



REORIENTING THE PROTECTION OF CULTURAL HERITAGE (CH): FORGOTTEN SUBJECT IN INTERNATIONAL LAW

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ABSTRACT

Nepal is party to multilateral international treaties in relation to the protection of cultural heritage either of tangible or intangible in nature. These properties are although mostly territorial in nature but seek global protection and international cooperation. The heritage properties are considered as gift to humankind and global assets for the global richness to humankind. The devastated earthquake, 2015 in Nepal had mostly damaged such properties. The GoN has attempted to recreate those heritages with its original shape and indigenously. The cultural heritage must be protected at any cost either with support of international cooperation or any other forms. This paper has highlighted the laws relating to the protection of heritage properties and also the responsibilities of the different government. The most comprehensive definitions of Heritage includes objects of an archaeological, paleontological, ethnological or historical interest and includes further any sites, place, structure, erection of building, memorial, tumulus, cairn, pit dwelling and others. There are four main methods to define the heritage either in international or also in the national law.

Key Words: Heritage, Compatibility, Protection, Memorial, Ethnological.

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GENESIS OF CULTURAL HERITAGE LAW

Most of the heritage legislation in Asia and Africa was enacted during the colonial period and definition is also influenced by the colonial rule/experience.¹ Most of the definitions generally equated heritage to the built heritage or to arte facts or objects from the past. Material aspects are paramount to define the heritage. The intangible objects are not included in the definition of cultural heritage. Some of laws like, Historic Monuments, Relics and Antiquities Act. The current heritage law has to be specified into two different categories for the Movable & Immovable properties/heritage. Such as in case of Zambia, The National Museums of Zambia² empowered with Movable heritage cities while the National Heritage Conservation Commission³ for Immovable Heritage. The most comprehensive definitions of Heritage includes objects of an archaeological, paleontological, ethnological or historical interest and includes further any sites, place, structure, erection of building, memorial, tumulus, cairn, pit dwelling and others. There are four main methods to define the heritage either in international or also in the national law. Most of the national laws are either directly copied in line with the international laws on heritage or are influenced by the colonial power. The main approaches are to define heritage as:

- A. A definition of protected heritage that specifies particular places by giving the list of items and places to be protected.⁴
- B. A definition of protected heritage based on values of the heritage resources.⁵

¹ Cultural Heritage and the Law, Protecting Immovable Heritage in English Speaking Countries of Sub-Saharan City, ICCROM (2009) (May 18, 2018, 7:45 AM), https://www.iccrom.org/sites/default/files/ICCROM_ICSO8_CulturalHeritageandLaw_en_0.pdf.

² The National Museums Act, 1966, Chapter 174 of the Laws of Zambia (May 2, 2018, 8:30AM) <http://www.parliament.gov.zm/sites/default/files/documents/acts/National%20Museums%20Act.pdf>.

³ The National Heritage Conservation Commission Act, 1989 Chapter 173 of the Laws of Zambia, (May 2, 2018, 8:30AM), <http://www.parliament.gov.zm/sites/default/files/documents/acts/National%20Heritage%20Conservation%20Commission%20Act.pdf>.

⁴ Cultural Heritage and the Law, Protecting Immovable Heritage in English Speaking Countries of Sub-Saharan City, ICCROM (2009), (May 2, 2018, 8:30AM), https://www.iccrom.org/sites/default/files/ICCROM_ICSO8_CulturalHeritageandLaw_en_0.pdf.

⁵ *Ibid.*

- C. A definition of protected heritage based on land management or demarcation of paces to provide general protection.⁶
- D. A definition of protected heritage based on time scales (chronology) or historical values.⁷

With regards to the Normative Protection of Cultural Property, the United Nations Educational, Scientific and Cultural Organization (UNESCO) was mandated in 1945, right after its creation. Legal measures were taken relatively quickly considering those nine years after its creation, the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflicts was adopted after the convocation of an Intergovernmental Conference. The philosophical background of this Convention resides in the preamble, recognizing that “cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction”. Moreover, the minds behind the Convention addressed the question of Heritage ownership or non-ownership by stating that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world”.

