
EFFECTIVENESS OF THE ANTIQUITIES AND ART TREASURES ACT, 1972 IN PREVENTING ILLICIT TRAFFICKING OF CULTURAL PROPERTY IN INDIA: A COMPARATIVE LEGAL ANALYSIS**Dr Khushboo Bhardwaj**

Research Scholar, School of Law, Singhania University, Jhunjhunu, Rajasthan

Dr Sunil Dutt Chaturvedi

Associate Professor, School of Law, Singhania University, Jhunjhunu, Rajasthan

Abstract

The illegal trading of cultural goods was a major challenge to the conservation of national heritage and cultural identity and especially in countries with abundant antiquities like India. This paper has investigated how successful the Antiquities and Art Treasures Act, 1972 is in curbing the illicit trade, exportation, and misappropriation of cultural property in India. The study took the doctrinal and comparative legal method of examining the statutory framework, enforcement mechanisms and institutional arrangements to provide the protection of antiquities. Comparative evaluation against several foreign jurisdiction was done including the United Kingdom, the United States and Italy to determine best practice and models of enforcing the law.

The paper concluded that despite the introduction of the Antiquities and Art Treasures Act, 1972 to develop a detailed regulatory framework, the effectiveness of the law was still limited by the low level of enforcement capacity, the spreading institutional responsibilities, the lack of effective documentation systems, and the lack of flexibility to address modern trafficking practices. It was also found that those jurisdictions that had performed better had been relying on criminal-law oriented structures, specialised enforcement agencies and sound market control. The results showed that there were a lot of gaps between the regulatory strategy used in India and the international standards.

The research found out that the prevention of illicit trafficking could not be properly done without more than formal statutory measures. To protect the cultural heritage, the need to intensify enforcement mechanisms, bring the legal provisions up to date, control the art market and increase international cooperation was paramount. The article has made contributions to the law field by giving a comparative view, and as well as making policy-related suggestions to reform the current cultural property protection regime in India.

Keywords

Cultural Property; Illicit Trafficking; Antiquities and Art Treasures Act, 1972; Heritage Protection; Comparative Legal Analysis; India

INTRODUCTION

Cultural property is a vital element of the historical memory, the collective identity, and the continuity of the civilization of the country. Not only are antiquities, artworks, manuscripts and archaeological objects aesthetical artefacts but also material proof of social, religious and political processes through the course of time. Smuggling of cultural property has become a major transnational crime, which is usually accompanied by organised criminal groups, money laundering and funding of the illegal operations¹. Not only will the transfer of cultural objects to their source countries lead to the irretrievable cultural loss, but also the national sovereignty and the integrity of historical studies. India is a country with a rich and extensive cultural heritage dating back to a number of millennia and is one of the oldest civilizations in the world. But it is this richness that has also made the country susceptible to systematic looting, excavation and cross border smuggling of antiquities². Many idols, statues, manuscripts, and ritual objects have been stolen out of temples, archaeological locations, and even personal collections, and trade in international art markets and elsewhere abroad. Illicit trafficking remains a thorn on the flesh³ even though India is a signatory of major international conventions to prevent such practices. The Indian Parliament was responding to increasing anxieties over the protection of heritage by passing the Antiquities and Art Treasures Act, 1972, the aim of which was to control the export, trade and possession of antiquities and art treasures⁴. The Act is aimed at creating a legal framework of compulsory registration and licensing of dealers, export restrictions, and sanctions against law violations. Although the act was a big step then when it was enacted, questions have been raised in the enactment of the act on its relevance today, its effectiveness in enforcement, and its ability to meet present-day manifestations of trafficking⁵.

In the rest of the world, the United Kingdom, the United States, and Italy are the countries that have embraced more dynamic and enforcement-focused legal systems of criminal penalties and technological databases, specialised enforcement units, and international cooperation models⁶. Comparative legal study of these jurisdictions can offer useful insights on best practices that can help in reinforcing the heritage protection regime of India.

It is against this background that the current research paper subjects the Antiquities and Art Treasures Act, 1972 to critical analysis as a measure of curbing illegal trafficking of cultural property in India. The comparative legal approach will enable the research to assess whether the current statutory framework is appropriate to deal with modern challenges and is observed in line with the international standards. The paper also seeks to establish the legal and institutional loopholes and recommend ways of reforming to better safeguard the Indian cultural heritage in the ever-globalised art market.

2. Review of Literature

Merryman (1986) studied the philosophical bases of the cultural property protection and stated that the arguments about the antiquities had always been swinging between cultural nationalism and cultural internationalism. He described that the source countries focused on keeping and preservation of cultural goods as part of national identity whereas the market countries focused on circulation and privatization⁷. It was based on this theoretical framework that later legal and policy-focused studies were built on illicit trafficking.

