

## PROTECTION OF CULTURAL PROPERTY VIS-À-VIS INDIAN ANTIQUARIAN LEGISLATION AND GLOBAL CONCERN

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The Indian cultural heritage is on the threshold of many risks, threats and perils that the cultural annals of the country and mankind ever seen. The protection, preservation and promotion of it has become one of the regular topics of the discussion among the academicians, art connoisseurs and the people alike. The Government and its agencies are assiduously endeavouring to conserve the heritage of the country and are enacting the antiquarian legislations as and when the need arises to ensure its safety and security. Even, the international communities like UNESCO, ICOM and ICOMOS are evincing deep concern to protect the monuments and natural sites of universal and exceptional value and are bringing out the documents of Conventions and Recommendations containing useful guidelines for preservation of them from time to time.

### Roots and Causes

Unfortunately, the cultural heritage of India is constantly exposed every day to one or the other kind of risk since early days. The conquerors, explorers and alien colonists have depleted the heritage the way they liked. Further, wanton destruction of heritage for obvious reasons has also been perpetuated. It is well known that the bricks of Harappa, now in Pakistan and Kalibangan, Rajasthan were riffled for laying the Railway tracks. Under Eral of Moria, the marble bath in Shah Jahan's Palace was once thought as a present to King George IV which was later sold by public auction under the orders of Lord Bentinck. The idea to dismantle the Taj Mahal for its marble value was also planned which fortunately did not materialize. Even a genuine antiquarian like Mackenzie did not find anything wrong in rifling away the magnificent stupa at Amaravati, Andhra Pradesh of some of its finest sculptural relics or in shipping them away to England. Surprisingly, Alexander Cunningham was allowed to have his share in the antiquities he discovered in the Archaeological explorations of the country. Added to this, the global interest in the Indian objects of artistic, traditional and antiquarian interest to possess them initially as curios and later the unflinching desire to procure them by any means paved the way for their clandestine trade also. Since the second half of the last century, this has taken a deep root on the Indian soil.

Today, vandalism, theft and illicit trafficking – each one being interrelated with one another, are the main risks among several others that are threatening the very existence of the heritage of the country. The illicit trade is often preceded either by blatant robbery or vandalism of the cultural heritage. The

cultural property once stolen, sooner or later appears in the international art markets as they fetch fabulous prices. The whole process involves different stages like the source, thief, receiver, middleman and the final destiny and purchaser. The unprotected monuments and sites located throughout the length and breadth of the country particularly in the remote places are more prone to such thefts and vandalism as compared to the centrally protected monuments and those under the State Governments. The items of theft and illicit export broadly comprise the sculptures in all media and other objects of plastic art such as miniature paintings, illustrated or painted manuscripts, tankas, coins, medals, arms and armoury and jewellery etc.

The production of replicas or fakes in the same size and fabric is yet another threat to the cultural heritage of the country. The original art objects like sculptures are replaced with these copies in their place which of course are detected at a later stage. The classic examples of this kind are the bronze image of Shivapuram Nataraja of Chola period and Amin pillars datable to second century BC. Both of these invaluable antiquities were replaced by the replicas and the originals smuggled out of the country only to surface in London. Fortunately, they have been successfully retrieved.

The museums and art galleries that house and exhibit a variety of antiquities and art objects ranging from prehistoric times to the modern age do not escape one or the other kind of menace. The theft and vandalism are again the main threats to these institutions. The visitors have a tendency to touch the exhibits particularly the images of Gods and Goddesses either out of curiosity or reverence. In due course, this leads to the disfigurement of the sculptures and other antiquities. The thefts and burglary from the museums have also been reported in the last century from the important museums in India like National Museum, New Delhi Indian Museum, Calcutta, Government Museum, Chandigarh only to name a few. The percentage of the thefts as compared to other areas is minimum and under control.

