



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy Studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN EXAMINATION OF THE GLOBAL AND INDIAN VISTA REGARDING THE LEGAL CUSTODIANSHIP OF CULTURAL HERITAGE

AUTHORED BY - KULDEEP SINGH PANWAR & K. LIVI YEPTHO

Abstract

This paper undertakes a comprehensive examination of the legal custodianship of cultural heritage from both global and India's perspectives. Cultural heritage, encompassing tangible monuments, artifacts, and intangible practices, represents not only the creative and historical expressions of past societies but also serves as a vital anchor of cultural identity and continuity. The study highlights the significance of safeguarding both tangible and intangible heritage against threats such as urbanization, conflict, illicit trafficking, and climate change. It further evaluates key international legal instruments, including the 1954 Hague Convention, the 1970 UNESCO Convention, and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, alongside frameworks under international humanitarian and criminal law. Parallely, India's robust legal regime, such as the AMASR Act (1958), the Antiquities and Art Treasures Act (1972), and constitutional provisions, is analyzed in light of landmark judicial interventions like the Nataraja Idol case and the Taj Trapezium matter. Case studies, including the restitution of the Benin Bronzes, Weary Herakles, and ongoing efforts for the recovery of Naga artifacts, are used to illustrate challenges and progress in repatriation. The paper concludes that the effective preservation of cultural heritage necessitates sustained international cooperation, national legal mechanisms, and community participation to ensure that these invaluable legacies continue to inform, inspire, and enrich future generations.

Introduction

Cultural heritage entails antiques, memorials, assemblages of facilities and locations, and galleries that possess a range of figurative, creative, aesthetic, ancestral or anthropological, and cultural significance.¹ It refers to the bequeathal of tangible items and intangible elements of an ethnicity passed down from previous generations. The notion of cultural and natural legacy is founded on chronicles of transforming ideologies, which are acknowledged by various

¹ UNESCO, <https://uis.unesco.org/en/glossary-term/cultural-heritage> (last visited Jan. 4, 2025).

groups of individuals. The concepts formulated and embraced by these distinct organizations provide diverse classifications of ethnic and ecological heritage. The association with and customary traditions adjacent to these items foster a feeling of community. The selection of items, memorials, or natural habitats for conservation determines the subsequent path of cultural mythologies and public consent about both the past and present. It is a notion that connects the anterior and the future via certain methodologies used in the present.²

- **Tangible Cultural Heritage:** Tangible cultural heritage denotes substantial curios created, preserved, and transferred over eras within a community. It encompasses creative works, constructed legacies including edifices and memorials, and other tangible manifestations of human ingenuity that have historical importance within a culture.³ Tangible heritage is often the most visible aspect of a community's identity.⁴ Ancient temples, forts, palaces, and traditional houses are not structures; they are testimonies of the skills, creativity, and values of earlier societies.⁵ For example, the Taj Mahal in India does not simply stand as an architectural wonder – it reflects centuries of craftsmanship, artistry, and cultural influences that shaped the Mughal era.⁶ Similarly, the Great Wall of China is not just a massive construction but a symbol of protection, perseverance, and collective effort.⁷ Beyond their beauty and grandeur, tangible cultural heritage sites and objects carry deep meanings.⁸ They tell stories of how societies evolved, what they valued, how they worshipped, and how they organized their lives.⁹ A carved wooden door in a tribal village or an ancient manuscript in a monastery both preserve a piece of history that

² *The Concept and History of Cultural Heritage*, CENTRAL EUROPEAN UNIVERSITY, <https://culturalheritagestudies.ceu.edu/concept-and-history-cultural-heritage>

³ RICHES RESOURCES, <https://resources.riches-project.eu/glossary/tangible-and-intangible-cultural-heritage/> (last visited Jan. 4, 2025).