O'Keefe (2011) compares the development of the international legal process targeted at the cultural property and finds that, despite the fact that the UNESCO 1970 Convention has developed significant normative principles, the practicality of its implementation was limited because of the poor implementation in the countries⁸. He observed that, the lack of standard rules of enforcement in different jurisdictions drastically decreased the deterrence effect of international conventions.

Vrdoljak (2006) was critical of how the domestic legal systems contribute to the implementation of the international obligations concerning cultural heritage. She suggested that the international law could not prevent illicit trafficking with the help of robust national laws and judicial goodwill to give restitution claims⁹. Through her work, the focus of municipal law in the translation of international commitments into effective protection was featured.

Menon (2018) has assessed the Indian legal framework that regulates antiquities and has noted that the registration and export control are some of the key regulatory frameworks which have been presented in the Antiquities and Art Treasures Act, 1972. Nevertheless, he argued that failure to enforce has been enhanced due to insufficient documentation, delays in administration and low institute capacity¹⁰. The paper has highlighted the importance of legal and administrative change to cope with modern trafficking activities.

The study by Bhatnagar (2017) on procedural and institutional issues of implementing the antiquities law in India discovered that the lack of coordination among the enforcement agencies was a major one that hampered the effectiveness of the regulations¹¹. She claimed that customs agencies, archeological departments, and policing agencies tended to operate independently, thus enabling the smuggling of objects to escape.

Comparative research of the cultural heritage protection laws in European countries (especially in Italy) by Forrest (2010) showed that the specialised police departments devoted to heritage matters and harsh criminal penalties had increased efficiency of enforcement¹². His research indicated that the inclusion of cultural property offences in the major criminal law systems enhanced deterrence.

Gerstenblith (2007) has contrasted the United States practice of regulating the international antiquities market and found that the application of general criminal law, supplemented by bilateral agreements and import restrictions, had yielded more practical enforcement benefits¹³. She proposed that the active prosecution and international legislative collaboration were critical in curbing the illicit trade.

In spite of these contributions, it was observed that there was a gap in the Indian context according to existing literature. The majority of studies looked at the Antiquities and Art Treasures Act, 1972 singly and failed to engage in systematic comparative analysis with other legal systems in foreign countries. In addition, very little emphasis had been put on evaluating the effectiveness of the Act in dealing with the new transnational trafficking networks.

This gap was attempted to be filled in the present study by adopting a comparative legal analysis to assess the sufficiency of the current structure in India as well as to establish areas where reform can take place.

3. RESEARCH METHODOLOGY

3.1 Research Design

The research design was the doctrinal and analytical research design. The design was deemed suitable because the research was on the interpretation, assessment, and comparison of legal rules, principles and institutional mechanisms of the protection of cultural property. The doctrinal approach made it easier to make a systematic inquiry into the statutory texts and judicial interpretations, whereas the analytical element allowed one to have a critical look at the effectiveness of the legal framework.

3.2 Nature of the Study

It was a qualitative research conducted mainly by law analysis. It has analysed the normative framework of the Antiquities and Art Treasures Act, 1972 and evaluated its contribution in curbing illicit trafficking of the cultural property. The research was not empirical or statistical in nature, since it was based on legal and policy aspects.

3.3 Sources of Data

The study relied exclusively on **secondary sources of data**, which included:

- Indian statutes relating to antiquities and cultural heritage
- Judicial decisions of Indian and foreign courts
- International conventions and legal instruments
- Government reports and policy documents
- Books, commentaries, and peer-reviewed legal journals

These sources were analysed to evaluate the scope, objectives, enforcement mechanisms, and limitations of the existing legal framework.

3.4 Method of Data Collection

In the process of gathering relevant legal materials, a systematic review of law reports, official publications on the legislation and international databases of the law, and scholarly repositories were undertaken. The materials gathered were placed in thematic categories in order to support a consistent legal study and comparison of jurisdictions.

3.5 Method of Analysis

A comparative legal approach has been chosen to examine the Indian legal system against some of the foreign laws which are the United Kingdom, the United States, and Italy. The comparison was concentrated on the structure of legislations, regulatory mechanisms, penal provisions and institutional enforcement models. This strategy was used to find out best practices and structural holes within the Indian system.'

3.6 Scope of the Study

The research was confined to the law of illegal trafficking in cultural property. It was concerned with legal and institutional means of prevention, control and enforcement. The paper did not explore archaeological valuation, economic pricing of antiquities and sociological factors of loss of cultural heritage.

3.7 Limitations of the Study

This research was limited in some ways. The use of secondary sources limited the availability of real-time information on the trafficking networks as it can be confidential or not accessible. The varying legal traditions and enforcement abilities in one jurisdiction as compared to another, as well as the administrative systems, further curtailed the degree of direct comparison. With these shortcomings, the approach used offered a strong structure of assessing the performance of the current legislation.

