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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ORIGIN AND DEVELOPMENT OF CULTURAL HERITAGE LAWS**

AUTHORED BY - ROOPAL BANSAL

The variety of cultures and traditions that are distinct and unique worldwide can be astounding. Furthermore, each of those cultures manifests those traditions in all forms of expression, such as daily habits, art, and craftsmanship. Over the last century, as trade and societies became more international, several local communities and governments claimed the need to protect those forms of traditional expression legally.<sup>1</sup>

*“The body of all natural or man-made goods, with no limit as to time or place”* :<sup>2</sup> the notion of cultural or natural heritage has evolved considerably to encompass, in its broadest sense, cultural expressions and traditional knowledge. They are essential because they are perceived as valuable sources of identity, creativity and diversity.<sup>3</sup>

## **2.1. INTRODUCTION**

In this chapter, I will be talking about evolution of Cultural Heritage Law. Indeed, the protectability of distinct cultural expressions under the domain of Intellectual Property Rights (IPR) involves complex issues that go beyond the usual confines of legal structures typically designed for individualistic and commercial inventions and creations. As civilizations evolve, so do their cultural expressions, which often embody the collective identity and heritage of entire communities. This analysis can delve into the specific aspects of how IP laws interact with these cultures.

Before we try to understand the convergence of both the subject-matters, let us make ourselves aware of the term ‘Culture Heritage.’

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<sup>1</sup> [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/protection-traditional-expressions-and-cultural-knowledge-india-2022-09-26\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/protection-traditional-expressions-and-cultural-knowledge-india-2022-09-26_en)

<sup>2</sup> DESVALLEES André, 1995, “Emergence et cheminements du mot patrimoine” (The emergence and development of the word “patrimoine”, *Musées et collections publiques en France* (208-3) : 6-29

<sup>3</sup> Laurella Rincon, Study carried out for the World Intellectual Property Organization (WIPO), *Intellectual Property and Protection of Cultural Heritage: The case of the national museums of arts and civilizations in France*

Cultural heritage is the knowledge, practice, and conscious display through fixation of the said knowledge, which is attributable to a group of people who have inherited such knowledge from the past, many generations. al expressions and the resulting complexities. <sup>4</sup> Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration.<sup>5</sup>

Cultural heritage refers to the legacy of physical artifacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present, and bestowed for the benefit of future generations. It includes a wide range of tangible and intangible forms.

Tangible Cultural Heritage includes physical objects or places that have cultural significance which includes Cultural objects like artifacts, works of art, texts, and other items that are important to a culture. They can be housed in museums, kept in private collections, or remain within the community. Whereas, Intangible Cultural Heritage refers to the non-physical, practiced elements of culture that are passed down across generations, it includes:-

1. **Oral Traditions and Expressions:** Including language as a vehicle of intangible cultural heritage. This category encompasses stories, epics, songs, and oral histories transmitted by word of mouth through generations.
2. **Performing Arts:** Music, dance, theatre, and other forms of performing arts that are continuously recreated by communities according to their tradition.
3. **Social Practices, Rituals, and Festive Events:** These are collective activities that strengthen the bonds within communities, mark important life milestones, or celebrate cultural or religious events.
4. **Knowledge and Practices Concerning Nature and the Universe:** Traditional knowledge systems that relate to environmental management, medicine, and the cosmos, often underpinning community health, food security, and harmony with nature.
5. **Traditional Craftsmanship:** The skills and knowledge involved in crafting objects, which are often both functional and artistically significant, representing the aesthetic and cultural values of a community.

When we see the cultural heritage in the light of IP, it usually happens in terms of Traditional

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<sup>4</sup> <https://www.kashishworld.com/blog/safeguarding-cultural-heritage-through-intellectual-property-rights/>

<sup>5</sup> <https://whc.unesco.org/en/about/>



Knowledge (TK) and Traditional Cultural Expression (TCE). The issue lies in the fact that there subsists no international or widely accepted definition of TK or TCE.