The treasure hunting and chance discovery of treasures, the two different groups are contributing the destruction of cultural heritage in their own way. In the first category, a cross section of the people have a belief that the ancient mounds, megalithic burials and spot just below the consecrated presiding deity in the garbhagriha (sanctum) of the temple contain the treasures i.e., gold and silver coins and other valuables, In view of this, the archaeological sites

and shrines are subjected to unscrupulous digging by these treasure hunters. The situation is altogether different in the latter case. As is well known, these type of treasures generally contain gold, silver and copper coins, medals and rarely jewellery items of great archaeological and historical significance. It has been experienced that whenever these treasures are found, in most of the cases they are concealed if not only a part of it is reported by the finder. Further, the coins are melted in order to extract the metallic contents. The timely action by the administrative authority of the State Government, have saved many of such treasures that have enriched the collection of the several museums in India.

The evergrowing building activities across the country particularly in mega cities and towns is resulting in cropping up the modern structures specially the sky scrapers very close to the ancient edifices and sites. This is seriously effecting the aesthetic value and landscape of monuments. It is well known that some of the monuments and sites are situated on the summit or within the precincts of the hillocks. The magnificent statue of Gommeteshvara at Shravanabelagola and group of monuments amidst picturesque granite outcrops at Vijayanagara (Hampi) are the only examples to mention among several others. Such type of monuments are exposed to the risk of mining, quarrying and blasting undertaken by the people for extracting the raw materials like stone, columns for the building purposes. The fire arms and their chemicals, the powerful rebound of hard and solid bits and blocks from the source when exploded cause serious damages to these monuments situated in and around the hillocks.

The environmental pollution is one of the latest in the series of threats that has become a serious concern of the day. It is well known that the factories, foundries and oil refineries emit the gases and smoke that contain the chemicals like sulphur and acids. These react whenever they come in contact with the nearby monuments thereby seriously effecting the materials like stones, marbles used for constructing the ancient edifices and deteriorating the very look of them.

### **Indian Legislative Measures:**

In order to obviate these dangers and threats referred to above and to ensure the safety and security of cultural heritage, the antiquarian legislations have been enacted from time to time and are also being amended as and when the need arises to meet the demanding situation of the day. At present, the preservation and protection of the immovable cultural property is governed by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereafter AMASR Act, 1958) whereas the movable by the Antiquities and Art Treasures Act, 1972 (hereafter AAR Act, 1972) and Indian Treasure Trove Act, 1878 (hereafter ITT Act, 1878). Of these regulations the first two are Central Legislations and the last one is vested with the State Government although originally it was a Central Act. The various provisions and powers contained in these legislations are

invoked and enforced as and when the necessity arises for protection of cultural property. In addition to these regulations, the State Governments too have their own legislations for protection and preservations of monuments and sites of regional or local importance.

The AAT Act, 1972 deals exclusively with movable cultural heritage of two different categories viz: (i) antiquity and (ii) art treasure. It is learnt that the amendments are being exercised to strengthen the Act. Among others, there is also a proposal to restrict the production of replicas in the same size and fabric. The compulsory registration of the notified categories of antiquities has been given priority in the Act. The sub-section 3 (a) of section 14 stipulates that every person who owns, controls or possesses any antiquity specified in the notification shall register such antiquity before the registering officer within three months from the date of issue of notification. In contravention of the sub-section 3 (a) of section 14, if any person do not register the notified category of antiquities he possesses such person is liable to be punished with imprisonment for a term which may extend to six months or with fine or with both and the antiquity shall be liable to confiscation.

