

Domestic and International Obligations of the Government in Preserving and Managing the Cultural Heritage

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Abstract

Cultural heritage can be considered as a symbol of manifestation for culture and identity. That heritage which had been illustrated the civilization, customs, traditions and the overall development, transformation and human evolution and societies throughout history. To preserve and protect the cultural heritage is the most important measures of government and international community would require the existence of committees mechanisms, rules and regulation. The aim of preserving the cultural heritage is commutes utilize from their history and transfer to future mankind generations. Development of cities, development of transportation, internal and international armed hostility, high profit of trafficking the historic – cultural properties and so on are always threatened the cultural heritages, seriously. Laws, regulations, treaties and international charters, as well as establishing the administrative procedures in the framework of international organizations and commitments and adherence of governments to some extent has been able to prevent the destruction of cultural heritage. But achieving to the ultimate goal requires to the full attention of governments and human society. Governments must be manage and protect the areas of cultural heritage by establishment the acts and regulation in domestic dimension meanwhile they obliged their followers to observing the established regulations. In the international dimension, governments establish some commitments and duties for themselves by membership in international organizations and adhering to treaties, conventions and charters which will be lead to responsibilities for offending states by violation of them. Recognition the responsibilities of the local and international governments in the field of cultural heritage can be have an effective position in reducing the crimes and usurpation to the heritages in structurally and administrative framework.

Key words: Cultural heritage Foundation patron, International organizations, International treaties, Laws and regulations

INTRODUCTION

Today one of the most important human issues which is observed in most international treaties is one problem as the cultural heritage which some efforts and expansion is provided for preservation and protection of it. On the other hand one of the factors and pillars of identity strength, national trust and confidence in each nation belongs to its cultural heritage of that country. Researches in various aspects of cultural heritage will be lead to clear

the ambiguities of history, understanding the obtained values result in long life of society and transferring the hidden fundamental values of the society in cultural heritage to modern life of society and it is received as one of the main factors of recognition of nations and countries from each other. Special features of Iranian art, culture and geographical position, it has been a significant influence on the art and culture in contemporary world which it can be considered as one proper context for international cooperation in contemporary period. Historical and ancient monuments which is very important for the countries with an important precious historical cultural values as well as tombs and historical sites located in the old towns and villages with a valuable historical and construction context and work and many historical objects in museums are an expression of art and unique capabilities of every nation and community those have a rich and genuine culture and also tradition and creativity. There must be a

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significant attention to cultural heritage as a national and worldwide capital result in the life and passing of the years and much centuries according to its dignity and position. Thus, preservation, protection and transformation of this heritage to the future generations as well as the importance and powerful influence of research, evaluation the maintenance, restoration and introducing the cultural heritage to communities play a very active role in clarify, consolidate and authority of the national culture. Affaires related to protection and preservation of cultural heritage is very difficult for government due to the extent of cultural heritage issues, their qualitative and quantitative varieties, expanding high costs and so on; therefore, it has become a national and popular duty. Effectiveness and influence the cultural heritage and jurisprudence from each other with regard to the culture, customs, traditions, norms, concepts and available meanings of cultural heritage which has been achieved over time shows that throughout history, every generation has been received and completed the experiences of previous generations according to time and place conditions or utilized them in his/her current life as similarity form or more complete. So, in fact, in the context of the legal law, the task of legislator is discovery the evolutions and strengthen of social relations. One of the causes of non-execution of relevant laws but abandoned is non-compliance with the cultural, social and religious features of community. Pay attention to the importance of customs, traditions, norms and culture of community is very important and necessary in legislation and proper planning for an accurate motion for building the present and future time based on historical experience. Recognition the different aspects of cultural heritage and expression the obligations and domestic and international duties can be effective in achieving the purpose of which is to protect and preserve the cultural heritage in order to organizing the activities and actions related to this context in the form of laws and treaties.

