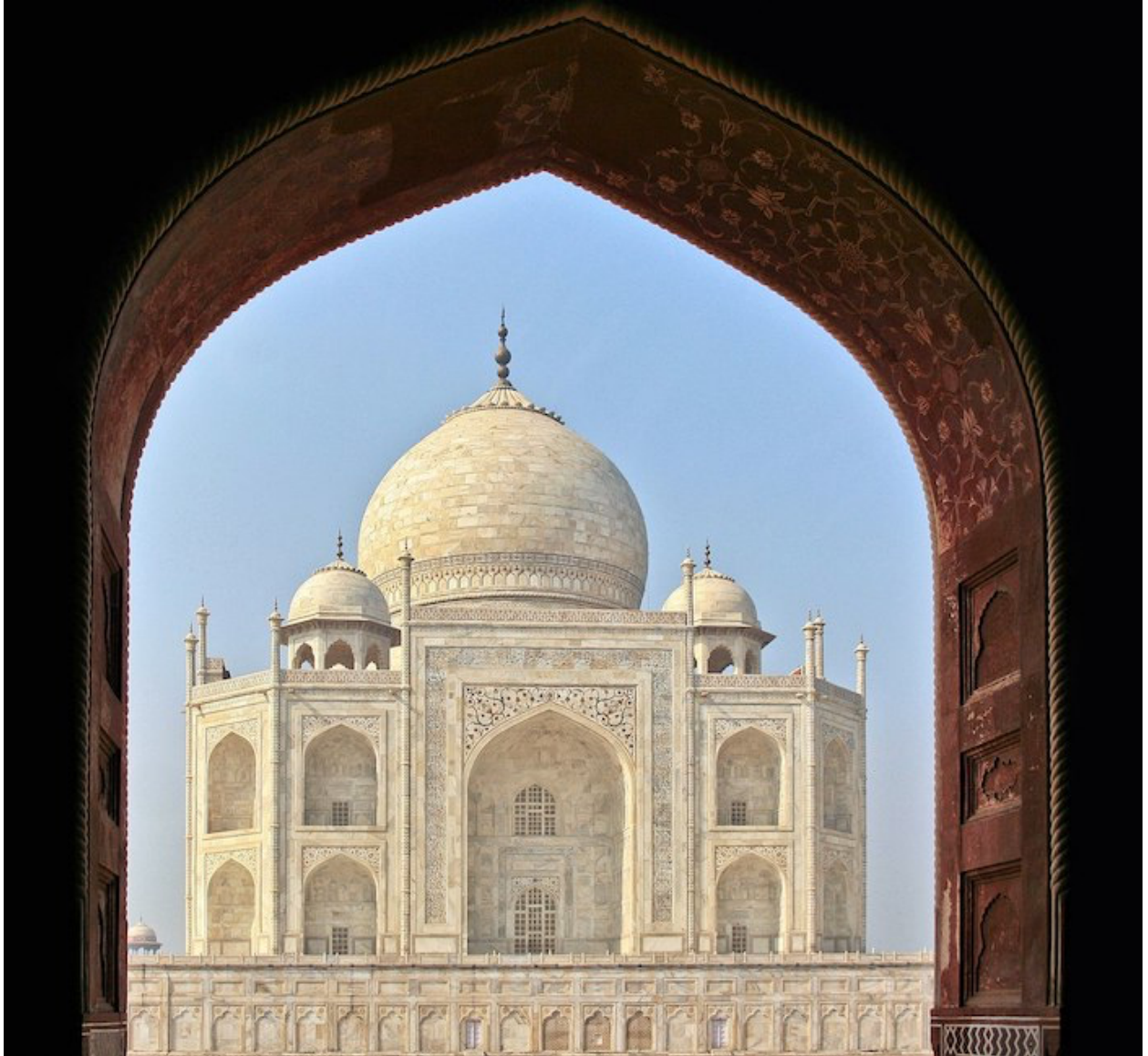


2024 India Report: U.S. Art Blockade Inevitable Despite Destruction and Neglect

Pro-Hindu Policies, Encroaching Development, and Administrative
Malfeasance Leave History and Heritage at Risk



Taj Mahal, Agra, India, Photo by Diego Delso, delso.photo, 3 December 2009, CCA-SA 4.0 International License.

© Kate Fitz Gibbon
CULTURAL PROPERTY NEWS - THE COMMITTEE FOR CULTURAL POLICY, INC.
CULTURALPROPERTYNEWS.ORG
February 20, 2024

2024 India Report: U.S. Art Blockade Inevitable Despite Destruction and Neglect

Pro-Hindu Policies, Encroaching Development, and Administrative Malfeasance Leave History and Heritage at Risk

Kate Fitz Gibbon



QTUB MINAR, DELHI, INDIA, DETAIL, PHOTO BY DIEGO DELSO, 10 DECEMBER 2009, CC BY-SA LICENSE.

A Memorandum of Understanding (MOU) with India under the Convention on Cultural Property Implementation Act^[1] (CPIA) appears to be a done deal. A full year before India’s ‘request’ was heard before the Cultural Property Advisory Committee (CPAC) at the State Department – which is supposed to be the first step of a recommendation to the President – the Indian press had announced that India’s government was finalizing the terms of an agreement to block the entry of Indian art and antiquities into the U.S. The first the American public heard about a future agreement with India was a November 29, 2023 announcement on a State Department website that a public hearing on the request was scheduled before CPAC in January of 2024.^[2] Information on the objects India wanted blocked was added to the website in mid-January 2024, only a week before the deadline for written testimony from the public.^[3]

India sought the following:

“[I]mport restrictions on archaeological and ethnological materials dating from 1.7 million years ago to 100 years ago, including objects dating from the Paleolithic, Mesolithic, Neolithic, Ancient Periods (including, but not limited to, the Indus Valley Civilization, Maurayan Empire, Shunga Empire, Gandharan Kingdom, Gupta Period, and the Gurjara-Pratihara, Rastrakuta, and Pala Dynasties), and Historic Periods (including, but not limited to, the Chola Dynasty, Delhi Sultanate, Mughal Empire, and the British Raj). Categories of objects include stone tools and artifacts, terracotta figurines, toys, coins and medals, seals and sealing, molds, dies, sculpture, utensils, architectural materials, arms and ammunition, scientific instruments, and jewelry and toiletries. Protection is also sought for miniature paintings, art pieces in cloth and paper, and manuscripts dating from the 7th century CE to 75 years ago.”^[4]



A SCENIC VIEW FROM DAULATABAD FORT, PHOTO BY ANAND SAURKAR, 14 MAY 2017, CCA-SA 4.0 INT'L LICENSE.

reports.^[5] Our conclusion, that an agreement between the United States and the Government of India is not merited, is based on the Indian government's own admissions of decades of negligence, underfunding, and failure to follow its own laws.

Despite India's failure to meet the criteria set by Congress in the 1983 Cultural Property Implementation Act (CPIA), we fully expect that the State Department's diplomatic goals will once again supersede both the law's requirements and Congress's intent. An agreement with India that places U.S. art interests at risk is inevitable under the aggressive pursuit of cultural heritage MOUs by the Department of State's Cultural Heritage Center at the Bureau of Educational and Cultural Affairs.

Foundational Principles: What Is an Agreement Under the Cultural Property Implementation Act?

The CPIA provided for the U.S. to enter into agreements with foreign nations to temporarily restrict the import of "significant" cultural items as a response to current looting. Restrictions are also allowed under the CPIA to prevent the importation of ethnographic objects "important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people," which Congress limited to the products of tribal or non-industrial societies.^[6] MOUs are accompanied by Designated Lists of objects at risk that may be restricted from import into the U.S.

An agreement under the CPIA is intended to work in concert with similar efforts on the part of other nations.^[7] The CPIA also obliges source country governments to take self-help measures consistent with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the "1970 UNESCO Convention"), for example, protecting archaeological sites and curbing markets for looted objects in their own countries.^[8] An agreement must be in the interest of the lawful international circulation of art for cultural, educational and scientific purposes.^[9] The role of the CPAC committee is to review requests made by source nations for an MOU and to identify covered objects to be subject to import restrictions. Congress granted CPAC the ability to make recommendations for five-year-long import restrictions that are renewable at need, but only in circumstances in which all four criteria under the CPIA continue to be met.^[10]

Thus, CPAC's task is to review the Government of India's request and determine:

1. whether there is a current looting situation that jeopardizes the cultural patrimony of India,
2. whether India has taken measures consistent with the 1970 UNESCO Convention to preserve national cultural property,
3. whether a MOU would be "of substantial benefit in deterring looting" and if another less drastic solution than import restrictions is available, and
4. whether import restrictions are justified under the legal requirement that they be "in the general interest of the international community in interchange of cultural property among nations for scientific, cultural, and educational purposes."

India's History of Cultural Property Law and Management



FIGURE OF A NOBLEMAN, MOHENJO-DARO EXCAVATIONS, PRE-PARTITION INDIA, PRESENT-DAY PAKISTAN, PHOTOGRAPHER UNKNOWN. PRIVATE COLLECTION.

India's cultural heritage spans 5000 years, several major civilizations, multiple empires, and thousands of small kingdoms. India is so rich in archaeological sites that it is literally layered with evidence of the rise and fall of civilizations, religions, and peoples. Never united into a single polity until the British colonial period, the idea of a consolidated Indian nation is an entirely modern concept. The fact that there was no single Indian 'nation' prior to the colonial period meant that the foundations of Indian identity as a people with common interests, despite religious, social, and economic differences, drew on predominantly Western concepts of nationhood.

The great Indian scholar and art historian, Dr. Pratapaditya Pal,^[11] in a recent interview^[12], identified a number of historical and factual inconsistencies in India's request that complicate and in some ways render impossible the enforcement of the import restrictions requested by India:

"It should be remembered that the subcontinent today is divided into three distinct nations: India, Pakistan and Bangladesh. Hence, it is necessary to determine whether the object came out of the geographical regions which today constitute the nations known as India, Pakistan or Bangladesh, which can be daunting for non-specialists. Even the so-called scholars and archaeologists lack the knowledge.

Moreover, it must be remembered that while the subcontinent known as "India" during the historical period, which begins no earlier than about roughly 300 B.C. was the recipient of cultural objects from abroad by both land and sea routes from both east and west and objects manufactured in India, especially textiles and religious objects were legitimately exported by other countries and nations. As example, I cite the Indian carved ivories that were found in Italy, primarily in Pompeii and now in Naples. Similarly, after Buddhism, which originated and was exported from the subcontinent as far east as Japan and west as Egypt, numerous religious objects traveled with merchants and pilgrims from India across Asia and as far west as Europe. ...

India's definition of "Archaeological and Ethnological" cultural property is not only inadequate but absurd. To cite only one instance, the Indus Valley Civilization flourished between both India and Pakistan,

but the two most important sites in fact are in Pakistan. Therefore, this is so vague that it is impossible for either U.S. customs, or archaeologists and ethnologists, in either India or the USA, to distinguish what was made where.

Besides, during the Indus Valley Civilization spanning from 2500 to 1500 BC, there was no nation called India or Pakistan. In fact, the name of the country (or people) where the civilization flourished was likely “Meluhah.” What then happens of the period between 1500 BC, the putative end of the period of the Indus Valley Civilization and the beginning of the Maurya period after Alexander’s invasion and conquest in the 4th century BCE and the subsequent cultural material produced by his successors, all of which are now well beyond the Indian borders, either in Pakistan or in Afghanistan in an ancient region called Bactria? Can they be claimed by India?

Similarly, the term “Gandhara Kingdom” makes no sense and is also beyond the jurisdiction of India—a nation created only in 1947. Most Gandhara material in Europe and America collections cannot be claimed by today’s Indian nation as they originated in Pakistan and Afghanistan.

Another glaring error is in the case of the division of the state of Bengal in the east of the subcontinent first into East Pakistan and subsequently into Bangladesh. In the so-called Pala Period (8th – 12th centuries) a dynasty named Pala ruled over both regions. To determine what was made in West Bengal and Bangladesh can be very tricky even for specialists. Is it fair to expect US Customs officers to be able to tell the difference and make a sensible decision?’^[13]

Dr. Pal has identified several key issues above – the extensive and open trade of many centuries, long before the existence of an “Indian” nation, and the inability of even specialists to correctly identify the source of objects made within the vast region of the Indian subcontinent. Dr. Pal’s writings have also made clear that the history of India and its variable and changing laws, and the fact that most of what India’s request calls its ‘national cultural property’ were treated as trade goods, not inalienable objects, would render this request an impossibility to administer.



