



CULTURAL HERITAGE PROTECTION AND REPATRIATION LAWS IN THE ART WORLD VIS-À-VIS PAINTINGS

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Introduction

Paintings, as timeless embodiments of cultural heritage, stand as a testament to the rich legacy our forebears have bequeathed us. They act as a crucial conduit linking our history to the present and guiding us towards the future. This legacy encompasses not only the tangible threads of our past, such as illustrious paintings, historic edifices, and ancient manuscripts but also the intangible tapestry of traditions, languages, and knowledge systems. Paintings, in their vibrant hues and strokes, encapsulate more than mere artistic endeavour; they are the essence of our collective identity and historical consciousness. They embody the values, experiences, and narratives of communities, playing a pivotal role in knitting together a sense of community, belonging, and the diverse cultural mosaic that showcases the myriad facets of human creativity. Therefore, the preservation and conservation of these artistic treasures are fundamental for ensuring the continuity and authenticity of cultural narratives across the globe.

The international mobilization to safeguard cultural heritage, with a keen focus on

paintings, underscores a global commitment to protect our shared history from the ravages of conflict, theft, and environmental threats. Acknowledging the intrinsic value of these artistic works, global entities like UNESCO have spearheaded conservation initiatives.

These efforts are supported by landmark frameworks such as the UNESCO Convention of the 1970s, designed to curb the illicit trade of cultural properties. India, with its rich tapestry of historical and cultural narratives, has emerged as a leader in the preservation of its artistic heritage. The nation's comprehensive legal and institutional measures, including The Antiquities and Art Treasures Act of 1972, reflect a profound dedication to safeguarding its cultural treasures for posterity.¹

Repatriation of paintings, or the act of returning these art pieces to their countries or communities of origin, has emerged as a complex subject within the art world, laden with ethical, legal, and cultural dimensions. This discussion delves into the intricate matters of ownership, museum responsibilities, and the rectification of historical wrongs, especially concerning paintings acquired during periods of colonial exploitation or through illicit means. For nations like India, which has seen its rich tapestry of art spread across the globe, repatriation is far more significant than merely reclaiming stolen treasures. It represents an essential step towards reinstating historical veracity and justice. The discourse on repatriating paintings is multifaceted, involving stringent legal

¹ Faheem F., "Preserving India's Heritage: The Power Of International Collaboration For Natural And Cultural Conservation" (*Counter Currents*, June 5, 2023)

<<https://countercurrents.org/2023/06/preserving-indias-heritage-the-power-of-international-collaboration-for-natural-and-cultural-conservation/>> accessed February 8, 2024.



frameworks, diplomatic efforts, and overarching ethical considerations related to cultural restitution. The profound cultural heritage of India, coupled with the global dispersion of its artworks, adds layers of complexity to the debate, underscoring the necessity for repatriation strategies that are both attuned to international standards and respectful of the unique aspects of Indian artistic heritage.

This dedication is demonstrated by the Indian government's aggressive efforts to repatriate antiquities of Indian origins from other countries. One noteworthy example is the recent return to the United States by U.S. officials of about 307 antiques valued at over \$4 million.² Moreover, Glasgow Museums' decision to repatriate seven pilfered artifacts to India is a prime example of the results of these efforts. These successful repatriation tales highlight the world's acknowledgement of the complex histories of once colonial countries like India and the deliberate efforts to address the historical theft of cultural artifacts.³ Furthermore, the success of repatriation has been greatly aided by the effectiveness of diplomatic discussions and the development of goodwill among nations. These developments have reignited discussions about the Kohinoor Diamond's restitution, particularly in the wake of Queen Elizabeth II's demise.⁴

Following the terms of the Lahore Treaty between Lord Dalhousie and the Sikh king Duleep Singh, the British colonial government stole the Kohinoor Diamond, a jewel with enormous historical and cultural value to India, in 1849. The Diamond has since been kept in the British Museum as part of the Crown Jewels of Great Britain. Many Indians have made returning the Diamond a recurring theme in their lives, representing a yearning to have a portion of their cultural and historical identity restored. The British Museum Act of 1963, which forbids the deaccessioning of objects from the museum's collection, has frequently been used by the government to reject such requests, notwithstanding these appeals.⁵ This position highlights the continuous difficulties and discussions in the pursuit of historical justice and cultural restitution, underscoring the intricate interaction of legal, ethical, and diplomatic factors that shape the discourse on cultural repatriation.