3.8 Ethical Considerations

The study was conducted within the the scope of academic integrity and ethics. No confidential or proprietary information was accessed or disclosed during the study and all sources consulted were solely used on academic basis.

4. Conceptual Framework: Cultural Property and Illicit Trafficking

Law had perceived cultural property as objects of historical, artistic, archaeological, religious or scientific interest which became part and parcel of the cultural identity of a community. And such objects could be valued on the basis of the material worth but also as a symbol of the past, tradition, and communal memory. Cultural property protection in law was thus considered acceptable due to the need to maintain cultural continuity, national identity and the intergenerational heritage¹⁴.

Smuggling of cultural property had been theoreticed as a compound legal malady of theft, unlawful excavation, illegal export, falsification of provenance and unlawful transfer of proprietorship. Contrasting to the common types of property crime, trafficking of cultural objects could be organized within transnational networks that took advantage of jurisdictional loopholes, lax enforcement systems as well as discrepancies between domestic legal systems. This is because the trade was covert and thus detection was difficult as well as prosecution¹⁵.

Laws legal illicit trafficking had been strongly associated with the operations of the international art market. Specific deeds had been historically encouraged by the demand of individual collectors, auction houses and museums stimulating looting and illicit exportation of the source countries. Poor due-diligence requirements and use of good-faith acquisition had added complexity to recovery and restitution issues. Due to this, the provenance verification and market regulation became the key aspects of the heritage protection measured by law frameworks in the modern world¹⁶.

Illegal trafficking was also identified to be an activity of transnational organised crime. Money laundering, forging documents, and smuggling operations across the borders became common cultural property offences. Jurisdictions having considered antiquities trafficking as a regulatory offence only enjoyed poorer deterrence results than those who considered the offences as a part of mainstream criminal law. This perception influenced the development of more repressive penal regimes and specialised institutions of the enforcement in a number of countries¹⁷.

At the global scale, the protection of cultural properties had been stipulated as national responsibility and also international responsibility. The states were regarded as the custodians of cultural heritage not only to their own people but also to the whole humanity. The inability to stop illicit trafficking was thus considered to be a blow to international cooperation, cultural diplomacy and restitution mechanisms¹⁸.

The understanding of antiquities in the Indian domestic law had tended to rely more on fixed statutory definitions that were not necessarily in keeping with the changing trafficking practices and market practices. The antiquities were frequently addressed as discrete entities and not elements of a larger cultural eco-system. Such a limited conceptual framework restricted the adaptability of the enforcement agencies to modern trafficking groups and online marketplaces¹⁹.

In order to conduct the current study, cultural property was defined as the legally safeguarded heritage with inherent cultural, historical, and national worth. Illicit trafficking was perceived as a multi-strata legal breach under the criminal, regulatory and international law aspects. This theoretical framework offered the analytical basis of assessing the efficiency of the Antiquities and Art Treasures Act, 1972, and to carry out a comparative legal analysis with a chosen number of foreign jurisdictions.

5. Legal Framework Governing Antiquities in India

The legal system that regulates the protection of antiquities in India was largely based on the Antiquities and Art Treasures Act, 1972, which was passed with the aim of ensuring that the illegal export, trade and misappropriation of the cultural objects did not occur. Before the signing of this law, the regulation of antiquities was done in a fragmented manner through the customs law and colonial era laws which had been discovered to be unsatisfactory in dealing with the magnitude and complexity of illegal trafficking²⁰. The 1972 Act was aimed to put in place a fully developing statutory system regarding the identification, regulation and preservation of antiquities and art treasures.

The Act had given a broad definition of antiquity to encompass historically, archeologically, or artistically interesting objects at least one hundred years old. This was also applied to sculptures, manuscripts, coins, inscriptions and other culturally valuable materials. The legislation sought to bring a legal certainty by using an age-based criterion, although this method also omitted culturally important objects of a more recent origin being covered by statutory protection²¹. The classification mechanism was a reflection of the static interpretation of heritage, which in the future proved difficult to answer the changing forms of trafficking. The Act had had a central regulatory mechanism in the mandatory registration of antiquities. Antiquity owners were also obligated to sign in the objects into the relevant authorities thus making it possible to keep a record of privately owned cultural property by the State. The registration system was also meant to discourage illicit trade and to enable stolen objects to be recovered. In practice, though, due to non-compliance and non-renewal of inventories, this was largely ineffective²².

The Act had also strictly limited the exporting of the antiquities and it was illegal to export any antiquity without the licence issued by the competent authority. This was an indication of India keeping cultural objects in national borders and was in line with international standards regarding protecting objects of source countries. The customs authorities were empowered to confiscate the objects that had been exported illegally, and its implementation was subject to the successful organization of the cultural and border-control institutions²³.

