

# **A STUDY ON PROTECTION AND PRESERVATION OF ARCHAEOLOGICAL MONUMENTS AND ARTEFACTS AS BASIC GOOD WITH SPECIAL REFERENCE TO WEST BENGAL**

*Aniruddha Das\* & Diganta Biswas\*\**

## **Abstract**

Precepts of the rule of nature are based on the fundamental idea that good to be created and sought, while evil must be avoided. According to John Finnis, the concept of a basic good is divided into seven traits: life, knowledge, practical reasonableness, play, aesthetic experience, friendship and religion. When combined, they speak of complete human fulfilment. Monuments and objects from antiquity enhance the aesthetic experience. To safeguard it, various legislative attempts have been made in India during both the colonial and post-colonial period. In this study, an effort is attempted to assess whether the protection and preservation of ancient structures and artefacts offer the basic goods of aesthetic experience.

**Keywords:** Common Good, Basic Good, Human Evolution, Reason, Knowledge, Aesthetic Experience.

- I Introduction**
- II A Philosophical Perspective On the Common Good**
- III Historic Remains and Knowledge as A Basic Good**
- IV Historical Remains Vis A Vis Aesthetic Experience As Common GOOD**
- V International Legal Framework For The Protection And Preservation Of Archaeological Monuments And Artefacts**
- VI Convention Concerning The Protection Of The World Cultural And Natural Heritage, 1972**
- VII Legal Framework for The Protection and Preservation of Archaeological Monuments and Artefacts in India**
- VIII Protection Umbrella During Pre-Constitutional Era**
- IX Protection Umbrella During Post-Constitutional Era**
- X Protection Under the Constitution of India**
- XI Statutory Protection**
- XII Recommendations**
- XIII Conclusion**

\*Professor, Department of History, Raiganj University,

\*\* Secretary, Post-Graduate Council, Raiganj University.

## I Introduction

TODAY THE right to development is acknowledged as a crucial human right. The term "common good" refers to the facilities material, cultural, or institutional those are made available to all the members of a community to meet a relational commitment they all have to protect specific interests that they share. Members of the political community engage in social relationship that calls for them to think and act in ways that reflect a particular kind of mutual concern. This kind of concern is defined by the common good. According to Aristotle, legal issues are just if they are tailored to foster and protect happiness and its contribution to the body politic (state). The concept of a common good is important in Confucian political theory, which emphasises the necessity of group or collective interests taking precedence over individual interests,<sup>1</sup> or at the very least the reciprocal dependency between the two- blossoming of the collective and the individual.<sup>2</sup> This essay tries to investigate how India's ancient monuments and artefacts are protected and preserved to ensure common goods within the ambit of the country's contemporary legal system.

## II A Philosophical Perspective On the Common Good

In order for there to be social justice, citizens must guarantee one another's fundamental rights and freedoms and not take advantage of one another. The idea of the common good has suggested that certain goods, like security and justice, may only be attained through citizenship, collective action, and active participation in public life, such as politics and public service, dating back to the time of the ancient Greek city-states and continuing into modern political philosophy.<sup>3</sup> The common good, however, goes beyond the fundamental criteria of justice since it calls for citizens to uphold particular behavioural patterns because they promote particular common interests. All theorists concur that "real" laws are those that adhere to a set of standards, typically moral norms discovered via the use of legal considerations, empirical data, and pragmatic reasoning. Western political philosophy has consistently emphasised the idea of the common good, most notably in the writings of

---

The authors are indebted to Shri Syamal Das, Life Member of the Supreme Court Bar Association, New Delhi, for valuable suggestions.

<sup>1</sup>David Wong, "Confucian Political Philosophy", in, George Klosko (ed.), *The Oxford Handbook of the History of Political Philosophy*, (Oxford University Press, 2011).

<sup>2</sup>Irene T. Bloom, *Mencius*, Philip J. Ivanhoe (ed.) *Translations from the Asian classics*, (New York: Columbia University Press, 2009).

<sup>3</sup>Simon Lee, Common good, available at <https://www.britannica.com/topic/common-good>, (last visited on August 01, 2022).

Aristotle, Niccol Machiavelli, and Jean-Jacques Rousseau. The political ideology of republicanism, which argued that the common good could only be attained via political means and the collective activity of citizens taking part in their own self-government, has developed it the most. The idea of the common good is strongly linked to citizenship, a shared commitment to common goals, and the importance of political engagement as a form of public service.<sup>4</sup> Let's now travel towards the philosophical underpinnings of the idea of the common good.

SOCRATES: According to Socrates, only a few people experience true happiness. An arrangement of human goods known as the naturally just or just places the soul's, body's, and external goods (like riches) in that order.

