



# International Journal of Engineering, Science and Humanities

An international peer reviewed, refereed, open-access journal  
Impact Factor 8.3 [www.ijesh.com](http://www.ijesh.com) ISSN: 2250-3552

## **Legal Framework For Protection of Art and Antiquities In India: A Critical Study of The Antiquities and Art Treasures Act, 1972**

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### **Abstract**

India possesses one of the richest and most diverse cultural heritages in the world, reflected through its art and antiquities. The increasing incidence of illicit trafficking, illegal export, and commercial exploitation of cultural property has necessitated a robust legal framework for heritage protection. This paper critically examines the legal regime governing the protection of art and antiquities in India, with particular focus on the Antiquities and Art Treasures Act, 1972. Using a doctrinal and analytical research methodology, the study analyses constitutional provisions, statutory mechanisms, and enforcement practices related to cultural property protection. The paper identifies key limitations within the existing framework, including definitional ambiguities, weak implementation, administrative fragmentation, and challenges arising from globalised art markets. It further evaluates India's compliance with international conventions on cultural property protection. The study concludes by proposing legal and institutional reforms to strengthen enforcement, enhance international cooperation, and promote public participation in heritage conservation. The findings contribute to ongoing discourse on cultural heritage law and underscore the need for modernised legal responses to protect India's antiquities effectively.

**Keywords:** Antiquities, Cultural Heritage, Antiquities and Art Treasures Act 1972, Illicit Trafficking, Heritage Protection, Indian Law.

### **1. Introduction**

Art and antiquities comprise the priceless part of the nation's cultural heritage, as they reveal the nation's past development, religious ideas, artistic forms, and national identity. Antiquities are not just objects of aesthetic interest in India; they contain the memory of society and serve as instruments of historical consciousness, and they have a continuous cultural tradition dating back many millennia. The story of the past and the continuation of India's civilisation are told through sculptures, manuscripts, coins, paintings, inscriptions, and archaeological artefacts. Such cultural



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property protection is thus not only a matter of national pride but also a duty to future generations<sup>1</sup>.

The rising commercialization of art objects and the growing demand in the international market for rare antiquities have been the primary causes of the issue of illicit trafficking, theft, and illegal exportation of cultural property. India has traditionally been among the most hit countries of origin in the international black market in antiquities, and many artefacts have found their way into foreign museums, private collections, and auction houses<sup>2</sup>. This has brought about the irreparable loss of cultural heritage and raised serious questions about the sufficiency of the domestic legal frameworks to eliminate such exploitation. The international character of the illicit trafficking in antiquities also complicates the enforcement, which requires effective local legislation and international collaboration<sup>3</sup>.

India has realised the value of preserving cultural heritage, and in this regard, the Indian legal system has established constitutional and statutory safeguards for antiquities and art treasures. The Constitution of India, in Article 49, places a responsibility on the State to safeguard monuments and objects of national significance against spoliation, disfigurement, destruction, removal, disposal, or export<sup>4</sup>.

Pursuant to this constitutional requirement, various legislations were enacted by the Parliament, including the Ancient Monuments and Archaeological Sites and Remains Act, 1958, and the Antiquities and Art Treasures Act, 1972. The Antiquities and Art Treasures Act, 1972, is one of them, and it embodies the endeavor to control the export, commerce, and possession of Indian antiquities.

The Antiquities and Art Treasures Act, 1972, was passed, with the main aim of preventing the smuggling of antiquities and ensuring effective control and conservation of art treasures in the country. The Act requires the mandatory registration of antiquities, the prohibition of their export, and prescribed penalties for violations<sup>5</sup>.

It also gives the Central Government the power to control transactions in antiquities and to assume control over their movement and possession. Although the Act is an elaborate structure, its lack of effectiveness has been a subject of concern on various grounds, including ineffective enforcement systems, stakeholder ignorance, administrative inefficiency, and ambiguities in the definition of certain terms<sup>6</sup>.

