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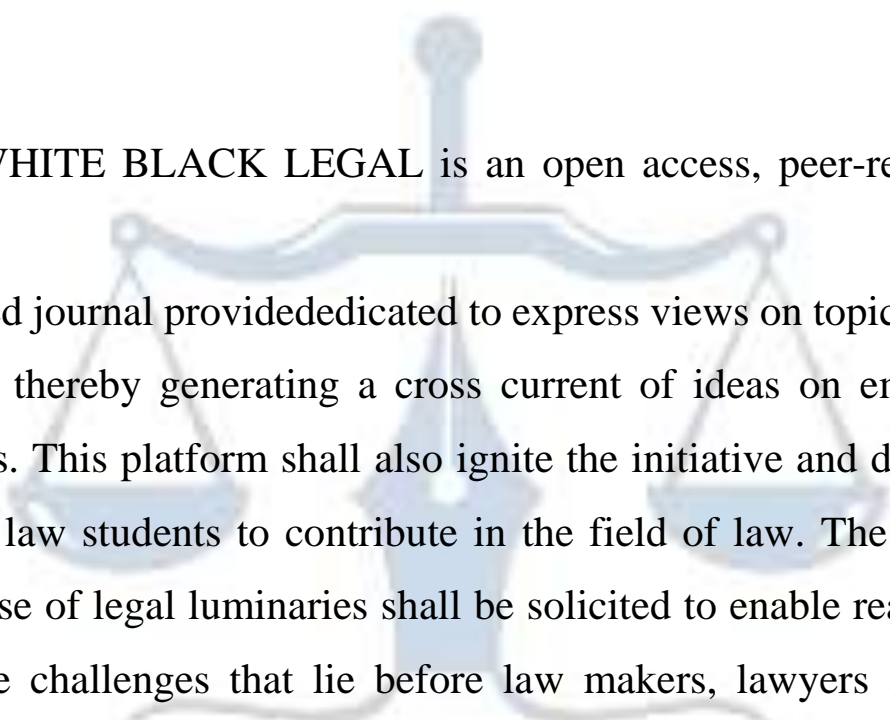
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

DUTY WITH RESPECT TO NATIONAL SYMBOLS AND HERITAGE LEGAL AND SOCIAL IMPLICATIONS

AUTHORED BY - SRINITHI K, RESHMA S & SUBHAKAVINITHA R

Abstract

The obligation to honor and protect national symbols and heritage embodies a nation's collective identity, history, and values. This abstract examines the legal and social implications of such duties. From a legal perspective, national symbols and heritage are often safeguarded through constitutional provisions, statutory laws, and international conventions like UNESCO's World Heritage Convention. These frameworks impose responsibilities on individuals, communities, and governments to preserve and respect these assets, with penalties for violations. Socially, the duty extends to fostering unity, instilling patriotism, and promoting cultural continuity. However, challenges such as globalization, cultural appropriation, and political misuse of symbols complicate this responsibility. Balancing reverence for tradition with the demands of a dynamic, diverse society requires an inclusive approach to policy and education. Ultimately, the legal and social obligations towards national symbols and heritage serve as a means to strengthen societal cohesion while respecting pluralism and global interconnectivity. This discussion highlights the interplay between law, culture, and society in preserving the integrity and relevance of national symbols and heritage for future generations.

1. INTRODUCTION

National symbols and heritage are the threads that weave together the rich tapestry of a nation's identity. They are the echoes of history, the manifestations of culture, and the aspirations of a people. These symbols and heritages, whether tangible or intangible, bind us to our past and shape our future. They are the touchstones of our collective consciousness, inspiring pride, fostering unity, and reminding us of our shared heritage. National symbols, such as flags, anthems, and coats of arms, represent the collective identity of a nation. They evoke feelings of patriotism and unity, inspiring citizens to work together for the common good. These symbols often embody the nation's values, ideals, and aspirations. For instance, the Indian flag, with its three colours symbolizing truth, peace, and courage, represents the nation's

commitment to these values. Heritage sites, monuments, and cultural traditions are tangible expressions of a nation's history and culture. They provide a glimpse into the past, allowing us to learn from the mistakes and successes of our ancestors. These sites and traditions also contribute to a nation's cultural identity and attract tourists from around the world. The Taj Mahal, a UNESCO¹ World Heritage Site, is a prime example of India's rich cultural heritage and architectural prowess. Intangible cultural heritage, such as languages, music, dance, and folklore, is equally important. It reflects the unique customs, beliefs, and values of a particular culture. These intangible elements contribute to a nation's cultural diversity and help to preserve its unique identity. For instance, the traditional Indian classical dance forms, such as Bharatnatyam and Kathakali, are a testament to India's rich cultural heritage. National symbols and heritage are invaluable assets that must be preserved and protected. They are the foundation of a nation's identity and play a crucial role in shaping its future. By respecting and honoring these symbols and heritages, we can ensure that future generations will continue to appreciate and benefit from our rich cultural legacy.

2. INTERNATIONAL PERSPECTIVE

2.1 UNESCO World Heritage Convention (1972)²:

One of the most significant agreements for cultural and natural heritage preservation. Encourages the identification, protection, and preservation of sites of outstanding universal value (e.g., cultural, natural, and mixed heritage sites). India currently has 43 UNESCO World Heritage Sites. This includes: 35 Cultural Sites: Showcasing India's rich history, architecture, and artistic traditions, 7 Natural Sites: Recognizing the country's diverse and unique natural landscapes, 1 Mixed Site: Combining both cultural and natural significance.