The export of antiquities and art treasures is regulated as contained in the Act. The section 3 of the Act lays down that it shall not be lawful for any person, other than the Central Government or any authority or agency authorized by the Central Government to export any antiquity or art treasure, except under and in accordance with the terms and conditions of a permit issued for the purpose by such authority as may be prescribed. Thus, no antiquity or art treasure can be taken out of the country without any valid permit issued by the Director General, Archaeological Survey of India. The Director General is the competent authority to issue such permits as provided in the Rule 3 of the Antiquities and Art Treasure Rules, 1973. If any person, himself or by any other person on his behalf, exports or attempts to export any antiquity or art treasure in contravention of section 3, he shall without prejudice to any confiscation of penalty to which he may be liable under the provisions of the customs Act, 1962(52 of 1962), be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine under sub-section (1) of section 25 of the Act.

The other class of movable cultural wealth i.e. treasure troves discovered accidentally which by and large contain the coins, medals and rarely jewellery fall under the purview of the ITT Act, 1878. The Act defines treasure as anything of any value hidden in the soil or anything affixed thereto. The section 4 of the Act lays down that whenever a treasure exceeding in amount or value rupees ten is found, the finder shall, as soon as practicable, give to the Collector notice in writing: of the nature and amount or approximate value of such treasure; of the place in which it was found; of the date of the finding. It further lays down that the finder should either deposit the treasure in the nearest Government Treasury or give the

collector such security, as the Collector thinks fits, to produce the treasure at such time and place as he determines from time to time. Since the treasures are of immense archaeological and historical significance, they are never distributed among the finder / owner or auctioned but they are acquired as laid down in the provisions of the Act. Under section 16 of the Act, the Collector, instead of dividing the find, may decide to acquire on behalf of the Government, the treasure, or any specified portion thereof by payment to the persons entitled a sum equal to the value of the materials together with one-fifth of such value.

The AMASR Act 1958 prohibits the construction within the protected area as specified in the sub-section (1) of section 19 which reads: no person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any or any operation of a like nature in such area, utilize such area or any part thereof in any other manner without the permission of the Central Government. The sub-section (2) of section 19 lays down that the Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provision of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal. For this purpose, the government has defined the prohibited and regulated areas and has notified in 1992 that the areas near or adjoining upto 100 mt from the protected limits of the monument as prohibited and further beyond upto 200 mt as regulated areas for the purpose of both mining operations and constructions. Thus, the Government is empowered to remove the structures that are built in contravention of sub-section (1) of section 19 and remove the same vide sub-section (2) of section of 19 and initiate the legal proceedings as contained in the sub-section (1) (IV) of section 30. A person, under this sub-section shall be punishable with the imprisonment which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

As well known, the monuments and archaeological sites and remains are subjected to various types of activities by the visitors. In order to impose restriction on these activities, an elaborate arrangement is made in the provisions of the AMASR Act, 1958 and Rules 1959. According to Rule (1) 7, no protected monument shall be used for the purpose of holding any meeting, reception party, conference or entertainment except under in accordance with a permission in writing granted by the Central Government. Such restrictions, however, are not applicable to any activity which is held in pursuance of a recognized religious usage or custom

as specified in Rule (2) 7. Further, it is laid down in rule 8 that no person shall, within a protected monument (a) do any act which causes or is likely to cause damage or injury to any part of the monument; or (b) discharge any fire-arms; or (c) cook or consume food except in areas, if any, permitted to be used for that purpose; or (d) hawk or sell goods or ware canvas any custom for such goods or ware or display advertisement in any form for or show a visitor round of monetary consideration, except under the authority of, or under and accordance with the conditions of a licence granted by, an archaeological officer, or (e) beg for alms; or (f) violate any practice, usage or custom applicable to or observed in the monument; (i) any animal, or (ii) any vehicle except in areas reserved of the parking thereof. Any person who contravenes these activities shall be punishable with fine which may extend to five hundred rupees.