The existing Act of Nepal in regards to the protection of cultural heritage has also adopted similar kinds of definition as stated in section 2 of the 1956 Act. The definition part of the Act has defined those all four categories of international definition available at the international levels for protection of cultural heritage.

APPLICABLE INTERNATIONAL LAWS

Reflecting the preoccupation of international law generally, most multilateral instruments for the protection of cultural heritage refer to the State as its primary subject. It is the State which defines what cultural heritage is to be protected and it is the State that must primarily fulfill obligations pertaining to its protection under, for example, the 1954 Hague Convention, 1970 UNESCO Convention and 1972 World Heritage

⁶ *Ibid.*

⁷ *Ibid.*

Convention. Consequently, it is the importance of cultural heritage to the nation-state which has been privileged by international law. While States remain primarily responsible for the protection of cultural heritage in international law,⁸ it is clear that the interests of other subjects have gained significance (if not, precedence): namely, the international community, and non-state groups.

The preamble of the Roerich Pact stipulates that ‘the Institutions dedicated to the education of youth, to Arts and Science, constitute a common treasure of all the Nations of the World.’⁴¹ The 1954 Hague Convention preamble reiterates this sentiment when it refers to ‘the cultural heritage of all mankind’, and adds: Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection.⁹

The preamble of the 1972 World Heritage Convention provides a more extensive elaboration of this trend by recognising the need to ‘safeguard this unique and irreplaceable property ...for all the people of the world ... to whatever peoples it may belong.’ It states: Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole. The 1972 Convention makes it incumbent on the international community, that is, States in cooperation with each other to protect such cultural heritage.¹⁰

The preamble recitals of earlier instruments clearly emphasize that the international protection of certain cultural heritage was driven by its importance to universal knowledge and the advancement of the arts

⁸ Ashlyn Miltigan, Targeting Cultural Property: The Role of International Law (May 2, 2018, 8:30AM), <https://jpia.princeton.edu/sites/jpia/files/2008-5.pdf> <https://jpia.princeton.edu/sites/jpia/files/2008-5.pdf>.

⁹ Preamble, 1954 Hague Convention (May 2, 2018, 8:30AM), http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

¹⁰ Fifth, sixth and seventh recitals, Preamble, and Article 6 of World Heritage Convention, 1972. Fifth recital, Preamble, Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003, UNESCO Doc. MISC/2003/CLT/CH/14; and first recital, Preamble, Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001, UNESCO Doc. MISC/2003/CLT/CH/4, and (2002) 41 *ILM* 37.

and sciences. While residual elements of this purpose linger today, the emphasis by the international community on protecting and promoting cultural diversity has created a decisive shift in the primary rationale fuelling contemporary international initiatives. Rather than protecting cultural heritage *per se*, they afford protection because of its importance to ‘peoples’, ‘groups’, ‘communities’ and ‘individuals.’ This acknowledgement of the interests of non-state groups in cultural heritage complements the extension of protection afford cultural heritage during non-international armed conflicts and peacetime.

Arguably, this interest of non-state groups is further recognized and reinforced by the widening definition of ‘cultural heritage’ in successive, recent multilateral instruments including the 2003 Intangible Heritage Convention. For example, indigenous peoples have stressed repeatedly the importance of a holistic understanding of culture heritage in any eventual international declaration for the protection of their rights and cultural heritage.¹¹ The *travaux* relating to Article II, which defines the scope of the 2003 UNESCO Declaration, note the term ‘cultural heritage’ ‘was not qualified but was left intentionally broad ... so as not to exclude expressly its “movable” or “immovable” natures, or its “tangible” or “intangible” forms.’¹² On the basis of the understanding of the international communities, these are the list of laws applicable in regards to the protection of cultural heritage either in time of armed conflict or in time of peace. Nepal government is party to most of these laws which has imposed obligation to government not only to the federal but also to the provincial government in current political structure set up.

- Lieber Code, 1863.
- Brussels Declaration, 1874.
- Manual of the Institute of International Law, 1880.

¹¹ E.-I. Daes, Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples, 28 July 1993, UN Doc. E/CN.4/Sub.2/1993/28, paras. 21ff; E.-I. Daes, Final Report in conformity with Sub-Comm. Res. 1993/44 and CHR Dec. 1994/105, 21 June 1995, UN Doc. E/CN.4/Sub.2/1995/26, Annex: Revised Text of the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples, at Guidelines 11 and 12; and T. Janke, *Our Culture Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights* (Canberra, 1998).