⁴ Mateusz Brodowicz, *The Impact of Cultural Heritage on Personal Identity and Sense of Belonging*, AITHOR (Sept. 23, 2024), <https://aithor.com/essay-examples/the-impact-of-cultural-heritage-on-personal-identity-and-sense-of-belonging>

⁵ Lazarus Obed Livingstone Banda, et. al., *Preserving cultural heritage: A community-centric approach to safeguarding the Khulubvi Traditional Temple Malawi*, 10 HELIYON, e37610 (2024), <https://www.sciencedirect.com/science/article/pii/S2405844024136419>

⁶ Satwant Rihal, et. al., *Structural Assessment of the Seismic Behavior of the Dome of the Taj Mahal*, 12TH INTERNATIONAL CONFERENCE ON STRUCTURAL ANALYSIS OF HISTORICAL CONSTRUCTIONS (2020), https://www.scipedia.com/wd/images/3/35/Draft_Content_778373233p726.pdf

⁷ Qianyi Li, *Construction of the Great Wall Cultural Park from the perspective of great sites*, ATLANTIS PRESS, (2024), <https://www.atlantis-press.com/proceedings/cacc-24/126004776>

⁸ Irina Pavlova, *Heritage as a dynamic force in building resilient communities*, UNESCO (Oct. 23, 2024), <https://www.unesco.org/en/articles/heritage-dynamic-force-building-resilient-communities?utm>

⁹ Permanent Delegation of the Kingdom of Saudi Arabia to UNESCO, *The Rural Cultural Landscapes of Sarawat Mountains*, UNESCO (Jan. 23, 2023), <https://whc.unesco.org/en/tentativelists/6640/?utm>

connects the present generation to its roots.¹⁰ These objects and sites are not only relics of the past, they are also living resources that continue to shape identity, inspire creativity, and foster pride among communities.¹¹

Preservation of tangible cultural heritage is crucial, yet it is not without challenges. Rapid urbanization, industrialization, natural disasters, and even armed conflicts have endangered many heritage sites across the world.¹² Climate change adds another layer of risk as rising sea levels, floods, and temperature fluctuations threaten fragile monuments and artworks.¹³ At the same time, neglect, looting, and unregulated tourism can cause irreversible damage.¹⁴ The tragic destruction of cultural treasures in conflict zones serves as a reminder of how fragile these resources are and how their loss means a collective loss for humanity.¹⁵

International organizations like UNESCO have played a vital role in identifying and protecting tangible heritage through programs such as the World Heritage List.¹⁶ Being recognized as a World Heritage Site not only brings prestige but also helps ensure resources and attention for preservation.¹⁷ However, protection is not only the responsibility of governments and international bodies.¹⁸ Local communities are often the most important custodians of heritage, since they live closest to these sites and

¹⁰ Renzo Freschi, *Tribal Doors of Central India*, Renzo Freschi, <https://www.sahapedia.org/the-woodcarvings-of-chamba-district-himachal-pradesh?utm>

¹¹ Gurvinder Singh, *Naga tribes carved out their culture*, VILLAGE SQUARE (Dec. 3, 2021), <https://villagesquare.in/carved-gates-illustrate-naga-tribal-culture/?utm>

¹² Jun Xia, et. al., *Global Research Trends and Future Directions in Urban Historical Heritage Area Conservation and Development: A 25-Year Bibliometric Analysis*, 14(10) BUILDINGS 3096 (2024), <https://www.mdpi.com/2075-5309/14/10/3096>

¹³ Olufemi Adetunji, *Climate Risk Management in Cultural Heritage for Inclusive Adaptation Actions in Nigeria*, 7(3) HERITAGE 1237–1264 (2024), <https://www.mdpi.com/2571-9408/7/3/60>

¹⁴ Edwin Kiarie, *Cultural Heritage Preservation in the Face of Globalization*, 3(3) INTERNATIONAL JOURNAL OF HUMANITY AND SOCIAL SCIENCES 1-14 (2024), https://www.researchgate.net/publication/382228947_Cultural_Heritage_Preservation_in_the_Face_of_Globalization

¹⁵ Lingran Zhang, *Towards a Better Approach: A Critical Analysis of Heritage Preservation Practices*, 10 OPEN JOURNAL OF SOCIAL SCIENCES 43-54 (2022), https://www.scirp.org/pdf/jss_2022050713490750.pdf

¹⁶ Alisa Santikarn, “*World Heritage, Blood Heritage*”: *The Kaeng Krachan Forest Complex and the Impact of World Heritage on Indigenous Rights*, 31(3) INTERNATIONAL JOURNAL OF CULTURAL PROPERTY 316-337 (2024), <https://www.cambridge.org/core/journals/international-journal-of-cultural-property/article/world-heritage-blood-heritage-the-kaeng-krachan-forest-complex-and-the-impact-of-world-heritage-on-indigenous-rights/55DA34B3E8357A2C6C2AC5D3773EA56C>

