

PRESERVATION OF NATIONAL HERITAGE – A CONSTITUTIONAL MANDATE

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Introduction

Heritage is the identity of a state.¹ It features a belonging to the culture of a particular society, such as traditions, languages, or buildings that were created in the past and still have historical importance.² Cultural and natural heritage of outstanding universal value is the common heritage of humanity. Everyone's cultural right and right to quality environment are recognized by Human Rights law³. Right to development as an inalienable human right includes cultural well being⁴. Preservation of heritage, however formidable it may appear, is an inevitable responsibility.

The Preservation of National Heritage is a duty imposed by the Constitution of India under Article 51 A, Fundamental Duties, - *Article 51 A (f)* - 'It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture.'⁵ Fundamental Duties are mandated provisions of the Constitution. It is a duty imposed upon every citizen.

The Constitution has also provided for the protection of monuments under *Article 49* of the Constitution, Directive Principle of State Policy, wherein - Protection of Monuments and Places and Objects of National Importance – 'It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be'⁶. Though Directive Principles of State Policy are not mandated provisions as they are not enforceable, they hold an equal status as

¹ Heritage – definition, Merriam – Webster Dictionary.

² Heritage – definition, Cambridge English Dictionary.

³ Universal Declaration of Human Rights 1948, International Covenant on Civil & Political Rights 1966, International Covenant on Economic, Social & Cultural Rights 1966, U. N. Declaration on Right to Development 1986.

⁴ Ibid 3

⁵ P.M. Bakshi, The Constitution of India.

⁶ Ibid 5

Fundamental Rights guaranteed by the Constitution. Hence, this Article is given importance and is followed.

The Constitution of India has divided the jurisdiction over these monuments, cultural heritage, and archaeological sites as follows⁷:

- Union: Ancient and Historical Monuments and Archaeological sites and remains, declared by Parliament, by law to be of national importance.
- State: Ancient and Historical Monuments other than those declared by Parliament to be of national importance.
- Concurrent: Besides the above, both the Union and States have concurrent jurisdiction over archaeological sites and remains other than those declared by law and Parliament to be of national importance⁸.

Enactments

The important enactments promulgated to protect and preserve archaeological sites, national heritage, in furtherance of the provisions of the Constitution, are as follows:

- *The Indian Treasure Trove Act, 1878 (ITTA)*⁹:

First legislation post – establishment of the Archaeological Survey of India enacted to protect and preserve treasure found accidentally but having archaeological and historical value. Civil disputes and mutual rights of claimants are settled through the Collector. The Collector may acquire the treasure on behalf of the government on payment of the value. Grounds for acquisition are not stated in the Act. ITTA is not aimed at cultural heritage preservation.

- *The Antiquities (Export Control) Act, 1947*¹⁰ –

This provided for controlling the export of objects of antiquarian or historical interest or significance. It has been repealed & replaced by The Antiquities and Art Treasures Act 1972 (AATA).

- *The Ancient Monuments Preservation Act, 1904 (AMPA)*¹¹ –

⁷ Negi Mohita, The Relation Between Centre and State in India, <http://www.yourarticlelibrary.com/essay/the-relation-between-centre-and-state-in-india/24925/>

⁸ R K Chaubey, Indian Federalism Autonomy and Centre-State Relations, Lexis Nexis Publications, 2007,

⁹ Indian Treasure Trove Act, 1878,

<http://hp.gov.in/LAC/Archaeology/Art%20Treasure%20%20Trove%20Act%20and%20Rules/ACT.pdf>

¹⁰ Sri Vidhya Jayakumar, Heritage Management: Law and the Role of Public Interest Litigation, Heritage Management Law, TMC College, Thane, International Seminar On Heritage Tourism, Vashi, http://www.vpmthane.org/law1/Heritage_Management_Law_131010.pdf

¹¹ The Ancient Monuments Preservation Act, 1904, http://www.asi.nic.in/pdf_data/5.pdf

This was enacted to provide for the preservation of ancient monuments and of objects of archaeological, historical or artistic interest. AMPA is applied to ancient monuments other than those of national importance. But, many states have their own legislations on similar lines and in such states AMPA is either declared repealed or not applicable.

- *The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951* –

This was repealed by AMASRA.

- *The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASRA)*¹² –

This was enacted on 28th August, 1958. The Act provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. The Act was followed by AMASR Rules, 1959. Section 14 mandates the Central Government to maintain every monument acquired under the Act and every monument where guardianship is acquired.