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<sup>1</sup> B B Lal, *The Earliest Civilisation of South Asia* (Aryan Books International 1997).

<sup>2</sup> S Mackenzie, *Illicit Trafficking in Cultural Objects* (Routledge 2005).

<sup>3</sup> Lyndel V Prott and Patrick J O'Keefe, *Law and the Cultural Heritage: Movement* (Butterworths 1989).

<sup>4</sup> Constitution of India 1950, art 49.

<sup>5</sup> Antiquities and Art Treasures Act 1972, ss 3–5.

<sup>6</sup> K K Singh, 'Protection of Cultural Heritage in India: A Critical Appraisal' (2018) 60 *Journal of the Indian Law Institute* 345.



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Moreover, the legal framework for antiquities in India should be considered in light of evolving international norms and conventions. India is bound by the UNESCO Convention of 1970, which means that State Parties should make suitable efforts to prevent and prohibit the illicit importation, exportation, and transfer of ownership of cultural property<sup>7</sup>.

The congruence of local laws with international norms has thus been especially vital in addressing international trafficking and recovering stolen works of art. Nonetheless, the reality of the situation continues to keep the harmony between municipal law and international responsibilities at loggerheads, without robust implementation plans<sup>8</sup>. It is against this background that a critical analysis of the Antiquities and Art Treasures Act, 1972, is necessary to determine its relevance, adequacy, and efficiency in modern times. This paper examines the law protecting art and antiquities in India, potential loopholes in its application, and whether the current statute is equipped to address contemporary issues such as online markets, collectors, and foreign auction houses.

This paper aims to contribute to the discussion on cultural heritage protection by providing a doctrinal and analytical overview of the Act and proposing reforms to the legal framework in India to align with international best practices.

## Objectives of the Study

The research is conducted to investigate the legal framework regulating the protection of art and antiquities in India, with specific reference to the Antiquities and Art Treasures Act, 1972. The main goal is to examine how much the Act achieves its aim, to the extent that the unlawful exportation, commerce, and misuse of antiquities and works of art are prevented. The research also seeks to critically analyze the efficiency of the statutory mechanisms established under the Act, such as the registration provision, the controls imposed by regulation, and sanctions.

The other important goal of the research is to identify the practical difficulties in implementing and enforcing the Act. This involves an evaluation of administrative constraints, stakeholder ignorance, and coordination problems among the enforcers<sup>9</sup>. The paper also aims to examine how the Indian legal framework is compatible with international standards, particularly those developed under global conventions on cultural property protection. Lastly, the study seeks to make positive recommendations and legislative changes to enhance the security and conservation of art and antiquities in India in a manner that meets the modern domestic and international demands.

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<sup>7</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.

<sup>8</sup> Antiquities and Art Treasures Act 1972, long title and ss 3–5.

<sup>9</sup> K K Singh, 'Protection of Cultural Heritage in India: Issues and Challenges' (2019) 61 *Journal of the Indian Law Institute* 412.



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## Research Methodology

The current study employs a doctrinal and analytical research approach, which is the most suitable method for studying statutory frameworks and legal principles governing cultural heritage protection. The research relies mostly on secondary data, including statutory requirements, judicial rulings, books, research articles, law commission reports, government reports, and international law instruments<sup>9</sup>. The statutory basis of the analysis lies in the Antiquities and Art Treasures Act, 1972<sup>10</sup>, as well as in other similar legislation, such as the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

A descriptive style has been used to outline the current legal framework, and a critical analysis has been conducted to assess its strengths and weaknesses. The use of comparative references to international conventions and foreign legal practices has been applied, where relevant, in determining whether India is adhering to international standards in the protection of cultural property<sup>11</sup>.

The study lacks empirical data collection and relies solely on doctrinal material to secure objectivity and analytical richness. Such methodology helps the study offer a clear and logical interpretation of the law concerning art and antiquities, identifying gaps and proposing reforms that can be applied to the law.