¹⁷ Eva Parga-Dans, et. al., *The social value of heritage: Balancing the promotion-preservation relationship in the Altamira World Heritage Site, Spain*, 18 JOURNAL OF DESTINATION MARKETING & MANAGEMENT 100499 (2020), https://www.academia.edu/44206678/The_social_value_of_heritage_Balancing_the_promotion_preservation_relationship_in_the_Altamira_World_Heritage_Site_Spain

¹⁸ Yishu Xu, et. al., *Exploring the connotation of “Local Community” in ICOMOS discourse: a textual analysis based on authoritative documents*, 12 HERIT SCI 116 (2024), <https://www.nature.com/articles/s40494-024-01222-4#citeas>

maintain traditional knowledge of how to care for them.¹⁹

Tangible cultural heritage is more than physical remains – it is the anchor of cultural identity.²⁰ It gives people a sense of belonging and community in a rapidly changing world.²¹ Safeguarding it ensures that future generations will not only inherit bricks and stones but also the stories, meanings, and values embedded in them. In this way, tangible heritage becomes a bridge between the past, present, and future, reminding us of who we are and how we came to be.²²

- **Intangible Cultural Heritage:** According to Article 2, of the “Convention for the Safeguarding of the Intangible Cultural Heritage” under UNESCO, Intangible cultural heritage refers to the customs, depictions, gestures, expertise, competencies, tools, items, antiques, and social locations that communities, groups, and, in certain instances, people acknowledge as integral to their cultural heritage.²³ It is the living side of culture: the songs, rituals, crafts, languages, and know-how that communities practice, teach, and adapt from one generation to the next. Unlike monuments or museum objects, intangible cultural heritage exists in people’s voices, hands, bodies, and social practices.²⁴ The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage highlights 5 broad domains:
 - i.) Oral traditions and expressions
 - ii.) Performing arts
 - iii.) Social practices, rituals, and festive events
 - iv.) Knowledge and practices concerning nature and the universe, and
 - v.) Traditional craftsmanship.²⁵

The importance of intangible cultural heritage lies in its role in shaping cultural

¹⁹ Malgorzata Trelka, *Negotiating Authority: Local Communities in the World Heritage Convention*, 16(1) JOURNAL OF THE WORLD ARCHAEOLOGICAL CONGRESS 99-119 (2020), https://link.springer.com/content/pdf/10.1007/s11759-020-09391-x.pdf?error=cookies_not_supported&code=28a1fd76-1775-463f-b1c0-569838df3710

²⁰ Lingran, *supra* note 15.

²¹ Sawaros Thanapornsanguth, et. al., *Intangible Cultural Heritage Safeguarding: A Youth-led Community of Practice in Lao People’s Democratic Republic*, 20 INTERNATIONAL JOURNAL OF INTANGIBLE HERITAGE 159-179 (2025), <https://unu.edu/publication/intangible-cultural-heritage-safeguarding-youth-led-community-practice-lao-peoples>

²² Wenqi Min, *A scientometric review of cultural heritage management and sustainable development through evolutionary perspectives*, 13(1) NPJ HERITAGE SCIENCE 215 (2025), <https://www.nature.com/articles/s40494-025-01708-9#citeas>

²³ UNESCO- INTANGIBLE CULTURAL HERITAGE, <https://ich.unesco.org/en/convention> (last visited Jun. 4, 2025).

²⁴ UNESCO, <https://www.unesco.org/en/intangible-cultural-heritage/> (last visited Jun. 10, 2025).

