164.100.47.194/Loksabha/Legislation/billspending.aspx>.

⁷⁶ *Draft Antiquities and Art Treasures Regulation*, *supra* n. 39.



Narada Visits Valmiki, painting, made for a manuscript of the Ramayana epic, Walters Art Museum, Baltimore, Maryland, USA, Gift of John and Berthe Ford, 2002. Creative Commons license.

India of antiques and antiquities possible. A controversial element of the law would have eliminated the requirement that all antiquities dealers in India operate under a government-issued license. Instead, anyone could sell antiquities, but all antiquities sold must be described in detail in the dealer's inventory, which would have to be uploaded in advance to a government portal.

The 2017 Antiquities Bill distinguished between antique but unimportant objects and more valuable ones. Badly worn objects (works with nothing to add to the understanding of history or culture) may be "written off" the lists by ASI officials tasked to classify antiquities. The law would have created multiple expert advisory committees to decide if an item should be classified as an antiquity or an art treasure. The committees would decide what types of objects (coins for example) would be covered under the Bill, but would refer questions about classification to the Archaeological Services of India.

The proposed law would have enabled the central government to compulsorily acquire antiquities or art treasures and take possession of them, including by force. Objections to such takings were allowed within 30 days. Compensation would have been paid for seized objects or monuments; the value determined by agreement by a judge of the High Court, a person nominated by government having expert knowledge, or by an arbitrator having the power of a civil court.

Export of antiquities was still prohibited under the draft law. Import of antiquities will require prior upload of a details of the imported objects to a Web portal and prior approval of the import. The Indian Government could relax import duties under certain unspecified conditions. In order to meet qualifications for entry, imported items must have been lawfully acquired.

5. Indian state heritage laws.

The Indian Constitution grants both the Union Government and the State Governments powers to enact laws on subjects mentioned in the List III (Concurrent list).⁷⁷ State governments can therefore legislate on archaeological sites and remains other than those declared by the Parliament to be of national importance. Laws made by the State governments should not be contrary to the laws made by the Union Government under the Indian Constitution. State laws include:

- Victoria Memorial Act, 1903 – Pre-independence legislation. An Act to provide for the erection and management of the Victoria Memorial at Calcutta, India.
- Orissa Ancient Monuments and Preservation Act, 1956 – An Act for the preservation of ancient monuments and objects of archaeological, historical or artistic interest in the State of Orissa. Also for the preservation of ancient monuments, for the exercise of control over excavation in certain places, and for the protection and acquisition of ancient monuments and of objects of archaeological, historical or artistic interest in the State of Orissa.
- The Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 – The Act seeks to bring about uniformity in the laws relating to protection and preservation of ancient monuments falling under entry 12 in the State List, that is, ancient and historical monuments other than those declared by Parliament to be of national importance.
- Salar Jung Museum Act, 1961 - A law to declare the Salar Jung Museum and Salar Jung Library at Hyderabad an institution of national importance and to provide for its administration and ancillary issues.
- Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 – The Act provides for the preservation, protection, upkeep, maintenance, acquisition and regulation of, and control over, ancient and historical monuments, archaeological sites and antiquities in the State of Rajasthan.
- Tamil Nadu Ancient Monuments and Archaeological Sites and Remains Act, 1966 - The Act is for the preservation of ancient monuments and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical or artistic interest in the State of Tamil Nadu.
- The Madhya Pradesh Ancient Monuments and Archaeological Sites and Remains Act, 1964 – The law aims to provide for the preservation of certain ancient and historical monuments and archaeological sites and remains and for the regulation of excavation of archaeological sites in Madhya Pradesh.
- The Goa, Daman and Diu Ancient Monuments and Archaeological Sites and Remains Act, 1978 – The law provides for the preservation of ancient monuments and archaeological sites and remains other than those declared by or under any law made by Parliament to be of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carving and other like objects which are antiquities.
- Public Records Act 1993 – The law came into force on February 3, 1995. According to the Act, the Central Government in the Department of Culture has the power to permanently preserve public records which are of enduring value.
- The Hampi World Heritage Area Management Authority Act, 2002 – The law provides for the conservation of the cultural heritage of Hampi, including the site and archaeological remains, and its natural environs, and to ensure sustainable development of Hampi World Heritage Area.

6. Penalties

The Antiquities and Art Treasures Act, 1972,⁷⁸ India's current primary cultural property law, provides search, seizure and penalties as follows under Sections 23, 25, 26, 27, 28 of the AAT Act, which states:

23. Powers of entry. Search, seizure, etc. (1) Any person, being an officer of Government, and authorised by the Central Government, may, to secure compliance with the provisions of this Act or to satisfy himself that the provisions of this Act have been complied with:

⁷⁷ The List III or Concurrent List is a list of items over which Indian state or federal power may be exercised. If a state adopts legislation or regulations that is "repugnant" to federal legislation and regulations, then the federal Parliamentary law is effective and the state law is void.

⁷⁸ *The Antiquities and Art Treasures Act, 1972*, UNESCO DATABASE OF NATIONAL CULTURAL HERITAGE LAWS, http://www.unesco.org/culture/natlaws/media/pdf/india/in_actantiquitiesarttreasures1972_engorof.pdf.



Rukmini Devi Temple, Dwarka, ASI monument number N-GJ-128, photo by Madhuranthakan Jagadeesan, 1 October 2013, Creative Commons Attribution-Share Alike 4.0 International license.

- (i) enter and search any place;
- (ii) seize any antiquity or art treasure in respect of which he suspects that any provision of this Act has been, is being, or is about to be, contravened and thereafter take all measures necessary for securing the production of the antiquity or art treasure so seized in a court and for its safe custody, pending such production.

24. Penalty.

- (1) If any person, himself or by any other person on his behalf, exports or attempts to export any antiquity or art treasure in contravention of section 3, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Customs Act, 1962 (52 of 1962) as applied by section 4, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and a fine.
- (2) If any person contravenes the provisions of section 5 or section 12 or sub-section (2) or sub-section (3) of section 13 or section 14 or section 17, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both and the antiquity in respect of which the offence has been committed shall be liable to confiscation.
- (3) If any person prevents any licensing officer from inspecting any record, photograph or register maintained under section 10 or prevents any officer authorized by the Central Government under sub-section (1) of section 23 from entering into or searching any place under that sub-section, he may suffer imprisonment for a term which may extend to six months, or with fine, or with both.

25. Cognizance of offences.

- (1) No prosecution for an offence under sub-section (1) of section 25 shall be instituted except by or with the sanction

of such officer of Government as may be prescribed in this behalf.

(2) No court shall take cognizance of an offence punishable under sub-section (2) or sub-section (3) or section 25 except upon complaint in writing made by an officer generally or specially authorized in this behalf by the Central Government.

(3) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under this Act.

27. Magistrate's power to impose enhanced penalties.—Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898⁷⁹, it shall be lawful for any Presidency Magistrate or any Magistrate of the First Class to pass any sentence under this Act in excess of his power under section 32 of the said Code.

28. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director”, in relation to a firm, means a partner in the firm.

Offences under the Indian Penal Code, 1860⁸⁰

The following criminal offenses are often charged against persons accused of domestic cultural heritage crimes:

Section 120 in The Indian Penal Code

120. Concealing design to commit offence punishable with imprisonment.—

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design. . . If the offence be committed, the offender shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Section 379 in The Indian Penal Code

379. Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 380 in The Indian Penal Code

380. Theft in dwelling house, etc.—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 401 in The Indian Penal Code

401. Punishment for belonging to gang of thieves.—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 411 in The Indian Penal Code

411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 413 in The Indian Penal Code

⁷⁹ No. 2 of 1974, CODE CRIM. PROC.(1974) § 29.

