In 2006, New York art dealer Subhash Kapoor arranged the theft and illegal exportation of a 900-year old bronze statue of the Dancing Shiva from a small temple in Southern India. In 2008, the National Gallery of Australia bought the statue for AUD$5.6 million. In 2013, Kapoor was arrested and news spread of his illicit activity. The Indian Government requested the statue be returned. In 2014, the Gallery relinquished the work, and the Australian Prime Minister returned it to India.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.
I. Chronology

Post 1970 restitution claims

- **30 September 2005**: The New York art dealer **Subhash Kapoor** visited Chennai, the capital of Tamil Nadu, in southern **India**, and met **Sanjivi Asokan**. Asokan headed a ring of **thieves** in the region. Kapoor contracted Asokan to steal idols belonging to Chola Era.¹

- **January 2006**: Asokan’s hired temple looters **stole antique sculptures** from a temple in Sripuranthan village, in the Ariyalur district of Tamil Nadu. Among others, Asokan’s thieves stole a 11th century **Dancing Shiva statue**.² which was subsequently shipped to New York.

- **February 2008**: The National Gallery of Australia (the Gallery), a state institution, paid Subhash Kapoor AUD$5.6 million for the **Dancing Shiva statue**.³ Weeks before acquiring the statue, the Gallery consulted an art law expert who cautioned the Gallery officials about the considerable risks of acquiring the sculpture, including the likely possibility that it was stolen.⁴

- **August 2008**: When villagers in Tamil Nadu **discovered the theft**, they reported it to the Tamil Nadu Police “Idol Wing”.⁵

- **March 2009**: The police arrested 7 locals alleged to be involved in the theft, including Sanjivi Asokan. The detectives obtained the information that Kapoor had directed them.⁶

- **25 October 2011**: India’s Central Bureau of Investigation issued an international alert, Interpol’s Red Corner Notice, for Kapoor’s “non bailable” **warrant for arrest** in connection with the case.⁷ Five days later, Kapoor was arrested in Germany.

- **14 July 2012**: Kapoor was extradited to India, where he faced criminal proceedings for the **looting and trafficking of Indian art**. Kapoor pleaded not guilty.

- **2012**: The US FBI raided Kapoor’s warehouse in **New York** seizing $100 million worth of allegedly looted art.⁸

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² The **Dancing Shiva statue** was created by an Indian craftsman in c. 1100 AD. It is a 130 cm bronze figure from the Chola dynasty, which depicts the Hindu god as the Lord of the Dance or Nataraja.


- **December 2013**: Kapoor’s business partner Aaron Freedman pleaded guilty to six criminal counts to the New York Supreme Court. He admitted that the *Dancing Shiva* was *stolen* from an Indian temple and that he had created forged documents to give a fake collecting history to the statue and facilitating its sale to Australia.\(^9\)

- **February 2014**: The **Gallery** contacted the **Indian Government** to discuss avenues for restitution for the statue.

- **March 2014**: The **Indian High Commission** lodged a formal request to the Australian **Attorney-General Department** asking for the *Dancing Shiva* to be returned to India. **Negotiations** subsequently took place between the Gallery, the Australian and the Indian Governments. The Gallery “voluntarily removed” the statue from public display.\(^10\)

- **5 September 2014**: The Australian Prime Minister, Tony Abbot, **returned** the *Dancing Shiva* to the Indian Prime Minister, Narendra Modi.

### II. Dispute Resolution Process

**Diplomatic channel – Negotiation – Settlement agreement**

- In February 2014, once more evidence about Kapoor’s illicit activity had emerged through investigations, the Gallery admitted that the statue was *likely* to be stolen.\(^11\) Hence the Gallery was willing to discuss avenues for restitution with the Indian Government.

- The Indian and Australian Governments became more involved in the dispute over ownership of the statue. This is because the process for retuning foreign cultural objects was handled on a government-to-government basis in accordance with the provisions of the *Protection of Moveable Cultural Heritage Act* 1986, which implements Australia’s obligations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 UNESCO Convention). In response to the March 2014 return request from the Indian Government, the Gallery voluntarily removed the *Dancing Shiva* from public display.

- In its September 2014 Press Release, the Gallery stated that it “is cooperating and working closely with relevant authorities on fact gathering and on possible outcomes”.\(^12\)

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11 Ibid.

12 Ibid.
III. Legal Issues

Deaccession – Due diligence – Criminal offence (theft) – Illicit exportation – Ownership

- In 1972, the Indian Government introduced the Antiquities Act, which established that after 1972 all items of antiquity are to be owned by the Indian State and are only to be exported with exhibition licenses. Therefore, the removal of the Dancing Shiva from a Tamil Nadu temple and its export to New York constituted a theft and illicit exportation under Indian law. In fact, Kapoor is currently on trial before Indian courts, accused of the looting and the illicit trafficking of Indian art. Moreover, Kapoor’s business partner Freedman acknowledged that the statue was stolen from a Tamil Nadu temple before US courts, and that they had sold numerous artworks to famous museums and galleries around the world with forged provenance documents.