Penalty - The following acts are punishable with fine up to Rs.5000/¹³-

- Removal, injury, alteration, defacement, destruction, imperils or misuse of a protected monument.
 - Contravention of order by owner or occupier
 - Removal from protected monument any sculpture, carving, image, bas relief, inscription or other like object.
- *The Antiquities and Art Treasures Act, 1972 (AATA)*¹⁴ –

It was enacted in September, 1972 for effective control over the moveable cultural property, consisting of antiquities and art treasures. The AATA was followed by AAT Rules, 1973. The Act and Rules aim at -

- Regulating the export trade in antiquities & art treasures
- Providing for the prevention of smuggling of and fraudulent dealings in antiquities

¹² The Ancient Monuments and Archaeological Sites and Remains Act, 1958, http://asi.nic.in/minutes/AMASR_Act2010_Gazette_Notification.pdf , http://asichennai.gov.in/downloads/amasr_act_1958.pdf

¹³ The Ancient Monuments and Archaeological Sites and Remains Act, 195, http://asichennai.gov.in/downloads/amasr_act_1958.pdf

¹⁴ Antiquities and Art Treasures Act, 1972, http://asi.nic.in/pdf_data/8.pdf

- (iii) Providing for the compulsory acquisition of antiquities and art treasures for preservation in public places¹⁵.

AATA defines antiquity – to include – coins, sculpture, and painting, objects of ancient literature, religious, political or historical significance, articulated declared so by the Central Government. These should be at least 100 years old. Antiquities also include manuscripts, records, documents, etc. which shall be at least 75 years old¹⁶.

- *The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (AMASRA)*¹⁷ –

The Act prescribes the limits of regulated and prohibited area around a monument¹⁸ by amending Section 20 of AMASRA, 1958. It also provided for creation of National Monument Authority.

Heritage Bye-laws in respect of each protected monument shall be framed by Competent Authority in consultation with the experts. Section 20 - on functions and powers of National Monument Authority lists the following¹⁹ -

- To make recommendations to the Central government for grading and classifying protected monuments and protected areas declared as of national importance till the commencement of the amendment 2010 and also regarding monuments and areas which may be declared thereafter.
- To oversee the work of Competent Authorities.
- To consider the impact of large-scale developmental projects, including public project and projects essential to the public that may be proposed in the regulated areas and make recommendations in respect of them to the Competent Authority.

Judicial Interpretation

Judiciary has upheld the citizen's constitutional duty to protect the environment. State inaction and indifference has been condemned referring to the duty of the state to protect the environment under Article 51 A. State's duty to educate the masses as to their responsible conduct towards the environment has been recognized and enforced.

¹⁵ Ibid 14

¹⁶ Supra 10

¹⁷ Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, http://www.asi.nic.in/minutes/AMASR_Act2010_Gazette_Notification_new.pdf

¹⁸ Impact of AMASR, 1958, Press Information Bureau, Government of India, Ministry of Culture, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103479>

¹⁹ Supra 10

Taj Mahal, a monument protected under AMASRA and a World Heritage Site, was threatened by emissions of industry in and around Agra. The Public Interest Litigation battle was fought for over ten years before the Supreme Court. In *M C Mehta v Union of India*²⁰ (*Taj Trapezium Case*), the Court directed that all the industries which are not in a position to obtain gas connections and also the industries which do not wish to obtain gas connections may approach/apply to the Corporation/Government before for allotment of alternative plots in the industrial estates outside Taj Trapezium Zone.

In *Rajeev Mankotia v. Secretary to the President of India*²¹, Supreme Court declared Vice Regal Lodge at Shimla and appurtenant land as historical heritage and directed the Government of India to notify the entire area as protected area and ensure proper maintenance of this and all other national monuments. The government neglected to consider the Lodge, a harbinger of Colonial past with architectural grandeur and beauty of Elizabethan Era, as a historical monument standing as the witness to the transition of independence to the Indians. The Lodge is now a historical monument fait accompli by the order of the Court. But for the Public Interest Litigation, the Lodge would have become another five star hotel.