⁸⁰ No. 45 of 1860, INDIA PEN. CODE (1860), <https://www.ncib.in/pdf/indian-penal-code.pdf>



Bracelet with six portraits of Mughal Rulers and their royal wives, watercolor on ivory, gold, 1860-1870, Walters Art Museum, Baltimore, Maryland, USA, gift of John D. Schapiro, Mrs. Jerry Cascarella, 1999. Creative Commons license.

413. Habitually dealing in stolen property.—Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with . . . [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 414 in The Indian Penal Code

414. Assisting in concealment of stolen property.—Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 457 in The Indian Penal Code

457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

7. Conventions and international treaties regarding cultural property.

1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

The Convention provides for the adoption of peacetime safeguarding measures such as the preparation of inventories, the planning of emergency measures for protection against fire or structural collapse, the preparation for the removal of movable cultural property or the provision for adequate in situ protection of such property, and the designation of competent authorities responsible for the safeguarding of cultural property.

Signatories are obligated to preserve and protect cultural property situated within their own territory as well as within the territory of other States Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property. Presently 133 countries, including India, are party to the treaty. Opened for signature on May 14, 1954, India ratified the Hague Convention on June 16, 1958.

1972 Convention Concerning the Protection of the World Cultural and Natural Heritage

A convention recognizing that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction. Adopted by UNESCO on November 16, 1972. There are presently 193 signatories. India was a signatory to Convention on November 14, 1977. The Convention establishes the World Heritage Committee and grants a special legal status to designated sites.

1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property

The Convention recognized that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations. It recognized the illicit import, export and transfer of



Kailasanathar temple Kanchi Meditation chambers on the right with lion figures guarding the inner sanctum, photo Guruparama, 8 June 2016 Creative Commons Attribution-Share Alike 4.0 International license.

ownership of cultural property as a main cause of the impoverishment of the cultural heritage of countries of origin and that international co-operation could protect each country's cultural property.

It encouraged State Parties to set up national services for the protection of the cultural heritage with a qualified staff, to effectively draft laws and regulations designed to secure the protection of the cultural heritage and prevention of the illicit import, export and transfer of ownership of important cultural property; establish a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage; promote the development of scientific and technical institutions to ensure the preservation and presentation of cultural property; supervise archaeological excavations, establish, for the benefit of curators, collectors, antique dealers, etc., rules in conformity with the ethical principles set forth in this Convention; take educational measures to stimulate and develop respect for the cultural heritage of all States, and introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations. The 1970 UNESCO Convention was adopted for signature on November 14, 1970. India ratified the convention on January 24, 1977.

PART III

IMPLEMENTATION, OPERATION, AND ENFORCEMENT OF CULTURAL PROPERTY LAW

Identify National Cultural Inventory – Distribution, Status, and Title

What constitutes “cultural property” subject to domestic laws? Have there been significant changes over time in what types of objects are considered cultural property under the law? Have there been significant changes over time in what types of objects are considered state-owned or an inalienable part of the national heritage? Although the term “cultural property” has not specifically been defined under India laws, the term “antiquity” has been defined under the Antiquities and Art Treasures Act, 1972 (AAT Act) and because of its breadth, is virtually synonymous with “cultural property.”

“Antiquity” includes any coin, sculpture, painting epigraph or other work of art or craftsmanship; any article, object or thing detached from a building or cave; any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages; any article, object or thing of historical interest; 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 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.

The term ‘treasures’ can apply to any object more than 75 years old created by a deceased artist. Treasures are defined entirely at the discretion of the Director General.

Does the law clearly prohibit export of cultural property?

Yes, unless permission is granted. Only the Government of India has the power to allow export.

Is there a permitting system, or other mechanism, for the export of cultural property, and for what purposes (sale, exhibition, exchange)?

Although the AAT Act makes provision for the possibility of export, and allows temporary export for scientific or exhibition purposes with Government permission, for all practical purposes, there is no export allowed. Under Section 3 of the AAT Act, the Central Government or any authority authorized by it may permit such sale, exhibition or exchange within India. Section 7 and 8 of the Act describe the process for applying for a license to the Central Government and the grant of such a license thereon. If any person exports or attempts to export any antiquity in contravention of this provision, he may be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and a fine. See AAT Section 3:

3. Regulation of export trade in antiquities and art treasures. —

- (1) On and from the commencement of this Act, it shall not be lawful for any person, other than the Central Government or any authority or agency authorized by the Central Government in this behalf, to export any antiquity or art treasure.
- (2) Whenever the Central Government or any authority or agency referred to in sub-section (1) intends to export any antiquity or art treasure such export shall be made only under and in accordance with the terms and conditions of a permit issued for the purpose by such authority as may be prescribed.

Does the law recognize religious or other cultural institutional ownership of cultural property? Does the law recognize private ownership of cultural property?

Every private individual owning cultural/religious property must establish his rights and ownership over such property. A private owner may retain an ancient monument, though with caveats: ownership may be taken by the State for fair compensation if the owner places the monument at risk of damage or destruction. The Central Government can declare any ancient monument to be a protected monument, can attain rights in or guardianship of an ancient monument, or make efforts to preserve the ancient monument under The Ancient Monuments Preservation Act, 1904. (Section 3, 4 and 5 of The Ancient Monuments Preservation Act, 1904.)

“Property” is a concurrent subject, over which the Central Government and State Governments can both legislate. Laws can be varied depending upon the property and ownership in question, if the state law is not contrary to the central laws. If there is no private individual with ownership of the property, the government would have rights of title and ownership.⁸¹

Privately owned cultural property must be registered according to the registration process set forth in the Antiquities

⁸¹ See Supreme Court of India: Teki Venkata Ratnam v. Commissioner of Endowment, (2001) Insc 373 (Aug. 7, 2001), finding that every temple is public unless proved otherwise.



Harmandir Sahib or the Golden Temple, Amritsar, India, photo by Diego Delso, 8 December 2009, license CC BY-SA

and Art Treasure Rules 1973. There is not public data on the number of objects registered, but registration of private collections is generally avoided. Institutional collections of educational or religious nature do not require registration.

Does the law clearly vest title to cultural property in the state from a certain date?

No. Private ownership is allowed but if the antique is over 100 years old, registration is mandated. Every person who owns, controls or is in possession of any antiquity specified in the notification issued under subsection (1) shall register such antiquity before the registering officer— in the case of a person who owns, controls or possesses such antiquity on the date of issue of such notification, within three months of such date; and (b) in the case of any other person, within fifteen days of the date on which he comes into ownership, control or possession of such antiquity. The owner must obtain a certificate in token of such registration. However, per the CAG Performance Audit of ASI, there is no access to the documentation that such reporting has taken place, or else the documentation cannot be located.

Is cultural property that is NOT state-owned subject to export restrictions?

Whether or not it is state-owned, if cultural property is over 100 years old, it falls within the AAT Act and is subject both to mandatory registration and is prohibited from export without authorization by the Central government. If any person exports or attempts to export any antiquity in contravention of the AAT Act, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine under Section 25(2) of the AAT Act.

