
PROTECTING INDIA'S ANTIQUITIES: EVALUATING LEGAL FRAMEWORKS AND COMBATING ILLEGAL TRADE

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ABSTRACT

The protection of antiquities is essential in order to preserve a country's heritage. Effective legal frameworks are required to conserve these invaluable assets. The Antiquities and Art Treasures Act, 1972 provides the source for regulating and prohibiting the illegal trade in antiquities in India. This paper critically examines the effectiveness of the legislative frameworks in curbing the problems of antiquities trafficking. It seeks to identify the legislative and administrative gaps and recommend measures to protect India's rich cultural heritage from illegal trafficking and smuggling. India still continues to face problems in combating the illicit trading of antiquities irrespective of the fact that the Antiquities and Art Treasures Act, 1972 has been in existence for more than five decades. The key difficulties include the lack of a centralized database for monitoring provenance, lengthy registration procedures, low fines for offenders, and insufficient international cooperation. The study takes a doctrinal research method. It examines the main legal sources like the Antiquities and Art Treasures Act, 1972 and important case laws. Secondary sources, such as scholarly publications, reports from the Archaeological Survey of India (ASI) and international treaties (e.g., UNESCO 1970) are examined to suggest practical and policy-oriented solutions. This research offers a new perspective on the limitations of India's present legal system by incorporating comparative perspectives and stressing technological advances such as digital registration and global databases. The paper also examines the draft Antiquities and Art Treasures Regulation, Export, and Import Bill of 2017 to emphasize its potential and limits. Its novelty stems from its multidimensional strategy which provides effective solutions to overcome legal and administrative gaps while assuring global compliance.

Keywords: Antiquities Protection, Illicit Trade, Legal Frameworks, Cultural Heritage Preservation, Antiquities Trafficking

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Introduction

Culture is the foundation of any society. It includes the values, rituals, traditions, customs, art, and intellectual legacy as well. On the other hand, Heritage refers to the transmission of these cultural elements from generation to generation. Collectively, this may be called as “cultural heritage”. Mainly the United Nation’s Conventions and various judicial pronouncements are sole responsible for the identifications and protections of the cultural heritage worldwide. India, being one of the oldest civilisations in the world, possess a diverse range of cultural heritage. Apart from the immovable heritages like monuments and archaeological sites, Indian cultural heritage is a reservoir of extraordinarily unique and rich antiquarian wealth. From a painting at an old art gallery to a statue of a bronze goddess India’s cultural heritage reflects and glorifies one significant aspect of the country’s history. Indian antiquities are among the most valued items in many antique collections across the world because of their rareness and the significant symbolic value they hold. Unfortunately, this has resulted in a large-scale smuggling and illegal trade in antiquities.

At the beginning let us start by looking at the various laws that are present to govern and protect the antiquities in India. To understand these legislative enactments better we should look back at how these laws evolved to safeguard and preserve the antiquities.

It all began in the nineteenth century with the first ever antiquarian law which is known as Bengal Regulation XIX of 1810 which was followed by the Madras Regulation VII of 1817. Later, the Indian Treasure Trove Act of 1878 was passed by the Government to safeguard and preserve treasures that were discovered by accident and had historical and archaeological significance.

The Antiquities and Art Treasures Act, which replaced the Antiquities (Export Control) Act of 1947, was passed by the Indian Parliament in 1972. Its objectives are to control the export of antiquities and art treasures, to stop smuggling and fraudulent activities, and to make it easier to preserve cultural assets in public areas.

The Antiquities and Art Treasures Act of 1972 and the Antiquities and Art Treasures Rules of 1973 are two vital areas of law that form the foundation of India’s framework for preserving its cultural heritage. These regulations were put in place to control the export of artifacts and antiques, stop fraud and smuggling, and guarantee the preservation of cultural assets

domestically.