The most recent addition to this list is the Moidams – the Mound-Burial System of the Ahom Dynasty in Assam, recognized in 2024.

2.2 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)³:

Protects cultural property during armed conflicts and establishes guidelines for preventing the illicit trafficking of cultural artifacts.

¹ India ratified the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage on **November 14, 1977**.

² India ratified the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage on **November 14, 1977**.

³ India has been a party to the Hague Conventions of 1899 and 1907 since its independence in 1950.

Protocol I (1954): This protocol introduced provisions on the use of cultural property in armed conflict, emphasizing the duty of nations to take preventive measures to protect cultural property.

Protocol II (1999): The 1999 Protocol builds upon the original Convention by strengthening the protections offered and updating its provisions in response to changing warfare dynamics.

It specifically addresses:

- The obligation of States to prevent the theft, pillage, or vandalism of cultural property.
- The extension of protections to cultural property in non-international conflicts (civil wars, internal armed conflicts).
- Enhanced measures for the restitution of stolen cultural property.

The Hague Convention relies on state parties to implement its provisions through national legislation, regulations, and actions. While the Convention sets standards and guidelines, enforcement is primarily the responsibility of individual nations, and the international community can exert diplomatic pressure or take action through institutions like UNESCO.

2.3 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970):

Aims to combat illegal trade and return cultural property to its country of origin.

2.4 Convention for the Safeguarding of the Intangible Cultural Heritage (2003):

Focuses on protecting traditions, performing arts, rituals, and knowledge systems that form a nation's intangible heritage.

2.5 Convention on Biological Diversity (1992):

Includes provisions to protect cultural heritage linked to biodiversity, such as traditional knowledge and practices.

2.6 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995):

Addresses private law aspects of returning stolen or illegally exported cultural objects to their rightful owners.

⁴ www.knowledgeum.com – 10/12/2024 , 4.30 pm

2.7 International Council on Monuments and Sites (ICOMOS):

Provides technical advice to UNESCO on cultural heritage conservation.

2.8 International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM):

Focuses on training, research, and advocacy for cultural property conservation.

2.9 World Intellectual Property Organization (WIPO):

Works on protecting traditional cultural expressions and intellectual property rights related to heritage.

2.10 Blue Shield International:

Often referred to as the “Cultural Red Cross,” this organization protects cultural heritage during armed conflicts and natural disasters.

2.11 Interpol and the World Customs Organization (WCO):

Collaborate to combat the illicit trafficking of cultural goods and ensure their safe return.

3. HISTORICAL EVOLUTION

- The Indus Valley Civilization (c. 3300–1300 BCE) laid the foundation of India’s tangible heritage, with its advanced urban planning, seals, and sculptures. The British colonial period (1757–1947) witnessed the systematic looting of India’s cultural artifacts, many of which were transported to British museums⁵.
- British officials like Alexander Cunningham (founder of the Archaeological Survey of India, 1861) and James Prinsep initiated efforts to document and preserve India’s ancient monuments and inscriptions⁶.
- The Ancient Monuments Preservation Act (1904) marked the first legislative effort to safeguard heritage under colonial rule⁷.
- Post-Independence Era (1947 Onwards): National Identity and Preservation

⁵ E.g., Kohinoor diamond, Amaravati sculptures).

⁶ The Archaeological Survey of India (ASI) is a statutory body (Ministry of Culture) under the AMASR Act 1958 for archaeological research and protection.

⁷ The Ancient Monuments Preservation Act, 1904 Act 7 of 1904 Published on 18 March 1904 Commenced on 18 March 1904

- The national flag, emblem, and anthem were carefully chosen to represent India's unity in diversity. The Ashoka Chakra, derived from ancient Buddhist symbolism, was incorporated into the flag, signifying peace and progress.⁸

4. Laws Related to National Symbols and Heritage in India

India has a robust legal framework to protect its national symbols and cultural heritage. Here are some key laws:

4.1 Protection of National Symbols

The Emblems and Names (Prevention of Improper Use) Act, 1950: This law prohibits the improper use of national emblems, including the national flag, emblem, and anthem. It aims to prevent misuse for commercial or other unauthorized purposes.⁹

The Prevention of Insults to National Honour Act, 1971: This law penalizes acts that insult the national flag, the Constitution, the national anthem, or the Indian map.¹⁰

4.2 Protection of Cultural Heritage

The Ancient Monuments and Archaeological Sites and Remains Act, 1972: This law provides for the preservation of ancient monuments and archaeological sites. It establishes the Archaeological Survey of India (ASI) to oversee the protection and conservation of these sites.

The Antiquities and Art Treasures Act, 1972: This law regulates the export and import of antiquities and art treasures. It aims to prevent the illegal trade of cultural artifacts. The illegal trade in antiquities and art treasures is a global issue, and India has been particularly affected by the smuggling of its cultural property. The Antiquities and Art Treasures Act serves as a safeguard against the illicit trade in art treasures, which often involves forgeries, illegal exports, and the theft of invaluable cultural artifacts. The Act facilitates India's participation in international cultural diplomacy and the global effort to protect cultural property. It aligns with

⁸ Constitution law – Pandey

⁹ The Emblems And Names (Prevention Of Improper Use) Act, 1950
Act 12 of 1950 Published on 1 January 1950
Commenced on 1 January 1950

¹⁰ [Amended by The Prevention Of Insults To National Honour (Amendment) Act, 2003 (Act 31 of 2003) on 1 January 2003]
[Amended by THE PREVENTION OF INSULTS TO NATIONAL HONOUR (AMENDMENT) ACT, 2005 (Act 51 of 2005) on 20 December 2005]

international agreements, such as the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (1970), which aims to protect the world's heritage from illegal trafficking. By regulating and documenting antiquities, the Act ensures that historical and cultural artifacts are preserved in museums, archives, and other institutions. This preservation helps maintain the historical narrative of the country and allows future generations to learn about their cultural roots¹¹.

