

## THE OUTDATED ANTIQUITIES

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### ABSTRACT

*Antiquities are the gateways to our past civilisation and they collectively hold our civilisation together by tracing us all to the same common ancestors. The cursor to civilisation of the Ancient Hindoosthan is being traumatised today even the word Antiquity is ambiguous due to the incompetence and ineffective implementation of the Antiquities and Art Treasures Act, of 1972. The confusing and tiring features of the act itself form a cornerstone for the black market to flourish hence the records of the government themselves fail to recognize and maintain the potential antiquities available in the country. We are in immediate need of a holistic and pragmatic national heritage policy that can inculcate and tackle the diverse threats coming it's way. In this article, the author will discuss and analyse the present scenario of the antiquity market and its relevant laws and their demerits. Further, the author will also discuss some of the proposed suggestions to overcome these inefficiencies. The historical perspective of the land is affected due to these special but clumsy provisions which in turn muddles the future picture of the civilisation.*

**Keywords:** Antiquities, Civilisation, Art, Treasure, heritage, Policy.

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### INTRODUCTION

The parent legislation holding sway over the matter of antiquities is the Antiquities and Art Treasure Act of 1972 {hereafter referred to as the principal act} which was the by-product of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property of 1970. The principal act is under the umbrella of the Archaeological Survey of India and the Cultural Ministry of India. The predecessor of the principal act was the Indian Treasure Trove Act of 1878 which was a British legislation hence it is clear that the intent was not to safeguard the antiquity and the remains of the civilisation of the then British India but to facilitate the smooth regulation of the shoplifting of the same. The relevancy and the vagueness of the British Act can be deduced by its

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provisions which were all based on how to divide the interesting material of treasure and all the matters incidental to the treasure thereupon.

### **CONTEMPORARY ORDEAL AND THE PRINCIPAL ACT**

There is a huge fog in the principal act, even if the consideration of it being liberal is taken, it would still not be an exaggeration to label it as irrelevant if not incompetent. It lacks the precision of the UNESCO conventions which describe antiquities and artifacts in a wide and explicit sense. But the act at disposal which deals with the current scenario of the Indian antiquity realm describes the word antiquities and art treasure in a very limited and indecisive sense<sup>1</sup>. For instance, the definitions provide an age threshold for a “thing” to become antiquity which is of 100 years above. Which by default makes anything older than 100 years of antiquity. In the normal discourse, it is of no importance but when the current laws are employed it leaves a humongous room for interpretation both for the judiciary and for the ASI which is the working arm in these cases. Further, after the base the major acrobatics of law can be seen in the registering process of antiquity which is very ungainly and cumbersome and works like a fertilizer for the black market of the antiques. As a result, the number of artifacts registered with the ASI is just 3.5 lakhs and the actual number of antiquities is estimated over 3 billion. Hence the people who own these artifacts approach the international black market which provides them with a huge amount of profit and less cumbersome procedure. Another reason why the authorities still have blank coffers due to the heavy stealing of artifacts is that ASI still engages private firms because of their modern equipment and efficiency, which creates an administrative wound since they cannot be held responsible<sup>2</sup>.

Furthermore, the adjacent working of ASI is always needed in the registering and sustaining of the antiquity which requires a decent amount of resources but due to the administrative lacuna of the principal act and the governing basis of ASI, the majority of the resources of the ASI are employed for the maintenance, restoration and preservation of the ancient monuments and archaeological sites creating a whirlpool of ineffectiveness.

Further, the lack of political will to safeguard and actually do something about the issue regarding illegal antiques is also distorting the historical imperatives. But, initiatives like

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<sup>1</sup> The Antiquities and Art Treasures Act, 1972, §2.

<sup>2</sup> Yogesh Kabirdoss, 1200 ancient idols stolen from Tamil Nadu temples in 25 years: Audit, Times of India (Jan. 23, 2018), available at <https://timesofindia.indiatimes.com/city/chennai/1200-ancient-idols-stolen-from-tamil-nadu-temples-in-25-years-audit/articleshow/62611654.html> (last accessed 23<sup>rd</sup> May, 2023)

National Mission on Monuments and Antiquities (NMMA) bring a positive breakthrough to the realm of antiques. In the initial decade of the 21<sup>st</sup> century which marked the beginning of a new chapter for both Indian economics and Indian art treasure a result national heritage committee was formed under the chairmanship of Justice Mukul Mudgal but that failed due to unspecified reasons and the report of the same is not in the public domain<sup>3</sup>.

### **CLEMENT'S LAWS AND LACK OF INGENUITY**

The penalties outlined in the act for offenses related to antiquities are relatively lenient, failing to serve as a sufficient deterrent<sup>4</sup>. This inadequacy enables the continuation of illicit activities, as the potential gains outweigh the potential consequences. To address this issue, there is a need to revise and update the Antiquities and Art Treasures Act, of 1972, incorporating stricter penalties that reflect the gravity of offenses and serve as a deterrent to potential wrongdoers.