Key Legal Instruments and Conventions

The fields of cultural heritage conservation and cultural item repatriation are encapsulated in a complex and all-encompassing web of international agreements and domestic laws. This complex legal system is a reflection of the widespread agreement on the need to protect cultural legacies, which is evidence of the importance

² Sivaraman R, "U.S. Returns 307 Antiquities, Valued at Nearly \$4 Million, to India" (*The Hindu*, October 18, 2022) <<https://www.thehindu.com/news/national/tamil-nadu/united-states-returns-307-antiquities-valued-at-nearly-usd-4-million-to-india/article66026108.ece>> accessed February 8, 2024.

³ "Glasgow Museums to Return Seven Stolen Artefacts to India" (*BBC News*, August 19, 2022) <<https://www.bbc.com/news/uk-scotland-glasgow-west-62604145>> accessed February 9, 2024.

⁴ "After Queen Elizabeth II's Death, Many Indians Are Demanding the Return of the Kohinoor Diamond" (*TIME*, September 9, 2022) <<https://time.com/6212113/queen-elizabeth-india-kohinoor-diamond/>> accessed February 8, 2024.

⁵ *Ibid.*



of cultural legacy to human identity and social continuity.

UNESCO 1970 Convention

A historic international agreement designed to stop the illegal trade in cultural artifacts is the 1970's UNESCO Convention concerning the Measures to Prohibit and Prevent the Illegal Import, Export, and Transfer of Ownership of Cultural Property. Concerns over the increased theft and trafficking of cultural artifacts, which not only deprives countries of their cultural legacy but also weakens the historical and cultural bonds that unite communities, gave rise to the Convention.

The goal of this Convention is to prevent the illicit cross-border movement of cultural artifacts. This entails establishing strong safeguards against the unauthorized export, import, and transfer of ownership of cultural assets, guaranteeing that these priceless gems may be conserved, valued, and researched in their native environments or, in the event that they are relocated, properly returned to them.⁶

In this setting, Article 13 of the Convention is quite important. It requires the States Parties to the agreement to endeavour sincerely on behalf of the repatriation of cultural treasures obtained unlawfully. The restitution concept, which is essential to the goals of the Convention, is emphasized in this clause. To ensure that the request is valid and founded on verifiable rights over the disputed object, the claimant countries must, however, furnish significant proof of

ownership before the return procedure can begin.

There is broad worldwide agreement on the value of preserving cultural heritage, as evidenced by the 142 member nations of the Convention, among them India. This broad ratification shows that cultural goods are valued not just as national treasures but also as essential parts of the global cultural history and diversity. These nations assume a shared responsibility for protecting cultural property from the dangers of illegal trafficking by ratifying the Convention.

After the convention was ratified, there was a global push to establish cooperative methods and legal frameworks that would make it easier for cultural artifacts to be recovered and returned to their original locations or owners. This involves the creation of national cultural property inventory, the improvement of customs laws, and the encouragement of global collaboration between law enforcement, cultural organizations, and other parties engaged in the preservation of cultural heritage.

Convention Concerning the Protection of the World Cultural and Natural Heritage

A historic international agreement enacted in 1972 is the Convention Concerning the Protection of the World Cultural and Natural Heritage, or simply the World Heritage Convention. Its main goal is to encourage international cooperation in order to safeguard and conserve historical places that are extremely valuable to humanity. These

⁶ "Repatriation of Antiquities to India: Is Your Collection Protected?" (*Lexology*, March 30, 2022) <<https://www.lexology.com/library/detail.aspx?g=2d>

c9e5e9-7f86-4f0e-9cd1-fb39a21fccb9> accessed February 9, 2024.



locations contain exceptionally beautiful natural vistas as well as ecologically significant areas, in addition to their cultural and historical relevance.⁷

The Convention presents a thorough approach to heritage conservation, highlighting the need for an organized and methodical strategy based on scientific knowledge to protect these priceless assets. In order to guarantee that these locations survive for future generations, this strategy emphasizes the significance of a continuous commitment to heritage preservation by utilizing the most recent advancements in conservation research and practice. India is one of the 194 State Parties to the Convention, demonstrating the nearly universal support for the cause of cultural heritage protection. This broad involvement highlights the universal agreement on the significance of preserving the world's natural and cultural legacy, across national borders over time and space.