The Copyright Act, 1957: This law protects literary, artistic, dramatic, musical, and cinematographic works. It also protects traditional knowledge and cultural expressions.¹²

The prevention of damage of the public property act 1984: The Prevention of Damage to Public Property Act, 1984 serves an important function in protecting national infrastructure and preventing vandalism of publicly owned property. By imposing stringent penalties for those who cause damage during protests or other civil disturbances, the Act aims to maintain public order, safeguard public services, and uphold the rule of law. While its effectiveness in deterring large-scale destruction is significant, it has also raised concerns regarding free speech, protesting rights, and potential misuse. As with many laws, balanced implementation is key to ensuring that the Act serves its intended purpose without infringing on democratic rights.¹³

5. CONSTITUTION OF INDIA RELATED TO NATIONAL SYMBOLS AND HERITAGE:

5.1 Directive Principles of State Policy (Part IV):¹⁴

Article 49: The State is obligated to protect monuments, places, and objects of historical or artistic interest from spoliation, disfigurement, destruction, and removal. This reflects the government's role as a custodian of India's tangible cultural heritage.

*M.C. Mehta v. Union of India*¹⁵: This case, related to the pollution of the Taj Mahal, highlighted

¹¹ The Antiquities And Art Treasures Act, 1972 Act 52 of 1972 Published in Gazette 52 on 1 January 1980 Assented to on 1 January 1980 Commenced on 1 January 1980

¹² The Copyright Act, 1957 Act 14 of 1957 Published in Gazette 14 on 4 June 1957 Assented to on 4 June 1957 Commenced on 4 June 1957

¹³ The Prevention Of Damage To Public Property Act, 1984 Act 3 of 1984 Published on 16 March 1984 Commenced on 16 March 1984

¹⁴ Constitutional law – Mp.Jain

¹⁵ M.C. Mehta vs Union Of India & Ors on 30 December, 1996

Equivalent citations: AIR 1997 SUPREME COURT 734, 1997 (2) SCC 353, 1997 AIR SCW 552, 1997 LAB. I. C. 667, 1997 ALL. L. J. 254, (1997) 1 SCALE 61, (1997) 1 SUPREME 418, (1996) 2 ORISSA LR 435, (1997) 1 CURCC 127

the responsibility of the state to protect monuments of national importance. The court's orders to curb pollution and protect the Taj Mahal were influenced by the directive principles enshrined in Article 49. While there may not be specific cases directly citing Article 49, its underlying principle of protecting national heritage has been a guiding factor in numerous judicial decisions. These decisions have contributed to the preservation of India's rich cultural heritage and ensured that future generations can appreciate and benefit from it.

5.2 Fundamental Duties (Part IVA):

Article 51A(f): It is a fundamental duty of every citizen to value and preserve the rich heritage of India's composite culture.

*Heritage Trust vs Union of India*¹⁶: This case highlights the duty of citizens to preserve their cultural heritage under Article 51A(f). The court emphasized the role of the government in protecting heritage sites and the responsibility of citizens to respect and preserve them.

Article 51A(i):

Citizens must safeguard public property, which includes heritage sites and monuments, and to abjure violence that may harm them. *M.C. Mehta v. Union of India*: This case, often referred to as the "Pollution Case," highlights the duty of citizens to protect the environment, which is a form of public property.

State of Rajasthan v. Union of India: This case deals with the protection of forest lands, which are considered public property. The case arose in the context of a dispute between the State of Rajasthan and the Union of India concerning the management and protection of forest lands, which are considered to be public property under the Constitution of India. The Rajasthan government had taken a position that it had the authority to manage and utilize its forest resources as per its own needs and priorities. This stance conflicted with central laws aimed at forest protection, particularly the Forest (Conservation) Act, 1980, and earlier legislations that sought to regulate and restrict the use of forest land for non-forestry purposes. The Union of India, on the other hand, argued that forest resources are national assets and that the central government had the authority to legislate and take steps to prevent the indiscriminate exploitation of forests, given their importance to the environment and the overall ecological balance of the country. The Supreme Court held that forest lands are public property and that their protection is a matter of national concern. As such, the Union Government had the

authority to impose restrictions on the use of forests, even within a state's territory, particularly when such actions were deemed necessary to protect the environment and prevent ecological degradation.

5.3 Recognition of Scheduled Languages (Eighth Schedule):

The Eighth Schedule lists 22 languages, reflecting India's linguistic and cultural diversity. These languages form a crucial part of India's intangible cultural heritage.

5.4 Federal and Local Roles in Heritage Protection

Division of Powers (Seventh Schedule):

Union List (Entry 67):

The Central Government is responsible for the protection of ancient and historical monuments and archaeological sites of national importance.

State List (Entry 12):

The State Governments oversee the preservation of monuments and sites of local importance.

Concurrent List (Entry 40):

Both the Union and State Governments can legislate on archaeological sites and cultural treasures that do not fall under national importance.