¹² UNESCO 32C/25, Annex II, p. 4, para. 12; and *Supra* note 48, p. 16.

- 2nd Hague Convention, 1899.
- 4th Hague Convention, 1907.
- Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Washington Treat), 1935.
- Declaration for the Protection of Historic Buildings and Works of Art in Time of War, 1939.
- Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954.
- AP I and AP II of Geneva Convention, 1949.
- International Law Commission Draft Code of Crimes against the Peace and Security of Mankind, 1996.
- Convention on Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Cultural Property, 1970.
- Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (Nepal ratified on 1978).
- Declaration Concerning the Intentional Destruction of Cultural Heritage, 2003

Nepal has made a specific constitutional provision in relation with the protection of cultural heritage. Article 32¹³ of the Constitution has secured “Right to language and culture” as fundamental rights which have direct remedies in case of infringement or violation at the court of law. This Article has further incorporated that art, 32 (3), every Nepalese community residing in Nepal shall have the right to preserve and promote its language, script, culture, civilization and its heritage. The government has no any constitutional mandate to protect the heritage of country. The rights relating to heritage is not under the direct purview of the government rather the community is constitutionally empowered to promote, preserve and protect their heritage sites and properties. There is no any further remarks on the issues of ‘heritage and its protection’ in the Constitution. This may be reason the govt. is escaping from any obligation to protect it.

Further, the govt. has also made provision relating to the protection under the ‘Policies of the State’ under entitlement’ 51 (c),¹⁴ Policies relating

¹³ Art. 32 of the *Constitution of Nepal*.

¹⁴ Art. 51 (c, 2) of the *Constitution of Nepal*.

to social and cultural transformation which has explained the role of government to make effective work on sites of cultural heritage which are not enforceable in the court of law. The Court has to apply non-conventional strategy of judicial enforcement mechanism explained above in different cases. There are very few places where the term 'cultural heritage' is appeared in the constitutional articles. The GoN has shown also concerns about the protection of 'intangible cultural heritage' implicitly under the policies of state. The GoN has not denied the fact that intangible properties also can be subject to the lawful protection. The protection of intangible cultural heritage is growing concerns in the international community's at the international forum. The cultural heritage is not the exclusive responsibility of state rather requires whole international communities to be serious of it. It is the assets to humankind.

The GoN has further enacted an old ancient law called, An Act Made to Preserve the Ancient Monuments and Archaeological, Historical or Artistic Objects (1956) which by name suggest the protection of 'intangible cultural heritage'. The preamble of the Act has captured three specific issues which has changed the international communities from protection of heritage properties:

- To preserve the ancient monument
- To control the illicit trade in archaeological objects
- To excavate the places of ancient monuments

This objective is reflected in various international treaties in relation with the protection of cultural heritage at the international level. Such as, Convention on Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Cultural Property, 1970¹⁵ adopted fifteen years later 1954 Hague Convention and applicable in time of peace reveals the consequences of the War regarding Cultural Heritage has prohibited any such act which can be challenging the work of humankind. There is global condemnation of the illicit trade of heritage properties which was

¹⁵ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) (May 2, 2018, 8:45AM), http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html.

also seen in bringing back statues of Buddha after several years through the international coordination and cooperation back to Nepal.

In 1989, the 25th session of the general Conference of UNESCO adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore.¹⁶ It was adopted in order to encourage countries to take constitutional and legislative measures to safeguard traditional cultures in both forms of ICH or tangible. The World Intellectual Property Organization (WIPO) empowered to work on issues of IP globally. These are treaties for the IP protection or ICH protection at international level to which Nepal is party.

- The Berne Convention for the Protection of Literary and Artistic Works, 1971 adopted in 1983.
- WIPO Copyrights Treat (WCT), 1996.
- WIPO Performers and Phonograms Treaty (WPPT), 1996.
- The International Protection of Related Rights/ Neighboring Rights (such as right of performers) has further includes following other treaties:
 - ❖ The Rome Convention, 1961.
 - ❖ The Phonograms Convention, 1971.
 - ❖ The Satellite Convention, 1974.