REVIEW OF LITERATURE

Cultural Heritage

“Cultural heritage of every nation is whatever the result of thought, ideas, beliefs and the efforts of previous generations in one society and nation and it has been transferred to next generations in form of traditions, beliefs, customs or the instruments embodied“ (Pazuki, 1998, p. 82). With this definition can be stated that the cultural heritage of each country is considered as the essence of personality, cultural identity, religious and political of very nation in the history and every nation is owner of personality, identity, authenticity, origin and historical value with regard to some documentation that is presented as cultural heritage. Another point of this

definition is that “We inherit whatever the ancients has no cultural religion, we only call whatever cultural religion that culture and cultural factors is effective in their structure “ (Tohidi, 2003, p. 11). Cultural Heritage: The meaning concept of cultural heritage has been evolved during recent decades. At the first, this term is only generally used to are masterpieces and historical values but now it has been expanded by broader meaning and includes all particular things which is important for people. Today, heritage term including cultural and natural heritage. It means that recognition and full understanding the cultural diversity is not possible without no special attention to the natural heritage. There is an inherently relationship between nature and culture. Human modified their around environment and the environment has also influenced on human activities. Although the majority part of cultural works id divided into in two premises of cultural and natural categories, but there is a third category which is compilation of cultural and natural instances and today, it is known as combined heritage. Examples of cultural heritage can be includes one or more of these cases in brief as: architecture and monuments works, historic centers, monument set, museums, archives, libraries, archaeological sites, primary caves, cultural figures, historical parks and gardens, biological parks and so on. (Samadi, 1989).

All kinds of Cultural Heritage

Iran is one of the most oldest of ancient countries which has been created during the long ages due to the natural conditions, certain geographic locations and relations of its inhabitants with neighbors. So, many researchers and archaeologists have been called Iran as origins of human civilization. Famous researcher named Christy Wilson says, “recent excavation in Iran indicates that Iran should be have industry older than Egypt and Babylon. “(Wilson, 1939, p. 8) Accordingly, diversity of cultural heritage in Iran is so considerable. None of archaeologists and researchers has no considered such heritage diversity in the field of cultural heritage as fully and comprehensive. “However, according such definitions in the law is found regulations and international conventions and also some categories those is provided by archaeologists; tangible or intellectual cultural heritage generally cultural heritage is divided into natural cultural heritage and under water cultural heritage.” (Shad Noush, *ibid.*, p.23).

Tangible or Material Cultural Heritage

As understood from this type of cultural heritage can be say that this category of heritage includes the heritages with material realization and with a tangible capabilities as physically. In one more accurate definition it can be said that “It refers to the total material symbols which will be has material and physical realization out of our essence. More historic values and artistic works is based on material

symbols and works, such as cities, buildings and objects. "(Tohidi, 207 p. 9).

Intangible or Spiritual Cultural Heritage

Intangible or spiritual cultural heritage is part of those civilization achievements which give them identity. Intangible cultural heritage is generally used to nonphysical aspects of a culture and often includes customs of the society in a period of time or it refers to behavior approaches in one society which usually these are some official general rules to operation in a particular culture space. Spiritual cultural heritage relates to more alive and oral tradition of the people. Mortals products like as stories and beliefs, values and various forms of knowledge and skill that cultural life is indebted to them belongs to this category of heritages. These heritage can include dances, weddings, skills and local knowledge. All reminded works form different cultures indicates the ruled thought and spiritual culture on those communities, in fact, spirituality of mankind become manifest as material, cultural and historical phenomena and consequently, it can create the tangible aspect of intangible heritage. So, here, we can discover the mutual and rooty interdependence between intangible or spiritual cultural heritage and tangible or material cultural heritage (Cheraghchi, 2005).

Clauses 1 and 2 of Article 2 of Chapter I of the Convention on the protection of Intangible Cultural Heritage adopted on October 17, 2003 Educational organization, United Nations Scientific and Cultural Organization (UNESCO), has been recognized the expression of some instances of intangible cultural heritage as well as areas those this type of heritage occurs in their charts. Accordingly, it can be said that intangible cultural heritage occurs in following:

"A: Traditions and oral tools includes language that is as a nonsense for intangible cultural heritage; B: Exhibition arts; C: Social actions, customs and festivals; D: Knowledge and practices concerning to the nature and the universe; C: Skill in the traditional manual arts. "(Cheraghchi, 2005, p. 250).

Natural Cultural Heritage

Exceptional advantages that have some of the natural heritage caused that these heritages considered as World Heritage of Humanity and be protected. World Heritage includes cultural and natural wealth that go beyond the political and geographical borders and gain the worldwide value and give the possibility to the international community to cooperate in the protection and preservation of its elements. "Conservation of cultural and natural heritage is a vital necessity in the present day which is the fighting age against environmental pollution. There are a lot of economic and cultural benefits by doing so performance

which plays its role as an effective factor in creating and maintaining the sustainable development. Utilization the natural resources although has the negative effects and causing the environmental degradation but it cannot be stopped, so, it should be dealt with acceptance the certain system of morality. Thus, it can be prevent as much as possible the harm to the environment and available cultural and natural attractions into it " (Rezvani, 2002, p. 128).