6. LEGAL VS. SOCIAL IMPLICATIONS OF NATIONAL SYMBOLS AND HERITAGE PROTECTION

The protection of national symbols and heritage carries both legal and social dimensions, each with distinct implications. While laws ensure formal recognition, preservation, and enforcement, societal attitudes and practices determine how deeply these values are integrated into everyday life. Below is a comparison of the two perspectives:

6.1 Legal Implications

Formal Recognition:

Legal frameworks establish the status of national symbols (e.g., flag, anthem) and heritage sites. For example, the Emblems and Names (Prevention of Improper Use) Act, 1950¹⁷, safeguards national symbols from misuse. The Act stipulates penalties for any individual or organization found guilty of misusing or improperly using national emblems, symbols, or

¹⁷ Act 12 of 1950 Published on 1 January 1950 Commenced on 1 January 1950

names. The penalty includes: A fine, which may extend to one thousand rupees (a significant sum at the time of the Act's enactment, though the fine may have been revised or amended over time). Imprisonment for a term that may extend to two years, or both fine and imprisonment. These penalties are intended to act as a deterrent against the misuse of national symbols and to preserve their sanctity.

Heritage Laws:

Acts like the Ancient Monuments and Archaeological Sites and Remains Act, 1958, ensure the preservation and maintenance of cultural and historical sites. India has enacted various laws to preserve its rich cultural, historical, and archaeological heritage. These laws primarily deal with the protection of monuments, archaeological sites, artifacts, and the prevention of their destruction or illegal trade. Among the prominent acts is the Ancient Monuments and Archaeological Sites and Remains Act, 1958, but there are several others that complement its provisions for safeguarding India's heritage.

Enforcement Mechanisms

Punitive Measures: Legal violations, such as disrespect to the national flag or illegal trade of cultural artifacts, invite penalties. For instance, the Prevention of Insults to National Honour Act, 1971, criminalizes disrespect toward the national flag or anthem.

Punishment for Disrespecting the National Anthem: Section 3 of the Act specifically addresses any insult to the National Anthem, "Jana Gana Mana", and prescribes a punishment for those who disrespect it.¹⁸

Imprisonment for up to three years, or A fine, or both. This section applies to any person who disrespects, displays disrespect, or fails to show respect to the National Anthem.

Punishment for Disrespecting the National Flag: Section 2 prohibits the insult or desecration of the National Flag of India (the Tiranga). Imprisonment for up to three years, or A fine, or both. This section ensures that the flag is not used inappropriately or for commercial purposes in a manner that undermines its dignity.¹⁹

¹⁸ The act also states that anyone who has already been convicted of an offense under Section 2 or Section 3, and is convicted again, will face a minimum of one year in prison for each subsequent offense.

¹⁹ Burning, mutilating, or defacing Using as a costume, Embroidering or printing, Using as a receptacle

Prohibition of Insult to National Symbols (General Provisions): The law extends to the protection of national symbols other than the National Flag and National Anthem, although these two are the most commonly referred to in the Act. The general aim is to prevent any act of disrespect to the symbols that represent the nation's sovereignty and integrity.

Punishment for Misuse of National Symbols: Section 4 of the Act imposes punishment for the improper use or misuse of national symbols in a way that may damage their sanctity or cause insult. It is an offense to use the National Flag or National Anthem for commercial purposes, advertisements, or products, or in a disrespectful context such as in movies, advertisements, or other inappropriate settings.

Application to Public Gatherings and Events: The Act also applies to public gatherings, ceremonies, and events where the National Anthem is played. It ensures that all attendees must stand in respectful silence while the anthem is being played. Failure to do so is considered disrespectful, and it could lead to penalties under the Act.

Symbolic Protection: The Act is concerned with the symbolic importance of the national symbols. Therefore, even symbols, emblems, or representations of the National Flag and Anthem are protected, and any act that disrespects or misuses these symbols is punishable under the law.

Government Accountability: Laws impose obligations on governments to protect monuments and heritage, as mandated by Article 49 of the Constitution.²⁰

Global Obligations

International Cooperation:

Treaties like the UNESCO²¹ World Heritage Convention obligate nations to preserve sites of global significance, ensuring compliance through international monitoring.

Repatriation of Artifacts:

²⁰ Article 49 of the Constitution of India contains provisions relating to the State's obligation to protect cultural heritage. The said article is as under: "49. Protection of monuments and places and objects of national importance.

²¹ UNESCO has launched several pioneering programs, including:

The Universal Copyright Convention (1952)

Man and the Biosphere program (1971)

World Heritage Convention (1972)

Convention for the Safeguarding of the Intangible Cultural Heritage (2003)

Legal frameworks are often invoked in cases involving the return of stolen cultural artifacts, fostering international dialogue on ownership.

6.2 Social Implications

National Identity and Unity-

National symbols like the flag and anthem evoke patriotism and unity. They play a vital role in fostering a collective national identity, especially during crises or celebrations (e.g., Independence Day). The flag and anthem evoke powerful emotions in people, particularly during significant moments such as Independence Day celebrations or national victories in sports. It stirs deep feelings of patriotism, gratitude, and national pride, as people reflect on the sacrifices that enabled the country to gain freedom and achieve progress. The national anthem and flag serve as tangible manifestations of India's motto of unity in diversity. When they are displayed or sung, citizens are reminded that, despite the cultural, linguistic, and religious differences, they are one nation, bound together by common ideals of democracy, sovereignty, and freedom.