Does the state allow domestic trade (shop or gallery or auction sales, private sales or other transfers) in the same kinds of cultural property that it restricts export in?

Only if the person selling the antique, as defined under the AAT Act, is licensed under Section 5 of the Act:

As from the date of expiry of a period of six months from the commencement of this Act], no person shall, himself or by any other person on his behalf, carry on the business of selling or offering to sell any antiquity except under and in accordance with the terms and conditions of a licence granted under section 8.

Does the state make its domestic laws available domestically or internationally so that an exporter could reasonably know whether at the time of export that the object was exported in violation of the law?

All laws are available in hard copies in select bookstores and online. The ASI also has put up scanned copies of the enactments. Although there have been situations wherein ignorance of the owner owning the antique has not led to any punishment,⁸² it cannot be said that every such case may not lead to penal prosecution.

Please provide copies or examples of any export or import forms, or other documents that an individual or entity is required by law to complete in respect of cultural property, for example as part of any registration process.

The official Government of India webpage for registration is nonfunctional. The form is available as “FORM IV: Register of Antiquities” on page 16 of the Antiquities and Art Treasures Rules 1973.

What in-country systems exist specifically for cultural property management and administration? Describe how law enforcement and prosecutorial and penal systems are involved in violations of cultural property law.

The Ancient Monuments, Sites and Remains Act 1958 (AMSAR) and the Amendments and Validation Act 2010, and the Ancient Monuments, Sites and Remains (Framing of Heritage Bye-Laws and other Functions of Competent Authority) Rules,⁸³ provide the current process for monuments management.

The Central Government may declare a monument to be of national importance by publishing a notice to that effect in the Gazette of India. Furthermore, a National Monument Authority (under the Ministry of Culture, Government of India) has been established pursuant to the amendment. This authority is supposed to act as a watchdog keeping an eye on all construction related work in and around protected monuments.

Additionally, construction in and around protected monuments is restricted as follows:

- No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry out any mining, quarrying, excavating, blasting or any operation of a like nature without the permission of the Central Government.
- No person shall carry out any construction in the prohibited area (100 meters from the protected area) and can carry out repair/renovation only after the permission from the ASI Competent Authority on the recommendations of the National Monument Authority.
- Permission from the ASI Competent Authority on the recommendations of National Monument Authority is required to carry out construction/reconstruction in the regulated area (200 meters from the prohibited area).
- Central Government on the recommendations of NMA can increase the prohibited/regulated area.
- Construction without the permission of the competent authority shall be punishable with imprisonment not exceeding two years or with fine up to Rupees one lakh (Rs. 100,000)

According to the CAG Performance Audit of ASI, there has been no comprehensive survey to identify monuments of national importance and include them in the list of centrally protected monuments, or review of monuments which have lost the status of national importance. Notices naming monuments for protection were often decades out of date or had never been issued.

The Delhi office of the Archaeological Survey of India, Competent Authority, issues permits for construction in proximity to monuments.⁸⁴ Still, encroachment by builders constructing homes and shops close to or on monument properties is rampant. Professor Nayajot Lahiri of Ashoka University noted in 2017 that recent government proposals

⁸² S.R. Kiran vs. Cent. Bureau of Investigation, Bangalore, (1999) Crim LJ 3079 (India), the Honorable Court considered the applicability of the penal provisions under section 25(2) of the AAT Act. In this case, the articles in possession of the petitioner were 100 years old and the petitioner had not obtained the registration certificate under the Antiquities and Art Treasures Act, 1972. The Honorable Court observed that the articles were antiquities requiring registration and non-registration thereof was an offence under the Act. However, in view of the fact that the petitioner was not aware of the fact that the articles were 100 years old and he had not misused the articles for any purpose, the Hon'ble Court gave the petitioner an opportunity to make the necessary application to the competent authority, and ordered the authorities to return his antiquities if the petitioner satisfied the requirements of law.

⁸³ Ancient Monuments, Sites and Remains Rules 2011, Gazette of India, pt. II sec. (3)(f) (Aug. 23, 2011) https://upload.indiacode.nic.in/showfile?actid=AC_GEN_27_37_00002_195824_1517807319310&type=rule&filename=AMASRFramingofHeritagRules2011.pdf.

⁸⁴ *Grant of Permission*, COMPETENT AUTHORITY: DELHI, ARCHAEOLOGICAL SURVEY OF INDIA, <http://competentauthoritydelhi.co.in/GrantOfPermission.aspx>.

will strip away the narrow protections of the 1958 Ancient Monuments, Sites and Remains Act (AMSAR).⁸⁵ According to Professor Lahiri, recent Cabinet notes show that the Ministry of Culture is now effectively acting as a clearinghouse for the Ministry of Road Transport and Highways. The Cabinet claims that amendment to the Act is necessary, in part because it desires to build an elevated road in Agra in front of the tomb of the Emperor Akbar.

There are also serious concerns about the squatters living in monuments. Of the 1,655 monuments examined and inspected by the Comptroller and Auditor General (CAG) in 2013, 546 were encroached upon by illegal construction. Also according CAG Performance Audit of ASI, two hundred seventy-eight monuments under the protection of Archaeological Survey of India are continuously inhabited by squatters. The list of monuments being used as residences and businesses included the Golconda Fort in Hyderabad, Sher Shah Tomb in Sasaram, Bihar, forts of Chittorgarh, Ranthambhor, Kumbhalgarh in Rajasthan, Clive House in 24 Parganas, West Bengal, Nili Masjid in Hauz Khas, and Sunehri Masjid near Red Fort in Delhi.⁸⁶

Under the terms of Rule 7 of the AMASR Rules 1959, no protected monument shall be used for the purpose of holding any meeting, reception, party, conference or entertainment except under and in accordance with permission in writing granted by the Central Government. Any other usage, either reported to or observed by the Director General (ASI) could result an imprisonment of two years or a fine of two 200,000 rupees or both (subsequent to the amendment in the year 2010).

Are there procedures for the recovery of cultural property (under treaties, or other agreements) that has been 'lost' to foreign nations? Analysis of enforcement/lack of enforcement: how does the law on paper match current and past practice?

Yes. Countries that are signatories to the aforementioned UN conventions can recover an object of cultural property. Article 7 of the 1970 UNESCO Convention specifically provides for steps for the recovery and return of cultural property illegally taken from a country which is a signatory. It is pertinent to note a recent debate over the recovery of the 'Kohinoor' diamond, allegedly taken from India by the British during the pre-independence era and presented to Queen Victoria. The Government of India has stated that it cannot enforce return under the Indian 'Antiquities and Art Treasures Act, 1972'. It noted that the Act predates India's signing of the 1970 UNESCO Convention and local laws would not apply in the present case. It is unknown whether any significant seizures are likely to take place in the future between India and another 1970 UNESCO Convention signatory country.

What is the funding for law enforcement and prosecutions?

Any violation against the law under the aforementioned statutes is criminal in nature and is prosecuted by the State. The funding therefore is from the government for any penal enforcement.

What institution or ministry administers cultural property? What institution or ministry historically managed cultural property? Explain the basic administrative structure and the process through which an object passes.

Presently, the Ministry of Culture, Government of India administers cultural property in India. The ministry initially commenced operations as "Scientific Research and Cultural Affairs" ministry in the year 1961.⁸⁷ Presently, the Ministry of Culture receives assistance from other bureaucrats (including but not limited to officials working in the ASI, the zonal Directors General, officials working within the ministry itself, *et al*).