In order to control internal trade, the Act had provided a licensing system of dealers in antiquities and art treasures. The dealers were mandated to acquire licences, have records of transactions and allow inspection by the authorities. This control strategy aimed at bringing in transparency to the art market. However, informal markets, offline sales, and informal dealings were still in operation even without the statutory provision thus complicating regulatory goals²⁴.

The criminal provisions of the Act had criminalised unauthorized export, illegal sale and violation of the registration requirements. The punishment of the offences was the imprisonment and the fines, which indicated that the legislation aimed at preventing the violation. Even with the presence of these sanctions, enforcement measures were not effective since there were low prosecution levels as well as slowness in the process²⁵. Lack of specialised investigative units also restricted good use of penal provisions. In the institutional context, archaeological authorities operating under the central government had been given the responsibility of the administration of the Act. Although such institutions had technical skills in conservation of heritage, they were usually limited by their scarce enforcement resources and power. This cultural disintegration between cultural authorities and mainstream law-enforcement agencies undermined the effectiveness of the entire legal system²⁶.

In general, the legal system of the Indian antiquities had created a complete regulatory framework in principle. Nevertheless, its limitations were noticeable in areas of definition, documentation, enforcement capacity and inter-agency coordination, all the way to respond to modern manifestations of illicit trafficking. The existence of these structural restrictions became the precondition of the critical analysis of the efficiency of the Act and the necessity to compare it with the foreign jurisdiction.

6. Effectiveness of the Antiquities and Art Treasures Act, 1972

The success of Antiquities and Art Treasures Act, 1972 had been greatly decided on the basis of its ability to control illicit trafficking by controlling, enforcing, and discouraging the act. Although the Act created a broad statutory structure on paper, its daily operation showed that there were serious gaps in the intention of the legislation and the results of its enforcement. The effectiveness thus had to be evaluated by looking at the mechanisms of implementation, practices of enforcement and judicial response. The laws and regulations that were introduced as part of the Act, registration of antiquities and licensing of dealers, were supposed to establish traceability and transparency in the art market. But in reality the registration system was not fully established and was out of date and the amount of privately held antiquities was not recorded. The lack of a national database that was centralised and computerised reduced the power of the State to monitor stolen or unlawfully sold objects, and thus restricted the preventative effect of the legislation²⁷.

The institutional limits had further limited enforcement under the Act. Archeological officials charged with the responsibility of administration did not have the power to investigate on a similar level as standard law enforcement agencies. Liaison between the Archaeological Survey of India, the customs and the police forces and the border agencies was still disjointed. Consequently, illicit trafficking was frequently identified through accidental seizures, and not through systematic implementation based on intelligence²⁸. Such institutional maladjustment greatly minimized the workability of the Act.

The Act had set up penalties of incarceration and penalties as a result of unauthorised export and illegal deal of antiquities in terms of unauthorised export and illegal trade. It was found that even with these sanctions, the rates of conviction were low. Delay in the procedures, proving provenance, and poor forensic documentation often led to lengthy trials or acquittals. The punishments which were theoretically meant to instill enough fear of punishment were not successful in deterring traffickers who were also operating in well-organized networks²⁹.

The cautious approach was observed in the interpretation of the Act by the judicial review. The courts accepted the necessity to preserve cultural heritage in most cases and found the constitutionality of restrictions on exports and controlling measures to be valid. Nevertheless, judicial review tended to reveal flaws in the administrative systems in regard to seizure processes, documentation and adherence to due process. These inadequacies undermined prosecutor cases and in a more indirect way, the deterrent impact of the law³⁰.

The inability of the Act to conform to the modern trafficking practices also contributed to its lack of effectiveness. The law was intended in a pre-digital era and failed to cover properly the online art markets, privacy international sales, and the use of provenance documents which were forged. Traffickers were now taking advantage of these loopholes and their activities were out of the scope of the conventional regulation mechanisms as envisioned through the Act³².

The Act was limited in procedural assistance in cases of restitution and repatriation of trafficked antiquities in terms of international cooperation. In spite of the fact that India tried to find the solution in diplomatic circles and in the international courts, the lack of the elaborate statutory provisions of the international claims decreased the efficiency of the attempts. The use of general principles of international law and bilateral cooperation frequently led to a slow and unpredictable response procedure³³.

In general, although the Antiquities and Art Treasures Act, 1972 had provided a legal basis of heritage protection, the absence of enforcement, institutional disunity, stale regulatory instruments, and rigid responsiveness to current patterns of illicit trafficking limited its success in reducing illicit trafficking. These shortcomings highlighted why comparative analysis should be made to foreign legal systems and why statutory change should be made to reinforce the culture property protection system in India.