Another notable drawback of the current legal framework is the absence of a centralized database for antiquities in India. This lack of a comprehensive documentation system impedes efforts to accurately account for and track the vast number of antiquities present in the country. Without a reliable database, it becomes challenging to identify stolen or illegally traded artifacts, hindering their recovery and the prosecution of offenders. Therefore, it is crucial to establish a centralized national database that includes detailed information on all registered antiquities, their provenance, and ownership history. Furthermore, the maintenance and management of this database should involve the active participation of experts and scholars in the field of antiquities. Their expertise would contribute to accurate cataloguing and classification, ensuring that the database becomes a valuable resource for research, preservation, and legal enforcement.

To improve the effectiveness of the legal framework, it is essential to enhance transparency and public awareness regarding antiquities. Public awareness campaigns should be developed to educate the general population about the significance of cultural heritage and the consequences of engaging in illicit activities related to antiquities. Encouraging citizens to report suspicious activities and illegal trade through dedicated hotlines or online platforms can facilitate the identification and recovery of stolen artifacts.

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<sup>3</sup> Government of India ministry of culture Lok Sabha unstarred question no. 5587 to be answered on 02.04.2018, <https://eparlib.nic.in/bitstream/123456789/768448/1/AU5587.pdf>. (Accessed on 22<sup>nd</sup> may 2023).

<sup>4</sup> The Antiquities and Art Treasures Act, 1972, §14

## INTERNATIONAL COOPERATION AND BEST PRACTICES

Since the main playground for illegal

International cooperation plays a vital role in strengthening antiquities policies and practices in India. By engaging with other countries and learning from their well-structured policies, India can enhance its own efforts in preserving and protecting cultural heritage. This section elaborates on the importance of international cooperation and highlights key areas where India can collaborate and adopt best practices. One significant aspect of international cooperation is knowledge exchange and learning from the experiences of other countries. India can actively participate in international conferences, workshops, and forums dedicated to antiquities and cultural heritage preservation. These platforms provide opportunities to share insights, challenges, and best practices with experts, scholars, and policymakers from around the world. By participating in these discussions, India can stay updated on global trends, innovative approaches, and successful strategies in the field of antiquities management. Bilateral agreements with countries renowned for their expertise in antiquities preservation and regulation are crucial for knowledge sharing and collaboration. These agreements can facilitate the exchange of information, joint research projects, and training programs. India can establish partnerships with countries that have well-developed systems for inventorying, cataloguing, and regulating antiquities. By studying and adopting their best practices, India can enhance its own policy framework and enforcement mechanisms. Furthermore, India can benefit from collaborating with international organizations specialized in heritage preservation, such as UNESCO (United Nations Educational, Scientific and Cultural Organization), ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property), and ICOM (International Council of Museums). These organizations provide valuable expertise, resources, and guidance on safeguarding cultural heritage. By engaging in partnerships with them, India can tap into their networks, training programs, and technical assistance to strengthen its antiquities policies.

Another important aspect of international cooperation is sharing information and intelligence related to stolen or illicitly traded antiquities. India can collaborate with INTERPOL and other relevant international law enforcement agencies to exchange information on the movement and

identification of stolen artifacts. Such collaborations enable faster identification, recovery, and repatriation of antiquities smuggled across borders.<sup>5</sup>

Additionally, India can draw inspiration from the policies and practices of countries that have successfully tackled the illicit antiquities trade. Countries like Italy, Greece, and Egypt have implemented robust regulatory frameworks, improved enforcement mechanisms, and established specialized units within law enforcement agencies to combat illegal trade. By studying these models, India can identify effective strategies and adapt them to its own unique cultural context. Also, collaboration with international research institutions, universities, and archaeological teams can also contribute to India's antiquities preservation efforts. Joint research projects, excavations, and the sharing of scientific techniques and expertise can enrich the understanding and documentation of antiquities. These collaborations can also foster cultural exchange and promote a global perspective on the importance of preserving cultural heritage.

In conclusion, international cooperation and the adoption of best practices are crucial for strengthening antiquities policies in India. By actively participating in international forums, establishing bilateral agreements, collaborating with international organizations, sharing information, and learning from successful models, India can enhance its antiquities framework. Drawing on the experiences of other countries, India can develop innovative approaches, implement effective regulatory measures, and improve enforcement mechanisms. By embracing international cooperation, India can work towards the preservation and protection of its cultural heritage, ensuring its safeguarding for future generations.