The ambit of TCE is vast enough to incorporate pre-existing materials dating from the distant past to the very recent contemporary expressions of such materials in the form of adaptations, imitations, revitalizations, etc. The qualifying requirement for a TCE is that it should be a “defining characteristic of a tradition,” and the same should be existent as a “living tradition amongst a community” that practices it.

Several indigenous people have longed for such protection to commercially exploit the fruit of their generational knowledge and prevent third-parties from taking unaccredited advantage of such TCEs.

Traditional Knowledge (TK), on the other hand, includes the cultural heritage, the practices, and the know-how behind such practices, belonging to traditional communities. Traditional knowledge is not limited to just art forms but has an extensive scope extending up to fields of agricultural, scientific, technical, ecological, biodiversity-related and medicinal knowledge. Such prolonged knowledge should at least span up to 5 generations before it qualifies as a TK, as per the WIPO Draft Article on TK.<sup>6</sup>

Heritage plays a pivotal and often constitutive role in the creation of national heritage. It is for this reason that many countries have taken strong measures to prevent the export of cultural objects they view as ‘theirs’ and some artefact-rich States have enacted legislation to assert a blanket claim of ownership over all cultural heritage found in their territory.<sup>7</sup>

## **2.2. TIMELINE OF CULTURAL HERITAGE PROTECTION**

### **ANCIENT TIMES TO LATE 19<sup>TH</sup> CENTURY**

Placing a value on monuments and artefacts which reflect the cultural and religious expressions of a society is by no means a modern impulse. Examples can be found from ancient times of concern for the protection of cultural artefacts such as an early museum of antiquities established in ancient

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<sup>6</sup> <https://www.kashishworld.com/blog/safeguarding-cultural-heritage-through-intellectual-property-rights/>

<sup>7</sup> Janet Blake, *International Cultural Heritage Law*, 2015 Oxford University Press

Babylon by the daughter of King Nabonidus in the sixth century BC<sup>8</sup>.

In the following century in Greece, Thucydides attempted to use archaeological finds as the basis for historical explanation when he considered that Delos had been settled by Carians since the type of armour and weapons he found in many of the graves there resembled those of the Carians of his day.<sup>9</sup> In the late Roman Republic, Cicero attacked Verres, the Roman Proconsul of Sicily between 71 and 73 BC, in his court orations<sup>5</sup> for removing looted artworks to Rome<sup>10</sup>.

It seems, however, that early antiquities legislation developed first in Europe in the fifteenth century with the papal Bull promulgated by Pope Pius II in 1462 aimed at the preservation of the ancient monuments located in the papal States. In 1630, King Gustavus Adolphus of Sweden appointed a state antiquarian, thus demonstrating a desire to protect and preserve important state cultural heritage.<sup>11</sup>

The Ottoman Turkish authorities began to develop a legislative and administrative system for the preservation of antiquities in the late nineteenth century in what was one of the earliest 'modern' antiquities protection regimes.

In 1846, they established in Istanbul the Assemblage of Ancient Weapons and Antiquities which, in the late 1860s, became the Imperial Museum; under the directorship of Osman Hamdi Bey, it undertook the first archaeological excavations by an Ottoman team.<sup>12</sup> The first Ottoman Historic Monuments Act was adopted in 1874 and is one of the earliest examples of a modern antiquities' legislation.

It stated, inter alia, that excavation finds should be shared between the excavation team, the owner of

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<sup>8</sup> Ennigaldi lived in sixth century bc and is said to have acted as a museum curator. Vicki León, *Uppity Women of Ancient Times* (Conari Press, 1995) pp 36–7

<sup>9</sup> Thucydides, *The History of the Peloponnesian War*, Book I

<sup>10</sup> In Verrem, Acta I and II.

<sup>11</sup> Papal Bull entitled *Cum Alma in Nostram Urbem*, cited in Lyndel V Prott and Patrick J O'Keefe, *Law and the Cultural Heritage*, vol 1 (Abingdon: Professional Books, 1984) at p 34.