These Indian laws also comply with the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, which established worldwide standards. This convention highlights the international commitment to protecting cultural heritage by giving Governments a uniform framework for taking action against the illegal trafficking of cultural property.²

The Antiquities and Art Treasures Act of 1972 is essential to preserving the country's cultural heritage. However, this regulation urgently needs to be updated and strengthened in order to adequately address the changing issues in the art industry.

Research Objectives:

1. To critically examine the effectiveness of the present laws in India regarding the protection of antiquities through statute like the Indian Antiquities and Art Treasures Act, 1972.
2. To evaluate how well the enforcement agencies like the Archaeological Survey of India, local Governments, and other authorities implement laws to protect cultural heritage and how well they work to combat crimes like the theft and illegal trade in antiquities.
3. To examine the preventive role of thorough documentation and the establishment of heritage registers to assess the effectiveness of these instruments to monitor antiquities in India.

Research Methodology

The research methodology basically states the techniques and methods that will be incorporated to conduct the research and to look at the main issues related to the preservation and protection of the antiquities as well as preventing theft and illicit trafficking in these artifacts. Doctrinal research will form the core of this study. It will mainly analyse secondary legal data sources. Examining the current legal system that oversees India's antiquity protection will be the main aim of this study. The first step of the research will be an examination of pertinent laws,

²Atreya Mathur, *An Excursion into the Antiquities' Law of India*, CTR. FOR ART L. (June 1, 2020), <https://itsartlaw.org/2020/06/01/an-excursion-into-the-antiquities-law-of-india/> (last visited Mar. 8, 2025).

including the Treasures Trove Act of 1878, the Antiquities and Art Treasures Act of 1972, and other laws. The effectiveness of these legal requirements in preserving cultural heritage and deterring the theft of antiquities and art treasures will be evaluated. Special attention will be given to the lack of punitive measures and weak enforcement mechanisms. Beside this Various relevant case studies will be analysed.

Meaning of Antiquities and Art Treasures

As per the Antiquities and Art Treasures Act, 1972³, any object that is of at least hundred years old can be considered as an antiquity. The term antiquity includes, any coin, art, craft, sculpture, painting, epigraph, any article, object, religion, science, literature etc. This also includes any manuscript, record or other document that must be in existence for at least seventy-five years or more.

Whereas, the term Art Treasure under the same Act⁴ means any art made by human being and declared by the Central Government by notification in the official Gazette that the object is an art treasure for its artistic value. That object must not be an antiquity.

In India, the sale and export of antiquities are regulated under the core central legislation, i.e., Antiquities and Art Treasures Act of 1972 (AATA). Antiquities cannot be exported under this Act unless the Central Government or other approved agencies do so. The Customs Act of 1962 is used to enforce this ban, guaranteeing that any unlawful attempts to export these items will result in legal sanctions.

Legislative Enactments Governing Antiquities in India

The Supreme Law of India that is the Constitution of India under Article 49 requires the State to safeguard all monuments, places and objects of artistic or historic significance against spoliation, defacement, destruction, or removal, acknowledges the need of preserving cultural heritage. Additionally, Article 51A(f) of the Constitution of India requires all the citizens to value and preserve our composite culture's rich legacy. These clauses impose a Constitutional duty on the State and its citizens to protect cultural heritage as a public good.

³ Section 2(1)(a)

⁴ Section 2(1)(b)

Apart from the Constitutional provisions there is other laws that can be considered as the main enactments that govern and give protections to the antiquities in India. Historically, The Indian Treasures Trove Act, 1878 plays the foundational role in antiquities protection in India. Afterwards this Act provided the groundwork for subsequent laws. In order to prevent smuggling and illegal trade in antiquities and art treasures, the Antiquities and Art Treasures Act of 1972 was passed by the Parliament. According to this Act the registrations of all the artifacts that are privately owned are compulsory. Numerous issues with the statute have resulted in a dearth of information about India's antiquities. In order to control the export of sculptures and antiquities, stop their smuggling and fraudulent commercial activities, acquire them for conservation, and handle other related issues, the Antiquities and Art Treasures Act of 1972 was developed.