7. International Legal Framework on Cultural Property Protection

The global legal system on cultural property protection had been developed in reaction to the rising magnitude and transnationalism of antiquities illicit trade. Appreciating that domestic legislations were not adequate to deal with international flow of culture, the international community has come up with multilateral tools to harmonize standards, promote collaboration and encouraging restitution of stolen cultural heritage.

UNESCO Convention of 1970 had been the first international attempt to deal with illicit traffic of cultural property on a comprehensive basis. State Parties had binding obligations and commitments by the Convention to ban and avert the unlawful importation, exportation and conveyance of cultural property and to put up preventive actions like the utilization of catalogues, exportation certification, and popular education. The Convention has stipulated a significant normative structure but its success was largely contingent upon the domestic execution of the member states. This lack of retroactive application and enforcement did not help in the ability to obtain restitution in most instances.

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 had then provided the remedies and principles of restitution by private law to fix the gaps left by the UNESCO framework. The Convention had established a strong status of the source countries by compelling the good-faith purchasers to repatriate stolen cultural objects under limited compensation. By placing emphasis on restitution claims as a private transaction rather than a state responsibility, the UNIDROIT Convention had made legal certainty to be strengthened. Nevertheless, its international influence was limited by its limited ratification³⁴.

The intervention of Interpol and specialised databases like the Interpol Stolen Works of Art Database had also helped in international cooperation. Through these mechanisms, information sharing amongst the national enforcement agencies had been made possible and identification of trafficked objects had also been done better. Such tools were useful but relied on timely reporting, proper documentation and the involvement of the national authorities³⁵.

The international framework had also been added by judicial and diplomatic mechanisms. Claims on restitution due to violation of export and national ownership legislation of source countries became more accepted in foreign courts. The process of limiting importation of cultural objects of high-risk areas and repatriation was to be done through bilateral agreements and memoranda of understanding. These systems, as effective as they were in some instances, misused time in lengthy court proceedings and diplomacy³⁶.

The global legal framework had theorised the protection of cultural property as the collective initiative of the global community. States were not considered as only the owners of cultural heritage but as custodians of humanity. This policy was used to support restrictions to market freedom and privatization in favour of heritage conservation. Nevertheless, the structure was still troubled by the issue of disproportional ratification, contradictory national legislation, and opposition of the market states which were more interested in commercial considerations³⁷.

As far as India is concerned, the international legal means offered a normative framework to the prevention of illegal trafficking and recovery of cultural property on foreign territories. However, the success of these tools still depended on effective domestic laws, administrative capability and active engagement of the international community. The short-comings of the global framework thus supported the need to reinforce national laws and harmonize them with those of the international standards by means of comparative legal reform.

8. Comparative Legal Analysis

A comparative legal study was already done to evaluate how effective Indian legal framework was, by looking at the legal heritage protection regimes in the chosen foreign jurisdiction, which are United Kingdom, United States and Italy. Such jurisdictions were selected because they have elaborate legal frameworks, special enforcement frameworks and are involved in international collaboration in the fight against illegal trafficking of cultural property. The comparison was made in terms of scope of legislation, enforcement mechanisms and institutional set ups.

8.1 United Kingdom

The United Kingdom had already taken the targeted criminal law approach under the Dealing in Cultural Objects (Offences) Act, 2003, which had made it a criminal offence to engage in the dishonest dealing of the tainted cultural objects. In contrast to the more regulation oriented model in India, the UK model considered smuggling of illegal drugs as a significant criminal offense that needed the demonstration of ill intent instead of regulatory failure. This measure enhanced deterrence whereby criminal responsibility has been stuck to market agents who were fully aware of trading illegally³⁸.

Beyond statutory frameworks, the UK had been relying on effective due-diligence practices in the art sector and this relied on professional codes of conduct and collaboration between the law-enforcement agencies and the cultural institutions. Heritage protection has been incorporated in the regular process of criminal investigation, which increased compliance and ease in prosecution³⁹.

8.2 United States

The US had taken a mixed-method of enforcing the general criminal laws in conjunction with specialised legislation of cultural properties. The National Stolen Property Act was widely applied to convict cases of stolen antiquities even when the theft had taken place outside the US territory. The foreign patrimony laws were construed to have established state ownership; this facilitated criminal prosecution of importation and sale of foreign goods illegally⁴⁰.

Culture property implementation act also allowed the US to restrict imports by signing bilateral agreements with countries of origin. This process has enabled preventive action in reactive measures by limiting the access of undocumented cultural items

into the US market. The increased focus on enforcement by Federal agencies and other specialised prosecutors helped to increase recovery and conviction rates⁴¹.

