



History of Heritage Protection and Management Laws in India

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ABSTRACT

India's cultural legacy and its archaeological and constructed legacy in particular are unprecedented worldwide. India has one of the largest geopolitical areas and one of the highest historic volumes and variety. This huge Indian heritage depot is acknowledged worldwide as a major component of its distinct cultural character. Although beyond Indian territory, many countries around the world contain in their museums some of the most important specimens of the heritage of our region which often narrate the glory of Indian culture along with the history of colonial heritage, while Other monuments in Southeast Asia are an example of the spread of Indian culture.

Introduction

The initial survey shows the total amount of Indian archaeological remains, including centrally protected monuments, state-protected monuments, heritage buildings under various religious trusts, historical cities and archaeological landmarks, may amount to approximately 400,000 plus heritage structures across the nation.

The potential of the insurmountable legacy of India is still not used – simply because it exists in different forms and experiences in many states, and since there was no single overarching vision for the heritage of India to date. Contrary to western civilizations, India's cultural heritage has shown continuity throughout ages, with the usage of ancient customs.

India's heritage preservation is now underfunded and a comprehensive vision for the budget and planning of heritage with creative management is crucial. Heritage not only represents the vital markers of the history of India, but it also offers a special chance to create jobs and revenue via tourism and local development.

Growth before Independence

The archaeological and other historical activities began in India with Sir William Jones, who on 15 January 1784 in Calcutta brought together an antiquarian group forming the Asian Society.¹ Many people who conducted monumental surveys in different regions of India backed him. Chandragupta Maurya's connection with Sandrokotto by Jones helped to establish a chronological perspective of Indian history. The identification at the confluence of the Ganga and the Sone was followed by the identifying Pataliputra (Palibothra of traditional script). Charles Wilkinson's decipherment of the script of Guptas and Kutila was an important milestone.²

Many people since then have contributed to the survey of various monuments in India. The first archaeological surveyor designated was Alexander Cunningham in 1861. Between 1861 and 1865 he examined territories across India. However, this effort was discontinued with the dissolution of the Archeological Survey in 1866. In 1863, a law was enacted to prohibit damage to buildings and preserve them for their historical and architectural worth. The Religious Endowments Act XX of 1863 gave the government the authority to stop acts of vandalism and protect

¹ Abu Imam, Sir Alexander Cunningham And The Beginnings of Indian Archaeology (University of London, 1963).

² Archeological Survey of India, Ancient India, available at: https://asi.nic.in/Ancient_India/Ancient_India_Volume_9/article_1.pdf (last visited on: 02-04-2021).

monuments of cultural and historical significance.³ These priceless structures must be protected and preserved in order to ensure their survival. In 1878, the Indian Treasure Trove Act was passed. In addition, it enforced the Treasure Trove Act in 1878, allowing the government to seize historical valuables and antiques that were discovered during a digging accidental or otherwise.⁴ After 26 years, an Act to preserve archeological sites and artefacts of archaeological, historical or aesthetic importance was passed in 1904 called Ancient Monuments Preservation Act, 1904.⁵

However, the Indian Archeological narrative officially begins with the Asian Society's establishment in 1784. Over time, there arose a necessity for an archaeological department, which led to the establishment of archaeological survey of India (ASI). The main purpose of creating ASI was to examine the archaeological sites and document them. In addition, its charter included issues of the protection of monuments. Initially, the preservation, exploration and excavation through five administrative circles had been formed. Later the notion of environmental development was incorporated around monuments and places. The Archaeological Survey of India now manages the preservation and conservation of monuments under its protection through 24 circles.⁶ The last three mini-circles added were headquarters in Mumbai, Shimla and Goa. In addition to the excavative works, there are six branches of the excavative field, two Temple Survey Project's, one Building Survey Project, one Prehistory Branch, one Science Branch and two Epigraphic Branches (one for Arabic & Persian and one for Sanskrit and Dravidian).⁷

The passage of the Ancient Monuments Preservation Act, 1904, ushered in a new era for heritage conservation and preservation (Act No. VII of 1904).⁸ To account for the great relevance and significance of the country's priceless assets, even the British government recognised the need to conserve our history, which is why the Ancient Monument Preservation Act of 1904 was enacted. The Act passed sought to control the maintenance and conservation of monuments under private or individual ownership.⁹

In 1904, as said earlier, a law on antiquarian monuments and archaeological excavation controls and protection and acquisition of ancient monuments and of objects of aesthetic, historical and archaeological importance was passed to safeguard the preservation of old monuments. The Antiquities (Export Control) Act, 1947 was adopted mainly to restrict antique exports.¹⁰ Within Entry 15 of the Central Act i.e. Government of India Act, 1935, archaeological monuments, archaeological sites, and others pertaining to monuments fell under the jurisdiction of the Federal government.

Post-independence Era

The jurisdiction over the monuments, cultural heritage, and archaeological sites were split after independence when the Constitution of India was drafted in the manner as follows:

Union List Entry 67: Monuments and ancient sites, as designated by Parliament, are legally protected in the nature of national importance.¹¹

State List Entry 12: Historic and important Monuments Except Those Designated as National Heritage by Parliament.