The Convention's implementation is a dynamic, participatory process. States Parties are obliged to suggest possible locations inside their borders that satisfy the stringent requirements for World Heritage designation in order for these locations to be included on the World Heritage List. In addition to recognizing the sites' inherent worth, this listing encourages assistance for their preservation on a global scale. When a site is considered endangered, it may be included to the List of World Heritage in Danger, which

directs international attention and support toward its preservation.

Additionally, the Convention has created a forum for countries to exchange lessons learned from one another and work together to conserve their cultural heritage by sharing their accomplishments, struggles, and experiences. The UNESCO World Heritage Centre, which organizes global initiatives and provides technical assistance and training to help nations meet their conservation goals, supports this group effort.

UNIDROIT Convention 1995

Established in 1995, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is a crucial international legal framework designed to tackle the issues related to the criminal trafficking of cultural property. This Convention emphasizes the importance of proactive and preventative actions to conserve cultural assets. It also highlights a comprehensive approach to the restitution and repatriation of cultural items.⁸ In addition to focusing on the return and restoration of cultural artifacts, the Convention highlights the significance of taking proactive steps to protect cultural assets. These measures take many forms, such as physically guarding archaeological sites against looting, creating and using databases or registers to record cultural artifacts, and encouraging technical collaboration between states to improve their ability to preserve cultural heritage. In order to reduce the threats to cultural artifacts and guarantee their preservation for future

⁷ "Convention Concerning the Protection of the World Cultural and Natural Heritage" (*World Heritage Convention*, UNESCO) <<https://whc.unesco.org/en/conventiontext/>> accessed February 9, 2024.

⁸ "1995 Convention - UNIDROIT" (*UNIDROIT*) <<https://www.unidroit.org/instruments/cultural-property/1995-convention/>> accessed February 9, 2024.



generations, such comprehensive methods are essential.

As of the most recent statistics available, only 54 Contracting States had ratified the Convention, indicating a gap in its universal adoption despite its significance. Notably, India is one of the nations that has not ratified the Convention, highlighting the difficulties in forging international agreement and collaboration in the struggle against the illicit trafficking of cultural property.

The Hague Convention

The need to protect cultural assets is an international obligation that cuts beyond both space and time. The worldwide commitment to protect the cultural legacies of different peoples is ingrained in this acknowledgment, and it was given legal form with the passage of the Convention for the Protection of Cultural Property in the Event of Armed Conflict. This historic convention, now known as the Hague Convention, was held in 1954 under the auspices of the UNESCO. It is recognized as the first legal document dedicated solely to the preservation of cultural heritage, representing a turning point in the history of cultural heritage protection.

The Hague Convention of 1954 sprang from the awareness that violent wars had a catastrophic effect on countries' cultural fabric. Past events, most notably the widespread devastation of cultural property during World War II, have shown how vulnerable cultural heritage is to war and the necessity of a coordinated worldwide effort to protect these priceless resources from the

devastation of armed conflict. The Hague Convention was created in response to this necessity, with the dual goals of preserving cultural property during times of peace and during times of conflict.⁹

The Convention's scope is broad, including a multitude of cultural qualities that are considered essential to a people's cultural identity and legacy. This encompasses, among other things, architectural monuments that serve as reminders of past artistic and historical movements, archaeological sites that provide a glimpse into the past, artistic creations that showcase the inventiveness of various cultures, manuscripts and books that preserve the knowledge of past civilizations, and scientific collections that represent human inquiry and discovery throughout history. The Convention emphasizes the universal importance of cultural heritage by taking an inclusive stance and extending its protective mantle over cultural items regardless of their ownership or place of origin.