As per the Act, The Central Government has the authority to designate licensing officers who are Gazetted officers in Government departments. The responsibilities and powers of the licensing officials will be determined by the Central Government. If a person intends to sell antiquities, then he must apply for a license at the appropriate licensing authority. The licensing officer will conduct any necessary investigation before awarding a license. The applicant's past expertise in working with antiquities and the region in which the business will be conducted must be taken into consideration. The other factors that should also to be considered by the licensing officer for awarding a license are the number of persons operating businesses who are connected to antiquity in the same area. The Antiquities and Art Treasures (Amendment) Act that was passed in 1976 amended the Antiquities and Art Treasures Act, 1972. The Central Government passed the Antiquities and Art Treasures Rules, 1973 for the implementation of the Act. The Act gives power to the Central Government to make regulations that are required to ensure that the Act is applied effectively.

Drawbacks of the AATA, 1972

Despite having a legislation to govern the antiquities in India effectively, there exist some lacunae in Act itself. There are some provisions in the Act that permit the private collectors to face legal instances if they fail to maintain registered antiquities. These rules might prevent collectors from registering their antiquities. However, this may result in a rise in smuggling and illegal domestic antiquity trade.

Apart from this, the Act's penalties for violating any of the provisions are regarded as being

extremely minimal. It could not be enough to discourage people from breaking its rules. For example, exporting artifacts without permission can lead to fines and imprisonment from six months to three years.

It is difficult to keep an eye on and track antiquities across the nation because there is no central database for their registration.

Controlling the antiquities trade requires the implementation of suitable regulatory frameworks. The Draught Antiquities and Art Treasures Regulation, Export and Import Bill, 2017 forbids exporting antiquities to other countries. Antiquities can only be exported by the Government or its agents. It will help stop the smuggling of antiquity onto the world market.⁵

International Convention

According to the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illegal Import, Export, and Transfer of Ownership of Cultural Property, countries that have significance in archaeology, prehistory, history, literature, art, or science are able to designate cultural property. Since the illegal import, export, and transfer of ownership of cultural property is one of the main reasons why the cultural heritage of the nations where it originated is deteriorating, international cooperation is one of the best strategies to protect each country's cultural property.⁶

According to a 2019 INTERPOL report, the illicit international trafficking of cultural objects and related offenses is unfortunately increasing in frequency, over 50 years after the UNESCO treaty was signed.⁷

Factors Driving Illicit Trade in Antiquities in India

The illicit trade in antiquities in India has significantly increased since independence. Collectors frequently seek these artifacts due to financial gain or cultural acquisition as antiquities can serve as profitable black-market investments. Archaeological and historic sites

⁵R Madhu Mitha, *A Critical Analysis of the Antiquities and Art Treasures Act, 1972*, LEGALVIDHIYA (Nov. 17, 2023), http://www.legalvidhiya.com/a-critical-analysis-of-the-antiquities-and-art-treasures-act-1972/#_fn22 (last visited Mar. 8, 2025).

⁶Next IAS, *Missing Antiquities in India*, NEXT IAS (Mar. 17, 2023), <http://www.nextias.com/current-affairs/17-03-2023/missing-antiquities-in-india/> (last visited Mar. 8, 2025).

⁷Next IAS, *Missing Antiquities in India*, NEXT IAS (Mar. 17, 2023), <http://www.nextias.com/current-affairs/17-03-2023/missing-antiquities-in-india/> (last visited Mar. 8, 2025).

are especially vulnerable to stealing because of the need that an object be at least 100 years old in order to be deemed valuable. Local and regional intermediaries that help smuggle and sell these cultural treasures are often involved in this illicit activity.⁸

This problem is linked to more general difficulties in safeguarding and conserving India's cultural legacy. Many monuments and historical sites, including those protected by the state, have been neglected and vandalized since independence. Effectively handling the problem has been difficult for the Archaeological Survey of India (ASI) which is in charge of protecting these monuments. According to a 2013 Comptroller and Auditor General (CAG) report⁹ at least 92 centrally protected monuments have disappeared. It shows the shortcomings in the ASI's administration and supervision. The status of several state departments is also not very encouraging. The ASI was unable to handle the issue. Except a very few cases the ASI's conservation efforts have been of a very poor nature.