²⁵ *What is Intangible Cultural Heritage?* UNESCO (last visited Jun. 10, 2025), <https://ich.unesco.org/en/what-is-intangible-heritage-00003?>

identity, strengthening social cohesion, and providing continuity with the past. Scholars emphasize that safeguarding intangible cultural heritage contributes to community resilience and social sustainability, since heritage practices foster a sense of belonging and intergenerational dialogue. For instance, agrarian practices or rituals associated with seasonal festivals can help strengthen the community while transmitting ecological knowledge essential for sustainable living.²⁶

However, intangible cultural heritage faces many challenges. Globalization, migration, and urbanization sever traditional means of transmission, and there are innumerable endangered practices, as youth are not learning the traditions, or mass tourism and commercialization reduce them to a meaningless performance. UNESCO states that some intangible cultural heritage elements, like craft traditions, need urgent safeguarding to help prevent them from disappearing.²⁷

It has been well established that climate change and conflict also bear upon intangible cultural heritage. Displacement caused by wars or disasters can break the continuity of rituals and practices among communities. UNESCO research established the link between the safeguarding of intangible cultural heritage and disaster risk reduction, emphasizing how local knowledge systems embedded in rituals and oral traditions offer resilience strategies.²⁸

Intangible cultural heritage, ultimately, cannot be translated as freezing traditions in time; rather, it offers assistance to communities to invigorate them with contemporary meaning. It is a resource that is ever dynamic and amenable to evolution with societal change. The safeguarding of intangible cultural heritage essentially ensures that not only cultural objects but also the living practices, values, and wisdom by which people find meaning in life are passed down to the next generation.²⁹

The 2003 UNESCO Convention created binding obligations on States Parties to identify, document, and safeguard intangible cultural heritage in their territories. Unlike earlier heritage instruments that focused mainly on monuments, this treaty established an international legal framework for living heritage and requires periodic

²⁶ Committee for the Protection of Cultural Property in the event of Armed Conflict, UNESCO (Oct. 15, 2017), <https://unesdoc.unesco.org/ark:/48223/pf0000260454>

²⁷ *Browse the Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*, UNESCO, <https://ich.unesco.org/en/lists/> (last visited Jul. 10, 2025),

²⁸ *Meeting of Interim Co-ordinating Committee on Medical and Biological Abstracting*, UNESCO (last visited Jul. 13, 2025), <https://unesdoc.unesco.org/ark:/48223/pf0000371576>

²⁹ *What is intangible...*, *supra* note 25.

reporting to ensure compliance.³⁰ Furthermore, it recognizes the principle of community participation and free, prior, and informed consent, making it one of the first cultural treaties to formally embed human rights values into heritage law.³¹

SIGNIFICANCE OF CULTURAL HERITAGE

Continued humanity is the result of past generations, and relationships with grandparents help pass on knowledge and legacy. Thus, tangible and intangible cultural heritages must be protected and preserved.

India's cultural heritage is notably abundant and varied, indicating its position as one of the planet's most ancient civilizations.³² India's traditional legacy is characterized by gigantic edifices such as the Taj Mahal, historic shrines, and archeological treasures that narrate the intricacies of its past and development.³³ The nation boasts a diverse array of dialects, ceremonies, creative endeavors, and cuisines that enrich its rich ethnic fabric. The conservation of practices like songs, choreography, and ceremonies guarantees that the succeeding generations retain a link to their historical past.³⁴

- **Conservation of History**

Cultural legacy preserves previous generations' narratives, customs, and relics, enabling us to comprehend the evolution of culture. This historical background helps us understand the challenges and accomplishments of our forebears and connects us to them. Each item or legacy illustrates societal values, enhancing our comprehension of human history.³⁵

- **Evolution of Identity**

Customs, dialects, and practices bequeathed across generations assist individuals in establishing their identity amid their cultural frame. This link enhances personal

³⁰ *Text of the Convention for the Safeguarding of the Intangible Cultural Heritage*, UNESCO (last visited Jul. 11, 2025), <https://ich.unesco.org/en/convention?>

³¹ *Basic texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage*, UNESCO (last visited Jul. 12, 2025), <https://ich.unesco.org/en/basic-texts-00503?>

³² KNOW INDIA, <https://knowindia.india.gov.in/profile/> (last visited Jan 4, 2025).

³³ NATIONAL CULTURE FUND, https://ncf.nic.in/blog/cultural_heritage (last visited Jan 4, 2025).

