

*Article History*  
Received 19 Jan 2021  
Reviewed 27 Jan 2021  
Revised 12 Feb 2021  
Accepted 20 Feb 2021

# **Monument Toppling: A Review of International Laws related to Cultural–Heritage Property and their Implications to Tourism**

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## **Abstract**

Recent public conversations around cultural property law have exposed this area of international law to several gaps that exist in this field. Cultural property is key to tourism across the world and brings in the much-needed inflow of money in an economy due to its attraction. However, the entire premise of cultural property law is based on preservation and this common thread runs through almost all international legal instruments and most domestic legislations. In this paper, it is analysed through a careful perusal of the history of international cultural property law, if there is scope to introduce a limited right to destroy cultural – heritage property. This is explored through reading of international human rights law along with cultural property law to advance suggestions of rethinking and revamping this legal regime, as it has strong implications to tourism management. In the conclusion, the paper also explores how tourism management would also be reshaped if the international right to destroy oppressive imagery becomes a part of the discourse.

## **Keywords**

cultural property tourism, destruction, human rights, international law, monument toppling, preservation,

## **I. Introduction and the Study Objective**

In 2017, at a protest rally led by the white supremacists for the statues of Confederate Generals Robert E. Lee and Thomas “Stonewall” Jackson, counter protestor Heather Heyer was brutally killed (Heim, 2017). This news was splashed across the television sets and

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newspapers around the world. People saw what happened to Heather and thus started the conversation on racism.

The violence that was perpetuated changed the way in which people understood the spaces around them. These monuments have long stood there as tourist attractions with the tourists completely unaware of the historical underpinnings. The statues, monuments, public buildings, names of towns and cities that we all grew used to being around to the point of them not bothering us at all, were now stark reminders of hate, racism and violence. This discourse slowly trickled into other nations as well. Now the issue is no more restricted to the Confederacy and its symbols but all kinds of racist symbols that stood for colonisation and slavery.

In May 2020, the death of George Floyd in the most brutal and inhumane manner led to widespread *Black Lives Matter* movements and campaigns (Hill et al 2020). As public debate and discourse on matters on racism grew, public imagery in the form of cultural property came to light. Demands were made to bring down confederate statues, the statues of some colonial slave traders were toppled by protesters, some were removed by state authorities.

Traditionally the treatment of cultural property within international law has been with the aim of protection and preservation. The norm has been to protect from destruction and looting within the historical scenario. The response to destruction of cultural property historically has been condemned by the international community. A lot of it grew after World War II and the subsequent armed conflicts in different nations. There is no recognition of the importance to sometimes remove or even destruct cultural property that has racist and oppressive underpinnings.

The demand to decolonise public spaces and rid it of the bigotry and scars of racism requires the exploration of the legal paradigm. It is important to revisit and see what international law in terms of cultural property state in such matters. It is also pertinent to evaluate and look at the genesis of these legal instruments to understand their basic premise and to identify the gaps.

In Part I, this paper explores the international law regime concerning cultural – heritage property, by tracking the evolution of international law and the various legal instruments that have been adopted by States. This is important to understand its value within cultural tourism. Part II discusses the constant tussle between the ideas of preservation of cultural property and destruction of cultural property. To what extent are we going to push this limit and where do we stop. The constant, stark reminders of a traumatic past do not end with statues, it is within buildings, monuments, halls, libraries, universities. The question is whether international law is even prepared to deal with this gap. In Part III, the paper examines the Human Rights based approach to claims of destruction of cultural property and how that may offer a

plausible solution to the international community to develop upon in changing times. This shall also change the way cultural tourism is perceived.

Therefore, the present paper aims at analysing the issue of monument toppling by critically reviewing international laws related to cultural–heritage property. The study should prove relevant, as the study-issue has the implications to the management of tourism, particularly of heritage tourism, one of the most popular tourism sectors in South Asian countries like Nepal and India.