8.3 Italy

The Cultural Heritage and Landscape Code had developed one of the most restrictive cultural heritage protection systems in the world in Italy. Cultural property crimes were defined as serious offenses and they were enforced by the specialised Carabinieri Command on the Protection of Cultural Heritage. This unit integrated investigation, technology databases, and international collaboration which led to successful recovery and deterrence⁴².

The Italian paradigm focused on an extensive paper trail, criminalising the unauthorised excavation and high principles of state ownership. The fusion of heritage protection and national policing systems had the significant effects of decreasing illegal trafficking and boosting international restitution activities⁴³.

8.4 Comparative Insights

The comparative analysis showed that those jurisdictions that had better enforcement results had embraced the criminal-law-based approach, specialisation of enforcement agencies, and the most modern inventory systems. By comparison, the Indian structure was based on regulation and administrative structures that had minimal criminal implementing powers. Lack of specialised investigative agencies, laxity in regulating the markets and lack of integration with general criminal law decreased the deterrence under the Indian system.

The comparative analysis showed that success in the prevention of the illegal traffic was not only based on the statutory prohibition but on the intensity of the enforcement, the capacity of the institution and market regulation. These were the insights, which were used to recommend reforms in putting the legal framework of India in line with international best practices.

9. Challenges in Preventing Illicit Trafficking of Cultural Property in India

India had also been a victim of a variety of structural, institutional, and legal issues that had complicated the prevention of illicit trafficking of cultural property. Although there was a statutory framework that was established under the Antiquities and Art Treasures Act, 1972, these obstacles placed a serious dent with the practical efficiency of the law and with its enforcement procedures.

Lack of an overall and centralised list of antiquities had been one of the main challenges. Many of the antiquities that were in the possession of individuals, religious societies and local authorities were not documented or poorly documented. This made it hard to determine ownership, provenance and theft, undermined investigation and prosecution in trafficking cases⁴⁴. The recovery and restitution of trafficked items also were legally complicated without the help of reliable records.

Enforcement had also been limited by institutional fragmentation. Various organizations such as Archaeological Survey of India, customs departments, police forces and state cultural departments had overlapping yet ill-coordinated duties. Lack of a common enforcing body meant that jurisdictional blending, delays in reaction, and application of the law inconsistency⁴⁵. Institutional mandates tended to fall in the gap of illegitimate trafficking cases, making them less accountable and less effective. Lack of criminal enforcement orientation of the legal framework had been another major challenge. An antiquity trafficking was often overlooked as a regulatory or administrative infraction and not a serious organised crime. This strategy did not mirror the magnitude, profitability and transnational character of the offence. This made traffickers relatively safe in comparison to the large financial rewards in the illegal art business⁴⁶.

There were more challenges of informal and digital art markets growth. Online sales, private sales and international auctions began to be used more and more to pass the circulation of antiquities with a forged or incomplete provenance. The law in place was not well prepared to govern online dealings and deal with new types of cover and money laundering of cultural artifacts⁴⁷. Such technological disparity would enable traffickers to be outside the scope of traditional enforcement measures.

Prosecution also had procedure and evidentiary challenges. To prove the antiquity status of an object, establish that it was illegally exported, that the accused possessed the necessary knowledge, or intention to establish such knowledge, and was frequently done through expert testimony and through voluminous documentation. Delay in forensic examination and absence of specialised training in investigation undermined prosecutorial results⁴⁸. In its turn, it resulted in low conviction rates, which weakened the deterrence effect of the law.

There were additional issues of international cooperation. Although India sought the restitution of trafficked antiquities in both diplomatic and judicial measures, this often took a long and uncertain period. The disparity in the local legality standards, the issue of burden of evidence, and acceptance of export violations in other countries made recovering difficult⁴⁹. Lack of well-organized statutory processes to international claims narrowed down the potential of India to effectively utilize the international legal processes.

The level of public awareness and stakeholder involvement also was low. The registration requirements and legal obligations under the Act were not very well known to the owners, the temple authorities and local communities. Such ignorance enhanced susceptibility to theft and illegal sale especially in rural and remote locations where enforcement was low⁵⁰.

Altogether, these difficulties indicated that lawlessness in the growth of the illicit trafficking in India was not only the outcome of the lack of laws but also the indicator of more profound problems of enforcement, the ability to coordinate the activities of the different institutions, changes in technologies, and international interactions. These problems demanded an overhaul of the law, an increase in administrative muscle, and adherence to international best practices.

10. Recommendations and Policy Reforms

Following the weaknesses that were established with the current legal system, it was believed that there were certain reforms that needed to be put in place to make the Antiquities and Art Treasures Act, 1972 more effective in curbing illicit trade in cultural property in India. The objectives of these recommendations were to enhance legal provisions, institutional capacity and adjustment of domestic law in line with international best practice.