Case Study

1. In 2019, Subhash Kapoor, an Indian art dealer, was charged with transporting \$145 million worth of stolen artifacts, according to a criminal complaint filed by the Manhattan District Attorney's Office. After being captured by Interpol in Germany in 2011, Kapoor was extradited to India in July 2012, where he was still detained pending prosecution for smuggling and theft.

Authorities have not yet retrieved items valued at around \$36 million that are thought to have been hidden by Kapoor's family members, even after his detention. According to investigations, Kapoor was able to portray these artifacts as legally obtained riches because some of his co-conspirators refurbished them. As a result, seven people who are connected to these operations have become the subject of arrest warrants.

American authorities have asked for Kapoor to be extradited to the US to face charges; this is expected to happen when his court case in India is over.

The case highlights the difficulties authorities encounter in retrieving stolen cultural objects and prosecuting individuals involved, underscoring the complexity and global

⁸ Samayita Banerjee & Ishani Ghorai, *Antiquities Theft and Illicit Antiquities Trade in India* (4th ed.).

⁹ MINISTRY OF CULTURE, PERFORMANCE AUDIT OF PRESERVATION AND CONSERVATION OF MONUMENTS AND ANTIQUITIES OF UNION GOVERNMENT, REPORT NO. 18 OF 2013.

reach of illegal antiquities trafficking.¹⁰

2. In a landmark judgement British High Court in 1982 ordered the return of a Nataraja statue of Lord Shiva to India. The case started when the British Museum alerted Scotland Yard to the statue's presence and the statue was seized after it was sent to the museum for restoration by the Canadian company Bumper Development Corporation (BDC). The chairman who was renowned art collector Robert Borden had purchased it from London antique dealer Julian Sherrier who claimed it had been in his family's possession for many years.

BDC, the Metropolitan Police, and other parties were named as co-defendants in the case that the Indian Government started. The use of Hindu personal law which views temple idols as living beings with separate legal identities was the core area of Indian argument. Indian jurisprudence accepted this perspective and granted the idols legal personhood. It enables idols to possess properties and to participate in legal proceedings. Expert opinion of archaeologist Ramachandran Nagaswami who showed convincing evidence of the idol's provenance and significance had an impact on the court's decision to return the Nataraja statue to India.

The successful restoration of the Nataraja statue the need of precise definitions and strong legal frameworks to safeguard cultural heritage and resolve future disputes of this nature.¹¹

3. The illegal antiquities trade has historically centred on Chandraketugarh which is an old West Bengali archaeological site. Despite its great historical importance, the site has been neglected and has not received enough scholarly attention. This resulted in extensive looting. Chandraketugarh artifacts have been trafficked all over the world, frequently with the help of locals, middlemen, and antiquities traders. Because auction houses, museums, and individual collectors are so interested in these relics, both authentic and fake artifacts can be found in collections all over the world.

¹⁰ Special Correspondent, *ASI Identifies Indian Artefacts Seized from Smuggler Subhash Kapoor*, THE HINDU (May 9, 2019), <https://www.thehindu.com/news/national/asi-identifies-indian-artefacts-seized-from-smuggler/article27072785.ece> (last visited Sept. 9, 2025).

¹¹ K.R.A. Narasiah, *Man Who Brought Back Nataraja*, TIMES OF INDIA (Sept. 20, 2023), <https://timesofindia.indiatimes.com/blogs/tracking-indian-communities/man-who-brought-back-nataraja/> (last visited Sept. 8, 2025).

The Ashmolean Museum in the United Kingdom, the Linden Museum and the Museum of Indian Art in Germany, and the Musée Guimet in Paris are notable museums that include artifacts from Chandraketugarh. The National Museum in Delhi and the State Archaeological Museum in West Bengal in India both have collections. Significant objects from the site are now in the possession of individual collectors like Dilip Maite.