## **II. Research Methodology**

This paper extensively evaluates the existing international regime on cultural property and the blanket protection afforded to such property by the international regime. Reliance for this analysis was placed on international conventions and treaties. The research methodology involved churning out the critical points from each of these international instruments that discuss preservation of cultural property. This has then been juxtaposed against the recent events of monument toppling around the world. This required a historical critique of the events leading up to the erection of such monuments that cause anguish amongst people who have endured suppression and oppression for generations. Through a strictly research based, non-doctrinal and analytical and comparative study, the paper aims to provide plausible solutions in terms of human rights within international law.

## **III. Findings and Discussions**

The following section discusses the key findings of the study.

### **I. International Cultural Property Law Regime**

Before looking at whether or not the right to destroy is an available remedy, it is imperative that the international law regime that decides the recognition of such cultural properties is perused and evaluated. The reason why cultural property remains dear to tourism across the world would be understood here. In this part, the history of the laws and their current modern form are discussed.

#### **A. History of protection of Cultural Property**

The international law regime in relation to cultural property has evolved largely from the wars and armed conflicts that have ravaged through the 19<sup>th</sup> and 20<sup>th</sup> Century. The first known formulation of a legal codification to protect culturally important property was the Leiber Code, 1863 (hereinafter Leiber Code, 1965) developed by the United States. This was provided as a *rules of war* instruction to the United States Armies during the American Civil War and was duly signed by then President Abraham Lincoln. Article 35 of the Leiber Code provides for protection and states that all “classical works of art, libraries, collections...”(Leiber Code, 1965) must be protected from “avoidable injury” (Leiber Code, 1965). Further, Article 36 of the Leiber Code states that, “If such works of art, libraries, collections ...belonging to a hostile

nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized or removed for the benefit of the said nation" (Leiber Code, 1965). Additionally, "In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated or wantonly destroyed or injured" (Leiber Code, 1965).

The Code reflects the unique resolve that even if the property belonged to the adversaries, they were not to be destroyed and were to be preserved. The seeds of a preservationist approach towards cultural heritage property were sowed in this legal document. This restriction on destruction of cultural property is also a manifestation of the limitation to military necessity in an armed conflict. Such proscriptive underpinnings were followed in the Brussels Declaration 1874: the Institute of International Law (IIL) was established on 8 September 1873, the first attempt by governments around the world to codify laws of war (This declaration did not formally come into force but formed a very important foundation for the contemporary legal instruments in the field) and the Oxford Manual, an initiative of the Institut de droit International.

The Leiber Code, Brussels Declaration and the Oxford Manual were all very influential legal pieces during the Hague Peace Conferences of 1899 and 1907. These two conferences culminated into the widely known *Hague Rules*. At the First Hague Peace Conference in 1899 three Conventions and three Declarations were adopted. The same Conventions and Regulations related were revised and diversified at the Second Hague Peace Conference in 1907. Thirteen Conventions and one Declaration were adopted in 1907.

Some of these Conventions in particular formulated rules on the protection of cultural property and monuments in armed conflicts. Like Article 5 of the 1907 Convention concerning Bombardment by Naval Forces in Time of War provides that "... all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes" (Convention (IX) concerning Bombardment by Naval Forces in Time of War, 1907). It is important to note this article makes it vivid that unless the property in question is being used for military purposes, it should not be denied protection. Hence, bombardment or destruction of the cultural property is permitted if being used for military purposes.

Another such provision is Article 56 of the 1907 Regulations Respecting The Laws And Customs Of War On Land states that, "...All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and

should be made the subject of legal proceedings” (Annex to Convention (IV) respecting the Laws and Customs of War on Land and its annex, 1907). Further such safeguards were mentioned within the Rules Concerning the Control of Wireless Telegraphy in Times of War and Air Warfare of 1923 also known as the Hague Rules of Air Warfare (The Hague Rules of Air Warfare, 1923). Another such attempt was made through the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments also known as the Roerich Pact was signed under the aegis of the Pan-American Union in 1935.