INDIAN TRADE CLOTH, COTTON 14TH-16TH CENTURY, FOUND IN SOUTHEAST ASIA, ASIAN CIVILIZATIONS MUSEUM, SINGAPORE.

India’s potential for trade, not a desire for conquest, is what brought European powers to the subcontinent in the first place. This trade was not simply from India to the West and vice versa. To simplify matters greatly, the spice trade in Southeast Asia had been dominated by Arabs for centuries, and to bring it under European control required that European traders be able to supply the goods that Southeast Asian sellers wanted and valued – primarily India’s beautifully dyed and printed cotton fabrics. Along with supplying European markets, British control of Indian textile manufacturing was imperative for the British to control the spice trade. Indian cotton cloths, dating as far back as the 12th and 13th centuries, which are sometimes depicted as worn by gods and kings on ancient stone carvings from Thailand, Cambodia, and the Indonesian islands, can still be found, preserved and revered, in Spice Island communities in the Far East. 12th to 17th century Indian printed cloths as well as bronze and brass statues have also been found in ancient shrines and monasteries in Tibet and China. Virtually all the objects named on the proposed Designated List for India were made for trade as much or more than for domestic use. Is it the intent of the CPIA to reverse the trade of centuries, even millennia, and claw back trade goods made between 75 and 2000 years ago?

India's Earliest Heritage Laws – Protecting Buildings and Monuments

It is well-known that the establishment of a unified British Indian administration and legal structure came only after protracted conflicts between local rulers and among colonial forces representing several European powers. The development of a vast trading economy under the British East India Company resulted in India's first unified economic and political administration. India's first modern cultural administrative apparatus was also shaped by British traditions.



INDIAN ARCHAEOLOGIST RAKHAL DAS BANERJI EXCAVATING AT HARAPPA. PRIVATE COLLECTION.

The earliest Indian laws related to cultural heritage were passed in Bengal in 1810 and 1817. These laws ordered the protection of historic, publicly owned buildings as “monuments.” The first sweeping colonial Indian laws on cultural heritage paralleled the archaeological 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 invested British government officials with powers of adjudication over properties owned by Muslim trust organizations, *waqfs*,^[14] 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, treasure was granted to the colonial administration. India's prehistoric cultures, its earliest civilizations, and even its Buddhist past came to light largely during the colonial period as a result of British interest: this research developed through both official and independent scholarly investigations by British and Indian scholars of the highest caliber.

Documenting India's Heritage: The Archaeological Survey of India

The Archaeological Survey of India (ASI) was founded in 1861, and the National Archives of India (NAI) were first established as the Imperial Records Department in 1891. The ASI and NAI were tasked with archaeological excavation, academic research, preservation of India's monuments and cultural objects, and curation of historical records. Both agencies now form part of India's Ministry of Culture. Even today, the ASI and Cultural Ministry retain administrative structures that date to the colonial period.

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. By 1904, a well-established ASI supervised a general Ancient Monuments Preservation Act that placed preservation and control in government hands. In the early 20th century, under Director John Marshall, the ASI 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. Partition, which followed independence, left

almost all the great Muslim monuments of the Indian subcontinent in present day India, not Pakistan or Bangladesh.



EXCAVATIONS AT HARAPPA. PRIVATE COLLECTION.

Although forts and government buildings of political and historical importance were included among protected monuments, the vast majority of structures defined as ‘monuments’ under colonial and later Indian national laws were associated with religious communities: 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. Older sites deemed remnants of past religions, including Buddhist, Jain and Hindu structures that were no longer in community use, were managed by the secular state, whereas those held under *waqf* or trust endowments were deemed to belong to

the communities that used them for religious activities. This policy was generally understood as separating the state from current religious matters and ensuring that communal tensions between religious communities would not “distort the unity of the country.”^[15]

Early 20th century cultural heritage policies also accepted that many ‘monuments’ would require an adaptive approach to preservation that accommodated continuing religious usage. The Indian Archaeological Policy, 1915:18-9, states in clause 19 that:

“...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 heirloom for posterity.”^[16]

India held so many sites classified as monuments that only a few could be considered appropriate for preservation. 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.^[17]

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.



DISTINGUISHED ARCHAEOLOGIST K.N. DIKSHIT, CENTER, AT A MEETING OF THE NUMISMATIC SOCIETY OF INDIA, 1938. PHOTO SOURCE HARAPPA.COM.

After independence, new Indian cultural heritage laws and regulations, such as the 1958 Ancient and Historical Monuments and Archaeological Sites and Remains Act, effectively reiterated colonial period legal protections. Conservation policies under the ASI followed the Indian Constitution’s explicit secularism. Official heritage policies often passed over community religious interests in less famous Indo-Islamic monuments. In addition, the continued existence of religious endowments, *waqfs*, provided an alternative source of funding for the preservation of buildings used for Muslim worship. The 1958 Ancient Monuments and Archaeological Sites and Remains Act gave India’s Union government the power to select and remove monuments having national importance, to acquire historic buildings for preservation, and to “decide the religious identity of a monument of national importance and the nature of religious observance inside it.”^[18]

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. A few museums were established as national or state-level governmental entities, but most were tied to specific historical monuments or sites. Princely art collections were also tied to a specific historical past; aside from the National Museum at New Delhi, which served primarily as a holding place for art organized in a historical didactic program, there was little interest in developing a national museum culture for the study and exhibition of artifacts as ‘art.’^[19] Instead, regional site museums based around important archaeological and historical sites were the most common way of organizing ‘museums.’

The twenty-four geographic divisions of the Archeological Survey of India, headquartered in Delhi, were tasked with preservation and archaeological work and with maintaining regional site museums across the country.

Early Indian Private Collections



SAMARENDRANATH GUPTA (1887-1964), ARTIST AND COLLECTOR. PUBLIC DOMAIN.

Many in the world of cultural heritage appear unaware that some of today’s great Western collections of Indian art – as well as foundational collections in Indian museums – are based on the magnificent collections originally formed by scholarly Indian collectors. While some colonial period British and other foreign collectors brought great Indian objects back to the West, the most important collectors were Indians themselves. Indeed, the earliest major collections that formed the National Museum Collection in New Delhi came from private holdings, including those of B.N. Treasurywala, Eric Dickinson, Srinivasan Gopalachari, and Samarendra Nath Gupta.^[20] At the time of independence, ASI Director Sir Mortimer Wheeler urged such acquisitions, saying, “One can’t build a National Gallery with a few broken stones and inscriptions. We must have colourful exhibits of pictures and paintings!”^[21]

This is not the place to describe how the eclectic dealer Radha Krishna Bharany enabled the building of many early collections, both Indian and Western, or the enormous interest in collecting Indian art that began in the U.S. under the influence of the great scholar Ananda Coomaraswamy when he and his collection came to the Boston Museum of Fine Art. But it must be said that a major factor in the dispersal of great early collections made by Indian collectors was the reluctance of Indian officials to acquire important collections for the nation.



EAST INDIA PALACE DISPLAY, LATE 19TH C. COLLECTION.

As the Indian collectors of the 19th and early 20th centuries died, their families needed to sell their collections, and even though many wished to keep them *in situ*, their collections left the country because Indian museums could not or would not buy them.^[22] At the same time, the government actively discouraged private ownership through punitive tax measures and usurpation of private property rights. The 1972 Antiquities and Art Treasures Act made it

illegal to export any ‘antiquity’ over 100 years old and documents over 75 years old. It required registration of all antiquities and a license to sell or transfer them even within India. Under its Section 19(2), the Act also allowed the Central Government to order their compulsory acquisition at a price determined by the government.

These are just some of the reasons that Dr. Pratapaditya Pal has described the passage of the 1972 Antiquities Act by the Government of India as “the single act of folly [that] has probably done more to encourage the flight of Indian art abroad and to discourage collecting in India than the so-called dishonesty and greed of dealers and collectors.”^[23]

How Did ASI Fail to Manage India’s Heritage?

In its first century, both British and Indian scholars at ASI made enormous contributions to the world’s understanding of the history of the subcontinent. Indian archaeologists continued to make 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, R.D. Banerji, 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. Distinguished Indian archaeologists and scholars at ASI continue to add to our historical understanding.



AERIAL VIEW OF THE CITADEL MOUND AT MOHENJO-DARO PRIOR TO WHEELER'S 1950 EXCAVATIONS.

But the ASI has never been 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 over three thousand of India's estimated 80,000-500,000 monuments. The ASI was also tasked with supervising numerous local museums at archaeological sites and major monuments.

Regrettably, ASI's administrative structure failed to advance along with Indian scholarship. Despite the passage of new laws and regulations, neither the ASI nor the National Archives of India has been modernized since independence. Policies suited to the responsibilities of the ASI as they were one hundred and fifty years ago are still present. In particular, the agency has been unable to meet the challenges posed by urban development and rural stagnation. The work was already overwhelming decades ago, and appears almost impossible today, after many years of underfunding, site encroachment, bureaucratic indifference, and the pressures of increasing population and industrial development.

Does India Meet the Legal Requirements of the CPIA?

"The MoU will be signed very soon between the Ministry of Culture and its American counterpart...And, we have worked out all the modalities."^[24] Union Culture Secretary Govind Mohan at the August 2023 G20 meeting in Varanasi, India.

"... the US Embassy in New Delhi told The Indian Express, 'We are eager to conclude a bilateral CPA, which would help to prevent illegal trafficking of cultural property from India to the US ... When objects are seized and forfeited under import restrictions created by the CPAs, there is a simplified process for returning objects to the partner country. The partner country does not have to prove the item is theirs. Rather, the United States automatically offers it to them for return,' the US Embassy spokesperson said." The Indian Express, November 27, 2023.^[25]



VICTORIA, QUEEN OF GREAT BRITAIN, EMPRESS OF INDIA, JUBILEE, 1887, CABINET PHOTO.

India's government has been clear that its intent in signing an MOU is not to stop looting. India is seeking an MOU in order to – in its own words – make it easier to claim and repatriate objects taken decades or even hundreds of years ago. Indeed, a number of the objects India is seeking to retrieve from the West were taken during the conquest of India by Portuguese, French, and then British colonial rulers, the Koh-i-Noor diamond presented to Queen Victoria in 1850 being a primary example.^[26]

Under these circumstances, there remain serious concerns, especially for the U.S. museum community, that an MOU would be used to justify claims for repatriation of objects that left India with official or unofficial blessing decades ago – something an MOU legally cannot do.^[27]

By law, the CPIA only restricts imports of objects that left source countries less than ten years before. Yet U.S. Customs has long made it a practice to challenge importers to produce evidence of past export far beyond the requirements of the law. If Customs followed the affidavit procedure set forth in the CPIA instead of demanding impossible proofs of permitted export from thirty to fifty years ago, an MOU with India would have little measurable impact. There is already more than sufficient Indian art already in circulation outside of India to satisfy any conceivable future market. Unfortunately, the barriers of overzealous Customs enforcement and retroactive requirements for documentation – combined with India’s interpretation of an MOU as a license for unwarranted demands for repatriation – could be devastating for long-held collections in U.S. museums.

Determination 1: Is there a Current Situation of Looting Imperiling India’s Cultural Heritage?

There is a several thousand-year history of international trade in Indian luxury products of all kinds, including virtually everything on India’s list of requested import restrictions. Indian art and artifacts have been openly sold and exported – as art – throughout the modern age, during most of which time there were no real restrictions on movable cultural property. As a result, there are innumerable Indian objects in circulation worldwide. Only in the last seventy years has there been any attempt to limit that trade to newly made goods – and only in the last two decades has there been a serious attempt at enforcement.



JEWELED FLASK GIVEN TO CLIVE OF INDIA AFTER THE BATTLE OF PLASSEY IN 1757.

The problems faced by India’s cultural administration today are many, but looting for sale barely registers among them. Analyses by Indian auditors prepared for its Parliament, the Lok Sabah, show that loss of heritage results primarily from past and present neglect of the vast majority of sites, decades of ignoring laws prohibiting encroaching development, indifference to what might be called ‘ordinary’ daily corruption and a massive, overweighted administrative apparatus that excels at passing the buck.^[28]

Under colonial administration, India did not rigorously enforce its own export laws – enabling low level officials in the 19th century to accept a fee in lieu of papers or allowing exceptions or ways to work around them in the 20th – regardless of the commodity being exported. The vast numbers of Indian artworks made available in Europe and the UK through this system enabled American philanthropists and collectors to acquire thousands of works that were later donated to U.S. museums. Soon after independence, India welcomed academic specialists working to build collections for U.S. museums. In mid-century, Jawaharlal Nehru himself facilitated the export of Indian and Nepalese art collected by Stella Kramrisch,^[29] much of which is now at the Philadelphia Museum of Art.^[30]

For most of the seventy years since independence, Indian art dealers have acted with impunity to export many of the same objects and artifacts that India now seeks to restrict. Decorative arts sellers all over the world have openly exported shipping containers full of antique objects, from architectural wood, marble, sandstone *jalīs*, and old furniture. Book and manuscript dealers have done the same, as have traders in antique textiles. There are hundreds of antique dealers around the world who sell such ordinary Indian antiques.