GoN has shown her strong commitment for the protection and preservation of the ICH form other legal perspectives.

INTERNATIONAL COOPERATION ON CULTURE HERITAGE

During the 19th Century, John Ruskin observed in his book “The seven lamps of architecture” that the conservation of ancient monuments is not only a matter of convenience or feelings but a matter of belonging. History does not belong to anyone if everyone.¹⁷ For this reason, cultural heritage and ancient monuments are in principle inviolable. Cultural Heritage and the philosophical perspective of a Universal heritage should

¹⁶ Recommendation on the Safeguarding of Traditional Culture and Folklore (May 2, 2018, 8:45AM) http://portal.unesco.org/en/ev.php-URL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html.

¹⁷ Ruskin John, *Les Sept Lampes De L'architecture Trad* 206 (George Elwall, éd. Denoël 1987).

not be mistaken for the concept of “common heritage of mankind”¹⁸. This has given rise of two perspectives which are reflected in the Hague Convention, 1954 as First, Cultural property delivered in nation-centered terms sets the basis for state action. Domestic laws are legitimate and necessary to protect Cultural Property, as a pillar of Culture and Nation and Secondly, Cultural Property delivered in universal terms sets the basis for international cooperation. The UNESCO adopted the Recommendation on the Safeguarding of Traditional Culture and Folklore, 1989 under ‘G’ has also urged for the international cooperation in regards to the protection of the traditional properties.

Recommendation on the Safeguarding of Traditional Culture and Folklore, 1989 which includes as, (a) co-operate with international and regional associations, institutions and organizations concerned with folklore; (b) co-operate in the field of knowledge, dissemination and protection of folklore, in particular through: (i) exchanges of information of every kind, exchanges of scientific and technical publications; (ii) training of specialists, awarding of travel grants, sending of scientific and technical personnel and equipment; (iii) the promotion of bilateral or multilateral projects in the field of the documentation of contemporary folklore; (iv) the organization of meetings between specialists, of study courses and of working groups on particular subjects, especially on the classifying and cataloguing of folklore data and expressions and on modern methods and techniques in research; (c) co-operate closely so as to ensure internationally that the various interested parties (communities or natural or legal persons) enjoy the economic, moral and so-called neighbouring rights resulting from the investigation, creation, composition, performance, recording and/or dissemination of folklore; (d) guarantee Member States on whose territory research has been carried out the right to obtain from the Member States concerned, copies of all’ documents, recordings, video-films, films and other material; (e) refrain from acts likely to damage folklore materials or to diminish their value or impede their dissemination or use, whether these materials are to be found on their own territory or on the territory

¹⁸ Kema Baslar L., *The Concept of the Common Heritage of Mankind in International Law*, Dordrecht, The Netherlands: Martinus Nijhoff (1998).

of other States; (f) take necessary measures to safeguard folklore against all human and natural dangers to which it is exposed, including the risks deriving from armed conflicts, occupation of territories, or public disorders of other kinds.

International cooperation and Law are needed to fully protect Cultural Property, as the core of Humanity heritage, especially in the globalization era. As in 1972 World Heritage Convention. In its Article 4, it stipulates that “each state Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State”. It explicitly places the International Responsibility at the second level, adding that the state “will do all it can to this end (...) and, where appropriate, with any international assistance and co-operation (...)”. However, the 2009 General comment no. 21 of the UN Committee on Economic, Social and Cultural Rights gives more details about its scope and application. Regarding the concept of “cultural life”;

“The Committee considers that culture, for the purpose of implementing article 15(1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence (...)

The nature of warfare has tremendously changed and no more fighting with or among states. The non-state actors participation in war activities has challenged the law enforcing agencies to bring under bar of law and held them responsible for their contravention with established rules of law in warfare or out of warfare. Some of the war and their victims like the victim of the first and second Persian Gulf Wars; Iraqi Cultural Heritage has been the target of important destruction and looting

such as the looting of the Iraq museum in April 2003¹⁹. Before the last U.S troops left Iraq in December 2011, the situation degraded in Syria. The Islamic State of Iraq and the Levant (ISIS or Daesh), created in 2006 by Abu Musab Al- Zarqawi and linked to the terrorist organization Al-Qaïda in Iraq, emancipated itself from the latter to become independent in 2014. Authors of numerous exactions in their quest of founding a new Sunni Caliphate, the United Nations condemned Daesh as a terrorist group responsible for war crimes, ethnic cleansing and crime against Humanity.²⁰ In this quest of eradicating idols, the Islamic State have caught the international attention in its propaganda video diffusing the images in Syria of the Palmyra site destruction in August 2015. Qualified as a war crime by the director general of UNESCO Irina Bokova²¹. It utmost required cooperation both from state and non-state actors.