³ Tanaka T. Trustee, "State and Stakeholder: Hindu Temple Management in Contemporary India, 1957–2012" 32(1) *Journal of Interdisciplinary Economics* 75-94 (2020).

⁴ Trivedi, Mudit, "On Taking from Others: History and Sensibility in Archaeologists' Arguments for Treasure Trove Legislations" *Public Archaeology* 17 (2019).

⁵ Ministry of Culture, Legislations, available at: <https://www.indiaculture.nic.in/sites/default/files/Legislations/5.pdf> (last visited on: 17-04-2021).

⁶ Sixteenth Report, Estimates Committee (2007-08), (Fourteenth Lok Sabha), Maintenance Of Monuments By Archeological Survey Of India, Ministry Of Culture.

⁷ Ministry of Culture, "Annual Report, 2006-07" (2007).

⁸ S.Praveen Kumar, "Monuments For The Development Of Tourism", 1(4) *International Journal of Management and Social Science Research Review* 87 (2014).

⁹ Dr Swapna Samel, "Conservation And Preservation Of ancient Monuments In British India: A Study" 6(5) *Journal of Emerging Technologies and Innovative Research (JETIR)* 103 (2019).

¹⁰ D.B. Channabasappa, "Indian Constitutional Provisions towards preservation of archeological inheritance" 2(6) *International Journal of Academic Research* 15 (2015).

¹¹ Government of India Act, 1935.

Concurrent List Entry 40: those not covered under the above entries can be jointly operated by the state and central government.¹²

To ensure that history is protected at the local level, the state governments are given the authority to pass legislation. The Indian Constitution has also mandated under Article 49 of the Constitution, Directive Principle of State Policy, that the state should protect monuments, buildings, and other places of cultural and historical significance as well as objects of national importance from looting, vandalism, disfigurement, destruction, removal, or export, if these have been declared by or under law made by Parliament to be of national importance. Even though they are not enforceable, the Directive Principles of State Policy have the same importance as Fundamental Rights assured by the Constitution by virtue of many judicial pronouncements.¹³

Under Article 51A of the Indian Constitution, every person has an obligation to maintain and protect our monuments.¹⁴ For the experience of current and future generations, it is also national obligation to protect these resources. The National Importance and antiquity of cultural heritage was addressed by enacting the Ancient and Historical Monuments and Archeological Sites and Remains (Declaration of National Importance) Act, 1951.¹⁵ With numerous restrictions in place, the abuse of antiquities was effectively and severely regulated by the Ancient Monuments and Archeological Sites and Remains Act, 1958. The Parliamentary statute, called the Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, came into effect shortly after the Constitution of India which was changed to Ancient Monuments and Archeological Sites and Remains Act, 1958 (AMASRA).¹⁶

The National Monuments Authority (NMA) and the Archeological Survey of India (ASI), have been assigned the task of governing and administering the laws connected to ancient and historical monuments. The Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010, which was enacted in March, 2010, created the National Monuments Authority (NMA) under the Ministry of Culture, Govt. of India.¹⁷ Several duties have been allocated to the NMA to administer the restricted and forbidden area around the centrally designated monuments for the conservation and preservation of monuments and sites. According to the requirements of the Ancient Monuments and Archeological Sites and Remains Act, 1958, the archaeological operations in India are all under the control of the Archeological Survey of India.¹⁸

It governs laws related to antiquities and national treasure, i.e. the Antiquities and Art Treasure Act, 1972. It is tasked with locating and discovering India's ancient monuments and historic sites. It is a leading study and preservation institution for the country's cultural heritage. The major focus of the ASI is the maintenance of historic monuments and archaeological sites and remnants of national value.

However, the 1958 Act possessed a great number of lacunas that still needed to be addressed. As a result, rules for the Act were crafted very recently in 2011 called Ancient Monuments and Archeological Sites and Remains (Framing of Heritage Bye-laws and Other Functions of the Competent Authority) Rules, 2011 formed under section 38. Section 28 and Rule 2(b) of the AMASR Act, 1958 and Rules 2011 together, establish the national monument authority as the Competent Authority. The Competent Authority's responsibilities are defined in Rule 4 in great detail including safeguarding our monuments.¹⁹

Most State governments have passed state heritage protection legislations as well. An example of the type of legislation that is applicable to

¹² *K. Guruprasad Rao vs State of Karnataka & Ors*, Civil Appeal No. 4823 of 2013.

¹³ *Minerva Mills v. Union of India*, A.I.R. 1980 SC 1789. Subsequent cases include *Sanjeev Coke Mfy. Co. v. Bharat Cooking Coal Ltd* ('83) A.SC 239, *State of Tamil Nadu V. Abu Kaur Baj* AIR 1984 SC 626 and *Unni Krishnan V. State of A.P.* (1993) 1 SCC 645.

¹⁴ Constitution of India, 1950, inserted through 44th amendment 1978.