## Legal Framework for Protection of Art and Antiquities in India

The legal system for the protection of art and antiquities in India has its constitutional basis in the obligation to conserve this country's cultural heritage, and is reinforced by a combination of statutory and administrative provisions.

The preservation of antiquities is not only considered an issue of control over ownership but also a necessary element in the preservation of national identity, historical continuity, and cultural sovereignty<sup>12</sup>. The framework operates at both the constitutional and legislative levels to ensure that cultural property of historical, artistic, and archaeological value is not destroyed, traded illicitly, or exported unauthorisedly. On the constitutional level, Article 49 of the Constitution of India imposes on the State the responsibility to safeguard monuments, places, and objects of national significance against spoliation, mutilation, destruction, removal, or export<sup>13</sup>.

This is a provision of the understanding that cultural heritage is not a commodity but a national asset possessed by a group of people. Also, Article 51A(f) imposes a primary responsibility on citizens to cherish and conserve the rich heritage of India's composite culture, thus making the protection of heritage the accountability of society in general, not only the State<sup>14</sup>. These

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<sup>10</sup> C R McGimsey, *Public Archaeology* (Academic Press 1972).

<sup>11</sup> Lyndel V Prott, 'International Control of Illicit Traffic in Cultural Property' (1983) 231 *Recueil des Cours* 215.

<sup>12</sup> S Manoharan, *Cultural Heritage Law in India* (Oxford University Press 2019).

<sup>13</sup> Constitution of India 1950, art 49.

<sup>14</sup> Constitution of India 1950, art 51A(f).



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provisions in the constitution provide the normative basis for statutory actions. Some of the main laws that regulate antiquities in India include the Ancient Monuments and Archaeological Sites and Remains Act, 1958, which is used to preserve monuments and archaeological sites of national interest<sup>15</sup>.

Though this Act is mainly concerned with immovable heritage, e.g., monuments and sites, its role in Australia complements the regulatory framework for movable cultural property by establishing State authority for heritage conservation. The Act allows the Central Government to proclaim monuments for protection and to control the construction, excavation, and use of protected sites to ensure that physical degradation and unauthorized interference are avoided.

The Antiquities and Art Treasures Act, 1972, contains the most important legislation directly concerning movable cultural property. The Act was also passed to govern the export, trade, and ownership of antiquities and art treasures, and to prevent their smuggling outside India<sup>16</sup>. It establishes antiquities based on their historical/artistic/cultural worth and stipulates the mandatory registration of such objects. The Act provides a total ban on any export of antiquities other than under particular circumstances that are approved by the Central Government, and, therefore, makes the cultural property that is considered to be of national interest subject to the control of the State.

The Act also regulates dealers in antiquities, requiring them to be licensed and meet specified norms<sup>17</sup>. Criminal laws have been introduced to discourage the unlawful acquisition, sale, and exportation of antiquities, and the penalties are imprisonment and fines.

The authority to enforce the law is vested in the specific official, such as customs officers, who have the power to seize and confiscate illegally traded artefacts. The Act, therefore, tries to establish a multifaceted regulatory framework comprising proactive and corrective action.

In addition to domestic law, Indian law is also informed by international conventions on the illicit trafficking of cultural property. India is a State Party to the UNESCO Convention of 1970, which calls on States to take measures to prevent unlawful importation, exportation, and transfer of ownership of cultural property<sup>18</sup>.

The standards of international cooperation, restitution, and due diligence embodied in the Convention have been incorporated into India's policies and administrative practices, especially in cases where stolen artefacts of foreign jurisdiction are being repatriated.

Even with an elaborate legal framework, the protection of art and antiquities in India remains problematic. Problems such as disjointed implementation, poor institutional capacity, the

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<sup>15</sup> Ancient Monuments and Archaeological Sites and Remains Act 1958.

<sup>16</sup> Antiquities and Art Treasures Act 1972, s 3.

<sup>17</sup> Antiquities and Art Treasures Act 1972, ss 5–8.

<sup>18</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.