As the “first ever” judicial case related to cultural property²² The Marquis de Somerueles judgment already testified: [t]he arts and sciences are admitted amongst all civilized nations, as forming an exception to the severe rights of warfare, and as entitled to favour and protection. They are considered not as the peculium of this or that nation, but as the property of mankind at large, and as belonging to the common interests of the whole species.”

This is why States must increase and develop any forms of cooperation amongst them and between all the relevant factors involved in the protection and management of cultural heritage beyond the territory of one specific state. There is no doubt that the heritage protection requires an international cooperation and coordination. Considering this fact, the Law on the Promotion of International Cooperation for Protection of Cultural Heritage Abroad was introduced in 2006 in Japan. Accordingly,

¹⁹ Stone Peter, Farchakh Bajjaly Johanne, *The Destruction of Cultural Heritage in Iraq* 4(2008).

²⁰ Reuter Christoph and Ghaddar Hanin Interview, «Voyage au bout de la Terre», *Courrier International*, Octobre/Novembre/Décembre 6 (2015).

²¹ Director-General Irina Bokova firmly condemns the destruction of Palmyra’s ancient temple of Baalshamin, Syria», speech 24.08.2015, UNESCO (May 7, 2018, 8:45AM), <http://en.unesco.org/news/director-general-irina-bokova-firmly-condemns-destruction-palmyra-s-ancient-temple-baalshamin>.

²² G7 Meetings of Experts, “The Protection of Cultural Heritage: Rules, Practices and Education (2017) (May 4, 2018, 8:45AM), http://www.g7italy.it/sites/default/files/documents/Protection_of_cultural_heritage_italian_contribution.pdf.

the Ministry of Foreign Affairs and the Ministry of Education, Culture, Sports, Science and Technology created the Basic Policy on the Promotion of International Cooperation for Protection of Cultural Heritage Abroad in 2007 in order to make clear the basic direction of promotion, the roles of the country and relevant institutions and prescribe a basic policy to be adopted.²³ Generally, there are three different approaches for the international cooperation in relating to the protection of cultural heritage worldwide as ‘regulatory, institutional and procedural’ level which can arise at three different levels.

First, there is an increasing law-making activity carried out at the international or supranational level. This regards both public and private actors.²⁴

Second, international regulation makes the institutional framework of protection of cultural heritage much more complex. The actors involved are not only governments or international governmental organizations (such as UNESCO), but also domestic administration or other national entities and private actors, either international or domestic or both.²⁵

Third, international regulation of cultural heritage presents a multi-layered system of procedures. There is a vertical dimension, with UNESCO, ICOM, ICCROM, and other international institutions on one side, and States, domestic administrations and museums on the other.²⁶ The ancient text on the international cooperation was seen at the 20th session of UNESCO’s General Conference, 1978, Resolution 4/7, 6/8 was calling an intensification of the project and the mobilization of international funds for the protection of valuable properties of humankind.²⁷

The international community has to develop multilayered structure in order to provide due protection of the cultural assets of the humankind

²³ Law on the Promotion of International Cooperation for Protection of Cultural Heritage Abroad (May 4, 2018, 8:41PM), http://www.mofa.go.jp/policy/culture/coop/unesco/c_heritage/coop.html.