ARISTOTLE: According to Aristotle, members of a political system are not only parties to a military alliance or a particularly extensive web of contractual transactions. Members also interact in what he defines as a friendship-like interaction. Citizens must desire one another well, be aware that the co-citizens wish them well, and engage in a shared life that addresses this shared concern in order to be considered friends. People care about one another and wish one another well, but what people care about most is living well that is, leading the most worthwhile life for themselves and their fellow people. According to Aristotle, the pattern of behaviour that most thoroughly engages and displays the logical aspects of human nature is the most worthwhile. Because this pattern of activity, like a play, comprises numerous interdependent aspects that can only be realised by the group as a whole, it is a pattern of collaborative action. Philosophy, mathematics, art, and music are just a few of the leisure pursuits that are centred on this pattern. The coordination of social efforts to engage in leisure activities (i.e., statesmanship) and different supporting activities, such as citizen education and resource management, are also included in the design.

Man is political by nature, according to Aristotle's claim in Book I of "Politics". Men can only achieve the common good of ensuring community safety by actively participating in politics as members of the political community, or polis, established by the state. This can be done in a variety of ways, including as public servants, participants in the discussion of laws and justice, or as soldiers defending the polis.<sup>5</sup>

---

<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

ST. THOMAS AQUINAS: Aristotle had a significant influence on St. Thomas Aquinas during the Middle Ages. He is the author of *Summa Theologica*'s. *Summa* is a kind of methodical exploration of a theological worldview that examines what kind of world God has made. He summarised, among other things, the following in his book "*Summa Theologica*":

- Legislation is related to reason; it must adequately take into account its relationship to happiness. Additionally, for a law to be just, it should be passed not for a single person's advantage but for the benefit of all citizens.
- A law should either belong to the entire population or to someone who is responsible for the entire population that the law will inevitably affect in order to serve the common good.
- A law must be applied to the men who must be governed by it to have binding force because a law is imposed when it is applied as a rule or measure. By promulgating the law and informing them of it, the application is made.

He held that a law is an ordinance of reason produced by someone who cares about the community and made public so that the importance of the law is understood. According to Aquinas, reason and rationality are the distinguishing qualities that God endowed humanity with. We naturally gravitate towards doing good deeds, mirroring God's superior rationality. We can discern what is obviously good and worthwhile by using the competence that God has given us. It is obvious that good things should be sought after and negative things avoided. When we make rules for the common good and pursue self-evidently beneficial things, we are exercising the "right reason" and taking part in God's logically designed order of the universe. Therefore, it is a natural law that every human applies reason to self-evident truths.

MACHIAVELLI: In the late fifteenth and early sixteenth centuries, Machiavelli's writings most notably "*The Prince*" took up the concept of the common good. Machiavelli argued that the presence of moral citizens was necessary to ensure the common good. As a matter of fact, Machiavelli created the concept of *virtù* to signify the trait of advancing the common good through citizenship, whether through military or political action.<sup>6</sup>

ROUSSEAU: For Rousseau, writing in the middle of the eighteenth century, the pursuit of an individual's private will had to be distinguished from the concept of the common good,

---

<sup>6</sup>*Ibid.*

attained via the active and voluntary commitment of people. As a result, it is necessary to distinguish between the "general will" of a republic's members acting as a collective and the specific will of each individual. Political power would only be seen as legitimate if it was in accordance with public opinion and worked for the common good. The state may operate as a moral community if it works towards the common good.<sup>7</sup>

JOHN FINNIS: According to contemporary scholar John Finnis, a theorist must comprehend, be bound by the law, and take part in fulfilling the aim of laws in order to advance the philosophy of laws. According to him, there are some fundamental human rights that are logically obvious. Life, knowledge, play, aesthetic experience, friendship, rationality in daily affairs, and religion are some examples of these fundamental types of commodities. Practically reasonable moral and legal laws must be implemented in order to achieve these goals. Practical Reasonableness (Pr. Re.) is the ability to balance our pursuit of many goals while honouring the fundamental worth of each goal for both individuals and society. Pr. Re. needs justice and vision. The common good is defined by Finnis as "a set of conditions that enable members of a community to attain for themselves reasonable objectives or to reasonably realise the value(s) for which they have reason to collaborate with each other (positively and/or negatively) in a community."<sup>8</sup>

When something is referred to as a basic good, as Finnis does in the first instance with knowledge, he claims that "reference to the pursuit of knowledge makes intelligible... any particular instance of the human activity and commitment involved in such pursuits" and that these basic goods are "indemonstrable but self-evident principles [that shape] our practical reasoning." They come in seven different categories. They are: (1) life, (2) knowledge, (3) practical reasonableness, (4) play, (5) aesthetic experience, (6) friendship, and (7) religion.

The two categories of basic goods are substantive and reflexive. In contrast to aesthetic experience, sociability, practical reason, and religion, which are considered reflexive goods, life, knowledge, and play are considered substantive goods. Reflexive goods must be "defined in terms of human choice," whereas substantive goods give people justification for decisions that can stand alone.

---

<sup>7</sup>*Ibid.*

<sup>8</sup>M. C. Murphy, The Common Good. *The Review of Metaphysics*, 59(1), 133–164, (2005). available at <http://www.jstor.org/stable/20130579>, (last visited on 12<sup>th</sup> May, 2023).