¹⁵ Ashish Verma, Vinita Singh, , Shikha Dimri, "Protection of Archaeological Sites in India: Laws and Its Applications" 17(9)*Palarch's Journal Of Archaeology Of Egypt/Egyptology* (2020).

¹⁶ Ehtesham Patel, "Conservation of Heritage Sites in India", 6(5) *International Journal of Engineering and Advanced Technology (IJEAT)* (2017).

¹⁷ Faraz Farooq, "Heritage Management in India and the AMASR Amendment of 2010" 5(5) *Global Journal For Research Analysis* 56 (2016).

¹⁸ Ramya B Senthil, "Heritage Conservation Plans Of India - Quantity Vs Quality Angsts", 6(7) *International Journal Of Scientific Research* 43 (2017).

¹⁹ Meghna Menda, "Preservation of National Heritage – A Constitutional Mandate" 4(2) *Journal Of Legal Studies And Research* 108 (2018).

ancient and historical monuments and archaeological sites and remains is the Ancient and Historical Monuments and Archaeological Sites and Remains Preservation Act, 1956 of Uttar Pradesh, which makes provision for the "preservation of ancient and historical monuments and archaeological sites and remains in the state other than those declared by Parliament by law to be of national importance. Under the Heritage Commission Act, 2001, West Bengal has created a Heritage Commission that is tasked with locating and preserving various types of heritage buildings, structures, locations, and objects. Similar law in Tamil Nadu Act called Tamil Nadu Ancient Monuments and Archaeological Sites and Remains Act, 1966 is enacted; the Hampi World Heritage Area Management Authority Act, 2002 was passed in Karnataka along with Ancient and Historical Monuments and Archaeological Sites and Remains Preservation Act, 1961.²⁰

The legislation called the Mysore Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 (which later on came to be known as the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961) was enacted with the aim of guaranteeing the preservation of ancient monuments and archaeological sites and remains in the erstwhile Kingdom of Mysore.²¹ The law assigned power to the state government to declare ancient monuments as "protected monuments" and some archaeological sites and remains as "protected areas". Since Section 19(1) of the 1961 Act empowers the government to establish protected areas, the State issued a notification on May 19, 1982, which declared the protected areas which were listed in the schedule. The eleven villages, including Virupapura Gaddi near Hampi, were therefore declared as protected areas on 22 October 1988 as a result of this notification.²² HWHAMA, the Hampi World Heritage Area Management Authority²³, was established under the Hampi World Heritage Area Management Authority Act, 2002 to preserve and protect the UNESCO heritage site.²⁴ The Karnataka Religious Institutions and Charitable Endowments Act, 1997 also administers and manages many deities and monuments in the state of Karnataka.²⁵

The Minister of Tourism and Culture presented a bill to include Construction in "prohibited areas" and other similar restrictions, named The Ancient Monuments and Archaeological Sites and Remains (Amendment) Bill, 2017.²⁶ The Bill may modify the Ancient Monuments and Archaeological Sites and Remains Act, 1958 but unfortunately it has lapsed. India is also a member of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 and many sites are declared to be UNESCO heritage sites.²⁷

Conclusion

Monuments reflect the myriad applications of building materials, such as, fine wood, stone, limes, metal, glass, etc., or composite materials, often using different techniques of construction, representing different architectural ornamentation (structural and applied). In terms of materials, styles, techniques and the impact of the vernacular architecture there are substantial regional and local variants of monuments as well.

The monuments that are once declared national importance monuments, whether kept alive or not, transcend their original character and should be valued and maintained in a spirit that showcases the exemplary human creativity, construction tradition and patronage and architectural, engineering accomplishments and the historic cultures. These monuments also represent concrete manifestations of our many millennia-long historical and cultural events.

²⁰ *Supra* note 16.

²¹ Shankar B, Chidambara Swamy, "Listing and Grading of Heritage Buildings in Mysore City", 4(10) International Journal of Innovative Technology and Exploring Engineering (IJITEE) 29 (2015)

²² *Sakkubai Etc. v. State of Karnataka etc.*, Civil Appeal Nos. 1443-1456 of 2020.

²³ Rajangam, Krupa, "A bureaucracy of care in managing Hampi World Heritage Site" *Journal of Social Archaeology* 20 (2019).

²⁴ UNESCO, "State of Conservation report regarding progress so far made with regard to the recommendations of the World Heritage Committee"(2016).

²⁵ G Ramesh, Centre of Public Policy, Indian Institute of Management Bangalore, "Working Paper No. 621, Governance and Management of Temples: A Framework"(2020).

Also see: *Sri Sahasra Lingeshwara Temple and others v. State Of Karnataka* decided on 8 September, 2006 by Hon'ble High Court of Karnataka, [2007 (1) KarLJ1].

²⁶ Menon J, Varma S., "Archaeological places: Negotiations between local communities, archaeologists and the state in India" 19(2) *Journal of Social Archaeology* 141-161(2019).

²⁷ The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage to which India was a signatory.

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