Through the recounting of the various historical legal instruments pertaining to the protection of cultural property, it can be concluded that *preservation* was key. The approach did not involve questioning the existence of such property, or evaluating the original purpose, or even assessing whether it was drawn upon an oppressive past or not. The international community essentially adopted these rules for the protection of historic cultural properties, but their fleeting importance did not last long and were quickly abandoned during World War I and World War II (O’Keefe & Prott, 2011).

### **B. Modern Day International Law Treaties and Conventions**

Soon after World War II, the United Nations established United Nations Educational, Scientific and Cultural Organisation (UNESCO), with the mandate of “building of peace, the eradication of poverty, sustainable development and intercultural dialogue through education, the sciences, culture, communication and information” (UNESCO, 2010). Taking forward this commitment, UNESCO brought together nations from around the world to formulate a treaty specifically providing guidelines on protection of properties that are culturally important during wars and armed conflicts.

Preservation of cultural property traditionally grew as a concept to protect the properties from destruction during armed conflicts and wars. This concept of preservation further became important as international and domestic tourism across the world boosted. Tourist attractions now began including properties of historical significance and those that had been preserved for generations. A direct result of this was expansion of the international law regime that protected cultural monuments as the significance impacted a large number of stakeholders, the significance could be either cultural/historical or commercial or both.

#### **1. 1954 Hague Convention**

In 1954, the first modern day treaty exclusively pertaining to cultural – heritage property, the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict was adopted (hereinafter 1954 Hague Convention). Currently 133 states are party to the Convention. The Convention has been with time appended with the First Protocol Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 and the Second Protocol to the Hague Convention, of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999. In this 1954 Hague Convention 1954, like the previously drafted legal

instruments, there was an exception to the effect that the prohibition on destruction of cultural property could be waived for military necessity. In the aftermath of the World War II where massive destruction, pillaging and devastation caused to cultural properties was caused, it was felt important to adopt this convention (Gerstenblith, 2012). The preamble of this convention also reflects the same:

“...Being convinced 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; 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; ... Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace; Being determined to take all possible steps to protect cultural property...”(1954 Hague Convention, 1954).

A close reading of the language reveals that it was recognised that cultural – heritage property suffered significant damage and the inclination clearly was to avoid such a happening in the future (Graham, 1987). This is also the point in history where the definition of cultural property was affirmed. The definition of the term Cultural Property was now to include any property, irrespective of the fact whether it is public or private property (1954 Hague Convention, 1954). Further it now came to include: “a) both movable or immovable property; b) monuments; c) archaeological sites; d) groups of buildings; e) works of art; f) manuscripts, books and other objects; g) such as museums; h) large libraries and depositories of archives; and i) refuges intended to shelter” (1954-Hague Convention, 1954). Another unique aspect of the Convention is that it states that such safeguarding and respecting of cultural property is to be done both in times of an armed conflict and in times of peace (1954 Hague Convention, 1954). In the 1954-Hague Convention, 1954, all of the constituents within the meaning of cultural property were seen through the preservation – oriented lens and were to be protected from damage.

## **2. UNESCO Convention, 1970**

The second important treaty related to cultural – heritage property was also a direct outcome of World War II. Soon after World War II, the illicit and illegal trade of cultural objects that had been looted and plundered during the war had spiked manifold (1954 Hague Convention, 1954). To curb this trade of contraband cultural property, UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter UNESCO Convention, 1970). With the aim of restricting this illegal trade, the Convention reminds the State Parties that, “... it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations...”(1970 UNESCO Convention).

The language of the preamble directs towards a preservationist approach. The 1970 UNESCO Convention, like the 1945 Hague Convention, keeps preservation of cultural property as the focal point. Even though the aim is to restrict trade of such property, the foundation is protection of cultural – heritage property.