- SUBSTANTIVE GOODS: (*Knowledge*): Finnis used the term "the pure desire to know" to describe an interest in or concern for the truth as well as a simple wish to avoid ignorance or wrong.
- REFLEXIVE GOODS: (*Aesthetic Experience*): The goal of an aesthetic experience might be either an external enjoyment of beauty or an inward appreciation of that beauty.

According to Finnis, the list of basic goods is exhaustive because "other goals and kinds of goods can be found." to be methods of pursuing... or combinations of methods, and understanding one or more of the seven fundamental types of goodness. The basic human goods are to be considered "final ends," but not in the sense of an objective and determinate final end; rather, they are final ends in that "they are 'definite possibilities' intuited independent of any other sort of knowledge." These goods are to be considered "final ends," but not in the sense of instrumental goods that are thus considered "means." Additionally, there is no hierarchy within the list, leading to the incomparability of the basic goods.

Each of the basic goods, according to Finnis, "can reasonably be regarded as the most important," and they are all "equally self-evidently a form of good," since none of them "can be analytically reduced to being merely an aspect of any of the others or to being merely instrumental in the pursuit of any of the others." These goods are also pre-moral because they do not "presuppose any moral judgement."

In defining the basic goods that are at the heart of Natural Law and Natural Rights, Finnis makes an important distinction between the two senses of the word good. One sense describes the object of an individual's willed action which is the good sought as the direct end of the action.<sup>9</sup> Here Finnis seems to refer to the sense in which Aristotle explained that every agent acts for an end. Good, in this particular sense, means the end sought in a particular case. The second sense refers to the universal concept of good which is the form of all individual good actions.<sup>10</sup>

---

<sup>9</sup>John Finnis, *Natural law and natural rights*. p. 61, Oxford University Press, (2011).

<sup>10</sup>John Finnis, *Natural law and natural rights*. p. 61, Oxford University Press, (2011).

This list resembles in many respects the list of the first precepts of the natural law identified by St. Thomas Aquinas in his “Treatise on Law”.<sup>11</sup> The first precept of natural law in Aquinas’ system serve a similar function to the Finnisian concept of basic good in “new” natural law. They identify the universal forms of good that are to be sought after and that cannot be directly controverted. Aquinas and Finnis say that certain goods (values) are self-evident and thus provide guides to the formation of laws. Aquinas, from a Christian perspective, says that certain Christian values are self-evident, while Finnis argues that by paying careful attention to the requirements of social life and individual fulfilment, we can find good values. Laws should advance these values to serve the goal of human flourishing. They resemble Aristotle, who considered human flourishing to involve happiness, self-development, and treating others fairly. Such happiness is self-evidently good, and laws should contribute to this happiness. Yet, notwithstanding some overlap in Aquinas’ and Finnis’ lists of aspects of the good, their understanding of these goods is radically different. The two points of departure are the demonstrability and commensurability of the goods they list. Finnis believes that the basic goods are both indemonstrable and incommensurable, whereas Aquinas understands the goods to be demonstrable from the natural inclinations (even if not derived through a formal syllogism), and he understands them to exist in a hierarchical relationship.<sup>12</sup>

### **III Historic Remains and Knowledge as A Basic Good:**

Finnis defined knowledge as “the pure desire to know,” arising purely out of curiosity, “an interest in or concern for truth, and a desire to avoid ignorance or error. “Our efforts to develop a discussion on history education that is founded on domain knowledge are represented by The Nature of Historical Knowledge. The ways in which history is understood, taught, and learned seem to animate and guide certain perceptions of the nature of knowledge, the aims associated with its pursuit, and the methods by which those goals can be attained. There are two historical philosophies that boost the authority of historical artefacts as a tool for knowledge, and they are as follows:

- The “single best version of the past... as it happened “is imparted by history teachers in order to convey "the single best version of history... as it happened” and so create

---

<sup>11</sup>St. Thomas Aquinas, *Summa Theological*, trans. Fathers of the English Dominican Province, Benziger Brothers, 1947. Available at <http://dhspriority.org/thomas/english/summa/index.html>, last visited on 14<sup>th</sup> May, 2023.

<sup>12</sup>John Finnis, *Natural law and natural rights*, op. cit., pp. 85–90, Oxford University Press, (2011).

unanimity among students. This style of teaching history is stabilising and didactic. In the backdrop of well-known events, new stories are offered, and each historical account contains valuable judgements about the people it discusses.

- When arriving at and disputing accurate interpretations of the past, the disciplinary approach to history makes transparent the data and techniques used to create narratives. Using correlations between historical facts, adages, and the passage of time, stories are created here and presented as reliable to others.

