



CULTURAL OBJECTS' THEFT

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ABSTRACT

Cultural objects serve the purpose of preserving the traditions of a civilisation through time. The price of a painting (say) cannot today be reduced to the cost of its materials and the time taken to paint it. The price reflects, instead, the artistic merit and thus scarcity of the painting, assessed by subjective consensus in terms of conception, originality, content, style, execution and so forth—the painting is said to have cultural value. Many cultural objects have a religious or otherwise ritual significance. Objects with such time traversing value are bound to catch the eyes of thieves and their theft has been a popular issue among the academicians. Some cultural objects can mean different things to different people. Through this paper, we intend to analyse the significance of these objects, the laws and conventions related to them, the lacunas, the organisations working to protect them and some solutions. The paper is concluded by a case study.

Key words - Cultural Artefacts, Heritage, Community Participation, Inherent and attached Value

INTRODUCTION

In the last few decades, academicians have abandoned the old tradition of confining themselves to a single subject. They have started to use methodologies and schemes distinctive of their fields to analyse matters. Similarly, legal academicians have also understood that the legal issues are intertwined with subjects outside of law such as Sociology, History, Anthropology, Economics and others. Donna Yates, for example discusses the theft of devotional objects from churches in Bolivia. Neil Brodie, Sam Hardy and Christiana Panella focus on 'antiquities', cultural objects of historical interest excavated from archaeological sites

Simply stated, law and economics, or economic analysis of law, is a legal theory or methodology that applies economic principles to law. Economic concepts are used to explain the effects of law, to assess which legal rules are economically efficient, and to predict which legal rules will be promulgated.¹ Economics is the science of human choice in a world where resources are limited in relation to human desires or needs. It explores and tests the implications of assuming that man is a rational being who *maximises* his ends in life, his satisfactions, and his self-interest². As a result of defining man as a rational *maximise* of his self-interest, it derives that people respond to incentives: if a person's surroundings change so that he could increase his satisfactions by altering

his behaviour, he will do so.³ Law and economy share a symbiotic relationship, a close relationship between legal system of a country and configuration of economy is always acknowledged. The most apt example of interdisciplinary approach are Benthamites—Economic Analysts of Law—around. These scholars look at the legal world from the standpoint of existing economic theory. And if the world does not do what that theory seems to suggest it ought to do, they dismiss the world as irrational. The future of Law and Economics lies in this sort of mutual relationship. It lies not in making law subservient to economics, but in using the analytical strength of economic theory in conjunction with the empirical insights into people's wishes that the legal system gives. So combined, both theory and practice will become better able to serve our wants and needs.

In the present study, it is relevant to understand the change in dynamics with respect to economics which takes place in cases of theft of cultural artefacts and how the laws

governing the same impacts the entire process. Attempt is made to analyse the role of law in preventing such theft and to find out the lacunas in these laws so as to preserve the valuable artefacts while at the same time ensure that their buying and selling benefits the economy and they do not end up in black markets.

I. DEFINITION

A discussion on the theft of Cultural Artefact could rights begin with understanding its meaning and significance.

The Section 2⁴ of The Antiquities and Art Treasures Act, 1972 defines antiquities as objects illustrative of art, culture, science, religion, customs, tradition etc from the bygone era. It maybe a coin, sculpture or an object detached from a building. Broadly speaking, a **cultural artefact** is an item that reveals valuable information about the society, to which it belongs.

Burial coins, painted pottery, manuscripts or anything else that evidences the social, political, economic or religious organization of the people whom they belonged to can be considered cultural artefacts. It embraces the objects made by man or modified by man. It excludes natural objects. Article 2 of the draft convention by the International Institute for the Unification of Private Law ("Unidroit") defines "cultural object" as "any material object of artistic, historical, spiritual, ritual or other cultural significance. By any definition, these artefacts are generally items of considerable historical and artistic merit. They can be the centre pieces of active cultures and religions.⁵

⁴ 2.(I) Definitions-

(1) In this Act, unless the context otherwise requires—

(a) "antiquity" includes

(i) any coin, sculpture, painting epigraph or other work of art or craftsmanship;