### **International Conventions and Recommendations:**

In the recent years, the UNESCO, ICOM, and ICOMS have become the pivotal centers for promoting and propagating the need for preservation of cultural and natural heritage. These world bodies, the UNESCO in particular, are bringing out an array of documents of conventions and recommendations containing useful guidelines for safeguarding the invaluable heritage available throughout the world. The documents issued by UNESCO are; (i) Convention for Protection of Cultural property in the event of Armed Conflict (1953); (ii) Recommendation of International Principles applicable to Archaeological Excavations (1956); (iii) Recommendation on the Most Effective Means of Rendering Museums to Everyone (1960); (iv) Recommendation of the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1964); (v) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1964); (vi) Convention Concerning Protection of the World Cultural and Natural Heritage (1972); (vii) Recommendation Concerning the International Exchange of Cultural property (1976); (viii) Recommendation of Participation by the People at large in cultural Life and their Contribution to it (1976); (ix) Recommendation Concerning the Safeguarding the Contemporary Role of Historic areas (1978); (x) Recommendation for the Movable Cultural Property (1979). The ICOMS had brought Vencie Charter (1964); International Charter for Conservation and Restoration of Monuments and Sites. The ICOM has also brought out the documents known as ICOM Ethical Acquisition Code and Guide Lines for Loans.

### **Remedial Measures**

The Government, Archaeological Survey of India and

institutions alike are assiduously endeavouring to protect and promote the cultural and natural heritage of the country and the results of these efforts are beyond expectations and are highly acclaimed by one and all across the world. If the people join and lend their hands in these endeavours i.e. active participation of masses, the cultural wealth of the country or for that matter throughout world will remain intact. The enlighten people are the best to safeguard the cultural property of any nation. India is essentially a urban dominated country and people at large are still ignorant about the importance of their own invaluable cultural heritage that they have inherited and not to speak of the antiquarian legislations. It is, therefore, essential to create cultural awareness among the masses. This will bring a sense of pride in them about the cultural heritage and their involvement to protect and preserve it for future. The Archaeological Survey of India has already launched a campaign in this regard. In addition to the celebrations of World Heritage Day / Week, Survey is arranging yearlong exhibitions throughout the country and publishing the popular literature in the form brochures on the various facets of the cultural heritage of the country.

It is well known that the unprotected monuments and sites particularly the one located in remote places are the easy targets of theft, vandalism and treasure hunting. It is, therefore, essential to photo document these monuments and sites with fullest possible details. These inventories will help in establishing the titles and ownership of cultural property subjected to theft and illicit trafficking. In addition to this documentation, the establishment of museums will further augment the efforts of safeguarding the cultural wealth. These museums can be created in all the district headquarters and important places in urban and rural areas and the antiquarian wealth available near by can be safely housed and exhibited in them.

### **Global Concern**

The international communities are showing a great concern to protect and preserve the cultural and natural heritage and none can dispute their efforts. Yet, certain areas require immediate attention of these bodies. Many of the member countries or state parties are signatories to the number of conventions and recommendations adopted by the UNESCO, ICOM and ICOMS. It is understood that still a few countries have not yet ratified the important conventions like 'Conventions on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural

Property' (Paris, 1970). In view of this, these international communities may impress upon them to ratify this convention and others. This convention is of paramount importance in preserving the heritage as it has the provision for repatriation of illegally exported cultural wealth vide Article 7 (II) b which will facilitate the smooth retrieval among the member countries.

Finally, under the prevailing situation, the preservation, protection and promotion of cultural heritage of India needs a multi dimensional approach wherein each endeavour is complement to other. The active participation of the masses is vital in safe guarding the cultural property. The people may be educated to understand the importance of antiquarian legislations so that legal obligations provided in legislative measures are fulfilled. The undocumented cultural relics through out the country which has given a boost to the heritage thieves and trades, has to be recorded on priority basis. The people are to be encouraged to register the antiquities they possess and report the discovery of treasures whenever they are found. The people are having apprehension that the Government will acquire them once they are registered and treasure are informed and this has to be eradicated by winning their confidence. All these coordinated efforts will strengthen the Government, Archaeological Survey of India and institutions alike including the international communities to protect, preserve and promote the cultural and natural heritage of India.

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