Pre-historic archaeology provides information about the various stages in the evolution of human culture, chiefly about the Stone Ages. Archaeology is considered as the science of reconstructing man's past life and activities through the scientific study of its material remains. Etymologically the term owes its origin to the two Greek words *archaia* (i.e. ancient) and *logos* (which means theory or science).<sup>13</sup> Archaeology, as an academic discipline mainly deals with firstly, pre-historic period, i.e. the period for which only stone and bone tools are the sources of information; secondly, proto-historic period, i.e. the period for which some kind of literary sources are available, which are often un-deciphered till now and thirdly, historic period, i.e. the period which is evidenced with available written records.<sup>14</sup>

For the pre-literate phase of human history, Archaeological remains are the main source of information. Proto-historic archaeology is a powerful supplement to the fragmentary literary evidence. As an example, it can be mentioned here that for the history of the Harappan civilization, archaeology is considered as the chief source of information, since the small amount of written records that is available inscribed on the seals, could not be deciphered, till now. Historical archaeology, however, provides substantial supplementary evidence to the literary evidence and also helps to fill in the gaps, i.e. for which we don't have much literary evidence. Corroboration between archaeological sources and literary sources helps us to reconstruct the history of a particular period of history in an objective manner. Material remains recovered as a result of exploration and excavations are direct evidence for the particular phase of history. These help the historians to bring to a minimum any guesswork while reconstructing history. Although archaeological data cannot always by themselves show the social and economic condition of men for a particular period, but it is very useful as direct evidence and therefore considered as an ancillary science of History.

---

<sup>13</sup> Available at <https://www.britannica.com/science/archaeology>, (last visited on 20th March, 2023).

<sup>14</sup> E. Sreedharan, *A Manual of Historical Research and Methodology*, the Centre of South Indian Studies, 2007, PP 132- 133.



The historical remains are our cultural heritage and natural heritage that we pass on to future generations. They are our touchstones, our points of reference, our identity and the sources of life and inspiration.

#### **IV Historical Remains Vis A Vis Aesthetic Experience As Common Good**

The artefacts, and figurines those are considered part of archaeological remains are useful not only for information regarding social and cultural life of any particular age; they are representatives of art and aesthetics of that era. After John Finnis, beauty is something outside oneself or the internal appreciation of that beauty. The aesthetic dimension of India's past is reflected in its art and architecture. The rock art of the stone ages represents the lives of the people and their aesthetic sensibilities. The aesthetic quality and skill were often associated with urban milieu, since literature and sculpture of high aesthetic qualities were often patronised by the urban elite. The objects found on archaeological excavations have aesthetic appeal to the people in a general sense. Aesthetic often helps us to make chronological framework of the objects belonging to different periods of history. The artistic achievements also signify the special feature of any particular era. Attainment of aesthetically high standard as noticed in the archaeological remains and objects of classical Athens is often rendered to the ambience of freedom and democracy of that particular place. The Greek artists could freely show their artistic genius. Immanuel Kant in his '*Critique of Judgement*' has discussed about the critical faculty of judgement and the philosophy of beautiful.<sup>15</sup> In this regard he gave importance to sculpture, as he considered it purer art form as it helped to avoid subjectivity in the judgement. Even in displaying the objects in the museum often the archaeological context is being considered as less important than aesthetic considerations.<sup>16</sup> It may be said that the approaches of archaeology and art history make an archaeological object into a work of art.

---

<sup>15</sup>Immanuel Kant, *Critique of Judgement*, translated by James Creed Meredith, Revised, edited and introduced by Nicholas Walker, Oxford University Press, 2007

<sup>16</sup>For detail discussion see, Sarah Scott, 'Art and the Archaeologist', Vol. 38, No. 4, *World Archaeology*, (2006) Available at <https://www.jstor.org/stable/40024060>, last visited on April, 29, 2023.

## **V International Legal Framework For The Protection And Preservation Of Archaeological Monuments And Artefacts**

UNESCO: The notion of establishing a global heritage conservation movement surfaced following World War I. The decision to construct the Aswan High Dam in Egypt, which would have drowned the valley that houses the Abu Simbel temples, a treasure of ancient Egyptian civilisation, was the event that caused the most international anxiety. An international safeguarding effort was started by UNESCO in 1959 in response to a request from the governments of Egypt and Sudan. Archaeological studies in the inundated areas were expedited. The most significant of these was the dismantling, relocation, and reassembling of the temples of Philae and Abu Simbel. The approximately US\$80 million campaign, of which half came from donations from nearly 50 nations, demonstrates the value of international cooperation and the shared accountability of nations in preserving cultural heritage. Its accomplishments paved the way for more protection efforts, including the restoration of the Borobudur Temple Compounds in Indonesia and the preservation of the Archaeological Ruins at Mohenjo-daro in Pakistan.<sup>17</sup>

## **VI Convention Concerning The Protection Of The World Cultural and Natural Heritage, 1972**

In 1972, the Convention on the Protection of the World's Cultural and Natural Heritage was established. When two distinct movements one devoted to the conservation of environment and the other to the preservation of cultural sites merged, the 1972 Convention arrived. States Parties are required by the Convention to identify possible sites and to play a part in their preservation and protection. Each nation that signs the Convention makes a commitment to preserve both its national history and the World history sites located on its soil. The States Parties are encouraged to include cultural and natural heritage protection in regional planning programs, establish personnel and services at their locations, conduct technical and scientific conservation studies, and enact policies that bring this legacy to the community's daily life. The strategic Objectives of the Convention covered under the "Five Cs" are as under-

- ✓ **Credibility:** Boost the credibility of the World Heritage List as a geographically balanced and representative testament to exceptional universal cultural and natural assets.