### **3. The World Heritage Convention**

In 1972, UNESCO's Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 (hereinafter The World Heritage Convention) was adopted. In this convention it is explicitly stated that the mandate is to preserve and protect cultural property during peacetime (O'Keefe, 2006). Another striking feature of this Convention is that it promotes preservation of not just cultural property but also conservation of nature. The World Heritage Convention does not just mandate protection from damage and destruction but goes a step further and states that State Parties, "shall endeavour , in so far as possible, and as appropriate for each country" (The World Heritage Convention, 1972) to "take the *appropriate legal, scientific, technical, administrative and financial measures* necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage" (The World Heritage Convention, 1972). The question of what such an obligation would mean was addressed by the Australian High Court in 1983, where they were of the opinion that this language does not hint towards coercing State parties but to take such actions that best suits their resources and capacities (Commonwealth v. Tasmania). Therefore, the language of the World Heritage Convention is also creating a soft obligation to ensure protection of cultural property, something which the Australian High court has also stated (Commonwealth v. Tasmania, 1983).

### **C. Cultural Property and International Humanitarian Law**

In the international humanitarian law regime, the Geneva Conventions of 1949 were a milestone in laying out the rules and law of war. The protection they afford to civilian populations and victims of armed conflict have been laid out in the most sophisticated manner. In 1977, two Protocols were adopted to supplement the Geneva Conventions of 1949. Additional Protocol-I deals with international armed conflicts and Additional Protocol II deals with non – international armed conflicts (an aspect that was originally provided for within common Article 3 of the four Geneva Conventions, 1949).

Both Additional Protocol I and Additional Protocol II lay out provisions for protection of cultural objects, they at the same time also provide for a waiver in case of *military necessity*. This is a common thread that can be witnessed in the international law provisions discussed above. Article 52 of Additional Protocol I states that, "Civilian objects shall not be the object of attack or of reprisals" (Protocol Additional to the Geneva Conventions, 1949 & Relating to the

Protection of Victims of International Armed Conflicts, 1977) Article 16 of the Additional Protocol II provides that, “Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship ...” (Protocol Additional to the Geneva Conventions, 1949 & Relating to the Protection of Victims of Non-International Armed Conflicts, 1977).

Hence, the International Committee of the Red Cross (ICRC) has left no stone unturned in these protocols to promote the protection of cultural property and heritage property across the world (Dutli, 2002). Their intention is clear through the two protocols and in the subsequent years, their actions to work towards protection of cultural – heritage property has been full well established. Through their studies and reports, the ICRC has reinforced the idea that protection of cultural property is a *humanitarian issue* and has been the most vocal against *cultural cleansing* (Price-Jones, 2020).

#### **D. Customary International Law and UNESCO Declarations**

Evolution of customary International Law on cultural – heritage property corresponds to that of the legal instruments as discussed in this section (Henckaerts, 2005). Much like the conventions and treaties which were a direct response to World War II, the international community reacted strongly to certain international events which have framed to a great extent the understanding of customary international law in the cultural property sphere.

During World War II, Einsatzstab Rosenberg, the special task force under the administration of Adolf Hitler was specifically set up to destroy Jewish Heritage (Wangkeo, 2003). Its acts were sharply denounced; and this was addressed during the Nuremberg trials. The International Criminal Tribunal for the Former Yugoslavia (ICTY) set up in response to the 1990 Yugoslav wars has also prosecuted persons for the devastation caused to the nation's cultural property (Abtahi, 2001). In *Prosecutor v. Dario Kordić & Mario ^Erkez*, the ICTY held that the destruction of cultural property amounts to being a, “*crimes against humanity*, for all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects” (Prosecutor v. Kordić, 2001). The role of ICTY is crucial in adding a layer of protection for cultural property in customary international law. Through its decisions, the ICTY has continuously stressed on how it violates the human rights of a group of people and therefore bringing in the aspect of violation of international human rights law (Vrdoljak & Koufa, 2007).