(ii) any article, object or thing detached from a building or cave;

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;

(iv) any article, object or thing of historical interest;

(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act,

which has been in existence for not less than one hundred years; and

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;

⁵ The Economics of Antiquities Looting and a Proposed Legal Alternative Author(s): Lisa J. Borodkin

Source: Columbia Law Review, Vol. 95, No. 2 (Mar., 1995), pp. 377-417

They may be classified into the following category-

1. Art (paintings, drawings, prints, sculpture, photography)
2. Diversions (books, toys, games, meals, theatrical performances)
3. Adornment (jewellery, clothing, hairstyles, cosmetics, tattooing, other alterations of the body)
4. Modifications of the landscape (architecture, town planning, agriculture, mining)
5. Applied arts (furniture, furnishings, receptacles)
6. Devices (machines, vehicles, scientific instruments)⁶

Archaeologists uncover many historically-significant artefacts that shed some light on how people lived in ancient societies. An artifact tells a story, but the story might be heard differently by each archaeologist, anthropologist or casual museum goer. It's important when examining a cultural artifact to use other clues that help piece together a more complete picture of the entire society. For example, the sculpture of "Priest-King" from Mohenjo Daro reflects the common use of jewellery in the upper caste of Harappan Civilisation. Figurines, like these, inform about the clothing style, hairstyle, and prevalent practices of those period. For example, almost all male figurines have a turban, or similar style of headdress. Some male figurines which are intact with their arms may hold a spear, signalling strength and protection of the Indus from outside attack. Many adult male figurines have a projection on the chin for a beard, some closely combed, others combed out, and spread wide.

II. SIGNIFICANCE

As the above paragraph explains that artefacts serve as peep-holes to the earlier civilisations, their importance can be emphasised by the following points:

1. Inherent and Attached Value

The most obvious cultural belief associated with material objects has to do with value. There are different kinds of value. One, intrinsic in the fabric of an object itself, is established by the rarity of the materials used. Such value will inhere in the object for as long as the material continues to be valuable. With gold or silver or precious stones, this kind of value is quite persistent. More transient or variable are those values that have been attached by the people who originally made or used the object,

⁶ Mind in Matter: An Introduction to Material Culture Theory and Method Author(s): Jules David Prown Source: Winterthur Portfolio, Vol. 17, No. 1 (Spring, 1982), pp. 1-19

by us today, or by people at any intervening moment. A value that accrues from the utility will inhere as long as an object continues to be useful and can be returned when an obsolete object again becomes useful.

2. Surviving Historical Events

Objects created in the past are the only historical occurrences that continue to exist in the present. They provide an opportunity by which "we encounter the past at first hand; we have direct sensory experience of surviving historical events."⁷ Artefacts may not be important historical events, but they are, to the extent that they can be experienced and interpreted as evidence, significant.

3. Voice of the Subaltern

These artefacts are not confined to the written manuscripts; therefore, they also act as the voice of the lower classes and the illiterates. The history, throughout, the world has been written by the educated ruling classes hence it lacks representation of ruled or the weaker sect of the society. Whereas these artefacts provide an insight in the day to day lives of the common people. Such as sculptures of toys and vehicles or idols tells the daily recreational stories. Therefore, these cultural artefacts ensure representation of all classes.

4. Preservation of Cultural in a Multi-Cultural Society

A place which has been subjected to invasions, time and again, may lose its initial fabric and get moulded into the new culture. Therefore, cultural artefacts play an important role in bringing forward the lost arts of the bygone era. For instance, under the influence of Victorian morality, homosexuality was an offence in Indian Penal Code. However, the temples of Khajuraho depict images of women erotically embracing other women.

These are the few reasons for which artefacts and their study is vital to understand the true colour of a civilisation and its development over the centuries.