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. CCA-SA 3.0 LICENSE.

Undoubtedly, there are still a few criminal looters stealing from temples in India, given the hundreds of thousands of temples and shrines scattered across the nation. Even this is on the decline, however, as the law enforcement ethos in India has changed in response to the ruling

party's current interpretation of 'protecting cultural heritage' as synonymous with promoting Hinduism. With growing awareness, the incidence of crime has greatly diminished.

Furthermore, Western museums, collectors, and art dealers are no longer willing to purchase ancient objects – particularly archaeological materials or objects from temples such as stone sculptures or bronzes – unless the objects left India long ago and have a record of ownership in the West. Is there a market for recently looted goods outside of India? Not in the United States or Europe.

Nor is everything returned to India as it is reported. On June 7, 2016, U.S. Attorney General Loretta Lynch presented more than 200 Indian art 'treasures,' said to be worth many millions of dollars, to Indian Prime Minister Narendra Modi at a Washington DC ceremony. Many of the 'treasures' were seized and deaccessioned objects resulting from a nearly decade-long investigation, Operation Hidden Idol, into the activities of Indian art dealer Subhash Kapoor. Photographs of the returns ceremony did include one very valuable statue, a *Manikkavichavakar* worth about U.S. \$1,000,000. According to officials, the *Manikkavichavakar* was voluntarily returned from a U.S. private collection. Other returned objects that belonged to Subhash Kapoor were far less valuable than claimed or simply not authentic. As one Indian official later told a journalist, "*We brought back what was genuine, and left the rest there.*"^[31]



POWDER FLASK, 18TH – 1ST HALF 19TH C. (LATE MUGHAL), HIPPOPOTAMUS IVORY, ACQUIRED BY HENRY WALTERS IN 1925; WALTERS ART MUSEUM, 1931.

Other nations have also returned objects to India in recent years. Two Chola bronzes purchased by the National Gallery of Australia from Subash Kapoor were personally delivered by Australian Prime Minister Abbott to Indian Prime Minister Modi in September 2014. However, the statues from Australia, a *Sripuranthan Nataraja* and the *Vridhachalam Ardhnari*,

were not returned as a result of Indian government initiatives, but by lobbying by a team of repatriation enthusiasts called the India Pride Project.^[32]

The Archeological Survey of India has not initiated repatriation cases so far. However, an ‘Idol Wing’ unit of the economic section of the Tamil Nadu police was established specifically to deal with thefts from temples. The Idol Wing unit remained inactive from 1986 – 2006, when it was revived in response to new international interest.^[33] 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.

The *Sivapuram Nataraja*



SIVAPURAM-NATARAJA, BRONZE, NORTON SIMON FOUNDATION.

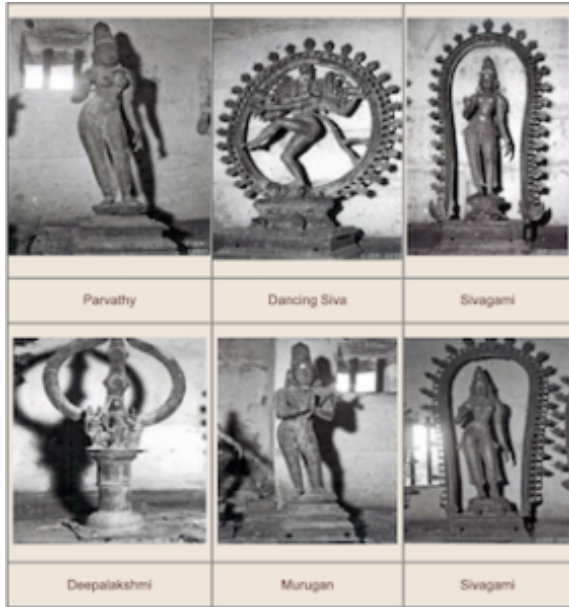
The most notable thefts of Indian heritage are long in the past and their history is often more ambiguous than is reported. The Indian government made its first repatriation claim against a foreign held object, a very large and beautiful bronze sculpture of Siva as Lord of the Dance, known as the *Sivapuram Nataraja*, in the 1970s. The sculpture was found in 1951, together with five other bronzes, in a farmer’s field in 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.^[34] Five years later, under pretense of needed conservation, several individuals sent the statues to a nearby restorer, who made copies that were returned to the temple while the originals were sold.

The authentic Sivapuram Nataraja eventually passed into the well-known private collection of Boman Behram in Bangalore.^{[35]-[36]} In 1969, the statue went to a New York art dealer who sold it to California businessman and philanthropist Norton Simon in 1972 for his eponymous museum in Pasadena, California.

Meanwhile, a British Museum curator had inspected the sculptures in the Sivagurunathaswamy temple and identified them as fakes. Soon after, the Indian government claimed the Norton Simon Museum sculpture and asked for its restitution.^[37] 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 unlawfully, 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 to be returned to India.

The Norton Simon Foundation countered that the statue had been legally imported into the U.S. and that the Indian government had abandoned its interest, having known the statue’s whereabouts for decades and taken no steps to recover it while it was displayed as part of the famous Boman Behram collection. The case was eventually resolved through negotiation. 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.

The Acquittal of Vaman Narayan Ghiya

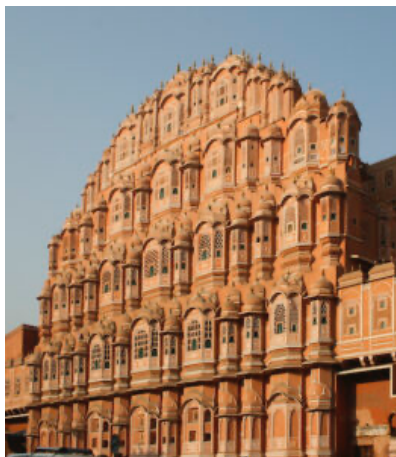


SEIZED SCULPTURES, THE IDOL WING WEBSITE, CHENNAI, TAMIL NADU, INDIA.

Widespread 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.^[38] The Ghiya case also spurred increased support for the moribund Idol Wing police unit in Tamil Nadu State. Ghiya may have been the most prolific smuggler of Indian antiquities of all time. He had been the most prominent dealer in India, trading in antique sculptures for more than thirty years in Rajasthan.^[39] During the 1980s, he is said to have employed multiple gangs of local thieves to take antique sculptures from temples, then shipped them to auction houses and clients in Europe and the UK.^[40]

Ghiya's extensive antiquities trading network received international attention in 1997, when British journalist Peter Watson published a book^[41] alleging that Ghiya had flooded Sotheby's auction house with dozens of highly important ancient stone and bronze gods and goddesses from neglected Indian temple sites in the early 1980s.

According to the Jaipur police^[42], India's Central Bureau of Investigation had long suspected that Ghiya was smuggling art. In 2002, using information from Watson's book, they began a year-long investigation of Ghiya and finally searched Ghiya's home in a dawn raid on June 7, 2003. There they discovered hundreds of photographs of stone figures of Indian Hindu deities, Jain Tirthankaras, and Chola bronzes. They also found sixty-eight catalogs from Sotheby's and Christies.^[43] After Ghiya's arrest, police searched his farm and a half dozen urban storage spaces and warehouses and found about nine hundred objects.



HAWA MAHAL OR PALACE OF WINDS, JAIPUR, INDIA, PHOTO BY DIEGO DELSO, 4 DECEMBER 2009, CC BY-SA LICENSE.

A trial followed but Ghiya was convicted^[44] only of dishonestly receiving stolen property^[45] and habitually dealing in stolen property,^[46] relatively minor offences under the Antiquities and Art Treasures Act. He was acquitted of violations of laws against theft,^[47] criminal conspiracy,^[48] some of the charged instances of habitually dealing in stolen property, and of assisting in concealment of stolen property,^[49] belonging to a gang of thieves^[50] and selling antiquities without a license.^[51]

The court's failure to convict on most of the charges took many by surprise, but the final outcome was even stranger. In 2014, two separate appeals courts effectively cleared Ghiya of all charges, even condemning the police for misbehavior. A high court for Rajasthan at Jaipur Bench, Jaipur denied the government's request for the acquittals to be reversed.^[52] In a separate judgement issued the same day, the High Court of Judicature for Rajasthan overturned Ghiya's remaining earlier convictions for dishonestly receiving and dealing in stolen property.^[53] Moreover, the Court strongly criticized the police for "not maintaining mandatory standards of safe custody of evidence."^[54]

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. According to Indian officials, the Palace of Winds lacks security measures sufficient for the exhibition of valuable artifacts, and some nine hundred objects were said to be in safe storage. However, a 2017 expose in the Hindustan Times revealed that 700 objects were actually stored in a police shed and in the open air in the backyard of the Vidyadhar Nagar Police Station at Jaipur.^[55] The key to the storage shed was reported lost. The Indian government has not made claims for objects sold earlier by Ghiya in Europe.



PRIME MINISTER SHRI NARENDRA MODI AT THE PRESENTATION OF THE PARROT LADY STATUE WITH THE PRIME MINISTER OF CANADA, MR. STEPHEN HARPER, IN OTTAWA, CANADA ON APRIL 15, 2015. GOVERNMENT OPEN DATA LICENSE – INDIA (GODL).

The Parrot Lady Seizure

In the case of the 'Parrot Lady' in 2011, 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.^[56] As a matter of routine, the Department of Canadian Heritage timely notified the Indian High Commission (IHC) in Ottawa of the 2011 seizure, and sought information regarding whether the sculpture was authentic. Three years later, the IHC responded that the statue was from a twelfth century Khajuraho temple site in central India, a World Monument site. Canada's Cultural Property Export and Import Act^[57] (CPEIA), makes import of cultural property illegally exported from a State that is also signatory to the 1970 UNESCO Convention illegal under Canadian law.^[58]

Although 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 as required by the Canadian law,^[59] 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 then Prime Minister Narendra Modi of India during the latter's state visit to Ottawa in April 2015.^[60]

The Case of Subash Kapoor

Most recently, India has received returns of numerous stone and stucco sculptures recovered in the case against Subhash Chandra Kapoor, including several important sculptures returned by the National Gallery of Australia (NGA) to India.^[61] The case against Kapoor has been ongoing for over a decade in both India and the United States and made Subash Kapoor a 'poster boy' for antiquities malfeasance in the press. In 1974, Kapoor, the son of an Indian antique dealer, immigrated to the U.S. and opened a gallery in New York, Art of the Past, selling manuscripts, miniatures and other Indian antiques. In 2011, Kapoor was accused of smuggling ancient sculptures taken from temple sites in the Indian state of Tamil Nadu, allegedly

filling the role left after the arrest of Naman Ghiya. Several temple robbers arrested in the Tamil Nadu region implicated Kapoor as the eventual recipient of their stolen goods via a chain of local dealers.



SUBASH KAPOOR, IMPRISONED IN TAMIL NADU, INDIA, AUGUST 19, 2022, INDIA TV.

Information shared by a former partner of Kapoor prompted a U.S. investigation into the Art of the Past gallery in 2011. That same year, Tamil Nadu police issued a warrant for Kapoor's arrest and India's Central Bureau of Investigation (CBI) issued a Red Corner Notice through Interpol. When Kapoor traveled from the U.S. he was detained and eventually extradited to India and imprisoned in Tamil Nadu State. Kapoor's sister, Sareen Kapoor, was arrested by New York County officers; four bronze Chola statues seized from her were valued at a total of \$14.5 million dollars. All four statues had been identified as stolen in 2008 by the Tamil Nadu police.

Soon after, Homeland Security Investigations raided a Manhattan storage facility used by Kapoor, seizing 2,622 miscellaneous artifacts. Hundreds of these artifacts were returned to the Government of India by U.S. officials, some real, and some effectively 'garden statuary,' just as they had been declared to U.S. Customs.^[62]

The charges against Kapoor prompted subsequent voluntary returns; a number of private collectors and nine U.S. and several international museums returned objects either sold or donated to them by Kapoor to India. In September 2014, two important statues sold by Kapoor to the National Gallery of Australia were handed over by Australian Prime Minister Tony Abbott during an official visit to New Delhi, and in 2015, a statue of the goddess Durga from the Linden Museum was delivered to the Indian Embassy in Germany.