The Hague Convention of 1954 outlines procedures for the preservation of cultural property. It establishes a system of protection that requires States Parties to carry out a number of preventive measures during times of peace, including inventory preparation, emergency planning for the preservation of cultural heritage, and the designation of protected monuments and sites.¹⁰ The Convention also establishes the unique Blue Shield logo, which denotes cultural property that is protected and makes it easier to identify certain locations and artifacts in the event of an armed conflict.

⁹ "1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict" (UNESCO) <<https://en.unesco.org/protecting-heritage/convention-and-protocols/1954-convention>> accessed February 9, 2024.

¹⁰ *Ibid.*



Indian Legal Framework

The Indian legal system is based on the Antiquities and Art Treasures Act of 1972, which regulates the export, exchange, and preservation of art treasures and antiquities. For more than 50 years, this legislation has been essential, demonstrating India's dedication to preserving its rich cultural legacy and historical relics. The main goal of the legislation is to regulate the flow of these objects, protecting them from illegal exports and trafficking, and creating an atmosphere that will allow them to be preserved for future generations.¹¹

The legislation has international significance since it interacts with international initiatives to prevent crimes against cultural property. An important player in this field is INTERPOL, an international body tasked with promoting cross-border police collaboration. India is among the 195 nations that make up INTERPOL's membership, which emphasizes the necessity of cultural relic protection around the globe. The organization's efforts to stop the illegal sale and theft of cultural items are a testament to the global effort being made to protect cultural property.¹²

Talks about the return of culturally significant items, like the Kohinoor Diamond, to their native countries are heightened by this international framework of collaboration and legal systems. The Kohinoor, a symbol of colonial

expropriation, has been the focus of international discussion due to its travel throughout empires and present home in the British Crown Jewels. It is still debatable and complicated whether international rules and bilateral agreements are effective in allowing the repatriation of these artifacts to their native nations. The Antiquities and Art Treasures Act of 1972, along with INTERPOL's endeavours, are noteworthy achievements in safeguarding cultural heritage. However, the Kohinoor Diamond case highlights the difficulties associated with repatriating artifacts that are complicated by diplomatic, legal, and historical factors.

Art of Painting as Tangible Asset

While the essence of paintings emanates from the intangible creativity of the mind, anchoring these artworks to a physical medium subject them to the realm of legal oversight through statutes like the Transfer of Property Act, 1882 (TPA) and the Sale of Goods Act, 1930 (SGA). The TPA predominantly addresses the legalities surrounding tangible private immovable property, outlining three principal rights afforded to owners: the rights to utilize, possess, and transfer (alienate) their property. This legal framework, with limited exceptions, typically categorizes substantial artworks such as sculptures and frescoes as immovable property, necessitating registered documentation for transactions like sales, leases, licenses, mortgages, and gifts, alongside the requisite stamp duty payments.¹³ Conversely, the exchange of

¹¹ "An Excursion into the Antiquities' Law of India" (Center for Art Law, June 1, 2020) <<https://itsartlaw.org/2020/06/01/an-excursion-into-the-antiquities-law-of-india/>> accessed February 9, 2024.

¹² *Ibid.*

¹³ Bhutoria, S., Saraf, A., & Garg, M. (2024, January 12). *A general introduction to Art Law in India*. Lexology. Retrieved February 11, 2024, from



movable artworks, including paintings, is facilitated under the SGA, permitting the transfer or conveyance of ownership through the simple act of handing over the artwork, backed by an intention to transfer ownership.