---

<sup>17</sup>Available at <https://whc.unesco.org/en/news/2196> (last visited on 3rd May, 2023).

- ✓ **Conservation:** Make sure that World Heritage properties are effectively conserved.
- ✓ **Capacity-building:** Developing effective capacity-building measures is important for understanding and implementing the World Heritage Convention and its accompanying instruments. One such measure is helping to prepare properties for nomination to the World Heritage List.
- ✓ **Communication:** Public knowledge, participation, and support for World Heritage can be increased through communication.
- ✓ **Communities:** Increase the part that communities play in putting the World Heritage Convention into practice.

The Convention concerning the Protection of World Cultural and Natural Heritage was adopted by the General Conference of UNESCO: The convention inter alia deals with the matters as under-

The UNESCO General Conference of November 16, 1972, adopted the Convention for the Protection of World Cultural and Natural Heritage. The Convention addresses issues as follows, among other things:

- The Convention specifies the types of natural or cultural sites that are eligible to be added to the World Heritage List.
- The Convention delineates the obligations of States Parties with regard to the identification of prospective sites and their participation in safeguarding and conserving them.
- Through signing the Convention, each nation commits to safeguarding its national heritage as well as the World Heritage sites located on its soil.
- States Parties are encouraged to the followings:
  - Integration and protection of the cultural and natural heritage into regional planning programmes;
  - Adoption of policies that give this heritage a purpose in the community's daily life; and
  - Incorporation of the protection of the natural and cultural heritage into regional planning programs.
- The Convention describes the terms and conditions under which international financial assistance may be given as well as the usage and management of the World Heritage Fund. Further, the States Parties are required to submit regular reports to the

World Heritage Committee regarding the conservation status of their World Heritage assets.

## **VII            Legal Framework for The Protection and Preservation of Archaeological Monuments and Artefacts in India**

Law is a system of reconciling conflicting interests. The purpose of law is the protection of interests. Interest is the pursuit of pleasure and avoidance of pain. Bentham believed, any law should be made by keeping in mind this theory of utility. He felt that in order to achieve the purposes of the legal order, there has to be recognition of certain interests (Private interests; Public interests; and Social interests). After Roscoe Pound, when determining the scope and subject matter of the system, the following five things have to be done: (i) preparation of an inventory of interests, classifying them; (ii) selection of the interests which should be legally recognized; (iii) demarcation of the limits of securing the interests so called; (iv) consideration of the means whereby laws might secure the interests when those have been acknowledged and delimited and (v) evolution of the principles of valuation of the interests.

## **VIII            Protection Umbrella During Pre-Constitutional Era**

Awareness about the architectural conservation is an important phenomenon in the modern period of Indian history. Monuments started to be considered as symbols of cultural heritage. It was through the organised endeavour of the institutions like The Asiatic Society of Bengal, established in 1784 that the process of new explorations and research began to take place. James Fergusson played a pioneering role in the study of Indian architecture in a systematic manner. However, in 1808, Taj Committee was appointed by the Governor General the Earl of Minto to preserve the monument and repair works were undertaken of this outstanding monument. Several architectural marvels of the medieval India were also saved from being destroyed or repaired during this period. The Bengal Regulation of 1810 and Madras Regulation of 1818 were promulgated to save the ancient monuments from being destroyed by human intervention. The launching of the Archaeological Surveys in India in 1861 heralded a new era in the history of conservation. An Archaeological Department was established in 1871. In 1873, the Central Government delegated the task of conservation to the Local (provincial) Governments, and a Curator of Ancient Monuments was appointed by

the Centre in 1880.<sup>18</sup> In India, the idea of protection and preservation of historical remains started with Lord Cunningham. Later, during Burgess' tenure exploration, conservation and epigraphy - three distinct fields of operations were amalgamated. The post was however, abolished later on. Archaeological excavations made much headway during the tenure of Alexander Cunningham and James Burgess as the two subsequent Director Generals of the Archaeological Survey of India (henceforth, ASI). Burgess in particular gave much emphasis on architecture. It was during the Viceroyalty of Lord Lytton that The Indian Treasure Trove Act of 1878 was passed, that (vide Section 4) authorised the Government to claim possession of any treasure unearthed that exceeded ten rupees in value, acting upon a Notice given by the finder of treasure.<sup>19</sup> Section 3 of this Act mentions that "treasure" means anything of any value hidden in the soil, or in anything affixed thereto. In 1886 Burgess succeeded in inducing Government to issue a directive, debarring public officers from disposing of, without official approval, antiquities found or acquired by them. The Treasure Trove Act however, was not amended.<sup>20</sup> His tenure is called as the period of 'architectural archaeology. It was, however during the time when Sir John Marshall was the Director General the remains of Harappa and Mohenjo-daro were discovered. This discovery proved that the Indian civilization was one of the oldest civilizations of the world, at par with the Mesopotamian or Egyptian civilization.