However, The CAG Performance Audit of the ASI found significant management issues at the ASI, including:

- The sites which fell under the category of "World Heritage" sites were in many cases subject to encroachments and unauthorized construction, and there had been no comprehensive assessment of preservation works that were required in the case of these sites.
- The ASI does not have any updated and approved conservation policy to address the conservation and preservation requirements. In the absence of prescribed criteria for prioritization of monuments requiring conservation works, they were arbitrarily selected for conservation, and in many cases monuments that require structural conservation were not taken up for the work at all.
- There is poor documentation of the conservation works. "Inspection Notes" on monuments were not prepared by the concerned officials.
- Although one of the primary activities of the ASI is exploration and excavation of the archaeological remains of the country and their study, less than 1 per cent of the ASI budget is spent on this.

⁸⁵ Nayajot Lahiri, *Making a Monumental Crisis*, THE HINDU, JULY 6, 2017, <https://www.thehindu.com/opinion/lead/making-of-a-monumental-crisis/article19225813.ece>.

⁸⁶ See also TNN, *Squatters Rule 278 ASI-Protected Monuments Across the Country*, TIMES OF INDIA, DEC. 8, 2015, <https://timesofindia.indiatimes.com/india/Squatters-rule-278-ASI-protected-monuments-across-country/articleshow/50084552.cms>.

⁸⁷ *History*, MINISTRY OF CULTURE: GOV'T OF INDIA, <https://www.indiaculture.nic.in/history>.



Pigeon food sellers, Jaipur, India, photo by Diego Delso, 4 December 2009, license CC BY-SA

- Excavation works suffer from poor documentation. The ASI Headquarters in Delhi, could not provide the status of 458 excavation proposals sanctioned in the last 5 years. No data is available regarding the status of pending excavation reports, and numerous cases of excavation proposals were not undertaken or left incomplete.
- There was no comprehensive policy guideline for the management of antiquities owned by ASI. The ASI did not set any standard for acquisition, preservation, documentation and custody of objects in its possession. Valuable antiquities were found stored in poor condition.
- The museums did not perform any better in this direction. There was no proper system of even evaluating and checking the authenticity of objects acquired by them.
- Accession registers were not properly maintained in all the museums under review. Significant discrepancies were observed in the number of antiquities reportedly available in Indian Museum, National Museum and Asiatic Society, Kolkata, and those listed in their database.
- There was no specific policy for systematic conservation and restoration of artefacts.
- The ASI did not have a database of the total number of antiquities in its possession. The audit team found that 131 antiquities were stolen from various monuments and sites and that 37 antiquities were stolen from site museums. The ASI effort to retrieve these artefacts was ineffective.
- More than 95 per cent of museum objects lay in reserve collections. There was no rotational system of display in the galleries.⁸⁸

⁸⁸ CAG PERFORMANCE AUDIT OF ASI, *supra* n. 8, at viii-xi.

The outsourcing of conservation of national heritage is a relatively recent phenomenon; nongovernmental organizations (NGOs), civil society organizations (CSOs), and corporate entities have all become active participants in conservation and preservation activities. Religious communities are not recognized as stakeholders for official conservation purposes, although many are active in maintaining monuments in active religious use.

With respect to conservation, according to the same CAG Performance Audit of ASI, which provided numerous examples of outsourcing both to NGOs and to purely commercial contractors (the majority), the ASI entered into many agreements for conservation completely without monitoring and often without prior vetting on companies or contracts. For example, the ASI entered into an agreement with the Aga Khan Trust through NCF in April 1999 for Humayun's Tomb, Delhi Circle. The Aga Khan Trust for Culture (AKTC) was to arrange for the funding through domestic or international donors with no financial obligation placed on the ASI. "The [ASI] Sub Circle in charge of Humayun's Tomb intimated (January 2013) that he was not aware of terms and conditions of the agreement or the time schedule of the work being carried out by AKTC and thus had no monitoring role. This highlights how the ASI has given up its responsibilities as per the MoU."⁸⁹

Five projects involving monuments in the Lodhi garden complex at Delhi Circle were carried out by the Indian National Trust for Art and Cultural Heritage (INTACH) in 2006. There was no formal agreement or work order. In October 2009 the ASI noticed that INTACH had carried out faulty and inferior conservation work, and that part of the work supposed to have been completed had not been done. There was no corrective action until November 2012 and the company performing the work was not blacklisted.⁹⁰

Is there a state registry or database of monuments?

Yes. The Government of India maintains a database. Information on the database is not publicly accessible except through a RTI (Right to Information) application.⁹¹ (The 2005 Right to Information Act mandates a timely response to citizen requests for government information. It replaced the 2002 Freedom of information Act.) However, the CAG Performance Audit of the ASI also found serious problems at the ASI related to documentation:

- There has been no comprehensive survey or review to identify monuments of national importance and include them in the list of centrally protected monuments. Similarly, there is no review of those monuments which have currently lost the status of national importance.
- There is no ASI database of the exact number of the monuments protected by it.
- During the joint physical inspection of the monuments, 92 monuments could not be traced. This was out of the total of 1,655 jointly inspected monuments. This figure is 'far higher' than the number of untraceable monuments reported by the ASI to the government.⁹²
- The CAG Performance Audit of the ASI also found that the ASI does not utilize standard criteria for documenting objects such as the standards adopted by the International Council of Museums (ICOMOS) or UNESCO: "The Ministry did not have a comprehensive policy for the management of antiquities. There were no standards for acquisition, preservation, documentation and custody of objects."⁹³

INTACH, the Indian National Trust for Cultural Heritage, is an NGO established in 1984, which has documented over 70,000 monuments in the country, of which about 60,000 are not monitored by any government or private agency.

Which government agencies or cultural institutions document and track movable cultural property?

The Archaeological Survey of India, a sub-agency of the Ministry of Culture, manages all Union government sites and cultural property.

Does the state maintain an inventory of cultural property so that it is possible to establish the date of illicit removal or of export?

Under the AAT Act, every antique ought to be registered and a list maintained by the Central Government. The ownership, however, may be private or public depending on who has title to and retains the registered antique. Registration records are not available and it is not known what objects are registered.

Is there a system of registration for legal trade in cultural property, such as a dealer's registry? What institution or ministry administers these registries/databases?

⁸⁹ *Id.* at 80.

⁹⁰ *Id.*

⁹¹ *Right to Information Act (RTI Act)*, ARCHAEOLOGICAL SURVEY OF INDIA, <http://asi.nic.in/right-to-information-act/>.

⁹² CAG PERFORMANCE AUDIT OF ASI, *supra* n. 8, at viii-xi.

⁹³ *Id.* at 131.



Tank at Hampi, ASI monument number N-KA-B49, photo by Jonathan Freundlich, 13 November 2011, 10:36:53 Creative Commons Attribution-Share Alike 3.0 Unported license.

The Ministry of Culture is supposed to maintain details of all antiquities and heritage property in circulation through registration by dealers of their inventory. The Ministry of Culture administers the databases. There are several departments under the Ministry, which depending on the query asked, provide the responses.

What terms and classifications exist for the categorization of cultural property under a state or ministerial registry or database?

There is no such classification mentioned specifically on the Ministry of Culture's website. Any internal classification system is not available to the public.

Are registries publicly accessible?

Whatever records are public may be sought through the National Portal of India, which provides access to various types of National agencies and departments.⁹⁴ Any detail not listed on this may be acquired through a Right To Information application.