III. THEFT OF ARTEFACTS AND ECONOMICS: IMPORTANCE

According to Global Financial Integrity, a Washington-based advocacy group, illegal trade in paintings, sculptures, and other artifacts is one of the world's most lucrative criminal

⁷ 4 Jules David Prown, "Style as Evidence," Winterthur Portfolio 15, no. 3 (Autumn 1981).

enterprises, estimated at \$6 billion a year. And India, with its redoubtable cultural heritage, bureaucratic apathy, and tardy implementation of antiquities protection laws, offers pilferers fertile ground to plunder the past and spirit away booty worth billions for sale in the international bazaar.

UNESCO has confirmed that **ISIS trafficks in art** and antiquities to finance its operations, and that it earned **approximately \$1 million of revenue a day in 2016**.

In 2015, **Operation Hidden Idol** was launched by USA's Homeland Securities Investigation Department which to recover and repatriate looted around 2600 Artifacts and Antiquities by Subhash Kapoor worth an estimated 650 Crores (\$100 million)

A Chola era sculpture of Shiva and Parvati (“Festival Bronze statue”) stolen from TamilNadu and smuggled into the US was eventually returned to India.

International Art market is a \$50 billion market that is **almost entirely unregulated**.

Indian antiquities also regularly feature in scams involving the world’s two largest auctionhouses – Sotheby’s and Christie’s. Employees of these organizations have been known to work in connivance with Indian smugglers in the past to peddle stolen artifacts at auctions. Even websites like eBay claim to be selling Indian antiquities.

WHAT DOES A COUNTRY STAND TO LOSE WHEN ITS ANTIQUITIES ARE STOLEN?

- Double Jeopardy due to illicit removal of cultural objects
- **Irreplaceable:** Stolen antiquities are irreplaceable by themselves
- **Loss of Heritage:** Crucial historical information and legacy about the artefact and its period is lost.

IV. THE LEGAL PROVISIONS AVAILABLE TO ADDRESS SUCH THEFT

PREVENTIVE MEASURES:

1. Antiquities and Art Treasures Act in India: An Analysis

Antiquities: According to the Antiquities and Art Treasures Act, 1972, an “antiquity” is an article or object that is at least 100 years old. These illustrate the science, art, crafts or customs or religion or literature of a bygone age, or anything of historical interest.

As per the Act, Antiquity includes:

1. any coin, sculpture, painting epigraph or other work of art or craftsmanship;
2. any article, object or thing detached from a building or cave;
3. any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;
4. any article, object or thing of historical interest;
5. any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act

However, if it is a manuscript or record of any scientific, historical, literary or aesthetic value, it should be at least 75 years' old. **Art Treasure:** An **art treasure** is a humanwork of art, other than an antiquity, declared to be a treasure by the Centre for its artistic value after the artist's death.

2. To facilitate Custom Authorities in allowing non-antiquities to be exported, the Archaeological Survey of India (ASI) has established **Expert Advisory Committees to issue non-antiquity certificates authorities** to distinguish between antiques and non- antiques.
3. An **Antique Cell** has been opened in Central Bureau of Investigation (CBI) for investigation into cases of thefts and losses of antiques
4. **National Mission on Monuments and Antiquities (2007):** It aimed to prepare a National Register on Antiquities by documenting antiquities from different sources in a uniform format. As of 2016, over 14 lakh antiquities have been documented (Culture Ministry). The mission will also help establish provenance in the retrieval of smuggled antiquities, in addition to promoting public awareness and participation in the safeguarding of antiquarian wealth. A committee has also been set up to review museum security requirements for a comprehensive security policy.
5. Indian Treasure Trove Act 1949
6. **National Manuscript Mission** for Documenting Heritage
7. **Bilateral agreements** to recover smuggled artifacts

For instance- Australia will return Nataraja Idol (Bronze) under its own Protection of Movable Cultural Heritage

Act. It was originally from **Sapthakanni Temple** in Sripuranthan (under Chola times). **Australia is also a signatory to a UNESCO convention** on the illicit import, export and transfer of ownership of cultural property

V. INTERNATIONAL TREATIES AND CONVENTIONS THAT PROTECT ARTIFACTS AND ANTIQUITIES:

Civil Society Initiative: India Pride Project: It is a volunteer-network spread across the globe, that tracks and brings back India's stolen antiques and art treasures.