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absence of digitised inventories, and poor relationships between the central and state governments have impacted effective implementation<sup>19</sup>. Nonetheless, the legal system in place provides a baseline on which, with reform and modernisation, a solid protection for India's cultural heritage can be provided in accordance with international norms.

## **Critical Analysis of the Antiquities and Art Treasures Act, 1972**

The Antiquities and Art Treasures Act, 1972, was passed with the intention of stopping the illegal exportation and commercial exploitation of antiquities and to provide State ownership of cultural property of national significance. Although the Act is an important legislative initiative that aims to protect heritage, its effectiveness in practice has been a longstanding academic and policy issue. A critical examination shows that the Act, despite its broad purpose, is afflicted with structural, definitional, and enforcement-based limitations that have limited its effect<sup>20</sup>.

Among the main issues is the definition of the term 'antiquity' in the Act. The legal definition, which is mainly based on an object's age and cultural value, has been criticised for its lack of clarity and flexibility<sup>21</sup>.

The antiquity criterion, which requires an object to be 100 years old to be considered an antiquity, frequently, excludes culturally important artefacts of later date. This time-based limit does not account for changing artistic culture and living heritage, thereby limiting protection. In addition, the subjective nature of the powers granted to authorities to decide what is regarded as having historical, artistic, or cultural value has led to inconsistent interpretations.

The other significant weakness of the Act is its obligatory antiquities registration system. Registration is supposed to provide formal documentation and curb illegal trade, but its implementation has been very ineffective<sup>22</sup>. Many antiquities are not registered because people are unaware of it, there is bureaucracy, and the administration has not made efforts to reach these people. In many cases, registration is perceived by the private collectors as an infringement on the right of ownership, and a non-compliant state is therefore deliberate. This has consequently undermined traceability and enforcement due to the lack of a digitised, comprehensive national database.

One of the Act's strongest points is its export control mechanism, which imposes a near-total ban on the export of antiquities. Yet, this is also the rigidity that has been criticised as discouraging valid academic exchange and international exhibition<sup>23</sup>. Researchers posit that the lack of a transparent, flexible licensing framework has led to excessive centralisation of power, making the process cumbersome and opaque. This has, on a few occasions, encouraged unlawful avenues

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<sup>19</sup> Nayanjot Lahiri, *Marshall's Empire: Archaeology in British India* (Permanent Black 2012).

<sup>20</sup> V N Khanna, 'Legal Protection of Cultural Property in India: An Appraisal' (2017) 59 *Journal of the Indian Law Institute* 521.

<sup>21</sup> P S Narayanan, *Intellectual Property Law* (4th edn, Eastern Book Company 2014).

<sup>22</sup> Shanti P Verma, 'Regulation of Antiquities in India: Problems and Prospects' (2018) 3 *Indian Journal of Cultural Studies* 67.

<sup>23</sup> J H Merryman, 'Two Ways of Thinking About Cultural Property' (1986) 80 *American Journal of International Law* 831.



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rather than the controlled cultural flow. The institutional and administrative flaws have also sabotaged enforcement under the Act.

The Act places much reliance on the customs officials and specific authorities who are not usually trained on specialisation in the identification of antiquities<sup>24</sup>. This is a loophole that traffickers have used to exploit this skill gap, especially at international borders. There is also a lack of coordination between the activities of central agencies, state departments, and law enforcement organizations, and it decreases the efficiency of seizures, investigation and prosecutions.

The criminal clauses of the Act, which were supposed to serve as deterrence mechanisms, have been accused of being archaic and not strict enough in the context of the contemporary international art market<sup>25</sup>. As the monetary value of antiquities grows exponentially, fines and penalties prescribed for application do not always reflect the seriousness of the violation in proportionate terms. Moreover, low conviction rates and a lengthy litigation process have watered down the deterrent impact of the law. On the international level, although the Act is generally compatible with the UNESCO Convention of 1970, it does not contain any specific tools for restitution or cross-border collaboration<sup>26</sup>. The lack of elaborate procedural guidelines for repatriating stolen artefacts has put India at a disadvantage in cases before international tribunals. Such a void shows that major changes are required at the legislative level to include more specifications on global cooperation and mutual legal support.