**The Ancient Monuments Preservation Act 1904:** It was during the Viceroyalty of Lord Curzon that many changes took place in the government policy. An attempt to define an ancient monument has been made for the first time. An "ancient monument" is defined in Section 2 (1) of this Act as any structure, erection, monument, tumulus, place of interment, cave, rock sculpture, inscription, or monolith that is of historical, archaeological, or artistic interest (as stressed by authors), or any remnants thereof. This includes: (a) the location of an ancient monument; (b) any area of land adjacent to the location of an ancient monument that may be needed for fencing, covering, or otherwise preserving such monument; and (c) the means of access to and convenient inspection of an ancient monument. Any movable items

---

<sup>18</sup>S N Roy, *The Story of Indian Archaeology 1784-1947*, 54-55 (The Director General Archaeological Survey of India, New Delhi, 2011)

<sup>19</sup>The Indian Treasure Trove Act, 1878 (Act 6 of 1878), s.4, Available at <https://www.indiacode.nic.in/bitstream/123456789/2286/1/A187806.pdf>, (last visited on April 19, 2023)

<sup>20</sup>JAS Burgess (ed.), *The Indian Antiquary*, Vol. VIII, April, 1879, Swati Publications, Delhi, 1984, quoted in Aniruddha Das, JAS Burgess and "The Indian Antiquary" (1872-1884): *Crafting India's Past, Proceedings of the Indian History Congress*, 2014, Vol. 75, Platinum Jubilee (2014), Published by: Indian History Congress, Available at <https://www.jstor.org/stable/44158491>, (last visited on October 25, 2020).

that [the Central Government] may deem important to safeguard against damage, removal, or dispersal due to their historical or archaeological linkages are considered "antiquities," according to Section 2(2) of the Act. According to Section 18 of the Act, the Central Government has the authority to regulate the transportation of sculptures, carvings, or similar items. The Act's Section 19 addresses the "Purchase of sculptures, carvings, or like objects by the Government." According to Section 20 of the Act, even the Central government has the authority to designate as protected sites if they are required for archaeological excavation and research.

Sir John Marshall the then Director General of ASI, gave conservation utmost importance, which is evident from his "Conservation Manual". He had incorporated in this the essential government orders regarding maintenance of monuments, the duties of archaeological and Public Work officials and also instructions and specifications on the conservation of ancient monuments in India.<sup>21</sup> After Curzon left India the zeal for conservation continued for some time. Later on major resources were diverted to exploration and research.

In 1919, archaeology was formally defined a Central subject.<sup>22</sup> Now 'Conservation was no longer remained direct responsibility of the regular administration and Public Works Department, although, till 1945 all the works were still executed by the Public Works Department on behalf of the Survey but Public Works Department would never own it up any more as they were no longer the policy makers'.<sup>23</sup> Before independence, under certain amendments in the Ancient Monuments Preservation Act, foreign institutions were allowed to undertake fieldwork in India. Through this provision Chanhudaro in Sind was explored and excavated.<sup>24</sup>

**The Antiquities (Export Control) Act, 1947:** In April 1947, just prior to independence, the Antiquities (Export Control) Act was passed. Section 2 of this Act defines "Antiquity" as: any coin, sculpture, manuscript, epigraph, or other piece of art or craftsmanship; any item or thing that is separated from a structure or cave; any item or object that represents science,

---

<sup>21</sup> Sir John Marshall, *Conservation Manual- A Handbook for the use of Archaeological Officers and others entrusted with the care of ancient monuments*, (Superintendent Government of Printing, Calcutta, 1923)

<sup>22</sup> Rajat Ray, 'Policies and Principles of Conservation of Architectural Monuments in British India', in Gautam Sengupta and Kaushik Gangopadhyay (ed.) *Archaeology in India- Individuals, Ideas and Institutions* 362 (MunshiramManoharlal Publishers Pvt. Ltd., in association with Centre for Archaeological Studies & Training Eastern India, Kolkata, 2009)

<sup>23</sup> Id. 362-363.

<sup>24</sup> Available at <https://asi.nic.in/about-us/history/>, (last visited on April 20, 2023)

art, crafts, literature, religion, customs, morals, or politics in earlier eras; any item or object that the Central Government declares by publication in the 'official Gazette to be an antiquity for the purposes of this Act,- which has been in existence for not less than one hundred years.<sup>25</sup>

### **IX Protection Umbrella During Post-Constitutional Era**

The Constitution of India is the supreme law of India. The document lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. Adopting the Constitution of India on 26<sup>th</sup> January, 1950, India became a republic and after the adoption of Constitution, several legislations have been enacted to protect and preserve several interests of the citizens of India.