1. Protection under **Hague Convention (1954)**

- It provides for protection of **Cultural Property in the Event of Armed Conflict**
- Rules to protect **cultural goods** during armed conflicts such as monuments, art, archaeological sites, scientific collections, manuscripts, books and other objects of artistic, historical or archaeological interest to ensure the cultural legacy doesn't get affected during war.
- The Hague Convention was adopted in the wake of the severe cultural destruction that occurred during the Second World War
- Convention defines a **Protective Sign ("Blue Shield")** to facilitate the identification of protected cultural property during an armed conflict

2. Protection under **Geneva Convention on War**

- Establishes the standards of international law for the humanitarian treatment of war.
- Under Article 53 of **Protection Of Cultural Objects And Of Places Of Worship in the Event of Armed Conflict**– it provides for protection of UNESCO world heritage sites

3. Under **UNESCO Convention** on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)

The Convention provides that the contracting parties would take steps to prevent illicit import into their territories of stolen cultural property.

- Circulation of artifacts are prohibited under this UNESCO treaty
- **India is a signatory** to this treaty
- For instance, Koh-i-noor diamond and others in Western Museums is nothing but **illegal acquisition**. Hence, As both India and UK are signatories to this Convention, this too comes under the mandate.

5. **UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995):** It defines nature of the objects covered and includes provisions for the restitution of stolen property. The Convention calls for the return

of illegally exported cultural objects and outlines the circumstances under which such property shall be ordered returned.

VI. WHY HAVE LEGAL PROVISIONS IN INDIA BEEN INEFFECTIVE?

1. **Indian Treasure Trove Act (1949)**

- This act is too obsolete, was last amended in 1949
- Because any object worth more than (mere) 10 Rs found hidden in soil is regarded as “Treasure”!
- Barriers to Good Samaritans: Person who dutifully reports the find is often made to go through Cumbersome procedure

2. **Antiquities and Art Treasures Act**

- Under this act- **antiquities in private possession** must be registered and person trading in them must get a license.
- But improper enforcement of law, and lack of punitive action on traders without licences has made a mockery of this law

3. **Archaeological Survey of India (ASI) has been criticized** by a 2013 CAG report for **failing to even recognize few artifacts** set to return for repatriation by USA and Australian authorities

- That **ASI has no policy for management of antiquities**. Storage conditions of these antiquities in monuments like Safdarjung’s Tomb and Purana Qila are pathetic.

4. Our laws **inhibit Community Participation**

- Local community is usually the first respondent to path-breaking discoveries
- Many a case such as recent **Rakhigarhi Excavation** (which went on to become largest IVC site) was first reported on Farming land by local workers and farmers
- In absence of incentives to identify and report such Treasure Troves to authorities, they suffer irreparable damage as people treat them as derelicts:

VII. OTHER CHALLENGES:

1. **Definition of Antiquity:** Critics argue that the legal definition is so wide that anything over 100 years automatically becomes an antiquity.

2. **Illicit Trade:** India’s rich cultural heritage, bureaucratic apathy and poor implementation of antiquities

protection law has made India a fertile ground for loot and smuggling of antiquities for sale in the International market. In recent years, there has been growing concerns over antiques being smuggled and sold to fund terrorists' activists.

3. **Lack of database:** There is a lack of an integrated database of existing and stolen artefacts. In the absence of any centralised information, there is always a high risk of loss of antiquities.

4. **Poor conservation:** Poor restoration and conservation of antiquities in museums is a major concern. Most of the antiques and art treasures need immediate conservation. In most cases, the objects received for conservation are already damaged beyond restoration.

5. **Replicas:** The production of replica of an antiquity in the same size, material and fabric is not prohibited. This gap in law has greatly facilitated replacement of several original objects with replicas.