Cultural Continuity:

Heritage sites and traditions reinforce a sense of belonging and connection to history, fostering intergenerational transmission of cultural values. These elements provide a shared history and cultural identity, connecting individuals to a larger community. Heritage sites and traditions often serve as gathering points for communities, fostering social cohesion and a sense of shared purpose. They offer tangible links to the past, allowing people to understand their roots, how their society evolved, and the challenges and triumphs of their ancestors. Heritage sites and traditions can provide valuable lessons about past mistakes and successes, guiding future generations. Traditions, like festivals, rituals, and crafts, are often passed down through generations, ensuring the continuity of cultural practices. Heritage sites often become the backdrop for stories and oral histories, allowing older generations to share their wisdom and experiences with younger ones. Heritage sites and traditions showcase the rich tapestry of human cultures, fostering appreciation for diversity and understanding between different communities. By preserving and celebrating their heritage, societies can strengthen their identity, connect with their past, and ensure that their cultural legacy continues to thrive for generations to come.

Public Awareness and Responsibility

Community Involvement:

Society often plays an active role in preserving heritage through initiatives like cultural festivals, volunteer programs, and education.

Respect for Diversity:

India's heritage represents a mosaic of religions, languages, and traditions. Social respect for this diversity strengthens communal harmony.

Risks of Misuse or Disrespect

Ignorance or Apathy:

Lack of awareness can lead to neglect or misuse of symbols and sites. For instance, vandalism of heritage sites reflects social indifference.

Symbolic Nationalism:

Overemphasis on symbols may lead to superficial patriotism, overshadowing deeper cultural appreciation or inclusivity.

6.3 Legal vs. Social Implications: comparative study

While laws provide a crucial framework for protecting national symbols and heritage, it is equally important to foster a culture of respect and appreciation. This can be achieved through:

- **Education and Awareness:** Educating people about the importance of national symbols and heritage.
- **Community Engagement:** Encouraging community involvement in the preservation and protection of heritage sites.
- **Strict Enforcement of Laws:** Ensuring that laws are effectively enforced to deter acts of vandalism and theft.
- **International Cooperation:** Collaborating with other countries to combat the illicit trade of cultural artifacts.
- **Public-Private Partnerships:** Leveraging public-private partnerships to fund restoration and conservation efforts.
- **By striking a balance between legal measures and social awareness, we can ensure the continued protection and preservation of our shared cultural heritage.**

6.4 Interdependence of Legal and Social Aspects

- Laws can drive societal awareness, while social values ensure adherence to legal provisions. For example, laws protecting heritage sites succeed when communities actively engage in their upkeep.
- Social pressure often complements legal enforcement. Public outrage against the disrespect of symbols or heritage (e.g., vandalism or cultural appropriation) can prompt stricter adherence to laws.
- Legal mandates to include heritage education in curricula can foster societal respect for national symbols and traditions.

7. CHALLENGES

Challenges in Respecting National Symbols and Heritage

The challenges in respecting national symbols and heritage are multifaceted, stemming from both internal and external factors. Here's a deeper dive:

7.1 Internal challenges:

- **Insufficient Awareness:**

Many individuals, especially the younger generation, may lack a deep understanding of the historical and cultural significance of national symbols.

- **Limited Patriotism:**

A decline in civic education can lead to a decrease in patriotic sentiments and a weakened sense of national identity.

- **Misinterpretation and Misuse:**

Political Exploitation: Politicians often manipulate national symbols for their own gain, distorting their original meanings and fostering division.

- **Commercialization:**

Excessive commercialization can trivialize symbols, reducing them to mere commodities and eroding their cultural value.

- **Diverse Interpretations:**

Cultural Differences: In multicultural societies, differing interpretations of symbols can lead to misunderstandings and conflicts.

- **Generational Gaps:**

Older and younger generations may have varying perspectives on the significance of symbols, leading to generational divides.

- **Lack of Engagement:**

A lack of active participation in cultural events and heritage preservation activities can contribute to a decline in respect for symbols.

- **Complacency:** People may take national symbols for granted, failing to recognize their importance and vulnerability.

7.2 External Challenges:

- **Cultural Homogenization:**

The dominance of Western culture can erode local traditions and symbols, leading to a loss of cultural identity.

- **Consumerism:**

The rise of consumer culture can prioritize material possessions over cultural values, diminishing the importance of heritage.

- **Natural Disasters and Climate Change:**

Physical Damage: Natural disasters like floods, earthquakes, and hurricanes can damage historical sites and artifacts.

- **Environmental Degradation:**

Pollution and climate change can accelerate the deterioration of cultural heritage sites.

- **Destruction of Heritage:**

Terrorist organizations often target cultural heritage sites to erase history and sow fear.

- **War and Civil Unrest:**

Conflicts can lead to the destruction of historical monuments and cultural artifacts.

- **Addressing the Challenges:**

To overcome these challenges, a multi-faceted approach is necessary:

- **Comprehensive Civic Education:**

Incorporate lessons on national symbols, history, and culture into school curricula.

- **Strict Enforcement of Laws:**

Implement stringent laws to protect national symbols and heritage sites.

- **Public Awareness Campaigns:**

Organize campaigns to educate the public about the importance of preserving cultural heritage.

- **International Cooperation:**

Collaborate with other countries to protect shared cultural heritage.

- Sustainable Tourism:
Promote responsible tourism practices that minimize damage to heritage sites.
- Community Involvement:
Encourage community participation in heritage preservation efforts.
- Digital Preservation:
Utilize technology to document and preserve cultural heritage.

By addressing these challenges and implementing effective strategies, we can ensure that future generations can appreciate and benefit from the rich cultural heritage of our nation.

