

Chapter 17

Protection of Intangible Heritage: Need to Reassess the Framework

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ABSTRACT

The convention concerning the protection of cultural and natural heritage only emphasizes the protection of tangible cultural heritage. However, the present convention completely turned a blind eye and a deaf ear to the intangible cultural heritage. “Cultural heritage” as a term and its content are largely taken from other fields like anthropology and archaeology. The legal aspect of cultural heritage is most complex and difficult to understand. There also exist elements of intangible culture which would include songs or folklore musical traditions, ceremonial or ritual traditions, aspects of the life of ancient societies, and any special relationship between the people and the land that they inhabited. With the term property also comes the idea of assigning the artifact a market value whereas they are historically priceless. Cultural heritage has been made global and a part of universal heritage or “common heritage of mankind.”

INTRODUCTION

Every country is endowed with a specific cultural frame which is not only unique but is genetically embedded in each and every person living in that country. There are certain practices and usages which predominantly guide one’s behaviour. Every country has a plethora of activities which are crucial for the very existence of that country. It is time and again quoted that people living in a specific cultural set up should never forget their roots. But, in this post-modern world, all these tradition principles and practices have taken a backseat. The values which have been cherished since time immemorial have hid

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themselves under the veil of so-called modernity. Also, the international community at large is promoting “pluralism” at the forefront which directly intersects “cultural relativist” tendencies of the world.

Everyone wishes to get attached with their own set of ideas governed by the culture they are brought up in. However, in the post-modern world, these traditional cultural nuances have taken precedence by new set of ideologies emanating out of the new world order. There has always been a persistent debate among the academicians about the definition of the term “cultural heritage”. It is a comprehensive term which is difficult to define with utmost precision. Even, the legal aspect of cultural heritage is highly difficult to comprehend and thus, its over arching connotations are inextricably interwoven with law.

“Cultural heritage” as a term and its content are difficult to maneuver. The legal aspect of cultural heritage is most complex and difficult to understand (Pratt and O’Keefe, 1989 pp.8). The term cultural heritage in legal sense as per UNESCO regulations of 1973 encompasses several main categories of heritage namely:

1. Tangible cultural heritage
2. Intangible cultural heritage
3. Natural heritage
4. Heritage affected in cases of armed conflict

The intangible heritage as stated above is not in strict terms but due to their evolution process. The process of intangibility in heritage goes far beyond aesthetic contemplation and has some practical usage to it (Bortolotto 2007, p21).

Let us understand this by an example. When we talk about performers of intangible heritage like Kutiyattam dance form of Kerala we are talking not just about the performance but also the space it theoretically takes up along with the notion that what is being performed belongs to the public, created by them or their forbears and also performed for them. Tangible heritage is easy to identify but intangible heritage can only be discovered by practical observation (Wittgenstein 1958 p 43).

GLOSSARY

Before going any further, basic terms which shall appear in the chapter have been defined hereunder:

- A. **Common Heritage of Mankind:** This principle of international law states that some cultural and natural resources are prevalent irrespective of the territorial boundaries. Everyone has an inherent right over these resources.
- B. **Cultural relativism:** It refers to those practices which form the core of a cultural group or a nation. They do not get subdued by the universal practices which are being adopted by the post-modern world.
- C. **Folklore tradition:** The activities which have been an intrinsic part of the cultural practices of a nation. These include songs, dance forms and other skills.
- D. **Heritage in the event of armed conflict:** These includes monuments, complex of buildings of archaeological and historic significance, ancient works of art which have been abandoned as the off-shoot of any armed conflict.
- E. **Intangible cultural heritage:** oral traditions, performing arts, rituals of a particular cultural group.

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