



RESEARCH ARTICLE

RESTITUTION AND RETURN OF CULTURAL PROPERTY TO INDIA: A MYTH OR REALITY

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Abstract

India has rich cultural heritage since past. During colonial time the same was subjected to misappropriation by Colonial rulers. Many movable Cultural property is lying in Britain for decades. This paper attempts to find out the current trend in the process of restitution and Return of Cultural property to India. Whether the restitution/ return of Cultural Property is a myth or reality in Indian Context? Who will return and who will receive the property is the main question to ask. Whether national and international law are helpful to this regard. A short study is also presented based on news paper coverage, where instances of return is shown and at the same time instances where the cultural property is yet to be returned is indicated in the study. Based on that a conclusion is drawn as to where we stand today.

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Introduction:-

The term 'restitution' 'return' and 'repatriation' is used interchangeably, although the three words have thin line of differences. The word 'restitution' denotes the cultural property pillaged during the time of war and also includes stolen property. The term 'return' signifies "the property displaced for the benefit of colonial power and now restored to the country of origin and also includes unlawful exports". In cases of 'repatriation' the destination of the property may vary. It can be sent either to the country of origin or to the ethnic community from where it is replaced¹. Is there any need to make such distinction, because the ultimate purpose of any property, which is subjected to inappropriate appropriation is to be restored to its country of origin? Instead of debating on appropriate terminology it would be better if I straightway discuss the situation of restitution or return of cultural property to the country of origin. My critics will say that it will disturb the course of history. My answer to them is, it will correct the history and redeem the injustices which were done in the past. But the bottom line of the question is whether the restoration of the property still depends upon the will of the nation which houses the Cultural Property? What is the approach of Source nation like India in getting back its own Cultural Property from Colonial power? Thus question looms over our head is, Whether restitution and return of Cultural property is a reality or myth. Sometimes restitution/ return of Cultural Property becomes difficult due to passage of time and also removal of the same may not be altogether wrong. It is praiseworthy to see that there is an increasing consciousness among communities and people at large to get back their Cultural Heritage from the colonial power, which once ruled them. But unfortunately, that spirit is lacking in India. Our people still considers the Cultural Heritage as remains of past and

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¹ Mark Andre Reynolds , "New Developments in the Restitution of cultural property: Alternative Mode of Dispute Settlement' International Journal of Cultural Property (2010) 17:1-31". Printed in the USA., Copyright © 2010 International Cultural Property Society doi:10.1017/S0940739110000044, <https://www.researchgate.net/publication/231788154>, last visited 23.04.2021

for some the attitude is bygone are bygone. Such laxity in people's attitude cannot pressurize the government to work actively to get their cultural property back.

Thus to answer the research questions raised in Introduction the entire paper is divided in four segments.

Part I- Restitution and Return: with respect to what to return? Who will return and who will receive the same will be explored in this section?

Part II- Restitution and Return: Existing regime of National Laws of India and International Laws will be examined here.

Part III- Restitution and Return: The rate of restitution and return of cultural Heritage to India. Here the information is based on newspaper coverage

Part IV- Restitution and Return- Analysis and Conclusion.

Part- I RESTITUTION AND RETURN: WITH RESPECT TO WHAT TO RETURN? WHO WILL RETURN AND WHO WILL RECEIVE THE SAME

To begin with the question what to restitute/ return, we have to look into the content of the same. We have to remember that we are talking about 'cultural property' in question. Cultural property which are movable in nature can only be returned.

Who can return and who can receive²...is the important looming question as over a period of time there are multiple actors involve in the process of restitution/ return and also in the capacity of receiver. In normal circumstances, it is owner who possess can dispose of the property. Some nations have granted completed freedom to Museums to decide the question of restitution and return. India does not have to restitute or return any property as it was not Colonial power in the past centuries but in fact there are many cultural properties which needs to be returned to Indian mostly by British Colonial Powers.

The next glaring question is restitution/ return is done to whom? Who is at the receiving end? Normally it is the State, the role of private owners and indigenous community, whether they can receive the same or not, is still a question to be answered. The restitution and return is done mostly to the government and same is done based on the principle of good neighborly relation. The extent of cooperation and good relationship between nation is the determinant factor in restitution and return of cultural property.

PART II- RESTITUTION AND RETURN: EXISTING REGIME OF NATIONAL LAWS OF INDIA AND INTERNATIONAL LAW WILL BE EXAMINED HERE.

The instances of Cultural Property trafficked into India is very low but same cannot be denied in cases of illicit trafficking outside India. Since India is rich with Cultural Heritage and it has observed the mass exodus of its antiquity and art treasure being illegally exported since the time of moslem invaders and culminated during British Rule, Indian Laws are dedicated in protecting its heritage, rather than addressing the issue of restitution and return. The enactments, "The Ancient Monument Preservation Act, 1904, and The Ancient Monuments and Archaeological Sites and Remains Act, 1958, The ancient monuments and archeological sites and remains bill (updated in January 2012), The Antiquities and Art Treasures Act of 1972, The Antiquities and Art Treasures Rules, 1973" does not addresses the issue of restitution and return of Cultural Property.