8. NATIONAL SYMBOLS AND HERITAGE: JUDICIARY ROLE

Bijoe Emmanuel vs. State of Kerala²²–

The case arose from an incident in a school in Kerala where three students Bijoe Emmanuel and two others were expelled for refusing to sing the national anthem during a school assembly. The students, who were members of a Christian sect (Jehovah's Witnesses), refused to sing the national anthem because it was against their religious beliefs. While the national anthem was being played, the students stood silently with their heads bowed. The school authorities expelled the students, arguing that they had shown disrespect for the national anthem by not participating. The students contended that standing in silence with their heads bowed was a sign of respect, not disrespect. They also argued that their refusal was based on their freedom of religion as guaranteed by the Indian Constitution.

The Supreme Court ruled that: Standing in silence with heads bowed was not an act of disrespect toward the national anthem. The right to freedom of religion (Article 25) must be upheld, and individuals are entitled to practice their religious beliefs, even when they conflict with certain state-imposed rituals. The national anthem and other symbols of national pride must be treated with respect, but the interpretation of how to show that respect may vary. While the Court upheld the need to respect national symbols, it also emphasized that respect does not require uniformity in practice, and other forms of showing respect (such as standing silently) are equally valid. The case is a landmark in balancing individual rights and the collective identity represented by national symbols. It also sets a significant precedent for the treatment

²² Bijoe Emmanuel & Ors vs State Of Kerala & Ors on 11 August, 1986

Equivalent citations: 1987 AIR 748, 1986 SCR (3) 518, AIR 1987 SUPREME COURT 748, 1986 (3) SCC 615, (1987) IJR 133 (SC), (1986) 3 SCJ 395, (1986) JT 115 (SC), (1986) 2 CURCC 744, (1986) 3 SUPREME 344, (1986) KER LT 1037, (1986) 99 MAD LW 89

of religious beliefs in relation to the constitutional rights of citizens.

Shyam Narayan Chouksey v. Union of India (2018) ²³–

This case arose from a public interest litigation (PIL) filed by Shyam Narayan Chouksey, a citizen of India, regarding the mandatory playing of the national anthem in cinemas before the screening of films. The petitioner sought a directive from the Supreme Court to make it compulsory for the national anthem to be played in cinemas as a sign of patriotism and respect for the country. The petition was based on a previous order by the Supreme Court in 2016, which had directed that the national anthem be played in cinemas before the screening of a film. The petitioner argued that it would help instill a sense of national pride and unity among the public. However, there were controversies regarding the order and the respectful display of the national anthem. The judgment reaffirmed the centrality of the national anthem in expressing national pride and unity. It reinforced that the anthem is a symbol of the nation's sovereignty and must be treated with respect, particularly in public places like cinemas, where a large number of people congregate. This case addressed the delicate balance between national unity and the fundamental rights of individuals. The Court made it clear that while respect for the national anthem is essential, it should not be enforced in a manner that violates personal freedoms such as freedom of speech, religion, or expression. The Court clarified that standing up in silence during the national anthem was adequate, and citizens could choose not to sing the anthem, so long as they stood respectfully. This was a vital aspect of the ruling, particularly for those who might have religious or personal objections to singing. The ruling showed the importance of public displays of patriotism, but also set limits to avoid making them compulsory in situations that might undermine individual freedom. The judgment made clear that patriotism should be voluntary and unforced, and should come from a place of genuine respect for the national symbols. This ruling serves as a legal precedent in establishing how the national anthem is treated in public places like cinemas, balancing the needs of national unity with the rights of individuals. The judgment is important for future cases that may deal with the conflict between personal freedoms and national symbols.

²³ Shyam Narayan Chouksey vs Union Of India on 9 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 357, 2018 (2) ABR 446, 2018 (1) AKR 838, AIR 2018 SC (CIVIL) 769, (2018) 1 KER LT 444, (2018) 1 GUJ LH 172, (2018) 1 JLJR 224, 2018 (2) KCCR SN 192 (SC), AIRONLINE 2018 SC 627, 2018 (1) AKR 357

Union of India v. Naveen Jindal and Another (2004)²⁴ –

The case Union of India v. Naveen Jindal involved the right to fly the national flag in India. Naveen Jindal, a private citizen and industrialist, had been actively campaigning for the right of citizens to fly the national flag at their homes and businesses. He had been involved in raising awareness about the repression of citizens' rights to display the Indian national flag. At the time, the Flag Code of India restricted the display of the national flag by private citizens. The restrictions were governed by the Flag Code of India, which mainly allowed the flag to be flown by government institutions and on state occasions. However, the code did not permit private citizens to fly the flag outside of specific circumstances, such as on official events or at designated buildings. Jindal had been questioned and detained by the authorities for hoisting the national flag on his premises, arguing that such actions violated the official regulations. In response, Jindal filed a public interest litigation (PIL) before the Supreme Court challenging the restrictions placed on the display of the national flag by private citizens.

The Supreme Court of India gave a historic judgment in favor of Naveen Jindal, and clarified that every citizen has the right to fly the national flag. The Court emphasized that the national flag represents the sovereignty, unity, and integrity of India, and therefore, citizens have a fundamental right to display it in a respectful manner. As a result of this judgment, the Flag Code of India was revised in 2002 to allow the national flag to be displayed by citizens, both on private buildings and in personal residences, subject to conditions. The revised Flag Code laid down specific rules on how the flag should be hoisted, including size, positioning, and the way it should be treated. The Court balanced the fundamental right of expression with the need to maintain the dignity of the national flag. The judgment emphasized that the dignity and respect for the flag should always be maintained, but citizens should have the right to display it without unreasonable restrictions.