<sup>12</sup> Information on the Ottoman law from Emre Madran, *The Restoration and Preservation of Historical Monuments in Turkey (From the Ottoman Empire to the Republic of Turkey)* (Ankara, 1989). See also: A Çilingiroglu and B Umar, *Eski Eserler Hukuku (Ancient Monuments Law)* (Ankara Universitesi Basimevi, Ankara, 1990) [in Turkish].

the land, and the State<sup>13</sup> and it placed all foreign excavation teams under the control and supervision of the Ministry of Education (a forerunner to the later Turkish system of granting permits for excavation work). The third version of this law adopted in 1884 included the significant provision of granting state ownership of all antiquities and established the Department of Antiquities to administer the legislation.<sup>14</sup>

The idea of creating an international movement for protecting heritage emerged after World War I. The 1972 Convention concerning the Protection of the World Cultural and Natural Heritage developed from the merging of two separate movements: the first focusing on the preservation of cultural sites, and the other dealing with the conservation of nature.

Although some attempts were made to regulate cultural heritage, in particular in the event of armed conflict<sup>15</sup> and on the regional (American) level, it is fair to say that modern international law relating to the protection of cultural heritage started in the period following the Second World War, the establishment of the United Nations (UN) and the UN Educational, Scientific and Cultural Organization (UNESCO) in 1945, and the adoption of the Universal Declaration on Human Rights (1948).

It is no surprise, then, that the first international treaty in this area concerned the protection of cultural heritage in wartime<sup>16</sup>, in view of the purpose of the UN stated in its Charter to foster the peaceful coexistence of States and of UNESCO (set out in its Constitution) to build peace in the minds of men (sic)<sup>17</sup>. The 1954 'Hague Convention' sets out its purpose and underlying philosophy in the Preamble, recognizing that 'cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction' and that 'damage to cultural property belonging to any people whatsoever means damage to the

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<sup>13</sup> The best third being given to the State.

<sup>14</sup> Janet Blake, *International Cultural Heritage Law*, 2015 Oxford University Press

<sup>15</sup> Conventions No IV and IX adopted by the International Peace Conference of 1907 addressed issues relating to cultural property, in particular the Regulations appended to Convention No IV (Arts 23(g), 25, 28, and 47). See Jiri Toman, *The Protection of Cultural Property in the Event of Armed Conflict* (Dartmouth/UNESCO, 1996) at p 10.

<sup>16</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, The Hague, 14 May 1954 [249 UNTS 240; First Hague Protocol 249 UNTS 358]. Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, The Hague, 14 May 1954 [249 UNTS 358].

<sup>17</sup> Preamble at para 1 reads: 'since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed'

cultural heritage of all mankind, since each people makes its contribution to the culture of the world'<sup>18</sup>.

## **THE CONVENTION TIMELINE**

### **1972 - Adoption**

Adoption of the Convention concerning the Protection of the World Cultural and Natural Heritage, a unique international treaty linking for the first time the concepts of nature conservation and preservation of cultural properties, recognizing the way people interact with nature, and the fundamental need to preserve the balance between the two. The Convention was adopted by the General Conference of UNESCO on 16 November 1972.

### **1975 - Ratification**

The World Heritage Convention formally takes effect upon ratification by the first 20 States Parties. The List of World Heritage in Danger is created to draw attention to properties needing special international consideration and priority assistance. The World Heritage Fund is established to assist States Parties identify, preserve and promote World Heritage sites through both compulsory and voluntary contributions.

### **1978 - Operational guidelines**

The World Heritage Committee develops selection criteria for inscribing properties on the World Heritage List, and draws up Operational Guidelines for the Implementation of the World Heritage Convention, setting out among other principles those of monitoring and reporting for properties on the List. Ecuador's Galapagos Islands becomes the first of twelve sites to be inscribed on the World Heritage List.

### **1992 - Cultural landscapes**

With 377 sites inscribed in the first twenty years of the Convention, the World Heritage Centre is established to oversee the day-to-day management of the Convention. A new category of sites is added, making the Convention the first legal instrument to recognize and protect cultural landscapes.