OBJECT RETURNED TO INDIA BY THE MANHATTAN DISTRICT ATTORNEY IDENTIFIED AS A BIKSHANA WARRIOR, MANHATTAN DA OFFICE, NY.

In India, the case against Subash Kapoor has proceeded very slowly. Although it began in 2012, the first hearing was not held until 2016. On July 7, 2019, a 285-page criminal complaint filed in New York charged Kapoor with grand larceny, conspiracy, and criminal possession of stolen property.^[63] Kapoor was sentenced to ten years in prison in Tamil Nadu State in 2022, all of which was accounted as time served. It is expected that he will be extradited from India for trial in the U.S. and the details of his role in the smuggling of Indian cultural property to the U.S. will come to light.

Independent researchers, not the Indian government, have tracked down other items stolen from temples at various times in the last century, primarily using old photographs, many from the French Institute of

Pondicherry. However, these records are themselves stored in poor conditions and are disappearing despite current efforts to digitally preserve and archive them.

Photographs of temple statues *in situ* have enabled seizure and return of objects under the National Stolen Property Act in the U.S. These cases would also be deemed stolen and returned under the CPIA without an MOU. In all the cases made public, identification of statues *in situ* has been sufficient for museums and private collectors to volunteer their return prior to cases being filed. In none of the high-profile cases described above would the existence of an MOU have made any difference.

Determination 2: Has India taken measures consistent with the UNESCO Convention to Protect its Cultural Patrimony?



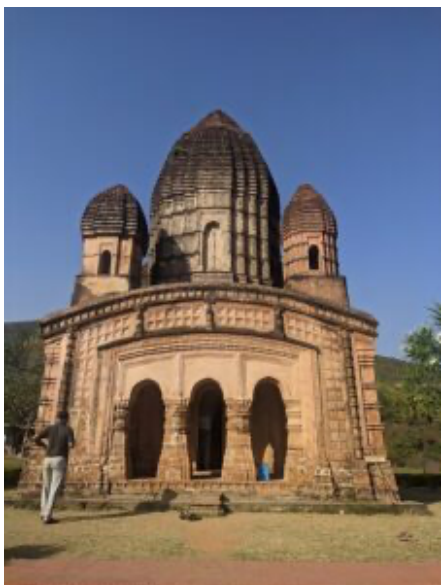
RUINED PANCHARATNA TEMPLE AT GARH PANCHAKOT, PURULIA DISTRICT, WEST BENGAL, INDIA, 5 OCTOBER 2014, PHOTO BODHISATTWA. CCA-SA 4.0 INT'L. LICENSE.

(1) Overview

In India, cultural heritage has held great political importance only in the 21st century. Still, Indian government commitment to research and conservation of Indian heritage remains lacking. Despite cultural property's new high visibility and importance as a political issue, there has not been a commensurate increase in funding or improved administration,

according to Indian parliamentary resources.

The Antiquities and Art Treasures Act 1972 (No. 52 of 1972) remains India's foundational national heritage law today.^[64] Its passage reflected international discussions surrounding the 1970 UNESCO Convention and its espousal of identity-building through national ownership laws and state control of cultural property. Like other formerly colonized areas, India has 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.



RESTORATION AT GARH PANCHAKOT, 14 MARCH 2022, PHOTO BY MILANDEEP SARKAR. CCA-SA 4.0 INT'L. LICENSE.

Today, India's vast cultural wealth and its hundreds of thousands of ancient and historic sites are managed under multiple, many-layered bureaucratic systems that are unwieldy and ineffective even according to Indian standards. The Ministry of Culture is the government entity tasked with the development of cultural policy and has oversight of the preservation of cultural heritage under the ASI, 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. The audits and reports prepared for India’s Parliament that are a major source for this commentary are extremely critical of virtually every aspect of India’s heritage management.

(2) Report on a Failed Heritage System: the CAG Performance Audit of ASI

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),^[65] (hereafter “2013 CAG Performance Audit of ASI” or the “2013 Audit”) was a major study analyzing the ASI’s capacities and performance. It is a primary resource for this paper, as is the *Follow-up on the Performance Audit of Preservation and Conservation of Monuments and Antiquities, Report No. 10 of 2022*,^[66] (hereafter “2022 Follow-up Performance Audit” or “2022 Audit”) which assessed the ASI’s performance subsequent to the highly critical 2013 Audit.



BODHISATTVA PADMAPANI, CAVE 1, AJANTA CAVES, 5TH CENTURY. FROM LE MUSÉE ABSOLU, PHAIDON, 10-2012, PUBLIC DOMAIN.

The 2013 CAG Performance Audit of ASI was the first thorough analysis of the ASI since independence in 1947. This three-hundred-page survey 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 site museums, recordkeeping, and coordination with the Ministry of Culture, and law enforcement. A 2022 official review of reforms demanded by Parliament after this devastating appraisal found that there had been no significant improvements.

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 confirmed the public’s perceptions of the ASI’s failings. It showed that for decades, despite internal awareness of its shortcomings, ASI had been incapable of taking action to improve its performance by 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 that the Ministry of Culture did little to supervise or monitor the ASI with respect to its basic responsibilities.^[67]

Key issues were the shortage of staff to fulfill the ASI’s workload, and a serious lack of funding available to manage the monuments and objects comprising India’s cultural heritage.



GHANTAI TEMPLE, ONE OF THE TEMPLE RUINS AT KHAJURAHO. 21 OCTOBER 2012, PHOTO PATTY HO. CCA 2.0 GENERIC LICENSE.

In the summary prefacing the published report, the 2013 CAG Performance Audit of ASI noted among documentation concerns that there has been no comprehensive survey to identify monuments of national importance and include them in the list of centrally protected monuments. Notices naming monuments for protection were often decades out of date or had never been issued.

In addition:

- There is no ASI database listing the correct number of the monuments protected by it.
- During a 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 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 artifacts were 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 was 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 security whatsoever.
- The ASI Headquarters in 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 excavation proposals were not undertaken or left incomplete.^[68]



QTUB MINAR, DELHI, INDIA, DETAIL, PHOTO BY DIEGO DELSO, 10 DECEMBER 2009, CC BY SA LICENSE.

Nine years after this devastating report, the 2022 Follow-up Performance Audit found no improvement:

- “Against the recommendation of the PAC [Public Accounts Committee of Indian Parliament], notification of rules and conservation activities under National Conservation Policy, notification of Archaeological Excavation Policy, updation of Antiquities and Art Treasure Act, modification in Ancient Monuments and Archaeological Sites and Remains Act regarding system for recording footfall was not done,” and “there was no uniform procedure for museums under the control of the Ministry/ASI.”^[69]
- “[O]ut of 3693 Centrally Protected Monuments, [Heritage By-Laws and site plans] for only 31 monuments have been notified...”^[70]
- “ASI had no strategy or road-map (long term/medium term) to fulfill its mandate... [a] Central Advisory Board on Archaeology conceptualised as apex body to advise ASI on matters relating to archaeology was inactive...” and nothing was done to check incidents of encroachment.^[71]
- A National Mission on Monuments and Antiquities launched in 2007 to provide a national database of monuments had done only minimal documentation and basic recording of one-quarter of its total goal. “A list of only 915 monuments was prepared by ASI which was still under consideration.”^[72]
- There was physical encroachment (building of shops, housing, and roads) of 546 out of 1655 inspected important ASI monuments.^[73]



INDIA TUGHLAKABAD FORT, DELHI. THE MUNICIPAL AGENCY ENCROACHED THE SITE BY DRAINING SEWAGE WATER INTO THE PROTECTED AREA OF THE MONUMENT. 2022 PERFORMANCE AUDIT PHOTO.

The 2022 Follow-up Performance Audit also found that:

“PAC had recommended that guidelines for determination of national importance of monuments to be finalised at the earliest and after this a comprehensive survey should be conducted to identify the exact number of monuments that can be protected. [Although the Ministry informed Parliament in 2016 that guidelines had been prepared] ...It was noted that guidelines was not prepared, no survey/review of monuments was undertaken by ASI. Instances defining absence of criteria for centrally protected monuments as reported earlier were still existing. In this regard, Ministry/ASI informed that taking of survey is an ongoing phenomenon and the view of PAC was not relevant/possible to be implemented.”^[74]

(3) Shortcomings in Museum Management



INDIA NATIONAL MUSEUM DELHI – 2022 PERFORMANCE AUDIT PHOTO.

Although regional museums, including historical collections and archives founded in the colonial period are generally under the direction of boards of local and state officials, national museums managed by the Ministry of Culture include the National Gallery of Modern Art and the National Museum, both at Delhi.^[75] The ASI also 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 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, the ASI’s core museum guidelines have not been updated since 1915, and updated policies for the acquisition of art objects, conservation, storage, transport, and security were still in the drafting stage in 2015.

The 2013 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. ... 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.”^[76]



ARCHAEOLOGY GALLERY, INDIAN MUSEUM, KOLKATA, PHOTO BISWARUP GANGULY, CCA 3.0 LICENSE.

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.^[77] It provided basic instructions for museum administration and management of collections.

Despite this assistance, the 2022 Follow-up Performance Audit found that “comprehensive policy guidelines addressing all issues related with management of antiquities viz. acquisition, accession, custody, rotation, etc. at museums under the control of the Ministry and also for site-museums under ASI was not available. Ministry had informed the PAC about following steps being undertaken by it:

- drafting and finalisation of uniform policy for acquisition of art objects;
- constitution of committee to work out uniform security policy; and
- constitution of committee to prepare standard manual of procedures.”

Nonetheless, the PAC was informed by the Ministry that no such policies or plans had actually been made.^[78]

The 2022 Follow-up Performance Audit stated that:

“Despite being the custodian of invaluable antiquities and activities spread all over the country, ASI had no vigilance or monitoring cell to function as a deterrence against theft of antiquities from its monuments. Even though the Central Antiquity Collection (CAC), which is the largest collection of antiquities with ASI had not reported any case of loss/damage, the status could not be verified as no physical verification of its artefacts had been conducted after 2006. As of December 2021, ASI had reported theft of 17 antiquities from its monuments during 2015 to 2021 of which only three were recovered.”^[79]



VAIROCHANA BUDDHA (500- AD-700 AD), AUREL STEIN COLLECTION, NATIONAL MUSEUM, DELHI, INDIA, GOOGLE ART PROJECT.

A similar lack of accounting for objects was found by the Follow-Up Performance Audit at India’s major museums. For example, the National Museum at Delhi had not accessioned any objects at all except through gifts and had had no Purchase/Acquisition Committee since 1997. The museum had no policy or guidelines for handling objects including their physical verification; while digitization was ongoing, the digitized inventory contained relatively few photographs. Only ten percent of coins were verified. Only 1942 out of 5437 objects supposedly in inventory were located and the curator had no information on the whereabouts of the remaining artefacts. Of 2909 Pre-Columbian objects only 1208 were reported. The Anthropology section was missing 509 objects. Thirty-five percent of their manuscripts have still not been physically verified.

The Aurel Stein collection at the National Museum is one of the most important Central Asian collections in the world. Some 700 objects from it were loaned to the Victoria and Albert Museum in London between 1923-1933 and are still there. No effort was ever made to retrieve the collection from the V&A.^[80]

Neither Indian government policy nor Indian laws encourage the establishment of private museums outside government management. The U.S. concept of the museum – one operated by independent philanthropists and managed by trustees that include academics, businesspeople and wealthy art donors – has not been welcomed as a model by India’s government. Important collections of Indian art owned by Indian citizens (sometimes purchased overseas from older colonial collections) *remain* overseas due to collectors’ concerns over possible seizure, burdensome customs laws, and unresolved tax issues in India.

(4) Failures of Governance at the Ministry of Culture and the ASI

The 2013 CAG Performance Audit of ASI stated 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 shortcomings in the functioning of the ASI and museums.”^[81] 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, “[n]o 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.”^[82]

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.”^[83] Projects were unmonitored, “some lying incomplete for decades.” When corrections were made, they were to a particular project and did not address systemic issues.^[84]

(5) Staff shortages and unqualified personnel



OUTER WALL FRIEZES AT RUKMINI DEVI TEMPLE, DWARKA, 1 OCTOBER 2013. PHOTO MADHURANTHAKAN JAGADEESAN, CCA-SA 4.0 INT’L. LICENSE.

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.^[85] 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 the recommendations.