Orissa High Court suo-moto took up the matter of priceless antiquities lying in the State malkhanas involved in criminal trials on the basis of a report submitted by the Registrar (I and E) of the court. Stone and metal sculptures kept lying in the malkhanas of the state long after the trials were over because nobody claimed them as owners. In the matter of *Preservation of Antiquities involved in Criminal Trials*²², the Court directed that these antiquities should be handed over to the state museum in order to ensure proper and safe custody of them and enable interested academicians and historians to undertake research studies. The state museum was required to appropriately identify and separately display the items as “antiquities involved in judicial proceedings - court’s property”. The court lay down that the judicial officers shall in future, direct handing of antiquities to state museum following proper procedure.

The High Court of Delhi decided a Public Interest Litigation filed against the construction of Delhi Development Authority officers club in the land within 100 meters of Siri Fort Wall in *Vishwanath Pratap Singh v Union of India*²³. Siri Fort Wall signifies the only place in the whole of Asia and Europe where Mongols were actually defeated and their armies turned back in total

²⁰ (1997) 2 SCC 353

²¹ AIR 1997 SC 2766

²² AIR 1999 Ori 53

²³ MANU/DE/1490/2002

humiliation. The epic story of the triumph of our country is engraved in the stones of the wall. Considering Article 49, Schedule VII division of powers and AMASRA & AMPA, the Court entertained the Public Interest Litigation and held that the construction was in violation of the 1992 notification prohibiting construction activity in 100 meters area and regulating 200-meter area of protected monuments.

In *Dr. Chandrika Prasad Yadav v. Union of India*²⁴, The ancient site and archaeological remains at Kumrahar, which dates back to the Mauryan Empire is a site in Patna. The other is the recently-excavated site which is unfolding archaeological treasures known as the Mira Bigha site, Jahanabad. The Mira Bigha site is witnessing an onslaught of thievery and pilferage by the idol seekers. Under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 such areas of historic heritage are to be cordoned off without let or hindrance, with determination, and the areas adjacent and contiguous to these sites have to be declared as a regulated, prohibited, protected area. These areas are to be cleared so that ancient monuments and historical sites are protected. Every District Magistrate within whose area such archaeological sites lie, owes a personal moral and Constitutional obligation for efforts to preserve these sites, so does the Archaeological Officer, under the 1958 Act.

The National Textiles and mill structures in Mumbai owe their heritage status to the Public Interest Litigation – *Indian National Trust for Art and Cultural Heritage and others v State of Maharashtra*²⁵. By ad interim stay, demolition of 77 structures was prevented. The High Court directed that once structures were listed under D C Regulation 67, Municipal Corporation was bound to hear the objections to develop them.

In *M C Mehta v Union of India*²⁶ (*Taj Corridor Scam Case*) Supreme Court has kept in view Article 49 while entertaining the Public Interest Litigation against the Uttar Pradesh government's Taj Heritage Corridor Project. Construction of food plazas, shops, and amusement activities near Taj had to be given up on the Public Interest Litigation.

In *Dr. Anhita Pandole v. State of Maharashtra*²⁷, the High Court looked into the lawfulness of hoardings on heritage buildings and heritage precincts in Mumbai. The Mumbai Municipal

²⁴ 2004 Insc 222

²⁵ MANU/MH/0189/2006

²⁶ 2007 (1) SCC 110

²⁷ MANU/MH/0396/2008

Commissioner's decisions contrary to the advice of the Mumbai Heritage Conservation Committee were quashed.

In *Emca Constructions Company v. Archaeological Survey of India & Ors.*²⁸, The appellant, felt aggrieved by an interim order passed by a learned Single Judge directing the parties to maintain status quo with regard to the construction in respect of the property lying within the prohibited distance of a squarely protected monument, which became the subject matter of consideration. The Court took an overall view of the buildings which were constructed within the prohibited distance from the squarely protected monument as also the report of the expert advisory committee including the ex post facto permission so granted. The Court then directed the Archaeological Survey of India through its DG to forthwith stop accepting and processing any application for grant of permission for construction/renovation of any structure or buildings in a prohibited area and to also stop accepting appeals against any orders that may have been issued refusing such permissions and to reconsider all permissions granted pursuant to the setting up of the Committee and take consequential steps after giving the affected parties an opportunity of being heard.