- Whilst a court has still to decide the matter, one can argue that the Gallery did not acquire the ownership of the Dancing Shiva. The forged provenance records that lead the Gallery to purchase the stolen item hold no legal weight for the Gallery’s claim of title over the work. However, the Gallery maintained that it made a bona fide (good faith) purchase, based on diligent provenance research that was in accordance with their Museum’s protocol and ICOM’s Code of Ethics for Museums.

- However, under Article 14(2) of Australia’s Protection of Moveable Cultural Heritage Act 1986, knowingly importing a cultural object, whose export has been prohibited, constitutes a breach of law. Furthermore, under Australian common law regulating tangible personal property, if an object is stolen then it is illegal to acquire the work, even as a good faith purchaser. Criminal liability has not been attributed to the Gallery.

IV. Adopted Solution

Unconditional restitution

- On 5 September 2014, the Prime Minister of Australia, Tony Abbott, presented the Dancing Shiva statue to the Prime Minister of India, Mr Narendra Modi, “in a (diplomatic) gesture of goodwill and respect. This action was undertaken with the cooperation and approbation of the Gallery”.

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13 Felch, “Unprecedented”.
14 Ibid.
16 Australia, Personal Property Securities Act 2009. Property legislation in all Australian States is grounded upon the British Torrens principle of registration of title.
17 National Gallery of Australia, Questions and Answers.
V. Comment

- The Gallery’s lawsuit to recover its losses from Kapoor has been considered “unprecedented” because of its rarity.\(^{18}\) Many museums, galleries and private collectors around the world have returned looted objects to countries like Italy, Greece, Turkey, India and Cambodia. However, according to Felch, no museum or collector has filed a similar suit because it would possibly expose claimants to investigations into their due diligence and prior knowledge of the items being looted – regardless of the fact that dealers had provided standard warranties guaranteeing good title to the objects. The Gallery’s press release lists its “thorough and extensive research process … which found no indications that the acquisition would be improper or illegal”.\(^{19}\) The Gallery maintained that “it did what any reputable international gallery would have done and what is required to comply with the UNESCO conventions”.\(^{20}\) However, the Chasing Aphrodite author also claimed that the Gallery performed “optical due diligence”, because it did not properly follow up provenance concerns, such as the authenticity of Kapoor’s contacts.\(^{21}\)

- The news of Kapoor’s illicit activity, after his arrest in 2011, has raised numerous concerns for other museums and galleries that have purchased art though him, and “been victim of a most audacious act of fraud”.\(^{22}\) “The man who sold the world” and “created a black-market Sotheby’s”\(^{23}\) also made deals with the Metropolitan Museum of Art in New York, the Los Angeles’ Getty Museum, Sydney’s Art Gallery of New South Wales, and many more. In total, 236 objects have been traced to galleries and museums.\(^{24}\) This has caused a wave of increased provenance checks occurring, and policies being updated. The overwhelming influence Kapoor had in the art world, and the contacts that he used, are under continued police investigation.

- Blame has been pointed in all directions, for the looting and trafficking of art. Vijay Kumar\(^{25}\) and Hemang Desai\(^{26}\) believe the Western demand in the art market encourages the continued illegal supply of works. However, it is the responsibility of a number of stakeholders to protect cultural heritage. The 1970 UNESCO Convention outlines that Member States must “protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export”.\(^{27}\) This means that governments of countries like India, and not just their museums, hold responsibility for protecting their own heritage. Accordingly, the Indian Government has received criticism for its “seemingly apathetic view and response to the theft of thousands of priceless heritage objects, despite

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\(^{18}\) Ibid. Filed February 5, 2014, in the New York Supreme Court.
\(^{19}\) Ibid.
\(^{20}\) National Gallery of Australia, Questions and Answers.
\(^{22}\) Ibid.
\(^{23}\) Matthews, “The Man Who Sold the World”.
\(^{24}\) Felch, “Kapoor’s Footprints”.
\(^{25}\) Matthews, “The Man Who Sold the World”.
\(^{27}\) Preamble.

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the millions of dollars being spent on historical preservation”. UNESCO estimates that nearly 50,000 objects were smuggled out of India between 1979 and 1989 alone, with figures multiplying in the last two decades. Furthermore, the tolerance for “reputable galleries knowingly and unknowingly buying stolen or looted art” has drastically fallen in the post-war period, with the implementation of the 1970 UNESCO Convention and ICOM’s Code of Ethics for Museums.

VI. Sources

a. Legislation

- India, Antiquities Act, 1972.

b. Documents


c. Media


29 Ibid.