Twenty years after the review by the Mirdha Committee, in 2005, 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.”^[86] 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 reduced them in 2015; removing the requirement that a candidate hold a history or archaeology-related PhD and merely requiring several years’ experience in *any* government bureaucratic post, paving the way for functionaries to take the place of knowledgeable professionals in the fields of art and archaeology.^[87]

There appears to be little hope for the development of a cadre of skilled archaeologists and museologists in India today. According to the 2022 Follow-up Performance Audit:

“It was noted that all 45 posts (under different categories) in the Institute of Archaeology, as mentioned in the previous Report were not filled and lapsed due to delay in framing of Recruitment Rules. Further, enrolment for higher studies was not forthcoming at the National Museum Institute. During 2013 and 2015-17, no student was enrolled for its PhD (Doctor of Philosophy) level courses in History, Conservation and Museology. In this regard, NMI stated (December 2021) that due to UGC regulations restricting number of PhD students under a professor, availability of only five teaching faculty for three NMI PhD courses and minimum time of three years for completing the research work, it was not in a position to invite applications for the course every year.”^[88]

Likewise, the 2022 Follow-up Performance Audit found that there was an increase in the vacancy rate for staff since the 2013 audit in all but one of India’s five national museums, ranging from the lowest at the National Museum in Delhi of 20.7% vacancy to the 58.9% vacancy rate at the Indian Museum in Kolkata.^[89]

(6) Funding Shortages



THYAGARAJA TEMPLE, TIRUVARUR, BY SSRIRAM MT, 5 JANUARY 2019, CREATIVE COMMONS ATTRIBUTION 4.0 INT’L. LICENSE.

Perhaps the greatest challenge facing Indian cultural heritage today is a lack of funding necessary to address systemic problems in cultural heritage management and to enable the administrative reorganization of the ASI.^[90] 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 (around \$35,400,000 in 2008 dollars) as its annual budget.^[91] 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 (over \$12,000,000). However, three quarters of this ticket revenue is redirected to other sectors at the Ministry of Culture rather than staying within the ASI. World Heritage sites generate far more tourism income proportionately than sites without World Heritage designation – one reason India is seeking World Heritage designations for more than 40 additional sites.^[92]

According to the 2013 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.^[93] The 2013 audit also stated that the Culture Ministry allocated funds without apparent reference to planning, funds requirement or absorptive capacity, a problem that continued in 2022.^[94]

“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 Minars^[95] the expenditures incurred during the last five years was only Rs. 38.33 lakh [equal to about \$45,000 dollars U.S.]. On many other sites/monuments no money was spent despite dire need of conservation.”^[96]

According to the 2013 audit, the Circles/Branches of the ASI prepared estimates in only a few cases. As a result, the ASI ignored the conservation needs of several important monuments due to lack of funds.^[97]

The 2022 audit emphasized that tourism accounted for 6.8% of India’s GDP and 8.1% of all employment in 2019.^[98] The ASI generates most of its revenue through ticketing monuments, filming charges for movies, and payment for cultural events. While ASI included more monuments in a ticketed category and generated more funds today than in 2013, in some cases this led to the exclusion of the general public, who could not afford entry.^[99]

(7) New Legislation Needed but Never Passed



ENGLISH: RUINS NEAR HAMPPI VILLAGE, INDIA. JULY 2008, 21 JULY 2009, PHOTO BY ADAM JONES, ADAMJONES.FREESERVERS.COM, CCA-SA 3.0 UNPORTED LICENSE.

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 was harshly critical of the Ministry of Culture’s apparent apathy in the wake of the 2013 CAG Performance Audit of ASI, expressing:^[100]

“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.”^[101]

In response to an Indian Public Accounts Committee’s question regarding the measures taken “to prevent valuable antiquities and artifacts from landing in foreign shores,” a Ministry of Culture representative testified in 2016 that:

“One of the reasons for smuggling is that antiquity prices are very depressed in India. One of the reasons for depressed prices 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.”^[102]



15TH C BUGGA RAMALINGESWARA TEMPLE, TADIPATRI, ANDHRA PRADESH, 4 SEPTEMBER 2019, PHOTO SARAH WELCH, CCO 1.0 UNIVERSAL PUBLIC DOMAIN DEDICATION.

According to the 2013 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.^[103] However, “No note has been taken by the concerned authorities” of this need.^[104] Recent attempts to pass new laws to reorganize the administration of cultural property in India have gone nowhere. The National Commission for Heritage Sites Bill of 2009 would have established a National Heritage Sites Commission as a step towards protecting sites and monuments lying in a state of neglect.^[105] The legislation referred directly to India’s signing in 1977 of the 1972 UNESCO Convention; it called for “appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of cultural and natural heritages.” Seven years later, in 2016, the Ministry of Culture formally announced the abandonment of the project. After several other false starts, no other legislation has been passed. Government authorities have for the most part looked the other way instead of enforcing the laws on the books or providing necessary enforcement support in the decades since independence.^[106]

(8) Why don’t Indians collect Indian Art?

For decades, wealthy Indians who acquired art overseas generally kept it overseas – and most still do. Heavy customs duties and burdensome official requirements for documentation and registration for private collections inside India have encouraged major Indian collectors to hold their artworks in Europe, the U.S. and other foreign countries. Even after passage of a 2009 regulation^[107] 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 continue to deter Indian citizens from collecting Indian art and from developing a philanthropic culture that would support world-class museums inside India for its public benefit.^[108]



AN OLD TICKET OF THE HERITAGE MONUMENTS OF INDIA ISSUED BY THE ARCHAEOLOGICAL SURVEY OF INDIA (ASI), FROM A PERSONAL COLLECTION, PHOTO BY BILLJONES94, 2 JUNE 2022, CCA-SA 40 INT’L. LICENSE.

An Antiquities and Art Treasures Regulation, Export and Import Control Bill to amend the 1972 Antiquities and Art Treasures Act to make it easier to collect art inside India was finally proposed in 2017.^[109] 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, Indian collectors and art dealers are wary of inconsistent government treatment and would have to be convinced to participate in the scheme.

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 failed to pass, leaving the unwelcoming status quo unchanged.

(9) Non-Governmental Efforts, Adopt a Heritage, and Other Cultural Projects

While public involvement in heritage is always a positive, India's government has made it nearly impossible to move forward in cultural matters unless proposals promote tourism or have a direct public relations benefit for politicians. A non-governmental organization, INTACH,^[110] the Indian National Trust for Art and Cultural Heritage, was created in 1984 as part of a citizen's conservation movement frustrated with the ASI's bureaucracy. INTACH supports public education and heritage documentation projects. In many ways, INTACH supplements and supersedes the work of the ASI. It 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.^[111] Funding for a broad range of cultural projects also comes through the National Culture Fund,^[112] (NCF) established in 1996 by the Ministry of Culture. The National Culture Fund solicits contributions from State Governments, the private sector and individuals.^[113]



PUMA ADVERTISEMENT VIDEO IN WHICH GRAFFITI WAS SPRAYED ON A DELHI, INDIA MONUMENT.

Unwilling to pay for basic maintenance at heritage sites on its own, the Indian government recently launched a scheme inviting private companies and other entities to assist in the development of tourist facilities at major Indian monuments. This 'Adopt-A-Heritage' scheme, inspired by similar efforts in Italy, was announced in 2017 by the Ministry of Tourism in collaboration with ASI to allow corporate control of certain monuments and heritage sites, so that their maintenance and operations could be handled more professionally.^[114] 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." 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."^[115] The Initial plan was to delegate management of ninety-three ticketed ASI monuments to corporate entities. Five years later, bylaws for these monuments are still being framed by the Ministry, according to the 2022 Follow-up Performance Audit.^[116]

An Adopt-A-Heritage contract to manage and develop tourism for a five year period at one of India's most popular tourist attractions, Delhi's Red Fort, was signed with Dalmia Bharat,^[117] a major cement and sugar company, on April 9, 2018.^[118] Under the contract, 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.^[119] Unfortunately, such projects are solely focused on tourism and exploitation rather than the preservation of Indian heritage.

Determination 3. Will an MOU be of Substantial Benefit in Deterring Looting?

The Indian scholar Dr. Pratapaditya Pal stated when interviewed for this commentary that “since almost 1995 the import of Indian art of all sorts and periods that arrived from the geographical area of the Indian subcontinent that constitutes today’s nation known as India has considerably decreased.”^[120]



KAPOOR INVENTORY GROUP WITH SOME DISTINCTIVE FAKES, SCREENSHOT FROM HOMELAND SECURITY INVESTIGATIONS VIDEO.

The removal of the primary looting organizations in India has been one contributing factor to this change, but the highly effective self-policing undertaken by museums, auction houses, galleries and collectors in the U.S., Europe, and the U.K today does much more. ‘Freshly looted’ objects – any objects without a lengthy provenance – are simply not acceptable in today’s art market or in museums. Since Subash Kapoor’s arrest over a decade ago, recently looted objects have not been reported in the U.S. Instead, objects long in circulation have been identified through decades-old photographic records and documentary research. This research is almost always initiated outside of India’s government, by activists for repatriation, such as the India Pride Project.^[121] When proof that objects were stolen is provided to U.S. museums and collectors, they are usually returned voluntarily and no seizure ensues.^[122]

It should also be clear that that import restrictions will do nothing to safeguard a heritage that the Indian government has abandoned. The primary threat to India’s heritage is from negligence, unauthorized development, and deliberate destruction, not looting.

Unpermitted development of any kind at historic and ancient monuments had been strictly prohibited in India since long before Independence. The Ancient Monuments and Archaeological Sites and Remains Act, 1958, amended in 1992 and again in 2010,^[123] prohibited any erection of a structure or any electrical or drains construction within one hundred meters of the borders of a listed monument.



ILLEGAL BUILDINGS AROUND *BAOLI*, THREATENING ITS COLLAPSE. PHOTO VARUN SHIV KAPUR, NEW DELHI, INDIA, CCA 2.0 LICENSE.

Despite this, a disastrous pattern of destruction came to light when India’s culture minister reported to Parliament in 2015 that 278 of ASI’s ‘protected’ monuments (the most highly restricted) had numerous individuals, families and businesses squatting inside them. Among the monuments illegally appropriated for housing were 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.^[124]

In 2009, the Indian press described how a family of squatters had been living for 70 years in the 400 year old Moghul tomb of state-chancellor Atgah Khan in Delhi.^[125] The ASI said at the time that it was unable to preserve the tomb, built in 1556, because it was so encroached upon by illegal buildings that machinery could not be brought to it.^[126] The squatter family and their many neighbors at the “grade-1 protected” site were still there in 2016 when ASI staff armed with sledgehammers began to demolish one building. The family refused to move and continued to hang laundry in the rubble strewn courtyard. They had even built a modern bathroom complete with shower adjoining the tomb’s upper story. The family diverted electricity from a nearby power line to the tomb and bolted two satellite dishes to its roof. The original squatters are the descendants of the devotional singer Mehmood Nizami, who came to Delhi from Hyderabad in the 1940s and first took up residence in the tomb. Today they act as landlords, renting out huts constructed around the tomb to poor families. Although the flimsy shacks are at risk of occasional destruction by authorities, they are easily replaced. Modern buildings have been constructed by other squatters and shopkeepers all around the *baoli* reservoir at the Atgah Khan tomb; authorities say the whole structure is overweighted and liable to collapse.



TANK AT HAMPI, INDIA, ASI MONUMENT NUMBER N-KA-B49, PHOTO JONATHAN FREUNDLICH, 13 NOVEMBER 2011, CCA-SA 3.0 UNPORTED LICENSE.

In 2008, the Lal Mahal, a 13th century red sandstone palace that was one of Delhi’s oldest Islamic structures (just a few hundred feet from Atgah Khan’s tomb) was bulldozed to allow construction of a new development. The Lal Mahal was supposed to have been listed as a protected monument in the 1970s but was never correctly listed. A shell remained in 2009, but construction was said to continue at night, and ASI officials were not allowed access to the site.

However, when the Indian government feels it is expedient to remove people settled at monuments, it does so, even in the face of massive international criticism. In 2010, the ASI ordered the removal of long-standing residents and bulldozed Hampi Bazaar, considered a ‘living heritage’ and part of its medieval tradition by the World Heritage Organization. India then maneuvered the World Heritage Center into suspending a planned investigation and monitoring mission.^[127] Their actions at Hampi Bazaar are part of a pattern; India has aggressively pursued the listing of Indian monuments as World Heritage sites, which then become prime tourist attractions. The World Heritage designation brings with it requirements for preservation that are routinely disregarded, once the designation is attained. India’s failure to follow World Heritage commitments made for the Group of Monuments at Hampi is a prime example. Hampi was inscribed on the World Heritage list in 1986 but relegated to a site “in Danger” after the government constructed two suspension bridges in 1999 and 2006, one of which collapsed, killing eight workers.