Internationally an attempt is made to deal with restitution of stolen objects and return of illegally exported cultural property in the form of **UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**, 1995. It declares illegally excavated object as stolen cultural property. The period of limitations within which private owners or States can apply for restitution of object is fifty years and three years of knowledge of the location of the object. It also includes the identification of the possessor.

"The possessor of a cultural object which has been stolen shall return it";

Compensation is to be paid to the possessor of the stolen object. The same is allowed only in those cases where care was taken to avoid acquiring stolen cultural property. Criteria for the establishment of diligence include

² Supra note 1, at 1

circumstances of acquisition, character of parties involved, price paid, consultation of a register of stolen cultural objects and absence of an export certificate required by the law of the requesting State are incorporated in the Convention.

Return of illegally exported cultural object to requesting State is mandatory, if the object is of great importance to the state. Even after the Convention is in place, how far it has fructified the restitution and return in Indian Context can be evaluated in the next segment.

PART III- RESTITUTION AND RETURN: THE RATE OF RESTITUTION AND RETURN OF CULTURAL HERITAGE TO INDIA.

Instances of Return

	Newspaper Reporting of stolen Cultural Property	Rate of stealing	Observation of the Researcher
1.	The Diplomat	“According to the Indian Ministry of Culture, 101 antiquities have been stolen from the subcontinent’s Centrally Protected Monuments between 2000 and 2016. However, others suggest that the actual number of missing artwork may be in the several thousands. The U.S.-based alliance charted reported cultural property seizures since 2014 and found that nearly \$65 million worth of illegal artifacts had been seized between 2014 and 2019” ³ .	
2.	The Indian Express	“A case in point is a recent seizure of a Chola Jain Teertankara bronze. (in picture). It was smuggled out by SanjeeviAshokan and Deendayal and eventually reached international smuggler Subhash Kapoor in New York. In early 2004, a farmer who found the buried bronze along with a few ceremonial vessels (sadly lost now) had sold it for its weight to a scrap merchant (Rs 5,000). Within a year in February 2005, the bronze had been sold by Kapoor for \$70,000 to a collector in New York City”. ⁴	The actual diggers are paid literally peanuts compared to what the middlemen and dealers make even before the artefact is smuggled out and prices multiplied 100 times over in the eventual markets in Europe and America.
3.	UNESCO Courier	“Yet, just years after the Antiquities Act, nearly 3,000 thefts of antiquities were reported between 1977 and 1979. More than 50,000 art objects have been smuggled out of India till 1989, according to an estimate by UNESCO. But officials agree that an exact count remains impossible.” ⁵	

³“**Angel L. MartínezCantera**, Reclaiming India’s Stolen Cultural Heritage, THE DIPLOMAT (October 23, 2019), <https://thediplomat.com/2019/10/reclaiming-indias-stolen-culturalheritage/#:~:text=According%20to%20the%20Indian%20Ministry,be%20in%20the%20several%20thousands>”.

⁴“S.VijayKumar, **Theft of cultural treasures: Reviewing ASI’s role**, The New India Express, (04th June 2020 10:59 AM) <https://www.newindianexpress.com/opinions/2020/jun/04/theft-of-cultural-treasures-reviewing-asis-role-2151934.html>”

4.	DNA	“National Crime Records data, compiled from FIRs registered in police stations across the country, reveals a more realistic figure – 4,115 cases of 'cultural property' stolen in 2010-2014. Of these, 1,130 cases were resolved, leading to recoveries, but there are still 3,000 unsolved cases in just these four years. Add to these statistics the thefts in obscure temples in remote corners of India for which even police cases aren't filed. In sum, the figure that experts give, of more than 10,000 objects stolen in the last ten years, seems a more likely estimate of the heritage going out of our country”. ⁶	Of the 200, the Prime Minister brought 11 back with him. The rest are to follow, although the exact schedule of the returns remains unclear, say officials in the Ministry of External Affairs and the Archaeological Survey of India (ASI). But clearly, several artefacts are on the way.
5.	THE HINDU	“When Australian Prime Minister Scott Morrison visits India in January 2020, he will not only bring with him the goodwill of his country, but also three priceless cultural artefacts. The sculptures, including a pair of dwarapalas or door guardians from Tamil Nadu and one nagaraja or serpent king from either Rajasthan or Madhya Pradesh, will come back to their place of origin after the National Gallery of Australia (NGA) voluntarily deaccessioned and returned them to India after establishing that they were, in fact, stolen” ⁷ .	
	The Hindustan Times	The British police on Tuesday handed over to India ancient idols of Lord Ram, Lakshman and Sita that were stolen from Tamil Nadu in 1978, as part of growing efforts to return artefacts of India's cultural heritage from across the world ⁸ .	What about the artefacts stolen by Britain during Colonial Rule.