Another event that caught international attention was the complete demolition of the Bamiyan Buddha statues located in Afghanistan (Hammer, 2010). These Buddha statues were carved into the walls of a cliff in the 6<sup>th</sup> Century (France-Presse, 2001). The Taliban in 2001, destroyed the two statues despite the international community's uproar over the issue. In response to



this, the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 2003 was adopted. (~~UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 2003~~). The Declaration states that in the wake of increase in the number of acts destroying cultural property, if it is established that a State, “intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity... bears the responsibility for such destruction, to the extent provided for by international law” (Article VI, UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, 2003).

Article 8(2)(e)(iv) of the Rome Statute that forms the basis of the International Criminal Court provides that, “intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments...” falls within the definition of war crime (Article 8(2)(e)(iv) of the Rome Statute, 1998). This was upheld by the ICC in the case of *Prosecutor v. Al Mahdi*, where the ICC convicted Ahmad Al Faqi Al Mahdi, the leader of Hesbah in Mali for ordering the destruction of UNESCO protected World Heritage Sites (Prosecutor v. Al Mahdi. Therefore, both ICTY and the ICC provide for protection of cultural property as part of international humanitarian law.

Careful consideration of the entire history of development international law in relation to cultural – heritage property, the modern-day international law regime, that all these were born out of the philosophy of protection. Most of these legal measures and mechanisms were in response to events that were unfolding around the world and have been interpreted to be transnational crimes. So, it can be concluded that it is recognised by international law that protection of symbols, monuments and cultural property is vital. The question remains however, who decides which cultural property deserves protection and which interpretation of that cultural property deserves protection. We see this is a question that is increasingly being asked when the existence of symbols of a racist colonial past have come to light.

## **II. Preservation versus Destruction**

A deliberate perusal of the existing legal apparatus reveals that it does not answer the question of whether removal or destruction of cultural property with traumatic and disturbing underpinnings is possible or not. And if it is possible then how must it be done and what role does the State play in this as the State continues to sometimes even make money off of cultural tourism to these monuments. This part explores that though international law may not provide for a solution on treatment of cultural property that has racial, colonial and oppressive history, the need to recognise this and come up with a desirable resolution is the need of the hour.

### **A. Colonial Iconography and Confederate Statues**

In 2015, the movement widely known as *Rhodes Must Fall* started as a protest against the statue of Cecil Rhodes which was situated on the campus of the University of Cape Town (Fairbanks, 2015). The statue was removed by the University authorities, but the movement grew bigger and reached the Oxford University (Chaudhuri, 2016). Oriel college of Oxford University, of which he was a member, has a statue of Cecil Rhodes. He is known for his racist, imperialist ideas, was actively engaged in slave trade and apartheid in South Africa. It is his violent legacy and his statue being a symbol of the oppressive history that leads to the mobilization (Chowdhury, 2019). The campaign was revived again in 2020 (McKie, 2020). The irony is that there is also a scholarship that has long been run in his name offered at Oxford University to students from nations that had been colonised in the past.

Similarly, 2020 saw the downfall literally of many such colonial iconography of men who propagate slave trade, oppressed populations and have been memorialised by way of statues and monuments. The statue of the slave trader, Edward Colston was toppled by the Black Lives Matter protests in Bristol (Farrer, 2020). The statue of another slave trader, Robert Milligan was brought down by authorities from outside the London Museum in wake of the protests (Milligan, 2020). Many statues of King Leopold II, a colonizer from Belgium and who caused the violent crimes against people in Congo have been removed (Birnbaum, 2020). Another set of contentious monuments have been the confederate monuments in the United States. The violent protests that led to the killing of a woman at Charlottesville, toppling of the statues of "Old Joe" in Florida, Roger Taney in Maryland, Robert E. Lee in Johnston, Texas, all bear witness to the growing consciousness around rejection of a racist past (Morris, 2020). In the United States, both federal legislature like the National Historic Preservation Act (NHPA), 1966 and state legislations in almost all the Southern states still have laws providing protection to the confederate monuments. State legislations exist in North Carolina, South Carolina, Georgia, Alabama, Virginia, Tennessee and Mississippi for the protection of cultural property. These are the very same states that formed the confederacy, practiced slavery and fought the Civil War against the Union states (Graham, 2017).