6. **Deterrence to registration:** The 1972 Act introduced various avenues for the government to raid and prosecute private collectors on grounds, like "inadequate maintenance of the object". Stringent curbs have been placed on the movement and trade of antiquities, even within India. Such provisions deter most people from registering their antiquities. This has inadvertently led to the smuggling of antiques by discouraging the domestic trade. Further, registering antiquities with the Archaeological Survey of India (ASI) has been a cumbersome and difficult procedure for most collectors deterring registration.

7. **Punishment:** The penal provisions in the Act are too mild to deter people from violating the Act.

8. **Issues with ASI:** The ASI's focus and resources have been primarily channelled towards the maintenance, restoration and preservation of ancient monuments and archaeological sites. The additional mandate for supervising the antiquities market has put a strain on its limited resources.

9. **Issues with Investigation:** The investigative agency dealing with theft/ smuggling of antiques are lack expertise in dealing with such cases. The CBI has not built the capacity to deal with stolen antiquities. A few State government who have special wings as part of their police force, are also understaffed and unqualified. This also led to low appearance of Indian antiquities on the stolen list of Interpol.

VIII. PROPOSED AMENDMENT TO ANTIQUITIES ACT, 1972

The Draft Antiquities and Art Treasures Regulation, Export and Import Bill, 2017 The important provisions of the Bill are:

- It says that every licence issued under the 1972 Act will stand repealed once the new bill becomes a law.
- The draft prohibits the export of antiques, unless it is done by the government or its agencies.
- However, it allows trade in such items virtually without any restrictions within the country. A dealer must notify the government of the transaction through an online portal maintained by the ASI
- The draft has also waived customs duty for anyone who brings back antiques of Indian-origin after lawful purchase and artists who bring back their own creations.

The Draft Antiquities Bill, 2017 has raised concerns among activists about facilitating theft and boost illegal trade due to its loose provisions on registration and licence.

IX. SOLUTIONS

1. Poor management and smuggling of antiques highlight the loopholes in Antiquity Act of 1972 and the need to bring about a new comprehensive law to safeguard Indian Antiques and art treasures.
2. Museum security requirements should be assessed and strengthened to curb theft of antiques and artefacts
3. The Archaeological Society of India (ASI) must be tasked only with the preservation and maintenance of public antiquities. The ASI must not be overburdened with responsibilities which fall outside the scope of its core competence. Therefore, there is an urgent need to create empowered agencies to deal with antiques
4. It is important to develop a robust database of existing and stolen antiques and artefacts. As advised by Central Information Commission, centralised public documentation system containing the details and photographs of stolen antiques is an urgent need.
5. An international collaboration is required to stop illegal export and import of antiques.
6. It is important to cultivate public engagement and awareness for the protection of India's cultural heritage

LESSONS FROM OTHER COUNTRIES

(i) **Community Participation**

- Best practices in England and Wales have shown remarkable success in reducing theft of artefacts
- **Portable Antiquities Scheme:** Encourages local communities to voluntarily report and register discovery of artefacts with help of experts
- Resulting database is placed in the public domain

- India can learn from such laws and adapt features to suit Indian Conditions
- (ii) **Enhanced and Dedicated Policing**
- **Dedicated Art Police** in Italy (country with highest UNESCO Natural and Cultural Heritage sites)
- In 2009 itself, they recovered 60,000 pieces of looted antiquities and helped reduce art theft by 15%

For example: The cultural heritage squad of Carabinieri, the Italian armed police force.

- The Cultural Heritage squad (set up in 1969) has built an impressive database of about 1.1 million missing artefacts and is the most acclaimed police force in protecting antiquities.
- The officers are well-trained in art history, international law, and investigative techniques.
- Till 2016, the force has recovered more than 8,00,000 stolen artefacts within the country. The squad is also known for its aggressive pursuit of restitution cases.

(iii) **India should learn from USA's Operation Hidden Idol**

- India should work on a mission mode to recover theft of its own artifacts by launching a **policy for management of Antiquities** and make ASI accountable for it.
- It includes checking catalogues at international auction houses, posting news of such theft on websites, posting information about theft in the International Art Loss Registry, sending photographs of stolen objects electronically to dealers and auction houses and scholars in the field.