## DENOUEMENT AND SUGGESTIONS

After analysing the present scenario of the antiquity market, its relevant laws, and their demerits, we shall now have an outline of the recommendations and suggestions that should be considered and would therefore lead us to the conclusive idea of having a holistic and pragmatic countrywide background policy that could inculcate and tackle the various threats coming it's the way<sup>6</sup>. The suggestions also can be taken from an overseas international perspective as many of them have a very well-structured policy to follow for the same<sup>7</sup>. As this blog had analysed the difficulties that the source nations face in protecting their cultural property has less to do

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<sup>5</sup> Stefan Gruber, *Asian Journal of International Law*, Volume 3, Issue 2, July 2013, pp. 341.

<sup>6</sup> *Export antiques out of Italy*, Angie Elizabeth Brooks, Thu 16 Jun 2005 12:00 AM.

<sup>7</sup> *Italy Defends Treasures (and Laws) With a Show*, Elisabetta Povoledo, Oct. 7, 2008.

with economic development and more to do with cultural property laws and international affairs<sup>8</sup>.

Second, only to drugs in profitability for illegal trade, the international trade in antiquities generates billions annually. Since World War II, interest in antiquities among art collectors has increased, leading to unprecedented growth of the antiquities market. Though the looting and trading of cultural property have existed for centuries, its extensive growth since 1945 has been a cause of concern for many art-rich nations like India. The demand for antiquities causes the looting of archaeological sites and the theft of state cultural property. The process, which begins with the illegal export of antiquities and ends in their legal import into market nations, makes the trade half licit, half illicit. Major market nations, such as the United Kingdom, and transit countries like Switzerland, who have yet to change their laws or join international efforts to help source nations, are to blame for the veneer of legality that complicates the recovery of stolen and illegally exported cultural property. This lack of cooperation emasculates the export controls and cultural property laws of source nations rendering them meaningless.

Several countries have implemented rigorous and efficient antiquities laws to protect their cultural heritage. However, it is challenging to pinpoint a single country as having the most rigid and efficient laws because the effectiveness of antiquities laws can vary based on various factors, including the country's legal framework, enforcement capabilities, cultural context, and historical circumstances. That being said, countries like Italy, Greece, and Egypt are often cited as having robust antiquities laws and effective enforcement mechanisms<sup>9</sup>. These countries have faced significant challenges in combating the illicit trade of antiquities due to their rich archaeological heritage and the high demand for their artifacts in the global market<sup>10</sup>.

Italy is known for its stringent antiquity laws, including laws related to the protection of archaeological sites and the regulation of the antiquities trade<sup>11</sup>. The country has a specialized unit within the Carabinieri (Italian military police) dedicated to the protection of cultural heritage. It has also been proactive in repatriating stolen artifacts and has established strong

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<sup>8</sup> *Art Law in Italy*, CBM & Partners – Studio Legale, March 13 2019, Italy.

<sup>9</sup> See John Doxey, *A Smuggler's Den of Antiquities*, Bus. WK., Apr. 15, 1996, at 18, LexisNexis Library, Business Week File ("And with more ancient Greek sites than Greece and more Roman cities than Italy, Turkey has in recent decades surpassed both countries as the largest source of classical artifacts."); *The Thief at the Wedding*, ECONOMIST, Apr. 29, 2000, LEXIS, Nexis Library, The Economist File.

<sup>10</sup> *The Cultural Property Regime in Italy: An Industrialized Source Nation's Difficulties in Retaining and Recovering Its Antiquities*, SUE J. PARK.

<sup>11</sup> *Egypt's law prohibits visiting archaeological sites, climbing antiquities without permits*, BY Egypt Today staff, Thu, 27 Oct 2022 - 08:39 GMT.

collaborations with international law enforcement agencies and organizations such as INTERPOL and UNESCO<sup>12</sup>.

At the national level, an immediate need is to establish a wholly dedicated national authority for antiquity management and trade. It would be responsible for the registration maintenance and trade of the artifacts within the borders and a parent body aligned with the ASI for the trade and extradition of the artifacts globally. For additional support, the advisory body of this authority must include officials such as customs officers and historical experts presided by a High Court judge or any other judge as the case may be. By this, we can ensure a “white” and corruption-free exchange in the Antiquity realm.

To sum up, by establishing a robust legal framework, creating a centralized database, promoting transparency and public awareness, fostering international cooperation, and investing in capacity building and research, a comprehensive antiquities policy can be forged. Such a policy would not only safeguard our cultural treasures but also contribute to a deeper understanding and appreciation of India's remarkable civilization. In the end, the point to bask upon is an innovative and integrative approach of both the administration and the citizens. Through the cumulative work of both these agencies, we can ensure the smooth functioning, accessing, acclaiming, restoring, and finally safeguarding of our antiquity realm.

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<sup>12</sup> Law No. 117 of 1983 on Antiquities Protection, Chapter III, Articles 40-47, UNTOC Articles.