In order to get a full understanding of the cultural diversity the first we should be find a recognition from the natural heritage. Nature and culture can be linked and complement to each other. Natural cultural heritage while represents the history of civilization, culture and natural attractions of each country as a result of the passing the over time of time." Forces and factors those are creator of these natural and humankind monuments as the natural and cultural heritage during over the time are as result of effectiveness of natural factors to each other and interference of human factors on them that is created some diverse perspectives and is distinguished in terms of their specific characteristics from other natural phenomena. "(Rezvani, 2002, p. 130). According to the extent of the dangers that threaten this category of heritage and in order to protection them, the Convention for the Protection of the World Cultural and Natural Heritage adopted by Member States in 1977 which also, Iran acceded to it in 1976. In this Convention and in Article 2 is provided one definition of natural heritage as follows:

For purposes of this Convention, the following shall be considered as 'natural heritage':

-Natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty "

Legislator of Islamic Republic of Iran on 2004/01/13 used the natural heritage for the first time after the formation of Heritage Culture and Tourism. Accordingly the Cultural Heritage and Tourism's organization is obliged to coordinate on how to the possibility of utilizing the country's natural heritage and stipulated commitments in the Convention for the Protection of the world's cultural and natural heritage act to prepare the regulatory by common proposal of Cultural Heritage and Tourism and Environmental Protection Agency.¹ Accordingly, executive regulation Note 2 of The Law of Cultural Heritage and Tourism Organization by defining the natural heritage, also,

is saying about the causes of conservation and utilization of these resources as: “Heritages are natural geography ranges and certain areas of the country That due to its special quality of physics and biology or natural beautiful landscape and unique and or natural - historic landscapes and non-historical phenomenon and valuable samples of flora and fauna and their habitats must be determined, protected and sustainable utilized them.”

Article 2 of the Regulations is provided as well as examples of natural heritages as follows:

“ A: Natural landscapes and non-protected geographical exquisite effects.

B: The vestiges of human cognitive and obtained sites of physical and cultural interaction of man and nature.

C: The areas referred to Clause (a) of Article 3 of the Law on Protection and improvement of the environment such as national natural monuments and other protected areas.

D: The vestiges of ancient plant and animal cognition”(Ghanami, 2010, p. 218).

Underwater Cultural Heritage

Another type of cultural heritage is entitled underwater cultural heritage on the basis of international conventions. United Nations Educational, Scientific and Cultural Organization (UNESCO) through general conference of this organization in 2001, and according to considering the underwater cultural heritage as a part of the cultural heritage of humanity as well as the importance of maintaining this type of heritages and responsibility of states for its heritage and also, according to the unauthorized activity and even the possible negative effects which can be lead to the destruction or endangerment of underwater cultural heritage, they adopted a convention entitled Convention on the Protection of the Underwater Cultural Heritage. This convention in addition to defining the underwater cultural heritage and providing some instances, is stated the government ‘s tasks about protection of them. Islamic republic of Iran has been joined to this convention with a seven years delay. Pharos Alexandrinus works which has been thrown out into the sea by successive earthquakes during the 14th century is one of the samples of underwater cultural heritage.

METHODOLOGY

The aim of present study was to investigate the domestic and international obligations of the Iranian government to protect, preserve and manage in cultural heritage which is based on the stipulated regulations and rules as the law about the preservation of national works adopted in 1931, Constitution Law of cultural heritage adopted in 1989 and so on, international convention like as convention of preservation the cultural properties in

war period, convention of preservation the cultural and natural heritages of the world. Present research is aimed to responses to following questions as:

1. Does domestic regulation of government commitment provide the effective and sufficient for cultural heritage?
2. Does international convention and charters guarantee the necessity protection for cultural heritage?