In *K. Guruprasad Rao v. State of Karnataka and Ors.*²⁹ The protection of ancient monuments has necessarily to be kept in mind while carrying out development activities. The need for ensuring protection and preservation of the ancient monuments for the benefit of future generations has to be balanced with the benefits which may accrue from mining and other development related activities. While mining activity is sure to create financial wealth for the leaseholders and also the State, the immense cultural and historic wealth, not to mention the wealth of information which the temple provides cannot be ignored and every effort has to be made to protect the heritage. The Government of India shall also appoint an expert committee/group to examine the impact of mining on the monuments declared as protected monuments under the 1958 Act and take necessary remedial measures.

In *Subhas Datta v. Union of India and Ors.*,³⁰ The petitioner filed Public Interest litigation in the Supreme Court on the issue of protection of historical objects preserved in various museums across the country. He pleaded direction from Supreme Court for adequate security arrangements and for proper investigation into the incidents of thefts and damages to several

²⁸ 164 (2009) DLT 515

²⁹ CIVIL APPEAL No.4823 OF 201.(Arising out of SLP(C) No.20180 of 2010) decided on July 1st, 2013.

³⁰ WRIT PETITION (C) No. 252 of 2004 decided on February 3rd, 2015.

historical objects and also for making an inventory of available articles for future reference. The Court asked the museums and the Ministry of Culture to take necessary which are to be reviewed from time to time to consider further course of action.

Conclusion

Our cultural heritage is astoundingly rich and vast. We are duty bound under our Indian Constitution to preserve our cultural heritage. Although the Constitution recognizes the significance of cultural heritage and there are piece meal legislations, there is no authority at National and State level to deal with the management of cultural heritage in a wholesome manner. Cultural heritage management will require huge research, encouragement of NGOs in this field and creation of widespread information and awareness in the people. Considering Articles 49 and 51A (f), India is under an obligation to create awareness about the need to protect cultural heritage. But there are no statutory provisions entrusting such responsibility to any authority. As aforementioned, the Preservation of National Heritage is a constitutional mandate which has been considered with the enactments made by the Parliament as well as judicial interpretation. But, the number of Public Interest Litigations in respect of heritage matters does not match the vastness and richness of our heritage. The reasons probably are the low level of public awareness and the less number of NGOs in this field.

Hence, the author recommends-

- The government takes necessary steps in increasing the number of awareness programmes.
- Special courts shall be established under AMASRA and AATA. The antiquities involved in criminal trials shall be required under these statutes to be sent to museums without delay.
- There shall be framed a national policy on Cultural Heritage.

A country vast by stretch and width, India has natural resources plenty and rich. We are testimony of a civilization of thousands of years with languages so many and religions as many. The heritage splendor of India whether architectural, literary, moveable or intangible is monumental and enchanting. They have stood the test of time, the ravages of nature and our despicable negligence. Devoted cultural heritage management is true Vande Mataram³¹.

³¹ Supra 10

Bibliography:

Dictionaries:

- a) Merriam – Webster Dictionary
- b) Cambridge English Dictionary

International Covenants:

- a) Universal Declaration of Human Rights 1948
- b) International Covenant on Civil & Political Rights 1966
- c) International Covenant on Economic, Social & Cultural Rights 1966
- d) U. N. Declaration on Right to Development 1986.

Statutes:

- a) Constitution of India
- b) Indian Treasure Trove Act, 1878
- c) The Antiquities (Export Control) Act, 1947
- d) The Ancient Monuments Preservation Act, 1904 (AMPA)
- e) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951
- f) The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASRA)
- g) The Antiquities and Art Treasures Act, 1972 (AATA)
- h) The Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 (AMASRA)

Cases:

- a) M C Mehta v Union of India (Taj Trapezium Case)
- b) Rajeev Mankotia v. Secretary to the President of India
- c) Preservation of Antiquities involved in Criminal Trials
- d) Vishwanath Pratap Singh v Union of India
- e) Dr. Chandrika Prasad Yadav v. Union of India
- f) Indian National Trust for Art and Cultural Heritage and others v State of Maharashtra
- g) M C Mehta v Union of India (Taj Corridor Scam Case)
- h) Dr. Anhita Pandole v. State of Maharashtra
- i) Emca Constructions Company v. Archaeological Survey of India & Ors.
- j) K. Guruprasad Rao v. State of Karnataka and Ors.
- k) Subhas Datta v. Union of India and Ors.

Papers:

- a) Heritage Management: Law and the Role of Public Interest Litigation
- b) The Relation Between Centre and State in India

Books:

- a) Indian Federalism Autonomy and Centre-State Relations