Are registration requirements for either commercial property held for sale or private property held as heirlooms

⁹⁴ *Heritage*, NATIONAL PORTAL OF INDIA, <https://www.india.gov.in/topics/art-culture/heritage>.

or as art collections enforced? Is inheritance or gifting permitted? Are there penalties - in law or in fact?

Any property, ancestral in type and nature, is subject to Indian property laws. The Transfer of Property Act, 1882, the Indian Succession Act, 1925 and The Hindu Succession Act, 1956 (for Hindus) are the primary governing enactments for property received by a legal heir. Owning a property that has acquired a heritage status, unless acquired by the Indian Government through a legal forced sale, remains with the legal heir. The owner may be penalized if acts are done which violate the law in any manner. Gifting is permitted under The Transfer of Property Act, 1882. Notification of a transfer of an antique to a new owner of an antique through registration is required.

Is transfer of historic real properties by sale permitted? (Describe any limitations on transfer.)

Yes. The Transfer of Property Act, 1882 permits sale of historic properties in India. Restrictions are dependent on the conditions pursuant to which the Government has permitted the usage of the property. A well-known example is the iconic Taj Mahal Palace Hotel in Mumbai, which is currently operated by the Tata family.

Under the various laws, does a non-permitted transfer of private real property actually result in a confiscation/seizure, and/or transfer of ownership to the state?

This largely depends on who was the original owner of the said property. If the State owns the property and the transfer takes place by a non-permitted owner to a third party, the State can initiate criminal proceedings against the seller and seize the property. The buyer of the said property has an option of initiating civil and criminal remedies against the seller as well.

What other actions or treatment of the cultural property will trigger a transfer of ownership to the state under the law? Is there compensation?

Under Indian law, the Government is the primary owner of land and has the right to acquire real property. There have been numerous cases, such as Mysore Palace acquisition case and the Dolpur Palace acquisition case, among others, in which the Government has acquired property owned by erstwhile Indian kings. If the property has acquired a heritage status, the Government may impose conditions for maintaining the property. However, whenever property/land is acquired, owners are compensated at the prevailing land rates, which the Government gives notice of at the particular point in time. The Land Acquisition Act, 1894 is the governing law for such sales in India.

How broadly or narrowly is the national law applied, in actual fact, in the following circumstances: Domestic transfer by inheritance and gift transfers? Domestic transfer by sale?

In all cases, national law applies. However, it is extremely common that collectors in India do not register their objects.

Are objects of religious heritage included or excluded within state controls?

Numerous properties continue to be outside state control. However, ownership of religious heritage owned by kings vested to the State upon India's Independence.

Do national cultural property laws include community-owned artifacts, for example, objects used in religious rituals or ceremonies by a minority or majority religion?

If the religious properties have been acquired by the government, yes. Others, not. Governments do not usually interfere and 'boards,' comparable to trustees, are usually present to maintain and take care of such artifacts.

Is there a date-based division or a point at which such community records or property is held to belong to or be under the "protection" of the state government when it is over a certain age?

No. However, objects greater than one-hundred years old, even if privately owned, must be registered with the State. Note that the Government of India has abolished all rights and titles to privy India kings, including rights to community records and archives.

Does national cultural property legislation apply to the export of such minority individual or community property?

Yes.

Is archaeological work within the country organized and managed by the government through a ministry of culture or by universities through archaeological departments, or both?

The Ministry of Culture, through its departments and organizations organizes archaeological work.

Who gives permissions for archaeological excavations and study to domestic archaeologists?

The Government of India or government of the particular state wherein the property is situated.⁹⁵

Who grants permissions for foreign archaeological excavations and what are the requirements for permit or

⁹⁵ Grant of Permission, *supra* n. 84.

criteria for qualifications?

Appropriate permission has to be sought from the ASI and any State-level department tasked with supervising archaeological excavations in India. India also has volunteer non-governmental archaeological and preservation organizations doing documentary work and even excavation.

What is the penalty for violation of illicit trade provisions?

See above under Penalties.

How many convictions are there each year for violation of cultural property laws, export laws and related offenses?

No data is available in the public domain.

Is there information available on the financial value of seizures of cultural property?

This information is not in the public domain but could be made available through a Right to Information (RTI).

Can the classification of an object or a real estate property as a cultural property be extinguished?

The Government of India could extinguish a classification through an executive order (ordinance) or a change in law.

Are there requirements for archaeological excavation as part of private development and construction? Are these regulations enforced?

The ASI is tasked with maintenance of heritage properties. Any construction or excavation, therefore, must have permission of the ASI/government

Are there private collections of cultural property? Are they well known? Are there private museums?

Yes. Antique collectors may put up their exhibitions. It is however relevant to note that such 'antiques' have to be registered under law by the owner.

Is there any privileged group that collects art or artifacts that is allowed to do so?

Any person is authorized as long as the 'antiques' are registered.

If there is an illicit art and artifact market in the country, who are the participants? Is there a public marketplace, whether in galleries or in a bazaar?

Per media reports, there is. Unfortunately, it is only known through media reports.

Does the country apply the same sort of export restriction that it places on its own cultural property to the cultural property of other nations?

Yes. No private person is allowed under the Act to export antiquities under Section 3 of The Antiquities and Art Treasures Act, 1972. It is only lawful for the Central Government or any authority or agency authorized by the Central Government in this behalf, to export antiquities.

Does the country allow domestic trade in cultural property of other nations which have restrictive cultural property laws?

Not permitted under law. Any trade in violation of a MOU/convention signed with another country is not permitted in India.

Does the nation participate in international efforts to preserve cultural property in other nations? UNESCO projects? World Monuments Fund projects?

There are 37 UNESCO World Heritage Sites listed in India, which has the sixth largest number of sites of any country in the world. India has twenty-nine cultural sites, seven natural sites and one mixed site.

- Kaziranga Wildlife Sanctuary, Assam (1985)
- Manas Wildlife Sanctuary, Assam (1985)
- Mahabodhi Temple Complex at Bodh Gaya, Bihar (2002)
- Humayun's Tomb, Delhi (1993)
- Qutb Minar and its Monuments, Delhi (1993)



The Norton Simon Sivapuram Nataraja, Wikipedia.



The Prime Minister, Shri Narendra Modi at the presentation of the Parrot Lady statue, in the library of Canadian Parliament with the Prime Minister of Canada, Mr. Stephen Harper, in Ottawa, Canada on April 15, 2015. Licensed under the Government Open Data License - India (GODL)

- Red Fort Complex (2007)
- Churches and Convents of Goa (1986)
- Champaner-Pavagadh Archaeological Park, Gujarat (2004)
- Group of Monuments at Hampi (1986)
- Group of Monuments at Pattadakal (1987)
- Buddhist Monuments at Sanchi, Madhya Pradesh (1989)
- Rock Shelters of Bhimbetka, Madhya Pradesh (2003)
- Khajuraho Group of Monuments, Madhya Pradesh (1986)
- Ajanta Caves (1983)
- Ellora Caves (1983)
- Elephanta Caves (1987)
- Chhatrapati Shivaji Terminus – formerly Victoria Terminus (2004)
- Sun Temple, Konarak (1984)
- Keoladeo National Park (1985)
- Jantar Mantar, Jaipur (2010)
- Great Living Chola Temples (1987)
- Group of Monuments at Mahabalipuram (1984)
- Agra Fort (1983)