In the responding for mentioned questions, following hypothesis will be studied:

- State stipulate some regulations and laws to protection and the preservation of cultural heritage Then, create the administrative procedures and transfer the related responsibility to certain institutional areas enforcement the execution of the regulations objectivity. meanwhile, it will be stand as the custodian of this affair against the bumps and abuses.
- In the international dimension, governments establish some commitments and duties for themselves by membership in international organizations and adhering to treaties, conventions and charters which will be lead to responsibilities for offending states by violation of them. A lot of these conventions has been predicted performance the bond in their texts. Non-fulfillment of obligations causes the imported irreparable lossesto cultural character of government.
- Domestic law creates a government commitment, according to their oldness, they have no sufficient efficiency associated with the development of science and technology and updating of their knowledge is inevitable.
- Lack the strong and necessity performance bond will be weak the supportive dimensions of international conventions and charters undermining and only the government’s commitment to implement the provisions of international engagementcan be considered as guarantee for this protection.

Selected method in this researchis library, means all data collected through compiling resources in libraries or refer to the relevant sites and then, these data has been studied and analyzed and also, information will provided as descriptive and analytical form.

INFORMATION ANALYSIS

Domestic Government Commitment to Preserving the Cultural Heritage

One of the organizations affiliated to the Ministry of Culture and Islamic Guidance was an organization titled “Traveling and Tourism“. One of the duties of this organization, was creation the necessity context in order

to attract the domestic and foreign tourists and as a result, exchange technology to the country. "With the increasing growth of the tourism industry in the world, tourists show high interest to the history of their cultural heritage while protection of this heritage is an vital necessity in the 21st century which was fighting period against environmental pollution " (Rezvani, 2002, p. 130).

Historic tourism that will be lead to that tourists to visit the places that interested to keep them. Monuments, museums, arenas and historic monuments can be includes such places.

The relationship between cultural heritage and tourism can be leads to mutual effectiveness and influences among people of different societies. "If there are no prudent management of governments in development of tourism, so it can be causing the social and cultural problems"(Simbar, 2004, p. 205).

Cultural heritage can be also reflect to other peoples and communities with integrating with tourism attractions, the basic values of peace, human rights and other international cooperation and leads to the favorable results.

In general it can be said, addressing the importance of cultural heritage in the planning, development and promotion of tourism industry which is now considered as one of the most important factors of income in countries, it has become widely accepted.

"The economic values have four potential sources of revenue; tourism, trade, exploitation and welfare facilities. Mismanagement of government in each of these resources leads toundesirable development or even destruction of cultural heritage " (M. Feilden and Viewciltu, 2004, p. 44).

All mentioned factors and close link between cultural heritage and tourism (and of course with prudence and government policies) were lead to separate two depended organizations to the Ministry of Culture and Islamic Guidance; organizations of "Cultural Heritage" and "Traveling and Tourism" from this ministry by legislator and formed one newly organization by integration of these two organization to Cultural Heritage and Tourism Organization under the direct supervision of President.

2-4 Study the International Commitment of Government to Protect the Cultural Heritage

Respectand protection of cultural property that formed a part of the public interest of the international community is the task of all governments. Damage or destruction leads to" strong poverty of heritages in all the world "as mentioned in introduction of Convention for the

protection of cultural and natural heritage approved in 1972.

Prevention the destruction or disposal of any part of the cultural and natural heritage which this Convention has declared it as extreme poverty the heritage of all nations of the world including the government's commitment and violation of it will be leads to taking the responsibility.

"In international law to fulfill the international responsibilities is necessary to state the following conditions":

A: breach of an international obligation; B: damage adducing; C: the existence of causal link between the breach of commitment and the damage adducing; (D: the deleterious action attributable to a body of government. "(Safai, 1997, p. 17).

In the field of the cultural heritage of the government's commitment against protection and preservation the cultural heritage apart from being accepted a breach of commitment directly by the government or justcreated by private parties indirectlywill be leads to some performance bond for the government "since every government is bound and obliged to supply and protect the public order in his country and also to protect the rights of people ". (Ghasemi Shoub, 2006, p. 77). Because of the fact that international rules after execution the legal formalities of each country (approved by Countries Council or approved by Board of Ministers) is in domestic law and in many international communitieseven such rules preferred to domestic rules, governments are responsibility for practices of their members. Therefore, internal rules should be adopted and stipulatedin a manner without any conflict between themand international obligations of the governments. Member governments of conventions or international agreements is obliged to recognized their cultural heritage, including the movable and immovable properties and to announced the relevant international organizations while providing a comprehensive list of them and to take the protective measures surrounding them.