In addition to being plagued with controversy, the site itself suffers from institutional incompetence and insufficient conservation measures. Chandraketugarh's unique cultural legacy is in danger because to persistent thievery and deterioration brought on by improper preservation.

The creation of regional museums, like the Chandraketugarh College Museum, which displays ceramics, coins, terracotta figurines, and other archaeological artifacts, is one attempt to address these issues. These organizations seek to raise awareness and encourage preservation while preserving and showcasing the site's antiques.¹²

The Draft Antiquities and Art Treasures Regulation, Export and Import Bill, 2017 and its Loopholes

As per the Section 5 of the Antiquities and Art Treasures Act, 1972 only an individual with a licence granted by the Government can carry on a business of antiquities. Beside this an individual who is in possession of an antiquity needs to register that piece of object with the Government. The Draft Antiquities and Art Treasures Regulation, Export and Import Bill, 2017 proposed some significant amendments to the Act to combat the illegal trade in antiquities. It suggested the unrestricted mobility of antiquities throughout the country by eliminating the system that requires licenses issued by the Government for domestic sales. The Bill allowed "no question-asked sales."¹³ By doing so, it potentially facilitates the free trade of illegally obtained antiquities more and without revealing the source of the acquisition. However, it will render the source permanently untraceable. It is extremely risky to rely on the good faith of the seller to declare the source without an external verification method.

The Bill permits the virtual trade of antiquities with the goal of promoting registration and

¹² Samayita Banerjee & Ishani Ghorai, *Antiquities Theft and Illicit Antiquities Trade in India* (4th ed.).

¹³ Atreya Mathur, *An Excursion into the Antiquities' Law of India*, CTR. FOR ART L. (June 1, 2020), <https://itsartlaw.org/2020/06/01/an-excursion-into-the-antiquities-law-of-india/> (last visited Mar. 8, 2025).

building an extensive database. Additionally, to make the registration process hassle free the Bill suggested digitizing the registration procedure and uploading of the information regarding the antiquities online to increase the accessibility. However, this proposed amendment would have a positive impact only if the State can take stronger implementation procedure. The laws must be implemented by the Government very effectively to bring about a change in the proper management of the stolen antiquities and that should also encourage the involvement of the experts and activists in the field.

Conclusion and Suggestions

To safeguard the nation's artistic history and guarantee a broader appreciation of the art world, India's cultural legacy must be conserved. To guarantee more robust legal safeguards for India's antiquities, the law must be changed.

The Government, lawyers, institutions, galleries, and museums must raise awareness through conferences, seminars, and art discussions in order to ensure that citizens and change-makers are aware of the problems associated with the illegal antiquities trade. Increased social media surveillance, such that done by The Antiquities Trafficking and Heritage Anthropology Research (ATHAR) Project, can help the authorities stop the illicit antiquity trade.

The proposed suggestions may include:

Database centralization

One of the crucial initiatives to be taken for the protection of the antiquities can be to create a national and user-friendly database. This centralized system will contain detailed information about the registered antiquity. It will include the origin, ownership, description, and present condition of the same. Working along with private organizations such as The Art Loss Register can improve recovery and tracking.

Integration of Technology

In this contemporary era technology has opened up greater possibilities for everything. For the Protection and management of the antiquities the technology can work as a pivotal instrument. Easy-to-use tools can be used to create catalogue for thousands of artefacts and that can simplify the process of documentation for the museums, collectors and other heritage

organisations. Additionally, inventory procedures can be streamlined and cultural asset monitoring can be enhanced by using internet resources and international databases like Object ID.

Strict Penalties

In order to combat the crime of theft and smuggling of antiquities in effective manner it is essential to have adequate penalties. Smugglers and traffickers may be discouraged by amending current laws to enforce harsher punishments for illegal activity. It also emphasize the Government's seriousness about protecting cultural heritage of the country.

International Co-operation

Collaboration with International Organizations and law enforcement are essential to address the cross-border trade in antiquities and assist in the return of stolen artifacts. As for example Italy's Carabinieri cultural heritage protection unit has successfully recovered stolen antiques.