- Fatehpur Sikri, Uttar Pradesh (1986)
- Taj Mahal (1983)
- Mountain Railways of India (1999, 2005 and 2008)
- Nanda Devi and Valley of Flowers National Parks (1988)
- Sundarbans National Park (1987)
- Western Ghats (2012)
- Hill Forts of Rajasthan (2013)
- Rani ki vav – the Queen’s Stepwell (2014)
- Great Himalayan National Park (2014)
- Nalanda (2016)
- Khangchendzonga National Park (2016)
- The Architectural Works of Le Corbusier (2016)
- Historic City of Ahmadabad (2017)
- Victorian and Art Deco Ensemble of Mumbai (2018)⁹⁶

Since 1995, thirty-one Indian sites have been included in the World Monuments Watch. World Monuments Fund India has provided funding and technical support for preservation and restoration for many Indian sites, including Pardesi Synagogue in Kochi, Taj Mahal, The Krishnadevaraya Temple in the World Heritage site of Hampi, and the Dwarkadeesh Temple in Ahmadabad, Basgo and Sumda Chun Gompas in Ladakh, and St John’s Church in Kolkata, Delhi Heritage Route and Biharji Temple in Amber. Current projects include Balaji Ghat, Varanasi in partnership with INTACH, Osmania Women’s College the former British Residency Hyderabad, The Mughal Riverfront Gardens of Agra, and Gon Nila Phuk Caves at Saspol Ladakh.⁹⁷

APPENDIX

Foreign Smuggling and Repatriation Cases

Following is a brief review of the best-known cases involving smuggling and foreign repatriation of important Indian artworks. Seizures by foreign law enforcement and internal researches by foreign museums as well as Indian government investigations have resulted in the return of illicitly exported objects.

The Archeological Survey of India has not initiated repatriation cases, although it has done investigative work on existing cases. However, an Idol Wing unit of the economic section of the Tamil Nadu police was established in 1983 specifically to deal with thefts from temples. The Idol Wing unit remained largely inactive until about 2006, when it revived in response to thefts from regional temples.⁹⁸ Tamil Nadu village temples hold many thousands of bronze and stone statues, many from the 11th-14th century. When these go missing, the Idol Wing unit is authorized to register cases independently for any missing “idols” valued at over 500,000 rupees (about \$8,000) and over 100 years old.

1. The Sivapuram Nataraja

The Indian government made its first repatriation claim against a foreign held object, a very large and beautiful bronze sculpture of Siva as Lord of the Dance, known as the Sivapuram Nataraja, in the 1970s.

In 1951, the *Sivapuram Nataraja*, was found together with five other bronzes in a farmer’s field in Thanjavur district, Tamil Nadu state, in southern India. Although considered government property under India’s Treasure Act, the statue was placed in custody of the nearby Sivagurunathaswamy temple.⁹⁹ Five years later, several individuals conspired to send the statues to an Indian restorer, who made copies that were returned to the temple while the originals were

⁹⁶ *India: Properties Inscribed on the World Heritage List*, UNESCO, <https://whc.unesco.org/en/statesparties/in>.

⁹⁷ *WMF India*, WORLD MONUMENTS FUND, <https://www.wmf.org/affiliate/india>.

⁹⁸ *Idol Wing History*, GOV’T OF TAMIL NADU ECON. OFFENSES WING, http://www.tneow.gov.in/IDOL/IW_history.html.

⁹⁹ Although the Treasure Trove Act (VI of 1878) vested rights of possession in the government, India’s Ancient Monuments Preservation Act (Act No. VII of 1904) can defer rights to possession of religious artefacts to persons for purposes of worship.

sold. The authentic Sivapuram Nataraja went first to collector Lance Dane in Bombay¹⁰⁰, and then passed into the well-known Indian private collection of Boman Behram in Bangalore.¹⁰¹ In 1969, Behram sold the statue to New York art dealer and collector Ben Heller. Heller sold the Nataraja to California businessman and philanthropist Norton Simon in 1972 for \$900,000 for his eponymous museum in Pasadena, California.

Meanwhile, in 1965, British Museum curator Douglas Eric Barrett had inspected the sculptures in the Sivagurunathaswamy temple and informed museum and academic colleagues that the sculptures stored there were fake. Although the Sivapuram Nataraja sculpture was generally known to be in the Norton Simon Foundation collection, it was only as a result of publicity surrounding a major exhibition at New York's Metropolitan Museum of the Norton Simon Foundation's Indian art collection in 1973, that Indian authorities became aware that the Nataraja was in the U.S.

Soon after, the Indian government claimed the sculpture and asked for its restitution, at the same time filing civil lawsuits against the Norton Simon Foundation and Ben Heller in California and in New York.¹⁰² As the statue was in the UK for restoration, India succeeded in getting Scotland Yard to impound the statue there. In addition to claiming that the statue was exported by means of false statements and in knowing violation of Indian law, India also raised an unprecedented argument that the statue was not "property" but had divine, godlike properties that made it a legal entity able to sue on its own behalf. The Foundation countered, arguing that the statue had been legally imported into the U.S. and that the Indian government had abandoned its interest, having been able to discover the statue's whereabouts for years and taking no steps to recover it while it was displayed notoriously as part of the Boman Behram collection.

The case was resolved through negotiation by the parties, who reached an out of court settlement. The Norton Simon Foundation agreed to recognize India's ownership and return the statue to India. India agreed to allow the statue to be displayed in the newly opened Norton Simon Museum in Pasadena, California for ten years, and gave the foundation carte blanche to purchase any Indian antiquity already outside of India with complete immunity from suit for a period of one year.

2. The Acquittal of Vaman Narayan Ghiya

Wide foreign publicity about the wholesale export of important antiquities to Europe and the UK by notorious 'idol thief' Vaman Narayan Ghiya in the 1990s helped prompt the first major Indian police investigation of a smuggling case involving antiquities.¹⁰³ The Ghiya case also spurred increased support for the Idol Wing police unit in Tamil Nadu State, where many temples with ancient carved stone and bronze 'idols' were located. Indian art dealer Vaman Narayan Ghiya is reported to have been the most prolific smuggler of Indian antiquities. According to police cases filed against Ghiya in his home state of Rajasthan, he illicitly traded in antique sculptures for thirty years before finally being investigated and arrested in June 2003.¹⁰⁴ During the 1980s, Ghiya became known as the preeminent buyer of ancient stone and bronze temple sculptures. Several gangs of local thieves were alleged to have stolen antique sculptures from various temples. Ghiya was said to have purchased and illegally shipped them from India to auction houses and other clients in Europe and the UK.¹⁰⁵ Ghiya also set up two companies at the Geneva freeport in Switzerland to sell artworks to each other, providing an ostensible Swiss provenance for them.

Ghiya's extensive antiquities trading network received international attention when in 1997, British journalist Peter Watson published the book, *Sotheby's: The Inside Story*.¹⁰⁶ In it, Watson recounted accusations by a former Sotheby's employee named James Hodges, that Ghiya had flooded Sotheby's with dozens of highly important ancient stone and bronze gods and goddesses from neglected Indian temple sites in the early 1980s and that Hodges had routed substantial funds to secret accounts in Ghiya's name.