It can be say that international protection and preservation of the cultural heritage performs in three ways:

1. International conventions which expressed the mutual obligations of states on the protection and preservation of cultural heritage;
2. Specialized international organizations that are responsible for performing the taskat the international level;
3. International charters that " treat as ethical guidelines or invitation to taking the proper actions in stipulation the regulations and national guidelines.

These Charters, in fact, are scientific standards and also, professional - technical criteria consensus with conservationists of cultural heritage which originates from the maturation and evolution of concepts and principles governing on the protection of cultural heritage in national, regional and worldwide level and inference and develop from the conversations and exchange views and practical comparison of function in different areas related to the subject. "Cheraghchi, 1993, p. 114).

Governments decided to establish the educational, scientific and cultural organizations for United Nations in order to achieving the international peace and welfare of popular people to cooperate with nations in the field of education, science and culture gradually and it is one of the primary goals of the United Nations that it is also mentioned in the Charter. Convention that has approved by this organization as follows:

- Convention 1948 Beirut about reducing the custom tax duties for audio-visual. productions that have scientific and cultural education nature
- International Convention on the Protection of Copyright 1952
- Convention 1954 on the protection of cultural heritage against the effects of war
- Convention 1970 on the taking measures to prevent the importation and exportation and illegal transfer of historical ownership of historic cultural property.
- Convention 1972 on the protection of cultural and natural Heritage of the world.
- Convention 1995 on the restoration of cultural property like as trafficking and stolen
- Convention 2001 on the protection of underwater cultural heritage.

CONCLUSION

1. Due to scientific reasons and recognize to different nations and on the other hand due to religious and philosophical reasons, to protect the cultural heritage is confirmed as one of the functions of government and society. Also, today, tourism industry is created the most largest economic developments in some countries those have historic and cultural attractions due to its much profit and causes to political stability and development of communication and culture. By this definition, protection and preservation the cultural heritage is essential and critical practice.
2. In societies like as Iran there are a few attention to the role and importance of cultural heritage due to economic problems and is no one of the priorities of the people. Thus, a part from nearly a century oldness,

legislative of cultural heritage context and increasingly growth of science and technology, as well as growing the devastating and threatening the factors of present natural and human's society industry, the old rules were invoke and only a small part as the new legislation carried out as incomplete, incoherent and sometimes in contrary way

3. Cultural heritage have many anecdotes from industrial and artistic developments of communities, scientific records, political communication, legal relations, social meetings, conflicts, religion and customs of tribes during different period. Knowledge of the history of civilization indicates the historic affairs of a nation or ethnic group that has a great deal to human civilization and social development is the result of the same tasks.
4. The preservation of cultural heritage is based on two factors: Existence the regulate in this regard and acceptance rate and community's commitment to these rules. This means that acceptance and public support is a necessity condition for realization the cultural rules. On the other hand, in the international space the ruled spirit on the present conventions indicates a positive step towards the protection and conservation of worldwide cultural heritage but there are some considerable problems as follows:

After almost fifty years of development and recognition Hague Convention, the Convention has been converted to obsoleted and inapplicable treaty which most of the Member States has no interest to implementation of it, practically. However, today, all countries are aware to keep and protection importance of cultural works left by his predecessors as a valuable national resources, and though the Hague Convention is one tool to achieve such lofty goal, but the reason can be found in inefficiency of the Convention as a proper tool for the realization of a certain goal.

One of the most important factors that has been made difficult the implantation of the Convention belongs to its incapability to respond to the requirements and current conditions.

Some conditions the provisions of the Convention in 1954 is based on, today, its position has been changed with a new conditions that sometimes has a fundamental difference with the past conditions and whatever belongs to World War II, is no respond to the main changes in qualitative and quantitative development of weapons. Today, international contracts are more effective than in the past ages concern to the performance the bond and surveillance mechanisms whereas Hague Convention 1954 like as a commitment letter which is only guarantor of the implementation of the signatories conscience.

It is also notable about the 1972 treaty is that among the countries where their historic – cultural and natural works are recorded on the World Heritage List, our country is located in the class of fifty-sixth rate despite being more ancient.

Of comparison of gap distance between the number of historic - cultural and natural works with exceptional available values in the country and the number recorded in the World Heritage List, shows that the activity of apparatus organization of cultural and natural heritage in the context of the implementation of the Convention and enjoyment of the privileges must be go through faster and more developed.

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