³⁴ *India's Cultural Heritage: Preserving the past, Inspiring the future*, VISIONIAS (Sept. 16, 2024), https://cdn.visionias.in/value_added_material/0000a-weekly-focus-123_indias-cultural-heritage.pdf

³⁵ Heather Ferguson, *Cultural Heritage Is Important!*, CULTURAL HERITAGE THROUGH IMAGE (2019), <https://culturalheritagethroughimage.omeka.net/cultural-heritage-is-important>

identity and fortifies societal bonds.³⁶

- **Cultural Progression**

The oral tradition of customary processes guarantees tradition preservation. Intangibles like rituals, festivals, and oral traditions help cultural continuity. Celebrating these customs helps societies maintain their eccentric origins whilst responding to modern difficulties.

- **Fostering Multeity and Perception**

Cultural heritage promotes awareness by highlighting the abundance of other civilizations. Discussion within diverse categories establishes cross-cultural assimilation. Recognizing multiple traditions may foster compassion and collaboration amongst varied communities.³⁷

LEGISLATIONS GOVERNING CULTURAL HERITAGE GLOBALLY AND IN INDIA

Global regulations overseeing cultural heritage are crucial for safeguarding and maintaining traditional assets, tackling concerns like unlawful smuggling, armed conflict, and the protection of both physical and ethereal legacy. International frameworks and conventions include:

- **The 1954 Hague Convention (1954)**

It is the first and most extensive multinational pact solely focused on the preservation of traditional assets during both peacetime and warfare. It seeks to safeguard historical resources, including architectural, artistic, or monuments, archaeological locations, writings, literature, and other artistic items of ancestral significance, along with research-based assemblages of every nature, irrespective of their genesis or possession.³⁸

- **UNESCO Convention (1970)**

It pertains to the unlawful smuggling of traditional artifacts. It requires nations to adopt steps to deter unlawful acts, such as the creation of catalogues and the provision of reparations on appeal. The Convention relies on historical asset restoration to

³⁶ *The Significance of Cultural Heritage*, Ministry of Information Eritrea (Oct. 2, 2019), <https://shabait.com/2019/10/02/the-significance-of-cultural-heritage/>

³⁷ UNESCO, <https://www.unesco.org/en/cultural-heritage-7-successes-unescos-preservation-work> (last visited Jan. 4, 2025).

³⁸ *Cultural Heritage & Armed Conflicts*, UNESCO, <https://www.unesco.org/en/heritage-armed-conflicts/convention-and-protocols/1954-convention#:~:text=Now%20widely%20referred%20as%20the,territory%20of%20other%20States%20Parties.>

commemorate, conserve, and foster harmonious communities.³⁹

- **The World Heritage Convention (1972)**

It is a fundamental document designed to acknowledge and safeguard heritage masterpieces of exceptional significance. The World Heritage List was created to highlight monuments that need worldwide assistance for maintenance. Additionally, the treaty established the World Heritage Fund to aid in the preservation of these treasures.⁴⁰

- **International Humanitarian Law and the Protection of Cultural Property**

Showcases an agreement for safeguarding historical property during armed conflict. It forbids assaults on heritage and institutes particular safeguards for important places. The Second Protocol (1999) to the 1954 Hague Convention augments existing rights by permitting the “enhanced protection” category for monuments of significant importance.⁴¹

- **International Criminal Court (ICC)**

It categorizes offenses involving cultural heritage as wartime atrocities within its authority. Deliberate assaults against heritage assets are liable for punishment, hence strengthening the legal ramifications of such activities in times of war.⁴²

NOTABLE RULINGS OF THE INTERNATIONAL COURT

- **The return of the Benin Bronzes**

The Benin Bronzes represent significant instances of cultural heritage appropriation during the imperial period. The bronze figurines and plaques, handmade by the Edo folks of the Kingdom of Benin (present-day Nigeria), were stolen by British troops in 1897 during an alleged Punitive Expedition. For more than a century, these objects of art have been exhibited in personal collections and art galleries throughout North America and Europe. In 2021, the dialogues between the Nigerian and German governments commenced and culminated in the execution of a Joint Declaration in July 2022. The agreement establishes an extensive structure for the restitution of artifacts

³⁹ *Fight Illicit Trafficking (1970 Convention)*, UNESCO (Oct. 10, 2024), <https://www.unesco.org/en/fight-illicit-trafficking/about>

⁴⁰ *The World Heritage Convention*, UNESCO, <https://whc.unesco.org/en/convention/>

⁴¹ DIAKONIA INTERNATIONAL HUMANITARIAN LAW CENTRE, <https://www.diakonia.se/ihl/resources/international-humanitarian-law/ihl-protection-cultural-heritage/> (last visited Jan 5, 2025).