Determination 4: Are import restrictions consistent with the general interest of the international community in the interchange of cultural property?



PRIME MINISTER NARENDRA MODI UNVEILS GRAND RAM TEMPLE ON SITE OF DESTROYED BABRI MOSQUE IN AYODHYA. PIB.

The fourth determination requires evidence that import restrictions would work to advance, or at least not impede, the exchange of cultural property between nations, which is identified as an international communal good. In virtually all CPAC discussions in the past twenty years, the committee has embraced an extremely narrow interpretation of ‘compliance’ with UNESCO’s goals regarding whether the Fourth Determination is met, effectively reducing the Fourth Determination to, “Has the source country organized loan exhibitions to the U.S.?”

The State Department’s idea seems to be that frequent loan exhibitions from source countries provide sufficient public access to global heritage, making a legitimate trade in art unnecessary.

As it happens, although Indian law permits loans for scientific and educational purposes,^[128] in practice, India’s government does not send exhibitions of art overseas, and American museums that seek to borrow individual artworks face serious challenges because India keeps such poor records; at many institutions, even where a collection inventory exists, photography is lacking, making loan object identification extremely challenging. There is a process for foreign loans, but no clear guidelines. India has also not enacted immunity from seizure legislation, as the U.S. has; without it, U.S. museums cannot receive the same protections in making loans as India does when it lends objects to U.S. museums.^[129] In any case, to reduce ‘cultural exchange’ to a travelling exhibition or two is a gross distortion of UNESCO’s commitment to the importance of building mutual understanding between nations. Making cultural exchange the exclusive provenance of established museums limits the range of cultural experiences available and excludes the vast majority of people worldwide from learning about or engaging with world cultures.

India’s government-promoted Hindu Nationalism and the destruction of history.

“Our god Ram has come. Centuries of sacrifice and patience has paid off,” Modi told a massive crowd that January 22 “brings the dawn of a new era.”

Anjana Pasrisha, *Modi Unveils Grand New Temple on Site of Destroyed Mosque*, Voice of America, January 22, 2024

“Shaikh, a resident of eastern Mumbai, was just 13 when he witnessed the embers of hate engulf his locality after the Babri Mosque was demolished. In the days after, rioters from Hindu right-wing parties attacked Muslim homes in his neighbourhood. ‘Muslims would live in self-imposed curfews in those days,’ he said. The violence, Shaikh said, seems to have deliberately been forgotten without any attempts to grant closure. ‘When the government is on your side, even a crime becomes a celebration.’”^[130]

From an article on the opening by Prime Minister Narendra Modi of the new Hindu Ram Temple on the remains of the Babri mosque, January 22, 2024.



THE BABRI MOSQUE BEFORE ITS DESTRUCTION IN 1992. WIKIMEDIA COMMONS.

Any country that pursues the deliberate destruction of its history and heritage should be barred from any cultural property agreement with the United States under the CPIA. The Indian government's preferential treatment of majority Hindu culture at the expense of religious minorities' heritage is in no way in keeping with UNESCO's directive. India's national and state government's recent actions denying the rights of its Muslim and other minorities to their heritage and in tolerating deliberate neglect and destruction of their cultural sites and property cannot possibly be considered consistent with the UNESCO Convention, *per* Determination Two, nor with the interest of the international community in the interchange of cultural property in Determination Four.

For the last decade, and increasingly during his second term, Narendra Modi's Bharatiya Janata Party has urged policies denying minority Muslims' and Sikhs' place in India's history, including by destroying monuments and historical records of these communities. This is the antithesis of everything UNESCO is supposed to stand for. By handing Modi a diplomatic victory in cultural matters, the U.S. gives credence and support to his brutal destruction of historical monuments that do not align with his party's version of history. Import restrictions must only be undertaken when there is assurance that a source country will honor and care for all, not just some of its history.



KAR SEVAKS DEMOLISHING BABRI MOSQUE IN 1992. WIKIMEDIA COMMONS.

The week before CPAC heard testimony on India's request for an MOU in January 2024, there was an historic celebration attended by hundreds of thousands of happy, chanting and dancing people. The event was the opening of a giant new Hindu temple by President Modi himself. This enormous new temple was built at a cost of \$217 million. It is constructed on the site of the ancient Babri Mosque, which had been destroyed, brick by brick, in 1992 by a Hindu mob incited by local politicians. The mob then set fire to nearby Muslim homes as policemen stood by, doing nothing. In the weeks that followed, thousands of people died in riots across India, most of them Muslims.

The celebration for the opening of the Ram temple also marked the end of all pretense that India is a secular state in which all citizens, regardless of their religious beliefs, stand equal under the law. Indian government policy on cultural heritage is today driven by a government sanctioned policy of promoting India as exclusively Hindu in character, a country in which minorities have a subordinate, lower place. This religiously biased agenda supports propaganda that falsifies history, makes overt claims of Hindu supremacy and denies the religious, cultural, and civil rights people of other religions.

On January 4, 2024, the United States Commission on International Religious Freedom (USCIRF)^[131] stated its "extreme disappointment" that the State Department failed to designate India as a 'country of particular concern,' despite its meeting the legal standard for this designation. The USCIRF Chair stated that:

“In India, in addition to perpetrating egregious religious freedom violations within its borders, the government has increased its transnational repression activities targeting religious minorities abroad and those advocating on their behalf.”^[132]



SIKH PRIEST READING SCRIPTURE, DELHI, INDIA, PHOTO JORGE ROYAN, 2005, CCA-SA 3.0 UNPORTED LICENSE.

This USCIRF statement relates to the Canada’s accusation in September 2023 that the Indian government orchestrated the murder of a Canadian citizen who was a Sikh activist. The Indian government vehemently denied the accusation and forced forty-one Canadian diplomats out of India. However, additional evidence brought out by Manhattan’s District Attorney in November 2023 supports Canada’s claims. The Manhattan prosecutor says that an Indian national tried to arrange the killing of another prominent Sikh activist in New York, Gurpatwant Singh Pannum, the attorney for Sikhs for Justice.^[133]

In the past, official Indian government policy on cultural heritage was both nationalist and secular by design: when the ASI was reorganized after independence it focused on issues of preservation and scientific exploration. More recently, policies on cultural property, monuments, and cultural heritage have become deeply entangled with the political exploitation of religious and social prejudices.^[134] India’s present administration claims that it follows a balanced, secularly oriented path. However, Muslim monuments are no longer given economic or restoration priority, the official narrative of Indian history has been rewritten to align with Hindu nationalist goals. Muslim and Sikh religious adherents’ access to religious monuments is increasingly restricted or denied as the buildings are relegated to tourist centers, sometimes embellished with anti-Muslim signage.^[135] Calls for the elimination of minority religions and a ‘Hindu monoculture’ are not just limited to Modi’s Bharatiya Janata Party: There is a popular slogan in India today, “Babri to bas jhanki hai, Kashi Mathura baki hai” (Babri is only a sneak peek; Kashi and Mathura are yet to happen).^[136]



HARMANDIR SAHIB OR THE GOLDEN TEMPLE, AMRITSAR, INDIA, PHOTO BY DIEGO DELSO, 8 DECEMBER 2009, CC BY-SA LICENSE.

Conflicts over religious primacy have resulted in the destruction of several important religious edifices, beginning with the 1992 demolition of the Babri mosque by a mob that was backed by politicians and ignored by police.^[137] In 2019, India’s Supreme Court found, without facts or evidence, that the land of the Babri Masjid was handed over to Hindus as the birthplace of Lord Rama. This finding strengthened the hands of anti-Muslim campaigners, who have now brought dozens of court cases across India seeking the removal of Muslim monuments. An 800-year-old mosque, the Shamsi Jami Masjid in Uttar Pradesh, is currently under a similar legal threat, despite being one of the largest and oldest mosques in India.

The destruction of mosques continues today. To give just a single recent example, the historic Shahi Masjid, a 16th century mosque in Prayagraj city in India’s Uttar Pradesh state was completely destroyed, flattened by bulldozers on January 9, 2023.^[138] (The excuse given was that it was for a road project, but the demolition

took place in advance of a court hearing scheduled to review it.) Mosques and historic Islamic buildings are being destroyed all over India following a pattern of court cases brought by locals alleging that the mosque was built on top of a Hindu temple destroyed under the rule of one of India's Mughal, Muslim rulers. Armed Hindu mobs have taken to terrorizing Muslim neighborhoods during Hindu festivals, threatening to destroy mosques and build temples on top of them.



DESTRUCTION OF 16TH C SHAH MASJID IN PRAYAGRAJ CITY, IMAGE COURTESY BHASKAR.COM.

The role of politics and religion in cultural policy is openly acknowledged in today's public discourse about India's heritage. Religious bias has been a factor in the prioritization for preservation of certain Hindu monuments

and in government backing for scientifically untenable archaeological exploration, such as the Modi government-backed project, ongoing since 2014, to find the missing Saraswati "Mother River."^[139] Press reports on the neglect and endangerment of major Muslim monuments – including the world famous Taj Mahal – have blamed politico-religious interests.^[140] There have also been efforts by politicians to redefine many aspects of Indian archaeological history, including that of the Indus Valley Civilization, as proto-Hindu, dismissing scientific evidence in favor of a jingoistic pseudo-history that blames people of other religions for hiding these supposed truths while destroying and suppressing Hinduism. It is a policy that deliberately incites the members of India's Hindu community to hate, persecute and even kill their Muslim and Sikh neighbors.^[141]

The situation has rapidly worsened as many government officials owe their popularity and positions to playing the "Hindu card" in an attempt to gain political prominence, inciting old religious hatreds and urging their Hindu constituents to violence. The extreme politicization of cultural heritage in India now places not only Muslim, Sikh, and other minority communities in danger, it also places even major Muslim monuments at risk.^[142] The situation is worsening, not getting better, as the preservation and protection of specific monuments now depends upon the approval of national, regional, and local politicians who espouse these anti-minority beliefs, severely limiting opportunities for pragmatic reform.^[143] Granting India's MOU request at this time would be understood internationally and in India as U.S. ratification of these false beliefs. It would be seen as a gesture of support for Modi and his Bharatiya Janata Party's religious bigotry. It would be tantamount to an endorsement of the deliberate repression of minority communities' religious, social, and civil rights.

A Final Question: What will happen to objects returned to India?

Despite advocates of repatriation's repeated claims that Indian villagers desire nothing more than to have their gods back, objects returned to India are likely to meet a very different fate. In fact, according to Indian media reports, few objects seized from criminals in India or repatriated from foreign countries have ever been returned to the original temples where they were housed – or even to an Indian museum.

A December 26, 2023 article in the Times of India online describes the fate of hundreds of artifacts seized by police in the notorious Naman Ghiya case:

"Stolen artefacts dating between the 2nd and 12th centuries lying in the open and closed courtyards of a Jaipur police station for the past 20 years will finally be shifted to museums across the state. The Rajasthan police granted permission to the department of Archaeology and Museums (DAM) to acquire around 700

artefacts recovered from an organised smuggling gang between 1998–2003... In 2014, the Rajasthan High Court asked the state government to acquire it from the police following due process... ‘Many of them are in bad condition and need to be kept in places or chambers with regulated temperatures, exposure to sunlight, and ventilation to preserve them for future generations,’ said Khadgawat.”^[144]

Many sculptures from temples without security now rest in such police warehouses or godowns around the country or have been gathered together in official ‘Icon Preservation Centres’ under the supervision of the Hindu Religious and Charitable Endowments Department of the Tamil Nadu Government.

State-run religious temples and foundations have been criticized not only for laxity and disregard of safety measures in managing the idol centers, but also for abusing the public’s trust by wasting or misappropriating other temple assets. Temple farmlands, real estate donated to temples by devotees, and massive temple complexes that receive daily donations from pilgrims and local supporters are not accounting for the revenue accrued. In the five southern states of India, over 100,000 temples are operated either directly or indirectly by state agencies. As Indian courts have noted, when there is rampant negligence, the spectacle of a secular government running religious institutions into the ground is not just ironic, but criminal.



ARTIFACTS RECOVERED FROM NOTORIOUS SMUGGLER VAMAN NARAYAN GHIYA IN 2003. INSTEAD OF BEING EXHIBITED IN THE PALACE OF THE WINDS, AS ANNOUNCED, ABOUT 700 OBJECTS ARE STILL IN THE YARD OF THE VIDHYADHAR NAGAR POLICE STATION. TIMES OF INDIA.