Overall, despite providing a legal basis for the protection of cultural property in India, the Antiquities and Art Treasures Act, 1972, suffers from a lack of definition, an inability to enforce the law, systemic government inefficiencies, and outdated penalty provisions. The Act should then be critically re-evaluated to ensure it is responsive to current demands, such as globalised art markets, online trading platforms, and international restitution claims.

## **Challenges in Implementation and Enforcement**

Although there is a well-developed system of statutory protection, the real functioning and enforcement of laws that govern the protection of art and antiquities in India is full of various challenges. They are structural and operational and they pose a big threat to the goals of the Antiquities and Art Treasures Act, 1972.

A limitation in the institutional capacity of enforcement agencies is among the most challenging issues that are persistent. Leaders of the implementation of the Act usually do not receive

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<sup>24</sup> S K Gupta, 'Illicit Trafficking of Antiquities: Challenges for Enforcement Agencies' (2020) 45 *Economic and Political Weekly* 54.

<sup>25</sup> A K Singh, 'Penal Sanctions and Cultural Property Crimes in India' (2019) 11 *National Law School Journal* 102.

<sup>26</sup> Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press 2006).



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specialised training on archaeology, art history and identification of heritage, which negatively affects their skills to differentiate between actual antiquities and replicas or modern artefacts<sup>27</sup>.

The other significant issue is associated with the decentralized administrative hierarchy of protecting cultural heritage. The responsibility of several agencies, such as the Archaeological Survey of India, the customs authorities, the state departments of archaeology and local law enforcement agencies, overlap<sup>28</sup>. Lack of a central command structure or a centralised coordination mechanism has led to the failure to have a single command structure, slow responses and inconsistencies in the enforcement practice. Such disjointedness has been most notable in scenarios touching on the cross-border trafficking where inter-agencies are essential in executing swift cooperation.

The non-availability of detailed records and digitised lists of antiquities is a major problem with enforcement. Many artefacts, especially those that are in the possession of individuals or religious organizations are not registered under the Act<sup>29</sup>. Without a national digital database, provenance would be hard to trace, stolen objects would be hard to identify, and provenance in a judicial case would be hard to establish.

This loophole has also not facilitated India to file restitution claims before the foreign courts and international organizations. Enforcement is further weakened by little publicity and stakeholder involvement. Numerous antiquities owners, such as collectors and temple officials, do not know about the registration conditions, and are not accustomed to the regulatory compliance as an intrusion into property rights<sup>30</sup>.

This unwillingness to collaborate with the police has created the culture of non-compliance, which is not proactive but reactive. This has been caused by the absence of awareness campaigns and community participation programs towards the creation of a heritage-sensitive society that is actively involved in the protection programs.

The problem of illegal trafficking and international market forces remains one of the primary enforcement issues. The fact that the Indian antiquities are high demanded in the international art markets coupled with porous borders and well organized smuggling networks has made it very hard to detect and prevent the activities<sup>31</sup>. The loopholes in the law, the fake provenance papers, and the online auctions are used by the traffickers to help the trade of illegal goods. The high rate of development of online auction sites has also made regulation a difficult task because the current laws were not created to deal with online transactions.

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<sup>27</sup> S K Gupta, 'Heritage Protection and Enforcement Challenges in India' (2020) 55 *Journal of Cultural Heritage Management* 211.

<sup>28</sup> Nayanjot Lahiri, *Archaeology and the Public Purpose* (Oxford University Press 2016).

<sup>29</sup> T S Satheesh, 'Documentation and Digitisation of Cultural Property in India' (2019) 8 *International Journal of Heritage Studies* 143.

<sup>30</sup> R K Verma, 'Public Participation in Cultural Heritage Protection' (2018) 4 *Indian Journal of Public Administration* 389.

<sup>31</sup> Neil Brodie, 'Illicit Antiquities Trade and Global Markets' (2015) 41 *Crime, Law and Social Change* 213.