⁴² *Policy on Cultural Heritage*, INTERNATIONAL CRIMINAL COURT (Jun. 2021), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/20210614-otp-policy-cultural-heritage-eng.pdf>

from Benin to all museums across Germany.⁴³ The same was followed through by the Smithsonian's National Museum of African Art in Washington, US,⁴⁴ and two universities from the United Kingdom.⁴⁵

- **The restitution of the Weary Herakles**

In 1980, the "Weary Herakles", which is a Roman marble statue unearthed in Perge, Turkey. In 1981, a fifty percent stake in the top section of the model was obtained by the Museum of Fine Arts Boston, with the remaining fifty percent held by enthusiasts Shelby White and Leon Levy. In 1990, the title claims of the model were asserted by the Turkish Government. In 2011, following extensive discourse, the "Weary Herakles" was returned to Turkey.⁴⁶

India has an extensive legislative system regulating customary ancestry, designed to protect and manage its abundant archaeological and historical treasures.

- **The Indian National Trust for Art and Cultural Heritage (INTACH)**

Although not legislated, INTACH is crucial in promoting heritage protection in India. It partners with governmental entities to raise awareness and execute ecological campaigns nationwide.⁴⁷

- **Indian Treasure Trove Act (1878)**

This Act regulates treasure hunting in India. It covers possession disagreements, reporting, asserting, and protecting assets. It also sets procedures for identifying the owner.⁴⁸

⁴³ *Return of Benin Bronzes from the Ethnologisches Museum: Artefacts Now in Nigerian Hands*, STAATLICHE MUSEEN ZU BERLIN (Aug. 25, 2022), [https://www.smb.museum/en/whats-new/detail/return-of-benin-bronzes-from-the-ethnologisches-museum-artefacts-now-in-nigerian-hands/#:~:text=Museum%20/%20Claudia%20Obrocki-,Return%20of%20Benin%20Bronzes%20from%20the%20Ethnologisches,Artefacts%20Now%20in%20Nigeria n%20Hands&text=Today%2C%20a%20contract%20was%20signed,display%20in%20the%20Humboldt%20Fo rum](https://www.smb.museum/en/whats-new/detail/return-of-benin-bronzes-from-the-ethnologisches-museum-artefacts-now-in-nigerian-hands/#:~:text=Museum%20/%20Claudia%20Obrocki-,Return%20of%20Benin%20Bronzes%20from%20the%20Ethnologisches,Artefacts%20Now%20in%20Nigeria n%20Hands&text=Today%2C%20a%20contract%20was%20signed,display%20in%20the%20Humboldt%20Fo rum.).

⁴⁴ Linda St. Thomas, *Smithsonian Returns 29 Benin Bronzes to the National Commission for Museums and Monuments in Nigeria*, SMITHSONIAN (Oct. 11, 2022), <https://www.si.edu/newsdesk/releases/smithsonian-returns-29-benin-bronzes-national-commission-museums-and-monuments>

⁴⁵ Vivienne Chow, *After Years of Debate, Two Universities Have Become the First U.K. Institutions to Restitute Benin Bronzes*, ARTNET (Oct. 29, 2021), <https://news.artnet.com/art-world-archives/uk-universities-restituted-benin-bronzes-2027670>

⁴⁶ ARTHEMIS, <https://plone.unige.ch/art-adr/cases-affaires/weary-herakles-2013-turkey-and-museum-of-fine-arts-boston#:~:text=University%20of%20Geneva.-,The%20%2E2%80%9CWeary%20Herakles%2E2%80%9D%20is%20a%20Roman%20marble%20statue%20that%20was,to%20Turkey%20on%20September%202011.> (last visited Jan. 6, 2025)

⁴⁷ INTACH, <https://www.intach.org/chapters-legal.php> (last visited Jan. 6, 2025).

⁴⁸ Indian Treasure Trove Act, 1878, No. VI, Acts of Parliament, 1878 (India).