Public Awareness

Public awareness is very important to combat this particular issue. Community support for maintaining and preserving antiquities can be increased by advancing education on cultural heritage and public knowledge of the value. This practice can help in combatting the illegal trade in antiquities.

Hence, it can be concluded that India's rich cultural heritage including the valuable antiquities are the witnesses to the country's magnificent history and identity. Protecting these assets from theft and smuggling is not only crucial for preserving the past but also for educating the future generation and to promote national pride. As the central legislations are failing sometimes to keep the antiquities safe and protected, the existing Indian law needs to be amended to include the following: (1) a more specific definition of the term "antiquities," (2) a requirement to disclose from where the antiquity has been acquired, and (3) providing rewards for registering antiquities, such as authenticity certification and greater ownership transparency. These initiatives would facilitate the establishment of database of antiquities ownership.¹⁴

¹⁴ Forum IAS, *Antiquities and Art Treasures Act in India: An Analysis*, FORUM IAS (Nov. 3, 2018), <https://forumias.com/blog/antiquities-and-art-treasures-act-in-india-an-analysis/> (last visited Mar. 8, 2025).

References

1. Atreya Mathur, *An Excursion into the Antiquities' Law of India*, CTR. FOR ART L. (June 1, 2020), <https://itsartlaw.org/2020/06/01/an-excursion-into-the-antiquities-law-of-india/> (last visited Mar. 8, 2025).
2. R Madhu Mitha, *A Critical Analysis of the Antiquities and Art Treasures Act, 1972*, LEGALVIDHIYA (Nov. 17, 2023), http://www.legalvidhiya.com/a-critical-analysis-of-the-antiquities-and-art-treasures-act-1972/#_ftn22 (last visited Mar. 8, 2025).
3. Next IAS, *Missing Antiquities in India*, NEXT IAS (Mar. 17, 2023), <http://www.nextias.com/current-affairs/17-03-2023/missing-antiquities-in-india/> (last visited Mar. 8, 2025).
4. MINISTRY OF CULTURE, PERFORMANCE AUDIT OF PRESERVATION AND CONSERVATION OF MONUMENTS AND ANTIQUITIES OF UNION GOVERNMENT, REPORT NO. 18 OF 2013.
5. Samayita Banerjee & Ishani Ghorai, *Antiquities Theft and Illicit Antiquities Trade in India* (4th ed.).
6. Special Correspondent, *ASI Identifies Indian Artefacts Seized from Smuggler Subhash Kapoor*, THE HINDU (May 9, 2019), <https://www.thehindu.com/news/national/asi-identifies-indian-artefacts-seized-from-smuggler/article27072785.ece> (last visited Sept. 9, 2025).
7. K.R.A. Narasiah, *Man Who Brought Back Nataraja*, TIMES OF INDIA (Sept. 20, 2023), <https://timesofindia.indiatimes.com/blogs/tracking-indian-communities/man-who-brought-back-nataraja/> (last visited Sept. 8, 2025).
8. Forum IAS, *Antiquities and Art Treasures Act in India: An Analysis*, FORUM IAS (Nov. 3, 2018), <https://forumias.com/blog/antiquities-and-art-treasures-act-in-india-an-analysis/> (last visited Mar. 8, 2025).
9. INDIAN AUDIT & ACCOUNTS DEPT, FOLLOW-UP ON THE PERFORMANCE AUDIT OF PRESERVATION AND CONSERVATION OF MONUMENTS AND

ANTIQUITIES OF UNION GOVERNMENT, MINISTRY OF CULTURE, REPORT
NO. 10 OF 2022.

10. *Her Majesty v. Lord Shiva*.
11. Antiquities and Art Treasures Act, No. 52 of 1972, Acts of Parliament, 1972 (India).
12. INDIA CONST. (1950).
13. Draft Antiquities and Art Treasures Regulation, Export and Import Bill, 2017.
14. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.