Since 2017, the Hindu Religious and Charitable Endowments (HR&CE) Department of the government of Tamil Nadu state has taken over management of temples and their contents. Tamil Nadu, in southern India, is both one of the regions

richest in ancient monuments, and a center for theft and smuggling activities involving religious icons. HR&CE was tasked with running 38,481 temples and endowments in the area. However, India’s media has reported that delegating management to HR&CE has only produced corruption. Court cases were filed in 2017 alleging that Hindu idols were removed from temples and that in one case, false documentation by HR&CE covered up the fact that six ancient idols were not kept in an Icon Centre but in an “unauthorised tunnel and also in a scrap room belonging to the Public Works Department.”^[145] In his ruling in this case, Madras High Court Justice R. Mahadevan was extremely critical of HR&CE:

“It is startling to find that the HR&CE department, with all its income from major temples, has not been able to maintain historical temples and safeguard the idols ... many temples constructed at least 1,500 years ago or much before ... are in ruins.”^[146]

Another 2017 case filed by public interest litigant Elephant G. Rajendran alleged that a high-ranking police officer who was part of the Tamil Nadu police Idol Wing, specializing in cultural heritage crimes, sold ancient sculptures seized in an investigation to “a noted smuggler in Chennai.” Despite a FIR (a complaint lodged with police) being filed against the officer and his police accomplices, they were not prosecuted, but were promoted instead.^[147]

The following year, an Indian police investigation into missing icons focused primarily on objects removed from HR&CE storage since 2013. However, Inspector General of Police, Idol Wing, A.G. Pon Manickavel told *The Hindu* that key documents were missing without which the case could not proceed: “We are

looking for a 1955 register that could hold the key to the exact number of icons stolen. Vested interests are dodging the moves to retrieve the register.”

The Icon Centres Disaster: Bronze Disease a Greater Threat than Theft



SITE OF ICON CENTRE, THIRUVARUR TEMPLE, INDIA BY KASIRUNACHALAM AT ENGLISH WIKIPEDIA, 13 FEBRUARY 2008, CREATIVE COMMONS ATTRIBUTION-SHARE ALIKE 3.0 UNPORTED LICENSE.

Under Hindu Religious and Charitable Endowments administration, there are few records of which works still exist in Indian temples and which are stored on the shelves in official Icon Preservation Centres – a system that appears designed to destroy, not preserve them. On July 26, 2017, the HR&CE Department of the government of Tamil Nadu announced the completion of Idol

Preservation Centres at Perambalur and Ariyalur, ostensibly to hold India’s precious religious idols in safety. The buildings have been completed and filled with idols, but so far they have no controls for temperature or humidity. The failure to provide proper storage is a disaster for India’s ancient bronze sculptures. Stacked willy-nilly together, without proper climate control, virtually all such stored sculptures risk destruction by an enemy far more dangerous than any thief: bronze disease.

The Icon Preservation Centre at Tiruvarur is said to now hold 4,359 ‘idols.’ After concerns about conservation were raised in 2018, along with reports that a number of idols stored there were not ancient, but modern replicas, a court appointed a team from the Archaeological Survey of India to examine the vaults, the first such audit ever undertaken. Some fakes were detected, showing that the original sculptures had been stolen, either from temples far earlier or even from the icon centers themselves.



SITE OF ICON CENTRE, THYAGARAJAR TEMPLE THIRUVARUR, INDIA, PHOTO BY SSRIRAM MT, 5 JANUARY 2019, CCA 4.0 INT’L LICENSE.

What was far worse, the examiners found that thousands of the idols stored were suffering from a highly corrosive process known as ‘bronze disease.’^[148] If unchecked by chemical treatment, and unless treated objects remain continually stored in a very dry environment, bronze

disease can reduce an entire object to dust within a few years. Significant damage can take place in just months. The ‘disease’ can easily spread when bronzes are handled or they touch one another, as many stacked in the Icon Centres do. The ASI team also stated that the idols were badly maintained, that air conditioning systems were not working at all, and that although HR&CE officials had been ordered to be present for the inspection, they did not appear. The objects warehoused in such ‘safety vaults’ in India include the Shiva Nataraja returned by the Norton Simon Foundation to India decades ago, reportedly now stored in the icon vault of Kabaleeswarar Temple, Mylapore, Chennai.

CPAC and U.S. Cultural Policy on India – Recommendations

Congress granted the CPAC the ability to make recommendations for import restrictions that would actually reduce archaeological and historical losses, by imposing five-year bans on imports of objects that were shown to be at current risk of looting. That is the entire scope of CPAC's powers and goals. The law also obliged source country governments to do the right thing along with the United States by taking self-help measures to protect archaeological sites and to curb the markets for looted objects in their own countries.

Based upon the facts outlined below, the Government of India meets none of the four legal criteria under the statute for import restrictions under the Cultural Property Implementation Act.

If any MOU is signed, it should be limited in scope to objects that are both significant and subject to current looting and therefore legally allowed to be included under the CPIA. India's cultural administration should be held accountable for its failure to meet the reasonable benchmarks set by Congress when it mandated self-help measures. Under no circumstances should import restrictions be applied to items that are neither archaeological nor ethnological in character according to the standards set in the statute and elucidated by the Senate in its deliberations.



VENDOR OF SOUVENIR SHELLS AT SEASHORE, KANYAKUMARI, INDIA. PHOTO BY ADAM JONES, ADAMJONES.FREESERVERS.COM, JULY 2008. CCA-SA 3.0 UNPORTED LICENSE.

It is clear that the key problem of preserving Indian heritage has nothing to do with the world market. It has everything to do with the Indian government's failure to invest in heritage projects and to assure that there is competent heritage management staff and a skilled body of museum workers, conservators, capable workers for digital documentation and other immediately necessary work.

While there is much that can and should be done to provide grants to improve the quality of heritage preservation in India, there is no benefit to India's heritage to place U.S. import restrictions on movable goods. Looting and smuggling are not the problem. Indian government neglect, indifference, and the lack of core competencies in heritage management are the problem.

The justifications for limiting the U.S. market for archaeological materials is to give source countries the opportunity to build their own enforcement capacity, pass legislation, build museums and institutions of historical learning, and educate their people to appreciate the social benefits of preserving and honoring their past. Other means such as supporting an open dialog with Indian academics and archaeologists would redirect U.S. attention to India's crucial need for heritage conservation and documentation. Developing loan exhibitions from India and other direct connections between Indian governmental and cultural institutions and museums in the United States would give a sorely needed boost to India's badly neglected cultural institutions and encourage a legitimate historical dialog. U.S. institutions welcome loans and exchanges but India needs to improve its own museum infrastructure in order to make that possible.

The greatest mutual benefits will be found, not in the unjustified acceptance of India's request or the unwarranted imposition of import restrictions, but in increasing cultural cooperation between institutions in the U.S. and India, and through directly beneficial civil-society assistance through the Bureau of Educational and Cultural Affairs.

NOTES

- [1] The Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601, *et seq.*
- [2] *Cultural Property Advisory Committee Meeting, January 30 – February 1, 2024*, BUREAU EDUCATIONAL & CULTURAL AFFAIRS, U.S. DEP'T STATE (Nov. 29, 2023, updated Dec. 18, 2023 & Jan. 16, 2024), <https://eca.state.gov/highlight/culturalproperty-advisory-committee-meeting-january-30-february-1-2024-0>.
- [3] The Committee for Cultural Policy, Inc. and Global Heritage Alliance, Inc. submitted joint public testimony on the request on January 22, 2024, on which this Commentary is largely based.
- [4] This listing of the scope of India's request was removed from the Bureau of Educational and Cultural Affairs webpage in early February 2024.
- [5] *Archaeological Survey of India*, Ministry of Culture, <http://asi.nic.in/>.
- [6] 19 U.S.C. §2601(2).
- [7] 19 U.S.C. 2602(c).
- [8] 19 U.S.C. § 2602(a)(1)(B)
- [9] 19 U.S.C. 2602(a).
- [10] 19 U.S.C. § 2602(e)
- [11] Dr. Pratapaditya Pal is a distinguished Indian scholar of Indian, Southeast Asian, Nepalese and Tibetan art and culture. He has served as a curator of South Asian art at several prominent U.S. museums including Boston's Museum of Fine Arts, the Los Angeles County Museum of Art (where he also served as Director), and the Art Institute of Chicago. He has organized dozens of major exhibitions and helped build the museums' collections, has written over 90 books and catalogs and over 250 articles on the subject, taught at several universities, and served as the editor of the Indian art magazine, *Marg*. In 2009 he was awarded Padma Shri by the Government of India for his contributions to the study of Indian art.
- [12] *Interview by Kate Fitz Gibbon with Dr. Pratapaditya Pal*, Los Angeles, June 2023.
- [13] Pratapaditya Pal, *Commentary on the proposed MOU with India*, January 19, 2024, personal communication.
- [14] 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.
- [15] 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.
- [16] *Id.* at 11
- [17] Sir John Marshall, *Archeological Survey of India, Conservation manual*. A handbook for the use of archaeological officers and others entrusted with the care of ancient monuments, ASI, Superintendent government printing, 1923.
- [18] *Id.* at 15
- [19] Art museums and art history have not been prioritized by the ASI or by India's Ministry of Culture. In consequence, many important Indian art historians and experts traveled to work in museums and universities in the West.
- [20] Pratapaditya Pal, "Collecting Art in British India," in Tillotson, Giles, ED., *A Passionate Eye: Textiles Paintings and Sculptures from the Bharany Collections*, 2014, The Marg Foundation, p 23.
- [21] *Id.*
- [22] See Pratapaditya Pal, *In Pursuit of the Past; Collecting Old Art in Modern India*, circa 1875-1950, Marg Foundation, Vol. 67, No 1, 2015. Some great Indian collectors, such as Karl Khandelavala and the Tagore brothers insisted that their collections remain in India, but for others, economic and political forces required that they be sold, and many items left the country on the deaths of the original collectors.
- [23] Pratapaditya Pal, *Collecting Art in British India*, *supra*, n. 20, at 30.
- [24] *Discussion on Varanasi Ministerial Declaration Moving Towards Full Consensus: Culture Secy*, Latestly, August 25, 2023, <https://www.latestly.com/agency-news/india-news-discussion-on-varanasi-ministerial-declaration-moving-towards-full-consensus-culture-secy-5365755.html>
- [25] Divya A, India, *US work on pact for quick return of stolen antiquities: Instead of India having to prove that the item in question belongs to it, the US will automatically offer it for return once the Cultural Property Agreement (CPA) comes through*. Indian Express, November 27, 2023, <https://indianexpress.com/article/india/india-us-work-on-pact-for-quick-return-of-stolen-antiquities-9043653/>.
- [26] Jawad Iqbal, *Will India ever get back the Koh-i-Noor diamond?* The Spectator, 21 May 2023, <https://www.spectator.co.uk/article/will-india-ever-get-back-the-koh-i-noor-diamond/>.
- [27] Although the provisions of the CPIA limit its scope to objects that are taken without permission from a country after the signing of an MOU and its inapplicability to objects that have been outside of source countries for more than ten years, another U.S. law, the National Stolen Property Act (NSPA), may be used to seize objects that were exported after passage of a 'national ownership law' vesting ownership and title in the State in the source country. Due to this contradiction in U.S. law, it is possible for an object to have entered the U.S. lawfully under the terms of the CPIA and to be held to be 'stolen' under the NSPA.

[28] See 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 2013 CAG Performance Audit of ASI) and Follow-up on the Performance Audit of Preservation and Conservation of Monuments and Antiquities, Comptroller & Auditor Gen. India (2022), available at <https://cag.gov.in/en/audit-report/details/116604>

[29] Personal Communication to Kate Fitz Gibbon from Dr. Pratapaditya Pal, June 2023.

[30] See *Stella Kramrish*, Philadelphia Museum of Art, <https://philamuseum.org/collection/curated/kramrish>.

[31] An article by Amrita Madhukalya quotes an official from India’s cultural ministry commenting on the return of ‘cultural treasures’ seized from Subash Kapoor by the US: “‘Globally, countries are quick to send back items. Last month, we acquired some antiquities from the US. The officials sent a large number to the Indian Consulate’s office. We brought back what was genuine, and left the rest there,’ said the official.” Amrita Madhukalya, *UNESCO portal to act as global directory of stolen antiquities*, Daily News and Analysis, October 7, 2016, <https://www.dnaindia.com/india/report-unesco-portal-to-act-as-global-directory-of-stolen-antiquities-2262007>.

