

II.Safeguarding System & Policy

The primary value of intangible cultural heritage (ICH) lies in its ability to create locally based knowledge that performers, practitioners, and other participants use to contemplate, understand and act upon in their lives. Its scope is utilitarian as well as spiritual, ethical as well as aesthetic. Through ICH, local participants realize a wide range of benefits-ranging from practical techniques to affirmations of individual identity and group solidarity. National cultural institutions that programmatically recognize this value, develop policy both to help safeguard local ICH, and to promote cultural diversity, an ethical and political principle that recognizes the creativity, beauty, wisdom and legitimacy of the variety of human cultures. Cultural diversity at national level can help safeguard local practices of ICH.

Through this report, there is need to focus on two areas: on one hand, the safeguarding of local ICH; and on the other hand, the development of methods to promote cultural diversity at the national level. A central concern in collaborating with local communities to safeguard their ICH is sustainability --- the capacity of local ICH practices to maintain them over time. To assist policy development, there is a requirement of conceptual framework that enriches the idea of ICH expressed in the 2003 Convention by employing the concept of social institution. I hope to show that this idea, which is already implicit in the Convention, offers a perspective that facilitates the observation, analysis, discussion, and planning of sustainability in intangible cultural heritage.

The Constitution of India guarantees cultural rights of the citizens in the following terms: "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same"¹. The Constitution further provides that it shall be the duty of every citizen of India to value and preserve the rich heritage of India's composite culture.

¹[http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(4\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(4).pdf)

Article 29 grants any section of citizens having a distinct language, script culture of its own, and the right to conserve and develop the same, and thus safeguards the rights of minorities by preventing the State from imposing any external culture on them².

Legislative framework

Most States have enacted laws for the protection and conservation of their cultural assets. The law that is most important for the conservation of the art and cultural heritage is “The Ancient Monuments and Archaeological Sites and Remains Act, 1958”.

There are numerous legislation acts that deal with the subject of “culture” as related to the UNESCO 1972, 2003 and 2005 Conventions and that are related to the following domains:

- a. Promotion and preservation of historical monuments, heritage sites
- b. Establishment of/support for cultural institutions
- c. Protection of intellectual property rights (copyright, patents, geographical indication)
- d. Conservation of indigenous traditional knowledge
- e. Tribes Cultural Rights
- f. Media and content monitoring

These legislations were enacted to preserve and protect the cultural wealth of the country both by the constituent States and Central Government.

The Indian Copyright Act, 1957

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. The Act came into effect from January 1958. The Copyright Act, 1957 protects original literary, dramatic musical and artistic works and cinematographs films and sound recordings from unauthorized uses.

²Basu, Durga Das 1993) *Introduction to the Constitution of India (15th ed.)* New Delhi: Prentice Hall of India. p. 475.ISBN 81-203-0839-5).

Institutional framework

Several ministries and departments of the Government of India are concerned with Culture, among which Ministry of Culture and the Ministry of Tribal Affairs are the foremost. The Ministry of Culture is responsible for the protection, conservation and promotion of cultural heritage of India by supporting and sustaining cultural creativity and its multiple expressions, as a unifying factor within diversity. The wide functional spectrum of the ministry ranges from generating cultural awareness at the grassroots levels to promote cultural exchanges at an international level. Tangible and intangible heritage are given importance. Tangible heritage includes the protection of monuments of national importance, archaeological sites, and the national and regional museums. To fulfil its mission, a wide range of services are provided by the Ministry through a large number of specialized and competent institutions and organisations throughout the country (this will be discussed in the section 'relevant organisations').

Policy measures

India ratified the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 as early as 1977 but the Government did not take any action to adopt a suitable legislation as set forth under the Article 5 of the Convention. However, an amendment was adopted in 2010 to the existing Act [the Ancient Monuments and Archaeological Sites and Remains Act, 1958] as a measure towards safeguarding the monuments and their surroundings.

In order to strengthen activities in the field of performing arts, the Ministry of Culture has enunciated programmes and policies to safeguard and protect intangible cultural expressions and cultural diversity in order to meet the obligations arising from the 'Convention for the Safeguarding of the Intangible Cultural Heritage 2003' and the 'Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005'. Indian authorities are planning to adopt a new "Scheme for Safeguarding and other Protective measures in the area of the Intangible Heritage and Cultural Diversity" with the involvement of communities, local government and the civil society, thereby demonstrating a will to ensure the wide participation of all the segments of the society in cultural life as per the principles of UNESCOs conventions.

There is a very active civil society engaged in the cultural life of the country, which undertakes initiatives and activities in all facets of culture and that support the principles contained in the three major cultural conventions of 1972, 2003 and 2005. The civil society actors have helped to develop international standards of practice in the field of preservation and conservation of heritage and play an instrumental role in influencing legislation and policy in the country.

The Ministry is making its international presence felt through the bilateral cultural exchange programmes with various countries, through which 'Festivals of India' and exhibitions showcasing Indian culture have been taken abroad. The Ministry of Culture is also responsible for implementation of various UNESCO conventions in the field of Culture.

India actively participates in programmes and activities of regional organisations such as the South Asian Association for Regional Cooperation (SAARC), UN organisations' programmes (including UNESCO) and other intergovernmental organisations (such as the International Centre for the Study of the Preservation and Restoration of Cultural Property - ICCROM), as well as with leading professional international associations active in the cultural field such as the International Council for Museums (ICOM), the International Council on Monuments and Sites (ICOMOS), the World Conservation Union (IUCN) and the World Monuments Fund.

India is taking a very active part in the implementation of the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 and the Convention for the Safeguarding of the Intangible Cultural Heritage 2003. Indian representatives served on the World Heritage Committee from 1985 to 1991, and 2001 to 2007, and served on the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage in 2006 and 2010.

However, attention should be drawn to the following issues:

- a. The existing legislation is much focused on the monuments and sites, while there is no specific legislation that is directly translatable to the 2003 Intangible Heritage and 2005 Diversity of Cultural Expressions Conventions.
- b. With regard to community engagement, civil society organisations are far ahead of existing legislation and working effectively in areas covering the three major UNESCO cultural Conventions.

c. In order for Indian citizens to fully participate in their cultural life, there is, therefore, a need to harmonize the institutional framework, update and coordinate legislation.

Capacity-building and technical assistance provided and/or recommended by UNESCO.

UNESCO supports a wide range of awareness raising activities and capacity building workshops in the country, paying a particular attention to involving communities and civil society actors so as to foster their participation in cultural life. The two UNESCO Conventions, one to safeguard and protect Intangible Heritage' and the other on 'Cultural Diversity', have urged governments to initiate proactive measures to safeguard and protect cultural diversity and the various expressions of intangible heritage facing the risk of disappearance.