- **Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act)**

This legislation is fundamental in ensuring the conservation of antiquities and archaeological regions by giving a regulatory foundation for their administration. It guarantees the protection of locations that are over 100 years. A designated zone of 200 meters surrounding classified landmarks prohibits building and operations that might jeopardize these landmarks. The National Monuments Authority (NMA), incorporated under the AMASR Act, is responsible for preserving antiquities and administering forbidden and restricted zones around them.⁴⁹

- **The Antiquities and Art Treasures Act (1972)**

It regulates the sale, purchase, shipping, and preservation of artifacts. The act aims to avoid antiquities trafficking and theft, determine a National Authority to safeguard cultural assets, create a Register of Antiquity and National Cultural Objects, adhere to international conventions, hinder disintegration, and unavoidably obtain art valuables to ensure equitable conservation.⁵⁰

- **Convention on the Protection of the Underwater Cultural Heritage (2001)**

It acknowledges the huge depreciation of undersea cultural assets and establishes a licit enforceable mechanism for States Parties to enhance the identification, study, and safeguarding of their aquatic bequest, assuring its upkeep and survival.⁵¹

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

The objectives of the Convention are to protect Intangible Cultural Heritage (ICH), honor the ICH of societies, organizations, and people, enhance understanding of its significance, facilitate transnational collaboration and support, and motivate nations to preserve ICH within their jurisdictions. It cultivates a feeling of affiliation by linking people to their origins and collective encounters. Such consistency is fundamental for subsequent generations to grasp their ethnic roots and preserve their history in a progressively globalized society. The safeguarding and conservation of marine historical legacy as archaeological finds enhance understanding and recognition of

⁴⁹ The Ancient Monument and Archaeological Sites and Remains Act, 1958, No. 4, Acts of Parliament, 1958 (India).

⁵⁰ The Antiquities and Art Treasures Act, 1972, No. 52, Acts of Parliament, 1972 (India).

⁵¹ *Underwater Cultural Heritage 2001 Convention*, UNESCO (Aug. 19, 2024), <https://www.unesco.org/en/underwater-heritage/2001-convention>

previous societies, their past, and sciences⁵²

- **National Policy on Archaeological Exploration and Excavation (2014)**

This policy illustrates the government's strategy for archaeological research and heritage administration, highlighting ecological approaches for the conservation of heritage assets.⁵³

- **The Constitution of India (2016)**

According to Article 49 of the Indian Constitution, the state is obligated to safeguard landmarks and sites of national significance against demolition or defacement. Article 51A (f) also mandates everyone to appreciate and safeguard India's extensive cultural legacy.⁵⁴

HISTORIC JUDGMENTS UNDER THE INDIAN JUDICIARY

- **Her Majesty v. Lord Shiva (1982)**

This case concerns the repatriation of the Nataraj Idol of Lord Shiva from the United Kingdom to India. The effigy, a bronze sculpture representing Lord Shiva in his Nataraja form, was fraudulently trafficked from India and subsequently landed at the British Museum. The idol was identified by the Indian Government as dating back to the Chola Dynasty (approximately 11th – 12th Century CE) and was purloined from a holy site in Tamil Nadu. A lawsuit was commenced in the courts of the UK to assert custody and repatriate the artifact. The Indian Government presented substantial proof demonstrating the idol's legitimate genesis and ownership. The UK court issued a decision in India's favor, mandating the restitution of the Nataraja Idol. This case established a momentous standard for the repatriation of historical items and underscored the necessity of safeguarding and maintaining cultural heritage.⁵⁵

- **M. C Mehta and Anr v. Union of India & Ors (1986)**

Widely called the "Taj Trapezium Case," it revolves around the famous Taj Mahal, where the judicature furnished directives to safeguard the Taj from the detrimental impacts of air pollution resulting from numerous industries within 10,400 sq km

⁵² 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, <https://ich.unesco.org/doc/src/15164-EN.pdf>

⁵³ NATIONAL POLICY ON ARCHAEOLOGICAL EXPLORATION AND EXCAVATION, https://www.nitiforstates.gov.in/public-assets/Policy/policy_files/PNC1568R000292.pdf (last visited Jan. 6, 2025).

⁵⁴ INDIA CONST. art. 49 & 51A(f), amended by The Constitution (One Hundred and First Amendment) Act, 2016.