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<sup>18</sup> Janet Blake, International Cultural Heritage Law, 2015 Oxford University Press

### **1994 - Global Strategy**

The Committee adopts the Global Strategy for a Balanced, Representative and Credible World Heritage List, aimed at addressing the imbalances on the List between regions of the world, and the types of monuments and periods represented. The Strategy marks the progression from a monumental vision of heritage to a much more people - oriented, multifunctional and global vision of World Heritage. The Nara Document on Authenticity is adopted, recognizing the specific nature of heritage values within each cultural context.

### **The "4 Cs" - 2002**

On the occasion of the 30th Anniversary of the Convention, the Committee adopts the Budapest Declaration on World Heritage, inviting all stakeholders to support World Heritage conservation through four key Strategic Objectives (the "4 Cs"): Credibility, Conservation, Capacity building and Communication.

The World Heritage Partners Initiative, known today as PACT, is launched to encourage public-private partnerships and set in place a framework through which a wide range of institutions as well as individuals can contribute to the conservation of World Heritage sites around the world.

### **2018 - Warsaw Recommendation**

The "Warsaw Recommendation on Recovery and Reconstruction of Cultural Heritage" was developed at the 'International conference on reconstruction: The challenges of World Heritage recovery held in Warsaw, Poland, from 6 to 8 May. These are universal guidelines for the recovery and reconstruction of World Heritage properties following armed conflict or disasters caused by natural hazards, notably for historic urban areas.<sup>19</sup>

In these categories, we can find elements that match to the different meanings of culture as employed in cultural heritage instruments which, in one way, suggests the complexity of the idea of culture as used in cultural heritage law.

The idea of 'heritage' is an easier one to grasp and contains elements that are essential for understanding this field of law: it refers to an inheritance received from the past, to be held 'in trust'

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<sup>19</sup> <https://whc.unesco.org/en/convention/>

by the current generation (that may enjoy its value in the present) to be handed down in at least as good a state as it was received to the next generation.<sup>20</sup>

## **2.3 INDIA'S ROLE IN PROTECTING CULTURAL HERITAGE**

India indeed boasts a rich and diverse cultural heritage, with countless historical monuments and archaeological sites that serve as invaluable witnesses to its past. These sites hold immense significance for Indians, representing not only the country's glorious history spanning thousands of years but also embodying resilience, cultural expressions, and community identities.

Historical sites in India are revered as living testaments to various epochs, from ancient civilizations to the struggles for independence. They are revered for their architectural grandeur, historical importance, and the stories they tell about the people and events that shaped the nation.

Officially designated as historic or heritage sites, these places are often protected by law to ensure their preservation for future generations. They encompass a wide range of structures, landscapes, and artifacts, reflecting the political, military, cultural, and social history of the region.

Tourism plays a significant role in showcasing India's historical treasures to both domestic and international visitors. Tourists are drawn to these sites out of a sense of nostalgia, a desire to learn about India's rich history and culture, or simply to admire the architectural marvels of the past.

To enhance the visitor experience, modern amenities and visitor centres are often established near historical sites. These centres serve as gateways to the past, providing educational resources, interpretive displays, and guided tours to help visitors better understand the significance of the site and its historical context.

Overall, India's historical sites and heritage monuments serve as living reminders of the country's enduring legacy and contribute significantly to its cultural identity and tourism industry. Preserving and promoting these treasures is essential for safeguarding India's heritage for future generations to cherish and appreciate.

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<sup>20</sup> Janet Blake, *International Cultural Heritage Law*, 2015 Oxford University Press

The country's heritage is regulated by the law of the country. These are provided by constitutional provisions; legislation or acts established by the parliament or the State Assembly; and subordinate legislation established by Byelaws, Regulations, Rules of Procedure under particular legislation.

The security of India's heritage sites is managed by Indian Archaeological Survey, which works under Culture Department.

The conservation of ancient monuments in India can be traced from the enactment of parliamentary bills which have encapsulated the guidelines to usher in the protection of historically important sites in the country.