The moment we put into perspective the context in which these colonial and confederate iconography and memorabilia were commissioned, we come face to face with the brutal history of dehumanization of people, mass atrocities, violence and collective trauma. Domestic legislation in the United States for example replicates the international law premise of preservation and protection. This points to the fact that it may be time that these legislations are revisited and revamped.

## **B. Deliberate Destruction**

Though we have the growing consciousness about cultural – heritage property that needs to be brought down to ensure racial justice. International Law is also at the same time constantly faced with the question of protection. In recent times, with rise in armed conflicts, there has also been an increase in atrocity crimes. The desecration of the Temple of Bel at Palmyra in Syria (Little, 2020), the Gates of Nineveh in Iraq and the Great Mosque of Aleppo in Syria during wars are examples of why it is important to have even stricter compliance of international law to ensure accountability.

It is amply vivid that the current set of circumstances around the world expose us to challenges that are new and need due consideration. After careful perusal of the existing regime of international law concerning heritage property and bearing in mind the impact on cultural tourism due to this, the author believes that the international community is faced with certain critical questions, namely:

- 1) How should international law be revisited to ensure protection of cultural and religious property and the rights of minority communities?
- 2) While ensuring such protection, how should the aspect of revisiting monuments that have been formed on the foundation of grave human rights violations be incorporated?
- 3) Who decides this balance, what would be the parameters and how?

With these three questions at the heart of this debate, the next section explores possible solutions.

## **III. The Human Rights Approach**

### **A. Right to destroy of Cultural – Heritage Property**

With growing awareness about the past and history of cultural property has initiated a whole new discourse in international law. There is also some consideration by scholars if destruction of cultural property as a right could have some value. E. Perot Bissell V in their paper, argues that a limited right to destroy cultural – heritage property could be allowed (Bissell V, 2019). The rationale behind this argument is that “monuments erected in commemoration of violations of the customary international law of human rights should be exempted from the structures of cultural – property law when the government that owns them wishes to destroy them” (Bissell V, 2019). Bissell also argues that there is a sort of cathartic value to the destruction of cultural property which in a way is helpful in alleviating the suffering of those whose rights had been violated.

It is undeniable that the presence of Confederate monuments was in celebration of those who actively violated the human rights of an entire population of people. The Civil War was fought because they saw preservation of slavery and propagated racial discrimination (Southern

Poverty Law Center, Special Report, 2017). Most of these statutes and memorials cropped up during the Jim Crow era. The Ku Klux Klan (KKK) and the United Daughters of the Confederacy are largely the white supremacist outfits that looked after initiation of the memorabilia project and looked after setting up of Confederate statues.

There is strong evidence, like in the case of Confederate Statues that they were built on the foundation of racial discrimination, human rights violations and celebrated those who propagated and practiced slavery. Hence, as per Bissell, in such cases, the context in which the monument was built becomes evident and therefore, the State must have the power to determine whether it can be destroyed or not (Bissell V, 2019).

### **B. Transitional Justice and Reparation**

The Transitional Justice paradigm is founded on ensuring redressal for the victims and at the same time asserting accountability of the perpetrators. “Transitional justice consists of both judicial and non-judicial processes and mechanisms” to achieve the same (Guidance Note of the Secretary – General, United Nations, 2010). Reparations is one such mechanism that forms part of such transitional justice. Through reparation is an individual right, in the case of transitional justice for a set of people, community reparations can be offered.

Often, memorials are built to preserve history and honour the memory of the victims (The African Union Series, 2013). When memorialisation is done as part of reparations, this can be viewed as recognising the past and honouring the memory of the victims and their families. Ordinarily, memorials are built to acknowledge the past, destroying memorials must be considered as having the same effect.