According to interviews with Anand Shrivastava, Superintendent of Police in Jaipur, in Patrick Radden Keefe's 2007 article, *'The idol thief'*¹⁰⁷, India's Central Bureau of Investigation had long suspected that Ghiya was smuggling art. In 2002, Shrivastava led a year-long investigation of Ghiya in Jaipur that he named 'Operation Black Hole.' Together with

¹⁰⁰ *Idol Wing Judgment*, GOV'T OF TAMIL NADU ECON. OFFENSES WING, <http://www.theow.gov.in/IDOL/judgement.html>.

¹⁰¹ The career of Boman Behram, one of the great Indian private collectors of ancient art, is described by Dr. Pratapaditya Pal in PRATAPADITYA PAL, IN PURSUIT OF THE PAST. COLLECTING OLD ART IN MODERN INDIA, CIRCA 1875-1950 (2015).

¹⁰² *Union of India v. the Norton Simon Foundation*, 74 Cir. 5331 (S.D.N.Y. 1976); United States District Court, and *Union of India v. the Norton Simon Foundation*, No. CV 74-3581-RJK (C.D. Cal. 1976).

¹⁰³ Patrick Radden Keefe, *The Idol Thief*, THE NEW YORKER (Apr. 30, 2007) <https://www.newyorker.com/magazine/2007/05/07/the-idol-thief>.

¹⁰⁴ *Id.*

¹⁰⁵ PETER WATSON, *SOOTHEBY'S: THE INSIDE STORY* (1997).

¹⁰⁶ *Id.*

¹⁰⁷ Keefe, *supra* n. 94.



Itmad-Ud-Daulah's Tomb, Agra, India, photo by Diego Delso, 3 December 2009, license CC BY-SA

Peter Watson's book, *Shrivastava* obtained old archaeological studies and images from catalogs and books in the West to try to link photographs to missing statues. Based on this information, Jaipur police searched Ghiya's home in a dawn raid on June 7, 2003.

They discovered hundreds of photographs of stone figures of Indian Hindu deities, Jain Tirthankaras, and Chola bronzes. They also found 68 catalogs from Sotheby's and Christies.¹⁰⁸ After Ghiya's arrest, police searched his farm and a half dozen urban storage spaces and warehouses. Altogether, they found about 900 objects.

A lengthy investigation and trial followed. In a judgment issued on November 20, 2008 in the Additional Sessions Court in Jaipur, Vaman Narain Ghiya and an associate, Banne Singh, were convicted¹⁰⁹ of dishonestly receiving stolen property¹¹⁰ and habitually dealing in stolen property¹¹¹ and for offences under the Antiquities and Art Treasures Act.

¹⁰⁸ In statements to police during his confinement, Ghiya later identified nearly 700 objects in the catalogs as smuggled by him into Geneva. However, statements made under interrogation in India are not admissible in court.

¹⁰⁹ *State of Rajasthan vs. Vaman Narain Ghiya & Anr.*, (2014) (India), <https://indiankanoon.org/doc/152498913/>.

¹¹⁰ Central Gov't Act, PEN. CODE 411. Dishonestly receiving stolen property.—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

¹¹¹ Central Gov't Act, PEN. CODE 413. Habitually dealing in stolen property.—Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

They were acquitted of violations of laws against theft¹¹², criminal conspiracy¹¹³, of some of the charged instances of habitually dealing in stolen property, and of assisting in concealment of stolen property¹¹⁴, conspiracy of the same, for belonging to a gang of thieves¹¹⁵ and for selling antiquities without a license.¹¹⁶

On January 15, 2014, the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur denied the government's request for the acquittals to be reversed.¹¹⁷ In a separate judgement issued the same day in *Vaman Narain Ghiya vs. State of Rajasthan*, the High Court of Judicature for Rajasthan overturned Ghiya's remaining earlier convictions for dishonestly receiving stolen property and habitually dealing in stolen property.¹¹⁸ Much of the evidence produced at the original trial was held by the High Court to be either inadmissible for lack of proper documentation or to be hearsay.¹¹⁹

The High Court announced that a Ghiya Collection of South Asian Art made up of the objects seized in India would be stored and eventually displayed at Jaipur's Palace of Winds, the Hawa Mahal. However, as the Palace of Winds lacks security measures sufficient for the exhibition of valuable artifacts, they have remained in storage. The Indian government has not made claims for objects sold earlier by Ghiya in Europe.

3. Vishnu sculpture returned to India.

A U.S. Immigration and Customs Enforcement investigation located a stolen 9th C idol with carving of ten manifestations of the God Vishnu in a home gallery in NY. The statue had been taken in the 1990s from the Varaha temple in Mandsour, Madhya Pradesh. The statue was located by U.S. Customs investigators. It was returned to the Indian government in 2006.¹²⁰

4. 'Parrot Lady' Sculpture Returned to India

A stone statue was seized in Canada after import from the U.S. The importer was a retiree in Alberta who bought the statue on eBay for \$3,818.59 as a replica to decorate her home.¹²¹

The Department of Canadian Heritage notified the Indian High Commission (IHC) in Ottawa of the seizure in 2011. Three years later, the IHC responded that the statue was from a twelfth century Khajuraho temple site in the Vindhya mountain range in central India, a World Monument site. Canada is a signatory to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and has passed the Canadian Cultural Property Export and Import Act¹²² (CPEIA), making import of cultural property illegally exported from a State that is also signatory to the convention illegal under Canadian law.¹²³

¹¹² Central Gov't Act, PEN. CODE 379. Punishment for theft. —Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

¹¹³ Central Gov't Act, PEN. CODE 120B. Punishment of criminal conspiracy. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

¹¹⁴ Central Gov't Act, PEN. CODE 414. Assisting in concealment of stolen property. —Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

¹¹⁵ Central Gov't Act, PEN. CODE 401. Punishment for belonging to gang of thieves.—Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

¹¹⁶ Antiquities & Art Treasures Act, § 5 (1972) (India).

¹¹⁷ *State of Rajasthan vs. Vaman Narain Ghiya & Anr.*, (2014) (India) para. 12, <https://indiankanoon.org/doc/152498913/>. (DB Criminal Appeal No.809/2012, Against The Judgment Dated 20.11.2008 Passed By The Additional Sessions Judge (Fast Track) No.1, Jaipur City, Jaipur IN Sessions Case No..76/2006(141/2003), Judgment January 15, 2014).

¹¹⁸ *Id.*

¹¹⁹ *Id.* The court found that the government failed to prove the gangs alleged to have supplied antiquities were formed for the purpose of committing theft or robbery, and that the sculptures, manuscripts and other artifacts seized were either stolen property or antique. It stated that the prosecution witnesses' testimony had been "shattered" in cross examination; that the prosecution provided no expert testimony that the artifacts recovered were from the stated sites; that an investigating officer demanded "an illegal gratification" from Ghiya which was refused, and the same investigator and other officers never sealed the seized items or met mandatory standards of safe custody of evidence.

¹²⁰ PTI, *Stolen Lord Vishnu's Statue Sent Back Home*, TIMES OF INDIA, Apr. 18, 2006, <https://timesofindia.indiatimes.com/world/us/Stolen-Lord-Vishnu-statue-sent-back-home/articleshow/1494372.cms>.

¹²¹ Douglas Quan, *Woman Who Found 900-year-old 'Parrot Lady' Statue Canada Presented to India Still Convinced It's Just a 'Nice Knock-off'*, NATIONAL POST, Nov. 27, 2015, <https://nationalpost.com/news/canada/woman-who-found-900-year-old-parrot-lady-statue-canada-presented-to-india-still-convinced-its-just-a-nice-knock-off>.