State Rep. by The Inspector of Police v. D. Senthilkumar (2013)²⁵ –

In this case, D. Senthilkumar, a school teacher in Tamil Nadu, was accused of disrespecting the national flag during the celebration of Independence Day. He allegedly misused the national

²⁴ Union Of India vs Naveen Jindal & Anr on 23 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1559, 2004 (2) SCC 510, 2004 AIR SCW 705, (2004) 2 JT 1 (SC), 2004 (1) SLT 832, 2004 (1) SCALE 677, 2004 (1) ACE 602, (2004) 16 ALLINDCAS 178 (SC), 2004 (2) JT 1, (2004) 2 ALLMR 339 (SC), 2004 (2) UJ (SC) 955, 2004 UJ(SC) 2 955, (2004) ILR (KANT) (2) 1741, (2004) 73 DRJ 720, (2004) 2 JAB LJ 148, (2004) 15 INDL 47, (2004) 28 OCR 28, (2004) 1 SUPREME 880, (2004) 1 SCALE 677, (2004) 3 GCD 1793 (SC), (2004) 2 CURLJ(CCR) 231, (2004) 109 DLT 717

²⁵ CrI.OP No.15656 of 2020 And CrI.MP. No.5974 of 2020

flag by allowing it to touch the ground, which is considered a violation of the proper handling and respect for the national flag as per the Flag Code of India and other related laws. The issue escalated when the Inspector of Police filed a case against Senthilkumar under Section 2 of the Prevention of Insults to National Honour Act, 1971, which criminalizes the desecration or improper handling of the national flag or the national anthem.

The Supreme Court of India in this case dealt with the proper handling and respect due to the national flag and clarified the consequences of misuse or disrespect of national symbols. The Court reiterated that the national flag is a symbol of national pride, sovereignty, and unity. Any form of disrespect or improper handling of the flag can be considered an offense under the Prevention of Insults to National Honour Act, 1971. This includes actions such as the flag touching the ground, which is treated as a desecration of the flag. The Court acknowledged the importance of national symbols, emphasizing that the national flag should always be treated with utmost respect. It is illegal to allow the flag to touch the ground or to disfigure it in any manner. The act of disrespect, even if inadvertent, could lead to criminal liability under the law. The Prevention of Insults to National Honour Act, 1971 prohibits the insult or desecration of national symbols, including the national flag. The law makes it clear that anyone who disrespects or insults the national flag, whether knowingly or unknowingly, could face punishment. Section 2 of the Act specifically deals with the improper use of the national flag, including acts like allowing it to touch the ground, or disfiguring or defiling the flag. The Court upheld this provision, reinforcing that deliberate disrespect or negligence leading to the flag touching the ground can attract criminal charges. The Court examined whether the act was intentional or inadvertent. In this case, the Court considered that the flag's improper handling by the teacher (Senthilkumar) was a mistake due to his lack of awareness about the proper protocols for handling the flag, rather than an intentional act of disrespect. However, the Court noted that regardless of intent, carelessness in handling national symbols can be punishable. The Court also addressed the context in which the incident occurred—an educational setting during Independence Day celebrations. It acknowledged that the flag should be treated with care even in ceremonial settings, especially in schools, where students are often involved in such events. Teachers and other individuals responsible for the ceremony are expected to ensure proper handling of the flag. While the Court acknowledged the importance of punishing deliberate disrespect, it also took into account the context and intent of the act. As a result, the Court decided on a moderate approach in terms of punishment, taking into consideration whether the act was committed in good faith or due to ignorance of the proper procedures.

Sarvadnya D. Patil and Anr. v. State of Goa and Ors. (2001) ²⁶–

The case *Sarvadnya D. Patil v. State of Goa* dealt with the issue of whether the national anthem should be played before the start of every public event or film screening. Sarvadnya D. Patil and another petitioner challenged the non-compliance with the Indian Constitution and laws related to the proper display of the national anthem in public places in the state of Goa. They argued that the national anthem should be played before every public event, including cinemas, schools, and other public gatherings, as a measure to instill patriotism and respect for the national flag and anthem. The petitioners contended that there were instances in the state where the national anthem was either not played or was disrespected in some public settings, and they called for its mandatory display before the beginning of such events.

The Court emphasized the need for respect for national symbols. It laid down that any disrespect or misuse of the national anthem would be considered a violation of the law, as the national anthem represents the collective identity of the nation. It is necessary to ensure that the anthem is played with respect at appropriate occasions, but there cannot be a compulsion to play it at every event. The Court also mentioned that education regarding national symbols and their importance should be made an integral part of national consciousness and patriotism. This could include awareness campaigns and initiatives to ensure that citizens recognize the value of the national anthem and flag, not just as a matter of legal compliance, but as a symbol of unity and national integrity.

Indian Express v. Union of India (1985) ²⁷–

The case *Indian Express v. Union of India* revolves around a conflict between the freedom of the press and governmental restrictions on the publication of news. The Indian Express newspaper filed a petition challenging the government's action of imposing restrictions on the publication of certain news and information. In 1983, the Government of India had issued a press note under the Official Secrets Act, 1923, which sought to prevent the publication of certain information regarding the sensitive nature of national security, particularly relating to issues of foreign policy and military operations. The government argued that the publication of such sensitive information could jeopardize national security, as it was vital for maintaining

²⁶ Laxminarayan Chotelal Ladhoriya (... vs The Union Of India And Ors on 25 January, 2018

²⁷ Indian Express Newspapers (Bombay) ... vs Union Of India & Ors. Etc. Etc on 6 December, 1984

Equivalent citations: 1986 AIR 515, 1985 SCR (2) 287, AIR 1986 SUPREME COURT 515, 1985 TAX. L. R. 2451, (1985) CURLJ(CCR) 140, 1985 CRILR(SC&MP) 79, (1985) 2 SCR 287 (SC), 1985 (1) SCC 641, 1985 SCC (TAX) 121, 1985 2 SCR 287, (1985) 4 ECC 111, (1985) 1 COMLJ 115, (1986) 159 ITR 856

state secrecy. The Indian Express newspaper, on the other hand, argued that freedom of the press, guaranteed under Article 19(1)(a) of the Indian Constitution, was being violated by the government's restrictions. The newspaper contended that the imposition of censorship and other press controls was unconstitutional and would adversely affect the freedom of the media.