By putting into context the monument or cultural property in question, the act of taking it down is in itself symbolic of standing with the community that has been victimised. This rejectionist approach then becomes not just motivated by an individual or a mob, but can then be considered by the local, municipal, or state authorities with respect to the circumstances in which the structure in question was raised.

Historical origins of this concept can be found within the Roman era when *damnatio memoriae* or “dishonouring of the memory” was practised (Robey, 2013). By way of this practice the statues, busts, buildings or other monuments dedicated to the dictators and tyrannical rulers are toppled. Many memorabilia of the Adolf Hitler and those idealising Nazi Germany were destroyed after World War II (Fortin, 2017). Multiple statutes and busts of Joseph Stalin and Vladimir Lenin have been brought down by former Soviet Union countries (Fortin, 2017).

Therefore, destruction as part of the reparations mechanism towards transitional justice may hold some value. While preservation and construction of monuments is acceptable, similarly destruction to achieve a significant transitional justice goal can also be considered as an important medium.

### **C. Contextualisation and Preservation of History**

The vexed question in the discourse concerning destruction of cultural - heritage property is what about the erasure of history that will be caused. To that it is important to note that after perusing the circumstances in which the monuments may have been erected, the context becomes crucial. Once the cultural property in question has been contextualised, the course of action becomes easy to decide.

After gaining independence from British colonial rule, in India statues of colonial leaders, British Governor Generals, and officers of the East India Company have slowly being removed from public spaces. These statues or busts often occupied significant spots in and around towns and cities in India. Since the 1960's they are being taken down, removed and sometimes relocated to lesser-known spots or obscure monuments. In the erstwhile East India Company, that helped the Crown to establish colonial rule in India, it was a tradition to honour the outgoing officer generals of the British Army by raising their statues at prominent city spots (Sohini C, 2020). With time, even roads, streets and other public buildings that were named after British officials have been changed.

If it is determined that the cultural property in question has been established in contravention of the customary international law of human rights, like suggested by *E. Perot Bissell V*, the right to destroy must supersede preservation (*Bissell V*, 2019). However, there is also another area that will have to be weighed. This is about the recognition of cultural property and monuments. Once, the context has been determined, the question that will still remain to be answered is who to decide which interpretation and which symbolic meaning is the State protecting. Is there a group of people that will be protected and others that are left out? If so, then as Bissell suggests, the State would have to turn their gaze towards determining the customary international law of human rights that have been violated.

## **IV. Conclusion**

The development of international law with respect to cultural property has essentially only talked in terms of preservation and not destruction of cultural property. The question of whether a legitimate claim to desecration of cultural property is an option that must be

available to communities whose rights have been violated and those with an oppressive past. With the change in moral composition of the society and the manner in which we understand collective trauma and historical injustices has also transformed. The recent debates around historical racism have prompted people and governments to rethink some of the ideals they tend to portray through monuments and statues occupying public spaces. The destruction of such cultural property is prohibited by international law and in most cases considered an atrocity crime. When viewed from the lens of human rights law, cultural property law as an extension to it must therefore offer some possibility of redressal. This redressal may be in the form of recognizing the colonial and racist foundations while permitting destruction of the cultural – heritage property.

The key in all of this is that there are also concerns over how this would impact cultural tourism across the world. It is important that states realise that educating the people for the destruction of an oppressive monument is also important, so that the hate and violence of the past is explained. Tourism management in this context requires a careful perusal of all the existing histories and cultures beyond the lens of commercial activities. The moment the commercial angle of tourism is dropped, redressal and using the redressal to explain the right destruction in that context becomes essential. Therefore, a framework adhering to the customary international law of human rights would be the best suited to revamp the existing legal paradigm to introduce a limited right to destroy cultural property after proper contextualisation.

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#### ***Funding***

The author declares that she has received no funding or financial support in carrying out the research.

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#### ***Conflict of interest***

The author claims having no conflict of interest in the research work.

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