A variety of factors are contributing to the degradation of the heritage sites. It is now conceivable that heritage sites must exist on a permanent basis, and therefore the decision to protect such sites from harm is a task that should be pursued diligently.<sup>21</sup>

### **EARLY 19<sup>TH</sup> CENTURY**

As India's civilisation is considered one of the oldest in the world, there are innumerable historical objects, monuments, and traditions in India that are of immense importance in today's age. However, the legal system that India follows is largely sourced from English law, i.e. that of its colonizers.

Protection of cultural heritage in India was not at the top of the list for the British, but their contribution to establishing a legal regime for the same is unparalleled. Even though India became a republic in 1950, and the Constitution of India became the Grund-norm, the law for the protection of heritage is still either colonial or based upon the same concepts that promoted protection and conservation, rather than development.<sup>22</sup>

Archaeological and historical pursuits in India started with the efforts of Sir William Jones, who put together a group of antiquarians to form the Asiatic Society on 15th January 1784 in Calcutta.

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<sup>21</sup> <https://judicateme.com/laws-regarding-the-protection-of-heritage-sites-in-india/>

<sup>22</sup> Gaurav Pathak, GDANŚKIE STUDIA AZJI WSCHODNIEJ 2022/22

The efforts put by Jones had a long backing, of enthusiasts and dilettantes like Tavernier, Finch and Bernier, Thevenot, Careri, Fryer, Ovington, Hamilton, Anquetil du Perron, Joseph Tieffenthaler, William Chamber, to name a few, who carried out survey of monuments in various parts of India, earlier.

This endeavour put forward by Jones culminated in the publication of a periodical journal named, Asiatick Researches started in 1788. The journal brought to light the researches; surveys carried out by the society to make the public aware of the antiquarian wealth of India.

The continuing fieldwork soon brought to light many antiquities and other remains which were later housed in a museum in 1814. Later, similar societies were started at Bombay (Mumbai) in 1804 and at Madras (Chennai) in 1818.

The identification of Chandragupta Maurya with Sandrokottos of Greek historians by Jones enabled to fix a chronological horizon of Indian history. This was followed by the identification of Pataliputra (Palibothra of classical writings) at the confluence of the Ganga and Son. The decipherment of Gupta and Kutila script by Charles Wilkinson was a landmark in this aspect.

The appointment of Francis Buchanan in 1800 by Marquis of Wellesley to survey Mysore was a positive step by the then government. In 1807 he was engaged to survey monuments and antiquities in parts of present-day Bihar and Uttar Pradesh.

The repair to the monuments were not thought of during this period and very sparsely certain monuments like Taj Mahal, Fatehpur Sikri and Sikandara were repaired. The Bengal Regulation XIX of 1810 was the first attempt to make the government to intervene in case of risks to monuments through legislation.

The statutory regime for the protection of culture and heritage is older than the Constitution of India and was established by the British. As a result of the savings clause present in the Constitution, colonial laws continued to exist in independent India and are still enforced (art. 13(3)(b)). The first archaeological work in India was undertaken by Sir William Jones, who started his work in 1784. It



was only after the mutiny of 1857 that the Crown established direct rule over India.<sup>23</sup>

Cunningham was appointed as the first Archaeological Surveyor from December 1861. He surveyed areas stretching from Gaya in the east to the Indus in the northwest, and from Kalsi in the north to the Narmada in the south, between 1861 and 1865.

For this, he largely followed the footsteps of the Chinese pilgrim Hieun Tsang. However, the endeavours came to a sudden halt due to the abolition of the Archaeological Survey in 1866 by Lord Lawrence. In the meanwhile, however an act (XX) was passed in 1863, which vested powers with the government 'to prevent injury to and preserve buildings remarkable for their antiquity or for their historical or architectural value'<sup>24</sup>

The first statute "to prevent injury to, and preserve the buildings remarkable for their antiquity and historical or architectural value" was passed in 1863.<sup>25</sup>