²⁴ G7 Meetings of Experts, “ The Protection of Cultural Heritage: Rules, Practices and Education (2017), (May 4, 2018, 8:41PM), http://www.g7italy.it/sites/default/files/documents/Protection_of_cultural_heritage_italian_contribution.pdf.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Riddhi Pradhan, Historical Background of the Kathmandu World Heritage Sites with Special Reference to Patan Monument Zone (May 4, 2018, 07:38 AM), http://himalaya.socanth.cam.ac.uk/collections/journals/ancientnepal/pdf/ancient_nepal_139_05.pdf.

globally. The state would not be sufficient to have such protection until; there is also equal cooperation and coordination among non-state and super empowered individuals. The Non-State Actors has to be more responsible for their act specific targeting the cultural heritage sites of the world communities. The international cooperation is most and there is need to have good faith based practices among the state to have such protection from and around world. Nepal needs more due to huge presence of cultural heritage sites crossing the different locations.

INTER PROVINCIAL COOPERATION IN NEPAL

The newly structured government will require more cooperation in regards to the protection and promotion of intangible cultural heritage properties. The intangible cultural heritage (ICH) – or living heritage – is the mainspring of our cultural diversity and its maintenance a guarantee for creativity” (Convention for the Safeguarding of the Intangible Cultural Heritage, 2003). Since the 1960s the concept of cultural heritage has dramatically broadened.²⁸ The Venice Charter (1964)²⁹ made reference to “monuments and sites” and dealt with architectural heritage, which soon expanded to cover clusters of buildings, architecture, and industrial and 20th century built heritage. By the 1980s heritage experts (largely influenced by anthropology) began to discuss the significance of ‘non-tangible heritage’, which later was termed ‘intangible cultural heritage’ (ICH) - as stipulated in the Convention for the Safeguarding of the Intangible Cultural Heritage, which came into effect on 20 April 2006. In the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (ICH Convention) says that “consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments” (Article 2.1 of the ICH Convention). It is often understood as ‘folk life’ i.e. the beliefs, practices, stories, jokes, songs (etc.) of a people, transmitted orally or by other non-institutional means. The protections of ICH are developed on the five subjects:

²⁸ The Intangible Cultural Heritage of Nepal: Future Directions, UNESCO Office (2007), (May 6, 2018, 06:30 PM), unesdoc.unesco.org/images/0015/001567/156786E.pdf.

²⁹ International Charter for the Conservation and Restoration of Monuments and Sites, Venice Charter (1964) (May 6, 2018, 06:30 PM), https://www.icomos.org/charters/venice_e.pdf.

- A. Oral Traditions
- B. Performing Arts (such as traditional music, dance and theatre)
- C. Social Practices, Rituals and Festive Events
- D. Knowledge and Practices Concerning Nature and the Universe
- E. Traditional craftsmanship

The different 7 provinces have to develop a strong legal and structural basis for the cooperation in regards to both the tangible and intangible cultural heritage properties in Nepal. The Constitution has also given mandate although not in form of binding laws rather non-enforceable part of it but has to be understood in progressive framework in the light of due protection of the law. There is also need to develop a strong mechanism which will have a detail survey on the nationwide available of both forms of properties. Specifically, the ICH for which Nepal has very few laws like Copy Right Act and some others which need more amendment. The Govt. has mandate to provide the strong local support to preserve and also promote local ICH more than the others. These are some of the key act require considering the international best practices in regards to the protection of the cultural heritage properties. These practices have helped for the conservation and promotion with protection in the global humankind assets. The possible work can be list as below:

- The subject of ICH specific in terms of Intellectual Property lies with Federal Government responsible under Schedule-5 of the Constitution which includes Patents, Designs, Trade Marks and Copy Rights (Schedule No.24) along with sites of archaeological importance and ancient monuments (S.N. 34) under exclusive jurisdiction of Federal Government.
- The State govt. is empowered to maintain Statistics (S.N. 6) of Schedule -6 of the Constitution along with the capacity to establish the Museums (S.N. 8) of it. The State Govt. is further empowered for the exploration and management of the Mines (S.N.7) along with the protection and use of language, scripts, cultures, fines, arts and religions (S.n.8) and managements of Trusts (Guthi-S.N. 21).
- These are further power division among the states:-