[32] *India Pride Project*, Wikipedia, https://en.wikipedia.org/wiki/India_Pride_Project.

[33] *Idol Wing History*, Gov’t of Tamil Nadu Econ. Offenses Wing, http://www.tneow.gov.in/IDOL/IW_history.html.

[34] 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.

[35] *Idol Wing Judgment*, Gov’t of Tamil Nadu Econ. Offenses Wing, <http://www.tneow.gov.in/IDOL/judgement.html>.

[36] The career of Boman Behram, one of the great Indian private collectors of ancient art, is described in Pratapaditya Pal, *In Pursuit of the Past; Collecting Old Art in Modern India*, circa 1875-1950, Marg Foundation, Vol. 67, No 1, 2015.

[37] *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).

[38] Patrick Radden Keefe, *The Idol Thief*, *The New Yorker* (Apr. 30, 2007) <https://www.newyorker.com/magazine/2007/05/07/the-idol-thief>.

[39] *Id.*

[40] Peter Watson, *Sotheby’s: The Inside Story*, Random House (1997).

[41] *Id.*

[42] Keefe, *supra* n.38.

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

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

[45] 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.

[46] 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.

[47] 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.

[48] 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.

[49] 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.

[50] 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.

[51] Antiquities & Art Treasures Act, § 5 (1972) (India).

[52] *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).

[53] *Id.*

[54] *Id.* In *Vaman Narain Ghiya vs. State of Rajasthan*, 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, or 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, and that an investigating officer demanded “an illegal gratification” from Ghiya which was refused.
- [55] Deep Mukherjee, *Priceless artifacts kept in dismal condition at Jaipur police station*, August 24, 2017, <https://www.hindustantimes.com/jaipur/priceless-artifacts-kept-in-dismal-condition-at-jaipur-police-station/story-76BWtOFpVk5H2OrUjyi1AJ.html>.
- [56] 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>.
- [57] Cultural Property Export and Import Act, R.S.C 1985., c. C-51 (Can.).
- [58] Lauren Bursey, et al., *Case Parrot Lady Sculpture – Canada and India*, Arthemis, 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>
- [59] 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>.
- [60] 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>.
- [61] On February 5, 2014, the National Gallery of Australia (NGA), which bought a 1,000-year-old bronze Nataraja for U.S. \$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>.
- [62] 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>.
- [63] 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>.
- [64] Antiquities and Art Treasures Act 1972 (No. 52 of 1972), https://indiaculture.gov.in/sites/default/files/acts_rules/TheAntiquitiesandArtTreasuresAct1972_12.03.2018.pdf
- [65] 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 2013 CAG Performance Audit of ASI).
- [66] Follow-up on the Performance Audit of Preservation and Conservation of Monuments and Antiquities, COMPTROLLER & AUDITOR GEN. INDIA (2022), (hereafter “2022 Follow-up Performance Audit”) available at <https://cag.gov.in/en/audit-report/details/116604>
- [67] 2013 CAG Performance Audit of ASI. at x.
- [68] 2013 CAG Performance Audit of ASI. 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>.
- [69] 2022 Follow-up Performance Audit, vi.
- [70] *Id.*
- [71] *Id.*
- [72] 2022 Follow-up Performance Audit, vii. See also *Id.* at 6.1: “There was no defined strategy or road-map for documenting the estimated 4 lakh [400,000] monuments and 58 lakh [5,800,000] antiquities. No annual target or annual progress in documentation work was available with the National Mission on Monuments and Antiquities (NMMA). After giving two consecutive extensions of five years each, NMMA was merged with ASI without any timeframe for completion of the work.”
- [73] 2022 Follow-up Performance Audit, 4.1.4.1.
- [74] *Id.*, vii-viii.
- [75] India’s significant national level museums are the National Museum, Delhi, Victoria Memorial Hall Museum, Kolkata, Indian Museum, Kolkata, Asiatic Society, Kolkata, Salarjung Museum, Telangana, Asiatic Society, Mumbai, 2022 Follow-up Performance Audit, 8.1.
- [76] 2013 CAG Performance Audit of ASI, at 222.
- [77] The Sarnath Initiative, et al., Guidelines for ASI Museums (2013) http://asi.nic.in/wp-content/uploads/2018/01/Guidelines_ASI_Museums_14.pdf.
- [78] 2022 Follow-up Performance Audit, 3.1(E).
- [79] 2022 Follow-up Performance Audit, 4.1.4.2.
- [80] *Id.* 8.1-8.1.1. The Victoria and Albert Museum website states that it has nearly 600 textile fragments and over 70 ceramic and Buddhist objects dating between 200 BC and 1200 AD in the Stein Collection, <https://www.vam.ac.uk/collections/the-stein-collection>.
- [81] 2013 CAG Performance Audit of ASI, at 206.

- [82] *Id.* at 205.
- [83] *Id.* at 208.
- [84] *Id.* at 207.
- [85] 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>.
- [86] 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.
- [87] In a glaring example, May 2015, Venu Vasudevan, the 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>.
- [88] 2022 Follow-up Performance Audit, 4.2.1.
- [89] 2022 Follow-up Performance Audit, 4.2.2.
- [90] 2013 CAG Performance Audit of ASI, at 206.
- [91] Phadnis, *supra* n.85.
- [92] 2013 CAG Performance Audit of ASI, at 42.
- [93] *Id.* at 158. 2022 Follow-up Performance Audit, 5.1.
- [95] 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.
- [96] CAG Performance Audit of ASI, at 159.
- [97] *Id.*
- [98] 2022 Follow-up Performance Audit, 5.3.
- [99] 2022 Follow-up Performance Audit, 5.3.1. Standard ticket charges were not followed with ad hoc amounts being initiated at multiple venues. Prices for foreigners were typically ten times that for Indians, and some locations were charging without authorization from ASI.
- [100] Pub. Acct. Committee, Protection and Conservation of Monuments and Antiquities (Report No. 39) (2016) http://164.100.47.193/lsscommittee/Public%20Accounts/16_Public_Accounts_39.pdf.
- [101] *Id.* at 46.
- [102] *Id.* at 6.
- [103] 2013 CAG Performance Audit of ASI, at 132.
- [104] 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).
- [105] 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.
- [106] 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/>.
- [107] Notification No. 97 of March 17, 2009. Issued from File No. 01/89/180/Misc-1/AM03/PC-2 ATaxGuru, See <https://taxguru.in/dgft/notification-97-re200820042009-dated-17032009.html>.
- [108] 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>.
- [109] *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/>.
- [110] Indian Nat'l Trust for Art & Cultural Heritage, <http://www.intach.org/>.
- [111] *INTACH Listing Cell*, Indian Nat'l Trust for Art & Cultural Heritage, <http://chapter.intach.org/chapter-listing-cell.php>.
- [112] *National Culture Fund*, Government of India: Press Information Bureau, June 21, 2011, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=72795>; Indian National Cultural Fund, <http://ncf.nic.in/>.
- [113] *Id.* Donations/contributions to NCF deductible under Section 80G(2)(iii hh) of the Income Tax Act, 1961.
- [114] 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>.
- [115] Sabha, *supra* n. 68, at 61.
- [116] 2022 Follow-up Performance Audit, 5.2.
- [117] 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>.
- [118] Adopt A Heritage, <https://www.adoptaheritage.in/>.
- [119] 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.

- [120] Kate Fitz Gibbon interview with Dr. Pratapaditya Pal, Los Angeles, June 2023.
- [121] See India Pride Project, *supra*, n. 32.
- [122] See, for example, *The Met to Return 15 Sculptures to India*, press release, March 30, 2023, Metropolitan Museum of Art, <https://www.metmuseum.org/press/news/2023/returning-sculptures-to-india>.
- [123] India. Act No. 10 of March 29, 2010 (The AMSAR -Amendment and Validation Act or Ancient Monuments and Archaeological Sites and Remains Amendment and Validation Act), 2, IFAR, <https://www.ifar.org>.
- [124] *Squatters rule 278 ASI-protected monuments across the country*, Times of India, December 8, 2015, <https://timesofindia.indiatimes.com/india/squatters-rule-278-asi-protected-monuments-across-country/articleshow/50084552.cms>.
- [125] Kate Fitz Gibbon, *Satellite Dishes on Ancient Tombs*, Cultural Property News, April 20, 2016, <https://culturalpropertynews.org/satellite-dishes-on-ancient-tombs/>.
- [126] Stephanie Nolan, *India's Ancient Mausoleums are Home Sweet Home to Some*, The Globe and Mail, <https://www.theglobeandmail.com/news/world/indias-ancient-mausoleums-are-home-sweet-home-to-some/article4395266/>.
- [127] Lynn Meskel, *A Future in Ruins*, 100-103, 2018, Oxford University Press.
- [128] Guidelines for Organizing International Exhibitions, GOV'T INDIA, MINISTRY OF CULTURE, <https://indiaculture.gov.in/sites/default/files/circulars/doc01790220150825144421.pdf>
- [129] Statement of the Association of Art Museum Directors on the Request by the Government of the Republic of India to the Government of the United States of America for the Imposition of Import Restrictions to Protect Indian Cultural Patrimony under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Association of Art Museum Directors, January 30, 2024.
- [130] Kunal Purohit, Popcorn and curfews: *India gets ready for Ram temple with frenzy and fear*, Al Jazeera, January 22, 2024.
- [131] The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan federal government entity established by the U.S. Congress to monitor, analyze, and report on religious freedom abroad, pursuant to the International Religious Freedom Act (IRFA).
- [132] *USCIRF Calls for Congressional Hearing after State Department Fails to Designate Nigeria and India as Countries of Particular Concern*, U.S. Commission on International Religious Freedom, January 4, 2024, <https://www.uscirf.gov/newsroom/releases-statements/uscirf-calls-congressional-hearing-after-state-department-fails>.
- [133] Norimitsu Onishi, *Alleged Plot in New York Bolsters Canada's Accusations Against India*, N.Y. Times, November 30, 2023, <https://www.nytimes.com/2023/11/30/world/canada/india-assassination-plot-canada-sikh.html>
- [134] 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).
- [135] 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. See 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, at 18.
- [136] Sara Ather, *Politics of ruin: Why Modi wants to demolish India's mosques*, Al-Jazeera, April 3, 2023, <https://www.aljazeera.com/opinions/2023/4/3/politics-of-ruin-why-modi-wants-to-demolish-indias-mosques?>
- [137] 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 owners 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 for inciting the riot. 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.
- [138] *Id.*
- [139] 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>.
- [140] Vikas Pandi, *Reality Check: Whose Taj Mahal is it Anyway?* BBC News, Nov. 2, 2017, <https://www.bbc.com/news/world-asia-india-41813339>.
- [141] 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/>.
- [142] Vikas Pandey, *Reality Check: Whose Taj Mahal is it Anyway?* BBC News, Nov. 2, 2017, <https://www.bbc.com/news/world-asia-india-41813339>.
- [143] 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.
- [144] "Stolen artifacts lying in police stn find place in state museums," Times of India, December 26, 2023,

[145] *R. Venkataraman vs The Director General Of Police*, 21 July, 2017, Madras High Court, Kanoon, <https://indiankanoon.org/doc/68007570/>.

[146] *Id.* at paragraph 12.

[147] R Jagannathan, *Fence that eats the crop: Government running Hindu temples is another anomaly India's selective secularism fosters*, Times of India, August 29, 2017, <https://timesofindia.indiatimes.com/blogs/toi-edit-page/fence-that-eats-the-crop-government-running-hindu-temples-is-another-anomaly-indias-selective-secularism-fosters/>.

[148] Bronze disease is the common term used for a series of chemical reactions that can result in a devastating, irreversible form of corrosion that affects bronze and other copper-alloy artifacts. Bronze disease appears as either a powdery or warty green pitted encrustation. Corrosive bronze disease takes place in the presence of moisture, chlorides, and oxygen. Removing one of these elements will halt the corrosive process, but it can restart when they are again present. Cuprous chloride in copper alloys reacts with water to create hydrochloric acid which pits the bronze object and reacts with the copper content to create a soft, powdery, often virulently-green-colored surface. If left untreated, or if stored in a humid environment, bronze disease will destroy the object. Treatment with benzotriazole may stem the chemical reaction but without scrupulous care of objects in a very low humidity environment, the bronze disease will recur. The average daily humidity in Chennai, in Tamil Nadu, is 70%. The thousands of bronze statues supposedly safely stored in icon centers today may be doomed unless immediate steps are taken to properly care for them.