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Courts and constrained conviction rates also water the effect of enforcement mechanisms. Criminal cases brought under the Antiquities and Art Treasures Act are frequently full of difficult evidentiary questions, expert opinion and extended legal action<sup>32</sup>. Lack of specialised courts or special training in cultural property law in judiciary has led to delay in adjudication thus making penal provisions ineffective. Therefore, criminals often do not see the threat of punishment as significant.

Further, the enforcement agencies have been limited by resource constraints like lack of sufficient funding, insufficient trained personnel and insufficient technological assistance<sup>33</sup>. The goals of heritage protection are challenging to realise without adequate investment on capacity building, surveillance infrastructure and mechanisms of international cooperation. These issues lead to the conclusion that a comprehensive reform strategy must be implemented, which includes the correction of legal and institutional weaknesses.

## **Suggestions and Recommendations**

Given the issues revealed during the implementation and enforcement of the Antiquities and Art Treasures Act, 1972, a number of legal and institutional adjustments should be made to enhance the safeguarding of India's cultural heritage. Among the recommendations is the top suggestion to revise the definitional provisions within the Act. The strict age-based categorization of antiquities should be reconsidered to embrace culturally relevant artefacts of recent provenance, especially those that reflect indigenous, tribal, and post-colonial artistic cultures. A more lenient, value-based strategy would ensure broader, more accommodating coverage.

The other urgent reform concerns the digitisation and centralisation of antiquities records. The establishment of a publicly available, comprehensive national digital registry of antiquities would make the process more transparent, facilitate provenance, and enhance enforcement. Records kept by museums, religious organizations, individual collections, and auction houses should be integrated into such a database, and the data protection safeguards should be deemed sufficient. It would also enhance India's ability to pursue international claims for restitution, which are digitised.

Enforcement agencies should be prioritised for capacity-building. Special training should be provided to the customs officials, police officers, and heritage experts in art history, archaeology, and forensic identification of antiquities. The creation of special heritage crime units at the state and national levels can enhance the efficiency of investigations and the coordination of laws. Also, it is necessary to enhance cooperation between the Archaeological Survey of India and law enforcement agencies to successfully implement it.

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<sup>32</sup> Prabha Kotiswaran, 'Law, Evidence and Cultural Property Crimes in India' (2021) 13 *Asian Journal of Law and Society* 87.

<sup>33</sup> UNESCO, *Strengthening the Fight Against Illicit Trafficking of Cultural Property* (UNESCO Publishing 2018).



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Regulatory-wise, the Act must include a clear provision for international collaboration and restitution in accordance with the best worldwide practices. Clear guidelines on cross-border information exchange, mutual legal assistance, and recidivism would help improve India's international cultural property cases. Also, the penalties contained in the Act ought to be adjusted to reflect the current economic value of the antiquities, a factor that would restore its deterrent power.

The stakeholder engagement and public awareness are also paramount. I would use educational activities, community involvement, and outreach campaigns to foster a sense of shared responsibility for preserving the heritage. The resistance among the private collectors and religious institutions can also be reduced by encouraging voluntary compliance through incentives and easy registration procedures.

## Conclusion

The culture and history of India are preserved through the protection of art and antiquities. Although the Antiquities and Art Treasures Act, 1972, is a commendable legislative initiative aimed at controlling the ownership, trade, and export of cultural property, it has not been effective due to ambiguities in its definition, enforcement procedures, administrative difficulties, and dynamic market realities.

The issues described in the current research reflect the necessity of a dynamic and adaptable legal framework that could cope with the modern threats, including illegal trafficking, online markets, and international crime networks.

An enhanced legal system that has undergone reform and been reinforced through the establishment of institutional capacity, technological integration, and the involvement of international partners and populations can greatly improve the protection of heritage. Through harmonization of domestic law with international norms and the comprehensive enforcement of the law, India will be able to ensure that its rich cultural heritage is not only maintained as a source of national pride but also passed on to future generations.

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