It reinforced the importance of the freedom of the press in India's democracy. The Court upheld that the press is a critical pillar of democracy, helping ensure transparency, accountability, and citizen participation in governance. This case created a balance between the freedom of the press and the need to protect national security. The Court acknowledged that while the press must be free to report and disseminate information, reasonable restrictions can be imposed in cases of national security concerns. The Court's judgment indicated that national security should not be used as a blanket justification for censorship but should be subject to scrutiny to ensure it is genuinely necessary. The Court's ruling established that judicial review plays an essential role in ensuring that government restrictions on press freedom are legitimate, proportionate, and justified. The Court emphasized that the government must not exaggerate national security threats to curtail press freedom and must show a clear and direct link between the disclosure of information and potential harm to national security. The judgment provided an important safeguard against the abuse of censorship laws. It emphasized that the Official Secrets Act cannot be used arbitrarily to prevent the dissemination of information that is in the public interest. The Court highlighted the need for proportionality and specificity in imposing restrictions on the press.

9. CRITICAL ANALYSIS:

- ❖ In cases where the flag or anthem is used in advertisements or art forms, such as in advertisements or films, the boundaries between artistic freedom and respect for national symbols are blurred, leading to legal and social challenges. Legal restrictions might be necessary, but they also limit artistic expression and the freedom of speech guaranteed under Article 19 of the Constitution.
- ❖ Urbanization vs. Heritage: As cities like Delhi, Mumbai, and Bangalore undergo rapid urbanization, there is a conflict between heritage conservation and real estate development. The Heritage Conservation Rules often come in conflict with the demand for urban expansion, leading to legal battles over the preservation of cultural sites versus modernization.

- ❖ The National Honour Act, 1971, criminalizes the disrespect of the National Flag and Anthem. The mandatory respect required by this law may seem necessary to maintain national pride; however, it raises questions regarding individual rights. The right to protest or express dissent sometimes involves using or challenging national symbols. The act might inadvertently suppress dissent or minority voices, creating a tension between national unity and individual freedom. In the *Shyam Narayan Chouksey v. Union of India* (2006) case, the Court upheld the mandatory playing of the National Anthem in cinemas but raised concerns about forced nationalism, where individuals were not allowed to express their objections freely.
- ❖ Cultural and Regional Identity vs. National Identity: In a country as diverse as India, national symbols sometimes become contentious, especially when they are used to assert a uniform national identity over regional identities. Regional pride (for instance, in the case of state flags) sometimes comes into conflict with the symbolic unity represented by the national flag.
- ❖ National symbols are often invoked in political protests. In India, there have been instances where dissenters have used the national flag and symbols to express opposition to government policies, sometimes leading to controversial interpretations of what constitutes "respect" for the flag. Case of *Kanhaiya Kumar and the JNU Protest* (2016): The JNU protest, where students were accused of disrespecting the National Anthem, led to divisive debates about patriotism, freedom of speech, and the limits of symbolic protest. The case highlighted that national symbols should not be used solely to police patriotism but to inspire a deeper connection to the nation's values.
- ❖ Impact on Indigenous Practices: The commodification of cultural symbols, such as the tribal crafts or the use of traditional attire in fashion, can undermine the authenticity of these symbols. This raises questions about how global tourism affects local cultural practices, and whether legal protection can prevent the misappropriation of these symbols.
- ❖ Cultural Imperialism and Nationalism: There are concerns that national symbols are sometimes imposed on citizens in a way that marginalizes diverse expressions of identity. For example, the National Flag Code prohibits the improper display of the flag, but its enforcement could be seen as an imposition of state-sanctioned patriotism on those who might have alternative national symbols or identities.

10. Conclusion:

The duty with respect to national symbols and heritage encompasses both legal obligations and social responsibilities, and it holds profound implications for the identity, unity, and cultural integrity of a nation. In India, national symbols such as the Flag, National Anthem, and Emblem are not only important markers of national identity but also embodiments of the country's values and historical legacy. Similarly, India's cultural heritage, including monuments, traditions, and artifacts, represents the continuity of a nation's rich history, offering a bridge between past generations and future ones. The legal and social duties with respect to national symbols and heritage are deeply intertwined with a nation's sense of identity and unity. While legal measures provide a framework for safeguarding the dignity of national symbols and protecting cultural heritage, the broader social responsibility is to ensure that these symbols are meaningful to all citizens and that respect for them does not come at the cost of individual freedoms or diverse expressions of identity. The legal protections must be carefully balanced with fundamental rights, particularly freedom of expression and cultural pluralism, ensuring that national symbols and heritage continue to serve as sources of pride and unity, while respecting the plurality of the nation's identities. Ultimately, the duty to uphold national symbols and heritage is not just a matter of legal compliance but also a reflection of a collective, evolving consciousness about what it means to belong to a nation.

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