One of the initial reforms entailed the modernisation of statutory definitions of the Act. The age definition of antiquity was discovered to be too inflexible and could not be used sufficiently to define culturally relevant objects of more modern origin. A broader definition that encompasses culturally significant artefacts regardless of their age would have seen the law better address the current form of trafficking. This reform would indicate the dynamism of cultural heritage, as well.

It was deemed necessary to create a centralised and digital antique register of the country. An extensive cyber-based inventory that could be accessed by enforcers, customs authorities and international collaborators would have enhanced tracing and enable recognition of stolen or illegal exported items. The incorporation of this registry with the international databases would further enhance cross-border enforcement and restitution.

There was also a need of institutional reforms to increase capacity to enforce them. Existing institutional fragmentation would have been solved by the establishment of a specialised cultural heritage protection unit, whose investigative mandate is on par with mainstream law-enforcement authorities. Specification of provenance analysis, documentation and collaboration in the international cooperation would have enhanced detection and prosecution results.

Another urgent need was reform of the penal structure. Greater deterrence would have been achieved by enhancing the punishments of the grave trafficking crimes and making the illicit trade in antiquities a specific form of organised crime. The inclusion of the confiscation of proceeds of crime and asset forfeiture would also drive the trafficking networks out of business and decrease the level of financial motivation.

The art market had to be strengthened in terms of regulation. Compulsory due-diligence of dealers, auction houses and collectors would have decreased the number of objects with dubious provenance circulating. Market responsibility should have been legalized and disregard or cheating in the market should have been punishable to ensure that India would have followed the best practice abroad.

Mechanisms of international cooperation also had to be strengthened statutorily. Prominent provisions of restitution, repatriation and mutual legal assistance in domestic law would have enhanced the presence of India in foreign courts and diplomatic talks. Bi-lateral agreements between key market states would have also limited the access of undocumented Indian antiquities into the markets abroad.

Awareness to the community and participation of the people were also significant. Sensitization activities to temple authorities, private owners and local communities would have enhanced compliance with registration and minimized the vulnerability of theft. The participation of communities in the protection of heritages would have reinforced the preventative actions and formal enforcement strategies.

All of these reforms would have turned the Antiquities and Art Treasures Act, 1972 into a more of an enforcement-focused and less of a regulation law. Combining technological resources, the institutionalization of these resources, market control, and international goodwill, the cultural property protection regime of India would have been in a better position to respond to the dynamic nature of illicit trafficking.

Conclusion

The current research paper reviewed the usefulness of the Antiquities and Art Treasures Act, 1972 in the protection of the issue of illicit trafficking of cultural property in India by a comparative approach of law. The discussion showed that although the Act had offered a substantive legal basis through which antiquities were regulated and their protection ensured, its execution was still weak because of its structural, institutional, and enforcement-related shortcomings.

The research discovered that the regulatoryism of the Act, especially its registration and licensing focus was not adequate to deal with the complex and transnational nature of modern antiquities trafficking. The deterrence effect of the law had been totally compromised by weak documentation systems, institutional roles, and capacity of enforcement. The fact that the statutory framework became unable to meet technological change and changing market practices also limited its effectiveness. Comparative study showed that jurisdictions in which heritage protection performance was enhanced had embraced enforcement oriented methods, making cultural property offenses criminal law offences and creating special investigative force units. Conversely, the administrative control and the basic enforcement methods used in India did not show the importance and lucrativeness of illicit trafficking networks.

The paper also pointed out that despite offering normative support, the international legal tools were not able to replace good domestic laws and institutional capacity. The success of the international collaboration on the restitution and repatriation operations was identified to be dependent on the strength of the legal systems of countries and the proactive enforcement measures.

On the whole, the results highlighted the necessity of the wholesome change of the cultural property protection regime in India. Enhancement of statutory limits, modernisation of enforcement systems, regulating the art market, and the cooperation of countries were seen as the key actions in enhancing the efficiency of the legal framework. Unless these reforms were undertaken, the success of the Indian cultural heritage to illicit trafficking was bound to continue.

The research came to the conclusion that safeguarding of cultural property was not a law only but a general responsibility to the preservation of historical memory and cultural identity. This demanded a stronger and dynamic legal system that would help in preserving the cultural heritage of India that was to be preserved to the future generations.