¹²² Cultural Property Export and Import Act, R.S.C 1985., c. C-51 (Can.).

¹²³ Lauren Burse, et al., *Case Parrot Lady Sculpture – Canada and India*, ARTEMIS, ART-LAW CENTRE UNIVERSITY OF GENEVA (July 2015), <https://plone.unige.ch/art-adr/cases-affaires/parrot-lady-sculpture-2013-canada-and-india/case-note-2013-parrot-lady-sculpture-2013-canada-and-india/view>

A government requesting restitution under the CPEIA must provide documentation that the property was illegally exported from the requesting state. India had been unaware that the statue was missing before the seizure and was unable to supply either its former location or proof of illegal export within three years.¹²⁴ Nonetheless, Canadian officials eventually decided that the statue should be deemed to be from a Khajuraho temple. Canadian Prime Minister Stephen Harper presented the statue to Prime Minister Narendra Modi of India during Modi's state visit to Ottawa in April 2015.¹²⁵

5. The Ongoing Subhash Chandra Kapoor Case

Most recently, India has received returns of stone sculptures recovered in the case against Subhash Chandra Kapoor, including several important sculptures returned by the National Gallery of Australia (NGA) to India.¹²⁶

The case against Kapoor has been ongoing for the last decade in both India and the United States, and has resulted in the return of the largest number of Indian ancient sculptures and other antiquities to India of any investigation. In 1974, Kapoor, the son of an Indian antique dealer, immigrated to the US, and established a gallery. The gallery, initially called Temple Arts and later renamed Art of the Past, sold manuscripts, miniatures and other Indian antiques. According to Indian law enforcement, around 2005, Kapoor became extensively involved in smuggling of ancient sculptures in bronze and stone taken from temple sites in the Indian state of Tamil Nadu. A number of temple robbers arrested in the Tamil Nadu region implicated Kapoor as the eventual recipient of their stolen goods via a chain of local dealers.

Outside of India, investigations into Kapoor's gallery were prompted by information shared by a Singapore-based former partner, Paramaspy Punusamy, on the Internet in 2010-2011. Blogger Damien Huffer also posted links on his blog about investigations of Kapoor in India, which Kapoor denied. An investigation began in New York and New Jersey, undertaken primarily by U.S. Homeland Security Investigations (HSI).

In 2011, Tamil Nadu police issued a warrant for Kapoor's arrest. Then, in October 2011, India's Central Bureau of Investigation (CBI) issued a Red Corner Notice through Interpol, stating that Kapoor has received stolen property in 2006 and 2008. Five days later, Kapoor traveled from the U.S. to Frankfurt, Germany and was detained at Frankfurt airport. On July 14, 2012 Kapoor was extradited to India, to be held at a prison in Chennai, Tamil Nadu State.

Also in July 2012, the Manhattan District Attorney's Office issued an arrest warrant for Subhash Kapoor, charging him with possession of stolen property. Subhash Kapoor's sister, Sareen Kapoor, was arrested and charged with criminal possession of stolen property valued at more than U.S. \$1million. The seized property was identified as four Chola bronze statues valued at a total of \$14.5 million dollars. All four statues had been previously identified as stolen from the Varadharaja Perumi temple in 2008 by the Tamil Nadu police. Later the same month, HSI raided a Manhattan storage facility used by Kapoor. HSI initially estimated the value of the items seized at \$20M (they were later claimed to be worth \$100M). Altogether, HSI raided 12 warehouses of Kapoor's and seized 2,622 miscellaneous artefacts. Many hundreds of these artifacts were returned to the Government of India by U.S. officials.¹²⁷

The charges against Kapoor subsequently prompted the voluntary return by U.S. and international museums and private collectors of objects either sold or donated to them by Kapoor. Among the museums that returned objects were the Asian Civilisations Museum in Singapore; U.S. museums included the Honolulu Museum of Art in Hawaii, Toledo Museum of Art, Peabody Museum, Metropolitan Museum of New York, the Art Institute of Chicago, the Boston Museum of Fine Arts, Asian Art Museum of San Francisco, and Los Angeles County Museum of Art.

In September 2014, two important statues sold by Kapoor to the National Gallery of Australia were handed over by Australian Prime Minister Tony Abbott to Indian Prime Minister Narendra Modi during the former's visit to New Delhi. Then, in September 2015, the Baden-Württemberg Ministry of Science, Research and Arts delivered a statue of the goddess Durga purchased in 2010 by the Linden Museum to the Indian Embassy in Germany. Although the return was not required under German law, it was made for ethical reasons and to build goodwill between Germany and India.¹²⁸

In India, the case against Subash Kapoor has proceeded very slowly. Although it began in 2012, the first hearing was held

¹²⁴ Douglas Quan, *Canada Balks at Returning Statue Believed Stolen from World Heritage Site in India*, CANADA.COM, Aug. 3, 2014, <https://o.canada.com/news/national/canada-balks-at-returning-statue-believed-stolen-from-world-heritage-site-in-india>.

¹²⁵ PTI, *Stephen Harper Returns 900-year-old Khajuraho Temple Sculpture to Modi*, TIMES OF INDIA, Apr. 15, 2015, <https://timesofindia.indiatimes.com/india/Stephen-Harper-returns-900-year-old-Khajuraho-temple-sculpture-to-Modi/articleshow/46941237.cms>.

¹²⁶ On February 5, 2014, the National Gallery of Australia (NGA), which bought a 1,000-year-old bronze Nataraja for US \$5 million from Subhash Kapoor, filed a lawsuit against him in the Supreme Court of the State of New York, alleging that he fraudulently induced the NGA to purchase the Nataraja sculpture. Sarah Cascone, *National Gallery of Australia Sues dealer Over Stolen Antiquities*, ARTNET NEWS, Feb. 16, 2014, <https://news.artnet.com/art-world/national-gallery-of-australia-sues-dealer-over-stolen-antiquities-1266>.

¹²⁷ See Amrita Madhukalya, *UNESCO Portal to Act as Global Directory of Stolen Antiquities*, DNA INDIA, Oct. 7, 2016, <https://www.dnaindia.com/india/report-unesco-portal-to-act-as-global-directory-of-stolen-antiquities-2262007>.

¹²⁸ Alexandra Scherle, *Germany Returns Hindu Statue to India*, DW, September 9, 2015. <https://www.dw.com/en/germany-returns-hindu-statue-to-india/a-18731495>.



Gandhi Smriti, Delhi, India, photo by Diego Delso, 1 December 2009, license CC BY-SA

in 2016. However, its progress in the U.S. may indicate that proceedings in India are expected to end soon. On July 7, 2019, a 285-page criminal complaint and arrest warrant was issued in New York against Kapoor, charging him with grand larceny, conspiracy, and numerous counts of criminal possession of stolen property.¹²⁹ Seven other individuals were also charged in the same warrant with conspiracy and/or criminal possession of stolen property. It is expected that when the Indian case ends, Subhash Kapoor will be extradited from India and the details of his role in the smuggling of Indian cultural property to the U.S. will be brought to light.

¹²⁹ Sarah Cascone, *New York Files Charges Against Disgraced Art Dealer Subhash Kapoor in \$145 Million Smuggling Ring*, ARTNET NEWS, July 11, 2019, <https://news.artnet.com/art-world/new-york-files-charges-145-million-art-smuggling-ring-1598293>.