- ❖ Article 57 (1) - Explains about the power of Federal government under Schedule-5.
- ❖ Article 57(2) - Power of State Govt. - Schedule-6.
- ❖ Article 57(3) - Concurrent Powers of Federation and State- Schedule-7.
- ❖ Article 57 (4) - Local Level Power- Schedule-8.
- ❖ Article 57 (5) - Concurrent Powers of Federation, State and Local Level- Schedule-9.
- Although, the Federal Govt. is empowered with right in regards to the cultural heritage but also the State govt. is empowered to make necessary protection to tangible or intangible protection of heritage available under their respective jurisdiction. The State and Local level government is also empowered to make necessary arrangements for the protection and preservation of the heritage sites. Even the Article 32 of the Constitution has inserted language, like 'Every Nepalese community' which is very general in law. Everyone entitles to perverse and protect their respective heritage sites. But the legal responsibilities are with the government with al tier.
- The Government has also established the National Natural Resources and Fiscal Commission³⁰ empowered to solve possible disputes between the Federation and the States, between States, between a State and a Local level and between Local levels and in regards to various issues.³¹ This Commission is further empowered to provide suggestion to work in a coordinated manner to prevent any disputes. This can be further interpreted in a ways that. If there are any disputes in regards to nomination or protection for the either tangible or intangible cultural heritage, this Commission will be responsible for solving the disputes.
- The Act of 1956 has provision in relation to different areas to be considered as an area may be declared and preserved Monument Area.³² This also provides the power to recommend for the

³⁰ Art. 251 of the *Constitution of Nepal*.

³¹ Art. 251.1 (i) of the *Constitution of Nepal*.

³² Sec. 3 of the *Ancient Monument Preservation Act, 1956*.

consideration of area for the special protection. This Act has further classified the Ancient Monuments from the perspective of ownership into two categories as Public and Private Monuments.³³ And also, from the importance, Monuments are classified into three categories as international importance, national importance and of local importance.³⁴ This Act has further provision in relation to the restriction on transfer, transaction, export or collection of ancient monuments and archaeological objects or curio.³⁵

- The Federal Government has to establish a separate independent commission for the protection of ICH as well as the tangible properties of the humankind. There is need to have separate institutions and also bodies which shall have active responsibilities to protect the ICH available in all provinces along with the direct supervision of the Federal and Provincial Government. The inter coordination and cooperation is needed to have strong protection of heritage cites of the different provinces. The GoN has to follow the best practices of the other's states in terms of protecting the heritage of the nation.

The Inter-Provincial Cooperation is must for the realization and preservation of the heritage sites. It has to be facilitated by the proper legal and constitutional bodies for the protection and promotion of the heritage sites on its any forms and any geography,

CONCLUSION

Nepal is not only known for its geo-political situation rather equally known for the cultural assets in the world communities. The heritage sites of Nepal have always become the center for attraction of the international communities and which has compelled to enact a law for providing the security and preservation of the heritage sites. The GoN has enacted a law called, *Ancient Monuments Preservation Act* in 2013 B.S. (1956 AD) as known for the modern conservation of either ICH or TCH properties of the nation. It has stated that the first international cooperation in regards to the protection of Heritage sites began in 1970's

³³ Sec. 3 A (1) of the *Ancient Monument Preservation Act, 1956*.

³⁴ Sec. 3A (2) of the *Ancient Monument Preservation Act, 1956*.

³⁵ Sec. 13 of the *Ancient Monument Preservation Act, 1956*.

with the help of UNESCO's mission to restore the Hanuman Dhoka Durbar. This international cooperation has helped to enlist seven different sites from Kathmandu valley including 3 Durbar Squares, Pashupati Nath, Bouddha, Changu Narayan and Swoyambhu in the UNESCO's World Heritage Sites brought Nepal to international attention in heritage conservation arena.

The Act has empowered the Department of Archaeology (DOA), the central government institution in-charge of cultural heritage conservation in the country of any it's form. But this Department is not working effectively due to lacks adequate resources and mechanisms to oversee projects and to take care of heritage sites throughout the country. It has given opportunity to federal and local government for the protection of the heritage sites. The non-effective work on the protection of heritage sites has considered world heritage sites in Kathmandu valley was criticized by international agencies like UNESCO resulting in enlisting the Kathmandu Valley World Heritage Sites in the "endangered list" in 2003 which was recently been delisted with effective work of the DOA.

Hence, the Govt requires the proper coordination and cooperation for the protection and preservation of any heritage sites of any importance such as, international, national or local in nature.

□