The Cultural Property which are yet to return to India

	Nature of Cultural property	Description	Place where it is housed
1.	The Ring of Tipu Sultan ⁹	“British took away the ring and sword of Tipu Sultan after his death”.	Vijay Mallya bought the sword in auction, but the ring is still in UK and auctioned off.

⁵ “**Samayita Banerjee**, India: Heritage theft remains a challenge, The UNESCO Courier, <https://en.unesco.org/courier/2020-4/india-heritage-theft-remains-challenge>”

⁶“Gargi Gupta, India's stolen antiquities: An industrial-scale loot, The DNA (Jun 19, 2016, 07:25 AM IST) <https://www.dnaindia.com/lifestyle/report-india-s-stolen-antiquities-an-industrial-scale-loot-2225242>”

⁷ “Bringing back treasure: On Stolen Idols, The Hindu (November 30, 2019, 0025 AM IST) <https://www.thehindu.com/opinion/editorial/bringing-back-treasures/article30118780.ece>”

⁸ Prasun Sonwalkar, UK hands over 3 stolen ancient idols to India, The Hindustan Times (SEP 16, 2020 12:04 AM IST), <https://www.hindustantimes.com/world-news/uk-hands-over-3-stolen-ancient-idols-to-india/story-m1JlyLBQZYraMdFtGPHyIP.html>

⁹ “**Controversial Indian ring auctioned at Christie's**, The BBC News (Date:22 May 2014), <https://www.bbc.com/news/world-asia-india-27529905>”

2.	A. The Sultanganj Buddha ¹⁰	“The statue was of 2 m tall weighting 500 kg. It was discovered by E.B Harris, British Railway Engineer, during Railway Construction in 1862”.	Currently with Birmingham Museum
3.	The Amravati Marbles ¹¹	“Stunning collection of 120 sculptures and inscription made of limestone carving belonging to 100 A.D”	British Museum, London
4.	Tipu's Tiger ¹²	“A life-sized, wooden tiger mauling a Caucasian figure in European clothes. What is interesting is that hidden inside the tiger is an organ, and when a handle on the side is turned, the organ can be played which causes the dying man to wail and his arm to lift up and down”.	Victoria and Albert Museum, London
5.	The Nassak Diamond ¹³	“The Nassak Diamond (also known as the Nassak Diamond ^[2] and the Eye of the Idol ^[3]) is a large, 43.38 carats (8.676 g) diamond that originated as a larger 89 carat diamond in the 15th century in India”.	Private Museum at Lebanon
6.	Maharaja Ranjit Singh's throne ¹⁴	“Maharaja Ranjit Singh's throne was made by the goldsmith Hafez Muhammad Multani about 1820 to 1830”	Victoria and Albert Museum, London
7.	B. The Royal Jade Wine Cup of Shah Jahan ¹⁵	“The cup was made in 1657 for Mughal emperor Shah Jahan with inspirations from China, Iran, Europe and India”.	Victoria and Albert Museum, London

Part Iv Analysis And Conclusion:-

In the above discussion I have shown two aspects. In one aspect the instances where cultural property is return and other where it is not return and the substantial important part is with Britain. It is with respect to Cultural Property which is refused to India that we are concerned with and the entire concept of restitution and return becomes myth. It is this cycle that we have to break and force the other country to return the Cultural property. In fact, trade and economy is one of the grounds, based upon which a country can be forced to retribute the Cultural property. Again it will depend upon the mutual dependency between countries. For example, since our major Cultural property is in Britain, one way is to make Britain dependent on India for crucial trade market. Once that is done, India will be in the position of bargaining and create pressure to get its Cultural property back.

Another possible suggestion is with respect to Indians living in Britain, who can generate public opinion on issue of restitution and return and force the government to return the Cultural property.

It is at this place that we require proactive part from government either through negotiation or diplomatic process, the same has to be brought back to India. In this, the help from civil society, non-governmental organization and UNESCO's support has to be garnered to create pressure on the countries to retribute and return Cultural Heritage. Returning cultural property is about restoring peoples' memory and healing wounds.

¹⁰ “https://www.telegraphindia.com/1150505/jsp/bihar/story_18183.jsp#.VxdN7TB97IU”

¹¹ “K.S.S Sheshan, Amravati Sculptor- A Colonial Voyage, The Hindu (APRIL 07, 2016 16:28 IST)<https://www.thehindu.com/features/friday-review/history-and-culture/known-as-eliot-marbles-the-amaravati-sculptures-occupy-a-pride-of-place-in-british-museum-writes-kss-seshan/article8446587.ece>”

¹² “<https://www.vam.ac.uk/>”

¹³ “<https://www.thehindu.com/society/history-and-culture/bring-back-indias-nassak-diamond-from-lebanon/article23346247.ece>”

¹⁴ “<https://www.vam.ac.uk/>”

¹⁵ “<https://www.vam.ac.uk/>”