### **X Protection Under the Constitution of India:**

The Constitution of India is considered as the father of all laws. Protection and preservation of items of historical importance bears the links of intergenerational connections (commercial, cultural etc.) which is discussed in the Constitutional Scheme of India in the manner as under-

- **Article 49, The Constitution of India:** Article 49 of the Constitution of India, 1950 addresses the preservation of monuments, as well as sites and items of national significance. Every monument, location, or item of artistic or historic significance that has been [recognised by or under legislation passed by Parliament] as being of national importance must be protected from spoliation, disfigurement, destruction, removal, disposal, or export, as the case may be.
- **Seventh Schedule (Article 246), The Constitution of India:**
  - ✓ List I (Union List), item 67 includes ancient and historical monuments and records, and archaeological sites, and remains [declared by or under law made by Parliament] to be of national importance.
  - ✓ List II (State List), item 12 includes libraries, museums, and other similar institutions controlled or financed by the State; ancient and historical

---

<sup>25</sup> The Antiquities (Export Control) Act, 1947 (Act 31 of 1947)

monuments and records other than those [declared by or under law made by Parliament] to be of national importance

- ✓ List III (Concurrent List), item 40 includes archaeological sites and remains other than those [declared by or under law made by Parliament] to be of national importance.
- Article 243W of the Constitution of India envisages that the State Government may, by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government.

In addition to the previously mentioned constitutional provisions, the 74th Constitutional Amendment Act of 1992 granted constitutional status to the Municipal Bodies, elevating them to the status of "Government" at the local level and giving them the authority to care for the archaeological remains within their jurisdiction.

### **XI Statutory Protection:**

It is interesting to note that in India, the legislature has enacted different legislations with an aim to protect and preserve the archaeological monuments and artefacts which are as under-

**The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act 1951:** The Act of 1951 introduced for the first time the concept of 'national importance'. Subsequently, the Ancient Monuments and Archaeological Sites and Remains Act was passed in 1958 and the Act of 1951 was repealed.

**The Ancient Monuments and Archaeological Sites and Remains Act, 1958:** The 1951 Act was later abolished and replaced by the 1958 Ancient Monuments and Archaeological Sites and Remains Act. Section 2(i) of the Act of 1958 considered all monuments designated as "nationally important" as protected and allowed for the notification of new monuments. Further, the term "ancient monument" is defined in Section 2(a) of this Act as "any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription, or monolith which is of historical, archaeological, or artistic interest and which has existed for at least 100 years." This includes: (i) the remains of an ancient monument, (ii) the location of an ancient monument, (iii) the portion of land adjacent to the location of an ancient monument that may be needed for fencing or covering in or otherwise preserving



such monument, and (iv) the means of access to, and convenient inspection of, an ancient monument. According to Section 2(b) of the Act, "antiquity" includes: (i) any coin, sculpture, manuscript, epigraph, or other piece of craftsmanship; (ii) any item or object that is not attached to a building or cave; (iii) any item or object that illustrates science, art, crafts, literature, religion, customs, morals, or politics from earlier eras ; (iv) any item or object of historical interest; and (v) any item or object declared by the Central Government, by notification in the Official Gazette to be an antiquity for the purposes of this Act.

**The Antiquities and Art Treasures Act, 1972:** The main goals of this Act were to control the export of antiquities and art treasures, prevent the smuggling and fraudulent dealing of antiquities, mandate the acquisition of antiquities and art treasures for public preservation, and provide for other related measures. The definition of "antiquity" under Section 2(II) was expanded to include "any manuscript, record, or other document which is of scientific, historical, literary, or aesthetic value and which has been in existence for not less than seventy-five years." Further, the meaning of "art treasure" under Section 2(b) also referred to any human creation that is not an antique that the Central Government designates as such for the purposes of this Act by publishing a notice in the Official Gazette, taking into account its aesthetic or artistic merits. Although there were provisions for protection for antiquities in the Act of 1858; the Act of 1972 provided for the first time, provision for Registration of antiquities (vide Section 14) with the objective to preserve such objects within India for the better appreciation of the cultural heritage of India. The Delhi High Court in *Ajay Kumar Mittal V. UoI& Ors*<sup>26</sup> has held that philatelic exhibits of postage stamps, fiscal stamps, envelopes, stamp papers and other such documents, are "antiquities" within the meaning of the Antiquities and Art Treasures Act, 1972. Noting that philately is a hobby of the "discerning connoisseur" who appreciates the intrinsic value of vintage stamps and other such documents, Justice C Hari Shankar observed that such exhibits are articles, objects or things of historical interest within the meaning of section 2(1)(a)(I)(iv) of the Antiquities and Art Treasures Act, 1972.