⁵⁵ Her Majesty v. Lord Shiva (1982).

encompassing the monument. The white marble had discolored to yellow as a result of acid rain along with substantial air pollution. The Supreme Court mandated the establishment of a dedicated cell within the Central government to ensure the safeguarding and upkeep of the Taj Mahal, Agra City, and additional cultural sites in the Taj Trapezium Zone (TTZ). This case resulted in Agra being designated as a Heritage City.⁵⁶

- **The Recovery of Naga Artifacts from Pitt Rivers Museum, Oxford (2020)**

The matter for repatriation that arose in 2020 related to the Naga ancestral relics that are on exhibition at the Pitt Rivers Museum (PRM), Oxford.⁵⁷ The particular Museum holds the world's biggest Naga assemblage, consisting of roughly 6,466 objects, including human remains and antiques like baskets, textiles, and traditional ornaments. Of this total, about 213 are ancient human relics. It originated internally amid COVID-19 when the Museum opted to remove the Naga human skulls from the general exhibition after more than a Century of exhibition.⁵⁸ The renowned Naga Anthropologist Dr. Dolly Kikon has been at the forefront of this cause. According to her, over almost a century, the bones of Naga progenitors and holy ceremonial artifacts, acquired by British anthropologists, government officials, explorers, and military personnel, were removed from Naga territories and deposited in personal possessions, galleries, and museums globally. The Pitt River Museum classified it as "*insensitive displays that highlighted the violent history of colonialism and imperialism.*" The Museum, on its part, keeping at its core its larger objective to decolonise, initiated the procedure to address and restore a challenging colonial history, focusing on reunification and engaging in co-curatorship alongside original communities. In this regard, the Forum for Naga Reconciliation (FNR) established a research group named Recover, Restore, and Decolonise (RRaD) to engage with native specialists, carry out interactive initiative research, raise consciousness among the public, and build a robust case to obtain a legitimate assertion to the University of Oxford.⁵⁹ The return of Naga

⁵⁶ M. C. Mehta v. Union of India & Ors., AIR 1987 SC 1086, 1986 SCR (1) 312.

⁵⁷ Arkotong Longkumer and Dolly Kikon, *Naga Ancestral Remains and the Healing of the Land*, THE WIRE (Jul. 4, 2022), <https://thewire.in/history/the-unfinished-business-of-colonialism-naga-ancestral-remains-and-the-healing-of-the-land>

⁵⁸ Dr. Dolly Kikon, *Journey Towards Repatriation of Naga Ancestral Human Remains: Decolonisation and Restorative Justice*, RECOVER RESTORE AND DECOLONISE (Dec. 3, 2022), <https://rradnagaland.org/online-press/journey-towards-repatriation-of-naga-ancestral-human-remains-decolonisation-and-restorative-justice/>

⁵⁹ Dr. Dolly Kikon, *Journey from the heart: Naga Repatriation & Healing of the Land*, RECOVER RESTORE AND DECOLONISE (Dec. 3, 2022), <https://rradnagaland.org/rrad-collective/journey-from-the-heart-naga-repatriation-healing-of-the-land/>

lineal human remains and ethnic relics from the Pitt Rivers Museum remains an evolving procedure. Although no tangible historical items are currently being returned to date, considerable development is underway. The museum stated that the restoration process of human relics, “*can take between 18 months and several years, depending on the complexity of the case.*”⁶⁰

CONCLUSION

The essence of cultural heritage, comprising the tangible and intangible facets, acts as a conduit linking the epochs of the past, present, and future generations. The preservation of this entity is quintessential for upholding historical continuity, nurturing cultural identity, and enhancing global diversity. Legal frameworks, whether at the international or national level, are vital in protecting these invaluable assets from threats such as illicit trafficking, neglect, and environmental degradation. International conventions such as the UNESCO treaties and national legislations like the AMASR Act and Antiquities Act offer organized frameworks; however, empirical case studies reveal the complexities and successes inherent in cultural repatriation and preservation initiatives. The persistent international cooperation, bolstered by legal frameworks and active community participation, is crucial for preserving cultural heritage, enabling it to inspire and educate generations to come.

⁶⁰ Neyaz Farooquee, *Indian tribes seek to bring back ancestral skulls from UK*, BBC (Nov. 19, 2024), <https://www.bbc.com/news/articles/c9vn13zr1n9o>