## **POST BRITISH EVASION LAWS**

The legal framework for the protection of heritage in India has evolved over time, with various laws enacted to address different aspects of heritage preservation. The key legislations related to this are:-

1. **Treasure Trove Act, 1878:** - This Act was one of the earliest legislative measures in India aimed at regulating the discovery and ownership of treasure troves, including valuable artifacts and antiquities found underground. It provided guidelines for the reporting and disposition of such discoveries. This Act defines treasure as "anything of any value hidden in the soil, or in anything affixed thereto," (Section 3) and any person who finds treasure worth ten or more rupees has to inform the Collector (Section 4). Although the sum of ten rupees must have been a great deal of money in 1878, in 2022, it is equivalent to 13 cents, and all it can buy is a very small candy. Surprisingly, the threshold of ten rupees has remained unchanged for over 200 years. The Collector, who is now called a District Magistrate, is a government official and is considered to be the overall in charge of administration in a district.<sup>26</sup>

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<sup>23</sup> Gaurav Pathak, GDAŃSKIE STUDIA AZJI WSCHODNIEJ 2022/22

<sup>24</sup> Archaeological Survey of India Government of India, 2021, Ministry of Culture, Government of India

<sup>25</sup> Ibidem.

<sup>26</sup> Gaurav Pathak, GDAŃSKIE STUDIA AZJI WSCHODNIEJ 2022/22

2. **Ancient Monuments Preservation Act, 1904 (AMPA):** - This Act focused on the preservation and protection of ancient monuments and archaeological sites in British India. It empowered the government to declare certain sites as protected monuments and regulate activities that could potentially damage or alter them.

3. **Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (AHMASRA):** - This Act aimed to identify and declare certain monuments and archaeological sites as being of national importance. Its primary objective was to recognize and protect sites of significant historical and cultural value.

4. **Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act):** - This Act expanded on the provisions of earlier legislations and provided a comprehensive framework for the preservation, maintenance, and protection of ancient monuments and archaeological sites across India. It empowered the Archaeological Survey of India (ASI) to oversee the management of these sites. At present, the AMASR Act is the mainstay regarding the protection of heritage in India. It is largely based on the Act of 1904<sup>27</sup>, but differs in certain crucial aspects. For example, some powers of the Collector are now with the Director-General of Archaeology; Central Government can compulsorily direct the owner of a monument to maintain the same; Central Government can regulate excavation of archaeological sites which are not declared to be of national importance; and Central Government can compulsorily purchase “antiquities and other objects of historical or archaeological importance on payment of compensation<sup>28</sup>”

The 3 most essential part of AMASR Act are:-

- i) ancient monuments (sec 2(a))
- ii) antiquity (sec 2(b))
- iii) archaeological site and remains (sec 2(d))

1. **Antiquities and Art Treasures Act, 1972:** - This Act focused on regulating the export, import, and transfer of antiquities and art treasures to prevent their illicit trafficking and ensure

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<sup>27</sup> 2 I. Sengupta, Preservation between Empire, Nation and Nationalisms: The Problem of History and Heritage in India, “Nations and Nationalism” 2018, vol. 24, issue 1, p. 116.

<sup>28</sup> Statements of Object and Reasons, the AMASR Act

their preservation within the country. It aimed to safeguard India's cultural heritage by controlling the trade of valuable artifacts.

The definition of antiquities under the Act is similar to that given in AMASR Act, but also includes “any manuscript, record or other document which is of scientific historical, literary or aesthetic value and which has been in existence for not less than seventy-five years.” (Section 2(1)(a)(II), the AAT Act) In addition, the Act defines “art treasure” as “any human work of art, not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure.” (Section 2(b), the AAT Act) However, art cannot be recognized as an art treasure if its author is alive. As per the Act, only Central Government and its authorities are empowered to export antiquities and art treasures out of India, which export, too, is strictly regulated. Violation of this provision attracts penalties in the Customs Act, 1962 as well as “imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.” (Section 25, the AAT Act) Any person desirous of dealing in antiquities has to first obtain a licence from the Central Government.