It can be said that the Ancient Monuments Preservation Act 1904, The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and The Antiquities and Art Treasures Act of 1972 are important milestones for the conservation of the ancient monuments and art treasures. As the definition of ancient monuments and antiquities

---

<sup>26</sup>*Ajay Kumar Mittal V. Uoi& Ors*, 2022/DHC/004642

continues to expand, it is clear that legislators have placed a growing emphasis on monument and antiquity conservation over time. In order to safeguard monuments, the idea of "national importance" was used; on the other hand, legislation was created to reflect the worry about protecting antiquities from smuggling or destruction. Growing public awareness of the need is still necessary to safeguard cultural heritage of the country.

**The West Bengal Municipal Act, 1993:** The Act under Section 63(1) (i) entrusts the Municipal Authorities with the obligation to make reasonable and adequate provision subject to the territorial limits of the municipal area and the financial means at its disposal maintenance of all monuments vested in the Municipality. Additionally, Section 63(3)(k) of the Act speaks about the preservation of monuments and places of historical, artistic and other importance. Section 63(4) of the Act entrusts the Municipality with the following functions as well-(h) maintenance and development of all properties vested in or entrusted with the management of the Municipality; (k) protecting public properties in general and civic properties in particular. However, the Act is not applicable to the areas under the Panchayats.

**The West Bengal Heritage Commission Act, 2001:** Section 3 of this Act addresses the creation of the West Bengal Heritage Commission, which aims to identify historic structures, monuments, precincts, and locations as well as to take steps to preserve and restore them.<sup>27</sup> The Commission is a corporation with perpetual succession, a common seal, and the authority to contract, hold, and dispose of property. It also has the right to sue or be sued under its own name.<sup>28</sup> Section 15 of the Act gives the Commission the same authority as a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of : (a) summoning and enforcing the attendance of any person and examining him; (b) requiring discovery and production of any documents; (c) receiving evidence on affidavits; (d) requisitioning any public record or copies thereof from any office; and (e) any other matter that may be prescribed. According to the provisions of Section 11(3) of the Act, no local authority may identify, conserve, conserve, or restore any heritage building in a way that is inconsistent with the Commission's judgement or recommendations. It should be noted, however, that nothing in this Act will prevent the State Government from calling for and reviewing, on its own initiative, any case of advice by the Commission under sub-section (1)

---

<sup>27</sup>The West Bengal Heritage Commission Act, 2001 (Act 9 of 2001), s.3(1),

<sup>28</sup>*Id.* at s. 3(2)

of section 11 of the Act, if that Government deems it necessary so in the public interest.<sup>29</sup> The State Government and each local authority, as applicable, are required under Section 16(1) of the Act to accept all recommendations made by the Commission and to take fast, efficient action to put those recommendations into practice.

## **XII Recommendations**

For the protection of cultural heritage F R Allchin, felt the need of a) educating public opinion and encouraging public participation, b) providing a proper legal basis, and c) creating a logical and consistent structure integrating the various measures into a comprehensive programme.<sup>30</sup> To give an all-embracing legal basis he has pointed out the requisites, e.g. a) enlisting of monuments, including those which are unprotected, b) adequate provision for the protection of the conservation area, i.e. an wider area containing numbers of monuments or monument groups, c) enlisting of conservation areas, d) developing suitable scheme for grading listed monuments and conservation areas based on their importance for the cultural heritage, e) the protection of monuments and conservation areas should be linked to these grades and finally f) introduction of a new legislation to ensure its satisfactory working.<sup>31</sup>

It has been found that the monuments situated in the places away from the cities are often remain guarded by one person. Centuries old stone images are very often found while digging pond or constructing houses. But instead of find their ways to museums; these are worshipped by the villagers or remain unheeded. These images of aesthetic and historical importance should be subject matters of serious study. Proper legislation/guideline is required regarding the method of taking these images to any museum. Preparation of Block/ Sub-division wise list of heritage monuments/buildings and objects is still awaiting. An encouragement for heritage tourism can also create interest in the heritage buildings and objects. An increased awareness would help saving the cultural heritage of the country. Whereas, the requisites mentioned by Allchin are still relevant (already mentioned); there is a necessity to address these issues for the maintenance of ‘basic good’.

---

<sup>29</sup>*Id.*, s.13

<sup>30</sup>F R Allchin, ‘Monument Conservation and Policy in India’, Vol. 126, No. 5268, *Journal of the Royal Society of Arts* 760(1978), <https://www.jstor.org/stable/41372851>(last visited on February 22, 2023)

<sup>31</sup>*Id.* at 761-762

### **XIII Conclusion**

The concept of basic good has a hoary past. It has drawn the focus of the leading philosophers of all ages. In contemporary history we find that the preservation of art and architecture has been associated with the principal premise of basic good. The legislature has rightly passed a few laws during colonial and post-colonial period. Whereas the colonial legislation had its imperialist interest to preserve and to transfer some of the artefacts to the home country; the post-colonial period witnessed an endeavour to protect and exhibit the cultural past of India represented by its art and architecture. Considering the present condition of most of the old monuments and artefacts or objects, with the exceptions of very few prominent ones, it can be said that, appropriate legislation can save the tangible heritage of the country thereby upholding the cause of the basic good.