Art of Painting as intangible Asset

The intricate rights associated with the realm of paintings are meticulously safeguarded under a wide array of intellectual property regulations in India. These protections for original paintings are specifically outlined in the Indian Copyright Act of 1957 and its accompanying rules. Within the ambit of the Copyright Act, 'work' encompasses an extensive range of artistic expressions, including both visual and performing arts, literature, and derivative creations. Among these, paintings, along with other recognized forms of visual art like engraving, sculpture, photography, and architectural works, are classified under 'artistic works'. This categorization distinctly separates them from other copyrightable materials such as literary compositions, digital creations, music, and films, which are acknowledged as independent entities of copyrightable works.¹⁴

This differentiation in Indian copyright legislation bestows upon paintings and similar visual arts a set of legal privileges not uniformly extended to other art forms. For example, paintings, under the umbrella of artistic works, are afforded a more expansive right to reproduction compared to literary or performing arts. Moreover, the privilege to claim resale royalty is exclusively reserved for paintings, sculptures, and drawings with a valuation exceeding 10,000 rupees. This right does not extend to artworks of lesser value or

to other forms of art, including photographs, highlighting a tailored approach to the legal protection of paintings within the sphere of Indian copyright law.

Instance as to Painting

One prominent real-life example pertaining to painting and the broader context of Cultural Heritage Protection and Repatriation in the art world involves the Klimt painting 'Portrait of Adele Bloch-Bauer I'. This case highlights issues around art restitution, ownership disputes, and the repatriation of cultural property. It is one of Gustav Klimt's most famous paintings, completed in 1907. The painting was commissioned by Ferdinand Bloch-Bauer, a wealthy Jewish sugar industrialist and the husband of Adele Bloch-Bauer, the woman depicted in the painting. The painting became famous not only for its beauty but also for its intricate history, entangled with World War II and the Holocaust.

During World War II, the Nazis annexed Austria, and the Bloch-Bauer family, being Jewish, fled the country. The Nazis looted countless artworks from Jewish families, including Portrait of Adele Bloch-Bauer I, which was confiscated and ended up in the Austrian State Gallery (now the Belvedere Museum) in Vienna.

The story of the painting's repatriation began decades later when Maria Altmann, the niece of Adele Bloch-Bauer, sought to recover the painting from Austria. In 1998, Austria passed a law aimed at returning art stolen by the Nazis to their rightful owners or their descendants. This law opened a window for Altmann and other heirs of the original

<https://www.lexology.com/library/detail.aspx?g=643b6555-f9bf-475e-bdf8-a0549650c5af#footnote-043>.

¹⁴ *Ibid.*



owners to claim their family's looted artworks.

The case of *Portrait of Adele Bloch-Bauer I* involved a lengthy legal battle that eventually reached the United States Supreme Court in "Republic of Austria v. Altmann" (2004). The Court ruled that Austria could be sued in US courts under the Foreign Sovereign Immunities Act, allowing the case to proceed.

In 2006, after a binding arbitration in Austria, the Austrian government agreed to return the painting, along with several others by Klimt, to Maria Altmann and her family. The 'Portrait of Adele Bloch-Bauer I' was subsequently sold to Ronald Lauder for the Neue Galerie in New York for \$135 million, at the time a record price for a painting.

This case has become emblematic of the complex issues surrounding art restitution and the repatriation of cultural property. It highlights the importance of legal frameworks and international cooperation in addressing historical wrongs and restoring cultural heritage to its rightful heirs. The story of 'Portrait of Adele Bloch-Bauer I' also underscores the emotional and cultural significance of artworks, beyond their monetary value, as symbols of history, identity, and memory.

Conclusion

The intricate dance between cultural heritage protection and repatriation laws within the art world, particularly through the lens of painting, underscores a complex interplay of legal, ethical, and cultural considerations. As we have seen, the implementation of repatriation laws and the adherence to international conventions like the UNESCO Convention of 1970, while not without their

challenges, have paved the way for significant progress in the return of culturally significant artworks to their countries of origin. These legal frameworks, coupled with a growing awareness and sensitivity towards cultural heritage issues among museums, collectors, and the public, are driving a shift towards more ethical practices in the art world.

the journey of repatriating paintings and other cultural artifacts is emblematic of a broader quest for justice, understanding, and mutual respect among nations and cultures. While the path is fraught with legal and ethical dilemmas, the continued evolution of cultural heritage protection and repatriation laws holds the promise of a more inclusive and equitable art world. Through these efforts, we not only safeguard the physical embodiments of our shared human history but also honour the intangible bonds that connect us to our diverse cultural heritages.