REFERENCES

1. Lyndel V Prott, *Commentary on the UNIDROIT Convention* (Institute of Art and Law 1997).
2. Neil Brodie and Colin Renfrew, 'Looting and the World's Archaeological Heritage' (2005) 38 *Annual Review of Anthropology* 343.
3. UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970).
4. Antiquities and Art Treasures Act 1972.
5. Pramod Kumar and Alok Kumar, 'Illicit Trafficking of Cultural Property in India: Legal and Institutional Challenges' (2019) 61 *Journal of the Indian Law Institute* 215.
6. Patty Gerstenblith, *Art, Cultural Heritage, and the Law* (4th edn, Carolina Academic Press 2019).
7. John Henry Merryman, 'Two Ways of Thinking about Cultural Property' (1986) 80 *American Journal of International Law* 831.
8. Patrick J O'Keefe, *Protecting Cultural Objects: Before and After 1970* (Institute of Art and Law 2011).
9. Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press 2006).
10. R Venkata Rao Menon, *Heritage Law in India* (Oxford University Press 2018).
11. Ruchi Bhatnagar, 'Legal Regulation of Antiquities in India: Issues and Challenges' (2017) 9 *NUJS Law Review* 45.
12. Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010).
13. Patty Gerstenblith, 'Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past' (2007) 8 *Chicago Journal of International Law* 169.
14. John Henry Merryman, 'The Public Interest in Cultural Property' (1994) 77 *California Law Review* 339.
15. Lyndel V Prott and Patrick J O'Keefe, *Law and the Cultural Heritage, Volume I: Discovery and Excavation* (Professional Books 1992).
16. Neil Brodie, 'The Market in Iraqi Antiquities 1980–2009' (2011) 45 *Crime, Law and Social Change* 135.
17. Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010).
18. Ana Filipa Vrdoljak, *International Law, Cultural Heritage and State Responsibility* (Oxford University Press 2014).
19. Dilip K Chakrabarti, *Archaeology, Cultural Heritage and the Antiquities Trade* (Oxford University Press 2018).
20. Comptroller and Auditor General of India, *Performance Audit on Preservation and Conservation of Monuments and Antiquities* (2013).
21. Law Commission of India, *Antiquities and Art Treasures: Legal Protection and Regulation* (Report No 88, 1984).
22. Ministry of Culture, Government of India, *Annual Report 2021–22*.
23. *Union of India v Rajendra Singh* (1996) 3 SCC 100.
24. Neil Brodie, 'Illicit Antiquities Trade and the Internet' (2015) 16 *Journal of Art Crime* 29.
25. Ana Filipa Vrdoljak, 'Restitution of Cultural Objects: International Law and Practice' (2011) 30 *Netherlands Yearbook of International Law* 161.
26. UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970).
27. UNIDROIT, *Convention on Stolen or Illegally Exported Cultural Objects* (1995).
28. Interpol, *Stolen Works of Art Database: Operational Guidelines* (2019).
29. Patty Gerstenblith, *Art, Cultural Heritage, and the Law* (4th edn, Carolina Academic Press 2019).
30. Lyndel V Prott, 'The International Movement of Cultural Objects' (2009) 12 *International Journal of Cultural Property* 225.
31. Dealing in Cultural Objects (Offences) Act 2003 (UK).
32. Norman Palmer, *Museums and the Holocaust: Law, Principles and Practice* (Routledge 2000).
33. *United States v Schultz* 333 F3d 393 (2d Cir 2003).
34. Cultural Property Implementation Act 1983 (US).
35. Italian Cultural Heritage and Landscape Code (Legislative Decree No 42 of 2004).
36. Francesco Rutelli, *The Return of Stolen Art: Lessons from Italy* (Meltemi Editore 2010).
37. Comptroller and Auditor General of India, *Performance Audit on Preservation and Conservation of Monuments and Antiquities* (2013).
38. Law Commission of India, *Antiquities and Art Treasures: Legal Protection and Regulation* (Report No 88, 1984).
39. Neil Brodie, 'Illicit Antiquities Trade as a Transnational Crime' (2014) 13 *International Journal of Cultural Property* 1.
40. Tess Davis, 'Antiquities Trafficking and the Internet' (2016) 9 *Journal of Art Crime* 45.
41. Pramod Kumar, 'Prosecution of Cultural Property Crimes in India: Legal Challenges' (2021) 63 *Journal of the Indian Law Institute* 287.
42. Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press 2006).
43. Ministry of Culture, Government of India, *National Mission on Monuments and Antiquities: Status Report* (2018).
44. Law Commission of India, *Antiquities and Art Treasures: Legal Protection and Regulation* (Report No 88, 1984).
45. UNESCO, *Strengthening the Fight against Illicit Trafficking of Cultural Property* (2015).
46. Craig Forrest, *International Law and the Protection of Cultural Heritage* (Routledge 2010).
47. Neil Brodie, 'Illicit Antiquities Trade as Organised Crime' (2014) 13 *International Journal of Cultural Property* 1.
48. Patty Gerstenblith, *Art, Cultural Heritage, and the Law* (4th edn, Carolina Academic Press 2019).
49. Ana Filipa Vrdoljak, *International Law, Cultural Heritage and State Responsibility* (Oxford University Press 2014).
50. Ministry of Culture, Government of India, *National Mission on Monuments and Antiquities: Status Report* (2018).