Every person having a licence has to maintain “records, photographs and registers” of antiquities, which can be inspected by the Government. The Government also has the power to mandate the registration of certain antiquities, and the transfer of such antiquities has to be communicated to appropriate authorities by persons dealing in antiquities. Lastly, the Government also has the power to compulsorily acquire an antiquity.<sup>29</sup>

Over time, these statutes have been subject to amendments and modifications to address changing needs and challenges in heritage preservation. While some of these laws may no longer be in effect, they have laid the groundwork for subsequent legislations and policies related to heritage conservation in India.

Today, heritage conservation in India is governed by a combination of national and state-level laws, along with regulations and guidelines issued by government bodies such as the ASI and the Ministry of Culture. These legal instruments aim to balance the preservation of India's rich cultural heritage with the need for sustainable development and tourism.

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<sup>29</sup> Gaurav Pathak, GDAŃSKIE STUDIA AZJI WSCHODNIEJ 2022/22

Our constitution also contains various provisions regarding protection of Cultural Heritage which are:-

- **Article 29:** It states that “Any section of the population residing in the territory of India, or any part thereof having its own distinct language, script or culture, shall be entitled to retain the same<sup>30</sup>.”
- **Article 51 A(F):** Article 51(a)(f) of the Constitution provides that “It is the duty of all Indian citizens to value and preserve the rich heritage of our composite culture; and (g) to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.”<sup>31</sup>
- **Article 49:** Article 49 of the Indian Constitution shall preserve the country’s-built heritage: “A State shall be obligated to guard against spoilage, disfigurement, destruction, removal, disposal or export any monument or place or object of artistic or historical interest, which shall, by or under Parliamentary law, be nationally important<sup>32</sup>.”

India currently has 38 World Heritage Sites, making India the 6th largest World Heritage Site in the world. Italy and China are home to the largest number of UNESCO world heritage sites in the world. There are Thirty cultural sites, seven natural sites, and one mixed as UNESCO recognized. India has managed to get seven of its sites registered on the UNESCO World Heritage List in the past five years.

The Walled town of Jaipur was the last World Heritage site added to India. The decision was taken at the 43rd meeting of the Baku Committee on World Heritage (Capital city of Azerbaijan). On 6 July 2019, the walled town of Jaipur, a major hub for the craft industry, won its place on the list of the World Heritage Sites. In 2018, the Mumbai Victorian Art Deco Ensemble had previously been included in the list. UNESCO helps in preserving the heritage sites in India by listing them of great importance and promoting the protection of it.

Despite the measures taken by UNESCO in preserving the heritage sites all over the world, it has been scrutinized for many reasons one of them being the exclusion of the term living cultural heritage.

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<sup>30</sup> Article 29, Constitution of India

<sup>31</sup> Article 51 A(f), Constitution of India

<sup>32</sup> Article 49, Constitution of India

In the absence of the definition of World Heritage to include living cultures and to include local communities, the policy of the World Heritage Authority of the States Parties often profits in an effort to eliminate or refute connections between local and indigenous communities.<sup>33</sup>

## **CONCLUSION**

In this chapter, I covered all about origin and development of Cultural Heritage Laws in India as well as other countries, while including pre and post war situations. The formalized efforts to protect cultural heritage on a broader scale began to emerge in the modern era, particularly in response to threats posed by urbanization, industrialization, warfare, and globalization.

From Early Antiquarianism In Renaissance Europe to Integration of Indigenous Knowledge and Practices all over the world, The devastation caused by World Wars I and II highlighted the vulnerability of cultural heritage to destruction and looting during times of conflict. In response, international organizations such as UNESCO (United Nations Educational, Scientific and Cultural Organization) were established to promote the protection of cultural heritage on a global scale and maintained a framework for the identification, protection, and preservation of cultural and natural heritage sites of outstanding universal value.

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<sup>33</sup> [https://judicateme.com/laws-regarding-the-protection-of-heritage-sites-in-india/#\\_ftn1](https://judicateme.com/laws-regarding-the-protection-of-heritage-sites-in-india/#_ftn1)