X. CASE STUDY: SUBHASH KAPOOR

Subhash Kapoor is a New York-based art dealer on trial in Chennai for allegedly running a \$100 million international smuggling racket. He was previously the owner of the *Art of the Past* gallery in Manhattan. His sister business, *Nimbus Import/Exports*, specialised in selling antiquities from across the Indian Subcontinent and Southeast Asia to major museums around the world.

1. A tip off by Indian customs authorities in 2007 with a consistent follow up by the Indian counsel in the US which led the US agencies to act. The majority of the pieces being repatriated were seized during Operation Hidden Idol, an investigation that began in 2007 after Homeland Security special agents received a tip off about a shipment of seven crates destined for the US manifested as "marble garden table sets". This tip-off was provided by the Directorate of Revenue Intelligence, a customs department intelligence wing.

3. On detailed examination by ICE, the consignment was found to contain rare Indian art and antiques. The consignment was abandoned by Subhash Kapoor and it was used by ICE as evidence against Kapoor. The then Indian consul trade had lodged the claim of Indian ownership of the antiquities with Customs and Border Protection Agency.

4. After collecting detailed intelligence, information about Subhash Kapoor's activities, ICE searched various galleries and warehouses owned and controlled by Kapoor on 5th January 2012. ICE in the course of search stumbled upon a treasure trove of antiques in those galleries and warehouses.
5. Investigations done by ICE established that "Art of the Past," a gallery located at 1242 Madison Avenue, NY was owned and operated by Subhash Kapoor. "Kapoor Galleries" located at 1015 Madison Avenue is owned and operated by Ramesh Kapoor and his son Suneet Kapoor. Ramesh Kapoor and Subhash Kapoor are sons of Parshotam Ram Kapoor, who was an antiques dealer. Parshotam was operating in antiquities trade since 1947 from Jalandhar in Punjab. Sometime in 1962, he along with his two sons Subhash and Ramesh relocated to New Delhi to accommodate the growing demands of the antiquities trade. Both Subhash and Ramesh moved to New York in the mid-1970s, they had been trading in Indian antiquities since then.
6. Subhash Kapoor, owner of Art of the Past Gallery, was arrested in Germany on the basis of Interpol Red Corner Notice and is now awaiting trial in India. Investigations later revealed that Kapoor had hawked the artifacts not only to private collectors but also to acclaimed institutions, such as the Honolulu Museum and Peabody Essex Museum, which eventually surrendered the illicit antiques. Sleuths have since executed a series of search warrants targeting Kapoor's New York City gallery, seizing artifacts worth more than \$100 million.
7. Among the antique pieces returned was a statue of Saint Manikkavasagar, a Hindu mystic and poet from the Chola period (circa 850 AD to 1250 AD), which was stolen from Sivan Temple in Tamil Nadu and is valued at \$1.5 million. Also, in the first lot is a bronze sculpture of Ganesh, estimated to be 1,000 years old, and a Jain figure of Bahubali.
8. Some 200 more pieces stolen from India will be returned shortly. Moreover, some 3,000 pieces will follow as the two sides begin institutionalised cooperation to sweep up such items in the US and elsewhere. Officials in DRI are quite upbeat about the operation's success and happy that this operation has paved way for many such joint operations in future with ICE now called Homeland Security and Investigations.
9. Subhash Kapoor is currently in custody under trial.

XI. CONCLUSION

According to the National Mission for Monument and Antiquities, there are approximately 7 million antiquities in India. But by March this year, only 1.3 million had been documented. A report by the Comptroller and Audit General stated in 2013 that the ASI had never participated or collected information on Indian antiquities put on sale at Sotheby's and Christie's as there was no clear provision in the Antiquities Act, 1972 for doing so.

The repatriated antiques are just two of more than 2600 antiquities that have been discovered around the world. The investigation remains ongoing. Though these measures augur well for the future of Indian heritage, experts say there is an urgent need for more proactive measures, factoring in the needs of all stakeholders. As Naman P. Ahuja, professor at JNU explains, “Thieves may smuggle Indian heritage, but the inaction of policymakers can destroy it forever.”

